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A comparison between conflict of interest in Western and Islamic literatures in the realm of medicine

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Abstract

In Western literatures, "conflict" is a general term that refers to discord between two or more entities. In Islamic jurisprudence, however, in addition to the term "conflict" (Taāruz), there is another term which is called tazāhum. The two terms, however, have different definitions. Conflict between two concepts, for instance, indicates that one is right and the other is wrong, while tazāhum does not necessarily have to be between right and wrong, and may appear between two equally right concepts. Moreover, conflict exists on a legislative level, while tazāhum is a matter of obedience and adherence, meaning that in practice, both sides cannot continue to coexist. Conflict of interest is a known term in Western literatures, and according to D.F. Thompson, it refers to a situation where professional judgment regarding a primary interest is improperly and unjustifiably influenced by a secondary interest. Taking into account Thompson's definition and the distinction between "conflict" (Taāruz) and "tazāhum", the English term "conflict of interest" translates to "tazāhum of interest" in Islamic jurisprudence as it refers to a person's action without reflecting right or wrong, and simply concerns priority of one interest over another. The resolution to tazāhum in Islamic jurisprudence lies in two principles: the principle of significance and the principle of choice. For instance, in case of conflict (the Western term) or tazāhum (the Islamic term) between the interests of patient and physician, the patient's interest should be the main concern based on the principle of significance. Although Western literatures propose methods such as disclosure or prohibition in order to resolve conflict of interest, the foundation for these solutions seems to have been the principle of significance.

Keywords: *conflict, conflict of interest, Taāruz, Tazāhum*

Introduction

Conflict has always been an important topic of discussion in ethics, so much so that Plato maintained that morality developed as a solution to conflict (1). Ralph Barton Perry, a 20th century philosopher, also suggested that morality was the solution to problems caused by conflict (1). Conflict can be classified according to the field in which it arises. In management, for instance, it can be divided into intrapersonal, interpersonal, intragroup, and intergroup conflict (2). In another classification, conflict can be right-based, interest-based, or value-based (3), and where conflict exists between individuals or groups, it may be referred to as either conflict of interest or conflict of values (or beliefs) (4). Obviously, conflict of interest is a form of conflict, and while conditions leading to it may be traced back to the times when human interactions commenced, the term itself has been specifically recognized in ethics in the past 60 years. Conflict of interest was originally used as an ethical or legal term in law, commerce, and management, but gradually extended into medicine as a common problem (5). In this paper, since the concept of "conflict" in Islamic and Western literatures are not the same, firstly we compare the definition and distinctive features of this term in both doctrines. Secondly, we discuss conflict of interest in the field of medical ethics through comparing this concept in both Western and Islamic literatures, and later through an evaluation of the solutions offered by both doctrines. It should be mentioned that throughout this paper, where reference is made to Islam, it is based on Shi'a rather than Sunni fiqh (jurisprudence), not because the two differ greatly on the subjects discussed, but because this study has been based on Shi'a sources. We will need to begin by introducing usūl al-fiqh (principles of jurisprudence) and explicating the terms taāruz and tazāhum and their differences, and the solutions to problems associated with each. Since readers may not be acquainted with the terminology used in this paper, a glossary has been provided at the end.

Definition of Fiqh and Usūl al-Fiqh in Islam

In Islam the term "fiqh" or jurisprudence literally means "understanding", whereas generally speaking, it refers to understanding the "hukms'' (or sentences) of shari'ah (Islamic law) on matters of people and other entities. Usūl al-fiqh, therefore, is the science that investigates the "dalils" (or evidence) applied in fiqh and how they should be utilized, and surrounding topics. In other words, usūl al-fiqh is the set of rules required to comprehend the hukms of shari'ah (6). The Arabic terms taāruz and tazāhum are also rather common in usūl al-fiqh, but are used in Persian as well; the English

equivalent of the former is "conflict", while there is no exact translation for the tazāhum in the English language, as will be discussed later.

