

ANALYSIS OF LEGAL STRATAGEMS CASES IN THE QURAN AND SUNNAH

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Abstract

Legal stratagems or Hiyal are the means to reach an end in an unconventional way. Every law consists of this kind of exits for special cases, but these concessions can become a source to circumvent the objectives of the law. Islamic law is the divine law regulated by Allah SWT for all human beings. The primary foundations of this law are the Holy book of Allah SWT and the life of His Prophet PBUH. The researcher aims to analyze the twelve stratagem cases mentioned in the Quran and Sunnah to extract a generalized ruling about applying Hiyal in Islamic law. The researcher studied each and every case, its background, impact, related department of Islamic law in detail. He found that Hiyal are permissible subject to the intensity of need, the intention of the doer, and not evading the higher object of Shari'ah. Some cases of Quran and Sunnah are not pure legal stratagems, but dual meaning sentences used for a valid purpose.

Keywords: Hiyal, legal stratagems, Shari'ah, Hiyal, Quran and Sunnah.

INTRODUCTION

Every law constitutes some boundaries and limits for the people to control their operations (Nedelsky, 1990). On the other hand, it relaxes these boundaries and permits concessions for some specific cases. This is to maintain the flexibility and practicability of any law (Sobota, 1991). One form of these relaxations is the use of legal stratagems, which is to reach a permissible end through an unorthodox way (Wheeler, 1988).

Islamic law is the divine law regulated by Allah SWT for all human beings. The primary foundations of this law are the Holy book of Allah SWT and the life of His Prophet PBUH. All the other sources like the analogy, Istihsan, etc. are secondary and less authoritative (Makdisi & Makdisi, 1995). There are some stratagems discussed in the Quran and some legal artifices mentioned in the practices of Prophet PBUH. These need to be scrutinized in depth to extract the real viewpoint of Islamic law about using these artifices to reach an objective.

Literature review

Legal stratagems and artifices have been a point of discussion for law scholars. The article of D'Aspremont (2016) scrutinizes the conceptual artifices that made international custom and behaviorally created normativity possible in global law. Klass (2012) wrote about the law of deception. His article argues that the law of deception is a natural legal kind and it has to be faced throughout the law procedures. Daly (2018) aimed to clarify the non-transparent nature of constitutional-rights jurisprudence, compared with legislative decisions concerning rights. He argued that the doctrinal artifices are nonetheless complex to interests that are the precursor to the law itself.

Focusing on Islamic Law, the stratagems, and exits from the normative doctrine is a famous topic since the medieval period which was the peak of Islamic law engineering (Reid, 2013). The word used for this phenomenon is *Hilah* (plural: *Hiyal*). The other word is *Makhraj* (exit) (Djafri, 2018). Several scriptures are found today prepared by different doctrines of Islamic Law comprising of hundreds of stratagems and *Hiyal* prescribed by Muslim scholars for hard times. The scholars consist of both advocates of the stratagem theory like many Hanafi scholars and opponents like Hanbali scholars. Some scriptures are Shaybani (1999), Al-Khassaf (1994), Al-Samarqandi (2005), Bukhari (2000b), etc.

From the orientalist, Joseph Schacht was a famous writer of the twentieth century, his subject of study was Islamic law (Layish, 1982). He is also considered as a significant thought producer in Hadith Studies (Schacht, 1949; Suadi, 2017). More orientalist like Horii, (2002) and Udovitch (1970) followed the steps of Schacht in defining the background of *Hilah* (legal stratagems) and artifices in Islamic law.

The topic received extended attention from scholars in recent years. It is due to the legalism approach followed by Islamic finance scholars in advising solutions as an alternative for the conventional banking system. Like the works of Aziz & Nordin (2019), Ismail (2010), Abdul Aziz & Ahmad (2018), Mohamed Fairouz (2010), Abozaid (2010), etc. Most of them guided the debate towards the application of *Hiyal* in Islamic finance resolutions. Although they did refer to the stratagems discussed in the Holy Quran and Sunnah, a detailed analysis of the stratagem stories of Quran and Sunnah is yet to be furnished to extract a general ruling about this approach, instead of relying on scholars who were humans with a possibility of incorrectness (Al-Marwazi, 2000).

