

# The Rules Of Balancing And Weighing And Their Applications In The Saudi Criminal Procedure Law In Light Of The Objectives Of Islamic Law

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## Abstract

*This paper examines the doctrinal principle in Islamic jurisprudence—the principle of averting harm takes precedence over attaining benefit—and explores its practical application within the Saudi Criminal Procedure Code. Grounded in prophetic guidance and scholarly consensus, the principle asserts that if harms outweigh or equal benefits, priority must be given to preventing damage. The analysis looks at the written and theoretical bases from hadith and Qur'ānic sources, the views of legal scholars, and how it is applied in key procedural articles, showing how the Code balances personal rights and the public good according to the goals of Islamic law (مقاصد الشريعة). The study consists of an introduction, three sections, a conclusion, and recommendations for further studies. The three sections are the main part of the study, in which section one bears the title The principle of preventing harm takes priority over attracting benefits and its applications in the Criminal Procedure Code, whereas the second deals with the principle of public interest taking precedence over private interest and its applications in the Criminal Procedure Code. The third one is about the rule of prioritizing the prevention of consensual harm over the prevention of disputed harm and its applications in the Criminal Procedure Code.*

**Keywords:** Islamic jurisprudence, intentions of Islamic law, harm prevention, criminal procedure code (Saudi Arabia), procedural justice, legal protections, balancing harm and benefit

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## INTRODUCTION

Islamic jurisprudence is built around the safeguarding of five universal objectives: faith, life, intellect, lineage, and property. Central to this is the principle of prioritizing the prevention of harm (درء الضرر) over the realization of benefit (جلب مصلحة). This principle, which underpins legal ethics and systemic fairness, is articulated in the hadiths of the Prophet messenger and is supported by Quranic guidance that condemns wine and gambling due to their greater sin compared to any benefit. Renowned jurists further clarified that even when benefits might outweigh harm, preventing it remains primary when the two are equal. These teachings profoundly influenced the Saudi Criminal Procedure Code, which integrates this principle to ensure justice, protect dignity, and preserve social welfare. The present study aims to analyze key legal articles to demonstrate how they embody Islamic objectives and ensure that harms are averted even when doing so may limit potential benefits.

### Reason for Choosing the Research

1. To demonstrate the relationship between legislation in the Kingdom of Saudi Arabia and the principles of Islamic law and objectives.
2. To defend the legislation of the Kingdom of Saudi Arabia in light of the wave of attacks against it by hostile circles.
3. To demonstrate the innocence of the legislation of the Kingdom of Saudi Arabia in investigating charges of neglecting human rights.

### The importance of the research:

The research derives its importance from its connection to the Criminal Procedure Law and its alignment with the principles of Islamic law and its objectives. Its significance is that it is the only study that examines the law from this angle. It will be an important reference for students of the law and its relationship to Islamic law and its objectives.

### Research Objectives

1. To demonstrate the regulator's commitment to balancing benefits and harms in the Criminal Procedure Law.

2. To demonstrate the regulator's reliance on the rules of balancing and weighing and their objectives in most of the investigation articles.

## RESEARCH METHODOLOGY

The research will begin by presenting the issue, elucidating its meanings, examining its legal form, and providing supporting evidence. Then, the regulatory texts included in the text are traced and compiled. Given the many applicable examples, addressing them all would double the scope of the research. Therefore, we will focus on specific examples from the text, study them, and connect them to the key rules of balancing and weighting to show why the organizer put the text together, along with any other texts needed for the study's context.