Definition of Taāruz and Tazāhum in Islam and their distinctions

Taāruz: Moeen Persian Dictionary defines taāruz as "disputing or disagreeing with one another" (7). In usūl al-fiqh, however, taāruz refers to an encounter between two or more dalils (evidence) that cannot coexist (8). In Islamic literatures such as the Holy Qur'an and Sunna (written Islamic tradition) the Islamic jurisprudent or faqīh may encounter issues that appear in conflict with one another, and he will need to resolve them based on the guidelines suggested by usūl al-fiqh. That is why usūl al-fiqh has a topic, namely taāruz-e adelleh, dedicated to this matter, which is of great significance (9). A case in point is the saying in Islamic literatures "respect scholars" while another saying is "do not honor libertines". The first saying means all scholars should be respected, while the second means no libertine should be honored. Should a scholar happen to be a libertine as well, a case of taāruz will occur; i.e. the first dalil (respect) and the second dalil (do not honor) negate each other, and this is an example of taāruz (9).

Tazāhum: Moeen Persian Dictionary defines tazāhum as "giving each other trouble and crowding one another out" (10). In usūl al-fiqh, tazāhum is used when two hukms conflict to the point that they cannot both occur at the same time (8).

Distinction between Taāruz and Tazāhum

There are certain distinctions between these two terms among which the following are relevant to the subject of this study:

- Taāruz describes the correlation between two dalils, while tazāhum refers to the confrontation of two hukms.

- Taāruz between two dalils arises on the legislative level, but tazāhum between two hukms is on the executive level. In other words, taāruz occurs because the legislator is unable to issue a certain order, while tazāhum between two hukms occurs because they are equally correct, but one cannot execute both of them (6).

- When two dalils are in taāruz, one is right (or legitimate) and the other is wrong (or illegitimate), while tazāhum may arise between two equally right hukms that cannot both be executed. Either case entails discord, but in the former, it exists between right and wrong, while in the latter, it is a matter of obedience and adherence (11).

A case of taāruz: If someone says Prophet Muhammad passed away in the month of Safar[1] and another insists that He passed away in the month of Rabī al-Awwal[2], we have a case of taāruz, since the Prophet cannot have passed away in both months (12).

A case of tazāhum: Saving two drowning people when it is physically possible to only save one. The question here is not whether it is right or wrong to save them both, but that they cannot both be saved, and the only solution here is to save one and let the other drown (8).

Another case of tazāhum: According to shari'ah, among the duties of a person is providing financial support for one's parents. From the legislative point of view, there is no conflict between providing for both parents, but since one may not be financially able to support both one's mother and father, one will face a case of tazāhum, and may therefore have to choose between the two (6).

- Tazāhum can be resolved by resorting to reason, while taāruz can be worked out through shari'ah. In the example above regarding the two drowning persons, if one's father is one of the drowning people and they cannot both be saved, it is rational to save one's father, but if there is no rational preference, one has the choice to save either (8).

Conflict in English (Western) literatures

In Oxford Online Dictionary the word "conflict" has been defined as "a serious incompatibility between two or more opinions, principles, or interests" (13). In everyday usage, however, the term can refer to fighting or struggling, as well as a clash between opposing principles (14). In other words, conflict is a situation in which people believe they have incompatible goals, interests, principles, or sentiments (15).

A comparison between the definition of conflict in Western and Islamic literatures

In Western literatures the word "conflict" has a broad usage and generally refers to a disagreement between two or more things. In Islamic jurisprudence or fiqh, however, there are two terms for these disagreements, taāruz and tazāhum, the distinctions between which have been expounded above. Consequently, the equivalent of the English term "conflict" is oftentimes "tazāhum" in Islamic fiqh. In fact, the correct term for "conflict of interest" in Islamic fiqh is "tazāhum of interest" which will be explicated in this study.

Solutions for Tazāhum

There are two solutions for tazāhum: the principle of al-aham fi al-aham (the principle of signifi-

cance) and the principle of takheer (principle of choice), explanations of which will follow below. It should be mentioned, however, that some solutions exist to taāruz, but they are not related to the topic of the present study.

The principle of al-aham fi al-aham: This principle applies to cases where two hukms are involved and one is of greater significance, and therefore the more important hukm will rule. For instance, if one drowning person is one's father and the other a stranger, and they cannot both be saved, one will naturally save one's father (16).