Research Problem

The research problem-focused in this study is the analysis of *Hiyal*, legal stratagems, and exits discussed in divine sources, to form a general opinion and solve the problem on a broader spectrum. This has not received the deserved attention of scholars, especially in the modern era. The reason is the opinion of jurists has become the base of all decisions in every doctrine, instead of fetching the result from the real sources. Although jurist opines on the foundations of the Quran and Sunnah, the understandings of everyone are different from others (Abu Zahra, 2001).

Research Objective

The research objective for this study is to find out the viewpoint of the Holy book of Allah and his sacred Prophet PBUH, which are divine sources of knowledge, in discovering stratagems and exits from the general law, by examining the text of the Quran and Sunnah.

Methodology

The study applies a qualitative approach and grounded theory method to develop the theory of stratagems and *Hiyal* analyzing the divine textual data of the Quran and Sunnah. Grounded theory is a systematic research method including the discovery of notion through data collection and analysis (Engward, 2013). The researcher retrieved twelve stories or scenarios from this data for assessment and some normative general statements from Hadith of Prophet PBUH supporting the same idea.

Role of Quran and Sunnah in fixing Islamic law principles

Quran is the divine book of Allah, and Sunnah is the sayings and practices of Prophet PBUH in the humanistic words but the message is as heavenly as the Quran (Quraishi & Kamali, 2000). Both are the primary sources in Islamic law formation and the latter is the practical explanation of the former (Usmani, 2009). Therefore, in defining Islamic law principles termed as *Usul-Fiqh*, these two have the general authenticity (Hilal & al-Beirawi, 2007). Both do not have any possibility of incorrectness (except the *Ahad* type from hadith) as they are produced by the divine source that is Allah (Basir, Othman, Aziz, & Haron, 2012). Moreover, they are not influenced by the surroundings as may be the case in jurist's opinions (Zaydan, 1986). Thus, in generating a universal law about stratagems and exits from the law, cases of the Quran and Sunnah should be studied in depth to highlight the trend for this principle.

1. Stratagems and Exits

Every statutory law has exits naturally, it is because the law is the name of boundaries. Within these boundaries, a follower can penetrate. The Prophet PBUH to explain this idea to Arab shepherds said “O listen, the prohibitions of Allah are his pasture. So do not penetrate even near to that”. (Bukhari, 2000, Kitabul Iman). But in some exceptional cases it is required to create an exit from these boundaries for a specific person, these exits are called ‘legal stratagems or Hiyal’ to reach an objective.

Hilah can be defined as a trick or stratagem (Abu Jib, 1988; Cowan, 1980), while makhraj may be defined as a licit exit or relief (Abu Jib, 1988). Smolo et al., (2019) differentiated in makhraj and Hilah and said prior one is a legal exit, and the latter is a trick. They utilized intent to demonstrate the contrast between the two jargons: makhraj tries to comply with the Shari’ah excluded requirement. While, in the case of Hilah, the intention usually is to commit the prohibited act. Hilah (plural: Hiyal) was used in a broader sense in the early ages, an intelligent solution to a Shari’ah problem, but in later centuries it was specified as a trick to escape the Shari’ah prohibition, and the concept of Makhraj was introduced, which is a way out from the universal ruling in a justifiable need (Al-Enezi, 2015; Alkhan, 2016).

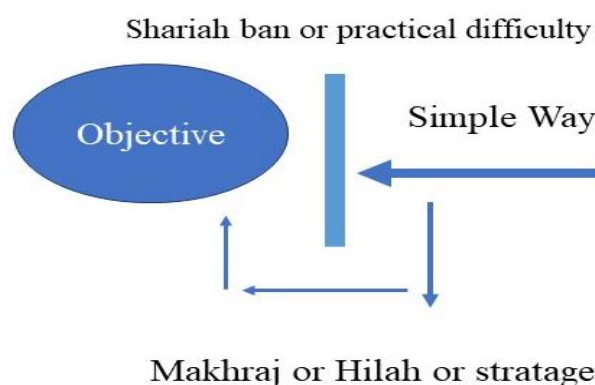


Figure 1: Authors illustration for Hilah/ legal stratagem concept.

