

## An analysis on Islamic rules on drugs

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**ABSTRACT:** The consumption of drugs for medication had been acknowledged by traditional Muslim jurists. However, when drugs were consumed for recreational purpose, the jurists started to dispute in this matter. This paper analyses the traditional Muslim jurists' attitudes (opinions) towards drug and examines their methodologies to determine the rulings of drug. This study finds that the jurists did not only rely on traditional analogy (*qiyas*) or conservative methods of deriving rules but some of them also conducted self-experiment method to identify the effect of drugs. The study also finds that the classical jurist were divided into three groups, the first group totally permitted drugs, the second group allowed drugs that are consumed for necessity purpose and the last group banned drugs totally.

### Introduction

Drug had been used by Muslims for medication purposes since ages. The consumption was acknowledged in Muslim medicines books and *fiqh* treatises. The majority of the classical jurists already acknowledged that there was a certain level of consumption of certain drugs for medication and this fact can be found in medical books of *Tibb al-Nabawi*. This book shows that the consumption for medication was commonly approved by the society. The terms frequently used in *fiqhi* literature are *hashish*, *banj*<sup>1</sup>, *khat*<sup>2</sup>, *nabat majhul*<sup>3</sup> and *mukhaddar*<sup>4</sup>. However, when Muslims started to consume drugs for recreational purposes, the jurists divided in this matter. It is interesting to point out that the

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<sup>1</sup> Hashish is a cannabis preparation composed of compressed stalked resin glands, called trichomes, collected from the unfertilized buds of the cannabis plant. It contains the same active ingredients but in higher concentrations than unsifted buds or leaves. Hashish is often a paste-like substance with varying hardness and pliability, its color most commonly light to dark brown but varying toward green, yellow, black or red. See <http://en.wikipedia.org/wiki/Hashish>

<sup>2</sup> Khat or qat is a flowering plant native to tropical East Africa and the Arabian Peninsula. Khat contains the alkaloid called cathinone, an amphetamine-like stimulant which is said to cause excitement, loss of appetite, and euphoria. In 1980, the World Health Organization classified khat as a drug of abuse that can produce mild to moderate psychological dependence (less than tobacco or alcohol). The plant has been targeted by anti-drug organizations like the DEA. It is a controlled or illegal substance in many countries, but is legal for sale and production in many others. See <http://en.wikipedia.org/wiki/Khat>

<sup>3</sup> This Arabic terminology means 'unknown plant'

<sup>4</sup> Mukhaddar is an Arabic word for narcotic

classical jurists carried out a painstaking task to reveal the exact rule of the consumption of drugs. It is worth to mention that the drug problem only attracted the jurists' attention in the later period. This problem was not detected among the early jurists such as Abu Hanifa, Malik, al-Shafi'i and Ahmad as Ibn Taymiyya<sup>5</sup> argued that drug abuse started to occur in the Muslim world only in a later period. However, Rosenthal discovered that drug abuse actually started in the Muslim world as early as the third century. This statement was based on the rulings of al-Muzani (d. 264/878) and al-Tahawi (d. 321/933) against the use of narcotics.<sup>6</sup>

In this regard, both arguments of Ibn Taimiyya and Rosenthal could be correct. It can be assumed that the Muslims started abusing drugs as early as 3<sup>rd</sup> century as claimed by Rosenthal, however, the problem became serious during the late 6<sup>th</sup> and early 7<sup>th</sup> century of Hijra after the Tartars came into power.<sup>7</sup> Furthermore, it can be assumed that the early jurists did not record any particular rulings about drug abuse for several possible reasons. Firstly, during the early formative period of *fiqh* especially in the first and second centuries of Hijra, drugs were only known to have beneficial effects, hence it was generally considered lawful. No serious effort had been made to determine the ruling of drug consumption. Secondly, if the drug abuse was there, the abuse was not significant and not widespread, thus the early jurist were ignorant about the abuse. However, when drug abuse became widespread and many Muslims were found badly affected by this substance, it started to attract the jurists' attention.

### Drug for medication

While al-Suyuti (d. 1505/911) in his book, *al-Tibb al-Nabawi* did not mention any particular rulings about drug consumption, he himself acknowledged that certain plants and herbs could be used as medicine.<sup>8</sup> The power of drugs was known by experimenting and by testing. A drug was classified according to its effect on the human body. A drug that did not produce any effect was categorised as a first degree drug, while the second degree drug was that which could cause a certain effect which was harmless to a human. The example of a second degree drug is poppies, which are recognised to have an intoxicating effect and these herbs were placed in the category of cold and dry.<sup>9</sup> The third degree drug was a kind that produced harmful effects but was not powerful enough to kill a human being. The fourth category of drug was what he called poison and that proved to be fatal. The example for this category was euphoria or *shabram* that was hot and dry. A drug was considered dangerous if an overdose of this drug could be fatal. Physicians reportedly

<sup>5</sup> Ibn Taymiyya, *al-Fatawa al-Kubra*, vol. III, p. 418

<sup>6</sup> Rosenthal argued that there was ambiguity about the use of the term of *banj* and *hashish*. Some jurists argued that both refer to same substance which prohibited in Islam.

