CHAPTER 5

Legal Maxim regarding Hardship and Facility: “Hardship Begets Facility” (al-Mashaqqa Tajlib at-Taysir)*

Hardship and Facility in Islamic Criminal Law

One of the beauties of Islamic Law is its recognition of the fallibility of human beings in carrying out their spiritual and mundane activities. Moreover, it comprehends the difficulties they will face in achieving both their spiritual and mundane objectives. Thus, Islamic Law endorses the breach of certain rules in cases of dire necessity. The maxim which establishes this approval and is supported by sound evidence from the Qurʾān, Ḥadīth, and scholarly consensus (ijmāʿ) is “Hardship begets facility” (al-mashaqqa tajlib at-taysir).

Definition and Interpretation of the Legal Maxim al-Mashaqqa Tajlib at-Taysir

The maxim “Hardship begets facility” is one of the basic general maxims agreed upon amongst Islamic jurists. It is applicable to almost all issues and branches of Islamic jurisprudence. Because of the important role it plays in Islamic Law, it is now being recognized as a fundamental maxim,1 used as a legal concession in the Sharīʿa for any recognized hardship (mashaqqa). Thus, it serves the purpose of Islamic Law to alleviate or remove burdens that people may face in exercising the religious rites.2

The origin of the maxim is derived from an in-depth study of the Islamic textual injunctions of removing hardship (rafʿ al-ḥaraj). It is clearly stated in many Qurʾānic verses and traditional texts that Islam enjoins facility and leniency in any case that leads to difficulty. A Qurʾānic verse states: “God intends for you ease, and He does not want to make things difficult for you”,3 adding

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2 Ibn Nujaym, al-Asbāb wa-n-Nażāʾir, 89–90.
3 Q. 2:185.
in other verses, “and [He] has not laid upon you in religion any hardship”\textsuperscript{4} and “God wishes to lighten [the burden] for you; and man was created weak”.\textsuperscript{5} Many other verses suggest that Muslims can find their way out of any difficulty.\textsuperscript{6} Although they differ in context, these verses impart the same implications; namely, that God will ease difficulty and hardship whenever it exists as well as make humans understand that what is virtuous and legal is commensurate with their own moral responsibility. Thus, in fact, there is nothing in Islamic Law that surpasses the human capacity to accomplish.\textsuperscript{7} The Prophet is reported to have said: “Religion is very easy and whoever overburdens himself in his religion will not be able to continue in that way”.\textsuperscript{8}

Conversely, of course, some of the legislation in Islamic criminology may appear difficult and severe for mankind to endure, but that is not sufficient reason to brand them as ‘barbaric’ or ‘relics of antiquity’. Just because we may derive great pleasure from many of our daily activities, such as eating, drinking, having intercourse with one’s spouse, we may not intuit the proportion of hardships (\textit{mashaqqa}) lurking beneath the surface of what appears normal or ordinary.\textsuperscript{9}

The relevance of this maxim to Islamic criminal justice lies in the fact that, although committing certain crimes such as illicit sexual intercourse (\textit{zinā}) or intentional homicide (\textit{qatl ‘amid}) is never permitted, other crimes such as theft (\textit{sariqa}) and consumption of alcohol (\textit{shurb al-khamr}) or forbidden foodstuffs can be justified under dire, extenuating circumstances. Nevertheless, if a fundamental rule is broken due to dire necessity (\textit{darūra}), and the right of man (\textit{ḥaqq al-ādamī}) is involved, then restitution is recommended. Events that occurred during ‘Umar Ibn Khaṭṭāb’s rule provide a vivid proof that rules can be breached in dire circumstances. It is reported that ‘Umar suspended \textit{ḥadd} punishment for theft during a period of famine in Medina.\textsuperscript{10} The crime was neither legalized nor ‘fiscalized’, but the severe punishment for a \textit{ḥudūd} crime was waived or reduced temporarily, depending on the perpetrator’s circumstances, in order to alleviate the hardship of starvation.

Most of the verses that stand as legal evidence for the breach of rules during a period of hardship are related to the consumption of forbidden (\textit{harām})

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  \item \textsuperscript{4} Q. 22:78.
  \item \textsuperscript{5} Q. 4:28.
  \item \textsuperscript{6} Cf., Q. 5:7 and Q. 2:286.
  \item \textsuperscript{7} al-Shāṭibī, 2:119.
  \item \textsuperscript{8} al-Bukhārī, \textit{Kitāb al-Imān}, Ḥadīth No. 39.
  \item \textsuperscript{9} al-Shāṭibī, 2:425 and 434.
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