2. Need/Inconvenience aspect in Stratagem’s relaxation:

This initiated a new point of discussion relevant to the said topic that is the need and the necessity of using a legal device. Shari’ah offers a Darurah principle, which is evidence of the flexibility of divine doctrine. This principle is universally agreed upon by all schools of thought. It means that a mukallaf (a person deemed by Shari’ah as responsible) is at times in a state that does not let the implementation of obligations of the Shari’ah be performed (Abdul Aziz & Ahmad, 2018). It constitutes a legal maxim of fiqh: “Necessities permits the forbidden”. It means that the forbidden can be un-sinfully committed when necessary (Courts, 2001; Ibn Nujaim, 1999). The rule is derived from the verse of the Holy Quran (22:78): (وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ) “He has not placed upon you in the religion any difficulty”, and one more verse state almost the same (4: 28): (يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ) “Allah wants to lighten for you [your difficulties]”. Al-Qaradawi (1978) stated that this principle may provide a good reason to engage in what is primarily deemed unlawful in Shari’a (Islamic law), considered as an exclusion.

The dire need does make an impermissible action permissible, but that is only for a specific person and limited time, and this does not require to nullify the impermissibility of that action. For instance, Shari’ah allows the one dying due to thirst to drink wine if no other option is available, but that does not invalidate the impermissibility of wine (Abuzaid, 2015). So, the need does legitimize some prohibitions, but that is for a particular scenario. The fundamental act must be necessary for the life of the human, i.e. it must be a requirement, for the Darurah concept to be functional. Some Fiqh schools have characteristically paralleled what is called Hajah (needed) in the Shari’ah to the above concept, but only when it is public (Abozaid, 2010). Hajah refers to a human need that is not indispensable for the existence of human beings, but it is vital for their well-being. Hajah is what a human can endure without bearing hardship and difficulties. For example, having a car for transport is not a dire need in Shari’ah terms (Darurah), but it may be a simple need (hajah) in some places (Al-Shatbi, 1964). Most writers confined the permitted stratagems with a need and defined Hiyal which establish a stratagem that enables a needy person to realize a legitimate goal without violating the Shari’ah laws (Syed & Omar, 2017).

3. Legal Stratagems in Quran:

The researcher has found five exits discussed in the Holy Quran.

- The Quran states: (وَلَا تَحْنَثْ-) (38:44), In this verse, an exit prescribed by Allah SWT Himself to his beloved prophet Ayyub (peace be upon him) in chapter 38 Surah 'Saad' to comply with his oath and save his wife from being beaten 100 lashes. Instead, it was advised to beat her with a pack of 100 strings which may not cause any harm and fulfill his oath after he recovered from his long illness.
- The second stratagem is in the Surah al-A'raf, in the verse (7: 163):

وَسَأَلْتَهُم عَنِ الْقَرْيَةِ الَّتِي كَانَتْ حَاضِرَةَ الْبَحْرِ إِذْ يَعْدُونَ فِي السَّبْتِ إِذْ تَأْتِيهِمْ حِيتَانُهُمْ يَوْمَ سَبْتِهِمْ شُرَعًا وَ يَوْمَ لَا
يَسْتَوُونَ لَا تَأْتِيهِمْ كَذَلِكَ تَبْلُوهُمْ بِمَا كَانُوا يَفْسُقُونَ-

Here Allah the Almighty, cursed the people of Banu Israel on using stratagem to evade the purpose of Allah's order and fishing on the prohibited day. They built a pond with riverside so that fishes may enter in the pond and cannot go out on Saturday, the prohibited day for fishing, then they would fetch the imprisoned fishes on the next day. The people of that village were categorized into three groups. One was the committer of that Hīlah. The opponents opposed and forbade them. The third category was the silent group. The result as quoted in Surah A'araf was the committers were punished and turned into monkeys and the opponents got rid of them.

