

# **Al-Waadih Fee Usool ul- Fiqh**

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Al-Waadih Fee Usool ul-Fiqh

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

أَفَلَا يَتَدَبَّرُونَ الْقُرْآنَ وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ  
اِخْتِلَافًا كَثِيرًا (82) وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الْأَمْنِ أَوْ الْخَوْفِ  
أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ  
الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ وَلَوْلَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ لَاتَّبَعْتُمْ  
الشَّيْطَانَ إِلَّا قَلِيلًا

*Then do they not reflect upon the Qur'an? If it had been from [any] other than Allah, they would have found within it much contradiction. And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it. And if not for the favour of Allah upon you and His mercy, you would have followed Shaytaan, except for a few (An-Nisaa' 82-83).*

## **Foreword:**

To the Shabab....

To the Shabab who have believed in Islaam as an intellectual Aqeedah from which a system emanates... And who have sought to be enlightened by its guidance and have made a firm determination to bring it about within the reality of life... To the generation of awakening... The generation of revival... The generation of Al-Jihaad...

This is for you to assist you in making the Usool firmly and deeply rooted, the thoughts deeper and also as a motivation towards Ijtihad....

## **The Introduction:**

Al-Hamdu Lillah Who created man and taught him speech. And prayers and peace be upon Muhammad upon whom the Qur'aan was revealed as a guidance and mercy for mankind.

Verily Allah Ta'Aalaa sent Muhammad (saw) with Islaam to mankind in its entirety. So he began with his own Arab people and presented to them his miracle that guided to his Prophethood. This is the Qur'aan Al-Kareem which came in a clear Arabic tongue challenging them to bring a Soorah that is comparable to it and so they failed, were incapable and as such resorted to accusing him of magic and insanity.

The Messenger (saw) continued and persevered in his Da'wah patiently bearing the harm that afflicted him and his companions whilst not being deflected by their obstinacy and arrogance. This was until Allah Ta'Aalaa prepared and brought for him those who would give him support in Al-Madinah Al-Munawwarah within which he then established his State. The Wahi descended upon him continuously, explaining the Ahkaam (rulings) that regulate the relationship of the people with their Rabb, with themselves and with others upon this earth until the Day of Judgement.

After the Messenger (saw) passed away and joined the highest abode and company and after the Wahi came to an end and the Kitaab of Allah and his Sunnah were left behind for the people, after that there came the Khulafaa'. The Fuqahaa of the Sahaabah then went forth to deduce the practical Ahkaam Ash-Shar'iyah from the Kitaab and the Sunnah for all new realities that occurred or came into being.

The Ijtihaad and the verdicts of the Sahaabah (rah) were the closest to the truth when compared to the Ijtihaad of others because they held the knowledge of the Arabic language and the indications and

implications of its wordings and expressions. They were witnesses to the circumstances of the revelation and its causes (Asbaab An-Nuzool) as they lived alongside and at the same time as the Nabi (saw) and they accompanied him and took part in his actions and battles.

The Taabi'oon, who followed them, proceeded upon their path making Ijtihaad and deducing Ahkaam. They in turn were followed by the Taabi' At-Taabi'een who recorded the Sunnah of the Messenger of Allah (saw) and also recorded the verdicts of the Sahaabah and their Ijtihaad alongside that. Then they recorded and wrote down books in Fiqh although they did not at this time record the Qawaa'id (principles) upon the basis of which Ijtihaad and Istinbaat takes place.

Then by the end of the second century Hijriy the Islamic State had expanded greatly and the Arabs had mixed with other peoples and had become one Ummah melted by the melting pot of Islaam. In this situation the new realities were many and the issues being faced were various and numerous. As a result, debates and discussions arose related to deducing the Ahkaam and particularly between the Ashaab ul-Hadeeth and the Ashaab ur-Ra'y. As such the Muslims were in need of disciplinary principles and measures to make clear the most correct Ijtihaad. The Fuqahaa then began to lay down Qawaa'id (principles), drawing out methodologies and establishing measures to judge the correctness and validity of the Ijtihaad. However, this was without, at this stage, putting down in writing a new complete science in respect to this matter.

At the end of that century Allah Ta'Aalaa brought a great Quraishi 'Aalim, Muhammad Idrees Ash-Shaafi'iy, to address this matter and lay down clear features and firm principles (Qawaa'id) for the 'Ilm (science) of Usool ul-Fiqh. Ash-Shaafi'iy was befitting of this because he was an 'Aalim (scholar) in the Arabic tongue, in Hadeeth and of

Fiqh in his time period. As such his 'Risaalah' was written in the 'Ilm of Usool ul-Fiqh in an ordered, comprehensive and complete manner. Then 'Ulamaa who followed him proceeded upon his path and methodology clarifying, explaining and critiquing however they did not go outside of the scope of knowledge that Ash-Shaafi'iy had put down for this 'Ilm (science).

Then after Ash-Shaafi'iy the 'Ilm of Usool ul-Fiqh became an area of knowledge of great significance which the 'Ulamaa and Fuqahaa competed in. It became known that anyone who perfects and masters the 'Ilm of Usool ul-Fiqh would find other sciences and areas of knowledge ('Uloom) easy. That is because it is an 'Aqly (intellectual) and Shar'iy science which depends upon a precise understanding of the indications of the Arabic worded expressions, the composition of the language and its styles, the manner of establishing principles and building upon them, just as it depends upon the discussion (and study) of the Adillah, closely examining the indications to acquire knowledge of the angles of similarity and difference between them and upon the Tahqeeq ul Manaasat (understanding of the reality) which is followed by applying the correct and fitting Hukm upon it.

If the 'Aalim (Scholar) was to perfect or master these matters, then other sciences like mathematics, astrology and chemistry amongst other subjects would become easier for him to acquire. This is what happened with Ibn Seenaa, Al-Khawarazmiy and Ibn ul-Haitham amongst others. They began with Usool ul-Fiqh and then knocked upon the doors of other sciences and areas of knowledge. So they delved in to them, excelled in them and were innovative within them.

After having studied Usool ul-Fiqh for more than twenty years as a student and teacher I became passionate about this area of knowledge. I pursued its books and understood some of its principles and how to utilise them to deduce some of the Shar'iyah rulings.

After that, I sought assistance with Allah and decided to place down this humble brick in the building of this lofty fortress that was constructed by the Salaf As-Saalih (righteous predecessors). I choose for this work of mine the name: ‘Al-Waadih Fee Usool ul-Fiqh’ (The Clear in the Fundamentals of Fiqh) and in my preparation and writing I relied upon books that came before me; some of which were classical whilst others were more recent. I transmitted some of the statements as they were and I added to and explained others. I also incorporated some of what I had gained and acquired from weighing between those former opinions and from studying the books of Fiqh, Tafseer, Hadeeth and language. This was in an attempt to make this book comprehensive and clear in its style and presentation with extra examples to assist and facilitate understanding.

I have made it two parts:

1) The first part which includes:

- The definition of Usool ul-Fiqh, its origins, its subject area and its paths.
- The Adillah Al-Ijmaaliyah (the comprehensive evidences) that have been agreed upon in respect to their Hujjiyah (validity as a proof and source of evidence). These are: The Kitaab, the Sunnah, Qiyaas and Ijmaa’ As-Sahaabah.
- The Adillah Al-Ijmaaliyah that have been differed upon in respect to their Hujjiyah (validity) and these are: Al-Istihsaan, Al-Masaalih Al-Mursalah, Al-‘Urf, Al-Istishaab, Madh’hab As-Sahaabiy and Shar’i Min Qablinaa.

I have presented the evidences for the Hujjiyah (validity) of every Daleel and have mentioned the opinions of the ‘Ulamaa in respect to them. I then presented my opinion in respect to the Hujjiyah of every Daleel that has been differed upon and made clear the stronger



opinion in regards to that Daleel from the viewpoint that I have adopted. That viewpoint is that the Hujjiyah (validity) of the Daleel Al-Ijmaaliy must be Qat'iyah (definite) in respect to this Daleel having been brought by the Wahi (divinely inspired revelation).

2) The second part which includes:

- The meaning of the Hukm and the divisions or categories (Aqsaam) of the Hukm.
- Studies of the language that explain the Dalaalah (indication/implication) of the Alfaazh (worded expressions) in respect to their meanings and included in these are the Alfaazh (wordings) of the Kitaab and the Sunnah.
- The manner of Istidlaal (deduction) and this includes: Al-Ijtihad, At-Taqleed, At-Ta'aadul and At-Taraajeeh (plural of Tarjeeh).

I have expended all my effort to make this book 'Al-Waadiah Fee Usool ul-Fiqh' clear for every student, seeker of knowledge and researcher so that he or she will love this 'Ilm (discipline of knowledge) just as I have loved it.

I ask Allah to benefit the Muslims by it and me in the hereafter. Verily he is Samee'un Mujeeb (The One who hears and responds).

The author (Muhammad Hussein Abdullah).

# **Al-Waadih Fee Usool ul-Fiqh**

## **Part One**

## **Chapter One:**

### **The definition of the ‘Ilm of Usool ul-Fiqh, its subject area, its objective and its beginning.**

- 1) The meaning of Usool and the meaning of Fiqh and the meaning of the expression Usool ul-Fiqh when the two words are combined (Murakkab). Its subject area and its objective.
- 2) The difference between Usool ul-Fiqh and Fiqh and between it and Al-Qawaa'id Al-Fiqhiyah (Fiqhi principles).
- 3) The history of the ‘Ilm of Usool ul-Fiqh, the first to record it and put it down in writing and Ash-Shaafi'iy. The ‘Ilm of Usool ul-Fiqh after Ash-Shaafi'iy and Usool ul-Fiqh after the Madhaahib Al-Fiqhiyah (Schools of Fiqh).
- 4) The Tareeqah (method) of the Mutakallimeen and the Tareeqah of the Fuqahaa and the most significant or important writings of each of them.

## Al-Fiqh:

### The meaning of Al-Fiqh:

Al-Fiqh linguistically means: ‘Al-Fahm’ (understanding). Allah Ta’Aalaa said upon the tongue of Mousaa (as):

وَاحْلُلْ عُقْدَةً مِّن لِّسَانِي يَفْقَهُوا قَوْلِي

*And untie the knot from my tongue (so that) they understand (Fiqh) my speech (TaHa 28).*

Which means that they ‘understand’ what I say to them.

### The meaning of Al-Fiqh in accordance to the Istilaah (terminological definition) of the ‘Ulamaa of Usool ul-Fiqh is:

الْعِلْمُ بِالْأَحْكَامِ الشَّرْعِيَّةِ الْعَمَلِيَّةِ الْمُسْتَفَادَةِ مِنْ أُدْلَتِهَا التَّفْصِيلِيَّةِ

‘It is the ‘Ilm (knowledge) of the practical Ahkaam Ash-Shar’iyah taken from its detailed evidences’.

### Explanation of the definition:

#### Al-Ahkaam Ash-Shar’iyah:

What is intended by this is: Al-Waajib, Al-Mandoob, Al-Mubaah, Al-Makrooh and Al-Haraam.

What is intended is also: As-Sabab, Ash-Shart, Al-Maani’, Al-‘Azeemah, Ar-Rukhsah and As-Sihhah, Al-Fasaad and Al-Butlaan.

#### Al-‘Amaliyyah (practical):

That which has a relationship to the actions of the ‘Ibaad (slaves) like the Salaah, the Jihaad, the trade and appointing a Khalifah for the Muslims.

### **Al-Mustafaadah:**

That which is taken without Istinbaat (deduction) and that which is taken by way of Istinbaat.

### **Al-Adillah At-Tafseeliyah (the detailed evidences):**

These are the Adillah Al-Juz’iyah (partial evidences) like the Aayah or the Hadeeth or a part from them both like: “Aqeemu-s-Salaah” (establish the prayer) and like: “Allah has made Bai’ (trade) Halaal”.

### **The origins of Fiqh and how it arose:**

Fiqh arose with the descent of the Wahi (divinely revealed inspiration) as the Wahi (through Jibreel (as)) used to descend upon the Messenger of Allah Muhammad (saw) conveying to him the thoughts and Ahkaam of Islaam in the form of the Qur’aan or the Hadeeth. Then the Messenger (saw) would convey that to the people around him and the Muslims would adhere and commit themselves to what this Wahi came with, in respect to Aqaa’id (beliefs) and Ahkaam (rulings). This is because the Qur’aan Al-Kareem and the Prophetic Hadeeth were revealed in the language that the Arabs had excelled in and understood. In particular they had a clear understanding of the meanings and thoughts that the Alfaazh (worded expression) of these two guided to, indicated and expressed.

The Alfaazh (wordings) of some of these Aayaat and Ahaadeeth indicate one single meaning and are understood without difficulty like the Aayah:

وَلَا تَقْرُبُوا الزَّيْنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

*And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way (Al-Israa' 32).*

So this Aayah is a Daleel Juz'iy (partial evidence) that guides to the Hukm of the Tahreem (prohibition) of Zinaa whilst the Hukm is understood from the Alfaazh (wordings) of the Aayah without exerting mental effort.

There are also Aayaat and Ahaadeeth in which their Alfaazh (worded expressions) can hold more than one meaning and the Sahaabah (rah) would make Ijtihad in respect to understanding them. Consequently, one of them would understand a meaning different from the meaning that another had understood and each would work or act in accordance to what they had understood, that is whilst the Messenger of Allah (saw) approved of them doing this. It was related that when the Nabi (saw) returned from the Ghazwah (battle) of Al-Ahzaab he said to the Muslims: **“None of you shall pray ‘Asr until he is in Bani Quraizhah”**. And so the time for ‘Asr came whilst they were on route and so some of them said: “We will not pray ‘Asr until we reach Bani Quraizhah as the Messenger of Allah (saw) said” whilst others said: “Rather we should pray ‘Asr now because the Messenger (saw) was only intending that we rush”. Then when this reached the Messenger (saw) he approved of both groups, each of them according to their understanding.

Consequently, Fiqh refers and relates to understanding the Aayah and the Hadeeth and taking the Hukm Ash-Shar'iy from them.

The Muslims continued upon that method and so every time they came across a new incident they understood its Hukm Ash-Shar'iy

from the Aayaat and the Ahaadeeth and then committed to that understanding. Or some of them would understand its Hukm whilst others would take and adopt their opinion. This took place without recording the Fiqh upon paper and this continued until approximately the beginning of the second Hijri century.

## **Usool ul-Fiqh:**

Usool ul-Fiqh is an 'Ism Murakkab' (A name that is constructed and composed of two parts). It is composed of the 'Mudaaf' (added) and the 'Mudaaf Ilaihi' (added to) (i.e. one word attached and added to another to give a particular meaning when combined). We have already defined the 'Fiqh' part and now we will define the 'Usool' part so as to arrive at the definition of 'Usool-ul-Fiqh'.

## **Usool linguistically:**

It is the plural of 'Asl' and it is that which is built upon like building a wall upon the foundation and like building the Hukm upon the Daleel. So the Tahreem (prohibition) of 'Al-Maitah' (carrion) is the Hukm Ash-Shar'iy built upon the Daleel Ash-Shar'iy which is the Qawl of Allah Ta'Aalaa:

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ

*Prohibited to you are dead animals (carrion) (Al-Maa'idah 3).*

So the Usool is 'Usus' (foundations) or Qawaa'id (principles) upon which something else is built.

## **The definition of Usool ul-Fiqh:**

It is the Adillah Al-Ijmaaliyah and the Qawaa'id (principles) through which knowledge ('Ilm) of the practical Ahkaam Ash-Shar'iyah taken from the Adillah At-Tafseeliyah (detailed evidences) is arrived at.

As for the Adillah Al-Ijmaaliyah then these are: The Qur'aan, the Sunnah, Qiyaas, Ijmaa' and other than these.

As for the Qawaa'id (principles) then they are: Either Qawaa'id Kulliyah Shar'iyah (Comprehensive Shar'iyah principles) like the Qaa'idah (principle):

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

'That which the Waajib is not completed except with it is (in itself) Waajib'

Or Qawaa'id Lughawiyah (linguistic principles) like the Qaa'idah: 'The Lafzh (wording) is not taken away from its Haqeeqah (literal meaning) to the Majaaz (metaphorical meaning) unless there is a Qareenah (indicative linkage/ connotation).'

## **The Subject Area of Usool ul-Fiqh:**

Usool ul-Fiqh deals with the following four matters:

1) Al-Adillah Al-Ijmaaliyah:

Al-Kitaab, As-Sunnah, Al-Qiyaas, Al-Ijmaa' and others like: Al-Istihsaan, Al-Masaalih Al-Mursalah, Al-'Urf, Shar'u Min Qablinea, Madh'hab As-Sahaabiy and Istishaab.



Usool ul-Fiqh looks at these Adillah (evidences) from the perspective of affirming their validity to be used as a Hujjah (proof/evidence) and their evidential grade or level within the process of deduction.

2) Al-Hukm Ash-Shar'iy and what is related to it.

This comprises of: The meaning of the Hukm, Aqsaam Al-Hukm (types/categories), Maqaasid Al-Ahkaam Ash-Shar'iyah, Arkaan (pillars) of the Hukm and these are: Al-Haakim (The judge), Al-Mahkoom 'Alaihi (Judged upon) and Al-Mahkoom Bihi (Judged with).

3) Dalaalat Al-Alfaazh (the implications, import of the worded expressions).

This comprises of:

- Dalaalat Al-Alfaazh (indications of worded expressions) of the Kitaab and the Sunnah in terms of their level of clarity and in terms of that which is not apparent (obvious or completely clear).

- Dalalat ul-Alfaazh in respect to the meanings like the Dalaalat ul-Tbaarah, Dalaalat ul-Ishaarah and Al Mafhoom Al-Mukhaalafah.

- Dalaalat Al-Alfaazh from the perspective of their comprehensiveness like the 'Aamm (general) and the Khaass (specific) and the Mutlaq (unrestricted) and the Muqayyad (restricted).

- The Seeghah (form) indicative of the Takleef (legal responsibility): This is like the Seeghat Al-Amr (command form) and what it indicates and the Seeghat An-Nahi (forbidding form) and what it indicates.

4) Al-Ijtihad and At-Taqlid:

- Al-Ijtihaad: Its meaning, conditions, its categories (Aqsaam) and its Ahkaam.
- At-Taqlaad: Its meaning, its Hukm and its types.
- At-Ta'aadul and At-Taraajeeh: Their meanings and how to utilise them when dealing with the texts.

## The Objective of Usool ul-Fiqh:

Usool ul-Fiqh has two main objectives:

1) To verify that the Adillah Al-Ijmaaliyah are definitely (Qat'an) from the Wahi (divinely inspired revelation). This means that is essential for these Adillah (evidences) like the Qur'aan, Ijmaa' and others to be definitely proven to be from Allah. This is because Allah Ta'Aalaa says:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ

*And do not pursue that of which you have no knowledge (Al-Israa 36).*

And He Ta'Aalaa says:

إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

*Verily speculation does not avail anything against the truth (Younus 36).*

Therefore, the Asl (foundation) which is built upon must be definite in respect to proving that it is from Allah. This is because if it is not definite (Zhanniy) then the possibility of difference can occur in

respect to whether it is from Allah or not? And for the Masdar (source) to be considered as a Hujjah (valid proof) then it is necessary for the Daleel Al-Qat'iy (definite evidence) which is the 'Burhaan Al-Qaat'iy' (decisive proof) to establish its consideration as a Hujjah. This is so that the Muslim is convinced and assured that what he is undertaking in terms of actions are in line with the commands of Allah and what He Ta'Aalaa has forbidden.

2) The application of the Qawaa'id of Usool ul-Fiqh upon the detailed Shar'iyah evidences like the Aayaat, the Ahaadeeth and others is for the purpose of arriving at the practical Ahkaam Ash-Shar'iyah that bind the Muslims in their lives so that they adhere to them when undertaking actions. This objective is of the most noble of objectives and that is because Allah Ta'Aalaa created the human and revealed the Sharee'ah to him so that he abides by its Ahkaam in his life of the Dunyaa. He will then be held to account upon that on the Day of Judgement where it will either be Jannah (paradise) or the Naar (fire).

Allah Ta'Aalaa said:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

*And I did not create the Jinn and the human being except to worship Me (Adb-Dhaariyaat 56).*

And He Ta'Aalaa said:

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ ﴿٧﴾ وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

*So whoever does an atom's weight of good will see it and whoever does an atom's weight of bad (evil) shall see it (Aaz-Zalzalah 7-8).*

The following is a practical example in respect to the manner of how to apply the Qawaa'id (principles) of Usool ul-Fiqh upon the detailed Shar'iyah evidences, in order to deduce or extract a practical Shar'iy Hukm (ruling):

Allah Ta'Aalaa states:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ  
وَعَشْرًا

*And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days] (Al-Baqarah 234).*

And Allah Ta'Aalaa said:

وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

*And for those who are pregnant, their term is until they give birth (At-Talaaq 6).*

1) If we were to take the Qaa'idah (principle) from the Qawaa'id of Usool: 'The later Nass (text) abrogates the former Nass (text)' then the Aayah from Soorah At-Talaaq would be abrogating the Aayah from Soorah Al-Baqarah because it was revealed after it. The period of waiting ('Iddah) of the pregnant woman whose husband had died would be completed by her giving birth in accordance to the Qawl of Allah Ta'Aalaa:

وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

*And for those who are pregnant, their term is until they give birth (At-Talaaq 6).*

2) There are scholars of Usool who say that the Naskh (abrogation) requires another Daleel that indicates the abrogation of an Aayah by another, in addition to the issue of one being advanced and the other being delayed (i.e. in terms of the time of revelation). These scholars combined these two Daleels that appeared to be contradictory and said:

The one whose husband dies whilst she is pregnant could perceive a contradiction in respect to the length of time of her 'Iddah (waiting period) and particularly if she was to give birth after her husband's passing in less than four months and ten days. As such they presented the following solution:

It is possible to reconcile between the two evidences in the following way. The pregnant woman whose husband has passed away waits for the longer of the two time periods. If she gives birth before four months and ten days from the date of his death, then she waits until the four months and ten days is completed. And if that time comes to an end before she has given birth then she waits until she has given birth.

And this Tawfeeq (reconciliation) between the two evidences represents an application of the Qaa'idah (principle) in Usool ul-Fiqh that states: 'Working with the two evidences is better (or more appropriate) than neglecting one of them'.

## **The difference between Usool ul-Fiqh and Fiqh:**

1) Usool ul-Fiqh, as we have mentioned, represents the principles (Qawaa'id) that the Mujtahid follows in the Istinbaat (extraction) of the practical Shar'iyah rulings from their detailed evidences like the Qaa'idah (principle): 'Working with two evidences is better (more proper) than neglecting one of them'.

This is whilst Fiqh is the ‘Ilm (knowledge) of the practical Ahkaam Ash-Shar’iyah taken from its detailed evidences like: Khamr is Haraam, Al-Jihaad is Fard. Tahaarah is a Shart (condition) from the conditions of the validity of the Salaah and like Haid (menses) is a Maani’ (prevention) for the performance of the Salaah.

2) Usool ul-Fiqh includes studies in relation to the language and its principles because these principles are necessary for Ijtihaad. This is like: The studies about the Haqeeqah (literal) and Majaaz (metaphorical), the meanings of the Huroof Al-Jarr (prepositions), the Huroof Ash-Shart, and the general Alfaazh (expressions) amongst other matters.

This is whilst Fiqh is restricted to the explanation of the Hukm Ash-Shar’iy that is a requirement of the Mukallaf like: The Salaah is Fard, ‘Umrah is Sunnah (Mandoob) and Ribaa is Haraam.

3) Usool ul-Fiqh examines the Ijmaaliy Shar’iy Daleel like the Qur’aan, Sunnah, Qiyaas and Ijmaa’ in respect to establishing that it has come from Allah and then it examines what came within it in terms of principles and forms like: The Khusoos and the ‘Umoom (specific and general), the Mutlaq and the Muqayyad (unrestricted and restricted), Al-Mujmal (general/un-detailed) and Al-Bayaan (explanation) and An-Naskh (abrogation).

This is whilst Fiqh examines the Daleel Al-Juz’iy (partial evidence) that guides to or indicates a specific Hukm for a matter or an action for the purpose of the Mukallaf abiding by it. So for example it will examine the Aayah:

وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً كَمَا يُقَاتِلُونَكُمْ كَافَّةً

*And fight against the disbelievers collectively as they fight against you collectively (At-Taubah 36).*

And the Aayah:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has made trade Halaal and made Ribaa (usury) Haraam (Al-Baqarah 275).*

And the Hadeeth:

**‘If two Khaleefahs are given the Bai’ah then kill the latter of the two’ (Muslim).**

And the Ijmaa As-Sahaabah in respect to delaying the burial of the Messenger of Allah (saw) until after they had pledged allegiance to a Khalifah from amongst them.

That is done in order for the Hukm As-Shar’iy to be taken from each Daleel (evidence).

4) The aim of Usool ul-Fiqh is the application of its principles upon the detailed evidences to arrive to the manner of how the practical Ahkaam Ash-Shar’iyah are extracted.

This is whilst the aim of Fiqh is to explain and apply the Ahkaam Ash-Shar’iyah upon the actions of the people and their speech and it is to make every Mukallaf aware of the commands of Allah Ta’Aalaa and what He has forbidden, so that the Mukallaf can adhere to it in his actions.

## The difference between Usool ul-Fiqh and Al-Qawaa'id Al-Fiqhiyyah

1) The 'Ilm of Usool ul-Fiqh represents the methodology (Minhaaj) that the Mujtahid abides by for the purpose of deducing or extracting the Ahkaam Shar'iyah and so that he does not fall into error in the deduction. His principles therefore represent controls for the Shar'iyah evidences sources in terms of establishing and affirming that they are from Allah Ta'Aalaa and in terms of the manner of how to deduce Ahkaam by them.

As for the Qawaa'id Al-Fiqhiyyah (Fiqhi principles) then they are principles that bring together partial Ahkaam which share a single attribute or description in common with each other. They are therefore from the area of Fiqh and not from Usool ul-Fiqh.

2) The Qaa'idah (principle) in Usool ul-Fiqh is 'Aammah (general) and it is possible to be applied upon numerous types of evidences and Ahkaam equally whether these Adillah are the Qur'aan, the Sunnah and Ijmaa' or if the Ahkaam related to the 'Ibaadaat, Mu'aamalaat or 'Uqoobaat.

So in respect to the Qaa'idah in Usoolu ul-Fiqh which states:

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

'That which the Waajib is not completed except with it is (in itself)  
Waajib'

It is necessary to apply it upon the Aayah:

ثُمَّ أَتَمُّوا الصِّيَامَ إِلَى اللَّيْلِ



*Then complete the fast until the night (Al-Baqarah 187).*

The principle applied here indicates that it is Waajib for a part of the night to be entered into with the fast so that the fast will be valid. That is because the obligation of the fast and its validity requires that the whole day be fasted whilst it is not possible for us to be absolutely certain that the day has ended without entering into a part of the night and even if it is only very briefly. Therefore, fasting that part (of the night) would be Waajib because the Waajib, which is to fast the day until the sunset, cannot be fulfilled or completed except by it. This is in accordance to the principle: *‘That which the Waajib is not completed except with it is (in itself) Waajib’.*

It (the principle) also applies to indicate the obligation of establishing the Islamic State as follows: Establishing the Hudood like cutting the hand of the thief and stoning the adulterer amongst other rulings are Waajib (obligatory) upon the Muslims. Establishing these obligatory Hudood cannot be implemented except in the existence of a State that applies the Shar’a of Allah. Therefore, bringing that State into existence is an obligation upon the Muslims based upon the same Usooli principle:

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

‘That which the Waajib is not completed except with it is (in itself) Waajib’

Consequently, as can be seen by the two examples, the very same Qaa’idah (principle) was used to derive a Hukm in the ‘Tbaadaat and another Hukm in relation to the ruling system.

The Fiqhi principle (Al-Qaa’idah Al-Fiqhiyyah) does not cover except one kind from the Ahkaam that are similar to each other. This is like the ‘Uqoobaat (penal code/punishments) in respect to the Qaa’idah:

*'Avert the Hudood by doubts'*. This is because it is specific to the Hudood and does not extend to other Ahkaam beyond them.

Another example is the principle: *'The command of the Imaam resolves the disagreement/ dispute'* and this is specifically related to what the Khalifah adopts in terms of Ahkaam which have been differed upon. So what the Khalifah adopts is binding upon the Muslims to follow. This principle does not include within it the Wulaah (governors) or the Qudaah (judges) and it also does not include within it or cover that which the Khalifah has not made an adoption upon.

Another Fiqhi principle is: *'The original position is innocence'* and there is the principle: *'The proof (Bayyinah) is upon the claimant/ accuser (to establish/ produce) and the Yameen (oath) is upon the who denies (the accusation/ charge)'*. These two Fiqhi principles are therefore specific to judging between to disputants whilst neither have any relationship to the 'Ibaadaat or the Akhlaaq (for example).

## **History of the 'Ilm of Usool ul-Fiqh:**

1) Allah Ta'Aalaa sent the Messenger Muhammad (saw) with Islaam to mankind in its entirety. So he began with the Arabs whilst the Qur'aan Al-Kareem had been revealed in their language. Its revelation came in the age when the Arabic language was at its ripest and indeed in the golden age of this language. This was at a time when the Arab tribes had established special arts markets so that they could present their poetry and compete with one another in respect to their skills and prowess.

The Arabs understood the Qur'aan and the Hadeeth because the language which the Aayaat and Ahaadeeth came in represented a natural talent, trait and inborn disposition which they were endowed with. They could fully take in the meanings of its worded expressions

and understood its styles. Consequently, each of them would take the Hukm Ash-Shar'iy that he required without difficulty.

The situation of the Muslims then continued like that in the era of the Sahaabah and the Taabi'een until the beginning of the second Hijri century.

2) After that, the Islamic State had expanded and many other nations had entered into Islaam like the Romans, the Persians, Hindus and Berbers. The Arabs then mixed with them in terms of where they resided and in respect to their speech. As a result, the Arabic tongue weakened due to the insertion of expressions, colloquialisms and styles of a non-Arabic origin. This led to the weakening of the understanding of the Shar'iyah texts amongst the majority of the Arabs. As a result, they became in need of linguistic controls and principles in order to understand the Aayaat and the Ahaadeeth as the first Muslims had understood them. The scholars responded and made efforts to put down and provide a Minhaaj (methodology) to explain the manner of how to deduce the practical Ahkaam Ash-Shar'iyah through the Kitaab and the Sunnah.

3) From the host of these linguistic and Shar'iy principles and controls (Dawaabit) the 'Ilm of Usool ul-Fiqh was formed and the beginning of this 'Ilm was in the second Hijri century.

4) The first to gather together some of the principles of this 'Ilm within a book was Al-Imaam Abu Yusuf (rh) the companion of Al-Imaan Abu Haneefah (rh) as was mentioned by Ibn un-Nadeem in his book 'Al-Fihrist'. However, this book written by Abu Yousuf did not reach us.

The Shee'ah have said that the first to put the subject of Usool ul-Fiqh into writing was Al-Imaam Ja'far Muhammad Al-Baaqir however this statement has not been supported by evidence.

The ‘Ulamaa before Ash-Shaafi’iy used to speak about the issues of Usool ul-Fiqh, make deductions and objections however they did not have a complete methodology that was put down on paper that could be referred back to.

5) The first book that reached us in the subject area of Usool ul-Fiqh was ‘Ar-Risaalah’ of Al-Imaam Muhammad Bin Idrees Ash-Shaafi’iy (rh) who passed away in the year 204 after Hijrah. He discussed the Adillah Al-Ijmaaliyyah in an ordered and organised manner; the Kitaab, the Sunnah, Qiyaas and Ijmaa’. And he also dealt with the linguistic principles and how to use them to deduce the Ahkaam Ash-Shar’iyah

Therefore, the ‘Ilm of Usool ul-Fiqh that Ash-Shaafi’iy provided represented a disciplined yardstick to know the correct opinions from the incorrect ones and a precise measure to know what is from the Shar’a and what is not from the Shar’a.

Ash-Shaafi’iy restricted himself to this Minhaaj (methodology) in his Istinbaat (deduction) of the Ahkaam Ash-Shar’iyah and based his Madh’hab, known as the Shaafi’iy Madh’hab in Fiqh, upon it which was recorded in his book ‘Al-Umm’.

In his ‘Muqaddamah’ when discussing the ‘Ilm of Usool ul-Fiqh Ibn Khaldoon said: “The first who wrote in it was Ash-Shaafi’iy, may Allah be pleased with him. He dictated in it (the subject area) in his famous ‘Risaalah’ and in this he spoke about the commands and forbiddances, the Bayaan, the Khabar, An-Naskh (abrogation) and the Hukm of the ‘Illah that has come in the text in respect to Qiyaas...” (Al-Muqaddamah p455).

In his ‘Risaalah’ Ash-Shaafi’iy ordered (graded) the levels of the Adillah Al-Ijmaaliyyah and placed them in their positions: “We judge

(or pass verdict) in accordance to the Kitaab and the Sunnah upon which a consensus has been formed, in which there is no difference and its position is essential, because it is not Halaal to resort to Qiyaas whilst the Khabar (i.e. Sunnah) is present” (Historical study of Fiqh and its Usool – Dr. Mustafa Sa’eed p181 Vol 1).

## **The ‘Ilm of Usool ul-Fiqh after Ash-Shaafi’iy**

Ash-Shaafi’iy founded the ‘Ilm of Usool ul-Fiqh and this was received (well) by the ‘Ulamaa and Fuqahaa, who followed him, through examination and study. So they added to it and revised a number of issues within it until it became an ‘Ilm that was coherent, clear and distinguished in its features, due to the firm foundation that Al-Imaam Ash-Shaafi’iy laid down solidly for this noble knowledge.

Ash-Shaafi’iy did not reach the point of completion in respect to Usool ul-Fiqh and so others came to complete the building that he had begun. There were from amongst them those who followed him providing explanation and elaboration, there were also those who came adding new principles whilst others came critiquing and disagreeing with him in respect to some of the Qawaa’id (principles).

These areas of study after Ash-Shafi’iy were restricted to specific subjects in Usool ul-Fiqh and they did not deal with Usool ul-Fiqh as a whole. They were restricted to subjects in respect to explanation, addition and disagreement.

The most prominent explanations (Shurooh) of Ash-Shaafi’iy’s Risaalah in Usool ul-Fiqh were:

1) The Sharh (explanation) of Abu Bakr Muhammad As-Seerfiy who passed away in the year 330 AH and it was called: ‘Dalaal Al-I’laam’.

- 2) The Sharh of Muhammad Al-Qaffaal Ash-Shaashii who passed away in the year 365 AH.
- 3) The Sharh of Abu Muhammad Abdullah ibn Yousuf Al-Juwainiy who passed away in the year 438 AH.

From the earliest of those who wrote in Masaa'il (issues) of Usool ul-Fiqh after Ash-Shaafi'iy were:

- 1) Al-Imaam Ahmad Bin Hanbal in his book: 'Taa'at Ar-Rasool', the book: 'An-Naasikh Wa-l-Mansookh' and the book: 'Al-'Ilal'.
- 2) Daawud Azh-Zhaahiriyy in the book: 'Ibtaal Al-Qiyaas' and the book: 'Al-Khusoos Wa-l-'Umoom' amongst others. Most of what he wrote was a critique of the Usool of Ash-Shaafi'iy.
- 3) Muhammad At-Tirmidhi who passed away in the year 255 in the book: 'Ithbaat Al-'Ilal Ash-Shar'iyah'.

Most of these books were lost and it is clear to us from their headings and titles that they were restricted to dealing with issues of disagreement or difference; either in support of Ash-Shaafi'iy and as a rebuttal to those who disagreed with him, or they were to establish the Madh'hab of the writer and as a rebuttal in opposition to the Madh'hab of Ash-Shaafi'iy.

## **The 'Ilm of Usool ul-Fiqh after the Madhaahib Al-Fiqhiyyah**

The Islamic State expanded greatly, reaching China in the East and Andalus in the West and it incorporated under its wings nations from a variety of origins and a number of languages.

In order to foster the affairs of this State it was essential to have laws which were derived from Islaam, from the Qur'aan, the Sunnah and from other sources that the Wahi had guided to, in order to treat the

pressing and newly occurring problems. So the Muslims referred back to them; the rulers, judges, groups and individuals, in response to this pressing need. Consequently, the Muslim ‘Ulamaa went forth in the second Hijri century expending their efforts to deduce and extract rulings from the Islamic Shar’iyah texts to treat all the problems and interests that arose.

The talents and Ijtihadaat of some of the ‘Ulamaa shone out above some of the others like those of the four Madhaahib (Schools of Fiqh): Abu Haneefah, Ash-Shaafi’iy, Al-Hanbaliy and Al-Maalikiy. Others who stood out included Sufyaan Ath-Thawriy, Al-Awzaa’iy and Al-Hasan Al-Basriy amongst others.

These held a position in respect to Usool ul-Fiqh that was started by Al-Imaam Ash-Shaafi’iy.

The followers (Ashaab) of Ash-Shaafi’iy explained his Risaalah in Usool ul-Fiqh and clarified what came in it. These included the like of Abu Bakr Muhammad Ash-Shaibaaniy An-Naisaabooriy, Muhammad Ibn ‘Ali Al-Qaffaal Al-Kabeer Ash-Shaashiy and As-Seerify amongst others.

As for the Ashaab (followers) of Al-Imaam Abu Haneefah, then they provided and set down an Usool for their Fiqh and they added to the Adillah Al-Ijmaaliyah (Al-Itihaas and Al-‘Urf) from the four Adillah of Ash-Shaafi’iy (Al-Qur’aan, As-Sunnah, Al-Qiyaas and Al-Ijmaa’). From the earliest of their books in Usool ul-Fiqh were: The ‘Risaalah of Al-Kharkhiy in Usool’ authored by Abu-l-Hasan ‘Ubaidullah Bin Al-Hasan Al-Kharkhiy who passed away in the year 340 Ah. Then there was the Usool of Al-Jassaas who passed away in the year 370 AH. This method or methodology in respect to putting down Usool ul-Fiqh differed from the methodology employed by Al-Imaam Ash-Shaafi’iy.

As for the Maalikiyah, who followed the 'Tareeqah (methodology) of Ash-Shaafi'iy in terms of putting down Usool ul-Fiqh, then they added the 'Ijmaa' of Ahl-ul-Madinah' to the four Adillah Al-Ijmaaliyyah which they had adopted from Imaam Maalik and which Ash-Shaafi'iy had criticised. They also took 'Al-Istihsaan' and 'Al-Masaalih Al-Mursalah' which represent two matters which Ash-Shaafi'iy had attempted to invalidate. They also added by expanding in the area of 'Adh-Dharaa'i' (pretexts/excuses).

The followers of Al-Imaam Maalik followed the same methodology as Al-Imaam Ash-Shaafi'iy in presenting and approaching Usool ul-Fiqh. From amongst their (well known) books was: 'At-Ta'reef Wa-l-Irshaad Fee Tarteeb Turuq Al-Ijtihad' written by Al-Qaadiy Abu Bakr Muhammad Bin At-Tayyib Al-Baaqalaaniy who passed away in the year 403 AH.

As for the followers of Al-Imaam Ahmad Bin Hanbal, then Al-Imaam Ahmad himself, sufficed them by writing in the 'Ilm of Usool ul-Fiqh. So after Ash-Shaafi'iy he authored the book: 'Taa'at Ar-Rasool', the book: 'An-Naasikh Wa-l-Mansookh' and the book: 'Al-Ilal' all of which were related to Usool ul-Fiqh. They (the followers of the Madh'hab) took what Ash-Shaafi'iy had taken except they did not view an Ijmaa' (to be valid) apart from the Ijmaa' As-Sahaabah whilst Ash-Shaafi'iy had accepted the Ijmaa' of the Mujtahideen of the Islamic Ummah in an era from the eras after the Nabi (saw). After Al-Imaam Ahmad there were those who did take the Ijmaa' of the Mujtahideen of the Ummah like Al-Imaam Muwafiq ud -Deen Bin Ahmad Bin Qudaamah Al-Maqdasiy who passed away in the year 630 AH which was expressed in his book: 'Raudat un-Naazhir Wa Jannat ul-Manaazhir Fee Usool ul-Fiqh'.

As for the Zhaahiriyy Madh'hab then its adherents rejected Qiyaas and did not take except by the text. There Imaam Daawud Bin Khalaf Al-Asfahaaniy who was given the title of 'Azh-Zhaahiriyy' due to his



taking from what was apparent in the text and he proceeded upon the same methodology as Ibn Hazm Al-Andalusi.

As for the Shi'ah Al-Imaamiyah who follow the Madh'hab of Al-Imaam Ja'far As-Saadiq, then they also rejected taking by way of Qiyaas (i.e. using it as a source) just as they rejected the Saheeh Ahaadeeth that opposed their view in relation to the Khilafah. They also specified the Fiqhiy Istinbaat (deduction) within the Istinbaat of their A'immah (Imaams) alone. (or restricted)

It can be observed that the 'Ulamaa' of the four Madhaahib and others besides them followed two paths (or methodologies) in respect to Usool ul-Fiqh. These are: The method of Ash-Shaafi'iy and the methodology of the followers or companions of Al-Imaam Abu Haneefah. These have in turn been called the Tareeqah (method) of the Mutakallimeen and the Tareeqah of the Fuqahaa'.

## **Tareeqah (method) of the Mutakallimeen and the Tareeqah of the Fuqahaa' in relation to Usool ul-Fiqh**

1) Tareeqah of the Mutakallimeen:

Al-Mutakallimoon is an expression that was given to the 'Ulamaa who utilised the 'Aql to arrive to affirm and establish the Usool ud-Deen, like the Imaan in Allah and Imaan in respect to the Qur'aan being from Allah Ta'Aalaa. The title was given to those who looked into the issue of the infallibility of the Anbiyaa' before Prophethood, the issue of the rational or 'Aqliy determination of Husn and 'Aqliy determination of Qubh and the issue of showing gratitude to the Mun'im (the provider of the Ni'mah) who is Allah and whether it is obligatory to listen due to the Daleel Ash-Shar'iy or is it obligatory rationally! They also discussed the origin of languages and whether

they are 'Tawqeefiyah (from Allah) or are they 'Tawfeeqiyah i.e. by the agreement of the people upon them.

The Tareeqah (method) was called Tareeqat ul-Mutakallimeen for two reasons:

1) Some of the Mutakallimeen entered into the study of Usool ul-Fiqh in this method because they found within it a strong resemblance between it and their own methodologies of study. As such they looked into, approached and studied Usool ul-Fiqh just as they had studied the 'Ilm ul-Kalaam.

### **What is the reality of this Tareeqah in relation to the 'Ilm of Usool ul-Fiqh?**

The first one to firmly lay down the pillars of this method was Al-Imaam Ash-Shaafi'iy in his Risaalah which was written in the subject area of Usool ul-Fiqh. This method is distinguished in respect to establishing the Qawaa'id Al-Usooliyah, verifying them in a purely theoretical manner, conducting a thorough examination of what they include in terms of disagreement or difference without paying consideration to any Madh'hab. The aim of it is therefore to produce the strongest principles whether that would be in service of a particular Madh'hab or was in opposition to it. That is because it dominates over the Fiqh and is not subservient to it. It was rare that those following this Tareeqah would preoccupy themselves with the branches unless this was to provide further clarity or provide examples ('Mabaahith Fee Usool ul-Fiqh' by Dr. Al-'Abd Khaleel Abu 'Eid p26).

Consequently, there were those of this Tareeqah who disagreed with Ash-Shaafi'iy (in areas) even if they were followers of his Madh'hab. So for instance we saw that Ash-Shaafi'iy did not take Al-Ijmaa' As-Sukootiy whilst Al-Aamadi who was of the Shaafi'iy Madh'hab

outweighed that Al-Ijmaa' As-Sukootiy is a Hujjah (proof and source).

This Tareeqah (method) benefited Usool ul-Fiqh and the Usooli principles were not subservient to partisanship to the Madh'hab. Rather it was studied in a 'Ilmiy and deep manner and was subservient to precision and thorough examination. As such correct and strong principles resulted from that built upon definite clear evidences or proofs (Baraaheen).

Example:

I will now relate to you the manner of establishing or affirming a Qaa'idah (principle) from the Qawaa'id of Usool ul-Fiqh undertaken by the Hanaabilah taken from the book 'Raudat An-Nazhar Wa Jannat ul-Manaazhir' in Usool ul-Fiqh authored by Al-Imaam Muwaffiq ud-Deen Abdullah Ibn Ahmad Ibn Qudaamah Al-Maqdasiy who passed away in the year 630 AH. This was upon the Tareeqah (methodology) of the Mutakallimeen:

### **The Qaa'idah (principle):**

The Ijmaa' of Ahl-ul-Madinah (the people of Madinah) is not a Hujjah (proof/source of evidence).

### **Al-Burhaan (the proof/evidence):**

“The Ijmaa' of Ahl-ul-Madinah is not a Hujjah and Maalik said that it is a Hujjah because it represents the source of knowledge ('Ilm), the home of the Wahi and the children of the Sahaabah resided within it. As such it is impossible for their agreement to be upon other than it (i.e. Islaam) and for them to go outside from what they were upon...” He then says: “And their statement that it is impossible for the Haqq (truth) to leave them is judged (evaluated). This is in the case where it

is not impossible for a man to hear a Hadeeth from the Nabi (saw) whilst travelling or in Al-Madinah and then leave it before transmitting it to others and the merits of Al-Madinah do not oblige the convening of an Ijmaa' (consensus) by its people. For verily Makkah is better than it and it has no trace (or impact) in respect to the Ijmaa' and their Ijmaa', if it was to be considered a Hujjah, would have been obliged to represent a Hujjah in all times. This is whilst there is no difference or disagreement in respect to their statement not being relied upon in this current time of ours let alone it being regarded as an Ijmaa'".

In this example Ibn Qudaamah therefore used rational or an intellectual judgement to affirm or establish that the Ijmaa' of Ahl-ul-Madinah is not a Hujjah which had been taken by the followers or proponents of the Maaliki Madh'hab as a Hujjah.

## **The most significant books of Usool written upon the methodology of the Mutakallimeen**

This Tareeqah was first manifested by Al-Imaam Ash-Shaafi'iy (Muhammad Bin Idrees Ash-Shaafi'iy) who passed away in the year 204 AH in Egypt. That was in his 'Risaalah' in Usool and it happened without him having any connection to the Mutakallimoon although he agreed with them in respect to utilising the intellectual ('Aqliy) judgement to establish the Qawaa'id (principles) that he provided for Usool ul-Fiqh.

The most significant books written in Usool ul-Fiqh upon the method of the Mutakallimeen are:

1) 'Al-Mu'tamad' of Abu-l-Hasan Al-Basriy Al-Mu'taziliy who passed away in the year 463 AH.

2) ‘Al-Burhaan’ of Al-Imaam Al-Haramaini Abdul Malik Al-Juwainiy who passed away in the year 487 AH.

3) ‘Al-Mustasfaa Li Hujjat il-Islam’ by Abu Haamid Al-Ghazaaliy who passed away in the year 505 AH.

These three books are the main references and all that came after them revolved around them whether in terms of compilation, summary or abridgment.

The following are some of the books that preceded them and some that came after them:

1) ‘At-Ta’reef Wa-l-Irshaad Fee Tarteeb Turuq Al-Ijtihad’ written by Al-Qaadiy Abu Bakr Al-Baaqilaaniy Al-Maalikiy who passed away in the year 403 AH.

2) ‘Al-Lam’u’ authored by Abu Ishaq Ibraheem Ash-Sheeraaziy who passed away in the year 476 AH.

3) The book: ‘Al-Ihkaam Fee Usool ul-Fiqh’ by Abu Hasan Al-Aamadiy Ash-Shaafi’iy who passed away in the year 731 AH.

4) ‘Al-Mahsool’ by Fakhr-ud-Deen Ar-Raaaziy who passed away in the year 731 AH.

## **Tareeqah (methodology) of the Fuqahaa’ in respect to the ‘Ilm of Usool ul-Fiqh**

As for the second methodology then it is the Tareeqah of Al-Fuqahaa’ which the followers of Al-Imaam Abu Haneefah followed when placing down the Usool ul-Fiqh of their Madh’hab. They proceeded upon this method by looking at the effects of the Furoo’

(branches) and by explaining that Usool ul-Fiqh is to serve the branches and to affirm the soundness of the Ijtihad in them. This Tareeqah establish the Qawaa'id Al-Usooliyah in light of what has been transmitted from the branches from their A'immah (Imaams) whilst claiming that these represent the Qawaa'id (principles) which those A'immah paid regard to when they extracted and deduced the branches which represent the Ahkaam Ash-Shar'iyah. The principles therefore represent Usool which came after the presence of the Ahkaam Ash-Shar'iyah and which came as a result of deduction made from the branches.

The following was mentioned in the book of Usool ul-Fiqh by Al-Imam Abu Zahrah: "In this way the Hanafiyah Usool differs from the Shaafi'iyah Usool as the Usool Ash-Shaafi'iyah was a methodology for Istinbaat (deduction) and was controlling over it. As for the method of the Hanafiyah then it was not controlling over the branches after it was were recorded. This means that they deduced the Qawaa'id (principles) upon which their Madh'hab had been built upon and defended them. They therefore represent measures (Maqaayees) that have been established (Muqarrarah) and not measures that are controlling (Haakimah)".

For this reason, they mention the Furoo' (Branches) a lot in their books because in most cases they formulate the Usooliy Qawaa'id in accordance to what agrees to these branches. However, they then began to utilise these Qawaa'id (principles) to extract new Ahkaam for newly occurring problems.

After the Tareeqah of the Fuqahaa' matured and became complete the followers of the other Madhaahib began to proceed in accordance to them in respect to their Usool ul-Fiqh and began to adopt this Usool for the deduction of the Ahkaam. Even the Shee'ah Al-Imaamiyah and Zaidiyah followed the 'Fuqahaa' method after the Hanafiyah in respect to putting down the Usool of their Fiqh.

Shihaab ud-Deen Az-Zanjaani Ash-Shaafi'iy who passed away in the year 656 AH wrote a book upon the methodology of this Tareeqah which he called: "Takhreej Al-Furoo' 'Alaa l-Usool"

Example:

The following is an example of how an Usooliy principle is put down upon the Tareeqah of the Fuqahaa "The Tareeqah of the Hanafiyah":

The Fuqahaa arrived at the following Ahkaam Ash-Shar'iyah from their detailed evidences:

1) The skin of the dead animal (carrion) is purified if it is tanned. This Hukm was extracted from the Hadeeth of the Messenger (saw): "The Messenger of Allah (saw) passed by a dead sheep and then said: **"If this hide is tanned (then) it has been purified"** as related by Al-Imaam Muslim in his Saheeh.

2) The Hukm of cutting the hand of the thief which was deduced from the Qawl of Allah Ta'Aalaa:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

*And the male thief and female thief cut off their hands (Al-Maa'idah 38).*

And this was revealed in relation to the incident of the theft of the shield or cloak of Safwaan.

3) The Kaffaarah (expiation) of Azh-Zhihaar being the freeing of a slave and for the one who does not have that at his disposal, then fasting for two consecutive months. The Hukm for this was taken from the Qawl of Allah Ta'Aalaa:

الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّهَاتِهِمْ

*Those who pronounce Zhihaar among you [to separate] from their wives - they are not [consequently] their mothers.... (Al-Mujaadalah 2).*

Until Aayah four from Soorah Al-Mujaadalah. And this was revealed in relation to Maslamah Bin Sakhr.

4) Mutual cursing (Al-Mulaa'anah or Li'aan) between a husband and wife, the Hukm of which is taken from the Qawl of Allah Ta'Aala:

وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَهُمْ لَا يَأْتِيهِمْ بَشَاهِدَةٌ إِلَّا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ  
أَرْبَعٌ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ

*And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful (An-Noor 6).*

Until Aayah 9 of Soorah An-Noor. This was revealed in relation to Hilaal Bin Umayyah.

The Adillah (evidences) for these Ahkaam came in general Alfaazh (worded expressions) in the order of: If the hide is tanned... And the male thief and female thief... Those who do Zhihaar... Those who accuse their wives... However, each Daleel (evidence) was revealed for a specific Sabab (cause) and these Asbaab (causes) were in the order of: 'The sheep of Maymoonah (ra)... The cloak of Safwaan... Maslamah Bin Sakhr... Hilaal Bin Umayyah...'



However, the Sahaabah and the Taabi'een who came after them applied all of these Ahkaam upon every action (of these) that the Muslims did. As such they put down the Qaa'idah Al-Usooliyah (Usooli principle) of:

العِبْرَةُ بِعُمُومِ اللَّفْظِ لَا بِخُصُوصِ السَّبَبِ

*'The importance/consideration (Ibrah) is in the generalness of the expression (Lafz'h) and not the specificity of the Sabab (cause).'*

The 'Ulamaa arrived at this Qaa'idah (principle) through the Tareeqah (method) of the Fuqahaa by examining the Ahkaam Ash-Shar'iyah, the detailed evidences of which, were revealed for a specific cause but the worded expressions of the Daleel indicated generality.

Therefore, in relation to the Hadeeth of the Messenger of Allah (saw):

لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرُهُمْ امْرَأَةٌ

**A nation that entrusts its (ruling) affairs to a woman will never succeed**

If someone was to say that this is specific to the daughter of Kisraa who took over the Persian rule after her father in the time of the Messenger (saw) then we would say in response that: 'The consideration (Al-'Ibrah) is in the generality of the expressions and not the specificity of the cause'. That is because the expression: 'Never will a nation succeed' indicates generality because it is Nakirah (indefinite) in the context of negation (Nafy). Therefore, it is not permissible for a woman to assume any position of ruling in Islam so as to become the Khalifah or a Waali.

## **The most significant works of Usool upon the Fuqahaa' Tareeqah (method):**

The following are from the most significant books written upon this method:

- 1) 'Risaalah Al-Karkhi Fee Usool' authored by Abu l-Hasan 'Ubaidulah Bin Al-Hasan Al-Karkhi who passed away in the year 340 AH. In it he mentioned the Usool upon which a large number of the books of the followers of Al-Imaam Abu Haneefah revolve around.
- 2) 'Usool Al-Jassaas' written by Abu Bakr Ahmad Bin 'Ali Ar-Raaziy Al-Jassaas Al-Hanafiy who passed away in the year 370 AH. He proceeded in his book upon the Tareeqah of Al-Karkhiy.
- 3) 'Usool As-Sarkhasiy' written by Abu Bakr Muhammad Bin Ahmad As-Sarkhasiy who passed away in the year 483 AH.

Some of the other books in Usool ul-Fiqh upon this Tareeqah include:

- 1) 'Usool Al-Bazdawiy' authored by Fakhr-ul-Islam Abu-l-Hasan Al-Bazdawiy who passed away in the year 482 AH and the name of the book is: 'Kanz ul-Wasool Ilaa Ma'rifat ul-Usool'.
- 2) 'Ta'sees An-Nazhar' written by Abu Zaid Abdullah Ad-Daboosiy who passed away in the year 430 AH. His book guides towards the Usool that the A'immah (Imaams) of the Hanafiy Madh'hab agreed with others upon and he also mentioned where they disagreed.
- 3) 'Manaar Al-Anwaar' authored by Abu-l-Barakaat Abdullah An-Nasafiy who passed away in the year 710 AH. Many explanations (Shurooh) have been written for this book and the first of which was 'Kashf Al-Asraar' by the same author.

## **Combining the methods of the Mutakallimeen and the Fuqahaa in Usool ul-Fiqh**

Each of these two methods has its own specificities. The Mutakallimoon established the Qawaa'id (principles) stripped from the branches whilst the Fuqahaa established the Qawaa'id guided by and derived from the branches. Both methods or approaches have their own merits and specificities that are not found in the other.

Some of the writers in Usool ul-Fiqh combined both methods in the case where they took what each was distinguished by in terms of its merits whilst casting aside and leaving that which criticism had been directed towards.

### **The most significant books that combined the two methods of the Mutakallimeen and the Fuqahaa in Usool ul-Fiqh**

1) The book: 'Badee' An-Nizhaam' which combined the Usool of Al-Bazdawiy Al-Hanafiy and the Usool of Al-Aamady Ash-Shaafi'iy. The author of 'Badee' An-Nizhaam' was Al-Imaam Al-Muzhafir ud-Deen Ahmad Al-Ba'labakiy Al-Hanafiy who was known as 'As-Saa'aatiy' and passed away in the year 694 AH.

2) 'At-Tanqeeh' authored by Al-Qaadiy Sadr Ush-Sharee'ah 'Ubaidullah Al-Bukhaariy Al-Hanafiy who passed away in the year 747 AH and this book summarises a number of books upon both methods.

3) 'At-Tahreer' written by Kamaal Ud-Deen Muhammad who is well known as 'Ibn Ul-Himaam' the Hanafiy jurist who passed away in the year 861 AH.

4) ‘Muslim Ath-Thuboot’ authored by Al-‘Alaamah Muhibb Ud-Deen Bin Abdi-Sh-Shukoor Al-Hindiy who passed away in the year 1119 AH. In the introduction he states that: “It contains the Hanafiy Tareeqah and the Tareeqah of Ash-Shaafi’iy...”

## Chapter Two

### 1) Al-Kitaab Al-Kareem

- Its definition, how it was revealed and the Hikmah (wisdom) in respect to that.
- Its Tawaatur transmission and the angles of its miraculous or inimitable character.
- Its validity as a proof (Hujjiyah) and its importance in respect to the other Adillah.
- The Ahkaam that it comprises and the manner in which it presents them.

### 2) As-Sunnah An-Nabawiyah Ash-Shareefah

- Its definition and its intrinsic divisions or categories.
- Hujjiyah (validity as an evidential proof) of the Sunnah and its connection to the Qur'aan Al-Kareem and its categories in relation to it.
- Its categories in terms of Sihhah (correctness/validity) and Da'f (weakness) and in the Ruwaah (relaters/transmitters). The Mutawaatir, the Mash'hoor, the Aahaad and working or utilising each category.

### 3) An-Naskh (abrogation) in relation to the Qur'aan and the Sunnah:

- The meaning of An-Naskh (abrogation) and the opinions of the 'Ulamaa' in respect to it.
- The extent of the occurrence of An-Naskh in the Qur'aan and the Sunnah.
- The abrogation of the Qur'aan by the Qur'aan, the abrogation of the Qur'aan by the Sunnah and the abrogation of the Sunnah by the Qur'aan.

## The Second Chapter

### Introduction:

After having presented the definition of Usool ul-Fiqh in the first chapter; its origins, history, men, methods, paths and its books, we now move on to the most important of its subject areas and this is the subject of the Adillah Al-Ijmaaliyah, which are the sources of the Islamic legislation and from which the practical Shar'iyah rulings are derived.

The most important of the Adillah Al-Ijmaaliyah are: 'The Qur'aan Al-Kareem, the Sunnah An-Nabawiyah and what the Qur'aan and the Sunnah guide to in terms of sources like Al-Qiyaas and Al-Ijmaa'. This subject area also includes other sources like: Al-Istihsaan, Al-Masaalih Al-Mursalah, Al-'Urf, Al-Istishaab, Madh'hab As-Sahaabiy and Shar'u Min Qablinaa.

We will take each Daleel from amongst these Adillah Al-Ijmaaliyah separately and examine its Hujjiyah (validity as a source) based on proof and evidence and upon the basis of whether it is a Daleel emanating from the Wahi (divinely inspired revelation). That is because we as Muslims have been commanded to follow what the Messenger of Allah Muhammad (saw) definitely brought from Allah Ta'Aalaa. This is due to the Qawl (statement) of Allah Ta'Aalaa:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

*And whatever the Messenger brought to you take it and whatever he has forbidden you from abstain from it (Al-Hasbr 7).*

His Qawl Ta'Aalaa:

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ﴿٣﴾ ۖ إِنَّ هُوَ إِلَّا وَحْيٌ يُوحَىٰ

*And he does not utter from (his own) desire. It is only Wahy (divine inspiration) that has been inspired (An-Najm 3-4).*

And due to the speech of Allah Ta'Aalaa:

وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ

*And whoever seeks a Deen other than Islaam, it will never be accepted of him, and in the Hereafter he will be one of the losers (Aali 'Imraan 85).*

Al-Islaam is the Deen that Allah Ta'Aalaa revealed to Muhammad (saw) through the means of the Wahy (divine inspiration).

Allah Ta'Aalaa has forbidden following that which is not Yaqeeniy (certain and definite) in respect to the like of these Adillah (evidential sources). Allah Ta'Aalaa said:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ

*And follow not that of which you have no knowledge ('Ilm) (Al-Israa' 36).*

The 'Ilm (knowledge) is Al-Yaqeen (certainty) and the Zhann (absence of certainty) cannot compensate for the Yaqeen. Allah Ta'Aalaa says:

إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

*Certainly, conjecture can be of no avail against the truth (Younus 36).*

This is because if the Daleel Al-Ijmaaliy (source evidence) was based on uncertainty or conjecture (Zhann) then the potential and possibility of difference would occur in respect to whether it is from Allah or not from Allah. This is the case where the source for it to be a Hujjah (proof and evidence) must be Qat'iy Ath-Thuboot (definite in transmission) that it is from Allah. That is so that the Muslim is convinced and comfortable that the actions he is undertaking are in accordance to the commands and forbiddances of Allah Ta'Aalaa.

It has been established amongst the Muslims as a whole through definite correct proofs and evidence (Baraaheen), some 'Aqliy and some Naqliy, that the Qur'aan and the Sunnah are from Allah and that they represent a Hujjah. They have differed in respect to the Hujjiyah of the remainder of the Adillah like Al-Ijmaa', Al-Qiyaas, Al-Masaalih Al-Mursalah and the others beside them.



## The First Daleel

### Al-Qur'aan Al-Kareem

#### Ta'reef (definition of) Al-Qur'aan:

It is the Kalaamullah (the speech of Allah), the inimitable/miraculous, the Tilaawah (recital) of which is an act of worship, which was revealed upon Muhammad (saw) in the Arabic language by way of the Wahi (Jibreel) in Lafzh (wording) and Ma'naa (meaning), and it is what lies between the two covers (front and back) of the Mushaf that has been transmitted to us by Mutawaatir transmission.

The Qur'aan is derived from the verb قَرَأَ (to read). Allah Ta'Aalaa said:

إِنَّ عَلَيْنَا جَمْعَهُ وَقُرْآنَهُ ﴿١٧﴾ فَإِذَا قَرَأْنَاهُ فَاتَّبِعْ قُرْآنَهُ

*Verily, upon Us is its collection and [to make possible] its recitation. And when We have recited it to you then follow its (the Quran's) recital (Al-Qiyaamah 17-18).*

Amongst its names are: Al-Qur'aan, Al-Kitaab, Al-Furqaan and Adh-Dhikr. As for what some have considered to be names of the Qur'aan like Al-Majeed and Al-Azeez then these only represent descriptions of the Qur'aan. Allah Ta'Aalaa said:

بَلْ هُوَ قُرْآنٌ مَّجِيدٌ

*Indeed, it is a Glorious Qur'aan (Al-Burooj 21).*

## وَإِنَّهُ لَكِتَابٌ عَزِيزٌ

*And verily it is a Mighty Book (Al-Fusillat 41).*

### How the Qur'an was revealed

The Qur'aan was revealed upon the Nabi Muhammad (saw) in instalments (in parts) over a period of 23 years. It did not descend upon a regular pattern; sometimes it would come consecutively whilst at other times it would be delayed or there would be long gaps between the revelations. The first to be revealed was from Soorah Al-'Alaq and this was His Qawl Ta'Aalaa:

اقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ ﴿١﴾ خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ ﴿٢﴾ اقْرَأْ  
وَرَبُّكَ الْأَكْرَمُ ﴿٣﴾ الَّذِي عَلَّمَ بِالْقَلَمِ ﴿٤﴾ عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ

*Read in the name of your Lord who created. Created man from a clot. Read and your Lord is the Most Generous. Who taught by the pen. Taught the human that which he did not know (Al-'Alaq 1-5).*

And the last of the revelation was the speech of Allah Ta'Aalaa:

وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

*And fear a Day when you will be returned to Allah. Then every soul will be compensated for what it earned, and they will not be treated unjustly (Al-Baqarah 281).*

The Qur'aan began to be revealed upon the Messenger of Allah (saw) when he was in the cave of Hira'a, close to Makkah, where he would go for solitude and to contemplate before he was tasked with the carrying of the message and the Prophethood.

## **The Wisdom in respect to the Qur'aan being revealed in instalments**

Allah Ta'Aalaa has explained the Hikmah (wisdom) for the revelation of the Qur'aan in instalments and not all at once in two Aayah:

a) The First Aayah:

وَقَالَ الَّذِينَ كَفَرُوا لَوْلَا نُزِّلَ عَلَيْهِ الْقُرْآنُ جُمْلَةً وَاحِدَةً كَذَلِكَ لِنُثَبِّتَ بِهِ فُؤَادَكَ وَرَتَّلْنَاهُ تَرْتِيلاً

*And those who disbelieve say: "Why was the Qur'an not revealed to him all at once?" Thus [it is] that We may strengthen thereby your heart. And We have spaced it distinctly (Al-Furqaan 32).*

b) The Second Aayah:

وَقُرْآنًا فَرَقْنَاهُ لِتَقْرَأَهُ عَلَى النَّاسِ عَلَى مُكْثٍ وَنَزَّلْنَاهُ تَنْزِيلًا

*And a Qur'an which We have divided (into parts), in order that you might recite it to men at intervals. And We have revealed it by stages (Al-Israa' 106).*

These two Aayah indicate that the Hikmah (wisdom) for the Qur'aan to have been revealed in parts and not all at once are:

1) To strengthen and consolidate the heart of the Messenger of Allah (saw) through the revelation of the Qur'aan in parts throughout the mission of Prophethood. He had been exposed to harm and denial from his people whilst he carried the Da'wah to them and so the Wahi that descended at different times was his greatest support and assistance making him feel that Allah Ta'Aalaa was always with him. That consecutive connection over periods or intervals strengthened his determination and helped him to bear what he faced in terms of hardship and obstacles and to continue the Da'wah.

2) The strengthening and consolidating of the heart is also by the meanings of the Aayaat represented in the Ahkaam that the Aayaat contain within them. As the incidents occurred the Qur'aan would be revealed to explain the Hukm of each incident. This therefore acted as an assistance to the Messenger (saw) in respect to understanding the Qur'aan and to consolidate this understanding within his 'Fu'aad' (heart/'Aql). That is because the word 'Fu'aad' indicates the meaning of heart (in the Arabic language) just as it also indicates Al-'Aql (the mind).

3) The Arabs prior to Islaam used to believe in an Aqeedah that had become deeply rooted within them whilst they followed customs and traditions that they had inherited from previous generations. They had become rigid upon this Aqeedah and these customs and as such they were in need of time to become convinced of a new Aqeedah and new Deen. They were in need of a gradual approach in leaving that which they had believed in and become accustomed to. Therefore, Allah Ta'Aalaa revealed the Qur'aan in instalments to reach their ears, from one time to another, explaining the falsity of their belief so that they abandon it and explaining the Islamic Aqeedah so that they embrace it.

4) The Qur'aan was revealed to an illiterate people who could not read or write and Allah Ta'Aalaa intended for the Qur'aan to be

memorized within the breasts. The Qur'aan was revealed in parts and segments to make it easy for the Nabi (saw) to recite it to them and to make it easy for them to memorise it and abide by the Ahkaam that were brought in it.

## **Tawaatur Al-Qur'aan**

The linguistic meaning of At-Tawaatur is At-Tataabu' (successiveness, consecutiveness).

The Istilaahi (terminological) meaning of At-Tawaatur is: The transmission of a group (Jamaa'ah) from a group from a group in which it is impossible for there to be any collusion or connivance upon a lie (i.e. that the possibility for a lie to be colluded is eliminated).

This Tawaatur occurred in respect to the transmission of the Qur'aan which Allah Ta'Aalaa has guaranteed to be protected and safeguarded.

Allah Ta'Aalaa said:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

*Verily it is We Who revealed the Dhikr (i.e. the Qur'an) and verily We will safeguard it (Al-Hijr 9).*

The preservation of the Qur'aan took place as follows:

1) Every time Aayaat of the Qur'aan Al-Kareem were revealed upon the Messenger of Allah (saw) he would recite them to his companions and they would then memorise it exactly as they received it from him. They would then recite the Aayaat in their Salaah and at

the same time he would command (the selected) recorders of the Wahi to write them upon skins and hides amongst other materials that were written upon at that time. Then prior to his passing (saw) he recited it (in its entirety) to Jibreel (as).

2) When the Messenger of Allah (saw) passed away the whole Qur'aan had been written on materials and had been memorised within the breasts of the Sahaabah (rah). Therefore, the number of those who had memorised it had reached the level of Tawaatur for every Aayah from the Aayaat of the Qur'aan.

3) At the time of Abu Bakr (ra) the ordering and gathering together of the Qur'aan was completed in accordance to what was Tawqeefiy (set by Allah) exactly as it had been transmitted from the Messenger of Allah (saw). This was undertaken by a committee led by the one who had most preserved it, Zaid Bin Thaabit (ra), who had been one of the writers of the Wahi as it descended. And so its Aayaat and Suwar (Soorahs) were ordered and organised. The Aayaat and Suwar were put and brought together and then tied by string. Then Abu Bakr (ra) gave it the name of Al-Mushaf and this Mushaf has been adopted by the Ummah by way of a consensus (Ijmaa') upon it whilst all that is in it has been affirmed by way of Tawaatur (definite reports).

4) In the time of 'Uthmaan Ibn 'Affaan (ra), one of the Sahaabah (Hudhaifah Bin Al-Yamaan) said to 'Uthmaan: "Take hold of this Ummah before they differ in respect to the Kitaab (i.e. the Qur'aan) like the differing of the Jews and the Christians (in respect to their books before them)". So 'Uthmaan (ra) communicated to Hafsa (ra) for her to send to him the Mushaf which had been collected and compiled at the time of Abu Bakr (ra). Then 'Uthmaan appointed Zaid Bin Thaabit, Abdullah Ibn Zubair, Sa'eed Ibn Al-'Aas and Abdur Rahman Bin Al-Haarith over this matter. They then made four copies and he ('Uthman) sent a single copy to each of Al-

Koofah, Al-Basrah, Ash-Shaam whilst keeping one copy with him in Al-Madinah Al-Munawwarah.

5) The Qur'aan Al-Kareem was then memorised by a number reaching the level of Tawaatur in every generation until our current day.

The Tawaatur of the Qur'aan alongside it having been written down makes it Qat'iy Ath-Thuboot (definite in transmission) in regards to it being the Qur'aan that Allah Ta'Aalaa revealed upon the Messenger Muhammad (saw).

Nothing apart from the Mutawaatir is considered to be Qur'aan. Therefore, the reading of Abdullah Ibn Mas'ood (ra) in regards to the Kaffaarah (expiation) of the orphan:

فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ مُتَابَعَاتٍ

But whoever does not have the means, then he should fast for three (consecutive) days

Is not considered to be Qur'aan because the word 'consecutive' (متتابعات) was not transmitted by way of Tawaatur and it was not written in the Masaahif (plural of Mushaf) which were copied at the time of 'Uthmaan Ibn 'Affaan (ra).

Finally, there has never been a book in this Dunyaa that has received the amount of care, attention and study as the Qur'aan Al-Kareem received.

**The purpose of the miraculous nature and inimitability**

The purpose behind the ‘I’jaaz (miraculous nature and inimitability) is to convince the people that the one who came with the Mu’jizah (miracle) is a Messenger who has been sent by Allah Ta’Aalaa (to them).

### **I’jaaz (inimitability of) Al-Qur’aan:**

Allah Ta’Aalaa sent Muhammad (saw) amongst a people who were eloquent and pure of tongue (i.e. in language). They had seasonal markets and fairs in which they would compete in respect to the purity, beauty and eloquence of their poetry. The winning poetry would then be written in gold and hung upon the walls of the Ka’bah which was their most sanctified and sacred place. The news would then spread and the tribes would gain pride and honour through this. Within this reality Allah Ta’Aalaa provided Muhammad (saw) with a miracle which was of the same kind or within the same category that they found pride and honour in. It was Arabic speech utilising the same letters and expressions that they would formulate their poetry from and it was the Kalaam (speech) of Allah that was miraculous and inimitable (impossible for humans to replicate).

Allah challenged the Arabs with the Qur’aan by challenging them to bring something similar and like it and indeed even to just bring one Soorah that was similar to it. Allah Ta’Aalaa said:

أَمْ يَقُولُونَ افْتَرَاهُ قُلْ فَأْتُوا بِسُورَةٍ مِّثْلِهِ وَادْعُوا مَنِ اسْتَضَعْتُمْ مِّن دُونِ اللَّهِ  
إِنْ كُنْتُمْ صَادِقِينَ

*Or do they say [about the Prophet]: “He invented it?” Say: “Then bring forth a Surah like it and call upon [for assistance] whomever you can besides Allah, if you should be truthful” (Younus 38).*



And He Ta'Aalaa said:

قُلْ لَّيِّنَ اجْتَمَعَتِ الْإِنْسُ وَالْجِنُّ عَلَىٰ أَنْ يَأْتُوا بِمِثْلِ هَذَا الْقُرْآنِ لَا يَأْتُونَ  
بِمِثْلِهِ وَلَوْ كَانَ بَعْضُهُمْ لِبَعْضٍ ظَهِيرًا

*Say: "If mankind and the jinn gathered in order to produce the like of this Qur'an, they could not produce the like of it, even if they were assistants to one another" (Al-Israa' 88).*

## **The aspects of the miraculous nature and inimitability (P'jaaz) of the Qur'aan**

Some of the 'Ulamaa of the Muslims regarded the following to represent some of the miraculous aspects of the Qur'aan:

1) Al-P'jaaz Al-'Ilmy (miraculous nature of the knowledge it contained or scientific knowledge):

This relates to the Qur'aan mentioning some knowledge or scientific based facts which had not been discovered at the time of the revelation. This is like the Qawl of Allah Ta'Aalaa:

وَأَرْسَلْنَا الرِّيحَ لَوَاقِحَ لَوَاقِحَ فَأَنْزَلْنَا مِنَ السَّمَاءِ مَاءً فَأَسْقَيْنَاكُمُوهُ وَمَا أَنْتُمْ لَهُ  
بِحَازِنِينَ

*And We have sent the fertilizing winds and sent down water from the sky and given you drink from it. And you are not its retainers (Al-Hijr 22).*

That is because it was only discovered later that the winds assist the fertilisation of plants and vegetation.

2) Al-I'jaaz Al-Ikhbaariy (miraculous nature of what it informed):

This manifests in its informing about realities that will happen in the future and then actually happened. This is like the speech of Allah Ta'Aalaa:

﴿ ٣ ﴾ غُلِبَتِ الرُّومُ ﴿ ٢ ﴾ فِي أَدْنَى الْأَرْضِ وَهُمْ مِّن بَعْدِ غَلَبِهِمْ سَيَغْلِبُونَ ﴿ ٣ ﴾

فِي بَضْعِ سِنِينَ

*The Romans have been defeated. In the nearest land. But they, after their defeat, will be victorious. Within three to nine years (Ar-Room 2-4).*

This also includes the Ikhbaar (informing) about the incidents and realities related to the previous nations which the Arabs at that time had no knowledge of, like the story of Nooh (as) for example.

3) Al-I'jaaz Al-Bayaaniy (miraculous nature of style of speech):

This is manifested in the style of the Qur'aan in its provision of meanings which made the Arabs baffled and perplexed. After evaluating and measuring between it and what they had known in respect to poetry and eloquent speech they found that it wasn't of the same kind. This is because it had come in a unique style and this miraculous nature and inimitable quality was remarked upon by one of the enemies of the Islamic Da'wah, Al-Waleed Ibn Al-Mugheerah, when he said: "We have known poetry in its entirety, its Rajaz, Hajaz and Qareed (specificities of Poetry), its content and its extent, and it (the Qur'aan) is not poetry". Then he said: "We have seen magicians and their magic whilst he does not put spells on them or blow knots... By Allah it is the sweetest of speech, adorned with beauty and

charm. Its root is abundant and its branches are fruitful...” (As-Seerah An-Nabawiyah, Ibn Hishaam).

### **Point of view:**

The definition of Al-I'jaaz (miraculous nature of inimitability) does not apply upon the 'I'jaaz Al-'Ilmiy and Al-I'jaaz Al-Ikhbaariy as they are not, in my opinion, representative of the Al-'I'jaaz at all. That is for two reasons:

1) The Aayaat that comprise of the scientific laws and the news of the past and future represent some of the Qur'aan. They are therefore according to their opinion miraculous Aayaat whilst the remainder of the Aayaat and Suwar do not contain this 'I'jaaz. This is despite the Qur'aan being miraculous throughout at the same level whilst Allah Ta'Aalaa challenged the Arabs to bring or reproduce a Soorah like it, like Soorah Al-Ikhlaas or An-Naas for example, which are free from the matters that they considered to be angles for the miraculous or inimitable nature and character of the Qur'aan.

2) The 'I'jaaz represents the confirmation and proving of the inability of man to reproduce the thing that is beyond his ability until the Day of judgement. As long as humankind is capable of discovering some of the laws of existence and are capable of speaking about the past and the future and even if they are untruthful and in the case where millions of books have been written in these subject areas, then the presence of these matters within the Qur'aan Al-Kareem does not indicate the I'jaaz in our current time. This is contrary to the true reality of the I'jaaz which indicates the continual inability of humankind forever.

These matters which they considered to be scientific and informative miracles represent evidences for the knowledge of Allah Ta'Aalaa

encompassing everything in the past, present and future but they do not however represent faces or aspects of the miraculous inimitable nature of the Qur'aan.

Therefore, the miraculous inimitable character of the Qur'aan manifests in its style in which the meanings were brought. Abu Salmaan Muhammad Al-Khitaabiy wrote in his book: 'Bayaan I'jaaz Al-Qur'aan': "It only became miraculous because it came in the most pure and eloquent (Afsah) Alfaazh (worded expressions) in the best form of composition which incorporated the purest and most eloquent of meanings". He then said: "And it is known that bringing (or reproducing) the like of these matters and with this style and combining its varieties so that they are harmonious and precisely arranged represents a matter that is beyond the ability of human faculties".

Consequently, the I'jaaz of the Qur'aan is restricted and confined to its Usloob (style) and the components or constituents of this style:

1) In respect to its Alfaazh (wordings/worded expressions) and Taraakeeb (word and sentence compositions):

The Qur'aan Al-Kareem came with Alfaazh (wordings) at the height of lucidity, with eloquent fluent speech and a precise composition which was not like the methodology of the rhyming poetry (Al-Mawzoon Al-Maqfa) or the method of the rhyming prose (An-Nathar, Al-Masjoo' or Al-Mursal). Rather it was a style that was unique that stood by itself. It was a style that those who were most elegant and pure in their speech were unable to bring and reproduce the like of.

2) In respect to its Naghmah (melody and rhythm):

The ordering of the letters in the words and the ordering of the words within the Aayaat came in a harmonious ordering. This harmony manifests when the Qur'aan is recited as a very particular rhythm is heard that is not found within man's speech whether in poetry or prose. It intensifies and relents in line with the meanings. So when you hear His Qawl Ta'Aalaa:

فَلَا أُقْسِمُ بِالْخُنَّسِ ﴿١٥﴾ الْجَوَارِ الْكُنَّسِ ﴿١٦﴾ وَاللَّيْلِ إِذَا عَسْعَسَ  
 ﴿١٧﴾ وَالصُّبْحِ إِذَا تَنَفَّسَ ﴿١٨﴾ إِنَّهُ لَقَوْلُ رَسُولٍ كَرِيمٍ

*But nay, I swear by the retreating stars. Those that run [their courses] and disappear. And by the night as it closes in. And by the dawn when it breathes. [That] verily it is a word [conveyed by] a noble messenger (At-Takweer 15-19).*

When you hear this you sense and feel the whisper or murmur of the repeated 'Seen' (at the end of each Aayah) and the smoothness of its rhythm that is in complete harmony and fitting to the meaning manifested in the calmness of the night, the dawn of Fajr and the fading light of the stars.

And when you hear the speech of Allah Ta'Aalaa:

إِذَا أُلْقُوا فِيهَا سَمِعُوا لَهَا شَهيقًا وَهِيَ تَفُورٌ ﴿٧﴾ تَكَادُ تَمَيِّزُ مِنَ الْغَيْظِ  
 كُلَّمَا أُلْقِيَ فِيهَا فَوْجٌ سَأَلْتَهُمْ خَزَنَتُهَا أَلَمْ يَأْتِكُمْ نَذِيرٌ

*When they are thrown into it, they hear from it a [dreadful] inhaling while it boils up. It almost bursts with rage. Every time a company is thrown into it, its keepers ask them, "Did there not come to you a warner?" (Al-Mulk 7-8).*

When this is heard the one listening to it feels terror and alarm whilst being able to picture and visualise the terrifying reality of Jahannum (hellfire), may Allah Ta'Aalaa provide us with refuge from its torment.

3) With these worded expressions, compositions and rhythms the Qur'aan contains a host and great variety of meanings including the rulings to organise and regulate the relationships amongst the people and the relationships between states. The coming together of these many and various meanings within precisely built wordings and compositions is therefore a manifestation from the manifestations of the I'jaaz of the Qur'aan Al-Kareem.

The I'jaaz (miraculous inimitable nature) of the Qur'aan Al-Kareem is therefore within the style that incorporates wordings, compositions and meanings whilst it does not lie in the information that it provides about the previous nations or of the future just as it isn't found within scientific laws. The Arabs perceived the I'jaaz of the style of the Qur'aan but did not comprehend the true reality of this style, as had they fully comprehended it, they would have been able to imitate it.

### **Hujjiyat ul-Qur'aan (Its proof and validity)**

The Qur'aan is a book which is Arabic in terms of language and style, which Muhammad (saw) came with. It can therefore either have come from the Arabs, or from Muhammad or it could have come from Allah Ta'Aalaa. It is not possible for it to have come from any other than these three due to it being Arabic in language and style.

As for it having come from the Arabs then this is false and invalid because the Qur'aan challenged them to come with and reproduce the like of it, indeed just one Soorah like it. Allah Ta'Aalaa said:

أَمْ يَقُولُونَ افْتَرَاهُ قُلْ فَأْتُوا بِسُورَةٍ مِّثْلِهِ وَادْعُوا مَنِ اسْتَنْطَعْتُمْ مِّنْ دُونِ اللَّهِ  
إِنْ كُنْتُمْ صَادِقِينَ

*Or do they say [about the Prophet]: "He invented it?" Say: "Then bring forth a Soorah like it and call upon [for assistance] whomever you can besides Allah, if you should be truthful" (Yousuf 38).*

It is therefore not from the Arabs because they were incapable and did not have the ability to reproduce the like of it or a Soorah like it. Their inability was established and verified and they still remain incapable of bringing the like of it.

As for it having originally come from Muhammad (saw) then this is also false and invalid because Muhammad (saw) was an Arab and whatever the level of his genius or eloquence, he was still one from amongst his society. As long as the Arabs were not able to bring the like of it and as long as Muhammad (saw) is one of them, then what applies to them also applies to him. In addition to that Muhammad (saw) has Ahaadeeth (speech) that has reached us by way of Tawaatur (definite transmission) like the Hadeeth: **“Whosoever lies about me deliberately then let him take his seat in the fire”** (Al-Bukhaari and Muslim). If this Hadeeth or any Hadeeth is compared to an Aayah of the Qur’aan no resemblance in style can be found between them.

The Arabs themselves did not make the claim that the Qur’aan was the speech of Muhammad (saw) but rather one of their claims was that a Christian youth called Jabar would bring it to him. Allah Ta’Aalaa then refuted them by His Qawl:

وَلَقَدْ نَعْلَمُ أَنَّهُمْ يَقُولُونَ إِنَّمَا يُعَلِّمُهُ بَشَرٌ لِّسَانُ الَّذِي يُلْحِدُونَ إِلَيْهِ  
أَعْجَمِيٌّ وَهَذَا لِسَانٌ عَرَبِيٌّ مُّبِينٌ

*And We certainly know that they say, "It is only a human being who teaches the Prophet." The tongue of the one they refer to is foreign, and this Qur'an is [in] a clear Arabic language (An-Nabl 103).*

The Qur'aan is therefore not originally from Muhammad (saw).

The Qur'aan must therefore definitely be the Kalaam (speech) of Allah Ta'Aalaa. It is a miracle for Muhammad (saw) to indicate and guide to the fact that he is a Nabi and Rasool sent by Allah Ta'Aalaa.

This represents the rational and intellectual ('Aqliy) proof and evidence in respect to the Qur'aan being from Allah and it has been established and affirmed by Tawaatur (definite transmission) that it is the same Qur'aan that Allah Ta'Aalaa revealed upon Muhammad (saw).

Allah Ta'Aalaa has addressed mankind in this Qur'aan in a number of Aayaat demanding that they follow that which was revealed in it. Allah Ta'Aalaa said:

وَأَنَّ هَذَا صِرَاطِي مُسْتَقِيمًا فَاتَّبِعُوهُ وَلَا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَن  
سَبِيلِهِ

*And verily, this is my Straight Path, so follow it, and do not follow (other) paths, for they will separate you away from His Path (Al-An'aam 153).*



And He Ta'Aalaa demanded that they rule and judge by what He had revealed in it:

وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ

*And so judge between them by what Allah has revealed and do not follow their desires and beware of them lest they seduce away from some of that which Allah has sent down to you (Al-Maa'idah 49).*

And He Ta'Aalaa said:

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ

*And whosoever does not judge by what Allah has revealed then they are the disbelievers (Al-Maa'idah 44).*

The Qur'aan is therefore a Hujjah (proof and argument) over mankind and its Ahkaam are obligatory to be followed.

## **The importance of the Qur'aan in relation to the other Adillah (sources of evidence)**

The Qur'aan has a special importance and significance that distinguishes it from the remainder of the Adillah Al-Ijmaaliyyah like the Sunnah, Ijmaa', Qiyaas and others. This significance manifests in the following matters:

1) The Qur'aan Al-Kareem is the Kalaam (speech) of Allah in its Lafzh (wording) and in its Ma'naa (meaning). Consequently, the

Prophetic Ahaadeeth are not considered to be from the Qur'aan because its Alfaazh (wordings) are not from Allah even if its meanings have been inspired from Allah. The Tafseer of the Qur'aan is also not considered to be from the Qur'aan just as the translation of the Qur'aan into other non-Arabic languages are not considered to be the Qur'aan. People undertake an act of worship by reciting the Qur'aan due to it being the Kalaam of Allah which is a special quality that is particular to it and is not found within any other Adillah.

2) The Qur'aan Al-Kareem has been transmitted to us by Tawaatur and this applies to every single one of its Aayaat. Each Aayah is Qat'iy Ath-Thuboot (definite in transmission) in respect to it being from Allah Ta'Aalaa. Consequently, anything that has not been transmitted by Tawaatur is not considered to be from the Qur'aan like that which was related from Abdullah Ibn Mas'ood (ra) for example when he recited the Qawl of Allah Ta'Aalaa:

فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ

*And whoever does not find the means then he should fast three days (Al-Baqarah 196).*

When he read this Aayah he added the word 'Mutataabi'aat' (consecutive) after the three days and as such this reading is understood to represent a Tafseer of the three days in respect to them being consecutive in accordance to the opinion of Abdullah Ibn Mas'ood (ra).

That is while the vast majority of the Prophetic Ahaadeeth, that have been transmitted to us, are not Mutawaatir in their transmission as they are mostly Khabar Aahaad which means that they are Zhanniy Ath-Thuboot (not definite in transmission) in respect to them being from the Messenger of Allah (saw).

3) The Qur'aan Al-Kareem is safeguarded from any addition or omission (or deletion) due to the Qawl of Allah Ta'Aalaa:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

*Verily it is Us who have revealed the Dhikr (Al-Qur'aan) and verily it is us who will safeguard it (Al-Hijr 9).*

Therefore, it is not possible for a creation to add to it or take anything away from it because Allah Ta'Aalaa has taken over and guaranteed that it will be preserved and safeguarded. In contrast we have seen that there have been those who have added to the Ahaadeeth of the Messenger of Allah (saw) either out of ignorance and good intention or in a deliberate attempt to scheme and fight against Islaam. The Saheeh Ahaadeeth are then only distinguished by the relaters and scholars of Hadeeth like Al-Bukhaari, Muslim and At-Tirmidhi amongst others.

4) The Qur'aan Al-Kareem is the Asaas (basis) and is the first point of reference for the Islamic Sharee'ah whilst the Hujjah (proof and validity) of the other Adillah like the Sunnah, Ijmaa' and Qiyaas is derived from it. As such we take the Sunnah because Allah Ta'Aalaa has said in the Qur'aan:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

*And whatever the Messenger brings to you take it and whatever he forbids you from abstain from it (Al-Hashr 7).*

And we take the Ijmaa' As-Sahaabah because Allah Ta'Aalaa has praised them (collectively) in the Qur'aan:

وَالسَّابِقُونَ الْأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ  
 رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِي تَحْتِهَا الْأَنْهَارُ خَالِدِينَ  
 فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ

*And the first forerunners [in the faith] among the Mubaajireen and the Ansaar and those who followed them with good conduct - Allah is pleased with them and they are pleased with Him, and He has prepared for them gardens beneath which rivers flow, wherein they will abide forever. That is the great attainment (At-Taubah 100).*

## **The Ahkaam that are encompassed by the Qur'aan Al-Kareem**

The Qur'aan encompasses Usool Ud-Deen (fundamentals of the Deen i.e. Aqeedah) and all types of Ahkaam including those which came in an 'Aamm (general) and Mujmal (requiring detail) way and it also includes that which has come in a detailed manner. Allah Ta'Aalaa said:

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ

*And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims (An-Nabl 89).*

It has organised and regulated these Ahkaam (rulings): The relationship of the human with his Rabb, the relationship of the human with himself and the relationship of the human with others.

## 1) The Ahkaam that regulate the relationship of the human with his Rabb:

- **Al-Aqaa'id (beliefs):** The Aayaat of the Qur'aan Al-Kareem have explained and made clear that which is obligatory for the Muslim to believe in like the Imaan in Allah, His Malaa'ikah (Angels), His Kutub (Books), His Rusul (Messengers), the Last Day, Jannah (paradise) and Naar (hellfire), Jinn and other matters... Allah Ta'Aalaa said:

يَا أَيُّهَا الَّذِينَ آمَنُوا آمِنُوا بِاللَّهِ وَرَسُولِهِ وَالْكِتَابِ الَّذِي نَزَّلَ عَلَيَّ رَسُولِهِ  
وَالْكِتَابِ الَّذِي أَنْزَلَ مِنْ قَبْلُ وَمَنْ يَكْفُرْ بِاللَّهِ وَمَلَائِكَتِهِ وَكُتُبِهِ وَرُسُلِهِ  
وَالْيَوْمِ الْآخِرِ فَقَدْ ضَلَّ ضَلَالًا بَعِيدًا

*O you who have believed, believe in Allah and His Messenger and the Book that He sent down upon His Messenger and the Scripture which He sent down before. And whoever disbelieves in Allah, His angels, His books, His messengers, and the Last Day has certainly gone far astray (An-Nisaa 136).*

- **Al-Ibaadaat (Acts of worship):** Like the Salaah, Zakaah, Siyaam, Hajj and Al-Jihaad which came in an 'Aamm (general) and Mujmal manner and were then explained (and detailed) by the Messenger of Allah (saw) who said: **“Take your rituals (Manaasik of Hajj) from me”** (Ahmad) and said: **“Pray as you have seen me pray”** (Ahmad and Al-Bukhaari).

## 2) Ahkaam that have organised the relationship of the human or person with himself:

- **Al-Mat'oomaat** (foodstuffs) and **Malboosaat** (clothing/dress): Allah Ta'Aalaa said:

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا

*O mankind, eat from that which is upon the earth (that is) lawful and good (Al-Baqarah 168).*

From these things some matters have been exempted and have been made Haraam like that which is mentioned in the following Aayah:

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالْدَّمُ وَخِمُّ الْحَنْزِيرِ وَمَا أَهْلًا لِعَيْرِ اللَّهِ بِهِ

*Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah... (Al-Maa'idah 3).*

From the two Aayaat and others the following principle was deduced: *'The Asl (origin) in respect to things is Al-Ibaahah (permissibility) as long as no Daleel has been mentioned to prohibit it'.*

- **Al-Akhlaaq (morals):** The Qur'aan has urged the possession of the virtuous morals like truthfulness, humbleness, Khushoo' (focus in worship) and Sabr (patience) and it has prohibited bad characteristics like lying, cheating, pride and arrogance whilst making the consequence of having these traits being linked to punishment in the hereafter:

وَيْلٌ يَوْمَئِذٍ لِلْمُكَذِّبِينَ

*Woe, that Day to the deniers (Al-Mursalaat 19).*

**2) Al-Ahkaam that organise and regulate the relationship of the human with others:**

- **The Ruling System:** The Qur'aan regulated the relationship between the ruler and the ruled and placed down principles that must be observed by general Adillah. The most important of which are:

a) Al-Hukm (ruling) by what Allah Ta'Aalaa has revealed. Allah Ta'Aalaa said:

وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ

*And rule between them by what Allah has revealed and do not follow their desires  
(Al-Maa'idah 49).*

b) Al-'Adl (justice) in resolving disagreements and disputes between the people. Allah Ta'Aalaa said:

وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

*And when (if) you judge (rule) amongst the people you must judge with justice  
(An-Nisaa' 58).*

c) Obedience to those entrusted with authority (Uoli-l-Amr) as long as they adhere to the Hukm (ruling) by what Allah Ta'Aalaa has revealed. Allah Ta'Aalaa said:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن

تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it back to Allah and the Messenger (An-Nisaa' 59).*

d) Ash-Shouraa (consultation): Allah Ta'Aalaa said:

وَشَاوِرْهُمْ فِي الْأَمْرِ

*And consult them in the matter/affair (Aali 'Imraan 159).*

And He Ta'Aalaa said:

وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ

*And whose affair is Shooraa (consultation) between them (Ash-Shouraa 38).*

e) At-Ta'aawun (cooperation): Allah Ta'Aalaa said:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

*And cooperate in righteousness and piety, but do not cooperate in sin and aggression (Al-Maa'idah 2).*

- **The Economic System:** This relates to the organisation and regulation of ownership, its causes and how to act or dispose in regards to it. It has explained that the property in origin belongs to Allah:

وَأَتَوْهُمْ مِّن مَّالِ اللَّهِ الَّذِي آتَاكُمْ

*And give them from the wealth of Allah which He has given you (An-Noor 33).*



And Allah Ta’Aalaa has entrusted the human with this property (Maal). Allah Ta’Aalaa said:

وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ

*And spend of that whereof He has made you trustees (Al-Hadeed 7).*

And it placed down a general principle (Qaa’idah ‘Aammah) for the spending and this is the Qawl of Allah Ta’Aalaa:

وَابْتَغِ فِيهَا مَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا

*But seek, through that which Allah has given you, the home of the Hereafter; and [yet], do not forget your share of the world (Al-Qasas 77).*

- **The Social System:** ‘The Family System’ and this is the system that treats the relationship between the man and the woman and what arises from this relationship like Zawaaj (marriage), Talaaq (divorce), ‘Iddah (waiting period) and Nafaqah (spending). And it established the relationship between the husband and wife upon Mawaddah (affection) and Rahmah (mercy). Allah Ta’Aalaa said:

وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

*And He placed between you (male and female) affection and mercy (Ar-Room 21).*

- **Punishment System:** This is like the Hadd (set prescribed punishment) for Al-Qatl (murder), the Hadd for Saraqah (thievery),

the Hadd for Az-Zinaa (fornication and adultery) and the Hadd for Al-Huraabah (highway robbery). They are punishments which act as a deterrence in which the preservation and safeguarding of the lives, minds, offspring (lineage) and wealth (properties) is observed. For example, it has been explained that there is life (Hayaat) in Al-Qisaas (law of retribution) as Allah Ta’Aalaa said:

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ

*And there is for you in legal retribution [saving of] life (Al-Baqarah 179).*

- **The relationship of Muslims with others:** The Muslims have been directed to fulfil their covenant with others: The Qur’aan directed the Muslims to fulfil their covenant with others including the States, peoples and nations. Allah Ta’Aalaa said:

وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ

*And fulfil the covenant of Allah when you have convened it (An-Nabl 91).*

And it instructed us to act kindly and generously with the captive as Allah Ta’Aalaa said:

وَيُطْعَمُونَ الطَّعَامَ عَلَىٰ حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا

*And they give food in spite of love for it to the needy, the orphan, and the captive (Al-Insaan 8).*

And the Qur’aan directed treating the enemy in a like for like manner. Allah Ta’Aalaa said:

فَمَنْ اَعْتَدَىٰ عَلَيَّكُمْ فَاَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اَعْتَدَىٰ عَلَيَّكُمْ

*So whoever has assaulted you, then assault him in the same way that he has assaulted you (Al-Baqarah 194).*

## **The Style of the Qur'aan in respect to its explanation and presentation of Ahkaam (rulings):**

The Qur'aan Al-Kareem presented the thoughts and Ahkaam of Islaam that it brought with an Arabic style that reached the highest level of Balaaghah (eloquence) and Fasaahah (purity). The following matters can be observed in respect to its methodology of presentation:

1 – It presented the Ahkaam in a manner that arouses the desire to follow and be obedient. At the same time, it incites an aversion and repulsion in respect to violating, undertaking a contrary act and resistance to His commands. Allah Ta'Aalaa said:

وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ

*And whoever obeys Allah and His Messenger He will enter him into gardens*  
*(An-Nisaa' 13).*

And He Ta'Aalaa said:

وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا

*And whoever disobeys Allah and His Messenger and transgresses His limits He will enter Him into the fire (An-Nisaa' 14).*

2 – It has determined the WujooB (obligation) through the Seeghat ul-Amr (command form). Allah Ta’Aalaa said:

وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ

*And establish the testimony for (the acceptance of) Allah (At-Talaaq 2).*

And it has also determined that an action is Maktoob (written/prescribed) upon the Mukallafeen through the Seeghat ul-Ikhbaar (form of informing) like in the speech of Allah Ta’Aalaa:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ

*Fasting has been written (proscribed) upon you like it was written for those who were before you (Al-Baqarah 183).*

3) Al-Qur’aan is Qat’iy Ath-Thuboot (definite in transmission) and its Dalaalah (indicative meaning) in respect to the Ahkaam can be Qat’iy Ad-Dalaalah (definite in indicative meaning). This is like in the speech of Allah Ta’Aalaa:

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُنْ لَهُنَّ وِلْدٌ

*And for you is half of what your wives leave if they did not have a child (An-Nisaa’ 12).*

In this case, the Lafzh (wording) in this Aayah does not hold the possibility of more than one meaning. However, an Aayah can also

be Zhanniy Ad-Dalaalah (indefinite in its indicative meaning). An example of this is the Qawl of Allah Ta’Aalaa:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

*And the divorced women remain in waiting for three (Quroo’) (Al-Baqarah 228).*

The Lafzh “Quroo” holds the possibility to mean Tahaaraat (periods of purity) just as it holds the possibility to intend the meaning of the periods of impurity (Haidaat). Due to being open to more than one meaning, the Dalaalah (indication) of the Aayah follows the ruling of the Zhanniy (indefinite) and not the Qat’iy (definite).

4 – Some of the Aayaat of the Qur’aan came Mujmalah (in an undetailed manner) or ‘Aammah (general) or Mutlaqah (unrestricted) and the Sunnah came to explain the Mujmal, specify the ‘Aamm and restrict the Mutlaq. Allah Ta’Aalaa guided to that in His speech:

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ

*And We revealed to you the Dhiker (reminder) that you may make clear to the people what was sent down to them (An-Nabl 44).*

## The Second Daleel

### As-Sunnah An-Nabawiyah Ash-Shareefah

#### Definition of As-Sunnah:

As-Sunnah linguistically means: The path that is trodden (or the way that is followed) and its origin comes from their (the Arabs) usage:

سنت الشيء بالسن

*I forged something with a grindstone' (i.e. like carving a path).*

This is in the case where I passed a thing through it (the grindstone) until a 'Sannan' i.e. a Tareeq (path) was effected within it (i.e. like etching a path).

#### The meaning of As-Sunnah in the view of the 'Ulamaa of Usool ul-Fiqh:

The Sunnah is all that was issued or came from the Messenger (saw) other than the Qur'aan, represented in a Qawl (speech), a Fi'l (action) or Taqreer (approval, consent, silence).

Based on this definition the intrinsic divisions of the Sunnah are three: As-Sunnah Al-Qawliyah, As-Sunnah Al-Fi'liyah and As-Sunnah At-Taqreeriyah.

#### 1 - As-Sunnah Al-Qawliyah:

The Sunnah Al-Qawliyah is all that the Messenger (saw) uttered or stated or said (Nataqa) related to the Tashree' (legislation). The name 'Hadeeth' has been given for this whilst some ('Ulamaa) have made the Hadeeth synonymous with the Sunnah comprising of all three categories of the Sunnah.

The Aqwaal (statements) of the Messenger (saw) related to the Tashree' (legislation) number many and represent the majority of the Sunnah. They include his Qawl (speech) (saw): **“The killer does not inherit”** (Abu Daawood and An-Nasaa'iy) and **“If two Khaleefahs are given the Bai'ah then kill the latter of them”** (Muslim) and: **“A man asked the Nabi (saw): “Which Jihaad is the best?” He said: “The word of truth before the oppressive (or unjust) Sultaan (ruler)””** (An-Nasaa'iy with a Saheeh Isnaad).

## 2 – As-Sunnah Al-Fi'liyah:

As-Sunnah Al-Fi'liyah are his actions that are particular or specific to the Tashree' (legislation) like his Salaah and like what Jaabir (ra) narrated: **“The Messenger of Allah (saw) threw the Jamrah (pebbles) on the day of An-Nahr (sacrifice) at Duhaa, as for after (11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>), then when the sun has gone down”** (Related by the five). It is also like what 'Aamir Bin Ar-Rabee'ah (ra) related when he said: **“I saw the Nabi (saw) use Miswaaq whilst he was fasting so many times that I cannot count”** (Al-Bukhaari).

And there are actions which the Messenger of Allah (saw) undertook which have been established to be specific to him and these actions are not for other than him. This is like the Wisaal (continuation ththrough) of his fasting where he (saw) would continue his fast without Iftaar or Suhoor. Ibn 'Umar (rah) said: **“The Messenger of Allah (saw) forbade Al-Wisaal (continuation of fasting)”**. They said (to him): **“You continue your fast”** and he (saw) replied: **“You**

**are not like me. I am fed and given drink (i.e. nourished)”**

(Agreed upon and this is the version of Al-Bukhaari).

Another example is the specification of combining more than four wives in marriage at one time. These matters are specific to the Messenger (saw) and it is not permissible to follow (or emulate) him in respect to them.

### **3 – As-Sunnah At-Taqreeriyah:**

This is the Sukoot (silence) of the Messenger (saw) upon a statement or action that took place or happened in his presence or in his absence but with his knowledge of its occurrence. This silence indicates the permissibility of the statement or the action because the Messenger of Allah (saw) does not remain silent over the Baatil (falsehood/falsity/invalid matter) or a Munkar (a prohibited matter). An example of this is his silence (saw) in respect to the Abyssinian youths playing with spears inside his Masjid in Al-Madinah in addition to his silence in respect to ‘Aa’ishah, the mother of the believers (ra), watching them whilst they were engaged in that.

### **Hujjiyat As-Sunnah An-Nabawiyah:**

The Sunnah of the Messenger of Allah (saw) is a Hujjah (valid proof) in the Deen, a Daleel from the Adillah (sources of evidence) for the Ahkaam and indeed represents the second Daleel (source of evidence) after the Qur’aan Al-Kareem. The Hujjiyah (validity of proof) of the Sunnah has been guided to and indicated in:

#### **1 – Al-Qur’aan Al-Kareem:**



The Qur'aan has explained and made clear that the Sunnah is from the Wahi (divinely inspired revelation) and especially the Sunnah Al-Qawliyah. Allah Ta'Aalaa said in respect to His Messenger (saw):

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ﴿٣﴾ إِنَّ هُوَ إِلَّا وَحْيٌ يُوحَىٰ

*And he does not speak from his (own) desire. It is only (divine) revelation that is inspired (An-Najm (3-4)).*

And Allah Ta'Aalaa said:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

*And whatever the Messenger brings to you take it and whatever he forbids you from abstain from it (Al-Hashr 7).*

That is whilst understanding that the Messenger (saw) came with the Sunnah just as he came with the Qur'aan. And Allah Ta'Aalaa said:

قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِي يُحْبِبْكُمُ اللَّهُ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ

*Say if you love Allah then follow me; Allah will love you and forgive you your sins (Aali Imraan 31).*

These Aayaat therefore indicate that the Sunnah is from Allah and demand that this Sunnah be followed.

## **2 – Al-Ijmaa':**

The Sahaabah have agreed by consensus after the passing of the Messenger of Allah (saw) upon the obligation of taking the Ahkaam

that the Sunnah An-Nabawiyah brought and they did not differentiate between a Hukm found or mentioned in the Qur'aan and a Hukm found within the Sunnah, as both in their view were obligatory to follow. Examples of this include: 'There consensus upon the stoning of the Zaani Al-Muhsin (adulterer)' which was based upon a Sunnah

Qawliyah and a Sunnah Fi'liyah that came from the Messenger (saw). The examples indicating their Ijmaa' upon this matter are so many that they are innumerable.

