

The Notion of Balwā al-Ām (Public Affliction) and its Implementation in Islamic Law

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Abstract

Providing easiness for servants is one of the principles of Islamic jurisprudence and Muslim jurists resort to it whenever literal applications of Islamic rulings cause hardships and difficulty. Providing benefits for people and protecting them from harm them is one of the higher objectives of Islam, and jurists have tried to actualize this in their ijtihāds through various methods. Balwā al-ām is an Islamic concept which refers to public affliction that is encountered often in society and is therefore difficult to avoid. Muslim jurists take balwā al-ām into consideration when producing legal verdicts to secure benefits and avoid harm. In this essay, balwā al-ām and its relevance to other juristic concepts such as istiḥsān, maslaḥah mursala, sadd al-dharāʾī and istihlāk will be discussed. Additionally, some contemporary issues will be explained using practical examples from the daily life of Muslims to indicate how balwā al-ām can be used to remove difficulty and hardship from Muslims.

Keywords: balwā al-ām (public affliction); the notion of easiness in Islamic Law; istiḥsān (juristic preference); maslaḥah mursala (considering public benefit); sadd al-dharāʾī (blocking the means); istihlāk (assimilation or consumption).

1. Introduction

The Arabic term balwā literally means a test, calamity, hardship, affliction or necessity. Balwā al-ām is defined by jurists as a common affliction that is encountered often in society and is therefore difficult to avoid. This term denotes public necessity and common interest. There is a relation between balwā al-ām (public affliction or general affliction) and ḍarurah (necessity). Both can be a basis for a religious ruling in Islamic Law. Balwā can be seen as a public necessity which cannot be avoided due to its communality in society. In order to determine if something is in the scope of balwā al-ām, the necessity, the public need, the communality of such a thing and its frequent occurrence in society are investigated. The notion of balwā al-ām is used in the field of uṣūl al-fiqh (methodology of Islamic law) and fiqh (Islamic law).

Balwā al-ām is a legal term used by jurists in their methodology (uṣūl al-fiqh) regarding the authenticity of khabar wāḥid (solitary report). If something needs to be known by the public due to its context at the time of the Prophet but it is reported as a solitary report (khabar wāḥid) it raises doubt regarding its authenticity. The matters which people need to know because they afflict people in general and recur frequently in their life are expected to be part of the knowledge or experience of the majority. According to Abu Ḥanīfa, if a ruling pertains to matters of balwā al-ām (general affliction) and concerns people in general, it must be mutawātir (the most authentic report which is reported by large number) or mashhūr (well-known report) sunnah. For this reason, if a ruling regarding public matters is reported by a solitary report (khabar wāḥid), its authenticity is doubtful according to Abu Ḥanīfa. Since there is a possibility that such a solitary report may be fabricated or it was abrogated during the time of the Prophet or it may be erroneous for other reasons. For example, if a ruling regarding criminal penalties or atonement (kaffārah) is reported as solitary (khabar wāḥid), it is not accepted, and therefore not implemented. Similarly, Maliki School holds that a solitary report regarding a ruling on public matters or issues that the public in general should be rejected.

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For example, if a ruling regarding salah (five daily prayers), zakat (almsgiving charity), hajj (pilgrimage) and sawm (fasting) is known through solitary report (khabar wāḥid), it is not accepted. In this essay, balwā al-ām will be discussed from the perspective of general affliction which brings hardship and difficulty upon Muslims.

2. Proof Value of Balwā al-Ām in Islamic Law

Balwā al-ām (public affliction) is defined in Islamic Law as bringing easiness when people meet hardships and afflictions which are difficult to avoid. The logical reasoning in balwā al-ām is that God does not will hardship for His servants in religious obligations. He established Islam on the notion of easiness. There are many verses in the Qur'an which aim to remove hardship when practicing rulings: "He does not will hardship for you, so that you can complete the number of the days required, and exalt God for He has guided you, and so it may be that you will give thanks (due to Him)." (2:185) "He has chosen you (especially for this task) and has not laid any hardship on you in the Religion. This is the way of your father Abraham." (22:78) There are also many hadith which support the notion of easiness: "The Prophet did not have to choose between two matters, but that he chose the easier of them as long as it was not a wrong action. If it was a wrong action, he was the furthest of people from it. (Muwatta', Akhlāq, 1)

The Prophet said, make things easy for people (concerning religious matters), and do not make it hard for them and give them good tidings and do not make them run away (from Islam). (Bukhari, Nafaqāt, 1) The Prophet said, give tidings (to the people), do not create (in their minds) aversion (towards religion), show them leniency and do not be hard upon them. (Muslim, Jihad, 3) The Prophet said, the best of your religion is that which brings ease to the people. (Musnad, 5/22)

