

**Shara'i' al- Islam**  
**Fi Masa'il al- Halal wal- Haram**

By  
al- Muhaqqiq al- Hilli  
Abu al- Qasim Najm al- Din  
Ja'far ibn al- Hasan  
(602-672 H.)  
Translated by  
Hasan M. Najafi  
Volume I

**In the Name of Allah  
The Beneficent the Merciful**

## Table of Contents

<b>THE FOUNDATION FOREWORD-----</b>	<b>9</b>
<b>PART ONE -----</b>	<b>11</b>
<b>THE 'IBADAT (WORSHIPS) -----</b>	<b>11</b>
<b>KITAB AL- TAHARAH -----</b>	<b>11</b>
<b>FIRST RUKN: ABOUT WATERS, WHICH HAS SEVERAL CONDITIONS.-----</b>	<b>12</b>
FIRST CONDITION: PURE WATER ( <i>MUTLAQ</i> ).-----	12
SECOND CONDITION: WATER ( <i>MUDAF</i> )-----	16
THIRD CONDITION: THE LEFT - OVER OF DRINK ( <i>SU 'R</i> )-----	17
<b>SECOND RUKN: THE WATER PURIFICATION -----</b>	<b>18</b>
PART ONE: ABLUTION-----	18
PART TWO: GHUSL-----	28
<b>THIRD RUKN: THE DUST TAHARAH -----</b>	<b>49</b>
SECTION ONE: CONDITIONS IN WHICH <i>TAYAMMUM</i> IS PERFORMED-----	49
SECTION TWO: THE SUBSTANCE ON WHICH <i>TAYAMMUM</i> IS PERFORMED--	50
SECTION THREE: MANNER OF PERFORMING <i>TAYAMMUM</i> -----	52
SECTION FOUR: THE RULES OF <i>TAYAMMUM</i> -----	53
<b>FOURTH RUKN: THE NAJASAT AND THEIR RULES -----</b>	<b>55</b>
THE <i>NAJASAT</i> (IMPURITIES): -----	55
RULES OF <i>NAJASAT</i> : -----	57
THE VESSELS & UTENSILS:-----	59
<b>KITAB AL- SALAT -----</b>	<b>61</b>
<b>FIRST RUKN: THE PRELIMINARIES OF SALAT -----</b>	<b>61</b>
FIRST: NUMBER OF PRAYERS -----	61
SECOND: THE TIMES OF PRAYERS-----	62
THIRD: THE <i>QIBLAH</i> -----	67
FOURTH: THE CLOTHING DURING SALAT -----	70
FIFTH: PLACE OF SALAT -----	72
SIXTH: THE LOCALE OF <i>SUJUD</i> -----	74
SEVENTH: <i>ADHAN</i> AND <i>IQAMAH</i> -----	75
<b>SECOND RUKN: ACTS OF SALAT -----</b>	<b>79</b>
FIRST: <i>NIYYAH</i> -----	79
SECOND: <i>TAKBIRAT AL- IHRAM</i> -----	80
THIRD: <i>QIYAM</i> -----	81
FOURTH: <i>QIRA' AH</i> -----	82
FIFTH: THE <i>RUKU'</i> -----	85
SIXTH: <i>SUJUD</i> -----	86
SEVENTH: <i>TASHAHHUD</i> -----	89

EIGHTH: TASLIM -----	89
<b>THIRD RUKN: OTHER PRAYERS-----</b>	<b>92</b>
SECTION ONE: THE FRIDAY PRAYER -----	92
SECTION TWO: THE 'ID PRAYERS -----	98
SECTION THREE: THE PRAYER OF THE ECLIPSES -----	100
ITS CAUSE, MODE OF PERFORMANCE AND RULE -----	100
SECTION FOUR: SALAT OVER THE DECEASED -----	102
SECTION FIVE: THE RECOMMENDED PRAYERS -----	105
<b>FOURTH RUKN: THE TAWABI' (SUBSIDIARY ISSUES) -----</b>	<b>108</b>
CHAPTER ONE: ERROR AND DOUBT DURING SALAT-----	108
CHAPTER TWO: SALAT AL- QADA'-----	114
CHAPTER THREE: SALAT AL- JAMA'AH -----	116
CHAPTER FOUR: FEAR & CHASING PRAYERS -----	123
CHAPTER FIVE: SALAT DURING TRAVEL (SALAT AL- MUSAFIR) -----	126
<b><u>KITAB AL- ZAKAT-----</u></b>	<b><u>132</u></b>
<b>SECTION ONE: ZAKAT ON PROPERTY-----</b>	<b>132</b>
CONDITIONS FOR ZAKAT ON PROPERTY:-----	132
KINDS OF PROPERTY LIABLE TO ZAKAT: -----	134
ZAKAT ON LIVESTOCK: -----	134
ZAKAT ON GOLD AND SILVER:-----	140
ZAKAT ON CROPS AND FRUITS:-----	143
KIND OF ZAKATABLE CROPS: -----	143
ZAKAT ON MERCHANDISE -----	145
CLASSES ENTITLED TO RECEIVE ZAKAT: -----	148
TIME OF PAYMENT: -----	156
THE NIYYAH: -----	157
<b>SECTION TWO: ZAKAT AL- FITRAH -----</b>	<b>158</b>
<b>①</b> THOSE ON WHOM IT IS WAJIB: -----	158
<b>②</b> ITS KIND AND QUANTITY: -----	160
<b>③</b> TIME OF WUJUB:-----	161
<b>④</b> WERE TO SPEND IT: -----	161
<b><u>KITAB AL- KHUMS -----</u></b>	<b><u>164</u></b>
<b>CHAPTER ONE: IT IS WAJIB ON SEVEN CATEGORIES -----</b>	<b>164</b>
<b>CHAPTER TWO: USES OF KHUMS -----</b>	<b>166</b>
<b><u>KITAB AL- SAWM (FASTING)-----</u></b>	<b><u>170</u></b>
<b>THE ARKAN: -----</b>	<b>170</b>
<b>RUKN ONE -----</b>	<b>170</b>
<b>RUKN TWO: -----</b>	<b>172</b>

A. THE MUFTIRAT-----	172
B. CONSEQUENTIAL REQUIREMENTS:-----	173
C. MAKRUHAT IN FASTING: -----	177
<b>RUKN THREE: -----</b>	<b>178</b>
TIME PROPER FOR FASTING -----	178
<b>RUKN FOUR -----</b>	<b>178</b>
CONDITIONS OF FASTING: -----	178
<b>VARIOUS KINDS OF FASTS-----</b>	<b>180</b>
SECOND: SUPEREROGATORY FASTS ( <i>MANDUB</i> ):-----	187
THIRD: REPREHENSIBLE (MAKRUH) FASTS:-----	188
FOURTH: PROHIBITED FASTS:-----	189
<b><u>KITAB AL- I'TIKAF-----</u></b>	<b><u>193</u></b>
<b>FIRST: CONDITIONS OF I'TIKAF-----</b>	<b>193</b>
<b>SECOND: PARTS OF I'TIKAF-----</b>	<b>195</b>
<b>THIRD: RULES OF I'TIKAF-----</b>	<b>196</b>
<b><u>KITAB AL- HAJJ-----</u></b>	<b><u>199</u></b>
<b>RUKN ONE: THE PRELIMINARIES-----</b>	<b>199</b>
1 <sup>ST</sup> . MEANING OF HAJJ:-----	199
2 <sup>ND</sup> . THE CONDITIONS FOR HAJJ:-----	199
HIJJAT AL- ISLAM: -----	199
CONDITIONS OF HAJJ OBLIGATED BY VOW, OATH AND PLEDGE-----	205
ISTINABAH (DEPUTATION)-----	206
THE FORMS OF THE HAJJ-----	211
THE MAWAQIT OF IHRAM:-----	215
<b>SECOND RUKN: THE ACTS OF THE HAJJ -----</b>	<b>217</b>
THE IHRAM-----	217
THE HALT IN 'ARAFAT-----	225
THE HALT IN AL- MASH'AR -----	227
AT MINA, AND ITS RITES: -----	230
TAWAF (CIRCUMAMBULATION ROUND THE KA'BAH) -----	237
THE SA'Y -----	243
THE AHKAM OF MINA AFTER RETURN: -----	245
<b>RUKN THREE: APPENDICES-----</b>	<b>249</b>
SECTION ONE: IHSAR AND SADD -----	249
SECTION TWO: RULES OF HUNTING-----	251
SECTION THREE: THE OTHER RESTRICTIONS FOR MUHRIM -----	254
<b><u>KITAB AL- 'UMRAH-----</u></b>	<b><u>261</u></b>
<b>ITS MANNER, CONDITION OF WUJUB, ACTS AND KINDS-----</b>	<b>261</b>
<b>CONDITIONS OF ITS OBLIGATION: -----</b>	<b>261</b>
<b>THE ACTS OF THE 'UMRAH:-----</b>	<b>261</b>

