

ISLAMIC CONCEPT OF DRUGS AND REHABILITATION: ITS COMPATIBILITY WITH MALDIVIAN LEGAL FRAMEWORK

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Abstract	<p><i>Islamic law is the law of Allah Taala, which governs all aspects of Muslims' lives, whether religious, administrative, judicial, social, or personal. According to Islamic law, Muslims are required to be of sound mind at all times. Therefore, a drug user is considered to be someone who is not living in accordance with the prescribed ways of Islam. Drug addiction is a chronic disease with harmful consequences, but the compulsive and difficult-to-control nature of drugs causes an addict to use drugs constantly. Due to the seriousness of the disease, this study aims to determine the position of drug addiction in Islamic law. In order to achieve this, a qualitative study was conducted in which data was collected through library research. Further analysis is conducted from different perspectives to examine the compatibility of Islamic laws with the Maldivian rehabilitation system. The study found that the Maldivian rehabilitation system is compatible with Islamic law.</i></p> <p>Keywords: <i>Drugs, Islamic, Rehabilitation, Maldives, Legal.</i></p>
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INTRODUCTION

Basically, drugs can be defined as substances used to diagnose, cure, mitigate, treat, or prevent disease. The Islamic view of drugs and other intoxicants is clear in terms of general consumption. Thus, the Holy Quran states:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْحُمُرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَمُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ﴾

Which means, "Oh You who believe! Indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful." (al-Quran. Al-Maidah: 90)

Furthermore, it is mentioned that,

﴿إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْحُمُرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ ۚ فَهَلْ أَنْتُمْ مُنْتَهُونَ﴾

Which means, "Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?" (al-Quran. Al-Maidah: 91)

It is clear from these two Quranic verses that intoxicants are considered acts of Satan and are forbidden in Islam. The question arises about the use of other forms of drugs, whether

in powder form or in other forms of consumption and administration to the human body. Since synthetic chemistry introduces new forms of drugs and not all forms of narcotics are intended for intoxicating purposes, it is important to determine how Islam classifies drugs and intoxicants.

The Maldives declares itself an Islamic country that must adopt all Islamic law. To address this problem, the Maldives government has taken a number of measures with the Drugs Act 17/2011, establishing a special drug court and introducing better and improved rehabilitation programs. The Drugs Act 17/2011 criminalises drug abuse, drug trafficking, and drug peddling and provides for harsh penalties. These penalties are based on the weight of drugs found on them, and most addicts are convicted of drug trafficking and peddling. However, a large number of Maldivian youth are addicted to drugs, and the number of people involved in drug-related offences is increasing by the day. It has also been noted that the rehabilitation provisions of the Drugs Act 17/2011 have not been able to reduce the number of drug-addicted youth in the Maldives, and in fact it is increasing.

Based on the above, this article attempts to determine the Islamic concept of drugs and rehabilitation. The study will include the position of drugs in Islam and the punishment mechanisms. In addition, this article will show the correlation between Maldivian laws and Islam in order to provide a reference point for this study with regard to changes in Maldivian drug laws. The overarching goals of Shari'ah or *Maqasid al-Shariah* in relation to drugs and intoxicants are also examined to identify the areas where Islam focuses on enacting a law for people to follow. In addition, this article examines the rehabilitation of drug offenders and the approaches and conditions prescribed in Islamic law.

METHODOLOGY

This study uses a qualitative research technique as a means of data collection. Library research is conducted to gather information from Quranic passages, prophetic hadiths, opinions of Muslim jurists, journal articles, books, and relevant laws and regulations. Reference is also made to primary and secondary sources of law in the Maldives.

RESULTS

Islam recognises drug addiction as a disease requiring treatment. Islamic scholars have identified the graduality model from the verses of the prohibition of alcohol as an approach to treating drug addiction. This method of reducing the harm caused by withdrawal symptoms and other physical, social, psychological, and other drug-related syndromes is also recognised by the countries of the United Nations. The harm reduction approach, which is reflected in the maxims of Islamic jurisprudence, is also consistent with the five main objectives of *Maqasid al-Shariah* (necessity). The gradual harm reduction approach is permitted in Shariah, and this approach can be used to provide effective modern treatments for drug addicts in Islamic societies.

The Maldivian legal system also establishes the Islamic principle as the standard to which all Maldivian laws must conform. There is no exception in any respect, including the issue of drug abuse.

DISCUSSION

Drugs And Intoxicants In Islam

The particular word used in the Quran for intoxicants is *khamr*, which Islamic scholars believe is a compound term encompassing all types of intoxicants. Therefore, according to Al-Tabari, any drink that clouds, veils, and intoxicates the mind is included in this word. The word *khamr* also contains meanings such as concealment, obscuring, and something uncertain and something that obscures the mind. *khamr* is transmitted in Islam in relation to the effect of the substance that is either intoxicating or clouds judgement in a hadith of the Prophet (SAW): "*The Prophet (SAW) prohibited every intoxicant and Muftir (every*

substance which slackens the mind)" (Hadith. Sunan Abi Dawud. *Kitab Al-Ashribah*, "Naha Rasulullahi Sallallahu Alaihi Wasallama 'An Kulli Muskirin Wa Mufattirin. 3489).

