

THE PRINCIPLE OF *SADD ADH-DHARĪ'AH* (BLOCKING THE MEANS) AND ITS APPLICATION IN THE *SHARĪ'AH*

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Abstract

The principle of Blocking the Means is one of the outstanding principles of the *Sharī'ah*. It aims at preventing an evil before it occurs. This paper studies this principle and explains the rules that ensure its correct application. The paper also views the rulings of reputable scholars across the ages that are based on the principle, explaining the internal and external factors that affected the attitudes of the scholars concerned and their interpretations of the texts in their efforts to protect their societies from expected ills. The paper provides insights to people in position of formulating policies and legislation in their environs and advises them to always be mindful of the dictates of this principle, for it has been rightly said that prevention is better than cure.

Keywords: Blocking, Means, *Sharī'ah*, *Ijtihād*, *Mujtahid*, *Taqlīd*

Introduction

The principle of Blocking the Means is known in the *Sharī'ah* as *Sadd adh-Dharī'ah*. Literally, *adh-Dharī'ah* means a path that leads to something, while *Sadd* means: blocking. As a principle of *Sharī'ah*, *Sadd adh-Dharī'ah* is used when a lawful means which is supposed to lead to a lawful result, is used to procure an unlawful end.¹ Under the *Sharī'ah* law, such a means has to be blocked because of the result, regardless of the intention of the individual involved.

A simple example here is the case of deferred sales (*buyū' al-'ajal*) which some people exploit as a means of procuring usury (*riba*)² even when they know very well that *riba* is prohibited in Islam. Deferred sale takes the following form: "A" sells (for instance) a television set to "B" for fifty thousand Naira with the price being payable in six months' time, and then the same "A" buys the same television set from the same "B" for forty thousand

Naira with the price being payable immediately. This transaction in effect amounts to a loan of forty thousand Naira to "B" on which he pays an interest of ten thousand Naira after six months. Thus, sale which is supposed to be lawful is used as a means of procuring usury or *riba* which is unlawful. Blocking the means here means prohibiting that type of sale and regarding it unlawful Islamically, because of the result it leads to, regardless of the intention of the individuals involved.

The Basis of the Principle of *Sadd adh-Dharī'ah*

The basis of principle of *Sadd adh-Dharī'ah* is the Qur'ānic text that says:

" **ولا تسبوا الذين يدعون من دون الله فيسبوا الله عدوا بغير علم.** "

Revile not those whom they (the unbelievers) call upon besides Allah, lest they out of spite revile Allah in their ignorance (Q. 6:108).

The verse asks Muslims not to abuse what the non-Muslims worship, lest revile the Lord of the universe in retaliation. It is obvious from the verse that when a conduct which might have been otherwise permissible or even praiseworthy leads to an evil result, it acquires the value of the latter, regardless of the intention of the individual. The Muslim who reviles deities does so to denounce falsehood and to prove his firm belief in Allah, yet he is asked to refrain from doing it, because of the evil result it is likely to lead to. Besides the verse of the Glorious Qur'ān quoted above, the principle of Blocking the Means finds authority in the Sunnah. There are several rulings in which the Prophet of Islam forbade the Muslims from taking certain actions considering the undesirable results such actions were likely to lead to, as we shall see shortly.

Correct Application of the Principle of *Sadd adh-Dharī'ah*

There are fundamental issues to bear in mind while trying to apply the principle of Blocking the Means in order to ensure that correct application is devoid of errors. These can be briefly explained as follows: ³

- i) The principle of Blocking the Means aims at preventing an evil before it actually materialises. It is therefore not always necessary that the result should be obtained. It is rather the objective expectation that a means is likely to lead to an evil result which renders the means in question unlawful even without the realization of the expected result. ⁴

- ii) Furthermore, since the principle contemplates preventing an evil before its occurrence, the question of intention to procure a particular result is immaterial and therefore cannot be a basis for assessing the means under consideration. Imam Abu Zahra in discussing this principle, pointed out that the nature and value of the means is determined by looking at the purpose that it pursues regardless of the intention of those involved.⁵In other words, it is the expected result which determines the value of the means. If the result is expected to be good and praiseworthy, so will be the means towards it, and vice versa, regardless of the intention of the perpetrator or the actual realization of the result itself. This point is very clear in the Qur'anic text which we cited above as the basis of the principle, as the verse forbids Muslims, for example, from insulting idol-worshippers, notwithstanding the inherent enormity of idol-worshipping or the good intention of the Muslim who reviles idol-worship.
- iii) Sometimes, a means may lead to both a good end and an evil end, that is, the action under consideration may bring benefit and at the same time will cause harm. In such a case, the scholar (*mujtahid*) has to study the situation properly and weigh the benefit and the harm involved. If the harm is greater than the benefit or is even equal to it, the former will prevail over the latter. This is because of the general maxim of the *Sharī'ah* which says: "Preventing an evil takes priority over securing a benefit."⁶
- iv) Above all, considering the fact that the principle of Blocking the Means seeks to prevent an evil before it actually materialises, it is necessary to study the means properly, so that any means that is likely to lead to an undesirable result is blocked and regarded as unlawful, even without the realisation of the undesirable result.

