

MID TERM ASSIGNMENT

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Assignment #4 write in detail about **Elements of commanded rule (Hukm Shar'i?)**

ANS:- (HUKUM SHARI (LAW OR VALUE OF SHARIAH))

INTRODUCTION

By discussing Hukm Shari, it raises a question that, what is Islamic law? The response deals with Islamic law as a system as well as individual rules. And the study of Hukm Shari tells us all rules may not create an obligation and some rules are to facilitate the operation of other rules.

MEANING:-

The Arabic word Hukm in its literal sense means a '**COMMAND**', and in its technical sense means a '**RULE**', so the legal rule is called Hukm Shari.

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DEFINITION

“A communication from Allah Almighty related to the acts of the subjects through a demand or option or a declaration”.

(ELEMENTS OF HUKUM SHARI)

Hukum Shari in its literal sense conveys the meaning of a rule of Islamic law, The elements of it are as under:-

- The Hakim (Lawgiver), which is Almighty Allah.
- The Mahkum Fih or the act on which Hukam operates.
- The Mahkum Alay or the subject (legal person) for whose conduct the Hukm is stipulated.

BRIEF EXPLANATION:-

A demand is usually communicated in the form of either a command or a prohibition. When a demand to do or not to do something is established by definitive proof, it is referred to as **WAJIB** or **HARAM**.

But according to the Hanafi jurists if the demand is not definitive in its meaning (*Dalalah*) or authenticity (*Thubut*), it is *Wajib*, but if it is definitive in both respects, it is *FARD*.

And for the demand to avoid doing something, the Hanafis maintain that if it is based on definitive proof and authenticity, it is *haram*, otherwise it is *Makruh Tahrimi*.

And when a demand leaves the individual with an element of choice it is known as *mandub* (recommended).

“TYPES OF HUKUM SHARI”

Hukm shar'i is divided into the two main varieties of al-hukm al-taklifi (defining law) and al-hukm alwad'I (declaratory law)

Hukm-taklifi (defining law) consists of a demand or an option, which mainly defines the extent of man's liberty of action And hukm-wadi (declaratory law) consists of an enactment only, mainly declares the legal relationship between the cause (sabab) and its effect (musabbab) or between the condition (shart) and its object (mashrut).

“ELEMENTS OF HUKM SHAR'I”

The Hukm Shar'I in its literal sense conveys the meaning of a rule of Islamic Law. It comes through the operation of its three elements (ARKAN)

- The Hakim (lawgiver),the true source from the which Hukm originates, the original source for Islamic law is Hakim or the Law giver ,that is, Allah Almighty.
- The Mahk`um Fih or the act on which the Hukm operates, Also called the mahkm Bih.
- The Mahkum Alayh or the subject (legal person) for whose conduct the Hukm is stipulated.

Meaning of Hukm Shar'i or meaning of Islamic law

- The Arabic word Hukm in its literal sense means a command .in its technical sense its means a "rule", this may be a rule of any kind.
- The Muslims jurists give us definition Hukm Shar'i as

“A communication from Allah, the Exalted, related to acts of the subject through demand or option or through a declaration”

1. DEFINING LAW AL-HUKAM AL-TAKLIFI

Defining law is a locution or communication from the Lawgiver addressed to the *mukallaf* which consists of a demand or of an option; it occurs in the five varieties of as under:-

1. **Wajib**
2. **Mandub**
3. **Haram**
4. **Makruh**
5. **Mubah**

➤ **THE OBLIGATORY WAJIB FARD:-**

For the majority of Ulema, Wajib and Fard are synonymous and convey a demand in respect of doing something and omitting it leads to punishment. But Hanafis have drawn a distinction between wajib and fard.

Fard, when the command to do is a clear and definitive in text e.g. Salah and hajj, and wajib is if command to do something is in a speculative authority e.g. Ahad Hadith. For example reciting Surah Fateha in Salah.

A Muslim is bound to do acts in both, the difference as per Hanafi's is that who refuses to believe in binding nature of Farz becomes unbeliever and who refuses in case of Wajib becomes transgressor. But as per Imam Gazali and Shafi's, there is no difference between these two.