- The third one is the Hīlah, attributed to Allah, for fulfilling the purpose of Prophet Yusuf (peace be upon him) to retain his younger brother in Syria without disclosing to his elder brothers. The vessel of King was hidden in the belongings of Yusuf's brother, and he was taken by the authorities against this fake theft. The verse states 12: 69:

فَبَدَأَ بِأَوْعِيَتِهِمْ قَبْلَ وِعَاءِ أَخِيهِ ثُمَّ اسْتَخْرَجَهَا مِنْ وِعَاءِ أَخِيهِ كَذَلِكَ كِدْنَا لِيُوسُفَ مَا كَانَ لِيَأْخُذَ أَخَاهُ فِي دِينِ الْمَلِكِ إِلَّا أَنْ
يَشَاءَ اللَّهُ

This Hīlah is not an exit from the Shari'ah fiqh, rather a disguise or Toriyyah to accomplish the rightful object (Al-Sarakhsi, 1993).

- Another case is the answer from Prophet Ibrahim to the offer to go with the people on festival day. He glimpsed to the stars and said, "I am sick", actually he was not sick. The Quran states: (فَنظَرَ) فَتَنظَرَ (نَظْرَةً فِي التُّجُومِ فَقَالَ إِنِّي سَقِيمٌ) Al-Quran 37:88,89. The reason was to escape the offer to participate in a polytheist festival and teach the people about the oneness of Allah by breaking their idols. Again it is more of Toriyyah (disguising the real purpose in apparent words), not a genuine legal stratagem to escape Shari'ah parameters (Stewart, 2013).
- Al-Khassaf a Hanafi jurist answering the arguments of those who say 'if Hīlah in Zakat is applicable and Zakat can be waived off by a simple stratagem, why would Allah order to pay Charity/Zakat? He replied: Allah the Al-mighty, ordered not to marry or offer a married woman in his waiting period, then Himself allowed to indicate marriage (Al-Khassaf, 1994, p. 3). Thus, the offer of marriage is Haram, but an indication is allowed.

It shows that Share' (the law regulator) closes a door and opens another itself to circumvent the inconvenience caused.

4. Legal Stratagems in Sunnah:

Al-Khassaf, the Hanafi jurist, advocated that *makharij* and stratagems were practiced in the era of the Prophet (peace be upon him).

- He narrated, to prove the authenticity of the Hiyal theory, the incident when the Prophet (peace be upon him) to fulfill his promise of telling the holy verse to a companion, he told the verse while his second leg was still in the mosque (Al-Khassaf, 1994). So, he kept his promise.
- Al-Samarqandi (2005) narrated the famous story of Bilal, the companion of Prophet (peace be upon him) about selling low-quality dates against good quality dates with a difference in weight. It is riba, but if low-quality dates are exchanged against a price and then with that price same intended ajwa dates can be bought. It was nothing but hila to acquire ajwa dates (Bukhari, 2000a Hadith : 2208).

- It is advised by Prophet PBUH to a person accidentally broke his Wudhu during Salah, shall put a hand on his nose, pretending if a blood vessel broke out, and go out of the mosque, to save himself from suspicious eyes of people about farting. The words of Hadith are:
- إِذَا أَخَذْتَ أَحَدُكُمْ فِي صَلَاتِهِ فَلْيَأْخُذْ بِأَنْفِهِ وَلْيَنْصَرِفْ وَلْيَتَوَضَّأْ .

