

The Relationship of Introducing Deception to the Rules of Sharia

Ra'fat Khalil Ibrahim

Supervised by

Prof. Khairi Shakir Mahmoud (PhD)

Anbar University/College of Islamic Sciences

Dept. of Jurisprudence and its Origins

Raf18i1010@uoanbar.edu.iq

1. Introduction

The study is entitled the relationship of introducing tricks to the rules of Sharia which is not only a theoretical topic, but it goes beyond the practical reality in which these jurisprudential rules are used. It tries to reveal those realistic effects by adopting tricks and confronting the accusations against it as deviated from the requirements of the true Sharia, and abandoning what God Almighty has commanded, which causes stagnation and retard that the enemies of religion exploit in promoting the invalidity of Islamic Sharia. It promotes the abandonment and rejection of heritage and the use of so-called exits. Some affiliates of forensic science advocate an alternative to jurisprudential tricks, as they do not agree with the Sunnah. The consensus and the jurisprudential rules agree upon the masses of the Islamic nation.

2. The scientific method followed

The scientific method followed shows that the study relies on employing the descriptive method which depends on collecting the scientific material by focusing on the relationship between the use of tricks and the purposes of the total Islamic Sharia, and then using the analytical method in order to clarify that relationship. It reveals the actual application of these rules. The efforts of the scholars of the Islamic nation have a significant impact on establishing the confidence of Muslims in their Sharia which does not change their identity. It is applied through realizing the Holy Quran and the Sunnah. or through the burden of legal orders and their inconsistency with the development of the times.

3. The Relationship of Blocking the Pretexts with the Introduction of Tricks.

3.1. The Agreement and Difference between Blocking Excuses and Adopting Tricks.

The excuses agree with the tricks in which each one is a means to an intentional achievement, but the excuses differ from the tricks in the intention of the subject they deal with. The excuses include the

means whose owner intends to change through the legal rules, or the means whose owner does not intend to change through legal rules. Tricks are specific to what the owner intends to change the legal rule with skill subtlety and concealment. Ibn Taymiyyah said that the trick is with the intention of its owner which is forbidden in the Sharia... As for blocking the excuses, it is with the correctness of the intent. The difference between the excuses and the tricks is that the excuses are more general than the tricks, and the aspect of their importance includes the intended and the unintended meaning from what they lead to. Here, they are known as the prohibition of false tricks, and their prohibition and their illegality have rules:

Deception is the violation of the purposes of the Sharia, as God Almighty legislated their provisions and their means for purposes. So, the fraudster adopt them for other purposes other than following his whim, and every violation of the intention of the Sharia is void. The relationship between tricks and blocking pretexts becomes clear as preventing tricks to block the pretexts that lead to corruption or the loss of legitimate interests. The permissibility of tricks contradicts the purpose of blocking pretexts which is one of the purposes of Sharia. Sharia blocks any attempt to corruption in every possible way, and the fraudster opens the way to it with his tricks.

3.2.The Realistic Application of the Two rules of Blocking Excuses and Averting Evil.

Firstly, the concept of blocking the excuses:

Looking at the linguistic meaning of dam al-Dhari'ah which is a compound addition from the two words dam and al-Dhari'a. Dam in language is closing the defect and filling in the furrow. It is stretching and moving forward which arms at moving the arms, and energy and breadth.

The pretext is the means. it is said that it pleads with a pretext: i.e. begging. The pretext comes in the sense of reason to something. Fascist people hardly bury themselves .The pretext is the cause that leads to the thing and the blocking of the pretext means closing that cause and preventing it from reaching the thing.

Technically, blocking the precaution is defined by the Malikis as “determining the substance of the means of corruption in order to ward off it”. Bin Al-Qayyim defines it as blocking the pretext as it is not a means and a way to something.