3. Istiḥsān (Juristic Preference) and Balwā al-ām (Public Affliction)

There is a strong relationship between istiḥsān (juristic preference) and balwā al-ām (public affliction). Hanafi jurist Sarakhsī defined istiḥsān as seeking an easiness on matters which everyone is afflicted (Sarakhsī, 1978, 10/145). Juristic preference (istiḥsān) is a rationalist doctrine which consists essentially of giving preference to one of the many conceivable solutions to a particular problem. The choice of solutions is mainly determined by the jurist in the light of considerations of easiness and removing hardship from the servants.

In its juristic sense, istiḥsān is the method of exercising personal opinion in order to avoid any rigidity and unfairness that might result from the literal enforcement of the existing law (Dogan, 2014, p. 155). Istiḥsān is a juristic preference when a mujtahid, using his personal opinion, abandons the ruling which he has given for similar cases because of the existence of a verse or a hadith or ijma' or 'urf (custom) or maslahah (public benefit) and gives a different ruling for the case at hand (Dogan, 2014, p. 159). Indeed, removing hardship from Muslims is one of the higher objectives of Islamic law. For ibn al-'Arabi, istiḥsān is making an exception from what is required by the general rule because its application would result in deviation from the higher objectives of Islamic law (Ibn al-'Arabi, 1968, 2/57).

In istiḥsān (juristic preference) jurists encounter two opposing situations; the general rule and the strong need which opposes this rule. The main purpose of istiḥsān is considering the needs of people and removing any excessive burden that may arise from applying the regular ruling. For example, it is required to clean the water of wells and pools from filth and what has fallen into them. According to the well-established rule, pools and wells cannot be cleaned even if the water in them is partially or totally emptied. Even if some of the water is emptied, the rest cannot be deemed pure because the filth is in every part of it. If all the water is emptied the filth on the wall and floor will pollute the fresh water again. However, this general principle will bring hardship and difficulty for the Muslims if it is applied without taking the need of the people into consideration. Therefore, Hanafi jurists hold that, on the basis of istiḥsān and balwā al-ām, if some of the water or the water that is visibly filthy is emptied then the rest of the water is deemed pure (Dogan, 2014, p. 164).

According to general rule the leftover water used by predatory birds such as falcons, eagles, etc. is not clean. Predatory birds feed off carcasses and therefore, their beaks are always filthy. The ruling for their saliva is the same as the ruling for their beaks and meats; it is considered filthy and unlawful. There is a difference between predatory birds and predatory land animals, in that the birds usually approach the water from the sky making it difficult to protect the water from them. People living in the desert or rural areas often encounter this problem (public affliction). Whilst considering the ruling Hanafi scholars took their needs into consideration and departed from the general rule by

issuing a fatwa which deems the leftover water of predatory birds pure. The basis of this fatwa is istiḥsān and balwā al-ām.

Indeed, the notion of balwā al-ām was taken into consideration by the Prophet himself. For example, a cat is not lawful to eat and its saliva must be considered as filth. If a cat drinks water from a container, the leftover becomes filthy according to default fatwa. However, the Prophet said, a cat is not unclean and its leftover is clean. It is like a household member that goes around among you (Abu Dāwud, Tahara, 39). Aisha reported that I saw the Messenger of Allah performing ablution from the water left over by a cat (Abu Dāwud, Tahara, 38). In order to remove hardship from his followers, the Prophet did not deem a cat and its leftover filthy because cats usually live together with people and it is very difficult to protect water, food or other utensils from them. Therefore, the Prophet took the hardship into consideration and gave the ruling accordingly.

According to balwā al-ām, a small amount of filth on a dress such as the blood of a fly or insects does not invalidate the prayer. Similarly, if the dress is contaminated with a little amount of dust mixed with animal dung this does not prevent the acceptability of the prayer. Because, in these types of situations, people are afflicted in general and it is difficult to avoid them. Hardship necessitates easiness. If there is a valid need for the exemption from the general rule, the fatwa is given accordingly.

Shātibī holds that istiḥsān is not pursuing one's own desires, rather it is an indication that a jurist who has a profound understanding of the intention of the Lawgiver gives fatwa accordingly because he knows that a strict application of analogy to a new problem leads to loss of public benefit. Therefore, he abandons qiyāṣ (analogy) and resorts to istiḥsān (Shātibī, 2014, 4/206).