### 3) Ad-Daleel Al-'Aqliy (rational evidence):

The Daleel Al-'Aqliy (rational and intellectual evidence) has guided to and indicated that the Messenger Muhammad (saw) is the one who came with the miracle which is the Qur'aan from Allah. This represents a Qat'iy (definite) evidence that he is the Messenger of Allah (saw) sent to us. The Imaan (belief) in his Messengership necessitates the obligation of obedience to him, following his judgement and accepting all that he brought and without all of that, this Imaan would hold no meaning. It is also because the Qur'aan, which is a miracle, demands from him to rule and judge by all that Allah Ta'Aalaa had revealed:

وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ

*And judge between them by what Allah has revealed (Al-Maa'idah 49).*

His Sunnah is from that which Allah Ta'Aalaa has revealed, which He Ta'Aalaa inspired to him in meaning and then he (saw) expressed it in his words, actions and consent.

## The relationship of the Sunnah to the Qur'aan and its related categories:

The Qur'aan and the Sunnah are both Wahi from Allah and we have been commanded to follow what Allah Ta'Aalaa has revealed whether it was revealed as the Qur'aan or as the Sunnah. Allah Ta'Aalaa said:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ  
الْآخِرِ

*O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you have believed in Allah and the Last Day (An-Nisaa' 59).*

And Allah Ta'Aalaa said:

مَنْ يُطِيعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ

*And whoever obeys the Messenger has then (indeed) obeyed Allah (An-Nisaa' 80).*

And He Ta'Aalaa said:

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي  
أَنْفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا

*But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission (An-Nisaa' 65).*

## **The divisions/categories (Aqsaam) of the Sunnah in relation to the Qur'aan:**

The Sunnah came to explain and make clear the Qur'aan (Bayaan). Allah Ta'Aalaa said:

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ

*And We revealed to you the message that you may make clear to the people what was sent down to them (An-Nabl 44).*

This Bayaan (explanation and clarification) is manifested as follows:

### **1 – Providing the Tafseel (detail) to the Mujmal (undetailed) in the Qur'aan:**

An example of this is that Allah Ta'Aalaa commanded the performance of the Salaah by His speech Ta'Aalaa:

وَأَقِيمُوا الصَّلَاةَ

*And establish (perform) the Salaah (An-Noor 56).*

This came without a Bayaan (explanation) of its precise timings, Arkaan (pillars), the number of its Raka'at and the manner of how

to perform it. As such the Sunnah explained these matters in detail through the statements and actions of the Messenger (saw) who said:

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

**Pray as you see me pray (Al-Bukhaari)**

The same applies in respect to the Zakaah, the Hajj and the other actions.

## **2 – Takhsees (the specification) of the ‘Aamm (general) of the Qur’aan:**

An example of this is the Qawl of Allah Ta’Aalaa:

الرَّائِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

*The female fornicator (Zaaniyah) and the male fornicator (Zaani), lash each one of them with one hundred lashes (An-Noor 2).*

This is ‘Aamm (general) in respect to every Zaan (fornicator). The action of the Messenger (saw) and his speech then came and specified this Aayah to the Zaani who is not Muhsin (i.e. married). As for the Zaani who is Muhsin then he is stoned until death. This is due to the action of the Messenger (saw) when he stoned Maa’iz and Al-Ghaamidiyah and due to his Qawl (statement): **“The blood of a Muslim person is not Halaal except in one of three (circumstances); the married Zaani (adulterer), the life for the life and the one who left his Deen and separated from the Jamaa’ah”**.

### 3) Taqyeed (restricting) the Mutlaq (unrestricted) of the Qur'aan:

An example of this is the Qawl of Allah Ta'Aalaa:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

*And the male thief and female thief, cut off their hands (Al-Maa'idah 38).*

This is Mutlaq (unrestricted) to every type of theft and every thief and so the Sunnah came and restricted the theft through the speech (Qawl) of the Messenger (saw) in the Hadeeth narrated by Al-Bukhaari and Muslim in which he (saw) says: **“Do not cut the hand of the thief except in (the case of) a quarter of a Deenaar or above”**. It also has to be taken from a safe place of keeping (Hirz) amongst other restrictions that the Sunnah has brought in relation to the obligation of cutting the hand of the thief.

### 4) To attach a branch from amongst the Furoo' (branches) of the Ahkaam that has been found in the Sunnah with its Asl (origin) found in the Qur'aan:

An example of this is the Tahreem (prohibition) of combining two sisters in marriage:

وَأَنْ يَتَّخِذُوا بَيْنَ الْأُخْتَيْنِ

*And that you combine two sisters (in marriage) (An-Nisaa' 23).*

The Messenger of Allah (saw) attached to that the Tahreem (prohibition) of combining in marriage between a woman and her Khaalah (maternal aunt) and a woman and her 'Ammah (paternal

aunt). This came in his Qawl (saw): **“Do not marry a woman upon her ‘Ammah and not upon her Khaalah”** (Agreed upon).

In respect to this, it is hard to find a Hukm that the Sunnah has brought except that it has an ‘Asl (origin) in the Qur’aan Al-Kareem whether this connection was close or distant. This opinion was transmitted from Ash-Shaafi’iy in his ‘Ar-Risaalah’ and Ash-Shaatibi affirmed it after him in his ‘Al-Muwaafaqaat’. Consequently, in respect to the Aayah:

مَا فَرَطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ

*We have not neglected (overlooked) anything in the Book (Al-An’aam 38).*

And the Aayah:

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تَيَانًا لِّكُلِّ شَيْءٍ

*And we have sent down upon you the Book as an explanation for everything (or matter) (An-Nahl 89).*

These two Aayaat indicate with a Qat’iy Dalaalah (definite indication) that the Qur’aan comprises the Usool (fundamentals and bases) of all of the Sharee’ah. The Sunnah is then explanatory to it and there is no Hukm (legal ruling) that does not have an Asl (origin) in the Qur’aan. As for what is said in respect to the Hukm of the prohibition related to the domesticated (tamed) donkeys (Al-Humur Al-Ahliyah) and the predatory beasts and that they have no Asl (origin) in the Qur’aan, then verily Allah Ta’Aalaa said:

وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ

*And he makes Halaal for the them the Tayyibaat (good things) and makes prohibited upon them the Khabaa'ith (bad things) (Al-A'araaf 157).*

This Aayah has been argued to be representative of the Asl (origin) for every prohibited or permissible matter.

## **The Aqsaam (Categories or divisions) of the Sunnah in respect to its Sihhah (validity and soundness) and its Da'f (weakness)**

The Sunnah is divided in respect to As-Sihhah (soundness) and Ad-Da'f (weakness) into three categories: Saheeh, Hasan and Da'eef.

### **1 - Al-Hadeeth As-Saheeh (Sound):**

This is the Hadeeth in which its Isnaad (chain) connects the transmission of the 'Adl Ad-Daabit from the 'Adl Ad-Daabit until its end and is not Shaadh or Mu'allal.

Al-'Adl (the just): As-Sudooq At-Taqi (The honest person who fears Allah and obeys Him).

Ad-Daabit (the precise): Known for his astuteness and not being careless or inattentive.

Until its end: The Sanad (chain) connects to the Messenger (saw).

Not Shaadh (irregular) or without Shudhoodh (irregularity): That it does not go against the Thiqqah (a trustworthy narrator) stronger than it.



Mu'allal (defective) or without an 'Illah (defect): That it is free of defects like the interruption of the chain.

The highest level of the Saheeh Hadeeth is that which Al-Bukhaari and Muslim have agreed upon its Sihhah (soundness) and Riwaayah (report). This is what is indicated to by the statement: 'Saheeh Mutaffaq 'Alaihi' (Agreed upon).

The utilisation of the Saheeh Hadeeth as an evidence or proof for the Ahkaam is considered to be from the strongest forms of Ihtijaj (evidential usage of proof to derive Ahkaam).

## **2 - Al-Hadeeth Al-Hasan:**

“It is the Hadeeth whose point of origin is known and its transmitters (Rijaal) have become famous or well known”. It has been accepted by the majority of the 'Ulamaa and utilised by the majority of the Fuqahaa. It is the Hadeeth in which none in the Isnaad (chain) has been accused of lying and it is called Hasan due to the Husn Azh-Zhann in respect to its Riwaayah (narration) despite not reaching the level of the transmitters of the Saheeh Hadeeth.

The 'Ulamaa have provided the following definition for this category of Hadeeth:

The Hasan Hadeeth is that which its Sanad (chain) has connected through the transmission of the 'Adl, Khafeef Ad-Dabt (lesser precision) until its end without Shudhoodh (irregularity) or 'Illah (defect).

The difference therefore between the Saheeh Hadeeth and the Hasan Hadeeth is the existence of a lesser or lighter level of precision from the transmitter. Aside from that they resemble each other.

### **3 – Al-Hadeeth Ad-Da’eef (weak Hadeeth):**

The Da’eef (weak) Hadeeth is that in which the attributes of the Saheeh and Hasan are not met or do not come together.

There are three opinions in respect to using it as evidence (Ihtijaa):

1 – It is not used as evidence at all and this is the opinion of the Kibaar (major) Ulamaa like Al-Bukhaari. It is the most correct of the opinions.

2 – It is used as evidence in respect to the merits of Akhlaaq (morals) and traits (characteristics).

3 – It is used as evidence if the (requirements of the) Ahkaam Ash-Shar’iyah are not fulfilled or met by the Qur’aan or the (Saheeh) Sunnah.

The last two opinions are both weak because there is no Daleel Shar’iy that supports the adoption of either of them.

The Da’eef Hadeeth is of different types including the Shaadh (irregular or contradictory), the Mu’allal (defective), the Munqati’ (interrupted) and the Mawdoo’ (fabricated) amongst others.

### **Al-Hadeeth Al-Mursal: ‘Mursal At-Taabi’iy’**

This is the Hadeeth that the Taabi’iy (generation after the Sahaabah) raised to the Messenger of Allah (saw) in regards to a Qawl, Fi’l or Taqreer, whether the Taabi’iy was major or minor (i.e. well known or not as well known). It has been called ‘Mursal At-Taabi’iy’ and it is the Hadeeth in which the Sahaabiy is not mentioned (in the chain).

They (the Ulamaa) have considered it to be from the kinds of Da'eef (weak) Hadeeth.

The Hukm of the Mursal At-Taabi'iy: 'That which the Sahaabiy was not mentioned in the chain'.

A – It is not allowed to use it as evidence at all.

B – It is permissible to use it as evidence.

C – It is used as evidence with Shuroot (conditions) and that is that it does not contradict or go against a Hadeeth that is Musnad (i.e. complete top to bottom) within its subject area.

The most correct of these opinions is the last one because the absence of the mention of the Sahaabiy from the Sanad (chain) of the Hadeeth does not make it Da'eef and invalid to be used as evidence. That is because the Sahaabah (rah) are not in need of evaluation of their trustworthiness (Ta'deel) as Allah Ta'Aalaa has praised and commended them and the Messenger of Allah (saw) did likewise.

As such the Mursal At-Taabi'iy is used as evidence as long as it is not contradictory to or in opposition to a Hadeeth that is stronger than it.

The most well-known Mursal Hadeeth include:

- The Mursal of Sa'eed Ibn ul-Musayyib from the people of Al-Madinah.
- The Mursal of 'Ataa Bin Abi Rabaah from the people of Makkah.
- The Mursal of Al-Hasan Bin Abi l-Hasan Al-Basriy from the people of Basrah.

**The Aqsaam (categories/divisions) of the Sunnah in respect to the Ruwaat (narrators) "As-Sanad" (The chain)**

The Sunnah is divided into three categories in respect to the Sanad (chain): Al-Mutawaatir, Al-Mash'hoor and Khabar Al-Aahaad.

## 1 – Al-Mutawaatir:

Al-Mutawaatir linguistically means: Consecutiveness, one after another with a gap (of time) between.

Al-Mutawaatir in accordance to the Istilaah (terminological definition): That which was related in the three eras (or generations) by a large number making it impossible for them to collude upon a lie.

The three eras (generations) are: The era of the Sahaabah, the era of the Taabi'een and the era of the Taabi' At-Taabi'een.

The Sunnah Al-Mutawaatirah is Qat'iy Ath-Thuboot (definite in transmission) in respect to it coming from the Nabi (saw) and therefore it is obligatory to work or act with it in respect to what it came with whether this was Ahkaam or Aqaa'id (beliefs).

An example of the Sunnah Al-Qawliyah Al-Mutawaatirah is his Qawl (saw):

مَنْ كَذَبَ عَلَيَّ مُتَعَمِّدًا فَلْيَتَّبِعُوا مَقْعَدَهُ مِنَ النَّارِ

**“Whoever lies about me intentionally then let him occupy his seat (place) in hellfire”**  
(Al-Bukhaari and Muslim).

An example of the Sunnah Al-Fi'liyah Al-Mutawaatirah are like those related to the performance of the five prayers.

As for the Tawaatur Al-Ma'nawiy (in meaning) then this is the transmission of the narrators of a single Sunnah with different Alfaazh (wordings) in the case where the narrators of each wording or worded version do not reach the level or point of Tawaatur however the collection or collective of the narrators of those different wordings (Alfaazh) reach the level of Tawaatur. An example of this Sunnah is that the actions in the 'Tbaadaat (acts of worship) are based or built upon the Niyah (intention). As for the Alfaazh (wordings) that have incorporated and included this meaning then they are like his Qawl (saw): **“Verily the actions are only by the intentions”** (Al-Bukhaari, Muslim, Abu Daawood, At-Tirmidhi and An-Nasaa'iy), his statement (saw): **“Whoever fights to make the word of Allah the highest then he is Fee Sabeelillah (in the way of Allah)”** (Mutaffaq 'Alaihi) and: **“There is no Hijrah after Al-Fat'h (conquest) but rather there is Al-Jihaad and the Niyah (intention)”** (Agreed upon) and his statement (saw): **“The one who does not resolve (i.e. make intention) for the Siyaam (fasting) before Fajr has no fasting for him”** Abu Daawood and At-Tirmidhi).

### **The Number by which At-Tawaatur is attained:**

All of the opinions that have specified a specific number for the accomplishment of Tawaatur do not have a basis to support them whether textual or 'Aqliy (intellectual). That is because the Sunnah Al-Mutawaatirah in which Yaqeen (certainty) is attained, from the angle of Thuboot (transmission), must be narrated by a Jamaa'ah (group) and not by a particular number. The number of this group and the distance of their locations must make it impossible for them to collude or collaborate upon a lie.

As such the Shuroot (conditions) of the Tawaatur are three:

A – A number of narrators that secures and prevents their collusion upon a lie.

B – That the knowledge of the Ruwaat (relaters) is based upon hearing and witnessing and is not based upon deduction or inference.

C – That the Tawaatur occurs in all three eras: The Sahaabah, the Taabi'een and the Taabi'iy At-Taabi'een.

## **2 – As-Sunnah Al-Mash'hoorah:**

This is that which has been related from the Sahaabah by a number that does not reach the level of Tawaatur and then reached the level in the era or time of the Taabi'een and the Taabi'iy At-Taabi'een.

This Sunnah establishes Zhann (indefiniteness) and it does not establish Yaqeen (certainty) because it is not Qat'iy Ath-Thuboot from the Nabi (saw). It is therefore a Hujjah (evidence and source of proof) in respect to the Ahkaam Ash-Shar'iyah but not a Hujjah for the Aqaa'id.

An example from the Ahaadeeth Al-Mash'hoorah is his Qawl (saw): **“Verily the actions are only by the intentions”** and this is from the Sunnah Al-Mash'hoorah.

## **3 – Sunnah Al-Aahaad – Khabar Al-Aahaad:**

This is what has been related by a number that does not reach the level of Tawaatur in the three eras. There is no difference or disagreement amongst the Muslims in respect to the Sunnah Al-Aahaad representing a Hujjah upon the Muslims in respect to the obligation of acting by or working with it and to adhere to its

Ahkaam. The proof and evidence (Burhaan) for this is established from a number of angles including:

1 – The Ijmaa’ As-Sahaabah in a number of incidents and occurrences that are too numerous to be counted in regards to the acceptance of the Khabar Al-Waahid and acting by it. An example is when ‘Umar Ibn Al-Khattaab (ra) acted in accordance to the Khabar (report) of ‘Abdur Rahman Bin ‘Auf (ra) in respect to the Nabi (saw) taking the Jizyah from the Majoos. This is when he related from the Messenger of Allah (saw) that he said: **“Apply the same to them as you have applied to the Ahl ul-Kitaab (people of the book)”** (Al-Muwatta’).

2 – The Messenger (saw) found it sufficient to send Aahaad (singles/individuals) from amongst the Sahaabah to the rulers and nations to inform them about Islaam and its Ahkaam like when he sent Mu’aadh Ibn Jabal to Yemen and sent others to the Persians, Romans, Iraq, Ash-Shaam and Egypt.

3 – Allah Ta’Aalaa said:

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَافَّةً ۚ فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

*And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the Deen and warn their people when they return to them that they may beware (At-Taubah 122).*

The word Taa’ifah (in the Aayah) in accordance to the Arabic language is used for the Waahid (one) and more than Waahid (one). Consequently, if the Khabar Al-Waahid was not a Hujjah for actions

then the warning of those who had obtained understanding in the Deen would hold no benefit for the people returning from Al-Jihaad.

## **The Hukm (ruling) of working with each category of the categories of the Sunnah**

As was mentioned in the section about the categories of the Sunnah, working with (and acting upon) the Sunnah is Waajib. The following is a summary of what preceded in respect to the Hukm (ruling) of working with each Sunnah:

- 1 – Al-Mutawaatir: It is obligatory to take the Sunnah Al-Mutawaatirah in respect to the Aqaa'id and the Ahkaam.
- 2 – Al-Mash'hoor: It is obligatory to take the Mash'hoor in respect to the Ahkaam.
- 3 – Khabar Al-Aahaad: If it is Saheeh or Hasan, then it is obligatory to be taken to be worked with in respect to the Ahkaam.
- 4 – As-Sunnah Ad-Da'eefah: It is not used as evidence at all due to its transmission not being verified in respect to it being from the Messenger (saw).
- 5 – Al-Mursal: The Mursal At-Taabi'iy is used as evidence and acted upon or worked with as long as there is nothing stronger opposing it from like the Mash'hoor and Saheeh amongst others... And this also relates to the Ahkaam (and not the Aqeedah).



## **AFaal Ar-Rasool (saw) (The actions of the Messenger (saw))**

The AFaal (actions) of the Messenger (saw) are of four types:

1 – Al-AFaal Al-Jibilliyah (actions of natural disposition): These are the actions that are from the natural disposition of the human being (i.e. his Khalqah: how he naturally does things) which he undertakes like standing, sitting, eating, drinking, walking and what is similar. There is no difference or disagreement in respect to these being Mubaah for him (saw) and for his Ummah and as such they do not fall within the area of Takleef (legal responsibility and accountability). It is therefore not obligatory to follow the Messenger (saw) in his manner of how he undertook these actions.

2 – The actions that have been confirmed or established to be specific to him (saw). This is like the continuation of fasting without consuming food for the Suhoor and the Iftaar or like combining nine wives in marriage (at the same time). It is not permissible for us to share or participate along with him (saw) in these actions as they have been established to be from those matters which are specific to him by the Qur'aan and the Ijmaa'. Consequently, it is not permitted to emulate him in these types of actions.

3 – The actions which are an explanation of a Mujmal (undetailed or ambivalent) Nass (text) of the Qur'aan represents legislation for us and establishes the Hukm for us. The Hukm (ruling) of the action that came from him (saw) in this case and situation is the same as the Hukm that the action is explaining in respect to obligation (Wujoob), recommendation (Nadb) or permissibility (Ibaahah). This is like his actions related to the performance of the Hajj as their Hukm is the same Hukm as the Aayah:

وَلِلّٰهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ اِلَيْهِ سَبِيْلًا

*And it is a duty upon the people to Allah to perform Hajj of His house for whoever can find a means to it (Aali Imraan97).*

And the Hukm is Wujoob (obligation) and this remains as long as there is no Qareenah (connotation) that takes it away from the Wujoob (obligation).

4 – The actions that are connected to that which indicates that they are for drawing close to Allah Ta’Aalaa (Al-Qurbah). Actions either manifest within them the intention or purpose of Qurbah (seeking nearness to Allah) or do not manifest that. If the intention of Qurbah to Allah is manifested like the fasting of the day of ‘Aashooraa’ then it falls under the category of the Mandoob which the person is rewarded for undertaking and is not punished for leaving. If, however the intention of Qurbah is not manifested like in the choosing of a particular site or position for battle then it enters the category of the Mubaah (permissibility).

## **An-Naskh (abrogation) in the Qur’aan and in the Sunnah:**

### **The meaning of An-Naskh (abrogation):**

An-Naskh linguistically means: Raising/lifting (Ar-Rafu) and removing (Al-Izaalah). This is like the statement: ‘The Sun *Nasakhat* the shade’ and: ‘The wind *Nasakhat* the trace’. It can also be used linguistically to intend something similar to transference (Naql) like in their statement: ‘*Nasakhtu* Al-Kitaab’ (i.e. I copied it and transferred what was on one to the other).

An-Naskh in accordance to the Shar'a terminological convention (Al-Istilaah) means: The lifting of the Hukm established by a previous address by an address that is later than it.

The meaning of lifting (RaFu) of the Hukm: The removal of the Hukm so that the Mukallafeen (those who are legally responsible and accountable) are no longer requested or required to undertake or fulfil it.

### **Daleel An-Naskh (The abrogating evidence):**

Allah Ta'Aalaa has informed us of the occurrence of An-Naskh. He Ta'Aalaa said:

مَا نَنْسَخُ مِنْ آيَةٍ أَوْ نُنسِهَا نَأْتِ بِخَيْرٍ مِّنْهَا أَوْ مِثْلَهَا ۗ أَلَمْ تَعْلَمْ أَنَّ اللَّهَ  
عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

*We do not abrogate a verse or cause it to be forgotten except that We bring forth [one] better than it or similar to it. Do you not know that Allah is over all things competent? (Al-Baqarah 106).*

And He Ta'Aalaa said:

وَإِذَا بَدَّلْنَا آيَةً مَّكَانَ آيَةٍ وَاللَّهُ أَعْلَمُ بِمَا يُنزِلُ قَالُوا إِنَّمَا أَنْتَ مُفْتَرٍ ۚ بَلْ  
أَكْثَرُهُمْ لَا يَعْلَمُونَ

*And when We substitute a verse in place of a verse - and Allah is most knowing of what He sends down - they say, "You, [O Muhammad], are but an inventor [of lies]." But most of them do not know (An-Nahl 101).*

## Types of An-Naskh (Abrogation):

1 – The Naskh (abrogation) of the Hukm without replacement or substitution:

Allah Ta’Aalaa said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَاجَيْتُمُ الرَّسُولَ فَقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَةً

*O you who have believed, when you [wish to] privately consult the Messenger, present a charity before your consultation (Al-Mujaadilah 12).*

This Hukm, which was the presentation of Sadaqah before meeting the Messenger for private consultation, was abrogated by the following Ayah:

أَشْفَقْتُمْ أَنْ تُقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَاتٍ ۚ فَإِذْ لَمْ تَفْعَلُوا وَتَابَ اللَّهُ عَلَيْكُمْ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ ۚ وَاللَّهُ خَبِيرٌ بِمَا تَعْمَلُونَ

*Are you afraid of spending in charity before your private consultation (with him)? If then you do it not, and Allah has forgiven you, then (at least) perform As-Salat and give Zakat and obey Allah and his Messenger. And Allah is All-Aware of what you do (Al-Mujaadilah 13).*

2 – The Naskh (abrogation) of the Hukm to a (new) Hukm that is lighter than it:

The Mansookh (abrogated) Hukm: One (of the Muslims) standing firm in the face of ten enemies when fighting. Allah Ta’Aalaa said:

إِنْ يَكُنْ مِنْكُمْ عِشْرُونَ صَابِرُونَ يَغْلِبُوا مِائَتَيْنِ

*If there are twenty steadfast from you then you will overcome two hundred (Al-Anfaal 65).*

The Naasikh (abrogating) Hukm: One of the Muslims standing firm in the face of two enemies when engaged in battle. Allah Ta’Aalaa said:

الآن خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا ۚ فَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ صَابِرَةٌ  
يَغْلِبُوا مِائَتَيْنِ

*Now Allah has lightened for you and He has known that there is weakness amongst you. So if there are one hundred from you who are steadfast they will overcome two hundred (Al-Anfaal 66).*

3 – The Naskh of a Hukm to a Hukm that is comparable to it:

The Mansookh (abrogated Hukm): Directing the prayer in the direction of Al-Quds due to the command of the Messenger of Allah (saw).

The Naasikh (abrogating) Hukm: Directing the prayer towards the Ka’bah.

Allah Ta’Aalaa said:

قَدْ نَرَى تَقَلُّبَ وَجْهِكَ فِي السَّمَاءِ ۚ فَلَنُوَلِّيَنَّكَ قِبْلَةً تَرْضَاهَا ۚ فَوَلِّ وَجْهَكَ  
شَطْرَ الْمَسْجِدِ الْحَرَامِ ۚ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ ۚ

*We have certainly seen the turning of your face, [O Mubammad], toward the heaven, and We will surely turn you to a Qiblah with which you will be pleased. So turn your face toward al-Masjid al-Haram. And wherever you [believers] are, turn your faces toward it [in prayer] (Al-Baqarah 144).*

4 - The Naskh of a Hukm to a Hukm that is more severe:

The Mansookh (abrogated) Hukm: Reprimanding the Zaani and confining them to house arrest as taken from His Qawl Ta'Aalaa:

وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِّنكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّىٰ يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا ﴿١٥﴾ وَاللَّذَانِ يَأْتِيَانَهَا مِنْكُمْ فَادُّوهُمَا ۚ فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا ۚ إِنَّ اللَّهَ كَانَ تَوَّابًا رَّحِيمًا

*Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way. And the two who commit it among you, punish them both. But if they repent and correct themselves, leave them alone. Indeed, Allah is ever Accepting of repentance and Merciful (An-Nisaa' 15-16).*

The Naasikh (abrogating) Hukm: Lashing the non-Muhsin (married) with one hundred lashes which is taken from the Qawl of Allah Ta'Aalaa:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ ۚ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ

فِي دِينِ اللَّهِ

*The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and let not any pity for them restrain you in regard to a matter prescribed by Allah (An-Noor 2).*

## **How does An-Naskh take place in respect to the Kitaab and the Sunnah**

### **1 – The Naskh of the Qur’aan by the Qur’aan:**

Example:

Al-Mansookh (the abrogated): The Hukm of the steadfastness of one of the Muslims before ten of the enemy in battle. Allah Ta’Aalaa said:

إِنْ يَكُنْ مِنْكُمْ عِشْرُونَ صَابِرُونَ يَغْلِبُوا مِائَتِينَ

*If there are twenty steadfast from you then you will overcome two hundred (Al-Anfaal 65).*

An-Naasikh (the abrogating): The Hukm of the steadfastness of one of the Muslims before two of the enemy in battle. Allah Ta’Aalaa said:

الآن خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ صَابِرَةٌ يَغْلِبُوا مِائَتَيْنِ

*Now Allah has lightened for you and He has known that there is weakness amongst you. So if there are one hundred from you who are steadfast they will overcome two hundred (Al-Anfaal 66).*

## 2 – The Naskh of the Sunnah by the Qur’aan:

Example:

Directing the prayer to Bait ul-Maqdis was abrogated by the Qur’aan with the speech of Allah Ta’Aalaa:

فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ ۚ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوا وُجُوهَكُمْ  
شَطْرَهُ ۚ

*So turn your face toward al-Masjid al-Haram. And wherever you [believers] are, turn your faces toward it [in prayer] (Al-Baqarah 144).*

## 3 - The Naskh of the Sunnah by the Sunnah:

Example:

It is permissible for the Sunnah Al-Mutawaatirah to be abrogated by the Sunnah Al-Mutawaatirah, Al-Aahaad by Al-Mutawaatir and Al-Aahaad by Al-Aahaad. Examples of this include the statement of the Messenger (saw): **“I had forbidden you from visiting the graves but (now) visit them”** (Ad-Daaru Qutniy 259/4) and his statement (saw): **“I had only forbidden you (previously) for the sake of travellers but now store (the meats) and give it in charity”** (Al-Bukhaari and Muslim).



## That which it is not permissible for An-Naskh to occur in

1 – It is not permissible to abrogate an established Hukm by Al-Ijmaa’.

This is because the established Hukm by Al-Ijmaa’ came after the death of the Messenger (saw) and was therefore after the cessation of the Wahi (revelation). There is therefore no text from the Kitaab or the Sunnah after the end or cessation of the Wahi.

2 – It is not permissible to abrogate the Kitaab by the Sunnah.

This is because Allah Ta’Aalaa says:

وَإِذَا بَدَلْنَا آيَةً مَّكَانَ آيَةٍ

*And when We substitute a verse in place of a verse (An-Nahl 101).*

And He Ta’Aalaa says:

نَأْتِ بِخَيْرٍ مِّنْهَا أَوْ مِثْلَهَا

*We bring better than it or like it (Al-Baqarah 106).*

The Sunnah is not the same as the Aayaat and it is not better than the Qur’aan or like it. It has also been soundly reported from ‘Umar Ibn Al-Khattaab (ra) that he said: “We do not leave the Kitaab of Allah and the Sunnah of our Nabi for the statement of a woman whom we don’t know whether she has told the truth or lied”.

3 – It is not permissible to abrogate the Sunnah Al-Mutawaatirah by the Khabar Al-Aahaad.

This is because the Sunnah Al-Mutawaatirah is Qat'iy Ath-Thuboot whilst the Khabar Al-Aahaad is Zhanniy Ath-Thuboot and the Zhanniy cannot abrogate the Qat'iy because the Qat'iy is higher than it.

4 – It is not permissible to abrogate a Hukm of Al-Qiyaas.

The Qiyaas (analogy) which is Mu'tabar (considered/valid) is the Qiyaas which its 'Illah (reason) is from the Qur'aan or the Sunnah. The Qiyaas remains as long as the Asl (origin) remains and if the Asl is abrogated then there is no Qiyaas. For this reason, An-Naskh (abrogation) does not occur in Al-Qiyaas at all and the occurrence of the abrogation of Qiyaas cannot be envisioned to happen whilst the Asl (origin) remains because the Hukm is present within the Asl.

### **The method for identifying the Naasikh (Abrogating) and the Mansookh (Abrogated)**

The Daleel An-Naasikh (Abrogating evidence), whether it is an Aayah or a Hadeeth, must have a Shar'iyah proof to indicate that it is abrogating, otherwise it would not be considered to be as such. The mere appearance of a clash or contradiction between two evidences does not mean that one is abrogating the other as it could be possible to reconcile between them in which case there would not actually be a contradiction between them.

The Shar'iyah Hujjah (proof) to identify the Naasikh and the Mansookh is as follows:

1 – That the later evidence states that it is a Naasikh for the previous evidence in its Lafzh (wording) or in its meaning like the statement of the Messenger (saw): **“I had forbidden you from visiting the graves but (now) visit them”** (Ad-Daaru Qutniy 259/4) or like the Qawl of Allah Ta’Aalaa:

الآن خَفَّفَ اللَّهُ عَنْكُمْ وَعَلِمَ أَنَّ فِيكُمْ ضَعْفًا فَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ صَابِرَةً  
يَغْلِبُوا مِائَتَيْنِ

*Now Allah has lightened for you and He has known that there is weakness amongst you. So if there are one hundred from you who are steadfast they will overcome two hundred (Al-Anfaal 66).*

2 – If two evidences are contradictory from every angle and it is not possible to reconcile between them, then the latter of them abrogates the former. That is in the case where the latter is of the same strength (or weight) as the former or stronger than it.

3 – The Naasikh can be identified by the action of the Messenger of Allah (saw) and an example of that is when he (saw) stoned Maa’iz who had committed Zinaa and did not lash him with one hundred lashes. This action of his (saw) establishes the abrogation of his speech: **“The Thayyib (married) with the Thayyib (married), one hundred lashes and stoning with rocks”**. Here, his action (F’il) abrogated his speech (Qawl).

Therefore, the claim of the occurrence of An-Naskh (abrogation) is not accepted unless the Shar’iyah proof was from amongst one of those proofs mentioned above. If none of these three Hujaj (proofs) then there is no abrogation.

## **The Shuroot (conditions) of the valid Shar'iy Naskh**

It is necessary for the following four conditions to be fulfilled and met in order for the Naskh to be valid:

- 1 – That the Daleel An-Naasikh (abrogating evidence) and the Daleel Al-Mansookh (abrogated evidence) are both Shar'iy evidences.
- 2 – That the Naasikh was revealed later than and after the Mansookh.
- 3 – That the Naasikh is like the Mansookh (in strength and weight) or stronger than it.
- 4 – That there is a Hujjah Shar'iyah indicating that the Daleel An-Naasikh is abrogating the Daleel Al-Mansookh.

## **The opinions of the 'Ulamaa in respect to An-Naskh**

The opinions that have been adopted in respect to the Naskh are based upon the Adillah Ash-Shar'iyah from the Kitaab and from the Sunnah. Consequently, as such we have avoided delving into some of the irregular (Shaadh) opinions that are not based upon a Daleel Naqliy or 'Aqliy (textual or rational evidence).

The following are in summary some of the opinions of the previous 'Ulamaa in respect to An-Naskh:

### **1 – The opinion of Ash-Shaafi'iy in respect to An-Naskh:**

Al-Imaam Ash-Shaafi'iy was the first to discuss An-Naskh in writing and that was in his 'Ar-Risaalah' which was written in the subject area of Usool ul-Fiqh.

He does not consider An-Naskh as the cancelling of the text but rather he regards it as making redundant the Hukm of the text. Ash-Shaafi'iy said: "The Qur'aan is not abrogated except by the Qur'aan" and he used as evidence the two Aayahs that we used earlier. And he said: "It is necessary for there to be a Sunnah that makes clear and distinguishes the Naasikh (abrogator) from the Mansookh (abrogated) and that is because the Naskh (abrogation) is a type of Islamic Shar'iyah explanation (Bayaan). That requires an evidence from the Sunnah and it is necessary for the latter to be made clear and distinguished from the former in respect to the two texts whilst it is the Sunnah that makes that clear".

Ash-Shaafi'iy disagrees with the majority of the Fuqahaa as he establishes that the Ahkaam of the Sunnah are not abrogated except by a Sunnah like it. As such the Qur'aan does not abrogate the Sunnah in his view and due to that he says: "The Sunnah of the Messenger of Allah is not abrogated except by the Sunnah of the Messenger of Allah". The reasoning behind this view, as Ash-Shaafi'iy explained, was the fear attached to the Sunnah becoming obsolete. However, as we have explained previously the Qur'aan does abrogate the Sunnah. In addition, the followers of Ash-Shaafi'iy disagreed with the view of their Imaam and permitted the abrogation of the Sunnah by the Qur'aan.

## **2 – The opinion of Ibn Hazm in respect to An-Naskh:**

The definition of An-Naskh according to Ibn Hazm is: "It is the Bayaan (explanation) that the time of the first matter has come to an end". In his view the Bayaan (explanation) is divided into two categories: The Bayaan that provides Tafseel (detail) for the Mujmal (undetailed) and the Bayaan that includes Takhsees (specification) for the 'Aamm (general). It is in this way that according to him the two texts function: The Naasikh (abrogating) text and the Mansookh (abrogated) text.

And he says: “The Naskh (abrogation) is a type from amongst the types of exception because it exempts a time and specifies it with an action that is not in other times. So for example his speech (saw): **“I had forbidden you from visiting the graves but (now) visit them”**. This text explains the end of the time of the forbiddance of visiting the graves and its meaning relates to the specification of time with the text that the Nabi (saw) guided to in which he forbade the visiting of the graves”.

Ibn Hazm also viewed that the Qur’aan is abrogated by the Khabar Al-Aahaad because he viewed all of the Sunnah as being Qat’iy. As such (in his view) the Khabar Al-Aahaad are Qat’iy like the Qur’aan and therefore each can abrogate the other,

### **3 – The opinion of Abu Muslim Al-Asfahaaniy in respect to An-Naskh:**

Abu Muslim Al-Asfahaaniy viewed that there is no Naskh in the Qur’aan because the Qur’aan as a whole is Muhkam and that there is no Tabdeel (substitution) for the words of Allah. He presented the Aayaat that others have brought stating that they show abrogation and then attempted to remove the contradiction between the Naasikh and the Mansookh and then show that there is no abrogation within them.

These then represent three opinions of three of the ‘Ulamaa in respect to An-Naskh: Ash-Shaafi’iy, Ibn Hazm and Al-Asfahaaniy. There are also different opinions in the branches of An-Naskh like the subject of:

## **An-Naskh before At-Tamakkun (consolidation)**

- The Mu'atazilah and the followers of Al-Imaam Abu Haneefah said: That the Naskh before At-Tamakkun (consolidation) is not permitted. They said that this type of Nash is an impossibility because commanding the Mukallaf with a matter at a time demands that he views it as Hasan whilst forbidding him from the same matter in that time requires that he views it as Qabeeh (ugly). As such the same one action by the same person at the same time would be both Hasan and Qabeeh which is contradictory and not possible.

- The majority including the Ashaa'irah, the Hanaabilah, Al-Aamadiy and Al-Imaam Al-Haramayn said that the Naskh before the action is possible and that an impossibility is not built upon that as a consequence. To support this view, they used as evidence the story of the sacrificial slaughter of Isma'eel (as) as Allah Ta'Aalaa had commanded Ibrahim (as) to slaughter his son and then averted him from that before undertaking the action and exchanged his son with a great ram.

It can be noticed here that the 'Ulamaa had laid down (theoretical) suppositions and then began a discussion around them. This is despite the Ahkaam Ash-Shar'iyah representing practical rulings that are applied upon sensed realities. It would have been better and more worthy of them to have looked into and examined the reality of An-Naskh as found in the Kitaab and the Sunnah and the realities that it was applied in, just as the Messenger of Allah (saw) and his Sahaabah (rah) who came after him used to do.

## Chapter Three

### **Firstly: Al-Ijmaa' (Consensus):**

- 1 – Its meaning and importance in respect to the Ahkaam Ash-Shar'iyah.
- 2 – Its Hujjiyah (validity as a proof and evidence), the possibility of its occurrence and the opinions of the 'Ulamaa in respect to that.
- 3 – The levels (or grades) of Al-Ijmaa', the Ahl (people) of Al-Ijmaa' and their conditions.
- 4 – Mustanad Al-Ijmaa' (what the Ijmaa' rests upon)

### **Secondly: Al-Qiyaas (Analogy):**

- 1 – Its definition and significance within Islamic Fiqh.
- 2 – The Hujjiyah of Al-Qiyaas and the opinions of the 'Ulamaa in respect to working with it and its evidences.
- 3 – The Arkaan (pillars) of Al-Qiyaas: 'Al-Asl (origin), Al-Far' (branch), Hukm ul-Asl (original Hukm) and Al-'Illah (reason)'.  
4 – Aqsaam (divisions/categories) of Al-Qiyaas, its levels (grades) in respect to Al-Hukm and Al-Qiyaas upon Al-Hikmah (wisdom).
- 5 – Al-Qiyaas and An-Nusoos (the texts).



## The Third Daleel

### Al-Ijmaa' (consensus)

The meaning of Al-Ijmaa':

Al-Ijmaa' linguistically:

It is the determination or resolve upon a matter and agreement. This resolve is valid to emanate from one (person) and this meaning is found in the Qawl of the Messenger (saw):

مَنْ لَمْ يَجْمَعْ الصِّيَامَ قَبْلَ الْفَجْرِ فَلَا صِيَامَ لَهُ

**“Whoever does not resolve (i.e. intend) the fasting before Fajr, then there is no fasting for him”** (related by the compilers of the Sunan).

Just as it is valid to be used for more than one like in His Qawl Ta'Aalaa:

فَأَجْمِعُوا أَمْرَكُمْ وَشُرَكَاءَكُمْ

*So resolve upon your plan along with your associates (Younus 71).*

Which means resolve whilst being in agreement with your associates.

## **The meaning of Al-Ijmaa' in accordance to the Istilaah of the Usooliyeen:**

It is the agreement upon the Hukm of a reality from amongst the realities in respect to it being a Hukm Shar'iy after the passing of the Messenger of Allah (saw).

### **The Importance and Significance of Al-Ijmaa' within the Ahkaam Ash-Shar'iyah**

1 – Al-Ijmaa' is the third Daleel after the Qur'aan and the Sunnah because it based upon a Daleel Shar'iy even though that Daleel did not reach us (directly) but rather only the Hukm deduced from it has reached us.

2 – The 'Ulamaa of the Muslims have made Ijmaa' (held a consensus) upon Al-Ijmaa' representing a Hujjah (proof and evidence) even if they have differed in respect to those who are the people of Ijmaa' and whose agreement indicates and guides to the convening of Al-Ijmaa' (a consensus).

3 – The Fuqahaa dedicated special attention and care to identify and acquire knowledge of the areas and contexts of Ijmaa' amongst the Sahaabah (rah) so as to follow them within them. This is whilst every Mujtahid dedicated special care and attention do not go outside of that which the Sahaabah (rah) had agreed and held an Ijmaa' upon.

4 - The Hukm that has been established by Al-Ijmaa' is not abrogated because it came after the death of the Messenger of Allah (saw) and after the Wahi had ceased to descend.

5 – The Sahaabah (rah) have transmitted the Usool ud-Deen to us by their Ijmaa' as they have transmitted to us the Qur'aan Al-Kareem

and the Sunnah An-Nabawiyah which indicates and guides to the importance and significance of Al-Ijmaa’.

6 – Ahkaam have been established by way of Al-Ijmaa’ which have had a major impact and influence upon the life of the Muslims, the continuation of their State and the preservation of their Deen. Some of these Ahkaam are as follows:

A – The Ijmaa’ As-Sahaabah upon making a copy of the Qur’aan Al-Kareem in the time of the Khalifah ‘Uthmaan Ibn ‘Affaan (ra) and prior to that in the era of the Khalifah Abu Bakr As-Siddeeq (ra) which facilitated and made it easy upon the Muslims to refer to the Masaahif (pl. of Mushaf) to safeguard their memorisation and preservation of the Qur’aan.

B – The Ijmaa’ of the Sahaabah upon Abu Bakr As-Siddeeq (ra) assuming the post of the Khalifah (successor) to the Messenger of Allah (saw) and then after him ‘Umar and ‘Uthmaan (rah). This is what made clear the Shar’iy method for the Muslims, to pledge allegiance to a Khalifah in order to apply Islaam upon them internally and to carry it to mankind externally.

This is as the Sahaabah (rah) left the body of the Messenger of Allah (saw) lying in the house of ‘Aa’ishah (ra) for three days without burying him whilst they occupied themselves in choosing a Khalifah from amongst them and gave him the Bai’ah (pledge). (Translators note: This opinion has been later revised to two nights). This represented an Ijmaa’ indicating that it is Haraam for the Muslims to remain two nights or three days without appointing a Khalifah for them and this is because they delayed the Waajib of burying the Messenger of Allah (saw) due to being sinful as a result of the absence of a Khalifah. (Translators note: This has later been revised to the Ijmaa’ indicating the obligation to engage in the appointment of the Khalifah as soon as the position becomes vacant whilst the obligation to appoint the Khalifah within three days has been deduced from the

Ijmaa' upon the statement of 'Umar (ra) when he gave a time limit of three days for a Khalifah to be appointed after him).

## **Hujjiyat ul-Ijmaa' (the proof of its validity as a Daleel Shar'iy)**

The Hujjiyah of Al-Ijmaa' as a source for the Islamic Ahkaam is a place of agreement amongst the majority of the Fuqahaa and 'Ulamaa of Usool ul-Fiqh in addition to what is built upon that in terms of the obligation to follow and not violate a ruling based upon it. However, they differed in respect to which Muslims the Ijmaa' is taken from. The most well-known Ijmaa's that the 'Ulamaa of Usool ul-Fiqh and Fuqahaa adopted are:

Ijmaa' As-Sahaabah, Ijmaa' Ahl ul-Madinah, Ijmaa' Al-Ummah Al-Islaamiyah in a certain era or period, Ijmaa' Al-Mujtahideen in a certain era or time and Ijmaa' Ahl ul-Bait in the view of the Shee'ah.

I will first deal with the Hujjiyah of Ijmaa' As-Sahaabah because most of the 'Ulamaa from the Usooliyeen and Fuqahaa counted it as a legitimate and valid Ijmaa' and then I will address the Ijmaa' of the Islamic Ummah.

### **Hujjiyah Ijmaa' As-Sahaabah**

The Ijmaa' As-Sahaabah is regarded as a Hujjah (proof) due to the following evidences:

1 - Allah's commendation and praise (Thanaa') upon the companions (Sahaabah) of the Messenger of Allah (saw) in the Qur'aan:

مُحَمَّدٌ رَسُولُ اللَّهِ ۗ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ

*Muhammad (saw) is the Messenger of Allah, and those who are with him are severe against the disbelievers and merciful among themselves (Al-Fat'h 29).*

And in Soorah Al-Hashr Allah Ta'Aalaa said:

يَبْتَغُونَ فَضْلًا مِّنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ ؕ أُولَٰئِكَ هُمُ  
الصَّادِقُونَ

*They seek a bounty from Allah and [His] pleasure and supporting Allah and His Messenger, [there is also a share]. Those are the truthful (Al-Hashr 8).*

And He Ta'Aalaa said in the following Aayah of Soorah Al-Hashr:

فَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ

*It is those who will be successful (Al-Hashr 9).*

And He Ta'Aalaa said:

وَالسَّابِقُونَ الْأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ  
رَّضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِي تَحْتِهَا الْأَنْهَارُ خَالِدِينَ  
فِيهَا أَبَدًا ؕ ذَٰلِكَ الْقَوْزُ الْعَظِيمُ

*And the first forerunners [in the faith] among the Muhajireen and the Ansar and those who followed them with good conduct - Allah is pleased with them and they are pleased with Him, and He has prepared for them gardens beneath which rivers flow, wherein they will abide forever. That is the great attainment (At-Taubah 100).*

2 – The Sahaabah (rah) are those who gathered together the Qur’aan, they are those who preserved it, transmitted and made copies of it. And Allah Ta’Aalaa says:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

*Verily it is We Who revealed the Dhikr (i.e. the Qur’an) and verily We will safeguard it (Al-Hijr 9).*

Therefore, in the case where it was the Sahaabah (rah) who (practiacally) attended to the Qur’aan through their Ijmaa’ whilst Allah Ta’Aalaa had assumed its preservation, then the Aayah guides to the truthfulness and veracity of their Ijmaa’.

3 – It is impossible in accordance to the Shar’a for the Sahaabah to have an Ijmaa’ upon an error. If that was permissible, then it would be permissible for there to be an error or mistake in respect to the Deen because they are those who have transmitted this Deen to us via their Ijmaa’ (consensus).

4 – The Ijmaa’ As-Sahaabah discloses and is revealing of a Daleel Shar’iy. That is because they did not agree and hold a consensus upon a certain Hukm being a Hukm unless they had a Daleel from the statement, action or Taqreer (approval and consent) of the Messenger of Allah (saw). This reality does not apply to any other than the Sahaabah (rah) because they lived at the same time as the Messenger (saw), gathered around him and transmitted from him.

From these evidences above it becomes evident that the Ijmaa’ As-Sahaabah is the Ijmaa’ which the Adillah (evidences) have guided to being Qat’iy Ath-Thuboot (established and proven decisively). That is because its evidences are from the definite Aayaat and they are Qat’iy Ad-Dalaalah in respect to the commendation and praise upon their

truthfulness. This is also the case in respect to the fourth Daleel which is ‘Aqliy (rational).

In addition to the definite Adillah there are also Aahaad Al-Ahaadeeth that have been mentioned to us in respect to their praise like his Qawl (saw):

حَيْرُ الْقُرُونِ قَرْنِي الَّذِي بُعِثْتُ فِيهِمْ

**The best generation is my generation that I have been sent amongst them**  
(Abu Daawood).

أَصْحَابِي كَالنُّجُومِ بِأَيِّهِمْ أَقْتَدَيْتُمْ اهْتَدَيْتُمْ

**My companions are like the stars. Any one of them you follow you are guided**  
(Al-Baihaqi and Ad-Dailamiy related it from Ibn ‘Abbaas).

### **Ijmaa’ Al-Ummah**

This includes: The Ijmaa’ of the Ahl ul-Hall Wa-l-‘Aqd (people of decision making or influence), the Ijmaa’ of the Mujtahideen, the Ijmaa’ of Ahl ul-Madinah and the Ijmaa’ of Ahl ul-Madinah Wa Makkah.

Those who hold the view of Ijmaa’ Al-Ummah use the following evidences:

#### **1 – From the Qur’aan:**

The Qawl of Allah Ta’Aalaa:

وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ  
نُؤَلِّهِ مَا تَوَلَّىٰ وَنُصَلِّهِ جَهَنَّمَ ۖ وَسَاءَتْ مَصِيرًا

*And whoever opposes the Messenger after guidance has become clear to him and follows other than the way of the believers - We will give him what he has taken and drive him into Hell, and evil it is as a destination (An-Nisaa’ 115).*

### **The response and refutation:**

The guidance (Hudaa) mentioned in the Aayah means guiding to the oneness of Allah and the Prophethood of Muhammad (saw) whilst the opposite of Al-Hudaa (guidance) is Ad-Dalaal (misguidance). As for the way of the believers that is obligatory for them to follow then it is that which made them become believers which is Tawheed. The Sabab An-Nuzool (reason for and circumstance of revelation) for this Aayah indicates that because it was revealed in relation to a man who had apostatized from Islaam. This is because the Sabab An-Nuzool specifies the subject area that the Aayah was revealed about and this subject area is apostasy from Islaam. Therefore, the Sabeel (way) of the believers means Tawheed (i.e. it relates to belief).

As long as the Aayah is not guiding to the issue of Al-Ijmaa’, as its Dalaalah (indicative meaning) is outweighed to be restricted to what we have mentioned, then the Aayah is not valid or suitable to indicate the Hujjiyah (proof) of the Ijmaa’ of the Ummah, Ijmaa’ Al-Mujtahideen, Ijmaa’ Ahl ul-Madinah or any other Ijmaa’.

It is necessary for the Ijmaa’ in its Dalaalah (meaning and import), in order for it to be considered as a Daleel Ijmaaliy, to be based upon a



Daleel that is Qat'iy Ath-Thuboot and Qat'iy Ad-Dalaalah. The Aayah that they have made their deduction with is Qat'iy Ath-Thuboot however it is Zhanniy Ad-Dalaalah (indefinite in its indicated meaning) in respect to indicating to the Ijmaa' of the Ummah.

## **2 – From the Sunnah:**

They have used the following statements of the Messenger of Allah (saw) as evidence to prove the Hujjiyah (proof) of Ijmaa' Al-Ummah:

أمتي لا تجتمع على خطأ

**My Ummah will not gather together upon a mistake (or sin)**

أمتي لا تجتمع على الضلالة

**My Ummah will not gather together upon a misguidance**

لم يكن الله ليجمع أمتي على الضلالة

**Allah will not let my Ummah agree upon misguidance**

ما رآه المسلمون حسنا فهو عند الله حسنا

**What the Muslims have seen as Hasan then it is Hasan before Allah**

من سره بُجوحه الجنة فليلتزم الجماعة

**Whoever would be pleased to attain (the bliss of) Jannah then  
he should stick to the Jamaa'ah**

من فارق الجماعة ومات فميتته جاهلية

**Whoever separates from the Jamaa'ah and dies then his death is  
one of Jaahilliyah**

لا تزال طائفة من أمتي على الحق حتى يظهر أمر الله

**There will always be a group from my Ummah that is upon the  
Haqq (truth) until Allah's command is made prevalent**

This is in addition to many other Ahaadeeth that they have used to support the view of Ijmaa' Al-Ummah.

### **The response or refutation:**

1 – All of these Ahaadeeth are Akhbaar Aahaad and do not reach the level of At-Tawaatur. They do not establish Yaqeen (certainty) and as such are not valid to be used as evidence to establish that Ijmaa' Al-Ummah as a Daleel Shar'iy Ijmaaliy (Source of evidence).

2 – The Ahaadeeth mentioning that the Ummah will not gather together upon misguidance do not contain a Hujjah (proof) within them. That is because not agreeing together upon misguidance means not agreeing together to leave Islaam.

3 – The Ahaadeeth that mention the obligation of sticking to the Jamaa'ah have no place to be used as evidence to establish Ijmaa' because the preservation of the gathering of the Ummah and not

allowing its division or rebelling against it does not mean or indicate that their Ijmaa' (consensus and agreement) is a Daleel Shar'iy.

4 – In respect to the Ahaadeeth that have mentioned that there is a group from the Ummah that will remain upon the truth, then the Haqq (truth) means the opposite of Al-Baatil (falsehood) and it does not mean the opposite to the correct (As-Sawaab). Therefore, sticking to the Haqq does not mean the absence of the mistake but rather the absence of misguidance (Dalaal).

In addition, the existence of a group upon the right does not mean the Ijmaa' of the Ummah upon the right. That is because what is required and necessary is to establish and prove that the Ummah is upon what is right whilst it is not required to prove the negation of their agreeing upon misguidance.

5 – In respect to the Ahaadeeth that mention that the Ummah will not agree upon a Khata' (mistake) then these Ahaadeeth are weak in their Riwaayah (transmission) and are not used as evidence by the majority of the 'Ulamaa.

6 – There are Saheeh Ahaadeeth that are contrary to the Ahaadeeth they have utilised for their deduction of Ijmaa' Al-Ummah. From amongst these is the Hadeeth of the Messenger (saw):

خَيْرُ أُمَّتِي قَرْنِي ثُمَّ الَّذِينَ يَلُونَهُمْ ثُمَّ الَّذِينَ يَلُونَهُمْ " ، قَالَ عِمْرَانُ : فَلَا أَذْرِي أَذْكَرَ  
بَعْدَ قَرْنِهِ قَرْنَيْنِ أَوْ ثَلَاثًا ، ثُمَّ إِنَّ بَعْدَكُمْ قَوْمًا يَشْهَدُونَ وَلَا يُسْتَشْهَدُونَ ، وَيُحْوَنُونَ  
وَلَا يُؤْمَنُونَ ، وَيَنْذَرُونَ وَلَا يُفُونَ وَيَظْهَرُ فِيهِمُ السَّمَنُ "

**"The best of my nation is my generation then those who follow them and then those who follow them."** Imraan (the narrator of the Hadeeth) said: **"I don't know whether he mention after his**

**generation two generations or three, then he said: "...then, after you are a people who bear witness without being asked to do so they betray and are not trusted, they swear oaths and do not fulfil them and fatness will appear among them"** (Al-Bukhaari, Muslim and At-Tirmidhi).

This Hadeeth and others similar to it indicate a censure for the later eras that will follow and this means that their will exist amongst them Al-Khata' (mistake or sin). There will be lying, betrayal and treachery which means that their Ijmaa' would hold no value or legislative worth.

## **The possibility of the occurrence of Al-Ijmaa'**

1 – Concluding an Ijmaa' (consensus) of the Islamic Ummah in a certain time period or era or the Ijmaa' of the Mujtahideen from amongst the Ummah is not actually possible. This is because the people were dispersed across different regions. These regions are far away from each other and their distance apart makes their Ijmaa' an impossibility. The exception to that is their Ijmaa' (agreement and consensus) upon the Qat'iy text that has been transmitted to them from the Wahi like facing towards the Qiblah in the Salaah, the obligation of Siyaam, Zakaah, Hajj and Al-Jihaad. Despite that, the Hujjiyah (proof) in respect to these Ahkaam returns back to the definite (Qat'iy) text and to the Akhbaar Al-Mutawaatirah (definite reports) whilst it does not return to Al-Ijmaa'.

2 – As for Ijmaa' As-Sahaabah, then some of it has been transmitted to us by way of Tawaatur whilst some of it has been transmitted by Akhbaar Al-Aahaad in respect to what their consensus has fallen upon. Examples of this include their Ijmaa' in respect to the grandmother taking a sixth in inheritance; that she has the whole share if she is one and shares in the sixth if there are more than one. They also held a consensus upon the collection of the Qur'aan and

upon it being copied down into a Mushaf. They also agreed upon the appointment of Abu Bakr (ra) as the Khalifah (successor) to the Messenger of Allah (saw) in addition to holding an Ijmaa' upon many other practical Ahkaam Ash-Shar'iyah which are present within the books of Fiqh and are attributed to Ijmaa' As-Sahaabah.

## **The opinions of the 'Ulamaa in respect to the Hujjiyah of Al-Ijmaa' and the possibility of its occurrence**

Most of the 'Ulamaa and Fuqahaa and the vast majority have stated that Al-Ijmaa' represents a Hujjah (a source of evidence and proof for the Ahkaam Ash-Shar'iyah) and that it represents a Masdar (source) for the Islamic legislation. However, they have differed in respect to upon whom the Ijmaa' occurs and they have also differed in respect to the possibility of the occurrence of the different kinds of Ijmaa'. The following represents some of the opinions of those 'Ulamaa and Fuqahaa:

### **1 – The opinions of Al-Imaam Ash-Shaafi'iy:**

Ash-Shaafi'iy (rh) said: “Ruling (judging) is by the Kitaab and the Sunnah” and then he said: “And we rule with Al-Ijmaa' and Al-Qiyaas”.

Al-Ijmaa' in Ash-Shaafi'iy's view is manifested in the Ijmaa' of the Mujtahideen of the Ummah in a certain era. However, he did open up some discussion in respect to the possibility of it occurring due to the separation and distance between the lands, the absence of the Fuqahaa meeting together and the existence of differences amongst the Fuqahaa in every land, in addition to the absence of an agreement upon defining the attributes or description of the 'Ulamaa who would take part in such an Ijmaa'.

It appears that the concept of Ijmaa' was not crystallised by Ash-Shaafi'iy because he considered that the Ijmaa' could take place in respect to that which is known from the Deen by necessity and he brought examples of that including: The four Raka'at of Zhohr prayer and the prohibition of Khamr. This is despite these matters having been established and proven by definite evidences from the Kitaab and the Sunnah and have not been established by way of Ijmaa' but rather transmitted to us by way of Tawaatur. Even if the whole Ummah and its Mujtahideen have agreed upon the legal legitimacy of these rulings this legal legitimacy however originated from evidences other than the Ijmaa' as they came from the Kitaab and the Sunnah Al-Mutawaatirah.

## **2 – The opinion of Al-Imaam Abu Haamid Al-Ghazaaliy Ash-Shaafi'iy:**

Al-Ghazaaliy took the opinion of Ash-Shaafi'iy in respect to Al-Ijmaa' however he discussed the opinions of those who held contrary opinions. He did not permit the adoption of Al-Ijmaa' As-Sukootiy and he accepted the Hujjiyah (evidential validity) of Ijmaa' As-Sahaabah in addition to the Hujjiyah of the Ijmaa' Al-Mujtahideen in every era.

## **3 – The opinion of Daawood Az-Zhaahiriy:**

He did not take other than Ijmaa' As-Sahaabah (rah).

## **4 – The opinion of Al-Imaam Abu Haneefah:**

Al-Imaam Abu Haneefah (rh) said: "If the Sahaabah have held an Ijmaa' upon a matter we submit to that and if the Taabi'een have held an Ijmaa' we argue with them about it". Consequently, he did not take other than Ijmaa' As-Sahaabah.

## **5 – The opinion of Al-Imaam Maalik Bin Anas:**

Al-Imaam Maalik (rh) accepted the Hujjiyah of the Ijmaa' of Ahl ul-Madinah Al-Munawwarah. Maalik said: "It is a Hujjah because Al-Madinah is the source of knowledge, the place of the descent of the Wahi and it contains the children of the Sahaabah (rah). As such it is impossible for them to agree upon anything else – i.e. other than the Haqq".

## **6 – The opinion of Al-Imaam Muhammad Abu Zahrah (from the recent Scholars):**

Abu Zahrah said in his book 'Usool ul-Fiqh': "The Fuqahaa have not agreed upon an Ijmaa' apart from Ijmaa' As-Sahaabah. That is because their Ijmaa' in respect to the Ahkaam Ash-Shar'iyah has been proven and established by way of Tawaatur. For that reason, no one has disagreed and differed in respect to their Ijmaa'. Even those who viewed the occurrence of Ijmaa' to be a far off or unachievable matter submitted to and conceded to the Ijmaa' As-Sahaabah".

He then said: "And in truth, after the Ijmaa' As-Sahaabah no other Ijmaa' has been established upon a Mutawaatir path and as such the Fuqahaa have disputed the claims of Ijmaa' amongst those who took and left it".

I say that the Ijmaa' As-Sahaabah is a Hujjah and it represents the third Daleel Ash-Shar'iy after the Qur'aan and the Sunnah. That is because their Ijmaa' reveals and discloses a Daleel from the Sunnah in the case where the text of that Sunnah did not reach us. They knew this Daleel but did not transmit its text to us but rather transferred and transmitted the Hukm based on a Daleel through their Ijmaa'. This type of Ijmaa' does not occur to anyone other than them from humankind because they were the ones who lived at the time the Messenger (saw). They lived with him, met with him,

accompanied him, listened to him, went to battle with him and they transmitted the Islamic Deen to us from him (saw).

## **The levels or grades (Maraatib) of the Ijmaa'**

**The Ijmaa is of two grades: Sareeh (explicit) and Sukootiy (of silence)**

**1 – Al-Ijmaa' As-Sareeh (explicit) which was considered to be 'Qat'iy' (definite)**

This is when those gathered express or present their opinions explicitly in respect to a given reality from amongst the realities and then they hold a consensus upon which represents the Hukm Ash-Shar'iy for this reality.

An example of this reality is when the people of Ijmaa' are gathered in a single place and agree upon a single opinion. This is like what happened with the Sahaabah in respect to the delay of burying the Messenger of Allah (saw) so that they could select a Khalifah (successor) to the Messenger of Allah (saw). Most of them (the Sahaabah) were in Al-Madinah and indeed close to the body of the Messenger (saw) and in the Saqeefah of Bani Saa'idah.

Or they could be dispersed and then an issue (Mas'alah) is presented to them one at a time each providing their agreement so that all of their opinions are in agreement upon one single opinion.

Or it could be when one of them passes a judgement in a particular Mas'alah (issue) and that Hukm reaches the others and they then clearly express their agreement either by way of a statement, a verdict or judgment being passed.



## **2 – Al-Ijmaa’ As-Sukootiy: And they counted this to be ‘Zhanniy’**

This is when one of the people of Ijmaa’ provides an opinion in a Mas’alah (issue) from amongst the Masaa’il (issues), on the basis of it being a Hukm Shar’iy, and no one renounces or disclaims it.

Ash-Shaafi’iy did not adopt Ijmaa’ As-Sukootiy in addition to many of the Fuqahaa whilst some of them considered it as an Ijmaa’ but of a lesser strength as compared to the Ijmaa’ As-Sareeh. In another opinion it was considered to represent a Hujjah (valid legal proof) but not classified as Ijmaa’.

The Ijmaa’ As-Sukootiy in respect to the Sahaabah occurred when one of the Sahaabah held or stated an opinion which the Sahaabah were aware about and then none of them denounced or denied it. This is considered to (validly) represent an Ijmaa’ (consensus) if the following conditions are realised and met:

1 – That the Hukm Ash-Shar’iy was from that which would (normally) be denounced and the Sahaabah would not remain silent over it because of the impossibility of them remaining silent over a Munkar (a matter that must be denounced and denied). This is like what happened in respect to ‘Umar Ibn Al-Khattaab (ra) when he took the land of Bilaal Al-Muzniy, which the Messenger of Allah (saw) has apportioned to him, after he left it unworked on for more than three years.

2 – That this Hukm became well known and the Sahaabah knew and were aware of it because their silence without being aware of it or knowing about it is not considered to represent agreement or an Ijmaa’.

3 – That the matter is not from that which the right has been provided to the Ameer Al-Mu'mineen to act in accordance to his opinion like the revenues of the Bait ul-Maal (treasury). That is because these matters are from his mandatory powers and jurisdiction which the Shar'a has provided to him based upon the Kitaab and the Sunnah.

**Additional beneficial point:**

- Some considered the Ijmaa' As-Sareeh to be Qat'iy and the Ijmaa' As-Sukootiy to be Zhanniy.

The correct view is that the Hujjiyah of Ijmaa' As-Sahaabah in respect to it being a Daleel Ijmaaliy and a source from the sources of the Ahkaam Ash-Shar'iyah must be Qat'iy and that this is not fulfilled except in Ijmaa' As-Sahaabah.

As for the Ahkaam derived from the source of Al-Ijmaa' then they are treated like the Sunnah. It can either be Mutawaatirah in which case it would be Qat'iy Ath-Thuboot in respect to the Sahaabah having agreed and held a consensus upon it, or it can be from the Akhbaar Al-Aahaad in which case it would be Zhanniy Ath-Thuboot.

Working with and acting by the Ijmaa' is Waajib (obligatory) whether it was Qat'iy Ath-Thuboot or Zhanniy Ath-Thuboot. This is because the Ijmaa' As-Sahaabah, as we have mentioned, reveals and discloses a Daleel Shar'iy that did not reach us (directly) but rather the Hukm that was based on a Daleel reached us by way of Ijmaa' As-Sahaabah.

## **The people of Al-Ijmaa' and their Shuroot (conditions):**

The 'Ulamaa and Fuqahaa have differed and disagreed in regards to who the people of Al-Ijmaa' (consensus) are. They therefore set down conditions in respect to who is to be considered to be from the people of Al-Ijmaa'. The following represents some of the details related to this:

### **1 – As-Sahaabah:**

Most of the 'Ulamaa and Fuqahaa have agreed that the Ijmaa' had been convened in the time and era of the Sahaabah (rah) and that was due to being able to put a finger on and clearly ascertain the number of their Fuqahaa and knowledge of the people of mention (dhikr) and Ahl ul-Hall Wa-l-'Aqd among them, in addition to being aware of the possibility of the occurrence of Ijmaa' (consensus) amongst them.

The agreement of the Sahaabah upon what they agreed upon in respect to Ahkaam is regarded as an Ijmaa' with all that is contained within the word of Ijmaa'. That is because it has not reached our knowledge that anyone from amongst those who were absent from Al-Madinah Al-Munawwarah, the capital of the Khilafah, had opposed a Hukm from amongst the Ahkaam that had been agreed upon after being made aware of the Hukm. If something like this had happened it would have reached us just like the opposition of those who disagreed with 'Umar Ibn Al-Khattaab (ra) about the division of the land of Iraq reached us or like the opposition of the woman to a limit being placed upon the women's Mahr (dowry) having reached us. It is also because it is well known that the Sahaabah (rah) were not from those who would remain silent over a mistake or over falsehood. That is because they viewed opposition to the mistake or confronting Baatil and oppression to represent a Shar'iy obligation and an Amaanah (trust) upon their necks. Therefore, if they remained

silent over a Hukm, their silence would represent a signal and sign of their approval of it and this is equivalent to the strength of being explicit in respect to it.

And those who have said that there are other valid types of Ijmaa' other than the Ijmaa' As-Sahaabah did not deny the Ijmaa' As-Sahaabah. Rather they considered that their Ijmaa' could possibly take place or be convened whilst the occurrence of other types of Ijmaa' (held by others) was very difficult.

### **Who are the Sahaabah?**

As-Sahaabah is a Lafzh (wording) that has been applied to the one whose Suhbah (companionship) with the Nabi (saw) has been lengthy and his sittings with him have been many involving pursuing him and taking from him (saw).

Al-Imaam Al-Haafizh related in his 'Isnaad' from Sa'eed Ibn Al-Musayyib that he said: "We do not count someone to be from the Sahaabah unless he resided with the Messenger of Allah (saw) for a year or two years and (or) went to battle (Ghazwah) with him on one or two Ghazwahs".

Al-Maazaniy said in 'Sharh Al-Burhaan': "When we say that the Sahaabah are 'Udool (just) we have not meant everyone who saw him (saw), or visited him occasionally, or met with him for a certain purpose and then left (quickly). Rather we only mean those who remained beside him, supported him and followed the light that Allah had revealed, and those are the successful ones (Muflihoon)".

The Suhbah (companionship) is established by (certain) matters including:

1 – By Tawaatur: This is like the Suhbah (companionship) of Abu Bakr, ‘Ali, ‘Umar, ‘Uthmaan (rah) and all of those who were given glad tidings of Jannah.

2 – By Akhbaar Al-Aahaad: And this is when it has been related from single narrations of the Sahaabah or the Taabi’een that such and such a person was a Sahaabiy or through his own informing about this after affirming his trustworthiness that he is a Sahaabiy.

All of the Sahaabah are ‘Udool (just and trustworthy) and their ‘Adalah (justice or trustworthiness) is not enquired about in respect to any of them. Rather this matter has been dealt with because they have been accredited as being just and trustworthy through the texts of the Kitaab and the Sunnah, some of which we mentioned earlier in relation to the subject of the Hujjiyah (validity) of Ijmaa’ As-Sahaabah.

Those who seek to undermine their trustworthiness only wish to declare our witnesses to be unreliable in a (malicious) attempt to undermine the Kitaab and the Sunnah.

It is true that a Sahaabiy by himself is not Ma’soom (infallible) and what is possible to happen in respect to any other human being in terms of making mistakes and committing prohibited acts is also possible in respect to him. However, what they have transferred and transmitted to us from the Deen, even if this was individually, is Saheeh (valid) because they are ‘Udool (trustworthy) in respect to transmission due to the speech of the Messenger (saw): **“By anyone of them you follow you will be guided”** (Al-Bayhaqi and Ad-Dailamiy attributed it from Ibn ‘Abbaas).

However, in regards to what they agreed and held a consensus upon then this is definite in respect to its validity (Sihhah) due to the reasons that we mentioned related to the Hujjiyah of their Ijmaa’.

## **2 – The Mujtahidoon of the Muslims in a particular time period:**

The proponents of this opinion including Ash-Shaafi'iy and Al-Hanaabilah. The majority of Fuqahaa' said: If or when the Mujtahideen of the Muslims have agreed irrespective of their different lands (locations), their places of origin and their groupings, in the case where a reality has been presented to them in order to know its Hukm Ash-Shar'iy and then each of them provides his opinion explicitly in respect to its Hukm, by Qawl (speech) or Fi'l (action), whether they did this collectively gathered or as individuals, and then all of their opinions had been in agreement upon a single Hukm in respect to that reality, then this represents an 'Ijmaa'. This Hukm that they had agreed upon would then represent a Hum Shar'iy that is Waajib (obligatory) to follow and it is not permitted to oppose it just as it is not allowed for others in any time to contravene it because it has been established by Ijmaa'.

### **Who are the Mujtahideen by which an Ijmaa' is convened through their agreement?**

1 – Many of the 'Ulamaa of the Ahl us-Sunnah stipulated that the Khawaarij, Al-Qadariyah and Ar-Rawaafid are to be excluded from the Mujtahideen.

2 – From amongst the well-known Fuqahaa there are those who counted the Shadh'dhaadh (irregular outside the norm) Fuqahaa to be excluded in respect to the Ijmaa' whilst some permitted them if they were not calling to their own opinion.

3 – Ash-Shawkaani said in 'Irshaad Al-Fuhool': "The Ijmaa' that is to be considered in any area or discipline of knowledge is the Ijmaa' of the people of that discipline who are knowledgeable in it and not the Ijmaa' of other than them".

Consequently, what is to be considered in respect to the Ijmaa' in relation to the Fiqhi issues is the statement or opinion (Qawl) of all of the Fuqahaa. If some of the Fuqahaa of the people of Ijmaa' are in opposition, then the Ijmaa would not be considered to have been convened.

4 – Some of the Fuqahaa said: It is stipulated for the Ijmaa' to be completed for the Mujtahideen who held an Ijmaa' to have all passed away. It would not be an Ijmaa' in their view until the death of all those who had held a consensus upon an opinion whilst some of them only adopted this view in respect to the Ijmaa' As-Sukootiy alone.

5 – Most of the Fuqahaa view that the Ijmaa' is convened and represents an Ijmaa' by the mere agreement of all of the Mujtahideen in a time in their lives and after their deaths.

6 – Some of them have stipulated that the number of those agreeing together must reach the number necessary for Tawaatur whilst others did not stipulate that like Al-Ghazaaliy and Abdul 'Ali Al-Ansaariy.

### **3 – Ahl ul-Madinah:**

– Imaam Al-Maalik Bin Anas (rh) was alone in holding this opinion and he took the Ijmaa' of Ahl-ul-Madinah for every Hukm not found in the Kitaab and the Sunnah.

– As for the followers of Maalik who came after him then they agreed that the Ijmaa' of Ahl ul-Madinah represents a Hujjah (proof) in the matters that are not known except by way of Tawqeef from the Messenger (saw). As for the matters in which there is room for opinion then they differed in respect to that.

That is whilst the majority have said that the Ijmaa' of Ahl ul-Madinah does not represent a Hujjah.

#### **4 – Ijmaa' Ahl ul-Bayt (people of the house) of the Messenger of Allah (saw):**

The people who held this view used the following statement of Allah Ta'Aalaa as evidence:

إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

*Allah wishes only to remove Rijs (evil deeds and sins, impurity) from you, O members of the family (of the Prophet saw), and to purify you with a thorough purification (Al-Abzaab 33).*

They considered the Ahl ul-Bayt to consist of 'Ali and Faatimah, and Al-Hasan and Al-Hussein (their two sons). This was accompanied by the consideration that they were Ma'soom (infallible) from mistake and sin (Al-Khat'a).

Some of the Shee'ah (like Al-Ja'fariy) also added their Imaams to the Ahl ul-Bayt in respect to the 'Ismah (infallibility) who in their opinion are free from erring and do not commit sins.

This has been responded to and refuted by Muhibbullah Bin Abdi Sh-Shukoor in his book: 'Muslim Ath-Thuboot' in the subject area of Usool ul-Fiqh when he said: "And they claimed infallibility for some of their sons like Zein Al-'Aabideen and Al-Imaam Ja'far amongst others. We have (however) said that what has come to us by way of Tawaatur from the Sahaabah and the Taabi'een is that they were Mujtahideen and that they gave verdicts (Fatawaa) which were



different to what the Ahl ul-Bayt gave. They were not censured for that and nobody found fault in anyone else. Indeed, nobody said that the one who gave a Hukm contrary to the Ahl ul-Bayt had made a mistake”. Then he said: “It has become evident to you that the Qat’iy Ijmaa’ in which Ahl ul-Bait are part of, dictates that there is no ‘Ismah (infallibility) in the Ahl ul-Bayt which means that the mistaken Ijtihad is possible from them...”

The above author dealt with their evidences and proofs and he refuted them under the heading: ‘Al-Ijmaa’ of the Ahl ul-Bayt is not convened by them alone’.

## **5 – Ijmaa’ of the four Khulafaa’: Abu Bakr, ‘Umar, ‘Uthmaan and ‘Ali (rah):**

This was a view held by Al-Imaam Ahmad Bin Hanbal (rh) and some of the Hanafiyah like Al-Qaadi Haazim.

### **That which the Ijmaa’ is rested upon (Mustanad):**

1 – The Ijmaa’ is not convened except upon a relied upon basis (Mustanad) that the people of Ijmaa’ rely upon. This is the view of most of the Fuqahaa’ and the ‘Ulamaa of Usool ul-Fiqh. That is because the people of Ijmaa’ do not come up with new Ahkaam without a Daleel and that is due to the right of bringing legislation belongs to Allah Ta’Aalaa and the Nabi (saw) whom Allah Ta’Aalaa revealed divine inspiration to.

The ‘Ulamaa have agreed upon the permissibility for the rested upon basis (Mustanad) for the Ijmaa’ to be the Kitaab and the Sunnah. The following are some examples that they brought to show the linkage to the Ijmaa’:

## From the Kitaab:

Allah Ta'Aalaa said:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ

*Prohibited to you (in marriage) are your mothers and your daughters (An-Nisaa' 23).*

An Ijmaa' was convened in respect to the intended meaning of 'mothers' is the roots or origins of women like grandmothers and great grandmothers and that the intended meaning of daughters are the branches of the women like daughters, granddaughters from daughters and sons and their daughters.

## From the Sunnah:

Their Ijmaa' (consensus) in respect to giving the grandmother a sixth from the inheritance because the Messenger (saw) gave the grandmother a sixth.

\* They have differed in respect to the rested upon basis (Mustanad) of the Ijmaa' being a Qiyaas (analogy) into a number of views:

A – Forbiddance of Qiyaas being used as a basis for Ijmaa' because the faces (types) of Qiyaas are different.

B – That all types of Qiyaas are permitted to be a basis for Ijmaa' because it represents a Hujjah Shar'iyah that depends upon the texts.

C – The opinion that it is permissible for Qiyaas to be a rested upon basis for Ijmaa' if the Qiyaas is based on a textual 'Illah or if the 'Illah was clear. If it was not based on a textual 'Illah (reason) and was not clear, then it is not permissible for Qiyaas to be a rested upon basis

for the Ijmaa'. Examples that have been provided to show that Qiyaas had been a relied upon basis for Ijmaa' include the Ijmaa' As-Sahaabah upon the Khilafah of Abu Bakr (ra) based on analogy of his Imaamah (leading) of the Salaah to the point that it was said: "The Messenger of Allah was content with him in respect to the matter of our Deen so should we not be content with him in the matters of our Dunyaa?"

2 – Some people permitted the convening of Ijmaa' without a rested upon basis (Mustanad) i.e. without a Daleel Shar'iy. They said that it is possible and reasonable that Allah inspires the Mujtahideen to come together upon what is correct and grant them Tawfeeq to come out with the correct Hukm after having studied and examined the Mas'alah (issue) that has been presented before them in a thorough and complete manner.

3 – The Mustanad (rested upon basis or source) of Ijmaa' As-Sahaabah is the Daleel Ash-Shar'iy like the Qawl (speech) of the Messenger of Allah (saw) or his Fi'l (action) or his Taqreer (consent). And that the Sahaabah (rah) who agreed upon the Hukm had come across this Daleel that indicates and guides to the Hukm whilst the Daleel (itself) did not reach us.

## **My opinion in respect to Al-Ijmaa'**

None of the 'Ulamaa or Fuqahaa have denied Ijmaa As-Sahaabah because its Hujjiyah (proof of validity as a source of evidence) is clear and Qat'iy (definite) however they differed and disagreed about the other types of Ijmaa' like Ijmaa' Al-Ummah, Ijmaa' Al-Mujtahideen, Ijmaa' of the people of Al-Madinah and the Ijmaa' of the four Khulafaa' amongst others. The reasons for their difference in respect to the rested upon basis of Ijmaa' goes back to the following matters:

1 – The Muslims have been commanded to follow that which Allah Ta’Aalaa has revealed and so it is necessary for the Ijmaa’ to have a rested upon basis from the Wahi like the Kitaab and the Sunnah that it depends upon.

As for the Qur’aan, then it has arrived to us by way of Tawaatur and nothing of it has been left behind due to the Qawl of Allah Ta’Aalaa:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

*Verily it is We Who revealed the Dhikr (i.e. the Qur’an) and verily We will safeguard it (Al-Hijr 9).*

In respect to the Ahkaam which the Qur’aan Al-Kareem has guided to and indicated, whether deduced by Ijtihad or without Ijtihad, then their Daleel is the Qur’aan and not Ijmaa’. And so the Aayah:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ

*Prohibited to you (in marriage) are your mothers and your daughters (An-Nisaa’ 23).*

This Aayah indicates by its Mafhoom (understanding), as taken from the meanings of the Alfaazh (wordings) of the Arabic language, that the mothers include the origins or roots (Usool) of the women like the grandmothers and the great grandmothers, just as the daughters indicates by its Mafhoom the daughters of the boys and girls (grandchildren) and their daughters (great grandchildren). As for what the Sahaabah agreed upon or held a consensus upon, then this was the meaning of the Aayah, just as they had agreed upon many of meanings of the Alfaazh (wordings) of the Qur’aan and the Sunnah. This then does not represent an Ijmaa’ but rather an agreement upon

an Ijtihaad whilst Ijtihaad is not a Daleel. Rather it is the expending of effort by the Mujtahideen in order to understand the Adillah Ash-Shar'iyah to extract the practical Ahkaam Ash-Shar'iyah.

This is whilst the Ijmaa' is a Daleel in itself. That is because the Daleel that they took in their Ijmaa' did not reach us and as such our Daleel for the Hukm is their Ijmaa'. It follows that this cannot be realised in other than the Ijmaa' As-Sahaabah because they alone are those who heard the Daleel from the Messenger of Allah (saw) whether this was manifested in a Qawl, Fi'l or Taqreer (speech, act or consent). Therefore, the rested upon basis (Mustanad) for Ijmaa' As-Sahaabah is the Sunnah alone. That is because the Qur'aan has reached us in a complete form whilst the Sunnah has reached us through narration in an incomplete form and the Ijmaa' As-Sahaabah then completed its arrival to us. In that way the Messenger (saw) had completed his delivery of the Message in a complete form to his companions. Allah Ta'Aalaa said:

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ  
دِينًا

*Today I have completed your Deen for you and perfected upon you my favour and have chosen for you Islam as a Deen (Al-Maa'idah 3).*

2 – As for the Mustanad (relied upon basis) for Ijmaa' being Qiyaas (analogy) then this is not accurate. That is because the correct (or sound) Qiyaas and the one that is recognised by the Shar'a is the one that rests upon a text (Nass) from the Kitaab or the Sunnah. Most of Ijtihaad falls within the subject area of Qiyaas and Qiyaas is a source from amongst the sources of legislation like the Qur'aan, Sunnah and Ijmaa', and is a Daleel for the Ahkaam Ash-Shar'iyah. Therefore, an Ijmaa' of the Sahaabah or of the Mujtahideen upon a Hukm Shar'iy,

the source of which is Qiyaas, would actually mean that the Daleel for the Hukm is Qiyaas and not Ijmaa' whilst their Ijmaa' would only represent an agreement or consensus upon its understanding and its transmission alone.

3 – Those who say that the Ijmaa' is convened without a Shar'iy Sanad (basis/attribution) have no Daleel or semblance of a Daleel to support their position. They have said this wanting to insert into Islaam that which is not from it whilst the Messenger of Allah (saw) said:

مَنْ أَحَدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ

**Whoever brings something (new) into our matter (i.e. Islaam) that is not from it, then it is rejected (Mutaffaq 'Alaihi).**

4 – None of the 'Ulamaa have relayed a Hukm Shar'iy that they have agreed upon other than the Ijmaa' As-Sahaabah. All that they looked in to in terms of Ijmaa' Al-Ummah and Ijmaa' Al-Mujtahideen represents nothing more than a theoretical study detached from practicality. This is in addition to the evidences that they used to establish these types of Ijmaa' being Zhanniyah (indefinite). This is whilst in Usool (the foundations) sources of evidence are not taken based upon Zhann due to the Qawl of Allah Ta'Aalaa:

إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

*Verily speculation does not avail anything against the truth (Younus 36).*

And He Ta'Aalaa says:

وَلَا تَعْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ

*And do not pursue that of which you have no (certain) knowledge (Al-Israa 36).*

And 'Ilm (knowledge) in this Aayah is Yaqeen (certainty).

## The Fourth Daleel

### Al-Qiyaas (Analogy)

#### Definition of Al-Qiyaas:

Al-Qiyaas linguistically means ‘At-Taqdeer’ (evaluation, measuring). It is said that I did Qiyaas of a thing with another thing and that I did Qiyaas upon it I.e. I measured it with something else (like it). Al-Qiyaas is also in according to the Arabic language ‘At-Taswiyah’ (levelling, equalisation, settling).

As for its definition according to the Istilaah (definition terminology) of the scholars of Usool then it is:

**Al-Qiyaas is the joining of one matter to another matter in respect to a Hukm Shar’iy due to the two matters being unified in respect to the ‘Illah (legal reasoning).**

‘Ubaidullah Bin Mas’ood Al-Bukhaari defined it by saying:

It is the extension of the Hukm in respect to the origin to the branch due to a unifying (common) ‘Illah (reasoning).

Ash-Shawkaani in his book ‘Irshaad Al-Fuhool’ defined it as:

It is the extraction of the like of a Hukm that has been mentioned to that which has not been mentioned by way of a shared commonality between them both.

Ibn Qudaamah Al-Hanbaliy in his book ‘Rawdat An-Naazhir’ defined it as:



It is the carrying of the branch upon the origin in respect to a Hukm by way of a shared commonality between them.

Al-Ghazaaliy in his book ‘Al-Mustasfaa’ said when defining Al-Qiyaas:

It is carrying a known matter (Ma’loom) upon a known matter in respect to establishing a Hukm for them both or negating it from them due to a shared commonality that joins them in respect to affirming a Hukm or a Siffah (description/attribute), or in terms of negating them from them.

Al-‘Allaamah ‘Abdul ‘Aliy Al-Ansaariy defined Al-Qiyaas as:

It is the equalising of that which has been silent upon to that which has been mentioned in the text (as found) in the ‘Illah of the Hukm (ruling).

All of these definitions indicate one single meaning which represents the true reality of Al-Qiyaas. This is that there are Shar’iyah texts from the Qur’aan and the Sunnah which mention the Hukm of a matter or issue and also mention the ‘Illah (reasoning) of this Hukm. The ‘Illah represents the motive/reasoning (Baa’ith) for the Hukm and the following is an example of this:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ  
وَذَرُوا الْبَيْعَ

*O you who have believed, when [the Adhaan] is called for the prayer on the day of Jumu'ab [Friday], then proceed to the remembrance of Allah and leave trade (Al-Jumu'ab 9)*

The Aayah has requested the leaving of trade at the time of Salaat ul-Jumu'ah and indicates its prohibition at the time of Salaat ul-Jumu'ah as it represents a 'Man'un' (prevention/forbiddance) following an Ibaahah (permissibility) whilst the 'Illah of that is the Ilhaa'a (distraction) from the Jumu'ah prayer.

The Mujtahidoon have made analogy upon the trade to any action that distracts from the Jumu'ah prayer. So they said that renting or leasing at the time of Jumu'ah is Haraam because it also distracts from the prayer and similarly practising sport or attending a lecture and so forth... The reason for that is that these actions and what is similar to them contain the 'Illah of distraction from the Jumu'ah prayer and as such they have taken the Hukm of trading at the time of the prayer, which is the prohibition that has been mentioned in the Aayah, and applied it to that which the 'Illah is also present in.

Therefore, if we were to apply the first definition of Qiyaas upon this example we would come to the following conclusion:

Practising sport is prohibited at the time of Salaat ul-Jumu'ah joined to the prohibition of trading at the time of Jumu'ah because each of them distracts from the performance of Salaat ul-Jumu'ah or due to the unifying of sport and trade in respect to the 'Illah which is distraction from the Jumu'ah prayer.

## **The Importance of Qiyaas within Islamic Fiqh**

Qiyaas takes the fourth position within the Islamic legislation as it comes after the Qur'aan, the Sunnah and Ijmaa'. However, it also holds a particular significance within the area of Islamic Fiqh which is distinguished from the rest of the Shar'iyah Adillah. That is due to the following matters:

1 – Qiyaas has a firm relationship with the Qur’aan, the Sunnah and the Ijmaa’. That is due to these three Adillah Al-Ijmaaliyah containing texts which include Shar’iyah ‘Ilal (reasonings) which require Qiyaas for the purpose of deducing Ahkaam Shar’iyah. Without Qiyaas it is not possible to deduce or extract these Ahkaam.

2 – The realities of life are continuously and newly occurring and are various whilst it is required from the Muslim to regulate his actions in accordance to the Ahkaam Ash-Shar’iyah. It is therefore necessary for these new realities to have Ahkaam Shar’iyah that explain and clarify what the Muslim’s position towards them should be. Al-Qiyaas is from the Adillah (evidences) that make clear the Ahkaam Ash-Shar’iyah for these realities. That happens by linking or attaching the newly occurring realities with the Ahkaam Ash-Shar’iyah which the Wahi brought down due to the similarity between them in respect to the ‘Ilal (reasonings) of the Ahkaam.

Consequently, Qiyaas represents a permanent source to derive the Ahkaam Ash-Shar’iyah for the new realities that occur through the course of human life. This is what makes Islaam proceed along with human life across all times and capable of dealing with all newly occurring realities attached to this human life.

3 – Qiyaas has added to and enriched the Fiqh with many practical Ahkaam Ash-Shar’iyah since the time of the Messenger of Allah (saw) until our present time.

And may Allah’s mercy be upon Al-Muzniy the companion of Ash-Shaafi’iy when he said the following about Qiyaas:

“The Fuqahaa from the time of the Messenger (saw) until this current day of ours have used measures (Maqaayees) in all of the Ahkaam in the matters of their Deen and they have agreed that the match for the

Haqq is the Haqq and that the match for the Baatil is the Baatil and as such it is not permissible for anyone to deny Al-Qiyaas”.

## **Hujjiyat ul-Qiyaas (the proof of its validity as a source of evidence)**

Qiyaas is a Daleel Shar’iy for the Ahkaam Ash-Shar’iyah and this has been established (or proven) through Qat’iy (definite) Adillah (evidences) and (supported by) Adillah Zhanniyah (indefinite evidences).

### **1 – The Qat’iy Daleel for the Hujjiyah of Qiyaas:**

The Qiyaas that is considered is the Qiyaas in which its ‘Illah (reasoning) has been guided to by the Shar’a from the Qur’aan or the Sunnah or the Ijmaa’ As-Sahaabah. As such considering Qiyaas as a Daleel Shar’iy is an inevitable matter because Qiyaas in its true reality represents the extraction or deduction (Istinbaat) of a Hukm Shar’iy from these three Adillah (evidences). Therefore, the Daleel (evidence) of Qiyaas is the same as the Daleel of the Nass (text) that has indicated or guided to the ‘Illah.

As such, if the Daleel of the ‘Illah is the Qur’aan Al-Kareem then the Daleel of the Qiyaas is the Daleel of the Qur’aan. This is like His Qawl Ta’Aalaa in Soorat ul-Jumu’ah:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ  
وَذَرُوا الْبَيْعَ

*O you who have believed, when [the Adhaan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade (Al-Jumu'ah 9)*

That is because this Aayah indicates the prohibition (Tahreem) of conducting trade at the time of Salaat ul-Jumu'ah due to the distraction from performing the Salaah. If we were then to say that leasing or hiring (Ijaarah) at the time of Salaat ul-Jumu'ah is Haraam in analogy to the trade, then we would have deduced the ruling of prohibition of Ijaarah at the time of the Jumu'ah prayer from the Aayah by way of Qiyaas (analogy). Consequently, the Daleel of Qiyaas in this case is the Daleel mentioned in this Aayah of the Qur'aan Al-Kareem.

If the Daleel of the 'Illah is the Sunnah An-Nabawiyah then the Daleel of the Qiyaas is the Daleel of the Sunnah An-Nabawiyah. That is like in the speech of the Nabi (saw):

فِي الْغَنَمِ السَّائِمِ زَكَاةٌ

**In respect to the free grazing sheep there is Zakaah (due)**  
(Al-Bukhaari and Abu Daawood with a different wording)

If we were then to say that based on Qiyaas there is also Zakaah due upon free grazing cows that live upon the pasture due to the cows and sheep sharing in the 'Illah (reasoning) of 'free grazing' then this 'Illah was mentioned and found within the Sunnah An-Nabawiyah. Consequently, the Daleel of the Qiyaas is the Daleel of the Sunnah An-Nabawiyah that was taken from the Hadeeth.

The same applies if the Daleel of the 'Illah was Ijmaa' As-Sahaabah in which case the Daleel of the Qiyaas would be the Daleel of the Ijmaa' As-Sahaabah.

It has already been established that these three Adillah are Adillah Qat'iyah (definite evidences) and as such the Daleel of Qiyaas in respect to it being from the Wahi is also Qat'iy.

## **2 – The Zhanniy Daleel supporting the Qiyaas being a Hujjah (proof and evidence):**

The Messenger of Allah (saw) guided towards the utilisation of Qiyaas and examples from amongst such evidences are the following:

It has been narrated from him (saw) that a man from Khath'am asked him: "My father became Muslim whilst he was of an elderly age and he is not capable of riding camels whilst the Hajj has been proscribed upon him. So can I make Hajj on his behalf?" So he (saw) asked: **"Are you the oldest of his sons?"** He replied: "Yes". (Then) he (saw) said: **"Do you see that if your father had a debt and you paid it off for him, would that count for him?"** He replied: "Yes". (So) he (saw) said: **"Then perform Hajj on his behalf"** (An-Nasaa'iy).

'Umar (ra) related: "I was in good spirits one day so I kissed (my wife) whilst I was fasting and after that I went to the Nabi (saw) and said: "I did something very serious today. I kissed whilst I was fasting" And so the Messenger of Allah (saw) said: **"Do you see what the case would be if you had washed your mouth out with water (Madmadah) whilst you were fasting"**. I said: "There is nothing in that". And so he (saw) said: **"And so what's the problem?"** (Abu Daawood) i.e. What are you fearing when you have undertaken a permissible act that does not invalidate the fasting?

It has been authenticated that Abu Bakr (ra) allocated inheritance to the mother of the mother but not the mother of the father and so some of the Ansaar said to him: "You have given inheritance to a

woman from a dead (man) whilst had she been dead he would not have inherited from her. And you left a woman who if she had been dead he would have inherited all that she left”. And so he revised his position to make them share in the sixth whilst none of the Sahaabah rebuked or denied this from him and as such it represented an Ijmaa’.

In this Ijmaa’ the Ansaari made analogy between the mother of the father and the mother of the mother in respect to inheritance and presented his argument to Abu Bakr based on this evidence or proof. Abu Bakr (ra) then accepted the argument because it was based upon a Daleel Shar’iy.

## **The opinions of the ‘Ulamaa and their Adillah in respect to working with Al-Qiyaas**

There are two opinions in respect to working with Qiyaas: Affirming Qiyaas and negating (or denying) Qiyaas:

### **1 – Affirmation of Qiyaas:**

The is the opinion of the majority of the ‘Ulamaa of the Muslims who have held the view of the Hujjiyah (validity) of Qiyaas in respect to the practical Ahkaam Ash-Shar’iyah. This is when a Hukm Shar’iy is not found for a reality within a Nass (text from the Kitaab or Sunnah) or Ijmaa’ and it is established that the reality is equal to another reality that has a text for its ruling and that this text contains a Shar’iyah ‘Illah (reasoning). Analogy is then made between one reality and the other reality that has a text for it and the same Hukm is applied to it. Its Hukm would then be a Hukm Ash-Shar’iy and the Mukallaf would have no choice except to follow it and act by it.

Those who have affirmed Qiyaas have used the Qur’aan, the Sunnah, the statements of the Sahaabah and their actions in addition to the

‘Aql (rationality) as evidence to support its affirmation. The following are some of these evidences:

### **From the Qur’aan:**

A – Allah Ta’Aalaa said:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*Then if you disagree over anything, refer it to Allah and the Messenger (An-Nisaa’ 59).*

Referring back to Allah and the Messenger means referring to the Qur’aan and the Sunnah and there is no doubt that linking or attaching that which has no text for it with that which has a text, due to them being the same or equal in respect to the ‘Illah of the Hukm, represents referring to Allah and the Messenger i.e. referring back to the Kitaab of Allah and the Sunnah of His Messenger.

### **From the Sunnah:**

B - The guiding of the Messenger of Allah (saw) to the utilisation of Qiyaas as previously mentioned when discussing the Daleel Azh-Zhanniy in respect to the Hujjiyah (validity) of Qiyaas.

### **From the Sahaabah (rah):**

C – ‘Umar Ibn Al-Khattaab (ra) said in his time to Abu Mousaa Al-Ash’ariy: “Then (use) the understanding that is most correct to you from that which has come to you that has no Qur’aan or Sunnah in respect to it, then at that point measure (Qiyaas) between the matters and understand the examples, then proceed in accordance to what



you see to be more beloved to Allah and the closest to the Haqq (truth)”.

### **From the ‘Aql (Rationality):**

D – The texts of the Qur’aan are limited whilst the realities of the people and their issues are not limited. Therefore, it is not possible for the limited texts by themselves to be representative of the legislative source. In this case it is the Qiyaas that represents the legislative source that allows the newly occurring realities to be continuously dealt with.

### **Points:**

The first who wrote about Al-Qiyaas was Al-Imaam Ash-Shaafi’iy in his ‘Risaalah’ in Usool ul-Fiqh. In regards to it he said: “In respect to the statement: ‘And Ijtihad is Al-Qiyaas’, then this is not precise (or exactly accurate). That is because Ijtihad can take place in other than Qiyaas just as it can occur with Qiyaas. It (Ijtihad) is the manner or way by which the Ahkaam Ash-Shar’iyah are deduced (or extracted) from their detailed evidences and it is not a source from among the sources of Islamic legislation like Al-Qiyaas is”.

Those who affirmed it differed in respect to its Dalaalah (import) in terms of it being Qat’iyah or Zhanniyah (definite or not definite). The majority viewed it to be definite whilst Abu l-Hasan Al-Basriy and Al-Aamadiy viewed it to be Zhanniyah (not definite). The first opinion is (in my view) the correct one.

Those who affirmed Qiyaas included those of the four Madhaahib and the Fuqahaa of the four Madhaahib; Ash-Shaafi’iyah, Al-Hanaabilah, Al-Hanafiyah and Al-Maalikiyah.

## 2 - Negation of Qiyaas:

The Nizhaamiyah (attributed to Ibraaheem Bin Sayyaar An-Nizhaam Sheikh Al-Jaahizh), Azh-Zhaahiriyah (attributed to Daawood Azh-Zhaahiriy, who was named as such because he took what was apparent from the text, and from amongst the strongest of them in denying Qiyaas was Ibn Hazm Al-Andalusi) and some of the Shee'ah groupings denied that Qiyaas represents a Hujjah Shar'iyah for the Ahkaam. These were named: 'The deniers of Qiyaas' and they deduced their negation of Qiyaas based upon the following matters:

A – The statement of Allah Ta'Aalaa:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ

*And do not pursue that of which you have no knowledge (Al-Israa 36).*

Which means: Do not follow that which you do not have knowledge (‘Ilm) of i.e. Yaqeen. This is whilst Qiyaas is a Zhanniyy matter that contains doubt. Consequently, working with it would not be working upon ‘Ilm (knowledge i.e. Yaqeen). It is like the Zhann that has been mentioned in the Qur’aan Al-Kareem:

إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

*Verily speculation does not avail anything against the truth (Younus 36).*

B – The Qawl of Allah Ta'Aalaa:

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تَبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ

*And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims (An-Nahl 89).*

The Qur'aan therefore contains an explanation for every Hukm and as such there is no need for Qiyaas to be brought along with it.

C – They said that Qiyaas leads to differences in respect to the Ahkaam and leads to disputation in respect to the opinions/views.

Those who took Qiyaas responded to and refuted those who denied Qiyaas and they refuted the understandings that they based their deduction upon.

The most correct opinion as we have previously explained at the beginning of the study is that Qiyaas is a Hujjah (proof/evidence) Shar'iyah for the Ahkaam Ash-Shar'iyah and the Daleel that proves its validity as an evidence is a Daleel Qat'iy (definite evidence).

As for their use of the Aayah:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ

*And do not pursue that of which you have no knowledge (Al-Israa 36).*

And the Aayah:

إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

*Verily speculation does not avail anything against the truth (Younus 36).*

(Translators note: It appears that the explanation was emitted in the final print following these two Aayah however it is clear from what is discussed earlier that

Qiyaas is established upon Qat'iy evidence and as such these two Aayah and the prohibition of relying upon Zhann in Usool does not apply upon it).

And the fact that the Qur'aan explains the Ahkaam in worded expression and meaning doesn't mean that there is an explicit text for every Hukm. This is the case where Qiyaas is attached to the Dalaalah (indicated meaning) of the Qur'aan in respect to the Ahkaam by meaning. Consequently, Qiyaas cannot be done without, as it would mean neglecting some of what the texts of the Qur'aan and the Sunnah have brought in terms of meanings indicated in its expressed wordings.

As for Qiyaas leading to differences in the Ahkaam then Ijtihad in respect to the Nusoos has already led to difference in respect to the Ahkaam like for instance in relation to the Aayah:

أَوْ لَأَمْسْتُمْ النِّسَاءَ

*Or you touched the women*

Or the Aayah:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

*And the divorced women remain in waiting for three (Quroo') (Al-Baqarah 228).*

That is because the Mujtahidoon differed in respect to the meaning of 'Laamastum' in terms of whether its meaning is the touching by hand or through intercourse. They also differed in respect to the meaning of 'Quroo' between the meanings of 'purity' and 'menses'. Therefore, differences occur in other than Qiyaas. In addition, the

Messenger of Allah (saw) approved of the Sahaabah in regards to their differences based upon Ijtihad.

## **The Arkaan (pillars) of Al-Qiyaas**

### **Al-Asl (origin), Al-Far'u (branch), Hukm ul-Asl (original Hukm) and Al-'Illah (reason)**

The Arkaan (pillars) of Qiyaas are taken from the following meaning of Qiyaas:

'The attachment (or joining) of a branch (Far'un) with an origin (Asl) in respect to a Hukm Shar'iy due to the unifying 'Illah between them'.

As such Qiyaas requires Arkaan (pillars) without which it will not be fulfilled and these are:

The Far'u (branch) that is intended to be analogised to.

The Asl (origin) that the analogy is intended to be made upon.

The specific Hukm Ash-Shar'iy of the origin that is intended to be applied upon the branch.

The 'Illah that joins the origin to the branch.

Example:

Allah Ta'Aala says:

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهَبُونَ بِهِ عَدُوَّ اللَّهِ  
وَعَدُوَّكُمْ

*And prepare for them all that you are able of force and of steeds of war by which you may terrify the enemy of Allah and your enemy (Al-Anfaal 60).*

The Asl (origin): Preparing or making ready the necessary power or force and the steeds of war were included within this at the time of the descent of the Aayah.

The Far'u (branch): Preparing or making ready the necessary power of force today which would include within it missiles and nuclear bombs.

The Hukm: Al-Wujoob (obligation).

The 'Illah (reason): Striking terror (fear) into the enemy.

Another example:

Allah Ta'Aalaa says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ  
وَدَرُّوا الْبَيْعَ

*O you who have believed, when [the Adhaan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade (Al-Jumu'ah 9)*

Al-Asl: Trade

Al-Far'u: Ijaarah (hiring/leasing) or swimming.

Al-Hukm: Tahreem (the prohibition) of conducting trade at the time of the Adhaan of the Jumu'ah prayer which then also applies upon the Far'u (branch).

Al-'Illah (reasoning for the legislation): Ilhaa' (distraction) from Salaat ul-Jumu'ah.

## **Shuroot (the conditions) of the Arkaan (pillars) of Al-Qiyaas**

### **A – Al-Asl (the origin):**

This is the reality upon which the Hukm is issued upon in the Aayah or the Hadeeth or the Ijmaa'. Therefore, the origin (Asl) in the first example is the steeds of war and the second example it is trading. As such the following is stipulated in respect to the Asl:

- The Asl upon which the Qiyaas is based must have been mentioned in a Nass (text) from the Kitaab, the Sunnah or be an Ijmaa'.

- Analogy is not made upon an origin where its Hukm has been established by Qiyaas. So in the example of the Jumu'ah prayer analogy is not made upon Ijaarah (renting/leasing) but rather Qiyaas is only undertaken upon the origin which is Al-Bai' (trade).

### **B – Al-Far'u (the branch):**

It is the reality that the knowledge of its Hukm is sought after through making Qiyaas upon the origin.

It is stipulated in respect to this Far'u (branch):

- That the branch (Al-Far'u) does not have a text for its Hukm. If there was already a text for its Hukm then there would be no need for us to seek its Hukm by way of Qiyaas as there is no Qiyaas in the place of the text.

- That the 'Illah is realised within the Far'u (branch) just as it is realised within the Asl. So in the case where the 'Illah (reason) for the Tahreem (prohibition) of conducting trade at the time of the call to prayer for the Jumu'ah prayer is Al-Ilhaa' (distraction), then if distraction was realised in the actions of leasing or practising a sporting activity then they would take the Hukm (legal ruling) of the Asl (origin) which is Tahreem. This is because if the 'Illah of the Asl was not realised within the Far'u then it would not be possible to provide the Hukm of the origin to the branch.

### **C – Hukm ul-Asl:**

It is the Hukm Ash-Shar'iy that is established for the Asl by the Kitaab or Sunnah or Ijmaa' and the following is stipulated in regards to it:

1 – That it represents a practical Hukm Shar'iy that is established by the Kitaab or the Sunnah or Ijmaa'.

2 – That the Hukm is 'Ma'qool Al-Ma'naa' (the meaning can be understood and the rationale behind it) which means that it is built or based upon an 'Illah that the 'Aql (mind) can comprehend. That is because the basis of Qiyaas is perceiving the 'Illah of the Hukm within the origin and perceiving its realisation within the branch. This is so that the Hukm of the Asl (origin) can be extended to the Far'u (branch).