<sup>7</sup> See Wizara al-Awqaf wa Shu'un al-Islamiyya bi al-Kuwait, *Al-Mausu'at al-fiqhiyya*, Vol. XI, p. 33

<sup>8</sup> See Cyril Elgood, "Tibb – ul-nabbi or medicine of the Prophet" in *Osiris*, The University of Chicago Press, Vol. 14, 1962, pp. 33-192. See also Jalal Al-Din Al-Suyuti, *al-Tibb al-Nabawi*.

<sup>9</sup> See Cyril Elgood, "Tibb – ul-nabbi or medicine of the Prophet" in *Osiris*, Vol. 14, (1962), p. 84

abandoned its use.<sup>10</sup> Some herbs like *sa<sup>ʿ</sup>tar* (thyme) and *sandal* (sandal wood) were categorised in the third and second degrees: they gave benefits to cure diseases like tapeworm and headache.<sup>11</sup> Brief descriptions of drugs in this treatise demonstrate that early Muslims already recognised the benefits and harmful effects of drugs. The drugs that could be used for medicinal purposes were generally permissible while the dangerous drugs were something that one had to be careful of. The benefits of drugs for medicinal purposes were also acknowledged in some *fiqh* work with the jurists permitting the selling and buying of certain plants that can be used as medicine.<sup>12</sup>

Whilst most jurists agreed that drugs were permitted for medication, they did disagree over the consumption of drugs for other than medication purposes. Some jurists prohibited drug consumption for recreational use, while some permitted it and some left the matter undecided. Serious legal discussions of drugs are found in the books of Ibn Taymiyya and Ibn Hajar al-Haitami (d.1567/974). For instance, in his treatise, *al-Fatawa al-Kubra al-Fiqhiyya*<sup>13</sup>, Ibn Hajar al-Haitami admitted that the ignorance of the real understanding of drugs, inadequate research and the unavailability of trusted reports from experts regarding drug had led to a misconception concerning drugs among jurists in his times. Drugs were a grey area which the jurists disagreed about, particularly the regular consumption of drugs. Due to a lack of reliable reports about drugs, some jurists were reported as testing certain drugs on themselves to investigate the effects of the drugs and then they made the ruling accordingly.

For instance, there was a report regarding a jurist known as Imam Sufiyy al-Muzajjad,<sup>14</sup> who changed his *fatwa* on drugs based on his self-experiment. He withdrew his previous *fatwa* prohibiting the consumption after making a simple self-experiment. He found that the drug (*hashish*) he tested made him feel energetic which he claimed to be a good effect for those who want to perform *ʿibada* (ritual acts). On this basis, he ruled that *hashish* should be permitted as it had a beneficial effect for Muslims when fulfilling religious obligations.<sup>15</sup> However, this simple self-experiment was not sufficient to persuade the other jurists to accept the legality of *hashish* for non-medical reasons. This reluctance was confirmed by other reports regarding the negative effects of drugs such as losing one's appetite and making the user pale and sick. The mixed reports of drug effects made the decision quite difficult and uncertain. The jurists also relied on several contradictory reports on the effect

<sup>10</sup> See Cyril Elgood, "Tibb – ul-nabbi or medicine of the Prophet" in *Osiris*, Vol. 14 (1962), p. 93

<sup>11</sup> See Cyril Elgood, "Tibb – ul-nabbi or medicine of the Prophet" in *Osiris*, Vol. 14 (1962), p. 94

<sup>12</sup> See Ibn Hajar al-Haitami, *Tuhfa al-Muhtaj fi Sharh al-Minhaj* One of the preconditions of saleable article is that the article must be useful, which means non-beneficial items such poisonous animals, musical instruments, herbs, bugs and junk are rendered unfit by some jurists for transaction. However, for medical purposes, some plants can be bought or sold.

<sup>13</sup> This collection of his *fatwas* was compiled by one of his disciples. It includes several lengthy treatises with separate titles, 23 Rajab 974/3 February 1567.

<sup>14</sup> Ibn al-Hajr al-Haitami, *al-Fatawa al-Fiqhiyya al-Kubra*, vol. II, p.14

<sup>15</sup> The benefits of drugs were recorded as *nasha'at* and *taqwiyya*

of drugs. The drugs were also known during Ibn Hajar al-Haitami's era as *al-nabat al-majhul*, (literally means the unknown herbs), as the effects and the benefits of such herbs were unknown. Some jurists left the matter undecided. They also recognised certain characteristics of drug such as the ability of a drug to cover one's mind and leading to hallucination (*mukhaddar* and *mughib*). They also agreed that drugs had different effects on the body depend on the type of the substance consumed. Although this was the grey area for the jurists during the medieval period, they did agree on one issue; if the herb consumed led to serious harm, the herb was then forbidden, and the herb was considered lawful if it did not have an intoxicant and harmful effect. Thus, the rulings of drugs differed according to the effect of the drug used.

