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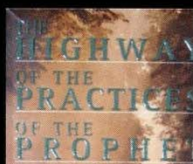


## THE WORLD HALAL FORUM 2008

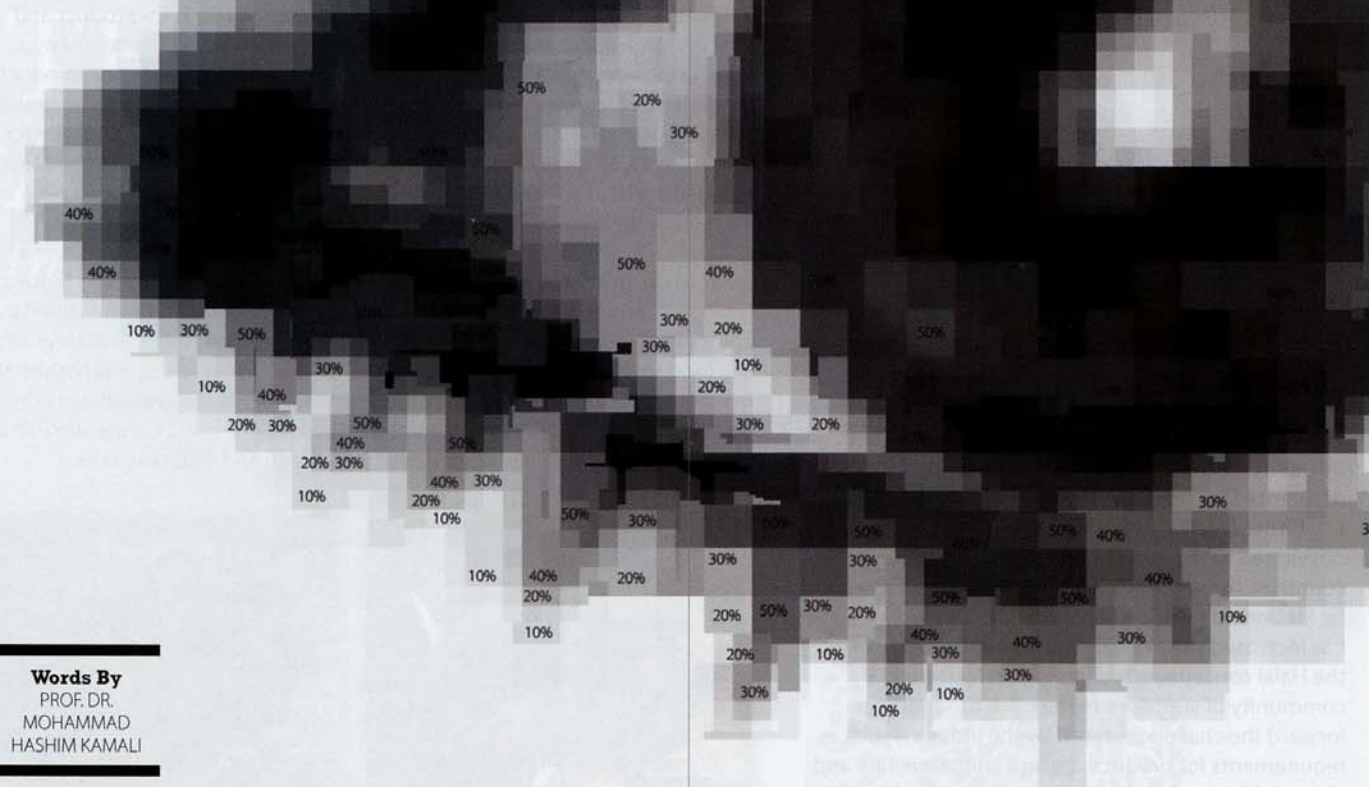
**SPECIAL REPORT**



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**+** **LIVING: THE THINK TANK CHRONICLE** |  
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Words By  
PROF. DR.  
MOHAMMAD  
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# Halal Industry within Islamic Principles: **A SHARI'AH PERSPECTIVE ON HALAL AND HARAM**

## Part 1: UNDERSTANDING THE PARAMETERS OF HALAL AND HARAM

The Halal industry is still in its early stages of development, and efforts to chart the way forward in compliance with Islamic principles are desirable and necessary. As with Islamic banking in the early years, this industry has also been largely driven by market demands and realities. It would be advisable to enrich the achievements of the Halal industry with research efforts that advance a better understanding of Islamic principles and the scientific knowledge relevant to our concerns. **PART ONE** begins with a review of evidence in the Qur'an and hadith on the Halal or *mubah*, and then proceeds to address the Haram. Parts 2 and 3 will cover the reprehensible (*makruh*) and the recommendable (*mandub*) respectively, as well as *fiqh* and the relationship between Islam and science.

**M**uslim jurists have discussed the source evidence and formulated guidelines to regulate the application of these value indicators to dietary substances. Halal and Haram are not black and white categories. There is a grey area known as *al-shubhat*, or doubtful matters that may occasionally call for fresh juristic enquiry and *ijtihad* as to their permissibility or otherwise. *Fiqh* works provide details over almost every known variety of animals, birds, insects, and so on.

### THE PERMISSIBLE (HALAL, ALSO MUBAH, JA'IZ)

**O**f the three Arabic words that appear in this heading, Halal and its derivatives occur more frequently in the Qur'an and hadith whereas *fiqh* literature is more inclined to employ *mubah* and *ja'iz*.<sup>1</sup> Halal may be defined as an act, object or conduct over which the individual has freedom of choice and its exercise does not carry either a reward or a punishment. Halal may have been identified by explicit evidence in the Shari'ah or by reference to the presumption of permissibility (*ibahah*) as explained below.

