



Review Article

Principle of Nonmaleficence in Islamic Jurisprudence and law and its usage in Biomedical Jurisprudence

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ABSTRACT

Background and Aim: The principle of nonmaleficence is one of the four principles of bioethics. This principle, along with other principles of bioethics has been set as a moral code and guide in the deployment of new biological technologies, especially new achievements in the medical field. The principle of nonmaleficence states that the use of new technologies should not cause injury to any person of people, human beings, and even nature and animals. This review aims to recognize this principle in the holy religion of Islam that has a very large range and a long history, which is coincided with its emergence and in the Islamic jurisprudence and law it's called the "la-zarar act" (the rule of no harm).

Materials and Methods: In this review, using the keywords of the principle of nonmaleficence, the rule of no harm, self-harm, and to ward off likely harm we searched for relevant literature in interpretations of the Holy Quran, narrative texts, juridical reference texts, and databases of Google Scholar, SID, Magiran, and NoorMags and related articles were studied.

Ethical Considerations: Honesty and ethics have been observed in searching and referencing.

Findings: The principle of nonmaleficence governs over humans' all the personal and social relationships and interactions as an inclusive rule and Islam give veto power to this principle over the other laws and regulations. This principle which is also presented as an ethical principle also includes the principle of nonmaleficence determined in the bioethics of today's global society, but it has quite a different scope and principles.

Conclusion: Based on the principle of nonmaleficence in Islamic Jurisprudence and law and based on wisdom as using medical and biotechnology and testing and research, the human and mankind should not be damaged at all and even if loss or damage is probable, the caution should be made and the harm should be prevented. This principle is general and includes self-harm, too.

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Introduction

There is a principle in the Islamic jurisprudence which is named La-Zarar and La-Zerar (no harm). This rule has been legislated to protect all humans' rights and set the individual and social relations and expresses the people's trading basis with each other and to limit the individuals' proprietary dominance and avoid disputes and disruption in

the social discipline. The main source and documentation of this principle are many narrations from the Holy Prophet (PBUH), which the phrase of La-Zarar and La-Zerar is used in them and he cited them specially and generally, however, jurists have reasoned to the Quranic evidence, consensus, and wisdom to prove this principle, and in addition to the legal documents, this principle has some strong rational reasons. The rule of "no harm" is one of clear and well-

known jurisprudential rules that is applied in many fields of law and can be cited in many social and political issues and achievements and new technologies of biology and medicine and it can be used for more usefulness of people and to avoid harming themselves and the others.

In general, based on this principle, it can be said that: "harm doesn't have legitimacy in Islam and illegitimacy of harm includes both the legislation and law enforcement stages. Prophet Muhammad (PBUH) has rejected the harm in legislation by the phrase of "La-Zarar and La-Zerar in Islam" (no harm in Islam). Therefore, as the words of the Prophet (PBUH) indicate the phase of composition of the rules, it won't be also signed by the legislator in the execution phase, namely if it causes harm to another person in particular social relations of people with each other" (1).

Ethical Considerations

Honesty and ethics have been observed in searching and referencing.

Materials and Methods

In this review, using the keywords of the principle of nonmaleficence, the rule of no harm, self-harm, and to ward off likely harm we searched for relevant literature in interpretations of the Holy Quran, narrative texts, juridical reference texts, and databases of Google Scholar, SID, Magiran, and NoorMags and related articles were studied.

Findings

1. The Concept of No Harm Principle

Zarar and Zerar (harm/ loss and damage) are more defined as importing deficiencies in money and lives and Zerar and its derivations mean to put someone in difficulty and damage them.

"Zarar is one of the minutiae of oppression of the population and property and rights. Therefore, rationally it's doomed to prohibition and is legally illegitimate" (2).

2. Evidence and Documentations of No Harm Principle

2.1. The Quranic Evidence: In many verses of the Holy Quran the words of Zarar and Zerar (harm/ loss and damage) and their derivatives have been used. Furthermore, some of these noble verses directly refer to the prohibition of Zarar which no doubt based on the words of the Holy Quran the

Zarar and Zerar are forbidden and doomed to illegitimacy .