The principle of takheer: "Takheer" is the freedom to choose one option over others and to act accordingly. In case of tazāhum between two hukms that cannot both be executed, if neither is preferable to the other, scholars of usūl al-fiqh state that individuals are free to select either hukm. For instance if both drowning people in the example above are strangers, one can make the choice to save either (16).

Definition of conflict of interest in Western literatures

Many definitions have been suggested for this term. According to one, conflict of interest occurs when an individual's obligations toward another person, or group of people, conflict with their personal interests (17). Another source defines conflict of interest as a situation in which an individual is (or a group of individuals are) affected by circumstances that can potentially drive him (or them) toward actions that are in conflict with his (their) professional or ethical duties. An example of such a situation is when in a patient's course of treatment the physician replaces known and effective medications with new ones only for financial gain from a pharmaceutical company (18). Thompson describes conflict of interest as a situation where professional judgment regarding a primary interest (such as a patient's welfare or validity of a research) is affected by a secondary interest (such as financial gain) in an improper and unjustifiable manner (19).

Thompson's definition contains three elements:

1) *Primary interest*: These include factors that have high priority in professional decision making. One such example is patient welfare, since physicians have agreed that patient welfare has priority over their own interests.

2) *Secondary interest*: These come second to primary interests, and may or may not be financial. Secondary interests are not necessarily illegitimate and can be desirable or even essential, but their priority in the hierarchy of professional decisions needs to be determined appropriately. Therefore financial or other secondary considerations (such as preferential treatment of one's family and friends, prestige seeking, and so on) do not

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[1] The second month in the Islamic calendar
[2] The third month in the Islamic calendar

need to be minimized or eliminated as long as they do not overshadow or obliterate primary interests.

3) *Conflict:* The term does not necessarily imply endangerment of primary interests, but it may refer to situations where secondary interests are prioritized to the point that primary interests are overlooked.

Conflict of interest is characteristically unavoidable in many cases, but a person can choose to not be overly affected by secondary interests. In other words, conflict of interest is similar to how smoking can increase the chance of lung cancer; it can increase the incidence of unethical decisions or judgments in certain situations, and while it does not always bring about unethical decisions, it prepares an environment where unethical decisions and judgments are more likely to occur. Generally speaking, one can say that conflict of interest is the result of relationships with specifically defined responsibilities, particularly responsibilities that generate certain expectations of behavior due to moral or legal considerations, such as doctor-patient, attorney-client, professor-student and parent-child relationships. Conflict of interest is the outcome of an opposition between interests and responsibilities that leads to behavior other than those expectations (5, 20, 21).

Other types of conflict in Western literatures and how they differ from conflict of interest

Conflict of obligation: This form of conflict occurs when a person has at least two ethical or legal responsibilities at the same time that interfere with one another. An example case would be a member of congress who needs to vote on a bill that is beneficial to his country but may have disadvantages for his district. It can therefore be said that conflict of obligation is a difficult choice between two options neither of which has priority over the other but only one of which can be acted upon under the circumstances, and this is essentially a dilemma. One obvious dilemma in medical ethics is cases of contagious diseases where patient confidentiality is in conflict with other people's safety. There is no conflict of interest in such cases as the conflict is between two legitimate primary interests, and therefore one can say that a dilemma is a conflict between two different primary interests.

*Conflict of commitment***:** This form is closer to conflict of interest since it occurs when a person's main responsibility within an institution is in conflict with their commitments elsewhere. It is similar to conflict of obligation in that the conflict exists between two legitimate activities, but it is also like conflict of interest since one has priority over the other. For instance, if a professor is active in a charitable organization, he may not always be able to perform his duties toward his students as his activities in the charity may conflict with his teaching responsibilities.

Conflict of bias: This form of conflict has a psychological factor of which the involved people may be unaware, even though it affects their decision making process and can injure anyone they are accountable for. Examples are prejudices (ethnic, racial, religious, sexual, etc) or social and cultural issues (values acquired throughout childhood or adulthood) that can affect decision making, such as when a physician denies treatment to a patient who belongs to a different ethnic or racial group, especially one he feels hostile to (20, 21).

