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PREVENTIVE JURISPRUDENCE IN THE ANTHROPOCENE: A COMPARATIVE FUNCTIONAL ANALYSIS OF SADD AL-DHARA'I (BLOCKING THE MEANS) AND THE PRECAUTIONARY PRINCIPLE IN SAUDI ENVIRONMENTAL LAW

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ABSTRACT

As global environmental governance shifts from reactive remediation to proactive prevention, legal systems are compelled to adopt ex-ante regulatory frameworks. This study investigates the epistemological alignment between the Islamic legal maxim Sadd al-Dhara'i (Blocking the Means to Evil) and the modern international "Precautionary Principle." While previous descriptive literature has established the theological validity of Saudi environmental regulations, this article advances a normative-analytical argument: that Sadd al-Dhara'i functions as a sophisticated risk-management mechanism capable of addressing the "Tragedy of the Commons." By critically analyzing the Saudi Environmental Law's provisions on grazing, vegetation cover, and national parks, we demonstrate how the state operationalizes the "Third Category" of Dhara'i (predominant probability of harm) to legitimize the restriction of ostensibly permissible rights. The findings suggest that Saudi Arabia is developing a hybrid "Theological-Ecological" legal model that creates a rigorous preventive shield against environmental degradation, offering a blueprint for sustainable governance in the Islamic world.

KEYWORDS: Sadd al-Dhara'i, Precautionary Principle, Environmental Risk Management, Saudi Vision 2030, Islamic Jurisprudence.

1. INTRODUCTION

The global environmental crisis, characterized by desertification, biodiversity loss, and climate change, has forced a re-evaluation of legal foundations. Contemporary International Environmental Law (IEL) relies heavily on the Precautionary Principle—the idea that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus, the burden of proof that it is not harmful falls on those taking the action (Al-Fiqqi, 1999).

In the context of the Kingdom of Saudi Arabia, the legal system is undergoing a rapid modernization under Vision 2030. However, the foundational legitimacy of these laws remains rooted in Islamic Sharia. This creates a fascinating juridical intersection: How does a legal system based on 7th-century texts address 21st-century ecological risks?

1.1. Ethical Disclosure and Research Gap

The theological basis for environmental protection in Islam has been explored in preliminary descriptive studies. Notably, Alhammami and Alasmari (2024) provided a foundational survey establishing that Saudi environmental regulations do not contradict the general maxims of Sharia. Building upon—but distinct from—that descriptive baseline, this current study adopts a comparative functional approach. We move beyond asking "Is it allowed?" to asking "How does it work as a risk-management tool?" We hypothesize that the Islamic concept of *Sadd al-Dhara'i* is not merely a restrictive religious rule, but a dynamic legal instrument functionally equivalent to the Precautionary Principle.

1.2. The Research Problem

The core tension lies in the conflict between Rights and Risks. In Islamic law, actions like grazing livestock or utilizing land are fundamentally permissible (Mubah).

However, unrestricted exercise of these rights leads to environmental collapse (Mursi, 1999).

The research question is How does the doctrine of *Sadd al-Dhara'i* provide the procedural mechanism to convert these "permissible rights" into "prohibited risks" within the Saudi statutory framework?

2. THEORETICAL FRAMEWORK: THE JURISPRUDENCE OF PROBABILITY

To understand the mechanics of Saudi environmental law, one must deconstruct the concept of *Sadd al-Dhara'i* through the lens of risk probability.

2.1. Defining the Concept

Linguistically, *Dhara'i* (means) refers to the path leading to an outcome (Ibn Manzur, 1414 AH). Technically, in *Usul al-Fiqh* (Principles of Jurisprudence), it refers to prohibiting an act that is outwardly permissible because it serves as a conduit to a forbidden result (harm/corruption) (Ibn Hazm, n.d.; Al-Zarkashi, n.d.).

2.2. The Risk Spectrum (The Three Categories)

Islamic jurists classify actions based on the probability of the harm they cause (Al-Qarafi, n.d.; Ibn Al-Qayyim, n.d.). **This classification is crucial for environmental law**

- Definitive Harm (Prohibited by Consensus)** Actions that lead to harm 100% of the time (e.g., dumping toxic waste into a drinking well).
- Rare Harm (Permitted)** Actions where harm is unlikely (e.g., growing grapes, which might be used for wine, but usually aren't).
- Predominant Harm (Ghalabat al-Zann)** Actions where harm is not guaranteed but is highly likely or frequent. This is the zone of environmental regulation.

Table 1: Comparative Analysis: *Sadd al-Dhara'i* vs. The Precautionary Principle.

Feature	<i>Sadd al-Dhara'i</i> (Islamic Jurisprudence)	Precautionary Principle (International Law)
Trigger	The "Means" (<i>Dhari'a</i>) leading to corruption (<i>Fasad</i>).	The "Activity" leading to potential irreversible harm.
Threshold	"Predominant Assumption" (<i>Ghalabat al-Zann</i>) of harm.	Lack of full scientific certainty but plausible risk.
Action	Prohibition or Restriction of the permissible act.	Regulatory intervention (bans, moratoriums).
Goal	Preservation of the Five Necessities (<i>Maqasid</i>).	Sustainability and Intergenerational Equity.
Authority	The <i>Wali al-Amr</i> (Ruler/State).	The State or Regulatory Agency.

Source: Synthesized by the authors based on Al-Shatibi (n.d.) and Al-Fiqqi (1999).

The Maliki and Hanbali schools argue that the state must block means in the third category

(Predominant Harm). This provides the "blanket authority" for modern environmental zoning and

licensing (Ibn Badran, n.d.).

3. METHODOLOGY

This study employs a Socio-Legal and Inductive Methodology.