3 – That the Hukm possesses an ‘Illah that is possible to be realised within the branch. That is because if the ‘Illah was restricted to the origin whilst not possible to realise it within anything other than it, then Qiyaas is refrained from. This is like, for example, the cutting of the hand of the thief as taken from the Qawl of Allah Ta’Aalaa:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

*And the male thief and female thief cut off their hands (Al-Maa’idah 38).*

So ‘Saraqah’ (theft) is a restricted (Qaasirah) ‘Illah and does not extend to other than it. That is like ‘Al-Ikhtilaas’ (embezzlement/misappropriation) where the cutting of the hand does not apply to it. In this case, this restricted ‘Illah, is called a Sabab and Qiyaas is not made upon it.

4 – That the original ruling (Hukm ul-Asl) is not specific to the Asl (origin). This is because its specification to the origin (Asl) prevents making analogy with a branch upon it and as such there is no Qiyaas (in that case). This is like the specification of the permissibility for the Messenger of Allah (saw) to be married to more than four wives at the same time and the prohibition of marrying his wives after him. Another example is the specification attached to Khuzaimah Bin Thaabit in respect to accepting his testimony alone and its consideration as being equal to the testimony of two. That is because this Hukm is Khaass (specific) to Khuzaimah which was established by the statement of the Messenger (saw): **“What Khuzaimah gives testimony in regards to then that is sufficient for him”** (Abu Daawood extracted it with the Lafzh (wording): **“The Shahaadah (testimony) of Khuzaimah is (equal to) the Shahaadah of two men”**). Consequently, analogy is not made to anyone else upon him irrespective of his level in terms of virtue and Taqwaa.

## **D – Al-‘Illah:**

The ‘Illah is that thing (or matter) for the sake or purpose of which the Hukm came into being (i.e. why it was legislated) In other words, it is the motivating factor or reason (Baa’ith) for the Hukm. It is the rationale of the text, which means that it is what makes the ‘Aql (mind) pass judgement upon the branch with the same judgement of the origin due to their unity and commonality in respect to the ‘Illah (reason).

The following are its conditions:

### **1 – That the ‘Illah is a Wasf Zhaahir (apparent description):**

It is necessary for the ‘Illah to be apparent (Zhaahir) and not concealed (or hidden) within the Asl (origin) so that its presence can be ascertained in the branch (Al-Far’u) in order to attach or link the branch to the origin in respect to the Hukm. The meaning of the ‘Illah being apparent is that it is comprehended or perceived through the senses or some of them.

So the intentional killing is the Sabab (cause or reason) for Al-Qisaas (law of retaliation) however deliberateness or the intentional nature of the act is not perceived by the senses and none but the one who undertook the action knows this. Therefore, the Shaari’ (legislator) established a Zhaahir (apparent or evident) matter in its place linked to it and guiding to it. This is the tool that the killer used which from its nature is from that which kills like the sword, gun or rifle. These are limited things and so the ‘Ulamaa made Qiyaas upon them to heavy or bulky things that also kill from their nature like rocks and iron (bars).

### **2 – That the ‘Illah is a Wasf Mundabit (accurate/consistent description):**

This means that it does not differ in accordance to the difference of people, the difference of conditions or circumstances and the difference of places. So for example the killing (Qatl) mentioned in the statement of the Messenger (saw):

الْقَاتِلُ لَا يَرِثُ

**The killer does not inherit**  
(Abu Daawood and An-Nasaa'iy).

This killing is a Wasf Mundabit (consistent description) because it has a specific and limited reality that does not differ in accordance to the difference of the killer or the one who is killed. As such it is possible to make analogy upon the killer of the Waarith (one being inherited from) to the Mousaa Lahu (the one who takes from the will (Wasiyah) i.e. up to a third of the wealth that is left behind and allocated by choice) if he kills the Moosiy (the one who has made the will), and as such he (the killer) would be forbidden from taking the Wasiyah (the will).

As for hardship and difficulty (Mashaqqah) which is thought to be the 'Illah for the permissibility of breaking the fast when travelling, then this is not Mundabit (consistent). That is because someone could travel and face hardship whilst he could be travelling and not face any hardship or difficulty in accordance to the differences of the people themselves, the means of transport used and the difference in the places and climates. Therefore, travelling (Safar) is not considered an 'Illah nor is hardship considered an 'Illah but rather Safar (travelling) is only considered to represent the Sabab (reason or cause) for the permissibility of breaking the fast whether the travelling entailed hardship or not. As such it follows that analogy is not made upon it because it is not an 'Illah.

### **3 – That the ‘Illah is a Wasf Munaasib Lil-Hukm (A fitting description for the ruling):**

The Wasf Al-Munaasib is divided into two types or categories: Al-Wasf Al-Mu’aththir and Al-Wasf Al-Mulaa’im.

A – Al-Wasf Al-Mu’aththir for the Hukm and it has also been called Al-Munaasib Al-Mu’aththir:

It is the Wasf (description) that indicates that the Hukm is an effect from its effects and this is the highest type of the Munaasib. An example of this is the statement of the Messenger of Allah (saw):

إِنَّمَا نَهَيْتُكُمْ مِنْ أَجْلِ الدَّافَّةِ الَّتِي دَفَّتْ عَلَيْكُمْ فَكُلُوا وَتَصَدَّقُوا وَادَّخِرُوا

**I only forbade you (previously) due to the travellers who pass through upon you but (now) eat, give in charity and store**  
(Al-Bukhaari, Muslim and Ahmad).

The Hadeeth explains that the Messenger of Allah (saw) had forbidden the storage of the meat of the slaughters for the purpose of feeding the Arabs who were visiting or newcomers and were in need of food. This therefore is an explicit text in respect to the ‘Illah (reasoning) for the forbiddance of storing the meat and this ‘Illah is the travellers (Daaffah) who are the Arabs who were in need of food. This ‘Illah is a Wasf Mu’aththir in respect to the Hukm of forbidding the storage of the meat from the sacrifices (i.e. there is a direct correlation between the ‘Illah and the Hukm).

However, had it been said for example: ‘I had forbidden you from storing due to the short men or for the white men’ then the Wasf (description) of ‘short’ and ‘white’ has no effect in respect to the Hukm. This is because the fact that they are short or white does not make them in need of the sacrificial meats which is opposite to that

which was mentioned in the Hukm (in the Hadeeth) because the fact that they were in need of the food had an effect upon the forbiddance of storing the sacrificial meats away. That is because the ‘Illah is the motivating factor or reason (Al-Baa’ith) for the ruling and ‘the people in need’ is the motivating factor and reason (Al-Baa’ith) for not storing away the sacrificial meats so that those in need can meet their needs.

This then is the meaning of the ‘Illah being a Wasf Mu’aththir in respect to the Hukm.

B – Al-Wasf Al-Munaasib Al-Mulaa’im Lil Hukm:

This is where the Wasf (description) is an ‘Illah for the Jins (kind/type) of the Hukm and not for the Hukm in itself. An example of that is the Qawl of Allah Ta’Aalaa:

فَإِنْ أَنْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ

*Then if you perceive in them sound judgement (maturity), release their property to them (An-Nisaa’ 6).*

The text has indicated that ‘Young age’ is the ‘Illah for taking guardianship (Wilaayah) over the wealth of the young. Some have made analogy of the ‘Wilaayah over the Nafs (person)’ upon the ‘Wilaayah of wealth’ and so they permitted the Waliy to not allow the girl whom he has Wilaayah (guardianship) over to marry without his permission.

As such the Arkaan of Qiyaas in this example are as follows:

Al-Asl (origin):	Wilaayah (guardianship) over wealth (or property).
Al-Far’u (branch):	Wilaayah over the Nafs (person).

Al-Hukm (ruling): Being able to dispose of wealth/property.

Therefore, the Wilaayah (guardianship) over wealth and the Wilaayah over the Nafs (person) are of the same kind or type (Jins) which is Wilaayah (guardianship). From this comes the ruling of the disposal over or conducting of marriage because it represents a Wilaayah over the Nafs.

#### **4 – That the ‘Illah is a Wasf Muta’addiy (a description that can be extended beyond it):**

The meaning of this is: That the ‘Illah is realised in the Far’u (branch) just as it is realised within the Asl (origin). Therefore, being distracted (Al-Ilhaa’) from the performance of Salaat ul-Jumu’ah is realised in the branch like swimming or engaging in a sporting activity just as it is realised in the Asl of conducting trade. If the ‘Illah is not a Wasf Muta’addiy (i.e. it doesn’t extend to a reality beyond itself) then Al-Qiyaas does not take place. This is like when the Wasf (description) is restricted to the Asl (origin) like in the Aayah:

الرَّائِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

*The female fornicator (Zaaniyah) and the male fornicator (Zaani), lash each one of them with one hundred lashes (An-Noor 2).*

Here the ‘Illah of the Hukm, which is the obligation to lash the non-married fornicator with one hundred lashes, is restricted to the fornicator and it does not extend beyond that. Therefore, analogy is not made between homosexual acts and Zinaa and they do not take its Hukm. For that reason, Zinaa (fornication) is considered to be the Sabab for the lashing and not an ‘Illah.

## **5 – That the ‘Illah is Shar’iy:**

This Shart (condition) means that the ‘Illah is mentioned or found within the text (Nass) like the Aayah of Qur’aan or the Hadeeth or located within the Ijmaa’.

If, however it was ‘Aqliyah (rational or based upon the minds reasoning), in the case where it is not based on a Shar’iy text, then it is not considered sound or valid for Qiyaas to be made upon it and the Hukm that is based upon it is not considered to be a Shar’iy Hukm.

## **The types of ‘Illah ‘Masaalik Al-‘Illah’**

The Shar’iy ‘Illah which is the matter for the purpose of which the Hukm was legislated and is derived from a Shar’iy text, is categorised or divided, in accordance to how it came, into four categories:

It can be Saraahatan (explicit), Dalaalatan (implicit), Istinbaatan (derived/extracted/deduced) or it can be Qiyaasan (based on analogy).

### **1 – The ‘Illah that has been mentioned Saraahatan (explicitly):**

This is the ‘Illah that is understood from the Alfaazh (wordings) of the Nass (text) that linguistically indicate Ta’leel (reasoning i.e. presence of an ‘Illah). These are like the wordings:

‘Min Ajli’ (for the sake or purpose of) or like the Huroof ‘Kay’ (ك/so that), ‘Laam At-Ta’leel’ (ل), Al-Baa’ (ب) amongst others.

Examples of this are as follows:

The statement of the Messenger of Allah (saw):

إِنَّمَا نَهَيْتُكُمْ مِنْ أَجْلِ الدَّافَةِ الَّتِي دَفَّتْ عَلَيْكُمْ فَكُلُوا وَتَصَدَّقُوا وَادَّخِرُوا

**I only forbade you (previously) due to the travellers who pass through upon you but (now) eat, give in charity and store**

(Al-Bukhaari, Muslim and Ahmad).

And his statement (saw):

إِنَّمَا جُعِلَ الْإِسْتِئْذَانُ لِأَجْلِ الْبَصَرِ

**Seeking permission was only for the sake of sight (i.e. seeing)  
(Agreed Upon).**

Or like the Qawl of Allah Ta'Aalaa:

كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

*So that it will not be a perpetual distribution among the rich from among you  
(Al-Hasr 7).*

And His Qawl Ta'Aalaa:

لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ

*In order that there not be upon the believers any discomfort concerning the wives of  
their adopted sons (Al-Abzaab 37).*

And:



لِقَالَا يَكُونُ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ

*So that mankind will have no argument against Allah after the messengers (An-Nisaa' 165).*

## **2 – The ‘Illah that has come Dalaalatan (implicitly or by indication):**

This is when the reasoning (Ta’leel) is necessarily understood from what is indicated by the wording (Madlool Al-Lafzh). So the Harf (letter) فاء is a Harf ‘Atf (letter of connection) and Ta’qeeb (of following) however the construction or structure of the sentence sometimes makes this Harf (Faa’a) indicative of Ta’leel (reasoning i.e. containing an ‘Illah). So for example:

The Messenger of Allah (saw) said:

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ

**Whoever revives a dead land then (Faa’a) it is his**  
(Ahmad and At-Tirmidhi who classified it as Saheeh).

So making the ownership of the land a consequence of reviving it by using the Faa’ At-Tasbeeb (the Faa’ of causality) makes reviving (Al-Ihya) the ‘Illah for ownership and it extends to everything that holds the meaning of reviving like putting stones upon its borders, cultivating it, planting on it, building upon it or making a stream or water source flow in it. This is all specific to the dead land that has no owner.

Another example of an Illah by way of Dalaalah is the speech of the Messenger of Allah (saw):

## الْقَاتِلُ لَا يَرِثُ

**The killer does not inherit**  
(Abu Daawood and An-Nasaa'iy).

That is because the (wording) Qaatil is a Wasf Mufhim Munaasib that establishes an 'Illah (reason) whilst the construction of the sentence indicates that killing is the 'Illah for depriving the inheritor who has killed from the inheritance of the one leaving the inheritance who has been killed.

A further example is his Qawl (saw):

## فِي الْعَنَمِ السَّائِمِ زَكَاةٌ

**In respect to the free grazing sheep there is Zakaah (due)**  
(Al-Bukhaari and Abu Daawood with a different wording)

That is because the Lafzh (wording) As-Saa'imah (free grazing) is a Wasf Mufhim that indicates the 'Illah of the obligation of Zakaah upon sheep if they are not fed fodder from their owner and graze naturally upon the pastures.

### **3 – The 'Illah that has been found in the text by way of Istinbaat (deduction):**

This is when the text through its composition provides for the deduction (Istinbaat) of an 'Illah for the Hukm whilst this 'Illah is not mentioned in the text either explicitly or implicitly (Saraahatan or Dalaalatan).

An example of this:

Allah Ta'Aalaa said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ  
وَذَرُوا الْبَيْعَ

*O you who have believed, when [the Adhaan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade (Al-Jumu'ah 9)*

And Allah Ta'Aalaa said in the Aayah that follows the above Aayah:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ

*And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah (Al-Jumu'ah 10).*

So the first Aayah contains a forbiddance (Nahi) from conducting trade at the time of the call to Jumu'ah and the second Aayah contains a command (Amr) to disperse in the land and seek the bounty of Allah when the Salaah has ended which means the Ibaahah (permissibility) of conducting trade if the circumstance forbidding it has gone away, which is the performance of the Salaah. From this it is deduced (Istinbata) that the forbiddance of conducting trade at the time of the call of the Jumu'ah prayer is due to the reason ('Illah) of Ilhaa' (distraction). Therefore 'distraction from the performance of the Salaah' represents the 'Illah that has been deduced (Mustanbatah) and which is not mentioned explicitly or implicitly within the text.

#### 4 – Al-'Illah Al-Qiyaasiyah:

If the ‘Illah mentioned in the text is a Wasf Mufhim (i.e. a description open to reasoning) it is possible to make analogy upon it a new ‘Illah and this new ‘Illah is called an ‘Illah Qiyaasiyah. The meaning of Wasf Mufhim is that it provides understanding of Ta’leel (reasoning) and the angle of reasoning. This then is like having an ‘Illah for the ‘Illah and it is therefore not permitted to make Qiyaas of an ‘Illah upon an ‘Illah unless the Wasf (description) mentioned in the text is open to reasoning or provides the understanding of reasoning and leads to the understanding of the angle of the ‘Illah within it.

An example of this:

The Qawl of the Messenger (saw):

لَا يَقْضِي الرَّجُلُ بَيْنَ الرَّجُلَيْنِ وَهُوَ غَضَبَان

**The man does not pass judgment between two men whilst he is  
angry**

(At-Tabaraani in Al-Awsat).

This Hadeeth contains a mentioned ‘Illah which is anger and it is the reason that the Messenger of Allah (saw) forbade passing judgement at the time of anger.

However, this mentioned ‘Illah (anger) is a Wasf Mufhim due to the effect or impact of anger upon passing judgement due to what anger causes in terms of clouding the thought and destabilising the condition. As a result, this new ‘Illah is called: ‘Clouding the mind and destabilising the condition’ and it represents an ‘Illah Qiyaasiyah and the ‘Illal (reasons) that include the clouding of the mind and destabilising the condition are measured upon it (i.e. Qiyaas is made). This would include hunger for instance so that the statement: ‘Don’t pass judgment whilst you are hungry’ would apply, or pain so that the

statement: ‘Don’t pass judgement whilst you are in a lot of pain’ would be applicable.

Three conditions are stipulated in regards to the Lafzh (wording) from which it is valid for an ‘Illah Qiyaasiyah to be taken:

1 – That it is a Wasf that is Mushtaqq and not Jaamid. The Mushtaqq (Lafzh) is that which is taken (derived) from other than it like ‘Ghadbaan’ (angry) is derived from ‘Al-Ghadab’ (anger). The Jaamid is that which is not taken or derived from other than it like ‘Al-Asad’ (lion), ‘Al-Burr’ (wheat) and ‘Adh-Dhahab’ (gold).

2 – That the Wasf is a Wasf (description) Mufhim (open to understanding an ‘Illah) indicating Ta’leel (reasoning).

3 – That the Wasf Al-Mufhim also guides to the angle of reasoning like hunger causing cloudiness of thought and like the pain and anger or severe thirst.

So for instance it is narrated that the Messenger of Allah (saw):

يَنْهَى عَنْ بَيْعِ الذَّهَبِ بِالذَّهَبِ ، وَالْفِضَّةِ بِالْفِضَّةِ ، وَالْبُرِّ بِالْبُرِّ ، وَالشَّعِيرِ بِالشَّعِيرِ ،  
وَالتَّمْرِ بِالتَّمْرِ ، وَالْمِلْحِ بِالْمِلْحِ إِلَّا سَوَاءً بِسَوَاءٍ ، عَيْنًا بِعَيْنٍ ، فَمَنْ زَادَ أَوْ أزدَادَ ،  
فَقَدْ أَرَبَى ،

**Forbade trading gold for gold, and silver for silver, and wheat for wheat, and barley for barley, and dates for dates, and salt for salt, except equally (like for like), the same for the same. So whoever adds or increases then he has committed a usurious act (i.e. Ribaa)**

(Version recorded by Muslim).

That which is mentioned in this Hadeeth is not reasoned. That is not because it is an amount or because it is foodstuffs but rather because these mentioned things in the Hadeeth are Jaamid Alfaazh and are not Mushtaqqaah (derived). As such it is not a Wasf Mufhim that indicates a reasoning and it does not contain the sense of reasoning whether from a linguistic or Shar'a angle. Therefore, the Tahreem (prohibition) of Ribaa Al-Fadl (excess) is restricted to these six items alone. Analogy is not made upon wheat and extended to rice, or grapes to dates, or sugar to salt. It is therefore permitted to exchange sugar for sugar with an increase and similarly for grapes to be exchanged for grapes with an increase (involved in the trade). This is as long as another text does not prohibit that.

### **Aqsaam (Categories of) Al-Qiyaas and their level of degree in respect to the Hukm in the view of some of the 'Ulamaa'**

Al-Qiyaas is built or based upon the shared commonality of the Far'u (branch) with the 'Asl (origin) in respect to one single 'Illah however the 'Illah could be stronger (or more evident) in the branch than it is in the origin. **This is the Qiyaas Al-Awlaa.**

It could also be equal in the branch as it is in the origin. **This is called Al-Qiyaas Al-Musaawiy.**

And it could be weaker in the branch than it is in the origin. **This is called Al-Qiyaas Al-Adnaa.**

#### **1 – Al-Qiyaas Al-Awlaa:**

This is when the 'Illah of the branch (Far'u) is stronger than it is in origin (Asl) and so the establishment (or proof/affirmation) of the

Hukm in the branch is Awlaa (more evident or applicable) than in respect to the origin.

**Example:**

Allah Ta'Aalaa says:

فَلَا تَقُلْ لَهُمَا أُفٍّ

**So do not say to either of them (parents) (as much) as 'Uff' (a word of disdain/displeasure) (Al-Israa' 23).**

The text here prohibits At-Ta'feef (showing displeasure/disdain) towards the parents and the 'Illah is that which is contained within the Lafzh (expression) in terms of (the meaning of) harm. This same 'Illah of 'harm' is present in the act of hitting the parents in a more powerful and stronger manner. Consequently, the prohibition of hitting the parents (which is the branch) is Awlaa (more effective/fitting) than the prohibition of showing displeasure towards the parents (which is the origin).

**Comment:**

Some of the scholars of Usool held the opinion that the prohibition of hitting the parents is established by the very text itself and not by Qiyaas. That is because the Mafhoom of the text (i.e. what is understood from the text by implication) indicates and guides to that prohibition without (the need of) Qiyaas. It represents alerting or drawing attention to what is higher or greater through that which is lower or lesser than it. So the Ta'feef (displaying displeasure) is Muharram (prohibited) by the Mantooq of the text (i.e. what is expressly understood from the worded expressions) whilst hitting or

insulting is prohibited through the Mafhoom of the text (i.e. the implied understanding) and this represents the correct view.

Similarly, another example of this is found in the Qawl of Allah Ta’Aalaa:

وَمِنْهُمْ مَنْ إِنْ تَأَمَّنْهُ بِدِينَارٍ لَّا يُؤَدِّهِ إِلَيْكَ

*And from among them there is he who, if entrusted with a single silver coin (Deenar), will not repay (Aali Imraan 75).*

It is understood from the Aayah without Qiyaas that this category of people are not trustworthy in respect to that which is greater than a Deenaar.

## 2 – Al-Qiyaas Al-Musaawiy:

This is where the ‘Illah in the Asl (origin) is equal (Musaawiy) to the ‘Illah in the Far’u (branch) and most of Qiyaas revolves around this category. In the example that we mentioned earlier which is the ‘Illah of the prohibition of conducting trade as the time of Salaat ul-Jumu’ah represented in the ‘Illah of Ilhaa’ (distraction) from the performance of the Salaah, then the distraction due to Ijaarah (leasing/renting) or engaging in a sporting activity for instance, which represents the branch, is equal in respect to the distraction found in the act of conducting trade.

Examples:

His Qawl Ta’Aalaa:

كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ



*So that it does not become a circuit amongst the wealthy from among you (Al-Hasbr 7).*

This part of the Aayah came after the request to the Messenger of Allah (saw) to divide and distribute the spoils (booty) amongst the poor Muslims and the ‘Illah (reason) is so that the wealth does not remain circulating amongst the wealthy or rich alone. As such, the command came for the spoils (Al-Fai’) to be distributed upon the poor.

‘Umar ibn Al-Khattaab (ra) made Qiyaas (analogy) with the lands of Iraq that had been opened by force upon that wealth. As such he kept it in the hands of its original people upon the basis that they pay Kharaaj and so that the revenue of this Kharaaj would be distributed upon the poor Muslims and be used to foster their affairs until the Day of Judgement.

Consequently, preventing the circulation of wealth amongst a particular class represents the ‘Illah and this ‘Illah is equal or applies equally in respect to the wealth manifested in spoils or booty and the wealth which is represented in the Kharaaj.

### **3 – Al-Qiyaas Al-Adnaa:**

This is when the ‘Illah is realised weaker or to a lesser degree in the Far’u (branch) than it is realised in the Asl (origin).

Some have utilised that in respect to the intoxication that they regarded to represent the ‘Illah for the Tahreem (prohibition) of Khamr in the case where this ‘Illah of Iskaar (causing intoxication) could be weaker in a barley alcoholic beverage than a date beverage for example.

## Comment:

Iskaar (causing intoxication) is the Sabab (cause) of the prohibition and not the 'Illah and what they have made analogy upon with the Khamr of grapes like the Nabeedh (other fermented beverages from dates for example) then it is in its reality Khamr (alcohol) and the text already includes and encapsulates it without Qiyaas. That is because the Messenger of Allah (saw) said:

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ

**Every intoxicant is Khamr and every intoxicant is Haraam (in another version: 'And every Khamr is Haraam) (Al-Bukhaari and Muslim).**

Therefore, the word Khamr is applied to everything that intoxicates the mind, where it clouds it and makes it dull-witted. Consequently, Iskaar (causing intoxication) is not an 'Illah. Had it been the 'Illah then drinking a portion of Khamr without that causing intoxication would be Mubaah (permissible) whilst the text of the Shaari' (legislator) has mentioned its prohibition by the statement of the Messenger of Allah (saw):

مَا أَسْكَرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ

**That which a lot of it intoxicates then a little of its is Haraam (Al-Bukhaari).**

There is therefore no Dalaalah (indication) in respect to the Adnaa (lower) being analogised with the A'laaa (higher). So in respect to the Qawl of Allah Ta'Aalaa:

مَنْ إِنْ تَأْمَنَهُ بِقِنطَارٍ يُؤَدِّهِ إِلَيْكَ

*The one if you entrust him with a Cantar (great amount of wealth) he will (readily) pay it back (Aali 'Imraan 75).*

The Mantooq (expressed meaning) of the Lafzh (wording) indicates that there are people whom if you were to give them a great amount of money they would safeguard it and return it. The Mafhoom (implied meaning) of the Lafzh indicates that if the like of these people were to be given less than a Cantar (great amount) they would safeguard it and return or repay it (readily). This is not understood or derived by Qiyaas but rather from the Dalaalah (indication) of the Mafhoom (the understanding that is implied).

Al-Qiyaas is divided in terms of its level and strength into two categories: Jaliy and Khafiy.

### **1 – Al-Qiyaas Al-Jaliy (plain/clear/evident):**

This is the type in which there is no differentiator between the Asl (origin) and the Far'u (branch) in respect to realising the 'Illah within each of them. This is evident in respect to the Qiyaas Al-Musaawiy mentioned previously and some have said that it is realised in both the Qiyaas Al-Awlaa and the Qiyaas Al-Musaawiy.

### **2 – Al-Qiyaas Al-Khafiy (not plain/evident i.e. concealed/hidden):**

This is when there is a differentiator in respect to the realisation of the 'Illah between the branch and the origin. An example of this is like the Qiyaas of killing with a heavy or blunt object like a rock upon the killing carried out with the sharp (or piercing) object like a sword and a bullet, in the case where it is permitted for the differentiator to

be influential or impacting (Mu'aththir) or not. For this reason, Abu Haneefah (rh) held that Al-Qisaas (punishment of retribution) is not obligatory in relation to the killing undertaken by a heavy object whilst other Fuqahaa viewed that Al-Qisaas is obligatory in its case. And this, according to their opinion, does not include or cover other than Al-Qiyaas Al-Adnaa. However, the correct opinion is that the heavy or blunt object is analogised with the sharp object due to the absence of a differentiator between them in respect to fulfilling or realising the 'Illah which is the occurrence of killing (or murder).

Ash-Shaafi'iy called the Qiyaas Al-Jaliy: 'Qiyaas Al-Ma'naa' (of meaning) and he called the Qiyaas Al-Khafiy: 'Qiyaas Ash-Shabah' (resemblance)

## **Al-Qiyaas upon Al-Hikmah**

### **The difference between the 'Illah and the Hikmah:**

The 'Illah is the Baa'ith (reason or motive) for the legislation and it is taken from the text (An-Nass). There are however texts which appear to contain the meaning of reasoning according to the tools of reasoning utilised or in accordance to the composition of the sentence. Despite that there are other Qaraa'in (indicators or connotations), whether they are found within the text or not, which negate the meaning of reasoning whilst establishing another meaning which represents the Ghaayah (aim) of the legislator that is being targeted through the legislation.

This aim (Ghaayah) or result (Nateejah) that explains what has been intended from the Hukm by the Shaari' (legislator) has been provided with the terminological naming of 'Al-Hikmah' (the wisdom) and it is not an 'Illah because it is not the reason for the legislation.

Examples of these texts that include this ‘Hikmah’ include:

His Qawl Ta’Aalaa:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*And We have not sent you except as a Rahmah (mercy) for all of that exists (mankind) (Al-Anbiyaa’ 107).*

Rahmah (mercy) represents a description for the Sharee’ah in terms of the result of its application or implementation whilst it does not represent an ‘Illah for its legislation. That is because its Seeghah (form) does not indicate At-Ta’leel (reasoning). Consequently, the aspect of reasoning is negated and the Hikmah of the legislation of the Sharee’ah is Rahmah (mercy).

Allah Ta’Aalaa said:

لِيَشْهَدُوا مَنَافِعَ لَهُمْ

*That they may witness benefits for themselves (Al-Hajj 28).*

And His Qawl Ta’Aalaa:

إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ

*Verily, the prayer prevents immorality and evildoing (Al-Ankaboot 45).*

Witnessing of benefits in Hajj is a Hikmah and not an ‘Illah and so the Hajj of the one who performs it is valid if he witnesses benefits i.e. from buying and selling and his Hajj is also valid if he does not

undertake any buying and selling. That is because the witnessing of the benefits or practising them is not an ‘Illah for Hajj. The witnessing of benefits is consequently a Hikmah of Hajj which could be realised by the one performing Hajj just as they may not be realised by him.

Similarly, the Hikmah of the prayer is that it prevents the one who performs it from engaging in the Muharramaat (prohibited matters and acts) because the Salaah strengthens the relationship between the ‘Abd (servant) and His Rabb (Lord) and this connection makes him more fearful of committing the Haraam acts. However, some of those who perform the prayer commit some of the prohibited acts whilst it has not been demanded or required from them to repeat their prayer and their prayer is regarded as valid even if it has not prevented him from performing immoral acts (Al-Fahshaa’) and Al-Munkar (Muharramaat).

Consequently, this Hikmah of the Salaah could be realised and attained just as it may not be realised even if in most cases it will be accomplished because it represents the Hikmah from Allah. Despite that it does not represent the ‘Illah of the Salaah as it is not the reason for the legislation of the Salaah. Rather it represents the aim (or intended result) of the legislation of the Salaah and no Qiyaas is undertaken upon this aim (Al-Ghaayah).

Another example is the Qawl of Allah Ta’Aalaa:

فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا

*And the family of Pharaoh picked him up [out of the river] so that he would become to them an enemy and a [cause of] grief (Al-Qasas 8).*

Here, the family of Fir'aun did not take in Mousaa (as) and care for him for the sake of him becoming an enemy to them and a source of grief for them. Rather it only the result of what Allah Ta'Aalaa had intended and this result represents the Hikmah of Allah from the family of Fir'aun picking up Mousaa (as) from the river. It is therefore not an 'Illah and Qiyaas (analogy) is not made upon it.

The Hikmah like the 'Illah must have a Shar'iy text to indicate it however it differs from the 'Illah as Qiyaas is not made upon it like the 'Illah.

It represents what Allah Ta'Aalaa intended and His Hikmah (wisdom) behind the Hukm (ruling) or the Sharee'ah. Therefore, none but Allah knows it and it is not possible for us to become knowledgeable of the Hikmah of Allah unless He Ta'Aalaa has made us aware of it through a text by way of the Wahi (divinely inspired revelation). It is like the Akhbaar (informing), the exhortations and Irshaad (guidance) and consequently, unlike the 'Illah, it is not involved in or part of the Istinbaat (deduction process) of the Ahkaam Ash-Shar'iyah

From amongst the differences between the 'Illah and the Hikmah is that the 'Illah is a Wasf Zhaahir Mundabit Mahdood and Mufhim (A description that is apparent, consistent, limited/defined and open to the understanding of reasoning). The Shaari' (legislator) brought it in a text to explain the matter that was behind (motive) of the Hukm Ash-Shar'iy (i.e. the reason for its legislation). This is whilst the Hikmah is a Wasf Munaasib Lil-Hukm (a description that is fitting for the Hukm) that is realised or attained in most circumstances as a result of fulfilling the ruling. It is not Mundabit or Mahdood (consistent and limited/defined) like the benefiting attached to the one who performs Hajj which is realised as a result of his performance of it whilst it is also possible for it to not be realised.

## **The stances of the ‘Ulamaa’ in respect to making Qiyaas upon the Hikmah**

The majority (Jumhoor) of the Fuqahaa have viewed that the Qiyaas takes place with the ‘Illah and not with the Hikmah.

Some of the ‘Ulamaa permitted for the Hikmah to be an ‘Illah for Qiyaas without examination whether it was a Wasf Mundabit (a consistent/controlling description) or not Mundabit.

Those majority of those who utilised this Qiyaas upon the Hikmah were from the Hanbali Madh’hab and the most well-known of those who did that were Ibn Taymiyyah and Ibn ul-Qayyim Al-Jawziyah.

We have explained the angles of difference between the ‘Illah and the Hikmah which make clear that Qiyaas does not take place except with the ‘Illah whilst it does not occur with the Hikmah and Allah is Al-Haadiy (the one who guides) to the correct opinion!

### **Al-Qiyaas and the Nusooos (texts):**

It is possible for there to be a conflict or contradiction between the Hukm that is taken from the Nass (text) and the Hukm of the Far’u (branch) that is deduced by Al-Qiyaas.

It is possible to sum up the opinions of the Fuqahaa’ in relation to this Mas’alah (issue) into three categories:

1) If the Hukm extracted from the text is in conflict with the Hukm of the branch deduced by Qiyaas then the Hukm that is understood from the text is taken and that is because there is absolutely no Qiyaas in the case where a text exists. This applies whether the text is Qat’iy or Zhanniy and whether the Dalaalah (meaning and import) of the text is Qat’iy or Zhanniy.



2) The Hukm of the branch taken by Qiyaas could contradict another Hukm taken from the text by a Zhanniy Dalaalah (indefinite meaning/import) but it cannot be contrary to the Qat'iy.

Consequently, if the Qiyaas is contrary to Al-Qat'iy then it is considered to be a Faasid (corrupt/invalid) Qiyaas and the Qat'iy is taken because it is stronger than the Qiyaas. Outweighing (Tarjeeh) the Qat'iy over the Zhanniy when they are in conflict with each other represents a point of agreement amongst all of the Fuqahaa'.

3) The Saheeh (correct/sound/valid) Qiyaas (i.e. the Hukm of the branch deduced through Qiyaas) cannot possibly be contrary to or in conflict with the Shar'iy text at all irrespective of whether the text is Qat'iy Ath-Thuboot like the Qur'aan and the Sunnah Al-Mutawaatirah or if it is Zhanniy Ath-Thuboot like the Akhbaar Al-Aahaad. This is the opinion of Ibn Taymiyyah and his student Ibn ul-Qayyim and is based on the argument that if the Qiyaas was contrary to any text then it would be a Faasid (invalid) Qiyaas.

The difference between this last opinion and the first is as follows:

- In respect to the first opinion: The Qiyaas is not turned or resorted to even if it was Saheeh (valid).
- In respect to the third opinion: It considers that the Qiyaas is Faasid (invalid) if it contradicts with the Nass (text).

### **The opinion of Al-Hasan Al-Basriy in relation to Al-Qiyaas and the Nusooos (texts)**

1) If the Qiyaas is based upon a Qat'iy text and the 'Illah of the text is Saraahatan or Dalaalatan (explicit or implicit) then in this case the Qiyaas will take precedence over the Khabar Al-Aahaad Azh-Zhanniy.

2) If the Qiyaas depended upon a Zhanniy Asl (origin) and the ‘Illah was established through Istinbaat (deduction), then in this case the Khabar Al-Aahaad takes precedence over the Qiyaas.

3) In regards to when the Qiyaas is established by a Zhanniy text and the ‘Illah of the text is Zhanniy: In the situation when a conflict or contradiction happens between a Khabar Al-Aahaad and Al-Qiyaas and it is not possible to outweigh one over the other, then, in accordance to his view, the ‘Ulamaa have held a consensus upon giving precedence to the Khabar Al-Aahaad over the Qiyaas.

4) When the ‘Illah is Mustanbatah (deduced) and the Asl (origin) that the Qiyaas is based upon is Qat’iy. In this case a difference of opinion has taken place amongst the ‘Ulamaa in respect to outweighing the Qiyaas over the Khabar Al-Aahaad.

- As-Shaatibiy said in respect to being presented with a conflict between the Qat’iy and the Zhanniy: “The Zhanniy that conflicts with the Qat’iy Asl and is not supported by the Asl Qat’iy is rejected without any problem”.

## **The difference between the ‘Illah and the Sabab**

The ‘Illah is the Baa’ith (reason, motive) for the legislation whilst the Sabab is that which notifies of the presence of the Hukm within the reality. It (the Sabab) is not related to the legislation of the Hukm in order to treat the reality.

Example:

Allah Ta’Aalaa said:

## أَقِمِ الصَّلَاةَ لِذُلُوكِ الشَّمْسِ

*Establish prayer at the decline of the sun [from its meridian] (Al-Israa' 78).*

The decline of the sun is the Sabab for the presence of the Zhohr prayer and the 'Dulook' of the sun is when it declines from the centre of the sky as a sign to identify the presence of Salaat uzh-Zhohr.

This is whilst the 'Illah is the reason or motive for the legislation of the Hukm and it is not a Sabab (cause) for its existence (in the reality). For example, the Sabab for the existence of Salaat ul-Jumu'ah is the decline of the sun from the centre of the sky whilst 'Al-Ilhaa' (distraction) is the 'Illah for the prohibition of conducting trade at the time of the Salaah.

Consequently, the Sabab brought Jumu'ah prayer into being. As for the 'Illah then it brought the Hukm that is related to the prayer into being.

From amongst the definitions of 'As-Sabab' is the following:

It is that which necessitates from its existence the existence (of the Hukm) and necessitates through its absence the absence (of the Hukm). Consequently, if the Zawaal (decline of the sun from the meridian) has taken place then the Hukm has taken place (i.e. come into being) and if it hasn't occurred then the (obligation of the) Salaah has not occurred.

### **The difference between the 'Illah and the Manaat**

The 'Illah is the matter that the Hukm has been legislated for its sake/purpose and there must be a Daleel Shar'iy that indicates or

guides to it in order to understand that it represents what the Shaari' (legislator) has intended from the Hukm.

As for the Manaas: It is that which is **أَنطَ** (made dependent upon) i.e. that which the Shaari' (legislator) related or attached the Hukm to. It therefore refers to the Mas'alah (issue) upon which the Hukm Ash-Shar'iy applies to and upon. In other words, it is that which the Hukm falls upon. So in respect to the Qawl of Allah Ta'Aalaa:

وَحَرَّمَ الرِّبَا

*And He made Ribaa Haraam (Al-Baqarah 275)*

In respect to this the Hukm is Tahreem (prohibition) whilst the Manaas of the Hukm is Ribaa (interest/usury).

### **Tahqeeq ul-Manaas (Verifying the reality):**

It is the examination, investigation or looking at the reality of a thing (matter) that the Hukm has come for its sake. That is in order to know (or understand) its reality and to understand the extent of the applicability of the Hukm (the Daleel of which is known) upon it.

Therefore, the Manaas and the Tahqeeq ul-Manaas are both rational matters and not Shar'iy.

Example:

Al-Khamr is Haraam and it is a Hukm Shar'iy which the Daleel has guided to.

Verifying and determining that a drink is Khamr or not, in order to bring the ruling in respect to it being Haraam or not, is the Tahqeeq ul-Manaas. So it is necessary to ascertain that the drink upon which

you want to provide a ruling for is Khamr in order for you to be able to pronounce that it is Haraam.

Consequently, if we wanted to know the Hukm of ‘Alcohol’ and whether it is permitted to consume it or not, then we have to examine the substance to see if it is Khamr or not? That would be by analysing it in a laboratory and acquiring knowledge of its components or ingredients and its effect upon the one who consumes it.

The Tahqeeq ul-Manaat is therefore the investigation of the reality upon which the application of the Hukm Ash-Shar’iy is sought. In this investigation we utilise the ‘Aql (intellect), science, scientific knowledge, experts and laboratories, all of which are non Shar’iy matters.

Then if we found that the contents of ‘Alcohol’ cause intoxication we would then have declared it to be Khamr and Khamr is Haraam as the Messenger of Allah (saw) said:

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ

**Every intoxicant is Khamr and every intoxicant is Haraam (in another version: ‘And every Khamr is Haraam) (Al-Bukhaari and Muslim).**

### **As for the Tahqeeq (ascertaining of) the ‘Illah:**

This involves examining the Shar’iyah texts to acquire knowledge of the matter that is the cause or motive for the Hukm. This requires us to be knowledgeable of the Alfaazh (worded expressions) and Asaleeb (styles) that establish reasoning, and their application upon

the texts. So for example the following statement of the Messenger (saw) would be examined to see if it establishes reasoning (Al-'Illyah) or not:

### فِي الْعَنَمِ السَّائِمِ زَكَاةٌ

**In respect to the free grazing sheep there is Zakaah (due)**  
(Al-Bukhaari and Abu Daawood with a different wording)

And so in this way every Hukm Shar'iy is based upon two premises:

**The first:** Tahqeeq ul-Manaat and this is purely rational. Its purpose is to attain knowledge of the reality of the thing or matter that a Hukm is sought to be pronounced upon.

**The second:** Understanding the Shar'iyah texts related to this reality which includes within it the Tahqeeq (verification or ascertainment) of the 'Illah.

That is then followed by: Applying the second upon the first. Or said differently: Through acquiring knowledge of the reality and gaining knowledge and understanding (of the texts) the knowledge of the Hukm of Allah in respect to that reality is arrived at.

## Chapter Four

### **Al-Istihsaan and Al-Masaalih Al-Mursalah**

#### **Firstly: Al-Istihsaan:**

1 – Its definition and its categories: ‘Istihsaan As-Sunnah, Istihsaan Al-Ijmaa’, Istihsaan Ad-Darooah and Al-Maslahah’.

2 – Its Hujjiyah (proof or evidence for its validity) and the opinions of the ‘Ulamaa in relation to this.

3 – Al-Istihsaan when in conflict with Qiyaas according to the Hanafiyah.

4 – Examples of the application of Al-Istihsaan.

#### **Secondly: Al-Masaalih Al-Mursalah:**

1 – Definition of Al-Masaalih Al-Mursalah, its categories and the significance of utilising it in the Islamic Fiqh.

2 - Hujjiyah of Al-Masaalih Al-Mursalah, the evidences for that and the opinion of the ‘Ulamaa in respect to it.

3 – Practical examples of the application of the utilisation of Al-Masaalih Al-Mursalah.

4 – The relationship between Al-Maslahah Al-Mursalah and Al-Istihsaan.

# The Fifth Daleel

## Al-Istihsaan

### Introduction:

We have already dealt with the Adillah Ash-Shar'iyah Al-Mu'tabarah (the evidences given consideration to) and these are four: Al-Kitaab, As-Sunnah, Ijmaa' As-Sahaabah and the Qiyaas for which the 'Illah is found within the Shar'a (i.e. text).

As for what some of the A'immah (Imaams) and Mujtahideen considered to represent Adillah and Islamic legislative sources, then they have not brought proof for the definite transmission (and authenticity) of these evidences in respect to them being from the Wahi. Rather they have only deduced their legitimacy by way of Zhanniy (indefinite) evidences which are not suitable or valid to be used as evidence in this area and context. That is because the Shar'iy Daleel represents an Asl (foundation) from the Usool of the Sharee'ah and as such it is like the Aqeedah which is not established and proven by other than Yaqeen (certainty). Consequently, there must be a Qat'iy (definite) Daleel that indicates and guides to it for it to be considered a Daleel (source).

Despite that, deduction that has been made using other than the four considered evidences, which contain a Shubhat Ad-Daleel (semblance of an evidence), is still considered to represent a Shar'iy deduction and the Ahkaam that are deduced in accordance to it are considered to be Ahkaam Shar'iyah because they have a Shubhat Daleel. Such a deduced Hukm is not binding upon the one who does not consider it a Daleel although it is not permitted to deny that it represents a Hukm Shar'iy.



Evidences of this type include: Al-Istihsaan, Al-Masaalih Al-Mursalah, Shar'u Min Qablinaa, Al-'Urf and Madh'hab As-Sahaabiy amongst others.

## **The definition of Istihsaan:**

### **Al-Istihsaan linguistically means:**

To count/regard a thing or matter as being good. It is used for that which the human inclines towards and even if is not regarded as being good in the view of others.

### **Al-Istihsaan in accordance to the Istilaah (definition terminology) of the Scholars of Usool:**

The 'Ulamaa have defined Al-Istihsaan in accordance to their stance towards it. The following are some of these definitions:

1 - The definition of the Hanafiyah: Abu-l-Hasan Al-Karkhi said: 'Al-Istihsaan is that the Muftahid departs from ruling in a Mas'alah (issue) with the like of what he ruled upon its likes due to a stronger aspect that dictates departing from the first'.

2 - The definition of the Maalikiyah: Ibn ul-Anbaariy defined it as: 'Al-Istihsaan is the use of a Maslahah Juz'iyah (partial interest) as opposed to a Qiyaas Kulliy (comprehensive analogy)'.

3 – Al-Hanaabilah: Some of them defined it as: 'Al-Istihsaan is the departure from the Hukm of a Mas'alah (issue) departing from its likes (i.e. what is similar) due to a specific (Khaass) Daleel Shar'iy.

From the above definitions it is apparent that two matters are intended in respect to Al-Istihsaan:

The First: Departure from a Qiyaas Jaliy (evident analogy) to the Qiyaas Khafiy (hidden or concealed analogy) and they call this Al-Ihtisaan Al-Qiyaasiy.

An example of this:

If two partners purchased a car from two partners in the form of a debt due upon them, then one of the two partners who were owed money took possession of a part of this debt and he then lost this amount that he had taken possession of before the partner took his share, what is the Hukm for that in respect to the Qiyaas Al-Jaliy and the Qiyaas Al-Khafiy which the followers of Istihsaan hold.

In respect to the Qiyaas Al-Jaliy:

The Qiyaas Al-Jaliy (which represents the sound Qiyaas) dictates that the money lost by one of the two partners is to be considered to be from the account of the two partners so that the loss is shared equally between the two of them.

In accordance to the Qiyaas Al-Khafiy:

The lost money is considered to be from the share of the one who took possession alone whilst the partner does not share in the cost of the loss as a result of Istihsaan. That is because, in their view, it was not binding for him to share with the one who took possession in origin but rather it was his right to leave the money that had been taken possession of by the possessor and then pursue the indebted for his share without paying any consideration to the lost money that his partner had taken possession of.

The Second: The exemption of a partial issue from a Kulliy Daleel due to a Daleel that the Nafs of the Mujtahid is contented by that dictates this exemption.

Example:

If the seller and buyer differ in regards to the price of a commodity or goods after its delivery, where the seller claims that its price is 50 Deenaar whilst the purchaser claims that it is 40 Deenaar, then what is the Hukm Ash-Shar'iy in respect to that?

The Kulliy Asl (origin):

That they are judged by the Qaa'idah Ash-Shar'iyah which is the text of the Hadeeth of the Messenger of Allah (saw):

الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

**The proof is upon the one making the claim and the Yameen (oath) is upon the one who denies (it) (Al-Baihaqi).**

Therefore, the Bayyinah (proof) would be upon the seller and if the buyer denies (his claim) then the Yameen (oath) is required of him.

The exemption to this issue using 'Istihsaan' is as follows:

That both the seller and the buyer swear an oath where each of them swears an oath upon the truthfulness of what he is saying and this is due to the statement of the Messenger of Allah (saw):

إذا اختلف المتبايعان والسلعة قائمة ولا بينة لأحدهما تحالفا

**If the two traders differ and the good/commodity is still present and there is no Bayyinah (proof) for either of them then they swear an oath (Hilf) (Al-Haakim).**

This Hukm has been considered by some to represent Istihsaan whilst in reality it represents referring back to the Sunnah of the Messenger of Allah (saw) and a specification (Takhsees) of the Asl Al-Kulliy (general origin) by the Hadeeth.

## **The Categories of Al-Istihsaan:**

The Istihsaan is divided in respect to the Daleel that is opposing to Al-Qiyaas into three categories:

### **1 - Istihsaan As-Sunnah:**

That the Sunnah establishes that which obliges the rejection of Qiyaas in respect to a ruling upon a certain reality.

An example of this: The testimony (Ash-Shahaadah) of Al-Khuzaimah:

The Nabi (saw) specified Khuzaimah in respect to the acceptance of his testimony alone and making his testimony equal to that of two men. He (saw) said:

مَنْ شَهِدَ لَهُ خُزَيْمَةٌ فَهُوَ حَسْبُهُ

**The one for whom Khuzaimah provides testimony then that is sufficient for him**

(Abu Daawood, An-Nasaa'iy with the Lafzh (wording): 'The Shahaadah of Khuzaimah is equal to the Shahaadah of two men')

Consequently, the acceptance of the testimony of Khuzaimah reflects a departure from Qiyaas because Qiyaas does not accept the Shahaadah of a single man because the Nisaab (required quantity) for

the testimony is two men or a man and two women. However, it is a departure from Qiyaas due to the mentioning of the text (i.e. the Sunnah).

## **2 - Istihsaan Al-Ijmaa':**

This is when the Qiyaas is abandoned in a Mas'alah (issue) due to the convening of an Ijmaa' upon other than what the Qiyaas has led to.

An example of this:

The Messenger of Allah (saw) said:

لَا تَبِعَ مَا لَيْسَ عِنْدَكَ

### **Do not sell that which don't have (Tirmidhi).**

The Shaari' (through the Sunnah) has forbidden the sale of that which does not exist (Ma'doom) and to make a contract upon that which does not exist (Ma'doom). However, the Ijmaa' has convened upon the permissibility of al-Istisnaa' (manufacturing) which represents a contract upon that which does not exist and is included within the forbiddance by Qiyaas.

## **3 – Istihsaan Ad-Daroorah and Al-Maslahah:**

This is when the Hukm of Qiyaas is gone against due to a compelling Daroorah (necessity) or a Maslahah (interest) required to meet the need (Haajjah) or repel the Haraj (hard or difficult matter).

Example:

The Shar'a has explained that the hired person is not liable if he damages something that he has been given in his possession

unintentionally and not due to a shortcoming. So if a person is hired to sew a garment for someone else for a period of a week then he is an Ajeer Khaass (private hired person). If he then damages the garment by his hand without it being deliberate he is not liable because his hand represents an Amaanah (trust) and the Messenger of Allah (saw) said:

لَا ضَمَانَ عَلَى مُؤْتَمَنِ

**There is no liability upon the thing that has been entrusted (Ad-Daaruuqtuniy).**

And if another person was hired to sew a garment and he was somebody who would sew items of clothing for all of the people then he would be an Ajeer ‘Aamm (public hired person). Then if he was to damage an item of clothing that was in his hand then there would be know Damaan (liability) and that is because his hand is also a hand of Amaanah (i.e. that has been entrusted) and this is in analogy to the Ajeer Al-Khaass mentioned previously.

However, in accordance to Istihsaan (Istihsaan Al-Maslahah) the private hired person is not liable whilst the public hired person is liable and that is so that he does not accept or take on work that is beyond his capability or capacity.

The Istihsaan Al-Maslahah has gone against the established Hukm by Qiyaas due to regard being given to Daroorah and Maslahah. This is despite having been commanded to follow the Hukm Ash-Shar’iy irrespective of what the results may be.

## Hujjiyat ul-Istihsaan (Evidence or proof for its validity as a source of evidence)

The following are from amongst the evidences that they have brought to support Istihsaan as a Hujjah (legal source of proof/evidence):

From the Qur'aan:

The Qawl of Allah Ta'Aalaa:

الَّذِينَ يَسْتَمِعُونَ الْقَوْلَ فَيَتَّبِعُونَ أَحْسَنَهُ

*Those who listen to the speech and follow the best of it (Aṣ-Ṣūrah 18).*

And His Qawl Subhaanahu:

وَاتَّبِعُوا أَحْسَنَ مَا أُنزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ

*And follow the best of what was revealed to you from your Lord (Aṣ-Ṣūrah 55).*

In respect to the first Aayah the angle that they have used for proof is that it contains praise and commendation for the one who follows the best speech. The angle of the second Aayah is His Ta'Aalaa's command to follow the best of what He revealed. If Istihsaan is not a Hujjah (proof) then why does this praise, commendation and matter exist.

As for the Ijmaa':

Then this is represented in the Ijmaa' of all of the Fuqahaa in respect to the permissibility to enter the bathroom without specification of

the amount of time to be spent in it, the quantity of water used and without specifying the amount that has been paid... This is whilst it is contrary to the conditions and pillars of the ‘Aqd (contract) in Islaam.

Similarly, there is the Ijmaa’ of the Fuqahaa upon the permission to drink water from the hands of those who provide it without specifying the amount of water.

Those who held the view of Istihsaan attempted to clarify its meaning, specify its features and explain that it does not represent a statement or opinion based on desires and whims but rather it only represents the departure of one Qiyaas to another Qiyaas, or an exemption from a Qaa’idah Kulliyah (comprehensive principle), or the specification from a general Asl (origin) due to a Daleel that requires that departure or the exemption or specification.

## **The opinion of the ‘Ulamaa in respect to Al-Istihsaan and its Hujjiyah (validity as a source of evidence)**

### **1 – The opinion of those who used it as a proof (Hujjah):**

Many of the ‘Ulamaa’ adopted Al-Istihsaan and considered it to be a Daleel from amongst the Adillah of the Ahkaam whilst they have disagreed in respect to its definition.

Some of them like the Hanafiyah considered it to represent an outweighing of a Daleel over a Daleel and therefore it represents a Hukm that is established by the text and no Istihsaan.

For that reason, we see Abu Ishaq Ash-Sheeraaziy Ash-Shaafi’iy, after presenting some of the views of the Fuqahaa of the Ahnaaf in respect to the meaning of Al-Istihsaan, saying: “If it means specifying some of the sum of the whole with a Daleel that specifies it or by judging



by the strongest of two evidences, then this is from that which nobody can reject” (Al-Lam’u p68).

And we see that As-Sam’aaniy and Al-Qaffaal said the meaning of: “The explanation of Al-Istihsaan as being a departure from a Daleel to a Daleel that is stronger than it, is something that we say and do not reject” (Irshaad Al-Fuhool of Ash-Shawkaani, p241).

Those who upheld Al-Istihsaan included: The Hanafiyah, Al Imaam Maalik and his followers whilst Ibn ul-Haajib said in his ‘Mukhtasir’: The Hanafiyah and Al-Hanaabilah upheld it whilst the others rejected it.

## **2 – The opinion of those who were opposed to Al-Istihsaan:**

The Shaafi’iyah, at the head of which was Imaam Ash-Shaafi’iy himself, the Zhaahiriyyah and many of the Mutakallimeen held the opinion of the absence of the Hujjiyah (evidential validity) of Istihsaan and the impermissibility of building legal rulings upon it.

The following statement of Ash-Shaafi’iy became well-known: “Whoever utilises Istihsaan then he has legislated” in addition to his statement: “Al-Istihsaan is self-gratification and an opinion based on desire” (Al-Aamaadiy Vol.4 p209).

In his book ‘Al-Umm’ he dedicated a chapter in the seventh volume under the title of: ‘Invalidating Istihsaan’. The following, in summary, are the Adillah that he used to invalidate it:

1 - The Sharee’ah is a Nass (text) and taking an understanding from the text by way of Qiyaas. If Istihsaan is one of these two (categories) then there is no need to mention it and if it is outside of these two (categories) then it is not from the Sharee’ah.

2 - Verily Allah Ta’Aalaa says:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*Then if you dispute in (respect to) anything, then refer it to Allah and the Messenger (An-Nisaa’ 59).*

And Al-Istihsaan is neither the Kitaab nor the Sunnah and it does not represent referring back to the Kitaab and the Sunnah.

3 - The Messenger of Allah (saw) did not provide verdicts based on his Istihsaan but rather he would await the descent of the Wahi to respond to the queries and questions of his companions like what happened in respect to the reality of Azh-Zhihaar (Soorah Al-Mujaadalah) and of Al-Li’aan (Soorah An-Noor 6-10).

4 - The Messenger of Allah (saw) rebuked the Sahaabah who adopted based upon their Istihsaan. So for example he (saw) rebuked some of the Sahaabah because they had burnt a Mushrik sheltered by a tree and he (saw) rebuked Usaamah Bin Zaid because he killed a man who said: ‘Laa Ilaaha Illallah’ whilst using the argument that he only pronounced it due to fear and under the threat of the sword.

5 - Al-Istihsaan without evidence has nothing governing it and no measure to be used to evaluate the truth from the falsehood. As such, within one single matter, there would be a variety of Ahkaam without a base to outweigh one over the other.

6 - If Al-Istihsaan was permissible for a Mujtahid and in its use he did not depend upon a Daleel Shar’iy, then it would also be permitted for someone who does not have knowledge of the Kitaab and the Sunnah. The result of that is that the opinion would be based on desire and not ‘Ilm (knowledge).

These evidences that Ash-Shaafi'iy brought to invalidate Istihsaan apply to invalidating the Istihsaan as utilised or held by the Maalikiyah who consider Istihsaan to be Al-Maslahah Al-Mursilah in accordance to the speech of Al-Imaam Maalik: "Al-Istihsaan represents nine tenths of knowledge ('Ilm)" whilst he included Al-Maslahah Al-Mursilah within the generalness of Istihsaan.

As for Al-Istihsaan in the view of the Hanafiyah, then the evidences provided by Ash-Shaafi'iy to invalidate Istihsaan apply upon a part of its usage, which is the Istihsaan Al-'Urf, whilst it does not apply to another part of its usage, which is the Istihsaan that is reliant upon the text and reliant upon Ijmaa'. This is the Istihsaan As-Sunnah and Istihsaan Al-Ijmaa'.

## **My opinion in respect to the categories of Al-Istihsaan**

1 - 'The Istihsaan As-Sunnah and Istihsaan Al-Ijmaa' in reality are not Istihsaan but rather they only reflect the outweighing of evidences. So for instance in regards to the testimony of Khuzaimah then it is evident that it represents the outweighing of the Hadeeth over the Qiyaas. It therefore falls within the remit of outweighing between evidences whilst it has no relationship to Istihsaan except in name.

As for Istihsaan Al-Ijmaa' then this also reflects the outweighing of the Ijmaa' or the Sunnah over Qiyaas (analogy). Consequently, in respect to the subject of manufacturing it is evident that it represents the outweighing of the Ijmaa' As-Sahaabah even though manufacturing is proven by the Sunnah. That is because the Messenger of Allah (saw) ordered the manufacturing of a ring and a Minbar. Therefore (the ruling of) manufacturing does not come from Al-Istihsaan.

The same applies to the entering of the bathroom (baths) without evaluating (the amount of) water (usage) or price. That is because it is proven through the Sunnah as this is the practise that took place at the time of the Messenger (saw) accompanied by his knowledge of its occurrence and his Taqreer (approval/consent). It (the ruling) is therefore established by a Daleel and it is the Sunnah At-Taqreeriyah and not Al-Istihsaan.

2 - As for Istihsaan Ad-Daroorah and Maslahah (of necessity and interest) which relates to that which is contrary to the Hukm of Qiyaas due to an obliging Daroorah or a Maslahah that requires the fulfilling of a need. Then in this case the contravention of the Hukm of Qiyaas represents a contravention of the Hukm Ash-Shar'iy established by the Daleel, which is Qiyaas. Taking the Hukm upon the basis of the Daroorah (necessity) or Maslahah (interest) and not upon the basis of the Daleel Ash-Shar'iy and its strength, in effect means referring to the Daroorah and Maslahah and not referring to the Kitaab and the Sunnah. This reference would therefore be contrary to the speech of Allah Ta'Aalaa:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*Then if you dispute in (respect to) anything, then refer it to Allah and the Messenger (An-Nisaa' 59).*

The invalidity of Maslahah is evident in the example of the hired worker because making the public worker liable and the private worker not liable represents an outweighing without anything to outweigh it with, in addition to it being in contravention to the Shar'iy text. That is because the Messenger of Allah (saw) said:

لَا ضَمَانَ عَلَى مُؤْتَمَنِ

## **There is no liability upon the thing that has been entrusted (Ad-Daaruuqutniy).**

This covers and includes everyone who has been entrusted whether he was a private hired hand or a public hired hand. As such abandoning the Daleel and then passing judgment by way of Istihsaan reflects passing judgment based on Hawaa (a desire of whim) and by what the mind has viewed to represent a Maslahah (interest).

From that it becomes clear that what has been called the Istihsaan of Daroorah and Maslahah does not represent a Daleel Shar'iy but rather it reflects the abandoning of the Daleel Ash-Shar'iy and adopting what the 'Aql (mind) views to be a Maslahah or Daroorah (necessity).

Despite this, the Ahkaam that the A'immah (Imaams) who adopt Istihsaan have deduced are considered to be representative of Ahkaam Shar'iyah because those Scholars have adopted Istihsaan upon their consideration that it represents a Daleel Shar'iy reliant upon a Shubhat Daleel.

## **Introduction: The opposition of Al-Istihsaan to Al-Qiyaas in the view of the Hanafiyah**

A lot of what has come in terms of the utilisation of the wording Al-Istihsaan by the Hanafiyah is with the meaning of that which is in opposition to Al-Qiyaas. So they would say: Al-Qiyaas dictates Al-Hazhr (prohibition) but Al-Istihsaan dictates Ibaahah (permissibility). They have made Istihsaan a Daleel Shar'iy that is in opposition to a Daleel Shar'iy like it, represented in Al-Qiyaas.

Some of them said that in the Hanafiyah view Al-Istihsaan represents every Daleel that is contrary to the Qiyaas Azh-Zhaahir (what is apparent or evident).

The Hanafiyah divide Al-Istihsaan into two categories:

1 - Istihsaan Al-Qiyaas.

2 - The Istihsaan caused by the opposition of Qiyaas to other evidences like the Sunnah and Ijmaa'. It is this category that represents the subject area of our study.

## **The opposition of Al-Istihsaan to Al-Qiyaas in the view of the Hanafiyah**

### **1 – Istihsaan As-Sunnah:**

This is when a Hukm is established by the Sunnah that makes it necessary to oppose the Qiyaas and to reject it, within a reality from amongst the realities. An example of this is found in what has been narrated in relation to the validity of fasting when food or drink is consumed accidentally. The Qiyaas dictated the breaking of the fast however the presence of the text guiding to the validity of the fast made the Hanafiyah reject the Qiyaas within this context.

Another example in respect to the Hanafiyah relates to the invalidation of the Wudoo' and the loud burst of laughter during the Salaah. Qiyaas dictates that the Salaah alone is invalidated as the fault or defect lay in it alone. And if the fault lay in the Mashroot (conditioned matter) which is the Salaah that fault (Khalal) does not extend beyond that to the Shart (condition) which is the Wudoo'. However, that which nullifies the Wudoo' is the Sunnah because the Nabi (saw) declared the Wudoo' of those who had laughed out loud in their Salaah as a result of seeing a blind man tumble to be invalidated.

Consequently, the Istihsaan taken from the Sunnah is in opposition to the Qiyaas in these two scenarios and consequently the Sunnah is taken and not the Qiyaas.

## **2 - Istihsaan Al-Ijmaa’:**

This means leaving the Qiyaas in a Mas’alah (issue) due to the convening of an Ijmaa’ upon other than what the Qiyaas led to within that issue.

That is like the Ijmaa’ of the Muslims upon the validity of the contract of Istisnaa’ (ordering something to be manufactured). This would be like your agreement with a carpenter to make a wardrobe for you of a particular description. Qiyaas would not permit that because the matter the agreement (i.e. the contract (‘Aqd)) is being made upon that which does not exist in the case where the Shaari’ (legislator) has prohibited the contract upon that which does not exist.

Here the Istihsaan is reflected in taking from the Ijmaa’ which states the permissibility of Istisnaa’ (manufacturing) and is contrary to the Qiyaas that states the impermissibility of convening such a contract upon that which does not exist, like the wardrobe in the above example.

## **3 - Istihsaan Ad-Daroorah (of necessity):**

The Hanafiyah adopt the Qaa’idah (principle): ‘Ad-Darooraat Tubeehu l-Mahzhooraat’ (The necessities make the prohibited matters permissible). So when or if the Mujtahid found a Daroorah (necessity) within a Mas’alah (issue) he would leave the Qiyaas and

adopt in accordance to the dictates of the Qaa'idah: 'The necessities make the prohibited matters permissible'. An example of this is the purifying of the land and the wells because it is not possible to purify them when we have adopted Qiyaas. That is because it is not possible to pour water upon the basin or well for it to be purified as the water entering the basin or well becomes impure upon coming into contact with the Najas just as the bucket becomes impure by coming into contact with the water and returns as being Najas (impure).

Therefore, due to necessity of the need they utilised Istihsaan to abandon working in accordance to the dictates of the Qiyaas.

The Fuqahaa' evaluated that the well or water basin would be purified by scooping out a large number of bucketfuls of water corresponding to the (amount of) Najaasah (impurity) until, by repeating the scooping and pouring (i.e. replacing), the proportion of the Najaasah is lessened, even if it is not completely removed.

This is accordance to the opinion of the Hanafiyah in respect to leaving the Qiyaas that dictates removing the Najaasah (completely) whilst adopting Istihsaan Ad-Daroorah that overlooks some of the Najaasah (impurity) remaining.

The opposition of Istihsaan to Qiyaas according to the Hanafiyah in regards to the first two types: 'Istihsaan As-Sunnah' and 'Istihsaan Al-Ijmaa'', represents a conflict between texts which contain Shar'iyah 'Ilal (reasons) and other texts within the same issue (Mas'alah) from the Sunnah and Ijmaa'. The 'Ulamaa' have examined this conflict and have placed down principles (Qawaa'id) for it, which we will discuss in the second part of 'Al-Waadiah Fee Usool ul-Fiqh' Inshaa Allah.

These principles are like of the 'Umoom and the Khusoos, the Istithnaa' and At-Ta'aadul and At-Taraajeeh.

As for Istihsaan Ad-Daroorah and Al-Maslahah then we have already explained this view previously



## Practical examples of the application of Istihsaan

Whilst discussing Istihsaan we mentioned some practical examples of the application of Istihsaan and the different types of Istihsaan and now we will present some other examples:

Example:

The saliva (spittle) of the beak of the predatory bird and this issue relates to what is left behind in the water after predatory birds drink from it like a hawk, vulture, crow or eagle. The spittle of these birds is pure (Taaahir) based on Istihsaan and Najas (impure) based on Qiyaas.

The angle of analogy (Al-Qiyaas):

The saliva of animals whose flesh is prohibited is Najas like that of a panther (or cheater), tiger, lion (or beast of prey) and wolf. The saliva or spittle of the predatory birds, which are prohibited to eat the flesh of, has by analogy (Qiyaas) been judged to be Najas (impure).

The angle of Istihsaan:

In respect to the predatory birds, even if the flesh is prohibited, their saliva generated from their flesh does not mix with their spit because they drink with their beaks and this is a pure bone. As for the spittle of the predatory beasts then they drink with their tongues which is mixed with their saliva and for that reason their spit is Najas.

Another example:

The sale of that which does not exist (Al-Ma'doom) is Baatil (invalid) due to the Qawl of the Messenger (saw):

## لَا تَبِعْ مَا لَيْسَ عِنْدَكَ

**Do not sell that which you do not have (possess) (At-Tirmidhi)**

However, ‘As-Salam’ (forward/advanced buying) has been exempted by way of Istihsaan due to the statement of the Messenger (saw):

مَنْ أَسْلَفَ مِنْكُمْ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ

**Whoever from amongst you practises forward purchasing then let him do it for a known (i.e. specified) measure, a specified weight and for a specified time (Related by the five, refer to At-Taaj 2/196).**

Another example:

The Messenger (saw) said:

الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالْمِلْحُ بِالْمِلْحِ  
مِثْلًا بِمِثْلِ يَدًا بِيَدٍ ، فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَيَبِيعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ  
يَدًا بِيَدٍ

**Gold with gold, and silver with silver, and wheat with wheat, and barley with barley, and salt with salt, like for like, hand to hand. So if these types are different then sell them how you wish if it was hand to hand (Related by the five).**

The original position is therefore the impermissibility to exchange the Dirham for a Dirham if there is a difference in their weight.

However, by way of Istihsaan it is permissible to exchange the

Dirham for another Dirham that is equal in value and even if there was a slight disparity in respect to the weight and this is to lift or remove the difficulty (Al-Haraj).

Another example:

The Messenger of Allah (saw) forbade the sale with the condition (Shart). However, by Istihsaan the majority of the Hanafiyah permitted it due to the Maslahah (interest) for the seller to stipulate upon the buyer to assure the debt by putting down a specific security (Rahn).

## The Sixth Daleel: Al-Masaalih Al-Mursalah

### Definition of Al-Masaalih Al-Mursalah:

Al-Maslahah linguistically: It is taken from the verb **صَلَحَ يَصْلُحُ** or from **صَلَحَ يَصْلُحُ** and it is the opposite of **فَسَدَ** in meaning (which means: to ruin/corrupt) Its meaning is therefore to rectify, make better or right.

Al-Maslahah carries the meaning of As-Salaah (properness/intactness) and the meaning of Al-Manfa'ah (benefit/interest/advantage). The plural of Maslahah is Masaalih.

Al-Mursal: The unrestricted (Mutlaq) without a Qaid (restriction/limitation) or it means a Daleel.

### Al-Masaalih Al-Mursalah in the Istilaah (terminology) of Usool ul-Fiqh:

It is an expression of the Wasf (description) that appears to the Mujtahid to be most likely to bring the Maslahah (benefit/interest) or repel the Madarrah (harm/detriment) when building the Hukm upon that Wasf (description) without the Mujtahid finding from the Shaari' (Legislator) that which indicates the cancellation of this Wasf (description) or reliance in it.

Said differently: It represents the Amr ul-Munaasib (suitable or fitting matter) for the legislation of the Ahkaam in respect to the incidents and realities in which there is no Hukm for them to the Shaari' (legislator), based upon the angle of acquiring a benefit or repelling a Mafsadah (cause of corruption or something bad).

Al-Ghazaaliy called Al-Maslahah Al-Mursalah: Al-Istislaah (الاستصلاح).

As for Imaam Al-Haramaini (Al-Juwainiy) and Ibn As-Sam'aaniy then they called it: Istidlaal (استدلال).

The Maslahah has been called a Maslahah because building the Hukm upon it is thought (most likely) to lead to the acquisition of benefits or to repel harms or negative bad things (Mafaasid). It has been described as Mursalah due to it being free or empty of a Daleel Shar'iy in respect to its consideration or its cancellation from the Shar'i perspective.

The 'Ulamaa have agreed upon the impossibility of working with Al-Masaalih Al-Mursalah in a matter from the matters of the 'Ibaadaat (acts of worship) because they have come Tawqeefiy (as they are and without reasoning) from Allah Ta'Aalaa, and defined and specified by the Shar'iyah texts from the Kitaab and the Sunnah. This is like the Salaah, the Sawm, Hajj and Zakaah, including the manner of how to perform or undertake these acts. It is therefore obligatory upon the Muslims to abide by them in accordance to that which has been explained to them in terms of the Ahkaam. This applies to the Hudood, Kaffaraat (acts of expiation), 'Ibaadaat and Meeraath (inheritance) and whether the angle of Maslahah appears to us or does not appear.

Example of Al-Maslahah Al-Mursalah:

When 'Umar Ibn Al-Khattaab (ra) was the Khalifah he poured out (emptied) the milk that had been mixed with water to discipline those who were committing this fraud. This fits into the remit of the Maslahah so that they would not cheat the people in this way after that.

Another example:

The Sahaabah (ah) approved of the killing of the group or collective for the murder of one if they participated in his killing because the Maslahah dictated that. That is to prevent two or more to take part in the killing of a single person in an attempt to avoid the Qisaas (law of retribution). It is so that no one who brought in someone else to assist him in killing a person can be saved from Al-Qisaas and so that the blood of the victim does not flow in vain (i.e. without retribution) and Al-Qisaas is made redundant. It has been related that a group killed one person in Sana'a and so 'Umar Ibn Al-Khattaab commanded that they all be killed. He (ra) said:

لَوْ اجْتَمَعَ أَهْلُ صَنْعَاءَ عَلَيْهِ لَقَتَلْتُهُمْ بِهِ

Had the people of Sana'a (as a whole) gathered upon it then I would have killed them for it

## The Categories of Al-Masaalih

From the Masaalih (interests) there are those which the Shaari' (Legislator) has borne witness to them with consideration (I'tibaar), there are those which the Shaari' has borne witness to them with cancellation (Al-Ilghaa') and from them are those which the Shaari' has been silent upon. Therefore, the first category is Al-Masaalih Al-Mu'tabarah (considered interests), the second is Al-Masaalih Al-Mulghaah (cancelled interests) and the third is Al-Masaalih Al-Mursalah.

### 1 - Al Masaalih Al-Mu'tabarah:

It is said that these are those which the Shaari' has given consideration to, where the Shaari' has legislated Ahkaam for them

through which they were arrived at. This is like the preservation of the Deen, the life, the mind, the honour and the property.

- So Allah Ta’Aalaa legislated Al-Jihaad and the killing of the Murtadd (apostate) for the preservation of the Deen.
- He Ta’Aalaa legislated Al-Qisaas for the preservation of the life.
- Allah Ta’Aalaa legislated the Hadd (fixed set punishment) for the one who drinks alcohol and prohibited the intoxicating substance to protect the ‘Aql.
- He Ta’Aalaa legislated the Hadd of Az-Zinaa, Al-Qadhf (slander against a woman’s honour/chastity) and Al Luwaat (sodomy) to preserve the honour and lineage.
- And He Ta’Aalaa legislated the Hadd of theft and the highway robber to preserve the property/wealth.

It is said that based upon these Masaalih Al-Mu’tabarah and connecting them to their Shar’iyah ‘Illah (reasoning) in presence and absence Qiyaas is undertaken upon them. Consequently, any reality that the Shaari’ has not provided a text for its Hukm and it is equal to another reality in respect to its Baa’ith (motive/reason) of the Hukm, which is the ‘Illah, takes the same Hukm of the reality that has a text for it, just like we have discussed in the section about Qiyaas.

Therefore, the Ahkaam of Saraqah (thievery) apply upon the Nashshaal (pickpocket) and if what obliges the Hadd (set punishment) of thievery is established in respect to him, then his hand is cut.

## **2 - Al-Masaalih Al-Mulghaah:**

These are Masaalih (interests) that have been imagined to be Masaalih whilst the Shaari’ relinquished them and they are not given regard due

to the Ahkaam that He legislated, indicating that they are not to be given consideration.

An example of this category of Masaalih (interests) is the Maslahah of the female in regards to her being equal to her male brother within inheritance. The Shaari' (Legislator) relinquished that by the Daleel of His Qawl Ta'Aalaa:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

*Allah instructs you concerning your children: for the male, what is equal to the share of two females (An-Nisaa' 11).*

Or the example of the one who interacts with Ribaa (usury) to increase his wealth through this interaction as the Shaari' has cancelled this Maslahah when the text mentioned the prohibition of Ribaa (usury/interest) in His Qawl Ta'Aalaa:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has made trade Halaal and made Ribaa Haraam (Al-Baqarah 275).*

It is also like the example of the statement of one of the 'Ulamaa to one of the Khulafaa' after he had intimate relations with his wife in the day time during Ramadhaan: "You must fast two consecutive months". Then when he was denounced for that due to not commanding the Khalifah to free a slave, whilst his wealth was sufficient, he said: "If I had commanded him with that (i.e. freeing a slave) then it would have been easy for him and so the Maslahah lay in obliging the fasting upon him in order to act as a deterrent". This opinion however is invalid (Baatil) and in opposition to the text of



the Sunnah because the Messenger of Allah (saw) said to the Arab (Bedouin) who had told him (saw) that he'd had relations with his wives during Ramadhaan: **“Free a slave”**. He said: “I do not find it (i.e. the means)”. He (saw) then said: **“Fast two consecutive months”**. He (the Bedouin) replied: “It is beyond my capability”. He (saw) said: **“Feed sixty Miskeen”** (Al-Bukhaari and Muslim with different wordings). This contains a strong indication of a fixed ordering and as such it is not permitted to go against that.

Another example is that related to the Maslahah of the cowardly ones who stay back from Al-Jihaad or the work to resume the Islamic life by bringing the Islamic State into reality, by arguing that it is in order to preserve and safeguard themselves from harm and death. This is whilst the Shaari' has foregone and cancelled out this outweighed Maslahah by the Ahkaam contained in the Qur'aan and the Sunnah which obligate Al-Jihaad and make the work to establish the Islamic State obligatory.

Allah Ta'Aalaa said:

كُتِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهُ لَكُمْ وَعَسَىٰ أَن تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَّكُمْ وَعَسَىٰ أَن تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَّكُمْ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

*Fighting has been enjoined upon you while it is hateful to you. But perhaps you hate a thing and it is good for you; and perhaps you love a thing and it is bad for you. And Allah Knows, while you know not (Al-Baqarah 216).*

And the Messenger of Allah (saw) said:

مَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً

**Whosoever dies whilst he has no Bai'ah upon his neck dies a death of Jaahiliyah (Muslim).**

### **3 - Al-Masaalih Al-Mursalah:**

These are the Masaalih that no specific Daleel from the legislator has been mentioned for them and bear witness to legitimacy for them or the absence of legitimacy. This is the meaning of them being Mursal or let go (i.e. without restriction).

These therefore are representative of Masaalih (interests) that have not been mentioned in the Shar'iyah Nusooos (texts), positively or negatively. Rather they are left to the estimation of Ijtihad by way of Ra'y (opinion) in every time period or era.

The legitimacy or illegitimacy of these Masaalih is measured upon the basis of the balance between what they contain in terms of the aspects of benefit and harm, and after study, analysis and thorough examination. If the aspect of true benefit (An-Naf'u l-Haqeeqiy) is of greater weight, it is then taken upon the basis that it is from the Shar'a whilst if the aspects of the Mafsadah (bad element) or Darar (harm) is stronger, then it is left, forbidden and considered as being not Shar'iy (legal/legitimate).

Therefore, the key point in respect to understanding the Masaalih Al-Mursalah, is what dominates upon them in terms of benefit or harm. The Hukm is then built upon that; positively if the benefit is dominant and negatively if the Mafsadah (bad or harmful element) dominates.

Al-Imaam 'Izz ud-Deen 'Abdus Salaam in his book 'Qawaa'id Al-Ahkaam' (Principles of Ahkaam) says: "Through the following of the Maqaasid Ash-Shar'i (aims of the Shar'a) in respect to bringing

Masaalih and repelling Mafaasid, he (Mujtahid) attains from the sum of that a belief (I'tiqaad) or a cognition, that this (so and so) Maslahah is not allowed to be neglected and that this (so and so) Mafsadah is not allowed to be approached, even if there is no Ijmaa', no Nass (text) and no specific Qiyaas. That is because the understanding of the very same Shar'a obliges that".

Consequently, there is no text and no Hukm of Ijmaa' in respect to the Masaalih and as such they are Mursalah (devoid) of the Daleel (evidence). There is no Daleel for them but rather they are taken from the generality of the Sharee'ah having come to bring the Masaalih and to repel the Mafaasid.

An example:

Those who have taken Al-Masaalih Al-Mursalah have regarded a number of actions of the Sahaabah (rah) to be based upon the Masaalih Al-Mursalah. These include:

- The compilation of the Qur'aan into a Mushaf by Abu Bakr (ra).
- 'Uthmaan Ibn 'Affaan (ra) ordering the copying of the Mushaf and burning other than that copy.

In their opinion, Abu Bakr and 'Uthmaan saw that the Maslahah dictates taking that action and so they undertook it. This was in the case that they had feared that the Qur'aan would be forgotten following the death of the Huffaazh or that the Muslims would differ in regards to the recitation of the Qur'aan in the absence of written Masaahif (i.e. copies).

It was related that in the time of his Khilafah 'Umar (ra) spilled and poured out the milk that had fraudulently been mixed with water as a disciplinary measure for the fraudster. This (in their view) was from

the angle of the Maslahah Al-‘Aammah (public interest) so that the traders will not deceive the people.

## **The significance of the utilisation of Al-Masaalih Al-Mursalah within Islamic Fiqh**

The Maslahah has been called a Maslahah because the building of a Hukm upon it is in accordance to what is thought to be most likely to bring or attain the benefits or repel the harms. And it has been described with Irsaal (i.e. Mursal) because it is devoid of a Daleel Shar’iy for its consideration or its cancellation from the side of the Shaari’. Its significance for those who use it is seen in the following matters:

1 - Al-Masaalih Al-Mursalah, for those who have adopted it, represents a wide scope for Ijtihad where it is possible for the Mujtahideen to establish a great number of Ahkaam upon it, for that which has no text or Ijmaa’ for it. This applies to the newly arising issues related to the affairs of the ‘Ibaad (servants, people) and the Masaalih (interests) of the land.

2 - Those Fuqahaa (who have adopted it) have built a lot of Ahkaam upon it through different time periods since the era of the Sahaabah until our recent time, within the times when the Islamic Sharee’ah represented the source of legislation. This included, as we have mentioned previously, the agreement of the Sahaabah in the time of Abu Bakr As-Siddeeq (ra) to compile the Mushaf and then their agreement to make a copy of the Mushaf in the time of ‘Uthmaan Ibn ‘Affaan (ra) and to destroy what had been written with different dialects.

3 - New incidents and occurrences are continuously occurring and the Masaalih (interests) change in accordance to that, in addition to

the changing times and conditions. Needs and essential matters or necessities appear in the society that differ from those that existed previously and this calls for particular Ahkaam. For that reason, in their view, it is necessary to take these matters into consideration and open up room for the Mujtahideen to deduce and extract the Ahkaam for the issues that occur in accordance to the Masaalih. If this was not done, then the interests of the people would be constrained by the Sharee'ah and the legislative needs of the society would not be met. The Masaalih Al-Mursalah would as such represent the source for these new Ahkaam.

### **The Hujjiyah (legal proof) of Al-Masaalih Al-Mursalah and the evidences for that**

This Asl (origin) of Al-Masaalih Al-Mursalah has been differed upon amongst the Fuqahaa of the Muslims and so the Hanafiyah and the Shaafi'iyah did not consider it to represent an 'Asl (origin) established in itself and they inserted it within the area of Al-Qiyaas. This is whilst the Maalikiyah and the Hanaabilah viewed that the Masaalih Al-Mursalah are to be taken as long as they fulfil the conditions that they placed down for their utilisation. In their view they represent that which realises the Maqaasid Ash-Sharee'ah (the intent of the Sharee'ah) and even if they do not have a specific text for them.

#### **Hujjiyah (proof of validity) of Al-Masaalih Al-Mursalah:**

##### **1 – Its Hujjiyah (proof of validity) according to Al-Ghazaaliyah:**

Al-Imaam Al-Ghazaaliy adopted Al-Masaalih Al-Mursalah and called it 'Al-Istislaah' and this adoption was within specific limitations. These were that is represented a Daroorah (necessity) from amongst the five Darooraat (necessities) which are the preservation of the Deen, the life (Nafs), the progeny/lineage (Nasl), the mind ('Aql) and

property (Maal). They also needed to be Qat'iy (definite) in respect to bringing or attaining the benefit or repelling the harm in addition to them being of general benefit where the benefit returns to the Muslims on mass and not to a particular person or specific group of the Muslims in exclusion to others.

Consequently, Al-Ghazaaliy took the Maslahah in the place of the Daroorah (necessity) and this is not from the Maslahah Al-Mursalah according to the view of those who uphold it. That is because 'The Darooraat (necessities) make the Mahzhooraat (prohibitions) permissible' is classified as a Shar'iyah principle, the adoption of which returns back to the Shar'iyah texts like the Kitaab, the Sunnah and Ijmaa' and does not go back to Al-Masaalih Al-Mursalah that has no text for it.

## **2 - The Hujjiyah of Al-Masaalih Al-Mursalah according to Al-Imaam Maalik and others:**

Al-Imaam Maalik took from Al-Masaalih Al-Mursalah the most. He used the following evidences as proof and those who held Al-Masaalih Al-Mursalah also took these evidences. They are:

1 - That The Sahaabah had adopted Al-Masaalih Al-Mursalah and examples of this include:

A – They compiled the Masaahif after the era of the Messenger (saw) and it was the Maslahah that drove them to undertake that, represented in preserving the Qur'aan to protect it from being lost.

B – 'Umar Ibn Al-Khattaab (ra) would take a half from the Wulaah (governors) from amongst those whom he accused in respect to their wealth due to their mixing of their private wealth with the wealth that they would attain due to their governorships. So if they did not provide a good reason for the amount of wealth they had

accumulated, he would take half of the wealth and include it in the Bait ul-Maal (treasury) of the Muslims. It was the general Maslahah (of the people) that motivated him to undertake that course of action.

C – The Sahaabah decided and approved of the killing of a group (in punishment) for the killing of a single person if they participated in that person's killing. That was because the Maslahah dictated that.

2 - If the Maslahah was in line with the Maqaasid of the Shaari' (legislator) and from the Jins (kind/type) that have been established to be from the Masaalih, then taking it would be in conformity and agreement to the Shaari's Maqaasid whilst neglecting it would represent neglecting the Maqaasid of the Shaari' (i.e. the aims and what is being intended to be sought) and neglecting the Maqaasid of the Shaari' is Baatil (invalid) and not permissible. It is therefore obligatory to adopt by way of the Maslahah upon the basis that it represents an Asl (origin) that stands in its own right concurrent or in line with the Sharee'ah.

3 - If the Maslahah Al-Mursalah is not utilised in the case where it is from the type of the Masaalih of the Shar'iyah the Mukallaf will find himself in difficulty and hardship. This is whilst Allah Ta'Aalaa has said:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

*And He has not placed upon you in respect to the Deen any hardship/ difficulty (Haraj) (Al-Hajj 78).*

And He Ta'Aalaa said:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

*Allah intends for you ease and does not intend for you hardship (Al-Baqarah 185).*

## **The opinions of the ‘Ulamaa in respect to Al-Masaalih Al-Mursalah**

The Fuqahaa have divided in respect to the adoption or utilisation of Al-Masaalih Al-Mursalah into three groups:

1 – A group that does not see any Maslahah outside of the Nusoo As-Sharee’ah and these are those who deny Qiyaas. They therefore assert that there is no Maslahah except for what the text has brought and that we do not seek a Hukm from other than that.

2 – The second group seeks the Masaalih from the texts and so they make analogy with every subject in which the Maslahah is realised upon the subject that has a text including the Maslahah. It would take the same Hukm of the Maslahah mentioned within the text. They therefore do not look to the Maslahah unless it has a proof for it from a Daleel Shar’iy Khaass (specific). They consider the regulators in which this Maslahah is realised in most cases to be an ‘Illah of Al-Qiyaas.

3 – The third group view that the Masaalih Al-Mursalah are the Masaalih that are in line with the Maqaasid of the Shaari’ and do not have a specific origin in terms of consideration or cancellation (Al-Ilghaa). If there was a specific origin evidenced, then it would enter within the generalness of Al-Qiyaas and if there was a specific origin evidenced with Al-Ilghaa’ (cancellation), then it (the Maslahah) would be Baatil (invalid) and considered to be from the Masaalih Al-Mulghaah (Cancelled out interests) and taking them would be in violation and contrary to the Maqaasid of the Sharee’ah.



Al-Imaam Maalik was the main flag bearer in respect to taking and utilising Al-Masaalih Al-Mursalah and he stipulated four conditions (Shuroot) for it to be employed or referred to:

A – That the Maslahah Al-Mursalah is fitting and in line with the Maqaasid of the Shaari’ and so it does not oppose an Asl (origin) from its Usool (origins/fundamentals) of a Daleel from its Qat’iy Adillah (evidences). Rather it in agreement to the Masaalih that the legislator has intended to be achieved like the preservation of the life, the Deen, the wealth, the progeny and the mind.

B – That the Maslahah Al-Mursalah is Ma’qoolah (reasonable/rationally acceptable) in its self so that if it was presented to the people of intellect it would be received with acceptance.

C – That taking it removes the Haraj (difficulty/hardship) in the case where if it was not to be taken, in its context or place, the people would then be left (or find themselves) in difficulty or hardship. This is whilst Allah Ta’Aalaa has said:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

*And He has not placed upon you in respect to the Deen any hardship/ difficulty (Haraj) (Al-Hajj 78).*

D – That the Maslahah (benefit/interest) is ‘Aammah (for general public good) bringing the benefit to the people and repelling the harm from them and that it is not for a certain group, faction or person.

Additional points:

- The Masaalih Al-Mursalah represent an Asl (origin) that is differed upon amongst the Muslim Fuqahaa and so the Hanafiyah and the Shaafi'iyah do not consider it to be an origin (Asl) in its own right whilst they include it within the Baab (chapter/area) of Al-Qiyaas. Consequently, if there doesn't exist a Nass (text) for the Maslahah to indicate it, it would be rejected and be considered to be Mulghaah (cancelled).
- As for the Masaalih Al-Mursalah in the view of the Maalikiyah and the Hanaabilah then it is considered and is taken as long as it fulfils the four conditions mentioned previously. It (in their view) represents the realisation of the Maqaasid of the Shaari' and even if it doesn't have a specific text for it (Nass Khaass).

### **The Adillah (evidences) of those who do not adopt Al-Masaalih Al-Mursalah**

1 – The Maslahah that does not have a specific (Khaass) Daleel for it from the Shar'a represents a kind of relish and desire. Al-Ghazaaliy said: “We know definitely (Qat'an) that the 'Aalim should not judge by his desire and appetite without paying regard to the indications of the Adillah (evidences). Al-Istihsaan without looking into the Adillah of the Shar'a represents passing a judgement by the desire alone (or purely)” and in respect to Al-Masaalih Al-Mursalah he said: “And if the Shaari' does provided evidence for it then it is like the Istihsaan”.

2 – If the Masaalih are Mu'tabarah (considered) then they enter into the generalness ('Umoom) of Al-Qiyaas and if they are not Mu'tabarah then they are not included within it. In addition, it is not valid to claim that there are considered Masaalih in which there is no text or Qiyaas because that implies that the Shar'iyah texts are deficient and incomplete which is a negation of the Qawl of Allah Ta'Aalaa:

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ  
دِينًا

*Today I have completed your Deen for you and have perfected by favour upon you  
and have chosen for you Islaam as a Deen (Al-Maa'idah 3).*

And negates His speech Ta'Aalaa:

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ

*And We have sent down to you the Book as clarification for all things and as  
guidance and mercy and good tidings for the Muslims (An-Nahl 89).*

3 – Taking the Masaalih Al-Mursalah without reliance upon a Shar'iy text leads to letting the Ahkaam Ash-Shar'iyah loose (or out of control) and oppression or injustice befalling the people in the name of the Maslahah (interest) just as some of the oppressive rulers have done. In respect to that Ibn Taymiyyah said: "It is from the direction of the Masaalih (interests) that a great instability has occurred in the matter of the Deen and many of the leaders and servants (i.e. people) saw (certain) interests and so they sought them based upon this foundation. These could include that which is prohibited in the Shar'a which they were unaware of..." (Majmoo'ah Ar-Rasaa'il Wa-l-Masaa'il part 5 page 22).

4 – If we were to take Al-Masaalih Al-Mursalah as an independent origin or foundation (Asl) in itself that would lead to different Ahkaam arising in different lands and even differences amongst the people within a single issue. A matter could be Haraam in someone's view in a land whilst the same issue could be Mubaah in another person's view in another land. This is whilst this is not the way of the eternal Ahkaam Ash-Shar'iyah that incorporate and comprehensively deal with all of the people in all ages until the Day of Judgement.

## The opinion of Ash-Shaatibiy in respect to Al-Masaalih

A – He rejected that which was not based on a solid (proven) basis (Asl) and if it was based upon a firm basis then it would be Al-Qiyaa (and not Al-Masaalih).

B – It is accepted as long as it is in line with the Maqaasid of the Shaari' and does not oppose an established basis or origin (Asl) like the Qur'aan, the Sunnah and Al-Ijmaa', and other than that is not accepted.

C – The acceptance of the Masaalih Al-Mursalah (that which is not based on a text) if it is close to the meaning of the established (proven) Usool and even if it is not based upon a Shar'iy origin standing in its own right.

D – The statement of Al-Ghazaaliy: The Maslahah Al-Mursalah is accepted if it represents a Daroorah Qatiyah (a definite necessity).

### My opinion in respect to the Masaalih Al-Mursalah making clear its invalidity

1 – Those who took Al-Masaalih Al-Mursalah as representing a Daleel Shar'iy say that the Shaari' (legislator) considered the type or category (Jins) of Al-Masaalih Al-Mursalah to fall under the category (Jins) of the Ahkaam Ash-Shar'iyah and they use the following Aayah to support that:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*And We have not sent you except as a Rahmah (mercy) for the worlds (mankind) (Al-Anbiyaa 107).*

This is as they consider the Rahmah (mercy), which they view to be the Maslahah, as an 'Illah for every Hukm Ash-Shar'iy. This is despite the Aayah not indicating 'Illiyah (the presence of reasoning) whether

in its form or in meaning. The intent of the Aayah is that the result of the application of Islaam upon the people would be a Rahmah (mercy) for them and so the Sharee'ah is a Rahmah for mankind and not an 'Illah (reason) for the legislation of the Sharee'ah. Rather it is only the result that happens as a result of its application.

2 – The Shar'iyah Nusoos (texts) from the Kitaab and the Sunnah relate to specific actions and they are not related to the Maslahah or the Mafsadah. So for instance Allah Ta'Aalaa says:

فَرِهَانَ مَّقْبُوضَةٍ

*Then a security deposit [should be] taken (Al-Baqarah 283).*

This is explaining the ruling of the security and also when He Ta'Aalaa says:

وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ

*And take witnesses when you conclude a contract/trade (Al-Baqarah 282).*

This is explaining the Hukm of the Shahaadah (witnessing). This is whilst there is no text that has been brought or mentioned stating that the 'Illah for these Ahkaam is to bring or acquire the benefit or to repel the harm or detrimental thing (Mafsadah).

Then when a text comes and it includes a Shar'iyah 'Illah that 'Illah is not the acquisition of the Maslahah or repelling of the Mafsadah but is rather something else other than that. We have already mentioned when discussing the subject of Al-Qiyaas that the 'Illah for the prohibition of trading at the time of the call to prayer for Salaat ul-Jumu'ah is Al-Ilhaa' (distraction or to be diverted) from the Salaah. That is while the Ilhaa' (distraction) has not been described in the text as being representative of a benefit or harm or as a repellent to a detrimental thing or harmful matter (Mafsadah).

And in respect to His Qawl Ta'Aalaa:

## وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ

*And there is for you in legal retribution [saving of] life (Al-Baqarah 179).*

The occurrence of Al-Qisaas is due to an 'Illah that has been understood from the Shar'iy Nass (text) and this is it's being (or representing) life (Hayaat) and it is not because it brought about a Maslahah or repelled a Mafsadah.

Consequently, the claims that the Shar'a has considered the Masaalih (interests) as the 'Illah (reasoning) for the Ahkaam are claims devoid of proof and evidence. There is nothing that indicates and guides to it within the Ahkaam Ash-Shar'iyah; whether in the Ahkaam which contain an 'Illah or those which do not contain and 'Illah.

For this reason, it is not permissible to say that Zinaa was prohibited to repel a Mafsadah and Al-Jihaad was made obligatory because it is a Maslahah. That is not said because the Shar'iy text did not say that at all and that was not understood from it whether in its Mantooq (explicitly expressed meaning) or its Mafhoom (implied meaning). The claims are therefore Baatil (False, invalid) and contrary to the Shar'a and the reality.

As for considering what the Hukm has indicated and guided to as a Maslahah or repelling of a Mafsadah or considering that which the 'Illah Ash-Shar'iyah has guided to as a Maslahah or repelling of a Mafsadah, then this is only in accordance to the view of the Muslim and the Islamic society. As for the non-Muslim then he does not see that because a matter or thing being a Maslahah or repelling of a Mafsadah only stems from the viewpoint in life. Consequently, that which the Shar'a has mentioned in the text in terms of Ibaahah (permissibility), or the Fard or the Mandoob, then in the viewpoint of the Muslim it represents a Maslahah because the Shaari' has brought

a text for it. This is whilst what the Shaari' has made Haraam represents a Mafsadah because the Shaari' has stated that.

Therefore, it is the Nass (text) that defines and specifies the Maslahah and the Mafsadah in the Muslim's view and it is not the Maslahah that specifies the Hukm. That is because the Hukm alone explains that a matter is Haraam, or a matter is Mubaah, Makrooh, Fard or Mandoob whilst it does not explain that such a matter is a Maslahah or Mafsadah. It is rather only the Muslim who interprets that (according to his viewpoint in life).

3 – As for the Ahkaam that they cited as examples for Al-Masaalih Al-Mursalah, then they are not indicative of a Maslahah 'Aqliyah (rational or intellectual interest). Rather each of them is based upon a Daleel Shar'iy:

Therefore, the compilation of the Qur'aan in the time of Abu Bakr (ra) and the making of a copy in the time of 'Uthmaan (ra) due to the fear of it being lost and due to differences amongst the Muslims in respect to its recitation, was based upon a Qaa'idah Shar'iyah (Legal principal) that the Messenger of Allah (saw) mentioned:

لَا ضَرَرَ وَلَا ضِرَارَ

**There should be neither harming nor reciprocating harm  
(Ahmad).**

The fear of losing the Qur'aan and the difference in its recitation only represented a Darar (harm) that the Khalifah of the Muslims removed based on the text of the above mentioned Hadeeth An-Nabawiy and it is not built upon Maslahah whilst the Sahaabah (rah) held a consensus (Ijmaa') upon that.

As for pouring out the milk (by ‘Umar (ra)) that had been mixed with water in an act of deception then this was a punishment for the one who defrauds or cheats who has contravened the Qawl of the Messenger (saw):

مَنْ غَشَّنَا فَلَيْسَ مِنَّا

**Whoever cheats (defrauds) us is not from us (Muslim and At-Tirmidhi).**

The punishment manifested in the pouring out of the fraudulent milk was from the Ta’zeer (discretionary punishment) and it is a punishment that the Shar’a has approved of and made its evaluation up to the Khalifah or the Qaadi (judge) where he evaluates it as he sees. This punishment does not represent a Hukm Shar’iy the Daleel of which is the Maslahah but rather it is a Hukm Shar’iy the Daleel of which is the Sunnah. It has been related that the Messenger of Allah (saw), upon seeing a pile of wheat, extended his hand in it and found that it was wet. So he said to the one whose pile it was: What is this? He replied: The sky rained upon us. So he (saw) said: Place the wet in sight (visibly). **“Whoever cheats us is not from us”** (Muslim and At-Tirmidhi). Therefore, the Ta’zeer of the Messenger (saw) was by way of speech whilst the Ta’zeer of ‘Umar was by pouring out the fraudulent milk.

4 – Verily Allah Ta’Aalaa says in Soorat ul-Hashr:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

*And whatever the Messenger has brought to you take it and whatever he has forbidden you refrain from it (Al-Hashr 7).*



This is whilst the Messenger (saw) did not come with Al-Maslahah Al-Mursalah and that is because those who adopt it admit that these Masaalih do not have a specific text for them from the Shar'a. Therefore, the Messenger (saw) did not come with them and consequently it is not permissible to adopt them or to consider them as a Daleel Shar'iy for the Hukm (legal ruling). (Note: That is because the Noble Aayah commands the Muslims to only take that which the Messenger (saw) came with i.e. that which has a text).

- There are, in addition to the above, other evidences establishing Al-Masaalih Al-Mursalah to be invalid as a proof and we mentioned them previously under the heading of: "The evidences of those who did not adopt Al-Masaalih Al-Mursalah" and so it is possible to refer back to and then add those arguments to these four.

### **Examples of the applied usage of Al-Masaalih Al-Mursalah**

We have previously mentioned a number of examples of the use of Al-Masaalih Al-Mursalah by those who regard it as a Hujjah previously and we will now present other examples to add to them:

Example:

Al-Maalikiyah provided the verdict that it is permissible to appoint the best from the non-Mujtahideen as a Khalifah if there is no Mujtahid in addition to the permissibility to appoint a Khalifah when there is someone better or more merit than him present. That is because it is from the Maslahah of the Muslims for them to have a Khalifah for them and because the absence of a Khalifah leads to a Mafsadah.

Example:

They permitted the Shahaadah (testimony) of the boys against each other in respect to injuries (Jaraahaat) and that is due to the Maslahah. That is because, normally, no one other than them witnesses their playing together. This is even if the Shart (condition) of Bulooah (maturity) is not met in them as that is from amongst the conditions of ‘Adaalah (justness) in respect to the Shaahid (witness).

Example:

Ahmad Bin Hanbal (rh) gave the verdict of banishing the people of Fasaad (corruption) to a land which is secure or safe from their evil and that is due to the Maslahah and Dar‘u-l-Mafsadah (repelling the harm or detrimental matter).

Example:

And he permitted specifying some of the children (to the exclusion of others) for gifts for a specific Maslahah like if for instance he was sick, in need, a parent of children or student of knowledge.

Example:

It is the right of the Haakim (ruler) to compel those monopolising to sell what they have at a similar price (i.e. market price) when the people are in (dire) need of it (i.e. a Daroorah for them).

Example:

The opinion of Abu Haneefah (rh) in respect to the permissibility of damaging or destroying that which the fighters are incapable of carrying with them in terms of the booty or spoils of war like provisions and animals, so that the enemy cannot benefit from them and then use them against the Muslims. As such the goods and

provisions are burnt, the animals are slaughtered and their meat is burnt.

Example:

Craftsmen guaranteeing what is destroyed under their hands (or supervision) in terms of the property of the people like cloth and wood unless the destruction or ruining was due to an overpowering force. This is despite their hands representing a hand of trust (Amaanah) and the Messenger of Allah (saw) saying:

لَا ضَمَانَ عَلَى مُؤْتَمِنٍ

**There is no liability upon the thing that has been entrusted (Ad-Daaruuqutniy).**

In spite of that the Maslahah dictates this Hukm (ruling) so that they (the workers) are not lax in respect to safeguarding the property of the people.

Example:

The permissibility of imposing taxes upon the rich if the Bait ul-Maal (treasury) is empty of the required wealth to face the essential expenditures of the state, like meeting the needs of the soldiers for instance, until the time that wealth comes into the Bait ul-Maal or there is within it that which is sufficient.

Example:

Al-Imaam Maalik permitted the beating or hitting of the one accused of theft to get him to talk and considered that to represent a Maslahah. Al-Imaam Al-Ghazaaliy responded to that saying: “This Maslahah is in opposition to another Maslahah and that is the

Maslahah of the one who is being hit. It is possible that he is innocent of the crime and not hitting the guilty is less of a matter than striking the innocent”.

## **My opinion and comment in regards to the previous examples**

Most of the Ahkaam mentioned in the previous examples are based upon a Daleel Shar’iy from the Kitaab, the Sunnah or the Ijmaa’ As-Sahaabah.

So the permissibility of appointing a Khalifah when there is somebody who has greater merit is due to the conditions of the contraction of the Khilafah being met by him in the case where being a Mujtahid are not from amongst those conditions. The Sahaabah (rah) gave the Bai’ah to ‘Uthmaan Ibn ‘Affaan (ra) even though some of them viewed that ‘Ali Ibn Abi Taalib was better than him. None rebuked them for that and as such it represented an Ijmaa’ which represents a considered source from sources of the Islamic legislation.

As for banishing the people of Fasaad, then ‘Umar ibn Al-Khattaab (ra) banished Nasr Bin Al-Hajjaaj and no one rebuked him for that and as such it represents an Ijmaa’ of the Sahaabah which is a Daleel and not a Maslahah.

As for destroying or ruining that which is most likely to be believed to give strength to the enemy, then the Muslims destroyed the palm trees of Bani An-Nadeer. Allah Ta’Aalaa said:

مَا قَطَعْتُمْ مِّن لِّيْنَةٍ أَوْ تَرَكْتُمُوهَا قَائِمَةً عَلَىٰ أُصُولِهَا فَبِإِذْنِ اللَّهِ وَلِيُخْزِيَ

الْفَاسِقِينَ

*Whatever you have cut down of [their] palm trees or left standing on their trunks - it was by permission of Allah and so He would disgrace the defiantly disobedient (Al-Hasbr).*

In respect to the permission to tax the rich if the Bait ul-Maal doesn't have the necessary sufficient funds to meet the expenditures which are obligatory upon the State, then this is taken from the Khalifah's obligation to foster and take care of the affairs of the people and from the principle:

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

‘That which the Waajib is not completed except with it is (in itself) Waajib’

This Qaa'idah (principle) is a Qaa'idah Shar'iyah deduced from the texts of the Kitaab and the Sunnah.

As for guaranteeing what is destroyed under the hand of the craftsmen without any shortcoming (or negligence) from them then the Messenger of Allah (saw) has forbidden such a guarantee in the Hadeeth:

لَا ضَمَانَ عَلَى مُؤْتَمَنِ

**There is no liability upon the thing that has been entrusted (Ad-Daaruuqutniy).**

In regards to hitting the one accused in order to get him to confess then Al-Ghazaaliy refuted that in addition to the existence of the Qaa'idah Al-Fiqhiyyah (Fiqhi principle):

الأصلُ براءةُ الدِّمَّةِ

‘The origin is the innocence of the responsibility’.

And the Qaa’idah:

البَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

**‘The proof is upon the one making the claim and the Yameen (oath) is upon the one who denies (it)’ (Al-Baihaqi in a Saheeh Isnaad).**

It is therefore not permitted to strike or hit someone to extract a confession.

As for compelling those who have monopolised to sell what they have at a similar cost (i.e. market price) then this represents the removal of a harm (Darar) that has afflicted the Ummah as a result of their monopolising of the commodities. It is therefore the right of the Khalifah or Haakim (ruler) to remove this harm due to the Qawl of the Messenger (saw):

لَا ضَرَرَ وَلَا ضِرَارَ

**There should be neither harming nor reciprocating harm (Ahmad).**

It is therefore a Hukm that is taken from the Nass (text).