<b>KINDS OF ‘UMRAH: -----</b>	<b>261</b>
<b><u>KITAB AL- JIHAD -----</u></b>	<b><u>263</u></b>
<b>SECTION ONE: UPON WHOM IT IS WAJIB -----</b>	<b>263</b>
SUPPLEMENTARY ISSUES: MURABATAH -----	264
<b>SECTION TWO: WHO IS TO BE FOUGHT &amp; MANNER OF JIHAD -----</b>	<b>265</b>
WHO IS TO BE FOUGHT: -----	265
HOW TO FIGHT THE BELLIGERENTS: -----	265
THE DHIMAM (PROTECTION COVENANTS) -----	268
THE PRISONERS OF WAR -----	271
RULES OF BOOTY ( <i>GHANIMAH</i> ): -----	273
<b>SECTION THREE: RULES FOR AHL AL- DHIMMAH -----</b>	<b>277</b>
FROM WHOM JIZYAH IS TAKEN: -----	277
QUANTITY OF JIZYAH: -----	278
CONDITIONS FOR DHIMMAH: -----	279
THE RULES OF BUILDINGS: -----	280
THE COVENANT OF TRUCE: -----	281
<b>SECTION FOUR: FIGHTING THE TYRANTS (AHL AL- BAGHI): -----</b>	<b>284</b>
<b><u>KITAB AL- AMR BIL- MA‘RUF WAL- NAHY ‘AN AL- MUNKAR -----</u></b>	<b><u>286</u></b>
<b><u>(TO ENJOIN GOOD AND FORBID EVIL) -----</u></b>	<b><u>286</u></b>
THEIR RULES: -----	286
CONDITIONS FOR FORBIDDING EVIL: -----	286
DEGREES OF FORBIDDING EVIL: -----	287
ONE EXECUTING THE PUNISHMENT: -----	287



## **The Foundation Foreword**

**In the Name of Allah,  
The Beneficent the Merciful**

All praise is due to Allah, the Lord of all worlds. His benediction and peace be upon the noblest of all creatures, our master Muhammad and his pure progeny, God's firm cable, and shelter of seekers of protection.

We praise the Almighty Allah, who helped us in publishing several volumes of the valuable *fiqhi* book "*Masalik al- ifham ila tanqih Shara'i' al- Islam*" of al- Shahid al- Thani (may God be pleased with him), after exorbitant efforts exerted by a group of honourable dignitaries who extracted its sources with doing verification and commentary on it, and introducing it. We implore Allah the Most High, to shower upon us of His succour and guide us to complete the work of the other volumes, and continue the course for which the Foundation was established, and as planned by its founder the late Ayatullah Sayyid Abbas al- Muhri (may God sanctify his grave).

And since the *Masalik* was in fact an exposition for another *fiqhi* book *Shara'i' al- Islam fi masa'il al- halal wa al- haram*, which being an axis and source for *fiqhi* studies and researches according to school (*madhhab*) of Ahl al- Bayt (peace be upon them), it was more proper for us to contribute in bringing out this valuable book too, hoping it attain God's pleasure and favour.

The book *Shara'i'* verily has its lofty status among the Islamic books. And from the time it appeared many *shuruh* (expositions) and *hawashi* (margins) have been written about it, the fact reflecting its profundity, profusion, precision and universality. All this comes along with its sufficient eloquent wording, which deserved and attracted all that excessive interest and concern on part of notable investigating *fuqaha* (may God sanctify their graves). Despite the prolongation of time and remoteness of epoch, still this book maintains its exceptional position in the theological schools (*al- hawzat al- 'ilmiyyah*), through

teaching, explanation and verification.

Besides, the book's compiler is one of the renowned Imami *ulama*, or rather one of the geniuses of the Ummah and notable erudites of Islamic jurisprudence, who deserved, thanks to his great efforts and scrutiny in various Islamic sciences, with profound verification in the Shi'i *fiqh* and comparative *fiqh*, to be exclusively called with the title al- Muhaqqiq. He is none but al- Imam al- Allamah Abu al- Qasim Najm al- Din Ja'far ibn al- Hasan, known as al- Muhaqqiq al- Hilli, may God sublimite his status and increase in his prestige and dignity.

**Foundation of Islamic  
Knowledge**





## Part One

### The ‘Ibadat (Worships)<sup>1</sup>

They include ten sections, of which I start with the most important and then the less important respectively.

#### Kitab al- Taharah

*Taharah* (ritual purity): is a name for *wudu’* (ablution) or *ghusl* (ritual bath), or *tayammum*, in a way having effect in legalizing the prayers.<sup>2</sup>

Each one of these is divided into: *wajib* (obligatory) and *nadb* (recommended).

A. What is obligatory of *wudu’* being that performed for an obligatory *salat*, or obligatory *tawaf* (circumambulation around the Ka‘bah), or for touching the words of the Qur‘an in obligatory cases.<sup>3</sup>

And the recommended *wudu’* is every case other than these.

B. What is obligatory of *ghusl* being that performed for the mentioned three cases, or for entering the mosque, or reciting the ‘*aza’im* (*surahs*) if

---

<sup>1</sup> What is meant by ‘*ibadat* is every act performed by the *mukallaf* with a motive of obedience and submission to Allah’s command. This can never be achieved but only by *mubasharah* (conduct) by the person, with no difference probably between two states of ability and inability. Since that who is unable to perform the obligatory prayers, is not allowed to depute any other person to perform it for him, but he should conduct and do it according to the predetermined conditions. Likewise is the fasting (*sawm*). The rule has been stated in some places, to some of which the compiler has referred... (see *al-Masalik* - “kitab al- wakalah” - , vol. V, p.255).

<sup>2</sup> Al- Shaykh al- Tusi is considered the first (among legists) in introducing the *taharah*, according to its nature (quiddity), in an all- inclusive way. After him many definitions were introduced, the most well-known of which are the following:

“It is the use of a purifier stipulated with *niyyah*,” which is attributed to Nasir al- Din Ali ibn Muhammad al- Qashi. Refer to: *al- Mabsut*, vol. I, p.4; *al- Tanqih al- rā’i’* of al- Siyuri, vol. I, pp.29 and 31-32; and *al- Rawdah al- bahiyyah*, vol. I, p.246.

Besides I came across a narration in al- Shaykh al- Mufid’s *al- Amali*, p. 60: in which the word *tahur* came alone without the provision of “use stipulated with *niyyah*.”

<sup>3</sup> Through a vow (*nadhr*) or alike, or for reclaiming a captious question that can never be corrected but through it, as its putting to right is *wajib* (obligatory) with capability (*kifayah*), for protecting the powerless. (*al-Masalik*, vol. I, p.10).

obligatory.<sup>1</sup>

It may be deemed obligatory if it remains till the daybreak of an obligatorily fasted day,<sup>2</sup> the same as that of the *junub's* performing a ritual bath, and for fasting on the part of a menstruating woman, when having *istihadah* blood flowing after soaking the cotton. And all other cases are *mandub* (recommended).