In this regard, the scholars have analysed the means and categorised them into four, from the viewpoint of the degree of probability or otherwise that a means is expected to lead to an evil end. The categories are as follows:⁷

- a) Means which definitely leads to evil. An example is insulting the idols in the presence of idol worshippers. You do not expect you will do that and that they will keep quiet and not retaliate. The scholars of all schools are, in principle, unanimous on the prohibition of this type of insult.

- b) Means which is most likely to lead to evil and is rarely, if ever, expected to lead to benefit. An example of this would be selling weapons during warfare or selling grapes to a non-Alcoholic wine maker. Here, Imam ash-Shatibi has asserted that these transactions are invalid according to the consensus of the scholars.⁸ But Imam Abu Zahra says that it is only the Maliki and Hanbali scholars who have considered these transactions to be forbidden.⁹ However, a dominant probability is generally accepted as a valid basis for a ruling under the *Sharī'ah*.
- c) Means which frequently leads to evil, but in which there is neither certainty nor even a dominant probability. An example of this is deferred sales (*buyū' al-'ajal*) which some people exploit as a means of procuring usury (*riba*). In cases like that, the scholars are divided. Imam Malik and Imam Ahmad Ibn Hanbal held that since deferred sales frequently lead to usury, they have to be prohibited.¹⁰ But Imam Abu Hanifah and Imam ash-Shafi'i maintained that sale is lawful and that mere possibility of usury must not be allowed to override the original legality of sale.¹¹
- d) Means which mostly leads to benefit and rarely leads to evil, as for instance, growing grapes on one's own farm, men and women living together in the same village, speaking a word of truth to a tyrannical ruler etc. In all of these cases, there is a possibility that evil might be caused as a result. In the case of growing grapes, it is possible that the grapes will be fermented into wine; in the case of men and women living together in the same village, there is the possibility of fornication and adultery and in the case of speaking a word of truth, there is the possibility that the scholar will be sent to prison etc. But mere possibility of this kind is overlooked by all the scholars of all the schools of jurisprudence.¹²

Applications of the Principle of *Sadd adh-Dharī'ah* Across the Ages

In order to learn how to apply this principle under the *Sharī'ah* law, it is thought that the easiest and most effective way is to study the *ijtihād* of reputable scholars across the ages and analyse rationally how they applied the principle in their efforts to find solutions to their problems. By seeing how

these scholars used this principle to solve the problems of their times, we should be able to learn to solve our own problems in the light of the principle.

***Sadd adh-Dhari'ah* in the Era of the Prophet**

The era of the Prophet extends from the beginning of the prophethood of Muhammad in 610 C.E. to his death in 11 A.H. (632 C.E).¹³ During the era, we find several rulings in which the Prophet forbade his followers from taking certain actions, not because the actions were really bad in themselves, but simply because they were very likely to yield undesirable results. Some of these rulings are as follows:

i) Prohibition of Excessive Praise of the Righteous

Umar Ibn al-Khattāb reported that the Prophet said: "Do not praise me excessively as the Christians extolled the son of Mary. I am merely a slave. So, just call me the slave of Allah and His Messenger (*Abdullahi wa Rasūluhu*)"¹⁴ In this Hadith, the Prophet prohibited his Companions and Muslims in general from praising him beyond his real worth, because such excessive praise or love for the righteous can easily provide a foundation on which idolatry could be established. This ruling of the Prophet is based on closing the path that leads to undesirable results. Praise of the righteous is, in itself, not something bad, but when it exceeds its bounds, it can lead to something else. So, when we know that, we just have to close the path from the very beginning and not wait till something else has happened before we start running helter-skelter looking for solutions, for it has been rightly said that prevention is better than cure.

ii) Forbidding the Killing of Hypocrites

Another example of the Prophet's application of the principle is that he forbade the killing of hypocrites who were known to have betrayed the Muslim community during battles,¹⁵ for fear that killing such people would give rise to rumour that Muhammad kills even his own Companions, which would in turn encourage the enemies.

iii) Suspending the Enforcement of the Penalty for Theft during Battles

In the same vein, the Prophet suspended the enforcement of the penalty for theft during battles,¹⁶ so as to avoid defection to the side of enemy forces.

iv) Prohibiting a Creditor from Taking a Gift from His Debtor

On a similar note, the Prophet prohibited a creditor from taking a gift from his debtor,¹⁷ lest that becomes a means to usury and the gift a substitute to *ribā*.

v) Others

There are several other rulings of the Prophet that follow the same pattern.¹⁸ Thus, in one Hadith, the Prophet told his Companions that the greatest form of un-dutifulness is for one to abuse his own parents. They wondered how one can possibly abuse his parents. He explained by saying: When you abuse another man's father, he will retaliate by abusing your own father and mother altogether. In another Hadith, he prohibited a *Muslimah* from travelling with a man who is not her *mahram* (very close relative). In another, he prohibited women in general from applying perfume when going out to the mosque for prayers; he prohibited a man from taking back his property by means of treachery from someone who had defrauded him out of it by means of treachery etc.

In the above stated examples, we see very clearly that the Prophet made the prohibitions, not because the actions prohibited were inherently evil, but simply because they were very likely to produce undesirable results, and that is what scholars of latter generations have termed as the principle of Blocking the Means.