## The relationship between Al-Maslahah Al-Mursalah and Al-Istihsaan

1 – Al-Istihsaan comes together with Al-Masaalih Al-Mursalah which were taken by Al-Imaam Maalik and that is because Al-Istihsaan represented the outweighing of the Qiyaas Khafiy over the Qiyaas Jalliy (apparent/evident analogy) due to the appearance of the Maslahah within the Qiyaas Al-Khafiy (hidden/concealed analogy). He also took a Maslahah Juz’iyah (partial interest) in opposition to a Qiyaas Kulliy (comprehensive Qiyaas).

2 – Al-Istihsaan in the opinion of Al-Imaam Ash-Shaafi’iy who declared it invalid and in the opinion of Al-Imaam Maalik who used it, incorporated and covered the Masaalih Al-Mursalah within it. Al-Imaam Maalik said: “Al-Istihsaan is nine tenths of Al-‘Ilm (knowledge)” and then said: “And Al-Istihsaan that is restricted to opposing the Qiyaas by the Maslahah counts for a negligible amount (of its usage)”.

3 – Al-Istihsaan and Al-Masaalih Al-Mursalah according to the view of those who used it as a proof is based upon Al-Qiyaas. That is because Al-Istihsaan represents the departure from a Qiyaas Jalliy to a Qiyaas Khafiy or the departure from Qiyaas to adopting based on the Daroorah (necessity) and the Maslahah (interest) to remove the hardship (Haraj). The Jins (type/kind) of Al-Masaalih Al-Mursalah is measured (analogised) upon the Jins (type) of the Masaalih Ad-Darooriyah (essential or necessary interests) that the Shar’a has mentioned like the preservation of the Nafs, Maal, Nasl, ‘Aql and Deen (life, property, progeny, mind and Deen).

4 – Al-Masaalih Al-Mursalah and Al-Istihsaan according to the definition of each of them are not based upon an explicit (Sareeh) text from the Sharee’ah texts but are rather based upon a semblance

(Shubhat) of a Daleel that the ‘Ulamaa have seen or perceived between the lines of the Sharee’ah texts.

5 – Al-Istihsaan and Al-Masaalih Al-Mursalah according to those who uphold it are both established upon the basis of removing or lifting Al-Haraj (the hardship or difficulty), acquiring the Maslahah and repelling the Mafsadah.

6 – The majority of the Maalikiyah view that there exists a clear difference between the two. That is that Al-Istihsaan occurs in the case where the subject of the Mas’alah (issue) is subservient to the Qiyaas and so in that case the Istihsaan comes negating that Qiyaas. As for the Maslahah Al-Mursalah, then it, in its branch issues, represents a Daleel for these issues (Masaa’il) in the case when there is no Daleel other than it.

As for Ash-Shaatibi then he viewed that there is no difference between them.

The relationship between Al-Istihsaan and Al-Masaalih Al-Mursalah can therefore be summed up in the following points:

- They have a connection with Al-Qiyaas.
- They give consideration and regard to the lifting of the Haraj (hardship/difficulty) from the people.
- The purpose of them is to bring or acquire the Masaalih and repel the Mafaasid.
- Each of them has a Shubhat (semblance) of a Daleel.

Note: The Ahkaam derived from the Daleel of Al-Masaalih Al-Mursalah are considered to be Ahkaam Shar’iyah and in particular those Ahkaam derived by the Imaams from the ‘Ulamaa like Al-Imaam Maalik and Al-Imaam Abu Haneefah (Note: May be Al-Imaam Ahmad Bin Hanbal was intended here). That is because they had a



Shubhat of a Daleel for these Ahkaam and also because many of these Ahkaam, as we explained earlier when refuting the Masaalih Al-Mursalah, are actually based upon a text from the Kitaab, the Sunnah or Ijmaa (As-Sahaabah). They are however not binding for the one who does not consider them to represent a Hujjah (proof and evidence) for the legislation.

## Chapter Five

### Al-'Urf and Al-Istishaab

#### **Firstly: Al-'Urf (custom):**

- 1 – Its definition and its importance.
- 2 – The (type of) 'Urf that is considered to be a Hujjah and its evidences, the opinions of the 'Ulamaa in respect to it and its Shuroot (conditions).
- 3 – The categories (Aqsaam) of Al-'Urf and examples of the application of Al-'Urf.
- 4 – Al-'Urf as a source for man-made laws.

#### **Secondly: Al-Istishaab (continuity of the rule):**

- 1 – Its definition, its Hujjiyah, the evidences for working with it and the opinions of the 'Ulamaa in respect to it.
- 2 – The Ahkaam that are built (or based) upon Al-Istishaab and examples of that.
- 3 -Al-Istishaab and man-made laws.

## The Seventh Daleel

### Al-‘Urf (custom)

#### Its definition (At-Ta’reef):

Al-‘Urf linguistically means: With a Dammah on the ‘Ayn it is the opposite of An-Nukr (denial) and it has also come with the meaning of the elevated place where it is said “Urf ul-Jabal’ (the high or elevated place of the mountain) and the flesh of the head of the cockerel is called an ‘Urf due to its high position in respect to its body.

#### Al-‘Urf in the Istilaah (terminological definition):

It is what the people have made habitual and are accustomed to whether this relates to speech or an action.

Al-Ghazaaliy (rh) defined it as: “Al-‘Urf is what has settled in the Nufoos (i.e. deeply in the people) by way of the ‘Uqool (minds) and the sound nature has received it with acceptance”.

In the view of the Fuqahaa it means the ‘Aadah (العادة) (the custom, norm, practise, habit).

Al-‘Aadah is taken from الْمُعَاوَدَة which carries the meaning of repetition. Therefore, the one who comes with an action and repeats it to such a level that it becomes hard for him to leave it, that action is called an ‘Aadah.

The ‘Urf is the ‘Aadah of the Jamaa’ah (collective). It is what the society has become accustomed to and made habitual so that they proceed according to it in speech and action in their lives.

## **Utilising the Saheeh ‘Urf as a Daleel:**

The ‘Ulamaa who adopted the ‘Urf stated: ‘The ‘Urf can be Saheeh (correct) and it can be Faasid (corrupted). The Saheeh is that which does not go against the Shar’a whilst the Faasid is that which goes against the Shar’a. The Faasid would be like some families being accustomed to swimming together in the swimming pools whilst the men and women are mixed or women leaving their houses without the Shar’iy dress or like men and women dancing together in a single circle at weddings or Eid celebrations.

The ‘Urf As-Saheeh which is not contrary to the Shar’a has been considered by some of the ‘Ulamaa to be a Daleel that the Faqeeh or Mujtahid uses as a guide to arrive to the Ahkaam (rulings) of some of the realities which do not have a text for them. It therefore represents, in their opinion, a Masdar (source) from the Masaadir (sources) of legislation like Al-Qiyaas and Al-Ijmaa’. Some of them have considered it to be a Daleel that is used to guide to understanding the intent of the Shar’iyah texts and from the wordings (Alfaazh) of contracting parties.

Some of them have also relied upon it in order to specify (Takhsees) the ‘Aamm (generalness) of some of the worded expressions (‘Ibaaraat), to restrict (Taqyeed) the Mutlaq (unrestricted) expressions and to make it a Hukm for some of the situations to accept the statements of one of the disputing parties when the Bayyinah (testimonial evidence) is absent from one of them.

## **The significance of Al-‘Urf**

The ‘Ulamaa have presented evidence in respect to the importance of Al-‘Urf and they considered it to be Shar’an (legitimate) based upon the views of the previous ‘Ulamaa including:

- 1 – Al-Imaam Maalik who built (or based) a lot of his Ahkaam upon the actions of the people of Al-Madinah i.e. upon the customs of Ahl-ul-Madinah and their ‘Urf.
- 2 – Abu Haneefah and his students (followers) differed in respect to some of the Ahkaam Ash-Shar’iyah based upon the difference in their A’araaf (customs).
- 3 – Al-Imaam Ash-Shaafi’iy changed some Ahkaam after going to Egypt which he had previously held whilst he was in Baghdad. That has been argued to be due to the differences in ‘Urf between the two places and it is for this reason that he has two Madh’habs, the old and the new.
- 4 – Ibn ‘Aabiden authored a paper about Al-‘Urf and said in it: “The Ma’roof ‘Urfan (the known by custom) is like the Mashroot Shartan (the stipulated by condition) and the Thaabit (established/proven/consistent) by the ‘Urf is like the established (Thaabit) by the Nass (text)”.

The ‘Urf in its true reality results from the thoughts that are prevailing within the society and from the systems and laws that treat the relationships of the society. As such these thoughts and those systems have become customs and measures (criteria) for the people whether they are aware of their original source or are unaware of it.

Therefore, the ‘Urf, for example, amongst the Muslims, results from the Islamic thoughts that the society has adopted and which the people have sought to go to judgment to for many centuries. This is like the prevailing customs in respect to celebrations, grief and the Eids. That is because most of these customs are based upon a text from the texts of the Islamic Shar’a.

The reason for the alteration and changing of some of these customs goes back to the absence of the Islamic ruling within the life of the people and the insertion of some thoughts to replace them like those attached to the capitalist and communist thoughts.

As for the previous ‘Ulamaa like Al-Imaam Maalik, Al-Imaam Abu Haneefah and those similar to them, then when they gave the ‘Urf consideration in respect to deducing the Ahkaam Ash-Shar’iyah, the society at that time was a purely Islamic society, like the society of Al-Madinah Al-Munawwarah at the time of Al-Imaam Maalik. They were judging by Islaam in respect to all that came from them in regards to norms and customs. Their ‘Urf was Islaam and nothing other than Islaam; they were raised upon it and raised their children upon it.

For that reason, we find Ash-Shaatibi saying in respect to the customs within the Islamic society: “If the customs differed, each custom would be referred back to its Shar’iy origin and that would be the judge (arbitrator) over it”.

Consequently, the Shar’a is the basis (Asl) and the ‘Urf follows it and results from it, whilst it is not a Daleel from which the Ahkaam are deduced. In reality it reflects a manifestation from amongst the manifestations of the system that is implemented within and applied upon the society.

### **The ‘Urf that is considered to be a Hujjah (proof) and its Adillah (evidences)**

The ‘Urf can be Saheeh and it can be Faasid, and the ‘Urf that the ‘Ulamaa used as a Hujjah (legal proof) was the ‘Urf As-Saheeh.

The ‘Urf As-Saheeh is the ‘Urf that does not oppose a text from the Shar’iyah texts and does not cause a considered Maslahah (interest) to be lost nor is it most likely to bring a Mafsadah (harmful or corrupt matter). This is like the people being accustomed to the one proposing offering items of clothing or something similar to the one

he is proposing to, as a gift whilst having no impact in relation to the Mahr (dowry).

Some of the ‘Ulamaa considered the ‘Urf to represent an Asl from the Usool of Istinbaat upon which the Ahkaam Ash-Shar’iyah are built and as a Daleel from amongst the Adillah Al-Ijmaaliyah (Sources of evidence) like Qiyaas and Ijmaa’. From amongst their statements in respect to the ‘Urf is the saying: “Al-‘Aadah Muhkimah” (The custom resolves or overrides the matter) and the saying: “Al-Ma’roof ‘Urfan Ka-l-Mashroot Shartan” (The known by custom is like the stipulated matter by condition).

From amongst the Adillah (evidences) supporting the Hujjiyah (proof validity) of Al-‘Urf are the following:

1 – From the Qur’aan His Qawl Ta’Aalaa:

حُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ

*Show forgiveness, enjoin what is good (Al-Urf) (Al-A’araaf 199).*

2 – From the Sunnah is the Hadeeth attributed to the Messenger of Allah (saw):

مَا رَأَهُ الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ

**What the Muslims see as Hasan (good) then it is Hasan (good) with Allah**

This is in addition to the Messenger of Allah’s (saw) approval of some of the A’araaf (customs) that were well known to exist amongst the Arabs before his being sent as a Prophet. This is like Al-Mudaarabah in the case where it has been cited that Al-‘Abbaas Ibn ‘Abdul-Muttalib, when paying money in Al-Mudaarabah (contract of

partnership), used to stipulate upon the worker that he would not cross by sea, descend a valley and to not buy anything. Then if he was to do that he would be assured. This reached the Messenger of Allah (saw) and he viewed it well (i.e. he (saw) approved of it). [Tabayyun Al-Haqaa'iq Vol 5 52-53].

It is also like As-Salam (forward selling) as it was related from Ibn 'Abbaas (ra) that he said: "The Nabi (saw) came to Al-Madinah whilst they were practising forward selling in respect to the fruits for a year and two years. So he (saw) said:

مَنْ يُسَلِّفَ فِي ثَمَرٍ ، فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ ، وَوَزْنٍ مَعْلُومٍ ، إِلَى  
أَجَلٍ مَعْلُومٍ

**Whoever does forward selling in dates then let him do so for a known measure (quantity), a known weight and for (until) a known time** (Narrated by the five, At-Taaaj: 2/197).

3 – The 'Urf, in the opinion of those who upheld it, returns to a considered (Mu'tabar) Daleel Shar'iy like the Ijmaa' and the Masaalih Al-Mursalah. Included within the 'Urf that returns back to the Ijmaa' is the Istisnaa' (asking someone to manufacture something on their behalf) and entering the baths. The practise of an 'Urf took place in respect to both of these without any rebuke and so it has occurred by way of Ijmaa' whilst Al-Ijmaa' is considered (Mu'tabar).

4 – The Fuqahaa's usage of the 'Urf throughout different eras and times and their consideration of it within their Ijtihadaat represents a Daleel for the correctness of its consideration. That is because their utilisation of it is equal to the level of the Ijmaa' As-Sukootiy and as such their consideration of it as a Daleel is established (or proven) by Al-Ijmaa'.



## **The conditions of the ‘Urf Al-Mu’tabar (the custom that is to be given consideration)**

For the ‘Urf to be given consideration and for Ahkaam to be built or based upon it, the following have been stipulated as conditions:

- 1 – That it is not contrary to the Nass (text) where it represents a Saheeh ‘Urf like the permissibility of Istisnaa’ (ordering a thing to be manufactured) and is not a Faasid ‘Urf like managing alcohol at Waleemahs (celebration dinners).
  
- 2 – That the ‘Urf is Muttarid (general) or Ghaalib (predominant) meaning that the ‘Urf is widespread amongst its people, well-known to them and acted upon by them. The predominance means that the majority of the people act in accordance to it.
  
- 3 – That the ‘Urf had arisen prior to the time of acting upon it and then the ‘Urf continues until its time so that it proceeds hand in hand with it simultaneously. That means that at the time of the conduct, the ‘Urf is being acted upon.
  
- 4 – That there is no speech or action that establishes the opposite of the ‘Urf. This would be like if it was from the ‘Urf that the fees of exporting were upon the buyer whilst the two contracting partners agreed for it to be upon the seller. In this case the ‘Urf would be dropped and what the two contracting parties had agreed would be taken. The Qaa’idah in this case according to them states: ‘That which is established by ‘Urf without mention is not established if the contrary has been stated’. This is taken from the ‘Qawaa’id’ (principles) of ‘Al-‘Izz Bin Abdus Salaam volume 2 page 178.

## The opinions of the ‘Ulamaa in regards to Al-‘Urf

The ‘Ulamaa who have said that Al-‘Urf is a Masdar (source) for the Islamic legislation acknowledge it as a Daleel in the case where there is no text (Nass) from the Kitaab or the Sunnah. If the ‘Urf was contrary to the Kitaab or the Sunnah, then it is rejected and not taken.

The Maalikiyah and Hanafiyah utilised the ‘Urf in other than the place of the text i.e. where there a Nass (text) for the Hukm (judgment) upon a reality from the realities does not exist. The ‘Urf in their view is that which the people have made habitual and become accustomed to in their Mu’aamalaat (societal transactions) and violating the considered ‘Urf, in their opinion, leads to difficulty and hardship. This is based upon the statement of Allah Ta’Aalaa:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

*And He has not placed upon you in respect to the Deen any hardship/ difficulty (Haraj) (Al-Hajj 78).*

For that reason, the ‘Ulamaa of the Maalikiy and Hanafiy Madh’habs said: The established (matter) by the Saheeh ‘Urf and not the Faasid is established by a Daleel Shar’iy.

The Shaarih (explainer) of the book: ‘Al-Ashbaah Wa-n-Nazhaa’ir’ said: “The established (matter) by ‘Urf is established (proven) by a Daleel Shar’iy.

As-Sarkhasy (rh), who is from the Hanafiy Madh’hab, said in ‘Al-Mabsoot’: “The established (matter) by the ‘Urf is like the established (matter) by text (An-Nass)”. The meaning of this statement of his indicates that the established matter by the ‘Urf is established by a Daleel that is other than the text (Nass).

The Fuqahaa' of the Hanafiyah have settled to leave the Qiyaas if it opposes the 'Urf and they have called that 'Istihsaan Al-'Urf'. They said that the 'Urf specifies (Takhsees) the 'Aamm (general) if the general text was Zhanniy (indefinite). An example of leaving the generality in the Zhanniy text for the sake of the 'Urf is that it was related that the Nabi (saw) forbade the sale that was accompanied by a Shart (condition). However, despite that, the majority of the Hanafiyah and Maalikiyah permitted every Shart (condition) that the 'Urf has given consideration to and even if that condition was linked with the trade.

The Fuqahaa have also sought judgement in the 'Urf in respect to the the Muwassa' (broad/wide) and the Mudayyaq (narrow). So the Ahnaaf, for example, held that if the trader sells something in the market to someone else and the two contracting parties have not expressed explicitly whether the cost is to be brought forward or delayed, whilst it was known by way of custom that the seller would take a known cost every Jumu'ah, then the payment will be made upon that basis without the need for elaboration, in accordance to the 'Urf (custom).

Ash-Shaafi'iyah held that if a person swore an oath not to eat eggs, he would not have broken his oath if he had eaten fish eggs because the name of 'egg' is not applied to them in accordance to the 'Urf.

Ibn ul-Qayyim Al-Hanbaliy authored a subject under the title: "The changing of the Fatwaa in accordance to the change of the 'Urf" within his book 'A'alaam Al-Muwaqqi'een'. He mentioned within it a number of examples to show the 'Urfi (customary) consideration which included amongst them: "That if a man was to swear an oath that he would not ride a Daabbah (four-legged animal) whilst it was known in accordance to the 'Urf (custom) of that land which he was

from that the word ‘Daabbah’ refers to the donkey specifically, then he would not have broken his oath by riding a horse or a camel”.

And Ibn ‘Aabideen said in his book “The spread of ‘Urf in respect to basing some of the Ahkaam upon the ‘Urf: “If the ‘Urf goes against the Daleel Ash-Shar’iy from every perspective then it is undoubtedly rejected, like Ribaa or the man wearing gold. If it does not oppose it from every angle in the case where the Daleel has been mentioned generally and the ‘Urf has then opposed it in some of its individual elements (that fall under its generality), then the ‘Urf is Mu’tabar (considered) if it was general and specifies the generality of the Daleel”.

Al-‘Izz ud-Deen Abdis Salaam mentioned that the consideration of ‘Urf is apparent in the issues (Masaa’il) dealt with by the Fuqahaa if it was Fi’liy (action based) i.e. Whether they are ‘Aamm (general) or Khaass (specific).

### **Aqsaam (categories of) Al-‘Urf**

The ‘Urf is either a Faasid ‘Urf which is not taken, or a Saheeh ‘Urf which is divided into two types: Qawliy (speech based) and ‘Amaliy (practical/action based). Each of these is further divided into the ‘Aamm (general) and the Khaass (specific).

1 – Al-‘Urf Al-Qawliy which is divided into the ‘Aamm and the Khaass:

- As for the ‘Urf Al-Qawliy Al-‘Aamm then this is like the usage of the Lafzh (wording) ‘Ad-Daabbah for every animal other than the human being whilst the Lafzh (worded expression) was originally placed down to indicate everything that moved upon the face of earth including the human.

- As for the ‘Urf Al-Qawliy Al-‘Khaass, then this is what is specific to a particular category or type from the ‘Uloom (sciences) like the agreed upon terminology (Istilaah) employed by the scholars of Arabic Nahw and Sarf (i.e. grammar). This would include the terms Al-Mubtada’, Al-Khabar, Al-Jaarr, Al-Majroor and Al-Maf’ool Al-Mutlaq, for instance. Or the Istilaah (terminology) used and adopted by the scholars of mathematics, physics and chemistry amongst other sciences.

2 – Al-‘Urf Al-‘Amaliy which is also divided into the ‘Aamm and the Khaass:

- As for the ‘Urf Al-‘Amaliy Al-‘Aamm, then this is what the people of a land are accustomed to as a whole practically in action. This is like entering the bathrooms without specifying the specific length of time that will be spent inside of them or like the people being accustomed to trade in practise (by actions) without the worded expressions of offer and acceptance. This would be where one of them would take a loaf from the seller and then give him two Qirsh without either of them speaking.

- As for the ‘Urf Al-‘Amaliy Al-Khaass, then this is like people in some cities or towns being accustomed to the seller giving an increase to the buyer above the amount agreed upon between them. This would be for instance like if for every tonne purchased of the goods, the seller would increase the amount by ten kilogrammes. Or it is like what the people are accustomed to doing in respect to the family of the wife presenting breakfast to the new husband and wife on the first morning that they awoke as husband and wife.

## Examples of the application of working with Al-‘Urf

We have mentioned practical examples of the utilisation of the ‘Urf (custom) in accordance to what the previous Fuqahaa who considered the ‘Urf to be a Daleel mentioned and the following are some more examples:

- The people being accustomed upon the one proposing presenting the one he has proposed to clothing or something similar which is considered as a gift and not part of the dowry (Mahr).
- The people of Baghdad and some of the Arabs being accustomed to providing lunch to workers undertaking building work in their homes or workers fixing their upholstery etc.
- Some people being accustomed to wearing black during the mourning period and particularly women.
- The Muslims being accustomed to stopping work after Salaat ul-Jumu’ah and similarly the suspension of work in government departments on the day of Jumu’ah even though Allah (swt) said:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ

*And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah (Al-Jumu’ah 10).*

- The people being accustomed to setting the costs of public transport and not bargaining over its amount whilst such bargaining occurs if the means of travel was private and is not used except by its owner himself.

## **The ‘Urf is a source for the man-made laws**

The ‘Urf is what the society is accustomed to, made habitual and proceeds upon in its life in terms of speech and action and it represents the repetitive custom of the society.

Some of the Fuqahaa of the Muslims like Al-Maalikiyah and Al-Hanafiyah counted it as a Daleel for ‘Tashree’ (making legislation) in the case where there is no Nass (text) (applying) upon a (given) reality from amongst the realities.

However, the ‘Urf in respect to non-Muslims represents a fundamental and main source for the man-made law.

The Westerners, in general, set the laws that regulate their life and their societal relationships and treat the problems arising amongst them based upon the ‘Urf or based upon what they have become accustomed to in terms of customs and traditions.

Consequently, it is the ‘Urf that determines that a certain matter, action or speech is permissible and so the person is not prevented from undertaking that. Just as the ‘Urf determines that a particular matter, action or speech is impermissible and as such the person must avoid it.

It is upon this foundation or basis that their Ahkaam (rulings) have become open and susceptible to change, difference and contradiction in accordance to the change in customs and their differing.

Therefore, you find that the same matter is permissible with a certain people whilst it is impermissible with another and what is permissible in a certain time is impermissible in another time.

For example, the House of Commons in Britain, which represents their legislative authority, made homosexuality permissible in recent

years whilst this ugly act had been forbidden previously. It made it permissible based upon the ‘Urf that has prevailed and dominated over the British society in recent times.

Due to this the Ahkaam that have been built upon the premise of the ‘Urf revolve with it wherever it revolves and a matter becomes invalid when the ‘Urf invalidates it. Consequently, if the ‘Urf and ‘Aadah (custom and norm) change and that Makrooh (hateful matter) becomes Mahboob (loved), the man-made laws then make it permissible (or legal). Similarly, if that liked matter becomes hateful, it is forbidden.

For this reason, we notice that changes and adjustments take place in respect to the man-made laws from one time to another so that they are in line with the customs and norms of the people.

The Siyaadah (sovereignty) in the democratic system therefore belongs to the nation (or people) and its Siyaadah includes choosing the laws that they wish and which agree with their customs.

This is whilst the Siyaadah in Islaam belongs to the Shar’a (Islamic legislation) and the Muslims are obligated to take their Ahkaam (rulings) from the Shar’a. Allah Ta’Aalaa says:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*Then if you differ in anything amongst yourselves, refer it to Allah and His Messenger (An-Nisaa’ 59).*

Referring to Allah (swt) and His Messenger (saw) means referring to the Kitaab of Allah and the Sunnah of His Messenger.



The scholars of man-made laws have stipulated conditions related to the validity of the ‘Urf and acting in accordance to it. They are as follows:

1 – That it is well met and here they mean that the ‘Urf realises a public (general) benefit. That is because their criteria in life is to realise the greatest portion of material benefit for the greatest number of the individuals of the society.

2 – Justice and they mean by this that the ‘Urf does not oppose the prevailing concept of justice within the society. So an example of justice in their view is that the woman takes the same amount from the inheritance as the man in the case where a will has not been written.

3 – That the ‘Urf is general and they mean by this that it is general in respect to the place in which the conduct occurs or that it is general in respect to the people that it occurs amongst. This is like the manufacturing and professional customs and this is called the specific (or special) custom.

4 – That the ‘Urf is not contrary or in opposition to a text from the texts of the constitution even though the constitution states that the custom is to be taken.

### **My opinion in respect to Al-‘Urf**

Some of the Mujtahideen consider the ‘Urf to be a Daleel from among the Adillah Ash-Shar’iyah and take a lot of the Ahkaam Ash-Shar’iyah from it. They do that based upon the following speech of Allah Ta’Aalaa to prove its legitimacy as an evidence:

خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

*Show forgiveness, command what is good (Al-'Urf), and turn away from the ignorant (Al-A'araaf 199).*

They also cited a number of Masaa'il (issues) and Ahkaam that the 'Urf was made a Daleel Shar'iy for.

The invalidity of their opinion is summarised in the following points:

1 – The Aayah that they have used as evidence for the Hujjiyah (validity) of the 'Urf has no relationship to it. That is because the Aayah is Makkiyah and from Soorah Al-A'araaf. The norms and customs of the people were Jaahil and contrary to Islaam. The Amru Bil-'Urf mentioned in the Aayah means ordering what is Jameel (beautiful and good) from amongst the actions in the case where the 'Urf is the Hasan (good) action and the Hasan is that which the Shar'a has designated as being Hasan. The Hasan does not represent that which existed in terms of the actions of Jaahiliyah like burying the daughters alive, Ribaa, Zinaa or drinking alcohol for example. Consequently, Allah (swt) is requesting the Messenger (saw) to command them with the good action that the Shar'a has demanded from them like the worship of Allah, being kind to the parents and feeding the poor etc.

2 – As for the Hadeeth that they used as proof and evidence to support the 'Urf being a Daleel Shar'iy which is:

مَا رَأَى الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ

**What the Muslims have seen as Hasan (good) then it is Hasan (good) with Allah**

This is a Qawl (speech) attributed to 'Abdullah Ibn Mas'ood (ra) and is not a Hadeeth. Consequently, it cannot be used as a proof and

additionally it has no relationship to the ‘Urf because the text states: ‘What the Muslims have seen...’ and not what they have become accustomed to and made habitual amongst themselves.

3 – As for the actions that the Messenger of Allah (saw) approved of which were from the customs and norms like the Mudaarabah partnership, Al-Istisnaa’ (ordering the manufacture of a thing) or some of the types of trade, then acting by them is considered to be acting in accordance to the Daleel Ash-Shar’iy. That is because it represents the Iqraar (approval and consent) of the Messenger (saw) whilst it does not represent acting in accordance to the ‘Urf or ‘Aadah (norm). That is because the Sunnah At-Taqreeriyah (approval and consent) is a Daleel Shar’iy.

4 – In regards to what the Fuqahaa considered to represent a Hukm Shar’iy based upon the ‘Urf Al-Qawliy (speech custom) then some of this relates to the Istilaah (terminological convention) and some of it is related to the measuring or evaluating of things (Taqdeer):

A – As for what relates to the Istilaah (terminology) then there is no doubt in respect to its consideration amongst those who made the terminology and this is not related to providing the Hukm (judgment) upon things or matters but rather it relates to providing and designating specific names for meanings.

An example of this is what the people of language have become accustomed to in respect to utilising the name ‘Daabbah’ for the non-human animals although in its original linguistic provision it had covered everything that moved upon the earth including the human. This therefore represents what is called a Haqeeqah Lughawiyah ‘Urfiyah (A customary linguistic reality) which is taken into consideration in respect to applying the Ahkaam Ash-Shar’iyah.

Consequently, if a man was to swear an oath that he would not give water to a Daabbah he would not have broken this oath if he was to provide water to a human being. That is because the Istilaah Al-Urfiy (Customary terminological convention) has excluded the human from the Lafzh (wording) ‘Ad-Daabbah’. We will examine this subject in detail Inshaa Allah in the second part of this book which deals with and examines the subject of the Arabic language.

B – As for the Taqdeer (evaluating and measuring) then this matter returns to the people of expertise whether it relates to Nafaqah (spending) or the Mahr Al-Mithl (dowry of like) or Ajr ul-Mithl (wage of like) or other than these.

The consideration of the Taqdeer (evaluation) comes only from the Shar’a and it does not come from the ‘Urf. That is because Shar’iyah texts have come making the evaluation (Taqdeer) of that belong to the Ma’roof (what is known) amongst the people whilst these texts did not come for the ‘Urf to pass judgment in everything or every matter. So when Allah (swt) said:

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ

*And due to them (wives) is similar to what is expected of them, according to what is (known to be) reasonable (Al-Ma’roof) (Al-Baqarah 228).*

What is meant by Ma’roof here is that matter which is known to be accustomed to in relation to the reality of the wife; is she from amongst those who is served by others or is she the one who serves her husband. So it relates to whether this woman, in accordance to her reality present within the married home, is a Sayyidah (mistress) who is served or from those who serve her husband. So the same rights that are obligatory to others like her are obliged in respect to her. Therefore, if she is a Sayyidah who is served, the husband (if capable) will bring a servant to serve her and if she was not like that

and was capable of serving her husband, the husband is not obliged to bring in a servant.

And when Allah (swt) said:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

*Upon the father is the mothers' provision and their clothing according to what is (known to be) acceptable (Al-Baqarah 233).*

The Ma'roof here means that the provision of their sustenance and clothing is required to be in accordance to those women who are similar to her. The evaluation of these matters would fall to the people of expertise who are aware of the amount of Nafaqah (spending) that is required or necessary for a particular woman. Each is evaluated in accordance to the level of their living in the society and the family that they live amongst.

The Istilaah (terminology) and Taqdeer (evaluation) are therefore necessary in order to realise the Manaah (reality) of the Hukm. They are required to make clear the reality of the thing, matter or action that is intended to pass judgment upon. They do not as such represent a source for the Daleel of the Hukm.

So whoever took the Istilaah and the Taqdeer to be used to explain and evaluate the meanings and matters during the process of investigating and realising the Manaah of the Hukm, then there is no issue with that. Indeed, they are both necessary for every Mujtahid in relation to deducing the Ahkaam Ash-Shar'iyah.

5 – As for the 'Urf Al-'Amaliy (action based custom), which are the repeated actions, then they must submit to and be subservient to the Shar'a. That is because it is decisive and definite that it is obligatory for the Muslim to make his actions proceed in accordance to and be

regulated by the commands of Allah Ta’Aalaa and what He has forbidden, whether they have been repeated or not been repeated.

Consequently, it is obligatory for the customs and norms to be ruled over by the Shar’a whilst it is impermissible for the ‘Urf to be considered to represent a Daleel Shar’iy.

6 – The origin of the Adillah is the Wahi represented in the Kitaab and the Sunnah and these two represent the two main or fundamental evidences. In addition, that which has been proven by these two to be a Daleel Shar’iy, like the Ijmaa’ and the Qiyaas, are considered to be a Daleel Shar’iy. In contrast, that which is not proven by these two to be a Daleel Shar’iy is not a Daleel Shar’iy.

And the ‘Urf has not been deduced from a Shar’iy text and the texts from the Qur’aan or the Sunnah have not guided to its Hujjiyah (validity as a proof and source of evidence). It is therefore not a Qaa’idah Shar’iyah and not a Daleel Shar’iy Ijmaaliy (source of evidence like the Kitaab, Sunnah, Ijmaa’ and Qiyaas).

## The Eighth Daleel

### Al-Istishaab (الإِسْتِشْهَابُ)

#### **Its definition:**

Al-Istishaab linguistically means (to accompany/associate). It is said that you 'Istishabta' a condition or state (of being) if you held on to it. And Al-Istishaab is (also) the seeking of companionship and remaining firm upon it.

#### **Al-Istishaab in accordance to the scholars of Usool:**

It is the Hukm (judgement) by affirming a matter in the present time based upon its affirmation in the past.

#### **The explanation of that:**

In respect to every matter that was confirmed to be present and then doubt occurs in respect to it no longer being present, then the origin is that it remains (in presence). So for example, the one who marries upon the basis that the woman was a virgin and then claims after having relations with her that she was not will not be believed except by a Bayyinah (valid testimonial proof/evidence). That is because the original position is that of virginity because that was affirmed and established since the time of her birth. As such her being a virgin accompanies (Istishaab) her until the time that she marries.

Another example relates to the one who is known to have been alive and so is judged to be remaining alive as long as a Daleel does not exist establishing the contrary to that.

Every matter about which its non-existence is known and then doubt arises in respect to its existence, then the origin (Al-Asl) is the continuance of the condition of non-existence.

For example, if someone purchases a dog upon the basis that the dog is skilled in hunting and then claims after that that he discovered that the dog had not been trained, he is believed. That is because the Asl (origin) is that the dog has not been trained to hunt from its birth and as such the non-existence or absence remains as Istishaab.

Similarly, if a person claims that he has married a woman and she denies his claims, he is not believed, upon the basis of Istishaab, as long as he does not produce a Bayyinah (legitimate evidence) to prove that. That is because the Asl (origin) is the non-existence of the marriage.

The same applies in all matters where the origin continues to remain until a Daleel establishes the contrary to that.

### **Hujjiyat (proof of validity of) Al-Istishaab and the Adillah for utilising it**

1 – The Hukm Ath-Thaabit (established ruling) in the past remains as long as the change of that Hukm has not been confirmed. That is because the matter established by certainty (Yaqeen) does not go away except by certainty.

So the one who makes Wudoo' for the Salaah and then has doubt in respect to breaking the Wudoo', prays with his Wudoo' as much as he wishes to pray. That is because it has been related that a man came to the Messenger of Allah (saw) with doubt and said: "The person perceives that something happens in his Salaah". He (saw) said:



لَا يَنْصِرَفَنَّ حَتَّى يَسْمَعَ صَوْتًا أَوْ يَجِدَ رِيحًا

**“He does not (with emphasis) leave until he hears a sound or finds a smell” (Related by Muslim).**

Therefore, the continuance or remaining of a matter that has been determined to be present remains predominant over its absence whilst doubt in respect to it does not remove it. This is what the Hadeeth of the Messenger of Allah (saw) has guided to and as such the Istishaab of the Wudoo’ from the past is not removed by doubt (Shakk) in the present but rather it remains present. Then if the person is certain about the occurrence of that which invalidates it, it is no longer present.

2 – The Messenger of Allah (saw) said:

إِنَّمَا أَنَا بَشَرٌ وَإِنَّهُ يَأْتِينِي الْخَصْمُ فَلَعَلَّ بَعْضَهُمْ أَنْ يَكُونَ أَبْلَغَ مِنْ  
بَعْضٍ فَأَحْسَبُ أَنَّهُ صَادِقٌ فَأَقْضِي لَهُ ، فَمَنْ قَضَيْتُ لَهُ بِحَقِّ مُسْلِمٍ  
فَإِنَّمَا هِيَ قِطْعَةٌ مِنَ النَّارِ

**“Verily I am only a man and disputes are presented before me. So it might be that some of them are more eloquent than others and so I believe him to be truthful and judge in his favour. So the one whom I have judged in his favour at the expense of a Muslim’s right then it will only be a piece of the hell-fire...”  
(Al-Bukhari)**

This establishes passing judgment upon what is apparent i.e. that which is heard in the dispute. The apparent matter is that which the Hukm of a matter has been confirmed for it in the past and so the Hukm must be in accordance to what is apparent. If someone then claims the contrary to what is apparent, then he must bring a Daleel

that supports his claim. Otherwise the matter stays as it was in the past in respect to the Hukm and this represents the reality of Al-Istishaab. It is the passing of judgment upon a matter in the present based upon its affirmation (or having been established) in the past i.e. previously.

3 – If that which has been established or confirmed in the past in terms of the existence of a matter, description or thing, and its disappearance has not become apparent, then it is necessary by Daroorah (necessity) for to be thought (Zhann) to be remaining in the present time, as it had been before that. This is in the case where working with Zhann in respect to the Ahkaam Ash-Shar'iyah is Waajib in the case where the Ahkaam Ash-Shar'iyah are built upon Ghalabat Azh-Zhann (preponderance/what is most likely) and where Al-Istishaab represents passing the Hukm upon the matter in the present based upon its confirmation and having been established in the past.

These three matters represent a Daleel for the Istishaab being a 'Qaa'idah Shar'iyah' that is to be utilised. This means that it is permissible for branching (At-Tafree') to take place upon it. Consequently, in regards to that which its presence or existence has been established or affirmed and its disappearance has not become apparent, then its remaining or continuance is preponderant (Ghalaba 'Alaa zh-Zhann).

For that reason, the absence of An-Naskh (non-abrogation) is the original position (Al-Asl) in respect to the Sharee'ah and the claim for the occurrence of abrogation must have a Daleel that indicates it. This is the essence of Al-Istishaab.

Therefore, in all matters the origin continues until a contrary Daleel is established.

If the Daleel establishes a Hukm of WujooB (obligation), Nadb (recommendation) or other than these, then this Hukm remains constant and established (Thaabit). If another Hukm is claimed that is contrary to the one established by the Daleel then there must be a Daleel to indicate that. If there is no such Daleel the Hukm remains upon the Asl (origin) in accordance to what the Daleel brought.

## **The opinions of the ‘Ulamaa in respect to Al-Istishaab**

Firstly: The majority of the ‘Ulamaa including the Hanaabilah, the majority of the Shaafi’iyah in addition to a section of the Maalikiyah and the Zhaahiriyah and some of the Hanafiyah, viewed that Al-Istishaab represents a Hujjah (legal proof) whether this was in respect to affirmation or negation because they viewed that the Hukm established in the past remains as long as the changing of the Hukm has not been proven or established. Therefore, the missing person is judged to be alive until the contrary to that, which is death, has been proven, due to the carrying forward and according to the continuance (Istishaab) of his life that had been affirmed in the past. For that reason, his wealth and property is not inherited, his wife cannot remarry and he would, for example, inherit from his father if he passed away and would receive his rightful share from the inheritance.

Similarly, if a person claimed that he had money or property with another person but he did not bring a Daleel for that and that person did not admit that he had the property, then the Asl (original position) is Baraa’at Udh-Dhimmah (quittance/innocence of liability) as long as no Bayyinah (testimonial evidence) exists establishing that he had taken the property.

Secondly: Most of the Mutakallimeen and some of the Hanafiyah held that Al-Istishaab does not represent a Hujjah. This is because

they viewed that the remaining of the Hukm upon what it is needs a Daleel to support it. That is because the Daleel establishing the Hukm for a reality from the realities is a Daleel for the existence of the Hukm and its establishment but not for its continuance and its remaining. Its continuance and remaining, in their opinion, requires another Daleel other than the one for its existence. So for instance, the missing man in the previously mentioned example, requires after a certain period, an evidence indicating that he is still alive. It is therefore a Hujjah of negation (Nafy) and not a Hujjah for affirmation (Ithbaat). This means that the established condition by way of Istishaab negates that which is contrary to it but it does not establish a new Hukm that the Daleel has not established. Therefore, if the inheritors demand the division of the missing man's wealth and property we refuse their request just as we refuse the request of his wife to remarry. That is due to the Ghalabat Azh-Zhann in respect to him being alive through Istishaab and that continues until contrary to that is proven in reality (Haqeeqatan) or in respect to the Hukm. However, from another angle, his right to receive inheritance from the one he inherits from is not established if he dies which is contrary to the view of those who say that Al-Istishaab is a Hujjah for (both) the negation and the affirmation which we mentioned earlier. That is because the missing person, in their opinion, is treated and dealt with in accordance to the one who is living in respect to his rights that are his and the obligations that are upon him.

### **At-Tarjeeh (outweighing the arguments)**

The Raajih (the outweighing or stronger) view is the opinion of the first group who state that Al-Istishaab is a Hujjah in the case or situation of negation and the case of affirmation. Therefore, that which the Shar'a has indicated to be affirmed remains so as long as there is no Daleel that has been mentioned that negates it. Similarly, that which the Shar'a has established to not be present remains non-

existent as long as there is no Daleel to establish or affirm its existence.

## **The Ahkaam which are based upon Al-Istishaab**

Al-Istishaab is necessary for the Faqeeh and the Mujtahid and many Ahkaam come about through it. Al-Qurtubiy said: “To uphold Al-Istishaab is necessary for everyone because it represents the Asl (origin/basis) that the Prophethood and Sharee’ah is built upon. If we had not held (the view of) the continuance of the condition of those Adillah then no knowledge of those matters would have been attained”.

Therefore, in all matters, the Asl (origin) carries through and continues (Istishaab) until a Daleel is established contrary or in opposition to that. However, the ‘Ulamaa categorised Al-Istishaab in regards to the previous Ahkaam for the issues into four categories:

### **1 – Istishaab of the Hukm of Al-Ibaahah Al-Asliyah (original permissibility):**

The Qaa’idah Al-Usooliyah establishes that:

الأصل في الأشياء الإباحة ما لم يرد دليل التحريم

The origin in respect to the things is permissibility as long as no evidence for its prohibition has been cited.

That is because Allah (swt) said:

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ جَمِيعًا

*It is He who created for you all that is on the earth (Al-Baqarah 29).*

And He Ta'Aalaa said:

وَسَخَّرَ لَكُمْ مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِنْهُ

*And He has subjected to you whatever is in the heavens and whatever is on the earth - all from Him (Al-Jaathiyah 13).*

This Taskheer (putting at disposal to be used) mentioned in the above Aayah (وَسَخَّرَ) cannot occur unless the benefiting by these created things is permissible (Mubaah). However, Allah (swt) exempted or excluded from these created things, things that he has made Haraam: That includes the carrion, blood and flesh of the pig amongst other prohibited things.

Example:

If a Faqeeh is asked about the Hukm (legal ruling) of a thing from amongst things in respect to it being Halaal or Haraam, then if he does not find a Hukm for its prohibition it would then be Mubaah in following (Istishaab) of the original rule of permissibility that has been mentioned in the Aayaat and the Ahaadeeth.

This category of Al-Istishaab has been agreed upon by the Jumhoor (vast majority) of the 'Ulamaa.

## **2 – Istishaab Al-Baraa'ah Al-Asliyah (original non-liability) or al-'Adam Al-Asli (original non-existence)**

It is known that the Asl (origin) in respect to the Dhimmah of the Insaan (liability/responsibility of the person) is its non-preoccupation in relation to the right of anybody unless a Daleel is established over it.

Example:

If a person claims that he has a debt owed to him from somebody and that person denies the debt, then it would follow the Istishaab of Al-Baraa'ah Al-Asliyah (original innocence) which is the freeing of his Dhimmah (liability) from the debt. This is unless the claimant proves the existence of the debt by way of a Bayyinah (testimonial evidence). And if the one who has the claim made against him is requested to swear an oath (Hilf) but refuses, judgment is not passed against him because of his refusal. That is because the origin or original position is being free of liability and the Yameen (swearing of an oath) is only upon the claimant and then if he does that the one being accused or who has a claim against him is judged against (i.e. the verdict is passed against him).

Another example:

If the partner claims that he has not received profit from the trade that has been conducted, he is believed in his speech because the profit is a newly added matter upon the original non-existence unless a Bayyinah (evidence) is brought confirming the gaining of profit.

### **3 – Istishaab of that which the evidence has upheld its affirmation**

This is the Istishaab of the Wasf Al-Muthbat (the affirmed or proven description) of the Hukm until the contrary of that Wasf is established or proven.

Example:

If the ownership of a certain property has been proven or affirmed for a person, the judgement of the continuation of this ownership is

passed as long as the Daleel has not indicated its disappearance or removal.

Another example:

If a person makes Wudoo' for the performance of the prayer and then has a doubt in respect to having broken or invalidated his Wudoo', he prays with his Wudoo' due to Istishaab of that which the Daleel has established. That is until the Daleel is established that indicates the invalidation or breaking of his Wudoo'.

#### **4 – Istishaab of the Hukm of Al-Ijmaa' in the context of dispute**

If Ijmaa' occurs upon a Hukm of a particular Mas'alah (issue) and that Siffah (descriptive element/attribute) that is in the issue changes, then does the Hukm of the issue remain as it is? They (the 'Ulamaa) have differed in respect to that.

Example:

What is the Hukm if the one who has made Tayammum due to the absence of water discovered water during his prayer? And how should he act in respect to completing his Salaah or not completing it?

A – Abu Haneefah views that his Salaah is invalidated upon the sighting of the water and Wudoo' is necessary for him and to resume his Salaah. Abu Haamid Al-Ghazaaliy, Abu At-Tayyib At-Tabari, Ibn As-Sabaagh and other Fuqahaa' also agreed with this opinion.

B – As for Ash-Shaafi'iy then he viewed that his Salaah is Saheeh (valid) and the sighting of the water during his prayer has no impact or effect upon his Salaah. This opinion was also upheld by Dawood Azh-Zhaahiriyy, Al-Aamadiyy and Ibn ul-Haajib amongst others.



At-Tarjeeh (outweighing):

- The invalidity of At-Tayammum when water is present of the one who has made Tayammum due to the absence of water is established by the text and not by Ijmaa'.

- When the one who made Tayammum entered into the state of the Salaah he was continuing upon (Istishaab) the case of the absence of the water and so he began his Salaah having met the conditions of its validity in full (completely) and he does not exit from his Salaah apart from by that which invalidates it. Seeing water does not break or invalidate the prayer and the prayer is one continuous action beginning with the Takbeer Al-Ihraam and ending with Salaam. Therefore, his performance of the Salaah counts for him as long as he had fulfilled the conditions for its validity.

### **Al-Istishaab and the man-made laws**

Al-Istishaab is given consideration (or weight) within the man-made laws and this is apparent in the following matters:

1 – Al-Istishaab is taken in respect to the penal code and it acts as an Asl (origin) within it because the matters remain upon Ibaahah (permissibility) as long as a text is not brought establishing or proving the punishment. Also, the accused is innocent until an evidence is brought to prove the accusation (or guilt) or until a text is issued for the punishment. These matters are based upon Al-Istishaab and this is Istishaab Al-Baraa'ah Al-Asliyah (The continuance of the original non-liability).

2 – Many of the rulings of the man-made law are built upon the Asl (origin or basis) of permissibility so for instance the issue of the

legality of the contract between two contracting parties is based upon the basis of the original permissibility in respect to contracts.

Therefore, the origin amongst the man-made law makers in respect to contracts is permissibility and is committed to until a text is established that prevents or forbids that.

3 – Article 180 from the code related to the arrangement of tribunals in Egypt was based upon the basis of Al-Istishaab and it states: “The testimony of the Dain (debt) is sufficient and even if its remaining (continuance) has not been declared in respect to the one owed, and similarly in respect to the testimony of the ‘Ain (eye)”.

And article 181 states: “The testimony by Wasiyah (will/testament) or Al-Iesaa’u (disposition) is sufficient even if the insistence of the one granting the Wasiyah had not been declared until the time of the death”.

4 – The following Qawaa'id (principles) have been based upon Al-Istishaab:

- The origin remains upon what it was upon until its change has been established (or proven).

- The origin in respect to things is Ibaahah (permissibility) and this comprises in their view both the things and the actions.

- That which is established or proven by Yaqeen (certainty) is not removed (or cancelled) by Shakk (doubt).

- The original position (Asl) in respect to the person is Baraa'ah (non-liability or innocence).

## My opinion in respect to Al-Istishaab

The truth is that Al-Istishaab does not represent a Daleel upon the Hukm because the Daleel is that which the Hukm for a matter or an action is taken from. The Hukm is either Fard, Mandoob, Mubaah, Makrooh or Haraam and no Hukm is taken from Al-Istishaab. Rather Al-Istishaab means the remaining or continuance of the Hukm that had been established by an evidence previously which was not in origin Al-Istishaab. That is because Al-Istishaab doesn't establish a new Hukm but rather the previous Hukm established by its legitimately recognised (Mu'tabar) Daleel continues by way of Istishaab.

Therefore, it doesn't in itself represent a Daleel for Fiqh or a Masdar (source) from which Ahkaam are extracted. It rather only represents a Qareenah (linkage) for the continuation of the previous Hukm that had (already) been established by the Daleel.

Consequently, Al-Istishaab is not a Daleel Shar'iy; meaning a Masdar (source) from the Masaadir of the legislation in Islaam. Rather, it is a Qaa'idah Shar'iyah (principle) that the Mujtahid utilises and relies upon when deducing some of the Ahkaam Ash-Shar'iyah just like the principle: 'There is no harming and no reciprocation of harm'.

And this principle: 'Qaa'idah Al-Istishaab' is deduced from the Adillah Ash-Shar'iyah that we have mentioned in the section related to the Hujjiyah (proof of validity) of Al-Istishaab.

Considering Al-Istishaab to be a Daleel like Ijmaa' As-Sahaabah or Al-Qiyaas represents an overstepping of bounds that has no justification for it as it has not been proven or established to be a Daleel Shar'iy (i.e. source of evidence) by the Kitaab nor the Sunnah.

## Chapter Six

### The Madh'hab of the Sahaabiy (companion) and Shar'u Min Qablinaa (The law of those who came before us)

**Firstly:**

#### **Madh'hab As-Sahaabiy:**

- 1 - The meaning of Madh'hab Ash-Sahaabiy
- 2 - The opinions of the 'Ulamaa in respect to working with or utilising Madh'hab As-Sahaabiy
- 3 - Examples of the Fataawaa (verdicts) of the Sahaabah and their Ijtahaadaat.

**Secondly:**

#### **Shar'u Min Qablinaa:**

- 1 – Its meaning.
- 2 – The opinions of the 'Ulamaa in respect to using it.
- 3 – Examples of the application of Shar'u Min Qablinaa.

## The Ninth Daleel

### Madh'hab As-Sahaabiy

#### Its meaning:

Al-Madh'hab linguistically means: At-Tareeq (the way/path).

In the Istilaah (terminological convention) of the scholars of Usool it means: The path that the Mujtahid follows (or treads) in the Istinbaat (deduction) of the Ahkaam Ash-Shar'iyah from its Adillah At-Tafseeliyah (detailed evidences).

It is used to describe the host of Ahkaam that the Mujtahid deduced like the Madh'hab of Ash-Shaafi'iy, the Madh'hab of Abu Haneefah, the Madh'hab Al-Maalikiy, the Madh'hab Al-Hanbaliy and the Madh'hab of Ibn Hazm amongst others.

The Sahaabiy in the view of the majority of the 'Ulamaa of Usool is: The one who witnessed the Nabi (saw), believed in him and accompanied him for a period long enough for the word Saahib (companion) to be attributed to him in accordance to custom. So for example this would include the four rightly guided Khulafaa', Abdullah Ibn Mas'oud, Abdullah Ibn 'Abbaas and other Sahaabah who believed in him (saw), supported him, heard from him and were guided by his guidance (Radiy Allahu 'Anhum Jamee'an).

Consequently, the meaning of Madh'hab As-Sahaabiy is:

It is the host of Ahkaam that the Sahaabiy deduced where he passed verdicts with these Ahkaam and judged in accordance to them. Some of the transmitters from the Taabi'een and the Taabi' At-Taabi'een were concerned with such narrations and recording them whilst some recorded them alongside the Sunan of the Messenger of Allah (saw).

## The opinions of the ‘Ulamaa in respect to using the Madh’hab of the Sahaabiy

The ‘Ulamaa differed in respect to the Hujjiyah (evidential validity) of the Qawl of the Sahaabiy. They did not differ absolutely and the following are some details related to this:

1 – The Qawl of the Sahaabiy in respect to that which has no text (Nass) for it from the matters of the Shar’iyah that are not understandable by the ‘Aql, was considered to be a Hujjah by the ‘Ulamaa and obligatory to be worked with or utilised in accordance to the view of the Jumhoor (majority). They reason this opinion of theirs by stating that the Sahaabiy must have heard it from the Messenger (saw). The Ahnaaf presented examples of that including that which was narrated from the mother of believers ‘Aa’ishah (ra): **“The pregnancy does not remain in the stomach of the mother for more than two years”**.

2 – The Qawl of the Sahaabiy upon which agreement has taking place over it is considered to be a Hujjah Shar’iyah because it represents an Ijmaa’ of the Sahaabah. Similarly, the Qawl of the Sahaabiy for which opposition is not known is regarded to be from the Ijmaa’ As-Sukootiy which also represents a Hujjah Shar’iyah for those who uphold Ijmaa’ As-Sukootiy.

3 – The Qawl of the Sahaabiy is not considered to be binding upon a Sahaabiy like him. That is because we have seen the Sahaabah (rah) differing in matters amongst themselves in the case where the opinion or Ijtihaad of one of them was not made binding upon the other.

4 – The Qawl of the Sahaabiy about a Ra’y (opinion) and Ijtihaad: This is in which difference has taken place. Does it represent a Hujjah for those who come after them or not?

The following are the opinions of the ‘Ulamaa in respect to that:

A – The opinion of the Sahaabiy emanating from a Ra’y and Ijtihaad was considered by some of the ‘Ulamaa as a Hujjah and this included Al-Imaam Maalik, his followers and the majority of the Ahnaaf in addition to Ar-Raazi and Ash-Shaatibiy.

Those who held this view used the Adillah (evidences) related to the Hujjiyah (legal validity) of Ijmaa’ As-Sahaabah to support it. This included the Qawl of Allah Ta’Aalaa:

وَالسَّابِقُونَ الْأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ  
بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ

*And the first forerunners [in the faith] among the Muhajireen and the Ansar and those who followed them with good conduct - Allah is pleased with them and they are pleased with Him (At-Tawbah 100).*

Ibn ul-Qayyim cited numerous Aayaat and Ahaadeeth that are used to deduce the merit and favour of the Sahaabah (rah) and concluded the Hujjiyah (validity as proof) of their Aqwaal (opinions) and the obligation to follow them.

B – As for the Mu’tazilah, some of the Mutakallimeen, Ash-Shaafi’iy, Ahmad Bin Hanbal, Al-Aamadiy and Ash-Shawkaaniy, then they held that the Madh’hab of the Sahaabiy is not legally valid as a Daleel.

They used evidences for their argument which included that the Sahaabiy is a Mujtahid just like any other Mujtahid where it is possible for him to be right or make an error. The opinion of the one like this cannot be binding and as for the praise and commendation of the Sahaabah that has been mentioned in the Aayaat and the Ahaadeeth then they represent a Daleel for the Hujjiyah of their Ijmaa’ (consensus) and not a Daleel for the Hujjiyah of the opinion

of one from amongst them and his Madh'hab (i.e. host of opinions attributed to him).

Ash-Shaafi'iy said in his book 'Al-Umm':

“If it is not within the Kitaab and the Sunnah, we have gone to the statements of the companions of the Messenger of Allah (saw) or one from amongst them. Then it was to the opinion of Abu Bakr, 'Umar or 'Uthmaan when Taqleed has become most preferred or likable to us. That is if we have not found an indication in the difference that guides to the closest difference from the Kitaab and the Sunnah in order to follow the opinion that has alongside it an indicated meaning (Dalaalah)”.

The speech of Ash-Shaafi'iy here indicates that he takes by way of the Kitaab and the Sunnah and then what the Sahaabah have held a consensus upon (Ijmaa'). As for what they have differed upon then he takes from their opinions the one which is most strongly connected to the Kitaab and the Sunnah. Then if the strongest is not apparent he takes that which the rightly guided Imaams acted upon.

Ash-Shawkaaniy has said in his book 'Irshaad Al-Fuhoor' in respect to the Madh'hab As-Sahaabiy:

“The Haqq (truth or correct view) is that it is not a Hujjah (valid proof) because Allah Ta'Aalaa did not send to this Ummah except our Nabi Muhammad (saw) and we do not have other than a single Messenger and single Kitaab (book) and all of the Ummah has been commanded to follow His Kitaab and the Sunnah of His Nabi. There is no difference between the Sahaabah and those who came after them in respect to that, as all of them are Mukallifeen with the Takaaleef Ash-Shar'iyah (legally responsible for the implementation of the Shar'iyah responsibilities) and following the Kitaab and the Sunnah. Therefore, the one who says that the Hujjah is established in



the Deen of Allah ‘Azza Wa Jalla by other than the Kitaab of Allah and the Sunnah of His Messenger (saw) and what returns back to these two (sources) then he has said something in respect to the Deen of Allah that has not been proven and he would have established something in regards to this Islamic Sharee’ah as a Shar’a that Allah had not commanded and this is a mighty matter and great statement (to make)”.

### **Examples from the Fataawaa of the Sahaabah (rah) and their Ijtihadaat**

The Wahi came to an end and the Islamic Sharee’ah was completed upon the passing of the Messenger of Allah (saw). Then a group from amongst the Sahaabah went forth to provide Ahkaam Ash-Shar’iyah for the newly occurring realities. They did that through their Istinbaat (deduction) from the Aayaat of Al-Qur’aan Al-Kareem and from the Ahaadeeth of the Messenger (saw). Those Sahaabah (rah) were qualified and capable of undertaking that as they had accompanied the Messenger in his life and were living as the Wahi descended upon him. They were therefore the most knowledgeable of people in respect to the Asbaab An-Nuzool (circumstances of revelation) and in comprehending the meanings of the texts.

From amongst those Sahaabah were the four rightly guided Khulafaa’, Mu’aadh Bin Jabal, ‘Abdullah Ibn ‘Abbaas, ‘Abdullah Ibn Mas’oud, ‘Abdullah Ibn ‘Umar and Zaid Bin Thaabit (rah) amongst others.

Some of the relators from the Taabi’een and Taabi’ At-Taabi’een concerned themselves with the relation of the Ijtihadaat of the Sahaabah and the judgments they passed to the extent where some of them recorded these alongside the Sunnah of the Messenger (saw).

They were followed by some Fuqahaa and Mujtahideen who then went on to familiarise themselves with the Ijtihadaat of the Sahaabah and sought to be enlightened by their understanding of the Qur'aan and the Sunnah.

Some other Fuqahaa considered the Ijtihad of the Sahaabah and their Qawl (opinion) in respect to the Shar'a to be a Hujjah (legal proof) that it is not allowed to contravene or go against. That is because they were the closest to the Messenger of Allah (saw) and they possess in terms of sincerity, reason ('Aql) and standing that which makes them the most capable of people in respect to the knowledge of the dimensions of the Shar'a and also because the Nabi (saw) said:

خَيْرُ أُمَّتِي الْقَرْنُ الَّذِي بُعِثْتُ فِيهِمْ

**The best of my Ummah is the generation that I was sent amongst (Muslim).**

The following are examples of their Ijtihadaat and of the judgments that they passed:

1 – The Khilafah is a Shar'iy Waajib and it is obligatory to establish it within the Ummah. For that reason, when the Messenger of Allah (saw) passed away, the Muslims left him (saw) laid out upon his bed without Ghusl, Takfeen (shrouding) or Dafn (burial) and went to the Saqeehah (courtyard) of Bani Saa'idah in order to choose a successor (Khalifah) for him. So the Ansaar said to the Muhaajireen: “(Let there be) from us an Ameer and from you an Ameer (leader)”. Abu Bakr (ra) then opposed that idea because that would mean a division of the Ummah's affair and because it is contrary to the Qawl of the Messenger (saw):

إِذَا بُوِيعَ لِخَلِيفَتَيْنِ فَأَقْتُلُوا الْآخَرَ مِنْهُمَا

**If the pledge is given to two Khalifahs then kill the latter of them (Muslim).**

He said to them: “The Arabs will not be directed by other than this place – Makkah – from Quraish”. As such, he reasoned the necessity of the Imaamah and Khilafah to be within the Quraish due to the standing of the location held by the Arabs and he requested that they give their pledge of allegiance (Bai’ah) to ‘Umar Ibn Al-Khattaab (ra) and then ‘Umar saw that there was nothing for him to do except pledge allegiance to Abu Bakr (ra). Then the Muhaajiroon and the Ansaar both stretched out their hands to pledge allegiance to Abu Bakr with the Khilafah.

2 – Allah Ta’Aalaa said:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمَوْلَّاتِ فُلُوبُهُمْ

*Zakah expenditures are only for the poor and for the needy and for those employed to collect [zakah] and for bringing hearts together [for Islam] (At-Taubah 60).*

The Messenger of Allah (saw) gave to the category of those whose hearts are sought to be reconciled or softened as did Abu Bakr (ra) after him. However, when they (this category of people) came to ‘Umar Ibn Al-Khattaab for him to provide them from the wealth of the Zakaah he rejected and did not give it to them. He held the view that the text did not apply to them in his era because the provision to reconcile the hearts was due to the Islamic state being still in its early days and there had been fear in respect to the state from their power, influence and their evil (intentions/plans). This is whilst at the time of ‘Umar this ‘Illah (reasoning) was no longer present and that was due to the spread of Islaam and the increase of its strength and

might. There was therefore no longer a reason to reconcile or soften the hearts (by providing them with a provision or incentive).

3 – In the year of the drought and famine, boy servants belonging to Haatib Bin Abi Balta'ah stole a she camel belonging to a man from Mazeenah. So 'Umar brought them and they admitted it. Then he sent for 'Abdur Rahmaan Bin Haatib; so he came and he said to him: "Verily the boy servants of Haatib stole a she camel belonging to Mazeenah and they admitted it". Then 'Umar said to one of the Sahaabah: "Go and cut off their hands". Then when they had turned to go 'Umar brought them back and then said: "By Allah, had I not known that you exploited them and starved them to the point where had one of them eaten that which Allah had made Haraam it would have been Halaal for him, I would have cut off their hands. By Allah, if I haven't done that then I will impose upon you a fine that will hurt you". Then he said: "O Muzniy, how much do you want for your she camel?" He said: "Four hundred". 'Umar said: "Abdur Rahman, go and give him 800" (A summarized wording from Al-Muwatta').

So after scrutinising the issue 'Umar (ra) found that the theft in this reality was due to compulsion and their dire need for food whilst Allah (swt) has said:

فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

*But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful (Al-Maa'idah 3).*

So how could he apply the Hadd from the Hudood (set punishments) upon a person whom Allah had forgiven his sin.

4 – The Diah (blood money) is obligatory in accordance to the Shar'a upon the 'Aaqilah in some forms of killing like when it is semi intentional or mistaken. The 'Aaqilah at the time of the Messenger

(saw) were the relatives of the criminal and the individuals of his tribe.

When ‘Umar (ra) made the Dawaaween (registers plural of Deewaan) and organised the affairs of the army he made the Diyah (blood money) fall upon the people of the Deewaan (register or organisational unit) of the killer i.e. upon the mature fighting men whose names were registered in the Deewaan. The Diyah would be taken from their wages upon the basis that the Nusrah (support) had been transferred from the relatives of the killer and his tribe to the people of his Deewaan who would provide support to one another and even if they were from a number of different tribes in origin. This opinion was taken by the Hanafiyah from amongst the Fuqahaa.

5 – Al-Bukhaari and Muslim related from Ibn ‘Abbaas that he said: “The Talaq (divorce) in the time of the Messenger of Allah (saw) and Abu Bakr and two years of the Khilafah of ‘Umar was (the pronouncement of) three divorces counting as one then ‘Umar brought an end to it”. This means that he made the divorce of three times in a single sitting equivalent to the Talaq Baa’in (irrevocable divorce) (Baynoonah Kubraa). Some reasoned this by stating that the Maslahah of terminating was stronger (or greater) than the Mafsadah of Wuqoo’ (falling or occurrence [into sin]). The correct view however is that it represented the understanding of ‘Umar in accordance to his understanding of the Shar’iyah texts.

### **My opinion in respect to the Madh’hab As-Sahaabiy**

The Ra’y (opinion) of the Sahaabiy is to be viewed from the perspective of it being his Ijtihad and as such it is not used as a proof upon the basis of it being a Daleel Shar’iy. That is because Allah (swt) said:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمُ عَنْهُ فَانْتَهُوا

*And whatever the Messenger has given you take it and whatever he has forbidden you from abstain from it (Al-Hasbr 7).*

The Mafhoom (implied meaning) of this Aayah is that you do not take anything that has come to you from other than the Messenger of Allah (saw). And Allah (swt) said:

فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*Then if you dispute in any matter then refer it back to Allah and the Messenger (An-Nisaa' 59).*

Therefore, at the time of the occurrence of difference, referring back to the Kitaab of Allah and the Sunnah of His Messenger is obligatory. Referring to the opinion of the Sahaabiy or his Ijtihad or judgments that he has passed does not however fall under the meaning of referring back to Allah and His Messenger.

In addition, the Sahaabah (Ridwaan Allah 'Alaihim), agreed (Ijmaa') upon the permissibility of the Mujtahid Sahaabah holding contrary opinions to each other. If their opinions and Ijtihadaat had represented a Hujjah then that would not have been the case.

The Sahaabah (rah) differed in Masaa'il (issues) and they held opinions contrary to one another like in the Mas'alah of At-Talaaq (divorce) by three pronouncements where Abu Bakr and 'Umar differed or like the issue of the distribution of the land of Iraq amongst the fighters where 'Umar and Bilaal differed.

From this, it is evident that the opinions of the Sahaabah and their Ijtihadaat and judgments that they passed do not represent a Daleel

from amongst the Adillah Ash-Shar'iyah like the Kitaab, the Sunnah and Al-Qiyaas.

However, the Sahaabah occupy a standing in Islaam and it is the highest standing after the Anbiyaa (prophets) as Allah (swt) has praised them explicitly in the Qur'aan and the Ahaadeeth.

Due to that, the Muslims were very concerned to collect their opinions, Ijtihaadaat and judgments (or verdicts) and they related them just as they related the Prophetic Hadeeth. As such, there is no book of Hadeeth except that it includes within it opinions of the Sahaabah and that includes the Hadeeth collections of Al-Bukhaari, Muslim and the Muwatta amongst others.

The reality of the matter is that the Ijtihaadaat of the Sahaabah are closer to the Deen and the Sunnah As-Saheehah as compared to the Ijtihaadaat of others who came after them. That is because it is quite possible that the Sahaabiy, when providing his opinion, had heard it spoken from the Nabi (saw) or from another Sahaabah who had heard it from the Messenger (saw). He would have provided the verdict of the Hukm in this case without relating the specific Daleel that it was based upon.

It is also allowed (or possible) for the Sahaabiy to be unique in respect to his understanding of the Nass (text) of an Aayah or Hadeeth in a manner that none after him understood it. That would be due to the completeness of his knowledge of the language and the implications of the wordings or due to being aware of the Sabab An-Nuzool (cause or reason of revelation) of an Aayah or Hadeeth as witnessed or heard by him. Therefore, his Ijtihaad would have more weight than the Ijtihaad of those who came after him in every time period and generation.

All of this makes the Ijtihadaat of the Sahaabah and their opinions take the place of a distinguished standing in relation to those who followed them in later times. Even if these opinions have not reached the level of being representative of a Daleel they nevertheless represent a higher level or ranking than the Ijtihadaat of others. For that reason, their opinion or Ijtihad is considered to be a Hukm Shar'iy and it is valid to follow it and imitate it.

Consequently, it is important for Muslims in every time period to be greatly concerned with the opinions of the Sahaabah, their Ijtihadaat and their judgements in respect to their narrations, recordings and making Taqleed to them.

The judgements passed by the Sahaabah, their Ijtihadaat and Araa' (opinions) are representative of the greatest Islamic legislative heritage after the Shar'iyah texts and after the Ijmaa' of the Sahaabah (rah).

They were those who guarded the Kitaab of Allah Ta'Aalaa and transmitted the Aqwaal (statements) of His Messenger Muhammad (saw) to those who came after them. They were therefore the most knowledgeable of people in respect to the Shar'a of Allah and the nearest to His guidance. Their Ijmaa' (consensus) was also a Hujjah for us and so whoever follows them and proceeds upon what they proceeded upon would be from amongst those Allah (swt) has said about:

وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ  
جَنَّاتٍ تَجْرِي تَحْتَهَا الْأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ

*And (also) those who followed them perfectly. Allah is well-pleased with them as they are well-pleased with Him. He has prepared for them Gardens under which rivers flow (Paradise), to dwell therein forever. That is the supreme success (At-Tambah 100).*



## The Tenth Daleel

### Shar'u Min Qablinaa (The Shar'iyah of those who came before us)

#### Its meaning:

'Ash-Shar'u' linguistically means: With a Fat'hah on its 'Raa' (i.e. Shara') or Sukoon (Shar'u) means evenness (Sawaa') and the way of a road (Tareeq Shaari') i.e. it is a Mashroo' (plan) that the people generally follow.

'Ash-Shir'ah' with a Kasrah on the 'Sheen' and a Sukoon on the 'Raa' and 'Ash-Sharee'ah' hold the same meaning. Examples of its usage include the Qawl of Allah (swt):

لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا

*To each among you, We have prescribed a law (Shir'ah) and a clear way (Al-Maa'idah 48).*

And His speech (swt):

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا

*Then We put you upon an ordained way (Sharee'ah) concerning the matter [of religion]; so follow it (Al-Jaathiyah 18).*

Ash-Shar'u in accordance to the Istilaah (terminological convention): It is all of the Ahkaam found within the Kitaab and the Sunnah whether they relate to the 'Aqaa'id (beliefs) or the actions of the 'Ibaad (servants/people) like the Mu'aamalaat (societal transactions),

'Tbaadaat (acts of worship) and 'Uqoobaat (punishments) amongst others actions.

## **Shar'u Min Qablinaa:**

What is intended by Shar'u Min Qablinaa are the Ahkaam that Allah (swt) legislated to those nations and peoples who came before us which had been revealed to their Prophets and Messengers so that they convey it to them. This is like the Sharee'ah of Ibraheem, Moosaa and 'Eisaa (as).

### **The Categories of Shar'u Min Qablinaa**

The legislative Ahkaam (rulings) found in those Sharee'ahs (Sharaa'i) that came previously to our Sharee'ah are of four types:

1 – That which is found (or mentioned) within our Sharee'ah and was made Fard or Sunnah upon us just as it had been made Fard or Sunnah upon the previous nations. When we take Ahkaam like this we only do so because they have been mentioned within our Sharee'ah and not because they were found within the Sharee'ah of those who preceded us.

So for example As-Siyaam (fasting) has been written (made obligatory) upon us just as it had been for those who came before us. Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ

*O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous (Al-Baqarah 183).*

The 'Udhiyah (sacrificial slaughter) has been made Sunnah for us just as it was for Ibraheem (as) in the case where Ahmad and Ibn Maajah related that he (saw) was asked: "What are these Adaahiy (sacrificial slaughters)? He (saw) replied: **"A Sunnah of your father Ibraheem"**.

2 – The second type is that which its mention is found within our Sharee'ah upon an angle indicating its prohibition upon those who came before us and its permissibility (Ibaahah) for us. This is like the prohibition of Dhu Zhufr (undivided hoof) and the Tahreem (prohibition) of the fats of the cows and sheep upon the Jews. Allah (swt) said:

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً  
 أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رِجْسٌ أَوْ فِسْقًا أُهْلِلَ لِغَيْرِ اللَّهِ بِهِ ؕ  
 فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ ﴿١٤٥﴾ وَعَلَى  
 الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفْرٍ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ  
 شُحُومَهُمَا إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوْ الْحَوَايَا أَوْ مَا اختَلَطَ بِعَظْمٍ ؕ ذَلِكَ  
 جَزَيْنَاهُمْ بِبَعْغِهِمْ ؕ وَإِنَّا لَصَادِقُونَ

Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure - or it be [that slaughtered in] disobedience, dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], then indeed, your Lord is Forgiving and Merciful." And to those who are Jews We prohibited every animal of uncloven hoof; and of the cattle and the sheep We prohibited to them their fat, except what

*adheres to their backs or the entrails or what is joined with bone. [By] that We repaid them for their injustice. And indeed, We are truthful (Al-An'aam 145-146).*

In regards to the Ahkaam like this, there is no difference or disagreement amongst the 'Ulamaa in respect to us looking to what our Sharee'ah has guided us to, so that we make Halal that which it has made Halaal and we make Haraam that which it has made Haraam.

3 – The third category relates to that which our Sharee'ah has been silent upon whilst it has been mentioned in their books. This is that which has not been mentioned by any indication within the Qur'aan Al-Kareem and the Sunnah An-Nabawiyah. This category is disregarded by us and it is not possible to take it or go to it for judgement by the agreement of the 'Ulamaa. That is because we have been commanded to only follow that which Allah (swt) revealed upon Muhammad (saw). Allah Ta'Aalaa said:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

*And whatever the Messenger has given you take it and whatever he has forbidden you from abstain from it (Al-Hashr 7).*

4 – That which its mention has been found in our Sharee'ah without denial or affirmation (support) and that is like the Qawl of Allah Ta'Aalaa:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ  
وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ

*And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution (Qisaas) (Al-Maa'idah 45).*

There are points of difference amongst the 'Ulamaa in relation to this category of Ahkaam, numbering less than the number of fingers on a hand, in respect to its Hujjiyah and whether it should be taken or left?

### **The opinions of the 'Ulamaa in respect to working with Shar'u Min Qablinah**

The 'Ulamaa have differed in respect to the Hujjiyah (legal validity as a source) of the Shar'u Min Qablinah that has been mentioned in our Share'ah without denial or affirmation (support). Are we addressed by it or not? Their opinions in regards to this are as follows:

1 – The majority of the Ahnaaf, the Maalikiyah and some of the Shaafi'iyah in addition to Ahmad in one view attributed to him, upheld that the Shar'u Min Qablinah that is mentioned in our Share'ah without Inkaar (denial or rebuke) and without Ta'yeed (support) is also a Shar'a for us and that we are bound to follow it. To support their opinion, they used the Qawl of Allah Ta'Aalaa as evidence:

أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهِدَاهُمْ أَقْتَدِهِ

*They are those whom Allah had guided. So follow their guidance (Al-An'aam 90).*

In addition to His Qawl (swt):

شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا  
وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا  
فِيهِ

*He has ordained for you of religion what He enjoined upon Nuh and that which We have revealed to you, [O Muhammad], and what We enjoined upon Ibrahim and Musa and Isa - to establish the religion and not be divided therein (Ash-Shooraa 13).*

And by the Qawl of the Messenger (saw):

إِذَا رَفَدَ أَحَدُكُمْ عَنِ الصَّلَاةِ أَوْ غَفَلَ عَنْهَا فَلْيُصَلِّهَا إِذَا ذَكَرَ

**If any of you misses a prayer due to sleep or forgetfulness (carelessness) then he must pray it as soon as he remembers (Muslim).**

As after stating this he (saw) recited the Qawl of Allah (swt):

وَأَقِمِ الصَّلَاةَ لِذِكْرِي

*And establish prayer for My remembrance (TaHa 14).*

Which was an address to Mousaa (as).

It is for that reason that the Hanafiyah deduced the killing of the Muslim for the non-Muslim based on His Qawl (swt):

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ

*And We ordained for them therein a life for a life (Al-Maa'idah 45).*

This is whilst the Aayah is discussing the Yahoos and what Allah (swt) had made obligatory upon them in the Tawrah. In addition, Ibn Katheer spoke in his Tafseer about the Ijmaa' (consensus) upon acting in accordance to the dictates of this Aayah.

2 – Another group including the Ashaa'irah, Mu'tazilah, Shee'ah, Ahmad in another opinion attributed to him, Ibn Hazm, some of the Ahnaaf and the majority of the Shaafi'iyah including Al-Ghazaaliy, Al-Aamadiy and Ar-Raaziy in addition to others from the scholars of Usool, held that the Shar'u Min Qablinaa is not a Shar'a for us and even if it has been mentioned in the Qur'aan. They deduced that from the Qawl of Allah (swt):

لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا

*And to each of you we provided a Shir'ah and Minbaaj (Al-Maa'idah 48).*

Therefore, every Ummah has an independent Sharee'ah and specific Minhaaj (method/way) and the Sharee'ahs of the previous nations did not possess the attribute of generalness or comprehensiveness like our Sharee'ah. Each of them had been specific to the Qawm (people) that their Sharee'ah had been revealed upon and as such they did not represent a Shar'a for us.

They also used as evidence the approval of the Messenger of Allah (saw) provided to Mu'aadh Ibn Jabal when he sent him as a judge to Al-Yaman (Yemen). That is because he did not instruct him to take anything from the previous Sharaa'i in the case where he did not find the Hukm in the Kitaab and the Sunnah. Rather he approved of the undertaking of Ijtihad and commended him in respect to taking this direction.

## Examples of the application of Shar'u Min Qablinaa

The Shar'u Min Qablinaa from the Yahood, Nasaaraa (Christians) and the Deen of Ibraheem had been twisted and distorted in the Tawrah and the Injeel. The Tawrah and Injeel that are present today are not the same that were revealed to Mousaa and 'Eisaa, peace be upon them both, but rather they have been afflicted by change and distortion which have taken them both far away from the Tawrah and Injeel which were revealed to the two Messengers Mousaa (as) and 'Eisaa (as).

Allah (swt) has mentioned some of the Ahkaam that the Messengers prior to Muhammad (saw) had come with in the Qur'aan Al-Kareem. The following is a selection of these:

1 – Allah Ta'Aalaa said in relation to Suleiman (as):

وَتَفَقَّدَ الطَّيْرَ فَقَالَ مَا لِيَ لَا أَرَى الْهُدْهُدَ أَمْ كَانَ مِنَ الْغَائِبِينَ ﴿٢٠﴾  
لَأُعَذِّبَنَّهُ عَذَابًا شَدِيدًا أَوْ لَأَذْبَحَنَّهُ أَوْ لِيَأْتِنِي بِسُلْطَانٍ مُّبِينٍ

*And he took attendance of the birds and said, "Why do I not see the hoopoe - or is he among the absent? I will surely punish him with a severe punishment or slaughter him unless he brings me clear authorization." (An-Naml 20-21).*

This is whilst there is no difference of opinion amongst the Muslims in respect to dropping punishment for the bird and even if it did something seen to be wrong. Indeed, the punishment of all animals has fallen as a Nass (text) has come explaining that. The Messenger of Allah (saw) said:

الْعُجَمَاءُ جَرَحُهَا جُبَارٌ

**The injuries/harms of the beasts are free of blame/innocent**



(i.e. they are free from blame and there is no guarantee/liability for anything they ruin or damage etc...).

2 – And from the Sharee’ah of Zakariyaa (as) is the Qawl of Allah Ta’Aalaa:

قَالَ رَبِّ اجْعَلْ لِي آيَةً ۗ قَالَ آيَتُكَ أَلَّا تُكَلِّمَ النَّاسَ ثَلَاثَ لَيَالٍ سَوِيًّا

*(Zakariyaa) said: "My Lord! Appoint for me a sign." He said: "Your sign is that you shall not speak unto mankind for three nights, though having no bodily defect (Maryam 10).*

This was a command to Zakariyaa (as) to not speak to the people for three consecutive nights which was a form of Sawm (fasting) from using speech. This is whilst in Islaam the fasting is from food, drink and intimate relations and there is no Sawm in Islaam from speech.

3 – From the Sharee’ah of Mousaa (as) there is the Qawl of Allah (swt):

وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفْرٍ ۖ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوْ الْحَوَايَا أَوْ مَا اختَلَطَ بِعَظْمٍ

*And unto those who are Jews, We forbade every (animal) with undivided hoof, and We forbade them the fat of the cow and the sheep except what adheres to their backs or their entrails, or is mixed up with a bone (Al-An’aam 146).*

That is whilst in the Sharee’ah of Islaam, all of that has been made Halaal for the Muslims due to His Qawl ‘Azza Wa Jalla:

وَطَعَامُكُمْ جِلُّ لَهُمْ

*And your food is lawful to them (Al-Maa'idah 5).*

These fats (Shuhoom) from our food are lawful for them and as such the Ahkaam of their Sharee'ah had been abrogated.

4 – And from the Sharee'ah of Yousuf (as) is the Qawl of Allah Ta'Aalaa:

قَالُوا جَزَاؤُهُ مَنْ وُجِدَ فِي رَحْلِهِ فَهُوَ جَزَاؤُهُ كَذَلِكَ نَجْزِي الظَّالِمِينَ

*They [Yusuf's (Joseph) brothers] said: "The penalty should be that he, in whose bag it is found, should be held for the punishment (of the crime). Thus we punish the Zhaalimoon (wrong-doers, etc.)!" (Yousuf 75).*

This means taking the thief into custody as a punishment for the theft and this is whilst Islaam has made cutting the hand the punishment for the thief.

5 – And from the Sharee'ah of Ya'qoub (as) is His Qawl (swt):

كُلُّ الطَّعَامِ كَانَ حَلَالًا لِّبَنِي إِسْرَائِيلَ إِلَّا مَا حَرَّمَ إِسْرَائِيلُ عَلَى نَفْسِهِ

*All food was lawful to the Children of Israel, except what Israel made unlawful for himself (Aali 'Imraan 93).*

This is whilst in Islaam it is not for the Messenger to make Haraam upon himself that which Allah did not make Haraam. Allah (swt) says:

يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ

*O Prophet! Why do you ban (for yourself) that which Allah has made lawful to you (At-Tabreem 1).*

## **My opinion in respect to Shar'u Min Qablinaa**

The Shar'u Min Qablinaa is not a Shar'a for us and it is not considered to be from the Adillah Ash-Shar'iyah. The Daleel for that is the Kitaab, the Sunnah and the Ijmaa' As-Sahaabah.

1 - As for the Kitaab:

Allah (swt) has said:

إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ

*Verily, the Deen with Allah is Islaam (Aali 'Imraan 19).*

And He (swt) said:

وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ

*And whoever seeks a Deen other than Islaam, it will never be accepted of him, and in the Hereafter he will be from the losers (Aali 'Imran 85).*

And Islaam is the Deen that Allah (swt) revealed upon Muhammad (saw).

The meaning of the first Aayah is that the Deen that is considered to be acceptable to Allah after the sending of the Messenger Muhammad (saw) is the Deen of Islaam.

And the meaning of the second Aayah is that whoever embraces a Deen other than the Deen of Islaam after the sending of Muhammad (saw) then Allah will not accept that from him and he will be from amongst the losers in the hereafter. This is supported by the fact that the Nasraaniy (Christian) and Yahoodiy (Jew) are addressed by the Sharee'ah of Islaam and commanded to leave their Sharee'ahs. In addition, Christianity and Judaism after the sending of Muhammad are considered to be Kufr (disbelief) and their adherents Kuffaar (disbelievers). This indicates that the Shar'u Min Qablinaa is not a Shar'a for us and indeed it indicates that it is Haraam to follow the Shar'u Min Qablinaa.

Allah (swt) said:

لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا

*And to each of you we provided a Shir'ah (path/law) and Minhaaj (method)*  
(Al-Maa'idah 48).

This means that the Sharee'ah of Muhammad (saw) is not the previous Sharaa'i and that the previous Sharaa'i are not the Sharee'ah of Muhammad because they are not his Shir'ah and Minhaaj in the case where every Messenger has a Shir'ah and Minhaaj. This is therefore a Daleel that he and his Ummah are restricted to adhering to the Sharee'ah of Islaam and not to any other Sharee'ah.

2 – As for the Sunnah:

Jaabir (ra) related that the Messenger of Allah (saw) said:

أَعْطَيْتُ حَمَسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي : كَانَ كُلُّ نَبِيٍّ يُبْعَثُ إِلَى قَوْمِهِ  
خَاصَّةً وَبُعِثْتُ إِلَى كُلِّ أَحْمَرَ وَأَسْوَدَ

**I have been given five (matters) that no one had been given before me: Every Nabi was sent to his people specifically whilst I have been sent to every red and black (i.e. everyone) (Al-Bukhaari and Muslim).**

Here the Messenger (saw) is informing us that every Nabi before him was sent to his people or nation (Qawm) specifically meaning that he had not been sent to other than his Qawm and that others were not bound by his Sharee'ah. It is therefore established that none of the Anbiyaa' were sent to us apart from Muhammad (saw) and consequently their Sharee'ahs are not a Sharee'ah for us.

3 – As for Ijmaa' As-Sahaabah:

The Ijmaa' As-Sahaabah has convened over the Sharee'ah of the Nabi Muhammad (saw) abrogating the Sharee'ah of those Prophets and Messengers that came previously and if worships were undertaken in accordance to them then that was due to being affirmed by our Sharee'ah and not as an abrogation to them.

In addition, had the Shar'u Min Qablinaa been a Shar'a for us, then the Sahaabah (rah) would have paid a great deal of attention to them, cared for them, transmitted them to us and recorded them along with our Sharee'ah. However, that did not happen because the Shar'u Min Qablinaa is not a Shar'a for us.

Response to some of the arguments presented:

As for the Qawl of Allah Ta'Aalaa:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ  
وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا

*And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution (Qisaas) (Al-Maa'idah 45).*

The Ahkaam mentioned in this Aayah were not established for us because they have been mentioned in this Aayah but rather through being proven by other Dalaa'il (indications) from our Sharee'ah. So Al-Qisaas (the law of retribution) mentioned in the Noble Aayah as being prescribed upon Bani Israa'eel is also a Hukm from the Ahkaam of our Sharee'ah. Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى

*O you who believe! Al-Qisas (the Law of Equality in punishment) is prescribed for you in case of murder (Al-Baqarah 178).*

And He (swt) said:

فَمَنْ عَتَدَىٰ عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا عَتَدَىٰ عَلَيْكُمْ

*So whoever has assaulted you, then assault him in the same way that he has assaulted you (Al-Baqarah 194).*

And it is established by the Qawl of the Messenger (saw):

الْعَمْدُ قَوْدٌ ، إِلَّا أَنْ يَعْفُوَ وَلِيُّ الْمَقْتُولِ

(For) the intentional (killing) is retaliation unless the guardian of the killed person pardons (At-Tabaraani in Majma' Az-Zawaa'id 286/6).

And his Qawl (saw):

مَنْ أُصِيبَ بِقَتْلِ أَوْ حَبْلِ ، فَإِنَّهُ يَخْتَارُ إِحْدَى ثَلَاثٍ : إِمَّا أَنْ يَفْتَصَّ  
، وَإِمَّا أَنْ يَغْفُو ، وَإِمَّا أَنْ يَأْخُذَ الدِّيَّةَ

Whoever is afflicted by murder or injury then one of three is chosen:  
Either retaliation (i.e. death), or pardon or takes blood money  
(Ahmad, Daawood and Ibn Maajah).

As for the Qawl of the Messenger (saw):

إِذَا رَقَدَ أَحَدُكُمْ عَنِ الصَّلَاةِ أَوْ غَفَلَ عَنْهَا فَلْيُصَلِّهَا إِذَا ذَكَرَ

If any of you misses a prayer due to sleep or forgetfulness  
(carelessness) then he must pray it as soon as he remembers  
(Muslim).

In the case where he (saw) recited the following Qawl of Allah  
Ta'Aalaa following this statement:

وَأَقِمِ الصَّلَاةَ لِذِكْرِي

*And establish prayer for My remembrance (TaHa 14).*

Which is an address to Mousaa (as).

The Messenger's (saw) mention of the Aayah after explaining the  
Hukm for the one who slept through or forgot to perform his Salaah  
in its time was only to explain that the Hukm Ash-Shar'iy of Islam in  
this issue is the same Hukm that was provided to Mousaa (as).

Therefore, our commitment and adherence is in accordance to that  
which our Messenger Muhammad (saw) informed us of and not in  
accordance to what Allah (swt) addressed Mousaa (as) with.

## Extra point of note:

I have mentioned within the section of the Masaadir At-Tashree' (sources of legislation): Al-'Urf, Madh'hab As-Sahaabiy and Shar'u Min Qablinaa, and I did that to explain and make clear my opinion in respect to them just like some of the previous 'Ulamaa had done in their works... May Allah inspire us to reach the strongest understanding and we supplicate to Him as He has taught us:

رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إِكْرًا  
كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ  
وَاعْفُ عَنَّا وَارْحَمْنَا

*"Our Lord! Punish us not if we forget or fall into error, our Lord! Lay not on us a burden like that which You did lay on those before us. Our Lord! Put not on us a burden greater than we have strength to bear. Pardon us and grant us Forgiveness. Have mercy on us" (Al-Baqarah 286).*



# **Al-Waadih Fee**

## **Usool ul-Fiqh**

### **Part Two**

# Chapter One

## Al-Hukm

1 – The meaning of the Hukm.

2 – Aqsaam Al-Hukm (divisions/categories).

A – Al-Hukm Ash-Shar’iy At-Takleefiy:

Al-Waajib, Al-Mandoob, Al-Mubaah, Al-Haraam, Al-Makrooh.

B – Al-Hukm Ash-Shar’iy Al-Wad’iy:

As-Sabab, Ash-Shart, Al-Maani’, As-Sihhah, Al-Fasaad, Al-Butlaan.

3 – Al-Adaa’u, Al-Qadaa’u, Ar-Rukhsah, Al-‘Azeemah, Fard ul-‘Ain, Fard ul-Kifaayah.

4 – Arkaan Al-Hukm.

Al-Haakim, Al-Mahkoom ‘Aliahi, Al-Mahkoom Feehi.

5 – Maqaasid Al-Ahkaam Ash-Shar’iyah: Darooriyaat, Al-Haajiyaat, At-Tahseenaat.

## Al-Hukm

Allah addressed An-Naas (the people/mankind) with all of the Islamic Sharee'ah; the Aqaa'id (beliefs) and Shar'iyah 'Amaliyah (practical legislated rulings).

The 'Ilm of Usool ul-Fiqh does not however examine the Aqaa'id (beliefs) but rather only examines the Ahkaam Ash-Shar'iyah Al-'Amaliyah from the angle of the bases or foundations upon which they are built. The 'Ulamaa of Usool ul-Fiqh have defined Al-Hukm Ash-Shar'iy, explained its Aqsaam (categories/divisions) and explained its Masaadir (sources) which we mentioned in the first part of this book.

### The meaning of Al-Hukm:

Linguistically Al-Hukm means:

Al-Man'u (المنع) (to prevent/rein in) and so it is said Hakama Al-Hisaan (horse) i.e. he prevented it from launching off (i.e. he reined it in). This meaning is found in the speech of the poet Jareer:

أبني حنيفة أحكموا سفهاءكم إني أخاف عليكموا أن أغضبا

Which means to rein in (prevent) your Sufahaa' (foolish people).

The meaning of Al-Hukm Ash-Shar'iy in accordance to the Istilaah of the Usooliyeen:

الْحُكْمُ الشَّرْعِي هُوَ خِطَابُ الشَّارِعِ الْمُتَعَلِّقُ بِأَفْعَالِ الْعِبَادِ بِالِإِقْتِضَاءِ أَوْ  
التَّخْيِيرِ أَوْ الْوَضْعِ

*'Al-Hukm Ash-Shar'iy is the address of the legislator related to the actions of the 'Ibaad (slaves/people) by Al-Iqtidaa', At-Takhyeer or Al-Wad'u'.*

Explanation of the definition:

Khitaab Ash-Shaari' (Address of the legislator):

The address (**Al-Khitaab**) of the legislator refers to the meanings included within the Alfaazh (wordings) and Taraakeeb (constructs/compositions) of the Shar'iyah texts like the Aayaat and the Ahaadeeth. As such a Mujtahid could deduce a Hukm from an Aayah that differs from the Hukm deduced by another Mujtahid. In that case the Hukm Ash-Shar'iy in respect to each of them would be what he had deduced from the text in terms of meaning.

And it is said **Ash-Shaari'** (Legislator) whilst it is not said Allah in order to include the address of the Sunnah, the Ijmaa' As-Sahaabah and the Qiyaas because all of these indicate the address of Allah. It is so that it is not imagined or perceived that what is intended by the address (Al-Khitaab) only refers to the Qur'aan alone due to it representing the Kalaam of Allah in Lafzh (wording) and meaning.

It is also called **'Khitaab Ash-Shaari'** (address of the Legislator) to indicate to what the speech in the texts provides in terms of benefit i.e. to indicate the meaning of the speech. That is because more than one meaning can be understood from the same speech and so the meaning that the Mujtahid understands is the Hukm of Allah in respect to him and the Hukm of Allah in respect to the one who makes Taqleed to him.

It is said **'Afaal Al-'Ibaad'** (actions of the slaves) in order to exclude the Aqaa'id. That is because the Hukm Ash-Shar'iy examines the practical Shar'iyah rulings and does not look into the Aqaa'id (beliefs) which is examined within the 'Ilm of Kalaam or the 'Ilm of Tawheed.

It is said ‘**Al-‘Ibaad**’ (slaves) and did not say Mukallafeen (those legally charged) like some of the definitions have mentioned in order to include the Ahkaam related to the Sabiy (boy) and the Majnoon (insane) in terms of the Zakaah and Ahkaam of property.

### **Bil-Iqtidaa’ (request):**

This means by way of the Talab (request). This is in the case where the Talab (request) is divided into types: Talab Fi’l (request to do) and Talab Tark (request to leave). If the Talab ul-Fi’l (the request to do) was Jaazim (decisive) then it (the Hukm) would be Fard or Waajib. If the Talab ul-Fi’l was not Jaazim then it would be Mandoob or Sunnah or Naafilah. If the Talab ut-Tark (request to leave) was Jaazim then it (the Hukm) would be Haraam or Mahzhoor and if it was not Jaazim (indecisive) then it would be Makrooh.

### **At-Takhyeer (choice):**

Al-Ibaahah (permissibility) and this is the Takhyeer (choice or choosing) between doing or leaving without a substitute.

### **Al-Wad’u:**

It is the making of a matter a Sabab (cause/reason), or a Shart (condition) or a Maani’ (preventer) for the Hukm Ash-Shar’iy or what is similar to that in terms of Sihhah (validity), Fasaad (corruption) and Butlaan (invalidation), and like the ‘Azeemah and the ‘Rukhsah (exempting permission).

Therefore, the definition of the Hukm Ash-Shar’iy: ‘The address of the legislator related to the actions of the ‘Ibaad (slaves/people) by way of Al-Iqtidaa’, At-Takhyeer’ encompasses the five Ahkaam

which are: Al-Waajib, Al-Mandoob, Al-Haraam, Al-Makrooh and Al-Mubaah. And this represents Al-Hukm At-Takleefiy.

The remainder of the definition is therefore: ‘The address of the legislator related to the actions of the ‘Ibaad (slaves/people) by Al-Wad’u’ and this encompasses that which is a Sabab, a Shart, a Maani’, Sihhah, Butlaan and Fasaad, or a Rukhsah and ‘Azeemah. This represents Al-Hukm Al-Wad’iy.

## **The Aqsaam (categories) of Al-Hukm Ash-Shar’iy**

The Hukm Ash-Shar’iy is divided into two categories: Al-Hukm Ash-Shar’iy At-Takleefiy and Al-Hukm Ash-Shar’iy Al-Wad’iy.

### **Al-Hukm Ash-Shar’iy At-Takleefiy:**

Al-Hukm Ash-Shar’iy At-Takleefiy is the address of Ash-Shaari’ (The Legislator) related to the actions of the ‘Ibaad (slaves/people) B-il-Iqtidaa’ or At-Takhyeer.

This Hukm is called Takleefiy because it contains a Takleef (legal charging of responsibility) for the human by way of a Talab (request) to undertake the action or a Talab to leave the action or a provision of choice (Takhyeer) between undertaking the action or leaving it.

The Hukm Ash-Shar’iy At-Takleefiy is divided into five types:

1 – Al-Waajib: It is what the Shaari’ (Legislator) has requested to do with a decisive request (Talab Jaazim). This is like the Zakaah for example.

2 – Al-Mandoob: It is what the Shaari' (Legislator) has requested to do with a non-decisive request (Talab Ghair Jaazim). This is like the giving of Sadaqah for example.

3 – Al-Haraam: It is what the Shaari' has requested to leave with a decisive request (Talab Jaazim). This is like Zinaa and Ribaa for example.

4 – Al-Makrooh: It is what the Shaari' has requested to leave with a non-decisive request (Talab Ghair Jaazim). This is like speaking in the place where one relives them self for example.

5 – Al-Mubaah: This is when the Shaari' has provided the choice to the Mukallaf (one charged) between undertaking the action or leaving it. This is like drinking water and walking for example.

## **Al-Waajib**

Al-Waajib and Al-Fard hold one meaning as they are synonyms (Lafzhaan Mutaraadifaan).

As for what some of the Mujtahideen have said including the Ahnaaf in respect to the Fard being that which has been established by a Daleel Qat'iy (definite evidence) and the Waajib being established by a Daleel Zhanniy (indefinite evidence), then there is nothing within the language or the Shar'a that indicates and guides to making such a differentiation between them.

The reality of this matter is that it is that which the Shaari' has requested by a decisive request and there is no difference in respect to whether the Talab (request) was established by a Daleel Qat'iy or a Daleel Zhanniy.

The definition of the Waajib or the Fard according to the majority is: It is what the Shaari' has requested to be done by way of a decisive request (Talab Jaazim) and it is also that which the doer is rewarded and praised/commended whilst its leaver is punished and found blameworthy.

Examples of the Fard include: Al-Jihaad, the Sawm of Ramadhaan and ruling by what Allah (swt) has revealed. From amongst the evidences indicating the Wujooob (obligation) of Al-Jihaad is the Qawl of Allah Ta'Aalaa:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَن يَدٍ وَهُمْ صَاغِرُونَ

*Fight against those who believe not in Allah, nor in the Last Day, nor forbid that which has been forbidden by Allah and His Messenger and those who acknowledge not the Deen of truth (i.e. Islam) among the people of the Scripture (Jews and Christians), until they pay the Jizyah with willing submission, and feel themselves subdued (At-Taubah 29).*

This is an Amr Jaazim (decisive command) due to the Qareenah (connotation) in His Qawl (swt):

إِلَّا تَنْفَرُوا يُعَذِّبْكُمْ عَذَابًا أَلِيمًا

*If you march not forth, He will punish you with a painful torment (At-Taubah 39).*

From among the Adillah (evidences) for the Wujooob (obligation) of fasting in Ramadhaan is the Qawl of Allah Ta'Aalaa:



يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ

*O you who believe! Observing As-Saum (the fasting) is prescribed for you as it was prescribed for those before you, that you may become Al-Muttaqun (Al-Baqarah 183).*

And the meaning of Kataba (written/prescribed) is Farada (made obligatory). The Qareenah (connotation) for that is the Qawl of Allah ‘Azza Wa Jalla:

أَيَّامًا مَّعْدُودَاتٍ ۚ فَمَن كَانَ مِنكُم مَّرِيضًا أَوْ عَلَىٰ سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ

*[Observing Saum (fasts)] for a fixed number of days, but if any of you is ill or on a journey, the same number (should be made up) from other days (Al-Baqarah 184).*

The Talab (request) is therefore Jaazim (decisive) because it has requested the sick person or traveller if they were unable to fast, to fast, after the passing of the excuse, a number of days in exchange for those in which they had broken their fast.

From the evidences (Adillah) for the Wujooob of ruling by what Allah has revealed is His Qawl Ta’Aalaa:

وَمَن لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ

*And whosoever does not rule by what Allah has revealed then they are the Kaafiroon (disbelievers) (Al-Maa’idah 44).*

And also the Aayaat that follow:

وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

*And whosoever does not rule by what Allah has revealed then they are the Zhaalimoon (transgressors) (Al-Maa'idah 44).*

وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ

*And whosoever does not rule by what Allah has revealed then they are the Faasiqoon (rebelliously disobedient) (Al-Maa'idah 44).*

## **Aqsaam Al-Waajib (the categories of the obligation)**

The Waajib is divided or categorised in accordance to different considerations. As such, there is a division in respect to its performance (Aadaa'), another in respect to its evaluation (Taqdeer), a third in respect to its designation and a fourth in respect to the one who has been charged with it (Mukallaf).

### **The categories of the Waajib in consideration of its time of performance or undertaking**

Waajib Mutlaq and Waajib Muqayyad (The unrestricted obligation and the restricted obligation):

1 – Al-Waajib Al-Mutlaq (unrestricted obligation):

This is what the Shaari' (Legislator) has requested to be done without restricting it to a specific time and an example of this type is the Qadaa' of Ramadhaan for the one who did not fast due to a Shar'iy 'Udhr (excuse/reason) like sickness or travelling. That is because he can make Qadaa' for it when he wishes without it being restricted to a specified year. This is the opinion of some of the Fuqahaa' in this

issue including the Hanafiyah. Others however have stipulated that it is a condition for the person to make up (Qadaa') for what he missed before the coming of the Ramadhān that follows the Ramadhān in which he didn't fast, if the Mukallaf is capable of doing that (i.e. within a year).

Other examples include the Kaffaaraat (expiations) and unrestricted vows (Nudhoor). So whoever breaks one's oath or vow, without being restricted to a specific time, can undertake the required expiation (Kaffaarah) directly after his breaking and undertake his vow immediately if he wishes to or he can delay it until a time of his choosing.

2 – Al-Waajib Al-Muqayyad (restricted obligation):

This is what the Shaari' has requested to be undertaken and specified a specific and defined time for its performance or undertaking. Examples of this include the five obligatory prayers and the fasting of Ramadhān because it is not permitted to undertake them before their set and specified time and the Mukallaf is sinful if he delays the action from its time without a legitimate legal excuse.

The Waajib Al-Muqayyad is divided into two categories: Waajib Muwassa' and Waajib Mudayyaq.

A – Al-Waajib Al-Muwassa': That which the time specified for its performance provides some time, room or expansiveness for it and other actions of its type to be performed. That is like the Zhohr prayer for example.

B – Al-Waajib Al-Mudayyaq (narrow): That which its specified time for its performance does not provide room for others of its type (to be performed) and this is like the fasting of Ramadhān. That is

because its time does not provide room except for the fulfilment of the obligatory fasting within it.

## **Aqsaam (categories of) Al-Waajib in regards to the consideration of the specification of what is required and its non-specification**

1 – Al-Waajib Al-Mu’ayyan (specified):

This is what the Shaari’ has requested in itself without providing the choice to the Mukallaf to choose between different matters (or actions). The Salaah is an example of such an obligation. As such the (obligation of the) Salaah does not fall from the Mukallaf unless he has performed it in itself, so it cannot be substituted by the recitation of the Qur’aan and fasting.

2 – Al-Waajib Ghair ul-Mu’ayyan (non-specified) or Al-Waajib Al-Mukhayyar (of choice):

This is what the Shaari’ (Legislator) has requested to be undertaken; not in itself (specifically) but within matters which have been made known. It is up to the Mukallaf to choose one from them in order to perform and fulfil such a Waajib. This Waajib could be one of two like in the Qawl of Allah Ta’Aalaa:

فَإِذَا لَقَيْتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثَخَّنْتُمُوهُمْ فَشُدُّوا  
الْوَتَانَ فِإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا

*So, when you meet those who disbelieve strike at their necks till when you have killed and wounded many of them, then bind a bond firmly (i.e. take them as captives). Thereafter (is the time) either for generosity (i.e. free them without ransom), or ransom until the war lays down its burden (Muhammad 4).*

This informs us that it is up to the Khalifah either to let the captives of war free or to exchange them by ransom.

The non-specified Waajib could also be one from three matters and its example is the Kaffarah (expiation) of the Yameen (oath). It is obligatory upon the one who breaks the oath to do one of three things: The feeding of ten poor, or providing clothing to them or to free a slave. This is in the case when the capability exists but if the capability is not present then the obligation is Mu'ayyan (specified) and that is the fasting of three days.

### **The Aqsaam (categories) of the Waajib in relation to the consideration of who is Mukallaf (i.e. who has been charged to undertake the obligation)**

#### 1 – Waajib ‘Ainiy or “Fard ‘Ain”

This is what the Shaari’ has requested to be done from every Mukallaf and it is not sufficient for some to do it whilst others do not. Examples of this include the Salaah, the Sawm, being faithful to contracts and the Zakaah. The one who leaves the action is therefore sinful and another person’s undertaking of it does not remove that sin from him.

#### 2 – Waajib ‘Alaa Al-Kifaayah:

This is what the Shaari’ (Legislator) has requested to be undertaken by a Jamaa’ah (collective) of the Mukallafeen (and not all of them). If or when some have undertaken it, then it (the obligation) falls from the rest and there is no sin upon them. Rather, all are sinful if the Waajib upon the Kifaayah (sufficiency) is not met. Examples of this include Al-Jihaad, judiciary, carrying the Islamic Da’wah to establish

the Islamic State, generating industries and sciences or areas of knowledge that the Ummah is in need of, preparing the necessary force to strike fear into the enemy and praying over the dead and burying them.

### **The Aqsaam (categories) of the Waajib in respect to the consideration of their evaluation or non-evaluation in respect to amount or quantity**

1 – Waajib Muhaddad Al-Miqdaar (the obligation where its quantity or amount is defined):

This refers to the Shaari' having specified a defined amount or quantity related to the undertaking of the Waajib like the Zakaat and the number of Raka'at in the obligatory prayers. The responsibility of the Mukallaf is not freed in respect to this Waajib except by undertaking and performing it upon the form that the Shaari' has defined and specified and by the quantity or amount that has been specified for it.