Salam is a contract whereby one sells something by describing it in detail and receives cash under the proviso that the goods will be delivered in the future. In this type of business transaction, the trader sells something before the product is available. According to general rule one cannot sell something before he actually owns it. However, this rule may bring hardship upon Muslims if it is applied without any exception. For this reason, the Prophet permitted Muslims to make business through salam contract to remove hardship from them; “if you sell something by making a salam contract, you'd better make it according to the fixed amount, fixed scale and fixed time” (Abu Dāwud, Buyu, 57)

4. Balwā al-ām (Public Affliction) and Maslaḥah Mursala (Considering Public Benefit)

Maslaḥah literally means benefit. Maslaḥah mursala is unrestricted public interest for which no textual authority can be found on its validity or otherwise. For al-Ghazālī, maslaḥah consists of considerations which secure a benefit or prevent a harm but which are, simultaneously, harmonious with the objectives (maqāsid) of the Sharia (al-Ghazālī, 1995, 1/139). Maslaḥah mursala is considering a public benefit which is harmonious with the objectives of the Lawgiver in general, but there is no clear indication as to its validity or otherwise in the primary Islamic sources (Sābūnī, 1995, p. 131). For example, the Companions issued currency, established prisons and imposed tax on agricultural lands in the conquered territories despite the fact that there is no textual authority in the Qur'an and Sunnah about them (Khallaf, 2001, p. 84).

In general, rulings are made based on a set of valid conditions, attributes or reasons. These benefits can be classified into three groups based on what is deemed valid or invalid by God, the Lawgiver. The first group, maslaḥah mu'tabara (valid public benefit), constitutes benefits which are determined by the Lawgiver and supported by evidence in Islamic law. Jurists who accept qiyāṣ evidence hold that these benefits can be used as the basis for rulings in Islamic law (Dogan, 2014, 192).

This category contains every benefit which Islamic law aims to actualize such as protection of religion, life, intellect, lineage and property. In order to secure these benefits alcohol, murder, robbery etc. have been prohibited in Islam. The valid maslaḥah are classified into three categories; ḍaruriyyāt (the essentials), ḥājjiyyāt (the necessities to complete the essentials) and taḥsiniyyāt (embellishments) (Shātibī, 2014, 2/3-5). The ḍaruriyyāt are the essential rights of human life such as religion, life, intellect, lineage and property.

These values are not only to be accepted but also be protected against any kind of violation. The ḥājjiyyāt (the necessities to complete the essentials) are the supplementary considerations that support the five essential values. Their aim is to bring ease and remove hardship from the lives of Muslims. Examples in this category are: permission for the sick and travellers not to observe the Ramadan fast. The aim of rulings regarding matters related to worship is

to bring ease (rukḥṣah). They are considered ḥājīyyāt. The taḥsīniyyāt (embellishments) rulings improve the life of Muslims and help them to attain their goals. Examples for this category include being in a constant state of cleanliness, moral virtues and preventing lavishness.

The second group is the benefits which are neither valid nor accepted based on evidences. Therefore, they are called as maslaḥah mulga (rejected or invalid benefits) (Dogan, 2014, 193). An important point to note is that God, the Lawgiver who established the Law based on wisdom, does not disregard any benefit unless the acceptance of it cancels a higher benefit. For example, surrendering to the enemy without fighting would be beneficial as it would prevent the loss of many lives. However, the Lawgiver disregarded all these benefits and commanded people to fight against their enemies to protect their lands, honour, and dignity and freedom.

The third group covers benefits which may or may not be valid because there is no supporting evidence making it clear (Dogan, 2014, 193). Jurists refer to this group as maslaḥah mursala meaning that the validity of these benefits is determined through ijtihād. The Companions, the Successors and the leading mujtahids produced legal verdicts in pursuance of maslaḥah despite the lack of textual authority to validate it. For example, The Caliph Abu Bakr collected and compiled the scattered records of the Qur'an in a single volume. he also waged war on those who refused to pay the zakat; and he nominated 'Umar as caliph after him (Shātībī, 2014, 2/287).

Balwā al-ām is closely related to maslaḥah mursala. In maslaḥah in order to remove hardship and bring easiness to the servants, the benefits which are in line with the objectives of Islam are secured. Similarly, in balwā al-ām, in order to remove hardships from the liable servants, their common afflictions are taken into consideration and the fatwa is given accordingly. If a general rule is applied without considering the public afflictions, the servants may experience hardship and difficulty while practicing religious rulings. To avoid such harm, Islam regulated some exemptions (rukḥṣah).