➤ **THE MANDUB RECOMMENDED:-**

Mandub denotes a demand to do something which is not binding. The complement of demand earns spiritual reward but no punishment for failure to perform. E.g. Charity

To illustrate Mandub as occurs in Quran; Qur'anic command which requires that giving and taking of period loans must be set down in writing (al-Baqarah, 2:282). In the Hadith which provides;

“Whoever makes an ablution for the Friday prayers, it is good, but if he takes a bath, it is better”.

➤ **THE HARAM FORBIDDEN:-**

For majority of Ulema, Haram is a binding command of abandoning something, and committing haram is punishable and omitting is rewarded.

➤ **THE HARAM FORBIDDEN:-**

But as per Hanafi's if Haram is in definitive proof it is Haram, And if founded in speculative proof, it is called Makruh Tahrimi not Haram. The two differs as in case of wilful denial of Haram leads to infidelity and not in case of Makruh Tahrimi.

➤ **MAKRUH:-**

Makruh is a demand to avoid something, but not in strict prohibitory terms. It is opposite of Mandub, omitting is preferable than committing it. Example, Hadith; "The most abominable of permissible things in the sight of God is divorce".

➤ **THE MUBAH PERMISSIBLE:-**

Mubah is a command which gives option to do or not to do. It may be in form of clear nass, or may state that certain act will not incur sin, e.g. in Quran; There is no blame on you if you make an offer of betrothal to a woman (al-Baqarah, 2:235).

2. DECLARATORY LAW (AL-HUKM AL-WADI:-

Declaratory law is defined as communication from the Lawgiver which enacts something into a cause (sabab), a condition (shart) or a hindrance (mani) to something else. E.g. pilgrimage of hajj: 'Pilgrimage is a duty owed to God by people who can manage to make the journey' (Al-Imran 3:97)

A more explicit example of a declaratory law is the Hadith which provides that; "There is no nikah without two witnesses". The presence of two witnesses is thus rendered a condition for a valid marriage. Similarly, the Hadith which lays down the rule that "the killer shall not inherit", renders killing a hindrance to inheritance. There are five varieties of al-hukm al-wadi which are as under:-

1. Cause ((Sabab):-

A sabab is defined as an attribute which is evident and constant as the indicator of a hukm and its presence necessitates the presence of the hukm and its absence means that the hukm is also absent, e.g. murder and theft for *qisas* and a *hadd* penalty respectively.

2. Condition (Shart):-

A shart is defined as an evident and constant attribute whose absence necessitates the absence of the hukm but whose presence does not automatically bring about its object. For example the presence of a valid marriage is a precondition of divorce.

3. Hindrance (Mani):-

A mani` is defined as an act or an attribute whose presence either nullifies the hukm or the cause of the hukm. For example, difference of religion, and killing, are both obstacles to inheritance.

4. Strict Law and Concessionary Law (Azimah and Rukshah):-

A law, or hukm, is an azimah when it is in its primary and unabated rigour without reference to any circumstances which may soften its original force, for example, salah, zakah, the hajj, jihad, etc.

An *azimah* is the law in its normal state, and *rukhsah* embodies the exceptions, which brings the ease in difficult circumstances, e.g. concession to travelers to break Fast during Ramadan.

5. Valid, Irregular and Void(Sahih, Fasid, Balti)

These are Shari'ah values which describe and evaluate legal acts i.e. to evaluate an act according to the requirements (arkan) and conditions (sharut) of the Shariah.

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The ulema are in agreement to the effect that acts of devotion (ʿibadat) can either be valid or void, valid when they fulfill all the requirements and void when any of these is lacking or deficient.

The Hanafis have, however, distinguished an intermediate category between the valid and void, namely the fasid. When the deficiency affects an essential requirement (rukʿn), it is null and void, but if the deficiency only affects a condition, it is fasid but not void. The Hanafi approach to the fasid is on ground that the deficiency can often be removed and rectified.

“DISTINCTION BETWEEN HUKM TAKLIFI AND HUKM WADI”

- ❖ Hukm Taklifi aims to create an obligation, hukm wadi does not.
- ❖ Act affected by Hukm Taklifi is within authority of subject, and not in case of Hukm wadi.
- ❖ But it is pertinent to note here that Hukm Taklifi and Wadi are not necessarily always stated separately e.g. QURANIC Hukam
- ❖ “The thief, male and female, cut off their hands”. Here Hukm is obligation cutting hands, the cause is theft (Sariqah), and thus both occurs in the same text.

THE END