Some examples of these verses are as follows:

The first verse: "No-one should be charged beyond his capacity. A mother should not be made to suffer because of her child, nor should he (father) to whom the child is born (be made to suffer) because of his child" (3).

In this noble verse, harming the child from the side of the parents has been sanctioned. According to the interpretation of the verse, each harm to other parents, through their children, is prohibited. Thus, the verse is understood that harming anyone else is prohibited and inadmissible.

The second verse: "Do not harm the divorced women by restricting the condition for the" (4).

The third verse: "After paying the legacies he or she may have requested or debts (to be paid), provided that no loss is caused to any one"(5).

In this verse, Allah has forbidden the testator from harming his/her heir in the will and preventing them from reaching their rights. In addition, He has forbidden harming the others directly in the verses of 231 and 282 of Surah Baqarah and verse of 107 in Surah Tobah (repentance).

In these verses, though harm was forbidden in certain cases as examples, certainly the above-mentioned examples are not only special examples of harm, and everything is included except where the harm is low and non-failed or there is an interest deemed more important than tolerance of the harm.

2.2. The Narrated Reasons

In a series of stories on this issue, hurt and harm are negated directly and the Prophet Muhammad (PBUH) mentioned the phrase of La- Zarar and La- Zerar (no loss and no damage (no harm)). For example, in response to an objecting person called Samurah Ben Jundab, the Prophet said: "So, you're a tough guy, stuck and damage the believer should not be harmful to anybody".

There are many other narrations of the Prophet (PBUH) and Imams (AS) in this regard which prove the general rule of "no harm" means harm and injury yourself and others are banned and prohibited in duty and situation. In other words, it mentions that in addition to the damage and harm another person is prohibited, which will also result in liability and compensation for the person who made harm and loss (7).

2.3. The Consensus of Jurists

We can confidently say that all Shia and Sunni scholars agree about the rule of "no damage no loss" (8).

2.4. The Rational Reasons

No doubt the wisdom independently renounces loss or harm and harm to others or self-harm is sentenced to prohibition. If there is no narrative and religious reason for a ban on harm, there was still reason for wisdom to ban the harm and decree its condemnation. So the wisdom is one of the strong pieces of evidence of the no-harm rule, even the most important evidence.

3. Harm to Self and Others and the Reasons for its Condemnation (prohibition)

3.1. Harm Others: What we ever mentioned about the concept and the documents on the no-harm rule, were about harming others and reasons for its prohibition.

3.2. Self-Harm: The word of harm and losses in the Hadith (narration) of no harm is used for all kinds of financial, self, dignity, and in general all forms of loss or damages; however, if the harm is not rationally acceptable and have a small loss and is not reliable, for example, donating money to charity too is not an instance of those losses or harm. The word of Zerar (harm) includes both harms the others and self-harm. This is confirmed by reason and religion which is necessary to ward off a loss of self. Sheikh Ansari believed that: "Based on the rational and narrative reasons, self-harm is forbidden"(9).

Sheikh Tousi in the necessity of eating forbidden food by the person in distress and helpless because of the fear of self-harm says that: "Preventing a loss is reasonably necessary and because of the word of God that says: "Do not kill yourself" (10). From his view, warding off the harm is reasonably necessary.

3.3. The Reasons for the Prohibition of Self-Harm: In addition to the consensus reason, there are many other reasons which forbid self-harm such as:

The first reason: The Holy Quran's noble verse says that: "Do not kill yourselves"¹¹. Though the verse is about self-killed, it can be said that this verse means self-harm.

The second reason: The words (Hadis) of the Holy Prophet which said: "La- Zazar and La- Zerar (no

loss and no damage)" also implies the prohibition of self-harm.

