

12. Sadd al-Dharai and Hukm Sharii

Sadd al-Dharai (Blocking the means): Dharai (means) is the plural of Dhariah which signify means. Sadd means 'to block'. In Usul, it means 'blocking the means to evil'. Sadd al-Dharai is often used when a lawful means is expected to produce an unlawful result.

The concept of Sadd al-Dharai is founded on the idea of prevention of evil before it materializes. There are examples of Sadd al-Dharai in the Quran (for instance, 6:108 and 2:104). The 'means' must conform to the 'ends' (objectives of Shariah) and 'ends' must prevail over the 'means'. If the 'means' violate the purpose of Shariah, these must be blocked. The purpose (Maqasid) of Shariah are identifiable from the texts.

A general principle has been adopted by jurists that 'preventing harm takes priority over securing a benefit'. As such means, if they lead to evil, these must be rejected. Authority for Sadd al-Dharai is also found in Sunnah. Prophet (SM) forbade a creditor to take a gift from debtor (as it could lead to taking of interest). He (SM) also forbade killing of hypocrites (as it could lead to dissention within community, also lead to wrongful killing on suspicion).

Despite the aforesaid, the Ulama of Usul are not in agreement over Sadd al-Dharai. Some accept it, some do not accept it. However, Shatibi is of the opinion that most Ulama have accepted it in principle, they differ only in application. Abu Zahra is also of the same opinion. (see textbook).

Dharai have been divided into the following four types from the point of view of their probability of leading to evil ends :

- a. Means which definitely lead to evil. Such means are totally forbidden.
- b. Means which most likely to lead to evil and rarely leads to benefit. Examples of this are selling weapons during war time and selling grapes to a wine-maker. Most Ulama have invalidated such means.
- c. Means which frequently lead to evil, but there is no certainty or even dominant probability. Ulama differ widely on the illegality of such means (see text book).
- d. Means which rarely lead to evil. Examples are digging well in a place which is not likely to cause harm or speaking a word of truth to a tyrannical ruler. Ulama have ruled in favour of permissibility of these means.

Sadd al-Dharai should not be used too much, particularly in the 3rd category stated above. Such use would render the 'mubah' (lawful) and the 'mandub' (recommended) as unlawful, which can not be accepted. Ibnul Arabi and Abu Zahra are in favour of moderation in its use. People of extremist tendencies can use sadd al-Dharai to restrict human freedom granted by Allah and the Prophet (SM) which must not be allowed to happen.

Hukm Sharii (Value of Shariah Rules): Hukm Sharii is the communication from the lawgiver (Allah and the Prophet (SM) on the authority of Allah) concerning the conduct of Mukallaf (on whom law is applicable, that is, a sane and adult person) which may be in the form of a demand or an option or only as an enactment.

When the communication is made in the form of a demand or option, the Hukm is called *Al-Hukm al-taklifi* (defining law). If the communication is made in the form of an enactment only, it is called *Al-Hukm al-Wadi* (declaratory law) [see explanation below].

Al-Hukm al-taklifi (defining law) may be in the form of Fard, Wajib, Mandub, Mubah, Makruh and Haram. According to majority, Fard and wazib are synonymous. If there is binding demand from the lawgiver to do something, it is wazib. However, the Hanafi's consider the demand Fard when both text and the meaning are definitive (qati) and wazib when either the text or meaning is speculative (Zanni - because Zanni is liable to interpretation of meaning or investigation of authenticity). Difference between Fard and Wazib has important consequence. Denial of binding nature of a command established by definitive proof (Fard by Qati evidence) leads to unbelief. However, denial of Wazib (according to Hanafi's) or 2nd category of Fard (according to the majority) lead to transgression (Fisq). Wazib has (and Fard) been variously classified into the following:

- a. Wazib ayni (personal obligation of all *Mukallaf*) and Wazib Kafai (collective obligation, performance of some of the community would suffice).
- b. Wazib Muwaqqat (Wazib contingent on time-limit, such as, Salah and Siam) and Wazib Mutlaq (absolute wazib which is free from time-limit, such as, Hajj).
- c. Wazib Muhaddad (quantified Wazib, such as, Zakah and Salah) and Wazib Ghair Muhaddad (unquantified Wazib, such as, charity to poor, paying Mohr to wife).

A consequence of distinction between quantified wazib and unquantified wazib is that quantified wazib becomes a liability on the person who has not paid it in proper time.

Mandub (recommended) denotes a demand not binding on the *Mukallaf*. Compliance earns spiritual reward but no punishment is inflicted for failure. This is the difference between Wazib and Mandub. Examples of Mandub are creation of charitable endowment (Waqf), giving alms to the poor and attending to sick. Mandub is also called Sunnah, Nafl and Mustahab.

Sunnah (Mandub) has been classified into

- i. Emphatic sunnah (Sunnah al-Muakkadah) - Examples are adhan, attending congregational prayer) and
- ii. Supererogatory Sunnah (Sunnah Ghair al-Muakkadah) - Examples are Nafl prayers and non-obligatory charity.