2 – Waajib Ghair Muhaddad Al-Miqdaar (the obligation the amount or quantity of which is not specified):

This refers to what the Shaari' (Legislator) has not defined and specified its amount. This is like spending in the way of Allah or the obligatory Nafaqah (spending) upon the wife and the children. That is because the Shaari' left the specification of its amount to what the spender is capable of and in accordance to what is customary amongst the people.

**Maa Laa Yatimm ul-Waajib Illaa Bihi Fa Huwa Waajib (That which the Waajib is not completed except with it, is Waajib)**

The Waajib is that which the Shaari' has requested to be undertaken by way of a decisive request (Talab Jaazim) and it can be the case that the completion of the Waajib cannot be fulfilled unless another action is undertaken upon which the fulfilment of the Waajib rests. That is like washing the elbows in the act of Wudoo' and that is because the completion of the undertaking of the Waajib, which is washing the hands until the elbows, cannot be fulfilled unless a part of the elbows are washed. That is because the end point of what is being sought, which is the elbows, is included with the sought after matter, which is the hands/forearms. Therefore, the fulfilment of this Waajib to wash the hands/forearms rests upon the washing taking place upon a part of the endpoint i.e. washing a part of the elbows. Consequently, washing part of the elbows is Waajib because the Waajib of washing the hands (i.e. arms) is not completed except through this action i.e. washing a part of the elbows. This is built upon the Qaa'idah (principle):

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

“That which the Waajib is not completed except with it, is Waajib”

Similar to that is the establishment of the Khalifah or accounting the ruler because these are both Waajib as stated by the Shaari' in the Aayaat and Ahaadeeth and the Waajib is not completed except by the establishment of a political structure that works to establish the Khalifah and account the ruler. That is because the individual cannot undertake that action because of his incapability to fulfil the undertaking of this action (and what it demands) by himself. As such establishing a political structured bloc is an obligation upon the Muslims because: “That which the Waajib is not completed except with it, is Waajib”. Consequently, if the Muslims did not establish a Takattul (structured grouping) they would be sinful because they

would not have undertaken that which is necessary for them to undertake and fulfil the Waajib.

Similarly, in this way, every matter that the Waajib cannot be fulfilled except with it, is Waajib. That is if the undertaking of this matter is within the capability of the Mukallaf and if it is not within his capability then it is not Waajib. That is due to the Qawl of Allah Ta’Aalaa:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

*Allah does not burden a person except in accordance to its capability (Al-Baqarah 286).*

### **Al-Mandoob (The recommended act)**

Linguistically Al-Mandoob is from An-Nadb (النَّدْب) and it is the Du’aa (supplication or beseeching) for something important.

The Mandoob according to the Shar’iy Istilaah (terminological convention) is:

That which the Shaari’ has requested to be done by way of a non-decisive request (Talab Ghair Jaazim).

It is said: It is that which the performer is rewarded for undertaking it whilst the one who does not do it is not punished. Examples of this include the Qawl of Allah Ta’Aalaa:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

*O you who believe! When you contract a debt for a fixed period, write it down (Al-Baqarah 282).*



The command to write the debt is one of recommendation (An-Nadb) and not obligation (Al-Wujoob) because it is a Talab Ghair Jaazim (non-decisive request).

The term Naafilah can be used for some of the Mandoobaat like for the Tahajjud prayer during the night. Allah (swt) said:

وَمِنَ اللَّيْلِ فَتَهَجَّدْ بِهِ نَافِلَةً لَّكَ عَسَىٰ أَنْ يَبْعَثَكَ رَبُّكَ مَقَامًا مَّحْمُودًا

*And in some parts of the night (also) offer the Salaah (Tahajjud prayer) with it (i.e. recite the Quran in the prayer), as an additional prayer (Nawafil) for you. It may be that your Lord will raise you to Maqaman Mahmuda (a station of praise and glory) (Al-Israa' 79).*

The term Sunnah can also be used for some of the Mandoobaat like the Sunnah of Salaat us-Subh (Fajr), Azh-Zhohr, Al-'Asr, Al-Maghrib and Al-'Ishaa. This Sunnah could be Mu'akkadah like the Sunnah before Fajr and the Sunnah of the two 'Eids just as the Sunnah could be Ghair-Mu'akkadah like the Sunnah of Salat ul-'Asr.

Similarly, Mandoob can be used for acts like the Sadaqah, helping those in need and the congregational prayer (Salaat ul-Jamaa'ah).

The Hukm of Al-Mandoob is that its performer is deserving of the reward (Thawaab) from Allah whilst there is no punishment ('Iqaab) for the one who leaves it. However, it is appropriate for the Muslim to perform a lot of the Mandoobaat in order to seek the reward of Allah, to build up his store of Hasanaat with Allah and for some of his Sayyi'at (bad acts) that he may have slipped in to be forgiven. Allah (swt) said:

إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ

*Verily the Hasanaat (good deeds) remove the Sayyi'aat (bad deeds) (Hud 114)*

And the Mandoob is from the Hasanaat (good deeds).

The Messenger of Allah (saw) used to perform a lot in respect to the Mandoobaat and so for instance he would stand in the night in prayer until his feet would swell up. There are also Mandoobaat that are not valid to be left by the Ummah as a whole, such as marriage, because leaving it would mean the extinction of the Ummah. It is therefore Mandoob in relation to the individuals but Waajib in relation to the Jamaa'ah (collective). Al-Imaam Ash-Shaatibiy said in 'Al-Muwaafaqaat': "The leaving of the Mandoobaat as a whole has an effect upon the conditions of the Deen if the leaving was continuous (or permanent). If, however it was only on occasions then it would not affect it". Therefore, undertaking the Mandoob is better and more appropriate than leaving it.

It has been named with this naming 'An-Nadb' because the Shaari' has called and beseeched him and it has been called 'Nafil' because it represents an increase upon the Fard and it increases the reward. It has also been called At-Tatawwu' (voluntary) because the one who undertakes it does so voluntarily and not under compulsion. The person undertakes it as a voluntary contribution beyond what is obliged upon (Al-Fard). And it has also been named 'As-Sunnah' because the Messenger of Allah (saw) introduced it and proceeded upon it.

### **Al-Haraam (the prohibited)**

Al-Haraam in accordance to the Istilaah Ash-Shar'i (terminological Shar'iy definition):

It is that which the Shaari' (Legislator) has requested not to be performed by way of a decisive request (Talab Jaazim) and it is that which its doer is censured and punished for. Al-Haraam is synonymous with the word Mahzhoor.

In the view of the Hanafiyah the word Haraam is not used unless the Daleel for the Hukm was Qat'iy (definite) and if it was Zhanniy (indefinite) they called it 'Makrooh Tahreeman'.

There is however no difference between the Hanafiyah and others in relation to both the Haraam and the Makrooh Tahreeman in respect to the person leaving it being rewarded and the one doing it being punished.

Examples of the Haraam include that which was mentioned in the Qawl of Allah Ta'Aalaa:

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنزِيرِ

*Prohibited to you (for food) are: Al-Maytah (the dead animals - cattle-beast not slaughtered), blood, the flesh of swine... (Al-Maa'idah 3).*

And in His Qawl (swt):

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has made trade Halaal for you and has made Ribaa (usury) Haraam (Al-Baqarah 275).*

And in the speech of the Messenger of Allah (saw):

كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ دَمُهُ وَمَالُهُ وَعَرَضُهُ

**Every Muslim in respect to (another) Muslim is Haraam (inviolable); his blood and his property and his honour (Muslim).**

The ‘Uqoobah (punishment) for the Haraam could be in the Dunyaa (life of this world) like in His Qawl (swt):

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ  
ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

*And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fasiqun (rebellious, disobedient to Allah) (An-Nur 4).*

And the ‘Uqoobah (punishment) for the Haraam can also be in the Aakhirah (hereafter) like has come in the Qawl of Allah Ta’Aalaa:

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ  
وَسَيَصْلُونَ سَعِيرًا

*Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing Fire! (An-Nisaa’ 10).*

**Aqsaam (categories) of the Muharram (prohibited matter) “Al-Haraam”**

A – Al-Muharram Li-Dhaatihi (in itself):

This is what the Shari’ has made Haraam from the beginning like the eating of carrion, Zinaa, Ribaa, killing the person that Allah has made Haraam except when it is done by right and the unjust devouring of the wealth of the orphan.

B – Al-Muharram Li-Ghairihi (due to other than it):

This is what was Mubaah (permissible) in origin and was made Haraam due to an ‘Illah Shar’iyah (legal reasoning).

This is like trading during the call to the prayer of Salaat ul-Jumu’ah. That is because trading in origin is Mubaah but the Shaari’ (Legislator) has prohibited it at the time of the call to the Jumu’ah prayer due to the ‘Illah (reason) of its distraction from the performance of Salaat ul-Jumu’ah.

There can be two differences as a consequence of this between the Muharram Li-Dhaatihi and the Muharram Li-Ghairihi. They are:

1 – If the Muharram Li-Dhaatihi (in itself) like the Maitah (carrion/non-slaughtered dead meat) or Khamr (intoxicating substance) was the context of a contract between two contracting parties then the contract would be Baatil (invalid). That is because the thing that is prohibited in itself represents a pillar (Rukn) from the pillars (Arkaan) of the contract and in such a case it is being contracted upon in the buying or selling, making the contract invalid (Baatil) as a result.

If, however it was prohibited due to other than it (Muharram Li-Ghairihi) the contract would not then be invalidated (Baatil). So for instance the contract, meaning the trade, at the time of Jumu’ah prayer is a Mubaah matter which is contracted in contrast to the view of the Haanabilah and the Zhaahiriyah. There are effects that are consequently built upon that like the transfer of ownership from the seller to the buyer and like the payment (and receipt) of the price. However, the one who has done this is sinful because he has undertaken an action that the Shaari’ has forbidden in a decisive manner at the time of the Jumu’ah Salaah.

2 – The Muharram in itself is not permitted except to the one compelled (Al-Mudtarr) for the purpose of preserving his life when he fears death and this includes the permission to eat carrion (Al-Maitah) or uttering words of Kufr which are permitted at the time of urgent compelling necessity.

As for the Muharram Li Ghairihi (prohibited due to other than it) then it can be permitted (i.e. provided with a Rukhsah). This is like the permissibility of the doctor to look at the 'Awrah of the foreign woman for the purpose of diagnosing the illness and prescribing the correct course of treatment.

### **Al-Makrooh (the disliked action)**

The Makrooh in accordance to the Shar'a Istilaah (terminological definition):

It is that which the Shaari' (Legislator) has requested leaving its performance by way of a non-decisive request (Talab Ghair Jaazim).

It is that which leaving it is better or preferred (or more appropriate) than doing it. The one who does the Makrooh is not sinful and if he leaves it in compliance to the command of Allah he is commended and rewarded.

An example of the Makrooh is that which was mentioned in the Qawl of the Messenger (saw):

إِنَّ اللَّهَ كَرِهَ لَكُمْ ثَلَاثًا : قِيلَ وَقَالَ ، وَإِضَاعَةُ الْمَالِ ، وَكَثْرَةُ السُّؤَالِ

**Verily, Allah has disliked (Kariha) three matters for you: It was said and he said (tittle-tattle/gossip), wasting of wealth and asking too many questions (Al-Bukhaari).**

The Hanafiyah have divided the Makrooh into two categories: Al-Makrooh Tahreeman where the one who does it is punished and Al-Makrooh Tanzeehan where the one who does it is not punished. The Hukm of the Makrooh Tahreeman is closer to the Haraam than the Makrooh because its meaning is the meaning of the Haraam. Both apply upon a single reality and the (Tanzeehan) consequence of both is that the one who does it is punished. The majority put it alongside the Haraam and that is the most correct view.

### **Al-Mubaah (the permissible)**

The Mubaah is the Khitaab (address) of the Shaari' in providing the choice between doing and leaving without alternative (Min Ghair Badal). The Ibaahah (permissibility) is from the Ahkaam Ash-Shar'iyah because it is the address of the legislator and it is necessary for the permissibility to be established from an address of the legislator that mentions it. That is because Allah Ta'Aala has explained the Hukm Ash-Shar'iy for every matter and in respect to every action. Allah (swt) said:

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ

*And We have revealed upon you the Kitaab as an explanation for every matter (An-Nabl 89).*

Therefore, the Mubaah is not that which the Shar'a has remained silent upon but rather it is that which the Shar'a has explained its Hukm to be Mubaah. As such, the permissibility (Ibaahah) of hunting is clear from the statement of Allah (swt):

## وَإِذَا حَلَلْتُمْ فَاصْطَادُوا

*But when you finish the Ibram (of Hajj or 'Umrah), you may hunt (Al-Maa'idah 2).*

The same applies to the permissibility of dispersing after Salaat-ul-Jumu'ah and seeking Rizq as it has come in His Qawl Ta'Aalaa:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ

*Then when the (Jumu'ah) Salat (prayer) is finished, you may disperse through the land, and seek the Bounty of Allah (Jumu'ah 10).*

As for the Qawl of the Messenger (saw):

الْحَلَالُ مَا أَحَلَّ اللَّهُ فِي كِتَابِهِ وَالْحَرَامُ مَا حَرَّمَ اللَّهُ فِي كِتَابِهِ وَمَا سَكَتَ عَنْهُ  
فَهُوَ مِمَّا عَفَا عَنْهُ

The Halaal is that which Allah has made Halaal in His Kitaab and the Haraam is that which Allah has made Haraam in His Kitaab and that which has been silent upon then it is from that which he has pardoned (Ibn Maajah and At-Tirmidhi from Salmaan Al-Faarisy).

This does not mean that what the Qur'aan has been silent upon is Mubaah because there are things which have been made Haraam and things that have been made Halaal within the Hadeeth (Sunnah). The meaning that is intended from **'that which has been silent upon'** is its being made Halaal. Its being made Halaal is considered to represent a pardoning ('Afw) from Allah and the silence mentioned in this Hadeeth and others like it signifies the Sukoot (silence) from



the Haraam and not the Sukoot (silence) in respect to explaining the Hukm Ash-Shar'iy for an action or matter.

## **The Hukm of things and the Hukm of actions**

The human undertakes his actions in order to satisfy his instincts and organic needs. So for instance he satisfies his instinct of (human) kind or procreation (Ghareezat An-Naw'i) through marriage, he satisfies the survival instinct (Ghareezat ul-Baqaa') through the ownership of property and the instinct of religiosity (Ghareezat At-Tadayyun) through acts of worship. He satisfies his organic needs by eating, drinking and sleeping amongst other such actions.

So what then is the Hukm of things?

The one who examines the Shar'iyah texts related to things finds that the Shar'a has provided them with the description of Ibaahah (permissibility) in a general manner and then exempted from that generality a number of things which the Shar'a has given the Hukm of Tahreem (prohibition).

### **Some of the Adillah (evidences) that indicate the Ibaahah (permissibility) of all the things:**

The Qawl of Allah Ta'Aalaa:

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا

*O mankind, eat from whatever is on earth [that is] lawful and good (Al-Baqarah 168).*

And His Qawl Ta'Aalaa:

أَلَمْ تَرَ أَنَّ اللَّهَ سَخَّرَ لَكُمْ مَّا فِي الْأَرْضِ

*Do you not see that Allah has put at your disposal (to use) whatever is upon the earth? (Al-Hajj 65).*

And His Qawl Ta'Aalaa:

لَمْ تَرَوْا أَنَّ اللَّهَ سَخَّرَ لَكُمْ مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ

*Do you not see that Allah has subjected to you whatever is in the heavens and whatever is in the earth? (Luqmaan 20).*

**Some of the Adillah (evidences) that indicate the Tahreem (prohibition) of some of the things:**

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ

*He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah (An-Nabl 115).*

And His Qawl (swt):

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ  
وَالْمُنْحَنِفَةُ وَالْمَوْفُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلَّا مَا  
ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ وَأَنْ تَسْتَقْسِمُوا بِالْأَزْلامِ

*Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah, and [those animals] killed by strangling or by a violent blow or by a head-long fall or by the goring of horns, and those from which a wild animal has eaten, except what you [are able to] slaughter [before its*

death], and those which are sacrificed on stone altars, and [prohibited is] that you seek decision through divining arrows (Al-Maa'idah 3).

From these texts and those similar to them the following Qaa'idah Ash-Shar'iyah was deduced:

‘الأصلُ في الأشياءِ الإباحةُ ما لم يردْ دليلُ التَّحريمِ’

‘The original position in respect to things is Ibaahah (permissibility) as long as there is no evidence of prohibition’.

This means that the Shaari' has made all of the things permissible by the general evidences without mentioning the name of each thing and then exempted from all of these things those things which the Shaari' prohibited through specific evidences which mentioned each of these things by its name.

As for the Hukm (ruling) of the actions of the Insaan (human)?

Allah Ta'Aalaa has requested from every Mukallaf (legally responsible person) during the undertaking of his actions to be restricted to and to adhere to the commands of Allah and his forbiddances. This is because He (swt) will hold the person account on the Day of Judgement for every action that he has done whether it is Khair (good) or Sharr (bad/evil). Allah Ta'Aalaa said:

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ ﴿٧﴾ وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

*So whoever does an atom's weight of good will see it. And whoever does an atom's weight of bad shall see it (Az-Zalzalah 7-8).*

And the Messenger of Allah (saw) said:

مَنْ أَحَدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ

**Whoever brings anything into our matter (i.e. Islaam) that is not from it, then it is rejected (Al-Bukhaari and Muslim).**

From these evidences and others like them the Qaa'idah Ash-Shar'iyah is deduced:

‘الأصل في الأفعال التَّفِيدُ بِالْحُكْمِ الشَّرْعِيِّ‘

‘The original position in respect to the actions is adherence to the Hukm Ash-Shar'iy’.

Therefore, a Muslim must know the Hukm Ash-Shar'iy (ruling) of the action before proceeding upon it whether the Hukm was Fard, Mandoob, Haraam, Makrooh or Mubaah, and that is so that he does that which is Halaal and stays away from what is Haraam.

## **Al-Hukm Ash-Shar'iy Al-Wad'iy**

### **It definition:**

It is the address of the legislator related to the actions of the 'Ibaad (servants) Bi-l-Wad'i.

The Ahkaam of Al-Wad'i are the matters which have been placed down (or provided) for the Ahkaam of Takleef like the Sabab, Shart, Maani' and others for the purpose of realising those Ahkaam and completing them.

The Address of Takleef relates to the action of the person directly whilst the address of Al-Wad'i relates to the address of the Takleef.

Therefore, the address of Al-Wad'i is related to the action of the human or person indirectly.

Example:

The Zakaah is a Hukm Takleefiy and it is Waajib.

The passing of a year upon the Nisaab of the Zakaah is a Shart (condition) for obligating the Zakaah and it is Wujooob (obligatory). If this condition in respect to the Nisaab of the Zakaah is not realised the Wujooob (obligation) falls. This Shart is from amongst the Ahkaam Al-Wad'i.

Another example:

The Zhohr prayer is Fard and is a Hukm Takleefiy.

This Salaah has a Sabab (cause) and Shuroot (conditions) and these represent the Ahkaam Al-Wad'iyah. So the sun's movement away from the middle of the sky is the Sabab (cause) for the presence of the Salaah whilst Tahaarah (being in a purified state), Wudoo' and facing the direction of the Qiblah are all Shuroot (conditions) for the validity of this prayer. These Shuroot represent Ahkaam Wad'iyah which the Shar'iyah texts have indicated or guided to.

Consequently, the Ahkaam Al-Wad'iyah are Ahkaam for the Ahkaam At-Takleefiyah with particular descriptions. The realisation of the Ahkaam At-Takleefiyah rests upon the Ahkaam Al-Wad'iyah just as their completion (Ikmaal) rest upon them, as was seen in the examples of the Zakaah and the Zhohr prayer.

## **The types of the Hukm Ash-Shar'iy Al-Wad'iy**

There are five types of Al-Hukm Ash-Shar'iy Al-Wad'iy and they are:

1 – As-Sabab (the cause)

- 2 – Ash-Shart (the condition)
- 3 – Al-Maani' (the preventer)
- 4 – As-Sihhah, Al-Butlaan and Al-Fasaad (Correctness/validity, invalidity and corruption).
- 5 – Ar-Rukhsah (permission) and Al-'Azeemah

Some of the 'Ulamaa have made them into only three types: The Sabab, Shart and Maani'. Others made them into four adding the Sihhah, Butlaan and Fasaad to the above three whilst others still have made it five types like that which is presented above with the inclusion of the Rukhsah and the 'Azeemah.

That is because the Fuqahaa differed in respect to these last two types: The Sihhah, Butlaan and Fasaad, and the Rukhsah and 'Azeemah. Some of them considered these to be from the category of the Hukm At-Takleefiy whilst others viewed them to be from the Hukm Al-Wad'iy category. The closest to what is correct is that they are from the Hukm Al-Wad'iy because they represent a Wasf (description) of the Hukm At-Takleefiy whilst they are not a type from amongst its five types: Al-Waajib, Al-Mandoob, Al-Haraam, Al-Makrooh and Al-Mubaah. So when we say, for instance, that such and such a contract is Saheeh, Baatil or Faasid it represents a description (Wasf) for the Hukm At-Takleefiy and not a Hukm Takleefiy itself because the Hukm At-Takleefiy for the contract could be Waajib, Haraam, Mandoob or other than that.

Similarly, when we describe the Hukm in respect to it being a Rukhsah or an 'Azeemah, this description is not the Hukm At-Takleefiy i.e. obligation, recommendation, prohibition, dislike or and permissibility. So for example, the Sawm (fasting) of Ramadhaan is Waajib (obligatory) but it is also an 'Azeemah whilst the breaking of fast undertaken by the sick person in Ramadhaan is Mubaah and it is a Rukhsah (permission). Therefore, the description of the Rukhsah or

‘Azeemah represents a description of the Hukm At-Takleefiy and not a Shar’iy description for the action of the Insaan (person) (itself).

For that reason, each of the Sihhah, Butlaan and Fasaad in addition to the Rukhsah and the ‘Azeemah are considered to represent a Hukm from amongst the types of the Hukm Al-Wad’iy and are not considered to be from the types of the Hukm At-Takleefiy. Based on that the kinds of the Hukm Al-Wad’iy number five: As-Sabab. Ash-Shart, Al-Maani, As-Sihhah, Al-Butlaan and Al-Fasaad, and Ar-Rukhsah and Al-‘Azeemah.

The following is an explanation of each of these kinds:

### **As-Sabab (the cause)**

#### **Its definition:**

As-Sabab linguistically means: That which arrives by it to a certain intended matter and for that reason the rope and the road are called a Sabab because each of them arrive to an intended matter.

As for the Sabab as a type from among the types of Hukm Ash-Shar’iy Al-Wad’iy then the Usooliyeen define it as:

The Sabab is a Wasf (description) Zhaahir Mundabit that the Shar’iy Daleel guides to as being an indicator for the presence of the Hukm.

The meaning of Zhaahir: That it is Mahsoos (sensed) and not Khafiy (hidden/concealed), that the human senses it with his senses and his Aql (mind).

The meaning of Mundabit: It means that when this description (Wasf) is found then the Hukm is also found as the Sabab and the

Musabbab (the cause and caused matter) are connected or tied together in presence and non-presence.

An example of that is the Qawl of Allah Ta’Aalaa:

أَقِمِ الصَّلَاةَ لِذُلُوكِ الشَّمْسِ

*Establish prayer at the decline of the sun [from its meridian] (Al-Israa’ 78)*

Or the statement of the Messenger (saw):

وَقْتُ الصَّلَاةِ الظُّهْرِ إِذَا زَالَتْ الشَّمْسُ

**The time of the Zhohr prayer is when the sun declines (i.e. from the meridian)**

So the Aayah and the Hadeeth both explain that the decline or passing of the sun (Zawaal) from the meridian is the Sabab (cause) for the identification of the existence of the Salaah. The meaning of that is that if this time comes into being then the Salaah of Zhohr comes into being and then it is allowed to perform it when the conditions (Shuroot) are met.

Consequently, the Sabab is an ‘Amaarah’ (sign or indicator) for the presence or non-presence of the Salaah. As for the obligation of the Salaah, then this is from the Ahkaam At-Takleefiy and its Daleel is the Qawl of Allah Ta’Aalaa:

وَأَقِيمُوا الصَّلَاةَ

*And establish the Salaah (An-Nur 56).*



And:

إِنَّ الصَّلَاةَ كَانَتْ عَلَى الْمُؤْمِنِينَ كِتَابًا مَّوْقُوتًا

*Verily, prayer has been decreed upon the believers a decree of specified times (An-Nisaa' 103).*

The same applies to the Sabab of the Sawm (fasting). Allah (swt) said:

فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ

*So whoever sights [the new moon of] the month, then he should him fast it (Al-Baqarah 185).*

And the Messenger of Allah (saw) said:

صُومُوا لِرُؤْيَيْكَ

**Fast when you see it**

(Ahmad and verified as Saheeh by At-Tirmidhi)

These two texts explain that the sighting of the Hilaal (new moon) of Ramadhaan is the Sabab for the presence of the fasting of Ramadhaan.

Similarly, the attainment or reaching of the Nisaab is the Sabab for the presence of the Zakaah, the Idtiraar (necessity) is the Sabab for the permissibility of eating the Maitah (carrion meat) and the Shar'iyah 'Uqood (contracts) are the Sabab for the permissibility to benefit from or transfer property (i.e. to take ownership and dispose of it).

The Sabab is therefore the indicator for the presence or non-presence of the Hukm and there must be a Daleel Shar'iy that indicates this Sabab. That is because the Shar'iy Sabab must have a Daleel Shar'iy that guides to it for it to be taken otherwise it would not be considered to be a Shar'iy Sabab for the presence of the Hukm Ash-Shar'iy.

In addition, the presence of the Hukm Ash-Shar'iy rests upon the presence of the Shar'iy Sabab so that in its absence the Hukm is also absent. Some have defined the Sabab based upon this angle and so they stated: 'The Sabab is what necessitates by its presence the presence (of the Hukm) and necessitates by its absence the absence (i.e. of the Hukm)'.

As such, the Shaari' (Legislator) addressed the Mukallaf with the Hukm Ash-Shar'iy At-Takleefiy and put down a sign or indicator that guides to the presence of the Hukm and this sign or indicator is the Sabab Ash-Shar'iy.

## **The Types of Sabab**

The Sabab from the angle of the capability of the Mukallaf is of two kinds:

1 – The Sabab which is from the actions of the Mukallaf and within his capability to do.

An example of that is:

The Safar (travel) that the Shar'a has specified which is the Sabab for the permissibility of breaking the fast in Ramadhaan.

2 – The Sabab which is not from the actions of the Mukallaf and not within his capability to do.

Examples of that include:

The passing of the sun from the middle of the sky as being the Sabab for the presence of the Zhohr prayer.

And death being the Sabab for the transference of property from the one being inherited from to the inheritor.

### **The difference between the ‘Illah and the Sabab**

1 – The ‘Illah represents the Baa’ith (motivator/reason) for the Hukm i.e. it is that for the purpose or reason of which the Hukm came about. This is like the ‘Ilhaa’ (distraction) from the Jumu’ah prayer which is the ‘Illah for the Tahreem (prohibition) of trading at its time.

That is whilst the Sabab is a sign or indicator (Amaarah) for the presence of the Hukm. Therefore, the passing of the sun (Zawaal) from the middle of the sky is the Sabab (cause) for the presence of the Zhohr prayer. It wasn’t for the sake or purpose of Zawaal (passing of the sun) that the Hukm came into being.

2 – If the same ‘Illah (reasoning) is found within two matters where the Hukm for one of them is mentioned or found in the texts whilst the other does not have a Hukm mentioned for it, then analogy is made for the second matter upon the first and then provided with the same Hukm (ruling). So for example, trading contains distraction from the Jumu’ah prayer at the time of its call and so analogy is made upon it to swimming or any other matter that distracts or diverts

somebody from the Salaah. These matters then take the Hukm of trading at the time of prayer which is Tahreem (prohibition).

This is whilst the existence of the Sabab does not dictate Qiyaas (analogy). So the Zawaal of the sun from the middle of the sky is the Sabab for the presence of the Zhohr prayer. Then if another matter takes place at the time of Salaat Uzh-Zhohr like trading for example, the trading would not take the Hukm of the obligation of the Zhohr prayer. That is because the Sabab is not an incentive or reason for Qiyaas (analogy) to then be made upon unlike the ‘Illah.

3 – The Sabab precedes the Hukm: So the sighting of the new moon of Ramadhaan is the Sabab for fasting and that Sabab precedes the Musabbab (caused matter) which is the fasting of Ramadhaan.

This is whilst the ‘Illah accompanies the Hukm and does not precede it. So the distraction from the Jumu’ah prayer which is the ‘Illah for the prohibition of conducting trade at the time of the prayer accompanies the Hukm (ruling) and does not precede it.

### **Ash-Shart (the condition)**

Linguistically the Shart means: Al-’Alaamah Al-Laazimah (The inherent or necessary sign or characteristic).

The Shart which is a Hukm Wad’iy according to the Istilaah (terminological definition) of the Usooliyeen is:

Ash-Shart is that which is a Wasf (description) that completes the matter that is being conditioned for (Al-Mashroot) whether this Mashroot was the action (Al-Fi’l) or the Sabab of the action.

Example:

**Al-Fi'l (the action):** As-Salaah and it is the Mashroot (the matter having conditions placed upon it).

**Al-Wudoo':** It is the Shart (condition) and it is a Wasf (description) that completes the actions of the Salaah. It is therefore a condition for its Sihhah (validity).

**Sabab ul-Fi'l** (the cause of the action): The wealth reaching the level of the Nisaab. The Nisaab is the Sabab of the Zakaah.

**Shart As-Sabab** (condition of the Sabab): The passing of a year upon this Nisaab. Therefore, the passing of a year is a condition (Shart) for the Sabab (cause) of the action which is the Nisaab of the Zakaah.

## Types of Ash-Shart

The Shart in respect to the Mashroot (the matter that has conditions placed upon it) is of two kinds:

1 – The Shart that is completing to the Musabbab (caused matter): This is the Shart of the Fi'l (action).

Example: Covering of the 'Awhrah is a condition (Shart) in the Salaah as it is a Wasf (description) completing the matter that has conditions applied to it (Al-Mashroot) and that is the action of the Salaah.

The Shuroot (conditions) in this kind or type of Shart returns back to the Hukm At-Takleefiy like At-Tahaarah, Al-Wudoo', the covering of the 'Awhrah, the purity of clothing which are all Shuroot (conditions) within the Salaah whilst the Salaah is a Hukm Takleefiy.

2 – The Shart which completes the Sabab: This is the Shart of the Sabab of the Fi'l (action).

Example:

‘Al-Ihsaan’ (الإحسان) (i.e. marriage) is a Shart for the Zinaa which is the Sabab (cause) for stoning (Ar-Rajm). Consequently, Al-Ihsaan is the Shart that completes the Sabab for the stoning whilst the Sabab is Zinaa.

Similarly, taking property from a safely stored location is a Shart in respect to the Saraqah (theft) which is the Sabab for cutting the hand of the thief.

The Shuroot (conditions) of this kind return back to the Hukm Al-Wad’iy (and not At-Takleefiy). They are Shuroot for the Asbaab (causes) and the Sabab is a type from amongst the types of the Hukm Al-Wad’iy.

## **The types or kinds of Shart in terms of its source**

The types of Shart in terms of its source are two:

1 – Ash-Shart Ash-Shar’iy: And this is the condition that the Shaari’ (Legislator) has stipulated.

This includes the conditions (Shuroot) that the Shaari’ has stipulated within the text specifically and it includes the two previous types i.e. the Shuroot that return back to the Hukm At-Takleefiy like the Wudoo’, covering of the ‘Awrah and Tahaarah which are conditions for the Salaah, and also the Shuroot (conditions) that return back to the Hukm Al-Wad’iy like the ‘Ihsaan’ being a condition in respect to

the Zinaa requiring the punishment of stoning and the safe storage being a condition for the Saraqah (theft) for the cutting or the passing of a year being a condition (Shart) for the Nisaab (in respect to the Zakaah) which are all Shuroot for the Asbaab whilst the Sabab represents a Hukm Wad'iy.

2 – Ash-Shart Al-Ja'liy (Shart that has been made/added): This is what the Mukallaf has stipulated as a condition.

It is stipulated in respect to these types of conditions that they do not violate the Shar'a. That is due to the Qawl of the Messenger (saw):

**الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا**

**The Muslims are (bound) upon their conditions apart from a condition that makes a Halaal (matter) Haraam and makes a Haraam (matter) Halaal (Abu Dawud and At-Tirmidhi).**

Conditions of contracts (Shuroot ul-'Uqood) are of this type like the conditions of sale, companies, the Waqf (endowment) and what is similar to these.

The Shar'a has made it permissible for the Muslim to stipulate within the contracts that which he wishes to in terms of conditions except for that which goes against a Hukm Shar'iy. The Daleel for that is what came in the Hadeeth of 'Aa'ishah (ra) in respect to (the slave) Barirah in one of the narrations. This is when the Messenger of Allah (saw) said to 'Aa'ishah (ra):

**اِشْتَرِيهَا فَأَعْتَقِيهَا وَيَشْتَرُوا مَا شَاءُوا**

**Buy her and free her and they can stipulate whatever they wish**

This indicates the Ibaahah (permissibility) of the person stipulating what conditions he wishes and this is supported by the statement of the Messenger of Allah (saw):

المُسْلِمُونَ عَلَى شُرُوطِهِمْ

### **The Muslims are (bound) upon their conditions**

Meaning that they are bound upon the conditions that they have stipulated and so here ‘Shuroot’ (conditions) have been attached to them (i.e. linguistically indicating possession (الإضافة)). In addition, the Nabi (saw) approved of the stipulation of conditions which are not mentioned in the Kitaab of Allah. Al-‘Abbaas Bin Abdil Muttalib used to pay the money of Al-Mudaarabah (i.e. finance it) and stipulate specific conditions upon the Mudaarib (the one undertaking the work with his financing). The news of that reached the Nabi (saw) and he viewed it positively i.e. he approved of it and its conditions.

### **Ash-Shart and As-Sabab (The condition and the cause)**

1 – The Shart and the Sabab agree in respect to each of them both being tied to something else where the matter is not completed or does not come into being without it. That is whilst neither of them represent a part of the reality of that thing or matter.

2 – The Sabab differs from the Shart as the Sabab necessitates from its existence the existence (of the matter) and from its non-existence it dictates the non-existence of the matter. So if the Zawaal of the sun happens the Zhohr prayer comes into being and if the Zawaal of the sun does not take place then the Salaah does not come into being.



This is whilst the Shart necessitates from its absence or non-existence the non-existence of the action (or matter) but it does not necessitate from its existence the existence (of the action or matter). So for example, the Wudoo' is a Shart in respect to the Salaah and so if there is no Wudoo' there is no Salaah but if there is Wudoo' that does not necessitate that there will be prayer (As-Salaah) as a Muslim could make Wudoo' without performing the prayer with that Wudoo'.

3 – They are also in agreement in respect to both of them being from amongst the types of the Hukm Al-Wad'iy.

### **Al-Maani' (the preventer)**

#### **The definition of Al-Maani':**

Al-Maani' linguistically: It is what prevents and is obstructive to other than it.

The meaning in accordance to the Istilaah (Terminological definition):

It is what the Shaari' has made the absence of the Hukm resultant from its presence or the absence of the Sabab (cause) of the Hukm resultant from its existence (i.e. if it exists the Hukm does not exist or the Sabab for the Hukm does not exist).

Example:

Al-Haid (menstruation) is a Maani' (preventer) for the woman's Salaah.

The debt represents a Maani' (preventer) for the attainment of the Nisaab of the Zakaah if the debt reduces the amount under the Nisaab.

## The types of Al-Maani'

1 – **Maani' Al-Hukm** (The preventer of the ruling):

This is what the Shaari' (Legislator) has made as a result of its presence, the absence of the Hukm (i.e. if the Maani' is present the Hukm is absent).

Example:

This is like the intentional or deliberate killing being a Maani' (preventer) of inheritance. It is therefore the opposite of the Sabab which the Shaari' (Legislator) has made as a result of its existence the existence or presence of the Hukm.

So Al-Quraabah (relation) is the Sabab for inheritance and the intentional killing is the Maani' of inheritance. The Sabab is therefore the opposite of the Maani'.

2 – **Maani' Lis-Sabab** (The preventer of the Sabab):

This is what the Shaari' (legislator) has made as a result of its presence the absence of the Sabab (i.e. if the Maani' exists the Sabab does not exist).

Example:

The passing of a year over the Nisaab makes the Zakaah obligatory. The passing of a year over the Nisaab with the presence of a debt that reduces the Nisaab.

The debt is therefore a Maani' for the Sabab which is the Nisaab and as a result it is also a Maani' for the Hukm (itself). That is because the

Sabab brings about the ruling (Al-Hukm) as a result of its presence and by its absence the Hukm is also absent.

### **The Mawaani' (plural of Maani') in respect to performance (Al-Adaa') and request (At-Talab)**

The Mawaani' (preventers) in consideration of the performance and request are divided into two categories:

1 – A Maani' that is preventative of the Talab (request) and prevents the performance and this is like the loss of the 'Aql (mind) due to sleep or insanity. That is because it prevents the request of prayer, fasting and trade amongst other matters related to the Ahkaam. At the same time, it prevents its performance and so this kind represents a preventer (Maani') from the original Takleefiy Talab (request).

2 – A Maani' that prevents the Talab but does not prevent the performance and this is like being female in respect to the Jumu'ah prayer. That is because being female is a preventer of the request of Salaat ul-Jumu'ah however if the woman was to perform the Salaah it would be valid for her because the Maani' is preventative of the Talab but not the Adaa' (the request but not the performance). Similarly, Safar (travelling) is a Maani' for the Talab (request) of fasting (As-Sawm) or from completing the four Rak'ah of the four Rak'ah prayers. However, if the Musaaafir (traveller) was to fast or pray four Rak'ah without shortening, that would be permitted for him because the Maani' represents a preventer (Maani') from the Talab and not the 'Adaa (performance).

Similarly, all of the causes of Rukhas (plural of Rukhsah meaning special permission or licence to leave an action) represent Mawaani' (preventers) from the Talab (request) and not from the performance.

## **As-Sihhah, Al-Butlaan and Al-Fasaad (correctness/validity, invalidity and corruption)**

### **As-Sihhah (validity):**

If the Mukallaf undertakes or fulfils the Hukm At-Takleefiy, fulfilling all of its Arkaan (pillars) and Shuroot (conditions), the Shaari' (Legislator) has judged upon its Sihhah (i.e. that it is valid). Built upon the Sihhah there are effects of the action in the Dunyaa (life of this world) or in the Aakhirah (hereafter) or in both.

Consequently, the Sihhah (validity) represents the agreement or conformity to the command of the Shaari' (Legislator).

So, when we say that the Salaah is Saheeh (valid) we mean that it is counted, has relieved the responsibility and the need to perform Qadaa' for it (i.e. make it up). Similarly, if the trade fulfilled and met all of its Arkaan and Shuroot it would be Saheeh (valid). We would say that the trade is Saheeh (valid) with the meaning that based upon that there would be effects in the Dunyaa, like the transfer of the right to benefit and utilise the commodity being passed to the buyer and the transfer of the price to the seller through money or debt.

In respect to the Salaah we say that it is Saheeh with the meaning that it is in agreement to the command of the Shaari' whilst reward is hoped for from the performance in the hereafter. And we say that the trade is Saheeh with the meaning that it is in agreement or in accordance to the command of the Shaari' and effects in this life are built upon it whilst reward is also hoped for based upon the intention being to comply to the command of Allah Ta'Aala.

### **Al-Butlaan (invalidity):**

Al-Butlaan is the non-agreement or non-conformity to the command of the Shaari' and what is intended by this is that the effects of the action are not consequential in the Dunyaa whilst there is punishment upon it in the Aakhirah. This is the action that does not meet or fulfil its Arkaan or Shuroot.

So if a Rukn (pillar) from the Arkaan of Salaah is left like the Rukoo' then the Salaah is Baatil (invalid). And if a Shart from amongst its Shuroot like Wudoo' was to be left it would be Baatil. It would therefore not count, relieve the responsibility or the need for performing Qadaa'.

If a Rukn from the Arkaan of the trade or transaction was left like the 'Tejaab' (offer) for example, then the trade would be Baatil and it would not be contracted and any effects in the Dunyaa will not be consequential from it and if they were to be built upon it they would be Baatil (as well) (e.g. the one who has taken possession cannot validly benefit from it and any action undertaken with it would be Baatil).

The Sihhah (validity) in respect to the Mu'aamalaat (transactions) means the permissibility to benefit whilst Al-Butlaan (invalidity) in respect to the Mu'aamalaat means the prohibition of benefiting. This is whilst punishment in the Dunyaa and the Aakhirah is consequentially built upon this Hurmah (prohibition). So whoever takes possession of wealth or property through an invalid 'Aqd (contract) then that property is Haraam and the one who has done that is deserving of the punishment in the hereafter.

### **Al-Fasaad:**

Some of the 'Ulamaa considered Al-Butlaan and Al-Fasaad as two terms with the same meaning however the reality is that the Fasaad differs from the Butlaan. That is because the Butlaan represents the non-agreement to the command of the Shaari' in respect to the Asl (origin) of the matter i.e. its Asl (origin) is forbidden by the Shar'a. That is like Al-Khamr or the sale of Mala'iqeeh which is what is found in the bellies of living creatures related to impregnation. This therefore represents the non-agreement or non-conformity with the command of the Shaari' in terms of the absence of a Rukn from the Arkaan of the contract or the absence of a Shart from the Shuroot violating the origin (Asl) of the action or contract, like the condition of Wudoo' in respect to the Salaah.

As for the Fasaad, then in respect to the Asl (origin) it is in agreement with the command of the Shaari' however it includes a Wasf (description) that is not from the Asl of the action or the contract that is contrary to the command of the Legislator. This would be like the marriage contract in which the Mahr (dowry) has not been specified as this would make it Faasid but not Baatil. The Fasaad (corruption) would then be removed through the specification of the Mahr. The Fasaad in respect to the contract represents a deficiency that is possible to complete so that the contract can become Saheeh whilst the Butlaan in respect to the contract necessitates a new contract that meets the required and necessary pillars and conditions.

Al-Fasaad in respect to the 'Ibaadaat are not conceivable as the 'Ibaadaat are either Saheeh or Baatil (valid or invalid). That is because the one who follows their conditions and pillars finds that they are all connected and related to the Asl (origin) (of the action). As such, the Tahaarah (being in a purified state) is a Shart for the Salaah and if this is not fulfilled then the action would be void and invalid (Baatil). Similarly, the Sujood (prostration) is a Rukn of the Salaah and if it does not take place then the Salaah would be Baatil.

As for the Mu'aamalaat (transactions) then Al-Butlaan and Al-Fasaad are both conceivable. Therefore, if a fundamental (Asaasiy) condition of a contract that violates the Asl (origin) of the contract was missing then the contract would be Baatil (void and invalid). If the condition however was not violating the Asl of the contract, the contract would then be Faasid (corrupted).

The Hanafiyah said: The Aqd (contract) that is not Saheeh is divided into two categories: The Baatil and the Fasaad. If the deficiency or violation occurred in the pillar of the contract it would be Baatil and no effects will be built upon this invalid transaction as a consequence of it, like the sale of carrion (Al-Maitah) for example. That is because the ownership of the carrion does not result from it nor does the ownership of its price or value and there is no permissibility in respect to benefitting through the Maitah (carrion) or its price.

If, however, the flaw, violation or deficiency (Khalal) occurred in one of the conditions of the contract then the ‘Aqd would be Faasid and some effects would be consequential to it like the contraction of the marriage without the specification of the Mahr. That is because the consequences of the Saheeh (valid) marriage are built upon it whilst the Fasaad (corruption or corrupted element) is removed by specifying the Mahr.

## **The Forbiddance of ‘Uqood (contracts) and Tasarrufaat (conduct/disposal)**

The Nahi (forbiddance) of ‘Uqood (contracts) and Tasarrufaat (conduct/disposal) for Ahkaam like trade and marriage are of two types:

1 – It can represent a Nahi (forbiddance) of the ‘Ain (essence) of the contract or the ‘Ain of the Tasarruf (conduct/disposal) itself which would make it Baatil or Faasid.

It would be Baatil if the Nahi (forbiddance) returned to the (essence of the) contract itself or to one of its Arkaan. That would indicate Al-Butlaan and this is like the Nahi of the Shaari’ in respect to selling Al-Maitah (carrion). That is because the Nahi returns back to a pillar of the contract and is contracted upon that in the case where the pillars of the contract are three: Al-‘Aaqid (the one who contracts), Al-Ma’qood ‘Alaihi (the matter being contracted upon) and Seeghat ul-‘Aqd (the contract form).

This is like the Nahi (forbiddance) of Bai’ ul-Hisaah which is when a buyer throws a pebble and whatever one it hits he buys like if he was to throw it towards a pen of sheep for example. The Shaari’ (legislator) has forbidden this type of trade in itself and as such it would be Baatil because it represents a Nahi (forbiddance) in respect to the wording (or form) of the contract (Seeghat ul-‘Aqd).

The contract or transaction would be Faasid if the Nahi returned back to a Sifah (attribute) from amongst its attributes and not to a Rukn from its Arkaan. This is like marrying two sisters at the same

time. That is because the ‘Asl (origin) in respect to marrying each of the two sisters is permissibility in accordance to the Shar’a however what has been forbidden is for them to be married at the same time. It would therefore be Faasid and the rectification of this Fasaad would take place by divorcing one of them.

Another example would be if a person was to loan another a sum of money and then stipulate upon him that he purchases books with it, this contract would be Faasid. The contract would be deemed to be valid whilst that condition would be Baatil and the one taking the loan would not be bound by it.

3 – If the Nahi from the Tasarruf (conduct/disposal) or the ‘Aqd was due to a matter external to them like the Nahi of conducting trade at the time of the call to the Jumu’ah prayer. This Nahi does not have an impact upon the contract or Tasarruf (conduct/disposal). It is not Baatil and not Faasid and all that results from and is built upon the Saheeh contract applies. However, the one who has done it will be sinful due to having violated the command of the Shaari’.

Similarly, the Salaah (if its Arkaan and Shuroot were fulfilled) in the usurped land is a Saheeh prayer that is counted (Mujzi’ah), relieving of the responsibility and the need for Qadaa’ to be undertaken. However, the one who undertakes it is sinful because he has undertaken a Haraam act as he has prayed in a usurped land that he has no right to and to utilise or make use of.

### **Al-‘Azeemah and Ar-Rukhsah**

Some of the ‘Ulamaa made the ‘Azeemah and the Rukhsah from among the types of the Hukm At-Takleefiy based upon them returning back to Al-Iqtidaa’ and At-Takhyeer. That is because the ‘Azeemah represents an Iqtidaa’ (request to do or leave) and so it (the action) could be Waajib or it could be Haraam. This is whilst the Rukhsah represents At-Takhyeer (choice). This is the opinion of Al-Qaadiy Al-Baydaawiy and Ibn As-Sibkiy.



Other ‘Ulamaa classified them with the categories of the Hukm Al-Wad’iy because the ‘Azeemah is an expression of making the normal condition or situation of the people a cause (Sabab) for the continuation of the general original rulings (Al-Ahkaam Al-Asliyah Al-‘Aammah) and because the Rukhsah represents making the extraordinary situation of the people a cause (Sabab) for the lightening or easing (of the rulings). This is in the case where the Sabab (cause) is from amongst the Ahkaam Al-Wad’iyah and not At-Takleefiyah. This is the opinion of Ash-Shaatibiy and Abu Haamid Al-Ghazaaliy.

This second opinion is the stronger because the ‘Azeemah represents a Wasf (description) of the Hukm At-Takleefiy in the normal or regular situation of the people whilst it does not represent the actual Hukm At-Takleefiy which is either Haraam or Waajib. And it is because the Rukhsah represents a description of the Hukm At-Takleefiy in the extraordinary situation whilst it does not represent the actual Hukm At-Takleefiy which is Ibaahah after Tahreem or Ibaahah after Wujooob (i.e. permissibility after originally being Haraam or permissibility after originally being Waajib).

### **Al-‘Azeemah:**

Al-‘Azeemah linguistically means: Being resolved upon a certain matter (or determined to see it through) which means that he moves towards it in sure and determined manner.

According to the Istilaah (terminological definition):

Al-‘Azeemah are the Ahkaam that have been legislated in a general manner and the ‘Ibaad (servants/people) have been enjoined to act in accordance to them like the Wujooob of the Salaah or the Tahreem of Al-Maitah (carrion).

### **Ar-Rukhsah:**

Ar-Rukhsah linguistically means: Ease and facility.

In accordance to the Istilaah:

The Rukhsah represents the Ahkaam that have been legislated as a lightening of the ‘Azeemah due to an ‘Udhr (excuse). The Hukm of the ‘Azeemah remains whilst the ‘Tbaad (servants/people) are not compelled to act in accordance to the Hukm of the ‘Azeemah.

Examples:

The obligation to fast the month of Ramadhaan is an ‘Azeemah whilst breaking the fast by the sick person is a Rukhsah.

Washing the body part (limb) in the Wudoo’ is an ‘Azeemah whilst wiping over the injured, wounded or broken limb represents a Rukhsah.

Standing in the prayer is an ‘Azeemah whilst sitting when incapable of standing represents a Rukhsah.

The prohibition of eating carrion (Al-Maitah) is an ‘Azeemah whilst the permission for the one compelled out of necessity to eat it represents a Rukhsah.

The prohibition to drink Khamr is an ‘Azeemah whilst the permission for the one compelled out of necessity to drink it is a Rukhsah.

Therefore, the ‘Azeemah is that which its legislation is general and does not specify some of the Mukallafeen whilst ignoring others, and it does not provide the choice of acting by it and acting by something other than it, but rather compels the Mukallaf to work in accordance to it alone.

This is whilst the Rukhsah is that which its legislation is out of the ordinary or extraordinary circumstances due to an ‘Udhr (excuse). Its legislation is considered when the ‘Udhr comes into being whilst it is not given consideration when the ‘Udhr (excuse) is no longer there. It is specific to the Mukallafeen who are characterised by this ‘Udhr (excuse) alone (and does not apply to other than them).

For the Rukhsah to be considered as a Rukhsah in accordance to the Shar'a, it must have a Daleel Shar'iy that indicates or guides to it. That which a Daleel Shar'iy does not indicate is not considered to be a Rukhsah as the Rukhsah is a Hukm Shar'iy that Allah (swt) has legislated due to an excuse ('Udhr). Consequently, the 'Udhr represents the Shar'iyah Sabab for the Hukm of the Rukhsah; if the Sabab exists so does the Rukhsah and if the Sabab (i.e. the 'Udhr/excuse) does not exist then the Rukhsah does not exist.

Analogy (Al-Qiyaas) is not made with the excuses of the Rukhsah because they are not Shar'iyah 'Ilal (reasonings) but are rather A'adhaar (excuses) and each 'Udhr (excuse) is specific to its specific ruling in itself. So for instance blindness represents an 'Udhr for not partaking in Al-Jihaad whilst it is not an 'Udhr for leaving the Salaah or the Sawm.

And the Safar (travelling) represents an 'Udhr (excuse) for shortening the Salaah but it is not said that the Safar is an 'Ilal (reason for the legislation) due to there being hardship involved in it. Rather, it is an 'Udhr which Allah Ta'Aalaa has considered to be an 'Udhr and not because it involves hardship. As such, the Musaafir (traveller) can shorten his prayer when he meets the specified travelling distance for shortening and even if he is travelling by plane. This is whilst, on the other hand, the traveller does not shorten at less than this distance and even if he is travelling in the severity of the heat of the desert. That is because hardship is not the 'Udhr that has given the Rukhsah (permission) for shortening but rather the excuse ('Udhr) that has provided the Rukhsah for shortening is As-Safar (travelling), in its description as travelling, without giving any consideration to the hardship involved. The same applies to all of the A'adhaar (excuses) upon which the Rukhas (special permissions) are built upon by way of a Shar'iy text.

### **Acting in accordance to the Rukhsah and the 'Azeemah**

If the 'Udhr (excuse) arises, which is the Sabab (cause) for the Rukhsah, it is permitted for the Mukallaf to act with whichever one

he wishes. He can choose to act in accordance to the ‘Azeemah or in accordance to the Rukhsah. That is because the texts related to the Rukhas (special permissions) have indicated that. Allah (swt) said:

وَإِذَا ضَرَبْتُمْ فِي الْأَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَقْصُرُوا مِنَ  
الصَّلَاةِ

*And when you travel throughout the land, there is no blame upon you for shortening the prayer (An-Nisaa’ 101).*

The lifting of the ‘Junaah’ (blame) mentioned in the Aayah means Al-Ibaahah (permissibility). As such, the Musaaafir who travels the distance of shortening is provided with the choice between the ‘Azeemah, which is to complete the Salaah with four Rak’aat, and between taking the Rukhsah and shortening the Salaah by praying the prayers consisting of four Rak’aat with two Rak’ah (i.e. Zhohr, Asr and ‘Ishaa).

Allah (swt) said:

فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ

*So whoever among you is ill or on a journey [during them] - then an equal number of other days [are to be made up] (Al-Baqarah 184).*

This also indicates Al-Ibaahah (permissibility) i.e. a choice between fasting and breaking the fast (or not fasting).

And the Messenger of Allah (saw) said:

إِنَّ اللَّهَ يُحِبُّ أَنْ تُؤْتَى رُخْصَةٌ كَمَا يُحِبُّ أَنْ تُؤْتَى عَزَائِمُهُ

**Verily Allah loves that his Rukhas are approached just as He loves for His ‘Azaa’im to be approached (i.e. undertaken) (Ibn Hibbaan).**

This explains that they are equal in respect to the obedience of Allah in regards to their performance or undertaking whilst the Talab

(request) of one of them does not have precedence over the Talab of the other.

### **Acting with the ‘Azeemah sometimes takes precedence over the Rukhsah:**

The Shaari’ has explained by the Adillah (evidences) that there are circumstances when acting with the ‘Azeemah takes precedence over acting with the Rukhsah and some of the ‘Ulamaa considered it to be Mandoob (recommended). This is like in respect to the Qawl of Allah Ta’Aalaa:

وَأَنْ تَصُومُوا خَيْرٌ لَّكُمْ

*And for you to fast is better for you (Al-Baqarah 184).*

The Aayah indicates that fasting during the Safar (travel) is Awlaa (preferential) than breaking the fast.

It was related that two of the Sahaabah (rah) were threatened with death by the Mushrikeen due to their embracing of Islaam. One of them then pronounced words of disbelief whilst the other refrained from doing so. So the Messenger of Allah (saw) said in respect to the one who refrained: “He is the best of the Shuhadaa’ and he is my companion in Jannah”. This is therefore a Daleel indicating that acting by the ‘Azeemah in this situation is preferential to acting by the Rukhsah.

### **The Wujoob (Obligation) of acting by the Rukhsah sometimes:**

In the case where acting in accordance to the ‘Azeemah will lead to sure death, acting in accordance to the Rukhsah is Waajib (obligatory) whilst adhering to the ‘Azeemah is Haraam. This is like the special permission to eat the carrion meat (Al-Maitah) in regards to the one who fears death. It is Mubaah due to the Rukhsah in origin, however, it would become Waajib if the death becomes a confirmed inevitable

reality. Adherence to the ‘Azeemah would then become Haraam due to the Qaa’idah Ash-Shar’iyah:

### الْوَسِيلَةُ إِلَى الْحَرَامِ حَرَامٌ

‘The means to the Haraam is Haraam’

The destruction of the person or life is Haraam and so adherence to the ‘Azeemah, which in this example is manifested in not eating the Maitah (carrion meat), is Haraam.

These cases in which the Rukhsah is Waajib and acting by it is Waajib, are not however actually a representation of the Rukhsah. Rather they represent a Takleefiy Hukm and the same applies in the case if it was Mandoob and acting by it was Mandoob.

That is because the Rukhsah, in respect to its reality, and in respect to it being legislated as a Rukhsah, is Mubaah in regards to its Hukm. Then if by leaving it and acting by the ‘Azeemah, it leads inevitably to Haraam, the Rukhsah, which is Mubaah, would become Waajib. This circumstance would then take it out from being a Rukhsah and it would become a Hukm Takleefiy and not a Hukm Wad’iy.

It is therefore considered to be a Rukhsah as long as its Hukm is that of Al-Ibaahah (permissibility) and as long as the Mukallaf is given the choice between doing it or doing the ‘Azeemah.

So the Sawm of Ramadhaan is Waajib whilst the breaking of the fast (or not fasting) for the ill person represents a Rukhsah which is Mubaah.

However, if by not breaking the fast it would lead to the perishing of the sick person, then in that case the Sawm (fasting) would become Haraam and breaking the fast would be obligatory. This new situation or circumstance would then be taken out of the sphere of the Rukhsah and ‘Azeemah and would become representative of a case upon which the following Shar’iyah principle applies:

### الْوَسِيلَةُ إِلَى الْحَرَامِ حَرَامٌ

‘The means to the Haraam is Haraam’

## **The difference between the Hukm At-Takleefiy and the Hukm Al-Wad’iy**

After having explained the Hukm At-Takleefiy and its five types which are Al-Waajib, Al-Mandoob, Al-Haraam, Al-Makrooh and Al-Mubaah, and after having explained the Hukm Al-Wad’iy and its five types which are As-Sabab, Ash-Shart, Al-Maani’, As-Sihhah, Al-Butlaan And Al-Fasaad, and Ar-Rukhsah and Al-‘Azeemah, after that, we have noticed that there are differences between the two; the most important of which are:

1 – Al-Hukm At-Takleefiy is related to the action of the ‘Abd directly and so the Khitaab Ash-Shaari’ (address of the legislator) is directed towards the request to do an action or the request to leave an action, or to provide the choice between doing and leaving.

As for the Hukm Al-Wad’iy, then it is related to the Ahkaam of At-Takleef and not the action of the Mukallaf directly. That is because the address of Al-Wad’i does not represent a request to do or a request to leave or a provision of choice between doing and leaving. Rather it is restricted to representing a Sabab for the presence of a Hukm At-Takleefiy, or a Shart from amongst its Shuroot (conditions), or a Maani’ from its request or from its performance or both, or it represents a description for the Hukm At-Takleefiy from the perspective of Sihhah, Butlaan and Fasaad, or an explanation for the occurrence of the Hukm At-Takleefiy in the ordinary case or situation or in an extraordinary situation which the Fuqahaa’ named the ‘Azeemah and Rukhsah respectively.

2 – The Hukm At-Takleefiy is within the capability of the Mukallaf and so it is possible for him to do it or not do it like the Salaah, conducting trade, Al-Jihaad and carrying the Da’wah amongst other acts. That is because Allah (swt) does not charge the people except with that which they are capable of undertaking. Allah (swt) said:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

*Allah does not charge a soul except [with that within] its capacity (Al-Baqarah 286).*

As for the Hukm Al-Wad'iy, then it can fall within the capability of the Mukallaf where he is capable of doing it. This is like the Wudoo' being a Shart for the validity of the Salaah, the theft being the Sabab for cutting the hand of the thief and the deliberate or intentional killing representing a Maani' (preventer) for inheriting from the relative.

The Hukm Al-Wad'iy can also be beyond the capability of the Mukallaf in the case where he is incapable of doing it and has no input in bringing it about. That is like the Zawaal of the sun from the middle of the sky being the Sabab for the existence of the Zhohr prayer due to the Qawl of Allah Ta'Aala:

أَقِمِ الصَّلَاةَ لِذُلُوكِ الشَّمْسِ

*Establish prayer at the decline of the sun [from its meridian] (Al-Israa' 78).*

### **Al-Adaa' (performance) and Al-Qadaa' (making up for what has been missed)**

**Al-Adaa'**: It is the undertaking of the Waajib in its time that has been specified for it by the Shar'a.

**Al-Qadaa'**: The undertaking of the Waajib after the passing of the time specified for it by the Shar'a.

The Adaa' Al-Waajib (The obligatory performance) in respect to its undertaking or performance is divided into two categories in regards to the time: Muqayyad (restricted) and Mutlaq (unrestricted).



1 - Al-Waajib Al-Muqayyad: It is what the Shaari' has requested to be done by way of a Talab Jaazim (decisive request) within a specific time (frame). This is divided into two categories:

A – Al-Waajib Al-Muwassa':

That which the time for its performance is specified providing room or space for it and other than it from its same kind or type (Jins) to be performed within it.

This is that in which the specified time for its performance is in surplus of it (i.e. in surplus of the time needed to perform it). So Salaat uzh-Zhohr for example is a Waajib Muwassa' as the time for its performance has been specified between the Zawaal of the sun from the meridian until the time when Salaat ul-'Asr begins. Consequently, in this time period that has been specified for it the Mukallaf has the choice to undertake the Salaah in any part within it. The Waajib is fulfilled by the Mukallaf in all of the segments of time during the period and therefore the Waajib falls from him (i.e. he would have fulfilled it) by his performance of it within any time of its specified time period.

Consequently, if the Mukallaf was to delay the Salaah from its beginning or early time whilst he was resolved to perform it and then died before the passing of the time period without having performed it, he would not meet Allah Ta'Aalaa as someone who had been disobedient (in respect to that specific obligation). However, if the Mukallaf believed it most probable that he would die during the specified time period of the Salaah, like if he was to know the time of his execution for example, then he would be disobedient to Allah (swt) by delaying it from its earlier or beginning time. That is because in respect to the Waajib Al-Muwassa' it must be most probable in the mind of the Mukallaf that he will undertake the obligation within its time period and if it is not most probable then it is not Halaal for him to delay it.

B – Al-Waajib Al-Mudayyaq (the narrow obligation in respect to time):

This is that which the time for its performance is specified whilst providing no room or space for other than it from its own kind or type (Jins).

This refers to the obligation that has a specific time for its performance without surplus or extra time and this is like the fasting of Ramadhaan as its time does not expand or provide room except for the performance of the obligatory fast within it.

2 – Al-Waajib Al-Mutlaq (the unrestricted obligation):

This is what the Shaari' has requested to be done by a decisive request (Talab Jaazim) without having specified a specific time for its performance. This is like the Kaffaraat (expiations) and the Mutlaq Nudhoor (unrestricted vows).

Or it is like the example of the Hajj which has been provided with a specific time for its performance within the year but has not compelled its performance to a specific year.

The performance of these types of obligations are required from the Mukallaf if he is capable of undertaking them during his life whilst the obligation falls from him if he is unable to undertake them during his lifetime and there is no punishment due upon him as a result of that in the Aakhirah. That is because Allah does not burden a person above his capacity or capability. However, if the causes for its undertaking have been met and he views that he is most likely to pass away before its undertaking and yet does not undertake it, then he would be sinful.

### **Al-Qadaa:**

Al-Qadaa' refers to the undertaking of the Waajib after the passing of its time that has been specified for it by the Shar'a.

The Qadaa' relates to the Waajib which is restricted (Muqayyad) to a specific time whether that time was Muwassa' (was extended and had room) like the time for the Salaah or Mudayyaq (no extended room) like the fasting of Ramadhaan.

The Qadaa' of the Waajib is obligatory upon the one who is capable. That is because the undertaking of the Waajib in its time represents a performance of what is obliged upon him and if the time passes without the person having undertaken the Waajib whilst he was capable of it then his responsibility would remain active and it is obligatory for him to fulfil it through the Qadaa'.

The leaving of the Waajib that demands the performance of the Qadaa is of three types:

1 – That which the Mukallaf leaves deliberately:

If the Mukallaf leaves the performance of the Waajib intentionally ('Amd) like the Salaah or Sawm then he is sinful and Al-Qadaa' is obligatory upon him.

2 – That which the Mukallaf left out of forgetfulness:

If the Mukallaf leaves the performance of the Waajib due to forgetfulness (Sahw), the Qadaa' becomes obligatory upon him but there is no sin upon him. The Messenger of Allah (saw) said:

مَنْ نَامَ عَنِ الصَّلَاةِ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إِذَا ذَكَرَهَا

**Whoever sleeps from (performing) the Salaah or forgets it, then he should pray when he remembers it (Al-Bukhaari and Muslim).**

If in this case the person does not perform the Qadaa' for what he missed he would then be sinful.

3 – That which the Mukallaf leaves due to an excuse ('Udhr):

If the Mukallaf leaves the performance of the Waajib due to a Shar'iy 'Udhr (excuse) that prevents its performance, then it is a duty for that person to make Qadaa' for that action after the passing of that preventer (or excuse). That is like the Haa'id (menstruating woman) or the Nufasaa' (women who are bleeding post birth) in

respect to Ramadhaan. That is because the Shaari' has given her a special permission not to fast and prevented her from fasting during the Haid and Nifaas whilst it is obligatory for her to make Qadaa' for what she missed after she has become purified. As for the Salaah then Allah Ta'Aalaa has pardoned the Haa'id and the Nufasaa' from making Qadaa' for what was missed.

The Musaaafir (traveller) and Mareed (sick person) must make Qadaa' if they do not fast in Ramadhaan although the travel and sickness differ from the Haid (menstruation) and the Nifaas (post childbirth bleeding). That is because they are two excuses which do not prevent the person from performing the fast due to the Qawl of Allah Ta'Aalaa:

وَأَنْ تَصُومُوا خَيْرٌ لَّكُمْ

*And for you to fast is better for you (Al-Baqarah 184).*

As for the one who fears death or a great harm due to the fasting then he will be disobedient for leaving the food due to its crime against the Rooh (i.e. body) which represents a Haqq (right) of Allah Ta'Aalaa in respect to him and therefore it is obligatory for him to break his fast or not fast (Iftaar).

### **Arkaan Al-Hukm (The pillars of the judgment)**

The Arkaan of the Hukm number three: Al-Haakim (the Judge), Al-Mahkoom 'Alaihi (the judged upon) and Al-Mahkoom Feehi (judged in respect of).

As for Al-Haakim (the Judge): This refers to the One who has the valid right to issue the judgment (Al-Hukm).

As for the Mahkoom 'Alaihi: Then this refers to the Mukallaf (i.e. the one legally charged and responsible).

As for the Mahkoom Feehi: Then this refers to what relates to the address of the Legislator and this is the Fi'l (act) of the Mukallaf or that which is related or attached to the action of the Mukallaf.

## **The First Rukn (pillar) from the Arkaan of the Hukm (Al-Haakim)**

From the most important studies related to the Hukm is the knowledge of whom the issuing of the Hukm returns back to. The one who holds the position of authority like the head of state is not the one who is intended by Al-Haakim here. Rather, what is intended by Al-Haakim is the one who possesses the right of issuing the Hukm upon the actions and things, so as to pass the judgement, for instance, that milk is Mubaah, Khamr is Haraam and that Al-Bai'u (trade) is Halaal whilst Ribaa' (usury) is Haraam and so on...

In the case where the issuing of the Hukm upon the actions of the human being or the things related to his actions has a relationship to the human himself, then the Hukm either belongs to Allah Ta'Aalaa or it belongs to him. In other words, this Hukm belongs to the Shar'a or to the 'Aql (mind).

What is meant by the issuing of the Hukm is the specification of the position or stance of the human being towards the action in respect to whether he does it or leaves it? (i.e. refrains from it). Or does he have a choice between doing and leaving it? It similarly relates to specifying his position towards the things related or connected to his actions in terms of whether he should take them or leave them? Or whether he has been provided with a choice between taking and leaving them?

The position or stance of the human in respect to actions and things rests upon his viewpoint towards them in regards to them being Hasanah (pretty or right) or Qabeehah (ugly or wrong)? Or are they equal in respect to the Husn and the Qubh (prettiness and ugliness)?

As such, the issuing of the Hukm upon actions and things is built and based upon determining the Husn and Qubh in respect to them. So who or what determines that; the Shar'a or the 'Aql (mind)?

### **The difference of the 'Ulamaa in respect to that**

1 – Madh'hab Al-Mu'tazilah and a group from among the Ja'fariyah:

They viewed that there exists an intrinsic Husn (good/prettiness) and Qubh (bad/ugliness) within the actions and things, and that the human 'Aql (mind) is capable of perceiving the Husn and Qubh in respect to the things and actions. They determined that what the 'Aql saw as being Hasan is Hasan with Allah and that the human should do the action which is accompanied by commendation and reward. Similarly, what the 'Aql (mind) views to be Qabeeh then it is Qabeeh with Allah and it is required of the human to leave it whilst the action is accompanied by blameworthiness and punishment.

Upon that basis the Ahkaam Ash-Shar'a in their view comes in agreement or conformity to what the mind comprehends in respect to the Husn or Qubh of the actions and things. So in respect to what the mind perceives to be Husn, the Shar'a came requesting it to be undertaken and what the mind perceives to be Qubh, the Shar'a has come requesting for it to be left.

They then built upon that the understanding that the human is Mukallaf before the sending of the Messengers to them or before the Da'wah had reached them, and that is because his 'Aql perceives and comprehends the Husn and Qubh of the actions and things.

2 – Madh'hab Al-Ash'ariyah, the follows of Abu-l-Hasan Ash'ariy and the Fuqahaa' who agreed with him and are considered to represent the majority of the scholars of Usool.

They viewed that the actions and things do not have an intrinsic Husn or Qubh present within them. Therefore, the Hasan is that which the Shar'a has requested to be undertaken and the Qabeeh is that which the Shar'a has come requesting to be left or refrained from. Consequently, the Husn and Qubh are both Shar'iy (i.e. determined by the Shar'a and not the 'Aql).

Upon that they built the understanding that the human is not Mukallaf before the sending of the Messengers or before the Da'wah reaching them. Consequently, there is no Hukm, Takleef or Hisaab (being held to account) before the presentation of the Shar'a.

### **My opinion in respect to At-Tahseen and At-Taqbeeh (determining the pretty and ugly)**

The Hukm (passing judgment) upon the actions and things in terms of Tahseen or Taqbeeh (determining their prettiness or ugliness) can occur from three directions:

- 1 – From the direction of the reality of things and actions and what they (intrinsically) are?
- 2 – From the direction of its appropriateness or suitability to the natural disposition of the human or its aversion to it.
- 3 – From the direction of the Thawaab and 'Iqaab (reward and punishment) applied to them or the Mad'h (commendation/praise) or Dhamm (disapproval/blameworthiness).

As for passing judgment upon the actions and things from the perspective of their reality and from the perspective of their agreeability, suitability or appropriateness to the natural disposition of the human or their non-agreeability or aversion to the natural disposition, then there is no doubt that this judgment belongs to the human himself to make i.e. it belongs to the 'Aql and not to the Shar'a. Consequently, it is the 'Aql that passes judgment upon actions and things from these two perspectives.

So the human judges that the honey is sweet and inclines towards eating it and that the colocynth (Mediterranean plant) is bitter and so he avoids it. From this perspective the honey would be Hasan and the colocynth ugly.

Similarly, he judges that wealth is Hasan and poverty Qabeeh and that knowledge is Hasan and ignorance is Qabeeh due to what their

realities encompass in terms of completeness or deficiency (Al-Kamaal or An-Naqs).

This judgement upon the things and actions and the Tahseen and Taqbeeh (determination of prettiness and ugliness) for things and actions in these two areas returns back to the reality of the matter that the Insaan (human) perceives and comprehends by his ‘Aql (mind) and upon which his senses fall or it returns back to the natural disposition of the Insaan and his Fitrah and what he feels and his mind comprehends.

Therefore, it is the ‘Aql that passes judgment upon the action or thing in terms of its Husn or Qubh from these two perspectives or angles. As such, the Hukm belongs to the human.

As for the third direction and that relates to the passing of judgement upon the things and actions from the perspective of rewards and punishment in the Akhirah or commendation and blame in the life of this world (Ad-Dunyaa), then there is no doubt or question that this returns to Allah alone and it does not belong to the human. This means that it belongs to the Shar’a to determine and not the ‘Aql. This is like the Husn of Imaan and the Qubh of Kufr, the Husn of lying in warfare and its Qubh when undertaken with the unjust ruler in a situation other than war, and the Husn of grapes and the Qubh of Khamr that is produced from them.

The Hukm upon the things and actions belonging to Allah in terms of the Thawaab (reward) and the ‘Iqaab (punishment) and from the perspective of Al-Mad’h (commendation/praise) and Adh-Dhamm (blame) has two evidences for it: A Daleel ‘Aqliy and a Daleel Shar’iy.

### **A – Ad-Daleel Al-‘Aqliy:**

The reality of the ‘Aql consists of sensation (Ihsaas), a reality, previous information and a brain. The sensation therefore represents a fundamental part from the components of the mind, as when the person does not sense a matter, it is not possible for his ‘Aql to issue a judgment (Hukm) upon it because the ‘Aql is restricted in passing judgements over matters sensed by one of the five senses whilst it is not possible for him to pass a judgment upon matters which cannot



be sensed. Therefore, Al-Hudaa (guidance) and Al-Iemaan (belief), Ad-Dalaal (misguidance/disbelief) and Al-Kufr (disbelief), Al-‘Adl (justice), Azh-Zhulm (oppression/injustice), As-Sidq (truthfulness) and Al-Kadhib (the lie/deceit), the grape and Khamr (intoxicant) amongst other matters are not from the things and actions which are within the capability of the ‘Aql to determine whether they anger Allah Ta’Aalaa and are deserving of a punishment. That is because the ‘Aql (mind) does not sense the commendation of praise (Mad’h) of Allah (swt) or his Dhamm (censure or blame) in respect to these things and actions. The mind does not sense the reward or the punishment attached to a thing or action unless Allah (swt) informs of that through His messengers (as).

From another angle, if the human was left to pass judgment upon the actions and things in terms of praise and blame (Mad’h and Dhamm) then the Hukm would inevitably differ according to the different people issuing it or in different times and places. That is because it is from the nature of the people for there to be disparity in their minds and natural dispositions in addition for them to be affected by the environments that they live in. The reality that has been consistently seen is that the person judges upon matters to be Hasanah (good or praiseworthy) on a certain day and then view them to be Qabeedah (ugly or blameworthy) on another day or at a later time. In this way the Hukm (judgment) upon one single issue differs, is not consistent and errors inevitably occur.

For this reason, it is not permitted for the (right of the) judgment upon things and actions to belong to the ‘Aql or the human in respect to praiseworthiness and blameworthiness (Al-Mad’h and Adh-Dhamm).

Consequently, the Haakim (judge) upon the actions and upon the things related to them in terms of Al-Mad’h and Adh-Dhamm must be Allah Ta’Aalaa i.e. the judge must be the Shar’a and not the ‘Aql.

## **B – Ad-Daleel Ash-Shar’iy**

The above relates to the Daleel Al-‘Aqliy in respect to determining the Husn and Qubh. As for the Daleel Ash-Shar’iy then the Shar’a has made the determination of the Tahseen (judging something to be

good and praiseworthy) and the Taqbeeh (judging something to be ugly and blameworthy) to Allah i.e. to the Shar'a. Allah (swt) said:

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا

*But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission (An-Nisaa' 65).*

And he (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

*O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger (An-Nisaa' 65).*

And the Messenger of Allah (saw) said:

مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ

**Whoever brings something into our matter (i.e. Islaam) that which is not from it, then it is rejected (Muslim).**

Therefore, the issuing of the Hukm (judgement) upon the actions and things belongs to the Shar'a and not to the 'Aql. That is in terms of Al-Mad'h and Adh-Dhamm for them in the Dunyaa (life of this world) and in terms of the Thawaab and 'Iqaab (reward and punishment) in the Aakhirah (Hereafter). As such, the human is able to judge with his mind that 'Ilm (knowledge) is Hasan however the mind is not capable of judging that there is Thawaab (reward) attached to the 'Ilm but rather that is determined by the Shar'a. Similarly, he is able to judge that oppression is Qabeeh but he is unable to judge that there is a punishment for that in the Aakhirah

because the Hukm in respect to that belongs to the Shar'a and not the 'Aql.

In respect to the things in relation to the Shar'a, then as we have explained they can either take the ruling of Ibaahah (permissibility) or Tahreem (prohibition) whilst the Qaa'idah Ash-Shar'iyah states:

الأصل في الأشياء الإباحة ما لم يرد دليل التحريم

'The origin in respect to the things is permissibility as long as no evidence for its prohibition has been stated'

As for the Hukm for the actions (Af'aal) then it falls into five categories:

Al-Waajib, Al-Mandoob, Al-Haraam, Al-Makrooh and Al-Mubaah, and these are the types of the Hukm At-Takleefiy.

As for the Hukm Al-Wad'iy then this is also represented in five types and they are: As-Sabab, Ash-Shart, Al-Maani', As-Sihhah, Al-Butlaan and Al-Fasaad, and Ar-Rukshah and Al-'Azeemah.

Therefore, in conclusion, the Haakim (judge) over the actions, upon the things attached or related to the actions and the matters related to both of these is the Shar'a alone.

## **Second pillar - Al-Mahkoom 'Alaihi**

Al-Mahkoom 'Alaihi is the person upon whom the address of the legislator is attached to his action and the 'Ulamaa have called this person the Mukallaf (Ref: Tayseer At-Tahreer Vol. 2 P. 395).

### **Al-Mukallafoon Bil-Ahkaam (Those who have been charged or made responsible with the rulings)**

Those who are Mukallaf (charged) with the Ahkaam (of Islaam) are all of the people and for that reason it has been said in regards to the

definition of the Hukm Ash-Shar'iy that it is: "The address of the legislator related to the actions of the 'Ibaad" and the 'Ibaad refers to the people whether they are Muslim or Kuffaar (disbelievers).

The Daleel for that is as follows:

1 – Allah (swt) says:

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا

*Say: O people (Mankind) verily, I am the Messenger of Allah to you all (Al-A'araaf 158).*

And Allah Ta'Aalaa said:

وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ بَشِيرًا وَنَذِيرًا

*And We have not sent you except comprehensively to mankind as a bringer of good tidings and a warner (Saba' 28).*

So the 'Naas' (people/mankind) as a whole have been addressed with the Deen of Islaam and it is a duty for the Muslims to convey Islaam to them in an eye-catching manner. This is just as the Messenger of Allah (saw) did when he sent messengers and letters to the well-known and prominent kings and rulers existing at his time inviting them to embrace Islaam and to submit to the Islamic State.

2 – The Qur'aan addressing the people or mankind as a whole:

Allah (swt) said:

يَا أَيُّهَا النَّاسُ اعْبُدُوا رَبَّكُم

*O Mankind worship your Lord (Al-Baqarah 21).*

What is meant by 'Ibaadah (worship) here is its general meaning which is to follow the commands of Allah and keep away from what He has forbidden. Allah (swt) said:

## وَلِلَّهِ عَلَى النَّاسِ حُجُّ الْبَيْتِ

*And [due] to Allah from the people is a pilgrimage to the House (Aali Imraan 97).*

And Allah (swt) said:

مَا سَأَلَكُمْ فِي سَقَرٍ ﴿٤٢﴾ قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ

*"What put you into Saqar?". They said: We were not of those who used to pray (Al-Mudaththir 42-43).*

This was mentioned in the context of asking the disbelievers about their branch actions like the Salaah and their punishment for what they didn't perform, as shown in the following Qawl of Allah Ta'Aalaa connected to that in the same Soorah:

وَكُنَّا نُكَذِّبُ بِيَوْمِ الدِّينِ

*And we used to deny the Day of recompense (Al-Mudaththir 46).*

These Aayaat therefore indicate that they are Mukallafeen (charged) with the Ahkaam Al-Furoo'iyah (branch rulings) just as they are Mukallafoon in respect to the 'Aqaa'id (beliefs). Had they not been charged and accountable for the Furoo' (branches) Allah would not have threatened them with a severe threat of punishment for leaving and not performing them.

Consequently, the people (An-Naas) in their entirety are addressed with the Islamic Sharee'ah as a whole including its Usool and Furoo' i.e. Aqaa'id and Ahkaam. And Allah (swt) will punish them for not having Imaan and for not undertaking the obligatory actions.

## **The position of the Islamic State in respect to applying the Ahkaam upon the disbelievers**

In respect to the disbeliever subjects of the Islamic State being bound by the Ahkaam Ash-Shar'iyah and in terms of its application (or implementation) upon them by the State and compelling them to undertake them, there are a number of details:

1 – If the Ahkaam are stipulated with the condition of Islaam for their performance by a Shar'iy text like the Salaah, Sawm, Hajj, Zakaah and the remainder of the 'Ibaadaat, then it is not permissible for them to undertake them and they are prevented from that because their Shart (condition) is Islaam (i.e. that they are Muslim).

2 – If the Ahkaam Ash-Shar'iyah do not stipulate Islaam it is permissible for them to undertake them and so for instance it is allowed for them to fight with the Muslims as individuals although they are not forced or pressured to do that. Similarly, their Shahaadah (testimony) is accepted in respect to Amwaal (properties) and in all Fanniyah (crafts) matters.

3 – If the Ahkaam Ash-Shar'iyah do not stipulate Islaam in respect to their performance and there is no Shar'iy text indicating the abandoning of its application upon them, then they are requested to do them, they are applied upon them, are compelled to undertake them and punished for leaving or refraining from them. That is because they are addressed with the Ahkaam Ash-Shar'iyah in a general form and they are not exempted from them due to their Kufr (disbelief). They are covered by the address and this includes the Mu'amalaat (transactions) and 'Uqoobaat (punishments). As such, trade (Al-Bai'u) is permissible for them but they are punished for dealing with Ribaah' (usury) and they are punished by the Ahkaam of Islaam in respect to Saraqah (theft), Zinaa (fornication and adultery), Al-Qisaas (law of retaliation) in addition to the other punishments. The Messenger of Allah (saw) stoned a Jewish man and a woman who had committed Zinaa.

## The obligation of the Muslims towards the Kuffaar (disbelievers) whom Islaam has not reached

The Messenger of Allah (saw) said in the Khutbah Al-Wadaa' (farewell speech):

أَلَا هَلْ بَلَّغْتُ؟ اللَّهُمَّ فَاشْهَدْ، فَلْيُبَلِّغِ الشَّاهِدُ مِنْكُمْ الْغَائِبَ ، قَرَبًا مُبَلِّغٍ أَوْ عَيِّ  
مِنْ سَامِعٍ

**Have I conveyed? O Allah bear witness. So let the one witnessing from among you convey to the one who is absent. It may be that the one being conveyed to is more aware than the one who heard it.**

The Shaahid (witness) is everyone who has been guided to Islaam and become acquainted with its Ahkaam, whilst the Ghaa'ib (absent) is everyone Islaam has not yet reached.

For that reason, it is the obligation of the Muslims in every time and age to convey Islaam in an effective eye-catching manner to those who are not aware of it. The conveyance is undertaken in the language that they understand and through rational or intellectual evidences and proofs guiding to the correctness of the Islamic Aqeedah and its system.

This matter requires capabilities beyond the capabilities of individuals and the undertaking of it is entrusted or delegated to the Islamic State that carries the Islamic Da'wah to the states of the world, their nations and peoples by way of Al-Jihaad which Allah (swt) has made obligatory upon the Muslims.

As long as this obligation is required from the Muslims whilst they are unable to undertake it except by the Islamic State, then from this angle it is obligatory upon then to bring this State about within the reality. That is because the Shar'iyah principle states:

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

‘That which the Waajib is not fulfilled except with it, is Waajib’

## Shuroot At-Takleef (conditions of legal responsibility)

There are Shuroot ‘Aammah (general conditions) for At-Takleef in which there is no difference between the Muslim and Kaafir in respect to them and these conditions are: Al-Buloogh (maturity i.e. past the age of puberty), Al-‘Aql (sound mind) and Al-Qudrah (capability).

The evidence for that is the Qawl of the Messenger (saw):

رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنِ النَّائِمِ حَتَّى يَسْتَبِقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ،  
وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ

**The pen has been lifted from three: The sleeping person until he awakens, the boy until he reaches the age of puberty and the one who has lost his mind until he can rationally reason/understand again (Abu Daawood).**

The meaning of the pen being lifted is that the Takleef (legal responsibility) has been lifted. Also Allah Ta’Aalaa does not burden or task a person unless he was capable and qualified (or competent) for the Takleef. That is due to the Qawl of Allah (swt):

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

*Allah does not charge a soul except [with that within] its capacity (Al-Baqarah 286).*

In respect to the Buloogh or when someone is Baaligh then this refers to the age of maturity (Sin Ar-Rushd) which for a man is at the time of Ihtilaam which refers to the emission of Al-Maniy (seminal discharge). When Sa’d Ibn Mu’aadh (ra) passed judgment of death upon the men of Bani Quraizhah, the Baaligh (the mature one i.e. classified as man) was identified by the growth of pubic hair. That is whilst the maturity of the woman is ascertained by the start of her menstruation.



Additionally, the person is only legally responsible (Mukallaf) if he has a sound mind ('Aaqil) and that is because the 'Aql represents the Manaaf At-Takleef (the place upon which the Takleef rests) and it is the mind that has been addressed by the Ahkaam because the 'Aql represents the aware, cognisant and comprehending power within the human being and without the mind the human would become like the animal and unable to understand the address or speech that has been directed to him.

## **The competency of the Mukallaf and its impediments**

It has been mentioned that the Shuroot of At-Takleef are three: Al-Buloogh, Al-Qudrah and Al-'Aql. We will now examine the subject of the Ahliyah (competence or qualification) and its categories and its obstacles or preventative matters in summary:

### **Al-Ahliyah (suitability):**

Al-Ahliyah linguistically means: As-Salaahiyah (suitability, appropriateness) and so it is said: The man is Ahl (suitable/appropriate) to work in such and such a field, in the case where he was Saalih (suitable) for it.

Al-Ahliyah according to the Istilaah of the Usooliyeen: It represents the aptness or suitability of the human in respect to that which is assigned to him in terms of performance or what is assigned to him or upon him in terms of Huqooq (rights) (i.e. competence).

### **Aqsaam Al-Ahliyah (the categories of suitability)**

The Ahliyah is divided into two categories: Ahliyah Wujooob and Ahliyah Adaa'.

1 – Ahliyah Wujooob: This relates to the suitability of the human in respect to him having legitimate rights or rights being due upon him. This Ahliyah exists from the time that the human is a foetus in the womb of his mother, then as a baby, child and then Baaligh (i.e. adult/pubescent)

Therefore, through life itself the human has rights (Huqooq) and Ahkaam are related to him like the Ahkaam of Al-Irth (inheritance) and Az-Zakaah in respect to his wealth amongst other rulings.

2 – Ahliyah Al-Adaa': This relates to the suitability of the human in regards to the Takleef in the case where he carries the responsibility of his actions and speech. The Shuroot of this Takleef in the case where the Ahliyah (suitability) is complete in respect to the performance (as a whole) are Al-Buloogh (adulthood), Al-'Aql (sound mind) and Al-Qudrah (capability). If the Ahliyah is deficient or incomplete in respect to the Adaa' (performance) then this relates to At-Tamyeez (age of discernment) alone and this starts when the child reaches the age of seven and lasts until he reaches the age of puberty (Al-Buloogh).

### **The stages that the human passes through in respect to Al-Ahliyah**

1 - The Foetal stage:

An incomplete Ahliyah is established for the foetus within the womb of the mother and so rights are established for it that do not require an acceptance (Qabool) for it to be affirmed. This includes the Meeraath (inheritance) and Wasiyah (will). As for the Huqooq (rights) requiring Qabool (an acceptance) like the receiving of gifts, then this is not established for the foetus. The Ahliyah of Adaa' performance is also not established or affirmed for the foetus.

2 – The stage of childhood (As-Sabiy):

This is from the birth until the age of Tamyeez (discernment) which is seven years of age.

The WujooB Kaamilah (complete obligation) is affirmed from the child (Sabiy) and so it is valid for him to attain rights and to carry obligations that are permitted for the Waliy (guardian) to perform on his behalf. This includes the Zakaah, Sadaqat ul-Fitr and the

guarantee in respect to what is damaged from the properties of others.

As for the Ahliyah of Al-Adaa; (performance) then this does not exist in his right due to his inability and the shortcoming in respect to his ‘Aql in relation to understanding the Khitaab (address).

### 3 – The stage of Tamyeez (discernment):

This begins at the age of seven and ends at the age of coming to maturity (puberty).

In this stage the Ahliyah of Al-Wujoob (obligation) is established for him as it was affirmed in the previous stage.

As for the Ahliyah of performance (Al-Adaa) then it is established for him in an incomplete (Naaqisah) manner due to his deficiency in respect to fulfilling the conditions of At-Takleef (legal responsibility). Consequently, he is not requested to undertake anything except in a way of teaching, instruction and behavioural refinement. This is like commanding the child to perform the Salaah and getting him used to the fasting. Some of his conducts can be accepted like his acceptance of gifts (Al-Hadiyah and Al-Hibbah) and Sadaqah. In other than this it rests upon the permission of the Waliy (guardian). If the Wali permits it then it is valid whilst it is invalid without him allowing it. All of this is whilst he is not taken to task and held to account for his actions which is due to the Qawl of the Messenger of Allah (saw) in the Hadeeth mentioned in the subject area of the conditions of At-Takleef:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ،  
وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ

**The pen has been lifted from three: The sleeping person until he awakens, the boy until he reaches the age of puberty and the one who has lost his mind until he can rationally reason/understand again (Abu Daawood).**

### 4 – The stage of Bulooah (maturity) and ‘Aaqil (of sound mind):

In this stage the Ahliyah Al-Wujoob Al-Kaamilah and the Ahliyah Al-Adaa' Al-Kaamilah (complete competency of obligation and complete competence of performance) is established and affirmed in respect to him. Consequently, if he was to commit Zinaa he would have the Hadd (set punishment) applied upon him and if he stole, his hand would be severed. Similarly, the 'Uqood (contracts) and Shar'iyah transactions would be valid from him and their effects would result from them.

The point of Bulooah (reaching of the age of maturity) would occur through the appearance of one of the signs of maturity. That is like the Ihtilaam (emission of Maniy/seminal discharge), menstruation or the appearance of pubic hair. The majority of the Fuqahaa; have considered this age to be fifteen years of age. In respect to this, differences in the environment and the specific individual configuration or makeup of the person will have an impact upon it.

### **Impediments or preventative matters ('Awaarid) affecting the Ahliyah**

The impediments to the Ahliyah refer to those descriptions that happen to a person and as a result remove the Ahliyah or some of it. These are divided into two categories: Samaawiyah and Muktasabah.

1 – The Samaawiyah (from the sky) impediments:

These are the impediments that befall the human against his will whilst he had no way of repelling them. The most significant of which are:

Al-Junoon (loss of mind), Al-'Ut'h (imbecility), fainting (passing out) and sleeping, forgetfulness, sickness and death. If the Mukallaf is afflicted by any of these impediments his Ahliyah would become deficient or incomplete in respect to Al-Wujoob and Al-Adaa'. In most cases the Ahliyah of Al-Adaa (performance) falls from him as a result of these impediments ('Awaarid). So for example, the one who has lost his ability to reason (Majnoon), the one sleeping and the dead

are not Mukallaf in respect to the Adaa' (performance) even if some rights are obligatory (Wajib) in respect to their wealth or properties.

2 - Impediments ('Awaarid) which are not Samaawiyah but 'Muktasabah' (acquired):

These are the 'Awaarid (impediments) that the human or person is characterised with by his choice. The most significant of which are:

Al-Jahl (ignorance), As-Sukr (intoxication), As-Safah (foolishness) and Al-Hazl (jokiness).

It is noticeable that these impediments originate from the person. They represent sinfulness if undertaken wilfully by choice and the Ma'siyah (disobedience) is not valid to be a reason or cause for lightening the accountability. These can affirm the deficiency or incompleteness of the Ahliyah of Al-Wujoob (of obligation) like holding back of the wealth/property of the Safeeh (foolish) or pardoning the ignorant (Jaahil) in respect to some Ahkaam that he is not aware of. However, in most cases the Ahliyah Al-Adaa' (performance) remains in place and the person who is characterised by these impediments remains Mukallaf (legally responsible) in accordance to the Shar'a and held to account for his actions in the Dunyaa and the Aakhirah. So for instance, if he was to undertake an act that obliged a Hadd from the Hudood (set penal punishments), that Hadd would be applied upon him.

The detailed Ahkaam Ash-Shar'iyah related to the Ahliyah and the impediments are present within the books of Fiqh alongside their evidences in addition to the differences of opinion amongst the Fuqahaa' within this issue.

### **Third Pillar from the Pillars of the Hukm - Al-Mahkoom Feehi**

Al-Mahkoom Feehi: It is what the Talab Ash-Shaari' (request of the Legislator) is attached or related to.

That is in the case where the Khitaab Ash-Shaari' is attached to the action of the Mukallaf and to what is connected to that action in terms of a thing, a Sabab, Shart, or Sihhah, Butlaan and Fasaad, or Rukhsah and 'Azeemah. In other words, the Mahkoom Feehi is that which is related to the Khitaab Ash-Shaari' in terms of At-Takleef and in terms of Al-Wad'u.

So for example:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

*O You who have believed! Fulfil the contracts (Al-Maa'idah 1).*

The WujooB (obligation) deduced from this address is attached to the action of the Mukallafeen. It is: The fulfilment of the contracts and as such the address, has made this action Waajib (obligatory).

And in respect to the Qawl of Allah Ta'Aalaa:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ

*O you who have believed, when you contract a debt for a specified term, write it down (Al-Baqarah 282).*

The Nadb (recommendation) deduced from this address relates to an act from amongst the acts of the Mukallafeen which is the writing down (recording) of the debt. The address, as such, made this action Mandoob.

The Qawl of Allah (swt):

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ

*Prohibited for you is Al-Maitah (carrion) (Al-Maa'idah 3).*

The Tahreem (prohibition) deduced from this address is attached to a thing that the human utilises which is the Maitah (carrion). As such the address made this thing Haraam.

And in relation to the Qawl of Allah Ta’Aalaa:

فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ

*So whoever among you is ill or on a journey [during them] - then an equal number of days [are to be made up] (Al-Baqarah 184).*

The Khitaab (address) here relates to the Marad (sickness) and the Safar (travel) and so it made not fasting in Ramadhaan for each of these circumstances a Rukhsah and this is representative of a Hukm Wad’iy.

Therefore, that which the Sharee’ah has brought represents an explanation of the Hukm of the actions of the human and the things related to those actions. That is for the purpose of making them (the actions) proceed in accordance to the commands of Allah and all that He has forbidden.

### **Shuroot Al-Mahkoom Feehi or the Shuroot of the validity of the Takleef in respect to the action**

From among the conditions of the validity of the Takleef in respect to the action are:

1 – That the action is Ma’roof (known) to the Mukallaf as the Takleef (being charged) with the Majhool (unknown) is not valid. For that reason, we find that the Takleefaat that came in the Qur’aan are Mujmalah (undetailed), like the Salaah and the Zakaah for example, which were then explained and made clear by the Messenger of Allah (saw) in his statements (Aqwaal) and actions (A’faal) which took away the angle of ignorance in respect to them (i.e. so that they are known). Indeed, Allah (swt) commanded His Messenger (saw) to make clear and explain the Mujmal of the Qur’aan. Allah Ta’Aalaa said:

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ

*And We revealed to you the message that you may make clear to the people what was sent down to them (An-Nabl 44).*

In addition, the Shaari' (Legislator) has requested the Mukallaf to ask the people of knowledge in respect to that which they do not know. Allah Ta'Aalaa said:

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

*So ask the people of the message if you do not know (Al-Anbiyaa' 7)*

That is because the 'Ulamaa are those who have studied that which Allah (swt) has placed upon the servants in terms of the actions of Takleef.

2 – That the action that has been charged to undertake is within the capability of the Mukallaf as Allah (swt) has said:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

*Allah does not charge a soul except [with that within] its capacity (Al-Baqarah 286).*

Allah (swt) has not charged the servants (Al-'Ibaad) to undertake the impossible and He did not charge them with that which does not fall under their will. As such, they are not charged or burdened in respect to the matters of the emotions and the heart which are not under the control of their will. This would be like being charged to love a specific matter or thing or to hate another thing. It was in this context that the Hadeeth of the Messenger of Allah (saw) in respect to his division between his wives came:

اللَّهُمَّ هَذَا قَسَمِي فِيمَا أَمْلِكُ فَلَا تُؤَاخِذْنِي فِيمَا لَا أَمْلِكُ

**O Allah, this is my division in accordance to what I possess (i.e. of ability) and so do not take me to account for that which I don't possess (i.e. beyond my ability and will) (Abu Dawud and At-Tirmidhi)**



So he possesses the ability to give each wife their right in respect to the Nafaqah (spending) and in respect to spending time and nights however he does not possess the ability to love each of them equally. That is because it is a matter of the emotions which are not within the person's capability to completely control.

3 – That the specification of the action that has been charged to undertake has come from a source that possesses the authority to command and issue the Takleef i.e. that it has come from Allah (swt). That is in order for the implementation to be an act of obedience and compliance to the command of Allah Ta'Aalaa and so that he attains Thawaab (reward) for undertaking it. So for example, the actions of the Salaah including the Shuroot, Arkaan and forms, are not counted (accepted) and do not release the fulfilment of the responsibility unless the Mukallaf undertakes them in accordance to what Allah (swt) has demanded. Consequently, it is not permissible for him to deliberately pray five Raka'at for the 'Asr prayer or for him to clasp his hands together behind his back during the Salaah and that is due to the speech of the Messenger of Allah (saw):

مَنْ أَحَدَّثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ

**Whoever brings anything into our matter (i.e. Islaam) that is not from it, then it is rejected (Al-Bukhaari and Muslim).**

### **The types of Al-Mahkoom Feehi from the angle of the direction that it is attributed to**

The action of the Mukallaf in respect to its connection to the Haqq (right) of Allah and to the right of the 'Tbaad (servants/people) is divided into four categories:

#### **1 – Haqq of Allah:**

This is the action upon which a general benefit/good (نُفْع) is built and for this reason it is attributed to the Lord of the worlds due to the comprehensiveness of its benefit.

It is not permitted to remove this right and it is not right for anyone to give it up (compromise in respect to it) or go against it. These types of Huqooq (rights) include:

- The 'Ibaadaat (acts of worship): Like the Salaah, Zakaah, Siyaam, Hajj, Al-Jihaad, carrying the Da'wah, Sadaqat ul-Fitr and the Zakaah upon the what is cultivated upon the 'Ushri land.

- Al-Kharaaj: This represents the taxes upon the Kharaajiyah lands and these are the lands which were opened up by force and were left in the hands of its non-Muslim owners. There is also the Jizyah that is taken from the non-Muslim subjects (Ri'aayaa) of the Islamic State.

- Al-Kaffaaraat (expiations) in all of their forms like the Kaffarah of breaking the oath sworn in Allah's name amongst other types. There is also the Khumus of the Ghanaa'im (fifth of the war booty) and the fifth of the Rikaaz. This is treasure buried under the ground and the one who finds it must give a fifth of its value to the State to be added to the revenues of the Bait ul-Maal (treasury).

- Establishment of the punishments that have been specified and set by the Shar'a and these are the Hudood like the Hadd of Zinaa, the Hadd of Saraqah (theft), the Hadd of drinking alcohol and the Hadd of the one who blocks the road to steal (highway robber) ... The Messenger of Allah (saw) said:

إِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِأَنَّهُ إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ قَطَعُوهُ ، وَالَّذِي نَفْسِي بِيَدِهِ ، لَوْ كَانَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا

Those who came before were indeed destroyed because when a nobleman stole amongst them he was let go and when a weak person stole amongst them they cut his hand. By the one in whose hand is my soul, had it been Faatimah the daughter of Muhammad (who had stolen) I would have cut off her hand

(Ref: Tayseer Al-Wusool Ilaa Jaami'i il-Usool Min Hadeeth Ar-Rasool Vol 2, p 14).

## **2 – Haqq ul-‘Abd (the right of the servant/person):**

This is the action that has within it a specific Maslahah (interest/benefit) for the individual. This is like the settling of the debt or blood money, guaranteeing the damaged or broken item and gifts. If the ‘Abd (servant/person) wishes, this type of right can be dropped or let go and if he wills he can fulfil it because the Shaari’ has given the human the right to conduct himself freely in his right as he wishes within the remits of the Ahkaam Ash-Shar’iy.

3 – That in which the Haqq of Allah and the Haqq of the ‘Abd come together whilst the Haqq of Allah dominates. Example: The Hadd of Al-Qadhif (slandorous accusation against a woman’s honour) as it contains within it a deterrent for criminals and the preservation of the peoples’ honours. This punishment falls under that which is from the Huqooq (rights) of Allah.

From another angle, in the occurrence of this punishment there exists a Maslahah Khaassah (specific benefit or interest) for the one who has been slandered as it clears the name, integrity and repels the taint or dishonour. Therefore, this punishment also includes a right for the ‘Abd and a Maslahah for him or her.

Despite that the Haqq of Allah is dominant and for that reason it is not permissible for the one who has been accused or slandered (Al-Maqdhoof) to drop the punishment from the Qaadhf (slanderer) and that is because the Haqq of Allah does not fall as a result of the servant’s wish for it to be dropped.

4 – That in which the Haqq of Allah and the Haqq of the ‘Abd come together whilst the Haqq of the ‘Abd (servant) dominates. Example: Al-Qisaas (law of retribution) against the intentional or deliberate killer. Within the Qisaas there exists life and a security for the life of the people and the preservation of that security. This then is representative of the Maslahah Al-‘Aammah (the general interest and benefit) which the Haqq of Allah is reflected in.

Al-Qisaas, from another angle, heals the hearts of the family of the one who was killed and removes their anger and hatred towards the

killer. From this angle it represents a Haqq (right) of the ‘Abd (servant/person). However, the Shaari’ (Legislator) has provided the Waliy (guardian) of the killed person the right to pardon the killer or to find the receipt of blood money sufficient. This indicates that that the Haqq of the ‘Abd is more dominant in respect to the ruling of Al-Qisaas.

### **Additional follow-on comment**

The man-made laws that were applied over the Muslims in the absence of the Islamic State followed a path opposing what was mentioned above. So they made Al-Qisaas (retaliatory punishment) of the killer a right belonging to the society and the affair of the killer was delegated to the ruler. If he wished, he would kill him and if he wished he would pardon him without any consideration being given to the Waliy of the killed person, in respect to him pardoning the killer or not pardoning him.

The man-made law also made the punishment of Az-Zinaa a private Haqq (right) and so the Zinaa in accordance to these laws is not considered to be a crime unless it was by way of compulsion or force and then the punishment in respect to it would be from the private right. The claim is not raised except from her husband and he has the right to stop its procedures. Then if judgment is passed against her, he has the right to stop or prevent the implementation of the ruling.

There is therefore a wide gap and difference between the Hukm of Allah and the Hukm of people!

## Maqaasid Al-Ahkaam Ash-Shar'iyah

Allah (swt) sent Muhammad (saw) with the Islamic Sharee'ah as a mercy for mankind. He (swt) said:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*And We have not sent you, [O Muhammad], except as a mercy to the worlds (Al-Anbiyaa' 107).*

And Allah Ta'Aalaa said:

وَنُنزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ لِّلْمُؤْمِنِينَ

*And we have revealed from the Qur'aan that which is a cure and mercy for the believers (Al-Israa' 82).*

Allah (swt) sent His Messenger with Islaam, as a mercy to mankind, to bring them out from worshipping other than Allah to worshipping Allah and He (swt) organised their relationships with the best of systems.

The aim and purpose of the Sharee'ah as a whole is therefore a Rahmah (mercy) for mankind. As the Sharee'ah represents a Rahmah. This means that the Sharee'ah as a whole came to bring and secure Masaalih (benefits/interests) and to repel Mafaasid (unbeneficial and corrupting/bad elements) in relation to the people generally when it is applied upon them. The Adillah (evidences) are explicit in respect to the Rahmah (mercy) representing the overall aim or objective of the Sharee'ah as a whole. That is whilst there isn't any indication within these general evidences to indicate that the Rahmah represents the aim or objective of every single individual ruling in itself or of every text from amongst the Sharee'ah texts.

Consequently, the overall Maqsad (aim) of the Sharee'ah is the realisation or accomplishment of the interests of the 'Ibaad (servants/people) however these Masaalih (interests/benefits) are not what the human views to be representative of a Maslahah or benefit in accordance to his whims or desires but rather the Maslahah is that

which is a Maslahah according to the scale of the Shar'a and not the scale of whims and desires. The 'Ulamaa have classified these Masaalih into three categories:

### **1 – Ad-Darooriyaat (essentialities/necessities):**

By these it is meant the Masaalih upon which the life of the people, the establishment of the society and its stability rests. If these Masaalih are not fulfilled or realised the system of life will become flawed and chaos and corruption will prevail. They will face hardship and suffering in this Dunyaa and punishment in the Aakhirah (hereafter). These Darooriyaat (essential matters) number five: Hifzh ud-Deen, Hifzh un-Nafs, Hifzh ul-'Aql, Hifzh un-Nasl and Hifzh ul-Maal (preservation of the Deen, life, mind, progeny/lineage and property). Islaam has legislated Ahkaam for the preservation of each of these Darooriyaat (essential matters).