The third reason: There is a narration from a person named Azafer who asked Imam Muhammad Baqir (AS): "Why has God forbidden corpse, blood, pork, and wine?" And Imam answered: "When Allah Almighty created his creations, he knew lawful and permissible anything that is considered in favor of them, and forbade anything bad for them. Then He knew same thing allowable to the person who finds it essential need and his/her body cannot be firm and alive without it, but to the extent of need, not more" (12).

The reason: From the words of Imam (AS) which said: "You are forbidden from what is harmful to you..." a general concept can be understood that God has forbidden people from anything harmful to the body, and if God forbade anything harmful to the body, therefore, self-harm is forbidden by God, unless it is necessary to use that harmful because of force and being in distress.

The fourth reason: Verses and Narrations on Worship: Some Verses and hadiths imply when worship or its arrangements are harmful to the body, their necessity is overthrown. Such as ablution or fasting or hadj, which cause harm to the body; in this case, instead of ablution we must do tayammum (to touch the clean soil and then touch the face and hands), and in the case of harmful fasting or hadj, these duties are aborted.

From the other narrations, there is a hadith from Imam Sadiq (AS) who mentioned: "Anyone fasting is harmful to him, breaking the fast is obligatory"(13).

The Fifth Reason: The Wisdom Sentence: Common sense also knows self-harm is forbidden and decrees the necessity of warding off the harm. Common sense doesn't decree the necessity of warding off the harm such as small losses and losses that their tolerance results in rational purposes. Therefore, it can be said that neither based on hadiths nor common sense can forbid the harm, because sometimes the harm is associated with rational goals, as donating Non-important members of the body for transplantation to a distress endangered patient; in this case, the prohibition of harm to the body conflicts with this rational important case, and in principle, it cannot be implemented. Based on the words of the supreme leader: "The self-harm is not forbidden and in general, organ donation for transplantation

to another person is not among the examples of self-harm" (14).

4. The Principle of the Necessity of Preventing Probable Harm

Both from the perspective of the men of Knowledge and from the narrations which refer to inhibition of harming the others or self-harm, it is deducted that their purpose is not only absolute harm but if the harm is suspicion and even less than suspicion must be avoided and forbidding the harm is also applied to these cases. Of course, in the case of notable losses, such as corruption or destruction of the body the importance of this principle is to the extent that a principle called "necessity of warding off the probable losses" which is a reasonable or rational rule was created and is the basis for the principle of caution.

So this is understood that based on this principle in Islamic law and jurisprudence as well as common sense when using biological and medical technologies, we not only must avoid certain damaging humans and the human race and self, and even animals and nature, but also we must be cautious about the possibility of loss or damage and ward off the probable harm, it means that the tests and investigations which have the possibility of harming humans or the human race or nature should be avoided.

5. The Usage of No Harm Principle in Biomedical Jurisprudence

Remembering some points: It's necessary to remember some points before addressing this topic:

-Proceeding harm for the rational objectives and important purposes and the harm and loss which is less and trivial is permitted and reason and religion don't know such harm as harmful, for example, when the treatment or warding off disease which its harm is more and difficult depends on tolerating less harm. In other words, the big harm must be prevented by tolerating less harm, such as a kidney transplant from a live human to an individual whose life depends on this transplant, and warding off such a big loss is not possible but with less harm.

- The necessity of taking away the self-harm of the legal concept is from the rule categories not right, it means that this rule is not changeable or destroyable and nobody is authorized to harm himself.

- Both from the view of jurisprudence and the view of common sense the harm must not be prevented by similar or bigger harm, for example, a person cannot give his eye's cornea for transplantation to someone else who lost one of his eyes to extract him from the trouble, because he will suffer from the similar defect.

-Concerning the recognition criteria for harm and because certain criteria were not determined for harm, determining the range and amount of harm and also recognizing the self-harm or harm the others is on the behalf of tradition and common sense and of course in the medical affairs is on the behalf of professionals in the field; it means that for determining and recognizing harm we must refer to tradition and common sense and professionals in the field. So what is not counted harm in tradition (religion) is not considered as negative and forbidden harm, except in cases where we have special reasons from our religion. However, certainly, medical diagnosis and determining the amount of loss and locating that is on the behalf of professionals in the field, such as member isolation from the human body and organ transplants; the judges' task in this regard is to extract the general juridical sentences, and researching on this issue is the task of scholars of Islamic jurisprudence.