“O ye who believe! Forbid not the good things that Allah has made Halal for you.” (al-Ma'idah, 5:87) This outlook on Halal has enabled jurists to formulate guidelines, such as the following legal maxim: “permissibility is the basic norm in all things unless there be evidence to establish a prohibition.”

The scale of five values that is known to Islamic jurisprudence, namely the obligatory, recommended, permissible, reprehensible, and forbidden (*wajib*, *mandub*, *mubah*, *makruh* and *Haram* respectively) does not occur in the Qur'an or hadith.

The Qur'an may thus use the word Halal or its derivatives directly, or declare that 'there is no sin,' 'no liability,' 'no blame,' or that 'God will not take you to task' for such and such, all of which imply permissibility. This can also be said of the *makruh* and the *mandub*, for which a variety of expressions are employed in the Qur'an and hadith. Thus, when we read in these sources, expressions such as 'God does not love' such and such, or when an act is described as 'an abomination,' 'disliked' 'misguided' and so forth, it would indicate a *makruh*, and the opposite of such expressions may also imply a *mandub*.<sup>2</sup>

The textual guidelines on Halal suggest that no restrictions should be imposed on the basic freedom of

the individual and that the scope of prohibitions should not go beyond what has been determined by the text. The permissible, or Halal, has been left open.

The Qur'an states: "This day all things good and pure have been made lawful to you." (al-Ma'idah, 5:6); and "O mankind, eat of that which is lawful and wholesome in the earth," (al-Baqarah, 2:168 & 172); and then again: "O ye who believe! Forbid not the good things that Allah has made Halal for you." (al-Ma'idah, 5:87).

This outlook on Halal has enabled jurists to formulate guidelines, such as the following legal maxim: "permissibility is the basic norm in all things unless there be evidence to establish a prohibition."<sup>3</sup>

The principle of permissibility (*ibahah*) also means that freedom is the normative position of Shari'ah with regard to foodstuff, animals on land and in the sea, customary matters, commercial transactions and contracts.

All are permissible in the absence of a clear prohibition.

Muslim jurists have also held that any textual evidence which overrules the presumption of permissibility must be decisive in both

meaning and transmission simply because a Haram cannot be established on the basis of doubtful evidence, such as a weak hadith, or a Qur'anic verse that does not convey a clear meaning - in which case the subject would be governed by the norm of permissibility.<sup>4</sup>

The two main exceptions to *ibahah* are devotional matters (*'ibadat*), and sexual intercourse between a man and a woman who are not married.

The Malikis are the most liberal with regard to the permissibility of foodstuff from animal sources that may have been classified under *makruh* or even forbidden by the other schools. The Shafi'is, Hanafis, and the Ja'fari Shi'ah are moderate whereas the Hanbalis tend to be restrictive.

The Malikis permit all varieties of land and sea animals and birds, including the jallalah, or stray animals that feed on filth, and also birds of prey as well as ants, worms, and beetles to be permissible for human consumption. Most other schools have declared them as *makruh* if not *Haram*.<sup>5</sup>

There are three types of Halal/*mubah*. First, *mubah* that does not entail any harm to the individual whether he or she acts on it or not, such as travelling, hunting or walking in the fresh air; second, *mubah* whose commission does not harm the individual although it is essentially forbidden. This may include the consumption of carrion to save one's life.<sup>6</sup>

The third variety of *mubah* refers to conduct that Islam prohibited but which was committed before the advent of Islam or, with reference to converts, before they embraced the religion. For instance, wine-drinking was not prohibited until the Prophet's migration to Madinah, hence it fell under *mubah* until the revelation of the Qur'an verse which finally declared it forbidden (al-Ma'idah, 5:90).<sup>7</sup>

As al-Ghazali explains, it

is incorrect to apply *mubah* to the acts of a child, an insane person, or an animal, nor would it be correct to call the acts of God *mubah*. Acts and events that took place prior to the advent of Islam are not to be called *mubah* either.

*Mubah* has again been divided into three types:

1) Acts that are *mubah* for the individual but recommendable (*mandub*) for the community as a whole. Eating certain foods, such as vegetarian food, beef, mutton, and so on, is *mubah* for the individual, but it is *mandub* for the community as a whole to have them available in the marketplace.

2) Acts that are *mubah* for the individual but obligatory (*wajib*) for the community as a whole. Under normal circumstances, eating, drinking and marriage may be *mubah* for the individual, but to ensure their availability is a *wajib* for the community and its leadership. Similarly, it is *mubah* for the individual to choose his line of work and profession, but the community as a whole is under obligation to ensure the survival of certain types of industry and trade.

3) Acts that are *mubah* on an occasional basis but forbidden if pursued regularly. For example, an occasional use of harsh words on one's child is *mubah* but forbidden if practiced all the times, and *makruh* if practiced frequently.<sup>8</sup>

#### THE HARAM (FORBIDDEN)

**H**aram (also known as *mahzur*) may be defined as "all that which the Lawgiver (*al-shari'*) has prohibited in definitive terms, and its perpetrator is liable to a punishment in this world or the Hereafter."

Haram is thus an act, object, or conduct that is forbidden by evidence in the

Qur'an or hadith. Committing Haram is punishable and omitting it is rewarded. This is the position of the majority of *madhahib*. For Hanafis, if the source evidence in question is anything less than definitive in respect of both authenticity and meaning, the Haram is downgraded to *makruh tahrimi* (*makruh* close to Haram) and no longer Haram in the full sense. The two resemble one another in that committing either is punishable and omitting rewarded, but they differ in so far as a willful denial of the Haram incurs infidelity, which is not the case with regard to *makruh tahrimi*.<sup>9</sup>

The Qur'an provides the primary proof in respect of Haram, as the text itself declares: "He (Allah) has explained to you in detail what is forbidden to you" (al-An'am, 6:119), which means that a vague and inconclusive text is not enough to establish a Haram.