Imam Al-Shatibi defines the pretext as “reaching what is beneficial to a harmful one”. Al-Qarafi defines it as “the ways that lead to the ends whether they involve benefits or evils”. The judge Abdulwahab defines it as “the matter which appears to be permissible if the accusation is strong in addressing it to the forbidden”. Dr. Abdulkarim Zidan defines it as “Blocking the Pretext, preventing means that lead to corruption”. Dr. Fathi Al-Darini defines blocking the excuses as “preventing the project if it becomes a means to the forbidden thing as forbidden by law.”

Secondly, parts of excuses:

There are many divisions of Dari'ah from which we choose the division of Imam Al-Shatibi where he divides the Dari' into four sections:

The first part is definitively performed to the evil, such as digging a well behind the door of the house, so that the interior may fall into it, and blocking this section of the pretexts is obligatory and necessary to block off the evil.

The second part leads to the evil one, as the most correct opinion is to perform the means to the end of corruption, such as selling weapons at the time of turmoil, or selling grapes to wineries. This section is prohibited, as Al-Shatibi says, because precaution requires taking the majority of suspicion, and because the most likely suspicion in the client rulings runs the course of knowledge. So, it runs its course here, and because the permission of this section is a kind of cooperation in sin. The aggression is forbidden by the Qur'anic text in the Almighty's saying: {Do not cooperate in sin and aggression}.

The third part leads to corruption a lot, not rarely, such as the sale of terms that lead to usury. Imam al-Shatibi argues that it is necessary to prevent the means that lead to much corruption, while the Shafi'is argue not to prevent them because the original and analogy in it is the assumption of the principle from the validity of the permission. Knowledge and suspicion of the occurrence of corruption are negligible as there is nothing here but an abstract possibility between occurrence and its non-existence, and no presumption that one side outweighs the other.

The fourth part indicates that evil is rare, such as eating food that usually does not harm anyone, and digging a well in a place that usually does not lead to anyone falling into it. There is usually no interest free from the evil.

3.3. The Relationship of Blocking Precautions to Preserving the Objectives of Sharia and the Interests of the Nation

The scholars of Islamic Sharia consider the rules of blocking pretexts as one of the most important rules upon which jurisprudence is based on the Islamic lands. By implementing that rule, the project is prohibited from actions if this legitimate act becomes a means to something forbidden by law. Through the application of this rule with its controls and conditions in society, this can lead to frustration from many crimes and cut off the means which lead to facilitating the commission of that crime. That verse prohibits adultery and that it is ugly because it is obscene. Islamic Sharia considers adultery as one of the most heinous crimes that threaten the life of the nation and the future of its generations. It is considered as one of the precursors to adultery, and one of the most prominent things in the Sharia to block every pretext that leads to that heinous crime. Islam forbids displaying and exposes the private parts of men and women, just as Islam warns of the danger of women's temptation and the necessity of guarding against it with good education. And it is forbidden, and finery is to reveal and appear to the eyes, or to reveal what must be hidden. God Almighty also forbade subjugation by saying, {O wives of the Prophet, you are not like any of the women}.

God also forbids being alone with women because being alone is one of the most dangerous excuses for fornication and its motives. In the modern era, the art of jurists is considered as one of the actions that come under the rule of approaching adultery, and they forbid it as inference by blocking pretexts. This is intended as a protection for society from the crime of adultery, and cutting off its means and methods altogether. When stirs instinct and call for committing the crime of adultery and abandoning

the path of chastity, there is a prevention from crime and a deterrent to the perpetrators based on the legal principle of blocking pretexts.

3.4. The Realistic Application of the Rule of Repelling Harms Takes Precedence over Bringing Benefits

The Islamic Sharia achieves the interests of the servants in the two worlds and to ward off evil. This is by ensuring that there is no rebellion, and in the hereafter with retribution for what the two hands have committed, so that God will take revenge for the wretched sheep, from the paired sheep on the Day of Resurrection, as the Messenger of God (P.B.U.H.) reported. The Prophet (peace and blessings be upon him) said: “The rights will be rendered on the Day of Resurrection, until the sheep will be evacuated from the cow”.

The jurisprudence has mentioned that there are types of both benefits and evils. and they are in touch with the legal penalties. They are the causes of interests even if they are in themselves evils.

