

## Concepts of Halal and Haram in Islam

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This document is divided into three sections. First of all, I define the concepts of *Ḥalāl and Ḥarām* in general then I specifically focus in the second section on the most commonly known area that is foods and drinks to shed light on the issue of what is permissible and what is not. However, I should stress in this context, that when we speak of Halal in Islam, we should also think of all other areas in life beyond eating and drinking. *Ḥalāl and Ḥarām* subject extends to all walks of life including but not limited to finance, relationships, clothing, medicine, cosmetics, tourism, art, entertainment, governance...etc., Simply put, Halal denotes the permissible and the right thing to do and Haram denotes the forbidden and wrong thing to do in all aspects and walks of life.

In the third section, I discuss the different Rulings in Islamic jurisprudence for those who want to expand their knowledge on the topic. This last section is mostly from my book, *Introduction to Islamic Jurisprudence & Its Principles*.

### A. Definition of *Ḥalāl and Ḥarām*

The terms *Ḥalāl* and *Ḥarām* indicate two important rulings in the Islamic jurisprudence (*fiqh*). *Ḥalāl* is also technically known as *mubāḥ* or *jā'iz* (permissible, lawful, licit and legal). When Allah gives Muslims the choice to do or not do something, this option is called *mubāḥ*. There is no reward for carrying out the action while there is no punishment for failing to execute it.<sup>1</sup> For instance, people can make different food choices and develop their personal tastes within the *Ḥalāl* diet itself. People are allowed to do many things for which they will not be held accountable. However, in cases of emergency or *iḍtirār*, a forbidden (*ḥarām*) act could become permissible (*mubāḥ*) in order to preserve human life which is of a higher priority.

*Ḥalāl*, or *Mubāḥ*, constitutes the largest area of Islamic law because it encompasses all human acts except for what Allah has highlighted as being bad, which must be avoided. One important Islamic jurisprudential maxim states, 'All acts are considered permissible unless communicated otherwise by Allah.' In order to consider an act permissible (*mubāḥ*), it should be either;

- Declared explicitly or implicitly as permissible by Allah,
- Be based on a Prophetic tradition (*Sunnah*),
- Or simply be permissible by default, common sense or customs.

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<sup>1</sup>Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, p.76.

The opposite of the permissible is *ḥarām*, (prohibited, unlawful or forbidden act) also known as *al-muḥarram* or *al-mahzūr*. An act is considered *ḥarām* when the prohibition is decisive (*ṭalab jāzīm*) and one who commits the act is considered a sinner. If the *ḥarām* action is avoided, the person will be rewarded. The injunction of prohibition (*taḥrīm*) uses the word *ḥarām* or a verb from the same derivation or other terms that,

- Denote prohibition,
- Communicate a clear command to avoid a certain conduct,
- Promise a punishment for disobeying.<sup>2</sup>

## **B. What is Halal and Pure food (Tayyib)?**

The Qur'an says, ***“They ask you what is lawful for them [to consume]. Say, “Lawful for you are (all) things that are good and pure [...]”***<sup>3</sup>

Food that is permissible for Muslims to consume is called "Halal" food. Most people in the West are familiar with the word "Kosher", but it is not totally the same thing. In general, as mentioned before, all food is halal except what is mentioned as haram in the primary sources of Islamic law – the Qur'an and the Sunnah. Therefore, it is easier to mention what is haram (unlawful) than to state all that is allowed to be consumed. However, there is sometimes some confusion over whether a certain product is haram or halal. This falls in the “Grey area” category that is known as ‘doubtful’, or *Mush'tabah*. The Messenger of Allah (peace be upon him.) said in this regard,

**“Halal is clear and Haram is clear. Between the two of them are doubtful matters which many people do not know of. Thus, whoever avoids doubtful matters keeps himself clear in his religion and honour. But whoever falls into doubtful matters will [eventually] fall into what is unlawful [...]”**<sup>4</sup>

### **What is Haram?**

As mentioned before, Haram items are very few relatively speaking. Allah says, **“Say Muhammad, I do not find in the Message sent to me by revelation any (meat) forbidden to be eaten by one who wishes to eat it, unless it is dead meat, or blood poured forth, or the flesh of swine - for it is an abomination - or what is impious, (meat) on which a name has been invoked other than Allah's.”** But (even so), if a person is forced by necessity, without willful

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<sup>2</sup>Zidān, *al-Wajīz*, p. 41.