C. The obligatory *tayammum* is that one performed for obligatory prayers when the person finding no time for using water, and for the *junub* in one of the two mosques<sup>3</sup> so as to go out with it.

The *taharah* may be obligated through vow (*nadhr*) and alike cases.<sup>4</sup>

This book relies on four elements (*arkan*):

***First Rukn:*** About waters, which has several conditions.

**First condition: pure water (*mutlaq*).**

It is everything deserving to be called water, without any addition. All of it is *tahir* (pure) and can be used for removing the *hadath*<sup>5</sup> and *khathath*.<sup>6</sup>

As regards occurrence of *najasah* (impurity) in it, it is divided into: flowing (*jari*), *mahqun*<sup>7</sup> (retained) and water of well.

The flowing water is that one which does not become *najis* unless

<sup>1</sup> The reference of pronoun is: entering the mosques and recitation of 'Aza'im (*surahs*), which both become incumbent through a vow (*nadhr*) and its alike. And *Aza'im al- sujud*: are its essentials (*fara'id*) in which Allah obligated *sujud* (prostration). Later on I will cite the names of their *wajib* and emphatically recommended ones in the second *rukun*, under acts of prayers: sixth: *al- sujud*. (See *Majma' al- bahrayn*, vol. VI, p.114).

<sup>2</sup> Like in the case of one of Ramadan days, or *qada'* (compensation) of a day he did not fast, or a *nadhr* in a day which was achieved, so its fasting became incumbent on him (*Minhaj al- salihin*, vol. I, p.34, freely).

<sup>3</sup> They are: the Sanctuary in holy Mecca, and the Prophetic Mosque in Medina.

<sup>4</sup> Like the pledge (*'ahd*) and oath (*yamin*).

<sup>5</sup> Its *najasah* is *hukmiyyah* (judiciary), which is in need of a *niyyah* and a *tahur* to remove it, like *ghusl al- janabah* (ritual bath) and *ghusl* for touching the dead (*mass al- mayyit*).

<sup>6</sup> Its *najasah* is *'ayni* (real, material), needing not a *niyyah* to remove it, but the *tahur* (purifier) is sufficient alone, like washing off (*ghasl*) the blood and the urine. It may be called too *al- najas*. (See *al- Nihayah*, vol. III, p.147; and *Taj al- 'arus*, vol. XII, p.447).

<sup>7</sup> It is the passive participle of the verb *haqana*, which means *habas* a (retains); (See *al- Muhkam wal- Muhit al- a'zam*, vol. III, p.10).

through *najasah* affecting one of its qualities.<sup>1</sup> It can be purified by letting abundant water (*ma' kathir*) on it-in an outpouring manner - till its change is removed. The same rule is applicable to bath water if it has a substance<sup>2</sup> (source).

If it comes into contact with pure water that changes it, or it is changed by itself, it will remain -intact- as a purifier, as long as the name<sup>3</sup> continues to be used for it.

In regard of the *mahqun* (retained), that which is less than the *kurr*,<sup>4</sup> it becomes *najis* on contact with impurity. It is purified by letting a *kurr* or more to flow on it all at once, but it, apparently, is not purified by making it reach the quantity of *kurr*.

When water reaches the extent of a *kurr* and more, nothing makes it *najis*, except that *najasah* affecting one of its qualities (smell, colour, taste). It can be purified by letting a *kurr* after a *kurr* to flow on it till the effect is removed. But it is never purified through removal of change (effect) by itself, or by blowing of the winds, or by falling of pure substances in it that remove the effect (change).

A *kurr* is equal to 1200 Iraqi *ritl*, apparently. Or that which each of its length, width and depth equals three and a half *shibrs* (span).<sup>5</sup> This rule is applicable to all kinds of water, of *ghudran* (pools), menstruation, and utensils apparently.

<sup>1</sup> That is its three characteristics: colour, taste and smell.

<sup>2</sup> That is an origin or source that providing it.

<sup>3</sup> In the current (prevalent) copies: name of water.

<sup>4</sup> *Kurr* is a legal unit for measuring the size, used in water purification, after it was used as a measurement unit by Iraqi people. See *Tahdhib al-lughah*, vol.IX, p.443.

In Kufah and Baghdad it is equal to sixty *qafiz*, which is equal to eight *makkuk*, and every *makkuk* is equal to three *kaylajah*, each of which is weighing six hundred dirhams.

In Wasit and Basrah it is equal to 120 *qafiz*, which is equal in turn to four *makkuk*. And every *makkuk* is equal to 15 *ritl*, and every *ritl* is equal to 128 dirhams. (See *Mafatih al-'ulum* of al- Khawarizmi, pp.13 and 44).

<sup>5</sup> Some of the legists hold that the *kurr* is equal to twenty - seven cubic spans;i.e. the length of each of its sides be three spans only. Refer to: *Minhaj al-Salihin*, vol. I, p.13.

On this basis, what is compared to it seemingly in the metrical system, is a cube whose each side is equal to 72.15 cm. Hence its size will be nearly 375 cubic cms, and its weight will be nearly 375 grams.

It is also reported that the *kurr* is a Hebrew term. (See *al- Munjid fi al-lughah*, p. 678).

Regarding well water, there is a consensus among Muslims that it becomes *najis* by changing its qualities on contact with *najasah*. But there is doubt regarding its becoming *najis* on contact. And the apparent opinion held by the 'ulama' says that it becomes *najis* (on contact).

### Manner of Purification:

The *najis* water of well can be purified by draining it off totally, if an intoxicant or beer<sup>1</sup> (*fuqqa'*) or semen, or one of the three kinds of blood as widely known among Muslims,<sup>2</sup> falls in it or when a camel dies in it.<sup>3</sup>

If containing all its (well) water be infeasible, four<sup>4</sup> (people) should embark on draining it off, two each time day and night.

It can be purified by draining off a *kurr* if a mount<sup>5</sup> or an ass or a cow dies in it. If man dies in it, it can be purified by draining off seventy<sup>6</sup> buckets.

And it is purified by draining off fifty (*dalw*) when the '*adhirah* (excrement of man) falls in it and dissolves<sup>7</sup> in another narration, by draining off forty of fifty - or animals having blood that flows on coming out like a sheep - for which it is narrated thirty up to forty (buckets).

Also it is purified by draining off forty (buckets) when dying in it a fox,

<sup>1</sup> *Fuqqa'* (beer) is a beverage extracted from the barley. It is called so due to the foam (*zabad*) that floating on its surface. (See *al- 'Ayn*, vol. I, p.201).

<sup>2</sup> Which are: blood of menstruation (*hayd*), and of childbirth (*nifās*) and *istihadah*.

<sup>3</sup> In the current copies: "... a camel or bull." Concerning the camel, it is said: it includes the male and female, the little and large, for which it should be referred to the common usage ('*urf*), since it will be used in judging its likes (*al- Madarik*, vol. I, p.66).

<sup>4</sup> In the current copies: "... four men." *Tarawuh* (alternation): is interaction (*tafa'ul*) of *rahaḥ* (relief), since every two of them relieve the other two, one of whom being on the top of the well hanging down the *dalw* (bucket) and the other inside it filling the *dalw*. The two strong men can never suffice (for the four) though performing the work of the four, according to the text... (*al- Masalik*, vol. I, p.15).

<sup>5</sup> What is meant by the mount (*dabbah*) here is, apparently, the horse, (*al- Hidayah*, vol. I, p.56).

<sup>6</sup> That is: Seventy buckets, according to a *hadith* reported by 'Ammar al-Sabati. (See *al- Madarik*, vol. I, p.75).

<sup>7</sup> What is meant by '*adhirah* is: the human excrement, and by dissolution (*dhawaban*): dispersion of its parts into the water and spreading in it (*al- Madarik*, vol. I, p.78).

or rabbit, or a pig or a cat, or a dog and alike animals,<sup>1</sup> and also when human urine falls in it. And for solid excrement, or animals whose blood does not flow on coming out like the birds and little *ru'af* (nosebleeding),<sup>2</sup> it is purified by draining off ten buckets, and in another narration, a few buckets.