### Theoretical Framework:

#### The Meaning of Balancing and Weighing the Objectives of Islamic Law:

Islamic law is not merely a collection of rulings, commands, and prohibitions devoid of any purpose; that would be a kind of futility, from which the Lord of the Worlds, glory be to Him, is far removed. Rather, the law came with rulings to achieve objectives and goals, which scholars have termed the objectives of the law. Al-Tahir Ibn 'Ashur defined them as the meanings and wisdom observed by the Lawgiver in all or most of the legislative situations (Ibn Ashur, 1984, p. 251). Upon closer examination of the rulings of the law, we find that the purpose of the law is to preserve what Al-Ghazali called the five necessities (Al-Ghazali, 1993, p. 174), and that the law came to fulfill the interests of these five necessities and prevent corruption from occurring. Sheikh al-Islam Ibn Taymiyyah said, Shari'ah came to achieve and perfect benefits and to eliminate and reduce harms. Otherwise, all forbidden things, such as polytheism, alcohol, gambling, indecency, and injustice, may bring benefits and objectives to their perpetrators. However, because their harms outweigh their benefits, Allah and His Messenger forbade them. Similarly, many matters, such as acts of worship, jihad, and spending wealth, may be harmful. However, because their benefits outweigh their harms, the Lawgiver ordered them (Ibn Taymiyyah, 2004, vol. 1, p. 265). There is no doubt that benefits and harms are rarely pure. If they were, it would not be difficult for a scholar, or even a lesser scholar, to choose what benefits and avoid what harms. However, benefits and harms intertwine, with some being stronger than others do. Al-Qarafi says, "The induction of Shari'ah dictates that there is no benefit that does not contain a harm, even if it is small and remote. And there is no harm that does not contain a benefit, even if it is small and remote" (Al-Qarafi, 1973, p. 87). Therefore, when dealing with mixed situations, the scholar must choose what achieves the greatest benefit and prevents the greatest harm. If two benefits conflict, he should prefer the greater of the two and act according to what achieves it. If two harms conflict, he must act on one of them and prevent the greater harm by doing the lesser harm. If achieving the benefit requires a greater harm, he should prioritize preventing the harm over achieving the benefit. If two objectives of Shari'ah conflict, he should prioritize the greater of the two, and so on. These are all established rules in Shari'ah, and prioritizing or delaying them requires balancing and weighing. The meaning of the word "balance" in the Arabic language is derived from the verb weigh (وَزَنَ), which means estimating something and knowing its value. "It is said: وَزَنَ الشَّيْءَ weigh something) if he estimated it, and weigh (وَزَنَ) the fruit of the palm tree when it is estimated. In the hadith of Ibn Abbas, he was asked about the advance payment on palm trees, so he said, The Messenger of Allah, may Allah bless him and grant him peace, forbade the sale of palm trees until they are eaten from and until they are weighed. I said: And what is weighed? A man in his presence said: Until it is estimated. Abu Mansur said: "He made the guess a weight because it is an estimate and a calculation" (Ibn Manthoor, 1993b, vol. 13, p. 477).

It is said: "A dirham is a weight," meaning one with weight. The weight of something itself is heavy, so it is a weight. "I did not assign a weight to it" is a metaphor for neglect and disregard (Al-Fayyumi, (n.d.). vol. 2, p. 658). The core of all of these concepts is understood in the statement of Allah Almighty:

﴿فَلَا تُقِيمُ لَهُمْ يَوْمَ الْقِيَامَةِ وَزْنًا﴾ [الكهف: 105].

"So their works are in vain, and on the Day of Resurrection, We shall not give them any weight" (Al-Hilali et al., 1997, p. 401, verse 105 of Surat Al-Kahf), meaning a measure. Moreover, the Arabic verb (wazana وزن) meaning weight is a construction that indicates adjustment and straightness (Ibn Faris, 1979, vol. 6, p. 107). Accordingly, "balancing" something means making it the same weight as it is; this balances it, i.e., it is parallel to it (Al-Himyari, 1999, vol. 11, p. 7152). In short, "balancing" is estimating something to determine its value. The estimation is done by comparing it to something else; one examines whether it is equal to it, heavier than it, or less than it is. Thus, one says, "So-and-so balanced the two things" (Al-Razi, 1995, p. 337).

The meaning of the word increasing "tarjeeh الترجيح" in the Arabic language is derived from the verb "rajāḥ رَجَحَ". The letters that comprise it, "raa ر", "jeem ج", and "haa ح", have a single root; it denotes seriousness and excess (Ibn Faris,

1979, vol. 2, p. 489). Thus, the meaning of "tarjeeh" in the Arabic language is "the increase of the weighed item." Someone says, "I weighed the scale," meaning I made its pan heavy with the weighed item. I weighed something by heaviness, meaning I made it more abundant" (Al-Manawi, 1990, p. 95; Ibn Manthoor, 1993a, vol. 2, p. 445).