It is important to mention that Islam brings some load, burden and duties. While carrying out these obligations, liable servants experience some hardships and difficulty. For example, fasting, praying and giving zakat are burdens upon Muslims and they may experience hardship while performing them. However, the religious obligations are doable by servants without meeting excessive hardship and difficulty. These duties are within the capacity of a liable person. Moreover, the benefit which will be achieved from the religious obligations are greater than the hardships and difficulty when practicing them. Therefore, the Sharia disregarded the hardship in religious obligations due to their great benefits for the servants. With the same logical reasoning, when determining if something is in the scope of balwā al-ām, its benefit and harm must be evaluated in the light of maqāsid al-sharia (objectives of Islam).

Jurists who accept maslaḥah mursala put some conditions for on its acceptance and these conditions are also valid for balwā al-ām;

- (1) The maslaḥah and balwā (affliction) must be genuine, not to be assumed or imagined. Assuming a certain legislation as beneficial or a certain case as public affliction therefore making exemption from the general rule without ascertaining the necessary balance between its possible benefits and harms, is not sufficient. There must be a reasonable probability that the benefit or a public affliction in a case is valid. Then the fatwa is given accordingly.
- (2) The second condition is that the maslaḥah and balwā (affliction) must be general. When giving fatwa on the basis of a maslaḥah or balwā, it must secure benefit, or prevent harm, to the people as a whole and not to a particular person or a group. If a benefit (maslaḥah) secures only the interest of a few individuals of certain social and political status, it is not valid. Similarly, if an affliction affects certain individuals but not people in general it is not considered as balwā al-ām. The whole concept of maslaḥah and balwā al-ām derives its validity from the idea that it secures the welfare of people in general.
- (3) The maslaḥah (benefit) or balwā (affliction) for a case should not be invalidated by any textual evidence from the Qur'an or Sunnah. If there is such evidence available, it is not permissible to produce fatwa against it. For example, there is a possibility of losing lives, property and freedom in a war to protect the country and land. Thus, surrendering to the enemy without fighting may have benefits. However, this is not valid maslaḥah or accepted balwā because there is evidence which consists of commandments in the Qur'an and Sunnah regarding the protection of land, honour, property and religion.

- (4) The *maslaḥah* and *balwā* must be rational and deemed acceptable by people of sound intellect. It can be justified by sound logic. Caliph ‘Uthman ordered scribes to write the official Qur’an and send copies of it to the main Islamic capital cities.

By doing this he aimed to settle conflicts among the Muslims which had arisen due to the various readings of the Qur’an, and thereby to unite them under one official copy. At the same time, he ordered the Muslims to burn their personal *Muṣḥāfs* (the Qur’an copies) as they were the main cause of dispute among the Muslims.

- (5) A valid benefit (*maslaḥah*) and *balwā* must prevent hardship from the people and if they are not taken into consideration, they would bring hardship to people. God wills easiness for His servants and He does not will hardship for them. When the population of Medina increased, Caliph ‘Uthman ruled that a second adhan should be called for the Friday Prayer. This ruling was based on the notion of *maslaḥah* to give time to the residents to make their ablution and other preparations between the first and second adhan. Islamic law ultimately aims to secure the welfare of the Muslims by promoting their benefit or protecting them from harm. It is a well-known fact that when times and conditions change, the benefits of the public (the *maslaḥah*) also change accordingly. Therefore, hardship and difficulty must be removed from the path of Muslims continuously.

5. *Balwā al-Ām* (Public Affliction) and *Sadd al-Dharā’ī* (Blocking the Means)

Sadd al-dharā’ī is derived from the two Arabic words; *sadd* meaning blocking and *dharā’ī* (the plural of *dharīa*) meaning ways, means and reasons. *Dharīa* is a way or reason which leads to a specific end or result. The juristic definition of *sadd al-dharā’ī* is blocking the means which would lead to bad or evil results (Shātibī, 2014, 2/2). Therefore, if a means leads to a haram (unlawful) then it is also haram; if it leads to *mubah* (lawful) then it is also *mubah*. Both the means and the end may be beneficial or harmful, physical or moral, visible or invisible. It is not necessary for the means and the end to be present simultaneously. For example, meeting privately with members of the opposite sex is unlawful because it may be a means (*dharīa*) to fornication whether or not it actually leads to it. The notion of *sadd al-dharā’ī* is founded in the idea of preventing an evil before it actually happens. The intention of the perpetrator is not taken into consideration, it is rather the expected result which determines the value of the means. Acts are subjected to particular legal rules according to their results, regardless of the intention of the doer. If the means serve to what is beneficial, they are valid and accepted, however, if they serve to what is harmful, they are prohibited. The result, rather than the intention of the doer, is the most significant criteria in judging whether a means should be blocked or not. The Qur’an forbids Muslims from insulting idol worshippers regardless of the actual intention behind it; “And insult not the idol-worshipper lest they in return insult God out of spite and ignorance.” (6: 108)