Historically, people at the time of the Prophet (SAW) consumed alcohol as their primary intoxicant. Only later did Muslims begin to use other forms of drugs for recreation. The particular drugs used for recreation were primarily for medicinal purposes in Islamic society at that time. However, because of the prevalence of social use, scholars had to debate the validity of this form of consumption. It must be noted that during the time of the *imams* of four major schools of Islamic thought, this issue was not addressed by them as this issue was not profoundly widespread nor known to exist in the Muslim society (Yasmin Hanani, 2013). There was no evidence that Muslims used these drugs for recreational purposes until the 11th Century. For this reason, the issue of hard drugs was not debated among the scholars of early Islam (Mansur Ali, 2014). Records shows that the issue became serious by 6th to the early 7th Century of *hijra* (Yasmin Hanani, 2013).

According to Mansur Ali (2014), there is no evidence that Muslims consumed drugs such as hemp, henbane, or opium in the early years of Islam. However, he noted that cannabis was introduced after the founding years of Islam. At that time, it was introduced for its medicinal properties by Greek physicians who came into contact with Muslims. It was prescribed for assisted digestion, to bring clarity to thoughts etc.

It is mentioned that prominent scholars such as al-Suyuti documented on the benefits of some herbs and plants upon conducting self-experimentation (Yasmin Hanani, 2013). Thus for medical purposes he categorised drugs into 4 classes.

Table 1. Al-Suyuti's Classification of Drugs

Classification	Effect on body
First degree	No effect
Second degree	Certain harmless effect, some intoxicating effect
Third degree	Non-lethal, but harmful effects
Fourth degree	Harmful, overdose could lead to death

According to the classification of medicinal use of certain drugs, early scholars were able to eliminate the more potent types of drugs from their usage in medical treatment (Yasmin Hanani, 2013). However it must be noted the sole purpose of the early classification of drugs was for medicinal usage.

When the problem of drug use became known, some scholars of the time tried to derive a solution from the Quran and the Sunnah, while other scholars found a gap in precedent and decided to test the effects of these drugs on themselves before making a decision on the matter, since there is no clear mention of a ban on hard drugs in the Quran and the Sunnah (Mansur Ali, 2014). Some scholars of that period also allowed the consumption of drugs based on their experiences with the drugs (Mansur Ali, 2014).

Regarding the classification of something as haram without it being sanctioned in the Quran or Sunnah, there were three main opinions among the four leading Islamic schools of thought. The first opinion is held by Hanafi and Hambali jurists; they view the original state of everything is *haram* unless there is a verse from the Quran making it *halal*. The second thought is held by Shafi'is and some Hanafis, this is the view of *tawaqquf* or to consider those things in a temporary suspended manner until a decision is received from Quran or Sunnah. This view does not make them haram or halal. The third view is held by majority of Hanafis, and some Maliki and Shafi'i jurists, this view is called *ibahah* (neutral) or to consider things that does not have a sanction from the Quran and sunnah as *mubah* or permitted (Ammar, 2016). Upon many debates and considerations the prominent view of the scholars was received for the third opinion which is to consider anything which is not clearly prohibited to be considered *halal* until a sanction could be derived for it from Quran and Sunnah.

There has been debate among scholars about the use of narcotics for recreational purposes. The debate is mainly based on the permissibility due to the effect that the drug has on the user. The jurist Imam Sufiyy al-Muzajjad, was one of the scholars who self-experimented hashish and considered it permissible for consumption as it had beneficial qualities rather than an intoxicant (Yasmin Hanani, 2013). However this stance was challenged by other scholars of his time as self-experimentation and observation of other jurists saw different results. These results were mostly negative effects. Also getting mixed results meant that during this period, some scholars could not give a fatwa with certainty thus leaving the issue of permissibility unresolved (Yasmin Hanani, 2013).

It must be noted that scholars view that something does not only become bad when Allah Taala prohibits it, rather it is prohibited by Allah Taala because it is bad and harmful. Thus, intoxicants are prohibited because they are harmful and cause a lot of social, economic and medical harms (Ammar, 2016). This view used for classification of new and contemporary issues could help scholars to determine the permissibility of something based on its harm or benefit factor. Reverting back to the initial classification, the scholars can formulate through (*qiyas*) analogy that if the consumption leads to a negative harmful effect or intoxication then it is unlawful.