In that it was said: “Perhaps the causes of interests are evils, so they are commanded or permitted, not because they are evil, but rather because they lead to interests, such as cutting off corroded hands to save lives, and risking lives in jihad, as well as all legal punishments, not required because they are evil, but because they are intended by Sharia as cutting off the hand of the thief, the killing of the perpetrators, the mercy of the adulterers, and their flogging and their alienation.. All these are evils that are required by the Sharia to collect the real interests that have been arranged for them, and calling them the correctness for virtue of naming the cause with the name of the cause.

It is noticed that defining these benefits and harms can only be considered if they are from the perspective of Sharia in light of its objectives and constants. As for the Shari'a perspective, Al-Shatibi confirms this meaning by saying: “The lawgiver's intent of the person in charge is his intent in action in accordance with his intent in legislation.” In terms of the desires of the soul to bring about its ordinary interests, or to ward off its ordinary evils, the evidence for that is important.

As mentioned that the Sharia is only to remove the committers from the motives of their whims, so that they would be righteous servants of God. This does not meet with the assumption that the establishment of the Sharia should be according to the whims of souls and the request for their immediate benefits. This is based on the interests. There is evidence to consider it or to cancel it, “It is sent only in terms of its partial non-quotation”, but in terms of its gender, it is considered because it is within the purposes of Sharia. Therefore, some jurists choose to define the sent interests as “Descriptions that fit the actions and purposes of the lawgiver, but There is no specific evidence for it in the Sharia to consider it or to cancel it. It comes from linking the ruling to what brought benefit or repels a corruption on the part of the people.

Based on that principle, the jurists devise controls for assessing the benefits and harms, and they can be summarized as follows:

1. The estimation of the interests and the evils must be in accordance with the Sharia, and does not distinguish the desires. For example, the interests must be under the objectives of the Sharia and do not conflict with the Qura'n, and the Sunnah, consensus or analogy. The evils must be considered as

such to be in conflict with those purposes or their ranks: The necessities, complements and improvements.

2. If benefits and evils combine, then if it is possible to achieve benefits and ward off evils. It is better to do that in compliance with the command of God Almighty when He says: {So fear God as much as you can, and if that is not possible, look; If the evil is greater than the benefit, the evil will be awarded without looking at the loss of interest}.

4. Precautionary action is to bring interests and ward off evils.

5. Prioritizing some rights over others according to the benefits and evils that result from them.

In summary, in warding off evil and bringing benefits, the Islamic Sharia has been established by God Almighty to take care of the worldly and the hereafter material and moral interests of the people. Such laws are only for the benefit of the servants in the immediate and the future time. The punishments that were mentioned by Sharia, i.e. punishments and retribution are for crimes that fall under the category of major crimes, but they do not rise to their level which are called punitive crimes. Since the greatest benefit is to ward off evil from them, and to bring interests to them according to the perspective of Sharia, not from the perspective of desire. Accordingly, any benefits are less than the major benefit are not considered as in the perspective of Sharia because they conflict with that major benefit. Preserving the human body and its limbs is a benefit. This is from the point of view of Islamic law, and retribution has been prescribed for it in wounds, but it is not considered in front of a greater evil which is the corruption of violating the sanctity of money. So, the hand is cut off if it extends to the money of others, and the same applies to the rest of the penalties.

4. Relationship to the Intentions of those Charged with Producing Tricks

4.1. The Agreement between the Use of Tricks and the Intentions of the Committers

We have presented at the beginning that permissible tricks are those that do not contradict the intentions of the Lawgiver, and the prohibited tricks are those that contradict the intentions. Here, Al-Shatibi said in his book 'Concord' that "The well-established among the scholars are that the intentions of the legislator which are known from the words of the texts and their theoretical meanings in all. So, it is necessary to look at the words in a way that does not violate the meaning in a way that does not violate the words. Sharia applies to the system One in which there is no difference or contradiction. Whoever claims that the intentions of the legislator are taken only from the words of the texts and their phenomena, such as the apparent, or they are taken only from theoretical meanings, the Lawgiver highlights trick that suits the rule. If it returns to phenomena and texts with suspension and cancellation, as is the opinion of those who are deep in analogy presented to him on the texts, this claims that it goes to extremes in the aspect of excess and negligence, and apply one side of the law without another. This is far from the straight path.