#### **- Hifzh ud Deen:**

The Islamic legislation does not force or compel anyone to enter into Islaam. Allah (swt) said:

لَا إِكْرَاهَ فِي الدِّينِ

*There is no compulsion in (respect to) the Deen (Al-Baqarah 256).*

And this was applicable after the Arab Mushrikeen entered into Islaam. However, in respect to the Muslim that apostatises from Islaam, he is discussed with and his repentance is sought for three days. Then, after that, if he persists upon his apostasy, he is killed. The Messenger of Allah (saw) said:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

**Whoever changes his Deen, then kill him (Al-Bukhaari)**

That is because the Islamic Aqeedah is in harmony with the Fitrah (intrinsic nature) of the human being and built (or based) upon the mind (rationality). As such, the Murtadd (apostate) from this

Aqeedah becomes like a manifestation of sickness that must be uprooted so that it does not infect the rest of the Islamic society. This relates to the preservation of the Deen.

Islaam has considered Al-Fitnah (strife) in the Deen to be worse and more severe than killing. Allah Ta’Aalaa said:

وَالْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ

*Al-Fitnah is worse than killing (Al-Baqarah 191).*

As such Islaam has legislated the following for the preservation of the Deen: The Da’wah (invitation) to it, repelling the assault or aggression against it and the obligation of Al-Jihaad against those who wish to negate it. Allah (swt) says:

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ

*And fight them until there is no more Fitnah and the Deen is to Allah (Al-Baqarah 193).*

#### **- Hifzh un-Nafs (preservation of the life):**

For the preservation of the Nafs (life) Islaam legislated all that which is required for its continuance or survival like food, drink and punishing the one who aggresses against it. Allah (swt) says:

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ

*And you have in Al-Qisaas (law of retaliation) life (Al-Baqarah 179).*

It has also prohibited exposing the life to destruction by making suicide Haraam.

#### **- Hifzh ul-‘Aql (preservation of the mind):**

For the preservation of the mind Islaam has prohibited the drinking of Khamr or consumption of drugs (intoxicants). At the same time, it

has encouraged and urged the pursuit of knowledge, contemplation and Ijtihad, which are all matters that develop the intellectual capability within the person. Islaam commends those who are knowledgeable and attain knowledge:

فُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ

*Say: Are those who know and those who don't know equal (or the same) (Az-Zumar 9).*

### - Hifzh un-Nasl (preservation of the progeny/lineage):

For its preservation Islaam has legislated the prohibition of Zinaa and a punishment for its perpetrator. It has also prohibited Al-Qadhif (accusations against chastity) and legislated the punishment for the one who makes such accusations or claims (Al-Qaadhf). It prohibited abortion for other than a Shar'iy 'Udhr (excuse) and encouraged marriage and the reproduction of many offspring.

### - Hifzh ul-Maal (preservation of the property):

Islaam has legislated the prohibition of stealing and the Hadd (set punishment) for the thief in regards to the preservation of the property. It has also prohibited the damaging of property, provided restrictive legislation to safeguard the wealth of the Safeeh (foolish) and Majnoon (not of sound mind), made (private) ownership permissible and encouraged wealth growth.

## 2 – Al-Haajiyaat (the needs):

These are the matters that the people need to lift the hardship or difficulty (Haraj) from them and to lighten the burdens of the Takleef upon them. Allah (swt) said:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

*Allah intends for you ease and does not intend for you hardship (Al-Baqarah 185).*



So in relation to the 'Ibaadaat the Takleef is in accordance to their capability whilst Rukhas (special permissions) have been legislated for them as a lightening for them in the case where there is a hardship upon them in respect to the 'Azeemah (the obligation before the Rukhsah). Consequently, it made the Iftaar (breaking of fast) in Ramadhāan Mubaah for the traveller and the prayer sitting for the one incapable of standing amongst other such rulings.

And in respect to the foodstuffs, the Tayyibaat (good things) were made Halaal for them and the Khabaa'ith (dirty/bad things) were made Haraam, whilst the one who is compelled to (Mudtarr) has been permitted to eat that which has been made Haraam upon him. Allah (swt) said:

فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرٍ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

*But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful (Al-Maa'idah 3).*

Within the area of the 'Uqoobaat' (punishments/penal-code) the following principle has been legislated:

دَرْءُ الْحُدُودِ بِالشُّبُهَاتِ

'Repelling the Hudood by doubts'

And the Diyah (blood money) has been legislated upon the 'Aaqilah' (relatives of the killer) in relation to the unintentional killing as a lightening (of the burden) upon the killer.

### 3 – At-Tahseenaat (improvements/betterments):

These are the matters that improve the condition of the people conforming with the requirements of a sense of honour, dignity and noble virtuous morals.

Consequently, in respect to the 'Ibaadaat the purification of the body, clothing and place was legislated in addition to legislating caution in respect to the Najaasaat (impurities) and for the Muslims to pay

attention to their adornment at every Masjid (i.e. where nice clothing.)

In regards to the Mu'aamalaat Al-Ghish (swindling/cheating), fraud, deceit, Israaf and stinginess has been made Haraam. In addition, dealing with every kind of Najas (impurity) and Daarr (harmful matter) is prohibited. The Shar'a forbade a person conducting a trade over the trade of his brother and fixing prices amongst other matters.

Similar to that applies in respect to the 'Uqooabaat (punishments/penal code) whilst the killing of monks, children and women have been made Haraam in Al-Jihaad, just as mutilation, treachery, killing of messengers (envoys) and burning the dead or living has been forbidden.

In relation to the Akhlaaq (morals) Islaam has demanded the person to be characterised with truthfulness (honesty), trustworthiness, patience, perseverance and righteousness whilst it has forbidden lying, cheating, deceiving, cowardice and lewd speech. The Messenger of Allah (saw) said:

إِنَّ مِنْ أَحَبِّكُمْ إِلَيَّ وَأَقْرَبِكُمْ مِنِّي مَجْلِسًا يَوْمَ الْقِيَامَةِ أَحْسَنُكُمْ أَخْلَاقًا

**Verily, from those of you are most beloved to me and sat the closest to me (in seating) on the Day of Judgement are the best of you in Akhlaaq (morals/manners)**  
(Al-Bukhaari and At-Tirmidhi).

And the Messenger of Allah (saw) was asked about that which most enters (its possessor) into Al-Jannah (paradise) and he (saw) said:

تَقْوَى اللَّهِ وَحُسْنُ الْخُلُقِ

**The Taqwaa of Allah and the good manners/morals**  
(At-Tirmidhi which he classified as Saheeh).

The Akhlaaq Al-Hasanah (good morals/virtues) as such are responsible for generating affection, respect and trust or confidence amongst the individuals of the society.

## **The difference or disagreement amongst the ‘Ulamaa in respect to the Ahkaam Ash-Shar’iyah being Mu’allalah (reasoned) by Al-Maslahah (the interest/benefit)**

The ‘Ulamaa differed in respect to the Ahkaam Ash-Shar’iyah being Mu’allalah (reasoned) by the Maslahah into a number of groupings:

1 – The first group:

This group denied the Ahkaam Ash-Shar’iyah being reasoned by Al-Maslahah i.e. that the Maslahah is the motive or reason for the Hukm Ash-Shar’iy. In accordance to their opinion they say that it is possible for the Shaari’ (Legislator) to legislate a Hukm Shar’iy that does not have a Maslahah (interest or benefit) within it. Those holding this view are the Asha’irah (the followers of Abu-l-Hasan Al-Ash’ariy) and the Zhaahiriyyah (the followers of Daawood Azh-Zhaahiriyy).

Despite that, they did however establish that an examination (of the texts and rulings) affirms that the Ahkaam Ash-Shar’i are all restricted to falling under a Maslahah from amongst the five matters: the preservation of the Deen, life, mind, progeny and property.

2 – The second group:

This group includes some of the Shaafi’iyyeen and some of the Hanafiyah and they affirmed that the Maslahah is valid to be an ‘Illah (reason) for the Ahkaam Ash-Shar’iyah on the basis that it represents the ‘Amaarah’ (sign) of the Hukm but not the motive for the Hukm i.e. that it is closer to the Sabab than the ‘Illah.

3 – The third group:

This group includes the Mu’tazilah, the Maatureediyah and some of the Hanaabilah and Maalikiyyah. They viewed that that Ahkaam Ash-Shar’i are reasoned by Masaalih without restriction (to the will of Allah Ta’Aalaa) on the condition that the reasoning does not demolish the text (i.e. go against it).

## My opinion in respect to the Ahkaam Ash-Shar'iyah being Mu'allalah (reasoned) by Al-Maslahah

1 – The deduction of some of the 'Ulamaa in respect to the bringing of interests (Jalb Al-Masaalih) and the repelling of harms or corrupted matters (Dar'u l-Mafaasid) being representative of an 'Illah (Shar'i reasoning) for the Ahkaam Ash-Shar'iyah is an invalid deduction.

The proof and evidence for that is that the Aayaat that they used for evidence in their deduction do not indicate 'Illiyah (reasoning) whether in the form that they have come (Seeghah) or in respect to the reality.

They used as evidence the Qawl of Allah Ta'Aalaa:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*And We have not sent you, [O Muhammad], except as a mercy to the worlds (Al-Anbiyaa' 107).*

The Aayah indicates that the sending of the Messenger (saw) represents a Rahmah (mercy) for mankind which means that the objective and purpose of the Islamic Sharee'ah in its overall description is to bring the Masaalih and repel the Mafaasid whilst the Aayah does not mean that the bringing of the Masaalih and repelling of the Mafaasid is representative of the 'Illah of the Islamic Sharee'ah in its overall description or that it is the 'Illah for every single Hukm Shar'iy in itself.

That is because the Aayah guides to the result that comes as a consequence of the Sharee'ah which is the bringing of benefit and the repelling of the Mafaasid whilst it does not indicate that they represent the 'Illah of the Shar'iyah. There is a difference between the result and the 'Illah as the result relates to the consequence of the Hukm after its implementation whilst the 'Illah is the reason or motive (Baa'ith) for the ruling itself i.e. the reason for which the Hukm was legislated. There is therefore a clear difference between the two.

They also used as evidence the Hadeeth of the Messenger (saw):

لَا ضَرَرَ وَلَا ضِرَارَ فِي الْإِسْلَامِ

### **There is not Harming and reciprocation of harm in Islaam**

The most that this Hadeeth can indicate is the negation of the Mafaasid (corrupt and harmful matters) from the Islamic Sharee'ah as a whole whilst it does not mean or indicate Al-'Illiyah (reasoning), whether it is in respect to the Sharee'ah (as a whole) or to any specific Hukm Shar'iy.

Additionally, this Hadeeth was related to repel the harm from the people whilst the wording 'In Islaam' was not mentioned in it. Ibn 'Abbaas (ra) said: The Messenger of Allah (saw) said:

لَا ضَرَرَ وَلَا ضِرَارَ ، وَلِلرَّجُلِ أَنْ يَضَعَ خَشْبَهُ فِي حَائِطِ جَارِهِ ، وَإِذَا  
اِخْتَلَفْتُمْ فِي الطَّرِيقِ فَأَجْعَلُوهُ سَبْعَةَ أذْرُعٍ

**There is no harming and no reciprocating of harm, and it is for a man to place a wooden peg in the wall of his neighbour and if you dispute on the path then make it seven arm spans (in width) (Ahmad)**

The Hadeeth was therefore not within the subject area of the Maqaasid of the Sharee'ah but was rather related to preventing or repelling the harm (Darar). Consequently, there is no Dalaalah (implied indication) within it in relation to the subject of bringing the Masaalih and repelling the Mafaasid or to indicate that it represents an 'Illah for the Ahkaam Ash-Shar'iyah.

Even if the texts of the Qur'aan and the Sunnah have guided to the result that occurs from the implementation of application of the Islamic Sharee'ah manifested in the bringing of the Masaalih and repelling of the Mafaasid, they do not however indicate that they represent an 'Illah (reasoning) for the legislation of the Sharee'ah or an 'Illah for every Hukm Shar'iy in itself. As a result, the deduction

based upon these evidences is not valid and falls down in respect to this subject area.

2 – The Ghaayah (aim) or Nateejah (result) of the Islamic Sharee’ah to bring the Masaalih and to repel the Mafaasid is only realised from the Sharee’ah in its description as a whole. As for every Hukm in itself then this could be realised just as it may not be realised. So for example, in the lands of Islaam today and under the shade (or rule) of the man-made systems that have been established within them, it is seen that Ribaa, which is Haraam, has become a part of the economic life of the people and so any trader or factory owner who does not deal with Ribaa is afflicted by an economic harm. That is whilst it could be perceived that he would carry a burden of significant losses as the result of his adherence to his Deen, in which case he would be like the one who is holding onto burning embers of coals. So in this case where does the worldly benefit of Maslahah lie?! And where is the Maslahah in relation to the implementation of the Hukm that has been guided to in the Hadeeth of the Messenger of Allah (saw):

سَيِّدُ الشُّهَدَاءِ حَمَزَةُ بْنُ عَبْدِ الْمُطَّلِبِ ، وَرَجُلٌ قَامَ إِلَى إِمَامٍ جَائِرٍ فَأَمَرَهُ  
وَنَهَاها فَقَتَلَهُ

**The master of martyrs is Hamzah bin Abdul Muttalib and a man who stood before the unjust Imaam, then commanded him and forbade him, and so he (the ruler) killed him**  
(At-Tirmidhi and Al-Haakim who said the Isnaad is Saheeh).

Therefore, the acquisition of the Masaalih or the repelling of the Mafaasid do not represent the Ghaayah (aim) or result of the application of every Hukm Shar’iy in itself but rather they represent the aim or result of the Islamic Sharee’ah as a whole.

3 – As for what occurs in terms of interests or benefits (Masaalih) as a result of the application of specific Ahkaam from the Islamic Sharee’ah, then this is not considered to be representative of a Daleel to support that the Ahkaam are Mu’allalah (reasoned) by the Maslahah. Consequently, the occurrence of a benefit or interest from marriage or trade or hiring, for example, could occur just as it may not occur. Someone could get married whilst he does not benefit or

he could hire and lose out just as he could trade making a loss. Adherence and commitment to these Ahkaam emanates from the Shar'iyah Adillah (evidences) that have guided to them whilst they have not emanated from the premise that they bring a Maslahah or repel of a Mafsadah.

As such, implicating or involving the acquisition of Masaalih or the repelling of Mafaasid in respect to the Ahkaam Ash-Shar'iyah as an 'Illah for them or as a result has no place or justification for it, as it does not just represent an implication but rather represents a gross error that distances the people and particularly the Muslims from a precise or accurate adherence to the Ahkaam Ash-Shar'iyah. It attracts leniency in respect to this adherence just as it brings about errors in respect to the legislation and deduction of the rulings as a result of connecting or tying the Hukm itself within the (scope of the) Maslahah that has been perceived to be present in relation to the Hukm.

4 – As for the Shar'iyah 'Ilal (reasons) then from an examination of the Shar'iyah texts it is found that there are Ahkaam (rulings) that are Mu'allalah (i.e. containing an 'Illah) just as there are rulings which do not contain an 'Illah (legal reasoning) for them.

The Ahkaam of the 'Ibaadaat do not have a Shar'iyah 'Illah for them. Consequently, the Wudoo' and performing Ghusl from the Janaabah (state of impurity) was not legislated for the purpose of cleanliness because the address of the legislator does not indicate that 'Illah. Similarly, the Salaah was not legislated to exercise the body and fasting was not legislated to improve the health of the fasting person, indeed someone could become ill from fasting... and so on.

Other Ahkaam did come with an 'Illah attached to them within the Mu'aamalaat (transactions) and 'Uqoobaat (punishments). So the Shaari' (Legislator) prohibited trade at the time of Salaat ul-Jumu'ah with the 'Illah (reasoning) of distraction (Al-Ilhaa') from the Salaah and the Shaari' has permitted visiting graves after having forbidden that with the 'Illah that the action reminds the person about the hereafter. The Shaari' also forbade the Qaadi (judge) from judging whilst he is angry because his anger muddles his mind and influences his judgment. These 'Ilal (reasons) could be stated in the text by the

Shaari' either Saraahatan (explicitly) or Istinbaatan (by way of deduction). That is because they are 'Ilal Shar'iyah and not 'Aqliyah and each 'Illah from amongst the 'Ilal is specific to a specific Hukm and does not extend beyond that to another Hukm.

Therefore, the statement or opinion that Jalb Al-Masaalih (gaining the benefits) and Dar'u l-Mafaasid (repelling negative consequences) represents an 'Illah for every Hukm Shar'iy is an opinion that has no basis for it, as the Hukm containing an 'Illah must have a Shar'iy text indicating that 'Illah.

The confusion and error related to the extraction and deduction of the Ahkaam Ash-Shar'iyah led to a weakness in respect to the understanding of Islaam which led to the weakness of the Muslims and then to the weakness of their State and to its downfall in the time of the 'Uthmanis. Precision and investigation is therefore necessary when taking or extracting the Hukm Ash-Shar'iy from its Daleel (evidence) and through utilising the correct method of Ijtihad that the Sahaabah (rah) of the Messenger of Allah (saw) proceeded upon and the method proceeded upon by those who followed them with Ihsaan (perfection).



## Section Two

### (Language and textual implications)

#### Outline

#### **1 – Al-Alfaazh (wordings or worded expressions) in the Kitaab and the Sunnah:**

A – In respect to their clarity: ‘Azh-Zhaahir, An-Nass, Al-Mufassar’.

B – In respect to their lack of clarity: ‘Al-Khafiy, Al-Mushkil, Mujmal and Mutashaabih’.

#### **2 – Al-Alfaazh (wordings) from the angle of their Dalaalah (implication) in respect to the meaning:**

Dalaalat Al-‘Ibaarah, Dalaalat Al-Ishaarah, Dalaalat An-Nass, Dalaalat Al-Iqtidaa’ and Mafhoom Al-Mukhaalafah.

#### **3 – Al-Alfaazh from the angle of their comprehensiveness (Ash-Shumool):**

Al-‘Aamm, Al-Khaass, Al-Mushtarak, Al-Mutlaq and Al-Muqayyad.

#### **4 – The forms (Siyagh) indicative of At-Takleef (legal responsibility):**

- Al-Amr (command) and its meaning, the command forms and what the Seeghat ul-Amr (command form) indicates and the Amr (command) that comes after the Hazhr (prohibition).

- An-Nahi (forbiddance) and its meaning, forms of forbiddance, what the Seeghat An-Nahi (form of forbiddance) indicates and the Dalaalah (implication) of the Nahi in respect to the Fasaad.

#### **5 – Areas of study related to the language**

# Al-Alfaazh (worded expressions/wordings) in the Kitaab and the Sunnah

## Introduction:

Deducing the Ahkaam Ash-Shar'iyah from the Qur'aan Al-Kareem and the Sunnah An-Nabawiyah rests upon knowledge of the Arabic language, knowledge of its categories (disciplines) and its Dalaalat (implications and indications). That is because the Qur'aan and the Hadeeth have come in the Arabic language. The Qur'aan is Arabic in its entirety and there is no word in it which is not Arabic. That has been established by the Qat'iy (definite) text of the Qur'aan. Allah (swt) said:

إِنَّا جَعَلْنَاهُ قُرْآنًا عَرَبِيًّا لَعَلَّكُمْ تَعْقِلُونَ

*Verily, We have made it and Arabic Qur'aan so that may understand (Az-Zukhruf 3).*

And:

بِلِسَانٍ عَرَبِيٍّ مُبِينٍ

*In a clear Arabic tongue (language) (Ash-Shu'araa 195).*

And Allah Ta'Aala said:

قُرْآنًا عَرَبِيًّا غَيْرَ ذِي عِوَجٍ لَعَلَّهُمْ يَتَّقُونَ

*[It is] an Arabic Qur'an, without any crookedness so that they might become righteous. (Az-Zumar 28).*

As for the Qur'aan containing Alfaazh (worded expressions) from other languages, then these Alfaazh have been arabized and they were used by the Arabs before the descent of the Qur'aan. These include words like: القرطاس, القسطاص, السجيل, المشكاة, amongst others.

These Alfaazh and those similar to them became Arabic after the Arabs arabized them i.e. after they framed them in accordance to the workings of the Arabic language and its letters. They were then used by some of their poets before the revelation of the Qur'aan Al-Kareem. For example Tarfah Bin Al-'Abd used the word 'Qirtaas' (القرطاس) to describe his horse in a line of poetry in the case where the word is of Greek origin 'Kuartees' with the meaning of paper or leaves.

It is therefore essential for Usool ul-Fiqh to include within it some of the studies related to the Arabic language and its categories or disciplines and particularly in regards to that which is directly related to the Istinbaat (deduction) of the Ahkaam Ash-Shar'iyah from the texts of the Kitaab and the Sunnah. As for the remainder of the areas of Arabic study that go into the subject at length, in depth and great detail, then these are the remit and area of speciality of the scholars of language like the 'Ulamaa of An-Nahw (grammar) and Al-Balaaghah (eloquence/metaphorical usage) in addition to the Fuqahaa' of the language.

In this chapter we will attempt to present the study areas of the Arabic language that the old or classical books of Usool ul-Fiqh mentioned and dealt with as they are. Then, following that, we will present our opinion and explain that which we believe to be correct in regards to this matter. We have also added a subject area related to the areas of the Arabic language for those who wish to examine and look into the subject area and benefit further.

The 'Ulamaa of Usool ul-Fiqh divided the Alfaazh (worded expressions) of the Kitaab and the Sunnah into two categories:

- 1 – In respect to their clarity: Azh-Zhaahir, An-Nass, Al-Mufassar and Al-Muhkam.
- 2 – In respect to their lack of clarity: Al-Khafiy, Al-Mushkil, Al-Mujmal and Al-Mutashaabih.

## **The Alfaazh of the Kitaab and the Sunnah in respect to their clarity**

These clear wordings (Alfaazh) are divided into four categories in accordance to their different levels of clarity. The strength of the Dalaalah (indication) corresponds to them as follows:

- 1 – Azh-Zhaahir: This is the least clear.
- 2 – An-Nass: This is regarded to be clearer than the Zhaahir.
- 3 – Al-Mufassar: It is clearer than the Nass.
- 4 - Al-Muhkam: It is clearer than the previous aforementioned types.

### **Firstly: Azh-Zhaahir**

#### **Its definition:**

The Zhaahir is the Lafzh (wording) which its linguistic meaning comes to the mind by just reading its form or hearing it, without the need to rely upon an external Daleel (evidence) to understand it. This is whilst this meaning does not represent the original intended meaning in respect to the legislation of the text.

Example:

Allah (swt) said:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has permitted trade and has forbidden interest (Al-Baqarah 275).*

It comes to the mind from the Zhaahir (apparentness) of the Alfaazh (wordings) of the Aayah that the trade is Halaal and that the Ribaa (usury/interest) is Haraam. This is the Zhaahir (apparent) meaning because its understanding from the two words ‘Ahalla’ and ‘Harrama’ comes to the mind without the need for an external Qareenah (connotation or linking indication).

This meaning, however, is not intended originally from the context (Siyaaq) of the Noble Aayah. That is because that which is originally intended from it is the negation of the resemblance between the trade and the Ribaa in the Hukm Ash-Shar'iy as the Aayah came in response to those who said: 'Verily, the trade is like the Ribaa'.

Another example:

Allah (swt) said:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ طَفَّانٍ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

*Then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one (An-Nisaa' 3).*

The Zhaahir (what is apparent) of the text of the Aayah guides to the permissibility of marrying more than one wife. This meaning is not intended in origin from the context of the Aayah but rather what is originally intended from its Siyaaq (context) is the permissibility to combine a number of marriages to the limit of four where they are secured from injustice occurring amongst them.

The Siffaat (attributes/characteristics) of the Hukm of the Zhaahir:

1 – It is open to Ta'weel (interpretation) so that the Lafzh is diverted from its Zhaahir meaning and another meaning is intended from it. This diversion can happen in different ways:

A – That it is specified in the case where it had been general. So in respect to the Aayah:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has permitted trade and has forbidden interest (Al-Baqarah 275).*

It is ‘Aamm (general) applying to every trade whilst it has been specified by Ahaadeeth that have forbidden the trade of the Bedouin to the resident (in town) and the trade of Malaaqeeh and the trade of Al-Hisaah (by the process of throwing stones).

B – That it restricts that which is Mutlaq (unrestricted). This is like that which has come in the Qawl of Allah Ta’Aalaa as the Kaffaarah (expiation) for Azh-Zhihaar (saying to the wife that you are like my mother’s back):

فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ

*And he who does not find [a slave] - then a fast for two months consecutively (Al-Mujaadalah 4).*

The Lafzh (wording) ‘two months’ is Mutlaq (unrestricted) and this Mutlaq has been restricted by the Lafzh ‘consecutive’ so that what is required is to fast two consecutive months and not just two months.

C – And it can be understood in accordance to the Majaaz (metaphorical meaning) and not the Haqeeqah (literal) like is found in relation to the Qawl of Allah (swt):

أَوْ لَأَمَسْتُمُ النِّسَاءَ

*Or you have touched the women (Al-Maa’idah 6).*

Al-Imaam Abu Haneefah (rh) understood this in accordance to the Majaaz (metaphorical meaning) and so he understood ‘Laamastum’ to mean that you have had intercourse and from that he deduced that the touching by the hand does not invalidate the Wudoo’.

2 – It is obligatory to work with its Zhaahir (apparent) meaning as long as a Daleel has not been established which dictates that the Zhaahir (meaning) is moved away from. That is because the original position is to not move the Lafzh (worded expression) away from its Zhaahir (meaning) unless there is a Daleel that dictates that. An example of that is the Qawl of Allah Ta’Aalaa:

## وَأَحَلَّ اللَّهُ الْبَيْعَ

*And Allah has made Al-Bai'a Halaal (Al-Baqarah 275).*

This 'Aamm (general address) has been specified by the types of trading that the Shaari' (Legislator) has made Haraam like the prohibition of trading with Al-Khamr or by the process of throwing stones (Al-Hisaah) amongst other trading that the Shaari' has forbidden. These do not fall under the 'Umoom (generality) of the Halaal trading that has been taken from the Zhaahir (apparent) of the Aayah.

3 – That the Zhaahir is open to accepting An-Naskh (abrogation) at the time of the Messenger of Allah (saw) because there is no Naskh (abrogation) after the Messenger (saw).

### **Secondly: An-Nass**

#### **Its definition:**

The Nass is the Lafzh (worded expression) that guides to its originally meant or intended meaning from its context with the Ihtimaal (openness to and possibility for) Ta'weel (interpretation).

(Author's note: The word 'Nass' is applied linguistically to every Aayah and Hadeeth with the meaning of 'Text' (i.e. Nass Al-Hadeeth or the Nusoos Al-Qur'aan (texts of the Qur'aan)) however in its Istilaahi meaning An-Nass means what the above definition has indicated to).

The Nass is that which has increased clarity over the Zhaahir. The increase in clarity did not come from the form (Seeghah) itself because both the Zhaahir and the Nass are equal or on the same level in respect to the clarity. Rather it comes from the meaning in the 'Nass' being intended in origin and initially whilst the meaning of the 'Zhaahir' is understood in according to other than what is intended originally (within the context of its usage).

Example:

Allah (swt) said:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has permitted trade and has forbidden interest (Al-Baqarah 275).*

Here the Dalaalah (indication) upon the Halaal and Haraam is Zhaahir in the Aayah however the Aayah is 'Nass' in respect to differentiating between them because the differentiation between them is the intended original meaning from the revelation of the Aayah which the Aayah was already indicated to:

ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*That is because they say: "Trade is [just] like interest". (But) Allah has permitted trade and has forbidden interest (Al-Baqarah 275).*

The guide (Daleel), indicating to what the Shaari' (Legislator) intended from the Aayah, is the Siyaaq (context) of the Aayah or it comes from the Sabab (reason) of its Nuzool (revelation/descent) like in respect to the following Aayah:

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

*Then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one (An-Nisaa' 3).*

### The Hukm of An-Nass:

1 – It must be worked in accordance to because its meaning is what has been originally intended by the Shaari'.

2 – It is open to Ta'weel however this Ihtimaal (openness or possibility) for Ta'weel (interpretation) is less likely than compared to the Zhaahir.



3 – If there is a conflict between the Hukm Azh-Zhaahir and the Hukm An-Nass in a particular Mas’alah (issue) the Hukm of the Nass is taken.

Example:

Allah Ta’Aalaa said:

وَأَجَلَ لَكُمْ مَّا وَرَاءَ ذَلِكَ

*And lawful (Halaal) for you are all that is beyond (or other than) that (An-Nisaa’ 24).*

This Aayah in its Zhaahir (apparent meaning) guides to the Ibaahah (permissibility) of marrying other than those who have been declared to be Haraam for him in the preceding Aayah. It did not specify or put a limit to the number of wives and as such it is permissible, in accordance to the Zhaahir of the Aayah to marry without a limitation to a specific number. However, His Qawl (swt):

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعًا ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً

*Then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one (An-Nisaa’ 3).*

From the angle of the ‘Nass’ specifies the number of wives whilst it goes against the Zhaahir of the text:

وَأَجَلَ لَكُمْ مَّا وَرَاءَ ذَلِكَ

*And lawful (Halaal) for you are all that is beyond (or other than) that (An-Nisaa’ 24).*

Consequently, the Nass is taken and the Zhaahir is left i.e. the specification is taken because the Nass is stronger than the Zhaahir.

## **The similarity and difference between the Zhaahir and the Nass:**

- 1 – Each of them has clear Dalaalat (textual implications/indications).
- 2 – Each of them is open to Ta'weel (interpretation).
- 3 – It is obligatory to work in accordance to the Hukm that is provided by both of them as long as nothing stronger than it is conflicting to it.
- 4 – Each of them is open to An-Naskh (abrogation) during the time of the message (i.e. before the passing of the Messenger (saw) and end of the Wahi).
- 5 – As for the difference between the two: The meaning provided by the Nass has been intended by the Shaari' in origin from the context or framing (Siyaaq) of the speech. The meaning taken from the Zhaahir is not what the Shaari' intended in origin but rather the Shaari' intended it in accordance to or in following to the original meaning.

Many of the scholars of Usool from the Maalikiyah, the Shaafi'iyah and the Hanafiyah have considered there to be no difference between the Zhaahir and the Nass whilst others distinguished between them in the manner that we have explained above.

### **Thirdly: Al-Mufassar**

#### **Its definition:**

The Mufassar is the Lafzh (worded expression) that indicates its intended meaning from the Siyaaq (context or framing) with clarity or it is that which is increased in clarity by the explanation of another Daleel. It is not open to Ta'weel (interpretation) but is open to An-Naskh (abrogation) in the time of the Messenger (saw).

The increase in clarity can originate from the same Seeghah (form) and it can also come from another Daleel (evidence).

A- Example of the first type:

Allah Ta'Aalaa said:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ  
ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا

*And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after (An-Noor 4).*

The Aayah indicates with a Qat'iy (definite) Dalaalah (indication) that is not open to Ta'weel (interpretation) that the lashing of the Qaadhif (thrower of accusations) is 80 lashes. It is a defined and set number that is not open to interpretation in respect to increasing or decreasing it. It is this lifting (or removal) of the openness or the possibility for interpretation which adds to the clarity. This strength in respect to clarity has consequently come from the same Seeghah (form).

B – Example of the second type:

That which is increased in clarity through the explanation of another Daleel.

Allah (swt) said:

وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا

*And [due] to Allah from the people is a pilgrimage to the House - for whoever is able to find thereto a way (Aali Imraan 97).*

In respect to this and what is similar, the Nabi (saw) detailed and explained the meanings of the Salaah, the Zakaah and the Hajj, and he made clear what is intended from them through his statements

(Aqwaal) and actions (Aʿaal). These Alfaazh (wordings) then became from the (category of the) Mufassar which are not open to Taʿweel (interpretation). Consequently, in regards to everything that has come in the Qurʿan Al-Kareem in terms of the Mujmal (undetailed) Alfaazh, and then the Sunnah came and explained it (i.e. provided its Tafseer), is considered to be from the ‘Mufassar’.

### **The Hukm of the Mufassar:**

1 – It is obligatory to work (act) in accordance to the Mufassar definitely (Qatʿan) in regards to what it guides to in terms of a Hukm by a clear Dalaalah.

2 – It is not open to At-Taʿweel (interpretation).

3 – There is no room for Ijtihaad in it when the explanation (Tafseer) is comprehensive.

4 – It is open to An-Naskh (abrogation) in the era of the Risaalah (message i.e. revelation).

5 – It is put ahead of the Nass and the Zhaahir because it is not open to interpretation whilst the other two are open to its possibility.

### **Fourthly: Al-Muhkam**

#### **Its definition:**

Al-Muhkam is the Lafzh (wording) guiding to the meaning that is intended from it in origin with a clear Dalaalah which is not open to interpretation or abrogation in the time of the Risaalah.

The Muhkam is therefore of the highest level of clarity because there is no openness (to change) within it and is clearer than the Mufassar because it is not open to being abrogated in the time of the Risaalah (i.e. time of revelation).

Example:

Allah (swt) said:

وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا

*And do not accept their Shahaadah **ever** (An-Noor 4).*

And Allah Ta’Aalaa said:

وَلَا أَنْ تَنْكِحُوا أَزْوَاجَهُ مِنْ بَعْدِهِ أَبَدًا

*And it is not [conceivable or lawful] for you to harm the Messenger of Allah or to marry his wives after him, **ever** (Al-Abqaaab 53).*

These meanings mentioned in these two Aayah are not open to Ta’weel (interpretation) and are not open to Naskh (abrogation). This type is called ‘Muhkam Li’Ainihi’ (Muhkam in itself) and this is what is intended here.

### **The Hukm of the Muhkam:**

- 1 – It is obligatory to work (act) in accordance to what it guides to definitely (Qat’an).
- 2 – It is from the highest level of clarity in respect to the Alfaazh of the Nusooos (worded expressions of the texts).
- 3 – It is put ahead (advanced) over all of the other clear texts at the time of conflict.

### **The Alfaazh (wordings) of the Kitaab and the Sunnah in terms of their lack of clarity**

These are the Alfaazh which in their Dalaalah (textual implication/indication), in respect to their meaning, is hidden or obscure and so they do not guide to what is intended from them but rather rest upon an external matter. There are four levels in respect to this lack of clarity:

- 1 – Al-Khafiyy and this is the least hidden (or obscure).
- 2 – Al-Mushkil and it is less clear than the Khafiyy.
- 3 – Al-Mujmal and this is less clear than the Mushkil.
- 4 – Al-Mutashaabih and this is very hidden and the least clear from the three previously mentioned types.

### **Firstly: Al-Khafiyy**

#### **Its definition:**

The Khafiyy is the Lafzh (wording) which its Dalaalah (implication/indication) upon its meaning is Zhaahir (apparent) except that there is obscurity and lack of clarity in respect to the application of its meanings to some of its Afraad (individual matters falling within it). These then require some examination and deliberation in order to remove the obscurity and lack of clarity.

The removal of the obscurity or lack of clarity would be undertaken by Ijtihad in analysing the reality that the text is intended to be applied upon.

This Ijtihad requires the Tahqeeq Al-Manaat (ascertaining of the reality) i.e. studying the reality that the Nass (text) is intended to be applied upon in a precise manner, in order to know whether it is encompassed within the text or not.

Example:

Allah (swt) said:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

*[As for] the male and female thief, cut off their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise (Al-Maa'idah 38).*

In respect to the Lafzh 'As-Saariq' (thief), its meaning is clear whilst As-Saraqah (theft) in accordance to the Shar'a is: 'The taking of a movable property of a (certain) value owned by someone else covertly from a normal place of safekeeping (Hirz)'.

And the Hirz is the place that property is normally put and kept safe in.

However, the Fuqahaa' differed in respect to the application of this meaning upon different forms of theft which have been given different (specific) names like An-Nashl (pickpocketing) for instance which is the taking of property quickly and in a highly covert manner from the people's pockets.

So is the Nash'shaal (pickpocket) a Saariq (thief)? Ijtihad is therefore required to know whether the Saraqah (theft) applies to An-Nashl (pickpocketing). If it does apply, then the Hukm of Saraqah (thievery) would apply and the hand of the pickpocket would be cut if the Arkaan (pillars) of the crime of theft are met. Consequently, some of the Fuqahaa considered the pickpocket to be a Saariq (thief) and deserving of the cutting whilst others did not consider him to be so and as such a Ta'zeer (discretionary) punishment would be applied upon him as determined by the Qaadiy (judge) or the Imaam (ruler) would.

They also differed in respect to the Nabbaash (grave robber) who is the one who robs the graves to take the shrouds or what is upon the dead. Is such a person a Saariq (thief) or not?

Consequently, the Lafzh (wording) 'Saariq' is Zhaahir (apparent) in relation to the obligation of amputating the hand in regards to every Saariq. This is whilst it is, at the same time, Khafiy (unclear) in regards to the pickpocket and the grave robber because they have been specified with a name that is different to the thief within the 'Urf (custom/tradition) of the people of the language. That is because specifying the pickpocket with another name has been done

for the purpose of providing additional meaning to the Saraqah (theft). That is because he is stealing from the one who is alert and not upon the angle of hiddenness (Wajh Al-Khafiyah). In addition, the specifying of the name of the 'Nabbaash' (grave robber) is due to a decrease in respect to the meaning of the theft (Saraqah) because he is stealing from the dead who is not intending to safeguard or preserve his property. Consequently, all of this is Khafiy (unclear) in regards to the Lafzh (worded expression) of the 'Saariq' (thief). For that reason, Ijtihad is required in order to apply the Hukm of the Saariq (thief) upon both the pickpocket and the grave robber.

The correct view, as I see it, in this issue, is that 'Saraqah' (theft) has a meaning in the language. The text has come to be applied upon this meaning that has a defined and known reality whilst this meaning is not applied upon the Nash'shaal and the Nabbaash (pickpocket and grave robber) because they are not Saariqs. They are therefore punished with a Ta'zeer (discretionary punishment) that the ruler or judge sees fitting, in the case where the punishment acts as a deterrent.

### **The Hukm of the Khafiy:**

1 – The Nass (text) does not apply to the Afraad (individual matters) in which there is doubt in respect to them entering within its general indicated meaning (Al-Madlool Al-'Aamm).

2 – It is applied upon the Afraad which the Ijtihad has shown the realisation of the meaning of the Lafzh (wording) within them and in that case the Hukm is applied upon them.

3 – The Fuqahaa could agree and they could disagree in respect to the result of their Ijtihadaat and so some of them apply the text to the Afraad (individual elements) whilst others do not apply it upon the same Afraad, just as what happened in regards to the subject of the pickpocket and the grave robber. That is because some of the Fuqahaa applied the Hukm of Saraqah (theft) to both, others took them both outside of the meaning of the text whilst others still applied it upon the pickpocket but not the grave robber.



## Secondly: Al-Mushkil

### Its definition:

The Mushkil is the Lafzh which its Dalaalah (implication) is not clear in respect to the meaning that is intended from it. It represents a lack of clarity arising from the Seeghah (form) or the Usloob (style) and this meaning cannot be comprehended or ascertained without Ijtihad.

The Mushkil is therefore more obscure than the Khafiy because the Lafzh of the Khafiy is clear in Dalaalah (implication), whilst the Lafzh of the Mushkil is not clear in its Dalaalah.

Example:

Allah (swt) said:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

*Divorced women remain in waiting for three periods (Quroo') (Al-Baqarah 228).*

The Qur'u is a Mushtarak Lafzh (a worded expression that holds more than one meaning) and hence its meaning is unclear. Amongst the Arabs it indicates two (possible) meanings: At-Tuhr (purity) and Al-Haid (menstruation). That is whilst it is known that the Shaari' (Legislator) intended one of them and not the other because it is necessary for there to be one Hukm for one Mas'alah. At the same time, it is the duty of the Muslim to search for this Hukm and know it via Ijtihad.

So the Lafzh 'Qur'un' is a Lafzh Mushtarak indicating two meanings: Purity and menstruation and as a result of the usage of this Lafzh in the Aayah an Ishkaal (a difficult or problematic issue) has arisen. This text has therefore been considered to be Mushkil (problematic).

I will now present a picture of the Ijtihadaat of the Fuqahaa in regards to outweighing one of the two meanings over the other by way of Qaraa'in (connotations) and Adillah (evidences) that the

Mujtahid found most probable or preponderant to reflect what the Shaari' (Legislator) intended.

A – The opinion of the Hanafiyah that the intended meaning of 'Al-Qur'u' is 'Al-Haid' (menstruation):

They based their deduction upon the following:

That Allah Ta'Aalaa made I'tidaad or 'Iddah (period of waiting) by months in the case where the period of waiting by the Haid (menstruation) is not possible. That indicates that the Haid (menstruation) is the Asl (origin) in respect to the waiting period as was mentioned in the Qawl of Allah Ta'Aalaa:

وَاللَّائِي يَيْسَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ

*And those who no longer expect menstruation among your women - if you doubt, then their period is three months (At-Talaaq 4).*

The Hikmah (wisdom) of the legislation of the I'tidaad (waiting period) is to know that the womb is free and that there is no pregnancy. What makes that evident is the Haid (menstruation) and not the Tuhr (purity).

B – The opinion of Ash-Shaafi'iyah that the intended meaning of 'Al-Qur'u' is 'At-Tuhr' (period of purity in between menstruation) the deduction of which was based upon the following:

Allah (swt) said:

إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ

*When you [Muslims] divorce women, divorce them for [the commencement of] their waiting period (At-Talaaq 1).*

This means: Divorce them for the commencement of their 'Iddah and this is whilst it is known that the legitimate or legal Talaaq

(divorce) occurs in the state of Tuhr (purity) and not the state or condition of Haid (menstruation). Consequently, the name of ‘Iddah (waiting period) was provided for the (period of) Tuhr (purity).

And they said that the Lafzh (wording) ‘Thalaathah’ (three) in His Qawl (swt):

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

*Divorced women remain in waiting for three periods (Quroo’) (Al-Baqarah 228).*

That the Lafzh came in the feminine form (Mu’annath) whilst it is known in the Arabic language that if the number is feminine then the thing or matter being numbered (Al-Ma’dood) is masculine (Mudhakkar) and not feminine. What is intended therefore is three ‘At’hur’ (i.e. three Tuhrs) meaning that the Qur’u is At-Tuhr (period of purity) and not Al-Haid (period of menstruation).

Another example:

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ

*And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified - unless they forego the right or the one in whose hand is the marriage contract foregoes it (Al-Baqarah 237).*

The ‘Ishkaal (problematic matter of difficulty) here does not lie in one single Lafzh (worded expression) but it is rather within the Usloob (style). So who is it that is intended by the Qawl of Allah Ta’Aalaa:

أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ

*Or the one in whose hand is the marriage contract foregoes it*

Is it the husband or it is the Wali (guardian)? The Hanafiyah viewed that it refers to the husband because it is the meaning that is in agreement with the Usloob (style) and he (the husband) is the possessor of the knot or contract of marriage that was completed by the contract of the marriage. Al-Maalikiyah however said that the one in whose hand is the knot of the marriage is the ‘Wali’ with the consideration that she is Qaasirah (young). That however is a distant interpretation.

### **The Hukm of the Mushkil:**

The text is not implemented or applied until after the Maqsood (intended meaning) from the text is known by way of Al-Ijtihad Al-Mu’tabar (i.e. valid and recognised process of Ijtihad).

## **Thirdly: Al-Mujmal (Ambivalent/undetailed)**

### **Its definition:**

The Mujmal is the Lafzh the meaning of which contains a number of Ahwaal (circumstances) and Ahkaam that have been brought together within it, whilst it is not possible to know them without a Bayaan (explanation/elaboration).

Al-Bazdawi in his Usool defined it as:

‘The Mujmal is that which has become crowded with meanings and what is intended has become obscure in a manner making it not comprehensible within the same statement or expression. Rather (it is understandable) by returning to seeking explanation and then by effort and reflection or deep consideration’.

The details of the Mujmal cannot be understood from the same text but rather there has to be a Mubayaan (something that explains it) that makes clear the meaning in it or that explains its partialities or details.

Example:

Allah Ta'Aalaa said:

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ

*And establish the Salaah and give the Zakaah (Al-Baqarah 43).*

The Salaah is a Mujmal Shar'iy Istilaah (terminology), the intended meaning of which is not known except by a Bayaan (clarifying explanation) from the Shaari' (Legislator). The same applies to the Zakaah and the Hajj. Consequently, the Messenger of Allah (saw) came with a Bayaan for these Mujmal Alfaazh (worded expressions) through his speech and actions. He addressed the Muslims with his Qawl:

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

**Pray as you see me praying**

And by his speech:

خُذُوا عَنِّي مَنَاسِكَكُمْ

**Take from me your rites (rituals/acts)**

The same is apparent within the Ahkaam of Al-Janaayaat (criminal acts) as the Qur'aan has stated the obligation of the Diah (blood money) whilst the Sunnah An-Nabawiyah came explaining its amount and circumstances.

From this angle the Mujmal resembles the Mufassar except the Mufassar does not require a Bayaan as the Bayaan (explanation) of the text is mentioned within it and not in a secondary text. This is like the Qawl of Allah (swt):

فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

*So lash them with eighty lashes (An-Noor 4).*

This is from the Mufassar because it does not need interpretation (Ta'weel) or Bayaan (explanatory clarification or elaboration). The Lafzh: "Eighty lashes" explained the Lafzh (wording): "Lash them".

### **The Hukm of the Mujmal:**

1 – Pausing to specify the intended meaning from it so it is not permissible to work or act by it unless something has been mentioned from the Shaari' (Legislator) which removes its Ijmaal (ambivalence) and reveals or discloses its meaning.

2 – If the Bayan (explanation) is sufficient and definite (Qat'iy) the Mujmal becomes from the Mufassar and it is obligatory to work (or act) by it. That is like the Bayaan that has come from the Messenger of Allah (saw) for the Salaah, Zakaah and the Hajj.

3 – If its Bayaan is not comprehensive and not Qat'iy (definite) then it is obligatory to work in accordance to the amount that its explanation has completed (and provided). That which the Bayaan does not cover falls into the realm of Ijtihad in respect to explaining what the Shaari' intended from it.

### **Fourthly: Al-Mutashaabih**

#### **Its definition:**

Al-Mutashaabih is the Lafzh (worded expression), the intended meaning of which is hidden or unclear. Its Seeghah (form) does not indicate or guide to what is intended from it. That means there is no way to comprehend it and that none except Allah (swt) knows it.

Examples of this that have been presented include the Huroof Al-Muqatta'ah at the beginning of the Suwar like: 'حمسق', 'الم', and 'كهيعص'.

They (i.e. some of the Muslims) have also presented as examples of this the Aayaat that discuss the Siffaat (attributes) like His Qawl (swt):

الرَّحْمَنُ عَلَى الْعَرْشِ اسْتَوَىٰ

*The Most Merciful [who is] above the Throne established (TaHa 5).*

And like:

يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ

*The hand of Allah is over their hands (Al-Fat'h 10).*

The Mutashaabih, according to this meaning, does not fall into the category of the studies of Usool but rather within the 'Ilm ul-Kalaam' because it has a relationship to the Aqeedah and not to the Ahkaam Ash-Shar'iyah. That is whilst 'Ilm Usool ul-Fiqh looks into the area of the practical Ahkaam Ash-Shar'iyah and not the Aqaa'id (beliefs).

They have used the following statement of Allah (swt) to support the view that man cannot comprehend the meaning of the Mutashaabih:

وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ

*And none knows its [true] interpretation except Allah (Aali 'Imraan 7).*

The Hanafi Scholars of Usool however added to the definition of the Mutashaabih by saying: "And none comprehend it except those who are firmly grounded (Raasikh) in knowledge".

## My view in regards to the Mutashaabih

Allah (swt) said:

هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ ۚ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ ۗ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ ۗ وَالرَّاسِخُونَ

فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِّنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ

*It is He who has sent down to you, [O Muhammad], the Book; in it are verses [that are] precise (Muhkam) - they are the foundation of the Book - and others unspecified (Mutashaabih). As for those in whose hearts is deviation [from truth], they will follow that of it which is unspecified, seeking discord and seeking an interpretation [suitable to them]. And no one knows its [true] interpretation except Allah and those firm in knowledge. They say: "We believe in it. All [of it] is from our Lord." And no one will be reminded except those of understanding (Aali Imraan 7).*

A difference of opinion or dispute has arisen in respect to interpreting the Mutashaabih from the Tafseer of this Aayah. So sin respect to the ‘Waw’ in His Qawl:

وَالرَّاسِخُونَ فِي الْعِلْمِ

*And those firm in knowledge*

Some have considered this ‘Waw’ to be a ‘Waw ul-Isti’naaf’ (of resumption i.e. beginning something new). They considered: “And those firm in knowledge” to be a starting sentence made up of a ‘Mubtada’ whilst its ‘Khabar’ (news) is:

يَقُولُونَ آمَنَّا بِهِ

*“They say: We have believed in it...”*

Accordingly, it is necessary to halt at the mention of the Lafzh Al-Jalaalah (i.e. Allah’s name) that came at the end of the statement:

وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ

*And none knows its [true] interpretation except Allah 9Aali Imraan 7).*

In this way and according to this Tafseer it is Allah (swt) alone who knows the Ta’weel (interpretation) of the Mutashaabih.



Others however held the view that the ‘Waw’ that is before the ‘Raasikheen’ (those firm in knowledge) is a ‘Waw Al-‘Atf’ (a Waw of connection and linkage). As such, it is Allah who knows the Ta’weel of the Mutashaabih and the Raasikhoon (those firmly grounded) in ‘Ilm (knowledge) also know it. That is while the sentence:

يَقُولُونَ آمَنَّا بِهِ

*“They say: We have believed in it...”*

That this sentence is in the Mahal Nasb Haal relating to the Raasikheen (i.e. it is describing their state and condition, the condition of those who are grounded firmly in knowledge).

According to this understanding the Mutashaabih is Mutashaabih due to the ambiguity of its meaning to the one who hears it whilst the Mutashaabih is not that which its meaning is not understandable. That is because there is nothing in the Qur’aan which its meaning is not understandable and because if the Qur’aan contained something that cannot be understood then it would take it out from being a ‘Bayaanul Lin-Naas’ (explanation for mankind) which is in opposition to the Qawl of Allah Ta’Aalaa:

هَذَا بَيَانٌ لِلنَّاسِ

*This is a clear explanation (Bayaan) for mankind (Aali Imraan 138).*

As for the Huroof (letters) at the beginning of the Suwar like ‘الم’ and ‘كهيعص’ and others then they possess a meaning because some have considered them to represent the names of the Suwar and identifiers for them. So it is said: ‘Soorah Alif Laam Meem Aali ‘Imraan’ for example.

That is whilst others, in what is closer to the correct view, have interpreted that Allah began some of the Suwar with them in order to grab the attention of the Arabs towards the Qur’aan Al-Kareem that was challenging them and which they were incapable of producing a Soorah like it. That is in the case where it is only made up of the

letters through which their speech and prose are regulated and organised (or composed of).

This interpretation is outweighed (or stronger) because most of the Suwar that have begun with these letters are followed by an Ayah or Aayaat that talk about the Qur'aan and draw attention to it. Allah Ta'Aalaa said in Soorah Al-Baqarah:

الم ﴿١﴾ ذٰلِكَ الْكِتٰبُ لَا رَيْبَ فِيْهِ هُدًى لِّلْمُتَّقِيْنَ

*Alif Laam Meem. This is the Book about which there is no doubt, a guidance for those conscious of Allah (Al-Baqarah 1-2).*

And in Soorah Aali 'Imraan:

هُوَ الَّذِيْ اَنْزَلَ عَلَيْكَ الْكِتٰبَ مِنْهُ آيٰتٌ مُّحْكَمٰتٌ

*It is He who has sent down to you, [O Mubammad], the Book; in it are verses [that are] precise (Mubkam) (Aali 'Imraan 7).*

In Soorah Ya Seen:

يس ﴿١﴾ وَالْقُرْآنِ الْحَكِيْمِ

In Soorah Saad:

ص وَالْقُرْآنِ ذِي الذِّكْرِ

And in Soorah Qaaf:

ق وَالْقُرْآنِ الْمَجِيْدِ

The same applies to the other Suwar which begin with letters. They contain a mention of the Qur'aan in the middle or latter part of the Soorah even if it is not mentioned immediately following the letters. The Mu'jiz (inimitable/miraculous) Qur'aan is therefore made up

from the same letters that are used in your language O Arabs! (So will you not take heed or reflect?!)

As for the actions and attributes attributed to Allah Ta'Aalaa within the Aayaat, then they are interpreted in accordance to that which is fitting to Allah (swt). So for example in respect to His Qawl Ta'Aalaa:

وَجَاءَ رَبُّكَ وَالْمَلَكُ صَفًّا صَفًّا

*And your Lord has come and the angels, rank upon rank (Al-Fajr 22).*

It is interpreted to mean the 'Amr' command of your Rabb (lord). That is to eliminate and distance making any resemblance between Allah and His creation, as there is nothing like or comparable to Him Ta'Aalaa:

لَيْسَ كَمِثْلِهِ شَيْءٌ

*There is nothing like unto Him (Ash-Shooraa 11).*

In respect to His Qawl (swt):

يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ

*The hand of Allah is over their hands (Al-Fat'h 10).*

Then it is interpreted with the meaning of the 'Quwwah' (power) of Allah... and so on... That is because the meaning of these Alfaazh (worded expressions) is open to these metaphorical (Majaaziy) meanings. That is because the Majaaz (metaphorical) is present within the speech (or language) of the Arabs much more than the Haqeeqah (literal).

As for the swearing by some of the creations (Al-Makhlooqaat) like:

وَالضُّحَىٰ ﴿١﴾ وَاللَّيْلِ إِذَا سَجَىٰ

*By the morning brightness. And [by] the night when it covers with darkness (Ad-Duhaa 1-2).*

وَالشَّمْسِ وَضُحَاهَا ﴿١﴾ وَالْقَمَرِ إِذَا تَلَاهَا

*By the sun and its brightness. And by the moon when it follows it... (Ash-Shams 1-2).*

وَالسَّمَاءِ ذَاتِ الْبُرُوجِ

*By the sky containing great stars (Al-Burooj 1).*

In respect to this and other such examples then they represent an encouragement and urging for the human mind to examine that which Allah Ta'Alaa has made an oath upon, due to the greatness of their manifestation within human life and as an indication of His power and capability (swt), in addition to the amazingness of His creation and its organisation. That is to increase the believer in his Imaan and to draw the disbeliever's attention to the excellence of His creation to encourage Imaan in the existence of the Creator and Arranger/Disposer (Al-Khaaliq Al-Mudabbir).

### **The Alfaazh (worded expressions) from the angle or perspective of what they indicate to in terms of meanings**

In the preceding section we spoke about the Alfaazh (worded expressions) from the perspective of their clarity or lack of clarity in respect to indicating the meaning. Now, in this section, we will speak about the manner in which the Alfaazh are indicative of meanings and the paths of this indication (Dalaalah).

The Alfaazh (wordings) from the angle of their indication upon meanings are divided into five categories and these are:

Dalaalat ul-‘Ibaarah, Dalaalat ul-Ishaarah, Dalaalat un-Nass, Dalaalat ul-Iqtidaa’ and Al-Mafhoom Al-Mukhaalafah.

## 1 – Dalaalat ul-‘Ibaarah

### Its definition:

The Dalaalat ul-‘Ibaarah is the Dalaalah (indication) of the Lafzh upon a meaning that is immediately understood from its same form (Seeghah) whether this meaning is what has been intended by its Siyaaq (context/framing) in origin or in following.

It is therefore every meaning that is understood from the Lafzh itself and represents the exact meaning of the text. This meaning is understood from the Alfaazh (wordings) directly without the exertion of examination or reflection (i.e. without Ijtihad) or it is understood after a little reflection and this is the meaning that the text establishes accordingly. This original or following meaning is called the Dalaalat ul-Ibaarah as it is understood from the ‘Ibaarah (expression) of the Nass (text).

Example:

Allah (swt) said:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۗ ذَٰلِكُمْ وَصَّاكُم بِهِ لَعَلَّكُمْ  
تَعْقِلُونَ

*And do not kill the Nafs (human life) which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason (Al-An’aam 151).*

And He Ta’Aalaa said:

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ

*And establish the Salaah and give the Zakaah (Al-Baqarah 43).*

And the Messenger of Allah (saw) said:

إِذَا بُوِيعَ لِخَلِيفَتَيْنِ فَأَقْتُلُوا الْآخَرَ مِنْهُمَا

**If you pledge allegiance to two Khalifahs then kill the other (or latter) of the two (Muslim)**

These three texts indicate by their 'Tbaarah (expression) i.e. by its very wordings (Alfaazh), the following meanings:

- The prohibition of killing the human life except by (legal) right.
- The request to undertake the Salaah and the Zakaah.
- The killing of the other (or latter) Khalifah.

The Alfaazh (wordings) of the Nusoos (text) can be indicative of more than one meaning like in the example:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

*And Allah has made trade Halaal and made Ribaa Haraam (Al-Baqarah 275).*

Two meanings are understood from this text:

A – The originally intended meaning from the text and that is the negation of (making) resemblance between the trade and the Ribaa' in response to the statement of the Mushrikeen who had said:

ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا

*That is because the said trade is only like Ribaa (Al-Baqarah 275).*

B – The meaning that follows and that is the trade being Halaal and the Ribaa being Haraam.

And an example from the speech of the Messenger (saw):

## إِذَا بُوِيعَ لِخَلِيفَتَيْنِ فَأَقْتُلُوا الْآخَرَ مِنْهُمَا

**If you pledge allegiance to two Khalifahs then kill the other (or latter) of the two (Muslim)**

This Hadeeth with its Alfaazh is indicative of two meanings:

A – The originally intended meaning which is the obligation of there being one single Khalifah for the Muslims alone.

B – The meaning that follows and that is the obligation to kill the other Khalifah who disputes the rule with the first Khalifah.

## 2 – Dalaalat ul-Ishaarah:

### **Its definition:**

Dalaalat ul-Ishaarah is the Dalaalah (indication) of the Lafzh (wording) upon a meaning or Hukm that is not intended either originally or in following. It is however corresponding to the meaning for which the speech has been framed for. The Dalaalat ul-Ishaarah is therefore not understood from the Mantooq An-Nass (expressed wording of the text) i.e. from the Harfiy meaning (i.e. letter for letter) which is called Dalaalat ul-Ibaarrah. Rather it is understood from the meaning that the meaning of the text has guided to. Some of the Usooliyeen (scholars of Usool) have called this type of Dalaalah the Mafhoom of the Nass (i.e. implied and understood but not expressed meaning).

That means that the indicated to meaning, which has not been indicated through its 'Ibaarrah (expression) (i.e. by its wording), necessitates another meaning, and that is called Dalaalat ul-Ishaarah (i.e. indication of a meaning by implication or indication). That is because the Nass (text) guides to it by way of Ishaarah (indication/implicitly) and not by the way of 'Ibaarrah (expression). For that reason, they talk about this Dalaalah (indication) as being the Dalaalah of the Lafzh upon a meaning of its meaning i.e. upon the meaning that was not intended from the 'Ibaarrah (expression). And

they (also) call it Dalaalah Al-Iltizaamiyah (indication by necessity) because the meaning of the Alfaazh (worded expressions) necessitates another meaning called the Dalaalat ul-Ishaarah.

This makes the Dalaalat ul-Ishaarah in need of depth in terms of examination and reflection in order to be aware of it. That is because it is in need of the presence of a real correspondence between the meaning that the text indicates in its 'Ibaarah (expression) by its 'Alfaazh' and the meaning that the text indicates to by its Ishaarah (indication or implicitly).

Example:

Allah Ta'Aalaa said:

وَشَاوِرْهُمْ فِي الْأَمْرِ

*And consult them in the matter (affairs) (Aali 'Imraan 159).*

The Aayah in its 'Ibaarah (expressed wording) indicates that is demanded from the Haakim (ruler) in Islaam to consult the Ummah in respect to the caretaking of their affairs.

This meaning necessitates the bringing about of a grouping (faction) from the Ummah who are consulted in relation to the caretaking of the affairs of the Ummah, as it is not possible for every individual from the Ummah to be consulted. This then is the meaning that is not intended (directly) from the context or framing (Siyaaq) of the Aayah whether in origin or in following. The Dalaalah (indication) of the Aayah upon this meaning represents the Dalaalat ul-Ishaarah.

Another example:

Allah (swt) said:

وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا

*And his (the child's) carrying and weaning is thirty months (Al-Ahqaaf 15).*



And He Ta'Aalaa said:

وَفِصَالُهُ فِي عَامَيْنِ

*And his (the child's) weaning is in two years (Luqmaan 14).*

It is understood from the two Aayaat by way of Al-Ishaarah (implicit indication) that the least or minimum period of time for the pregnancy is 6 months and this is clear from observing the two Aayah as their understanding necessitates that (understanding).

A further example:

The Messenger of Allah (saw) said in relation to the Zakaat ul-Fitr:

أَغْنُوهُمْ عَنِ الْمَسْأَلَةِ فِي مِثْلِ هَذَا الْيَوْمِ

**“Make them in no need of asking on the like of this day”**

The Dalaalat ul-Ibaarah in the Hadeeth according to its Alfaazh (worded expressions) and its Harfi (word for word) meaning guides to the request of discharging the Sadaqat ul-Fitr on the Day of 'Eid. That is whilst the Dalaalat ul-Ishaarah indicates and guides to the following Ahkaam:

- Zakat ul-Fitr is not taken except from the capable because it is not conceivable for the Fuqaraa (impoverished) to provide sufficiency to other than them.
- The Zakaat ul-Fitr is not given to other than the Fuqaraa because they are the ones in need of being made sufficient from asking.
- It is necessary for it to be made available before going out for the 'Eid prayer so that the removal of the need or the sufficiency can be realised for the entire day of 'Eid.
- It is not allowed for it to be dispensed to other than the Muslim Fuqaraa' (poor) because the statement of the Messenger of Allah (saw) was: “In the like of this day” and it is an 'Eid for the Muslims

and so the Fitr is given to the Muslims to make them not in need on the day of their 'Eid.

Consequently, the Hadeeth guides to all of these Ahkaam by way of Ishaarah because they represent Ahkaam which the meaning of the Hadeeth necessitates. It is the meaning of the Alfaazh that guides and indicates to them and not the Alfaazh (wordings) themselves or alone.

Another example:

أَجَلَ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ

*It is made lawful for you to have relations with your wives on the night of As-Saum (the fasts) (Al-Baqarah 187).*

From the 'Ibaarah of the Nass (text) (i.e. from the worded expressions (Alfaazh) of the Aayah) the permissibility of being intimate with the wife until the last part of the night of the (days of fasting) is understood.

And from the Dalaalat ul-Ishaarah it is understood that it is permissible for the fasting person to arise in the morning in the state of Janaabah (impurity). That is because intimacy with the wife in the last part of the night necessitates that the fasting person starts the morning in a state of impurity without that making his fast Faasid (corrupted) (Translators note: For further examples please refer to the book: 'Al-Wajeez Fee Usool ul-Fiqh' by Dr Abdul Kareem Zaidan.

### 3 - Dalaalat un-Nass

#### Its definition:

Dalaalat un-Nass is when the Nass (text) indicates that the Hukm that the text has been silent upon is in conformity to the Hukm that has been expressed in the text.

Some of the ‘Ulamaa have called it the Mafhoom Al-Muwaafaqah (understanding of agreement/conformity). That is because what is indicated within the Lafzh in the situation or place (Mahall) of silence conforms with the Hukm that has been expressed (Al-Mantooq) within the text. Others have named it ‘Fahwaa l-Khitaab’ (the sense or import of the address) because the ‘Fahwaa’ of the Kalaam (speech) refers to its meaning.

Therefore, if the text in it ‘Ibaarah (by its Alfaazh) guides to a Hukm of a specific reality and another reality is found that is equal to the first in respect to the ‘Illah of the Hukm or is more fitting for it (Awlaa). And that this similarity between the two is understood through the mere understanding of the language, so that it comes immediately to the comprehension, that the Nass (text) deals with both realities, then this text would have a Dalaalah (indication) other than the Dalaalat ul-Ibaarah and that is the Dalaalat un-Nass.

Example:

فَلَا تَقُلْ لَهُمَا أُفٍّ

*So do not say to them (parents) Uff (an utterance of disrespect) (Al-Israa’ 23).*

The Nass (text) guides through its ‘Ibaarah (expression) to the Tahreem (prohibition) of the son (or daughter) showing disrespect or disdain towards the two parents due to what this word (Uff) contains of harm towards them. It would then come to the mind that the text also deals with the prohibition of hitting the parents or insulting them due to what hitting and insulting contains in terms of harm and pain which is greater and more severe than expressing ‘Uff’ (i.e. showing disdain).

Therefore, that which has been silent about (Al-Maskoot ‘Anhu), which is the hitting and insulting, is Awlaa (more worthy) of the Hukm of Tahreem than the Mantooq (expressed meaning) which is the expressing of ‘Uff’.

Another example:

Allah (swt) said:

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا  
وَسَيَصْلُونَ سَعِيرًا

*Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing Fire (An-Nisaa' 10).*

The Aayah in its Mantooq, meaning its Alfaazh and Tbaarah, guides to the prohibition of eating the property of the orphan unjustly whilst its Tarkeeb (composition) indicates the prohibition of damaging it like by putting fire to it or submerging it in water for instance.

The Mafhoom of the Aayah, i.e. the Dalaalat An-Nass, which is that which has been silent about, indicates the prohibition of burning and sinking the property or any matter that leads to damaging it.

Consequently, the Hukm that has been silent about (Maskoot 'Anhu), meaning that which was not mentioned within the Alfaazh (wordings) of the text, which is burning and sinking (i.e. damaging), is in conformity (agreement) to the Hukm that has been mentioned in the Nass (text) which is the eating of the property of the orphan unjustly which takes the Hukm of Tahreem (prohibition).

Another example:

Allah (swt) says in Soorah Az-Zalzalah:

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ ﴿٧﴾ وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

*So whosoever does good equal to the weight of an atom (or a small ant), shall see it. And whosoever does evil equal to the weight of an atom (or a small ant), shall see it (Az-Zalzalah 7-8).*

The Dalaalat Al-Tbaarah, meaning the Mantooq of the Nass or its Alfaazh (wordings) indicate that Allah (swt) will account His Tbaad (slaves) upon the basis of who does an atoms weight of good or an

atoms weight of evil or bad. The person will be rewarded for the good and punished for the evil however small the acts may be. The Mafhoom of the Aayah, meaning the Dalaalat un-Nass, indicates that Allah (swt) will account His servants upon greater than an atoms weight of good, that he will be rewarded for and upon more than an atoms weight of evil, that he will be punished for.

This last part, which has been silent upon (i.e. not mentioned), is understood from the Dalaalat un-Nass and from the manner of its composition whilst it has not been understood from the ‘Ibaarah (expression) of the Nass i.e. from its Alfaazh (wordings).

#### **4 – Dalaalat ul-Iqtidaa’ (Indication of requirement/necessity)**

##### **Its definition:**

Dalaalat ul-Iqtidaa’ is the Dalaalah (indication) of the Lafzh upon a matter that its meaning does not stand up except by its Taqdeer (determination). This necessary Taqdeer (determination) could be dictated by the Shar’a or it could be dictated (i.e. made necessary) by the ‘Aql, either due to the Daroorah (necessity) of the Sidq (truthfulness) of the Mutakallim (source of speech/information) or due to the correctness (Sihhah) of the occurrence of the Lafzh (wording) through it.

Example:

Allah (swt) said:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ  
الأخِ وَبَنَاتُ الأُخْتِ

*Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters... (An-Nisaa’ 23).*

The Tahreem (prohibition) is not attributed to the essence of the mother herself or the essence of the daughter herself (specifically). As such, this Lafzh (wording) present within the Aayah dictates that before the Lafzh of ‘Ummahaatukum’ (your mothers) a necessary Lafzh is determined that the Shar’a has dictated and that is the prohibition of the Nikaah (marriage) of the Ummahaat, Banaat, Akhawaat... (mothers, daughters, sisters...). Therefore, the Dalaalat ul-Iqtidaa’ is not the Dalaalah (indication) of the Lafzh in its form or in its meaning but rather by way of an additional or extra matter that is determined or evaluated (Taqdeer) to exist within the speech so that what is required from the speech stands up (i.e. a correct meaning is understood) according to the Shar’a.

Another example:

The Messenger of Allah (saw) said:

مَنْ لَمْ يُجْمَعْ الصِّيَامَ قَبْلَ الْفَجْرِ فَلَا صِيَامَ لَهُ

**The one who does not resolve (intend) the fast before Fajr there is no fasting for him (Ahmad, Abu Dawud, At-Tirmidhi and An-Nasaa’i).**

The fasting without the Niyah (intention) is not considered to be a valid fast as made clear in the Hadeeth irrespective of abstaining from food, drink and all matters that break the fast. That is even though the act of fasting has actually taken place and as such the evaluation dictates that: There is no validity to the person’s fast.

A further example:

The Messenger of Allah (saw) said:

إِنَّ اللَّهَ رَفَعَ عَن أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ ، وَمَا اسْتُكْرِهُوا عَلَيْهِ

**Verily Allah has lifted from my Ummah the mistake, the forgetfulness and that which they were compelled/forced upon (undertaking) (Verified as Saheeh by Al-Haakim).**

The Zhaahir (apparent indicated meaning) in the speech of the Hadeeth indicates that the mistake, forgetfulness and compulsion do not exist or occur within the Ummah although that meaning is not correct. The reality contradicts that as there are amongst the Ummah those who make mistakes, forget and are forced through coercion to undertake certain acts or matters.

The Sidq (truthfulness) of the speech and correctness of the Kalaam (speech) dictates that an essential omitted word be determined and presumed (Taqdeer) and this is the word 'Hukm' (judgment) so that the meaning of the Noble Hadeeth is: "The Hukm (judgment) of these matters is lifted from my Ummah from those that it occurs from (i.e. the mistake, forgetfulness and compulsion) and so the person will not be punished in the Dunyaa (life of this world) and there will be no sin as a result of it in the Aakhirah (hereafter). The Lafzh 'Hukm' is therefore determined in accordance to the dictates of the truthfulness (Sidq) of the speech and this Dalaalah is considered to be Dalaalat ul-Iqtidaa'.

Another example:

Allah (swt) says:

وَاسْأَلِ الْقَرْيَةَ

*And ask the town/village (Yusuf 82).*

The Taqdeer (determination) has to be made here with the meaning: 'Ask the 'people' of the town' so that the correctness of what has been uttered is rational and that is because the Qaryah (town) does not have a mind and is not questioned. The Dalaalat ul-Iqtidaa' of this Aayah indicates that what is meant is to ask the people of the town and not the town itself so that the speech can be rationally correct (and understood).

## 5 - Mafhoom Al-Mukhaalafah (the opposite or contrary meaning)

Its definition:

The Mafhoom Al-Mukhaalafah is that which the Madlool (indicated meaning) of the Lafzh (wording) in the place or situation of Sukoot (silence) is in opposition to its indicated meaning (Madlool) in the situation or place of utterance.

It is (also) called ‘Daleel ul-Khitaab’ (evidence of the address) because the Khitaab Ash-Shaari’ (address of the Legislator) indicates and guides to it just as it has also been known as ‘Lahin ul-Khitaab’ (understanding/intellect of the address). The Mafhoom Al-Mukhaalafah is worked with in four types or categories which are:

Mafhoom As-Siffah, Mafhoom Ash-Shart, Mafhoom Al-Ghaayah and Mafhoom Al-‘Adad.

### A – Mafhoom As-Siffah (the understanding related to the attribute/description):

It is the Dalaalat ul-Lafzh of a Hukm restricted to a Wasf (description) which indicates the opposite of its Hukm upon the negation of that Wasf.

What is intended by ‘Wasf’ here is more general than the ‘Na’t’ (adjective). So it could be a Na’t Nahwiyah (adjective grammatically) like: “Fil Ghanami As-Sa’imah Zakaah” (“In (respect to) the free-grazing Sheep there is Zakaah (due)”) (in the case where ‘free-grazing’ is an adjective or description of the Sheep) or it could be ‘Mudaaf’ (an addition) like ‘Fee Saa’imat ul-Ghanam Zakaah’ (In respect to the free grazing of the sheep there is Zakaah (due)). Or it could be Mudaaf Ilaihi (Added to it) like: “Matall Al-Ghinaa Zhulm” (The overlooking of the affluence is injustice) or it could be Zharf Makaan (adverb of place) like in the example:

قَوْلٍ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ



*So turn your face in the direction (Shatr) of Al-Masjid- al-Haram (at Makkah)  
(Al-Baqarah 144).*

Example:

The Messenger of Allah (saw) said:

**فِي الْغَنَمِ السَّائِمَةِ زَكَاةٌ**

**In (respect to) the free-grazing sheep there is Zakaah (due)**  
(Al-Bukhaari related this with a different Lafzh (wording)).

It is understood from this Siffah (description) which is ‘Saa’imah’ (free grazing and living upon the pastures) that the non-free-grazing sheep do not have Zakaah due upon them.

In that way we would have taken the Hukm for the foddered sheep from the Mafhoom Al-Mukhaalafah of the Hadeeth **“In (respect to) the free-grazing sheep there is Zakaah (due)”**.

As such there is no Zakaah upon the foddered sheep (i.e. those which live upon fodder and do not live upon the pastures). That is because the ‘pasture or grazing land’ is a Wasf Mufhim Munaasib (Fitting description open to reasoning) that can be reasoned (with an ‘Illah). Consequently, the ‘Illah for paying the Zakaah upon the sheep is that they live upon the pasture. If this ‘Illah does not exist, then the Hukm does not come into being because the ‘Illah revolves with the Hukm in presence and absence.

As long as this ‘Illah is not present within the foddered sheep then its Hukm is that there is no Zakaah due upon them.

Another example:

Allah (swt) said:

**يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ**

*O you who have believed, when [the Adhaan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade (Al-Mumu'ah 9).*

The Mantooq of the Aayah (i.e. Dalaalat ul-'Ibaarah) indicates the prohibition of conducting trade at the time of the call to the Jumu'ah prayer whilst that which guides to that is the Siffah (description) that is found upon the form of a Zharf Zamaan (adverb of time) which is: 'On the Day of Jumu'ah).

The Mafhoom Al-Mukhaalafah indicates and guides to the non-prohibition of trading at the time of the call to prayer for the Salaah on other than the Day of Jumu'ah.

Consequently, in this case, we have taken the Hukm from the Mafhoom Al-Mukhaalafah of that text and that Hukm is the Ibaahah (permissibility) of conducting trade at the time of the call to prayer on other than the day of Jumu'ah. That is because the Shaari' has restricted the prohibition of conducting trade to the day of Jumu'ah.

## **B – Mafhoom Ash-Shart (understanding related to the condition)**

It is the Dalaalah of the Lafzh of a Hukm restricted by a Shart (condition) that indicates the affirmation (Thuboot) of its opposite at the time of the negation of the Shart (condition).

Consequently, the making the Hukm restricted to the presence of the Shart negates that Hukm when the Shart is negated. What is meant and intended by Shart (condition) in this case is the Shart An-Nahwi (grammatical condition) and it is a sentence that begins with a particle from amongst the condition particles like: *إِن, إِذَا, مَنْ* amongst others. Example: *إِنْ تَدْرُسْ تَنْجَحْ* (If you study you succeed).

Example:

Allah (swt) said:

وَمَنْ لَّمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَّا  
مَلَكَتْ أَيْمَانُكُمْ مِّنْ فِتْيَاتِكُمُ الْمُؤْمِنَاتِ

*And whoever among you cannot [find] the means to marry free, believing women, then [he may marry] from those whom your right hands possess of believing slave girls (An-Nisaa' 25).*

The Mantooq (expressed meaning) of the Aayah indicates that the one who is not able, due to his poverty, to marry free women then he can marry from the believing slave girls.

This text has placed down a Shart (condition) and that is the lack of financial capability.

If this restriction was removed (the lack of financial capability) then it is not permitted (Mubaah) for him to marry from the believing slave girls and marriage with them becomes Makrooh (disliked) when free women are present (or available).

The Hukm that is benefited and established from the Mafhoom Al-Mukhaalafah is the Nahi (forbiddance) upon those financially capable to marry believing slave girls/women.

Another example:

Allah (swt) said:

وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً ۚ فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا  
فَكُلُوهُ هَنِيئًا مَّرِيئًا

*And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease (An-Nisaa' 4).*

The Aayah established in its Mantooq (expressed wording) (i.e. in its Alfaazh): That it is the right of the husband to take from the Mahr (dowry) of his wife with her consent and approval.

That is while the Aayah in its Mafhoom Al-Mukhaalafah (opposite understanding) established: The prohibition of taking anything from the Mahr (dowry) of the wife without her approval or consent.

Another example:

Allah (swt) said:

وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ

*And if they should be pregnant, then spend on them until they give birth (At-Talaaq 6).*

The Dalaalat ul-‘Ibaarah (i.e. Mantooq/expressed meaning in the words) guides to the Wujoob (obligation) of spending upon the one who has been divorced with a Talaaq Baa’in if she was pregnant. The Mafhoom Al-Mukhaalafah has guided to the negation of this Hukm when there is no pregnancy.

### **C – Mafhoom Al-Ghaayah (understanding related to the end-point/aim)**

It is the Dalaalat ul-Lafzh of the Hukm restricted to a Ghaayah (aim or end point) that indicates the opposite of that Hukm after or following the (reaching of the) Ghaayah (end point/aim).

Making the Hukm of the Mantooq (what is expressed) restricted or tied to a Ghaayah indicates the affirmation of the opposite of that Hukm for that which is after or follows the (reaching of the) Ghaayah (aim/end point). The Huroof (letters/particles) indicative of the Ghaayah (in the Arabic language) are: حَتَّىٰ وَإِلَى (Hattaa wa ‘Ilaa) with the meaning of ‘until’.

Example:

Allah Ta’Aalaa said:

فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ

*Then fight you (all) against the one that which rebels till it complies with the  
Command of Allah  
(Al-Hujuraat 9).*

The Aayah in its Mantooq (i.e. its ‘Ibaarah or Alfaazh/expressed meaning of its words) guides to the legality of fighting the rebelling faction (i.e. the one who oversteps the limits and refuses to go to the Shar’a for judgement). Fighting them remains legal and legitimate until (or liGhaayah/to the point) the rebelling faction returns back to the Hukm of Allah. This represents its Hukm for what is before the Ghaayah (i.e. before its aim has been fulfilled or reached).

The Mafhoom Al-Mukhaalafah indicates and guides to the prohibition of fighting the group after it has complied, meaning after it has stopped its rebellion and returned to the command of Allah.

Another example:

وَكُلُوا وَاشْرَبُوا حَتَّىٰ يَتَبَيَّنَ لَكُمُ الْخَيْطُ الْأَبْيَضُ مِنَ الْخَيْطِ الْأَسْوَدِ  
مِنَ الْفَجْرِ

*And eat and drink until the white thread of dawn becomes distinct to you from  
the black thread [of night] (Al-Baqarah 187).*

The text establishes in its Mantooq (i.e. by the Dalalat ul-‘Ibaarah) the Ibaahah (permissibility) to eat and drink in the nights of Ramadhaan until the dawn of Fajr i.e. liGhaayah (up until) the coming of Fajr.

The Mafhoom Al-Mukhaalafah has established the prohibition to eat and drink after that Ghaayah i.e. after the coming of Fajr in the month of Ramadhaan.

Another example:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ  
إِلَى الْمَرَافِقِ

*O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows (Al-Maa'idah 6).*

The Dalaalat ul-'Ibaarah (i.e. Mantooq) within the Aayah guides to the obligation of washing the hands to the Ghaayah (up until) the elbows in the act of Wudoo' whilst the Mafhoom Al-Mukhaalafah indicates that the washing of the elbows and beyond is not required.

### **A special point of observation in respect to the Mafhoom Al-Mukhaalafah in relation to the Ghaayah**

In respect to the Mantooq (expressed meaning) of the Nusoos (texts) that contain a Ghaayah (aim/end-point), the expression ('Ibaarah) within them (i.e. its Alfaazh/wordings), indicates that what is required, to realise the Hukm, is its application upon that which is before the Ghaayah (end-point/aim). As such, eating and drinking is Mubaah before Fajr, the washing of the hands (arms) is required up to the end point or extent (Ghaayah) of the elbows and fighting the rebellious faction is required or demanded until the Ghaayah (point) that it returns back to the judgment of Allah.

It is not possible to accomplish the application of the Hukm upon that which is before the Ghaayah unless a part of the Ghaayah is entered into (or included within) what is before it. This is what is called the entering of Al-Ghaayah into Al-Mughyaa (the place of the end-point) and the entering of this part of the Ghaayah if it is required to accomplish the Waajib falls under Al-Qaa'idah Ash-Shar'iyah: **“That which the Waajib is not completed except with (or by) it is Waajib”**.

Consequently, a part of the elbow must be included into the washing of the hands (arms) within the Wudoo' so as to accomplish the washing of the arms completely or effectively. The rebelling or aggressing faction must also stop its rebellion and announce its seeking judgment by Islaam before fighting against it is stopped. Similarly, a part of the night of fasting must be entered in to to complete it so that the Qawl of Allah Ta'Aalaa is realised:

ثُمَّ أَنْتُوا الصِّيَامَ إِلَى اللَّيْلِ

*And complete the fast until the night (Al-Baqarah 187).*

And even if this part of the night was just a second or two.

### **D – Mafhoom Al-‘Adad (The understanding related to the number)**

It is the Dalaalat ul-Lafzh of a Hukm restricted to a number indicating the opposite of that Hukm in other than that number.

So the restriction of the Hukm by a specific number indicates and guides to the negation of the Hukm in respect to other than that number whether the number was an increase or decrease to it.

Example:

فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

*Lash them with eighty lashes (An-Noor 4).*

The Mantooq (the Dalaalat ul-‘Tbaarah) guides to the obligation of lashing the Qaadhif (the one who makes an accusation or gives testimony without the required number of witnesses in the case of Zinaa) with eighty lashes.

The Mafhoom Al-Mukhaalafah guides to the non-permissibility of lashing the Qaadhif with less or greater than eighty lashes. The Hadd (prescribed punishment) is not dropped (i.e. fulfilled) by less than eighty whilst increasing upon it is considered to be an act of oppression and violation.

Another example:

Allah (swt) said:

## فَمَنْ لَّمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ

*But whoever cannot find [or afford it] - then a fast of three days [is required] (Al-Maa'idah 89).*

The Mafhoom Al-Mukhaalafah in respect to this Aayah indicates that fasting other than this number of days will not count (or fulfil what has been required in respect to the Kaffaarah).

### **That which the Mafhoom Al-Mukhaalafah is not applied to**

We have said that the Mafhoom Al-Mukhaalafah is utilised with the Siffah, the Shart, the Ghaayah and the 'Adad.

The Mafhoom ul-Mukhaalafah is not utilised in other than these like:

1 – The Mafhoom Al-Mukhaalafah is not used at all with the Ism (noun) whether it was an 'Alam (name) like in the sentence 'Zaid Qaa'im (is standing)' and that is because it does not indicate that 'Sa'eed' (i.e. someone) else is not standing. The same applies if the 'Ism' was for a 'Jins' kind like in the Hadeeth:

### فِي الْغَنَمِ السَّائِمَةِ زَكَاةٌ

#### **In (respect to) the free-grazing sheep there is Zakaah (due)**

The Zakaah being due on the sheep does not indicate that there is no Zakaah due upon cows.

The same applies in respect to the Laqab (title/label) like in the statement: 'The tall man is generous' and that is because the man who is not tall could (also) be generous.

2 – The Mafhoom Al-Mukhaalafah does not function with the Wasf that is not Mufhim (open to reasoning) in respect to the Mafhoom Al-Mukhaalafah like in the statement of the Messenger of Allah (saw):



## للسَّائِلِ حَقٌّ وَإِنْ جَاءَ عَلَى فَرَسٍ

**The one asking (for assistance/money etc....) has a right and even if he came upon a steed**

The Hadeeth does not indicate that other than the Saa'il does not have a right in respect to the Zakaah but rather the Zakaah is provided to the Saa'il and to other than him. The Wasf (description) is Ghair (not) Mufhim i.e. open to understanding a reasoning and not Munaasib (suitable). The Mafhoom Al-Mukhaalafah consequently does not work in respect to it.

3 – The Mafhoom Al-Mukhaalafah does not work with the understanding of 'Innamaa' (إِنَّمَا) because it does not decisively indicate 'Al-Hasr' (restriction and limitation) but only indicates 'Al-Hasr' when accompanied by a Qareenah (connotation or linking indication). If it does indicate the 'Hasr' (restriction/limitation) then it has a Mafhoom Al-Mukhaalafah (opposite understanding) like in the Qawl of Allah Ta'Aalaa:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمَوْلَّاتِ قُلُوبُهُمْ  
وَفِي الرِّقَابِ وَالْعَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ  
اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

*Zakaah expenditures are only for the poor and for the needy and for those employed to collect [Zakaah] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller - an obligation [imposed] by Allah. And Allah is Knowing and Wise (At-Taubah 60).*

The Mafhoom Al-Mukhaalafah that is attained from the Ayah indicates that the Zakaah is not given to other than the eight categories mentioned within the Ayah due to the presence of the Qareenah indicating that the 'Innamaa' is for 'Hasr' (restriction/limitation).

If, however the ‘Innamaa’ does not indicate ‘Al-Hasr’, then there is no Mafhoom Al-Mukhaalafah for it and that is like the Qawl of the Messenger (saw):

إِنَّمَا الرِّبَا فِي النَّسِيئَةِ

**Verily, Ribaa is in delayed payment (Ibn Maajah)**

There is no Mafhoom Al-Mukhaalafah for the Hadeeth because Ribaa is not restricted to ‘An-Nasee’ah’ (the deferred or delayed debt) due to the convening of Ijmaa’ As-Sahaabah upon the Tahreem of Ribaa Al-Fadl which is the exchange of money for money with an increase. This is like the exchange of gold for gold, silver for silver, dates for dates, and the remainder of the six categories of items that were mentioned in the Hadeeth of the Messenger (saw) which stated at the end of it:

فَمَنْ زَادَ أَوْ أَزْدَادَ فَقَدْ أَرَبَى

**Whoever adds or increases then he has done Ribaa (At-Tirmidhi).**

4 – The Mafhoom Al-Mukhaalafah does not work with every address where its Mantooq (expressed wordings) has been specified with a mention of a matter representing that which is most general and predominant (i.e. most likely or in most cases) (Al-A’ammu Al-Aghlab).

Example:

Allah Ta’Aalaa said:

وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ

*And your step-daughters under your guardianship [born] of your wives unto whom you have gone in (An-Nisaa’ 23).*

The Mantooq of the Aayah has made it Haraam upon the husband to marry the daughter of his wife that has been raised in his house and

that is because in the most general and predominant or likely situation the wife would take her daughter from the first husband to live with her in the house of the second husband in the case where the daughter was young of age. As such there is no Mafhoom Al-Mukhaalafah for the wording: ‘Alaatiy Fee Hujoorikum’ (Those in your rooms i.e. under your guardianship) because this Wasf (description came in the Aayah because it is the most likely or what happens in most cases ‘Al-A’ammu Al-Aghlab’ and not because it is Munaasib (suitable) or Mufhim lit-Ta’leel (open to reasoning i.e. an ‘Illah). Consequently, the prohibition of the daughter of the wife upon the husband applies whether she lives under his roof or does not live under his roof.

Another example:

Allah (swt) said:

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ

*And do not kill your children for fear of poverty (Al-Israa’ 31).*

This Aayah does not have a Mafhoom Al-Mukhaalafah and so it is not permissible to kill the children if poverty is not feared. That is because the Arabs, before Islaam, in most cases would kill their children due to the reason of the fear of poverty, and so Islaam forbade them from doing that.

5 – The Mafhoom Al-Mukhaalafah is not utilised when another text (Nass) exists that makes it ineffectual (or negates its meaning).

Example:

Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً

*O you who have believed, do not consume usury, doubled and multiplied (Aali Imraan 130).*

This does not work with the Mafhoom Al-Mukhaalafah so that it could be said that Ribaa is Halaal as long as it is not doubled and multiplied. That is because such a Mafhoom (understand) is made redundant and invalidated by another text and that is His Qawl (swt):

(Translator's note: In the Arabic edition the Aayah reference and actually Aayah presented are different and so I will present both Inshaa Allah as a precaution).

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ  
 مِنَ الْمَسِّ ۚ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۗ وَأَحَلَّ اللَّهُ الْبَيْعَ  
 وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ  
 إِلَى اللَّهِ ۗ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۗ هُمْ فِيهَا خَالِدُونَ

*Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein (Al-Baqarah 275).*

And:

فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ ۗ وَإِنْ تُبْتُمْ فَلَكُمْ  
 رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

*And if you do not (give up what remains of Ribaa), then take notice of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal (capital) - [thus] you do not wrong, nor are you wronged. (Al-Baqarah 279).*

6 – The Mafhoom Al-Mukhaalafah does not function with the ‘Adad (number) if the frame or context (Siyaaq) of the Kalaam (speech) does not indicate a Hukm that is restricted to the mentioned number.

The Messenger (saw) said:

## اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ

### Keep clear from the seven destructive sins (Agreed Upon)

The legislative intention by restricting the number is not for the purpose of ‘Hasr (limitation) but rather it is for demonstration. Consequently, there are other acts, which share with them in their meaning and their effect in terms of being destructive acts of disobedience. So the Hadeeth goes on to mention: Shirk in Allah, magic, killing the life that Allah has prohibited except by right (i.e. legitimately), the devouring of the orphan’s wealth, eating of interest, turning back on the day of the march (to battle) and accusing unaware believing women (of fornication). It did not however mention Zinaa, homosexual acts, spying or other actions which are also from the acts of disobedience and destructive sins (Moobiqaat).

Consequently, the ‘Adad (number) in this Hadeeth does not have a Mafhoom Mukhaalafah attached to it because the Hukm is not restricted or limited to the number.

For the ‘Adad (number) to have a Mafhoom Mukhaalafah two conditions are necessary:

Firstly: That the Hukm is restricted by (or to) a number.

Secondly: That the Siyaaq (framing/context) of the speech indicates the negation of the Hukm for other than that number.

### **Dalaalat At-Tanbeeh Wa-l-Iemaa’ (The indication through alerting to it or providing a clue or indication to it)**

#### **Its definition:**

Dalaalat ul-Iemaa’ and At-Tanbeeh refers to what must be the intended meaning of the Shaari’ (Legislator) from the Lafzh (wording) in accordance to the provision of the language and it occurs in that which guides to an ‘Illyah (reasoning).

This is when the Shar'a brings a text where the Hukm is arranged upon a description (Wasf) by the letter 'Faa'a' (الفاء). This arrangement or linkage provides a Tanbeeh (alert) or Iemaa' (indication/clue) for that Wasf being representative of the 'Illah of the Hukm. Otherwise, there would have been no value or benefit for this linkage (Iqtiraan) or arrangement/ordering (Tarteeb).

Example:

Allah (swt) said:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

*[As for] the thief, the male and the female, amputate their hands (Al-Maa'idah 38).*

The Shaari' (legislator) has arranged or ordered the Hukm, which is the cutting of the hand, upon theft by the Harf (letter) 'Faa'a' (الفاء) 'فَاقْطَعُوا'. That indicates by the way of Al'Iemaa' (indication/clue) and not explicitly that the Wasf (description of 'Saraqah' (theft) is the 'Illah for the Hukm of the cutting. However, it is (nevertheless) an 'Illah Qaasirah (deficient reasoning) because it does not extend beyond it and analogy is not made upon it. Rather it only represents the Sabab (cause) for the cutting (i.e. for the Hukm). The Asl (original position) in respect to the 'Faa'a' linguistically is that it has been provided for Al-'Atf (connection) to establish the ordering (At-Tarteeb) along with the consequence (At-Ta'qeeb) without abatement/procrastination (At-Tarakhiy). However, the composition of the text made the 'Faa'a' establish the 'Illiyah (reasoning) or Sababiyah (causality) and its establishing of this reasoning or causality is the Dalaalat ul-Iemaa' and At-Tanbeeh.

Consequently, if the necessary meaning in respect to the Dalaalat ul-Iqtidaa' (dictated indication) is dictated by the 'Aql or the Shar'a, then the necessary meaning in respect to the Dalaalat ul-Iemaa' and At-Tanbeeh is dictated by the provision of the language.

Another example:

The Messenger of Allah (saw) said:

لا يَقْضِي الرَّجُلُ بَيْنَ الرَّجُلَيْنِ وَهُوَ غَضْبَانٌ

**A man does not pass a judgment between two men whilst he is angry**

‘Whilst he is angry’ (وَهُوَ غَضْبَانٌ) is a Wasf Munaasib (a suitable description) for forbidding the passing of judgment meaning that it has an impact or effect upon the judgment. As long as it is a Wasf Munaasib, according to the provision of the language, a necessary meaning has been made for it in accordance to the language. It is for it to be the ‘Illah for the Hukm that it is connected to i.e. the Hukm of the forbiddance of judging or passing judgment.

That which has indicated the ‘Iliyah (reasoning) of this composition in the language is called the Dalaalat ul-Iemaa’ and At-Tanbeeh and that is because the provision of this composition, in accordance to the provision of the language, alerts to and indicates (or points) to the ‘Illah of the forbiddance of judging being ‘anger’.

Another example:

The Messenger of Allah (saw) said:

الْقَاتِلُ لَا يَرِثُ

**The killer does not inherit (Abu Dawud, At-Tirmidhi and An-Nasaa’iy).**

‘The killer’ (الْقَاتِلُ) is a Wasf Munaasib (fitting description for understanding) linked to the Hukm and as such it indicates and guides to it being an ‘Illah (reasoning). That has been understood from the language provision (Wad’u l-Lughah) as it has informed that this Wasf Munaasib (the killer) is outside or excluded from those who inherit from the one who has been killed which is due to the reason of him killing him.

The language provision for this composition therefore dictated that an ‘Illiyah (reasoning) be understood from it and this represents the Dalaalat ul-Iemaa’ and At-Tanbeeh.

The Dalaat ul-Iemaa’ and At-Tanbeeh are from the Dalaalat of the Mafhoom (understood implicit meaning) and not from the Dalaalat (indications/implications) of the Mantooq (expressed or explicit meaning).

### **Maraatib Ad-Dalaalat (Rankings or levels of the different worded indications)**

The Dalaalat that we have discussed differ and vary in respect to the strength of their evidence and proof (Hujjiyah) in accordance to their strength (Quwwah) as follows:

1 – Dalaalat ul-Ibaarah (expressed indication) is the strongest due to two qualities:

Firstly: Because the meaning that it establishes is benefited or taken from the Alfaazh (worded expressions) of the Nass (text) directly.

Secondly: Because that meaning represents the Maqsood (what is intended) by the Shaari’ in origin or in following (Aslaalatan or Taba’an).

2 – Dalaalat ul-Ishaarah (indication by indication): The meaning established by it is taken from the Maqsood (what is intended) by the Shari’ (Legislator) necessarily and not in origin or in following.

3 – Dalaalat un-Nass: This is the Mafhoom Al-Muwaafaqah (congruent understanding) and this is the meaning that the text has been silent upon whilst it represents the Maqsood (what is intended) by the Shaari’ due to its agreement or conformity to the meaning that has been mentioned within the text as both share the Qasd (intent) that the Hukm was legislated for the sake or purpose of.



4 – Dalaalat ul-Iqtidaa’: It is the necessary meaning that the Sihhat ul-Kalaam (correctness of the speech) dictates in accordance to the Shar’a or the ‘Aql (mind).

Example:

A conflict between the Dalaalat ul-‘Tbaarah and the Dalaalat ul-Ishaarah.

Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى

*O you who have believed, prescribed for you is legal retribution for those murdered (Al-Baqarah 187).*

And Allah Ta’Aalaa said:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا

*But whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment An-Nisaa’ 93).*

The first Aayah indicates in the ‘Tbaarah (expressed wording) of the text to the obligation of Al-Qisaas (retribution) against the aggressing killer and the judgment of death upon him (as punishment).

The second Aayah by way of the Dalaalat ul-Ishaarah (by indication) establishes that there is no recompense upon the intentional killer in the Dunyaa and that there is no Qisaas.

There is therefore a conflict or clash between what the ‘Tbaarah establishes and what is established by the Ishaarah. That is because the first obliges Al-Qisaas, which is the Hukm of death, whilst the second negates that. In this case the first which is established by the ‘Tbaarah is advanced or preponderant because it represents the

Maqsood (what is intended) by the Shaari' and is taken from the Lafzh (wording). As for the second is not representative of the Maqsood of the Shaari' but is rather taken by way of necessity or requirement (Luzoom).

## **Al-Mantooq and Al-Mafhoom**

The Alfaazh (worded expressions) in relation to their clarity in addition to the Dalaalat Al-Alfaazh (indications of the wordings), that we have discussed in the previous discussion, all fall under the heading of 'Al-Mantooq and Al-Mafhoom'.

### **1 – Al-Mantooq:**

Its definition is: It is the meaning that is understood from the Dalaalah (indication) of the Lafzh definitely in the place of the expression or utterance (Mahall An-Nutq).

Allah (swt) said:

فَلَا تَقُلْ لَهُمَا أُفٍّ

**So do not say to them [so much as] "Uff" (Al-Israa' 23).**

The Mantooq of this Nass (text) indicates the Tahreem (prohibition) of At-Ta'feef (showing displeasure/disdain) towards the two parents. The Mantooq is therefore the meaning that is understood from what is expressed (the Mantooq) of the Lafzh without diverting from it to the necessary meaning that comes to the mind (from it). That is like the prohibition of striking the parents is understood from the previous text however that understanding is not called the Mantooq of the Nass (text).

The areas that fall under the category of the Mantooq are:

A – The Alfaazh in relation to their clarity like: Azh-Zhaahir, An-Nass, Al-Mufassar and Al-Muhkam.

B – The Alfaazh in respect to their lack of clarity like: Al-Khafiy, Al-Mushkil, Al-Mujmal and Al-Mutashaabih.

C – ‘Ibaarat un-Nass “Dalaalat ul-Ibaarah” (Indication of the expression).

All of these are understood from the Mantooq of the Nass i.e. from the Alfaazh of the text directly.

## 2 – Al-Mafhoom:

Its definition is: The meaning that is understood from the Lafzh in other than the place of its utterance or expression (Mahall An-Nutq). As such the Dalaalat ul-Mafhoom is the necessary meaning that comes to the mind from the Lafzh. Its Dalaalah (indication) is therefore not by the explicitness of its form or placing like the Mantooq. Rather, it is taken from the meaning of the meaning of the Lafzh and not from the Lafzh directly. That is unlike the Dalaalat ul-Mantooq (expressed indication) which is the meaning of the Lafzh (itself) and not the meaning of the meaning of the Lafzh.

Example:

Allah (swt) said:

فَلَا تَقُلْ لَهُمَا أُفٍّ

**So do not say to them [so much as] "Uff" (Al-Israa' 23).**

The Mantooq of this Aayah, as we explained above, indicates and guides to the prohibition of saying ‘Uff’ to the parents. As for the Mafhoom of the Aayah then it indicates and guides to the prohibition (Tahreem) of striking, insulting and harming the parents. This understanding (Mafhoom) is guided to by the meaning that comes to the mind for the Aayah whilst the Mantooq of the ‘Aayah (i.e. its expressed wordings) does not indicate that. Consequently, the prohibition of At-Ta’feef (showing disdain or displeasure) which is the meaning of the Alfaazh indicates and guides to another

(secondary or indirect) meaning and that is the Tahreem (prohibition) of bringing any harm to the parents like hitting or insulting etc...

Consequently, the Mafhoom is that which the mind understands from the meaning that has resulted from the Mantooq and even if that meaning is not present within the Alfaazh (wordings) of the Nass (text). So the wording 'harm' like 'hitting' and 'insulting' are not present within the text but rather it has been indicated to by the Tahreem (prohibition) of At-Ta'teef (saying Uff).

Another example:

The Messenger of Allah (saw) said:

إِذَا أَخَذَ أَحَدُكُمْ عَصَا أَخِيهِ فَلْيُرُدِّهَا عَلَيْهِ

**If one of you takes a staff (walking stick) from his brother, then he must return it to him**

The Mantooq of the Hadeeth indicates that it is obligatory upon the Muslim to return the staff of his brother if he has taken it from him.

The Mafhoom of the Hadeeth indicates that it is obligatory upon the Muslim to return anything or any item that he has taken from his brother like a car, an animal, book or any thing else.

Even though these things have not been mentioned within the Lafzh of the Hadeeth, their meaning has nevertheless been indicated to and understood from it.

### **The Alfaazh from the angle of their comprehensiveness**

Alfaazh (wordings) have been provided within the language to indicate meanings. The single Lafzh can indicate one single meaning like: 'Baghdaad' is indicative of the meaning of the city that is known by its name. A Lafzh can also indicate many meanings like: 'Ain' (eye) which is indicative of the meaning of the 'Ain of water (spring), the

‘Ain that sees (eye) and the spy amongst other meanings. The Lafzh can also be indicative of two meanings or more like the Lafzh ‘Ar-Rijaal’ (men) as it is indicative of everyone within whom the description of ‘Ar-Rajul’ (man) is realised and it could also indicate to an indicated meaning (Madlool) that is widespread within its type (Jins) like: ‘Rajul’ (A man).

Based upon this way that the Alfaazh (worded expressions) have been provided and set, the Alfaazh have been divided in respect to their comprehensiveness or lack of comprehensiveness into a number of categories which are:

Al-‘Aamm, Al-Khaass, Al-Mushtarak, Al-Mutlaq and Al-Muqayyad.

### **Al-‘Aamm (the general)**

#### **Its definition:**

The ‘Aamm is a Lafzh that takes in all that is fitting or viable (Saalih) for it, through a single worded expression (Lafzh).

Example: Al-Qawm (people/nation), Ar-Rijaal (men), Al-Mu’minoona (believers) and so on.

The Lafzh ‘Al-Qawm’ represents a single Lafzh under which many fall (within its meaning) in terms of women, men and children. This meaning takes in or absorbs into it all that fits it, through one single Lafzh.

#### **Al-Alfaazh Al-‘Aammah (the general worded expressions)**

There are Alfaazh (wordings) which the people of the language (i.e. those who came with it) provided in order to indicate and guide to the ‘Aamm (general). It is valid and correct (Saheeh) to use them as evidence to support that what is intended from them is Al-‘Umoom (generality or generalness). Consequently, what they guide to and indicate is ‘Aamm (general). These Alfaazh include

1 – The definite plural that has been defined (Mu'arraf) with 'ال' (Alif and Laam) Al-Jinsiyah (of type/kind) or Al-Istighraaqiyah (absorption/taking in). This is like in the Qawl of Allah (swt):

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ

*Men are the protectors and maintainers over women (An-Nisaa' 34).*

'Ar-Rijaal' (the men) is a Lafzh 'Aamm (general worded expression) and absorbs within it every man and the same applies to 'An-Nisaa' (the women).

2 – The definite plural that is defined (Mu'arraf) by 'Idaafah' (construct of attaching of one word to another) like in the example where Allah (swt) said:

وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِّنْ إِمْلَاقٍ

*And do not kill your children out of fear of poverty (Al-An'aam 151).*

The Lafzh 'Awlaadikum' (your children) absorbs within it the generality of 'Awlaad' (children).

3 – The Nakirah (indefinite) in the context (Siyaaq) of An-Nafiy (negation), An-Nahi (forbiddance) or As-Shart (condition). Example:

The Messenger of Allah (saw) said:

لَا يَحِلُّ لِمَرْأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُسَافِرَ مَسِيرَةَ يَوْمٍ وَلَيْلَةٍ إِلَّا مَعَ ذِي مَحْرَمٍ مِنْهَا

**It is not Halaal for a woman who believes in Allah and the Last Day to travel a distance of a day and a night except with a Mahram relative from her (Malik in Al-Muwatta').**

The Lafzh (wording) 'Imra'ah' (woman) is Nakirah (indefinite) in the Siyaaq (context or frame) of the Nafi (negation) i.e. it is preceded by

the ‘Harf An-Nafi’ (the letter indicating negation) which is ‘La’. It therefore encompasses every woman.

And Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرُ قَوْمٌ مِّن قَوْمٍ

*O you who have believed, no people should ridicule [another] people (Al-Hujuraat 11).*

Here the Lafzh ‘Qawm’ (a people) is Nakirah (indefinite) in the Siyaaq (context/framing) of a Nahi (forbiddance) and this Lafzh encompasses any Qawm. It therefore indicates ‘Umoom (generality).

And Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا  
بِجَهَالَةٍ فَتُصْبِحُوا عَلَىٰ مَا فَعَلْتُمْ نَادِمِينَ

*O you who believe! If a rebellious evil person comes to you with a news, verify it, lest you harm people in ignorance, and afterwards you become regretful to what you have done (Al-Hujuraat 6).*

The Lafzh ‘Faasiq’ (rebellious/disobedient) is Nakirah (indefinite) in the Siyaaq (context/framing) of a Shart (condition) because it has been preceded by the Harf of the Shart (letter or preposition of conditionality) ‘إن’. The Lafzh of ‘Faasiq’ therefore indicates every Faasiq and so it is indicative of Al-‘Umoom (generality).

4 – Asmaa’ Ash-Shart (conditional nouns):

Allah Ta’Aalaa says:

فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ

*So whoever sights [the new moon of] the month, let him fast it (Al-Baqarah 185).*

The Lafzh ‘مَنْ’ (who(ever)) is an Ism Shart (conditional noun) that indicates Al-‘Umoom (generality) and so it is indicating that every Muslim who has witnessed the month of Ramadhaan and is Mukallaf (legally entrusted and responsible) must fast the month.