Sadd adh-Dhari'ah* in the Era of the *Sahābah

The era of the *Sahābah* or the era of the rightly guided Caliphs, starts with the death of the Prophet and the appointment of Abubakar as-Siddiq as his Caliph in 11 A.H (632 C.E) and lasts till the death of the fourth Caliph, Ali Ibn Abi Talib in 40 A.H.¹⁹ During this era, the leading Companions of the Prophet are known to have taken many decisions based on the principle of Blocking the Means. Some of these decisions are as follows:

i) Killing Two or More People Who Participated in Killing One Person

It happened in the time of the second Caliph, Umar Ibn al-Khattāb, that two persons participated in killing one person. Umar called a consultative meeting to find a solution to the problem.²⁰ The *Sahābah* differed, due to the fact that texts of the Glorious Qur'ān have ordained that there has to be equality in punishment for wounds or murder. For instance, the Glorious Qur'ān (2:178) says: "O ye who believe, the law of equality is prescribed to

you in cases of murder." And another verse (5:45) says: "We ordained for them: life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal for equal..." So, how is equality going to be achieved in this case?

Eventually, they agreed that the two have to be killed and that even if they were one thousand persons they would still have to be killed.²¹ They reasoned from the context of the verses and the reasons behind their revelation (*asbāb an-nuzūl*) that the verses are actually against the old custom of the *jāhiliyyah* Arabs by which if a man from tribe "A" kills another from tribe "B", the able-bodied men of tribe "B" would gather and launch an attack on tribe "A", killing as many people as possible. They called that reaction retaliation, bravery and nobility.²² The Glorious Qur'an prohibited that *jāhiliyyah* practice in the verses mentioned above and made it clear that it is no retaliation killing a person who did not kill. The verses ordained that where retaliation for murder is inevitable, it must go to the murderer only. So, the real meaning of the verses is that we should kill the person who killed, not the person who did not kill. Therefore, if two or more people participate in killing one person, the verses still sanction that they should be killed.

The basis of the interpretation made by the *Sahābah* is Blocking the Means. This is because, if we interpret the verses otherwise, there would be chaos in the land, as people will co-operate with their friends and kill their adversaries with impunity.

ii) Futility of Divorce on Deathbed

It also happened during the era of the *Sahābah* that a man divorced his wife irrevocably on his deathbed in order to exclude her from inheritance.²³ The *Sahābah* felt that the man's action was repugnant to the spirit of Islam. They consulted with each other and agreed to regard the divorce as futile and of no effect. So, they entitled the divorced wife to inheritance after the man's death and burial.²⁴ The *Sahābah* took that decision so that a divorce of this type would not become a means of abuse. So, the decision was based on the principle of blocking the means.

iii) Prohibiting Muslim Governors from Marrying Jewish or Christian Women

Also in the era, the second Caliph, Umar Ibn al-Khattāb prohibited one of his provincial governors from marrying a Jewess. Imam Muhammad Ibn al-Hassan has narrated the following Hadith to that effect:

Hudhaifah Ibn al-Yaman (Umar's governor to the province of Madāin) married a Jewess in the city of Madāin. When Umar learnt about that he wrote ordering him to leave her alone. Hudhaifah wrote back to him: "Is she unlawful (for marriage) O Prince of the Faithfuls?" Umar wrote back to him saying: "I bid you to divorce her before putting down this letter of mine. The issue is that I am afraid that if we allow this, then other Muslims will follow your step in that direction and select their wives from among the People of the Book, for nothing else but their beauty, and that will be a great calamity for Muslim women".²⁵

The Caliph is saying that it is lawful to marry from the People of the Book, as ordained by Allah in verse five of *Sūratul-Mā'idah* of the Glorious Book: "(Lawful to you in marriage) are chaste women from the believers and chaste women from those who were given the Scripture (Jews and Christians) before you", That notwithstanding, Muslim women should be preferred, particularly where leaders are involved because their examples are followed by the masses. This *ijtihād* gives food for serious thought. On the one hand, a Muslim woman may not marry a non-Muslim man because her Muslim status would be negatively affected by that, unlike the non-Muslim woman marrying a Muslim man. Consequently, preferring non-Muslim women for marriage for whatever reason will be placing a serious disadvantage on Muslim women and so should be discouraged.

On the other hand, although Umar has referred specifically to the danger imposed in the issue due to the beauty of the Jewish and Christian women at the time, but in fact there are other dangers in that. If we look at what is happening in some Arab countries today where some misguided leaders go to America or Europe to select their wives, we will have a better appreciation of the Caliph's *ijtihād*. These leaders are never sincere in their pursuit of national interests. They only pay lip-service to these interests due to the influence of their foreign wives. They are never serious even with their religious obligations. These leaders, besides recognizing the legality of such marriages as ordained in the Glorious Qur'ān, should also try to understand what Umar al-Faruk is talking about.

Sadd adh-Dharī'ah in the Era of the Tābi'īn

The era of the *Tābi'īn* (followers of the *Sahābah*) extends from the death of the last of the rightly guided Caliphs, Ali Ibn Abi Tālib, in 40 A.H. (661 C.E.) and the ascendancy of the founder of the Umayyad dynasty,

Mu'āwiyah Ibn Abi Sufyān, and lasts to the end of the first century of the *Hijrah*.²⁶The *Tābi'īn* were the students of the *Sahābah*. They were called *Tābi'īn* (a term applied to them by the Glorious Qur'ān 9:100) itself, because they followed the *Sahābah* in all their good steps.

