

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

Part 2: **REVISITING THE GREY AREA**



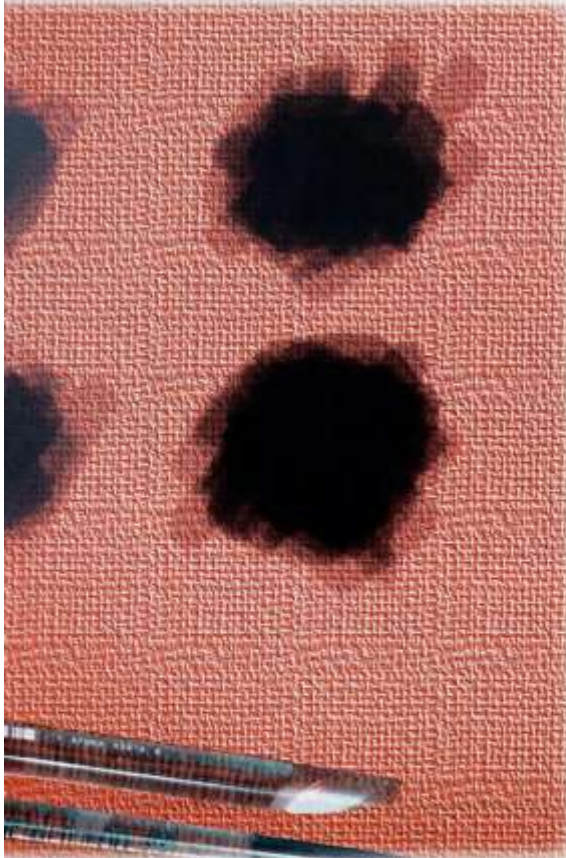
Muslim jurists have discussed the source evidence and formulated guidelines to regulate the application of the value indicators to dietary substances based on Islamic principles. Let's recall Part 1 of this series, where we saw that Halal and Haram are not black-and-white categories. Part 2 therefore 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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DOUBTFUL MATTERS (AL-SHUBHAT, MASHBUH, MASHKUK)

These 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...”¹

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 ...”²

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

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,⁴ 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*.”⁵ 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.”⁶ 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.⁷

THE REPREHENSIBLE (MAKRUH)

Makruh 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.⁹

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.¹²

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.¹⁶



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.⁸ 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.¹⁰

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.¹¹

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'at al-Salimah*).¹³ The other three schools are less restrictive, but their preferred position also considers the organs in question to be Makruh.¹⁴

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.¹⁵

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

THE RECOMMENDED (MANDUB)

Mandub (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

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 Ragh'aib with finer distinctions that often consist of sound advice and cultural refinement.¹⁷

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

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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.¹⁸

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. **■**

FOOTNOTES

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

² Muslim, *Mukhtasar Sahih Muslim*, p. 253, Hadith No. 956.

³ Al-Qaradawi, *al-Halal wa'l-Haram*, 37.

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

⁵ 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, p.118. 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."

⁶ The view is attributed to Mazhar Hussaini, Director of North American Halal Foundation, quoted in Richard Foltz (see the previous note: p.118.)

⁷ The Arabic version reads "idha jama' al-halal wa'l-haram, ghuliba al-haram." Cf. Shabir, *al-Qawa'id al-Fiqhiyyah*, p.325. Interestingly enough, al-Qaradawi does not refer to this maxim in his brief discussion of "avoidance of the doubtful – itqa 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'*. Cf. Shabir, *al-Qawa'id al-*

Kulliyah, 326-328.

⁸ See for details Muhammad Abu Zahrah, *Usul al-Fiqh*, Cairo: Dar al-Fikr al-'Arabi, 1958/1366, 34; Kamali, *Islamic Jurisprudence*, 424.

⁹ Cf. Kamali, *Islamic Jurisprudence*, 426.

¹⁰ 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 Daraqutni and Sunan Abu Dawud respectively and quoted in *al-Mawsu'ah al-Fiqhiyyah of Kuwait*, V, 149.

¹¹ *Ala al-Din al-Kasani, Bada'i' al-Sana'i' fi Tartib al-Shara'*, 2nd edn., Beirut: Dar al-Kutub al-'Ilmiyyah, 1986/1406, V, 39-40; Ibn 'Abidin, *Hashiyah*, V, 194.

¹² Cf., Zuhaili, *Al-Fiqh al-Islami*, Vol.III, p.667.

¹³ Cf., Wizarat al-Awqaf, *al-Mawsu'ah al-Fiqhiyyah*, V, 152.

¹⁴ Id., V,153.

¹⁵ Id., V, 155.

¹⁶ Cf., Ibn al-Rushd, *Bidayat al-Mujtahid*, Vol.I, p.329; Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, 3rd edn., Damascus: Dar al-Fikr, 1989/1409, Vol.III, p.663-664.

¹⁷ See for details Kamali, *Islamic Jurisprudence*, 419f.

¹⁸ 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.