



FURUD AL KIFAYAH AND THE MAQASID (OBJECTIVES) OF THE SHARIA

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Firstly, *furudh al a'yan*. Scholars of *usul al fiqh* (the “roots” of doctrine/jurisprudence) say the Islamic Shariah includes religious obligations that are binding upon those individuals who are required to perform them so that the *maqasid* (objectives) of the Shariah can be achieved. These binding obligations are called *furudh al a'yan*. A *fardh 'ain* (singular of *furudh al a'yan*) is “one which everyone upon whom it is incumbent is called upon to perform in person, insofar as if he fails to do so he will be guilty of sin and deserving of condemnation; this applies to all worship-related obligations in which a person who fails to perform them is culpable, such as Prayer, Zakat, Hajj and the fulfilment of contractual undertakings.¹” *Fardh 'ain* is designed for the benefit of the individual and this benefit is repeated every time the relevant obligation is performed.

1 Mohammed Abu Zahra: *Usul al Fiqh*, Egypt, Dar al Fikr al 'Arabi, P. 35.



In his work *Al Furuq*¹ al Qarafi says that there are two classes of actions – those in which the benefit is repeated each time the action is repeated and those in which the benefit is not repeated when the action is repeated. The first class such as, for example, the five Prayers, was ordained for individuals by the Lawgiver to produce additional benefits when it is repeated; in this particular case (i.e. the Prayers) the benefits result from submitting oneself to Allah, glorifying Him, holding personal discourse with Him, humbling oneself before Him, standing before Him, understanding Him when He speaks and modelling oneself on His *adab* (manners and etiquette). These benefits are repeated each time the Prayer is repeated. The distinctive feature of *furudh al a'yan* is that the person they are designed to benefit receives their benefits directly; he is therefore required by Divine Command to perform them in order to reap those benefits and achieve their objectives. Obligations of this kind may not be performed by one individual on behalf of another, because – as we have already pointed out – it is the person upon whom they are incumbent who receives the benefits from them.

Secondly, *furudh al kifayah*. The second type of *furudh* (obligations) defined by scholars of *usul al fiqh* is *furudh al kifayah*. These produce the benefits intended by the Lawgiver, but in this case they are not related directly and specifically to the person who carries them out. The Divine Command that they be performed is directed at the community as a whole rather than each individual member of it, and this is why they are called *kifayah* (collective). If their benefit is achieved, performing them is no longer a binding obligation upon the other members of the community.²

So in *furudh al a'yan* such as the Prayer, if one of us fails to pray, he becomes culpable for that sin as an individual. However, in the case of *furudh al kifayah* - such as *salat al janazah* (the Funeral Prayer), *ifta'* (delivering advisory opinions) or the study of medicine and crafts - if nobody performs these obligations, then the community as a whole is

¹ Shihab al Din al Qarafi: *Al Furuq*, Beirut, Dar al Kutub al 'Ilmiyyah, 1/470.

² Mohammed Salim Madkur: *Mabahith al Hukm 'ainda'l Usuliyin*, Beirut, Dar al Nahdhah al 'Arabiyyah, P. 75.



culpable. Hence the benefits for which *furudh al kifayah* are designed are general benefits and everybody suffers harm if they are not performed.

Scholars divide *furudh al kifayah* into two categories: religious duties, by which they mean strictly worship-related obligations such as the Funeral Prayer, and temporal obligations, by which they mean general benefits accruing to the Nation as a whole such as those derived from learning and crafts, which cater for society's needs and help promote prosperity.

Imam al Ghazali (d. 505 AH) says that *kifayah* obligations are limited to other-worldly-related actions – i.e. purely religious actions: “As for pledges of allegiance, marriage contracts, tilling, planting and all the crafts essential to people....there is no need to perform them, because they belong to this world ...(even so,) the existence of the *din* (Islamic Faith) must inevitably be conditional upon this world and how it is regulated...” The majority of *fiqh* (doctrine/jurisprudence) scholars disputed this with him and argued that a person is unable to understand the most complex issues of obligations and necessities by instinct alone, and that relying solely upon one's “general feelings” about them might cause the loss of a “higher worldly benefit” – as a result of a failure to perform it – with a consequent adverse impact on the religious benefit as well.¹

Al Shatibi (d. 790 AH) regarded *furudh al kifayah* as being of the greatest importance, since they are “the basis of the general *masalih* (interests/benefits) of all mankind”². He saw them as being closely linked to the *maqasid* (objectives) of the Shariah – the subject of his book *al Muwafaqat*. In his view those charged with performing these obligations are commanded to safeguard the *din* through their beliefs and their actions, to safeguard the *nafs* (psyche/lower soul) so that it can fulfil life's necessities, to safeguard the mind so that it can hear and understand Allah when He addresses it, to safeguard their progeny so that they can take their (parents') place in maintaining home and family, and to safeguard their property in order to help fulfil the other four aspects.

