

# *Usul al-Fiqh*

*by Shah Abdul Hannan*

## 6. Command, Prohibitions and Nask

**Command:** A command (*Amr*) is defined as a verbal demand to do something from a position of superiority to an inferior. Command (also prohibition) may occur in a variety of form.

Command is mostly in imperative mood. In some cases, use of a simple past tense in Arabic may also indicate command to do something (2:178). A Quranic injunction may occur in a form of moral condemnation (2:189, see also Kamali for explanation).

Quranic command may be conveyed as a promise of reward or punishment (see Kamali, see also 4:13-14). Important questions are: What is primary in command? Is it obligation or a recommendation or simple permissibility (as 'command' may mean all of these)? According to the majority, command implies obligation unless there are clues to suggest otherwise. Some have held that *Amr* (i.e., command) is in the nature of *Mushtarak* or which impart all (i.e., obligation, recommendation and permission). Some have held it implies only obligation or recommendation (Nadb). Some others have held that *Amr* means permission to do something. Clearly, the majority opinion is more rational and justified.

Command (*Amr*) may sometimes mean permissibility. For instance, when the Quran says, "Kulu Washrabu" (eat and drink - ref. 7:31), the context suggests that it is mere permissibility. Similar examples can be seen in verse 5:2 (*wa idba balaltum Fastadi*) and 62:10 (*Fantashiru fil Ard*), (see also Kamali.) A command may convey a recommendation in some cases (see Kamali, also 2:282). A command in a few cases may indicate threat, i.e., advise to desist from doing a particular thing (ref. 24:33 and 17:64 - also textbook of the course). A command may imply supplication or prayer also (Ref. 2:286). However, command (*Amr*) mostly means obligation (*Farz* or *Wazib*, depending on whether the text and meaning both are *Qati* or not).

Majority of Ulama held that a command following a prohibition means permissibility, not obligation (Ref. 5:2 and 62:10). According to majority, a single instance of compliance of the command is an obligation, in the absence of indications for repeated compliance. When a command is issued in conditional terms, then it must be complied whenever it (condition) occurs (Ref. 5:7). When a command is dependent on a cause or attribute, it must be fulfilled whenever the cause is present (Ref. 17:18).

As regard immediate or delayed execution of an *Amr*, it depends on the text and its indications. If the command does not itself specifies time limit (such as, the times of prayers), it may be delayed. As regards whether the command implies the prohibition (*Nahy*) of the opposite, the majority thinks so.

**Prohibitions:** Prohibition (Nahy) is the opposite of command. It is a demand to avoid doing of something. Prohibition may occur in the form of a statement (Ref. 2:221) or in the form of an order not to do something (62:9; 22:30). Nahy may convey *Tabrim* (total prohibition) or guidance (*irshad*) or reprimand (*tadib*). Nahy which implies reprehension may be seen in Quran 5:87. Nahy which conveys moral guidance may be seen in Quran 5:104. Majority hold that Nahy primarily implies Tahrim, if there is no other indication to think otherwise.

If the act (other than Ibadat) is not prohibited in itself but becomes prohibited because of an extraneous reason, it is *Batil* (void) according to Shaffi's, and *Fasid* according to Hanafii's (please read carefully the textbook on this case). *Batil* means, it can not be corrected (there are many instances where marriage becomes *Fasad* according to some scholars and *Batil* according to other scholars - so is the case of many business transactions. Read a book on marriage or on business in Islamic Law). The position is different about Ibadat (devotional matters). The *Fasid* here is equivalent to *Batil*. In other words, there is only *Batil*, not *Fasid* in this area.

Prohibition requires immediate and repeated compliance, whenever the prohibition is applicable. If the prohibition is conditional, it will be applicable where the condition is present (Ref. 60:10). When a prohibition succeeds a command, it conveys *Tabrim* (illegality).

Explicit (*Sarih*) injunctions (whether Amr or Nahy) require total compliance. However, the spirit of the Law should also be kept in view, not only letters (as for instance, in "Fazah ila zikrillah" in Quran 62:9). Implicit injunctions, unless made explicit elsewhere, can be understood by scholars and they may differ therein. The means which lead to observance of command or prohibition are covered by the same ruling which applies to commands and prohibitions. Only a small portion of Nasus (texts) gives precise meaning. The larger portion of Nasus have to be interpreted by Mujtahid or scholars in the light of the general principles and objectives of Shariah.

**Naskh (Abrogation):** *Naskh* iterally means obliteration. Naskh has been defined as the suspension or replacement of one Shariah ruling by another. Naskh operates only in law, not in beliefs. Naskh operates only when,

- i. two evidences are of equal strength,
- ii. these are present in 2 separate texts,
- iii. there is genuine conflict which can not be reconciled, and
- iv. the two texts are of two timeframe (one is later to the other).

There are scholars who do not agree that there is abrogation in the Quran (please see in Kamali's book and argument against Naskh in the Quran). They say that in 2:106 and 16:106, reference of "Ayah" is not to abrogation within the Quran but abrogation of earlier scriptures by the Quran. They also say that the 'so-called' conflict in the Quran can all be reconciled. Muhammad Asad has also mentioned in his Tafsir that there is no Naskh in the Quran. Abdul Hamid Abu Suleman feels that it was wrong on the part of earlier Ulama to turn Naskh into a doctrine of permanent validity instead of understanding as the circumstance of history (Ref. 'Islamic Theory of International Relations', by Abdul Hamid

Abu Sulayman, a IIIT's publication. Please also read the discussion in the book by Kamali on Naskh). Abu Sulayman suggests that Naskh's application should be limited to clear cases only, such as, change of Qiblah.

According to the majority, there is Naskh in the Quran and the Sunnah. According to majority, Ijma can not abrogate a ruling of the Quran and the Sunnah. Qiyas can not repeal a text of the Quran or the Sunnah. Abrogation may be explicit (sarih) or implicit (dimni) Please read Kamali for examples. According to Imam Shafii, there are two types of Naskh -

- a. Naskh of Quran by Quran and
- b. Naskh of Sunnah by Sunnah.

According to majority there are 4 types of Naskh:

- i. Quran by Quran,
- ii. Quran by Sunnah,
- iii. Sunnah by Quran,
- iv. Sunnah by Sunnah. (Please see examples in Kamali).

There is also another classification:

- i. Naskh al Hukm,
- ii. Naskh al Qiraah, and
- iii. Naskh al Hukm Wal Tilwah.

*Naskh al Hukm* means that ruling has been abrogated but the text remains. *Naskh al Qiraah* means that the text has been abolished but the ruling remains. In *Naskh al Hukm wal Tilwah*, both the text and rulings are treated as abrogated. Of the above three, Naskh al Hukm has some basis but the other two have very weak basis. Sayyid Abul Ala Maududi has explained in his "Rasail wa Masail", why Naskh wal Qiraah is not acceptable?

There is difference between Naskh (abrogation) and Takhsis (specification or qualification of a general text). There is no real conflict in Takhsis. Another issue is whether addition (Tazid) amounts to abrogation. The majority answer is negative, which is correct.