

## The Rules of the Faqih

Every science, such as grammar, physics, mathematics, etc., has general rules which are applicable to all cases under identical conditions. In grammar for example rules, the object is always in the accusative case, and the subject is always in the nominative case. So, we apply these two rules to all the nouns which are objects or subjects.

The science of *Fiqh*, which is the science of the Islamic laws and precepts, has also general rules and universal principles like other sciences. We apply these rules to define our religious duties in the subjects to which they can be applied.

We shall study, hereunder, some of the rules of the *Fiqh* to understand and apply them to their relevant subjects, so as to define our religious duties and whether they are performed correctly or incorrectly. So, the rule is a general precept which is applicable to identical cases: These rules are as below:

1. The rule of *At-Taharah*.
2. The rule of *Al-Faragh*.
3. The rule of *La Darara Wa La Dirar* [neither harm nor injury].
4. The rule of *Al-Istishab* (abiding by certainty)

### The Rule of Taharah

The Islamic Law is based on feasibility, on removing perplexities and distress from human life, so that man may have a feasible and easy life, away from harmful psychological states, such as the state of uncertainty and suspicion. One of the precepts which removes the state of perplexities, distress, and uncertainty, and erases doubt and suspicion from the hearts, is the rule of *Al-Taharah*, which says:

"Everything is *Tahir* [not to be *Najis*] until you know it to be *Beqadhir*<sup>1</sup> in itself."<sup>2</sup> That is, things which you suspect their being *Tahir*, are judged to be *Tahir*. So, when we doubt whether something is *Tahir* or not,

we are to regard it as *Tahir*, since originally things are *Tahir*, except what the Islamic *Shari'ah* judges says to be *Najis*.

Example: If somebody doubts whether his clothing, bed or anything else had become *Mutanajjis* [anything which is originally *Tahir*, but had been touched by a *Najasah* is called *Mutanajjis*] or not, or if he doubts whether an object is *Tahir* or *Najis*, he is to take it as *Tahir*, as long as his doubt is still there, and he is not sure of its being *Najis*. So, he can perform his *Salat* wearing the doubted clothes, or use any doubted article without judging it to be *Najis*.

## The Rule of Faragh

A man may perform a ritual act, such as the *Salat*, then, after completing it, doubt the correctness of his *Salat*; doubting, for example, whether he did or did not perform the *Ruku* [a basic part of the *Salat*] or whether he stood with his face or his back to the *Qiblah* [in the direction of Mecca] or whether he was *Tahir* or not during the *Salat*. In such cases he is to regard his *Salat* correct and need not repeat it, nor perform it later on as *Qada*.

The same rule is applicable to the *Wudu*, and or the *Ghusl*, after having performed them, one is not to doubt whether these were correctly done or not. One is to consider his *Wudu* or *Ghusl* as correct and need not repeat it. Therefore, the rule of the *Faragh* is: "Actions doubted after their completion, are deemed correct".

## The Rule of La Darara Wa La Dirar

Islam is a Divine Message which achieves for the people's interests and protects them against harm and corruption. This aim is found in the *Wajibs*: and the *Harams*, as well as in the Islamic rules, regulations, morals, manners, dealings, and teachings. The Prophet (s) had confirmed and explained this principle by saying: "*La Darara Wa La Dirar [Fil-Islam]*"<sup>3</sup>, i.e. neither harm nor injury is permitted in Islam.

The *Imam* Muhammad Al-Baqir (a.s.) narrated that: "Sumrah Ibn Jundub had a yielding date-palm in a farm. The house of Al-Ansari was built at the entrance of the farm, and Sumrah used to pass through it on his way to his palm-tree, without asking Al-Ansari's permission.

Al-Ansari talked to him, telling him to ask for his permission before entering, but Sumrah refused. So Al-Ansari came to the Messenger of Allah, complaining and telling him the story. The Messenger of Allah (s) summoned Samrah, informed him about Al-Ansari's complaint, and told him: "When you want to enter ask for permission". Samrah refused.

So the Prophet (s) asked him to sell the tree to Al-Ansari, and he offered him a price, and began increasing it until he reached a very high price, but the man continued to refuse. The Messenger of Allah (s) said: "If you give it up you will instead have a tree in Paradise." He still refused. At this point the

Messenger of Allah (s) told Al-Ansari: “Go, dig out the tree and throw it to him as there is neither harm nor injury” “*La Darara Wa La Dirar*”<sup>4</sup>

This narrative shows us how the Messenger of Allah (s) prevented Samrah from harming his neighbour and injuring [his feelings] by unexpectedly passing through his house without first getting his permission. So, the Messenger of Allah (s), prohibited him from inflicting harm and injury to his neighbour.