Neglect of sunnah al-Muakkadah is blameworthy but not punishable. Neglect of Sunnah Gair al-Muakkadah is neither blameworthy nor punishable. Examples of Mandub in the Quran can be seen in verses 2:282, 24:3.

Haram (also known as *Mahzur*) is a binding demand of lawgiver to abandon something. The level of proof required to establish prohibition is the same as Fard (as explained by early Hanafi Ulama) and of Wazib (as explained by the majority Ulama of Usul).

The textual evidence for Haram may occur in various forms such as:

- a. It may start with "Hurrimat alaykum" (forbidden to you) [5:3]
- b. It may be conveyed in negative terms such as "la taqtulu" (do not kill), "la takulu" (do not eat or take) [5:90; 2:188].
- c. It may be in the form of a command to avoid (5:90, to avoid wine-drinking and gambling).
- d. It may be stated that it is not permissible (La yahilla lakum, 4:19)
- e. Prohibition may be proved by punishment provided for a conduct (Quran - verses on hadd penalties and also verses mentioning punishment of fire in the hereafter).

Prohibition has also been classified into:

- a) haram li-dhatih (which is forbidden for its own sake such as wine, gambling) and
- b) haram li-Ghayrih (which is forbidden for an external reason, such as, marrying a woman only to make her legal for another man) (tahlil).

Makruh is opposite of *Mandub*. It is preferable to omit it than to commit it. Committing *Makruh* is not liable to punishment or moral blame. This is the majority view. Hanafi's divide *Makruh* into:

- a. *Makruh Tanzihi* and
- b. *Makruh Tahrimi*.

According to Hanafis, the commitment of *Makruh Tahrimi* entails moral blame but not punishment. There are traditions (Hadith) in which the word *Kariha* or its derivative has occurred. These are the textual basis for *Makruh*.

Mubah (also termed *halal* and *Jaiʿ*) is a communication of the lawgiver which gives option to the *Mukallaf* (Quran 5:6; 2:235, 2:173). The Ulama of Usul include "Mubah" under *Hukm Shari* although including it under *al-Hukm al-Taklifi* is on the basis of probability as there is basically no liability.

Al-Hukm al-wadi (declaratory law) enacts something as a cause (*sabab*), a condition (*shart*) or a hindrance (*Mani*) to the defining law. An explicit example is the hadith which says, "there is no 'nikah' without two witnesses". Thus the presence of witnesses has been made a condition of a valid marriage. Another example is the hadith, "there shall be no bequest to an heir" which enacts a hindrance (*ma'ni*) to bequest (*wasiah*).

Declaratory law is divided into

- a. cause,
- b. condition,
- c. hindrance,
- d. *Azimah*, and
- e. *Rukhsah*.

Azimah is the law as the lawgiver had intended in the first place without any softening for any reason (example: all *Ibadah* in normal circumstances). A law is a *Rukhsah* when the law

embodies the exception to take care of difficulties (example is granting concession to traveller to break fast).

Rukhsah may occur

- a. in the form of permitting a prohibited thing on the ground of necessity,
- b. omitting a Wazib when conformity to wazib causes hardship (example is the provision for traveller to shorten salah or not to observe fast during Ramadan) and
- c. in the form of validating contracts which would normally be disallowed (for example, advance sale [salam] and order for the manufacture of goods [Istisnah], though the goods are non-existent).

There is another kind of Shariah values called,

1. Sahih (valid),
2. Fasid (irregular), and
3. Batil (void).

The classification is made on the basis of compliance with essential requirements (arkam) and conditions (shurut) of Ahkam. When all these are fulfilled, the act is valid or sahih. If these are not fulfilled, the act is void or Batil. The Ulama are in agreement that Ibadah can only be sahih or batil. In the matter of transactions also, the majority hold the same view. However, the Hanafis have validated an intermediate category in transactions called Fasid (irregular, not Batil) when there is some deficiency in the Shart (condition). If the deficiency is made up, it becomes Sahih. The pillars of Hukm Shari are -

- a. Hakim or lawgiver,
- b. Mahkum Fih or subject matter,
- c. Mahkum Alayh, i.e., on whom law is applied.

The source of all law in Islam is ultimately Allah (6:57; 5:45). Mahkum Fih denotes the acts, obligations of the Mukallaf which may be in the form of Wazib, Mandub or Mubah. Mahkum Alayh deals with the legal capacity of the individuals or bear the rights and obligations imposed by Shariah.

A person acquires active legal capacity when he attains a certain level of intellectual maturity and competence. Active legal capacity is only partial in case of a child (because of age) and in case of a person in death bed. Hukm Shari has also been classified into

- a. Haqq-al-Allah and
- b. Haqq-al-Ibad.

Haqq-al-Allah or the rights of Allah is so called not because Allah benefits from them but because these are beneficial for the community at large. In other words, these are public rights. Worship, Hadud, Uqubah (minor punishments), Kaffarah, Jihad, etc. are within rights of Allah.