Abu Bakr Sairafi, a Shafi'i jurist said that the Hiyal theory is founded on this Hadith (Hakim, 1990, p. 294 (1)).
- An aged and paralyzed person committed adultery with a girl in the era of Prophet PBUH and sent a request to him for eradicating the sin. Prophet PBUH said: "He should be beaten a hundred lashes". They said that he cannot bear the lashes, he would die of these, then Prophet of Rahmah PBUH provided a concession of beating him with a pack of hundred strings, all of these touching him, to fulfil the obligation of chastisement on him. This was a special concession for him, and the same cannot be generalized to other patients. This Hadith is narrated by Imam ibn Majah (Al-Qazwini, 1952, 2574).
- In the hadith: "أَنَّ لَا يُفَرِّقُ بَيْنَ مُجْتَمِعٍ وَلَا يُجْمَعُ بَيْنَ مُفْتَرَقٍ مَخَافَةَ الصَّدَقَةِ", Prophet PBUH prohibits to accumulate or divide the wealth to escape Zakat. It is because Zakat applies to various ratios on different amounts. Thus the compilation or segregation can result in reducing or evading the Zakat obligation (Zanjoweh, 1986, p. 861 (2)). This stratagem to evade an obligation is strongly outlawed by Prophet PBUH.
- In the Hadith, "لعن الله اليهود، حرمت عليهم الشحوم فباعوها، وأكلوا أثمانها،" Prophet PBUH cursed on the Hilar committed by Jews, they were prohibited by God not to consume the fat of animals, they started to melt it down and sell in the market and use that illegal money (Ahmad bin Hanbal, 2001, p. 95 (4)). In another Hadith, Prophet warned Muslims not to follow the footsteps of Jews in legitimizing *maharim* (prohibitions) with simple stratagems.
- Another story of Prophet PBUH and his beloved companion Abu Bakr RA during the journey of migration to Medina. It was announced that whoever brings Muhammad PBUH, live or dead will get the reward of a hundred camels. A person somehow managed to reach them, but he did not recognize the Prophet PBUH, so he asked Abu Bakr RA, who is with you? He replied: "هَذَا رَجُلٌ يَهْدِينِي السَّبِيلَ" (He is a guide). He intended the guide towards Jannah and the person understood the other meaning (Ahmad bin Hanbal, 1983, p. 397). It was a Hilar to save the life of Prophet PBUH, endorsed by him due to his presence (Akdag, 2012).

Some scholars do not admit that the Prophetic stratagems were Hiyal. They turned all the quotations presented as evidence, to be inevitable exits or dual meaning sentences, they believed that not any one of these was a case of genuine stratagem (Ghanem, 2015; Musa & Smolo, 2009a).

These are the for and against cases for the Hiyal and stratagem theory. They need to be analyzed thoroughly from several aspects, like the dire need in the case, the committer of that stratagem, the impact of that Hilar, and the Shari'ah ruling for that particular scenario.

Discussion

The detailed analysis of the mentioned cases reveals the following results:

- The intensity of need is directly proportional to the permission or relaxation. As the need becomes intense, Shari'ah relaxes the limits on stratagems (See Table 2). Like in the case of Prophet Ayyub, the fulfillment of oath in normal form, would lead to lashing his wife a hundred times. So, a Hilar was advised by Allah SWT to escape this difficulty. While in the case of Jews catching fishes, when they had the other option of fishing on other days, just to increase their income they created a stratagem. There was no difficulty for them, so they stood cursed. In most of the permissible cases, there was dire need to commit the artifice (See figure 2 and 3).
- Most of the prohibited stratagems and artifices are related to monetary matters. It means the greed of a person leads him to stratagems to earn or retain Haram in apparent Halal way like in the case of escaping Zakat obligation (See Table: 2). Although, Prophet PBUH advised Bilal the companion, the right way to get the desired Halal result from a monetary transaction.
- The permitted eight scenarios to reveal that Haq-un Nafs or Haq-ul-Abd is secured against Haq-Allah like in the case of Prophet Ayyub's wife, the substance of Haq-ul-Abd was secured and the Haq of Allah i.e. oath with the name of Allah was fulfilled through an apparent form. Likewise,

the scenario of keeping a hand on the nose while exiting from collective prayers and the case of chastisement on a paralyzed person.