A comparison of abovementioned types of conflict: In a quick look, we can say that conflict of interest exists between two clearly different conflicting interests one of which is distinctly superior and the other may not even be categorized as a value. In conflict of obligation, the two interests are equally legitimate and neither has priority over the other. In conflict of commitment, the conflicting interests are of different values but not as different or as obvious as in conflict of interest. As for conflict of bias, it appears to fall into the category of conflict of interest, although it has been considered a separate form of conflict.

Solutions to conflict of interest in Western literatures

1) *Recusal or substitution (22):* These solutions signify that people in conflict avoid making decisions under the circumstances and someone else be appointed to do so. If a judge, for instance, has interests in a case, he should recuse himself from that case so that another judge can take over (23).

2) *Disclosure:* This is the golden rule in conflict of interest. In medicine, for instance, the test of whether or not one is in a conflict of interest is to ask themselves if they would feel comfortable in case the patient or others learned about their interest in the matter; if they worry that others might find out about their interests, disclosure is the solution. It seems obvious that if patients find out their physicians are keeping their interests from them, they will lose their trust in doctors (24).

3) *Prohibition:* Conflict of interest can at times have harmful effects on patients' and the public's trust in the medical profession, or at least have no particular benefit for patients, and therefore, activities leading to it need to be prohibited (24).

4) *Avoidance:* This means to avoid conflict of interest situations. For instance if a researcher offers a physician payment for study subjects, the physician should decline (25).

A comparison between conflict of interest in Western and Islamic literatures

Based on the viewpoints expressed above, in order to draw a comparison between conflict of interest in Western manuscripts and Islamic jurisprudence, the matter can be approached from two different positions:

A) *The concept position:* Due to the reasons that follow, the equivalent for "conflict of interest" in Islamic jurisprudence is "tazāhum-e manāfe":

1. As stated previously, taāruz between two dalils arises on the legislative level, but tazāhum between two hukms is on the executive level and owing to a person's inability to act on both. Based on the definition of "conflict of interest" in Western literatures, it appears that it pertains to two hukms rather than dalils, and in fact taāruz occurs because these hukms conflict. According to Western literatures, if a doctor prescribes unnecessary lab tests so they can receive commission from the medical laboratory, they are in a conflict of interest, as their interest and that of the patient conflict. In Islamic jurisprudence, however, this is regarded a matter of conflict between two interests and pertains to obedience and adherence, so it is viewed as a case of tazāhum; in other words, the physician's interest (financial gain) and the patient's interest cannot exist at the same time and therefore are in tazāhum.

2. Based on Thompson's definition of conflict of interest, there are two kinds of interest: primary and secondary, which do not disagree from a legislative point of view. For example there is no conflict between the physician's and patient's interests on the legislative level, but on the executive level, they can conflict as they may not both be attainable, and therefore, in Shi'a fiqh, conflict of interest is actually tazāhum of interest.

3. In Islamic jurisprudence, taāruz occurs between two dalils that are not both legitimate as one of them is right and the other wrong, while tazāhum may happen between two equally legitimate hukms that cannot be acted upon simultaneously. As stated before, in conflict of interest, Western literatures are not concerned with right or wrong, as neither side may be wrong. In the example of the doctor who prescribes unnecessary lab tests, one cannot claim that the doctor's interest is illegitimate, it is merely not as important as the patient's welfare, and this is the same case as in tazāhum.

4. Based on the arguments above, conflict of obligation (dilemma), bias, and commit-ment, that are named as different types of conflict in Western literatures, all fall into the category of tazāhum, although they may be different kinds of tazāhum.

B) *The problem solving position*

1. According to Thompson's definition of conflict of interest, one of the two conflicting sides is more important. For instance, a doctor's financial gain is secondary to a patient's welfare and health, and therefore Western literatures seek to resolve conflict of interest through avoidance, disclosure and so on. In other words, physicians must avoid actions that are not in the best interest of their patients and at the same time, disclose their interests in the matter to the patients or the public. If for any reason avoidance, disclosure or other solutions are not possible, such as when doctors' compliance cannot be relied on, other rules such as prohibition apply. Many such rules are expressed in the form of guidelines and procedures, which may require disclosure of interests or prohibit certain actions. Since in Islamic jurisprudence tazāhum-e manāfe indicates that one interest has priority over the other, based on the principle of al-aham fi al-aham (the principle of significance) the primary interest (e.g. patient's health) should be valued over the secondary interest (e.g. doctor's financial gain).