With regard to prohibited food, for instance, the Qur'an has specified ten items, namely "carrion, blood, the flesh of swine, the animal slaughtered in any name other than Allah's, the animal which has either been strangled, killed by blows, has died of a fall, or by goring or devoured by a beast of prey" all of which are Haram. (al-Ma'idah, 5:3).<sup>10</sup>

The subject also occurs in two other verses which actually summarise the ten items into four (cf. al-An'am, 6:145 & al-Baqarah, 2:172) as the last six items are actually included in the category of carrion. Wine drinking has also been declared forbidden (5:90). This is the sum total of clear prohibitions found in the Qur'an. As for the rest, it is ordained: "And do not utter falsehoods by letting your tongues declare: this is Halal and that is Haram, thus fabricating lies against God." (al-Nahl, 16:116)

All other foodstuffs, animals of land and sea, harmful or

unclean substances and so on, which are discussed in the *fiqh* manuals are subject to disagreement due mainly to the different perceptions of jurists concerning 'the grounds of Haram' as I elaborate below.

Although the hadith plays a role in determining what is Haram, the scope is fairly limited. Salman al-Farisi narrated that the Prophet was asked a question about the wild ass, quails and curdled milk, and he gave the following response:

"Halal is that which God has permitted in His Book, and Haram is that which God has prohibited in His Book. As for what He has chosen to remain silent about, it is exonerated."<sup>11</sup>

Since there was no particular text in the Qur'an on the three items in question, they were consequently declared to be Halal.

There is thus little scope for anyone else, including the jurist, the *mujtahid* (one who exercise *ijtihad*), the *mufti* and the government authorities in the determination of Haram.

Haram is divided into two types: (a) Haram for its own sake (*Haram li-dhatih*), such as theft and murder, carrion, spilt blood, and so on, which are forbidden for their inherent enormity; and (b) Haram due to the presence of an extraneous factor (*Haram li-ghayrih*), such as sale which is used as a disguise for securing usury (*riba*).

A consequence of this distinction is that Haram for its own sake is null and void (*batil*) ab initio, whereas violation of a *Haram li-ghayrih* renders its subject matter into a

*fasid* (voidable) but not null and void, and a transaction over it may, according to the Hanafis, fulfill some of its legal consequences. Most schools do not recognise *fasid* as a separate category and would subsume the violations in question all under *batil*.

Haram for its own sake does not become permissible save in cases of dire necessity (*darurah*), such as imminent death from starvation. Haram due to extraneous factors becomes permissible in cases of manifest need and when it prevents hardship (*haraq*).

According to a legal maxim of *fiqh* "the means toward Haram also partakes in Haram."<sup>12</sup> If theft and murder are Haram, the means toward procuring them are also Haram, and if pig meat is Haram, trading, processing, exporting and promoting it also partake in the same.

The rules of Halal and Haram are applied equally to all. It would thus be unacceptable, outside the situations of dire necessity, to make concessions in favour of particular individuals and groups, localities, climatic conditions and the like.

Muslims may not relax the rules of Haram in their dealings with non-Muslims either, nor would it be valid to make concessions on the ground of common practice of something which is Haram.<sup>13</sup> Recourse to legal stratagems (*hiyal*) that seek to procure Haram under a different guise or name is also forbidden.<sup>14</sup>

Good intentions do not justify the Haram either: In response to the question whether a Haram act can be combined with one that is intended to seek closeness (*qurbah*) to God – such as giving stolen food, or the proceeds of *riba*, in charity – it is stated that the Haram overrides and suppresses the *qurbah*.

The Halal and Haram are not always self-evident nor clearly identified in the sources, and a gray area persists between them that falls under the rubric of doubtful matters (*al-shubhat*) which I shall separately address. But before that, I propose to explore the grounds of Haram (*asbab al-tahrim*) especially with reference to foodstuffs.

#### THE GROUNDS OF HARAM

Muslim jurists have identified four grounds of Haram in foodstuffs: manifest harm, intoxication, filth/natural repulsiveness, and encroachment on the rights of others:

**1) Manifest harm (*darar*)**  
Poisonous plants and flowers, snakes, scorpions, poisonous fish and arsenics are included in this category. Poison is forbidden for human consumption absolutely, according to the majority of the leading schools. However the Maliki and Hanbali schools have held that some quantities



# Good intentions do not justify the Haram.

The Halal and Haram are not always self-evident nor clearly identified in the sources, and a gray area persists between them that falls under the rubric of doubtful matters (*al-shubhat*).

of it may be used in medicine and treatment of disease.<sup>15</sup> This addition is generally agreeable as exceptional uses of poison are also covered under the subject of necessity (*darurah*).

Harmful substances also include objects that may be harmful, even if not poisonous, such as eating mud, charcoal, harmful plants and animals etc. The Shafi'i holds that these may not be Haram for someone who is not harmed by them, whereas the Hanbalis classify these objects under the category of reprehensible (*makruh*). Added to this is the proviso that identifying the harm in an object is not always self-evident and may need expert opinion.<sup>16</sup>

## 2) Intoxication

Intoxicants of all kind, including alcohol and all varieties of narcotics, whether liquid or solid are forbidden on the basis of clear textual mandates of the Qur'an (al-Ma'idah, 5:90), and the hadith which declares that

"every intoxicant is like *khamr* and all *khamr* is Haram."<sup>17</sup>

Since this is a Haram for its own sake (*Haram li-dhatihi*), it is prohibited regardless of the quantity used, whether by itself or mixed with other substances and diluted, unless the mixture is such that alters the nature of the substance and it is no longer intoxicant – such as when wine turns into vinegar.