¹ Al Ghazali: *Al Wasit fi'l Madhhab*, Cairo, Dar al Salam, 1997, 6/7.

² Al Shatibi: *Al Muwafaqat*, Egpt, Dar al Kulliyat al Azhariyyah, 1967, 2/146.



Thirdly, Allah's rights, mankind's rights and shared rights. Those who disagree with al Ghazali's position appear not to have understood it correctly. The obligation arising from a direct Divine Command relating to an individual's act of worship is a right which Allah, Glory be to Him, is entitled to demand from those upon whom it is incumbent to perform that act. At the same time, that act of worship renders the individual "eligible, responsible and equal" – that is to say, he becomes eligible for membership of the Community of Believers; were this not the case, then why is congregational Prayer preferable to individual Prayer and why is the Friday Prayer obligatory for everyone, on certain conditions? An individual obligation is incumbent upon the individual if one considers it within its original context; however, it is also a collective obligation from the point of view of the objectives it is designed to achieve. Hence if the intention here is to draw a distinction, it should not be between *fardh al 'ain* and *fardh al kifayah*, but between what relates strictly to acts of worship (i.e. Allah's rights), and *masalih* (i.e. mankind's rights). There can be no disputing the fact that the objective of the Prayer or the Fast is to render unto Allah, Glory be to Him, what is His right and due, even if there should be secondary benefits such as a feeling of satisfaction at having done one's duty (the Prayer), physical health (the Fast) or purity of spirit and a sense of having contributed to the welfare of the community (Zakat and *waqf*). This is why Dr. Mohammed Dhiya al Din al Rayyis suggests that the term *fardh al kifayah* is not quite accurate and that it would be more appropriate to class obligations separately as being either Allah's rights or mankind's rights – i.e. the general or temporal *masalih* of society, endorsed by Allah, Glory be to Him, His *din* and the Mission of His Prophet (PBUH).

The Prophet's Mission was, and still is, designed to serve the *masalih* of mankind in this world and the next¹. Therefore al Shatibi was right when he linked obligations to the *maqasid* (of the Shariah), but wrong to criticise al Ghazali when the latter classed *furudh al kifayah* as being – like *furudh al a'yan* – limited to religious matters, since the truth is that all *furudh* are

¹ Mohammed Dhiya' al Din al Rayyis: *Al Nadhariyyat al Siyasiyyah al Islamiyyah*, Cairo, Dar al Turath, 1969, P. 310. My attention was drawn to this source by an article of Mustafa Tudi's entitled *Ihya' al Wajib al Kifa'l wa'l 'Aini; Tariq li' Iqamat Mujtama' al 'Umran* (published in *Al Tafahum* magazine).



furudh (obligations), while the difference lies in the way they are regarded – whether they are concerned with worship, *masalih* or the two together. All *furudh* are *furudh* and differ from each other only in the priority accorded to them from the “discourse” point of view – i.e. whether they concern individuals (and involve only acts of worship), or the community or group (and involve only – or virtually only – temporal *masalih*) or a combination of the two (i.e. a combination of worship and temporal *masalih*).

Fourthly, *furudh al kifayah* and the *maqasid* of the Shariah. In a small paragraph in his book *Al Burhan*¹, Imam al Haramain (d. 478 AH) lists the five *dhururiyyat* (necessities) as *nafs* (psyche/lower soul), intellect, *din*, progeny and property. Taken together, these provide the necessary conditions for the public weal – i.e. human societies cannot exist without them and the Shariah was revealed in order to safeguard them. It would actually have been appropriate to list them as four and point out that the *din*, or the Shariah, was sent down to uphold them, since they form the basic *maqasid* of the very Shariah itself. His pupil Imam al Ghazali, who followed him, neither added to them nor subtracted from them.