However, we sometimes see the scholars of the era re-visiting issues that were discussed by the *Sahābah* and then taking a completely different stand. A good example is the stand of the *Tābi'īn* towards a repentant armed robber.

i) No Pardon for a Repentant Armed Robber

The Glorious Qur'ān (5:33-34) says:

The punishment of those who wage war against Allah and His Apostle, and strive with might and main for mischief through the land is: execution or crucifixion or cutting of hands and feet from opposite sides or exile from the land: That is their disgrace in this world, and a heavy punishment is theirs in the hereafter, except for those who repent before they fall into your power. In that case, know that Allah is Oft-forgiving, Most Merciful.

The *Sahābah* studied this verse and understood from it that if an armed robber repents after committing heinous crimes, and returns to the authorities and surrenders himself before being over powered by the State force, he will be pardoned and helped to become a good and useful citizen.²⁷ But when the *Tābi'īn* came, they re-examined this decision of the *Sahābah*'s and rejected it, insisting that the repentant armed robber will still have to be punished for his past crimes.²⁸The *Tābi'īn* based their decision on the principle of blocking the means. They reasoned that if the authorities adopt the path of pardon, they may very easily end up being deceived by hypocrites.

If we examine the two forms of *ijtihād* critically, we may conclude that each one is solid. This is because the part of the verse that says: "Except for those who repent before they fall into your power" can mean that these repentant criminals are exempted from the punishment prescribed in the verse, in this world and in the Hereafter, and that is how the *Sahābah* have understood it. But it can also mean that they are exempted from the punishment in the Hereafter only, as understood by the *Tābi'īn*. Besides, it is very possible that in the time of the *Sahābah*, pardoning these criminals would encourage them to repent and abandon their evil ways, and that in the

time of *Tabi'īn* pardon would only produce negative results, as it would in our modern times.

ii) **Prohibiting Civil Servants from Receiving Gifts**

Also, in the era, the Caliph Umar Ibn Abdul-Azīz prohibited his governors and assistants from receiving gifts. He did that with a view to enforcing uprightness in them. He made it clear to them that those “gifts” were simply bribes in the cloak of gifts. As for himself, none could even think of attempting to approach him with “gifts” considering the fact that he returned the precious jewels which his wife, Fatimah received from her father, Caliph Abdul-Malik, back to the public treasury (*baitul-māl*) as dubious presents he could not bear to live in the same house with.²⁹

However, his governors did not like that. So, one day, one of them decided to argue it out with him. He told the Caliph that Islam in general encourages Muslims to give and accept gifts as a means of expressing love and affection, and that gifts, no doubt, inculcate the spirit of brotherhood and promote understanding and trust in the society. Then, he concluded his exposition in the following words: “And then, above all, you know very well that even the Prophet himself used to accept gifts.”³⁰ After listening to him carefully, Umar said to him:

You have really perished!! Gifts to the Prophet were truly gifts. But the issue is that today gifts are simply bribes in the cloak of gifts.³¹

The Caliph made that *ijtihād* on the basis of Blocking the Means. Everybody knows that the Glorious Qur’ān has prohibited bribery (5:188). But many people are deceived into receiving bribe for no other reason but that the giver calls it “gift.” But Umar Ibn Abdul-Azīz was not the type of person who could allow himself to be deceived by names, and he has a strong basis for that in the Sunnah of the Prophet. It once happened that the Prophet sent one of his Companions to the tribe of al-Azd to collect their *zakāt* of animals. But when the *zakāt* collector came back, he released hundreds of animals to the Prophet and withheld a small group, saying: “That large flock is yours (for the *Ummah*) but this small group is mine (given to me as presents)”. The Prophet went angry at that, and condemned the man’s action in a very strong terms, saying among other things: “You should have remained in your father’s and mother’s house till your presents come to you if you were telling the truth.”³²

The above Hadīth, as Imam al-Ghazali pointed out in his analysis, gives the criterion for distinguishing between a real gift and a bribe in the cloak of a gift. The gifts that come to you because you are holding a public office is nothing but a bribe, but the gift you are sure will come to you in your father's and mother's house - that is even after you have left that office, that is surely a real gift. ³³ As for a gift you are not very sure where it belongs because it vacillates between the two types, you have to regard it as a bribe, to be on the safer side.

iii) **Prohibiting Civil Servants from Engaging in Business**

In his earnest effort to keep the people far from injustice, Umar Ibn Abdul-Aziz also prohibited his governors and assistants from engaging in any form of trade or business, as long as they remained in service of the *Ummah*. His motto was: "You can't be a civil servant and a trader at the same time."³⁴ He based that *ijtihad* on the principle of Blocking the path that leads to undesirable results. This is because a governor who is a trader at the same time can very easily cheat the people. When people sell to him, they will accept whatever price he offers, and when they buy from him, they will pay whatever price he demands. For that reason, Umar fixed good salaries for them, and then prohibited them from engaging in any other form of business for as long as they agreed to serve the public.