<sup>3</sup>Qur'an, Chap. 5, V.4

<sup>4</sup>Related by al-Bukhari & Muslim

**disobedience, nor transgressing due limits, your Lord is Oft-Forgiving, Most Merciful”**.<sup>5</sup>

**“He has only forbidden for you dead meat, and blood, and the flesh of swine, and any (food) over which the name of other than Allah has been invoked. But if one is forced by necessity, without willful disobedience, nor transgressing due limits, then Allah is Oft-Forgiving, Most Merciful”**.<sup>6</sup>

**“He has only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name has been invoked besides Allah’s. But if one is forced by necessity, without willful disobedience, nor transgressing due limits, then is he guiltless. For Allah is Oft-Forgiving, Most Merciful”**.<sup>7</sup>

In short, most issues pertaining to Halal and Haram food are related to meat and how they are prepared from beginning to end. A brief description of each category of Haram food is as follows:

1. The meat of an animal that is not slaughtered by a Muslim or by the People of the Book in accordance to Mosaic Law is not permissible. Allah says, “Today, (all) good and pure things are made permissible for you. The food of the People of the Book is permissible for you and your food is permissible for them”.<sup>8</sup>

For instance, if a person who does not believe in God performs the slaughter, then the meat becomes prohibited for Muslims to consume.

The meat of an animal that dies before being slaughtered cannot be eaten by a Muslim because it is considered Carrion. All meats from dead animals are haram to consume.

2. Pork and anything derived from it such as bacon, lard, ham, and other pig by-products are prohibited. This means that any food that has ingredients such as gelatin and pepsin, or food, which was seasoned with pork or its derivatives, and any other food items having come into contact with pork or pork by-products, is unlawful to eat. Gelatin is usually made from the skin and bones of an animal. Gelatin itself is not prohibited - for example,

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<sup>5</sup> Qur’an, Chap.6, V. 145

<sup>6</sup> Qur’an, Chap.16, V. 115

<sup>7</sup> Qur’an, Chap.2, V. 173

<sup>8</sup> Qur’an, Chap.5, V. 5

In the Shī’ī fiqh, the term “*ta’ām*” in chap. 5, v. 5 is not interpreted as “food” in general; rather, based on the Hijāzi usage of the term, it refers to “grains and vegetables” only. Hence, the meat slaughtered by the People of the Book is not permissible at all.

halal gelatin from animals such as cow, sheep etc. slaughtered according to the religious requirement can be consumed. Any product such as marshmallows, capsules and Jell-O containing gelatin (which is neither kosher nor halal) cannot be consumed.

Since cheese requires enzymes, pepsin etc., which are derived from pork, only halal cheese can be consumed. Also, some brands of bread, cookies, doughnuts, cakes and other baked goods could contain lard. Therefore, its ingredients must be verified.

3. Meat of carnivores is haram (not permissible). Muslims can eat beef, chicken, pigeon, turkey, duck, lamb, goat, deer, and many similar animals, which do not consume meat and birds. The Prophet ﷺ forbade every beast having a fang and every bird having a talon.<sup>9</sup>
4. A food or a drink, which contains alcohol or alcoholic by-products, is haram. All wine, beer, liquor, and narcotics are unlawful for consumption whether in large or small amounts (even in cooking). In brief, any intoxicant whether a liquor or a drug is haram to consume.