2. As stated about conflict of commitment, both activities are legitimate and therefore we face a form of tazāhum, but one commitment has priority over the other. A professor's primary responsibility is toward his students, so in the case of the professor who is also active in a charitable organization, the principle of al-aham fi al-aham holds that his teaching commitments should take priority if his charitable activities interfere with his role as a professor,.

3. Conflict of obligation is in fact another form of tazāhum, where neither side has priority over the other. The solution proposed by Islamic fiqh is the principle of takheer (principle of choice), meaning a person is free to choose either side. It should be noted that Western literatures state that in conflict of obligation or dilemma, neither interest has priority over the other. This is illustrated through examples such as an incurable patient who insists on knowing the diagnosis while his or her family is against it. In this case, the doctor is fac-

ing a moral dilemma (26). Another moral dilemma is in the case of HIV-positive patients who insist their partners not be informed by medical staff; this gives rise to conflict between patient confidentiality and the safety of their partners (27). Although conflict of obligation is supposedly the result of a conflict between two interests of the same weight, in practice, one interest receives more weight and the whole situation ends up as a conflict of commitment. In the dilemmas presented above, patients are eventually told about their diagnosis, and HIV-positive partners are informed so they can be protected.

It appears that solutions presented by Islamic fiqh can resolve all of the above-mentioned types of conflict of interest mentioned in Western literatures, at least on an individual level. On a social level, however, this is obviously not the case, because Islam gives priority to social welfare over individual interests, and therefore in cases where theses two conflict, the latter must be compromised (28). Consequently, the principle of takheer (choice) should be used to develop the necessary guidelines and procedures.

Conclusion

Although there are differences between Western and Islamic standpoints on the usage of terminology and concepts as well as solutions to the issue of conflict of interest (the Western term) or tazāhum of interest (the Islamic term), the important issue is, especially in the medical field, how we approach it. One major drawback is that conflict of interest can be viewed in two lights: individual and social. From an individual point of view, physicians in conflict are trusted to put their patients' interests first even if there is no executive power to force them to do so, and simply as an act of conscience. There is another point of view, however, and that is the social point of view, since individual factors may not always be depended on, and so the social mechanism is there for cases where doctors fail to give priority to their patients' interests. This explains why some solutions proposed in Western manuscripts (such as avoidance, disclosure and recusal) or in Islamic manuscripts (principle of al-aham fi al-aham, for instance) are not always applicable, as they mainly rely on individual factors. It is true that the same solutions have been used by legislative bodies or professional organizations in order to enact guidelines and procedures, but they do not appear to have been adequate, and in many countries this inadequacy is quite noticeable, and therefore there seems to be room for more effort in this respect.

Glossary

Arabic/Persian	English	Explanation
Fiqh	Islamic jurisprudence	The science of shari'ah; the sacred law of Islam
Faqīh	Islamic jurisprudent	An expert in Islamic law
Usūl al-fiqh	Principles of Islamic jurisprudence	Principles that are used in understanding the hukms (or sentences) of shari'ah (Islamic law)
Dalil	Proof, evidence	Evidence that can be used in order to attain another objective through deliberation
Hukm	Sentence, commandment	Commandments of Shari'ah (Islamic law) regarding a Muslim's acts
Tazāhum		A high concentration of people in a small place; the act of crowding one another out
Shari'ah	Religious law, Islamic law	Matters in religion that God has specified and clarified for people
Shi'a	Shi'a	One of the two main branches of Islam that regards Ali as the true successor of Prophet Muhammad and recognizes him as the first Imam
Sunni	Sunni	One of the two main branches of Islam
Takheer	Preference, selection, choice	Providing someone with choice or option
Sunna	Tradition	In Shi'a Islam, Sunna refers to the sayings, practices, or written statements by Prophet Muhammad, His daughter Fatima, and the twelve Imams
Taāruz	Conflict	

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