It also confirms that a man is not allowed to use his rights, or property, in such a way as to cause harm to others. This general rule greatly and legally contributes to the organization of the relations among the interests of the individuals and groups, so that nobody may be harmed or injured. From this rule we also infer a number of precepts connected to religious rituals, business deals, social relations, and individual duties. Some examples are given below:

1. We are exempted from duties enjoined upon us by Allah, if these are expected to cause harm to our health, wealth or life, which we could not endure, unless such duties are confined to defending Islam, the truth, and one's life, as in the *Jihad* and enjoining the right and forbidding the wrong.

We know that Allah, the Exalted, has ordered us to fast. But if fasting is harmful to a person's health, he would be exempted from it, and, instead, he is to offer a redemption. The *Wudu*, and the *Ghusl* for *Taharah* from *Hayd* [menses], or *Janabah* are *Wajib* (compulsory) on the *Mukallaf* for the purpose of performing the *Salat*. But if using water for the *Wudu* or the *Ghusl* is harmful to a particular person, whether it is harmful to his health, or whether difficulty arises in obtaining water, such as the water being too expensive and thus badly affecting his financial position. Here, he would be exempted from performing the *Wudu* or the *Ghusl*, replacing them by the *Tayammum*.

2. Another example showing prevention of harm to others is as follows: A man may dig an irrigation canal on his farm, drawing away a large quantity of water from a communal source, thus, causing a loss of water to other farms, which in return means damage to the crops. This procedure is *Haram* because it harms others. For he should only draw away enough water, so as not to cause harm to others.

3. Suppose there was a merchant in the market having a very large amount of money. If he sold his goods at a low price aiming at causing bankruptcy to other smaller merchants, his act would be *Haram*, because he has no right to allege that he is free to handle his property as he likes, and nobody has the right to prevent him from doing so, because such a procedure causes harm to others. This also applies to anyone else who misuses his rights in a harmful way to others, thus committing a *Haram*.

Hence we can understand that all legislations of the Islamic *Shari'ah* are for our benefit, because causing harm to oneself or to others is *Haram* in Islam, and is never allowed. Nobody is allowed to use his property, wealth or rights in a way causing harm to other people, as was explained by the Messenger of Allah (s) in the episode of Samrah Ibn Jundub and Al-Ansari.

The Prophet (s) prevented Samrah from passing to his property in a way injuring his neighbour. Seeing

him insist on passing, he forced him to abandon his property, preventing him from using it in a way causing harm to others.

## Al-Istihab (the seeking for a link)

### Al-Istishab (the seeking for a link<sup>5</sup>)

It is a *Shari* rule which has vast application in our daily life. Istishab means the judgment of the Islamic Legislator (*Shari*) to the *Mukallaf* to practically stick to whatever [state] he was certain of, then he became doubtful of the remaining of the state or condition.<sup>6</sup>

For example: If someone was certain that a certain land is usurped, then he doubted the disappearance of the state of usurpation, in this case he should keep to of remaining usurped, then refrain from using it.

Another example: If anyone was certain of the purity of his clothes, then he had doubt about that purity, he should adhere to the state of purity of his clothes. *Imam* Ja'far Al-Sadiq (a.s.) explained this rule by saying: "Whoever was certain of something, then he doubted it, he should keep to his certainty, as the doubt cannot invalidate certainty."<sup>7</sup>

## Discussion

Q1. If you doubted whether a *Najasah*, such as blood or urine, had fallen on your clothing, would your clothing be *Tahir* or *Najis*? State the rule on which you depended in answering this question.

Q2. State what the following rule is called: "Actions doubted after their completion are deemed correct."

Q3. Complete the following phrases:

a. "*Al Yaqin* is the knowledge of something in the proportion of ....."

b. "*Ash-Shakk* is the knowledge of something in the proportion of....."

c. *Az-Zann* is the knowledge of something in the proportion of....."

Q4. Relate to your friends the story of Samrah Ibn Jundub, explaining to them the Prophet's saying: "*La Darara Wa La Dirar*".

<sup>1</sup>. Qadhir in itself means: Najis in itself.

<sup>2</sup>. Quoted from the Imam Ja'far Ibn Muhammad As-Sadiq (a.s.)

<sup>3</sup>. A noble prophetic Hadith / Ibn Majah, vol.2, p. 784, No. 2340. Al-Kulayni in "Al-Kafi".

<sup>4</sup>. Al-Bihbudi, Sahihul-Kafi, 1st ed, vol. 2, p. 387

<sup>5</sup>. Ulama have different opinions about the rule of Istishab, whether it is a jurisprudential rule or one of the Usuli rules. And we have defined it as a scientific rule of the Shari'ah, regardless of its connection to either of the two fields of religion.

<sup>6</sup>. Al-Ma'alim Al-Jadidah Lil-Usul, Martyr Muhmmnad Baqir As Sadr p. 87.

<sup>7</sup>. Wasa'il-Shi'ah, Al-Hurrul-Amili, Bab Nawaqidil-Wudu", Vol. 1 , p. 176.

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