Allah says, “Believers, intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination of Satan's handiwork: eschew such (abomination), that you may prosper”.<sup>10</sup>

5. Flowing blood and its derivatives are haram.<sup>11</sup>
6. Dead animals or birds that have died a natural death are haram. They are considered impure and thus not allowed to eat except in the case of dead fish unless it is proven medically harmful due to pollution or any kind of poisoning.
7. Foods that contain certain types of ingredients extracted from unlawful sources such as dead animals or pork are also haram. The Muslim must do his/her best to avoid anything suspicious and must investigate carefully about enzymes, lecithin, L-cysteine, mono and di-glycerides, shortenings, minerals, vitamins etc.,
8. Any halal food, which was not kept isolated from haram food and was contaminated, cannot be consumed. The Prophet (peace be upon him) said, “Abandon whatever puts

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<sup>9</sup> Related by Muslim and others.

<sup>10</sup> Qur'an, Chap.5, V.90

<sup>11</sup> Qur'an, Chap. 6, V.145

you in doubt for that which does not put you in doubt”.<sup>12</sup>

9. Meat or food, which was offered and dedicated to any god other than Allah. Allah says, “He has only forbidden you from dead meat, blood, the flesh of swine, and that on which any other name has been invoked besides that of Allah”<sup>13</sup>

This is the reason why Muslims must mention the name of Allah while slaughtering because it is an act of worship, regardless of whether it is a sacrifice or a routine act for meat consumption; All slaughter should be by the blessing of Allah who says, “Eat not of [meats] on which Allah’s name has not been pronounced: that would be impiety”.<sup>14</sup>

Most importantly, in addition to the above, any food that was stolen by any means or was purchased with stolen or unlawful money (obtained from gambling, cheating, fraud etc.) is haram to eat. The concept of lawful and unlawful is not just restricted on the substance and kind of food; it must also be gained through legitimate means whether through work, given as a gift, charity, or offered by family, friends or people.

### C. Rulings in Islamic Jurisprudence

Ruling in Islamic jurisprudence (*fiqh*) is called *ḥukm*, which linguistically derives from the verb *ḥakama*, which means ‘to judge or issue a verdict, prevent or stop someone from doing something’ (as it is related to *ḥikma* [wisdom]), and to *ḥakama* (a horse bridle for restraint).<sup>15</sup> There are three types of *ḥukm*: (1) intellectual ruling (*ḥukm ‘aqlī*), which is evident, natural, and never contradicts the divine injunctions and common sense; (2) habitual ruling (*ḥukm ‘ādī, tajrībī*), which is based on experience and the usual recurrences in life; and (3) legal ruling (*ḥukm shar‘ī*).

Technically, this is a divine communication concerning the actions of the *mukallaḥfīn* (individuals in full possession of their faculties): a demand (*ṭalab*), option (*takhyīr*), or enactment

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<sup>12</sup> Related by at-Tirmidhi and an-Nasa’ī

<sup>13</sup> Qur’an, Chap. 2, V. 173)

<sup>14</sup> Qur’an, Chap. 6, V. 121

<sup>15</sup> *Mukhtār al-Ṣiḥāḥ* (ح ك م), p. 141.

*Al-Mu’jam’ al-Wasīṭ*, Vol. 3, p. 190.

(*wadʿ*).<sup>16</sup> Thus, in Islamic law all legal rulings fall under two categories: *al-ḥukm al-taklīfī* (defining law) and *al-ḥukm al-waḍʿī* (declaratory law).<sup>17</sup>

The defining law (*al-ḥukm al-taklīfī*) defines rights and obligations. The Lawmaker communicates a demand (*ṭalab* or *iqṭidāʿ*) in the form of a command (*amr*) or prohibition (*nahy*), that requires the *mukallafīn*<sup>18</sup> either to perform an act or bring something into existence (*wujūd*) or to refrain from doing an act or remove something from existence (*ʿadam*). Under such demands come two major kinds of rulings: the ‘Do *افعل*’ acts (compulsory, obligatory, and recommended) and the ‘Don’t do *لا تفعل*’ acts (forbidden, prohibited, and detestable). The Lawmaker also communicates an option (*takhyīr*), which leaves the individual at liberty either to do or to avoid doing something.<sup>19</sup>