As for the meaning of "tarjeeh" as a term, linguists in general and scholars of the origins of language in particular have provided several definitions. Al-Jurjani defined it as "establishing the rank of one piece of evidence over the other" (Al-Jurjani, 1983, p. 56). Ibn al-Hajib defined it as "the coupling of an indication with something that strengthens it over its opposing side, so it must be given precedence, as they have established this" (Al-Rahuni, 2002, p. 304). Al-Manawi stated in Al-Tawqif that he was bolstering one of the two pieces of evidence legitimately. Some of them expressed it by increasing the clarity of one of the two pieces of evidence, and some by strengthening one of the two opposing sides or giving precedence to one of the two opposites" (Al-Manawi, 1990, p. 95; Ibn Manthoor, 1993a, vol. 2, p. 445).

Al-Shanqeeti defined it in Al-Mudhikra as "that which establishes a preponderance of the preponderance of one of the two sides" (Al-Shanqeeti, 2001, p. 530). All of these definitions are similar, and their gist is that if a mujtahid encounters two conflicting pieces of evidence or two objectives, such that reconciling them is impossible, he seeks what strengthens one side and adopts it. Al-Asmandi stated that "the benefit of tarjih is that the suspicion arising from one of the two indications is strengthened when they conflict" (Al-Asmandi, 1992, p. 651).

By including the word "balance" in tarjih, the above explanation becomes clear: if a mujtahid encounters two conflicting pieces of evidence, two reasons, or two objectives, he balances them to determine which side is heavier than the other and gives preference to it. This is often the intent of Islamic law. Since the Code of Criminal Procedure in the Kingdom of Saudi Arabia is derived from Islamic law, its provisions take into account these objectives of Islamic law and adhere to the principles of Islamic law in achieving benefits, preventing harm, and prioritizing the stronger objectives over the weaker ones.

### **Section One: The Principle of Preventing Harm Takes Priority Over Attracting Benefits and Its Applications in the Criminal Procedure Code.**

Islamic law seeks to achieve benefits and prevent harm. Accordingly, scholars have stipulated that if a benefit and a harm conflict, and the harm is greater than or equal to the harm and benefit, then the objective of Islamic law is to prioritize averting harm over attaining benefits. This interpretation is based on the hadith of Ubadah ibn Al-Samit (may Allah be pleased with him), in which the Messenger of Allah (peace and blessings be upon him) ruled that "there should be neither harming nor reciprocating harm" (Al-Daraqutni, 2011, p. 146; Ibn Manthoor, 1882, p. 153; Ibn Majah, n.d., Hadith No. (2340)).

Further clarifying this, Al-'Izz ibn 'Abd Al-Salam says, "If the harm is greater than the benefit, we prevent the harm, and we do not care about the loss of the benefit." Allah Almighty says,

{يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا} [البقرة: 219].

"They ask you (O Muḥammad ﷺ) concerning alcoholic drinks and gambling. Say: "In them is a great sin, and (some) benefits for men, but the sin of them is greater than their benefit" (Al-Hilali et al., 1997, pp. 46-47, verse 219 of Surat Al-Baqarah). From this, we understand that Allah "has forbidden them because their harm is greater than their benefit" (Al-'Izz 'Abd Al-Salam, 1991, vol. 1, p. 98).

Taj Al-Din Al-Subki says, "Preventing harm is more important than achieving benefit. There are exceptions, which state that if the benefit is greater and the harm is less severe, then the benefit deserves more consideration. The evidence demonstrates that preventing harm takes precedence over achieving benefit when the two are equal" (Taj Al-Din Al-Subki, 1991, p. 105). Since the Criminal Procedure Code stems from Islamic law, it was built on and applies this principle. Below, we will present some articles of the law as applications of the rule "Preventing harm takes precedence over attaining benefit," explaining the relationship of the articles to the rule.