It is right that most scholars consider both matters as the theoretical meaning is not prejudiced by the text, nor the text by the theoretical meaning. On this doctrine alone, we must rely on determining the authorities by which the purposes of the legislator are known. God grants success.

4.2. The relationship between the Intentions of the Committers and their Production of tricks

Firstly, they are the command and prohibition that come from the Lawgiver. Command requires that the commanded must be obtained from the person in charge, so that it occurs when the command is in position intended for the Lawgiver by activating it not in contrary to its purpose. The non-occurrence of the forbidden act is intended for the public and its rhythm is contrary to its purpose.

Secondly, considering the reasons for the command and the prohibition, the legislator orders this action, and he may forbid the other act. Then, the cause is either known or not. If it is unknown, it is necessary to stop defining the legislator's intention until evidence indicates that intent. Selling is in the interest of benefit from the contract, and the limits are in the interest of contempt. The cause here is defined by its established rule in the principles of jurisprudence.

The worship is dominated by the aspect of devotion, and the customs is the aspect of paying attention to meanings. For this reason, Malik (may God have mercy on him) did not pay attention to removing impurities and raising events to mere cleanliness until he stipulated absolute water in them, and stipulated to raise intention of events if cleanliness occurred without it. It is forbidden to establish anything other than the multiplication and the salutation in prayer is in their place. He was prevented from extracting values in zakat, and he was limited to just the number in penances to other issues that require specifying oneself to what is stipulated or what is similar to what follows.

Thirdly, the legislator has the law of worship and customs for the committer as original and subordinate purposes. Tracing the texts, their manifestations and their indications and extrapolating their theoretical meanings have shown that the legislator does not legislate from the ordinary and devotional causes that lead to the subordinate purposes except for what return from those purposes to the original intents by documenting, tightening, strengthening and linking. So, we infer that if any of these reasons are like which is not stipulated, then it is in accordance with the purposes of the Lawgiver. Whatever leads to the nullification and removal of the original purposes is contrary to the purposes of the Lawgiver.

Fourthly, the intentions of the legislator from those charged with the silence about the law of the rule of the establishment of the meaning are required. Like, "Whoever innovates something in this matter of ours that is not of it, it will be rejected." The explanation is that the silence of the legislator regarding the ruling is of two types: (i) he is silent about it because there is no reason to dictate it, and there is no reason to decide for it, such as the calamities that occur after the Messenger of God (P.B.U.H.) because they did not exist.

(ii) the legislator remains silent and his necessities exist. Even a rule is not decided at the time of the calamity in addition to what is at that time. The rule is legislated for him, and that is explicit in the excess of what exists. There is an excess of heresy in violation of what the legislator intends, as it is understood from his intention to stop what is forbidden. There is neither increase nor a decrease from it.

4.3. Realistic Application to Protect the Purposes of Islamic Law

The general purposes of Islamic law are matters if they are not preserved. Their failure to preserve leads to the death and loss of the soul. It involves preventing crime and eradicating the motives for

committing it. Those necessities which are legally commanded to be preserved are the preservation of religion, self, offspring, honor, mind and money. The jurists differ in arranging these necessities according to each other. The Shafi'is and Malikis hold that their arrangement is to preserve the religion, and then the soul, the mind, the offspring and the money without mentioning the presentations, but it is included within one of the five universals upon investigation. and the Hanafi jurists say that its arrangement is by giving precedence to the debt and then the soul to the offspring. Reason is money as it is said that these four are given precedence over religion because they are the rights of all human beings.

All scholars and commentators have agreed that a person must have a specific religion since it is human nature to embrace one of the religions. God Almighty made the laws and made among them what preserves the matter of religion. The basic foundation of the individual, and among these laws is the necessity of recognizing the personal consent and conviction as the way to have a religion. No one is forced to embrace a particular sect or belief in a particular even if it is the truth.