As for the declaratory law, in a concise manner we say that it is the law that regulates the proper implementation of defining laws by expanding on the conditions, exceptions, and qualifications thereof. It is defined as a communication from the Lawgiver concerning the *mukallaf’s* conduct (*mukallaf* is sing. *Mukallafīn*) of , which consists of an enactment (*wadʿ*). The latter is ‘neither a demand nor an option, but an objective exposition of the law which enacts something as a cause (*sabab*) or a condition (*shart*) of obtaining something else; or it may be conveyed in the form of a hindrance (*maniʿ*) that might operate as an obstacle against obtaining it’.<sup>20</sup> This law, also known as conditional injunctions, does not take into account human ability and the will to act, as in the case of proscribed injunctions. It arises as a consequence of another cause (*sabab*) such as timing, which is a consequential injunction to prayer<sup>21</sup>, or a condition (*shart*) such as ablutions (*wuḍūʿ*) for prayers, or a hindrance (*māniʿ*) such as murder for inheritance.

The defining law covers the following five categories: the Obligatory, the preferable, the Prohibited, the Abominable and the Permissible.

### 1.1 The Obligatory (*farḍ*, *wājib*)

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<sup>16</sup> *Irshād al-Fuḥūl*, p. 23.

Al-Khuḍari, *Uṣūl al-Fiqh*, p. 18.

Abū Zuhra, *Uṣūl al-Fiqh*, p. 27.

Kamali, *The Principles of Islamic Jurisprudence*, p. 321.

<sup>17</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, p.76.

<sup>18</sup> It derives from the word *taklīf* which means a duty, thereby making someone responsible. These faculties are: sanity, puberty, ability, knowledge and understanding...

<sup>19</sup> Abū Zuhra, *Uṣūl al-Fiqh*, p. 27.

*The Principles of Islamic Jurisprudence*, p. 323.

*Irshād al-Fuḥūl*, p. 23.

<sup>20</sup> *The Principles of Islamic Jurisprudence*, p. 321.

<sup>21</sup> Izzi Dien, *Islamic Law*, p. 99.

An act is obligatory and strongly required when the demand is decisive (*ṭalab jāzim*). A person who complies with it will be rewarded and commended, while one who disobeys will be punished.<sup>22</sup> For instance, the Lawmaker requires every Muslim to perform Salat (prescribed forms of prayer) five times a day, give alms (zakat), fast the month of Ramadan, perform hajj if possible, and be dutiful and kind to one's parents.

Although according to most of the jurists,<sup>23</sup> *farḍ* and *wājib* carry the same meaning, the Ḥanafīs, however, distinguish between the two. For them, when the Lawgiver's command to do an act is conveyed in a clear (*qaṭ'i al-dalālah*) and definitive text (*qaṭ'i al-thubūt*), such as the Qur'an and Sunna *mutawātirah*, then it is considered *farḍ*. But if the command is established in a speculative (*ẓannī*) manner, such as by a *āḥād Ḥadīth*, then it is considered *wājib*. Imam al-Ghazālī<sup>24</sup> rejected this position and defended the majority's stance that both *farḍ* and *wājib* are synonymous.

The compulsory (*farḍ*) is divided into different categories based upon various considerations:

**1.1.1 Responsibility:** Personal (*farḍ 'aynī*) and Collective (*farḍ kifā'ī*). The former includes all acts that should be performed by every able Muslim (*mukallaf*), such as the daily prayers and the good treatment of kith and kin, whereas the latter is a collective duty that, if done by some members of the community, absolves the others of undertaking it<sup>25</sup> (e.g., attending the deceased's funeral.) Similarly, many other social and educational duties are collective but become personal until someone comes forward and assumes responsibility for them (e.g., teaching, schooling, defending, and care giving).<sup>26</sup>

**1.1.2 Time limitation:** A *wājib* that is contingent on a time limit (*wājib muwaqqat*<sup>27</sup> or *wājib muqayyad*), such as the five daily prayers that must be performed at certain times of the day, or are absolute and free of any time limitation (*wājib muṭlaq*), such as the hajj, which can be performed whenever a person could afford it. Therefore, the performance (*adā'*) on time is part of the obligation; however, once it goes out of this time limitation it becomes (*qaḍā'*).