In his book *Adab al Dunya wa'l Din* al Mawardi (d. 450 AH) – a contemporary of al Juwaini – classed these “fundamentals” as the pillar of “worldly politics” and added effective government, hope and fecundity to the list. ‘Izz al Din Ibn Abdul Salam (d. 665 AH) states in *Qawa'id al Ahkam fi Masalih al Anam* that there are two categories of *masalih*: those in which the element of worship predominates and those in which worldly *masalih* predominate. Both come under the *maqasid* of the Shariah, which comprises the two elements. Al Shatibi (d.790 AH) took a broader view and classed the *maqasid* as *dhururiyyat*, *hajiyyat* (requirements) and *tahsiniyyat* (ameliorations); in his view the Shariah – and all laws – are designed to safeguard the *dhururiyyat* and serve the interests of the *hajiyyat* and *tahsiniyyat*. If safeguarding the *dhururiyyat* is obligatory in both the *fardh al 'ain* and *fardh al kifayah* categories, the continued existence of the *hajiyyat* and *tahsiniyyat* is guaranteed thanks to mankind’s instinctive awareness of what they consist of and

¹ Al Juwaini: *Al Burhan fi Usuli'l Fiqh*, Beirut, Dar al Kutub al 'Ilmiyyah, 1998, 2/118.



an understanding of the “recommended”, “desirable”, “disliked” and “permitted” categories.

All these elements belong to the *maqasid* of the Shariah, either directly or indirectly. However, who should in practice be responsible for safeguarding and upholding them? Al Mawardi and Abu ‘Ubaid al Qasim, a predecessor of his - in his book *Al Amwal* - believed that the political authority or the Imamate should do so “on behalf of the Muslims”. The Muslim community is the basic institution responsible for safeguarding *masalih*, even in the view of those who couple the ruling authority with the Shariah. For their part, al Juwaini, al Ghazali, Ibn Abdul Salam and al Shatibi did not fear that the Shariah might face a threat from society and described it as “working in and with society” to safeguard *masalih*. Misunderstandings – both in the past and in more recent times – have occurred when people have tried to separate the Shariah from society and have started talking about Shariah versus society or society versus Shariah. The truth is that the Shariah is a moral yardstick for society and is designed to safeguard its interests in every possible way.

The vast majority of *fiqh* scholars, then, maintain that all *fardh* obligations comprise or entail *masalih*. They are therefore not only legitimate but obligatory on the basis of the Shariah. Accordingly, it would appear that there is nothing to be gained from dividing *fardh* obligations into religious and temporal. The real differences are over two points – 1) establishing the origins or foundations of temporal *masalih* and 2) defining who should be responsible for implementing them. Al Ghazali maintains that temporal *masalih* are not in the “Shariah obligation” category – i.e. that they are not in the *furudh al kifayah* class. He cites several reasons for this view, including the fact that they are not covered by any specific textual injunction, that it is up to society to identify and uphold temporal *masalih*, and that in any case temporal *masalih* are recognised as such by instinct and as a result of human necessity.

With regard to the implementation of those *fardh* obligations, al Juwaini, al Ghazali, Ibn Abdul Salam and al Shatibi tend towards the view that they are in the category of society’s (or the general public’s) rights, despite the fact that they do not agree on their origins or



foundations – that is to say, whether they are derived from texts or based on *masalih* necessities and inspired by human motivations. At the same time, many *fiqh* scholars assert that *kifayah* obligations (particularly the temporal ones) are within the province of the political authorities, on the grounds that society en masse does not automatically recognise the need for them, and even if it does recognise that they are necessary, it is not capable of implementing them on its own. As examples they cite the *kifayah* obligations and benefits of education, craft manufacture, the creation of defensive armed forces (=jihad) and other strategic requirements.

Fiqh scholars – or the majority of them - seek to link “general” or “public” obligations to religious texts and assign responsibility for their implementation to the authorities, because they wish to highlight just how important those obligations are from both the religious and temporal angles. Despite this, there are few injunctions in the Qur’an or from the Prophet to support the position that specific actions are in the *furudh al kifayah* category. Moreover, while all *fiqh* scholars agree that these are collective duties or obligations, in doing so they distinguish between the Shariah and the community, just as they draw a distinction between the ruling authority and the general public. At the same time, however, they say that the Imamate or the ruling authority is to be chosen by the community and not appointed by the Lawgiver. In their view this means that the authorities are committed to performing religious duties, particularly if these are more closely related to *masalih* that are of practical concern to the Muslim community (and, of course, to the authorities themselves) than they are to pure acts of worship. In doing so they (the *fiqh* scholars) also maintain that *kifayah* obligations should be defined according to circumstances by *ijtihad* (interpretative judgement), which should also be applied in order to decide whether they belong to the *dhururiyyat*, *hajiyyat* or *tahsiniyyat* categories. In every case, top priority is given to ensuring social cohesion and the well-being of society, both within its own national borders and in its relations with the outside world.