5.1. This Principle's Usage in Biomedical Researches: In the Islamic jurisprudence based on the principle of permissibility, testing and doing biomedical research to achieve and discover the truths of the universe and the human body and for treatment of diseases and health and well-being is permissible for the researcher, considering the informed consent of the participants and ensuring them that there isn't any serious harm, even if there is a risk of minimal and tolerable damages because the purpose of bearing such damage is to reach important benefits by the human beings and even by the participant himself. Therefore, when there is a necessity or some important benefits which can be reached only by tolerating harm and doing a necessary act, accepting the harm is permissible.

5.2. This Principle's Usage in Treatment and Cure:

5.2.1. This Principle's Usage in Organ Transplant: Based on the principle of no harm in jurisprudence, the human is not permissible to donate his/her main organs such as heart, liver,

cornea, etc., because it causes harm to himself/herself or disability, or death and based on the aforementioned reasons, this act is doomed to prohibition. In this case, however, based on the first sentence "the people dominate their property and ego" which is the principle of human sovereignty over wealth and their lives (dominance principle), then one can dominate all his/her organs even the main organs and can procure each of them, but because this conquest and domination are meaningful as a loss, so based on the principle of no harm and prohibition of self-harm as well as the necessity of self-preservation based on the evidence in Islamic law and jurisprudence, this rule and reign are abolished. And also because this principle implies the prevention of harming others, surgeons are not allowed to procure the main organ and transplant it to other human beings and this is one of the cases when the no-harm principle overcomes the dominance principle, it means that the mastery of human over his/her body is bound to no harm principle. Not only Islamic jurisprudence, but medical ethics and international custom do not allow it if the organ transplantation leads to death or maim the individual, because we mentioned before that the no-harm principle is rational. On the other hand, this case is an example of warding off or compensating harm with similar or more severe harm which is not permissible, both from the view of the Holy Religion and the decree of common sense.

However, donating non-major organs as one of the kidneys for transplanting on another individual in distress whose health or life is bound to this transplantation conflicts with the principle of no harm and eliminates its necessity because this case is necessary and saves an individual is more important. On the other hand, based on the juridical rule of "the urgency and necessity eliminate the forbidden affairs", the necessity of saving a human in distress makes the amount of self-harm permissible. Some jurists also by affirmation of the physicians concerning continuing normal life with one kidney believe that this amount of harm in organ procurement is not among the causes of self-harm.

On the other hand, we can say that: "Applying the principle of no harm to the negation of harm legitimacy (according to some scholars' interpretation of this rule) in the discussion of organ transplantation requires a comprehensive vision that removes the decree of autopsy

prohibition or self-protection and self-harm due to the necessity of organ transplantation to the patients, because otherwise, due to the increasing issue of organ transplantation and its role in saving lives, we must believe that the decrees of autopsy prohibition or self-harm cause the patients' death, which it results in harmful or unpleasant outcomes"(15).

5.2.2. This Principle's Usage in Abortion:

Another application of the principle of no harm (nonmaleficence) in biomedical jurisprudence is the issue of abortion except for special cases, based on the principle of no harm others, the mother and medical staff is not allowed to harm fetus at any stage of its life or destroy it. Based on the first decree, abortion is from a certain unlawful case and the four reasons of the Qur'an, the Sunnah, consensus, and common sense imply this decree and its allowance is due to some secondary risks as distress or harm or fault. There are some verses and traditions that prove the basic prohibition of abortion, but in the consensus discussions, "the Muslim scholars reached a consensus about the necessity of blood money (on abortion) for compensation for an intentional crime"¹⁶. Common sense also implies the prohibition of harm and abortion is one of the clear examples of harming a person who can't defend him/herself.