And by draining off seven (buckets) for carcass (death) of a bird, and the rat - if lacerated or swelled - and for urine of a boy who has attained puberty, or for ritual bath (*ightisal*) of the *junub*, and falling of a dog in it and its coming out alive. In regard of the excrement of hens who eat human excrement,<sup>3</sup> it is purified by draining off five. And by draining off three for death of snake and rat. One bucket for death of a sparrow and its likes,<sup>4</sup> and for urine of a boy who has never eaten food.

In regard of raining water that contains urine, excrement and ordure of dogs, thirty buckets should be drained off.

The bucket (*dalw*) with which draining off is performed, is the one that is usually known to be used for this purpose.

### Three Sections

First: The rule applicable for a small animal concerning the draining off is the same one applicable to the big one.

Second: Differing of sorts of impurity causes multiplication of draining. There is uncertainty regarding its doubling with resemblance, the most precautionary of which is multiplication, unless it be a part of whole for which it was predestined, where the rule of its part does not exceed its whole.

Third: If amount of draining off for the impurity is not determined, all the water should be drained off. If that be impossible, it (well) will never be purified but through alternation. And in case of change of any of qualities of its water on contact with *najasah*, it is said: it should be drained off till the change be removed. It is also said: its water should be drained off.<sup>5</sup> And if that be impossible due to its (water) abundance, four people will alternate on

<sup>1</sup> By *shibh* (the like) of the dog I mean the otter (sea-dog).

<sup>2</sup> *Ru'af* is used for the blood coming out from the nose, due to its going before the tip of the nose (*Tahdhib al- lughah*, vol. II, p.348).

<sup>3</sup> The *jallal* animals are those animals whose main nourishment (food) being man's excrement (*Majma' al- Bahrayn*, vol. V, p.340).

<sup>4</sup> The word *shibh* (the like) includes all birds which are smaller than the pigeon in size, irrespective of whether their meat being eaten or not eaten (*al-Masalik*, vol. I, p.18).

<sup>5</sup> In the current copies: "... all of its water."

it,<sup>1</sup> which is nearer to truth.

B. It is recommended that five cubits separates between the well and the cesspool,<sup>2</sup> if the land be hard, or when the well be over the *balu'ah* (cesspool).<sup>3</sup> In other cases, seven cubits should separate between the well and cesspool.<sup>4</sup>

### Other rules:

No one can determine the impurity of the well unless with awareness of contact of cesspool water to it.

If the water judged to be *najis*, it will be impermissible to use it for purification at all,<sup>5</sup> nor for eating and drinking,<sup>6</sup> but in exigency cases.

In case of uncertainty regarding which utensil be pure and which one is *najis*, both should be kept away from use. And if the person finds no water other than theirs, he should perform *tayammum*.

## Second Condition: Water (*mudaf*)

### The Mixed

The mixed water is either water extracted from a substance (fruit),<sup>7</sup> or

<sup>1</sup> In the current copies: "... four men."

<sup>2</sup> Al- Azhari says: "*Balu'ah* and *ballu'ah* - in both ways - means: a well (*bi'r*) that is dug with making its top narrow, in which the rain water flows" (*Tahdhib al- lughah*, vol. II, pp. 411 - 412).

Al- 'Amili is also reported to have said: What is meant by *balu'ah* here: is the place where drained water or other impurities are poured (*al- Madarik*, vol. I, p. 102).

I say: In the religious houses, there are usually two cesspools: one which is clean that is allocated exclusively for the kitchen *ghasil*. And another one which is *najis*, and specially designed for refuses (*fadalat*) of the water closet and bath, which is called also: *kanif*.

<sup>3</sup> That is: when the land be hard, the bottom of the well be above the bottom of the cesspool, or on the same level of it, or beneath it.

And in case of the land be soft (*rakhwah*), the foundation of the well be above the bottom of the cesspool.

<sup>4</sup> That is: When the land is soft, the bottom of the well be on the same level of the bottom of the cesspool, or beneath it .

<sup>5</sup> By absoluteness (*itlaq*) it is meant: inclusion both the conditions: option (*ikhtiyar*) and exigency (*idtirar*) - (*al- Madarik*, vol. I, p. 107).

<sup>6</sup> In the current copies: "... nor for eating nor for drinking."

<sup>7</sup> Like water (juice) of pomegranate, apple and orange.

that which was pure initially before something was added to it,<sup>1</sup> that changed its character. It is pure, but does not purify a *hadath* as per the consensus of all schools, nor a *khathath* as per the verdict (*fatwa*). It can be used in other than these places. When it comes into contact with impurity, it becomes *najis*, whether being little or plentiful,<sup>2</sup> the case in which it can neither be used for making food nor for drinking. If its pure be mixed with the absolute water (*mutlaq*), giving it the name (*mā'*) would be considered valid to remove the *hadath*.<sup>3</sup>

The purity is disliked in the water heated with the sun in utensils,<sup>4</sup> and in a water heated with the fire for performing the washing of the dead (*ghasl al - mayyit*).<sup>5</sup>

The water used for removing the *khathath* becomes *najis*, irrespective of whether it has undergone any change on contact with impurity or not, except water of *istinjā'*,<sup>6</sup> which is pure unless undergoing change affected by *najasah* or coming into contact with outside impurity. The water used for ablution is pure as well as capable of purifying (the *najis*). And that water used in the major *hadath*<sup>7</sup> is pure. Is it valid to use it again for removing the *hadath*? The legists differ in this regard, and prevention is more preponderant.

### Third Condition: The Left - over of Drink (*su'r*)<sup>8</sup>

All kinds of *su'r* (left over of drink) are pure, except those of the dog, of the pig and of the disbeliever. There is uncertainty regarding the transformation (*musukh*),<sup>9</sup> and the legists prefer purity.

<sup>1</sup> Like saffron - water and rose - water.

<sup>2</sup> In the current copies: "... is *najis* its little and its much, according to unanimity."

<sup>3</sup> In the current copies: "... giving it the name."

<sup>4</sup> Because of the prohibition reported from the Prophet(S). And the reason cited for this being that it brings on leprosy. See *al- Masalik*, vol. I, p. 22.

<sup>5</sup> As per the text indicating aversion (*karahah*), according to consensus of legists, except the lukewarm water due to extreme coldness (see *al- Tawdih*, vol. I, p.6).

<sup>6</sup> *Istinjā'*: is the cleansing (purifying) with water or mud (*Tahdhib al-lughah*, vol. XI, p.199).

<sup>7</sup> In the current copies: "... and the water used in removing the *hadath*."

<sup>8</sup> In *al- Mu'tabar*, al- Muhaqqiq says: *al- Su'r* with *hamzah* means: the left-over of a drink. And according to definition of some legists in this *bab* (section): it is a little water that came into contact by animal's mouth (*al-Madarik*, vol. I, p.128).

<sup>9</sup> In the current copies: "and in the *su'r* (left - over) of the *musukh*."

Except the Kharijites and Ghulat,<sup>1</sup> all communities of Muslims have pure bodies and *su'r*. Detested are the *su'rs* of *jallal* (animals who eat man's excrement), and that of the animals eating the carrion (*jifah*), if the place of contact be devoid of *najasah*, and *su'r* of the menstruant woman who cannot be trusted,<sup>2</sup> with also those of mules, asses, rats, snakes, scorpion and those in which the *wazagh* (shivering) is dead.<sup>3</sup>

The water becomes *najis* with the death of an animal having a flowing soul,<sup>4</sup> except that which has no soul. The blood that is beyond reach by *tarf*, does not make the water *najis*, and some legists hold the opposite belief, which has to be acted with precaution.

### ***Second Rukn:* The Water Purification**

It includes ablution (*wudu'*) and ritual bath (*ghusl*).

#### **Part One: Ablution**

Which has several sections:

---

*Musukh* is plural of *maskh*, which is the disfigured (of deformed creation). Al- Layth said: *Maskh* is transformation of creature to another shape (form).