**1.1.2 Quantity:** Either a quantified *wājib* (*wājib muḥaddad*) or an unquantified *wājib* (*wājib ghayr muḥaddad*). There are many examples for the former, such as the number of prayers, the number of circumambulations around Ka'bah, and the percentage and weight for zakāt. The Lawgiver has

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<sup>22</sup> Zīdān, *al-Wajīz*, p. 31.

<sup>23</sup> Ibid., p. 24.

<sup>24</sup> Kamali, *The Principles of Islamic Jurisprudence*, p. 325.

<sup>25</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, pp. 111-2.

<sup>26</sup> Ibid., pp.126-9.

<sup>27</sup> The word *muwaqqat* derives from *waqt* which means time.

also specified many duties without specifying the numbers or weight (e.g., charity, looking after orphans and the needy, caring for humanity, benevolence, and dower [*mahr*] for marriage).

In terms of legal liability (*dhimma*), Imam al-Shāṭibī distinguishes between defined and undefined rights, whether for the obligatory rights related to Allah's rights upon the *mukallaf* (e.g., prayer, fasting, and hajj) or related to the rights of humans vis-à-vis others (e.g., debts, monetary obligations, advice, and dispute resolution). The defined rights are demanded from the *mukallaf* and make him liable to fulfill them, such as the price of purchased merchandise, the value of damaged goods, the exact amounts of zakāt, and the obligatory prayers. As for the second category, the *mukallaf* is required to do it but is not liable if he does not fulfill it.<sup>28</sup>

Scholars have mentioned a few more *wājib* considerations, and some of them will be mentioned indirectly later on.

## 1.2 The Preferable (*mandūb*)

An act is considered preferable or recommended (*mandūb*) when the demand is not decisive (*ṭalab ghayr jāzim*) or conveyed in a persuasive language, as opposed to a command per se,<sup>29</sup> for it is considered a recommendation, such as the Prophet's advice to get married or befriend pious companions. *Mandūb* is also known as the loved and praised (*mustaḥab*). The recommended acts are known as *sunan* (ways of the Prophet) or *nawāfil* (supererogatory deeds). The one who does *mandūb* act, such as visiting a sick person or fasting three days a month, is praised and rewarded; however, the one who abstains from those acts is neither blamed nor punished because they are not binding.

*Mandūb* is divided into many levels: (1) *Sunna mu'akkada*: An act that was demanded with a strong emphasis but without being made obligatory. Prophetic traditions and Muslim scholarship may use some indications that might give the impression that forsaking such acts is not encouraged or seen as a good thing to do. Under this category, we find the Prophet's supererogatory prayers that he did continuously (e.g., *witr*, *fajr*, and *rawātib*); (2) *qurubāt* (pl. of *qurba*): acts that the tradition highlighted as being means for drawing nearer to God (e.g., fasting on Mondays and Thursdays or three days every month); and (3) *sunan zawā'id*: acts done by the Prophet in the course of his daily life (e.g., his eating, walking, working, and sleeping habits). These acts are not required, but the Prophet is seen by many Muslims as a model to be followed in all spheres of life.

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<sup>28</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, pp. 111-2

<sup>29</sup> *The Principles of Islamic Jurisprudence*, p. 328.



In his *Kitāb al-Aḥkām* in *Al-Muwāfaqāt fī Uṣūl al-Sharīʿa*, Imam al-Shāṭibī says that if an action is partially *mandūb*, it could be wholly and collectively obligatory on the masses (e.g., the call to prayer [*adhān*] in the mosques, establishing congregational and 'Eid prayers, voluntary charities, marriage, *witr* and *fajr* prayers, *'umrah*, and all the supererogatory prayers) and partially recommended (*mandūb*) for individuals. But if such actions are to be forsaken collectively by everyone, then they become individual duties until they are performed by some. Al-Shāṭibī emphasizes, for instance, that although the *adhan* is not obligatory on individuals, it is one of the manifestations of an Islamic ritual that cannot be neglected. This also applies to congregational prayers and other actions. Partially such actions are not firmly required, but wholly and collectively they are obligatory.<sup>30</sup>