1. **Conceptual Deconstruction** We analyze the definitions of "Environment" (Natural vs. Built) in Islamic thought (Al-Fiqqi, 1999) and "Blocking the Means" in classical texts.
2. **Statutory Induction** We examine specific articles of the Saudi Environmental Law (grazing, parks, vegetation) as case studies.
3. **Functional Analysis** We evaluate these laws not on their textual wording, but on their function as preventive measures against the "Tragedy of the Commons."

4. APPLIED ANALYSIS: OPERATIONALIZING PREVENTION IN SAUDI LAW

The Saudi Environmental Law does not explicitly cite *Sadd al-Dhara'i* in every article, but the legislative intent serves as a textbook application of the doctrine.

4.1. Regulating the "Commons": The Grazing Restrictions

- **The Context** Grazing is a traditional right and an economic necessity for Bedouin communities. Historically, it is *Mubah* (Permissible).
- **The Risk** Unrestricted grazing leads to the

"consumption of rangeland areas within the vegetation cover," causing desertification (Alasmari & Zurib, 2025).

- **The Legal Mechanism** The law empowers the National Center for Vegetation Cover to prohibit grazing in specific zones for specific times.
- **Analysis** This is a shift from Retributive Justice (punishing someone for destroying a tree) to Preventive Justice. The state prohibits the means (grazing) because the probability of harm (desertification) is "Predominant" in sensitive areas. The law blocks the permissible act to save the system.

4.2. Protecting Public Assets: National Parks

- **The Context** Public lands are open for enjoyment.
- **The Risk** "Tampering and negligence" by unregulated visitors.
- **The Legal Mechanism** A blanket prohibition on "practicing any activity in national parks unless authorized by a license."
- **Analysis** Here, *Sadd al-Dhara'i* functions as a Zoning Tool. Instead of monitoring every individual's behavior (which is impossible), the law blocks the entry point (access without a license). The license acts as a "Preventive Filter," ensuring only responsible actors utilize the resource.

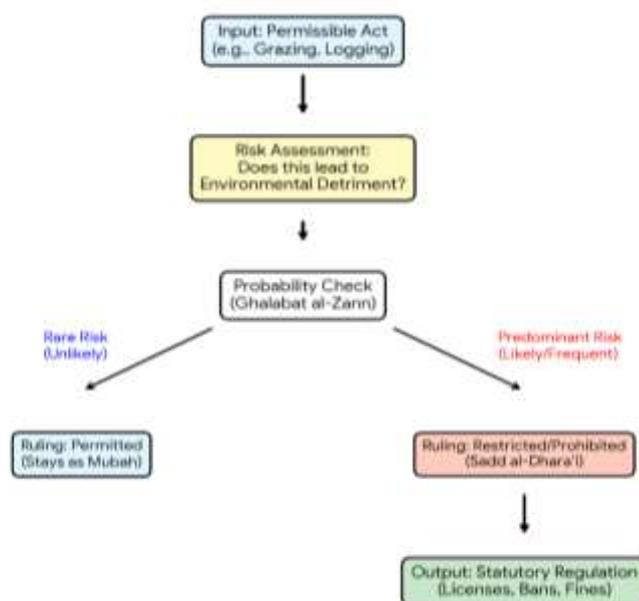


Figure 1: The Decision Matrix of *Sadd al-Dhara'i* in Environmental Law.

4.3. Resource Extraction: The Vegetation Cover

The comprehensive requirement for permits to exploit vegetation cover represents the total

operationalization of the doctrine. The state acknowledges that individual profit motives will inevitably lead to over-exploitation (The Tragedy of the Commons). By invoking *Sadd al-Dhara'i*, the state asserts that the preservation of the ecosystem (a Public Interest/Maslahah) supersedes the individual right to profit (Ibn Al-Qayyim, n.d.).

5. DISCUSSION: FROM THEOLOGICAL THEORY TO REGULATORY PRACTICE

The analysis reveals that the Saudi legal system uses *Sadd al-Dhara'i* to solve a modern governance problem: Uncertainty and Accumulation.

1. **Addressing Accumulation** One person grazing sheep causes no harm (Permissible). One thousand people grazing sheep cause desertification (Harm). *Sadd al-Dhara'i* allows the ruler to intervene before the tipping point is reached by assessing the cumulative "predominant" outcome.
2. **Addressing Uncertainty** Unlike criminal law, which requires proof of guilt, environmental law requires proof of potential harm. The Maliki/Hanbali view adopted by Saudi Arabia allows for regulation based on "strong probability" rather than "absolute certainty," aligning perfectly with the Precautionary Principle.

This findings align with Alasmari & Zurib (2025),

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who argued that Sharia objectives are activated through modern regulations. This study adds that *Sadd al-Dhara'i* is the specific tool of that activation.

6. CONCLUSION

The Saudi Environmental Law represents a successful fusion of classical Islamic jurisprudence and modern environmental management. This study concludes

1. **Epistemological Alignment** The Islamic principle of *Sadd al-Dhara'i* (specifically the view regarding predominant harm) provides a robust, pre-existing legal framework that mirrors the international Precautionary Principle.
2. **Legislative Sophistication** The transition from "open access" to "licensed use" in grazing and forestry is not an abandonment of Islamic rights but a necessary application of blocking the means to prevent the corruption of the earth.
3. **Global Model** Saudi Arabia offers a model for other Islamic jurisdictions, demonstrating how conservative jurisprudential tools can be leveraged to enforce progressive environmental conservation.

Future Research: Future studies should examine the enforcement aspect of these laws—specifically, how the judiciary interprets "predominant harm" when challenged by commercial interests.