Alcohol may not be used in medicine at first recourse, as per general agreement of the leading schools, although they all allow for situations of absolute necessity when, for example, it is known for certain that alcohol or its derivatives provide a cure to a disease and no other alternative can be found.<sup>18</sup>

## 3) Filth, Impurity and Natural Revulsion (*najas, rijs, khaba'ith, mustaqdharat*)

These are either identified as carrion, spilt blood, pig meat etc., (Q: 6, 145), or when people of sound nature consider them as such. It may be solid, liquid, animate or inanimate.

*Khabith* (pl. *khaba'ith*-revolting, impure), being the antonym of *tayyib* (pure,

clean) is a degree lower than both the *najas* and *rijs*. *Khaba'ith* accordingly subsumes predatory animals and birds as well as certain insects, such as lice and worms. They may not be *najas* in themselves, but they are subsumed, nevertheless, under the Qur'anic prohibition of *al-khaba'ith* (al-A'raf, 7:157).

Some substances are declared unclean because of the repulsion they invoke even if they are not filthy in themselves, such as human spit, mucous, sweat and semen, all of which are clean, but are declared non-Halal for consumption on grounds of their natural repulsion.

## 4) Unlawful acquisition

Forbidden foodstuffs and beverages also include unlawfully acquired property, such as stolen or usurped food and objects obtained through gambling, bribery, fraud and other unlawful means that are Haram in Shari'ah. This is the purport of the Qur'anic address to the believers to "devour not one another's properties wrongfully, unless it be through trading by your mutual consent" (4:29).<sup>19</sup> An exception is granted in this connection to certain individuals, such as one's parent and guardian, the *waqf* administrator, and one compelled by dire need and threat of starvation.

## CONCLUSION

Since the *ummah* is a unity in faith, it must remain open to learning from one another and appreciate their respective mores and cultural diversities within the wider context of the Islamic civilisation. If Islam can be characterised as diversity within unity, of sound *ikhtilaf* within the purview of *tawhid*, it is largely due to the unifying influence of the Qur'an, the exemplary teachings of the Prophet Muhammad p.b.u.h, and consensus on basic values.

Even though we speak of *tawhid* and unity in essential values, the Muslim world is not a monolithic entity and exhibits a great diversity in lifestyle and preferences for food varieties and cultural predilections that also have a bearing on comprehensive standardisation in the Halal industry.

Of the twin concepts of Halal and Haram, one can naturally expect greater levels of consensus on the Haram, which is binding, more than the Halal, which is essentially optional. Some aspects of the *mandub* and the *makruh* can also be coordinated in the interest of uniformity if one were to set in place an effective decision-making mechanism and a leading voice that inspires confidence in the industry and the Muslim masses at large.

## FOOTNOTES

<sup>1</sup> Paper presented at the World Halal Forum "Sustained Development through Investment and Integration," Kuala Lumpur, 12 May 2008.

<sup>2</sup> The reason for this diversity of terminology may be due to a degree of sensitivity that the Qur'an attaches to the subject and the message it conveys is that pronouncing the Halal and Haram is the prerogative only of God the Most High, as I shall elaborate. A slight difference in the meaning of these terms may also be relevant to note: whereas *mubah* and *ja'iz* refer to something over which the Shari'ah is totally neutral, Halal often implies a degree of purity in the context particularly of foodstuffs, and may as such imply preference that is not totally neutral.

<sup>3</sup> The Arabic expressions used for *mubah* are: *la ithma, la junaha, la ba'sa, la yu'akhdhukum Allah* etc.

<sup>4</sup> The Arabic version is: *al-aslu fi'l-ashya' al-ibahah hatta yadullu al-dalil 'ala al-tahrim*. Cf., Jalal al-Din al-Suyuti, *al-Ashbah wa'l-Nazair*, Beirut: Dar al-Kutub al-'Ilmiyyah, 1983/1403, 60. A legal maxim

normally consists of an abstract and epithetic statement of a *fiqh* position based on the overall reading of available evidence in the Qur'an and hadith. By way of explanation, al-Suyuti raises the question as to the permissibility for human consumption, for instance, of giraffe saying that the jurists have not taken no position on this and it is therefore Halal in the light of the said maxim and also the fact that giraffe is not a predatory animal. <sup>5</sup> Yusuf al-Qaradawi, *al-halalwa'l-haram fi'l-Islam*, 15<sup>th</sup> edn., Beirut: al-Maktab al-Islami, 1994/1415, 23; idem, *Bay' al-Murabahah li'l-amir bi'l-Shira*, 2<sup>nd</sup> edn., Cairo: Maktabah Wahbah, 1987/1407, 13. A sound or Sahih hadith is defined as a hadith with an unbroken *isnad* (chain of transmitters) all the way to the Prophet or a Companion, consisting of upright persons who possessed retentive memories and whose narration is not outlandish (*shadh*) and it is free of both obvious and subtle defects (*'ilal*). Cf., Mohammad Hashim Kamali, *A Textbook of Hadith Studies*, Leicester, U.K.: the Islamic Foundation, 2005, 139. <sup>6</sup> See for details, Wahbah al-Zuhaili, *al-Fiqh*

*al-Islami wa Adillatuh*, 3rd edn., Damascus: Dar al-Fikr, 1989/1409, vol.III, 510f.