Although denying falsehood and declaring it openly would be permissible and even praiseworthy, it is prohibited to insult idol-worshippers to prevent conflicts, enmity and hatred among the community members from different faiths. For this reason, if a means which is intrinsically praiseworthy leads to an evil result, it is prohibited. The prohibition in the example above indicates that if Muslims insult idols of paganist people, they cause them (idol-worshippers) to insult God as a result. Legal rulings (*aḥkām*) in Islam can be classified as the purposes (*maqāsid*) and the means (*dharā’ī*). The purposes consist of actions which are either beneficial or harmful. The means get their value according to their results. The notion of *sadd al-dharā’ī* is in line with objectives of the Lawgiver, for God legalized certain forms of conduct and prohibited others in accordance with the benefit or harm that they lead to.

If the means serve the most significant purposes of Islamic law such as the five essential values (life, religion, property, progeny and intellect) they have the highest legal value and similarly if they lead to the most harmful results, they hold the most serious legal value (Dogan, 2014, p. 216). Thus, if the means violate the basic purpose of the Sharia, then they must be blocked (Shātibī, 2014, 4/194).

Preventing an evil takes priority over securing a benefit. Therefore, if means lead to both a good and an evil, if the evil is either equal to or greater than the benefit, it should be prohibited (Shātibī, 2014, 4/195). There are many incidents in the Sunnah which demonstrate that the notion of *sadd dharā’ī* was accepted and rulings were issued accordingly by the Prophet (Dogan, 2014, p. 217). Despite the turmoil caused by the hypocrites in the wars, the noble Prophet did not order them to be killed. This prevented outsiders claiming that the Prophet killed his own friends, a slander which would have caused great harm to Islam (Bukhari, *Manāqib*, 8). The Prophet prohibited debtors from giving gifts to their lenders to block the means of usury and interest (Ibn Mājah, *Sadaqa*, 24).

Means can be classified into four categories according to the degree of probability or otherwise that a means is likely to lead to an evil end. Means which definitely lead to evil, such as digging a deep pit next to the entrance door to a public place without any precaution, leads to an evil result; anyone who enters the door is very likely to fall in the pit. This type of means is forbidden. There is no dispute among scholars about it (Abu Zahra, 1958, p. 228).

Means which most likely lead to an evil but rarely lead to a benefit. Selling grapes to a wine maker, for example, leads to an evil. Therefore, if there is a strong likelihood that means would lead to an evil, the means may be declared forbidden on the basis of this probability alone (Abu Zahra, 1958, p. 231).

Means which often lead to something harmful although it isn't certain or even probable that this will always be the case. For example, selling unripened fruits by agreeing on certain conditions can lead to interest or usury. In this contract, the buyer may want to buy unripened fruit below its real saleable price and may mean usury or interest by this act. Imam Malik and Ahmad b. Hanbal hold that the means which are likely to lead to usury must be obstructed. Therefore, this contract is not lawful. On the other side, Abu Ḥanīfa and Shāfi'ī hold that this contract is permissible, because the possibility of harm is not dominant to prohibit such an act. Means which rarely lead to an evil and most likely lead to a benefit. For example, selling food which usually doesn't harm anyone but sometimes may harm a few. This act is permissible as the benefits outweigh the harm (Shātibī, 2014, 2/249).

Despite minor disputes between scholars as to the application of *sadd al-dharā'ī*, the majority of scholars accept its application in Islamic law. The application of *sadd al-dharā'ī* (blocking the means) deals with the topics where a haram may be turned into halal if this is likely to present a greater evil. One of the legal maxims is a lesser evil is tolerated in order to prevent a greater one. For example, it is permissible to pay an enemy in exchange for the release of Muslim prisoners of war. Although this act is unlawful as it strengthens the enemy it is permitted here as it achieves the freedom of Muslim prisoners. Similarly, scholars usually permit a person to give bribes to prevent oppression and preserve his/her rights (Abu Zahra, 1958, p. 232).