#### **First Application:**

**Article 52** stipulates that searches must be conducted during the day, from sunrise to sunset, within the authority granted by the law. The search may continue into the night as long as it is conducted continuously. It is not permissible to enter residences at night except in the case of being caught in the act.

#### **Textual Analysis:**

"A residence is any private place where a person resides, either permanently or temporarily" (Al-Gharib, 1990, p. 158). The basic premise of a residence is that it is the repository of a person's private secrets and a means of concealing their faults. While the Code of Procedure allows searching homes to find information and items that help with the investigation—under strict rules about how searches should be done—it also aims to protect people's privacy and prevent harm to others, especially vulnerable groups like the elderly, women, and children, by requiring searches to happen

during the day and not at night. This is because nighttime is generally considered a time for sleeping or putting on clothes. Although there are benefits to entering a residence at night, as it involves a surprise and prevents the accused from concealing anything related to the investigation, it does not allow them to escape or otherwise serve a beneficial purpose. However, the Code prioritizes preventing the aforementioned corruption over potential benefits and permits nighttime searches only in two cases:

1. When the search begins during the day and continues into the night, here, the feared evils will not occur.
2. The case of being caught in the act of committing a crime; delay in this case is not permissible.

The intent of the Shari'ah is evident in the text's prohibition of night searches to prevent the evil of exposing private parts. This aligns with the Shari'ah's intent in commanding the preservation and protection of private parts (Al-Shatibi, 1997b, p. 385). We must prevent anything that exposes them, even if it offers benefits. The article also clearly prohibits entering homes at night, as this is the time to remove clothing. The prohibition also prevents the evil of exposing private parts, as Shari'ah commands covering private parts and not exposing them or attempting to look at them (Al-Tha'alibi, 1997, p. 196). Exposing and looking at private parts leads to immorality and the corruption of offspring, which Shari'ah commands to protect (Al-Ghazali, 1993, p. 174).

### Second Application:

**Article 53** states that if the only person in the searched residence is the accused woman, a woman must accompany the searchers.

**Analysis of the Text:** The law gives the security officer the right to search the accused to obtain information or belongings used in the crime that may assist in the investigation. However, this article makes an important exception: if the accused is a woman, a woman must accompany the searchers. The goal is to avoid the danger of exposing, humiliating, or violating the privacy of the woman in front of a stranger. This principle should take precedence over the interest of obtaining information or anything that may assist in the investigation (Al-Gharib, 1990, p. 138).

The legislator's intent in this text appears to emphasize the exception in the case where the accused woman is a woman, and thus the searchers must be accompanied by a woman. The wisdom of this provision stems from its adherence to the teachings of Islamic law, which prohibit men from even looking at women. In addition to the command to preserve women's dignity and protect them from any insult or emotional harm (Al-Gharib, 1990, p. 138), this legislation is consistent with the evidence that commands women's protection, such as the words of Allah Almighty:

{وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَاسْأَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ} [الأحزاب: 53]، وقوله تعالى: {يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ} [الأحزاب: 59].

"And when you ask (his wives) for anything you want, ask them from behind a screen: that is purer for your hearts and for their hearts" (Al-Hilali et al., 1997, p. 571, verse 53 of Surat Al-Ahzab), as well as the words of Allah Almighty: "O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e. screen themselves completely except the eyes or one eye to see the way). That will be better, that they should be known (as free respectable women) so as not to be annoyed. And Allāh is Ever Oft-Forgiving, Most Merciful" (Al-Hilali et al., 1997, p. 573, verse 59 of Surat Al-Ahzab). The Prophet ﷺ said, "A woman is an object of shame" (narrated by Al-Tirmithi, 1996, Hadith No. (1173)). Therefore, it is necessary to prevent the harm of violating her sanctity, even if that results in the loss of a benefit.