### **Narcotic drug**

The most widely used narcotic drug by medieval Muslims was *hashish*<sup>16</sup>. Some people also consumed *banj* and *opium*. Rosenthal traced back the *fatawa* of the jurists regarding the use of *hashish* and discovered that there is no authoritative text regarding the use of *hashish*, and this fact was exploited by a pro-hashish faction to legalise it while others strongly prohibited it. According to Rosenthal, the *banj* or hemp tended to be considered dishonourable. It was used to seduce innocent people or as a prelude to murder and robbery. *Hashish*, on the other hand, might have been used for pleasure and enjoyment, although Rosenthal did not have evidence to this effect from the first four or five centuries in Islam and al-Zarkashi (d.1373/774) also revealed that *hashish* affected many lower classes of people. Al-Muzani (d. 264/878) and al-Tahawi (d. 321/933) were against the use of narcotics. Although there was some problem regarding the terms used for narcotic drugs with jurists not knowing the newly coined slang terms, Rosenthal assumed that *hashish* was already a social and legal problem during Shirazi's period (d. 476/1083) in Shiraz and Baghdad. It can also be argued that when the drug became popular among the Arabs for illegal consumption, especially for recreational use, it was to achieve hallucinatory effects. In these cases, the jurists adopted a stricter view towards narcotic drugs.

As drugs have similar characteristics to *al-khamr*, the jurists had debated about the use of both substances. Although the basic rule for drugs was made from the analogy of *al-khamr*, the majority of jurists believed that drugs should not carry a total prohibition like *al-khamr*.<sup>17</sup> While *al-khamr* is prohibited due to its intoxicant element and its impure status, drugs are only prohibited because of the intoxicant element. This meant that the drugs are not technically impure, unlike *al-khamr*. The impure status of *al-khamr* is deduced explicitly

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<sup>16</sup> Rosenthal argued that there was ambiguity about the use of the term of *banj* and *hashish*. Some jurists were reported arguing that both refer to same substance which prohibited in Islam. See See Franz Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, Netherlands: E.J. Brill, 1971, p.19

<sup>17</sup> This is the accepted view nowadays.

from the *nusus* which made the prohibition of *al-khamr* total, absolute and undoubted.<sup>18</sup> The prohibition covers all kind of consumption regardless of the quantity of the wine consumed and it is considered impure like pigs and dogs. However, drugs are only prohibited because of its intoxicant effect, when they act like poison, causing serious harm to one's body, and impairing one's judgment. Most importantly, drugs are prohibited as they can easily lead to addiction.

As compared to wine, the Muslim jurists' attitudes towards the consumption of drug were less definite.<sup>19</sup> Unlike wine, where the characteristic of unlawfulness is divinely established, many argued that the dispute regarding narcotic consumption is mainly due to the non-existence of an authoritative text. The medieval jurists, especially the Hanafis, had a lenient view towards some narcotic drugs such as *hashish*. For instance, a Hanafi judge, Jamal al-Din al-Malati (d. 803/1400) permitted the use of *hashish*<sup>20</sup>. However, some authorities such as al-Muzani and al-Tahawi<sup>21</sup>, started to outlaw narcotic drugs. In the book of "*risala hurmat al-banj*", the writer argued that nobody after the time of al-Muzani and al-Tahawi ever said that *banj* and *hashish* were permitted, especially when they are consumed for the purpose of becoming intoxicants and for amusement.

The sternest attitude towards narcotic especially towards *hashish* was also upheld by Ibn Taymiyya, affirming that the narcotic drugs carry the same prohibition as wine. He firmly asserted that the total analogy applies.<sup>22</sup> This also means that narcotic drugs like *hashish* are prohibited whether the consumption leads to intoxication or not. The users have to repent and Ibn Taymiyya went further by condemning the people who disagree with this rule and regarding them as non-believers (*kafir*). If they do not repent before death, the prayer will not be performed over them and they will not be buried in a Muslim graveyard. However, Ibn Taimiyya limited the strict prohibition only to *hashish* but not to other drugs such as *banj* (hemp). According to him, *banj* is not an intoxicant, and therefore, it is lawful. It can be argued that the relentlessly negative view of Ibn Taymiyya is not generally applied to all drugs. It is only limited to what intoxicates and is harmful. According to Ibn Taymiyya, other harmless and useful drugs can be consumed.

Other illegal drugs were also known among the jurists as *mukhaddir*.<sup>23</sup> Although the majority of jurists agreed that the prohibition of *mukhaddir* is similar to that relating to *hashish* due to its intoxicant effect, they insisted that the analogy of wine cannot be applied here entirely. The basis of the prohibition of *mukhaddir* is the *hadith* saying that every intoxicant is prohibited, which means every intoxicant regardless of name is *haram*. On the

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<sup>18</sup> Q5.90: Q12.36,41:Q2.219: Q5.91 and Q47.15

<sup>19</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, pp. 100-103.

