

1. The Pillars of Islamic Rule (hakamah)

- **Law Maker (Al-Haakim)**

- Every specific Islamic rule has to come from a law maker, Allah.

مَنْ أَهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ ۗ وَمَنْ ضَلَّ فَإِنَّمَا

يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ۗ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ

رَسُولًا ﴿١٥﴾

15: Muhsin Khan: Whoever goes right, then he goes right only for the benefit of his ownself. And whoever goes astray, then he goes astray to his own loss. No one laden with burdens can bear another's burden. And We never punish until We have sent a Messenger (to give warning). [Surah Al-Isra, 17:15]

رُسُلًا مُّبَشِّرِينَ وَمُنذِرِينَ لِئَلَّا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ

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165: Muhsin Khan: Messengers as bearers of good news as well as of warning in order that mankind should have no plea against Allah after the Messengers. And Allah is Ever All-Powerful, All Wise. [Surah An-Nisa, 4:165]

- **The Law (Al Hukm Ash-Shar'ee)**

- The Islamic rule in the form of command which came from the law maker, Allah ta'ala.
- Establishes Islamic rule which falls in different categories (wajib, haram, etc.)

- **Meant for someone (Al-Mahkoom 'Alayh)**

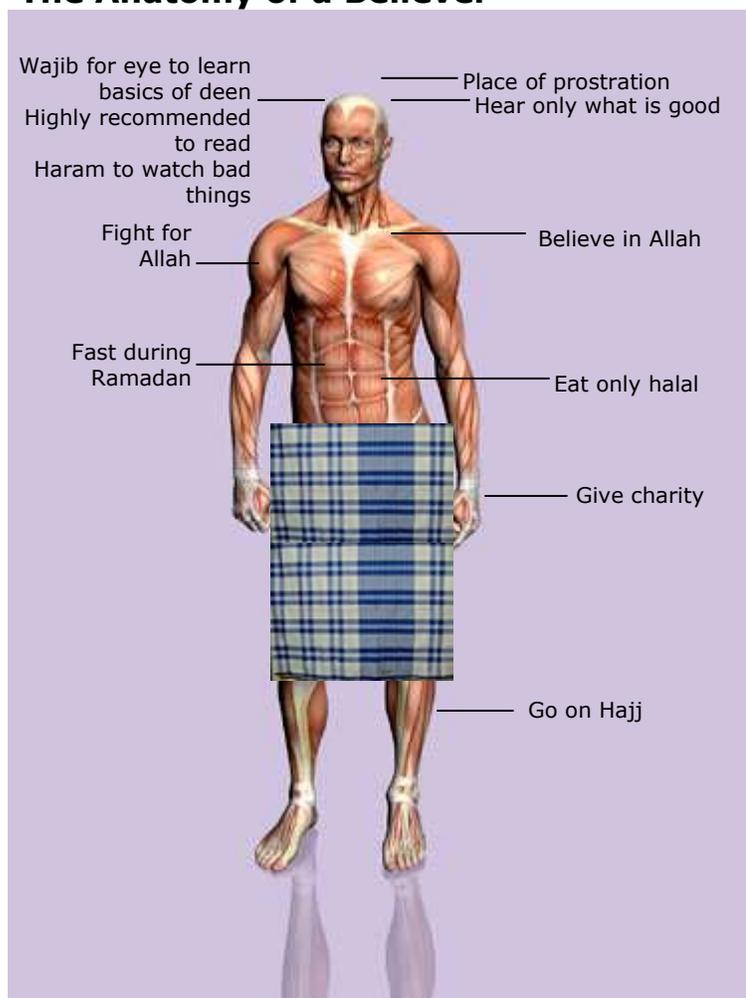
- That rule has to be meant for someone who is the accountable party (Mukallaf-the servant of Allah).
- It's haram/wajib in regards to whom? Those who are competent, young, sane, etc.

PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- The individual who is obligated to practice hukm Ash-Shar'ee
- **Applied to whom (Al-Mahkoom Feeh)**
 - That rule has to be applied to one of the actions of that servant of Allah. That is the subject matter of Hukm.
 - Apply rules to actions and statements
- **Extracted by whom?**
 - That rule is extracted by someone knowledgeable enough to extract it—the Mujtahid or Mufti.
- **How does he/she extract?**
 - The Mujtahid operates and extracts in a specific way and code; using the principles of Usool Al-Fiqh.
- **What do they filter?**
 - He or she knows how to regard and disregard 'tips' based on his/her knowledge of Usool Al-Fiqh.
 - 'Ulama filter what sources are important for practical use
- **What do they do with that knowledge?**
 - Then that Mujtahid tells the general public what Allah wants of them.

PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

The Anatomy of a Believer



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2. Who is Law Maker? Al-Haakim

- **Allah is the law maker!**

أَوَلَمْ يَرَوْا أَنَّا نَأْتِي الْأَرْضَ نَنْقُصُهَا مِنْ أَطْرَافِهَا وَاللَّهُ يَحْكُمُ لَا مُعَقِّبَ

لِحُكْمِهِ وَهُوَ سَرِيعُ الْحِسَابِ ﴿٤١﴾

41: Muhsin Khan: See they not that We gradually reduce the land (of disbelievers, by giving it to the believers, in war victories) from its outlying borders. **And Allah judges, there is none to put back His Judgment and He is Swift at reckoning.** [Surah Ar-Ra'd, 13:41]

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مَا تَعْبُدُونَ مِنْ دُونِهِ إِلَّا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ
وَعِبَادُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ إِنْ الْحُكْمُ إِلَّا لِلَّهِ أَمَرَ أَلَّا
تَعْبُدُوا إِلَّا إِيَّاهُ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا
يَعْلَمُونَ ﴿٤٠﴾

- 40: Muhsin Khan: "You do not worship besides Him but only names which you have named (forged), you and your fathers, for which Allah has sent down no authority. **The command (or the judgment) is for none but Allah. He has commanded that you worship none but Him (i.e. His Monotheism), that is the (true) straight religion, but most men know not.** [Surah Yusuf, 12:40]
- **Can intelligence be the law maker? NO**
 - Allah would not have sent messengers
 - People are not accountable until they receive guidance→through Messengers
 - Rebuttal to Mu'tazilat
 - Follow Allah's law, however, respect the rule of the land if you have no choice, i.e. car insurance

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- 165: Muhsin Khan: Messengers as bearers of good news as well as of warning in order that mankind should have no plea against Allah after the Messengers. And Allah is Ever All-Powerful, All Wise. [Surah An-Nisa, 4:165]

• Is the Prophet of Allah a law maker?

- He (sallallahu aleyhiwasalam) contributed to the law ← Law maker under supervision of Allah
- Umar's (radhiallahu anhu) statements that were made into law
- Umar (radhiallahu anhu) initiated some issues and the prophet (sallallahu aleyhiwasalam) made them into laws

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ

وَلَعَلَّهُمْ يَتَفَكَّرُونَ ﴿٤٤﴾

44: Muhsin Khan: With clear signs and Books (We sent the Messengers). **And We have also sent down unto you (O Muhammad SAW) the reminder and the advice (the Quran), that you may explain clearly to men what is sent down to them, and that they may give thought.** [Surah An-Nahl, 16:44]

فَإِنْ أَعْرَضُوا فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا إِنْ عَلَيْكَ إِلَّا الْبَلَاغُ وَإِنَّا إِذَا

أَذَقْنَا الْإِنْسَانَ مِنَّا رَحْمَةً فَرِحَ بِهَا وَإِنْ تُصِيبُهُمْ سَيِّئَةٌ بِمَا قَدَّمَتْ أَيْدِيهِمْ

فَإِنَّ الْإِنْسَانَ كَفُورٌ ﴿٤٨﴾

48: Muhsin Khan: **But if they turn away (O Muhammad SAW from the Islamic Monotheism, which you have brought to them). We have not sent you (O Muhammad SAW) as a Hafiz (protector) over them (i.e. to take care of their deeds and to recompense them). Your duty is to convey (the Message).** And verily, when We cause man to taste of Mercy from Us, he rejoices thereat, but when some ill befalls them because of the

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deeds which their hands have sent forth, then verily, man (becomes) ingrate! [Surah As-Shu'ara, 42:48]

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ
بِمَا أَرَادَكَ اللَّهُ وَلَا تَكُن لِّلْخَائِبِينَ خَصِيمًا ﴿١٠٥﴾

105: Muhsin Khan: Surely, We have sent down to you (O Muhammad SAW) the Book (this Quran) in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through Divine Inspiration), so be not a pleader for the treacherous. [Surah An-Nisa, 4:105]

﴿ شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَنْ يَشَاءُ وَيَهْدِي إِلَيْهِ مَنْ يُنِيبُ ﴾

13: Muhsin Khan: He (Allah) has ordained for you the same religion (Islam) which He ordained for Nuh (Noah), and that which We have inspired in you (O Muhammad SAW), and that which We ordained for Ibrahim (Abraham), Musa (Moses) and 'Iesa (Jesus) saying you should establish religion (i.e. to do what it orders you to do practically), and make no divisions in it (religion) (i.e. various sects in religion). Intolerable for the Mushrikun, is that to which you (O Muhammad SAW) call them. Allah chooses for Himself whom He wills, and guides unto Himself who turns to Him in repentance and in obedience. [Surah Ash-Shu'ara, 42:13]

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- **Is a Mufti or a Mujtahid a law maker?**
 - No, if initiating rule
 - Yes, if codifying, elucidating, clarifying law
 - All human beings are subject to error; fallible
 - Blind, uncritical following (Taqlaed) of other humans is haram
 - He or she is not a lawmaker or initiator, rather they are scholarly people informing us of what, to the best of their study and research, is the law that Allah commands us with.