As it is mentioned in the Holy Quran:

﴿الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْنُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ ۚ هُمْ أَطْيَبُ لَهُمْ الْخَبْرُ ۚ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۚ فَالَّذِينَ ءَامَنُوا بِهِ ۖ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنْزِلَ مَعَهُ ۚ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ﴾

Which means: "Those who follow the Messenger, the unlettered prophet, whom they find written [i.e., described] in what they have of the Torah and the Gospel, who enjoins upon them what is right and prohibits them from what is wrong and makes lawful for them what is good and forbids them from what is evil and relieves them of their burden and the shackles which were upon them. So they who have believed in him, honoured him, supported him and followed the light which was sent down with him - it is those who will be the successful." (al-Quran. Al-A'raf: 157)

Thus, the general rule, when there is no evidence that something is forbidden, is to fall back on this verse, which is clearly about forbidding evil and allowing good. However, due to the unknown nature of drugs at that time, according to Safian, the majority of scholars were not in favour of issuing a blanket decree on all drugs such as (*khamr*) alcohol. Since the consumption of alcohol is prohibited due to its intoxicating nature, drugs that have an intoxicating effect would fall under this category. However, when a certain drug does anything other than intoxication, such as acting as a poison for the consumer or impairing the consumers judgement, then the prohibition factor cannot be analogized as that of *khamr* (Yasmin Hanani, 2013). Thus with all these variations in effect, a common ground for drugs to be considered prohibited would be due to its addictive nature. The stance of amongst modern scholars is that there is consensus on the prohibition of alcohol in all circumstances, and consensus on prohibition of narcotic drugs for all non-necessity situations (Yasmin Hanani, 2013) such as for recreational use etc.

Drug Punishments In *Shari'ah*

The word used for punishment in Islam is *uquba* from the root word *aqaba*, which simply means to punish. In Islam punishments are essentially meted for those who cross the boundaries set in *Shari'ah*, thus those who commit acts which are prohibited in Islam are punished for disobeying the commandments of Allah Taala (Othman et al., 2015). However it must be noted that the punishments in Islam, whether *qisas*, *ta'zir* or *hudud* are not

without purpose. All punishments carry specific intents and purposes. The 3 main purposes of meting punishments are retribution, reformation and deterrence (El-Awa, 1972).

1. Reformation: This is to ensure that the offender is rehabilitated and educated so that he would not commit such offences in the future. This also saves the society from other offenses (Meraj, 2018).
2. Retribution: This is to ensure that the offender gets the same injury he caused to the victim (Ramzan et al., 2015).
3. Deterrence: This is to ensure that the public as well as the offender or future offenders would not commit further such crimes upon witnessing the severity of the punishment imposed on the offender (Muhammad, 2018).

All these goals ensure harmony and security within an Islamic society. Also known as *Maqasid al-Shariah* or the higher goals of Shari'ah.

Drug Punishment in Traditional Islam

Consumption of alcohol is considered a grave sin in Islam and also a sin with an applicable hudud punishment. The punishment for consuming alcohol is 80 lashes, as stated in the hadith of the Prophet (SAW). However, there was an incident when the Prophet (SAW) directed someone who consumed alcohol to be given 40 stripes with 2 palm branches (Okon, 2014). During the time of Umar (RA) the punishment for drinking was consulted by Caliph Umar (RA) and Abdur-Rahman bin Auf said the mildest for drinking wine is 80 stripes (Okon, 2014).

There is difference of opinion amongst the 4 main schools of Islamic thought regarding the amount *hudud* punishment and also regarding the correlation between the offenders intoxicated state and the type of the drink that person consumed. According to Shafi'i school the punishment for a free person (non-slaves) drinking wine is 40 stripes, this is the majority view of the Hanbali's as well. However, Malikis' and Hanafi's consider the punishment to be 80 stripes. There is a difference of opinion with Hanafi's when it comes to the type of the drink and state of the drinker. Hanafi's view that *hadd* punishment cannot be meted for someone who is not intoxicated. It must be noted that all schools of thought agree that drinking 'wine' is prohibited regardless of the quantity consumed and they all agree that it should be punished with the *hudud* punishment (Kondgen, 2017).

The question then arises regarding the applicability of *hudud* punishment for intoxicants other than alcoholic drinks, such as opiates and other drugs. There is a difference of opinion amongst major scholars of early Islam in terms of applying *hudud* punishment for drug use. There were scholars such as Ibn Taymiyya who prescribed *hudud* punishment for drinking wine for *hashish*. He believed that it is akin to consuming wine and is thus prohibited in the same manner. However, for other non-intoxicating drugs such as *banj* he prescribes *ta'zir* punishments as the drug itself does not induce intoxication. However, Shafi'i's believe that drugs such as opium and *hashish* and others should not have *hadd* punishment rather a *ta'zir* punishment by *ta'dib* (punishment by teaching moral values) would be applicable (Yasmin Hanani, 2013). Al-Qarafi also holds the view that for the use of non-intoxicant drugs such as *hashish* could not constitute a *hudud* punishment (Yasmin Hanani, 2013).

From the available resources it can be seen that the early scholars did not issue a clear verdict on the use of different types of narcotic drugs due to limited knowledge regarding the effects on the user. However, the consensus of the modern scholars determines that narcotic drugs whether intoxicating or not are all prohibited and should be given a *ta'zir* punishment for non-medical use.