And the Qawl of Allah (swt):

أَيْنَمَا تَكُونُوا يُدْرِكْكُمُ الْمَوْتُ

*Wherever you may be, death will overtake (or reach) you (An-Nisaa’ 78).*

The Lafzh ‘أَيْنَ’ (where) is an Ism Shart (conditional noun) for the place (Makaan) indicating the generality of place.

And His Qawl Ta’Aalaa:

أَيًّا مَا تَدْعُوا فَلَهُ الْأَسْمَاءُ الْحُسْنَىٰ

*Whichever [name] you call - to Him belong the best names (Al-Israa’ 110).*

The Lafzh ‘أَيِّ’ (which(ever)) is an Ism Shart (conditional noun) indicating Al-‘Umoom (generality).

5 – Asmaa’ ul-Istifhaam (questioning/enquiring nouns) like:

His Qawl (swt):

قَالُوا مَنْ فَعَلَ هَذَا بِآلِهَتِنَا

*They said: “Who did this with our deities (idols) (Al-Anbiyaa’ 59).*

And the Qawl of Allah Ta’Aalaa:

فَيَقُولُونَ مَاذَا أَرَادَ اللَّهُ بِهَذَا مَثَلًا

*They say: “What did Allah intend by this as an example?” (Al-Baqarab 26).*

And His speech ‘Azza Wa Jalla:



قَالُوا أَيَّنَ مَا كُنْتُمْ تَدْعُونَ مِنْ دُونِ اللَّهِ

*They will say: "Where are those you used to invoke besides Allah?" (Al-A'araaf 37).*

The Asmaa' Al-Istifhaam (questioning nouns) in the previous Noble Aayaat which are: 'مَنْ', 'مَاذَا' and 'أَيَّنَ' (who, what and where) are all Alfazh that indicate Al-'Umoom (generality).

6 – Al-Asmaa' Al-Mawsoolah: These include 'مَنْ' (who) and 'مَا' (what) if they are indicating the Jam'u (plural) and they also include 'Alladheena', Allaatiy and Allawaatiy.... This is like in the Qawl of Allah (swt):

وَلِلَّهِ يَسْجُدُ مَنْ فِي السَّمَاوَاتِ وَالْأَرْضِ

*And to Allah prostrates whoever is within the heavens and the earth (Ar-Ra'd 15).*

And His Qawl (swt):

وَأَجَلٌ لَكُمْ مَّا وَرَاءَ ذَلِكَ

*And lawful to you are what lie [all others] beyond these (An-Nisaa' 24).*

So the Lafzh 'مَنْ' (man) is an Ism Mawsool (relative pronoun) that indicates all that is in the heavens and the earth i.e. it indicates Al-'Umoom (generality).

Similarly, the Lafzh (wording) 'مَا' is an Ism Mawsool that is indicative of a Jam'u (plural) and indicates Al-'Umoom (generality).

Allah Ta'Aalaa said:

إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ لَهُمْ جَنَّاتٌ تَجْرِي مِنْ تَحْتِهَا  
الْأَنْهَارُ ۚ ذَلِكَ الْفَوْزُ الْكَبِيرُ

*Verily, those who have believed and done righteous deeds will have gardens beneath which rivers flow. That is the great attainment (Al-Burooj 11).*

The Lafzh 'الَّذِينَ' (Alladheena/who) is also indicative of Al-'Umoom.

Allah (swt) says:

وَاللَّائِي يَنْسَنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ

*And those who no longer expect menstruation among your women (At-Talaaq 4).*

The Lafzh (worded expression) 'اللَّائِي' (Allaaiy/who) is from among the Asmaa' Al-Mawsoolah (relative pronouns) that are indicative of generality (Al-'Umoom).

7 – Al-Ism ul-Mufrad (the singular noun) that is defined (Mu'arraaf) with 'ال' (Alif Laam) like:

Allah (swt) said:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

*The male thief and female thief cut off their hands (Al-Ma'idah 38).*

The Mufrad (singular) Lafzh 'As-Sariq' (thief) and the singular Lafzh 'As-Sariqah' encompass every male thief and every female thief as they are both indicative of Al-'Umoom (generality).

If however 'ال' Al-'Ahdiyah (العَهْدِيَّة) (of convention) was attached or affixed to a Mufrad (singular word) then it would not be indicative of Al-'Umoom (generality) like in the Qawl of Allah Ta'Aalaa:

الم ﴿١﴾ ذَلِكَ الْكِتَابُ لَا رَيْبَ فِيهِ هُدًى لِّلْمُتَّقِينَ

*Alif Laam Meem. This is the Book about which there is no doubt, a guidance for those who have Taqva of Allah (Al-Baqarab 1-2).*

So here the Lafzh (wording) ‘Al-Kitaab’ (the book) does not indicate to (the meaning) of every book but rather it is the Book Al-Ma’hood (that is well-known) and that is the Qur’aan Al-Kareem.

Some extra points of benefit:

1 – Al-Jam’u An-Nakirah (the indefinite plural) differs in respect to its ‘Umoom (generality) in the case where it does not take in all of its Afraad (individual elements) but rather absorbs or encompasses many of them. This is like the Qawl of Allah (swt):

فِي بُيُوتٍ أُذِنَ لِلَّهِ أَنْ تُرْفَعَ وَيُذْكَرَ فِيهَا اسْمُهُ يُسَبِّحُ لَهُ فِيهَا بِالْغُدُوِّ  
وَالْآصَالِ رِجَالٌ لَا تُلْهِيهِمْ تِجَارَةٌ وَلَا بَيْعٌ عَن ذِكْرِ اللَّهِ وَإِقَامِ  
الصَّلَاةِ وَإِيتَاءِ الزَّكَاةِ يَخَافُونَ يَوْمًا تَتَقَلَّبُ فِيهِ الْقُلُوبُ وَالْأَبْصَارُ

*[Such niches are] in mosques which Allah has ordered to be raised and that His name be mentioned therein; exalting Him within them in the morning and the evenings [Are] men (Rijaalun) whom neither commerce nor sale distracts from the remembrance of Allah and performance of prayer and giving of zakaah. They fear a Day in which the hearts and eyes will [fearfully] turn about - (An-Noor 36-37).*

The Lafzh ‘Rijaal’ (men) does not indicate all the men but rather indicates to a number from amongst them; more than two and the least numbering three.

2 – Al-‘Umoom indicates all of the Afraad (individual elements) that the Lafzh takes in and it could differ in respect to the minimum number that the Jam’u (plural) indicates and this lies between two and three.

As for from the perspective of the Sunnah, then the Salaat ul-Jamaa’ah (congregational prayer) is considered to be legitimately convened with only two people due to the Qawl of the Messenger (saw):

الإِثْنَيْنِ فَمَا فَوْقَهَا جَمَاعَةٌ

## Two and what is above (that) is a Jamaa'ah (ibn Maajah)

From the perspective of the language, then its determination requires a Qareenah (linkage/ connotation) and so for instance Allah (swt) said to Aadam and Hawaa' (ahs):

قَالَ اهْبِطُوا بَعْضُكُمْ لِبَعْضٍ عَدُوٌّ

[Allah] said: "Descend, being to one another enemies (Al-A'araaf 24).

(Ihbitoo refers to the plural form). Here had the Qareenah not been mentioned then the Jam'u (plural) what have been indicative of more than two.

3 – There are Alfaazh which act as a Ta'keed (reiteration) of the 'Umoom (generality) like Ajma'oon, Akta'oon, Kaaffah, 'Aammah and so on.

## Al-Khaass (the specific)

### Its definition:

Al-Khaass is the Lafzh that has been provided or utilised to indicate to a single Fard (element) related to the person, or a single Fard related to the kind (Naw'u) or to a number of Afraad which are restricted or limited (i.e. specified).

It therefore has three types:

- Khaass Shakhsiy (specific person) like the nouns which are names like: Zaid, Muhammad and Baghdaad.
- Khaass Naw'iy (specific type/kind) like man, human and woman.
- Or the Khaass which indicates to a number of individual elements (Afraad) but does not indicate Al-Istighraaq (i.e. complete absorption or taking in/encompassing) of all of the Afraad like the 'Aamm.

## The Hukm of the Khaass:

The Khaass (specific) indicates and guides to the meaning that has been set for it by a Dalaalah Qat'iyah (definite indication) i.e. without the possibility arising for other than it to share with it or the possibility to specify it (further). This is like His Qawl (swt):

فَمَنْ لَّمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ

*But whoever cannot find [a way or afford it] - then a fast of three days [is required] (Al-Maa'idah 89).*

That is because the Lafzh 'three days' is from the Khaass (specific) Alfaazh (worded expressions) and so its meaning indicates three days without any increase or reduction.

## Takhsees Al-'Aamm (The specification or specifying of the general)

The majority of the 'Ulamaa have agreed that the Lafzh Al-'Aamm (general expression) indicates and guides to all that the meaning of the Lafzh encompasses (in terms of a lot or many). If a Hukm Shar'iy is attached to this Lafzh then this Hukm would be 'Aamm (general) and apply upon all of the Afraad (individual elements) that the meaning of the Lafzh encompasses. The 'Aamm (general) will then remain upon its 'Umoom (generality) as long as a Daleel has not come specifying it.

Example:

Allah (swt) said:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

*The female Zaaniyah and the male Zaani, then lash each of them with one hundred lashes (An-Noor 2).*

So the Lafzh Az-Zaaniyah and Az-Zaaniy both indicate generality because they are both Ism Mufrad Mu'arraf Bi 'Al' Al-Jinsiyah (singular words defined with Alif and Laam of the kind/type). That is whilst the Hukm (ruling) is attached to this general Lafzh thus indicating that the Hukm of the one who commits Zinaa (fornication), male or female, is to be lashed with one hundred lashes. This 'Aamm (general) remains upon its 'Umoom (generality) as long as no other Daleel has come to specify it. And in this case another Daleel has come specifying it and that is the action (Fi'l) of the Messenger of Allah (saw) and his speech (Qawl). As for his Fi'l (action), then he stoned Al-Maa'iz and Al-Ghaamidiyah to death as they had been married when each of them had committed the act of Zinaa. As for his Qawl (speech) then he (saw) said:

لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِأَحَدٍ ثَلَاثٍ : الثَّيِّبُ الزَّانِي ، وَالنَّفْسُ بِالنَّفْسِ ،  
وَالتَّارِكُ لِديْنِهِ الْمُفَارِقُ لِلْجَمَاعَةِ

**The blood of a Muslim person is not Halaal except in one of three (circumstances): The married person who commits Zinaa, the life for the life and the one who leaves his Deen separating from the Jamaa'ah (Al-Bukhaari and Muslim).**

Consequently, the Fi'l (action) and Qawl (statement) of the Messenger (saw) explain that the Hukm of the married Zaani (i.e. adulterer) is stoning to death. That is whilst the Aayah explains the Hukm of the Zaani in a general manner, whether married or unmarried, and that is the lashing of one hundred lashes.

And so the second Daleel represented in the action of the Messenger (saw) and his speech has specified the Daleel Al-'Aamm (general evidence) which is the Aayah. As such, the married Zaani is taken out of the general text and its Hukm has been made different to that of the general Hukm whilst the Hukm 'Aamm (general ruling) still remains the Hukm for the unmarried Zaani.

Therefore, the meaning of Takhsees Al-‘Aamm (specifying the general) is to take the Lafzh away from the direction of generality to specifying it with specific Afraad (individual elements) with a Daleel (to support or indicate that).

## **Adillah Takhsees Al-‘Aamm (Evidences of specifying the general)**

The Adillah (evidences) of specifying the general are divided into two categories:

Adillah Takhsees Muttasilah (connecting evidences of specification) and Adillah Takhsees Munfasalah (separated evidences of specification).

### **1 – Adillah At-Takhsees Al-Muttasilah (connecting evidences of specification):**

At-Takhsees Al-Muttasil is that which is not independent in itself but rather the Takhsees (specification) is mentioned along with the ‘Aamm (general) within the same Nass (text). Its meaning is attached to the general Lafzh and it is a part of the speech that contains the ‘Aamm Lafzh.

It has four types which are: Al-Istithnaa’ (exemption or exception), Ash-Shart (the condition), As-Siffah (adjective/description/attribute) and Al-Ghaayah (end point).

#### **A - At-Takhsees by Al-Istithnaa’ (The specification by way of exemption)**

Adawaat Al-Istithnaa’ (particles of exception/exemption):

إلا, غير, سوى, خلا, حاشا, عدا, ما عدا, ما خلا, ليس, لا يكون

The Takhsees by way of Al-Istithnaa’ (exception) means excluding or exempting that which follows the exemption from that which was before it.

Example:

Allah (swt) said:

وَالْعَصْرِ ﴿١﴾ إِنَّ الْإِنْسَانَ لَفِي خُسْرٍ ﴿٢﴾ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَتَوَّصُوا بِالحَقِّ وَتَوَّصُوا بِالصَّبْرِ ﴿٣﴾

*By time. Verily, the human (Al-Insaan) is in loss. Except for those who have believed and done righteous deeds and advised each other to truth and advised each other to patience (Al-'Asr).*

So the Lafzh (wording) 'Al-Insaan' (man/human) is a Lafzh 'Aamm because it is Mufrad Mu'arraf (defined) with 'Al' Al-Jinsiyah and consequently it encompasses every human being. Allah (swt) has informed us that every human being is a loser and then excluded or exempted from those people who are losers Afraad (individual elements) that will not be losers and they are those who have believed and acted righteously (in accordance to His commands and prohibitions) ...

This then represents an example of the Takhsees (specification) that takes place by the Istithnaa' (exception/exemption).

- It is a condition for the validity of the Istithnaa' (exemption) for it be Muttasil (connected) to the Mustathnaa Minhu (the matter being exempted from) without there being a (more than normal) separation between them both. As for those who say that the Istithnaa' (exception) is valid and even if the time of a month had passed (i.e. great distance) then this is rejected and has no Daleel to support it.

- The Istithnaa' (exception) returns to the nearest Mustathnaa Minhu (matter which the exception is being made from). Allah Ta'Aalaa said:

إِلَّا آلَ لُوطٍ إِنَّا لَمُنَجُّوهُمْ أَجْمَعِينَ ﴿٥٩﴾ إِلَّا امْرَأَتَهُ قَدَرْنَا لَانَّهُآ لَمِنَ الْعَآبِرِينَ

*Except the family of Lot; indeed, we will save them all. Except his wife." We decreed that she is of those who remain behind. (Al-Hijr 59-60).*



So his 'Imra'ah' (wife) was exempted from those who will be saved but not exempted from the family of Lut and she will be amongst those who perish.

- It is permitted for the Mustathnaa (exempted matter) to be from a different Jins (kind/type) than the Mustathnaa Minhu (matter the exemption is being made from). An example of that is found in the Qawl of Allah Ta'Aalaa:

وَإِذْ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ فَسَجَدُوا إِلَّا إِبْلِيسَ

*And [mention] when We said to the angels: "Prostrate to Adam," and they prostrated, except for Iblees (Al-Israa' 61).*

And that is because Iblees was not from amongst the Malaa'ikah (angels) as Allah (swt) said:

وَإِذْ قُلْنَا لِلْمَلَائِكَةِ اسْجُدُوا لِآدَمَ فَسَجَدُوا إِلَّا إِبْلِيسَ كَانَ مِنَ الْجِنِّ فَفَسَقَ عَنْ أَمْرِ رَبِّهِ

*And [mention] when We said to the angels, "Prostrate to Adam," and they prostrated, except for Iblees. He was of the jinn and disobeyed the command of his Lord (Al-Kahf 50).*

Iblees is therefore not from the Malaa'ikah but rather from the Jinn.

- When the Istithnaa' (exception) comes after sentences that are connected or joined (Ma'toof) to one another, then the Istithnaa' returns to all (that has been mentioned) as long as there is no Daleel to specify other than that. Some have held the view that the Istithnaa' (exception) returns back to the last sentence (or statement) alone unless the Daleel indicates generality or that it covers all of them. An example of this is the Qawl of Allah Ta'Aalaa:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ  
 ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ﴿٤﴾  
 إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

*And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fasiqun (liars, rebellious, disobedient to Allah). **Except** those who repent thereafter and do righteous deeds, (for such) verily, Allah is Oft-Forgiving, Most Merciful (An-Noor 4-5).*

The Istithnaa' (exception) here returns to the Faasiqeen alone and not to the flogging or acceptance of testimony, according to the preponderant (or stronger) opinion.

### **B – At-Takhsees Bi-s-Siffah (The specification by the attribute/description)**

If the 'Aamm (general) is connected or linked to a Siffah (attribute/description/adjective) then it is specified by it and all other than it is excluded from it. This is like in the statement of the Messenger of Allah (saw):

فِي كُلِّ إِبِلٍ سَائِمَةٍ ، مِنْ كُلِّ أَرْبَعِينَ بِنْتِ لَبُونٍ

**In (respect to) every free grazing (Saa'imah) camel (Ibil)...**

His statement 'Saa'imah' (free grazing) is a Siffah (adjective) that has been connected to the 'Aamm (general) which is the Lafzh 'Ibil' (camel) that follows the word 'Kull' (every). So it covers all of the camels however due to being connected or linked to a Siffah, the wording 'Free grazing', all camels that are not free grazing are taken out from this generality and these are the camels which are fed with fodder. It therefore indicates that there is no Zakaah upon the foddered camels but rather Zakaah is only due upon those camels which graze freely, live and feed off the pastures.

The condition for the validity of specifying by the Siffah (description/attribute) is that it is connected to the Mawsoof (described thing/matter) or to the connecting Hukm.

Example:

His Qawl (swt):

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخْوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخْوَاتُكُمْ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُمْ مِمَّنْ نِسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

*Forbidden to you (for marriage) are: your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster mother who gave you suck, your foster milk suckling sisters, your wives' mothers, your step daughters under your guardianship, born of your **women (Nisaa'ikum)** to whom you have gone in - but there is no sin on you if you have not gone in them (to marry their daughters), - the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is Oft-Forgiving, Most Merciful (An-Nisaa' 23).*

Here the Lafzh 'Nisaa'ikum' (your women) is 'Aamm because it is a plural that is added to a pronoun (Idaafah). This 'Aamm (general) has then been specified by the Siffah (adjective/description) that is mentioned following it 'To whom you have gone in'. Therefore, the Tahreem (prohibition) of marrying the step-daughter is restricted to the daughters of the wives that had been entered into while it does not encompass and cover the women which has been contracted (in marriage) but the marriage has yet to have been consummated.

**C – At-Takhsees Bi-sh-Shart (the specification by the condition)**

The Adawaat (particles) of the Shart (condition) are numerous and they include:

إن الشرطية, إذا, من, مَهْمَا, حَيْثُمَا وَأَيْنَمَا.

Allah Ta'Aalaa said:

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ

*In that which your wives leave, your share is a half **if** (إن) they have no child (An-Nisaa' 12).*

The Shart (condition) has specified the inheritance of the husband with half of what his wife leaves behind if she does not leave behind her, following her death, a child, whether male or female.

The inheritance of half is therefore restricted to the case of the non-existence of a child. If however she has a child then the inheritance would differ and the husband would then get a quarter of what is left (At-Tarkah). The Shart, as such, excludes from the speech that which if the Shart had not been there, would have remained within it. This is like the statement: "Akrim Al-Mujaahideen In Fatahoo Al-Hisn" (Honour the Mujaahideen if they conquer the fortress). If it had not been in the Seeghah (form) of 'إن' (if) then the Ikraam (honouring) would have been general for all of the Mujaahideen. However, the insertion of 'إن' takes out those who do not conquer the fortress.

And the Messenger of Allah (saw) said:

إِذَا خَاطَبَ أَحَدُكُمْ الْمَرْأَةَ ، فَقَدَرَ عَلَى أَنْ يَرَى مِنْهَا مَا يُعْجِبُهُ ، فَلْيَفْعَلْ

**If one of you (intends) to engage the woman (and) then he was capable of seeing (that) from her of that which pleases him, then let him do that (Abu Dawud in his Sunan).**

This condition makes it permissible for the man to look at any part of the body of the woman that he is capable of seeing if he wishes to engage her for marriage and so this Shart (condition) has made an

exception to the prohibition of the man looking at the ‘Awrah of the women in this case when it is for the purpose of engaging her in marriage. The Hadeeth has therefore specified the ‘Umoom (generality) of the Hurmah (prohibition) of the man looking at the ‘Awrah of the woman to other than those who wish to engage her.

### **D – At-Takhsees Bi-l-Ghaayah (The specification by the end point (i.e. the meaning of until))**

The forms of the Ghaayah are two Lafzhs (wordings) which are: إِلَى, حَتَّى (Ilaa and Hattaa/to/until).

If any of these two worded expressions are included within the general speech, then what comes after them is excluded. The Hukm of what follows must be contrary to the Hukm that was before it.

Example:

Allah (swt) said:

فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ

*(Then) wash your faces and your forearms to (Ilaa) the elbows (Al-Maa'idah 6).*

The Lafzh ‘Aidiyakum’ (hands/forearms) is a Lafzh ‘Aamm and includes the ‘Yad’ from the shoulders until the fingers. However, the ‘Aamm has been specified by His Qawl: “Ilaa-l-Maraafiq” (to (or until) the elbows). Consequently, what is required and has been requested is to wash from the hand that which is from the fingers to the elbows. In that way ‘Ilaa’ (To/until), which is a Harf (particle of) Al-Ghaayah, has excluded that which comes after that, from the washing.

However, as an extra point of note, in respect to this issue specifically, the Qaa'idah Ash-Shar'iyah (Shar'iyah principle) that states: **‘Maa Laa Yatimm ul-Waajib Illaa Bihi FaHuwa Waajib’** (That which the Waajib is not fulfilled except with it is a Waajib) has made the washing of a bit or part of the elbows Waajib and that is in

order to ensure the washing of the Yad (arm) to the elbows is fulfilled.

Another example:

Allah Ta'Aalaa said:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا  
حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ  
حَتَّى يُعْطُوا الْجِزْيَةَ عَن يَدٍ وَهُمْ صَاغِرُونَ

*Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture - [fight] until they give the Jizyah willingly while they are humbled (At-Taubah 29).*

The Lafzh 'Alladheena' (those) establishes al-'Umoom (generality) because the Ism Mawsool (relative pronoun) indicates a Jam'un (plural) and Allah has commanded us to fight those who do not believe in Allah in a general manner. This was then followed by the particle ('Aadaat) of Al-Ghaayah 'Hattaa' and so it excluded from those whom it is obligatory to fight and they are those who give the Jizyah and submit to the authority of Islam. Those, who do that, are not fought as a result of their giving of the Jizyah.

Consequently, the Takhsees of the 'Aamm, which is 'those who don't believe in Allah', has occurred by way of the Ghaayah and its form 'Hattaa' and so what comes after the 'Hattaa' (until) is contrary, in respect to its Hukm, to what is before 'Hattaa' (until). This is where that which came after it was taken out of that which was before it in respect to the Hukm, in the case where what was before it was 'Aamm (general).

### **Adillah At-Takhsees Al-Munfasalah (Separated evidences of specification)**

The Takhsees that happens by separate evidences only takes place with the Adillah As-Sam'iyah Ash-Shar'iyah which are the Kitaab, the

Sunnah, Ijmaa' As-Sahaabah and Al-Qiyaas, and it is not permitted to specify the 'Aamm Daleel Ash-Shar'iy (general Shar'i evidence) by the 'Aqliy Daleel (rational evidence). That is for the following reasons:

A – The Takhsees represents a Bayaan (explanation/clarification). It is Tashree' (legislation) and the legislation is from the Wahi (divinely inspired revelation) and not from the 'Aql (mind/intellect/ration). It is therefore not valid for the 'Aql to be used to specify the Shar'a (divine rule).

B – The indication of the general wording (Al-Lafzh Al-'Aamm) upon its generality is what is intended from the Shaari' (Legislator) from the meaning of the Lafzh in accordance to the language and the Shar'a. To then specify this 'Aamm (general) by the 'Aql (mind) and exclude some of the Afraad (individual elements) encompassed by the 'Aamm (general) from the Hukm (ruling) is not valid linguistically. That is because the indication of the Lafzh upon its meaning is only referred back to the language and not to the mind.

The following are the types of At-Takhsees Al-Munfasal (Specification that is separated i.e. it is not within the same text)

- 1 – The Takhsees of the Kitaab by the Kitaab.
- 2 – The Takhsees of the Kitaab by the Sunnah.
- 3 – The Takhsees of the Kitaab by the Ijmaa' As-Sahaabah.
- 4 – The Takhsees of the Kitaab by Al-Qiyaas.
- 5 – The Takhsees of the Sunnah by the Kitaab.
- 6 – The Takhsees of the Sunnah by the Sunnah.
- 7 – The Takhsees of the Sunnah by the Ijmaa' As-Sahaabah.
- 8 – The Takhsees of the Sunnah by Al-Qiyaas.
- 9 – The Takhsees of the Mantooq by the Mafhoom.

Examples of this are:

### **1 – The Takhsees of the Kitaab by the Kitaab.**

The general evidence (Ad-Daleel Al-'Aamm): The Qawl of Allah Ta'Aalaa:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ  
أَشْهُرٍ وَعَشْرًا

*And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days] (Al-Baqarah 234).*

The specifying Daleel: His Qawl (swt):

وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

*And for those who are pregnant, their term is until they give birth (At-Talaaq 4).*

Consequently, the Aayah of Talaaq (Divorce) has specified the Aayah of Al-Baqarah to apply to other than those who are pregnant in respect to the 'Iddah (waiting period) of the women whose husbands have died.

## **2 – The Takhsees (specification) of the Kitaab by the Sunnah:**

The general evidence: His Qawl (swt):

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ

*Allah instructs you concerning your children: for the male, what is equal to the share of two females (An-Nisaa' 11).*

The specifying Daleel: The statement of the Messenger (saw):

الْقَاتِلُ لَا يَرِثُ

**The killer does not inherit** (At-Tirmidhi and An-Nasaa'i).

The Hadeeth has specified the 'Umoom (generality) of the Aayah to the children who have not killed those they inherit from.



### **3 – Takhsees (specification) of the Kitaab by the Ijmaa’ As-Sahaabah:**

The general evidence: The Qawl of Allah Ta’Aalaa:

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ  
تَمَانِينَ جَلْدَةً

*And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes (An-Noor 4).*

The specifying Daleel (evidence):

The Ijmaa’ of the Sahaabah upon the punishment of half of the lashing in respect to the slave. The Ijmaa’ as such specifies the generality of the Aayah to those who accuse chaste women to apply upon the free.

### **4 – Takhsees of the Kitaab by the Qiyaas:**

The general evidence: His Qawl (swt):

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

*The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes (An-Noor 2).*

The specifying Daleel: The Qiyaas (analogy) applied to the male slave Zaani (fornicator) upon the female slave fornicator upon whom the Nass (text) of the Shaari’ (Legislator) has stated that her punishment if she fornicated was half the punishment of a free woman.

Allah (swt) said:

فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ

*Then, if they commit illegal sexual intercourse, their punishment is half that of free (unmarried) women (An-Nisaa' 25).*

The Qiyaas is therefore taken from the second Aayah, specifying the generality of the Hukm of Zinaa (fornication) in the first Aayah, to the fornication of the free.

### **5 – At-Takhsees (the specification) of the Sunnah by the Kitaab:**

The general evidence (Ad-Daleel Al-‘Aamm): That which was mentioned in the treaty of Al-Hudaibiyah:

عَلَى أَنَّهُ لَا يَأْتِيكَ مِنَّا أَحَدٌ - وَإِنْ كَانَ عَلَى دِينِكَ - إِلَّا رَدَدْتُهُ إِلَيْنَا

**Upon the basis that none comes to you from us, and even if he was upon your Deen, except that you would return him to us (Al-Bukhaari).**

The specifying Daleel: The Qawl of Allah ‘Azza Wa Jalla in respect to the females who made Hijrah (Muhaajiraat):

فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ

*And if you have ascertained them to be believers, then do not return them to the disbelievers (Al-Mumtahaanah 10).*

The Aayah has therefore specified what was mentioned in the Sulh (treaty) of Al-Hudaibiyah to men alone. That is because that which was mentioned within the text of the treaty was ‘Aamm (general) encompassing the man and the woman whilst the Aayah came specifically in regards to the women.

### **6 – Takhsees of the Sunnah by the Sunnah:**

The general evidence (Ad-Daleel Al-‘Aamm): The statement of the Messenger of Allah (saw):

فِيَمَا سَقَّتِ السَّمَاءُ وَالْأَنْهَارَ وَالْعُيُونُ أَوْ كَانَ بَعْلَا الْعُشْرِ وَفِيَمَا سَقِيَ  
بِالسَّوَاقِي أَوْ النَّضْحِ نِصْفُ الْعُشْرِ

In respect to that which nourished by the sky, rivers, streams and was a water supply the ‘Ushr (tenth) is due and in respect to that which is artificially nourished or irrigated then it is half the ‘Ushr (tenth) (Al-Bukhaari and Muslim).

And the specifying Daleel (evidence): The Qawl of the Messenger (saw):

لَيْسَ فِيَمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ

There is no Sadaqah (due) on that which is less than 5 Awsaq (a measurement for land) (Al-Bukhaari).

The second Daleel therefore specifies the generality of the first to applying to 5 Awsaq or more.

### **7 – The specification of the Sunnah by the Ijmaa’ As-Sahaabah:**

The general evidence: The statement of the Messenger (saw):

فَأَنَّهُ لَا يَنْبَغِي لِجِيفَةِ مُسْلِمٍ أَنْ تُحْبَسَ بَيْنَ ظَهْرَانِي أَهْلِهِ

For verily the body (corpse) of the Muslim should not be held back amongst his family (Abu Dawood).

The specifying Daleel: The Ijmaa’ As-Sahaabah upon the delaying of the burial of the Messenger of Allah (saw) until they had pledged allegiance to a Khalifah (successor) to him.

Consequently, the Ijmaa’ As-Sahaabah specifies the generality of the Hadeeth of the Messenger of Allah (saw) and indicates the permissibility to delay the burial of the deceased if the Muslims are preoccupied by the work to appoint the Khalifah.

## 8 – Takhsees of the Sunnah by Al-Qiyaas:

The general evidence: The Qawl of the Messenger of Allah (saw) in respect to the Zakaah:

تُؤَخَذُ مِنْ أَغْنِيَائِهِمْ وَتُعْطَى لِفُقَرَائِهِمْ

**It is taken from their rich and given to their poor.**

The specifying Daleel: The permissibility to give voluntary Sadaqah based upon the analogy made upon the giving of the gift or present.

As such the Qiyaas is specifying to the generality of the Hadeeth in relation to giving the Zakaah to the Muslims and taking it from the Muslims and not the disbelievers.

## 9 – Takhsees Al-Mantooq by the Mafhoom:

The Daleel Al-‘Aamm: The Qawl (statement) of the Messenger of Allah (saw):

وَفِي الْعَنَمِ مِنْ أَرْبَعِينَ شَاةً شَاةً إِلَى عِشْرِينَ وَمِنَّةً

**In respect to the sheep, then for every forty sheep there is one sheep (due) up until 120 (Daawood and At-Tirmidhi).**

The Mantooq of the Hadeeth (i.e. Dalaalat ul-‘Ibaarah) indicates that there is Zakaah due on sheep from 40 to 120, whether these were free grazing of the pasture or were being fed fodder.

The specifying Daleel: Is the Qawl of the Messenger (saw)

فِي صَدَقَةِ الْعَنَمِ سَائِمَتُهَا...

**In regards to the Sadaqah (i.e. Zakaah) of the Sheep it's their free grazing (which it applies to) ...**

### (Al-Bukhaari).

The Mafhoom of the Hadeeth, which is a Mafhoom Mukhaalafah (opposite understanding) indicates that the foddered sheep do not have Zakaah due upon them. The Mafhoom of the second Hadeeth therefore specifies the generality of the Mantooq of the first Hadeeth in respect to making Zakaah due upon the free grazing sheep alone (i.e. those which live in the pastures and feed off them).

### **The importance or consideration is with the generality of the wording and not with the specificity of the cause**

(العِبْرَةُ بِعُمُومِ اللَّفْظِ لَا بِخُصُوصِ السَّبَبِ)

(Al-'Ibrah Bi'Umoom il-Lafzh Laa BiKhusoos is-Sabab)

The Wahy, manifested in the Qur'aan and the Hadeeth, descended upon the Messenger of Allah (saw) to explain the Ahkaam of specific incidents. For example, the Aayah of Saraqah (theft) was revealed in respect to the theft of the shield or cloak of Safwaan, the Aayah of Zhihaar (Al-Mujaadalah) was revealed in respect to Salamah Bin Sakhr or Khawlah Bint Tha'labah the wife of Aws Bin As-Saamit and the Aayah of Al-Li'aan (swearing a curse) was revealed in respect to Hilaal Bin Umayyah.

All of these Aayaat and those which we mentioned in the first part of the book, in relation to the deduction of this Qaa'idah (principle), were all revealed in relation to specific causes or circumstances (Asbaab). However, the Messenger (saw) and the Sahabah (rah) applied them in their generality and so they applied them to every similar incident or reality, and this application became established by the Sunnah and the Ijmaa' As-Sahaabah. These Aayaat came with general wordings (Alfaazh 'Aammah) and consequently indicating to Al-'Umoom (generality). So the Lafzh 'As-Saariq' (the male thief) and 'As-Saariqah' (female thief) represent a Lafzh 'Aamm because they are defined (Mu'arraf) with 'ال' (Alif Laam) Al-Jinsiyah (of kind/type). Its meaning therefore encompasses or absorbs within it every Saariq (thief) and every Saariqah. However, these Aayaat were revealed in

relation to certain causes (Asbaab). The ‘Ibrah (importance or that which is given consideration) does not lie in their specific Asbaab but rather the ‘Ibrah (significance) lies in their Alfaazh (wordings) that indicate to Al-Umoom (generality).

For that reason, the Mujtahidoon deduced from these Aayaat and those which are similar to them, in addition to the application of the Messenger (saw) and his companions of these rules upon all similar incidents, the following Qaa’idah:

(العِبْرَةُ بِعُمُومِ اللَّفْظِ لَا بِخُصُوصِ السَّبَبِ)

**(Al-‘Ibrah Bi’Umoom il-Lafzh Laa BiKhusoos is-Sabab)**

**The importance (consideration) is with (or given to) the generality of the wording and not in the specificity of the cause**

Example:

The Nabi (saw) passed by a dead sheep and then said: **“You could have taken its hide (skin), tanned it and then utilised (or benefit from) it”**. In another narration the Messenger (saw) said: **“Whatever (أَيُّمَا) hide (animal skin) is tanned then it has become purified”**. In this example the statement of the Nabi (saw) was connected to a specific Sabab (cause) which was that dead sheep that he passed by which was said to have been the sheep of Maymoonah. However the Alfaazh (wordings) of the Hadeeth came in a general manner i.e. with a Lafzh that is indicative of Al-‘Umoom (generality). The Lafzh in this Hadeeth was ‘Ayy’ (whatever or whichever) and so this Lafzh encompasses every hide or animal skin in respect to it becoming purified by way of the process of tanning. That is based upon the principle: **‘The importance (or consideration) is found with the generality of the wording and not in the specificity of the cause’**.

In the same way every Lafzh ‘Aamm (general wording) that has been mentioned related to a specific Sabab (cause) in relation to a question (that was asked or arose) or an incident (that happened), works in accordance to its generality whilst there is no ‘Ibrah (significance) in respect to the specificity of the Sabab (cause). That is because as Al-

Imaam Ash-Shaafi'iy said: "The Sabab does not produce anything, rather it is the wordings (Alfaazh) that produce (i.e. benefited from). And it was in accordance to this that the Fuqahaa' of the Muslims in the era of the Nabi (saw) and the era of the Sahaabah (rah) proceeded.

## **Al-Mushtarak**

### **Its definition:**

The Mushtarak (common) Lafzh is that Lafzh that has been provided for two or more meanings in respect to a number of situations. Each meaning from amongst the meanings has been provided for a particular situation or reality in the case where the Lafzh was provided for a meaning and was then used and provided again for another meaning and so on.

Examples:

- The Lafzh 'Al-Qur'u' (الْقُرْء) has been provided for two meanings: The period of purity and the period of menses.
- The Lafzh 'Al-'Ain' (الْعَيْن) has been provided for the meaning of the eye that sees, the spring of water and for the spy (amongst other meanings).
- The Lafzh 'Ar-Rooh' has been provided with the meaning of the secret of life, the realisation of the connection with Allah and with the meaning of Jibreel (as).

This indicates that the 'Mushtarak' represents a reality within the Arabic language. However, the existence of the Mushtarak is opposed to the 'Asl' (original position) as the 'Asl' (origin) is for every meaning to have a specific Lafzh allocated to it i.e. the origin is for there not to be such an Ishtiraak (common wordings with different meanings).

**The reasons for the existence of Mushtarak Alfaazh within the Arabic language:**

1 – The differences in Arab tribes in respect to the provision of the Alfaazh to their meanings. So a certain tribe would provide a particular Lafzh for a meaning whilst another would use the same Lafzh for a different meaning, and so on.

2 – The Lafzh has been provided for a meaning and then is used in other that meaning in accordance to Majaaz (metaphorical usage) and thereafter the metaphorical (Majaaziy) usage became well-known or widely employed. Then after the passing of time it is transmitted to us in regards to it being provided for two meanings; the Haqeeqiy (literal) and the Majaaziy (metaphorical).

3 – That the Lafzh was provided and set for a meaning within the language and then it was provided within the ‘Istilaah’ (terminological convention) with another meaning. This is like the Lafzh ‘As-Salaah’ which was provided in the language with the meaning of the ‘Du’aa’ (supplication) and then this Lafzh was provided in the Istilaah (terminological convention) of the Shar’a with the meaning of the well-known ‘Tbaadah (act of worship) manifested in the Rukoo’, the Sujood and so on...

### **The Hukm of the Mushtarak:**

1 – If the Lafzh revolves between the possibility of Al-Ishtiraak (i.e. having more than one meaning) or Al-Infiraad (having one meaning alone) then the Ghaalib ‘Ala Azh-Zhann (most probable) is Al-Infiraad and that is because Al-Ishtiraak is contrary to the Asl (original position).

2 – It is permissible to use the Mushtarak in more than one meaning from its meanings together and the evidence for that is that this has happened in the Qur’aan Al-Kareem. Allah (swt) said:

إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ

*Verily Allah and His angels Yusalloona upon the Prophet (Al-Abzaab 56).*

The Salaah from Allah is Maghfirah (forgiveness) whilst from the angels it is the seeking of forgiveness (Al-Istighfaar).



And Allah (swt) said:

أَلَمْ تَرَ أَنَّ اللَّهَ يَسْجُدُ لَهُ مَنْ فِي السَّمَاوَاتِ وَمَنْ فِي الْأَرْضِ  
وَالشَّمْسُ وَالْقَمَرُ وَالنُّجُومُ وَالْجِبَالُ وَالشَّجَرُ وَالْدَّوَابُّ وَكَثِيرٌ مِّنَ  
النَّاسِ

*See you not that to Allah prostrates whoever is in the heavens and whoever is on the earth, and the sun, and the moon, and the stars, and the mountains, and the trees, and Ad-Dawaab (moving living creatures, beasts, etc.), and many of mankind? (Al-Hajj 18).*

The Sujood (prostration) of the solid inanimate things and the creatures is their submission to the system that Allah Ta’Aalaa has imposed and obliged upon them whilst the Sujood (prostration) of the people is manifested in the placing of the forehead upon the ground. And so it is established that Allah Ta’Aalaa intended the two meanings from the Lafzh ‘Sujood’ (prostration).

3 – Specifying the Mushtarak to one of its meanings requires a Qareenah that specifies that meaning and if no Qareenah is found, like the case in the two previously mentioned Aayah, then it is obligatory to understand it according to all of its meanings.

Allah (swt) said:

نَزَلَ بِهِ الرُّوحُ الْأَمِينُ ﴿١٩٣﴾ عَلَى قَلْبِكَ لِتَكُونَ مِنَ الْمُنذِرِينَ

*The Trustworthy Spirit (Rooh) has brought it down. Upon your heart, [O Mubammad] - that you may be of the Warners - (Ash-Shu’araa’ 193-194).*

The Rooh (spirit) here is Jibreel (as) and the Qareenah is his descending with the Wahi upon the Messenger for him to be a Warner to the people.

And Allah Ta’Aalaa said:

فَإِذَا سَوَّيْتَهُ وَنَفَخْتَ فِيهِ مِن رُّوحِي فَقَعُوا لَهُ سَاجِدِينَ

*So when I have proportioned him and breathed into him of My [created] soul (Rooh), then fall down to him in prostration. (Saad 72).*

The Rooh in this Aayah is the secret of life and the Qareenah for that is understood from the framing and context of the Aayah in respect to the creation of Aadam (as).

4 – If a Mushtarak Lafzh has been mentioned within a Shar’iy Nass (text) of the Kitaab or the Sunnah it is examined: If a Qareenah is found to carry it over to one of its meanings then that meaning is taken. If, however it is Mushtarak between two meanings or more linguistically and there is no Qareenah to outweigh one of the meanings then all of them are carried over as was mentioned in point 2 above.

And if it was Mushtarak between a linguistic meaning and a Shar’iy Istilaahi meaning in the absence of a Qareenah then it must be carried and understood in accordance to the Istilaahi Shar’iy meaning. An example of that is found within the Qawl of Allah (swt):

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَطِيعُوا الرَّسُولَ لَعَلَّكُمْ تُرْحَمُونَ

*And establish prayer and give Zakaah and obey the Messenger - that you may receive mercy (An-Noor 56).*

That is because the Salaah linguistically is the Du’aa (supplication) whilst the Salaah in its Istilaahi Shar’iy meaning is the well-known Salaah that the Messenger of Allah (saw) explained to us. The same applies in respect to the Zakaah because its meaning as provided by the Arabs means growth (An-Namaa’) whilst its Shar’iy Istilaahi meaning is the money (or property) that is taken from the wealth of the wealthy Muslims and given to their poor in accordance to the Shuroot (conditions) that the Shar’a has stipulated and explained.

In the previous Aayah no Qareenah is mentioned to indicate what is intended from the expressions ‘As-Salaah’ and ‘Az-Zakaah’ in terms of them referring to the linguistic or the Shar’iy meaning. In this situation and those similar to them the Shar’iy meaning for the Lafzh

(wording) is taken because the Shaari' (Legislator) addresses with the meaning that He has provided for the Lafzh (wording) and not in accordance to the meaning that was provided within the language in origin.

If this had not been the case, then transferring or moving the linguistic meaning to the Shar'iy meaning would be without purpose or point and Allah is glorified above that.

## **Al-Mutlaq and Al-Muqayyad (The unrestricted and the restricted)**

### **Definition of the Mutlaq:**

Al-Mutlaq is a Lafzh (wording) that indicates a Madlool (indicated meaning) that is Shaa'i (widespread or universal) in its Jins (kind/type).

In other words, it is the Lafzh that indicates a Fard (individual element or matter) or non-specified Afraad (individual elements or matters) and without an expressional restriction. This is like the Alfaazh (worded expressions): Rajul (man), Rijaal (men), Kitaab (book) and Kutub (books).

For instance if it was to be said:

رَأَيْتُ رِجَالًا أَوْ قَرَأْتُ كِتَابًا

'I saw men (Rijaal) or I read a book (Kitaab)'

The Lafzh 'Rijaal' (men) does not specify who the men are and so they are any men, and the Lafzh 'Kitaab' (book) means any book without being specified or being restricted (Taqqeed).

### **Definition of Al-Muqayyad (the specified):**

Al-Muqayyad (the restricted) is the Lafzh that has indicated to a meaning (Madlool) that is widespread or universal in its Jins

(kind/type) whilst being restricted (Taqyeed) by a Wasf (description) from amongst the Awsaaf (descriptions).

In other words, it is from the Alfaazh (worded expressions) indicating a Fard from the Afraad (individual element from the individual elements) that are not specified whilst being linked to a Siffah (description/attribute/adjective) that indicates restriction and specification.

Example: Rajul Urduniy (A Jordanian man) – ‘Man’ is restricted by the Wasf or Siffah Jordanian.

Rijaal ‘Traaqiyoon (Iraqi men) – ‘Men’ are restricted by the description Iraqi.

Kitaab Taareekhiy (A Historical book) – ‘Book’ is restricted by the Siffah (adjective) ‘Historical’.

### **Taqyeed Al-Mutlaq (Restricting the unrestricted):**

The Mutlaq (unrestricted) becomes Muqayyad (restricted) by the placing of a Siffah (adjective/descriptive word/attribute) after it. What is meant by Siffah here is not its linguistic meaning of Na’t (النعته/adjective) as this Siffah could be represented in the form of a Jaar or Majroor, or Zharf, or Harf Al-Ghaayah amongst other matters.

Examples:

غسلت يدي I washed my hand – Meaning Mutlaq Al-Yad (hand without a restriction).

غسلت يدي إلى الرسغين I washed my hand to the wrists (restricted by Al-Jaar And Majroor).

نمت ساعتين I slept two hours (Mutlaq (unrestricted) two hours).

نمت ساعتين ظهرا I slept two hours at Zhohr time (restricted (Muqayyad) by a Zharf (participle of time)).

## The Hukm of the Mutlaq:

When the Mutlaq (unrestricted) Lafzh (wording) is mentioned within the Daleel Shar'iy then the Mutlaq will function in its unrestricted form. This is like in the Qawl of Allah Ta'Aalaa:

وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ  
مِنْ قَبْلِ أَنْ يَتَمَاسَا

*And those who pronounce Zbihaar from their wives and then [wish to] go back on what they said, then [there must be] the freeing of a slave before they touch one another (Al-Mujaadalah 3).*

The word 'Raqabah' (slave) is a Mutlaq (unrestricted) Lafzh and free from any restriction. It is therefore carried and understood upon its absolute or unrestricted form. The obligation is therefore the freeing of any slave, whether Muslim or non-Muslim, male or female.

And it is like the Qawl of Allah (swt):

فَمَنْ لَمْ يَجِدْ فَصِيَامَ ثَلَاثَةِ أَيَّامٍ ۚ ذَلِكَ كَفَّارُهُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ

*But whoever cannot find [or afford it] - then a fast of three days [is required]. That is the expiation for oaths when you have sworn (Al-Maa'idah 83).*

The Lafzh (wording) 'Thalaathati Ayyaamin' (Three days) is a Mutlaq Lafzh and so it can be fasted separately (on different days) or it can be fasted consecutively (three days in a row).

## The Hukm (ruling) of the Muqayyad:

When the Muqayyad (restricted) Lafzh is mentioned within the Nass Shar'iy (text) then it is not permissible to cancel that Qaid (restriction) unless there is a Daleel (evidence) to do so and it is obligatory to follow it as it has come mentioned in the text. That is

like the Qawl of Allah (swt) in respect to the Kaffaarah (expiation) for Azh-Zhihaar:

فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسًا

*And he who does not find [a slave] - then a fast for two months consecutively before they touch one another (Al-Mujaadalah 4).*

The fasting of two months is Muqayyad (restricted) with consecutiveness and therefore, for the Kaffaarah (to count), two months must be fasted consecutively without that being broken by the Iftaar (breaking of fast) on a single day within that period. If he was to break his fast or not fast for a day or more during his fasting, his Kaffaarah (expiation) would be invalidated and would not count.

Another example of this is found in the Qawl of Allah Ta’Aalaa:

فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ

*Then [only] the freeing of a believing slave (An-Nisaa’ 92).*

Therefore, it would not count if the freed slave was not a believer.

### **Carrying the Mutlaq (unrestricted) over to the Muqayyad (restricted):**

A Mutlaq Lafzh could be mentioned in a Shar’iy text whilst the same Lafzh is mentioned Muqayyad (restricted) in another Shar’iy text. And so in this case, is the Mutlaq carried over to the Muqayyad which means: The intended meaning of the Mutlaq Lafzh is that of the Muqayyad Lafzh? Or, is the Mutlaq worked with in its unrestricted state in the Nass (text) that it was found and mentioned within whilst the Muqayyad works in accordance to its restriction found within the text it was mentioned in? To answer this, it is necessary to have knowledge of the Hukm (ruling) and the Sabab (cause) for each of the two texts:

1 – If the Hukm and Sabab in both texts are unified or one and the same then the Mutlaq is carried over to the Muqayyad (i.e. the Muqayyad prevails). An example of that:

Allah (swt) said:

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنزِيرِ

*Haraam (prohibited) for you are the Maitah (dead non-slaughtered meat/ carrion) and the flesh of pig (Al-Maa'idah 3).*

And He (swt) said:

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا

*Say: "I find not in that which has been inspired to me anything forbidden to be eaten by one who wishes to eat it, unless it be Maitah (a dead animal) or blood poured forth (Al-An'aam 145).*

The Lafzh 'Dam' (blood) in the first Aayah is Mutlaq (unrestricted) applying to that which pours and that which is congealed whilst the Lafzh 'Dam' (blood) in the second Aayah is a Muqayyad (restricted) Lafzh (wording) by the Wasf (descriptive attribute) 'Masfooh' (poured forth/gushing). Therefore, the Hukm in respect to both of the Aayahs is unified and one and the same, which is the Hurmah (prohibition) of blood, and the Sabab of the Hukm is unified or one and the same, as some 'Ulamaa' consider it, and that is the Darar (harm) arising from the yielding of the blood.

Here, in the case of the unification of the Hukm and the Sabab within the two texts, then the Mutlaq is carried over to the Muqayyad (i.e. the Muqayyad prevails and restricts and applies upon the Mutlaq). Consequently, what is intended in respect to the prohibition of the blood is the 'Masfooh' blood which refers to the blood that pours out from the slaughtered animal whilst the blood which is not of that type is Halaal like that of the liver, spleen and the blood that remains within the meat (flesh) and the veins.

2 – The Mutlaq is not carried over to the Muqayyad if they differ in respect to the Hukm or in respect to the Sabab or in respect to both:

Example:

Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ  
إِلَى الْمَرَافِقِ

*O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows  
(Al-Maa'idah 6).*

And He (swt) said:

فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ

*Then seek (clean) earth and wipe over (Tayammum) your faces and hands with it  
(Al-Maa'idah 6).*

The Lafzh 'Aideekum Ilaa l-Maraafiq' (your arms to the elbows) is Muqayyad in the first text.

And the Lafzh 'Aideekum' (your hands) is Mutlaq in the second text.

The Mutlaq is not carried over to the Muqayyad in these two texts due to the difference in respect to the Hukm. The first relates to the Wudoo' whilst the second relates to At-Tayammum even though the Sabab (reason) for both is one and the same and that it is the wish to perform the Salaah.

Another example:

Allah (swt) said in respect to the Kaffarah (expiation) of Azh-Zhihaar:



وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ  
مِّن قَبْلِ أَنْ يَتَمَاسَا

*And those who pronounce Zbihaar from their wives and then [wish to] go back on what they said, then [there must be] the freeing of a slave before they touch one another (Al-Mujaadalah 3).*

And Allah (swt) said in respect to the mistaken or unintentional killing:

فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ

*Then [only] the freeing of a believing slave (An-Nisaa' 92).*

The Lafzh 'Raqaabah' (slave) came in the first text Mutlaqan (unrestricted).

The Lafzh 'Raqaabah Muminah' (believing slave) in the second text came Muqayyadan (restricted)

In the first the Sabab (cause) was Azh-Zhihaar and in the second the Sabab was Al-Qatl (killing) even if they are unified in respect to the Hukm which is the obligation of Al-Kaffaarah (expiation).

Another example:

Allah (swt) said in the Aayah of Wudoo':

وَأَيْدِيكُمْ إِلَى الْمَرَافِقِ

*And your forearms until the elbows (Al-Ma'idah 6).*

And He (swt) said in the Aayah about the Hadd (prescribed punishment) for Saraqah (theft):

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

*And the male thief and female thief cut their hands (Al-Maa'idah 38).*

The Lafzh (wording) ‘Aideekum Ilaa l-Maraafiq’ (hands to the elbows) is Muqayyad (restricted).

And the Lafzh ‘Aideehimaa’ in the second text is Mutlaq.

The Mutlaq is not carried over to the Muqayyad due the difference in respect to the Hukm and in respect to the Sabab. That is because the obligation of washing the hands (or arms) is due to the Sabab (reason) of wanting to perform the Salaah. And in the second text the obligation of cutting the hand is due to the Sabab of theft.

The Taqyeed (restriction) of the Mutlaq (unrestricted) is like the Takhsees (specification) of the ‘Aamm (general) and so what happens between the ‘Aamm and the Khaass happens between the Mutlaq and Muqayyad.

Therefore, the Kitaab is restricted by the Kitaab, the Sunnah, Ijmaa’ As-Sahaabah and Al-Qiyaas. And the Sunnah is restricted (Muqayyad) by the Kitaab, the Sunnah, Ijmaa’ As-Sahaabah and Al-Qiyaas.

### **The forms associated to At-Takleef (Legal responsibility)**

Through an examination of the Shar’iyah texts guiding to the Ahkaam, the scholars of Usool found that the Hukm Ash-Shar’iy At-Takleefiy is the Khitaab Ash-Shaar’i (address of the Legislator) related to the Af’aal (actions) of the ‘Ibaad (servants/people) in the form of Iqtidaa’ or Takhyeer i.e. in the form of a request (At-Talab) or the form of providing a choice. This address consists of five types of Ahkaam and they are:

Al-Fard (Al-Waajib), Al-Mandoob, Al-Mubaah, Al-Haraam and Al-Makrooh.

Each of these types has linguistic and Shar’iy forms that indicate them and it is possible to divide these forms into three types or categories:

The forms that are indicative of the Mubaah (permissible action of choice).

The forms that are indicative of the Amr (command).  
The forms which are indicative of the Nahi (forbiddance).

### The forms (Siyagh) that are indicative of the Mubaah:

The Mubaah is that which the Shaari' has provided the choice between doing the action or leaving it. Forms indicative of this include the following:

1 – The Ibaahah (permissibility) can be understood from the command form like in His Qawl (swt):

كُلُوا وَاشْرَبُوا مِنْ رِزْقِ اللَّهِ

*Eat and drink from the Rizq (sustenance) of Allah (Al-Baqarah 60).*

2 – The Ibaahah (permissibility) can be found within the form: حَلَّ, حَلَّ, حَلَّ (i.e. forms of the word Halaal). This is like the Qawl of Allah Ta'Aalaa:

الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ  
وَطَعَامُكُمْ حِلٌّ لَهُمْ

*This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them (Al-Maa'idah 5).*

3 – From among the forms (Siyagh) of the Ibaahah (permissibility) is the text negating the sin from the one undertaking the action, or Al-Haraj (difficulty/problem) or Al-Junaah (blame). This is like the Qawl of Allah Ta'Aalaa:

فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ

*Then there is no sin (or blame) on either of them if she gives back (the Mahr or a part of it) for her Al-Kbul' (divorce). (Al-Baqarah 229).*

4 – That the text comes indicating equalness between undertaking the action and leaving it. An example of this is what was extracted by At-Tabaraani in Al-Awsat that a Janaazah (funeral procession) passed by Ibn ‘Abbaas and Al-Hasan Bin ‘Ali and then one of them stood up and the other remained sitting. The one standing said to the one sitting: “Did the Messenger of Allah (saw) not stand up?”. So he replied: “Indeed and he sat”. And so it is understood from the Hadeeth that the standing and the sitting when the Janaazah passes by are (both) Mubaah.

## Al-Amr (the command)

### The meaning of Al-Amr:

The Amr is the Lafzh (wording) that has been provided to request the action upon the angle or basis of it coming from higher (Wajh ul-Isti’laa’). The form (Seeghah) that has been provided in the language for the command is the form: (أَفْعَلْ) (If’al) and this command form has come with a number of meanings, the most significant of which are:

1 – Al-Wujoob (obligation): This is like in the Qawl of Allah Ta’Aalaa:

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ

*Establish the Salaah and give the Zakaah (An-Noor 56).*

2 – An-Nadb (recommendation): Like in the Qawl of Allah Ta’Aalaa:

فَكَاتِبُوا لَهُمْ إِذَا عَلِمْتُمْ فِيهِمْ خَيْرًا

*Then write a contract with them if you know there is within them goodness (An-Noor 33).*

3 – Al-Ibaahah (permissibility) like His Qawl (swt):

وَإِذَا حَلَّيْتُمْ فَاصْطَادُوا

*And when you come out of Ibraam, then hunt (Al-Maa'idah 2).*

4 – At-Tahdeed (threat): Like His Qawl (swt):

اعْمَلُوا مَا شِئْتُمْ

*Do whatever you wish (Al-Fussilat 40).*

5 – Al-Irshaad (guidance/direction): Like in His Qawl (swt):

وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رَجَالِكُمْ

*And bring to witness two witnesses from among your men (Al-Baqarah 282).*

Al-Irshaad is close to the Nadb because of both sharing in common the request related to the attainment of the Maslahah, although the Nadb relates to the Maslahah of the hereafter whilst the Irshaad relates to the Maslahah of the Dunyaa.

6 – At-Ta'deeb (disciplining/educating): This falls within the Nadb and an example of this is like the statement of the Messenger (saw) to Abi Salamah when he was young: **“O boy, mention Allah’s name, eat with your right hand and eat what is before you (i.e. from nearest in the plate/dish)”** (Al-Bukhaari).

7 – At-Ta’jeez (inability related to challenge): Like in the Qawl of Allah Subhaanahu:

فَأْتُوا بِسُورَةٍ مِثْلِهِ

*Then produce a Soorah like it (Al-Baqarah 23).*

That is whilst Allah knows that they will never be able to bring or produce a Soorah like it.

8 – Ad-Du’aa (supplication): This is like the Qawl of Allah Ta’Aalaa:

رَبِّ اغْفِرْ لِي وَلِوَالِدَيَّ

*My Lord forgive me and my two parents (An-Nooh 28).*

9 – Al-Imtinaan (gratitude): As has come in His Qawl (swt):

كُلُوا مِمَّا رَزَقَكُمُ اللَّهُ

*Eat from that which Allah has provided for you of sustenance (Al-An'aam 142).*

10 – Al-Ikraam (honouring/provision of generosity):

ادْخُلُوهَا بِسَلَامٍ آمِنِينَ

*(It will be said to them): 'Enter therein (Paradise), in peace and security' (Al-Hijr 46).*

11 – Al-Ihaanah (rebuke/humiliation):

ذُوقْ إِنَّكَ أَنْتَ الْعَزِيزُ الْكَرِيمُ

*"Taste you (this)! Verily, you were (pretending to be) the mighty, the generous!" (Ad-Dukhaan 49).*

This is as an Ihaanah (rebuke/humiliation) due to the Qareenah (linking indication/connotation) that it is an address to the one who is in the fire.

12 – At-Taswiyah (equalising): Like in His Qawl (swt):

فَاصْبِرُوا أَوْ لَا تَصْبِرُوا سَوَاءٌ عَلَيْكُمْ

*Whether you are patient of it or impatient of it, it is all the same (At-Toor 16).*

I.e. Patience or the absence of it are the same in respect to being equally worthless at that point.

13 – At-Tamanniy (hope/wish): Like that expressed in the words of the poet:

ألا أيها الليل الطويل ألا إنجل بصبح وما الاصبح منك بأمثل

Here the poet is expressing his hope for the night to end (and the morning to come) due to its length.

### Seeghat ul-Amr (the command form)

The Seeghat ul-Amr (Command form) has been provided in the Arabic language to indicate the request or demand to undertake the action. To demand the undertaking of the action there are forms (Siyagh) that the Shaari' has utilised in the Qur'aan and the Hadeeth and these include:

1 – The Seeghat (form) that has been provided by the language to indicate the command form linguistically and this is the form (أفعل) 'If'al'. This is like what has come in the Qawl of Allah (swt):

أَقِمِ الصَّلَاةَ لِدُلُوكِ الشَّمْسِ

*And establish (Aqim) the Salaah at the decline of the sun (from the meridian) (Al-Israa' 78).*

And like His Qawl Ta'Aalaa:

وَأَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ

*And obey (Atee'oo) Allah and obey the Messenger (Al-Maa'idah 92).*

2 – The command is also realised with the Mudaari' (present tense) form prefixed with 'Laam Al-Amr' (لَيَفْعَلُ) 'LaYaf'al' like in His Qawl (swt):

وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

*And let a group of the believers witness their punishment (An-Noor 2).*

And in His Qawl Ta'Aalaa:

فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ

*So whoever sights [the new moon of] the month, let him fast it (Al-Baqarah 185).*

3 – The Talab (demand/request) to perform the action (i.e. the Amr/command) is also realised by the Jumal Al-Khabariyah (informative sentences) like His Qawl Ta'Aalaa:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ  
الرِّضَاعَةَ

*Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period] (Al-Baqarah 233).*

The intended meaning in this form is the Amr (command) for the mothers to breastfeed their children. It is not intended to just inform about the occurrence of breastfeeding from the mothers and this understanding is gained and deduced from the Siyaaq (context) of the Aayaat.

Another example of this is in the Qawl of Allah Ta'Aalaa:

وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ

*And [due] to Allah from the people is a pilgrimage to the House (Aali Imraan 97).*

4 – The demand or request (Talab) to do the action i.e. the command (Amr) is also realised by the Lafzh (worded expression): أَمَرَ يَأْمُرُ أَمْرٌ



(Amara, Ya'muru, Amr/He commanded, he commands, command).  
This is like what is found in the Qawl of Allah Ta'Aalaa:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

*Verily, Allah commands you to render trusts to whom they are due (Al-Maa'idah 58).*

And like in His Qawl (swt):

قُلْ إِنِّي أُمِرْتُ أَنْ أَعْبُدَ اللَّهَ مُخْلِصًا لَهُ الدِّينَ

*Say: [O Muhammad]: Verily, I have been commanded to worship Allah, [being] sincere to Him in respect to the Deen (Az-Zumar 11).*

5 – The command is realised with the Seeghah (form) of the Ism Fi'l (verbal noun) of the command like: هَلُمَّ (Halumma) which means go ahead or proceed upon. Allah (swt) said:

وَالْقَائِلِينَ لِإِخْوَانِهِمْ هَلُمَّ إِلَيْنَا

*And those [hypocrites] who say to their brothers: "Come to us" (Al-Abzaab 18).*

### **What does the Seeghat ul-Amr (command form) indicate?**

The 'Ulamaa have differed in respect to what the command form indicates from the angle of the Hukm At-Takleefiy and from the perspective of repetition, immediacy and abatement (let up).

In general, the 'Ulamaa said that: The Amr (command) has been placed and set in origin to provide one of three meanings and these are: Al-Wujoob (obligation) or An-Nadb (recommendation) or Al-Ibaahah (permissibility) and these 'Ulamaa disagreed or differed in respect to an intended single meaning for it as follows:

1 – Some of the followers of Al-Imaam Maalik said that the Seeghat ul-Amr (command form) indicates Al-Ibaahah (permissibility) because the Amr (command) has been provided or set to request the presence of the action and the least of this presence or existence is its permissibility.

2 – Others said, and this includes one of the two views attributed to Ash-Shaafi'iy, that the Seeghat ul-Amr indicates An-Nadb (recommendation) and that is because the Amr has been provided to request the action and its least amount is recommendation.

3 – The majority said that the Seeghat ul-Amr indicates Al-Wujoob (obligation) as the command has been provided to indicate the obligation. It is therefore, in respect to the obligation, a Haqeeqah (literal or according to its reality) and in other than the obligation it is Majaaz (metaphorical). Consequently, it does not become other than the obligation unless there is a Qareenah (connotation). If the Qareenah has then indicated to Al-Ibaahah, the Amr would be for permissibility and if it indicated An-Nadb then the Amr (command) would be for recommendation.

Those holding this opinion deduced it based on evidences from which we will mention the following:

A – It was mentioned in the Qur'aan Al-Kareem:

فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ  
أَلِيمٌ

*So let those beware who dissent from the Prophet's order, lest fitnah strike them or a painful punishment (An-Noor 63).*

As long as Allah (swt) has built upon the violation of his command (Amr), the consequence of Al-Fitnah or punishment, then the Amr (command) is there to indicate Al-Wujoob (obligation) otherwise the Fitnah and punishment would not be the consequence of the one who left it.

B – The Messenger of Allah (saw) said:

لَوْ لَا أَشَقُّ عَلَى أُمَّتِي لِأَمْرَتُهُمْ بِالسِّوَاكِ عِنْدَ كُلِّ صَلَاةٍ

**Had it not been that I don't bring hardship upon my Ummah I would have commanded them to use the Miswak at the time of every Salaah (At-Tirmidhi).**

If the command (Al-Amr) had been for other than the Wujooob (obligation) then there would not have been difficulty in the command.

C – Allah (swt) said:

وَلَا أَغْصِي لَكَ أَمْرًا

*And I will not disobey you in [any] order (Al-Kahf 69).*

The one who contravenes and goes against the command is described with disobedience and the disobedient one deserves the fire due to His statement:

وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَإِنَّ لَهُ نَارَ جَهَنَّمَ خَالِدًا فِيهَا أَبَدًا

*And whoever disobeys Allah and His Messenger - then indeed, for him is the fire of Hell; they will abide therein forever (Al-Jinn 23).*

This therefore indicates that the Amr (command) is indicative of Al-Wujooob (obligation).

### **Response and rebuttal of those who have said that the Amr (command) is indicative of Al-Wujooob (the obligation)**

In respect to the Adillah (evidences) used as proof by those who say that the Seeghat ul-Amr indicates Al-Wujooob (the obligation), then they have erred in their manner or process of deduction. That is because these evidences are related to the obedience to the command (Al-Amr) and disobedience to it whilst they are not related to the Seeghat ul-Amr (form of the command). The Amr (command) of Allah is Waajib (obligatory) to obey and disobedience to it is Haraam.

Obedience to the command is by not rebelling against it and obedience to the command is fulfilled in accordance to what Allah Ta’Aalaa has commanded. Consequently, if His command was Jaazim (decisive) then its obedience is Waajib in accordance to what has been commanded; undertaking the action is Waajib (obligatory) and the person would be disobedient if he did not undertake the action. This is represented in the Fard and Waajib. It is like His command to perform the obligatory Salawaat (prayers).

And if the command (Amr) was Ghair Jaazim (indecisive), obedience to it (in respect to being a command) is obligatory, as it has been commanded in its indecisive form. If the person undertook the action he would earn reward and if he submitted to the command but did not undertake the action that had been commanded, he would not have sinned, would not be disobedient (‘Aasiy) and would not be punished. This is the Mandoob like the Sunan prayers.

If, however he was to rebel against this command, deny it, not submit to, not accept this Mandoob nor acknowledge it, then he would be ‘Aasiy (disobedient) and going against the command of Allah. That is because the One who commanded the Waajib is also the One who commanded the Mandoob. Therefore, it is obligatory to submit to the Mandoob being from Allah even if he did not undertake or perform it.

Allah (swt) said:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

*Verily, Allah commands justice and the best conduct (An-Nahl 90).*

So, Allah Ta’Aalaa has commanded justice and He has commanded the best conduct. However, the command for justice (Al-‘Adl) is one of obligation (Al-Wujoob) whilst the command for the best conduct (Al-Ihsaan) is one of recommendation (An-Nadb) even though they have come in the text as a single command and within one single text. That indicates that the mere Amr (command) does not indicate the obligation but rather it could indicate the Wujoob, the Nadb or the Ibaahah (obligation, recommendation or permissibility).

Consequently, the obedience to the Amr (command) and disobedience to it does not indicate undertaking the action that has been commanded or refraining from undertaking it. Rather, it indicates to submitting to the command and obedience to it upon the basis that it was commanded in terms of it being obligatory, recommended or permissible.

### **The way that the Seeghat ul-Amr (command form) is indicative of Al-Wujoob, An-Nadb or Al-Ibaahah**

The Seeghat ul-Amr (command form) has been provided and placed down within the language to indicate the request for the action to take place. This form is 'أَفْعَلْ' (If'al) or that which takes its place like the Ism Fi'l ul-Amr (verbal noun command) and the Mudaari' (present tense) prefixed with 'Lam Al-Amr' (لِ), have been placed down and provided to indicate the Talab (request). In order to then understand what is intended by this Talab (request), in terms of whether it indicates the obligation, the recommendation or the permissibility, then it is necessary for there to be a Qareenah (connotation) from amongst the Qaraa'in (linking connotations) that makes clear and explains what has been intended from this request (At-Talab).

### **A – Qaraa'in (connotations or linking indications) that establish Al-Jazm (decisiveness) in the Amr (command):**

These refer to the necessary Qaraa'in which designate the Fard "Al-Waajib" and these include:

1 – If the Daleel (evidence) indicates that leaving or not doing the action has a punishment built upon that in the Dunyaa (the life of this world) or in the Aakhirah (the hereafter), or the hate (detestation) or anger of Allah is attached to it or the negation of Imaan (belief).

Example: The Qawl of Allah Ta'Aalaa:

وَأَقِيمُوا الصَّلَاةَ

*And establish the Salaah (An-Noor 56).*

This Amr (command) establishes the Talab (request to do) but without a Qareenah it does not indicate Al-Wujoob (obligation). The Wujoob (obligation) has come from other Qaraa'in (linking indications) like the Qawl of Allah Ta'Aalaa:

مَا سَأَلَكُم فِي سَفَرٍ (42) قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ

*What has caused you to enter hell. They said: We were no of those who used to perform the Salaah (Al-Mudaththir 42-43).*

The punishment that is built upon the one who abandons or does not perform the prayer indicates that it is Waajib (obligatory).

2 – The presence of a text containing the Lafzh (wording) that indicates the Wujoob (obligation) explicitly like: 'Furida' (it has been made obligatory) or 'Yajib' (it is obligatory) or one of its derivations like:

The Qawl of Allah Ta'Aalaa:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَإِنَّ السَّبِيلَ فَرِيضَةٌ مِنَ اللَّهِ

*Zakaah (Sadaqah) expenditures are only for the poor and for the needy and for those employed to collect (Zakaah) and for bringing hearts together (for Islaam) and for freeing captives (or slaves) and for those in debt and for the cause of Allah (Jibaad) and for the (stranded) traveller – a Fareedah (obligation) from Allah (At-Taubah 60).*

The Zakaah is therefore Fard and giving it to these categories or some of them is Fard.

3 – That which the doing of the Waajib cannot be completed or fulfilled except with it is Waajib. That is like the Shuroot (conditions) of the Sihhah (validity) of the Salaah. Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ  
إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ

*O you who have believed, when you stand to (perform) prayer, wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles (Al-Maa'idah 6).*

So here the verb of the command 'Ighsiloo' (wash) indicates the Talab (demand or request) to undertake the action alone whilst the Qareenah (linking indication) that guides to the obligation of the Wudoo' is the obligation of the Salaah that cannot be undertaken or fulfilled without the Wudoo' or At-Tayammum in some circumstances.

4 – That the Shaari' has commanded to undertake an action with what it contains within it in terms of difficulty (or hardship) like his Qawl (swt):

كُتِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهُ لَكُمْ

*Fighting has been written (prescribed) upon you whilst it is disliked by you (Al-Baqarah 216).*

The Qareenah for the Wujoob is “Whilst it is disliked or hateful to you”.

### **B – Al-Qaraa'in (linking indications or connotations) that establish indecisiveness (the absence of Jazm):**

These are the Qaraa'in that establish that the Seeghat ul-Amr (command form) indicates the Mandoob and these include:

1 – That the Daleel (evidence) requests the undertaking of the action without a Qareenah indicating decisiveness (Al-Jazm) i.e. the request is a command (Amr) without a Qareenah. This is like the statement of the Messenger (saw):

مَا مِنْ مُسْلِمٍ يُفْرِضُ مُسْلِمًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدَقَتِهَا مَرَّةً

**There is not a Muslim who gives a loan to a Muslim two times except that it is like giving its Sadaqah once**

The Hadeeth requests from the Muslim to give a loan to the Muslim and built reward upon that whilst there is no Qareenah that indicates Al-Jazm (decisiveness) like the Qaraa'in that we mentioned in respect to the Waajib (obligation). Consequently, it indicates that the giving of loans is recommended and not obligatory.

2 – That the Daleel for the undertaking of the action indicates within it Qurbah (drawing closeness) to Allah in the absence of a Qareenah indicating the obligation. That is like the Qawl of the Messenger (saw):

إِنَّ الدُّعَاءَ هُوَ الْعِبَادَةُ

**Verily the Du'aa (supplication) it is Ibaadah (act of worship)**  
(Ibn Maajah)

The Hadeeth has described the Du'aa as an 'Ibaadah and the 'Ibaadah has within it Qurbah (drawing closeness) to Allah because it represents the relationship between the 'Abd (slave/servant) and his Rabb (Lord). Consequently, the Du'aa is Mandoob and not Waajib.

**C – The Qaraa'in (connotations) that establish At-Takhyeer (provision of choice) i.e. Al-Ibaahah (permissibility)**

These Qaraa'in were mentioned in the forms that are indicative of Al-Ibaahah (permissibility) at the beginning of this section and can therefore be referred back to in that section.

**The Dalaalat ul-Amr 'Alaa At-Tikraar (the indication of the command upon repetition)**



Does the command form (Seeghat ul-Amr) indicate the repetition of the action that has been commanded?

The command (Al-Amr) does not indicate Tikraar (repetition) because the Seeghat ul-Amr (command form) does not indicate except the Mutlaq (unrestricted) request of undertaking the action without notification of a single time or its repetition a number of times. Rather it is there to request the action alone. As such, the repetition of the action that has been commanded or its occurrence one time come from other Qaraa'in (connotations) and not merely the command by itself.

So for example Allah (swt) said:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِئَةَ جَلْدَةٍ

*The female fornicator (Zaaniyah) and the male fornicator (Zaaniy) lash each of them with one hundred lashes (An-Noor 2).*

So the command for the occurrence of the lashing upon the fornicator is based upon the realisation of the Sabab (cause/reason) for the lashing. So every time the Sabab is repeated, which is the Zinaa (fornication), then the lashing is repeated.

Allah (swt) said:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ

*O you who have believed, when you stand to (perform) prayer, wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles (Al-Maa'idah 6).*

The command is 'Ighsiloo' (wash) and the repetition of the Salaah rests upon the explanation of the Messenger of Allah (saw) of the Qawl of Allah 'وَأَقِيمُوا الصَّلَاةَ' (And establish the Salaah) when he (saw) said:

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

### Pray as you have seen me pray

Consequently, the repetition or absence of it does not come from the Seeghat ul-Amr (command form) itself but rather comes from another Qareenah (linking indication) that the Shar'iyah texts have guided to.

### **Dalaat ul-Amr (indication of the command) in respect to immediacy or non-immediacy (delay)**

Does the Amr (command) indicate the request to undertake the action immediately or not immediately (i.e. with relaxation of time or delay)? If the action that had been commanded was Muwassa' (expansive and has been given breadth and room for its performance or undertaking), then it is permissible to undertake it at any time from its specified time period. This is like the Zhohr prayer or the giving of Zakaat ul-Fitr.

If the time was Mudayyaq (restricted and made narrow) like the fasting of Ramadhaan for example, then it is performed in its time immediately (without delay). As for that which has not been restricted by a defined or specified time like the command to undertake expiations (Al-Kaffaraat), then it is permissible to delay them i.e. to approach and undertake that which has been commanded with some delay or ease of timing (i.e. non immediate manner) just as it is allowed to undertake it immediately.

Consequently, the Amr (command) is either restricted by time whether this is Muwassa' (expansive) of Mudayyaq (narrow) or it could not be specified by time at all, and this is what designates whether there is immediacy or delay in respect to undertaking the command.

## The command following the prohibition

Some of the ‘Ulamaa’ said:

The Amr after the prohibition (Hazhr) is one of Al-Ibaahah (permissibility) and that is like what has come in the Qawl of Allah Ta’Aalaa:

وَإِذَا حَلَلْتُمْ فَاصْطَادُوا

*But when you come out of Ihraam, then hunt (Al-Maa’idah 2).*

Which followed His Qawl (swt):

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرْمٌ

*O you who have believed do not kill game while you are in the state of Ihraam (Al-Maa’idah 95).*

And so the Shaari’ (Legislator) made the killing of game Haraam for the one performing Hajj whilst he is in the state of Ihraam and then commanded in another Aayah to hunt after coming out of the state of Ihraam of the Hajj. Consequently, this command following the prohibition is considered by some of the ‘Ulamaa to indicate Ibaahah (permissibility).

However, the command following the Hazhr (prohibition) does not always indicate permissibility as Allah (swt) said to the Mushrikeen (polytheists):

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرْمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ

*And when the sacred months have passed then kill the polytheists wherever you find them (At-Taubah 5).*

Had the Amr after the prohibition meant permissibility then the killing of the Mushrikeen would not have been obligatory in accordance to the dictates of this text. The correct view is that the command to do an action after its prohibition is indicative of the

lifting of the prohibition and so the Hukm of the action returns to what it had been before the prohibition.

Hunting had been Mubaah before the Tahreem (prohibition) due to the Hajj, then when the command came with it after the passing of the reason of the prohibition, the action returned back to its original permissibility.

And fighting in other than the sacred months had been an obligation upon the Muslims. So when it was forbidden in the sacred months it became Haraam and then the command came to fight after the end of the sacred months i.e. after the passing of the reason. The Hukm therefore returned to what it had been before the prohibition which is the obligation to fight the Mushrikeen.

Making effort in search of Rizq was Mandoob before the call for the Jumu'ah prayer and then it was prohibited with the 'Illah of it distracting from the Jumu'ah prayer. Then when the command came to do it after the performance of the Jumu'ah prayer, it returned to being recommended, due to the disappearance of the 'Illah for the sake of which it was made Haraam.

## **An-Nahi (The forbiddance)**

### **The meaning of An-Nahi:**

The Nahi is the Talab (request) to leave or to not do the action 'Alaa Sabeel Al-Isti'laa'i (upon the sense or basis that it has come from a higher authority). The Seeghat un-Nahi (form of forbiddance) in the Arabic language is: لَا تَفْعَلْ or لَا يَفْعَلْ (Laa Ta'fal or Laa Ya'fal) like has come in his Qawl (swt):

لَا تَأْكُلُوا الرِّبَا

*Do not eat (consume/devour) Ribaa (usury) (Aali Imraan 130).*

And it is like the statement of the Messenger of Allah (saw): **“If the strap between the toes of the sandal breaks then he (the person)**

should not walk (Laa Yamshi) with only one sandal until he has fixed the strap of the other” (Saheeh Muslim).

Just as the Seeghat ul-Amr (command form) has many meanings the Seeghat un-Nahi (form of forbiddance) also has a number of meanings which include:

1 – At-Tahreem (prohibition) and that is like has come in the Qawl of Allah Ta’Aalaa:

لَا تَجَسَّسُوا وَلَا يَغْتَب بَّعْضُكُم بَعْضًا

*And do not spy on or backbite each other (Al-Hujuraat 12).*

2 – Al-Karaahah (dislike) like in the statement of the Messenger of Allah (saw):

لَا تَأْذَنُوا لِمَنْ لَا يَبْدَأُ بِالسَّلَامِ

**Do not give permission to the one who does not initiate with the Salaam (Al-Baihaqi).**

3 – At-Tahqeer (disdain, disparagement) and an example of this is His Qawl Ta’Aalaa:

وَلَا تَمُدَّنَّ عَيْنَيْكَ إِلَىٰ مَا مَتَّعْنَا بِهِ أَزْوَاجًا مِنْهُمْ

*And do not extend your eyes in longing for the things We have given for enjoyment to various groups of them (TaHa 131).*

4 – Explanation of the ‘Aaqibah (consequence) and an example of this is His Qawl (swt):

وَلَا تَحْسَبَنَّ اللَّهَ غَافِلًا عَمَّا يَعْمَلُ الظَّالِمُونَ

*And never think that Allah is unheedful of what the wrongdoers (oppressors) do (Ibraheem 42).*

5 – Ad-Du’aa (supplication) like in His Qawl (swt):

رَبَّنَا لَا تَجْعَلْنَا فِتْنَةً لِّلْقَوْمِ الظَّالِمِينَ

*Our Lord, make us not [objects of] trial for the oppressors (Younus 85).*

6 – Al-Irshaad (guidance/direction) like in His speech Ta’Aalaa:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَسْأَلُوا عَن أَشْيَاءٍ إِن تَبَدَّ لَكُمْ تَسْوَأُكُمْ

*O you who have believed, do not ask about things which, if they are shown to you, will distress you (Al-Maa’idah 101).*

7 – At-Ta’yees (despair/hopelessness) like in His Qawl (swt):

يَا أَيُّهَا الَّذِينَ كَفَرُوا لَا تَعْتَذِرُوا الْيَوْمَ إِنَّمَا تُجْرُونَ مَا كُنتُمْ تَعْمَلُونَ

*(It will be said in the Hereafter) O you who disbelieve, **make no excuses this Day!** You are being requited only for what you used to do (At-Tabreem 7).*

8 – At-Ta’deeb (chastisement) like in His Qawl Ta’Aalaa:

وَلَا تَمُنُّنَّ لِتَسْتَكْثِرُوا

*And do not confer favour seeking to acquire more (Al-Mudaththir 6).*

All of these meanings establish the Seeghat un-Nahi (form of forbiddance) which indicates that the Seeghat un-Nahi is utilised in a number of meanings. That is because the Nahi relates in reality to the request to leave or to not do something, however it does not indicate At-Tahreem (prohibition) or Al-Irshaad (guidance/direction) or Al-Karaahah (dislike) or anything else except by way of a Qareenah.

## Seeghat un-Nahi (the forbiddance form)

The Nahi (forbiddance) has a Seeghat (form) in the Arabic language and it is: لَا تَفْعَلْ or لَا يَفْعَلْ and it means to leave or not do the action

‘Alaa Wajh -il-Isti’laa’ (upon the basis that it has come from a higher authority). There are Siyagh (forms) in accordance to the styles of the Arabic speech that establish the leaving or refraining from the action and the meaning of the Nahi can be deduced from the composition of the sentences. It is possible to sum up the forms of the Nahi as follows:

1 – The form لا يَفْعَلُ , لا تَفْعَلُ

This is like the Qawl of Allah Ta’Aalaa:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

*And do not kill the soul (human life) which Allah has forbidden [to be killed] except by [legal] right (Al-An’aam 151).*

2 – The Lafzh حَرَّمَ (Harrama) and its derivations (Mushtaqat). This is like the Qawl of Allah (swt):

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنْزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ

*Prohibited to you are dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah (Al-Maa’idah 3).*

3 – The Lafzh نَهَى (to forbid) and its Mushtaqat (derivations). This is like in His Qawl (swt):

وَيَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ

*And forbids immorality and bad conduct and oppression (An-Nabl 90).*

4 – Alfaazh At-Tahdheer (worded expressions of warning) like: ‘إِيَّاكَ’

This is like in the Hadeeth of the Messenger of Allah (saw):

إِيَّاكَ وَالْإِلْتِفَاتِ فِي الصَّلَاةِ

**Beware of turning in the Salaah**

5 – The Lafzh (wording) 'لَا يَحِلُّ' (It is not Halaal).

This is like his statement (saw):

لَا يَحِلُّ بَيْعُ الْمُغَنِّيَاتِ ، وَلَا شِرَاؤُهُنَّ ، وَلَا تِجَارَةٌ فِيهِنَّ ، وَأَكْلُ أَنْثَمَانِهِنَّ  
حَرَامٌ

**It is not Halaal to sell Al-Mughanniyaat (female singers), or purchase them, or trade in them, and the consumption of their price is Haraam (Ibn Maaajah in his Sunan in the Book of Tijaaraat).**

All of the above forms establish the Nahi (forbiddance) and even if most of them have not been provided in origin by the language to indicate the Nahi. The Nahi in them is established by the linguistic formation and composition of the sentence and what they indicate in terms of the meaning of the Nahi. That is because the only form that has been set and provided by the Arabic language for the Nahi is that of the Mudaari' (present verb) form that is connected to the 'Laa An-Naahiyah' (لا) (the 'Laa' of forbidding).

### **What the Seeghat An-Nahi (Forbiddance form) indicates?**

The forbiddance form (Seeghat An-Nahi) actually guides to the Talab At-Tark (request to leave or not do and act). The 'Ulamaa have differed in respect to the meaning that it guides to in regards to the angle of its Dalaalah (indicating meaning) in relation to the category of the Hukm Ash-Shar'iy. So does it guide to Al-Haraam, or Al-Makrooh and does its indication guide to repetition, its singular undertaking or continual undertaking?

In respect to the angle of its Dalaalah (indicative meaning) for a Hukm Ash-Shar'iy then there are different opinions:



1 – Some of them said that it indicates Al-Karaahah (dislike) and does not indicate other than that unless there is a Qareenah (connotation) to indicate it.

2 – Some of them said that the Seeghat An-Nahi indicates At-Tahreem (prohibition) and it is not used for other than the Tahreem unless it is in a metaphorical manner (Majaaz).

3 – Some others said that the Seeghat An-Nahi does not indicate anything other than a Talab (request) to leave or not do an action whilst it is the Qareenah that diverts (or designates) the Nahi to Al-Irshaad (guidance/direction) or any one of its other meanings.

The last of these opinions is the closest to what is correct because the Seeghat An-Nahi (forbiddance form) represents the command provided in the language to indicate the leaving or not doing of the action, whilst it is the Qareenah (connotation or linking indication) that designates and specifies the kind of Talab (request) in terms of whether it is for Tahreem (prohibition) or Al-Karaahah (dislike) or Al-Irshaad (guidance/direction) or other than that.

From amongst the Qaraa'in (connotations or linking indications) that indicate At-Tahreem (prohibition) with the Seeghat An-Nahi and which indicate that the Talab At-Tark (request to leave) is a Talab Jaazim (decisive request) are the following:

1 – The text that indicates that a punishment in the Dunyaa (life of this world) or in the Aakhirah (hereafter) is a consequence of the undertaking of the action. This is like His Qawl (swt):

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءَ بِمَا كَسَبَا نَكَالًا مِّنَ  
اللَّهِ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

*[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise (Al-Maa'idah 38).*

The punishment therefore represents a Qareenah for the Tahreem (prohibition) of As-Saraqah (theft).

2 – The text that makes clear that Allah Ta’Aalaa detests that action like in His Qawl (swt):

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ  
فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا

*And do not marry those women whom your fathers have married except for that which has already come to pass. Verily it was an immoral and detestable (matter to Allah) and an evil way (An-Nisaa’ 22).*

And in His Qawl Ta’Aalaa:

كَبْرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ

*Greatly detestable in the sight of Allah that you say that which you don’t do (As-Saff 3).*

The first Aayah contains a Qareenah for the Tahreem (prohibition) of marrying those whom your fathers have previously married whilst the second Aayah contains a Qareenah indicating to the Tahreem of lying and making deceitful (hypocritical) claims.

3 – That the evidence has stated that the action being forbidden is from the works of Shaytaan. That is like His Qawl ‘Azza Wa Jalla:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ  
مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

*O you who have believed, verily, intoxicants (khamr), gambling and (sacrificing upon) stone alters, and divining arrows are from the work of Shaytaan, so keep away from them so that you may be successful (Al-Maa’idah 90).*

This therefore represents the Qareenah (linking indication) guiding to the Tahreem (prohibition) of Khamr, gambling, sacrificing upon alters and divining arrows.

4 – The text which guides to Allah having cursed the one who undertakes the action. It has been related that:

لَعَنَ الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ ، وَ الْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ

**He [the Messenger (saw)] cursed the men who make themselves resemble the women and the women who make themselves resemble the men (Al-Bukhaari).**

And like the Qawl of the Messenger (saw):

لَعَنَ اللَّهُ الْوَأَصِلَةَ وَالْمُسْتَوْصِلَةَ

**Allah has cursed the Waasilah and the Mustawsilah (Al-Bukhaari)**

(Note: Al-Waasilah is the one who makes hair extensions by profession and the Mustawsilah is the one who has it done).

The first Hadeeth guides to the Tahreem of men seeking to resemble women and women seeking to resemble men, whilst the second Hadeeth guides to the Tahreem of attaching hair to extend its length which used to be a widespread practise in Jaahilliyah (Arab society prior to Islaam).

That which indicates that the Seeghat An-Nahi is indicative of Karaahah (dislike) (i.e. that it is Makrooh) and indicates that the Talab Tark ul-Fi'l (request to leave or not do the action) is Ghair Jaazim (indecisive) includes the following:

1 – If the Nahi is not connected to a Qareenah indicating to the Tahreem (prohibition) like the Qaraa'in that we mentioned above. An example of this is like the statement of the Messenger (saw) to those who ate leeks and a smell was detected from them: **“Have I not already forbidden you (Nahi) from eating this plant. The Angels suffer from that which the human suffers from (i.e. its smell)”** (Related by Ibn Maajah in his Sunan). This guides to the

Karaahah (dislike) of eating leaks and what is similar to them like onions and garlic when going to the Masjid.

2 – For the Talab At-Tark (request to leave or not to do) to be combined with the Taqreer (approval) or the Sukoot (silence) of the Messenger (saw) in respect to an action. That is like the statement of the Messenger of Allah (saw):

مَنْ كَانَ مُوسِرًا وَلَمْ يَنْكَحْ فَلَيْسَ مِنَّا

**Whoever is wealthy (has the means) and has not married then he is not from us (Al-Baihaqi).**

The Messenger (saw) has forbidden not getting married for the one who is wealthy and has the means. However, this Nahi (forbiddance) is not Jaazim due to the indication of his silence in respect to some of the wealthy Muslims whom he (saw) knew had not got married. Consequently, the wealthy person not getting married is Makrooh (disliked).

### **What the Nahi indicates from the angles of repetition, the single forbiddance, the continuity and immediacy**

1 – The Nahi (forbiddance) of an action dictates refraining from it always if its form has not changed. That is because the Nahi represents the request or demand to not undertake an action and that request to leave the action continues along with the indicated meaning of the form (Madlool As-Seeghah) unless a Qareenah has come that halts that. This is like his Qawl (saw):

كُنْتُ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ فَرُزُّوْهَا تَذَكِّرْكُمْ أَخْرَكُمْ

**I had forbidden you from visiting the graves. So (now) visit them so that it reminds you of your hereafter (Sunan of Ad-Daaru Qutniy).**

Had the forbiddance of visiting the graves not been abrogated, then visiting them would have remained forbidden.

2 – The Nahi (forbiddance) of the action establishes that it is left immediately. It establishes the repetition of refraining and its continuation in all times. The Sahaabah (rah) at the time of the Messenger (saw) understood that meaning for the Nahi and so when the Ayah was revealed for the Tahreem (prohibition) of Khamr which ended with the speech:

فَهَلْ أَنْتُمْ مُنْتَهُونَ

*So will you not desist? (Al-Maa'idah 91).*

They (the Sahaabah) declared: 'We have refrained' and they poured what they had of Khamr out upon the streets of Al-Madinah.

3 – As for the Nahi that has come due to a preventer (Maani') like the fasting and prayer in relation to the menstruating woman, then this Nahi disappears or ceases upon the ceasing of its cause. That is because the Shar'iy Sabab (cause) is that which dictates from its presence, the presence (of the Hukm), and from its absence, the absence (of the Hukm).

### **The indication of the Nahi in respect to the Fasaad (corruption)**

The Nahi (forbiddance) related to Tasarrufaat (transactions) and 'Uqood (contracts) like trade, hiring and marriage amongst others, either represents a Nahi that returns to the 'Ain (essence) of the contract or a Nahi returning back to a matter linked, connected or adjoined to it.

1 – If the Nahi is directed towards the 'Ain (essence) of the contract or the Tasarruf (conduct/transaction), then there is no doubt that it impacts upon the transactions and contracts and makes them Baatil (invalid) or Faasid (corrupted). That is due to the statement of the Messenger of Allah (saw):

مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ

**Whoever does an action that is not upon our matter then it is rejected (Muslim).**

That means that it is not Saheeh (valid) and not Maqbool (acceptable). There is no meaning for it being described as Mardood (rejected) except Al-Butlaan (invalidity) or Al-Fasaad (corruption). Ibn ‘Umar made deduction upon the Butlaan and the Fasaad of marriage to the Mushrikaat (female polytheists) based on His Qawl (swt):

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ

*And do not marry polytheistic women (Al-Baqarah 221).*

And none denied this from him and as such it represents an Ijmaa’.

This is in the case when the Nahi establishes At-Tahreem (prohibition). When, however the Nahi establishes Al-Karahah (dislike) then it does not impact upon the Tasarrufaat and the ‘Uqood (transactions, conducts and contracts). That is because the Ta’theer (impact) comes from the Tahreem as the Tahreem of a transactional conduct or contract makes it Baatil or Faasid.

There is a difference between the Butlaan and the Fasaad which we explained in the first chapter discussing the types or categories of the Hukm Al-Wad’iy and consequently it is advisable to refer back to it.

2 – In the case where the Nahi returns back to a matter that is outside of the ‘Aqd (contract) or the Tasarruf (transaction, conduct), then the Nahi in this situation does not impact upon the ‘Aqd (contract) and even if it was Haraam. This is like trading at the time of the Adhaan of Salaat ul-Jumu’ah as the trade is Saheeh (valid), even if the act was Haraam, and its results are built upon it (i.e. of legal ownership and benefiting from it). Or it is like the Salaah performed in the usurped land (Al-Ard Al-Maghsoobah) as it is valid even though it is Haraam. It counts (is recompensed) and there is no

requirement to repeat its performance although the sin results from it and is a consequence of it.

## **The Amr (command) to do a matter does not represent A Nahi (forbiddance) to do its opposite**

The Amr is the Khitaab Ash-Shaari' (Address of the Legislator) indicating the request to undertake the action whether this is a Talab Jaazim (decisive request) or Talab Ghair Jaazim (indecisive request) and so it covers both the Fard (obligation) and the Mandoob (recommended).

The indication (Dalaalah) of the command is taken from its form that the language has set and provided for the command i.e. it is taken from the indication of its wordings (Dalaalat ul-Alfaazh) which means from its Mantooq (expressed meaning) which is known as the Dalaalat ul-'Ibaarah.

So for example in respect to the Qawl of Allah Ta'Aalaa:

وَأَقِيمُوا الصَّلَاةَ

*And establish the Salaah (Al-Baqarah 43).*

This represents a command requesting the performance of the Salaah, whilst this command does not indicate to the Nahi (forbiddance) of that which is opposite to the Salaah, like amusement or acts of distraction for example. So the command 'Establish the Salaah' does not mean linguistically: 'Do not undertake Lahw (amusement acts of distraction)'.

And 'Establish the Salaah' that is indicative of the Waajib (obligation) does not guide to or indicate that not establishing or performing it is Haraam. That is because the Nass has guided to the Waajib and has requested the undertaking of the action with a decisive request. That is whilst the text that is indicative of the Haraam means the request to not undertake an action in the form of a decisive request. 'Establish the Salaah' does not indicate in its form the request to not

do or leave any action. That is because leaving or not performing the Fard does not mean it is Haraam even if not undertaking it has sin attached and built upon it as a consequence.

### **Similarly, the Nahi (forbiddance) of a matter does not represent an Amr (command) to do its opposite**

The Nahi of a matter is not a command to do the opposite because the Seeghat un-Nahi (forbiddance form) has been provided in the language to indicate the Talab Tark Al-F'il (The request to leave or not do the action) in a decisive or indecisive manner whilst it includes the Haraam and the Makrooh within it.

Consequently, in respect to the Qawl of Allah Ta'Aalaa:

فَلَا تَقُلْ لَهُمَا أُفٍّ

*So do not say to them (parents) Uff (Al-Israa' 23).*

The Nahi (forbiddance) of At-Ta'feef (expressing displeasure/disdain) towards the parents, does not mean the command to do the opposite of At-Ta'feef. So: 'Do not say to them Uff' does not mean: 'Say to them other than Uff'. Just as it does not mean that the Waajib (obligation) is to say to them other than 'Uff' and that is because the leaving or abstention from Haraam does not mean the Fard and because the Nahi does not mean the command with opposite to the Nahi. That is because the Nahi linguistically means the request to abstain from undertaking the action whilst it does not mean the command to undertake the action opposite to the action that has been forbidden.

What applies in respect to the Fard and the Haraam applies in the same way upon the Mandoob and the Makrooh.



## **Areas of study related to the language**

The Shar'iyah Nusoos (texts) were revealed and came to us in the Arabic language and it is not possible to deduce the Ahkaam Ash-Shar'iyah except by it. For that reason, it is essential for the Mujtahid to be aware of the areas of study related to the Arabic language; its principles (Qawaa'id) and its Fiqh (rules and understanding). That is so that he can be familiar with what he necessarily requires of the linguistic areas of knowledge that will enable him to perform Ijtihad, make deductions and understand the texts.

The 'Ulamaa of Usool ul-Fiqh have included within their books a presentation of some of the issues related to the Arabic language that are necessary for the one who is studying Usool ul-Fiqh. That is so that some of the linguistic terminologies that are frequently mentioned within the principles of Usool ul-Fiqh can be understood like for example: The Haqeeqah and the Majaaz, the Haqeeqah Al-'Urfiyah and Haqeeqah Ash-Shar'iyah, and the Ishtiraak and the Taraaduf amongst other linguistic principles and definitions.

For that reason, I have seen that it completes the benefit of this book, to present some of the studies of the Arabic language in a brief manner whilst whoever wishes to increase upon that can do so by referring to the studies and works that have been undertaken in the books specialising in the language.

### **The Language (Al-Lughah)**

The language is an expression of Alfaazh (wordings) that have been provided and set for meanings.

The most important role and function of the language is for it to be a means for sharing understanding amongst the people. That is because the human, by his nature, needs to live with others of his kind. There therefore needs to be a means for them to be able to understand one another for the purpose and sake of cooperating and solving the problems that they encounter in life.

Language is a matter that has been provided and set by the people (i.e. it is man-made or devised). It is therefore Istilaahiy (conventional) which means that it represents an agreement amongst a collective of people to put down and set particular wordings to indicate particular meanings. Its wordings (Alfaazh) consist of and are constructed from letters (huroof) that occur from the human sound resulting from the meeting of the air with the movements of the mouth, tongue and throat.

With these Alfaazh (worded expressions) the person can express what is within himself in terms of mental pictures of things and actions. A person could see something from a distance and provide it with the Lafzh (wording) of a rock. Then when he gets closer to it he believes it to be a tree and so allocates the name of tree upon it. Then when he gets even closer to it, he finds that it is a person and so he calls it by the Lafzh (wording) of a person. This shows that the external meaning for the thing did not change with the changing of the Lafzh (wording) that was given to it. Rather, it was only the mental picture of that thing that changed that the person formulated in his brain.

Consequently, the Alfaazh (worded expressions) do not indicate by a definite indication (Dalaalah Qat'iyah) to the true reality of realities. Rather, it expresses what is within the mind in terms of visualisations or images of that reality. The Alfaazh (wordings) could be in conformity with the true reality of the reality or it could be contrary to it.

The language, therefore, represents a mental picture for which a worded expression has been provided whilst it does not represent the external essence of a thing or matter. The language, as such, represents a vessel for the thought whilst it is not the thought itself. That is because the Fikr (thought) is the judgment upon the reality whilst language is a tool for passing this judgment and expressing it to others.

## The Arabic Language

The Arabic language is like the rest of the languages. It was set by the Arabs and they made conventions of its Alfaazh (wordings) and upon the composition of these wordings into sentences. It is therefore from the conventions of the Arabs and it is not Tawqeefiy (a fixed setting) from Allah. Rather it is Tawfeeqiy (through a process of reconciliation) meaning that the Arabs agreed upon it. So for instance they set and placed down the word 'رَجُلٌ' (Rajul) for the mature male and they placed down and provided the word 'امْرَأَةٌ' (Imra'ah) for the mature woman (i.e. post-pubescent) and so on...

### The Way to Acquire Knowledge of the Arabic Language

The Arabic Language is an Istilaah (convention) that the Arabs made a convention (i.e. agreement) upon and so they placed down and set specific Alfaazh (wordings) to indicate specific meanings.

The way or path by which we take the Arabic language is by way of the Saheeh relation or report (Riwaayah). Consequently, the Lafzh (wording) is considered to be Arabic if it has been related from the Arabs by the path of a Saheeh Riwaayah and this is the Naql At-Mutawaatir (the definite transmission) or the Khabar Al-Aahaad (solitary chain reports).

The Arabs, whom their language is relied upon for proof or evidence, are the Aqhaah (pure tongued) Arabs who used to speak in the Arabic language before the Arabic language was corrupted. A group or section of these remained until the fourth century Hijri and these were those who lived as Bedouins and their tongue (language) had not been corrupted due to not mixing with other peoples' like the Romans and Persians (predominantly in the cities or towns).

Upon this basis, there is no room for the 'Aql in respect to knowing the language and in respect to knowing whether a Lafzh (wording) is Arabic or not. Rather, it depends and rests upon the transmission

through the path of the narration reported from the Arabs whom their language is relied upon.

## The Categories of the Arabic Language

Al-Kalaam (speech) is letters that have sounds coming out from the furthest part of the throat to the end of the mouth and the lips. There are 28 letters (Huroof) and from these letters the Arabs constructed or composed speech (Kalaam) that contains meaning. It can consist of a letter (harf) like the Harf Al-Jarr 'Al-Baa'u' (الباء), from two letters like 'Min' (من) and 'Kam' (كم), from three letters like 'Rajul' (رَجُلٌ) and 'Ilm' (عِلْمٌ), from four Huroof (letters) like 'Samaa'un' (سَمَاءٌ) and 'Dahraja' (دَحْرَجٌ) and from five letters like 'Julmood' (جُلْمُودٌ) and 'Isbakara' (إِسْبَكْرٌ). They did not set or provide an original word that was above 5 letters and words would only increase through adding a letter or two or three upon the original letters of the words (to provide extra meanings). They made these additional letters restricted to ten which are all found within the word 'سَأَلْتُمُونِيهَا' (Sa'altumoonihaa) (meaning: You (pl.) asked me it). So for example the word 'استصحاب' is from the origin of 'صحب' whilst the rest of the letters are an addition to that and not from its root or origin. In respect to the word: 'افتتاح' it is taken from the word 'فتح' whilst the rest of the letters are additional.

The Arabic language is divided into two categories: The Mufrad (single) and the Murakkab (constructed/composed).

1 – Al-Mufrad: It is made up of and consists of one Kalimah (word). This is divided into: The Harf (preposition), the F'il (verb) and the Ism (noun).

2 – The Murakkab: It is what is made up of or consists of two words or more.

This is divided into a number of types:

A – Al-Murakkab Al-Isnaadiy (Attributing composition): This refers to attributing a matter or thing to another matter or thing like

attributing 'Tool' (length) to 'Al-Qalam' (pen) when you say: Qalam Taweel (A long pen).

The Murakkab Al-Isnaadiy is of two types: Khabar and Inshaa'.

The 'Khabar' is the Hukm (judgement) upon a thing or matter with a (particular) meaning from amongst the meanings. This is like what happens in the 'Jumlah Al-Fi'liyah' (Verbal sentence) like if you said: 'Jaa'a Sa'eed' (Sa'eed came). In this example the coming has been attributed to Sa'eed and it was informed about (i.e. Khabar (news) was provided) within the sentence 'Jaa'a Sa'eed'.

It is also like what occurs in respect to the Jumlah Al-Ismiyah (Sentence beginning with a noun) like in the statement: 'Sa'eed Mujtahid' (Sa'eed is hardworking). Here the Ijtihad (hard work/diligence) is attributed to Sa'eed in the sentence: 'Sa'eed Mijtahid'.

As for the Inshaa', it is the sentence in which the one speaking demands the arising of a matter that is not present (yet). This is like the command (Amr) in the statement: 'Itaqqi-llah' (fear Allah) or like the Tarajiy (hope) in the statement: 'La'allaha ya'tiy Bil-Faraj' (Hopefully Allah will come with an escape/release/way out i.e. from a trial, hardship etc...). It is also like the question (Su'aal) and the Nidaa' (calling address) like in the statement: 'Maadhaa Ta'alu Yaa Muhammad?!' (What are you doing O Muhammad?!).

B – Al-Murakkab Al-Mujziy and Al-Idaafiy: This is when it consists of two words or more except that it indicates one single meaning (Madlool) and some have considered this to fall under the category of the 'Mufrad' (singular word). So for example, from amongst the names of people there are those which are from the type of the Murakkab Al-Idaafiy like 'Abdullah' and 'Abdur Rahman' and 'Zaid ul-Khail' whilst examples of the Murakkab Al-Mujziy include: Ba'labakk and Jaad ul-Haqq.

## Dalaalat ul-Alfaazh (the indications of the Alfaazh)

The Alfaazh (wordings) in respect to their Dalaalat (the indications they indicate to) in terms of meanings are divided into three categories:

### **1 – Dalaalat ul-Mutaabaqah (indication of conformity/correspondence):**

It is the Dalaalah (indication) of the Lafzh (wording) upon its complete naming (or the named matter) like the Dalaalah of the Lafzh: ‘Insaan’ applied upon the well-known speaking animal/creature (of its naming). The Lafzh (wording) came in conformity to its meaning without any addition or deduction. This is in respect to the Mufrad (singular) Lafzh. As for the sentence, meaning the Murakkab (construct), an example is the Qawl of Allah Ta’Aalaa:

فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

*Lash them with eighty lashes (An-Noor 4).*

The wordings (Alfaazh) in their Mantooq (expressed explicit meaning) guide to a meaning that is not open to Ta’weel (interpretation) and does not require Ijtihad. Consequently, if the Lafzh corresponds and conforms to the meaning completely without addition or deduction then it is the Dalaalah Al-Mutaabaqah. The Dalaalah Al-Mutaabaqah is from the category of the Dalaalah Al-Mantooq (what is indicated by the expressed wording). The meaning is therefore taken from the expressed Alfaazh (wordings) and not beyond that.