If modern governments can condescend to ponder over what Umar Ibn Abdul-Azīz was actually driving at, the society will be better for it. What is happening today amounts to waste of public resources.

iv) **Holding the Drunk Responsible for His Crimes**

Imam Malik has narrated in his *Muwata* from Yahya Ibn Sa'id that he said:

Marwan Ibn al-Hakam wrote to Mu'āwiyah telling him that a drunk who had committed the crime of murder in a state of drunkenness, has been brought before his court, and that Mu'āwiyah wrote back to him ordering him to execute him for the murder. ³⁵

Marwan Ibn al-Hakam, a provincial governor of Mu'āwiyah, wrote to the Caliph because he was confused. This is because in Islam, the basis of all responsibilities is sanity, and if a drunk cannot be said to be fully sane, he equally cannot be said to be fully insane. Therefore, what is he supposed to do in this case?

The Caliph, Mu‘āwiyah, instantly formulated the *ijtihād* that a drunk must be held fully responsible for his crimes. He is not to be given the same treatment as a lunatic because he caused his own ailment by himself, and he did that intentionally and in defiance of Allah’s injunctions.³⁶ This *ijtihād* is based on the principle of Blocking the Means that leads to undesirable results. This is because in addition to causing his problem intentionally by himself, the drunk can think and take decisions even in his state of drunkenness. Therefore, if we say that he is not responsible for his crimes, we shall be opening gateways for drunkards to cause havoc in the society. Besides, if people know that they will not be held responsible for the crimes they commit in a state of drunkenness, they will pretend to be drunk whenever they want to commit crimes.

v) Permissibility of Collecting Fees for Teaching the Glorious Qur’ān

One of the problems that were hotly debated in the era of junior *Tābi‘īn* was the position in Islam of collecting fees for teaching the Glorious Qur’ān.³⁷ In the era, there were so many people engaged in teaching the Glorious Qur’ān, especially to small children. The vast majority of the scholars of the time maintained that it was unlawful for these teachers to demand pay for teaching the Qur’ān. The basis of their view was the verse of the Qur’ān which says: “O my people! I ask of you no reward for this (message). My reward is from none but Him who created me: Will ye not then understand?” (Q.11:51) This verse is repeated in the Glorious Qur’ān several times and in the mouth of a lot of the prophets of Allah.³⁸ The proponents of this view argued from these texts that men of Allah throughout the ages never ask for reward in order to teach the message. And then, another verse of the Qur’ān says: “Or is it that thou ask for a reward, so that they are burdened with a load of debt?!” (Q.52:40). They maintained that this verse shows that if men of Allah were to demand for reward before teaching the message of Allah, people would take that as an excuse for not getting the message, for fear of being loaded with financial burden. They argued that the verse is therefore supportive of the view that no fees should be demanded for teaching the message of Allah, so as not to create room for neglect of this message.

But a leading scholar of the era, Imam al-Hassan al-Basri, rejected that view, and maintained that there was nothing wrong in collecting fees for

teaching the Glorious Qur’ān.³⁹ In his view, the verses quoted by the scholars are only making a general statement of fact concerning the prophets of Allah: that they did not ask for reward in order to deliver the message Allah sent them with. The verses are not directly or indirectly asking us not to collect fees for teaching the Glorious Qur’ān. He argued that the teaching of the Qur’ān will definitely suffer neglect if we make it a rule that no fees should be collected for that, and that will be doing greater harm than good to the Qur’ān itself in particular and to Islam in general.⁴⁰ So, his *ijtihād* was based on the principle of Blocking the Means.

Sadd adh-Dharī’ah* in the Era of the Great *Imāms

The era of the great *Imāms* also known as the golden age of the Islamic law, extends from the beginning of the second century to the middle of the fourth century of the Muslim era.⁴¹ The scholars of this era elicited the subsidiary sources of the *Sharī’ah* and gave them definite technical names and also elicited rules for the effective use of these subsidiary sources, including the principle of Blocking the Means.⁴² During the era, the great *Imāms* made several *ijtihād* based on the principle of blocking the Means. It was only *Imām* Abu Hanifa who did not subscribe to the principle in terms of nomenclature, even though he provided solutions to problems in line with the aims and objectives of the principle, as we shall see shortly. Some of the decisions taken in the era based on the principle of blocking the means are as follows:

i) Necessity of Participating in *Jihād* even if the *Imām* is Unjust

During the era, *Imam* Malik gave a verdict making it compulsory on people to participate in *jihād* even if the *Imām* (the Muslim leader) is unjust. He reasoned that if people would abandon *jihād* in protest against an unjust ruler, that would bring greater evil to the community.⁴³ So, the verdict was based on the Principle of Blocking the Means.

ii) Validating the Pledging of Oath of Allegiance to the Lesser

The general leader of the Muslim Ummah is supposed to be the most learned and the most pious. But *Imam* Malik reasoned that insistence on that may lead to disorder and chaos in the society. For that reason, he gave a verdict validating the pledging of oath of allegiance (*bai’at*) to a lesser (*mafḍul*) of the two qualified candidates for the office of the great *Imām*.⁴⁴

iii) A Close Relative may neither Act as a Witness nor as a Judge

The Maliki scholars have also given a verdict that close relatives may neither act as witnesses nor as judges in each other's disputes, lest that leads to prejudice in favour or against one of the parties.⁴⁵ The principle involved here is the principle of Blocking the Means, in that such activities might constitute the means to an evil end, namely, injustice.