- Toriyah or using a dual meaning sentence can benefit the user in many cases. It can serve as an exit saving oneself from telling a lie. Like in the case of the migration of Prophet PBUH to Medinah or Prophet Ibrahim, how he managed to break the idols for the sake of Nahi 'anel Munkar.
- One of the core reasons that lead to the impermissibility of employing any Hiyal is the circumvention of Maqsd-e-shar'i. It is the higher goal of Islamic law which is fulfilled in any case. Like in the case of Jews' stratagems of selling animal fat or fishing on through the pond on Saturday. In both of the cases, the Qasd-e-Shari'i is being circumvented through a Hilah which may be Halal apparently leading to an objective which is contrary to the prohibition order.

Table 1: Overview of Stratagems cases in Quran and Sunnah

| Stratagems | Need | Committer/ Prescriber | Impact |
|--|--|--------------------------------------|--|
| Ayyub AS's oath: strings instead of lashes | Fulfill the oath without beating his wife | Allah SWT | Discharge of oath |
| Fishing on the prohibited Day with a pond | Catching fishes when it is easy | Jews | Evading real substance of prohibition. |
| Demonstrating the brother as a thief to rescue him. | Redemption of Binyameen from injustice brothers | Attributed to Allah SWT | Brother rescued resulted in rescuing the whole family. |
| Portraying himself as sick while he was not. | To save himself from the festival and prove the oneness | Prophet Ibrahim AS | Broke the idols and oneness admired by monotheists inwardly. |
| Indicating the intention of marriage to a widow instead of offering her. | To marry her just after the waiting period | Allah SWT | Not leaving her without a husband for a long time. |
| Exchanging dates to dates with the intermediation of money. | To get good quality dates | Prophet PBUH | Fulfillment of purpose with changing the procedure |
| Being in the mosque with just one leg inside. | To fulfill the promise of telling an ayah before going outside the mosque. | Prophet PBUH | Fulfillment of promise. |
| Keeping a hand on the nose while exiting from Jama'ah. | To save from creating suspiciousness of farting | Prophet PBUH | Purpose fulfilled. |
| Chastisement on adultery strings instead of lashes | To save the life of an old person while implementing punishment. | Prophet PBUH | Haq of Allah fulfilled preferring the Haqof Abd. |
| Melting the animal fat and selling in the market to use money. | To consume the fat of animals or their price | Jews | The form changed to reach the prohibited goal. |
| Dividing the owned wealth or collecting dispersed amounts | To reduce Zakat expense | Prohibited by Prophet PBUH | Evading an obligation through accounting techniques. |
| Intending another meaning of a sentence by using Toriyah | To save life and fighting. | Abu Bakr RA in front of Prophet PBUH | Purpose fulfilled. |

Table 2: Analysis of Stratagems cases in Quran and Sunnah

| Stratagem | Need intensity | Prohibition/ Permission | Related department of Shari'ah |
|---|----------------|----------------------------|--------------------------------|
| Ayyub AS's oath: strings instead of lashes | High | Permission | Oaths |
| Fishing on a prohibited Day with a pond | Low | Prohibition | Earning livelihood |
| Demonstrating the brother as a thief to rescue him. | High | Permission | Political issues. |

| | | | |
|--|--------|--------------------|-------------------------------|
| Portraying himself as sick while he was not. | High | Permission | Toriyah for Nahi 'anel Munkar |
| Indicating the intention of marriage to a widow instead of offering her. | Medium | Permission | Family formation |
| Exchanging dates to dates with the intermediation of money. | Medium | Permission | Monetary transactions |
| Being in the mosque with just one leg inside. | Low | Permission | Keeping a promise |
| Keeping a hand on the nose while exiting from Jama'ah. | High | Permission | Saving self-respect. |
| Chastisement on adultery: strings instead of lashes | High | Special Permission | Caring for a patient |
| Melting the animal fat and selling in the market to use money. | Low | Prohibition | Monetary transactions |
| Dividing the owned wealth or collecting dispersed amounts | Low | Prohibition | Monetary obligation |
| Intending another meaning of a sentence by using Toriyah (Hijrah case) | High | Permission | Toriyah to save a life. |