It is seen that due to the non-existence of narcotic drugs use during the time of the prophet (SAW) there was no clear Quranic injunction with regards to its use. However, there were certain *hadith* which clarifies that any intoxicant is *haram* despite its quantity. Due to the lack of a clear understanding of the nature and its effects on the mind, body, society due to the use of drugs, the early scholars had a difficult time in establishing an analogy for the many different types of drugs. Some scholars even attempted to self-experiment to see the

effects it had for themselves. However, as there were a variety of drugs which had different effects on different people, those scholars who self-experimented also differed in their verdicts. Whilst some permitted some types and prohibited the use of others, the majority of the scholars abstained from giving a general verdict on all narcotic drugs. Their primary argument depended on the intoxicating effect of some drugs and if it is found to be an intoxicant then some scholars prescribed the *hudud* punishment for drinking wine. It is the contemporary scholars that determined upon modern discovery of the detrimental effects of narcotic drugs have on a person, societies and economies that all forms of non-medical use of these drugs are prohibited and should be given a *ta'zir* punishment.

Maqasid al-Shari'ah, Purposes Of Shariah And Islamic Punishment Philosophy

Maqasid al-Sharia can be defined as the objectives of *Shari'ah* or the purposes of the divine revelations. It was theorized as early as during the time of Caliph Umar (RA), however as a conceptual idea it was developed by Imam al-Ghazali in the 12th Century (Sarkawi et al., 2017). *Maqasid al-Shari'ah* is theorized with the consideration on how *Shari'ah* is revealed to best allow a person to lead their worldly lives so that they could have a better everlasting life in the hereafter (Abdullah, 2015) through Islam. As the religion of Islam is not constrained by time and place, the message and the rules are considered universal and applicable in every situation. Thus, the main purpose of *Shari'ah* is to avoid harmful acts and guide to acts which are beneficial for mankind and the purpose of *Maqasid Shari'ah* is to identify harmful deeds and to reach beneficial ones (Kholish et al., 2020).

Allah Taala mentions in the Holy Quran:

﴿وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ﴾

Which means, "And We have not sent you, [O Muḥammad], except as a mercy to the worlds." (al-Quran. Anbiya: 107)

Furthermore, it is mentioned that;

﴿يَأَيُّهَا النَّاسُ قَدْ جَاءَكُم مَّوْعِظَةٌ مِّن رَّبِّكُمْ وَشِفَاءٌ لِّمَا فِي الصُّدُورِ وَهُدًى وَرَحْمَةٌ لِّلْمُؤْمِنِينَ﴾

Which means, "O mankind, there has come to you instruction from your Lord and healing for what is in the breasts and guidance and mercy for the believers." (al-Quran. Yunus: 57)

The purposes of the Islamic law are divided into 3 main areas (Auda, 2007). The first area is called Necessities (*dharurat*); this area contains the 5 elements which are considered essential to be preserved and are essential for human life. These are, Preservation of Faith, Preservation of Soul, Preservation of Wealth, Preservation of Mind, Preservation of Offspring, Preservation of Honour. Failure in preserving any of these necessities would lead to chaos and corruption in the society. The second area is called Needs (*hajiyyat*) the elements that contains in this area are considered to be less essential than Necessities. The needs are elements which alleviates hardship, however neglecting it does not completely disrupt the order of life. For example, lease and hire contracts and the sale of *salam* (Asyraf Wajdi & Said Bouheraoua, 2010). The third area is identified as Luxuries (*tahsiniyat*) or beautifying purposes. These are the things related to customs and acts based on the status of the individual. Examples include the act of giving zakat, being kind in speech, wearing fine clothes, fair dealing and use of things which makes life comfortable (Asyraf Wajdi & Said Bouheraoua, 2010). It has to be noted that all these are in fact arranged in a way that each less essential area acts as a shield to protect the objectives within the Necessities area (Auda, 2007). It has to be mentioned that the most important area is the Necessities area where if the essentials of it are ignored than *fasad* or conflict would prevail in the society (Sabariah et al., 2020).

When analysing things which are *halal* or *haram* we could see it fits into the *Maqasid al-Shari'ah* paradigm. Also, even the punishments in Islam, either *hudud*, *ta'zir* or *qisas*

would also comply to this standard. There should be a *Shari'ah* purpose in everything Muslims do. It is evident that a purpose is necessary for looking at the original sources of Islam. The purpose of decreeing something in *Shari'ah* is mentioned in some places of the holy Quran and sometimes in the *sunnah* of the Prophet (SAW). As it is clearly seen from this verse of the holy Quran when Allah Taala decreed the punishment for murder:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى ۚ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ ۖ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ ۚ وَأَدَاءٌ إِلَيْهِ بِإِحْسَنٍ ۚ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۚ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ... وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِيَ الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾

Which means: "O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female.¹ But whoever overlooks from his brother [i.e., the killer] anything,² then there should be a suitable follow-up and payment to him [i.e., the deceased's heir or legal representative] with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment. There is 'security of' life for you in 'the law of' retaliation, O people of reason, so that you may become mindful 'of Allah'." (al-Quran. al-Baqarah: 178-179)

This verse clarifies that the punishment is given as a retributory action and goes on to mention that taking this punishment would in fact save lives. If we look how the punishment is meted, we can see that the punishment is severe, and it is witnessed by people of the society. This would act as deterrent for others from committing these types of crimes which would eventually saves lives (Afridi, 2016).

