

Understanding Hokm Shar'i

The Five Types of Divine Rule: Fard, Nadb, Ibaha, Karaha, Haram.

Many people are too quick to conclude that something is prohibited (*haram*) or allowed (*halal*) after only a cursory read of a verse of Quran or hadith. Rarely do such people really understand the meaning and rules governing legislation (*tashree'a*).

It is vital that one understands the type of speech of Allah, the Law-Giver, before concluding the divine law (*hokm shari*). It is not enough to understand only the literal meaning of a verse or hadith to draw a conclusion. The text (*nuss*), i.e., the verse or hadith, must be understood legislatively as well as literally.

All too often muslims understand the verse or hadith which indicates an apparent command or prohibition in only one of two ways, i.e., compulsory duty (*fard or wajib*) or forbidden (*haram*). But not all commands (*amr*) in the texts are compulsory duties (*fard*), nor are all forbiddings (*nahi*) prohibitions (*haram*). By *fard* it is meant, if it is not carried out the person would be sinful and will be punished. *Haram* being that action which if done the person would be sinful and will be punished. Some commands are actually recommended actions and some apparent prohibitions fall short of being haram, they are actions disliked rather than forbidden.

Actually the speech of Allah, as far as the legislation is concerned, can be understood in five ways and this is the subject of our discussion.

Hokm Shari'i Defined

The scholars of Islam have defined *hokm sharai* as the speech of the Law-Giver, i.e., Allah and His Messenger, connected to the actions of people.

Thus, *hokm shari* is established by the speech of Allah and His Messenger, and defined by pinpointing the meaning of the speech.

In other words, the speech of Allah, i.e., the Quran and hadith, are the origin of Islamic legislation, but it is not enough simply to read the Quran and hadith in order to determine the law. It is necessary to go one step further because not every command (*amr*) and forbidding (*nahi*) mentioned in the texts can be understood simply as *fard or haram*.

The speech of the Law-Giver is understood from the text (*nuss*) and from the connotations (*qara'in*) which determine the meaning of the text.

The command (*amr*) of the Law-Giver can be compulsory, but it can also be a recommendation (*nadb*), i.e., something encouraged, or allowed (*ibaha*). Likewise, the forbidding (*nahi*) may actually indicate dislike (*karaha*) rather than *haram*.

Fard (compulsory)

Allah the Almighty says:

"Fight against those who believe not in Allah nor the Last Day, nor make prohibited (Haram) that which Allah and His Messenger make prohibited." [9:29]

Thus Allah commands muslims to make jihad, evidently this is a duty, but that *fard* - as opposed to a recommended action - is determined not from this verse alone. Other texts (*nussoos*) related to the subject, i.e., the connotations (*qara'in*) of the verse we have quoted, determine that this duty to fight is a compulsory duty, or as it is often referred to as a decisive command. These other verses include the *a'yah*:

"If you go not forth (for Jihad), He will afflict you with a painful doom." [9: 39]

Haram (prohibited)

Likewise, when Allah says:

"And come not near adultery." [17:36] Allah forbids adultery, but the prohibition is not determined from this verse alone, it is determined from other relevant texts like:

"Lo! It is an abomination and an evil way." [17: 32] "The fornicator and fornicatress- scourge each of them with a hundred lashes. " [24: 42]

Mandoub (recommended)

In other texts the Messenger of Allah (SAW) expresses a command to do an action that is not intended to be compulsory. For example, Muhammad (SAW) said:

"I had forbidden you to visit the graveyards, see! GO visit them." [Muslim & Tirmidi]

This is a command, but we know it to be recommended (mandoub) rather than a compulsory (fard) command, because the Prophet (SAW) remained silent when individuals did not visit the graveyards. The Prophet's silence denotes consent, if it was compulsory then he would not have stayed silent. Likewise, we know praying in congregation (jamaa) is *mandoub* and not fard, because the Prophet (SAW) remained silent when individuals prayed alone; even though the Prophet (SAW) said:

"The collective prayer is twenty seven times better than the individual prayer." [Al Bukhari, Muslim, Malik, Ahmad, Tirmidi, Nesa'i & Ibn Majah]

This hadith is an order to pray in conjugation expressed in the informative form; but from the Prophet's (SAW) silence we know it to be a recommended command.

Makrooh (disliked)

The Prophet (SAW) also ordered us not to do things the connotative evidence of which indicates *makrooh* and not haram. For example, the Prophet (SAW) said:

"Whosoever is prosperous and does not marry does not belong to us" [Muslim]

This appears to indicate that it is forbidden to stay single if one can afford to get married. Moreover, in the hadith reported by Somrah, the Prophet (SAW) forbade asceticism. Thus in the first hadith the Prophet (SAW) forbids the person with means to stay single, and in the second hadith forbids people from not getting married whatsoever. However, these *ahadith* do not mean that it is *haram* for the man with wealth to remain single, or for whatever reason. Actually, the forbidding in these texts means it is disliked (*makrooh*) and not haram. Some of the companions did not get married and some who could afford to do so also remained single. Yet, the Prophet (SAW) stayed silent on their decision not to get married. This silence indicates that the forbidding in these texts is *makrooh*.

Mubah (allowed)

There are other instances in the Book of Allah where Allah commands an action that is not *fard*, nor *mandoub*, but allowed (*mubah*).

The Almighty says:

"And if you are free from the ritual consecration you can start hunting." [5:21]

Thus Allah orders us to go hunting after we are free from the ritual consecration of the *hajj* and *umrah*. And in a similar *ayah*:

'And if the prayer is, finished, go forth!'" [62: 10]

Allah orders the muslims to spread forth in the land after finishing the Friday prayer. But in both instances the command to go hunting and to spread forth does not mean the order is *fard* or *mandoub*. Other texts establish that the order is *mubah*, i.e., permitted to do or not. That the command is *mubah* is established by another connotations (*qara'in*). Allah commands hunting, once the pilgrim is free from the ritual state of consecration, as He had forbidden hunting while in the state of consecration. Likewise, Allah commanded the muslims to go forth after the Friday

prayer after He had forbidden them to do so during the prayer. Therefore from these connotations (*qara'in*) we can only expound that the commands indicate allowance (*ibaha*).

Al-Fajr Magazine, April 1990