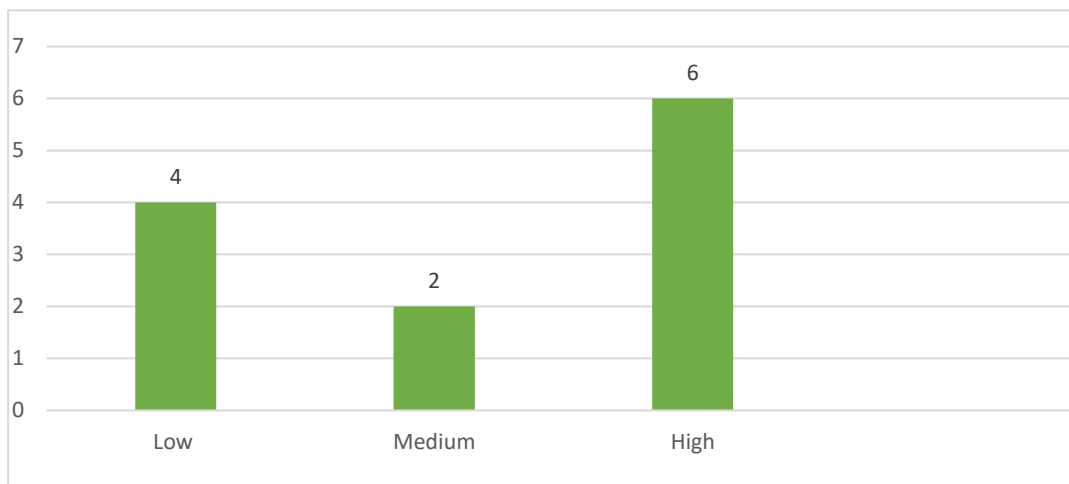


Figure 2: Inconvenience intensity in the Hiyal cases discussed in Quran and Sunnah

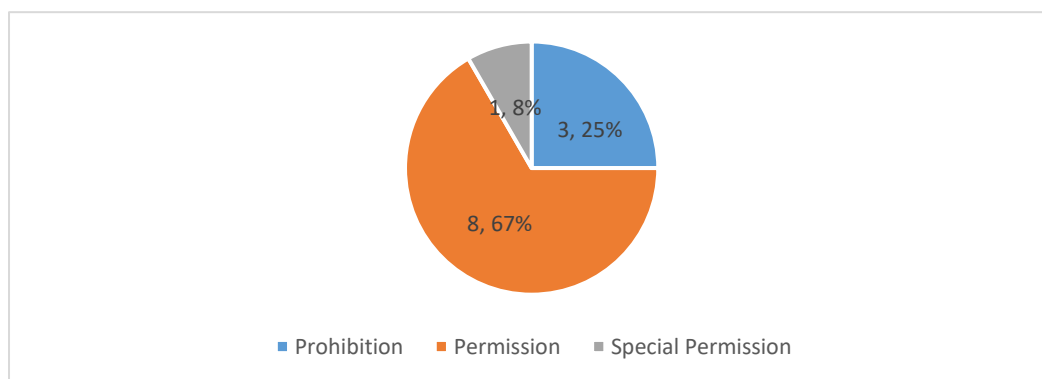


Figure 3: Shari'ah Rulings about Cases of legal artifices in the Quran and Sunnah

CONCLUSION

The researcher retrieved 12 scenarios from the divine sources of the Quran and Sunnah, in which a stratagem is applied to overcome a difficulty or a legal artifice or *Hilah* is employed or advised to reach an end. Most of the stratagems were permissible due to the dire need and others were prohibited when the stimulation was bad intent or to circumvent the prohibition orders. On the bases of the mentioned findings, it is suggested to scrutinize the legal stratagems on the criteria extracted from the above analysis. Three main checks should be applied to any *Hilah* applied in Islamic law.

- What is the intention of the committer by this stratagem?
- What is the dire need compelling the doer on *Hilah*?
- Whether the *Hilah* supports Maqasad-e-Shari'ah or circumvents it?

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