Drug Rehabilitation And Reformation In Islam

In order to establish the requirements and a definition of drug rehabilitation, we must first look at the definition of drugs and their effect on the user from a medical and scientific point of view. Drugs are defined as a substance that, when ingested, can alter one or more functions of the individual. Drug abuse is defined as the usage of drugs for non-medical reasons in a way which could impair the abuser's ability to function effectively and may pose detrimental harms of physical, emotional or social aspects (Nirula et al., 2006). Habitual drug abuse may lead to a point where the abuser becomes dependent on the substance and is not able to function and perform normally without it. If drug dependent person withdraws from taking the substance, they would have physical distresses such as shakes, itching, vomiting, joint pain and such other drug withdrawal ailments. The drug dependent individual may have psychological harm such as behavioural changes and damage to the brain causing failure to its proper functioning as well (Nirula et al., 2006). This is also known as the withdrawal syndrome. According to the World Health Organizations lexicon of Alcohol and Drug Terms, this syndrome is defined as;

"the group of symptoms of variable severity which occur on cessation or reduction of drug use after a prolonged period of use and/or in high doses. The syndrome may be accompanied by signs of both psychological and physiological disturbance." (ODCCP, 2000)

The result of drug abuse or dependence of drugs is also known as drug addiction. Drug addiction is a disease which requires specialist treatment and with proper treatment individuals can recover from this disease. The treatment for drug addiction is designed to maximize personal and social functioning of the individual so that the addicts could recover from this disease and return to society. The Expert Committee on Drug Dependence of the World Health Organizations defines treatment for drug addiction as follows,

"the process that begins when psychoactive substance abusers come into contact with a health provider or any other community service and may continue through a succession of specific interventions until the highest attainable level of health and well-being is reached." (WHO, 1998)

This definition of treatment is further elaborated by the Secretariat of the United Nations Office on Drugs and Crime as follows:

"Essentially, by providing persons, who are experiencing problems caused by their use of psychoactive substances, with a range of treatment services and opportunities which maximize their physical, mental and social abilities, these persons can be assisted to attain the ultimate goal of freedom from drug dependence and to achieve full social reintegration... Additionally, treatment aims at reducing the dependence on psychoactive substances, as well as reducing the negative health and social consequences caused by, or associated with, the use of such substances." (ODCCP, 2000)

In order to provide adequate treatment for drug addiction, different countries have adopted different approaches based on the cultural, religious, political, and economic perspectives of each country. While these treatment approaches change over time, the primary treatment methods, such as medical, rehabilitation, and psychological intervention treatments, focus on reducing drug use, discouraging initial use, and reducing the social consequences and negative health effects of drug (UNODC, 2003). The Declaration on the Guiding Principles of Drug Demand Reduction calls on the member states of the United Nations to embrace education, rehabilitation, counselling, early intervention, public awareness, relapse prevention, social reintegration and aftercare to achieve these goals (UNODC, 2003).

Islamic View on Rehabilitation and Reformation

As discussed so far in this article, it is clear that Islam prohibits access to drugs for Muslims for various reasons and to preserve the 5 essential elements of *Maqasid al-shariah*. Islam advocates refraining from all types of harmful acts and aims to stop injustice before it even begins. Therefore, Islam places the responsibility for correcting bad behaviour on each individual and on the entire community. Furthermore, Islam forbids all ways that could lead to these harmful practises (Nazar & Sabitha, 2017).

In studies, drugs have been found to lead to a life away from the religion of Islam. In a study conducted in Jordan among Muslims addicted to drugs, a common theme was discovered. The study found that all addicts had an aversion to religious duties. They failed to perform the 5 daily prayers, they drifted away from religion, family and social structures (Al Ghaferi et al., 2016). This study emphasized on the importance of including a spiritual component in the rehabilitation treatment (Al Ghaferi et al., 2016). However, it must be noted that there are also situations where some people become addicted to substances without their own volition, most of the time out of necessity due to some prescribed medication such as morphine for pain relief by doctors (Nazar & Sabitha, 2017).

According to Islam the opportunity to return to the right path is available for everyone. As it is mentioned in multiple places in the Holy Quran:

﴿وَمَنْ يَعْمَلْ سُوءًا أَوْ يَظْلِمْ نَفْسَهُ ثُمَّ يَسْتَغْفِرِ اللَّهَ يَجِدِ اللَّهَ غَفُورًا رَحِيمًا﴾

Which means, "Whoever commits evil or wrongs themselves then seeks Allah's forgiveness will certainly find Allah All-Forgiving, Most Merciful." (al-Quran. An-Nisa: 110)

Furthermore, for those who are in the right mind seeking recovery, Islam assures that Allah Taala would guide them to the right path.