iv) A Judge may not Adjudicate a Dispute on the Basis of his Personal Knowledge of Facts

One of the great issues debated by the jurists of the era was the position of adjudicating a dispute on the basis of the judge's personal knowledge of facts, without the formal presentation of evidence. Imam ash-Shafi'i and Imam Abu Thaur maintained that there was nothing wrong in that.⁴⁶ They supported their view with the Hadīth narrated by 'Āishah that Hind, the daughter of Ut'bah and wife of Abu Sufyan came to the Prophet and complained to him that her husband did not give her and her child money for their upkeep, and that the Prophet permitted her to take from his money what would be enough for them according to custom, and without extravagance.⁴⁷ They reasoned that the Prophet based his ruling on his personal knowledge of facts and for that reason did not even ask Hind for evidence. Therefore, there is nothing wrong in adjudicating a dispute on the basis of the judge's personal knowledge of facts, without the formal presentation of evidence.⁴⁸

But Imam Ahmad rejected that argument and maintained that a judge must base his judgment on the formal evidence presented to him by the parties concerned. He argued that if judges are given the right to base their judgments on their personal knowledge of facts without the formal presentation of evidence, abuse is inevitable and the result will be injustice.⁴⁹

The above *ijtihad* made by Imam Ahmad is based on the principle of Blocking the Means and is obviously preferable, especially in our modern times with hosts of dishonest judges. Besides, it is observed that the Hadīth cited by the opponents is not decisive. They did not consider other occasions where the Prophet based his decisions on evidence, and not on his personal knowledge of facts. There was, for instance, a tradition that states that the Prophet based his judgment on evidence, and not on his personal knowledge of facts.⁵⁰

v) **Technical Solution to the Problem of Arbitrariness in the Exercise of One's Legal Right**

Islam recognises the right of the individual to ownership and guarantees his freedom to make use of his property the way he likes. But sometimes, some people resort to arbitrariness in the exercise of their legal rights, to the extent that they insist on exercising those rights even where they constitute harm to others. During the Caliphate of Umar Ibn al-Khattāb, he ruled that if that happens, the authorities must intervene, because Islam does not approve of arbitrariness in the exercise of personal rights.⁵¹

When Imam Abu Hanifa came, he studied this problem and took a different stand. In his view, the authorities should be discouraged from interfering directly in such issues. The Imam said that it is not every problem that should be settled in law courts. Rather, people should be encouraged to settle their minor problems outside the courts. Litigation poisons love and co-operation between the people. We should think of alternative ways of making everybody to realize that it is in the best interest of all to live in mutual love and co-operation.⁵² One day, a man reported to the Imam that his neighbour was digging a well very near to his wall despite all his pleadings for him to desist, and that his wall was in danger of collapsing. Abu Hanifa asked the man to go back to his neighbour and explain to him in a very friendly manner that the well he was digging constituted a serious threat to his wall. Everything was done to dissuade the neighbour, but all in vain. His argument was that he was digging the well in his own land and not in another man's land. Therefore, there was no how he could accept from anyone whoever he may be, to tell him how to use his personal property.

Eventually, Imam Abu Hanifah advised the man to make a hole in his wall directly opposite the well and to make that the urinary for the whole family, so that the urine flows directly into the well. The man did as he was advised. The neighbour was infuriated by that. He came and argued that the man was contaminating his well with urine. But the man told him he was urinating in his own land and not in another man's land and that he will never accept from anyone whoever he may be, to tell him where to urinate and where not to urinate in his own land. Eventually, the neighbour was compelled to close the well without litigation.⁵³

By that, the Imam's message was made very clear to all. If you feel you have right to use your property anyhow, you should remember that other

people have similar rights. Then, if everybody exercises his personal right arbitrarily, no one in the society will be spared from its evil consequences.

Sadd adh-Dhari'ah in the Era of Stagnation and Taqlid

The golden era of the *Shari'ah* law was succeeded by the era of stagnation, in which the prevailing characteristic was *taqlid* or the blind following of the established schools of thought. The scholars of the era confined their activities to editing and revisiting previous works and to defence of their individual schools of thought.⁵⁴ This trend has continued from the middle of the fourth century of the Muslim era, to our present day. In spite of that, there existed from time to time throughout the era, a few outstanding scholars whose knowledge of the *Shari'ah* in many cases equalled those of the great *Imams*, founders of the legal schools of thought. These outstanding scholars of the era – people like Imam al-Baji, Imam Ibn Taimiyya, Imam Ibn al-Qayyim, al-Hafidh Ibn Hajar etc., opposed *taqlid* and dared to raise the banner of *ijtihad* high above the ocean of *taqlid* in which they lived. Some of the rulings they made based on the principle of Blocking the Means are as follows:

i) Permissibility of Price Control

Anas Ibn Malik and Abu Huraira have narrated that:

Prices soared in Madinah (in a certain year) during the time of the Prophet. For that reason, people said to the Prophet: "O Prophet of Allah! Prices have gone up too high. Please, fix prices for us." The Prophet replied: "Allah is the Fixer of prices. It is He who contracts, and it is He who expands. He is the Overall Giver of sustenance. It is my wish to meet Allah in a state whereby none of you has any demands against me for injustice in blood or money."⁵⁵

This Hadith means in essence that the Prophet refused the appeal for price control on the basis that it is Allah who fixes prices. If, for instance, Allah wants the prices of foodstuffs to come down, He will give people bumper harvest, and if He wants the prices to go up, He will give them poor harvest. Based on this Hadith, the multitude of the scholars from the time of the *Sahabah* and generations after that, held that price control is not permissible in Islam.⁵⁶ They maintained that people should have authority over their properties and that price control was a type of arbitrary interdiction on that authority. They asserted that if by price control, the Muslim leader aims at protecting the welfare of the buyer, he should remember that he is also

charged with the responsibility of protecting the welfare of the seller. For that reason, he has to leave the two parties alone to look for their welfare in their own ways.⁵⁷

However, Imam al-Baji made use of *ijtihad* on price control. He argued that there was nothing wrong Islamically in price control, especially if the need for that arises, as for instance, where some individuals try to cheat the public by raising prices arbitrarily to make quick money. He explained that in a situation like that, if the Muslim leader fixes prices, he cannot be said to have wronged the seller, because on the one hand, he is not denying the seller profit in its totality, but simply denying him excesses and exploitation, and because, on the other hand, he is not compelling the seller to sell. If he really does not like the prices the authorities have fixed, he (the seller) can keep the goods for his personal consumption.⁵⁸

This *ijtihad* formulated by Imam al-Baji is based on the Principle of Blocking the Means. It is targeted against heartless traders who resort to diabolic means to cheat the general public. The *ijtihad* shows there is nothing wrong Islamically in preventing them from achieving their objectives. It may be relevant to add here that Imam al-Baji's *ijtihad* was meant to explain the action of the Prophet based on the Hadīth of the Prophet quoted earlier. What happened was simply that the Prophet declined to fix prices of food stuff as requested by the people, because there was no good basis for doing so then. Price of food items had gone up then due to draught. Fixing prices in a situation like that would be doing great injustice to the traders, and he would not like to meet his Lord with injustice. This is quite different from the situation Imam al-Baji is talking about, where heartless traders create artificial scarcity in order to cheat the public.

ii) The Fate of a Man who Finds Another Man on his Wife and Kills Him

Imam al-Bukhari has narrated in his authentic collection, from al-Mughīrat that Sa'ad Ibn Ubadat once said: "If I should find a man on my wife, I will strike off his head with my sword, no room for pardon in that," and that when this saying of Sa'ad's reached the Prophet, he said to his Companions: "You are astonished at (the greatness of) Sa'ad's jealousy, but be informed that my own jealousy is even greater than that, and that Allah's is greater than mine."⁵⁹

This Hadīth shows that jealousy (sense of honour and hatred of infidelity) is something commendable in Islam, as it is not only an attribute of

the Prophet but of Allah Himself. The jealousy of Allah would mean something like intensive hatred of unfaithfulness, or something of that nature. Now, the implication of all these facts combined would be that if a man finds another man on his wife, and is impelled by the intensity of his jealousy to kill the man, he would not be liable to any punishment for that, for he would only be doing something that Allah and His Prophet love.

But Imam al-Baji, even while admitting that jealousy is something commendable in Islam, has ruled that a man must not go to the extent of killing for the sake of jealousy. In his view, if a man finds another man on his wife and wounds him, he will be acquitted, because the illegal presence of the man in his house is already enough justification for his antagonism. But if he goes to the extent of committing murder, he will be executed for that.⁶⁰

This *ijtihad* is based on the principle of Blocking the Means. This is because if we say that because jealousy is good, therefore a man who finds another man on his wife and kills him will not be killed for that, people will misuse that right, and kill their adversaries under false pretensions.

iii) Permissibility of Punishment by Confiscation

The Prophet has said concerning *zakāt*:

Any man who gives it (willingly) in anticipation of reward from Allah, will definitely be rewarded. But any man who refuses to give it, we shall take it (from him even by force) and (take together with it) a portion of his camels, for it (*zakāt*) is a strict law from our Lord.⁶¹

In his exegesis of the above Hadīth, Imam Ibn al-Qayyim deduced the permissibility of punishment by confiscation of property under the *Sharī'ah* law. In his analysis, the essence of what the Hadīth is saying is that when a man is ready to fulfil his obligations to the society, his rights will be fully protected, and vice-versa when he is unwilling. The Imam explained that the case of *zakāt* of animals referred to in the Hadīth is just an illustration: When a man is willing to give it, the tax-collector will of necessity calculate properly the number of camels he has and the number that is due as *zakāt*. But when he is not ready to co-operate, the story will become quite different, as the tax-collector will not waste his time making a detailed calculation of the man's camels, but will just carry away any number of camels he deems fit, and by that, the man will be losing to the State more camels than is actually due. And that's the confiscation we are talking about. He asserted that in addition to the Hadīth under discussion, it once happened that the Prophet

deprived one of his soldiers of his share of the booty as punishment for gross misconduct in the battle. All these evidences show that punishment by confiscation of property is something permissible in Islam where there is justification for it.⁶²