Al- Turayhi says: *Maskh* is transformation of a shape to something uglier; it is said: God has metamorphosed him into an ape. See *Tahdhib al- lughah*, vol. VII, p.196; and *Majma' al- Bahrayn*, vol. II, p.443.

<sup>1</sup> The Khawarij: are those who revolt or rebel against the government of the legitimate state ruler. The group known among them are those who revolted against the caliphate of al- Imam Ali ibn Abi Talib (A).

The Ghulat: are those who extremely exaggerate in loving son of Adam, to the extent of believing in his deity. The vivid example for them being the group who believed in deity of Ali ibn Abi Talib (peace be upon him).

<sup>2</sup> That is the woman who never takes precaution against impurities, and never cares for them. To her the martyr added every one accused of non - precaution (*al- Masalik*, vol. I, p.24).

<sup>3</sup> *Wazagh* means trembling and shivering, and it was used for an animalcule of the kind of lizards, because it is always seen as shivering when walking fast.

In the Sham it is called '*abu brais* due to its colour. Some Bedouins call it '*abu Kaff*' (*al- Mu'jam* of al- Zu'uluji, vol. VI, pp.216 - 217).

<sup>4</sup> What is meant by soul (*nafs*) here is the blood that is retained and assembles in the veins, and flows strongly on coming out when cutting any of the veins.

On the opposite side the animal having no flowing soul, whose blood comes out in a perspirative way, like blood of fish. See *al- Madarik*, vol. I, p. 138, freely; and *Tahdhib al- lughah*, vol. XIII, p.12.



### Section One: The Conditions Requiring Ablution

They are six conditions (*ahdath*): discharge of urine, excrement and wind from the ordinary place.<sup>1</sup> If the excrement comes out from a place lower than the stomach,<sup>2</sup> it would break the ablution according to some legists, and it does not break according to common usage (*ashbah*).<sup>3</sup>

If the *makhraj* (outlet) happens to be in other than the ordinary place, it (discharge of excrement) breaks the ablution, and the same rule is applicable when the *hadath* comes out from the wound, becoming then an usual habit.

Of the conditions requiring ablution is the sleep that prevails over the two senses.<sup>4</sup> It includes all states in which one loses consciousness like fainting, madness, intoxication and minor menstruation (*istihadah*).

The purity is never broken by discharge of *madhy* or *wadhy* (*wady*),<sup>5</sup> or blood - even if it comes out from one of the two outlets -<sup>6</sup> except the three bloods. Also ablution is not invalidated by *qay'* (vomit),<sup>7</sup> or *nukhamah* (mucus)<sup>8</sup> or nails-clipping, or hair shaving, or touching the penis or posterior, or touching a foreign woman, or eating what came into contact with fire, or that which comes out from the two outlets, unless it be mixed with that which invalidates the ablution.<sup>9</sup>

<sup>1</sup> Or from other than it, when it be blocked (*al- Rawdah al- bahiyyah*, 2nd ed., vol. I, p.317).

<sup>2</sup> Together with the period (*'ādah*), whether being from above the stomach or under it.

<sup>3</sup> Since it has not reached the bottom on which the reports emphasized (*al- Tawdih*, vol. I, p.7).

<sup>4</sup> He means by them the two senses of hearing and seeing. He distinguished them in particular since they are the most comprehending and perceptive senses, and if their perception is ceased the perception of other senses will be most probably ceased (*al- Madarik*, vol. I, p.144).

<sup>5</sup> *Madhy* is a viscid thin moisture discharged from the penis after sexual excitement (caressing). The *wady* is a dense white liquid emitted following micturition. And *wadhy* is a type of liquid which comes out of penis after sexual intercourse and emission of semen (*al- Masalik*, vol. I, p.27).

<sup>6</sup> By the two outlets is meant the outlet of urine and that of stool.

<sup>7</sup> The *qay'* is the food which comes out from the mouth after entering the abdomen (*Diya' al- Thaḡalayn*, vol. I, paper 37). It was used then for the ejected (vomited) food (*al- Misbah al- munir*, vol. I, p.208).

<sup>8</sup> *Nukhamah* is whatever coming out from the nostrils while expectorating and spitting (*Tahdhib al- lughah*, vol. VII, p. 452).

<sup>9</sup> Like the worms stained with excrement, or *madhy* stained with urine.

## Section Two: Rules of the Closet (*Khalwah*)

They are three:

### 1) Manner of seclusion:

Hiding (*satr*) the privy parts (*'awrah*)<sup>1</sup> in time of seclusion is obligatory, and covering the body is recommended (*mustahabb*). It is totally *haram* to face or turn one's back to the *qiblah* while relieving oneself whether it be in a closed or open space, with or without a screen.

The sitting in any site built on this, should in a way turned to right or left.

### 2) Istinjā' (cleansing):

It is obligatory (*wajib*) to cleanse (*ghasl*) the urinary and anal outlets with water, and nothing other than water can suffice for this with ability to use it. The least *mithl* can suffice for purifying the anal part.<sup>2</sup> The outlet of

<sup>1</sup> By *satr* here is meant: sitting of *mutakhalli* in a way that no one can sight him, such as by setting aside the privy parts, or entering a hole (*hufrah*) or a closed space ... etc. It was recommended due to its being the following of the example of the Prophet(S). By *wujub* we mean: screening the privy parts from every onlooker of discerning age, except the husband and wife, and the unmarried female slave owned by a male.

By *'awrah* is meant: the frontal and rear private parts (*qubul* and *dubur*). The *qubul* is the penis and testicles or vulva, and the *dubur* is the posterior (*makhraj*) not the two rumps, according to well - known traditions.

On the other part, the saying ascribed to Ibn al- Barraji: "The *'awrah* (privy parts) is from the navel up to knee." And also the utterance reported from Abu al- Salah as saying: "The *'awrah* is from the navel up to half the leg (*saq*)" (*al- Madarik*, vol. I, p. 156; *al- Tawdih*, vol. I, p. 7; and *al- Rawdah*, vol. I, p. 203, the margin - freely).

<sup>2</sup> Al- Sayyid Muhammad ibn Ali al- Musawi al- 'Amili is reported to have said: This statement is so general (*mujmalah*) ... and it is said: what is intended by it: the obligation (*wujub*) of washing the urinary outlet twice, for which the expression used is the *mithlayn*, to show the least that suffices.

Some of the contemporary legists observe: The similarity can be considered between the water separating from the object purified and the drop left over the glans penis (*hashfah*) following micturition. This drop can be watercoursed on the anal outlet, and most of it on the wetness caused on its sides.

It is also said: The *mithlayn* is an indication of one *ghasl*, due to stipulation of prevalence for the purifier; which can't be achieved by the *mithl*. (*al- Madarik*, vol. I, pp. 163 - 164, in brief).

excrement is purified by washing it with water till removing the *'ayn* and *athar* of *najasah* with no consideration to be paid to smell, provided the excrement has not spread around the outlet, in which case only water would be sufficient (*mujzy*). If it has not spread, there is an option, either to use water or to wipe it with stones. Water is preferable, and using both ways is most perfect. In case of wiping with stones, less than three stones will be insufficient.

It is compulsory to rub (wipe) the place of *najasah* with every and each stone, and it is sufficient to remove the very *najasah* not the *athar* (effect). If it be not purified by the three stones, more stones should be used till purification is achieved. If it be purified without them, one should complete them compulsorily.

It is not sufficient to use one stone from three sides.

Also it is insufficient to use neither the stone used (for *istinja'*), nor the very impure substances, nor the bone, nor the *mat'um*<sup>1</sup> (food), nor a burnished subject that slipping the *najasah*. If these were used they would not purify the *najis* part.

### 3) *Sunan of Closet:*

They are recommended (*mandub*) and abominable (*makruh*) acts.

The recommended acts are the following: Covering the head, *tasmiyah*,<sup>2</sup> starting with the left leg (during entering), *istibrā'*,<sup>3</sup> supplication during *istinjā'*<sup>4</sup> and after finishing it<sup>5</sup>, and advancing the right leg in time of departing the closet with reciting a certain prayer after it.