<sup>20</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p. 104

<sup>21</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p.113

<sup>22</sup> Ibn Taymiyya, *Al-Fatawa al-kubra*, vol. III, p. 424

<sup>23</sup> al-Suyuti, *al-Tibb al-Nabawi*, p. 33. All substances regarded as *mukhaddirat* and *mufattirat* are prohibited.

basis of this saying, every substance that intoxicates is unlawful. However, if intoxication is the fundamental characteristic leading to the prohibition of a substance, several questions must be answered. One of the questions raised by Rosenthal was whether intoxication when listed as a cause of the ruling was to be understood as potentially intoxicating or refers to the actual condition of intoxication. However, this question was left unanswered by the jurists. Some jurists like al-Qarafi, (d. 1285/684) and al-Zarkashi made remarkable efforts to distinguish the characteristics of drugs and wine. Al-Qarafi, for instance, claimed that *hashish* is only classified as *mufsid* (corruptive), and it is not an intoxicant<sup>24</sup>. According to him, this drug is less harmful than wine. He categorised the effects of drugs and wine into several different effects.<sup>25</sup> Firstly; *muftir* is the effect of laziness. Secondly, *ighma'* is unconsciousness that makes the person lose his ability to move or to think. Fourthly, *murqid* is losing one's mind and movement or the state of losing the five senses. Fifthly, *mufsid* is whatever befuddles the intellect without primarily generating joy. According to him, wine makes someone lose his mind and at the same time generates *nashwa*, joy. Analysing these effects, he reached the conclusion that *hashish* is not totally similar to wine. Some jurists like al-Qarafi also claimed that drugs are not similar to wine. While wine drinkers were commonly associated with aggressive behavior against others, the drug users were found having a totally different attitude. Heavy wine drinkers can easily become violent towards others and cause chaos. These effects made the wine more harmful than drugs. On this basis, the jurists reached the conclusion that *hashish* is less harmful than wine.

However, some jurists like Ibn Taymiyya disagreed with the above claim. They argued that like wine, *hashish* should be banned as it carries a similar negative effect. The intoxicating effects of *hashish* as highlighted by al-Zarkashi (d. 1392/794) are; someone whose orderly speech is confused, who spills his hidden secrets, or someone who does not know heaven from earth.<sup>26</sup> He also added that both wine and *hashish* are something desired by humans. In this matter, we can agree that it is not only the issue of intoxication that should be taken into consideration. The harm a drug causes and most importantly the effects of self-destruction are also relevant. The preservation of mental health is an imperative. Drug related problem not only concerns the transgression of the law, the addict is mainly held responsible for the effects he causes by consuming drugs. This position is largely accepted by the modern jurists. However, although they agreed with the prohibition, they only limited the prohibition to what intoxicates and prohibit the consumption for non-necessity cases.

<sup>24</sup> See Ahmad bin Idris al-Qarafi, *Anwar al-buruq fi anwa' al-furuq*, Vol. 1, p. 213

<sup>25</sup> Wizara al-Awqaf wa Shu'un al-Islamiyya bi al-Kuwait, *Al-Mausu'a al-fiqhiyya*, vol. XI, p.33

<sup>26</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p.107

Some scholars provided a more clear-cut legal decision with respect to the drug and wine cases. Below is the discussion pertaining to the distinctions between drug and *al-khamr* made by the jurists:

### The punishment

All Sunni jurists were in agreement that the consumption of wine regardless of the quantity consumed subjects the drinker to *hadd* punishment. Conversely, they disputed whether the consumption of drugs will also lead to the same sentence.<sup>27</sup> Ibn Taymiyya insisted that narcotic drugs like *hashish* carry the same prohibition as wine.<sup>28</sup> The sentence is either being whipped by 40 or 80 lashes. However, he held that *banj* consumption does not carry the same punishment as it is not intoxicating; it only leads the person to receive *ta'zir* (a punishment decided by the ruler). Al-Qarafi, on the other hand, disagreed with the *hadd* punishment for *hashish* users, as he argued that *hashish* is not an intoxicant, unlike wine.<sup>29</sup> He agreed with the Shafi'is that the illegal consumption of narcotics such as *hashish* and opium should only be punished by *ta'zir* or (some said) by *ta'dib* (punishment by teaching moral values). Some other Shafi'is, however, reaffirmed the view of Ibn Taymiyya's ruling that the *hadd* punishment should be the sentence for drug users. Those who agreed with *hadd* punishment also classified drugs as religiously unclean items like *al-khamr*. The majority of jurists did not agree with this strict view, however. It is also important to highlight that the consumption of *mukhaddar* (narcotic drug) for legal reasons such as medication will not subject the person to any form of punishment, either *hadd* or *ta'zir*, even if the consumption leads to intoxication.<sup>30</sup>

### The effect of actions of person under influence of *al-khamr*

The majority of scholars held that the person under the influence of wine is responsible for all his actions, as losing consciousness from wine drinking is not considered a valid excuse (to lift a punishment). For instance, a person stealing under the influence of wine is subjected to *hadd* punishment and his hand will be cut off. Conversely, the majority of Muslim jurists held that the person under the influence of legal drugs is not responsible for his acts.<sup>31</sup> However, the jurists were not in agreement regarding the consequence of actions performed by a person under influence of illegal drug. The Hanafis held that if the consumption of opium was for pleasure and joy (*lahw*), the actions are taken seriously and legally binding such as in buying and selling. However, the self-confession of a person under the influence of illegal drugs for *hudud* cases is rejected.