Sadd al-dharā'ī (blocking the means) is strongly related to *balwā al-ām* (public affliction), for both aim to prevent evil from Muslims. Early scholars usually give examples regarding *balwā al-ām* from the topic of cleanliness but it can be implemented in other areas as well. For example, according to general rule whatever enters into the body invalidates fasting. However, this principle is not applied when dust seeps into mouth and the person swallows it accidentally while fasting. This fatwa is given according to *balwā al-ām* because, people are afflicted in general with this type of situation and if the regular ruling were to be applied, it would bring hardship upon Muslims. Similarly, selling unripened fruits is not permissible according to the general principle but it is permissible from the perspective of *balwā al-ām*. This fatwa is given to remove hardship from the liable Muslims. According to general rule, one cannot sell a product which is not ready and available to be consumed. However, if this rule were to be applied without taking into consideration the public affliction and the common need, it would cause hardship and difficulty. Here, a lesser evil is preferred to avoid a greater evil.

One of the communal obligations (*farḍ kifāya*) is that Muslims must have a mujtahid to ask their questions. Moreover, as times change, new issues arise and mujtahids must address them so Muslims continue to practice Islam at all times and in all places.

However, if this condition were to be required for the institution of fatwa it would be impossible to find a mujtahid in every Muslim community. Therefore, giving a fatwa for Muslims does not necessitate the conditions of *ijtihād* according to *balwā al-ām*. If a scholar is knowledgeable in the area of *aḥkām* (religious rulings), he can give a fatwa for the Muslims in his community on the basis of *balwā al-ām*.

6. Discussion *Balwā al-Ām* in the Context of Modern Issues

Modern scholars have given fatwa for contemporary issues according to *balwā al-ām*. For example, it is permissible to use modern techniques to determine the time of each five daily prayers and use timetables for this purpose. Similarly, it is permissible to use speakers when calling *adhan* so the voice can reach further distances. In order to bring easiness for Muslim women, scholars permitted the usage of medicine or pills which prevent menstruation during *hajj* and Ramadan fasting. Women are afflicted with menstruation in general and they cannot avoid it. During *hajj* or Ramadan fasting, they are permitted not to observe these religious rulings, but they have to make them up later.

It would be better and easier for them if they perform hajj and observe Ramadan fasting on their allocated time rather than making up them later. In order to achieve this benefit, scholars permitted women to use pills which avoid menstruation so they can observe Ramadan fasting and hajj rituals on their fixed time.

According to general rule, it is not permissible to buy a product or a good before seeing it. However, today many products are sold in containers or packages due to health and hygiene reasons. If the general rule were to be applied, Muslims would not buy any product in a package or a container and this would bring great harm to their life. Because of public affliction, it is permissible to buy products in containers or packages on the basis of *balwā al-ām*. Selling products without complying with the regulations on health may cause some diseases and sicknesses among Muslims. In order to prevent evil results, the means which lead to them must be prohibited. Thus, if scientific findings require Muslims to follow certain regulations, they have to follow it. Otherwise, they will be held accountable for that. In the modern age, people are inclined to do shopping via technological devices such as the phone and internet. According to general rule, the buyer and seller must be present when concluding a transaction and they must have a consent. If this principle were to be applied, Muslims would not be allowed to do online shopping or buy/order things on the phone. The customs of modern Muslims are different than the early ones. Customs (*urf*) are valid source for a religious verdict, especially when there is no textual evidence for a case at hand. Online shopping has become the custom of modern people and ignoring it would cause hardship and difficulty for Muslims. Therefore, scholars have permitted online shopping on the basis of *balwā al-ām*.

One of the controversial issues which scholars have been debating is the permissibility or otherwise of an organ donation. According to general rule, every human being and his/her organs whether he/she is alive or dead is protected against any kind of harm and mutilation. If this rule were to be applied, it would not be possible to save many lives by organ donation. With scientific developments it is possible to transplant an organ from a dead body to a live person. Here, two contradicting arguments are available: it is not permissible to mutilate a human body even he/she is dead; it is very rewarding to save a human being even if it will happen through organ transplantation. When comparing its evil and benefit on organ donation, one will see that its benefit is greater than its evil, therefore it is permissible to donate organs on the basis of *balwā al-ām*.

Early scholars resorted to the notion of *balwā al-ām* in many cases and lightened the religious rulings for the benefit of liable servants. This doctrine can be applied in many new cases, especially for Muslims who live in foreign countries who face many difficulties and hardships. It is a duty upon Muslim scholars to discuss their problems and offer solutions to them. Since, *balwā al-ām* was used by early scholars to meet the need of Muslims in their time by lightening the religious rulings when they faced hardship and difficulty in the practice of religious duties, the same doctrine can be applied by contemporary scholars to provide solutions for modern issues.