The *makruh* (abominable) acts include sitting in: (sidewalks of) the

<sup>1</sup> Like bread and fruit (*al- Madarik*, vol. I, p.173).

<sup>2</sup> Mu'awiyah ibn 'Ammar is reported to have said: I heard Abu Abd Allah (peace be upon him) saying: "When you enter the closet you should say: in the Name of Allah; O my God I seek protection by You from the *khābith* (stinking) and *mukhbith* (noxious), the *rijs* (filth) and impure, the accursed Satan." And when you go out say: "In the Name of Allah, all praise belongs to Allah Who protected me from the stinking and harmful, and exempted me from the evil". (*al- Madarik*, vol. I, p.174).

<sup>3</sup> *Istibra'* is seeking to exempt the outlet from urine by exertion (*ijtihād*) which is performed by wiping between the *maq'adah* (seat) and *asl* (origin) of the penis thrice, with pressing the glans (*hashfah*) then thrice (*al- Rawdah*, vol. I, p.341). This issue will be elaborated in the section: *sunan al- ghushl* (methods of *ghushl*), in discussion of *ghushl al- janabah*.

<sup>4</sup> That is while being engaged in removing the *najasah* from its place.

<sup>5</sup> That is the *istinja'*.

streets, (thoroughfares) in *mashari'*,<sup>1</sup> under the fruitful trees,<sup>2</sup> places of fighting and localities of cursing,<sup>3</sup> and facing the sun and moon with the frontal parts (*farj*), or the wind with micturition. *Makruh* also is urination in the following places: the hard land, holes of animals and in the flowing and stewater. It is abominable also (in time of *khalwah*): eating, drinking and brushing the teeth (*siwak*), and *istinja'* with the right hand, and with the left while wearing a ring on which engraved the Name of Allah,<sup>4</sup> the Glorious; and also talking unless with remembering of Allah (the Most High),<sup>5</sup> or reciting *Ayat al- Kursi*, (verse 255 of *Surat al- Baqarah*) or an urgent need whose missing causes detriment.

### Section Three<sup>6</sup>: Manner of Ablution

Essentials of *Wudu'*, which are five:

1) *Niyyah*: It is an intention and will to perform an act inside the heart. Its form is to intend the obligation (*wujub*), or recommendation (*nadb*) and nearness (*qurbah*) to God.

Is it necessary to have intention to remove the *hadath*, or deeming lawful (*istibahah*) something for which purity is stipulated?<sup>7</sup> It is unnecessary, according to verdicts of some legists.

*Niyyah* is not essential for purity of clothes, or any other thing for which removing the *khath* is intended. And if one adds to *niyyah* of seeking nearness (*taqarrub*) the desire to coolness, or alike things,<sup>8</sup> his purity suffices.

<sup>1</sup> *Mashari'* is plural of *mashra'*, which is road of water open for the coming group (*al- Rawdah*, vol. I, p.343, freely).

<sup>2</sup> Those trees which are supposed to be fruitful, though not being so in actual (*al- Rawdah*, vol. I, p.343).

<sup>3</sup> It is reported from Zayn al- 'Abidin (A): "They (localities of cursing) are the doors of houses (*al- Masalik*, vol. I, p.32).

<sup>4</sup> Unless it be stained, when it should be forbidden. (*al- Tawdih*, vol.I, p.9).

<sup>5</sup> It is *wajib* to respond to the greeting, as expressed in *al- Muntaha*. It is *mustahabb* also to say 'praise be God's' in case of sneezing, with *tasmit* also, and ignoring it may be preponderant (*al- Madarik*, vol. I, p.183).

<sup>6</sup> For more information refer to: *al- Lum'ah al- jaliyyah fi ma'rifat al- niyyah*, of al- Shaykh Ahmad ibn Muhammad ibn Fahad al- Hilli; the verified article in the Journal of *Turathuna*, issue No. IV, pp.171-222, verified by 'Abd al- Husayn Hassoun.

<sup>7</sup> Like *istibahah* for performing the prayers, *tawaf* and touching the Arabic script of the Qur'an, if obligated by vow or alike.

<sup>8</sup> Like cleansing and testing the sweetness of the water.

Time of *niyyah* commences with washing of the hands, and becomes narrow during washing the face. It is obligatory to perpetuate its rule till finishing the (essentials of) ablution.<sup>1</sup>

### Subsidiary Issue:

In case of accumulation of various conditions requiring ablution, one *wudu'* with *niyyah* of *taqarrub* will be sufficient, and it does not depend on identifying the *hadath* from which he intends to purify. The same rule is applied in case of requiring several ritual baths. It is said: If he intended to perform *ghusl al- janabah*, it would suffice for other *ghusls*, but if he intended other than it, it would never suffice instead of *ghusl al- janabah*, whatsoever.

2) washing the Face: It means causing water to flow over the face, lengthwise from the place where the hair grow on the forehead, to the end of the chin.<sup>2</sup> Its extent breadth-wise is the area covered between the thumb and the middle finger (when the open hand with the thumb pushed back is stretched across the face). Whatever is outside this extent is not of the face, with no consideration to be paid to the *anza'*,<sup>3</sup> or to *aghamm*,<sup>4</sup> or to that whose fingers exceed or fall short of the *'idhar*,<sup>5</sup> but every one of them should follow the ordinary level of countenance, washing what can he wash. It is *wajib* to wash the face down from the top to the chin, and invalid to do its reverse, as agreed by legists. It is not *wajib* to wash the lanking hair of the beard,<sup>6</sup> nor permeating it, but only washing its outward suffices. If a beard grows for the woman, it is not *wajib* to permeate it, and it suffices to cause the water to flow over it.

3) Washing of Hands: It is *wajib* to wash the hands along with the

<sup>1</sup> On condition that he doesn't resolve upon a *niyyah* contradicting the first one, or being inconsistent with some of characteristics of the first *niyyah* (*al- Masalik*, vol. I, p.34).

<sup>2</sup> The chin (*dhiqn*) is the place where the *lahyan* meet from down. *Lahyan*: are the two bones on which the lower teeth grow - (*al- Munjid fi al- lughah*, vol. I, p.235, freely).

<sup>3</sup> The *anza'* is that whose two sides of his forehead are uncovered with hair (*al- Sihah*, vol. III, p.1289).

<sup>4</sup> The *aghamm* is that whose forehead is covered partially with some hair (*al- Madarik*, vol. I, p.199).

<sup>5</sup> The *'idhar* is the area adjacent to the ear, whose lower part is attached to side of the face, and its upper part to the *sudgh* (temple). The area between it and the ear is white (*al- Masalik*, vol. I, p.36).

<sup>6</sup> What is intended by it being the hair transcending the limit of the face, lengthwise and breadth - wise (*al- Madarik*, vol. I, p.201).

elbows once, and to start from the *mirfaq* (elbows),<sup>1</sup> but the reverse is invalid (*batil*), as agreed by legists. Similarly, they consider it *wajib* to start by washing the right hand.

If some part of the hand is amputated, he can wash the rest of the hand. If it is amputated from the elbow, the obligation of washing it will be dropped. In case of his having two arms lower than the elbow, or additional fingers, or sprouting flesh, it is *wajib* to wash them all. But if these be above the elbow, washing them is not obligatory. If he has an additional hand it should be washed.<sup>2</sup>

4) Wiping the Head: It is *wajib* to wipe the frontal part of the head. The recommended (*mandub*) extent is three fingers breadth - wise.<sup>3</sup> The wiping should be done particularly to the frontal part of the head. The legists consider it *wajib* that the wiping should be with the wetness of the earlier act of ablution performed (i.e. the washing of hands). Hence if hands are rinsed anew with water for wiping, the ablution will become invalid. If the wetness on his hand is dried up, he can take from (the wetness of) his beard and edge of eyelid.<sup>4</sup> If no wetness is left, he should renew (the ablution).