<sup>27</sup> Ibn 'Abidin, Muhammad Amin bin 'Umar, *Radd*

<sup>28</sup> Ibn Taymiyya, *Al-Fatawa al-kubra*, Vol. III, pp. 419-424

<sup>29</sup> Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p. 110. See also *al-Fatawa al-Hindiyya*, vol. II, p. 160

<sup>30</sup> Wizara al-Awqaf wa Shu'un al-Islamiyya bi al-Kuwait, *Al-Mausu'a al-fiqhiyya*, vol. XI, p. 38

<sup>31</sup> *Al-Mausu'a al-fiqhiyya*, vol. XI, p. 37

Some Hanafis also held that the divorce statement made by an unconscious person due to medical treatment by using opium or *banj* is valid. The Malikis also held the same view. They argued that a person under the influence of an illegal drug is accountable for any pronouncement of divorce or *‘itq* (setting slaves free) and he will be rendered fully responsible for any *hudud* or property related crime. However, his transaction, marital solemnisation and self-confession are not counted. The Shafi‘is also ruled that all business pronouncements made by a person under the influence of illegal substances are valid, as the consumption is regarded as a sin (*ma‘siyya*).<sup>32</sup> However, the Hanbalis regarded the state of a person consuming *banj* even for an invalid reason as similar to an insane person, which means the divorce would not be effective. However, Ibn Taymiyya disagreed with this position stating that the divorce is valid. Modern jurists generally agreed with the majority of medieval scholars on this point, that the unconsciousness caused by illegal drug use would make the user responsible for all his actions. To sum up, the majority of jurists held that the consequences of action of a person under influence of illegal drugs are similar to those for the person under influence of wine. Losing one’s mind due to illegal substance use is not accepted as a valid excuse in transactions, marriage or other contracts. The jurists held that the state of unconsciousness here is different from one that is caused by a natural cause such as insanity. These later cases impede a person from being a *mukallaf* who is obliged to fulfill his religious obligations.<sup>33</sup>

#### The questions of the amount of narcotic drugs that can be taken

Some jurists, including Ibn Taymiyya, who had a strict view regarding illegal drugs, contended that illegal substances cannot be taken as medicine as the prohibition is total, similar to wine. This also means any consumption of a drug like *hashish* is forbidden like *al-khamr*. Al-Nawawi, on the other hand, held that *hashish* being a plant is a clean item, and using a little *hashish*, which does not cause intoxication, is acceptable. However, this position was criticised by al-Zarkashi who ruled that any use of illegal drugs whatsoever is prohibited<sup>34</sup>. Al-Qarafi reaffirmed the position of al-Nawawi when he considered the consumption of a small quantity of *hashish*. Unlike al-Nawawi, who contended that *hashish* is intoxicating, al-Qarafi only classified *hashish* as merely corruptive, hence, it is not intoxicating. He also permitted the use of opium, *banj* and *saykaran* if the amount used is not of such quantity that it exercises an influence upon the mind and the senses. It can be said that the jurists who permitted the consumption of a little amount of *hashish* allowed it due to the argument that the prohibition is only for the amount that leads to intoxication. Therefore, it was lawful to use it if one was not intoxicated. This means, they forbade the substance by judging the end result. Conversely, those who held that *hashish* is prohibited

<sup>32</sup> For further reading, see Ibn Hajar al-Haitami, *Tuhfa al-Muhtaj fi Sharh al-Minhaj*, Vol. IV, p. 317

<sup>33</sup> Ibid.

<sup>34</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p. 111. See also al-Haddadi, *Jawhara Nayyira*, vol. II, p. 176



disregard the amount used, and prohibited it because it is not a necessity making a similar analogy to a wine case.

The most important issue here concerns the use of narcotic drugs for medical reasons, and whether this is lawful and permitted in Islam. Some jurists, like the writer of the *risala fi hurmat al-banj*, did not legalise the consumption of drug for medical reasons<sup>35</sup>. For them, drugs, like wine, cannot be consumed for any reason, including medication. However, the other jurists who compromised, and allowed the use of small amounts of drug, and those who claimed *hashish* was not similar to *al-khamr*, permitted the consumption of drugs for medical reasons. This is the popular view of the Hanafis<sup>36</sup>. Their position in permitting the consumption of *banj* or *hashish* is not unexpected, as the early Hanafis acknowledged the consumption of intoxicant drinks other than wine for medical reasons. The Hanafis further ruled that if one loses one's mind because of the use of *banj* and *opium* for medication, he is not held responsible for his actions<sup>37</sup>. They also ruled that the use of *banj* is permitted for medication purposes unless it leads to mental disturbance.