7. Balwā al-ām and Istihlāk (Assimilation or Consumption)

The notion of public affliction can be discussed together with the term “*istihlāk*” which literally means assimilation, consumption, perdition and disappearance. In Islamic Jurisprudence, *istihlāk* is defined as mixing a little amount of a substance to another substance which is more in quantity and at the end of this process the little amount of substance loses its color, taste and scent. According to this principle, if a little amount of haram substance is mixed with a large amount of halal substance, the former substance loses its qualities and therefore the haram qualities of the former substance no longer exist in the mixture. Accordingly, when a little amount of a substance which is not permissible to eat or drink is mixed with a large amount of halal substance, the mixture is considered halal for the former substance loses its qualities which made it haram in this process. This principle relies on the hadith of two *qullatayn*: The Prophet (pbuh) said; if there is enough water to fill two pots (*qullatayn*), it carries no impurity (it does not become unclean by a mixture of dirt) (Abu Dāwud, Tahara, 33).

The measurement mentioned in the hadith “two *qullatayn*” is equal to 220 kg. On the basis of this hadith, Imam Shāfiʿī ruled that if a little amount of dirt, filth or haram substance falls in a pool with water less than 220 kg, the pool becomes dirty and it is not permissible to use its water for drinking or cleaning purposes. However, if the pool has 220 kg water, the small amount of filth or dirt cannot pollute it and the pool and its water are considered clean. There are many modern issues that need to be discussed to provide answers for Muslims. One of the issues is the usage of alcohol to clean machines that are used in the food and beverage production. In order to kill the germs and harmful bacteria, and clean the machines from all kinds of dirt and filth, alcohol is used. Although alcohol is haram in Islam, its usage for hygienic purpose is a controversial issue among Muslim scholars. In order to understand the discussion, we need to know the answers to two questions:

- 1) Is it necessary to use alcohol to clean machines? Is there an alternative method which is not haram for this process?
- 2) What happens to alcohol which is used to clean machines for hygienic purpose?

The answer to the first question is that any surface, utensil or piece of equipment that comes into contact with food must be cleaned and sanitized otherwise germs and harmful bacteria may be grown there and this may affect human health negatively. It is important that clean, sanitized equipment must be used for food production to prevent bacteria growth. In order to understand the cleaning process, we need to differentiate and define certain terminology:

Sterilize refers to the statistical destruction and removal of all living organisms.

Disinfect refers to inanimate objects and the destruction of all vegetative cells (not spores).

Sanitize refers to the reduction of microorganisms to levels considered safe from a public health viewpoint.

General types of sanitization include the thermal sanitization which involves the use of hot water or steam for a specified temperature and contact time, and chemical sanitization, which involves the use of an approved chemical sanitizer at a specified concentration and contact time (Schmidt, "Basic Elements of Equipment Cleaning and Sanitizing in Food Processing and Handling Operations," <https://edis.ifas.ufl.edu/fs077>). Hygiene and cleanliness are strongly emphasized in Islam and it includes every aspect of life. Hygiene can be defined as being free from filth, dirt and unlawful materials which are prohibited by Islam. In food production, the objective is to ensure that the food is produced absolutely clean and not harmful to human health.

The usage of alcohol to clean machines in food production is the most effective method for it sterilizes, disinfects and sanitizes. The alternative methods such as washing, rinsing and heating may not kill some germs and bacteria completely, therefore they are not used as much as alcohol. As a result, there is a need to use alcohol to clean the machines effectively for hygienic purpose. However, we need to know what happens to alcohol that is used in the cleaning process in order to determine if such thing is halal or not.

Firstly, alcoholic drinks are totally prohibited in Islam and even a small amount of alcohol (ethanol) added into foods or drinks will render the mixture haram. However, traces of ethanol that are naturally present in food or drinks due to fermentation of glucose (natural sugar) or ethanol used in food processing are permitted (considered lawful) if the amount is insufficient to cause intoxication. This amount is determined as 0.77% according to scientific study on the basis of prophetic tradition. According to the principle of *istihlāk* (assimilation or consumption) if a small amount of a prohibited substance is mixed with a dominant permissible substance, and the prohibited substance loses all its attributes which rendered it haram (prohibited), then the mixture is considered halal (lawful). It is good to know how 0.77% ethanol alcohol is determined as lawful. Ibn Abbas reports: The Prophet went out on a journey and then came back and some persons amongst his Companions prepared *nabidh* (a drink made from fruits) for him in green pitcher, hollow stump and gourd. He commanded it to be thrown away, and it was done accordingly. He then ordered them to prepare it in a water-skin and it was prepared by steeping raisins in water, and it was prepared in the night. In the morning, he drank out of the water-skin and on that day and then the next night, and then on the next day until the evening. He drank and gave others to drink. When it was morning (of the third night), he commanded what was left over to be thrown away (Muslim, *Kitab al-Ashriba*, 23).