Facing the *qiblah* while performing the ablution is recommended, and it is abominable to keep one's back to the *qiblah*, as commonly known among legists. Washing the parts that should be wiped is invalid. It is permissible to wipe the hair grown on the frontal part of the head and on the epidermis. If he brings hair from other than this and wipes it, it will not suffice. It is invalid also to wipe the turban or any other thing covering the part that should be wiped.

5) Wiping the Two Feet: It is *wajib* to wipe the two feet (with the wetness of the earlier act of ablution) from the tips of the toes to the ankles - which are the raised bones of the feet. It is valid to do its reverse. It is not necessary to observe the sequence (*tartib*) in wiping the feet. If some wiped part is amputated, one can wipe the rest. If the foot is cut from the ankle, no wiping should be done to the feet.

<sup>1</sup> Unanimously by all legists, and it (*mirfaq*) is the meeting place of the two bones of the arm and upper arm (humerus). In confirming this there are many evidences from reports (*akhbar*), and utterances of the Companions, and since it is derived from *mura'faqah* (association, companionship) - (*al-Tawdih*, vol. I, p.11).

<sup>2</sup> The additional hand can be recognized from its being shorter, weakness, shortage of its fingers and alike things (*al-Masalik*, vol. I, p.37).

<sup>3</sup> The wetness that remained on one of the parts involved in ablution (*al-Tawdih*, vol. I, p.11).

<sup>4</sup> Or rather, from any part (involved in *wudu'*) (*al-Tawdih*, vol. I, p.12).

It is *wajib* to wipe the epidermis of the foot, and it is invalid to wipe an intervening covering, like shoes or socks or alike, unless it be for *taqiyyah* (dissimulation), or some other exigency. If the cause (covering) is removed, he should renew the purification, according to some legists. Some others say that it is not *wajib* to renew, unless it be for a *hadath*. The first rule is most precautionary (*ahwat*).

### Important points:

**First:** The sequence (*tartib*) is *wajib* in the ablution: starting with washing the face, then the right hand followed by the left hand, wiping then the head, ending with the feet. If this sequence is not observed, or violated, the ablution should be restarted - whether this being done deliberately or out of forgetfulness. The other condition is that the part washed earlier should not dry before beginning washing the next. And if it dries, the ablution will become *batil*, and it will be *wajib* to start it anew. Also if the wetness was still there, he should continue with observing the sequence.

**Second:** Continuity (*muwalat*) is *wajib* in ablution. It is the observance of continuity, i.e. to proceed immediately to the next act after having completed the earlier. That means the next part should be washed (or wiped) before drying of the earlier part. It is also said: It is *mutaba'ah* between the parts (of *wudu'*) with option (*ikhtiyar*), and observing the *jafaf* (drying up) with exigency.<sup>1</sup>

**Third:** Washing (face and hands) once is *wajib*, twice is *mustahabb* (*sunnah*), and thrice is *bid'ah* (heretical). Repeating the wiping is not permissible.

**Fourth:** It is sufficient, in washing, to use what is commonly known as *ghāsil*, even if it be like *dahn* (paint, oil).<sup>2</sup> When there being a ring or a strap (*sayr*),<sup>3</sup> he should make the water reach the skin beneath it. If it be wide, it is

<sup>1</sup> That is to be indulgent with the time of proceeding to the next part after the former one, unless it leads to drying up of the earlier washed part.

This be in case of being compelled and in exigency, as when the water is cut off from the tap which he was performing ablution from, and no any other source of water was available for him. Hence he has to start the *wudu'* anew when the water returns, and the part washed earlier being dried.

But when the wetness is still not dried yet, he may complete the ablution from where he had left off, from the part that be still wet.

<sup>2</sup> The likening with *dahn* is an exaggeration in sufficing with the little flowing water, metaphorically not actually (*al- Masalik*, vol. I, p.41).

<sup>3</sup> *Sayr* is a strap of rectangular leather (strip). Its plural is *suyur* (*Aqrah al- Mawarid*, vol. I, p.562).

recommended to move it (so as to let water reach the skin).

**Fifth:** Whoever having a covering (*jabirah*) on some parts of the body involved in ablution, if it be possible (not harmful) for him to remove it, he should do so, or he should repeat pouring the water on it till making it reach the skin under it. Otherwise, it will be sufficient to wipe on it, irrespective of whether the part under it be pure or *najis*. If the covering (*'udhr*) is removed he has to start the purity anew, with disagreement among the legists.

**Sixth:** It is not permissible that another person performs the acts of ablution instead of the performer of *wudu'* himself, in optional case, but it is permissible in exigency situation.

**Seventh:** It is *haram* for a person in a state of *hadath* to touch the Arabic script of the Qur'an (without an intervening medium). It is permissible for him to touch any other thing than the script (whether the script be in the Qur'an or somewhere else).

**Eighth:** In regard of a person afflicted with disease of *salas*<sup>1</sup> (incontinence of urine), some legists said: He should perform ablution for every *salat*, separately. Other legists said: Whoever has *batan*,<sup>2</sup> has, in case of repeating the *hadath* while performing the prayers (*salat*), to purify himself and carry on the *salat*.

## Sunan of Ablution:

### A. The recommended acts:

placing the utensil on the right, ladling (*ightiraf*) from it, *tasmiyah*,<sup>3</sup> reciting of traditional prayers, and washing the hands before inserting them into the utensil, once from *hadath* of sleep or micturition, and twice from discharge of excrement. Besiraising the mouth (*madmadah*)<sup>4</sup>, and *istinshaq*,<sup>5</sup>

<sup>1</sup> *Salas* is incontinence (non - control) of urine (*al- Munjid fi al- lughah*, p.355).

<sup>2</sup> *Batan*: is disease of abdomen. *Al- mabtun* is the person who dies with disease of *batan*. And he is that who having diarrhea or flatulence of the stomach, or that who complains of his stomach (*Diya' al- thaqalayn*, vol. II, p.285).

<sup>3</sup> *Tasmiyah*: is to say: "in the Name of Allah, by Allah, O God! Make me among the *twwabīn* (repentants) and make me among the *mutatahhirīn* (seekers of purity, not the commonly know) *tasmiyah*. And uttering only '*bism Allah*' (in the Name of Allah) is sufficient (as stated in *al- Masalik*, vol. I, p.43; and *al- Rawdah*, vol. I, p.328).

<sup>4</sup> *Madmadah* is inserting water into the mouth and rinsing it (*al- Rawdah*, vol. I, p.330).

<sup>5</sup> *Istinshaq*: is drawing the water into the nose (*al- Rawdah*, vol. I, p.330).



with reciting certain prayers while performing them and washing the face and hands, and while wiping the head and feet. Also it is *mustahabb* for the man to start the ablution with washing the outward of his hand, and with the second scoop its inward, while the opposite is recommended for the woman. Also the *wudu'* should be with a *mudd*.<sup>1</sup>

### B. The Reprehensible (*makruh*) acts:

It is *makruh* to seek help of others in performing the acts of purification (*wudu'*), and also to wipe out (dry) the wetness of ablution from parts involved in *wudu'*.

### Section Four: Rules of Ablution

If a person certain of *hadath* having occurred doubts having achieved *taharah* later, or be certain of both of them but doubts the latter, he should purify himself. So also if he is certain of not washing (or wiping) a part, he should repeat that part and complete rest of ablution. If the wetness dries he should restart anew. And if he doubts any of acts of *taharah*-while being in his state<sup>2</sup>-he should repeat the doubtful part and complete the rest in order. If he be certain of having been *tahir*, doubts whether a *hadath* has occurred, or in any of acts of ablution, after completion<sup>3</sup> (of ablution), he should not restart anew. Whoever leaves the washing of the outlet of *najw*<sup>4</sup> or urinary outlet, and performs *salat*, he should repeat his *salat*, whether this has occurred deliberately or out of forgetfulness or *jahl*.<sup>5</sup> Whoever renews his ablution with an intention (*niyyah*) of *nadb*, and performs his *salat* afterwards, remembering then that he has remitted a part of the two purities (anal and urinary outlets), the following rules are applied:

- if we be content with *niyyah* of nearness (*qurbah*), his *taharah* and

<sup>1</sup> *Mudd*: is a weight of nearly 725 grams nearly, and in size 725 cubic cms.