Shafi'i jurists, al-Marwarrudhi (d. 462/1069) and al-Zarkashi were also reported to have held the same opinion regarding *banj* and opium. Al-Zarkashi further argued that these substances can be used for medical purposes if the effectiveness is proven and well-established. The consumption was also permitted by al-Zarkashi to alleviate pangs of hunger.<sup>38</sup> Unlike other Shafi'i's view, he believed that *hashish* does not cause more hunger, unlike wine which leads to thirst. According to him, *hashish* has a significant potential benefit namely, its anaesthetising abilities during, for instance, the amputation of a gangrenous hand.<sup>39</sup> The important conclusion reached by al-Zarkashi with respect to the circumstances under which the use of *hashish* could be considered lawful, are five; firstly, when it is consumed in a small quantity; secondly if the user is immune to the intoxicating effect of *hashish*; thirdly, if it is consumed for medical purposes; fourthly, if it is used to produce anaesthesia in connection with an amputation; and finally, if it is consumed to relieve a great hunger.

Other Shafi'i' jurists for example, Al-Ruyani<sup>40</sup>, also reaffirmed the position of al-Zarkashi. He permitted drug consumption for medical reasons, even if the process led to intoxication. Although many jurists agreed with the permissibility of using narcotic drugs for medication

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<sup>35</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p. 114

<sup>36</sup> Such as al-Bazzazi and Khwaharzadeh, see Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p. 113.

<sup>37</sup> al-Bukhari, *Kashf Al-Asrar*, vol. IV, p. 351

<sup>38</sup> The text of Zarkashi's work can also be found in Rosenthal, p. 190

<sup>39</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, p. 115 and A. Rippin, "Al-Zarkashi, Abu 'Abd Allah Badr al-Din Muhammad b. Bahadur". *Encyclopaedia of Islam*, Second Edition, P. Bearman et al. (eds.), Brill, 2010. Brill Online. EXETER UNIVERSITY. Accessed date 19<sup>th</sup> January 2010 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_SIM-8945](http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-8945)

<sup>40</sup> See Rosenthal, *The Herb- Hashish versus medieval Muslim Society*, pp. 115-118

purposes, they did not clearly indicate the type of diseases concerned. Only al-Zarkashi mentioned that drugs are lawful for anaesthetic purposes. He also made the point clear by stating that the consumption of narcotics is only for the necessity of preserving human's life. As drugs are permitted for medical reasons, the buying and selling of narcotic drugs are also considered lawful by the majority<sup>41</sup>.

To sum up, although the preliminary experiments and works initiated by Muslim jurists did not construct a precise definition of narcotic drugs, and most importantly did not produce a definite ruling on drugs, drugs were actually understood well by Muslim jurists. Their understanding of these substances was not far from the modern jurists' definition of a drug. That is, any substance that alters normal bodily function is classed as a drug and drugs can be used for medicinal or leisure purposes. The form of illegal drugs nowadays include pills, liquids or parts of plants that people take to become intoxicated and can cause serious harm to the individual when consumed.

It can be further suggested that the preliminary studies on drugs completed by the early jurists made the decision easier for contemporary jurists. Furthermore, with the advent of modern research on drugs, the modern jurists can make a more precise and persuasive decision pertaining to the legality of particular drugs. Modern scientific research can provide more accurate information on the effects of illegal drugs. The modern jurists reaffirmed the position of the classical jurists by stating that the prohibition of illegal drug is made based on the analogy of *al-khamr*. Drug production, distribution and trading are thus forbidden. Some modern jurists, for instance, the Egyptian Board of Fatwa, have accepted the strict view of Ibn Taymiyya<sup>42</sup>. This board states that drugs are illegal and forbidden unless in the case of necessity. That means the consumption must meet all preconditions of necessity. First, the medicine should be prescribed by a trusted experienced and a God-fearing Muslim doctor and the second condition is that there should be no alternative except drugs. The committee has also added that the purpose of taking an unlawful drug for medication can only be due to the necessity to protect life. In this regard, the committee supports the position of Ibn Hajar al-Haitami, who insisted the consumption must be limited to what can save life.

The discussions among jurists regarding drugs are summarised in Table A below:

<sup>41</sup> *Mausu'fa Fiqhiyya*, vol. XI, p. 36. According to Shafi'is and Malikis, buying and selling *mukhaddar* not for medication is *haram*, while Hanafis only classified such a transaction as *makruh* (detestable). See also *al-Majmu' Sharh al-Muhadhdhab*, Vol. IX, p. 307 regarding buying and selling opium

<sup>42</sup> *Jumhuriya Misr al-<sup>c</sup>Arabiyya*, WizÁra al-Awqaf, *al-Fatawa al-Islamiyya min Dar al-Ifta' al-Miisriya*, Vol. X, p. 3518.