5. Conclusions

It is found that among the challenges of Islamic jurisprudence and its pioneers are some aspects of the internal, even external challenges that jurisprudence and its pioneers face in its path. It is noticed that there is underdevelopment of many of those related to Islam in its name only. The underdevelopment that prevails in some Islamic societies is one of the most serious challenges facing the Islamic world. In all intellectual, scientific and social aspects, in addition to the many cases of fragmentation dominate the Islamic world. It is one of the greatest evidence of the extent of backwardness that the Islamic nation is suffering from at the present time in which our contemporary world is heading towards uniting in strong blocs. Several results are shown in the following:

- 1- The backwardness that prevails in some Islamic societies is one of the most serious challenges facing the Islamic world in all intellectual, scientific and social aspects.
- 2- Doctrinal fanaticism and intellectual stagnation are among the challenges facing Islamic jurisprudence, especially in the present era. Islamic law represented by Islamic jurisprudence is the home of rulings as a broad law that is suitable for every time and place. It includes all developments in life.
- 3- The existence of stagnation in scientific activity besides sectarian fanaticism, which appears among some of those affiliated with forensic science by their rejection of the jurisprudential rules concord with the Imams, such as taking tricks while acknowledging other rules for lack of understanding and not paying attention to the nation's scientific heritage.
- 4- Claiming diligence and expressing opinions that contradict with the most basic legal foundations and rules lead to the nation's fluctuation and backwardness, and the failure to support Islamic Sharia. It concerns its enemies and claimants which require students and researchers in Sharia sciences to confront and reject such ideas and to produce Islamic jurisprudence.
- 5- Adopting tricks and applying general jurisprudential rules for the interests of the general nation are preserved by establishing the Islamic Sharia and making it public and contemporary with every

new incident. It appears in the actual application of the rules of Sharia as prevention of society's retard and regulates the interactions among its members.

6- Many scholars have announced that diligence is blocked in order to block the way in front of the ignorant or the half-scholars as part of the Sharia policy that deals with an existing situation, a temporary matter, a jurisprudential chaos, and an emergency circumstance. It does not have a valid Sharia.

Bibliography

- 1- Akhtar Zayti Bint Abdul Aziz, Contemporary Financial Transactions and the Impact of The Theory of Pretexts in Their Application, Dar Al-Fikr, Damascus, 1429.
- 2- Al-Bouti, Muhammad Saeed Ramadan, Controls of Interest in Islamic Sharia, Al-Risala Foundation, Fourth Edition, 1982.
- 3- Al-Turki, Abdullah bin Abdul Mohsen, The Origins of the Doctrine of Imam Ahmad, Al-Resala Foundation, 2000 AD.
- 4- Ibn Taymiyyah, Taqi al-Din Abu al-Abbas Ahmad ibn Abd al-Halim, Great Fatwas, Dar al-Kutub al-Ilmiyya, first edition, 1408 AH -1987 AD.
- 5- Ibn Taymiyyah, Interpretation of Ashkelat Verses, Investigation: Abdul Aziz bin Muhammad Al-Khalifa, Al-Rushd Library, 1417-1996 AD.
- 6- Ibn Taymiyyah, Total Fatwas, Saudi Ministry of Islamic Affairs, Call and Guidance - King Fahd Complex for the Printing of the Noble Qur'an, 1425-2004 AD.
- 7- Al-Hamad, Abdul Latif bin Ahmed Al-Hamad, Differences in Usul al-Fiqh, The Islamic University, Saudi Arabia, 1414-1993 AD.
- 8- Al-Derini, Fundamentalist Approaches to Ijtihad by Opinion in Islamic Legislation, Al-Resala Foundation, Beirut.
- 9- Al-Raissouni, Ahmed, The Theory of Intentions from Imam Al-Shatibi, International House of Islamic Books, Riyadh, 4th edition, 1995 AD.
- 10- Reda, Muhammad Rashid, Human Rights in Islam, Islamic Bureau, Beirut, 1975.