### 1.3 The Prohibited (*ḥarām*)

The prohibited or forbidden act is known as *al-Ḥarām* (or *al-muḥarram* or *al-mahzūr*). An act is considered *ḥarām* when the demand, which comes in the form of a prohibition, is decisive (*ṭalab jāzim*), and one who commits the act is considered a sinner and will be punished unless he/she is forgiven. If the *ḥarām* action is avoided, the person will be rewarded. The injunction of prohibition (*taḥrīm*) clearly states the word *ḥarām* (or a verb from the same derivation) or other prohibitory terms, communicating a clear command to avoid a certain form of conduct, promises a punishment, or clearly says it is unlawful or not permissible, and so on.<sup>31</sup>

According to the Hanafīs, if the Lawgiver's demand is based upon speculative (*ẓannī*) evidence, then it constitutes a *makrūh taḥrīmī* as opposed to a *ḥarām*.<sup>32</sup> This is usually applied on single narrations of *ḥadith* (*āḥād*) and not on injunctions from the Qur'an and Sunna *mutawātirah*. Obviously, this is based on the same methodology used by the Hanafīs to distinguish between *fard* and *wājib*.<sup>33</sup>

The prohibited is divided into two categories: *ḥarām li dhātih* and *ḥarām li ghayrih*. The first one is that which is forbidden for its own sake (e.g. eating pork, theft, murder, adultery, cheating, and lying) while the second one consists of that which is forbidden because of something else (e.g., making a business transaction during the Friday *jumu'a* prayer, for the Qur'an clearly forbids engaging in business at that particular time).

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<sup>30</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, p. 94.

<sup>31</sup> Zīdān, *al-Wajīz*, p. 41.

<sup>32</sup> Kamali, *The Principles of Islamic Jurisprudence*, p. 329.

<sup>33</sup> For more on the Hanafi position vis-à-vis single narrations (*khbar āḥād*) please see my book Introduction to Islamic Jurisprudence & Its principles, Part 2, Chapter 1, section A. (Categories of the Sunna).

## 1.4 The Abominable (*makrūh*)

An act is considered abominable (*makrūh*) when the demand to refrain from an action is not firm or is in strictly prohibitory terms. *Makrūh* is the exact opposite of *mandūb*, where the demand to do something is not revealed in a firm manner or strict terms. The one who abstains from a *makrūh* act is praised and rewarded, while the one who does it is neither punished nor blamed. For instance, although Islam allows divorce after exhausting all efforts to save the marriage, it still considers it a disliked thing.

Many scholars consider omitting something that the Lawgiver dislikes preferable to committing it, as it removes harm. This refers to a jurisprudential rule, “Removing harm takes precedence over bringing benefits” (*dar’u al-mafāsīd awlā min jalbi al-maṣāliḥ*).<sup>34</sup> The concept of *makrūh* has always been associated with the fear of God, asceticism (*zuhd*) and consciousness of the Devil’s plot. Very often, ascetics would stay away not only from abominable things, but also from permissible things out of fear of being led gradually to what is prohibited. A huge literature of ascetics and deep knowledge of *makrūhāt* (disliked things) developed over time, especially within the Sufi orders. One of the most notable works in this field is the work of Imam al-Ghazālī’s *Iḥyā’ ‘Ulūm al-Dīn* (The Revival of the Sciences of Religion).

We should note here that the kind of *makrūh* being discussed is *makrūh tanzīhī*, which is closer to the permissible (*mubāḥ*), and not the same as *makrūh taḥrīmī*, which the Hanafīs consider as being one step lower than *ḥarām* because it is not founded on any definitive textual proofs.