**Table A: Comparison of characteristics between *al-khamr* and narcotic drugs according to Muslim jurists.**

<b>Characteristics</b>	<b><i>Al-khamr</i></b>	<b>Narcotic drugs</b>
Jurists attitude towards the substance	All Muslim jurists are in unanimous agreement that <i>al-khamr</i> is totally prohibited	Muslim jurists, especially the ancient authorities, were in dispute regarding the rule of narcotic consumption
Degree of prohibition	<i>Al-khamr</i> is totally prohibited, including its trading, buying, selling, transporting and serving	Majority of jurists held that drugs do not carry total prohibition like <i>al-khamr</i> . Only prohibited when it is fatal and intoxicant.
The cause ( <i>‘illa</i> ) of prohibition	They unanimously agreed that the <i>‘illa</i> of the prohibition is that it is an intoxicant. Some also added that another cause of the prohibition was because it is considered <i>najas</i> . Others associated the aggressive behaviour resulting from wine drinking with the thing that makes the drink prohibited	Muslim jurists disputed the cause of the prohibition of drugs. Some like Ibn Taimiyya argued that drugs are prohibited because of its intoxicant effect which made the prohibition total like <i>al-khamr</i> . Al-Qarafi argued that some drugs like <i>hashish</i> only carry the corruptive effects, and are not intoxicants.
The purity status of the item	<i>Al-khamr</i> itself is considered as a religiously impure item, which cannot be taken to perform prayer	The status of purity of the narcotic drugs is disputed. The majority ruled that drugs or herbs are clean. However, Ibn Taimiyya ruled that drugs are ritually unclean like <i>al-</i>

		<i>khamr.</i>
The punishment	The punishment for wine drinking is <i>hadd add</i> punishment, regardless of whether consumption leads to intoxication or not. The Hanafis only confined the <i>hadd</i> for wine drinker.	Muslim jurists disagreed over the type of the punishment. Ibn Taimiyya ruled that the sentence for drug consumption is <i>hadd</i> punishment, while the others viewed that the punishments should only be <i>ta<sup>c</sup>zir</i> or <i>ta'dib</i> .
The effects on body and physiology	It causes people to lose their mind, and become intoxicated	It differs according to different types of drugs and the persons. The negative consequences; losing appetite, losing mind and unconsciousness. The effects ; people getting high, happy, releasing from pressure, feeling energetic
The effects on the surrounding environment	Social effects: getting aggressive as a result of drunkenness, causing violence against others etc	No aggressive behavior reported among drug users. However, drugs users were commonly found begging or stealing from others.
The effects of action of the person under influence of the substance	People are responsible for all acts done under influence of <i>al-khamr</i> as losing consciousness because of <i>al-khamr</i> is not considered as a valid excuse	Many jurists agreed that a person under influence of legal drug consumption is not responsible for all acts. However, the person is responsible for his actions if the drug taken was illegal.
The volume of permitted	Wine cannot be consumed regardless of	Some jurists insisted that the same rule

consumption	the volume. Early Hanafi authorities permitted drinking small amount of other than <i>al-khamr</i> when it does not lead to intoxication	applies to drugs. The majority maintained that drugs can be consumed in small quantities especially for medical treatment, but they cannot be consumed for recreational purposes.
The consumption of seeking for pleasure and joy	Totally forbidden	The majority prohibited it.
The consumption in <i>darura</i> situation	The majority prohibited it in all situations including emergency cases; except to release someone from choking	The majority argued drugs can be used in this situation.
The consumption for medication.	Majority of Muslim disagreed. Only Hanafis permitted it.	Majority agreed with the permissibility especially when there is no other lawful alternative.

### Discussions and conclusions

Examining the medieval Muslim jurists' view regarding narcotic drugs, it appears that Muslim jurists were divided into three groups. The early Sunni jurists and Sufis maintained that narcotic drugs should be entirely permitted (*al-ibaha al-asliyya*) despite some negative effects associated with the substance. There are several assumptions behind this lenient ruling. Firstly, there was no authoritative text pertaining to drug consumption. Secondly, the early Muslim jurists were ignorant about the plant being abuse. This is because the drug abuse was rarely reported during that time. Thirdly, the plants during that time were mainly consumed for medical purposes which were generally permitted. This lenient attitude towards drugs, however, gradually changed when the abuse of narcotic drugs became widespread, and when *hashish* in particular became a social problem within the Muslim community. This narcotic consumption was frequently associated with immoral behaviour such as homosexuality and wine drinking. As a result, the need to examine the real potency of the plant in order to clarify the precise ruling became the central focus of Muslim jurists living in the community corrupted with drug abuse. Some jurists, like al-

Qarafi and al-Zarkashi, understood the real potency of the plant. As a result, new rulings pertaining to narcotic drugs were reached. The majority of Muslim jurists agreed with the opinion of al-Qarafi and al-Zarkashi that any substance which carries the effect of *muskir* and *muftir* should be banned.

