

Laws of the Shari'ah and Their Categories

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We have come to know that 'Ilmul Usul studies the common elements in the process of deduction to derive laws of the Shari'ah, hence, it is necessary at the very outset to formulate a general concept of a law of the Shari'ah. 'Ilmul Usul pursues its derivation by defining the common elements in the process of deduction (Istinba-t)"A law of the Shari'ah is the

legislation originating from Allah Almighty to regulate the life of man.

The commands (al-Khitaba-t) of the Shari'ah contained in the Qur'an and the Sunnah bring out and reveal the laws but are not themselves the laws of the Shari'ah.

In the light of this explanation it is a mistake to define a law of the Shari'ah in the popular manner used by the earlier specialists on 'Ilmul Usul. They used to define it as the command (al-Khita-b) of the Shari'ah concerned with the actions of the Mukallafin (i.e. the legally responsible individuals) for the command reveals the laws and the laws are derived from the command.

In addition to that, the fact that a law of the Shari 'ah is not always concerned with the acts of Mukallafin it may concern their own selves or other things connected with them, as the objective of the laws of the Shari'ah is to regulate the life of man. Just as this objective is achieved by a command concerned with the acts of Mukallafin like "Pray" or "Fast" or "Do not drink wine", similarly it is achieved by the commands concerned with their own selves or with other things that are part of their life.

They are of the nature of the laws and commands which regulate the matrimonial relationship, on the basis of which a woman is deemed to be the wife of a man under certain specific conditions, or which regulate the relationship of ownership, on the basis of which an individual is deemed to be the owner of property under certain specific conditions. Now these laws are not concerned with the actions of legally responsible individuals. On the contrary, matrimony is a law of the Shari'ah concerned with their own lives, while ownership is a law connected with property.

It is best therefore that we change the accepted form of the definition of a law of the Shari'ah as mentioned above to state that a law of the Shari'ah is "The legislation originating from Allah to regulate the life of man, regardless of (the fact) whether it is connected with his actions or with his own self or with other things forming a part of his life".

DIVISION OF LAWS INTO POSITIVE (TAKLIFI) AND SITUATIONAL (WAZ'I)

In the light of the above we may divide the laws of the Shari'ah into two categories:

1. Those laws connected with the actions of man and regulating his conduct directly in the different spheres of his life -personal, devotional, matrimonial, economic, and political, that have been treated and regulated by the Shari'ah, like the prohibition from drinking wine, the obligation of offering prayers, the obligation of spending money on some categories of relatives, the permissibility of cultivating the land and the obligation on the ruler for dispensing justice. This is the category of positive laws (al-Ahka-m al-Taklifiyah).

2. Those laws of the Shari'ah that do not directly lay down regulations for man in his actions or conduct. This covers every law dealing with a specific situation and having indirect influence on the conduct of man. It is of the nature of the laws that regulate the matrimonial relationship. These laws deal specifically with a specific relationship between a man and a woman and influence their conduct indirectly and direct, that a woman, after becoming a wife, has to conduct herself in a specific manner vis-à-vis her husband. This category of laws is known as the situational laws (al-Ahka-m al-Waz'iyah). The connection between the situational laws and the positive laws is very strong, since each and every situational law is accompanied by a positive law.

Thus matrimony is a situational law and is accompanied by positive laws, like the obligation on the husband of maintaining his wife and the obligation on the wife of obeying her husband under specific conditions. Similarly ownership is a situational law of the Shari'ah and is accompanied by formal laws of the nature of the prohibition on a non-owner to dispose of property without the consent of the owner, and so on.

SUBDIVISIONS OF POSITIVE LAWS

The positive laws, i.e. the laws concerned with the actions of man and regulating them directly are divided into the following five categories: 1. Obligatory (al-Wujub): This refers to those laws of the Shari'ah which direct towards the things with which they are connected to the degree of necessity, e.g. the obligation of prayer and the obligation on the leader of supporting the needy.

2. Recommendatory (al-Istihbab): This refers to those laws of the Shari'ah that direct towards the things with which they are connected to a degree below that of necessity. Thus these are always accompanied by the permission of the Almighty Law-giver to act contrary to it, e.g. the recommendation of Salat-ul-Layl, (midnight prayers).

3. Prohibitory (al-Hurmah): This refers to those laws of the Shari'ah that prevent the things

with which they are connected to the degree of necessity e.g. the prohibition of giving and taking interest (Riba), the prohibition of adultery and fornication and the prohibition of selling arms to the enemies of Islam etc.

4. Abominable (al-Kara-hah): This refers to those laws of the Shari'ah that prevent the things with which they are connected to a degree less than that of necessity. Hence abomination in the field of prevention is like recommendation in the field of direction, just as prohibition in the field of prevention is like obligation in the field of inducement. for example, breaking a promise is an abominable act.

5. Permissible (al-Iba-hah): This refers to the Law- giver's leaving the field open for the Mukallafin (the legally responsible persons) to do or not to do a permissible act. Accordingly the Mukallaf enjoys freedom in permissible actions; if he wishes he can do it and if he wishes .he can refrain from doing it