Nabidh is a drink traditionally made from fruits such as raisins, grapes or dates. *Nabidh* may be non-intoxicating, mildly intoxicating, or heavily intoxicating depending on the level of fermentation. The Prophet and the Companions drank *nabidh* as seen in the hadith above. In order to determine the limit of allowable ethanol alcohol in *nabidh*, a group of scientists took eight samples from a variety of grapes, dates and raisins and put them in distilled water in a ratio of 1:2. Fermentation process was measured during three days. The fermentation ratio for grape 0.77% for date 0.63% and for raisin 0.19% was measured. As a result, an initial screening of *nabidh* from different sources suggested that 0.77% ethanol alcohol in foods is still permissible.

Secondly, alcohol (ethanol) that is used during the cleaning process is a volatile liquid having a boiling point of 78 degrees Celsius which is much lower than boiling point of water, 100 degrees Celsius. Hence ethanol readily evaporates and disappears. In other words, ethanol alcohol does not remain inside the machines after the cleaning process. If it were to remain it would affect the taste, smell and scent of the food or drinks that are produced in these machines. Furthermore, alcohol (ethanol) has both hydrophilic and hydrophobic properties which make ethanol very effective to remove viruses and bacteria hidden underneath the lipid layers in the machines.

In short, alcohol is used to clean machines in food production for the hygienic purpose because it is:

- Disinfectant
- Volatile
- Hydrophilic
- Hydrophobic
- It is the best industrial solvent
- It is readily available
- It does not leave any residue.

Another modern issue that is controversial among Muslim scholars is the permissibility of artificial flavors derived from alcohol. Before discussing it, we need to understand the mechanism of chemical reactions as in the following example. Water is produced from hydrogen and oxygen gases in the chemical reaction in which neither hydrogen nor oxygen retains their properties. In fact, hydrogen is a highly flammable gas and oxygen is a gas which causes combustion reactions. Combining these two gasses produces water which is a totally different substance and it is lawful and healthy. Now we can discuss the permissibility or otherwise of flavors. Many of the artificial flavors are esters. This is a chemical substance produced from carboxylic acids and alcohols. Ester is not an alcoholic substance which makes its consumer drunk. We can relate the production of ester to the chemical reaction in water. In the chemical reaction of water, hydrogen and oxygen cannot retain their properties. Similarly, in the production of ester, ethanol alcohol cannot retain its qualities therefore the final product (ester) is not alcohol at all. As a result, even if ethanol alcohol is used to produce flavors it is not haram, because the final product does not contain ethanol alcohol. This discussion is especially important for the production of soft drinks and medicines. Soft drinks are consisting primarily of carbonated water, sugar, and flavorings. Carbonated water constitutes up to 94% of a soft drink because it is inert, non-toxic, and relatively inexpensive and easy to liquify. The essential elements of soft drinks are not haram. The ingredients are conveyed into batch tanks where they are carefully mixed. As discussed before, artificial flavors are not haram therefore using them in soft drinks does not make the product haram. Some soft drinks may contain traces of alcohol because of the ingredients used. However, the color, taste and scent of alcohol is assimilated in the drink therefore it is halal. Hanafi jurist Kāsāni argues that if a little amount of alcohol is put in a container and it is mixed with a large amount of halal liquid then the former substance loses its properties such as color, taste and scent and the mixture cannot be haram. The halal substances dominate the alcohol and changed its nature.

8. Conclusion

Balwā al-ām is a principle in Islamic Law which aims to provide easiness for servants when the general rule brings hardship and difficulty. Muslim jurists should use this concept to address contemporary issues. In modern times, Muslims are facing many new issues, and giving legal verdicts in a literal sense makes Islam inapplicable, especially in non-Muslim countries. The notion of balwā al-ām is public affliction that is encountered often in society and it is difficult to avoid it, so Muslim jurists should consider many contemporary issues in this context and provide solutions which are better in harmony with the objectives of Islam. Providing benefits for servants and protecting them from harm is one of the higher objectives of Islam, and jurists should secure this objective with the application of balwā al-ām.

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