<sup>7</sup> Cf., Kamali, *Islamic Jurisprudence*, 429.

<sup>8</sup> Id., 429.

<sup>9</sup> Abu Ishaq Ibrahim al-Shatibi, *al-Muwafaqat fi Usul al-Ahkam*, ed. Muhammad Hasanayn Makhluaf, Cairo: al-Matba'ah al-Salafiyyah 1920/1341, I, 140f;

Wahbah al-Zuhaili, *Usul al-Fiqh al-Islami*, Damascus: Dar al-Fikr, 1986/1406, 86.

<sup>10</sup> Cf., al-Qaradawi, *al-halalwa'l-haram*,

15; Muhammad 'Uthman Shabir,

*al-Qawa'id al-Kulliyah wa'l-Dawabit al-Fiqhiyyah fi'l-Shari'ah al-Islamiyyah*,

Amman: Dar al-Nafais, 2006/1426, 324;

Kamali, *Islamic Jurisprudence*, 421.

<sup>11</sup> The Qur'anic prohibition of pig meat

represents a continuation of the Judaic

tradition. Similarly the negative view

of the Islamic tradition toward dogs is

attributed to the fact that the canines

were often seen as carriers of rabies

and best kept at a safe distance.

<sup>12</sup> Ibn Majah al-Qazwini, ed. Muhammad

Fu'ad 'Abd al-Baqi, *Sunan Ibn Majah*,

Beirut: Dar al-Kutub al-'Ilmiyyah,

1987/1407, hadith No. 3367; al-

Qaradawi, *al-halalwa'l-haram*, 23.

<sup>13</sup> Cf., al-Qaradawi, *al-halalwa'l-haram*,

34; Shabir, *al-Qawa'id*, 324.

<sup>14</sup> Cf., al-Qaradawi, *al-halalwa'l-haram*, 37-38.

<sup>15</sup> Id., 34. Al-Qaradawi illustrates this

by say calling casino dance as a

form of art, or *riba* as profit.

<sup>16</sup> Cf. Wizarat al-Awqaf wa'l-Shu'un al-

Islamiyyah, *Al-Mawsu'ah al-fiqhiyyah*, 4<sup>th</sup>

edn., Kuwait, 1993/1414, Vol.V, 125.

<sup>17</sup> Id.

<sup>18</sup> Muslim, *Mukhtasar Sahih*

*Muslim*, p. 342, hadith 1262.

<sup>19</sup> Al-Kasani, *Bada'i*, V: 114; al-

Zuhaili, *al-Fiqh al-Islami*, III, 5.

<sup>20</sup> The substance of this is also conveyed in a

hadith: "It is forbidden to take the property

of a Muslim without his consent." See

Abu Bakr 'Abd al-Rahman b. al-Husayn

al-Bayhaqi, *al-Sunan al-Kubra*, ed. M. 'Abd

al-Qadir 'Ata, Makkah al-Mukarramah:

Maktabah Dar al-Baz, 1987/1407, Vol.VI,

100, hadith No. 11325. We also read in

another hadith "You and your property

both belong to your father." See Tabrizi,

*Mishkat*, Vol. II, hadith no. 3354.

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# Halal Industry within Islamic Principles: **A SHARI'AH PERSPECTIVE ON HALAL AND HARAM**

## Part 2: **REVISITING THE GREY AREA**



Muslim jurists have discussed the source evidence and formulated guidelines to regulate the application of the value indicators to dietary substances based on Islamic principles.

Let's recall Part 1 of this series, where we saw that Halal and Haram are not black-and-white categories. Part 2 therefore discusses the grey area known as Al-Shubhat, or doubtful matters that may occasionally call for fresh juristic enquiry and Ijtihad as to their permissibility. Fiqh works provide details for almost every known variety of animals, birds, insects, and so on.

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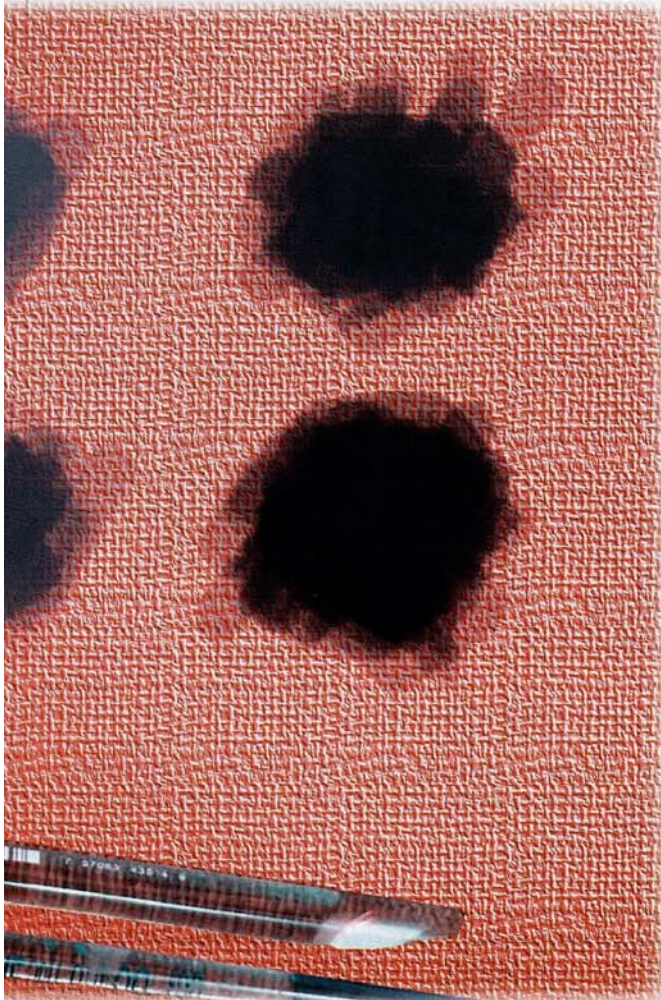
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### **DOUBTFUL MATTERS (AL-SHUBHAT, MASHBUH, MASHKUK)**

**T**hese are the intervening (and often undetermined) matters that fall between Halal and the Haram. Doubts may arise due mainly to two factors: Either the source evidence of Shariah is not free from doubt, or else its application to a particular subject or case is uncertain.