﴿وَالَّذِينَ جَاهَلُوا فِينَا لَنَهْدِيَنَّهُمْ سُبُلَنَا وَإِنَّ اللَّهَ لَمَعَ الْمُحْسِنِينَ﴾

Which means, “And those who strive in Our way, We will certainly take them to Our paths, and indeed Allah is with those who are good in deeds.” (al-Quran. Al-Ankabut: 69)

﴿وَلَا تَسْتَوِ الْحَسَنَةُ وَلَا السَّيِّئَةُ ۚ ادْفَعْ بِالَّتِي هِيَ أَحْسَنُ﴾

Which means, “For good and evil are never equal. Repel(evil) with that which is better, and thereupon the one between whom and you in enmity becomes like an intimate ally.” (al-Quran. Fussilat: 34)

In an Islamic society, every member of society is responsible for redressing grievances and helping fellow Muslims to approach the religion of Islam and achieve *maqasid al-shariah*.

Shari’ah Compliant Drug Treatment and Harm Reduction

The question now arises as to how Islam views it when someone is addicted to drugs and needs medical and psychological treatment in order to return to society. What kind of rehabilitative treatment is allowed in Islam and what are the limits for treatment practice?

The importance of reducing the negative effects of drug withdrawal was recognized by Islamic scholars, and they derived the harm reduction model from the three phases of alcohol prohibition in the Quran. It is mentioned that these 3 phases take into account human nature and allow for a gradual reduction before consumption is completely prohibited (Ali, 2014). As drugs and other narcotics also have a harmful effect on the user; whether psychological, physical, social or economic, the prevention from further harm from drug requires rehabilitation treatment for those who are already suffering from its effects. In other words, the intervention to stop the user from the effects of drugs is a necessity (*dharurat*) in Islam. In order to achieve this goal of harm reduction 3 phases of approach are identified through the maxims of *fiqh* (Islamic Jurisprudence) as follows;

1. The Emergency Approach

The guiding maxims in this approach are

- a. **الضرر يزال** – Harm must be eliminated: This maxim declares that harm must be removed at all times and there shall not be any permissibility in harming anyone. The harm must be removed if possible before its occurrence or even after (Al Mudahari, 2015). There are several verses in the Holy Quran which supports this maxim.

﴿وَلَا تُسْكُوهُمْ ضِرَارًا لِّتَعْتَدُوا﴾

Which means, “but do not take them back to injure them, (or) to take undue advantage; if any one does that; He wrongs his own soul.” (al-Quran. Al-Baqarah: 231)

﴿وَلَا تُضَارُّوهُمْ لِّتَضَيِّقُوا عَلَيْهِمْ﴾

Which means, “and do not harm them in order to oppress them.” (al-Quran. At-Talaq: 6)

﴿لَا تُضَارَّ وَلَدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ﴾

Which means, “No mother should be harmed through her child, and no father through his child.” (al-Quran. Al-Baqarah: 233)

- b. **الضرورات تبيح المحظورات** – Necessity dictates exceptions: This maxim declares that performing prohibited actions are permitted if it depends on necessity. For instance, for the survival of the human it is permitted to consume forbidden food and drinks to the extent to eliminate the necessitated state. However, it must be noted that the forbidden nature of the act does not become permissible, but rather is considered as a (*Ar-Rukhsah*) concession or a leniency for the elimination of necessity (Al-Muahari, 2015). There are several verses in the Holy Quran supporting this maxim.

﴿وَقَدْ فَصَّلَ لَكُمْ مَّا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرُّتُمْ إِلَيْهِ﴾

Which means, “He hath explained to you in detail what is forbidden to you - except under compulsion of necessity?” (al-Quran. Al-An’am: 119)

﴿إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالْدَّمَ وَالْخَنِزِيرَ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ ۚ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

Which means, “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.” (al-Quran. Al-Baqarah: 173)

﴿فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرٍ مُتَجَانِفٍ لِإِثْمٍ ۖ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

Which means, “But whoever is compelled by extreme hunger—not intending to sin—then surely Allah is All-Forgiving, Most Merciful.” (al-Quran. Al-Maidah: 3)

- c. المشقة تجلب التيسير – If the matter is narrowed then widen its facility: This maxim generally means that if a permitted becomes a hardship in its performance then it is allowed to widen its scope to ease the hardship. For instance, if a woman loses her guardian during a trip, then another man is allowed to assume her guardianship to protect her rights (Albasal, 2015). On the aspect of easing a hardship is mentioned in the Quran that;

﴿وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۚ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ ۖ إِنْ كُنْتُمْ تَعْلَمُونَ﴾

Which means, “If it is difficult for someone to repay a debt, postpone it until a time of ease. And if you waive it as an act of charity, it will be better for you, if only you knew.” (al-Quran. Al-Baqarah: 280)

This approach can be effectively utilized by authorities in formulating rehabilitation measures to mitigate the harm factor for drug addicts (Tariq & Hashi, 2016).

2. The Extraordinary Approach

The guiding maxim in this approach is;

- a. الضرورة تقدر بقدرها – Necessity is measured in accordance with its true proportions: This maxim mentions that the permissibility of any forbidden act allowed due to necessity is to the extent of the elimination of that particular necessity. The permissibility will not be extended nor expanded beyond what is needed to eliminate the necessity. As soon as the necessity is eliminated the permissibility of the forbidden act will be once again forbidden and it is not permissible to continue in that act (Zuhaily, n.d). For example the allowance of having an alcoholic drink is to quench the thirst to prevent imminent death or harm. However, once the possibility of imminent death or harm is removed then it is not allowed to continue drinking as it will be a sin.