The *ijtihād* of Imam Ibn al-Qayyim's in this issue and his analysis are all based on the principle of Blocking the Means. As we all know, whatever the individual earns through lawful means, is regarded in Islam as his private property which neither the State nor anyone else can justifiably claim. But the analysis made by Imam Ibn al-Qayyim has pointed out to an important fact: that this is only so as long as the individual fulfils his obligations to the society and pays taxes as ordained by the *Sharī'ah*. Otherwise, the State will be entitled to retaliate by trampling on his rights and confiscating his properties, and there will be nothing wrong in that Islamically. In addition, this is further strengthened by the fact that if that is not done, it can serve as encouragement to misconduct. Therefore, there is a need for decisive action to serve as deterrent.

This *ijtihād* is particularly relevant in our modern times. It is common these days to hear some people criticizing the government for failing to do this and that, even when they themselves engage in gross misconduct to the society and do not care about fulfilling their obligations to the government or paying their legitimate taxes. If the government confiscate their properties, there will be nothing wrong in that Islamically.

iv) Truth Matters in all Cases and not the Ruling of the Judge

Imam al-Bukhari has narrated from Umm Salāmat, a wife of the Prophet, that she said:

One day, the Prophet heard a quarrel at his doorsteps. He went out and addressed the people saying: "I am only a human being, and you people carry your quarrels to me. Some of you may be more eloquent and articulate (in their presentation), leading me by that into believing that they are telling the truth, and consequently into passing a judgement in their favour. Any one I pass a judgement conferring on him the right of his Muslim brother, should understand that it is nothing but a piece of fire. So, let him take it (if he likes) or abandon it."⁶³

In his exegesis of the above Hadīth, al-Hafīdh Ibn Hajar deduced a general rule that under the *Sharī'ah* law, what matters is the truth of the matter, not the ruling of the judge and that the ruling of a judge cannot

legalise anything. It is only Allah, the Almighty who can make something lawful or unlawful.⁶⁴ This is an issue over which the scholars differed a lot. In the understanding of majority of the scholars, this should apply in monetary matters only, because the Hadith was said in a case of monetary dispute. In their view, the ruling of a judge in other matters should be held to legalise the issue in question.⁶⁵

But al-Hafidh Ibn Hajar maintained that the rule applies in all cases. He based his *ijtihad* on the Principle of Blocking the Means. If the ruling of a judge can be held to exonerate an individual, that can encourage fraud, as people will then do everything possible to obtain a favourable pronouncement. So, the only solution to that is for people to know that it is only Allah, the Almighty who can make something lawful or unlawful, and in all cases, be it monetary or otherwise.

The opponents argued that this can create problems. They said: If, for instance, a judge adjudicates a quarrel between husband and wife and passes a judgement dissolving the marriage between the couple, the marriage should be regarded as dissolved and there should be no sin on any man who proceeds on the basis of that judgement to marry the woman, notwithstanding who of the couple was right or wrong. This is for the simple reason that if things are not taken like that, we can easily encounter funny situations.⁶⁶

But al-Hafidh Ibn Hajar stood firm in the face of all counter arguments. He explained that there is no point in the argument made by the opponents. What led to the ugly situation they tried to capitalise on is the illegality the woman resorted to in the first place to gain dissolution of her marriage with her first husband. So, the whole sin must return to her alone, as would be the case of a woman who leaves her husband even without a court ruling at all, and goes to another man and tells him she is not married, and by that deceives him into marrying her. Such a woman will be living in adultery throughout her life, and will certainly be punished for that. Nevertheless, there will be no blame on the man, as long as he has no means of realizing that he is marrying another man's wife.⁶⁷

This *ijtihad* is particularly relevant in our modern times. It is common these days to see a well-known thief running to the court with hundreds of hired advocates to help him obtain a ruling from the judge that he is not a thief, when he himself knows more than anyone else that he is a thief. Therefore, there are a number of moral issues of this nature which amount to

nothing but self-delusion. People should stop deceiving themselves, thinking that other people's properties can become their own just because a misinformed judge has made a pronouncement to that effect.

Conclusion

From the foregoing, it has been established that the principle of Blocking the Means is one of the provisions made by the *Sharī'ah* in solving human problems. It will therefore be necessary if the Muslims in the contemporary period can make good use of the principle in the addressing their problems. Although the *Sharī'ah* has not been fully implemented in Nigeria to give room for utilising the principle of Blocking the Means fully, Islamic scholars can still make use of the principle in the aspect of personal law relating to *nikāh*, *talāq*, *hadānah*, *mīrāth* and others on which the principles can be applied. This will go a long way in correcting some vices and immoralities in Nigerian society when the Muslim citizens are at alert to their responsibilities as Muslims. It is also considered necessary for Islamic scholars to educate Muslims on the teachings and dictates of the principle of Blocking the Means. This will go a long way in promoting the consciousness of Muslims in acting according to their religious dictates and in putting them at the right path of their religion. Consequently, the Nigerian society will be better from the end of the Muslims on their social, political, economic and religious spheres.

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