Some disagreement was indicated as to whether the full analogy of wine should apply. On this matter, only a small number of jurists held that the full analogy should apply. The hesitation of the rest to accept the full wine-analogy can be assumed to be due to several factors. The majority's attitude towards narcotic drugs was mainly brought about by the prevalent perception that narcotic drugs were useful for medical purposes. If a complete full analogy was accepted, that would mean that the use of drugs to act as medicine was denied and forbidden. They also argued that the full wine analogy cannot be applied as each varies in producing effects on a human's bodily functions. Historically, drugs were widely known to have medical benefits, and therefore, the rule is not similar to wine. Drugs are only prohibited when they are abused. Wine, on the other hand, is a different matter as wine production is mainly for drinking and leisure. The benefit of wine for medication was rarely reported. Most importantly, as the unlawful character of wine was divinely established leading to this unanimous undebated position among the jurists, the lack of divine prohibition on drugs makes it less harmful and more acceptable in the case of necessity.

Is the prohibition of drugs limited only to *hashish*? The consumption of drugs which is not for reasons of necessity should be made forbidden. This prohibition should not be limited to *hashish*. The early jurists only prohibited *hashish* (not other types of narcotic drugs) because it was the popular drug consumed for recreational use. Meanwhile, other drugs were considered legal at that time, perhaps due to a low level of abuse or the consumption was simply for medication. However, the legality of hemp, *banj* and opium established by the early jurists should not be read as a general permission to consume them illegally and not for reasons of necessity. It should be limited to medical purposes. At that time, opium, *banj*, hemp and other narcotic drugs were commonly known for their effective medical benefits<sup>43</sup>. The raw material of drugs like opium and hemp is considered lawful as they are considered to be an ordinary plant. However, nowadays when drugs are cultivated and chemically processed for illegal consumption, they cease to be permissible and they should be banned as they definitely lead to addiction.

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<sup>43</sup> See Rosenthal *The Herb- Hashish versus medieval Muslim Society*, p. 21, See Cyril Elgood, "Tibb – ul-nabbi or medicine of the Prophet" in *Osiris*, 1962, Vol. 14, pp. 33-192. See also al-Suyuti, *al-Tibb al-Nabawi*, and n.a, "The history of opium, opium eating and smoking", *The Journal of the Anthropological Institute of Great Britain and Ireland*, 1892, Vol. 21, pp. 329-332, <http://www.jstor.org/stable/2842564>. In page 330 states that even though the Greeks were claimed discovering the opium, the Arabs were believed introducing the medical benefit of this plant. They made it known to Persia, subsequently to India and China. The opium is also known as *afiyun* in Arabic books of medicine. The history of opium was not known in India until the Arab influence. The Chinese works also reported that Arab traders exchanging poppies for Chinese merchandise.

It can also be concluded that narcotic drugs used for surgery or other medical purposes remain generally lawful. This is what al-Zarkashi recognised as the consumption of drugs used on the basis of necessity. According to al-Zarkashi, this medical consumption was in line with the rule of *darura*. This also means that all the preconditions of *darura* should be met. Strict regulations should apply for those who consume these drugs as they can prove fatal if an overdose is taken. This fact was already recognised by the classical jurists and reaffirmed by modern medical research.

The other issue is whether or not the use of narcotic drugs is limited to what can save life, as was proposed by al-Zarkashi. What about non-necessity cases? In this matter, the drugs could be consumed for other non-necessity cases if the quantity is insignificant and if it does not lead to intoxication or serious harm. Al-Zarkashi himself recognised the use of drugs for medication if it was a better alternative than other medicine. However, the drugs can only be taken after obtaining an expert's prescription. Modern scientific research held that certain drug medication can heal faster than non-drug medicine. In this matter, some jurists asserted that an insignificant amount of narcotics can be used for medical purposes when the lawful alternative is not as effective as the drugs. However, this case must be verified individually and the amount of drugs consumed should be judged according to the seriousness of the disease.

However, the consumption of drugs for other purposes, especially for recreational use, ceases to be lawful regardless of the quantity of the drug consumed, as these drugs can be addictive and their consumption leads to many harmful effects. The harmful effects of illegal drugs use are not limited to the users but also to the community. Muslim jurists agreed that a Muslim is not allowed to place himself in a situation that impedes him from remembering God, where he can easily neglect his religious responsibilities such as prayer and fasting. Drug users who are under the influence of illegal drugs are not productive and they become a burden on society. The end result of wine drinking and illegal drug consumption is in this sense similar. Wine drinkers tend to be more aggressive towards others, and are responsible for increasing numbers of accidents, rape and physical assaults, while illegal drug use increases unemployment and the number of burglary cases. Although drugs and *khamr* have similar negative effects, the *ulama* did not only focus on the end result of drug, they also examined the *nusus* (evidence) before coming out with the exact ruling.

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