“in between them there are the doubtful matters which are not known to most people whether they are Halal or Haram. One who avoids them for the purity of one’s religion and honour would have saved oneself...”



The Qur’an itself has confirmed that some parts of it are inherently doubtful (*Mutashabihat* -- Al-Imran, 3:7). The Prophet *pbuh* has further acknowledged this in a long Hadith to the effect that Halal and Haram had been made clear from one another, but that “in between them there are the doubtful matters which are not known to most people whether they are Halal or Haram. One who

avoids them for the purity of one’s religion and honour would have saved oneself...”<sup>1</sup>

To avoid doubt, and to make an effort to stay clear of it, is thus conducive to piety and one’s good name and reputation. This much is indicated in the wording of the Hadith, which speaks of *absolution (Istibra’)*, and the course of action suggested in it indicates caution over doubtful matters.

The advice so conveyed partakes, in al-Qaradawi’s view, of the nature of “obstructing the means to an evil end (*Sadd al-Dhara’i’*), which is informed by certain insights into the health of one’s personality and character ....”<sup>2</sup>

In yet another Hadith, Muslims are instructed to “abandon that which is doubtful to you in favour of that which is clear of doubt.”<sup>3</sup>

Today, doubts arise about factory farming where animal remains are fed to other animals, and the use of hormones and antibiotics present difficulties in verifying whether meat is Halal. Factory practices may also fail the test of compatibility with the Islamic principle of compassion. Definitive answers to these questions need to be informed by scientific evidence.

The frequent incidence of BSE (“mad-cow disease”) in the West,<sup>4</sup> has also presented questions about feeding and rearing methods and the wholesomeness of meat. These are genuine doubts that merit investigation and research.

Yet I find somewhat restrictive the view that “Muslims are required to eat meat that is not only Halal but also *Tayyib*.”<sup>5</sup> The question posed here is whether Muslims should go a step beyond Halal in their choice of food — something that the *Fiqh* tradition does not stipulate. This demanding position can also amount to inflicting hardship on ordinary consumers who are not sufficiently informed about the food varieties they buy in the marketplace.

According to a legal maxim of *Fiqh*, “when the Halal and Haram are mixed up, the Haram prevails.”<sup>6</sup> In other words, when available evidence can imply both permissibility and prohibition, the latter prevails.

Confusion may thus arise due to the existence of two divergent Hadith reports, or

two conflicting analogies: One is prohibitive, the other permissive, and the former prevails over the latter.

The doubt that arises may be genuine (*Haqiqi*), such as ambiguity in the actual wording of a Hadith, or it may be relative and metaphorical (*Idafi*, and *Majazi*), and doubt arises in their application to a particular case. In all of these, an opportunity may arise for fresh interpretation and *Ijtihad*, which should be attempted and an effort made to secure that which is in the public interest and *Maslahah*.

Thus in cases of confusion between lawfully slaughtered meat and carrion, the prohibitive position prevails and consumption is consequently not recommended. Similarly in the case of confusion arising between revenues from *Riba* and from a lawful sale, one should exercise caution on the side of avoidance.

In the case of the hybrid breeding of animals, such as between a horse and a mule, the issue should be excluded from the Halal range. Most jurists would, however, take the mother’s side as the stronger indicator of permissibility: If the mother is Halal, the issue is also considered Halal.

Should there be a mixture of two varieties of food, one Halal and the other Haram, two situations may initially arise: Either the separation of the two parts is not feasible, such as when wine, blood or urine is mixed with water — then Haram prevails over Halal; or else the two parts can be separated, as when an insect or unclean substance falls on solidified butter — the object itself and its surrounding parts are removed and the rest becomes Halal.

However, if the mixture is of very small quantities that are hardly detectable and establishment of complete purity is not devoid of hardship,

such as the remains of small amounts of alcohol in cooking utensils in big hotels, the doubt in them may be overlooked but avoidance is preferable.<sup>7</sup>

#### THE REPREHENSIBLE (MAKRUH)

**M**akruh according to the majority of leading schools refers to an act, object, or conduct that should be avoided but whose perpetrator is not liable to punishment and does not incur moral blame.

The Hanafis are in agreement with the majority

According to the Hanafis, an act is Haram when it is decreed in definitive terms, but when there is an element of weakness in the prohibitive language of the Qur'an or Hadith, the matter falls under Makruh Tahrimi. For example, it is Makruh Tahrimi to make an offer of betrothal to a woman who is already betrothed to another man. The reason for this is that the Hadith proscribing this is a solitary (Ahad) Hadith, which is not altogether devoid of doubt in respect of authenticity.<sup>9</sup>

There is much disagreement among jurists about Makruh in foodstuff and other substances for

slaughtered and Halal animals have also been declared non-Halal. These include blood, the phallus, testicles, vagina, glands, gall bladder and bile, which are considered by the Hanafis to be Makruh Tahrimi due to the fact that the prohibitory Hadith text on them is a solitary Hadith that is not free of all doubt.<sup>12</sup>

The subject also falls under the Qur'an text that "he (the Prophet) forbids to them (Muslims) the Khaba'ith" (al-A'raf, 7: 157). But this verse is also a manifest text (Zahir) which is in the nature of probability. It is not certain, in other words, that the six items were actually meant to be

include rough handling (such as dragging the animal by its feet), abandoning the Tasmiyah (i.e. Bismillah) according to the Shafi'is and Malikis, slaughter in front of another animal, the use of bones and stones as cutting tools, cutting or skinning the animal before the complete exit of life, not facing the Qiblah, and citing the name of Muhammad next to that of Allah.