### Section Two: The Principle of Public Interest Taking Precedence Over Private Interest and Its Applications in the Criminal Procedure Code

One of the important principles introduced by Shari'ah to further achieve benefits and prevent harm is that public interest takes precedence over private interest (Al-Shatibi, 1997b, p. 89). Ibn Nujaym (1999, p. 74), articulates this as "tolerating private harm to prevent public harm." This means that if two interests conflict, one of which is public—for society or for a large number of people—and the other is private, the public interest is given priority. This principle applies in situations where conflicts arise. However, if it is possible to combine the two interests without neglecting either of them, they are combined. Furthermore, care must be taken to ensure that the person charged with the task does not cause harm to himself. If such an instance occurs, he is only charged with what is specific to him, despite a conflict over the issue, as al-Shatibi (may Allah have mercy on him) stated (Al-Shatibi, 1997b, p. 89). Public interest is defined as something that benefits the entire nation or the public. It does not consider the conditions of individuals except insofar as they are parts of the nation as a whole, such as protecting wealth from fire or flooding.

Private interest is what benefits individuals, considering their actions so that their reform can achieve the well-being of the society composed of them. Therefore, the initial focus is on individuals, leading to the eventual achievement of the general interest (Ibn Ashur, 2004, vol. 3, pp. 202-203). There is much evidence in Islamic law that indicates the priority

of public interest over private interest, including what is reported in Sahih Muslim, where the Prophet (ﷺ) said, "No one hoards except a sinner" (Muslim (1605)). Imam al-Nawawi said, "The wisdom behind the prohibition of hoarding is to prevent harm to the general public, as scholars have unanimously agreed that if a person has food and people are in need of it and cannot find anything else, he is forced to sell it to prevent harm to the people" (al-Nawawi, 1973, p. 43). It is clear from the words of Imam al-Nawawi that this rule is one of the unanimously agreed upon rules in Islamic law.

Given that the Code of Procedure is based on the principles, foundations, and objectives of Islamic law, the provisions of the Code are consistent with and take into account the principle of prioritizing the public interest over private interests. We will discuss some of its provisions below as applications of this important principle in Islamic law:

#### **First Application:**

**Article 17** says that a criminal case can't be started or investigated for crimes that affect someone's personal rights unless the victim, their representative, or their heir makes a complaint to the right authority, unless the Bureau of Investigation and Public Prosecution believes it's important for the public to pursue the case and investigate these crimes.

**Analysis of the Text:** The law guarantees the right of individuals to pardon, forgiveness, and reconciliation. Therefore, no one has the right to file a complaint except the person in charge of the case (the victim) or his representative, whether an agent or heir. However, this private interest of the perpetrator and the victim is eliminated if the Bureau of Investigation and Public Prosecution deem it in the public interest to file the case and investigate it. In that case, it has the right to file the case (Al-Gharib, 1990, p. 48).

The intent of Shari'ah is clear in stating that if the investigative body identifies a public interest in filing a lawsuit against the perpetrator, it will proceed with the lawsuit without waiting for the victim, who might have a personal reason to refrain from filing, such as if the perpetrator is a relative, friend, or acquaintance. However, if the case involves both a societal right and a public interest, the societal interest takes precedence over the individual right. This reasoning is consistent with Shari'ah, which states that some cases are societal rights in which the victim has no right to reconcile, such as adultery cases. Shari'ah makes filing a lawsuit a societal right. If four witnesses to an act of adultery file a lawsuit, the lawsuit will be accepted and the prescribed punishment will be carried out, even if both parties consent or the guardians of the woman forced to commit adultery waive it. This is because this is a right of Allah Almighty and society in which reconciliation is not possible (Ibn Kathir, 1999, vol. 5, p. 6).

#### **Second Application:**

Article 23 stipulates that a private criminal lawsuit shall expire in one of the following two cases:

1. Issuance of a final judgment.
2. Pardoned by the victim or his heir.

A pardon by the victim or their heir does not prevent the continuation of a public rights lawsuit.

**Text Analysis:** The expiration of a criminal lawsuit is a legal procedure taken by the competent authority that results in the cessation of criminal proceedings for certain crimes. This expiration occurs in two cases: the issuance of a final judgment in the case or a pardon by the victim, their representative during their lifetime, or their heir in the event of their death. However, this pardon applies to personal rights but not public rights; the victim may pardon their personal rights as they wish but not public rights. Therefore, their pardon has no effect on the continuation of the public right lawsuit (Al-Gharib, 1990, pp. 70-86).