### **2 – Dalaalat ut-Tadammun (the indication of inclusion):**

It is the Dalaalah of the Lafzh indicating a part of the named matter. That is like the Dalaalah (indication) of the Lafzh ‘Himaar’ (donkey) in respect to the animal. That is because the Lafzh (wording) guides

to a part of what falls under the named thing and that is the animal that includes the donkey, the human, the horse, the lion and so on...

The Dalaalat ut-Tadammun is also of the Mantooq category of Dalaalah and the Mantooq is that which is understood from the Lafzh in the place of its pronunciation or expression (i.e. when it is said).

### **3 – Dalaalat ul-Iltizaam (indication of an accompanying necessary meaning:**

It is the Dalaalah of the Lafzh upon its necessary accompanying meaning like the Dalaalah (indication) of a lion indicating bravery or the ostrich indicating cowardice.

The poet said in his description of a person:

***‘Asad ‘Alayya Wa Fi-l-Huroob Na’aamah’  
(A lion against me whilst in the wars an ostrich)***

It is not intended here by the Lafzh ‘Asad’ (lion) and the Lafzh ‘Na’aamah’ (Ostrich) what they have indicated to as being two kinds from amongst the kinds of animals that live upon the earth. Rather, the intended meaning of them is ‘courage’ and ‘cowardice’. These meanings are not taken from the Lafzh (worded expression) of ‘Asad’ (lion) or ‘Na’aamah’ (Ostrich) but rather they have been taken from the meanings of these wordings.

The Dalaalat ul-Iltizaam therefore represents the meaning that is in the mind that necessarily accompanies the meaning of the Lafzh.

From the Dalaalat ul-Iltizaam the Dalaalat ul-Ishaarah, Dalaalat un-Nass, Mafhoom Al-Muwaafaqah, Mafhoom Al-Mukhaalafah and Dalaalat ul-Iqtidaa’.

Understanding these Dalaalaat (indications) from the Shar’iyah texts is essential to the Mujtahid like water is essential to life. That is because the deduction of the Ahkaam (rulings) from the texts, including these Dalaalaat (indications), requires a precise and accurate study, thorough examination and depth.

For example, in respect to the statement of the Messenger of Allah (saw):

### فِي الْغَنَمِ السَّائِمَةِ زَكَاةٌ

**In (respect to) the free-grazing sheep there is Zakaah (due)**

Its Mantooq (expressed meaning) indicates and guides to the obligation of Az-Zakaah upon the sheep that live upon the pastures (naturally/free grazing). That Hukm (ruling) is understood from the Mantooq of the Hadeeth and can be understood by the Mujtahid and the non-Mujtahid. As for the Mafhoom Al-Mukhaalafah (opposing meaning) which is the non-obligation of the Zakaah upon the sheep that are foddered, then only the Mujtahid who comprehends the Dalaalat ul-Iltizaam (necessarily understood meaning) can understand that.

### **The Categories of the Lafzh (wording) in respect to ‘Ad-Daall’ (indicating) and ‘Al-Madlool’ (indicated)**

The Lafzh Al-Mufrad (individual or singular worded expression) is divided in terms of the Lafzh and the meaning that it indicates to into seven categories:

#### **1 – Al-Munfarid (unique):**

This is where the Lafzh (wording) and the Ma’naa (meaning) are unified and this is like the Lafzh ‘Allah’ because it is one single Lafzh and its Meaning is one, which means that its Madlool (the meaning that it indicates) is one.

#### **2 – Al-Mushtarak:**

This is where the Lafzh (worded expression) is one and its meanings are numerous. This is like the Lafzh ‘عَيْنٌ’ (‘Ain) as it indicates to a number of meanings including: Eye, spring of water, gold and spy. And other example is ‘الْقُرْءُ’ (Al-Qur’u) as it indicates to the meaning



of (the period of) purity and to the meaning of (the period of) menstruation.

### 3 – Al-Mutwaati'u:

This is the Lafzh that is applied upon things which are at a variance with each other although it is in agreement in respect to the meaning that the Lafzh was set and provided for. This is like the Lafzh 'لَوْنٌ' (lawn/colour) and that is because black is a colour, white is a colour and red is a colour and so on...

Another example is the Lafzh 'رَجُلٌ' (Rajul/man) which is applied to Zaid, 'Amr, Muhammad and so on... Or like the Lafzh 'جِسْمٌ' (Jism/body) as it is used for the sky, the earth, the human, the animal and anything of substance (weight) that occupies a scope of space.

Allah (swt) said:

سَبَّحَ لِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ

*Whatsoever is in the heavens and whatsoever is on the earth glorifies Allah (Al-Hasbr 1).*

Within this Aayah a Mutawaati'u Lafzh has been mentioned indicating to 'Al-'Umoom' (generality) and this is the Lafzh 'مَا' (Maa/what/whatsoever). It therefore means the human, the angels, the animals and inanimate creations... That is because the Lafzh Al-Mutawaati' is from the Alfaazh Al-'Umoom (worded expressions of generality).

### 4 – Al-Mutaraadif (synonym):

This is where the Lafzh is numerous whilst the meaning is one. This is like 'Al-Laith', 'Al-Hazeer' and 'Al-Ward' which all guide to one single meaning which is the animal known as the 'Asad (lion). Or another example where the Lafzh 'Salhab' (صَلْهَب) and the Lafzh 'Shawdhab' (شَوْدَب) indicate to the meaning of 'Taweel' (long/tall).

### 5 – Al-Mutabaayan:

This is where the Lafzh is numerous and its meanings are numerous. This is like: Al-Abyad and Al-Aswad (white and black), Al-Wujood and Al-'Adam (existence and non-existence), As-Samaa' and Al-Ard (the sky (heaven) and the earth), Ar-Rajul and Al-Mar'atu (the man and woman), and like Asad (lion), Muhammad, Kitaab (book) and so on...

The majority of the worded expressions (Alfaazh) of the language fall within this category.

## **6 – Al-Haqeeqah (Literal):**

The Haqeeqah is the Lafzh that is used in that which it was initially or originally placed down, set and provided for within the language. Like the word 'أسد' (Asad/lion) in the case where it was used to guide to the predatory animal e.g. 'I saw a huge Asad (lion) in the zoo'.

The Haqeeqah Al-Lughawiyah (Linguistic literal meaning) is divided into two categories:

Al-Haqeeqah Al-Lughawiyah Al-Wad'iyah and Al-Haqeeqah Al-Lughawiyah An-Naqliyah.

A – Al-Haqeeqah Al-Lughawiyah Al-Wad'iyah:

It is the Lafzh which was set and provided by the (original) people of the language initially for the meaning like the Lafzh 'رَجُلٌ' (Rajul/man) for the mature or post-pubescent male or like the Lafzh 'أسد' (Asad/lion) for the predatory animal.

B - Al-Haqeeqah Al-Lughawiyah An-Naqliyah:

It is the Lafzh that was placed down and provided by the people of the language for a meaning and then it was transferred by the people of the language or by the Shar'a to another meaning. In this case it would either be a Haqeeqah Lughawiyah 'Urfiyah (customary linguistic Haqeeqah) or a Haqeeqah Lughawiyah Shar'iyah (Shar'iy linguistic Haqeeqah).

## **1 – Al-Haqeeqah Al-Lughawiyah Al-‘Urfiyah (the customary linguistic Haqeeqah):**

This relates to what the people of the language have transferred the originally provided and set meaning to another meaning that became widespread and widely known. That is whilst the initial indicated meaning was disregarded. An example of this is the Lafzh دَابَّة (Daabbah) as the Arabs first placed it down to indicate everything that moves (slowly or close to the ground) upon the land including the human and the animal. Then they transferred this Lafzh to indicate those creatures which move on four legs alone whilst they cast aside the original meaning. In this way the Lafzh دَابَّة (Daabbah) came to be applied upon its new meaning which represents a Haqeeqah Lughawiyah ‘Urfiyah (customary linguistic reality).

There is also a Haqeeqah ‘Urfiyah Khaassah (specific or specialised customary literal usage or application) for the people of specific arts or skills. This includes the terminological conventions (Istilaahaat) of the ‘Ulamaa of Usool ul-Fiqh. So for instance, the Lafzh ‘عِلَّة’ (‘Illah) was set and provided in the language to indicate an illness (or defect). The ‘Ulamaa then used it in their terminology to indicate the matter that is the reason or motivating factor for the Hukm (legal ruling). Also within this category of the specific or specialised Haqeeqah Al-‘Urfiyah are the terminological conventions that are adopted in astronomy, medicine, geography and other such areas.

The Haqeeqah Al-‘Urfiyah Al-Khaassah (The specific customary Haqeeqah) differs from the Haqeeqah Al-‘Urfiyah Al-Lughawiyah (The linguistic customary Haqeeqah) in two matters:

1 - It is possible for the people of any particular skill, art or expertise and in any time period to set terminological conventions utilising the Alfaazh (worded expressions) of the language and transfer them to specific meanings associated to their field.

That is whilst the Haqeeqah Al-‘Urfiyah Al-Lughawiyah is specific to the (original) people of the language upon whose language is relied upon for proof or evidence. And so it is not permissible today to transfer an Arabic word that had been originally or initially been

placed down and set down for a specific meaning, to a new meaning, so as to make a Haqeeqah ‘Urfiyah Lughawiyah from it.

2 – In respect to the Haqeeqah Al-‘Urfiyah Al-Khaassah (The specific customary Haqeeqah) the first (or original) meaning of the Lafzh is not disregarded or cast away but rather remains utilised in writing and speech just as it was provided and set by the Arabs. So for example, the Lafzh ‘فَاعِلٌ’ (Faa’il) which has been given a terminological convention or definition by the scholars of Arabic grammar to indicate the word that the action is attributed to, remains utilised in its originally meaning that the Arabs provided for it initially.

That is whilst in regards to the Haqeeqah Al-‘Urfiyah Al-Lughawiyah, the first meaning which the Lafzh was used to indicate is cast aside and disregarded. So for instance, the Lafzh ‘غَائِطٌ’ which held the original meaning of the low lying land or ground was transferred to a new meaning which is the human excrement. It is then (only) utilised in its second meaning and not in its first meaning.

## 2 – Al-Haqeeqah Ash-Shar’iyah Al-Lughawiyah:

It is the Lafzh that the Shar’a has transferred to a meaning other than the linguistic meaning that had been provided for it. That is like the Lafzh (الصلاة) (As-Salaah) as its linguistic meaning had been the ‘Du’aa’ (supplication). The Shar’a then transferred or moved it to a new meaning and that is the specified actions that the Shaari’ has commanded like the Rukoo’, Sujood and the rest of the pillars of the Salaah.

These Alfaazh include: Az-Zakaah, As-Siyaam, Al-Islaam, Al-Kufr and Al-Fisq.

The Haqeeqah Ash-Shar’iyah requires a Daleel Shar’iy to indicate it and to explain its Shar’iy meaning like the Salaah in respect to which the Messenger of Allah (saw) explained its actions and said:

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

## Pray as you have seen me pray

And like the Lafzh ‘Al-Islaam’ which Allah explained its meaning by His Qawl (swt):

إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ

*Verily, the Deen with Allah is Al-Islaam (Aali ‘Imraan 19).*

And so forth...

### **7 – Al-Majaaz (the metaphorical):**

It is the Lafzh (worded expression) that it used in other than what it was set and provided for initially in the language by way of a Qareenah (connotation) that prevents the what is intended by the Haqeeqah (literal meaning). Consequently, the wording could be used upon its Haqeeqah (literal meaning) and it could also be used upon the Majaaz (metaphorical meaning) due to a Qareenah (connecting connotation). This is like the Lafzh ‘رَقَبَةٌ’ (Raqabah) in the Qawl of Allah Ta’Aalaa:

فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ

*Then the freeing of a believing slave (An-Nisaa’ 92)*

Here it has been used in a metaphorical manner to indicate the meaning of the ‘Owned slave’ and so ‘Raqabah’ (neck) was applied to him because the neck represents a part of the slave and so the relationship is said to be ‘Juz’iyah’ (partitive). Example: ‘رَأَيْتُ أَسَدًا يَفُودُ’ ‘الجَيْشِ’ (I saw a lion leading the army). The Lafzh ‘Asad’ (lion) is used here in a metaphorical manner and that is due to the relationship of Al-Mushaabahah (resemblance/similitude) in respect to bravery being present in both the brave man and the lion. Another example is the Qawl of Allah Ta’Aalaa:

إِنِّي أَرَانِي أَعْصِرُ خَمْرًا

*Verily, I have seen myself [in a dream] pressing wine (Yousuf 36).*

The Lafzh 'Khamr' (wine) has been used here metaphorically and that is because the thing that is being pressed or squeezed are the grapes and not the wine. 'Khamr' (wine) was consequently used metaphorically to indicate the grapes due to the relationship of what the grapes will become in the future.

It is the relationships and Qaraa'in (connotations) that indicate that the Lafzh has been used metaphorically i.e. that it has been used in other than the meaning that was initially provided for it. These relationships and Qaraa'in are numerous and varied which are explained and dealt with in detail by the scholars of the Arabic language and Balaaghah (eloquence) and whoever wishes to increase his knowledge should refer back to these for further study.

## Chapter Three

### **Al-Ijtihad and At-Taqlid:**

- 1 – Al-Ijtihad: Its meaning, its conditions, its categories and the Ahkaam of Ijtihad.
- 2 – At-Taqlid: Its meaning and its Hukm (legal ruling).
- 3 – The difference between Al-Ijtihad and At-Taqlid.
- 4 – The inventions amongst the Madhaahib.
- 5 – Following the Rukhas (pl. of Rukhsah).
- 6 – Al-Fatwaa: Its meaning and its conditions.

# Al-Ijtihad

## The meaning of Al-Ijtihad:

Al-Ijtihad linguistically means the exertion of effort and exhaustion of capability in respect to an action or undertaking. It is not used except for that which includes within it effort. It is said for instance: That the man made Ijtihad when carrying a heavy stone hand milling grinder but he did not do Ijtihad when carrying a feather.

## Al-Ijtihad in Al-Istilaah (terminological definition):

It is the exertion of the capability (and effort) to seek the Zhann (what is thought most probable) of a matter from the Ahkaam Ash-Shar'iyah in the case where the Mujtahid feels that he is incapable of doing any more (or exerting any more effort).

The meaning of this is that the Mujtahid exerts his mental efforts to deduce the practical Ahkaam Ash-Shar'iyah from its detailed evidences, in the case where he feels the inability to come up with and produce anything more accurate or correct than what he has arrived at (i.e. concluded and deduced).

Ijtihad occurs in respect to the Nusoos (texts), the evidences of which are Zhanniyah (indefinite). Meaning those texts which have the potential to hold more than one meaning. This is like the Aayah:

لَا مَسْئَةَ النِّسَاءِ

*You came into contact (touched) women (An-Nisaa' 43)*

Or His Qawl (swt):

ثَلَاثَةَ فُرُوءٍ

*Three periods (Al-Baqarah 228).*



The meaning of ‘Lams’ (touching) is open to two meanings: The touch of the hand and sexual intercourse. Likewise, ‘Al-Quroo’ is open to two meanings: One is purity and the other is menstruation. Outweighing one meaning over the other is Ijtihad whilst the outweighing or stronger (Raajih) opinion is Zhanniy (indefinite). The Mujtahid then considers his opinion to be correct albeit open to the possibility of error. He considers the opinion of others to be wrong with the possibility of being correct.

As for the texts which have a Qat’iyah Dalaalah (definite indicated meaning) where they are not open to except one meaning that the Alfaazh (wordings) of the text have guided to, then in respect to the texts that fall within this category, there is no room for Ijtihad to be undertaken in relation to them. It has been said in this regard: ‘Laa Ijtihad Fee Mawrid An-Nass’ (There is no Ijtihad in respect to the origin of the text i.e. what has been expressed in a definite manner not open to interpretation).

Islaam has encouraged the undertaking of Ijtihad and has provided two rewards (Ajr) to the one who performs Ijtihad and is correct whilst it has provided the one who performs Ijtihad and is incorrect (in his opinion) with a single reward. The Sahaabah (rah) at the time of the Messenger of Allah (saw) used to perform Ijtihad whilst the Messenger of Allah (saw) approved of that. The Muslims who came after them proceeded upon the same path and methodology and the ‘Ulamaa and Fuqahaa of the Muslims have left for us an enormous treasure of their Ijtihadaat filling the libraries with their written works.

## **Shuroot Al-Ijtihad (Conditions):**

For the Mujtahid to be qualified and capable of Ijtihad it is necessary for the following conditions of Ijtihad to be met and fulfilled within him:

### **1 – Knowledge of the Arabic Language:**

This means that the Mujtahid has a suitable level and sufficiency of the knowledge of Arabic like the ‘Ilm of Nahw, Balaaghah and Fiqh of the language. That is so that he is able to distinguish between the Dalaalat (indications and implications) of the Alfaazh like the Dalaalat ul-‘Ibaarah and Dalaalat ul-Ishaarah, Al-Haqeeqah and Al-Majaaz, Al-‘Aamm and Al-Khaass, Al-Muqayyad and Al-Mutlaq, Al-Mushtarak, Al-Mantooq and Al-Mafhoom... This does not mean that he needs to be a scholar and Mujtahid in the language but only that he has to be endowed with all that he requires to understand the Shar’iyah texts as they came in the Arabic language in style (Usloob) and worded expressions (Alfaazh).

## **2 - Knowledge of the Adillah Al-Ijmaaliyah which are the sources of the Islamic legislation:**

These are: Al-Kitaab, As-Sunnah, Al-Ijmaa’ and Al-Qiyaas amongst others. What is intended by having a knowledge of these Adillah (evidences) does not mean encompassing every detail and meaning that they contain or memorising them all. Rather what is intended by this knowledge is the following:

### A – Al-Quraan:

- Knowledge of the locations (Mawaadi’) of the Aayaat of the Ahkaam (rulings) so that he can easily refer to them.
- Knowledge of the Ahkaam that are benefited and extracted from the Aayaat and their Asbaab An-Nuzool (circumstances or causes of their revelation).
- Knowledge of the Naasikh (abrogating) and the Mansookh (abrogated) in respect to the Noble Aayaat.

### B – As-Sunnah:

- To know its Saheeh (sound) from its Da’eef (weak).
- To know its levels of strength: Al-Mutawaatir, Al-Mash’hoor and Al-Aahaad.
- Knowledge of the meanings of the Hadeeth and the circumstances for its mention.
- Knowledge of the Naasikh and Mansookh in respect to them.

- Knowledge of the Hadeeth's explanation of the Aayaat i.e. the relationship of the Hadeeth with the Qur'aan from the angle of its indication of a Hukm.

#### C – Al-Ijmaa' (Consensus):

After the Mujtahid has specified the (type of) Ijmaa' that he will be depending upon in his Ijtihad, in respect to whether it is Ijmaa' As-Sahaabah, Ijmaa' Al-Ummah, Ijmaa' Al-Mujtahideen or other than these, he then must have knowledge of the locations or contexts (Mawaadi') of the Ijmaa' so that he can be fully aware of them and then not contravene them within the Masaa'il (issues) that he is undertaking Ijtihad in.

#### D - Al-Qiyaas (Analogy):

Knowledge of the 'Illah, its types, its conditions and the manner of how to attach the Far'u (branch) to the Hukm of the Asl (origin) due to the commonality of the 'Illah existing between them.

### **3 – Knowledge of Usool ul-Fiqh:**

The Mujtahid requires knowledge of the principles (Qawaa'id) of Usool ul-Fiqh so that he can arrive at the deduction of the practical Ahkaam Ash-Shar'iyah from its detailed evidences through them. This is like the Qaa'idah: 'العبرة بعموم اللفظ لا بخصوص السبب' (The significance (consideration) is in the generality of the worded expression and not in the specificity of the cause). Or like the Qaa'idah: 'ما لا يتم الواجب إلا به فهو واجب' (That which the Waajib is not completed except with it, is Waajib) and the Qaa'idah: 'إعمال الدليلين 'أولى من إهمال أحدهما' (Making both evidences work (together) is better or more appropriate than disregarding one of them) in addition to the specific principles related to when there appears to be a conflict between the evidences and outweighing them (At-Tarjeeh).

## The Categories of Al-Ijtihad:

Some of the ‘Ulamaa divided Ijtihad into two categories: A specific category related to the Istinbaat (deduction) of the Ahkaam and a specific category related to the application of these Ahkaam upon the partitive/branch actions (Al-A’maal Al-Juz’iyah). That is whilst others divided it in accordance to the levels (Maraatib) of the Mujtahideen and these number three:

### 1 – Al-Mujtahid Al-Mutlaq:

He is the Mujtahid who has the capability to set the Qawaa’id (principles) of Usool ul-Fiqh. So he sets the foundations of the Usool and sets the Qawaa’id that he is bound and restricted to in his Ijtihad. He undertakes or embarks on Ijtihad in all of the Masaa’il of Fiqh and that is because all of the conditions of Ijtihad are amply fulfilled within him. Examples of such a Mujtahid include the A’immah (Imaams) of the Madhaahib (schools of Fiqh) like Al-Imaam Ash-Shaafi’iy, Abu Haneefah, Al-Imaam Ahmad Bin Hanbal, Al-Imaam Malik, Ibn Hazm and Ja’far As-Saadiq amongst others.

This does not however mean that the Mujtahid Al-Mutlaq has ‘Ilm (knowledge) of every single Hukm as this is not what is meant. That is because this is not the reality of the human being and even the Sahaabah (rah) had cause to pause at a great number of issues (Masaa’il) like ‘Umar (ra) in respect to fighting those who withheld the paying of the Zakaah following the death of the Messenger (saw) or Abu Bakr (ra) in respect to the Mas’alah (issue) of the inheritance of the grandmother. Or like the example of Al-Imaam Malik when he was asked questions in 40 Mas’alah (issues) and replied in respect to 36 of them: ‘لا أدري’ (I do not know).

Rather, what is meant, is that the Mujtahid Al-Mutlaq has the potential and capability in respect to Ijtihad that makes him capable of examining, deducing (Istinbaat) and laying down or setting the Usool and Qawaa’id in a number of Fiqhiy issues that encompass in a general manner the Ahkaam Ash-Shar’iyah as a whole. As a result, Fiqh is produced like that of the Fiqh of Ash-Shaafi’iy or Abu Haneefah and its likes and a Madh’hab is attributed to him in respect

to the Ijtihad i.e. a specific methodology that his students proceed upon after him. That is like the four well-known Madhaahib, the Ja'fari Madh'hab and the Zhaahiry Madh'hab amongst others.

## **2 – Mujtahid Al-Madh'hab:**

He is the Mujtahid who follows his Imaam in the Usool that the Imaam set and laid down. He therefore performs Ijtihad upon its basis in the process of deducing or extracting new practical Ahkaam Shar'iyah in the issues which his Imaam had not deduced a ruling. He therefore proceeds within the constraints of the principles (Qawaa'id) and Minhaj (methodology) that his Imaam had set for Ijtihad.

Examples of such Mujtahideen include the companions or followers of Al-Imaam Abu Haneefah, Al-Imaam Ash-Shaafi'iy and Al-Imaam Ahmad Bin Hanbal amongst others. The Mujtahid Al-Madh'hab is a follower of the Mujtahid Mutlaq who set the foundations for him in Usool and laid down the principles. So for example Ibn Qudaamah Al-Maqdasiy is a Mujtahid Madh'hab within the Hanbali Madh'hab, Abu Yousuf, the student of Al-Imaam Abu Haneefah, was a Mujtahid Madh'hab within the Hanafiy Madh'hab and even if he sometimes deduced contrary opinions to Al-Imaam Abu Haneefah (rah).

## **3 – Mujtahid Al-Mas'alah:**

He is the one who is able or enabled to undertake a correct and sound examination of a Mas'alah from amongst the Masaa'il (Sharee'ah issues) and provide the Hukm Ash-Shar'iy for it. That is after acquiring knowledge of the necessarily required Shar'iyah and linguistic areas of knowledge needed to deduce the Hukm in that issue or in a few or limited number of issues. The Mujtahid Al-Mas'alah would be a Muqallid (follower) in other than what he has performed Ijtihad in. That is because Ijtihad is partitioned and so whoever has knowledge of the Daleel of an issue from amongst the issues and he has encompassed what is necessarily required from the conditions of Ijtihad related to it, then it is for him to undertake Ijtihad in respect to that part and to make Taqleed in respect to the remaining Masaa'il (issues). The Sahaabah (rah) were Mujtahideen

whilst some of them would abandon their own opinion to follow the opinion of another.

## Ahkaam Al-Ijtihad

### 1 – Hukm ul-Ijtihad (the ruling):

Al-Ijtihad is Fard ‘Ala-l-Kifaayah (An obligation of sufficiency) and consequently it is not permissible for a time period or era to be free of a Mujtahid who is capable of deducing Ahkaam Shar’iyah for the issues (Masaa’il) and realities that newly arise. With the existence of a Mujtahid or more than one, in any given time period or era, the sin falls from the Muslims in that time. That is because new realities of life continuously arise and they require Ahkaam Shar’iyah that make clear what the position of the Muslims towards them should be. It is not possible to apply the Hukm of Allah upon them unless the Hukm of Allah in relation to them is known which makes it necessary for the Muslims to acquire knowledge of this Hukm from the Shar’iyah texts. Some of these texts have come in a clear and manifest manner which do not require Ijtihad to be undertaken however others require examination and Ijtihad in order to deduce the Hukm from them. For example, the Aayaat of the Mawaareeth (the inheritances) came providing detail for the Ahkaam however some of the Ahkaam Al-Juz’iyah (partial or branch rulings) within this area require understanding and effort to deduce or extract the ruling for the issue, like the Mas’alah (issue) of Al-Kalaalah for instance. That is because Abu Bakr (ra) was asked about Al-Kalaalah as mentioned in the Qawl of Allah (swt):

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً

*And if a man or woman leaves behind Kalaalah (neither ascendants nor descendants) (An-Nisaa’ 12).*

And he (ra) said: “I will say in respect to Al-Kalaalah that which is my opinion. If it is correct, it is from Allah and if it is wrong, then it is from me and from the Shaytaan. Al-Kalaalah: The one who has no father(s) or son(s)” (i.e. no ascendants nor descendants).

The obligation to judge and rule by what Allah (swt) has revealed upon the Muslims demands from them that they derive the Ahkaam from these Nusoos (texts) and as such Al-Ijtihad is Fard upon those capable in every era and time i.e. it is a Fard Kifaayah (obligation of sufficiency). If some were to undertake and fulfil it then the obligation would fall from the rest. This is from the angle of the principle:

‘مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ‘

(That which the Waajib is not completed except with it is Waajib)

That is because referring to what Allah (swt) has revealed for judgment cannot be accomplished in every issue except by Ijtihad. Indeed, the Messenger of Allah (saw) encouraged the undertaking of Al-Ijtihad when he said:

إِذَا اجْتَهَدَ الْحَاكِمُ فَأَصَابَ فَلَهُ أَجْرَانِ وَإِنْ أَخْطَأَ فَلَهُ أَجْرٌ وَاحِدٌ

**If the ruler (judge) undertakes Ijtihad and is correct, then he attains two rewards and if he is mistaken, then he attains one reward**

And this is highlighted in what the Messenger of Allah (saw) said to Mu'aadh Bin Jabal (ra) when he sent him to be a judge in Yemen:

بِمَ تَحْكُمُ؟ قَالَ: بِكِتَابِ اللَّهِ قَالَ: فَإِنْ لَمْ تَجِدْ؟ قَالَ: بِسُنَّةِ رَسُولِ اللَّهِ قَالَ: فَإِنْ لَمْ تَجِدْ؟ قَالَ: أَجْتَهُدُ رَأْيِي وَلَا أَلُو فَقَالَ: الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يَرْضَى رَسُولَ اللَّهِ

**By what will you judge? He said: By the Book of Allah. He said: Then if you have not found it? By the Sunnah of the Messenger of Allah. He (saw) said: Then if you have not found it? He said: I will make Ijtihad to form an opinion and I will not spare no effort. And so he (saw) said: “Praise be to Allah who has guided the Messenger of the Messenger of Allah to that which is pleasing to the Messenger of Allah” (At-Tirmidhi and Abu Dawud).**

The Sahaabah (rah) were therefore performing Ijtihad at the time of the Messenger of Allah (saw) and he approved of their performance of Ijtihad, informing them that the one who makes the correct Ijtihad will attain two rewards whilst the one who makes an error will attain one reward.

## 2 – Changing the Ijtihad:

If the Mujtahid arrives through his Ijtihad to a Hukm Shar'iy, then it is the Hukm of Allah in respect to him (Fee Haqqihi) and it is not permissible for him to abandon his Ijtihad and act contrary to this Ijtihad except in one of the following circumstances:

A – If the Imaam of the Muslims (Al-Khalifah) adopts a Hukm Shar'iy in an issue that is different to his Hukm, then he must follow the opinion of the Imaam. In the time of Abu Bakr's Khilafah, he (ra) would divide the expenditures upon the Muslims equally without differentiation or preference whilst 'Umar (ra) viewed that precedence in Islaam should be taken into consideration. However, 'Umar (ra) abandoned his Ijtihad in the era of Abu Bakr (ra) and adopted the adoption of the Khalifah. Then in the time of his Khilafah he applied his own Ijtihad.

The Qaa'idah Ash-Shar'iyah states: “أَمْرُ الْإِمَامِ يَرْفَعُ الْخِلَافَ” (The command of the Imaam removes the dispute or difference) and another states: “أَمْرُ الْإِمَامِ نَافِذٌ ظَاهِرًا وَبَاطِنًا” (The command of the Imaam is implemented openly and inwardly). This means that it is an obligation to follow the adoption of the Khalifah openly and secretly.

B – If by abandoning his Ijtihad it led to the preservation of the unity of the Muslims like what 'Uthmaan (ra) did when he was given the Bai'ah for the Khilafah in the case where he agreed to act in accordance to the Kitaab of Allah, the Sunnah of His Messenger and to follow the Ijtihadaat of the two former Khalifahs; Abu Bakr and 'Umar (rah). That was because the Muslims stipulated and made conditional upon the one they wanted to pledge allegiance to that he would follow the path of the two former Khaleefahs in respect to the



manner of ruling. Consequently, ‘Uthmaan made this concession in regards to leaving his Ijtihad in order to preserve the unity of the Muslims.

C – Greater level of Knowledge: If the Mujtahid saw that there was another Mujtahid who was more knowledgeable than him, then he can leave his own personal opinion and follow the opinion of that Mujtahid. This used to happen at the time of the Sahaabah (rah) and so for instance, Abu Mousaa Al-Ash’ariy (ra) would leave his opinion for the opinion of ‘Ali Ibn Abi Taalib (ra) whilst Zaid used to leave his opinion for the opinion of Ubayy Bin Ka’b (rah).

D – If the error of the Mujtahid’s Ijtihad becomes plain and clear to him, he must revise his position and act in accordance to his new Ijtihad that he views to be more correct than the previous one.

### **3 - Partitioning Ijtihad (Taj’ziyah AL-Ijtihad):**

The majority of the ‘Ulamaa have viewed that it is impermissible to partition Ijtihad and so it is not permissible for the Mujtahid to make Ijtihad in Al-Mu’aamalaat (societal transactions) and make Taqleed (imitation and following) in Al-‘Ibaadaat (acts of worship). That is because Ijtihad and Taqleed are two opposing meanings that do not meet or come together within a single person.

Some of the Maalikiyah and some of the Hanaabalah in addition to the Zhaahiriyyah said that Ijtihad can be partitioned. Consequently, the one who has knowledge of the linguistic areas or disciplines of knowledge and Shar’iyah areas sufficient for him to derive the Hukm of a particular Mas’alah (issue), then he should make Ijtihad in that and make Taqleed to others in other than that.

Many of the A’immah (Imaams) used to respond to questions by saying: ‘I don’t know’ (Laa Adriy) if they did not know the answer as has been reported from Al-Imaam Maalik and Al-Imaam Ash-Shaafi’iy amongst others.

Therefore, partitioning the Ijtihad is permissible in accordance to the Shar’a.

## Where Ijtihad takes place:

Ijtihad takes place in respect to the Nusoos that contain a Zhanniy (speculative) Dalaalah (indication or implication). As for the texts which contain a Qat'iy (definite) Dalaalah (implied meaning), then it is not permitted to undertake Ijtihad in respect to them.

Also, Ijtihad relates to deriving the practical Ahkaam Ash-Shar'iyah and does not take place in respect to the Aqaa'id (beliefs). That is because it is obligatory for the Aqeedah to be Yaqeeniy (certain and definite) i.e. Qat'iy Ath-Thuboot and Qat'iy Ad-Dalaalah (Definite in transmission and meaning). There is therefore no place for Ijtihad to be undertaken in respect to it as it is prohibited for the Aqeedah to be taken by way of Zhann (speculation or that which is indefinite). Allah (swt) says:

مَا لَهُمْ بِهِ مِنْ عِلْمٍ إِلَّا اتِّبَاعَ الظَّنِّ وَمَا قَتَلُوهُ يَقِينًا

*They have no knowledge of it except the following of Zhann (speculation). And they did not kill him, for certain (An-Nisaa' 157).*

## It is not permitted for Ijtihad to be attributed to the Messenger of Allah (saw)

The evidence for that is as follows:

### 1 – Ad-Daleel Al-'Aqliy (Rational or intellectual evidence):

The concept of Ijtihad is contradictory to the 'Ismah (infallibility) of the Messenger (saw) because it is not permitted for error to occur in respect to the message (Ar-Risaalah) and conveyance (At-Tableegh). The Messenger of Allah (saw) is therefore infallible from an error in respect to the message and the conveyance and because we have been commanded to follow the Messenger (saw) in respect to that which he conveys to us from his Rabb. That is whilst Ijtihad is open to error and it is not intellectually conceivable for Allah to command us to follow the error.

## 2 – Ad-Daleel Ash-Shar’iy:

Allah Ta’Aalaa has informed in the Qur’aan Al-Kareem that the Messenger (saw) only warns by the Wahi and only speaks or utters from the Wahi (divinely inspired revelation). Allah (swt) said:

قُلْ إِنَّمَا أُنذِرُكُمْ بِالْوَحْيِ

*Say: “I warn you only by the revelation” (Al-Anbiyaa’ 45).*

And He Ta’Aalaa said:

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ﴿٣﴾ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ

*Nor does he speak of (his own) desire. It is only a revelation that is inspired (An-Najm 4).*

The realities proved this. That is because when an issue arose or an incident occurred, he delayed answering the question or passing judgment upon the reality, until the Wahi had been revealed upon him, some of which came to him quickly whilst some of it came after days. And so he did not undertake Ijtihad in order to respond but rather he waited for the answer or the Hukm from the Wahi. Allah (swt) said:

إِنْ أَتَّبِعْ إِلَّا مَا يُوحَىٰ إِلَيَّ

*I but follow what is revealed to me by inspiration (Al-An’aam 50).*

## The Requirements of Al-Ijtihad

1 – Knowledge of the reality of the Mas’alah (issue) for which the derivation of the Hukm is being sought.

2 – Knowledge of the Shar’iyah texts related to the Mas’alah.

3 – Expending of effort where the Mujtahid feels that he is incapable of more.

That relates to the Istinbaat (derivation) of the Hukm Ash-Shar'iy from the texts related to the issue utilising his linguistic areas of knowledge and his Shar'iyah areas of knowledge that are necessarily required for that particular Istinbaat (deduction).

## **At-Taqleed (imitation or following)**

### **The meaning of At-Taqleed:**

At-Taqleed linguistically is the placing of the matter in the neck with an encompassment of it. Then it is used to entrust or delegate the matter to the person, as if it has tied the matter to his neck.

It is like the poet said:

وقلدوا أمركم الله دركم رَحْبَ      الذراع, بأمر الحرب

They were entrusted to your affair \_ your accomplishment is due to  
Allah \_ generous  
The arm, with the matter of war

And the meaning of At-Taqleed in accordance to the Istilaah (terminological convention):

At-Taqleed, according to its Shar'a meaning, is to act in accordance to the opinion of another without a Hujjah Mulzimah (A binding proof). That is like the 'Aamiy taking the opinion of the Mujtahid or the Mujtahid taking the opinion of another Mujtahid.

## **The types of Muqallideen (followers)**

**1 - Al-Muqallid Al-Muttabi'u (The follower based on pursuance):**

He is the Muqallid (follower/imitator) who possesses some of the knowledge considered in relation to the Tashree' (legislation) however he is unable to undertake Ijtihad with that knowledge. He therefore makes Taqleed to someone else in the case where he takes the Hukm along with the Daleel (evidence) for the Hukm. So for instance he would know the Furood (obligations) of the Wudoo' and he would know that these obligations have been taken from the Qawl of Allah (swt):

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ  
إِلَى الْمَرَافِقِ

*O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows (Al-Maa'idah 6).*

## 2 – Al-Muqallid Al-'Aammiy (the general follower):

He is the Ummiy (blind) Muqallid who does not possess some of the considered sciences or areas of knowledge ('Uloom) related to the legislation. Consequently, he enquires about the Hukm of the action or the matter that he wants to undertake and then it is said to him: It is Haraam, Waajib, Mandoob, Makrooh or Mubaah. He then follows that without knowing the Daleel from which the Hukm was deduced and taken and this is permitted by the Shar'a.

## The Hukm of At-Taqleed

The original position in regards to the Muslim is that he takes what he requires in terms of Ahkaam Ash-Shar'iyah (directly) from the Shar'iyah texts himself i.e. from the Aayaat and the Ahaadeeth. That is because Allah Ta'Aalaa has addressed him with these texts and requested that he does not follow other than 'Ilm (knowledge). Allah Ta'Aalaa said:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ ۚ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَٰئِكَ  
كَانَ عَنْهُ مَسْنُورًا

*And do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart - about all those [one] will be questioned (Al-Israa' 36).*

This Aayah commands us to utilise our senses and our minds to arrive at the knowledge of the Ahkaam Ash-Shar'iyah and if we are unable then it is obligatory for us to examine and undertake Ijtihad in order to arrive, by way of the preponderant Zhann (what is believed to be most likely), to the Hukm Ash-Shar'iy.

The Taqleed does make a person arrive at knowledge ('Ilm) or to the Zhann Al-Ghaalib (the preponderant view) of the Ahkaam Ash-Shar'iyah and as such the 'Ulamaa held a variety of opinions in respect to the Hukm of Taqleed as follows:

1 – Some of the 'Ulamaa viewed that At-Taqleed is not permissible at all and made Al-Ijtihad obligatory upon the Mukallaf and to learn its means and tools.

2 – Others viewed that At-Taqleed is absolutely permitted for the one who is capable of performing Ijtihad and for the one who is incapable.

3 – Others still permitted Taqleed for the one who is incapable of undertaking Ijtihad whilst prohibiting it for the one who is capable of undertaking it.

## **My opinion in respect to At-Taqleed**

Allah (swt) has requested from the Mukallafeen to follow what He has revealed:

اتَّبِعُوا مَا أَنْزَلَ إِلَيْكُم مِّن رَّبِّكُمْ

*Follow what has been revealed to you from your Lord (Al-A'araaf 3).*

It is therefore obligatory upon the Mukallaf to know the Hukm which is required of him in obedience to Allah and His Messenger. If he does not find the Hukm explicitly stated within the Shar'iyah texts,

then if capable, he performs Ijtihad to derive that Hukm from the Nusoos Ash-Shar'iyah (texts) or he takes it from other than him from the Mujtahideen who have derived the ruling, or he asks someone else who is knowledgeable of the Hukm. Allah Ta'Aala said:

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

*So ask the people of the scripture if you do not know (An-Nabl 43).*

Consequently, At-Taqlid is permitted for the Muqallid and the Mujtahid in respect to taking or adopting the practical Ahkaam Ash-Shar'iyah and there does not exist any Daleel (evidence) indicating its prohibition. The Sahaabah (rah) used to make Taqlid amongst themselves even though most of them were Mujtahideen and other Muslims would make Taqlid to them as well. This occurred and took place without any of the Sahaabah (ra) denying or reproaching them and as such it represents an Ijmaa' upon the permissibility of Taqlid.

The original position is for the Mukallaf to adhere to the Ahkaam Ash-Shar'iyah in respect to everything he does, whether this is as a Muqallid or Mujtahid, although it is better or more becoming for him to be a Mujtahid because Allah has placed reward upon the performance of Ijtihad; if he is correct he attains two rewards whilst if he errs he attains one reward.

### **Extra related points:**

1 – Al-Ijtihad is Fard Kifaayah; if some undertake it, the duty falls from the rest and if some have not undertaken it, then all those who are capable of Ijtihad are sinful. That is because it is not permissible for the Muslims to have an era or period of time without the existence of a Mujtahid or Mujtahideen who are capable of deducing the practical Ahkaam Ash-Shar'iyah for the new realities occurring in the life of the Muslims.

That does not however mean that making Taqlid to a Mujtahid is Haraam because the command to undertake a matter is not a forbiddance (Nahi) from doing its opposite, as we explained earlier in

the section about the Amr and the Nahi (Command and forbiddance).

2 – At-Taqlaad in the Aqeedah:

Just as there is no place for Ijtihad in respect to the Aqeedah, Taqlaad in respect to the Aqeedah is not permissible. That is because Allah Ta’Aalaa has rebuked the Muqallideen in the Aqeedah. He (swt) said:

وَإِذَا قِيلَ لَهُمْ اتَّبِعُوا مَا أَنْزَلَ اللَّهُ قَالُوا بَلْ نَتَّبِعُ مَا أَلْفَيْنَا عَلَيْهِ آبَاءَنَا ۗ  
أُولَئِكَ كَانَ أباؤُهُمْ لَا يَعْقِلُونَ شَيْئًا وَلَا يَهْتَدُونَ

*And when it is said to them: "Follow what Allah has revealed" they say: "Rather, we will follow that which we found our fathers doing." Even though their fathers understood nothing, nor were they guided? (Al-Baqarah 170).*

And Allah Ta’Aalaa said:

وَإِنْ تُطِيعُوا أَكْثَرَ مَنْ فِي الْأَرْضِ خَلُّوا سَبِيلَ اللَّهِ ۗ إِنَّهُمْ يَتَّبِعُونَ  
إِلَّا الظَّنَّ وَإِنْ هُمْ إِلَّا يَخْرُصُونَ

*And if you obey most of those upon the earth, they will mislead you from the way of Allah. They follow not except Zhann (speculation/uncertainty) and they are not but falsifying (Al-An’aam 116).*

The word *يَخْرُصُونَ* means lying whilst lying is Haraam and so following Zhann in the Aqeedah is also Haraam.

## The difference between Al-Ijtihad and At-Taqlaad

1 – Al-Ijtihad is the exertion of (capable) effort to deduce the practical Ahkaam Ash-Shar’iyah from its detailed evidences, whilst At-Taqlaad is following the opinion of someone else in relation to the practical Ahkaam Ash-Shar’iyah.



2 – Al-Ijtihad is the Asl (original position) and Allah has placed reward upon its undertaking; two rewards for the one who is correct in his Ijtihad and one reward for the one who is incorrect. That is whilst At-Taqlid is not commended by the Shar'a, it has not been commanded by Allah and reward has not been placed upon it.

3 – Al-Ijtihad is a Fard Kifaayah upon the Muslims and it is not permitted for an era to not have at least one Mujtahid within it. That is whilst At-Taqlid has not been commanded and it is more appropriate for its occurrence to be less or for it to happen little amongst the Muslims.

4 – Ijtihad does not take place in the Aqaa'id (beliefs) because its evidences are Qat'iy Ad-Dalaalah (in indication and meaning) and it is Haraam to make Taqlid in respect to them. It is however permitted to perform Ijtihad and Taqlid in respect to the Ahkaam Ash-Shar'iyah.

### **The Madhaahib in Al-Ijtihad**

The Madhaahib in Al-Ijtihad, like the Madh'hab Ash-Shaafi'iy, Abu Hanifah and Al-Maalikiy amongst others, are schools of Fiqh that have taken the names of the A'imma Al-Mujtahideen who set down the principles and methodologies in relation to Ijtihad for them. From amongst these Madhaahib are those which are still existing today and have followers like the four Madhaahib and the Madh'hab of Al-Imaam Ja'far. There are also those which have been blotted out and do not have followers in our current age like the Madh'hab of Sufyaan Ath-Thawri, the Madh'hab of Al-Imaam At-Tabari and the Madh'hab of Al-Imaam Al-Awzaa'i amongst others.

All of these Madhaahib without exception deduced their Ahkaam from the Shar'iyah texts. They therefore do not represent a proof (Hujjah) for the Islamic Shar'iyah but rather it the Islamic Shar'iyah which represents a Hujjah (proof) over them. The famous statement or slogan attributed to each of the Madh'hab was as follows: "My opinion is correct but open to error and the opinion of someone else is wrong but open to being correct". In light of this, it is necessary for the Muqallid of a Madh'hab to comprehend the following:

1 – The justification for following these Madhaahib today is the wide absence of Ijtihaad amongst the Muslims and that these Madhaahib make their followers aware of the practical Ahkaam Ash-Shar’iyah that are necessary for them in their lives for them to be able to adhere to and abide by Islaam.

2 – The Muqallid of the Madh’hab should not have blind devotion (At-Ta’assub) to that Madh’hab. As such, if it becomes plainly evident to him that the Madh’hab that he follows has made a mistake in a particular issue and that the correct opinion is within another Madh’hab, then he should follow that which he believes most likely (Ghalabat Azh-Zhann) to be correct.

3 – The differences between the Madhaahib in relation to the deduction of some of the Ahkaam is a healthy manifestation and not an unhealthy one or sign of sickness, as some imagine. That is because the minds and understandings of people differ based upon the individual differences that Allah Ta’Aalaa has created within the Fitrah (nature) of people. For that reason, the Mujtahideen differ in their Istinbaat (deduction) and understanding and this difference in Ijtihaad occurred in the time of the Messenger of Allah (saw) amongst the Sahaabah (rah). He (saw) approved of that and explained that the Mujtahid attains two rewards when his Ijtihaad is correct and that the Mujtahid who errs attains one reward. Consequently, making an error in the Ijtihaad is permitted by the Shar’a and the one who unintentionally falls into error is rewarded.

## **At-Talfeeq (concocting, piecing together) amongst the Madhaahib**

### **The meaning of At-Talfeeq:**

At-Talfeeq linguistically means: It is from the verb لَفَّقَ (Lafaqa/Yalfiqu) with the meaning of sewing a piece of garment into another piece whilst At-Tilfaaq means the sewing of a garment into another garment.

What is meant by At-Talfeeq amongst the Madhaahib is: The Muqallid taking from every Madh'hab that which conforms and agrees with his Hawaa (desires) in relation to the Ahkaam Ash-Shar'iyah that he requires without paying any regard to the criteria of outweighing, that we have mentioned, like the level of the knowledge of the one he is adopting from and the strength of the Daleel (evidence).

Examples of this:

That a person makes Taqleed in respect to the invalidators of the Wudoo' in accordance to what he sees to be lighter than others and so he considers that the touching of the woman does not break the Wudoo' according to the opinion of Al-Imaam Abu Hanifah, that bleeding does not break the Wudoo' according to the opinion of Al-Imaam Ash-Shaafi'iy and that sleep whilst sitting does not break the Wudoo' according to the opinion of Al-Imaam Al-Maalik.

This example illustrates the meaning of At-Talfeeq amongst the Madhaahib. The Muqallid has brought together that which agrees with his desires from the opinions of the Madhaahib within a single issue, which is the invalidators of the Wudoo'. If we were to present what he had adopted before each of the Madhaahib then it would be apparent to us that his Wudoo' had been invalidated and that it is not permitted for him to perform the Salaah.

That is because according to the Madh'hab of Al-Imaam Ash-Shaafi'iy and Al-Imaam Al-Maalik he would have invalidated his Wudoo' by the touching of the woman whilst he would have broken his Wudoo' according to the Madh'hab of Al-Imaam Abu Hanifah by the bleeding.

### **My opinion in respect to At-Taqleed and At-Talfeeq amongst the Madhaahib**

1 – It is for the Muslim to make Taqleed to a Madh'hab, itself, in all of the Ahkaam that he requires, like if he was to make Taqleed to Ash-Shaafi'iy for instance.

2 – It is permissible for this Muslim to ask for an opinion other than the opinion of Ash-Shaafi’iy to commit to, if his action had not been linked or connected to the Mas’alah that he is making Taqleed in. This means that if he had not already undertaken the action according to the opinion of Ash-Shaafi’iy. If he had however undertaken the action according to the Shaafi’iy opinion, and if only once, then it is not permitted for him to make Taqleed to other than Ash-Shaafi’iy in that Mas’alah (issue) unless he becomes capable and competent to undertake At-Tarjeeh (outweigh between the evidences and opinions). In that circumstance he would abandon the opinion of Ash-Shaafi’iy to adopt another opinion built upon that Tarjeeh (outweighing) and not because that new opinion is lighter or easier upon him than the Shaafi’iy opinion.

3 – If the Muqallid becomes a Mujtahid, it is permissible for him to leave the opinion that he had been following by Taqleed to adopt the opinion that he has deduced by Ijtihad, whether his action has connected to the first opinion or has not connected to it (i.e. whether he has acted upon it or not). That is as long as it is most probable or preponderant in his view (Ghalab ‘Alaa Zhannihi) that the second opinion is stronger than the first via a correct Ijtihad.

4 – If the Imaam (Khalifah of the Muslims) adopts a particular Hukm Shar’iy, it is obligatory at that time for every Muqallid and every Mujtahid to leave or abandon his opinion and to follow the opinion of the Imaam, in accordance to the Shar’iyah Qaa’idah (principle):

أَمْرُ الْإِمَامِ نَافِذٌ ظَاهِرًا وَبَاطِنًا

(The command of the Imaam is implemented openly and inwardly).

And Al-Qaa’idah Ash-Shar’iyah:

أَمْرُ الْإِمَامِ يَرْفَعُ الْخِلَافَ

(The command of the Imaam raises or removes the dispute or difference)

## **The following of Ar-Rukhas (special exempting permission)**

**Ar-Rukhas:** It is the Jam'u (plural) of Rukhsah and the Rukhsah is that which has been legislated from the Ahkaam Ash-Shar'iyah as a Takhfeef (lightening) of the 'Azeemah (commanded action before special permission) due to an 'Udhr (legitimate legal excuse) whilst the Hukm of the 'Azeemah remains (in place). The fasting in Ramadan is an 'Azeemah whilst the breaking of the fast of the sick person or traveller is a Rukhsah. Washing the body part or limb in the Wudoo' is an 'Azeemah whilst wiping over the injured or broken limb is a Rukhsah and so on...

What is not intended in this discussion 'The following of Rukhas', is the performing of the Rukhsah without the 'Azeemah, where all that is intended from the Rukhas is the taking of the lightest Ahkaam in respect to Takleef. This is where the Mukallaf adopts the Hukm that he views to be lighter than another in respect to commitment. So for instance he adopts that the touching of the woman does not invalidate the Wudoo' whilst putting aside the Hukm that states that touching the woman does break the Wudoo, and he adopts the Hukm of combining between prayers in a short journey which some of the 'Ulamaa considered to apply to the person just going outside of the boundaries of the town or village that he resides in, whilst he leaves the Hukm that considers travel to be that which equals 81 km or more.

The following of the Rukhas in the above description relates to the Muqallid taking from the Madhaahib the lightest Ahkaam for the purpose of abiding by them without giving any consideration to the strength of the Daleel or the level of the knowledge of the Mujtahid or even restricting himself to a single Madh'hab.

### **The opinions of the 'Ulamaa in respect to the Rukhas**

1 – Some of the 'Ulamaa, including Abu Ishaq Al-Marouziy, said that if the Muqallid took that which was easiest and lightest upon him

from every Madh'hab, then he would have committed Fisq (clear disobedience) meaning that he would be sinful and disobedient.

That is whilst the Hanaabilah specified the Fisq (clear disobedience) to the Mujtahid if he was to follow what was the lightest and easiest upon him. Al-Imaam Ahmad Bin Hanbal said: If a man acted in accordance to the opinion of the people of Kufa in respect to Nabeedh (beverage), the people of Al-Madinah in respect to As-Samaa' (السماع) and the people of Makkah in regards to Al-Mut'ah (temporary marriage), then he would have been a Faasiq. And the Hanaabilah specified the Fisq to the Mujtahid whilst the Muqallid Al-'Aammii, if he was to make Taqleed in respect to that, he would not have committed Fisq.

Al-Imaam Ahmad mentioned the three matters previously mentioned because the people of Kufa used to permit Nabeedh, the people of Al-Madinah used to permit As-Samaa' (listening to songs and instruments) and the people of Makkah permitted the Mut'ah marriage.

2 – As for 'Izz ud-Deen 'Abdis Salaam, then he said: The action that the Mujtahid does is examined. If it is from that which its prohibition is widely known in the Shar'a then he would have sinned and if it was not, then he would not have. He therefore restricted or specified the following of the Rukhas to that which its Tahreem (prohibition) was not widely known.

3 – Some of the 'Ulamaa, including Ibn ul-Himaam, said: There is no preventer (Maani') preventing the following of the Rukhas as it is permitted for the person to follow according to what is the lightest upon him. That is in the case where the Muqallid has not acted in accordance to another Hukm within the Mas'alah (issue). They would say that the Messenger of Allah (saw) used to love that which was lighter for the Sahaabah (rah).

## **My opinion in respect to the following of the Rukhas**

1 – It is not permitted for the Mujtahid to follow the Rukhas within the Madhaahib and that is because he is capable of outweighing the

opinion that he views to be correct. He is bound to follow that which he believes most likely (Ghalab ‘Alaa Zhannihi) to be the Sawaab (correct view) whilst it is not permissible for him to follow other than that. That is with the exception of the specific circumstances or cases that we have previously mentioned in relation to the changing of the Ijtihad.

2 – If the action of the Al-Muqallid Al-Mutabbi’u, who adopts the Hukm alongside its Daleel, has connected to a Hukm of a Mas’alah i.e. he has undertaken the action based upon a specific Hukm, it is not permissible for him to leave this Hukm except through a Shar’iy outweighing, like through the strength of the evidence or the level of the knowledge of the Mujtahid.

3 – If the action of the Muqallid Al-‘Aammii, who adopts the Hukm without its Daleel, has connected to a Hukm of a Mas’alah, it is not permitted for him to leave this Hukm for a different one within the same Mas’alah, whether the second Hukm was lighter or heavier in respect to the Takleef (legal responsibility). As for before his acting upon the Hukm, that he has enquired about, then it is for him to choose from the Ahkaam Ash-Shar’iyah presented before him within a single Mas’alah (issue), the Hukm that he wants to.

Therefore, the Mukallaf leaving the Hukm that his action has been connected to, to adopt another Hukm for the same action, is not permitted except in the cases or circumstances that we have mentioned in the subject area of changing the Ijtihad. And we ask Allah Ta’Aalaa for perseverance upon the Haqq and the adoption of the correct view.

## **Al-Fatwaa**

### **The meaning of Al-Fatwaa:**

Al-Fatwaa linguistically: It is from the verb ‘أَفْتَى’ with the meaning of ‘أَبَانَ’ (to make plain/evident). Al-Futyaa and Al-Fatwaa have the same single meaning and the Masdar (infinitive or verbal noun) is Al-Iftaa’u.

Al-Fatwaa in its Shar'a meaning:

It is what the Mufti (i.e. the Faqeeh) makes clear or explains in respect to a Hukm Shar'iy for the reality that is being enquired or asked about.

Allah (swt) said:

وَيَسْتَفْتُونَكَ فِي النِّسَاءِ ۗ قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ

*They ask your legal instruction concerning women, say: Allah instructs you about them (An-Nisaa' 127).*

The Noble Aayah means that Allah will explain or make clear the Ahkaam Ash-Shar'iyah related to the women.

## **Al-Iftaa', Al-Ijtihad and Al-Qadaa'**

### **The difference between Al-Iftaa' and Al-Ijtihad:**

1 – Al-Ijtihad is the exerting or expending of the Mujtahid's effort (and capability) to deduce (Istinbaat) the practical Ahkaam Ash-Shar'iyah from its detailed evidences (directly).

As for Al-Iftaa' (i.e. passing of the Fatwaa) then it means the Mufti informing about the Hukm Ash-Shar'iy for a Mas'alah (issue) whether that issue occurred or not.

2 – It is stipulated and made a condition in Al-Ijtihad for the Mujtahid to be familiar with the Shar'iyah areas of knowledge and the linguistic areas of knowledge that are necessary for the deduction of the Hukm to be made.

As for Al-Iftaa', then it is enough for the Mufti to know the Hukm Ash-Shar'iy for the issue that he has been asked about and even if he is not a Mujtahid in it.



## **The difference between Al-Iftaa' (provision of a verdict) and Al-Qadaa' (judging):**

The Iftaa' is the Mufti informing of the Hukm Ash-Shar'iy for the issue being enquired about to the one enquiring about it. That is whether he adheres to this Hukm or does not adhere to it. He could inform him of this Hukm in Daar ul-Iftaa' (the house of verdicts) as happens today or he could inform him of it in any other place.

That is whilst the Qadaa (judgment) is the informing of the Qaadi (judge) within the judiciary setting or session of the Hukm Ash-Shar'iy in a manner of compulsion for the purpose of applying this Hukm from the judge and upon the disputing parties or those who have committed violations, whether they are content with that Hukm (judgment) or not content with it. The Qadaa' (judging) is not implemented or effective except in the judiciary session like within the court room for example.

Example related to the giving of the Fatwaa:

It was related from Ahmad Bin Hanbal (rh) that Al-Hussein Bin Bashaar asked him about a Mas'alah in relation to At-Talaaq (divorce) and then he said: If he does that then he has broken an oath. And so Al-Hussein replied to him: O slave of Allah, verily a person has given me a Fatwaa that if he did that he would not break his oath. So he (Ahmad) said: You know the Halaqah of the Madaniyeen, a Halaqah Bi Rasaafah. So he said: He gave me the verdict, indeed he made it Halaal. He said: Yes.

## **Conditions of the Fatwaa**

If an incident or reality comes before the 'Aammiy (Muqallid) and he does not know the Hukm Ash-Shar'iy for it, then the Shaari' (Legislator) has directed him to ask the 'Ulamaa (people of knowledge). Allah (swt) said:

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ

*So ask the people of the scripture if you do not know (An-Nabl 43).*

And the Mufti is from amongst the Ahlu-dh-Dhikr (people of knowledge of the texts).

From amongst the conditions (Shuroot) of the Mufti are:

1 – That he is a Faqeeh and knowledgeable of a host of Ahkaam Ash-Shar’iyah and had studied the wide spread statements of the Madhaahib whilst it is not a condition for him to be a Mujtahid.

2 – That he provides the Hukm for the Mas’alah (issue or question) that has been presented before him and he approaches it seeking the Haqq without paying any regard to the Maqaasid (aims or intent) of the rulers.

3 – That he selects for the one seeking the Fatwaa from the opinions that he has chosen for himself. As such, he does not choose for himself that which is the easiest from amongst the opinions whilst selecting the most severe or hardest opinions for others to follow.

4 – That he provides the Hukm Ash-Shar’iy for the issue presented to him along with the Daleel that it is based upon and chooses the evidences that are the strongest in respect to indicating the Hukm.

5 – That the Mufti is of a level of Taqwaa and piety and adheres or restricts himself to the Ahkaam Ash-Shar’iyah. That is because the most despised in the sight of Allah are those who say that which they don’t do (ref: Soorah As-Saff Aayah 2-3).

6 – If the Mas’alah that he is being asked about is a matter of dispute or difference of opinion then the Mufti selects that which he believes preponderantly (Ghalab ‘Alaa Zhannihi) to be correct.

7 – The Mufti should take his time and not rush or be hasty. He should apply thought and contemplation, pondering over the matter, until he arrives to the Haqq (truth). Then if he is unable to arrive at that he should say: “Laa Adriy” (I don’t know). He should then guide the questioner to a person he believes has the knowledge of the Hukm for the Mas’alah.

8 – It is obligatory upon the Mufti to follow the Daleel Ash-Sahr'iy that leads to the correct Fatwaa in respect to Tahleel or Tahreem (permissibility or prohibition).

9 – It is permitted for the Muqallid to ask and seek a Fatwaa from someone of merit whilst there is someone who is better or of greater merit (preferable).

## Chapter Four

### At-Ta'aadul and At-Tarjeeh

#### In this chapter:

1 – At-Ta'aadul (equivalence): Its meaning, Ta'aadul (equivalence) of the two Qat'iys, Ta'aadul (equivalence) of the two Zhanniys and Ta'aadul (equivalence) of the Qat'iy and the Zhanniy.

2 – At-Tarjeeh (outweighing): Its meaning, the Hukm of using it and the Daleel for that.

3 – Working with both evidences, and even if from one aspect or angle, is more appropriate (Awlaa) than neglecting one of them.

4 - Conflict between two texts where one is later than the other and when it is not.

5 – Outweighing the analogies (Al-Aqyisah pl. of Qiyaas).

6 – At-Tarjeeh (outweighing) between the Dalaalat of the Lafzh (indications of the expressed wordings) within a single text.

## **At-Ta'aadul and At-Tarjeeh**

At-Ta'aadul and At-Tarjeeh arises from the perception of a conflict taking place amongst the evidences. In the case where the Adillah were to be in opposition with each other whilst some did not have a distinguishing feature or priority over the other, then this conflict if it arises is called "At-Ta'aadul" and this is contrary to the legislative reality.

If some of the evidences do have a distinguishing feature over other evidences, then the conflict in this case is called "At-Tarjeeh" and that is because the distinguishing factor (Al-Meezah) in one of the two evidences gives it strength over the other Daleel, in order to work with it. This Tarjeeh has taken place amongst the Zhanniy (indefinite) Shar'iyah texts.

### **At-Ta'aadul**

The meaning of At-Ta'aadul:

At-Ta'aadul is when two evidences are in conflict with each other in respect to a Hukm of a Mas'alah whilst there does not exist a distinguishing factor of one of them over the other (i.e. to be able to differentiate and outweigh one over the other).

At-Ta'aadul does not happen within the 'Tashree' (legislation) in the case where two evidences are equal in all circumstances, conditions and situations. That has not happened except in the case of An-Naskh (abrogation) and An-Naskh is not the same as At-Ta'aadul because it refers to the abrogation and nullification of the Hukm taken from a previous text with a new text, in the case where the Shar'iy requirement is to work with and take the latter text.

Consequently, the Ta'aadul (equivalence) of two Qat'iy evidences or two Zhanniy evidences is not a reality that takes place amongst the evidences. The Daleel for that is:

1 – If there was Ta'aadul in two definite (Qat'iy) evidences, then that would indicate the existence of certain knowledge ('Ilm Yaqeeniy) in

respect to a certain matter and the existence of another (different) certain knowledge within the same matter (at the same time). It is impossible to join and bring together a matter and its opposite at the same time and in the same situation, condition and place as each other. So for example, it could not be imagined that there would be a Daleel that comes establishing the existence of the Malaa'ikah (angels) and another evidence that denies their existence. This is something that the intellect and mind cannot accept (i.e. it is completely irrational) and is not established by the Shar'a.

2 – If At-Ta'aadul (equivalence) took place between two Zhanniy (indefinite) evidences from all angles or aspects. If the Mujtahid was to work with both of them, it would necessitate bringing together two evidences that negate one another, and if he was not to work with one of the two evidences then that would mean that the evidence came in the Shar'a without purpose or any point which is an impossible matter in respect to Allah Ta'Aalaa. In addition, if he was to work with one at the expense of the other without the existence of a Murajjih (something to outweigh one over the other) then his action would be representative of making the Deen based on desires which is not allowed in accordance to the Shar'a. Consequently, Ta'aadul does not exist between the evidences at all under any circumstances (Mutlaqan).

As for that which appears to be in conflict and appears to be Ta'aadul between the evidences initially, where the Mujtahid discovers a way to bring the two evidences together or outweigh one over the other, then this represents a reality within the Islamic legislation. It is not denied because its conclusion is the non-existence of At-Ta'aadul. The following are examples of this reality:

### **1 – The delusion of the existence of At-Ta'aadul between two Qat'iy evidences:**

Allah (swt) said:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ  
أَشْهُرٍ وَعَشْرًا

*And those who are taken in death among you and leave wives behind - they, [the wives, shall] wait four months and ten [days] (Al-Baqarah 234).*

And He Ta'Aalaa said:

وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ

*And for those who are pregnant, their term is until they give birth (At-Talaaq 4).*

- The two evidences are Qat'iy Ath-Thuboot and Qat'iy Ad-Dalaalah (definite in transmission and meaning).
- The first Aayah indicates that every woman whose husband passes away has a waiting period ('Iddah) of four months and ten days, whether she was pregnant or not pregnant.
- The second Aayah indicates that the waiting period of every pregnant woman lasts until she gives birth, whether her husband died or she was divorced.

The apparent conflict between the two evidences is:

- For the one whose husband has died whilst she is pregnant the first text dictates that her waiting period ('Iddah) is four months and ten days. That is because the Alfaazh (wordings) of the text are 'Aammah (general), encompassing the pregnant and non-pregnant.
- For the one whose husband has died whilst she is pregnant the second text dictates that her waiting period ('Iddah) is until she gives birth and that period of time could be as little as a single week or even less which means that her 'Iddah (waiting period or mourning) could well be less than the four months and ten days (mentioned in the first Aayah).

Consequently, the Hukm of Al-'Iddah in the first text conflicts with its Hukm in the second text in relation to the pregnant woman whose husband has died. Is her waiting period four months and ten days or until she has given birth?

- The conflict in these two Qat'iy (definite) texts is an apparent conflict (i.e. seems to be conflicting) and that is because as we have explained, there is no real conflict between two Qat'iy or two Zhanniy evidences of the same strength. It is therefore possible to remove this apparent conflict between the two texts by way of Al-Jam'u (bringing them together), At-Tawfeeq (reconciling) between them and by the Mukallaf working with or acting by them both.

- From amongst the paths of bringing together (Al-Jam'u) and reconciling (At-Tawfeeq) between the two texts discussed above is that the 'Iddah (waiting period) of the pregnant woman whose husband has died be in accordance to the furthest of the two times. So if she was to give birth before the passing of the four months and ten days following the death of her husband, she would continue to wait until the four months and ten days had been completed. If, on the other hand, the four months and ten days passes before she gives birth, she would wait until she gives birth for her 'Iddah to be completed. In this way what is included within both texts has been worked and acted in accordance with, whilst the conflict which was imagined to exist between them has been removed.

## **2 – The delusion of At-Ta'aadul between two Zhanni evidences:**

- It has been related that the Messenger of Allah (saw) did not accept the gift of one of the disbelievers after asking him if he had embraced Islaam. He said: No. So he (saw) said:

إِنِّي نُهَيْتُ عَنْ زَبْدِ الْمُشْرِكِينَ

**I have been forbidden from the gift of the polytheists**

(Ahmad, Abu Dawud and At-Tirmidhi who classified it as Saheeh)

- The Messenger of Allah (saw) accepted the gift of the Najaashiy (ruler of Abyssinia), Akeedar Douma and Al-Muqawqis (ruler of Egypt) and this was supported by the statement of 'Aa'ishah (ra): **“The Messenger (saw) used to accept the gift and place reward upon it”** (Ahmad, Al-Bukhaari, Abu Dawud and At-Tirmidhi.



- The two Hadeeth are Zhanniy and have come in respect to one Mas'alah, which is the acceptance of the gift of the disbeliever.
- The first Hadeeth indicates to the forbiddance of accepting the gift of the disbelievers.
- The second Hadeeth indicates the acceptance of the gift of the disbelievers like that of the ruler of Egypt Al-Muqawqis. In order to bring these two Hadeeth together (Al-Jam'u) we say:

The acceptance of the gift from the disbeliever is Mubaah apart from the one in whom you seek or desire to embrace Islaam, in which case it is Makrooh. That is because the Nahi (forbiddance) to accept the gift of the Mushrikeen is a non-decisive Nahi as it is not connected to a Qareenah indicating Al-Jazm (decisiveness). Its Hukm is therefore Makrooh and not Haraam.

Consequently, it is permitted to accept the gift of the Kaafir (disbeliever) and its acceptance is in working with the two evidences, because both the Makrooh and the Mubaah are permitted to do and punishment is not built upon them (as a consequence).

### **3 – The Ta'aadul of the Qat'iy and the Zhanniy:**

The Zhanniy (indefinite) conflicting with the Qat'iy (definite) can possibly happen. This means that it is possible for a Qat'iy text to be mentioned negating a command and a Zhanniy text to have been mentioned that affirms the command. In such a circumstance the Qat'iy text is taken because it has a distinguishing element that makes it stronger than the Zhanniy text. At that time the Zhanniy text is rejected in its Diraayah where the Diraayah refers to the understanding and the knowledge (Al-Fahm and Al-'Ilm). That means that it is rejected because the 'Ilm (knowledge) present within the Qat'iy text is Yaqeeniy (certain) whilst the 'Ilm (knowledge) within the Zhanniy text is not Yaqeeniy (certain) but rather it is "Zhanniy" and the Yaqeen outweighs the Zhann.

Example:

Allah (swt) said:

وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولًا

*And we were not to punish until We sent a messenger (Al-Israa' 15).*

And the Messenger of Allah (saw) said:

يُؤْتَى يَوْمَ الْقِيَامَةِ بِالْمَمْسُوحِ عَقْلًا وَبِالْهَالِكِ فِي الْفِتْرَةِ

**There will be brought on the Day of Judgment the one who is wiped mentally and the one who perished in the Fatrah (period of time)**

(Al-Hakeem, At-Tirmidhi, At-Tabaraani and Abu Na'em from Mu'aadh Ibn Jabal)

The Qat'iy Daleel (the Aayah) indicates that Allah will not punish on the Day of Judgement the one whom a message from Allah via the Messengers did not reach.

The Zhanniy Daleel (the Khabar Al-Aahaad Hadeeth) indicates that Allah punishes the one who perished from amongst the people of Al-Fatrah. The people of Al-Fatrah are those people who are found in the period (or age) occurring between the loss of a message and the coming of another message, and who were not reached by a Risaalah (message). There are in addition other Saheeh Ahaadeeth indicating that they will be punished on the Day of Judgment upon the basis of their Kufr (disbelief) and that their non-Mukallaf sons are alongside them in the fire.

This therefore presents a conflict between the Aayah which is a Daleel Qat'iy and the Prophetic Ahaadeeth which are representative of a Zhanniy Daleel. The scholars of Usool have placed down and set a principle for a conflict such as this: 'If the Qat'iy and Zhanniy are in conflict with each other in respect to the Hukm of a Mas'alah (issue), the Daleel Al-Qat'iy is taken and the Daleel Azh-Zhanniy is rejected in its Diraayah'.

Therefore, the verdict in relation to those whom a message from Allah did not reach, is that they are not punished on the Day of Judgement and that is because Allah (swt) said:

وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا

*And we were not to punish until We sent a messenger (Al-Israa' 15).*

The Zhanniy Daleel (the Hadeeth) is rejected in its Diraayah which means that it is rejected from the angle of its Dalaalah (meaning/import) in respect to the Hukm and not from the angle of its Riwaayah (report and transmission) because it is a Saheeh Hadeeth in respect to its Riwaayah.

## At-Tarjeeh (outweighing)

### The meaning of At-Tarjeeh:

Linguistically At-Tarjeeh means At-Tamyee (to incline) and At-Taghleeb (to be put before or above s.th.)

### At-Tarjeeh in the Istilaah of the Usooliyeen:

Giving strength to one of the two Daleels over the other in order to work with it due to the existence of a distinguishing factor within the Daleel Ar-Raajih (outweighing evidence).

Example of At-Tarjeeh:

- 'Aa'ishah (ra) and Umm Salamah (rah) related: **“That the Nabi (saw) used to awaken in a state of major impurity (Janaabah) after having engaged in sexual intercourse and not a wet dream and then fast (the fast of) Ramadan”** (Bidaayat ul-Mujtahid Wa Nihaayat ul-Muqtasid, Ibn Rushd Al-Qurtubi).

- He (saw) said:

مَنْ أَصْبَحَ جُنْبًا فَلَا صَوْمَ لَهُ

**Whoever awakes in a state of major impurity then there is no fasting for him**

(The two Sheikhs from Abu Hurairah (ra))

The first Hadeeth indicates that the Messenger of Allah (saw) used to have intimate relations in Ramadan before the rise of Fajr and remain in a state of major impurity (Janaabah) after the rising or start of Fajr, and then fast.

The second Hadeeth indicates that there is no fasting for the one who is in a state of major impurity (Janaabah) when Fajr comes.

At-Tarjeeh (the outweighing):

The first Hadeeth outweighs because its narrators are ‘Aa’ishah and Umm Salamah (rah) who were the wives of the Messenger of Allah (saw). They were therefore more aware of the actions of the Messenger of Allah (saw) in regards to that which is related to the marital life than the relator of the second Hadeeth (Abu Hurairah).

Therefore, the distinguishing factor or attribute that made the first Hadeeth stronger than the second Hadeeth is due to the narrator being more aware of the particular situation of the Nabi (saw) than the narrator of the second Hadeeth.

Another example:

- Abu Raafi’ related that the Nabi (saw) married Maymoonah whilst he was Halaal, meaning not in a state of Ihraam for Hajj, as recorded by Ahmad and At-Tirmidhi.

- Ibn ‘Abbaas (ra) narrated about the Nabi (saw) that he married Maymoonah whilst he was in a state of Ihraam in Sirf (name of place) as recorded by a collective (Jamaa’ah).

The Riwaayah (report) of Abu Raafi’ outweighs the Riwaayah of Ibn ‘Abbaas because Abu Raafi’ was the emissary between the Messenger (saw) and Maymoonah (ra).

This distinguishing attribute or factor makes his Hadeeth outweigh the Hadeeth of Ibn ‘Abbaas due to him being an active participant in the action that was mentioned in the Hadeeth.

## The Hukm of working with At-Tarjeeh

It has been confirmed that conflict amongst the Shar'iyah texts can happen and it has indeed happened between some of the texts. It is therefore necessary to outweigh one of the two evidences because the Hukm of Allah for a single issue is one. The Messenger of Allah (saw) and the Sahaabah (rah) after him worked with Tarjeeh and their Ijmaa' (consensus) has fallen upon working with At-Tarjeeh.

### Evidences for working with At-Tarjeeh:

There are evidences for working with At-Tarjeeh. They include both Shar'iy and 'Aqliy evidences.

#### Al-Adillah Ash-Shar'iyah:

1 – The Messenger's (saw) working with At-Tarjeeh.

Abu Hurairah (ra) said: **“The Nabi (saw) prayed Salaat ul-‘Asr with us and he made the Tasleem after two Rak’ah. Dhu-l-Yadain stood and said: Have you shortened the Salaah O Messenger of Allah or did you forget? And so he (saw) said: None of that happened. And so he said: Some of that had (taken place) O Messenger of Allah. So the Messenger turned towards the people and said: Did Dhu-l-Yadain speak the truth? They replied: Yes, O Messenger of Allah. So the Nabi (saw) completed what remained of the Salaah and then prostrated two prostrations whilst he was sitting after the Tasleem”** (Muslim). And it was added in a Riwaayah of the Hadeeth recorded by Abu Dawud: **“Abu Bakr and ‘Umar were amongst the people”**.

Therefore, the Messenger of Allah (saw) did not take the statement of Dhu-l-Yadain to begin with and then took it after the people supported or gave weight to it. This indicates that the Messenger (saw) gave weight to the second report that the people supported over the first report that Dhu-l-Yadayn was alone in presenting.

2 – Ijmaa' As-Sahaabah upon At-Tarjeeh:

It was related from Maalik that he said: “The grandmother approached Abu Bakr asking him about her inheritance. So Abu Bakr said: You do not have in the Kitaab of Allah ‘Azza Wa Jalla anything and I am not aware that you have anything in the Sunnah of the Messenger of Allah (saw). So return until I have asked the people. So Al-Mugheerah Bin Shu’bah said: She (i.e. the grandmother) attended the Messenger of Allah (saw) and he gave (or allocated for) her the sixth. So Abu Bakr asked: Do you have anyone to support that? So he said: Muhammad Bin Salamah. He then said the same as Al-Mugheerah. Abu Bakr then allocated it for her” (Al-Maalik in Al-Muwatta’).

Therefore, Abu Bakr gave weight to the report (Khabar) taking it after Muhammad Bin Salamah backed it up and then acted by it. None of the Sahaabah (rah) rebuked him for that and as such it represents an Ijmaa’.

Another example:

The outweighing of the Sahaabah of the Hadeeth of ‘Aa’ishah (ra) over the Hadeeth of Abu Hurairah (ra) in regards to the Messenger of Allah (saw) waking up in a state of Janaabah (major impurity) in Ramadan and then fasting. We have mentioned the two Hadeeth and the Tarjeeh between them previously in the section about At-Tarjeeh.

### **Ad-Daleel Al-‘Aqly (rational evidence) for At-Tarjeeh:**

If two Zhanniy evidences are in conflict and the Raajih (outweighing or stronger) one is not worked with, it means working with the Marjooh (outweighed or weaker) whilst outweighing the Marjooh (outweighed/weaker) over the Raajih (outweighing/stronger) is rationally not possible.

## Working with two evidences

**Working with two evidences, and even in one aspect is Awlaa (better or more appropriate than neglecting either one of them)**

The original situation is for there to be no real conflict between the Islamic Sharee'ah texts because this Sharee'ah is from Allah and He (swt) says:

أَفَلَا يَتَذَكَّرُونَ الْقُرْآنَ ۚ وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ  
اِخْتِلَافًا كَثِيرًا

*Then do they not reflect upon the Qur'an? If it had been from [any] other than Allah, they would have found within it much contradiction (An-Nisaa' 82).*

At-Ta'aarud (conflict) is included within the meaning of Al-Ikhtilaaf (difference or contradiction).

However, it appears to the person examining the Shar'iyah evidences at first glance that amongst some of them there is some conflict or opposition. For that reason, the scholars of Usool placed down and set principles in order to remove this imagined conflict. And that is by two methods:

- 1 – The method of outweighing (At-Tarjeeh) between the evidences.
- 2 – The method of making both evidences work and that is because utilising both evidences which appear to be in conflict with each other is Awlaa (more appropriate) than abandoning or neglecting one of them.

We have mentioned earlier an example of how to work with two conflicting evidences in respect to the 'Iddah (waiting or mourning period) of the woman whose husband has passed away whilst she is pregnant. That was discussed in the study under the heading: 'The delusion of At-Ta'aadul between two Qat'iy evidences'.

A further example:

The following speech of the Messenger of Allah (saw) was related in the Musnad of Ahmad Bin Hanbal:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

### Whoever changes his Deen then kill him

At-Tabaraaniy related that the Messenger of Allah (saw) came across a killed woman upon entering Makkah and so he said: “This one wasn’t to be fought” and it was related from him (saw) that he said:

نُهِيتُ عَنْ قَتْلِ النِّسْوَانِ

### I have been forbidden from killing the women

The first Hadeeth explains the Hukm (ruling) of the Murtadd (apostate), which is to kill, whether the apostate is a man or a woman. That is whilst the second Hadeeth forbids the killing of the women in general.

Consequently, a conflict appears to exist in respect to the Hukm of the female apostate, as the first Hadeeth commands that she be killed whilst the second forbids the killing of woman. So are both of these evidences which appear to be in conflict with each other worked with and utilised?

The answer: The subject area (Mawdoo’) of the two Hadeeth is different as the first relates to the Hukm of the Murtadd (apostate) whilst the second explains the Hukm of the woman who does not fight (in battle) and that Hukm is not to kill. The two evidences are therefore brought together in the case where the first Hadeeth is applied upon the killing of the apostate whether male or female whilst the second is applied upon the non-killing of the woman who does not fight during the war. That is whilst it is not said that the forbiddance from killing women encompasses the woman who changes (i.e. apostatizes) from her Deen and that is because of the difference of the subject area for each of the two evidences.

And due to evidences like this which are thought to be contrary to one another or conflicting the scholars of Usool placed down the Qaa’idah (principle): “Working with the two evidences – and even if



from one aspect – is Awlaa (better or more appropriate) than neglecting or abandoning one of them”.

Another example for the application of the principle:

Qais Bin Al-Haarith said: I became Muslim and I had 8 women (wives). So I went to the Nabi (saw) and mentioned that to him. So he said: **“Choose four from among them”** (Abu Dawud).

That is whilst it has been authenticated that the Messenger of Allah (saw) had been married to nine women at one single time as recorded by Al-Bukhaari.

The two Hadeeth appear to be contrary to one another and in conflict as the Messenger (saw) had nine wives at the same time whilst he commanded other than him to choose four wives alone.

The ‘Jam’u’ (bringing together) of the two evidences is as follows: The first Hadeeth is an address to the Muslims whilst the second Hadeeth is an address to the Messenger (saw).

### **The conflict between two texts with one being later than the other or not being later**

1 – Conflict between two texts with one of them being later (in the time of revelation) than the other:

If two texts are in conflict from every angle and it is not possible to bring them together (Al-Jam’u) (or reconcile them), in the case where they cannot both be acted upon together, whilst the later of the two texts (in terms of time of revelation) is known, then the later text would be Naasikh (abrogating) for the prior one (which would be Mansookh/abrogated).

Example:

Allah (swt) says:

وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِّنكُمْ ۖ  
 فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّىٰ يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ  
 اللَّهُ لَهُنَّ سَبِيلًا

*Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way (An-Nisaa' 15).*

And Allah Ta'Aalaa says:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

*The [unmarried] female fornicator and male fornicator, lash each one of them a hundred lashes (An-Noor 2).*

The two texts therefore appear to be in conflict in respect to the Zaaniyah (fornicator). The first explains that the Hukm of the Zaaniyah is for her to be confined within the house whilst the second explains that her Hukm (legal ruling) is for her to be lashed with one hundred lashes.

In the case where the Aayah in An-Noor was revealed after the Aayah of An-Nisaa' it means that the later Aayah of Soorah An-Noor abrogates the Hukm of the Aayah of Soorah An-Nisaa' which is prior to it (in revelation).

2 – Conflict between two texts in the absence of knowledge in respect to which one is later than the other:

If two texts are in conflict with each other and we did not know which of them is later than the other and we are unable to bring them together (Al-Jam'u), then we have to resort to the principles of At-Tarjeeh (outweighing) between the evidences so that we outweigh the strongest Daleel. The Quwwah Ad-Daleel (strength of the evidence) means its strength in respect to taking into consideration the following matters:

A – The consideration of the (ranking) order of the Adillah Al-Ijmaaliyah as follows:

- The Qur’aan Al-Kareem is stronger than the Sunnah An-Nabawiyah and even if it was Mutwaaatirah.
- The Ahaadeeth Al-Mutwaaatirah are stronger than the Ijmaa’ and stronger than the Khabar Al-Aahaad.
- Al-Ijmaa’ is stronger than the transmitted by Khabar Al-Aahaad because the Naskh (abrogation) in respect to Al-Ijmaa’ is ‘Ma’moon’ (Assured) in contrast to the Nass (text).
- Khabar Al-Aahaad is stronger than the Qiyaas where the ‘Illah that it is based upon is Istinbaatiyah (deduced) or Qiyaasiyah (made upon analogy). If the ‘Illah of the Qiyaas is Saraahah (explicit) or Dalaalah (implicit), then it is dealt with in accordance to the text that the ‘Illah was mentioned within (Note: i.e. if it was from the text of the Qur’aan then it carries the weight of the Qur’aan and so on).

B – Through the consideration of the Istidlaal (deduction) of the Zhanniy Daleel which is the Khabar Al-Aahaad like the Ahaadeeth As-Saheehah. The Tarjeeh (outweighing) in respect to them is from the angle of the Sanad (chain) or from the angle of the Matn (text).

**1 – Outweighing from the angle of the Sanad** i.e. from the angle of the narrators (Ruwaat) of the Hadeeth. This includes, for instance, that one of the narrators at the time of hearing the Hadeeth was closer to the Nabi (saw) than the other narrator.

Example:

- Abdullah Ibn ‘Umar (ra) narrated that the Messenger of Allah (saw) performed Hajj and did not make ‘Umrah in the Hijjat ul-Wadaa’ (farewell pilgrimage), as recorded by Muslim and Ahmad.
- Suraaqah Bin Maalik said: The Messenger of Allah (saw) combined (Qarina) in the Hijjat ul-Wadaa’ (Ahmad). Which means that he (saw) performed Hajj and ‘Umrah.

The narration (Riwaayah) of Ibn ‘Umar outweighs the other narration because he mentioned that he was under the camel of the Messenger of Allah (saw). For that reason, the narration of the performance of Hajj by itself outweighs his combination of the Hajj and the ‘Umrah in the farewell pilgrimage.

\* That one of the narrators is from amongst the wives of the Messenger of Allah (saw) within that which is related to marital life:

Example:

The narration of ‘Aa’ishah (ra) outweighs (i.e. viewed as stronger than) the narration of Abu Hurairah (ra) in respect to the Hukm of awakening in the state of Janaabah (major ritual impurity) whilst fasting as we explained previously in the section ‘The meaning of At-Tarjeeh’.

**2 – At-Tarjeeh (outweighing) between two evidences from the angle of the Matn** in the case where the Matn refers to the Nass (text) of the Daleel (evidence).

Therefore, a Daleel can outweigh another Daleel in terms of the strength of the Nass (text) of the Daleel and its Dalaalah (meaning and import) in relation to the Hukm. Principles in respect to this include:

\* The Daleel affirming the Hukm outweighs the Daleel negating the Hukm.

Example:

- Al-Bukhaari and Muslim related from Bilaal (ra) that the Nabi (saw) entered the Ka’bah and performed Salaah whilst Abu Dawud and Ahmad related from Usaamah Bin Zaid (ra) that he (saw) entered the Ka’bah but did not pray.

Here, the Khabar (report) of Bilaal (ra) outweighs the Khabar of Usaamah (ra) because the Khabar of Bilaal affirms the Hukm whilst

the Khabar of Usaamah negates its. That is because the Daleel Al-Muthbit (affirming evidence) for the Hukm outweighs the Daleel An-Naafi (negating evidence) of the Hukm.

\* That there is an addition in one of the two evidences upon the Daleel (evidence) of the other in which case the Daleel with the addition is taken.

Example:

- It was related that the Nabi (saw) made seven Takbeers in the 'Eid Salaah (Ahmad).

- It was related that the Messenger of Allah (saw) made Takbeer in the 'Eid prayer four times (Abdur Razzaaq) – It is Mawqoof upon Ibn Mas'ood (i.e. the chain stops at him).

The first Daleel outweighs the second because the first Daleel includes an addition or increase (Ziyaadah) upon the second Daleel.

The Mujtahid resorts to this outweighing when two evidences are equal in terms of strength from the angle of the Sanad (chain) i.e. from the direction or angle of the Ruwaat (narrators).

Another example:

- Ibn Mas'ood (ra) related that the Nabi (saw) said: "If one of you is forgetful in his Salaah, then he should investigate, and he should prostrate two Sajdahs" (Muslim).

- And he (saw) said: "Whoever has doubt in his Salaah then he should prostrate two Sajdahs after them and make Tasleem (i.e. say Salaam)" Abu Dawud.

The second Hadeeth outweighs the first due to the addition in the second which is the 'Salaam' after the two Sajdahs (prostrations).

\* Where one of the evidences establishes the Tahreem (prohibition) and the other establishes the Ibaahah (permissibility) or An-Nadb (recommendation) or Al-Wujoob (obligation). In this situation the

Daleel establishing the Tahreem outweighs (is stronger) and that is due to the Qawl (speech) of the Messenger of Allah (saw):

مَا اجْتَمَعَ الْحَلَالُ وَالْحَرَامُ إِلَّا غَلَبَ الْحَرَامُ الْحَلَالَ

**The Halaal and the Haraam do not meet except that the Haraam outweighs or dominates over the Halaal**

(Related by Abdur Razzaaq Maqoofan and Al-Bayhaqi classified it as Da'eef. Az-Zay'aliy the explainer of Al-Kanz mentioned that it is Marfoo'an i.e. the chain reaches the Nab (saw)).

And due to the statement of the Messenger (saw):

دَعُ مَا يَرِيْبُكَ إِلَى مَا لَا يَرِيْبُكَ

**Leave that which causes you doubt for that which does not cause you doubt**

\* That one of the two evidences establish Al-Wujoob (obligation) and the other establishes Al-Ibaahah (recommendation). The Daleel establishing the obligation outweighs the Daleel establishing Al-Ibaahah because leaving the Waajib is an 'Ithm' (sin) whilst leaving the Mubaah is not sinful.

\* That one of the two evidences negate Al-Hadd (prescribed set punishment) whilst the other Daleel affirms the Hadd. In this case the Daleel negating the Hadd outweighs the one affirming and that is due to the Qawl (speech) of the Messenger (saw):

ادْرَأُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ

**Avert the Hudood from the Muslims as much as you are able (At-Tirmidhi).**

And due to the Qawl of the Messenger (saw):

فَإِنَّ الْإِمَامَ أَنْ يُحْطِيَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يُحْطِيَ فِي الْعُقُوبَةِ

**For the Imaam to make an error in pardoning is better than him making an error in punishing (At-Tirmidh).**

Example:

It was narrated in Al-Muwatta' that 'Umar Ibn Al-Khattaab (ra) did not cut the hand of the thief in the year of the famine (or drought) even though Allah (swt) said:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ <sup>عَلِيمًا</sup>  
وَاللَّهُ عَزِيزٌ حَكِيمٌ

*[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise (Al-Maa'idah 38).*

\* This has been discussed in full in the subject of the 'Ijtihadaat of the Sahaabah' in the first part of this book.

## **Outweighing the Aqyisah (plural of Qiyaas) (i.e analogies)**

Al-Qiyaas is the joining of a matter to another matter within the Hukm Ash-Shar'iy due to the two matters being unified in respect to the (commonly shared) 'Illah (reasoning) in the case where the 'Illah represents the Baa'ith (reason/cause) for the Hukm.

Outweighing Qiyaas means outweighing a branch Hukm taken by way of Qiyaas upon another Hukm for the same branch also taken by way of another Qiyaas from another text.

## **Principles related to the Tarjeeh (outweighing) of Al-Aqyisah (analogies)**

Two Qiyaas(s) could conflict with each other in respect to the Hukm upon a reality where for instance the first Hukm deduced by Qiyaas

upon this reality is Waajib, whilst the second Hukm deduced also by Qiyaas from another text is Haraam. At such a time or circumstance the Mujtahid needs to outweigh one over the other.

From amongst the principles of outweighing the conflicting Aqyisah (analogies) are the following:

1 – If the two conflicting texts are equal (Mutasaawi) in respect to the ‘Illah in the case where the ‘Illah in each of them is of the same kind or type, like they were both Dalaalah (implicit) or both Saraahah (explicit) or Istinbaat (deduced) or Qiyaasiyah (analogised). If that is the case, then the two texts are treated or dealt with like the two conflicting texts as mentioned in the topic of ‘At-Tarjeeh’ and the conflict between two texts that we discussed above.

2 – If the two conflicting evidences are equal in terms of the Sanad (chain), which refers to the strength of the affirmation of the evidence from the angle of the narration or narrators, and was also equal in respect to the Matn, which refers to the Dalaalah (indicative meaning) of the text upon the Hukm, but the two evidences differed in respect to the ‘Ilal (plural of ‘Illah), then one of the evidences would outweigh the other in accordance to the strength of the ‘Illah found within the evidence.

The ‘Ilal (reasonings) in accordance to their strength are ranked from strongest to weakest as follows:

First is the ‘Illah that is mentioned Saraahah (explicitly), then Dalaalah (implicitly), then Istinbaatan (by deduction) and then Qiyaasiyan (by analogy).

The ‘Ilal are therefore outweighed in accordance to this order. As such, if the two texts are equal in respect to the Sanad (chain of transmission) and in respect to the Matn (the Dalaalah of the text) but are different in respect to the ‘Ilal, then one of the texts would outweigh another based upon the strength of the ‘Illah mentioned within it. Consequently, the Hukm that is deduced by Qiyaas from a Daleel in which its ‘Illah is mentioned Saraahah (explicitly) outweighs the Hukm which has been deduced by Qiyaas from another



conflicting Daleel in which the 'Illah has been deduced Istinbaatan or Qiyaasiyah.

Example:

Allah (swt) said:

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْحَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ  
اللَّهِ وَعَدُوَّكُمْ

*And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy (Al-Anfaal 60).*

By analogy (Qiyaas) upon the steeds of war it is obligatory to prepare weapons that strike fear or terror into the enemy in our current time and century. This includes sophisticated missiles and nuclear bombs amongst other modern weaponry. That is because of the Sareeh (explicit) 'Illah mentioned in the text which is 'Irhaab' (to strike fear or terror).

Allah (swt) says:

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ

*And if you punish [an enemy, O believers], punish with an equivalent of that with which you were punished with (An-Nabl 126).*

Based on analogy (Al-Qiyaas) upon the punishment mentioned in the Aayah it would be sufficient for us to prepare weaponry for war which is equal to the weaponry of the enemy. This is based on having made analogy of the war upon the punishment due to a perceived 'Illah that had been deduced (Istinbaat) based upon the resemblance between the war and the punishment.

Consequently, the Siffah (description) of weaponry required in the fighting of the enemy differs in the two Qiyaas's and the Hukm deduced by the first Qiyaas outweighs the Hukm that has been

deduced from the second Qiyaas. That is because the ‘Illah of the first text has come Dalaalatan (by implication) and this is manifested in the ‘terrifying or striking fear into the enemy’. That is whilst the ‘Illah in the second text has been deduced by way of deduction (Istinbaatan). It is Zhanniyah (speculative) and because it is opposing the ‘Illah that has been mentioned within the text it is rejected and not given consideration. As such, it is not permissible for the Muslims to adopt the thought of strategic balance between them and their enemies. That is because it is in opposition and contrary to what the first Daleel has mentioned in its text in addition to it being a dirty thought that has been exported by the disbelievers and disbelieving states, which they do not stick to whilst they demand that the Muslims stick to it, so that the Muslims remain in a position of weakness before them.

3 – As for the ‘Ilal (legal reasonings) that have been deduced by Istinbaat (deduction) or Qiyaasiyan (by analogy) then these could differ from one Mujtahid to another. So a Mujtahid could deduce an ‘Illah from a text which is contrary to the ‘Illah that another Mujtahid has deduced. As a consequence, there will be a conflict amongst the Ahkaam of the branch in line with the difference of the deduced ‘Illah. For example:

Allah (swt) said:

فَإِنْ أَنْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ

*Then if you perceive in them sound judgement, release their property to them (An-Nisaa’ 6).*

In relation to this Aayah they differed in respect to the ‘Illah of the Wilaayah (guardianship) over the girl. Abu Hanifah considered the ‘Illah of the guardianship to be young age (As-Sighar) and as such the guardianship ends at the time of the reaching or maturity (puberty). So if the girl reaches the age of maturity the guardianship of the Waliy (guardian) would fall from her and he permitted for her to marry without the Wali’s permission. As for Ash-Shaafi’iy, then he considered the ‘Illah to be Al-Bakaarah (virginity) and that this ‘Illah does not end unless the woman marries and becomes Thayyib (i.e.

married and no longer a virgin). For that reason, it is not permitted for her as long as she remains in a state prior to marriage to marry without the permission of her Waliy (guardian) whilst this guardianship over her would fall from her if she became married, whether she had reached the age of maturity or not.

### **Additional comment upon the two opinions of the two Imaams:**

If we were to have restricted ourselves to taking the Hukm from this Aayah alone then the opinion of Al-Imaam Abu Hanifah would have outweighed the opinion of Al-Imaam Ash-Shaafi'iy. That is because the word 'Ar-Rushd' mentioned in the text is explicit in that it is indicative of the Bulooagh (maturity) alone whilst it does not allude in any way to the meaning of virginity (Al-Bakaarah).

If, however, we were to refer back to all of the evidences related to the Waliy (guardian) and the mandatory powers and responsibilities that the Shar'a has provided him with, in relation to the contract of marriage, we would find that there is a place for the opinion of Al-Imaam Ash-Shaafi'iy (may Allah be pleased with them both).

### **The Tarjeeh (outweighing) between the Dalaalat (implications/indications) of the Alfaazh (worded expressions) within a single text**

There could be a Lafzh (wording) mentioned within the text that is open to more than one possible meaning. And so in this situation, which meaning should be taken?

Example:

Allah (swt) said:

وَأَقِيمُوا الصَّلَاةَ

*And establish the Salaah (An-Noor 56).*

The meaning of the Lafzh 'As-Salaah' according to the provision of the Arabs (i.e. meaning its linguistic meaning) is Ad-Du'aa

(supplication). Its meaning however in accordance to the Shar'a provision (i.e. its Shar'a meaning) is the specific actions that the Messenger of Allah (saw) explained and which begin with the Takbeerah of Al-Ihraam and ends with As-Salaam. And so which of the two meanings is intended within this Aayah?

The scholars of Usool have provided a Qaa'idah (principle) for this: It is that the Haqeeqah Al-Lughawiyah Ash-Shar'iyah outweighs the Haqeeqah Al-Lughawiyah Al-Wad'iyah (the linguistic Shar'iy meaning outweighs the linguistic provided meaning by those Arabs who set and put down the language originally). Consequently, the intended meaning of 'Establish the Salaah' is the Shar'iy meaning of As-Salaah. We have previously discussed the categories of the Haqeeqah when discussing the subject area of Arabic studies in the second part of the book, so please refer back to that for further detail.

The conflict between the Dalaalat (implications/indications/meanings) of the single Lafzh (wording) within the text requires outweighing one Dalaalah over another.

The Dalaalat that a single Lafzh can potentially hold are the following:

1 – Al-Ishtiraak: This is when the Lafzh is one and the meanings are multiple or numerous (more than one) like the Lafzh 'Al-Qur'u' which can mean both At-Tuhr (purity from menstruation) and Al-Haid (menstruation).

2 – An-Naql (transference): This is when the Lafzh transfers from its linguistic meaning to its 'Urfiy (customary) or Shar'iy meaning.

3 – Al-Majaaz (metaphorical): This is when the Lafzh indicates a meaning other than the Haqeeqiy (literal) meaning that has been provided for it. That is due to a preventative Qareenah that prevents the literal meaning being intended.

4 – Al-Idmaar: This is where a Lafzh is concealed before the Lafzh that is present in the text in order to complete the meaning that the text came to express. This is like in the Qawl of Allah (swt):

## وَاسْأَلِ الْقَرْيَةَ الَّتِي كُنَّا فِيهَا

*And ask the town that we had been in (Al-Yousuf 82).*

What is intended in this Aayah of Soorah Yousuf is to ask the ‘people’ of the town.

5 – At-Takhsees (specification): This is where the Khaass (specific) Lafzh takes out or excludes some of the Afraad (individual elements) which are included in the Lafzh Al-‘Aamm (general worded expression) from the Hukm found in the Lafzh Al-‘Aamm to another Hukm.

So for instance the Lafzh (wording) ‘Ar-Rijal’ (men) specifies the Lafzh ‘An-Naas’ (people) and the Lafzh ‘Zaid’ specifies the Lafzh ‘Ar-Rijal’ (men).

In respect to these five Dalaalat, which the single Lafzh is capable of holding, the ‘Ulamaa of Usool have put down principles for outweighing between two or more of them if they occur or fall within a Shar’iy text. This is as follows:

The conflict between the five possibilities: ‘Al-Ishtiraak, An-Naql, Al-Majaaz, Al-Idmaar and At-Takhsees’, occurs upon ten faces (Awjuh) and the controlling principle is to take each one with what is prior to it. So the Naql is Raajih (i.e. it outweighs) over the Ishtiraak, the Idmaar and the Majaaz are equal and each of them is Raajih (outweighing) over both the Naql and the Ishtiraak, whilst the Takhsees is Raajih over the Idmaar, Al-Majaaz, An-Naql and Al-Ishtiraak.

The following practical examples makes this clear:

### **1 – An-Naql outweighs (Raajih) the Ishtiraak:**

Allah (swt) says:

وَأْتُوا الزَّكَاةَ

*And give the Zakaah (Al-Baqarah 43).*

The Lafzh ‘Az-Zakaah’ is open to the possibility of being Mushtarak (holding more than one meaning) between the meanings of An-Namaa’ (growth/increase) and the meaning reflected in the amount taken out from the Nisaab.

It is possible for it to have been provided initially in the language for growth/increase (An-Namaa’) which refers to the increase in wealth or property, then it was transferred to the Shar’iy meaning the Shar’a extracted amount (from the wealth that has reached the Nisaab). Here, the Naql (transferred) outweighs the Ishtiraak so that the meaning of the Aayah becomes: ‘Give from your wealth the amount that the Shar’a has explained to the one who has the right to it (or is deserving of it)’.

## **2 – Al-Idmaar is Raajih (outweighing) over the Ishtiraak:**

Allah (swt) said in Soorah Yousuf:

وَاسْأَلِ الْقَرْيَةَ الَّتِي كُنَّا فِيهَا

*And ask the people of the town that we had been in (Yousuf 82).*

The Lafzh ‘Al-Qaryah’ (town) is open to being Mushtarak (more than one meaning) between ‘Al-Ahl’ (people) and ‘Al-Abniyah’ (buildings/constructions) i.e. that the Lafzh indicates to one of these two meanings. It is possible for it to be a Haqeeqah (literal meaning) in respect to ‘Al-Abniyah’ however the Lafzh (wording) ‘Ahl’ has been concealed (Idmaar) before the Lafzh ‘Al-Qaryah’. Consequently, the Idmaar outweighs the Ishtiraak and the intended meaning of the Aayah is: Ask the ‘people’ of the town that we had been in.

It is also possible for the Lafzh ‘Al-Qaryah’ to have been used metaphorically (Majaaz) to indicate to the residents of the town and in that case the Majaaz would outweigh the Ishtiraak.

## **3 – The Majaaz (metaphoric) is Raajih (outweighing) over the Naql (transferred):**

Allah (swt) says:

إِنَّمَا الْمُشْرِكُونَ نَجَسٌ

*Verily, the Mushrikeen (polytheists) are Najas (impure) (At-Taubah 28).*

The Lafzh ‘Najas’ (impure) is open to being metaphorical (Majaaz) carrying a non-physical or moral impurity and it is possible to be transferred (Naql) from its linguistic meaning to its Shar’iy meaning referring to the Shar’iy Najaasah (impurity) that is purified from like the urine and blood for example.

The Majaaz (metaphorical) outweighs the Naql (transferred) and the impurity of the Mushrikeen is considered to mean the moral or non-physical impurity and not the sensed Shar’iy impurity. It is therefore permitted to eat with them, to make physical contact and to drink from their vessels without the need of purification.

### **Al-Haqeeqah and Al-Majaaz (Literal and metaphorical)**

If a Lafzh (wording) has been mentioned within a Shar’iy text and that Lafzh is open to the possibility of two meanings, where one is the Haqeeqah (literal) and the other the Majaaz (metaphorical), then the Haqeeqiy (literal) meaning outweighs the Majaaziy (metaphorical).

Example:

Allah (swt) says:

أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا

*Or you made contact with women and you find no water, then perform Tayammum (Al-Maa’idah 6).*

The Lafzh ‘Laamastum’ (made contact/touch) is open to two possible meanings; the first is the Haqeeqah which is the touch by the hand and the other is the Majaaz meaning which is sexual intercourse. As long as there is no Qareenah (linking indication or connotation) within the text to take or divert the meaning away from its Haqeeqiy (literal) meaning to the Majaaziy (metaphorical) meaning, then the Haqeeqiy outweighs the Majaaziy. Consequently, the touching of the foreign woman – as taken from the Aayah – breaks the Wudoo’. This was the opinion taken by Ash-Shaafi’iy however Al-Imaam Abu Haneefah took the Majaaziy meaning and considered the Lafzh ‘Laamastum’ to mean ‘Jaama’tum’ (had sexual intercourse). He supported his opinion with Ahaadeeth of the Messenger of Allah (saw) which explained that he touched his women (wives) and performed the Salaah without making Wudoo’ again after the touch or coming into physical contact.

As for the Haqeeqah (literal meaning), then Al-Haqeeqah Ash-Shar’iyah within the Shar’iyah texts outweighs the Haqeeqah Al-Lughawiyah (linguistic literal meaning) and the Haqeeqah Al-‘Urfiyah (customary literal meaning) as was mentioned within an example at the beginning of this subject area.

**The book ‘Al-Waadih Fee Usool ul-Fiqh’ with both of its parts was completed on the day of Jumu’ah on the 20<sup>th</sup> of the blessed month of Ramadhaan in the year 1411 Hijrah. So all praise belongs to Allah for His favour and blessings which helped me to complete it and prayers and peace be upon Muhammad His Nabi and seal of His Messengers, and upon the Prophet’s family and companions.**

Abu Sufyaan  
Muhammad Hussein Abdullah  
20<sup>th</sup> Ramadhaan 1411 AH  
Corresponding to 05/04/1991 CE  
Jordan.



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