## 1.5 The Permissible (*mubāḥ*)

This one is also called *Ḥalāl* or *jā’iz*. If the Lawgiver’s communication gives the *mukallaf* the choice to do or not to do something, then the option is called *mubāḥ* and no reward or punishment is involved.<sup>35</sup> For instance, people can make different food choices and develop their personal taste within the *halal* diet itself. People are allowed to do many things for which they are not held responsible. However, permissibility (*ibāḥa*) could also involve allowing something that is considered forbidden so that life could be preserved, because it is of a higher priority.

*Mubāḥ* is the largest area of Islamic law because it encompasses all human acts except what the Lawgiver has highlighted as good to do or preserve, or bad to avoid doing or remove. One important Islamic jurisprudential maxim states, ‘All acts are considered permissible until a

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<sup>34</sup> Al-Zarqā, *Sharḥ al-Qawā’id al-Fiqhiyya*, (Rule # 29), p. 205.

<sup>35</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, p.76.

communication from the Lawgiver is made'.<sup>36</sup> In order to consider an act permissible (*mubāḥ*), it should be either declared explicitly or implicitly as permissible by the Lawgiver, be based on a Sunna, or be permissible by common sense or customs.

In his *Kitāb al-Aḥkām* in *al-Muwāfaqāt fī Uṣūl al-Sharī'a*, Imam al-Shāṭibī expands on the issue of permissibility and writes that *mubāḥ* could change to another level of legal rulings (e.g., *mandūb*, *wājib*, *makrūh*, and *ḥarām*) depending on how much performed actions are needed, demanded, or disliked. According to him, the permissible can be partially permissible but required wholly in either a recommended or an obligatory manner and partially permissible but wholly *makruh* or forbidden. He gives examples for the four levels where the *mukallaḥ* might go to the extreme as regards both excess and neglect.<sup>37</sup>

He goes on to report Imam al-Ghazālī as saying that doing *mubāḥ* continuously might lead to a minor sin and, by consequence, doing a minor sin continuously might lead to committing a major sin. This is why it was suggested: 'No minor sin with regularity'.<sup>38</sup>

In this context, scholars have analyzed the rulings of the means (*wasā'il*) and how they may lead to a result with a different ruling. As a consequence, they used an *uṣūlī* maxim related to *sadd al-dharī'a* (closing the means to evil), on which the jurist relies in his *fatwa* on many incidents based on what the *maṣlaḥa* requires. He also relies on it to extract general rulings under which many particulars fall, such as stating that 'the means take the same rulings as the objectives' (الوسائل لها حكم مقاصدها). This is a broad maxim from which many rules branch out such as: 'The permissible that leads to the forbidden is also forbidden', 'The permissible that leads to the abominable is also abominable', and 'The permissible that leads to the obligatory is also obligatory'. The jurists also refer to this as 'The means that cannot be avoided to achieve *wājib* are also *wājib*' (*mā lā yatimmu al-wājibu illā bihi fa huwa wājib* فَهُوَ وَاجِبٌ) and 'The permissible that leads to the recommended is also recommended'.<sup>39</sup>

In a nutshell, the legal rulings are divided into five major categories by every jurisprudential school except the Hanafis, who have added two more categories based on the degree of the text's validity. They can be summarized as obligatory (*farḍ* and *wājib*), recommended (*mandūb*), permissible (*mubāḥ*), abominable (*makrūh taḥrīmi* and *makrūh tanzīhi*), and prohibited (*ḥarām*)

The following table lists all the injunctions including the Ḥanafi additions with some examples for each category:

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<sup>36</sup> See (*Istishāb* under Disagreed upon sources) in Part 2, Chapter 1, Section B.

<sup>37</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, pp.92-3.

<sup>38</sup> Ibid., p. 93.