Here it is not just a question of who should define, uphold and promote the public’s interests and benefits. There is also the issue of the Muslim Community’s duties and commitments towards its *din*, which, unlike



temporal commitments, consist of obligations covered by textual injunctions. The Holy Qur'an specifies the duties of the Community of Believers as follows: "Let there arise out of you a group of people inviting to what is good, enjoining what is right and forbidding what is wrong; they are the ones to attain felicity". (*Āl 'Imran* 104).

So the injunction is general and states that the community itself must appoint people to invite to what is good, enjoin what is right and forbid what is wrong. Naturally, while these "people" will include the ruling authorities, they will not be limited to them. The authorities chosen from among the people to administer public affairs – and this is a noble calling – are responsible for some of the issues implied in the verse, but not all, or even most of them. This is why the *fiqh* scholars distinguish between the political authority, which is responsible for public affairs, and "enjoining what is right and forbidding what is wrong", which is the duty of every Muslim individual under the Shariah. That means that the fundamental obligation is incurred by the community, which appoints individuals or groups of people to look after its interests and other groups to take care of other matters. At the same time, it reserves for itself (as a whole) and its members the right to take such direct action as it sees fit on the remaining questions that concern it. It thus has the right to monitor and take decisions on the areas over which it has responsibility, including those matters relating to its interest which it administers through its individual members.

The *fiqh* scholars added *furudh al kifayah* to *furudh al 'ain* as a means of distinguishing between the specific and the general, or the individual and the collective, and to demonstrate that a collective obligation is just as important as an individual one. When they found their room for argument was restricted because the two were so closely linked together, they resorted to subtle and abstruse *qiyas* (analogy). Then, when they found that they were still in difficulties, they began to talk about "achieving" and "revising" the purpose of *qiyas* by including *masalih* in both the individual and collective obligations. Then when they found that even this did not solve their problem, they spoke about "Shariah-compliant politics" – a concept which offered both ruling authorities and *fiqh* scholars the opportunity to abandon *qiyas* if and when necessary. This, too, proved



insufficient, so they opted for the notion of *maqasid*, which al Shatibi describes as being derived from a detailed study of Shariah rulings. In modern times, reformists have applied the concept of Shariah *maqasid* to justify entering new areas opened up by “Islamic renewal” and have adopted al Ghazali’s position that *kifayah* obligations are limited to religious matters; in their view, it was the narrow approach adopted in former times that drove al Ghazali to regard *furudh al ‘ain* and *furudh al kifayah* as belonging strictly to the realm of religion, while the “general interests of the public” were the responsibility of the community. In doing so, he freed Shariah rule from the shackles of *qiyas* (despite its usefulness) and linked the general provisions of the Shariah to the community, not the ruling authority. He was inspired to adopt this position by al Juwaini, his sheikh, who spoke of the “succouring of nations in the garb of injustice” and maintained that in times of severe crisis and tribulation *Mujtahids* (scholars qualified to interpret the Shariah on the basis of *ijtihad*) might disappear. In such circumstances, all issues – including the restoration of governance and public order and the revival of the schools of learning (to enable new *Mujtahids* to appear on the scene) - should be in the hands of the community. At the same time, the authorities would have the social duty of taking such “necessary”, “requisite” or “ameliorative” actions as might be necessary to promote the community’s interests and appoint people to monitor them.

What does all this mean? It means that the Shariah should be in the hands of the Believing Community, which should endeavour to implement it and not act independently of it. If it should act independently of it, as Islamist political parties have been trying to do for the past half century, this means legitimacy is usurped by one particular group, which will lead to conflicts and divisions. If it is the governing authority that decides who shall rule, this means there will be no rotation of power, the current rulers will become a permanent institution, the public interest will no longer be protected and there will be conflict between the ruling authority and society.

The basic disagreement has been over how far *furudh al kifayah* extend and whether they cover both religion and *masalih*, while bearing in mind



that there are also *masalih* in religious matters. Some *fiqh* scholars have “liberated” *masalih* by assigning them solely to the community on the grounds that this is ordained by Qur’anic textual injunction. And since it is essentially the community’s responsibility to promote society’s interests, and because this offers extensive scope for *ijtihad* and amendment, we find that in every age the Islamic Nation has defined or redefined its needs and strategies for managing its affairs.

In the view of these scholars, this is best achieved by applying the *fiqh* of Shariah *maqasid*.