The Malikis do not stipulate facing the Qiblah as a requirement of slaughter due to the absence of textual evidence on this. The basis of this they say is a weak analogy that is drawn between Salah and slaughter.<sup>16</sup>



**Other instances of Makruh to be noted in conjunction with the rituals of slaughter include rough handling (such as dragging the animal by its feet), abandoning the Tasmiyah (i.e. Bismillah) according to the Shafi'is and Malikis, slaughter in front of another animal, the use of bones and stones as cutting tools, cutting or skinning the animal before the complete exit of life, not facing the Qiblah, and citing the name of Muhammad next to that of Allah.**

position in respect of only one of the two varieties of Makruh, namely Makruh for the sake of purity (Makruh Tanzih), but not with regard to what they classify as Makruh Tahrimi (Makruh closer to Haram), which does entail moral blame but not punishment.

The Madhahib are in agreement that one who avoids Makruh merits praise and gains closeness to God.<sup>8</sup> Makruh is the lowest degree of prohibition and, in this sense, it is used as a convenient category for matters that fall between the Halal and Haram (that is, matters that are definitely discouraged but where the evidence to establish them as Haram is less than certain).

The Hanafi category of Makruh Tanzih is subsumed under Mubah by the majority.

human consumption, but most include rotten meat that develops an offensive smell, water of a well in the midst of a graveyard, and unsupervised cattle and poultry that feed on impurities and filth such that changes of taste and smell in them may be detectable. The relevant Hadiths also include the milk of such animals.<sup>10</sup>

This impurity is, however, removed when animals are kept away from their dirty habitats for a number of days (three for poultry, four for sheep and goats, and ten for camels and cows). The preferred position of the majority of schools on this issue, however, departs from these specifications and merely advises isolation until the offensive signs and smells are no longer present.<sup>11</sup>

Certain organs of lawfully

included under the Khaba'ith.

The prohibitive view also holds these organs to be abhorrent to people of sound nature (al-Taba'i' al-Salimah).<sup>13</sup> The other three schools are less restrictive, but their preferred position also considers the organs in question to be Makruh.<sup>14</sup>

As for the use of rennet (Al-Infahah) from the stomach of cattle for use in fermenting and processing cheese, if it is taken from a lawfully slaughtered animal, it is Halal by consensus; but if taken from carrion, it is non-Halal according to the majority, but Halal according to the Hanafis on the ground of an analogy they draw between this and the milk of such an animal.<sup>15</sup>

Other instances of Makruh to be noted in conjunction with the rituals of slaughter

#### THE RECOMMENDED (MANDUB)

**M**andub (also known as Sunnah, Mustahab, Nafil)

denotes an act or conduct that the Shariah has recommended, but which is not binding. To comply with the Mandub earns one spiritual reward but no punishment is imposed for its neglect. Mandub is the opposite of Makruh, and this means that avoidance of Makruh amounts to Mandub.

Handling the slaughtered animal with clemency and care is Mandub, and rough handling is Makruh. To set up a charitable endowment (Waqf), attend to the sick, and honour one's neighbour and one's guest are all recommended.

If the Mandub is an act which the Prophet *pbuh* has performed on some occasions but omitted on others, it is called Sunnah, which is also of two types: It is emphatic Sunnah (Sunnah mu'Akkadah, also known as Sunnah al-Huda) if the Prophet has performed it regularly, or which he has strongly recommended, such as attending the congregational Salah, and calling out the

## Compared to Ikhtilaf, Tawhid is a much more prominent feature of Islam.

Since uniformity and standardisation bear greater affinity with Tawhid, to **promote standardisation in the Halal industry** is not only desirable but also eminently feasible.



Adhan preceding it.

To perform an act of merit, such as offering two units of Sunnah prior to the obligatory Salat al-Zuhr, or Salat al-Asr, or being generous in charity above the level of the obligatory Zakah are examples of supererogatory Sunnah, or Sunnah Ghayr mu'Akkadah. The schools of law have employed a variety of other expressions for Mandub, such as Tatawwu', Fadilah, Ihsan and Ragha'ib with finer distinctions that often consist of sound advice and cultural refinement.<sup>17</sup>

### CONCLUSION

Since the Ummah is a unity in faith, it must remain open to learning from one another and must appreciate the respective mores and cultural diversities within the wider unity of Islamic civilisation. If Islam can be characterised as diversity within unity, of sound Ikhtilaf within the purview of Tawhid, it is largely due to the unifying influence of the Qur'an, the exemplary teachings of the Prophet Muhammad *pbuh*, and a degree of consensus on basic values.

The Ummah also upholds a moral code of spiritual and legal dimensions that is grounded in the dual notions of Halal and Haram. Halal food, Halal trading and finance

are among the tangible manifestations of the shared values that give the Ummah its distinctive characteristics.