According to Tariq Abdul Razak, this approach could be utilized by relevant drug agencies in identifying the drug cases, studying and classifying them so that the drug abuse mitigation factor could be applied only to those who are genuinely in need of rehabilitation (Tariq & Hashi, 2016). This proportionality approach would maximize the benefit for drug abusers from the treatment programs and minimize harmful effects of drugs.

3. The Moral Approach

The guiding maxims in this approach are;

- a. **الضرر لا يزال بمثلله** – Harm must be eliminated but not by means of another harm: This maxim means that elimination of harm is necessary yet it is forbidden to eliminate harm by harming others. For example, a person dying of hunger is not allowed to steal the food of another person in a similar situation (Al-Mudahari, 2015). Another example of this maxim is that it is not allowed for someone to preserve his wealth by destroying the wealth of others. The harm should be removed without causing harm to others, or in a way the harm caused due to the action of removal of the initial harm is remedied as much as possible (Zuhaily, n.d).
- b. **يتحمل الضرر الخاص لأجل دفع الضرر العام** – Specific harm is tolerated to prevent a more general harm: This maxim mentions that in order to prevent harming the public or the general population it is necessary to commit a specific harm. For example, to prevent the widescale spread of a fire, it is permissible to demolish a house in front of it. Even though in general the act of demolishing someone's house is not allowed, however in this case it is permitted to protect the houses of the entire community (Al-Mudahari, 2015).
- c. **أخف الضررين** – Choosing the lesser harm between 2 or more harms: This maxim dictates that if one has no other choice but to choose between 2 harms in order to remove the necessity, then one should choose the lesser harm instead of the severe one (Al-Mudahari, 2015). An example of the application of this maxim is seen from the hadith of the prophet (SAW):

"While we were in the mosque with Allah's Messenger (SAW), a desert Arab came and stood up and began to urinate in the mosque. The Companions of Allah's Messenger (SAW) said: Stop, stop, but the Messenger of Allah (SAW) said: Don't interrupt him; leave him alone. They left him alone, and when he finished urinating, Allah's Messenger (SAW) called him and said to him: These mosques are not the places meant for urine and filth, but are only for the remembrance of Allah, prayer and the recitation of the Qur'an, or Allah's Messenger said something like that. He (the narrator) said that he (the Holy Prophet) then gave orders to one of the people who brought a bucket of water and poured it over." (Hadith. Muslim. Book 2. 127)

The moral approach where preferring the lesser harm over the graver one, allows the provision of drug treatment using lesser addictive drugs. These treatments can be designed with the harm reduction principle in mind where addicts could be successfully removed from the harmful addiction of a powerful drug gradually through such treatments if no other option is available or effective in treating the addict seeking rehabilitation.

Role of Shari'ah in Maldives

It is imperative to analyse the Maldivian legal context in relation to Sharia law, as the focus of this study is to find solutions for the Maldives in terms of drug law reform. According to the Maldives Constitution, the Maldives is a country whose population is 100% Sunni Muslims, and non-Muslims are not allowed to be citizens of the country (Constitution of Republic of Maldives, 2008). The Constitution of Maldives 2008 defines Maldives as follows;

"The Maldives is a sovereign, independent, democratic Republic based on the principles of Islam". (Const. of Rep. of Maldives, 2008: Chap. 1, Art. 3)

Furthermore, the constitution goes on to define the basis of all laws and state religion as Islam. It is mentioned:

"The religion of the State of the Maldives is Islam. Islam shall be the one of the basis of all the laws of the Maldives". (Const. of Rep. of Maldives, 2008: Chap. 1, Art. 10[a]) | No law contrary to any tenet of Islam shall be enacted in the Maldives". (Const. of Rep. of Maldives, 2008: Chap. 1, Art. 10[b])

When looking at how the Maldivian Constitution defines Islamic Shari'ah, it can be seen that it is defined as;

"Islamic Shari'ah means the Holy Qur'an and the ways preferred by the learned people within the community and followers of the Sunnah in relation to criminal, civil, personal and other matters found in the Sunnah." (Const. of Rep. of Maldives, 2008: Chap. III, Art. 274)

This article 10 of the Constitution of Maldives clearly defines a benchmark which all the laws of Maldives should adhere to; this benchmark is the tenet of Islam. As no law can be constructed nor enforced without complying to this rule, this rule is the most fundamental element when considering Maldivian laws. The Constitution requires the parliament to repeal or amend any law that is in contravention with any tenet of Islam (Const. of Rep. of Maldives, 2008). Furthermore the Constitution prohibits the parliament from enacting any law which contravenes with any tenet of Islam. Further, in regard to judicial decisions, the Constitution declares that the judges should consider Islamic Shari'ah in the instances where the laws are silent. Thus it is important to know how 'tenets of Islam' is defined in the Maldivian laws and what constitutes this repugnancy clause.