The article states that the injured party or their representative has the right to forgive, which is the intent of the Shari'ah. Giving forgiveness is one of the objectives of the Shari'ah, as Allah Almighty said,

{وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى} [البقرة: 237]، وقال تعالى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: 40]،

"And to forego (and give her the full Mahr) is nearer to At-Taqwa (piety, righteousness)" (Al-Hilali et al., 1997, pp. 46-47, verse 237 of Surat Al-Baqarah), in another context Allah Almighty said, "The recompense for an evil is an evil like thereof; but whoever forgives and makes reconciliation, his reward is with Allāh. Verily, He likes not the Zālimun (oppressors, polytheists, and wrong-doers)" (Al-Hilali et al., 1997, p. 660, verse 40 of Surat Ash-Shura). However, he does not have the right to forgive in a public right claim; it must be fulfilled, as in the crime of theft, for example, the victim may waive their right to recover the stolen item, but they do not have the right to pardon in the implementation of the prescribed punishment, as this is a right solely reserved for Allah Almighty (Al-Gharib, 1990, p. 40). In two matters, the public interest takes precedence over the private interest.

The first is to amputate the hand of a thief; although such an action would cause harm to the thief, it is a private matter. Therefore, preventing public harm—which is the recurrence of thefts in society, since implementing the prescribed punishment deters the offender and others—is given priority over preventing this private harm (Khalaf, p. 223). The

second point is that the victim may pardon the offender due to kinship or mutual benefit, but enforcing the prescribed punishment on the offender violates this principle and causes harm to both parties. However, this harm is tolerated so as not to undermine the public interest.

As in the hadith of Safwan ibn Umayya, he circumambulated the Kaaba and prayed, then wrapped a cloak of his own and placed it under his head. As he slept, a thief came to him, pulled it out from under his head, and took it. He brought it to the Prophet (ﷺ), who said, "This man has stolen my cloak." The Prophet said, "Did you steal this cloak?" He said, "Yes." He said, "Take him and cut off his hand." Safwan said, "I did not want his hand to be cut off while I was wearing my cloak." So he said to him, "What if it had not happened before this?" (Narrated by Al-Nasa'i, 2001, Hadith No. 4881). The meaning is that cutting off his hand is obligatory now, and you have no right to it; rather, it is one of the rights purely enshrined in Islamic law, and there is no way to abandon it ('Abadi, 2005, p. 42). The Prophet did not accept that Safwan's waiver of his right would be a reason to prevent the implementation of the prescribed punishment.

### **Section Three: The Rule of Prioritizing the Prevention of Consensual Harm over the Prevention of Disputed Harm and Its Applications in the Criminal Procedure Code**

Imam Izz Al-Din ibn Abd al-Salam stated that harms are not of the same degree but rather vary, some being lesser and greater, some agreed upon, and some disputed. He said, "The benefits and harms of both worlds are of varying degrees. Some are at the highest level, some at the lowest level, and some are intermediate between them. They are divided into those agreed upon and those disputed" (Ibn Abd al-Salam, 1991, vol. 1, p. 130). If a person wants to pray and only has a short garment, he should prioritize covering the private parts over the thigh. The two private parts are agreed upon to be covered, while there is disagreement regarding the thigh. The Code of Criminal Procedure has taken this rule into account in its articles, even considering the prevention of an agreed-upon harm over a disputed harm. In other words, committing a harm disputed over being a harm is done to prevent a harm agreed upon as a harm, following the rule of committing the lesser of two evils (Ibn Nujaym, 1999, p. 76; Al-Suyuti, 1983, p. 87). This principle is one of the agreed-upon rules, as stated by Sheikh Al-Islam Ibn Taymiyyah (Ibn Taymiyyah, (n.d.). p. 91). We will address three articles of the Code as illustrative applications of the Code's adherence to this rule:

#### **First Application**

Article 55 states that searches of anyone other than the accused or of any residence other than his own are not allowed unless there are strong indications that such a search will be useful in the investigation. Text Analysis:

A search is an investigative procedure aimed at searching for items related to the crime being investigated or evidence gathered. The Saudi system has approved this search, but the right to search is reserved only for the accused (Al-Gharib, 1990, p. 132). A person other than the accused may not be searched, "whether by personal search or search of his residence," unless the investigating authority has strong indications that he is concealing items that would help uncover the truth (Al-Gharib, 1990, p. 190).