<sup>39</sup> Rouguī, Mohammed, *Nazariyyatu al-Taḥqīq al-Fiqhī wa Atharuhā fī Ikhtilāfi al-Fuqahā'*, pp. 58-9.

|                                     |   |
|-------------------------------------|---|
| <i>al-ḥukm al-sharʿī</i>            | Example   |
| <i>farḍ</i>                         | The five pillars of Islam and kindness to parents   |
| <i>wājib</i> (for Ḥanafīs)          | <i>Witr</i> prayer  |
| <i>Mandūb</i>                       | Praying between the <i>ʿisha</i> and <i>fajr</i> prayers, giving charity after Zakat, and fasting outside Ramadan |
| <i>mubāḥ</i>                        | Everything except what was forbidden or commanded by a text or an analogy   |
| <i>makrūh tanzīhi</i>               | Eating onions prior to going to the mosque  |
| <i>makrūh taḥrīmi</i> (for Ḥanafīs) | Smoking cigarettes  |
| <i>ḥarām</i>                        | Eating pork, stealing, killing, and looting   |

### A level of forgiveness and tolerance

Imam al-Shāṭibī also explores another level or category between *ḥalāl* and *ḥarām* called *al-ʿafw* (pardon and tolerance) as being apart from the five legal rulings without considering it a sixth legal ruling. His argument is as follows:<sup>40</sup>

- a) The five legal rulings are about the actions of the *mukallaḥ*, which carry intentions, whereas *al-ʿafw* is about unintentional actions.
- b) The many reports in the Qurʿan and the *Sunna* about this level, such as in the ḥadīth of *al-ʿafw* where the Prophet said,
 

**[Allah the Almighty has laid down religious duties, so do not neglect them. He has set boundaries, so do not overstep them. He has prohibited some things, so do not violate them; about some things He was silent-out of compassion for you, not forgetfulness, so seek not after them.]**<sup>41</sup>
- c) The recorded reports about Companions who used to avoid asking too many questions.
- d) Whenever the Prophet was asked about something that was not forbidden, he would say *ʿafw* or *al-ʿafw*. Allah allowed *ḥalāl* and forbade *ḥarām*, and whatever He kept silent over is the realm of forgiveness and pardon that is *ʿafw*.

<sup>40</sup> Al-Shāṭibī, *al-Muwāfaqāt*, Vol. 1, pp.115-9.

<sup>41</sup>Reported by al-Dāraqutnī (see *al-Muwāfaqāt*, Vol. 1 p. 115).

- e) The Qur'an's explicit usage of *forgiveness* and *pardon*, such as, 'Allah has forgiven you for what you allowed them'.<sup>42</sup>

The concept of forgiveness is clearly demonstrated in the *Sharī'a*, especially when a mistake happens in *ijtihād*. It was reported that the Prophet (P.b.u.h.) said, **'The worst Muslims in sin among all the Muslims are those who ask about something which was not forbidden on them but it became forbidden because of their questioning'**.<sup>43</sup> He also said, **'what I have forbidden on you, avoid; what I have ordered you [to do], do as much of it as you can. It was only their excessive questioning and their disagreeing with their prophets that destroyed those who were before you'**.<sup>44</sup> The Qur'an forbids such obsession with questions and details, **'O you who believe! Ask not of things, which, if they were made known unto you, would trouble you; but if you ask of them when the Qur'an is being revealed, they will be made known unto you. Allah pardons this, for Allah is Forgiving, Clement'**.<sup>45</sup>

This meaning of pardon often recurs in different areas of the *Sharī'a*; some are agreed upon and others are not, such as mistakes and forgetfulness. It is agreed upon that the *mukallaf's* mistake or forgetfulness is not considered sinful and that every action is forgiven, whether it is demanded to be done or to be avoided. The same thing can be said for the unconscious, the mentally ill, and menstruating women. Some areas of the *Sharī'a* are related to mistakes in *ijtihād*, to constraint (*ikrāh*), concessionary laws (*rukhaṣ*), and preponderance (*tarjīh*) between two contradicting proofs with no possibility of combining them. Others were not revealed at all (*maskūtu anuhu*).<sup>46</sup>

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<sup>42</sup> Qur'an, Chap. 9, V. 43.

<sup>43</sup> *Al-Muwāfaqāt*, p. 116.

<sup>44</sup> *Ibid.*,

<sup>45</sup> Qur'an, Chap. 5, V. 101

<sup>46</sup> *Al-Muwāfaqāt*, pp. 117-9.