According to the constitution of Maldives 2008, the 'Tenets of Islam' are defined as follows:

"Tenet of Islam means, the Holy Qur'an and those principles of Shari'ah whose provenance is not in dispute from among those found in the Sunnah of the Noble Prophet, and those principles derived from these two foundations;" (Const. of Rep. of Maldives, 2008: Chap. III, Art. 274)

From this definition it can be construed that Tenet of Islam is defined to include the primary sources of Islam which are the Holy Quran and the Sunnah of the Prophet (S.A.W) and the consensus *Ijma'* (consensus of scholars) of the scholars of Islam.

It is clear from the standpoint of the Maldivian Constitution that Islam is the basis of all laws and any law that contravenes tenets of Islam are void and unenforceable in Maldives. Furthermore, the definition given in the Constitution clears any doubts on what could be considered as Islamic or Shari'ah compliant in interpretation or adoption of any provision of any law in the country. Similar repugnancy clauses in varying differences in the constitutions are also found in some other Islamic countries such as Pakistan and Malaysia (Glenn, 2013).

For the intents and purposes of this paper the main concepts under the Maldivian drug laws will be divided into the punishment aspect and rehabilitation aspect. Thus, when analysed with the already set standard of compliance with article 10(a) of the Constitution of Republic of Maldives and the standards placed under Shari'ah, The Maldivian drug laws and its punishments could be measured under this new benchmark to ensure its compliance with the standard.

- a. **Rehabilitation:** it is found that the Maldivian drug laws recognises the importance of rehabilitation of offenders and addicts and have in place provisions within the law to address how treatment and rehabilitation could be provided to those currently in prisons and other remand facilities as well as establishes special agencies and oversight committees to ensure the provision of rehabilitation for those requiring treatment. It has to be noted that all rehabilitation and treatment models are codified under the Maldivian drug framework, including the minor details such as the schedule and the

conduct of each program are codified in great detail to avoid any confusion and mistreatment of those seeking treatment. There are 6 types of treatment models available under the law which could be requested either voluntarily or through government agencies. It has to be noted that all 6 types of treatment programs prescribed in the Maldivian drug framework are found to be in compliance with Shari'ah concepts and purposes of rehabilitation and treatment and to the standard benchmark prescribed under article 10(a) of Maldivian Constitution.

- b. **Punishment:** it is found that the under the Drugs Act 17/2011 there are 3 types of punishments issued for various drug offenses. These are imprisonment, fines and forfeiture of assets and property. It has to be noted that corporal punishment and death penalty is not given for drug offenses in Maldives. Based on these punishments of Maldivian drug framework, it is found that the punishments included in the Maldivian drug framework are not in contravention with the rules of Shari'ah and are considered under *ta'zir* punishments in shari'ah.

CONCLUSION

In general, it should be noted that the Maldives is an Islamic country and its constitution prohibits any law that violates the teachings of Islam. The constitution contains a condemnation clause that invalidates any law that violates Islam. The Maldives Constitution requires that all laws of the country be in accordance with the Quran and the Sunnah of the Prophet (SAW). Thus, the drug law of the Maldives could also be further analysed from this point of view to examine its compatibility with Sharia in its rehabilitation provisions and in its practical application.

Regarding the subject of drugs and early Islam, it has been stated that in the early days of Islam, the subject of drugs as we know it today was not addressed because it was not present at the time of the Prophet (SAW) and the rightly guided caliphs. The subject of drugs did not become known in the Muslim world until much later, and some of the scholars of the time conducted self-experiments with the substances in order to pass judgement on their permissibility. At present, drugs and intoxicants are considered impermissible in Islam according to the unanimous opinion of scholars.

Drugs have also been found to negatively affect the five necessities of *Maqasid al-Shariah*, or the goals of divine revelation, which aim to protect religion, life, knowledge, lineage and property so that human life can survive in peace. Drugs and other intoxicants have been found to be harmful, causing physical and psychological harm in addition to the negative effects on society, the economy, politics, and religion. Habitual drug users who are addicted to drugs are considered as people who need special treatment and support to overcome this disease. In various studies, it has been found that a drug addicted person is not able to stop using drugs immediately due to negative effects known as withdrawal syndrome which varies in severity depending on the user. Therefore when formulating a drug rehabilitation and treatment, a model which would encompass and is compliant to both the Islamic and contemporary scientific methods would be essential for any Islamic country such as Maldives. The punishments as well as the rehabilitation provisions and aspects being compliant to this high standard will ensure maximum benefit to the individual and the society as a whole.

Significance Of The Study

United Nations member countries have agreed to reduce drug use through education, rehabilitation, social reintegration, and aftercare. This approach to treating drug addiction is also applied in Islamic Sharia law. Islam also recognizes the importance of providing treatment to those who need it. Islam grants drug addicts the opportunity for forgiveness and mercy.

This study found that the Islamic approach to the treatment of drug addiction based on the framework of *Maqasid al-Shariah*, in which priority is given to the essential necessities in treating the problem. Therefore, the maxims of Islamic jurisprudence regarding necessity can be used to formulate strategies for providing effective treatment options for drug addicts through legal mechanisms.

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