The intent of Shari'ah law is evident in the text's prohibition of searching anyone other than the accused. It is worth noting that Islamic Shari'ah law takes precedence over any other system in its commitment to guaranteeing personal rights and freedoms. In respect of this, Shari'ah law stipulates the sanctity of the person and prohibits unlawful searches. A person has immunity in his person and his personal life (Al-Gharib, 1990, p. 132). The decision is a matter of consensus. Therefore, the article stipulates that it should be prevented even if it results in another, doubtful, or disputed evil, namely the absence of something that would help uncover the truth.

No one has the right to violate a person's privacy unless there is a legitimate reason to do so. Violating this right contravenes the Shari'ah's requirement to protect people's property and honor. The Prophet ﷺ said in the largest gathering of his time, peace and blessings be upon him, "Your blood, your wealth, and your honor are sacred to one another" (Narrated by Al-Bukhari, Hadith No. (67). It also constitutes a transgression against what the Shari'ah has brought regarding the necessity of establishing justice and prohibiting oppression. Allah Almighty said,

{إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَتَّقُونَ} [النحل: 90].

"Verily, Allāh enjoins Al-'Adl (i.e. justice and worshipping none but Allāh Alone – Islāmīc Monotheism) and Al-Iḥsān [i.e. to be patient in performing your duties to Allāh, totally for Allāh's sake and in accordance with the Sunnah (legal ways) of the Prophet ﷺ in a perfect manner], and giving (help) to kith and kin (i.e. all that Allāh has ordered you to give them e.g., wealth, visiting, looking after them, or any other kind of help), and forbids Al-Faḥshā' (i.e. all evil deeds, e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right), and Al-Munkar (i.e. all that is prohibited by Islāmīc law: polytheism of every kind, disbelief and every kind of evil deeds), and Al-Baghy (i.e. all kinds of oppression). He admonishes you, that you may take heed" (Al-Hilali et al., 1997, p. 360,

verse 90 of Surat An-Nahl). It is understood from these statements that searching a person without any accusation is oppression against him.

**Second Application:** Article 84 specifies that the investigator may not seize any papers or documents handed to the accused by the defendant's representative or attorney, nor may they seize any correspondence exchanged between them in the case.

**Analysis of the Text:** The accused has the right to seek the assistance of an attorney to defend him and to appoint another attorney to defend him and explain the case. The accused gives his client documents and papers that help the attorney defend him, and they also correspond. The article stipulates that the investigator may not seize these documents or correspondence, as the action is considered an infringement on the rights of the accused and a weakening of the attorney's possession of documents and information that assist him in defending his client (Al-Gharib, 1990, pp. 256-257). The intent of Shari'ah law is evident in the text, which prohibits the investigator from seizing any documents handed to the accused by the defendant's representative to avoid the harm agreed upon in Shari'ah law. This harm violates the accused's privacy and confidentiality, even if it results in the loss of some information that would help uncover the truth. The Prophet (ﷺ) established in the hadith of Jabir ibn 'Abdullah that "If a man narrates a hadith and then turns away, it is a trust" (Narrated by al-Tirmidhi, 1996, Hadith No. 1959).

Ibn Raslan Al-Shafi'i said, "The meaning of the hadith is that if a man narrates something and then turns away, his turning away from it indicates that he is wary of anyone overhearing his conversation. This shows he wants to keep the conversation secret from everyone but the person he is telling. It is as if he is keeping the conversation secret from the person he is narrating it to, and in this case, it is a trust for the one narrating it" (Ibn Raslan, 2016, vol. 14, p. 527). Al-Tayyibi also stated, "This means that if someone narrates a hadith in your presence and then disappears, his conversation becomes a trust with you, and it is not permissible to neglect it" (Al-Tayyibi, 1997, vol. 10, p. 3225). Moreover, these documents may contain what the lawyer will submit to one of the authorities to prove the accused's right or to extract a document proving a right for the accused, and seizing that would deprive the right of its owner and waste it.