Compared to Ikhtilaf, Tawhid is a much more prominent feature of Islam. Since uniformity and standardisation bear greater affinity with Tawhid, to promote standardisation in the Halal industry is not only desirable but also eminently feasible. The purpose would naturally be better served if one aims at the common denominators of values, cultures and customs that can appeal to greater uniformity in trading practices, and Halal food and finance among Muslim countries and communities across the globe.

Standardisation in all the material aspects of the Halal industry should naturally take its cue from scriptural sources that constitute the basis of our efforts for uniformity and coordination throughout the Muslim world

The Fiqh discourse essentially elaborates the textual guidelines on Halal

and Haram, which also have devotional (Ta'abbudi) features that go beyond common rationality. One can promote uniformity in Halal standards with regard to the Halal or Mubah, and also the Makruh and the Mandub, by recourse to the principle of selection (Takhayyur) and single out among the various rulings of the Madhahib one that may be most suitable for that purpose.

As an accepted method of Islamic jurisprudence, Takhayyur is premised on the recognition that the leading schools of Islamic law have extended to one another and on the acceptance of one another as equally valid interpretations of the Shariah. Another method of selection, also known to Usul al-Fiqh, is the patching up (Talfiq) of certain aspects of the rulings of different schools or jurists with a view to amalgamating them in a single formula.

Talfiq differs from Takhayyur in that the latter selects the ruling as it is of a different Madhhab to one's

own, whereas Talfiq attempts to combine certain parts of different rulings/interpretation into a single formula for purposes of implementation.<sup>1</sup>

Standardisation in the Halal industry should also be informed by the approved mores and customs of Muslim communities. Since people's likes and dislikes in foodstuffs and marketing practices are influenced by a variety of factors, including climate, soil characteristics and even geographical proximity with other cultures, all of this may need to be taken into consideration in one's quest for standardisation in the Halal industry.

Nevertheless, levels of diversity and variation are not always self-evident and may need to be verified. Hence we need to enrich our efforts by research into the customary practices and predilections of countries and regions, as well as by setting in place consultative decision-making mechanisms that are duly informed by scientific and sociological research. **hij**

### FOOTNOTES

<sup>1</sup> Paper presented at the World Halal Forum "Sustained Development through Investment and Integration," Kuala Lumpur, 12 May 2008.

<sup>2</sup> Muslim, *Mukhtasar Sahih Muslim*, p. 253, Hadith No. 956.

<sup>3</sup> Al-Qaradawi, *al-Halal wa'l-Haram*, 37.

<sup>4</sup> Tabrizi, *Mishkat al-Masabih*, vol. II, p. 845, Hadith No. 4046.

<sup>5</sup> BSE stands for Bovine Spongiform Encephalopathy. See more on this in Richard .C. Foltz, *Animals in Islamic Tradition and Muslim Countries*, Oxford: Oneworld Publications, 2006, p118. Foltz thus informs us on the same page that "Middle Eastern countries now import much of their meat from places such as New Zealand and that factory farming

presents considerable difficulties in verifying whether meat is Halal."

<sup>6</sup> The view is attributed to Mazhar Hussaini, Director of North American Halal Foundation, quoted in Richard Foltz (see the previous note, p118.)

<sup>7</sup> The Arabic version reads "idha ijama' al-halal wa'l-haram, ghuliba al-haram." Cf., Shabir, *al-Qawa'id al-Fiqhiyyah*, p325. Interestingly enough, al-Qaradawi does not refer to this maxim in his brief discussion of "avoidance of the doubtful – ittiqa al-shubhat," which is perhaps not accidental, due to another line of evidence that advises taking that which is the easier course and brings facility and relief. This may why al-Qaradawi subsumes the issue under the rubric of *sadd al-dhara'i'*.

<sup>8</sup> Cf., Shabir, *al-Qawa'id al-*

*Kulliyah*, 326-328.

<sup>9</sup> See for details Muhammad Abu Zahrah, *Usul al-Fiqh*, Cairo: Dar al-Fikr al-Arabi, 1958/1366, 34; Kamali, *Islamic Jurisprudence*, 424.

<sup>10</sup> Cf., Kamali, *Islamic Jurisprudence*, 426.

<sup>11</sup> Thus according to one Hadith "The Prophet *pbuh* proscribed eating the flesh of a Jallalah camel," and according to another "The Prophet *pbuh* proscribed drinking the milk of a Jallalah." Both Hadiths are quoted in Sunan Daraqtuni and Sunan Abu Dawud respectively and quoted in *al-Mawsu'ah al-Fiqhiyyah of Kuwait*, V, 149.

<sup>12</sup> 'Ala al-Din al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, 2<sup>nd</sup> edn., Beirut: Dar al-Kutub al-Ilmiyyah, 1986/1406, V, 39-40; Ibn 'Abidin, *Hashiyah*, V, 194.

<sup>13</sup> Cf., Zuhaili, *Al-Fiqh al-Islami*, Vol.III, p.667.

<sup>14</sup> Cf., Wizarat al-Awqaf, *al-Mawsu'ah al-Fiqhiyyah*, V, 152.

<sup>15</sup> Id., V, 153.

<sup>16</sup> Id., V, 155.

<sup>17</sup> Cf., Ibn al-Rushd, *Bidayat al-Mujtahid*, Vol.I, p.329; Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, 3<sup>rd</sup> edn., Damascus: Dar al-Fikr, 1989/1409, Vol.III, p.663-664.

<sup>18</sup> See for details Kamali, *Islamic Jurisprudence*, 419f.

<sup>19</sup> See for details on *takhayyur* and *talfiq*, Mohammad Hashim Kamali, "Shari'ah and Civil Law: Toward a Methodology of Harmonisation," *Islamic Law and Society* 14(2007)391-421 at 406-411.