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أَمْ لَهُمْ شُرَكَاءُ شَرَعُوا لَهُمْ مِّنَ الدِّينِ مَا لَمْ يَأْذَنَ بِهِ اللَّهُ وَلَوْلَا
كَلِمَةُ الْفَصْلِ لَفُضِيَ بَيْنَهُمْ وَإِنَّ الظَّالِمِينَ لَهُمْ عَذَابٌ أَلِيمٌ ﴿٢١﴾

21: Muhsin Khan: **Or have they partners with Allah (false gods), who have instituted for them a religion which Allah has not allowed.** And had it not been for a decisive Word (gone forth already), the matter would have been judged between them. And verily, for the Zalimun (polytheists and wrong-doers), there is a painful torment. [Surah Ash-Shu'ara, 42:21]

- There is no obedience to any created thing if it entails disobedience to the Creator.
- A companion on an expedition told his disobedient followers to jump into the fire. The Prophet (*sallallahu aleyhiwasalam*) got angry and said if they entered they would never have come out.
- Story of 'Adee ibn Haatim in which he was told that the monks were worshipped when they were accepted as lawmakers.
- "Didn't they make the halal haram and the haram halal and you follow them?"

Amazing 'Gems' we derive from this discussion of who is the law maker

- The Mujtahid who explains Islamic rules and commandments to the general public should explain his proof (and evidence). In our times, many cultural Mad'hab followers have lost this.
- We learn that just because a human says something is part of Islamic Law doesn't mean we have to follow it, unless he or she proves that this is what Allah wants.
- Human intellect and rationale are not law makers; they are essential tools used by the Mujtahid in the process of deducing Islamic Law.

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3. Meet Hukm Shar'ee (an Islamic Law)

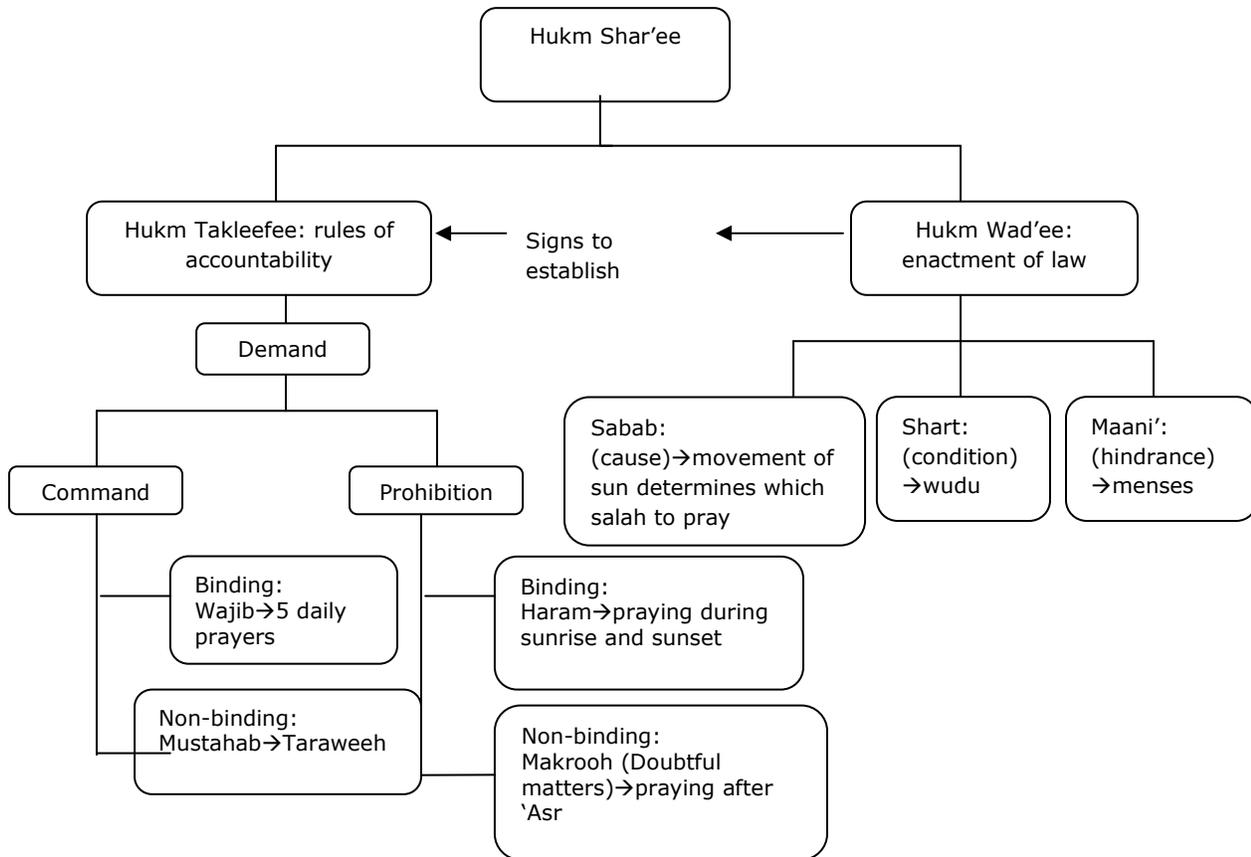
Every specific Islamic rule has to come from the Lawmaker, Allah, from the anatomy of Islamic Law. Here we shall discuss what an Islamic rule/law is, (aka. Hukm Shar'ee). [Refer to *Anatomy of an Islamic Rule/Law*]