## Findings

**Harm Prevention Takes Priority:**

The Saudi Criminal Procedure Code clearly states that stopping harm is more important than gaining benefits, as shown in Articles 52 and 53, which restrict actions that could hurt someone's dignity or privacy, even if those actions might help in an investigation.

**Public over Private Interest:**

The code aligns with the principle that public interest must override private grievances, especially in legal matters with societal implications. Articles 17 and 23 demonstrate this by allowing public prosecution to proceed even without a victim's complaint if public welfare is at stake.

**Gender-Sensitive Legal Protections:**

Article 53 requires female officers to be present when searching women, ensuring adherence to Islamic principles of modesty and privacy, reflecting a sensitivity to gender-specific ethical considerations.

**Protection of Legal Privacy:**

Articles 55 and 84 reinforce the Islamic value of personal sanctity and confidentiality, prohibiting searches of non-accused individuals and restricting the seizure of documents exchanged between the accused and their lawyer.

**Shari'ah-Informed Procedure:**

The Saudi legal system consistently follows basic Islamic principles, like avoiding harm that people agree on, focusing on harms that are accepted rather than those that are argued about, and choosing the lesser of two bad options—making sure that criminal procedures match ethical and religious guidelines.

## Recommendations

In light of the findings presented in this study, several directions emerge for future research that could deepen our understanding of how the principles of Islamic law—particularly the prioritization of harm prevention over benefit realization—are operationalized within the Saudi Criminal Procedure Code.

First, empirical research is needed to evaluate how these procedural protections function in practice. Field studies involving interviews with judges, prosecutors, legal scholars, and citizens could shed light on whether the protective measures prescribed by articles such as 52, 53, and 84 are consistently enforced and how they affect the administration of justice. Such studies would also help assess whether the balance between protecting individual rights and serving the public interest achieves its intended ethical and legal outcomes.

Second, comparative jurisprudential analysis would offer valuable insights. By examining how similar principles are applied in other Muslim-majority countries—such as Egypt, Morocco, or Pakistan—researchers could evaluate the extent to which Islamic legal maxims are universally interpreted and implemented, or whether national contexts lead to divergent applications. This comparison may also highlight best practices and areas for harmonization in the realm of procedural justice.

Third, future studies could employ quantitative and statistical methods to analyze how procedural decisions based on public interest versus private rights influence legal outcomes. For instance, researchers could track the number of cases pursued by the public prosecution despite private pardons, or analyze the frequency and effectiveness of search-related restrictions in protecting citizens' privacy. Such data would provide evidence-based guidance for refining procedural norms.

There is a need for further theoretical development of the concept of *maqāṣid al-sharī'ah* (the objectives of Islamic law) in light of contemporary challenges. As legal systems face new challenges like digital surveillance, cybercrime, and the use of artificial intelligence in courts, scholars need to take another look at old principles, like the importance of minimizing harm, to make sure they still make sense and can adapt. A renewed focus on *maqāṣid*-based reasoning can provide the ethical compass necessary for modern legal reforms grounded in Islamic tradition.

## CONCLUSION

The Saudi Criminal Procedure Code stands as a paradigmatic example of Islamic legal theory's operationalization—especially the principle of prioritizing the prevention of harm over the attainment of benefit. Articles 52, 53, 17, 23, 55, and 84 serve not only as technical protocols but as embodiments of *Shari'ah*'s aims: preserving human dignity, promoting social welfare, and guaranteeing justice. These articles illustrate that even when investigative or prosecutorial interests arise, fundamental ethical protections endure. Future research should continue to assess and refine these systems, ensuring that the code evolves responsively in a modern context while faithfully upholding its Islamic foundation.

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