On the other hand, the legitimacy of abortion cause damages to the ethical context of the society, but if the fetus survival causes a risk of illness or loss and hardship for the mother, according to the principle of "no harm" abortion is permissible, it means that here the principle of no harm is prioritized over the first decree. Sometimes due to the necessity and urgency ruling and based on the rule of "emergency" and "emergency removes the limitations" abortion is permissible, of course, before the insufflation of soul in it, but after the insufflation, the baby's life and its maintenance should be respected, except in special cases, such as when the continuation of pregnancy threatens the life of both mother and fetus and saving the fetus be impossible, but saving the mother's life is only possible by abortion.

Jurists sometimes reason the therapeutic abortion based on the rule of no harm and allocate some decrees based on the society's necessity and needs.

5.2.3. This Principle's Usage in Human Simulation: In the case of opposition to human simulation, although according to the first decree and the principle of permissibility there is no

reason to prohibit it, some Islamic jurists have referred to force harm and damage on the health and physical and mental growth of the children who have been given birth in this way and are deprived of having normal parents, and they have argued that "the creation of this simulated human concerning the origin of their creations is dangerous and as it is forbidden to harm non-existent, it is forbidden to cause the birth of the flawed creature"(17).

5.2.4. This Principle's Usage in Stem Cells:

Based on the principle of no harm and prohibition of harming another person, the researchers, investigators, doctors, and medical staff are not permitted to do experiments on genes, stem cells, and organs of human which threatens the participants life and healthy or makes at risk the other humans or human race and results in significant harms. Based on the principle of no self-harm and the necessity of self-protect the experiment participants are not allowed to take part in such experiments if they are aware of the harms, even if there is the possibility of significant danger and harm, based on the decree of common sense warding off the possible harm is necessary for both the researcher and the participant, and common sense testifies that in such situation we must be cautious. But research on this area if it doesn't have significant harm not only is permissible but also is necessary.

5.2.5. This Principle's Usage in Forced Treatment:

Based on the first decree and rational principle of: "People predominate their property and egos" and also according to the principle of human dignity and respect for his/her will we can't force anybody or any patient to be cured and treated, except in cases the patient cause harm or damage to another one or killing him/herself, in this case, the principle of no harm is before the principle of dominance and forces the patient to be cured. The expression of these two exceptions is as follows: "First, the disease has caused harm or loss to others. In this case, we can force him/her to cure with the permission of the special or general caretakers or parents, and the prohibition of force will be removed by the principle of no harm and no distress; second, there is the fear of the patient's death (18).

Some jurists have extended the scope of the necessity of warding off the harm to the necessity of medical treatment and curing dangerous

diseases: "Treatment and cure of serious diseases are necessary because of the necessity of warding off harm and the treatment is necessary if there is the possibility of harm. The treatment is necessary for the patient as well as its sufficient obligation for the doctor"¹⁹, of course in the case that the patient refers to the doctor.

Conclusions

The gist is that as mentioned the principle of "no harm" in Islamic jurisprudence is supported by all four legal sources and its scope covers all individual and social interactions. Based on this rule any harmful decree has not been legislated and any act that causes harm to self or someone else is illegitimate and Islam never accepts that. The purpose of the harm is both the personal losses and losses somehow; means that an act can harm an individual and may not be harmful to another one, in such a cause the harm is solved for the first one. Detection and determining harm in important medical affairs are among the topics of Islamic jurisprudence and it's the duty of specialists in this field and the duty of Islamic jurists is to extract its Islamic decree.

In the area of Islamic biological ethics, the principle of no harm can also be an ethical principle which based on it we can't harm individuals due to the progress of biology and modern technologies and the need for researches and different experiments on humans, organs, and their cells, but this principle requires that researches on humans should be done after the preliminaries and the first stages in laboratories and ensuring of safe and harmless results. The principle of "no harm" is an Islamic legal rule as well as a rational principle and the common sense and Islamic jurisprudence both accept that harm and damaging self or the other ones is prohibited and obscene and harm the others cause to compensation.

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Conflict of Interest Statement

The author declares that they have no conflicts of interest.

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