- **Definition of Hukm Shar'ee Far'ee** ← branch (not principle) of main law:

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- It is a communication from Allah, addressed to the Mukalaf (accountable person) in regard to his/her actions, constituting a demand or an option (Hukm Takleefee) or enactment (Hukm Wad'ee).
- The product of Usool al Fiqh
- **Hukm Takleefee as a demand**
 - A demand is either a
 - (a) command or a
 - (b) prohibition.
 - That demand is either
 - (c) binding or
 - (d) not binding.
- **Application of a demand**
 - A commanding, binding demand: Fard or Wajib
 - A commanding, non-binding demand: Mustahab or Sunnah
 - A prohibition which is binding: Haram
 - A prohibition which is not binding: Makrooh
- **What about Mubaah? Hukm Takleefee as an option.**
 - In the definition "*...or an option...*," the servant of Allah is at liberty to do or to avoid doing something. No reward or punishment is involved.
- **Hukm Wad'ee**
 - Enacting something into
 - (a) a cause (Sabab),
 - (b) a condition (Shart) or
 - (c) a hindrance (Maani') to something else.

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- **Example: Hukm Takleefee in a rent contract:**

- Wajib: They must pay \$950 per month for the duration of one year.
- Haram: They are commanded in a prohibiting way not to have pets.
- Mubaah: They may sublet if they wish.

1. Al-Wajib, aka. Fard

- Comes from wajaba: becomes established → falls down on you (befalls you)
- Rewarded for doing, punished for not doing
- **Definition:** It is a commandment that is binding.
- **Other names:** Other names include: Fard, Maktoob, Haqq – all of these terms mean the same thing according to the majority of scholars.
- **Is it called Wajib or Fard? Are they the same?**
 - According to the Hanafis, there is a difference between Fard and Wajib. The majority of scholars say that there is no difference.
 - If a person denies a Fard they are considered to be Kaafir. If a person denies a Wajib, it does not take them out of the fold of Islam.
- **Wajib vs. Fard according to Hanafis**
 - A Fard is something whose proof is in total agreement without any doubt, like Salah and Zakah and Hajj. A Wajib is something whose proof has a difference of opinion from the scholars, like Witr.
 - Imam Abu Hanifa considers Witr as Wajib; you are sinful if you don't do it, but not as sinful as not doing something that is fard.
 - Fard: higher degree of obligation than Wajib, based on source of evidence
 - Wajib: established through sunnah and general/speculative evidence
 - E.g. reciting surah al Fatiha is wajib but other surah is fard
- **Is there some benefit to this distinction?**
 - In the end, the discussion is like those who say forest, while others say trees.

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Two categories of Wajib

- **Wajib to Allah: devotional acts** (ibaadat)
 - Acts of worship, like salah, zakah, fasting Ramadan, and Hajj
 - Punishments, like the Hudood punishments
 - Punishments that come in the meaning of acts of worship, like the explanation for making false oath, etc.
- **Wajib due to the Creation:** regulations made in Islamic system to serve creation (mu'amalat)
 - The right of Qisas (eye for an eye).
 - Dowry
 - The punishment of 80 lashes for the false accusations of zina.
 - The responsibility to replace the property of others which one has destroyed.
 - Mourning period of death in the family or Iddah for the divorced woman.