In a *hadith* it is reported that: "the prophet (God's benediction be upon him and his progeny) used to perform ablution with a *mudd* and ritual bath (*ghusl*) with a *sā'*" (see *Tahdhib al- lughah*, vol. IX, p.107).

<sup>2</sup> That means his being occupied with acts of purification (*al- Masalik*, vol.I, p.45).

<sup>3</sup> That is completing the acts of ablution, without departing his place (*al- Masalik*, vol. I, p.45).

<sup>4</sup> *Najw* is everything emitted from the stomach (excrement) - (*al- Sihāh*, vol. VI, p.2502).

<sup>5</sup> What is meant by *jahl* here is being unaware of the rule, as he should be treated as the '*amid*' (that who does the act deliberately), not that who has no knowledge of the original rule. (*al- Masalik*, vol. I, p. 45).

*salat* will be valid.

- if *niyyah* of *istibahah* is obliged, he should repeat both of them (the purity and prayers).

- if he performs a *salat* with one of them, he should repeat the first *salat* according to the first view.<sup>1</sup>

- if a *hadath* occurs following purity of each of them, but he be uncertain of which one of them, he should repeat the two *salats* if they differing in number. Otherwise, he has to repeat one of them, with the intention of (compensating) what he owes (*fi al- dhimmah*). The same rule is applicable in case of his performing a *salat* with a purity, discharging a *hadath* afterwards, renewing his *taharah* and performing another *salat*, remembering then his not observing one of *wajibs* of one of the two purities.

- if he prays the five *salats* (five purities), being certain then of occurrence of *hadath* after one of the purities, he should repeat three obligatory prayers: three and two and four (*rak'ahs*); and it is said: he repeats the five. The first rule is preponderant.

## Part Two: Ghusl

It is divided into: *wajib* and *mandub*.

The *wajib*: is divided into six:

*Ghusl al- janabah* - *ghusl al- hayd* - menstruation (*istihadah*) that penetrates the *kursuf*<sup>2</sup> - *al- nifas* - touching a corpse (*mass al- mayyit*) after it turns cold and before it has been given a ritual bath - and *ghusl al- amwat*.

The details will be given in five sections:

### Section one: Ghusl al- Janabah

#### Reason, Rule and Ghusl

Reason of *janabah* (major ritual impurity) is of two kinds:

- *Inzal* (insertion): When it is certain that the discharge emitted is

<sup>1</sup> That means: he should repeat the first *salat* in particular, according to the first saying, which is sufficing with *qurbah*. That is due to possibility of the fault being in the first purity, so the first *salat* will be invalidated not the second, because of its coming after a valid purity.

And according to the second rule - which is stipulation of *istibahah* - : he should repeat both the *salats* due to possibility of the defect being in the first (purity), and the second being not exempted of defect (*al- Madarik*, vol.I, p.263).

<sup>2</sup> *Kursuf* means cotton (*Majma' al- bahrayn*, vol. V, p.140).

semen, and if alike doubtful discharge occurs, being in spurts<sup>1</sup> (*dafq*) accompanied with sensation of pleasure and languor (*futur*) of the body, the *ghusl* becomes *wajib*. And if the person is sick, the sensational pleasure and languor of the body suffice in making it (*ghusl*) *wajib*. If the discharge was without sexual arousal (*shahwah*) and spurting - despite the doubt of its being semen - no bath is required. If a person (on waking up) finds semen on his clothes, *ghusl* is *wajib* upon him, if no other one shares him in using the clothes.

- copulation (*jima'*): if a male copulates with a female, by inserting the penis into her vagina, and the two circumcisions meet, the *ghusl* becomes *wajib*, even if the person (woman) with the passive role be a corpse (dead). If he copulates from the anus (*dubur*) without emission of semen, it is *wajib* to perform the *ghusl*, according to the most preponderant sayings of legists (*'ala al- asahh*).

If he copulates with a boy and inserts his penis into the boy's anus (*awqaba*)<sup>2</sup> without *inzal* (emission of semen), al- Murtada<sup>3</sup> (may God's mercy be upon him) said: The *ghusl* is *wajib* (obligatory), depending upon the compound unanimity.<sup>4</sup> But the unanimity is not proved in this regard.

<sup>1</sup> By *dafq* (effusion) is meant: emission (of semen) in a propulsive and pouring out manner, accompanied with languor of the body: mitigation (*inkisar*) of *shahwah* (carnal lust) after its discharge - (*al- Masalik*, vol. I, p.48).

<sup>2</sup> *iqab* means inserting the penis into the vulva. Its limit is disappearance of the glans inside the vulva; and it is said a part of it. Its rule is *wujub* of *ghusl*.

In the *hadith* on menstruate woman, it is said: "In regard of the man, it suffices to insert it (penis) into between the woman's rumps, without *iqab* (see *al- Masalik*, vol. I, p.49; and *Majma' al- bahrayn*, vol. II, p.181).

<sup>3</sup> He is Ali ibn al- Husayn al- Musawi, nicknamed as Dhu al- Majdayn and 'Alam al- Huda. On the paternal side he is related to al- Imam Musa ibn Ja'far (A), and on the maternal side to al- Imam Zayn al- 'Abidin (A). He is born in Rajab 355H. and dead on 25<sup>th</sup> of Rabi' al- Awwal 436H. Of his works is: *al- Dhari'ah fi al- usul*. (*Rawdat al- jannat*, vol. IV, pp.294-312, freely and in brief).

<sup>4</sup> By '*jima' murakkab* (compound unanimity) is meant: the unanimity that is constructed of two verdicts, in a way that opposing both of them entails opposing the consensus; in a way that the saying of that having a considerable opinion of them be restricted in consensus. This case is called in *ilm al- usul* as: *ihdath qawl thalith* (innovation of a third saying).

The conclusion here: Al- Murtada (may God be pleased with him) claims: Whoever observes *wujub* of *ghusl* for insertion into anus of woman, observes its *wujub* on insertion into anus of a boy. And whoever observes its non-obligation for the first case, observes its non-obligation for the second one.

If the copulation be with an animal with no emission of semen, *ghusl* is not obligatory.<sup>1</sup>

### Subsidiary Issue:

*Ghusl* is *wajib* upon the disbeliever (*kafir*) when its requiring conditions are attained, but it is not accepted of him when being in state of *kufir*.<sup>2</sup> On his embracing Islam, he will be required to perform the *ghusl* of *janabah*, and it will be approved of him.

If he performs *ghusl al- janabah*, apostatizing then, and then embracing Islam, his *ghusl* will not be invalidated.

### The Rule (*hukm*):

It is *haram* for a *junub* person to recite each of the four *surahs* called *al- 'Aza'im*, and recite a part of them even the Basmalah, if making the *niyyah* to read one of them. Also it is *haram* for him to touch the (Arabic) script of the Qur'an, or anything holding the name of Allah, the Glorious, the Most High, and to remain in a mosque, or placing something in it. But it is permissible for him to pass through al- Masjid al- Haram<sup>3</sup> and Masjid al- Rasul(S) in particular. If he sleeps in one of them and wakes up to find that he had an emission (of semen), he is not permitted to pass through them unless through performing *tayammum*.<sup>4</sup>

---

Observing its *wujub* in regard of insertion into the woman not the boy, is innovation of a third belief, requiring invalidating the consensus of legists. But when the proof is established on its (*ghusl*) *wujub* for insertion into the woman, applying it in case of the boy becomes *wajib* (see: *al- Masalik*, vol. I, p.50; *al- Ma'alim* pp. 454-455; *Mabadi' al- wusul ila 'ilm al- usul*, pp. 191-192; *Muntaha al- wusul*, p.44; *al- Dhari'ah ila usul al- Shari'ah*, vol. II, pp.161-163).

<sup>1</sup> The discussion here is regarding *wujub* and non-*wujub* of *ghusl*, not regarding legality or non-legality of the act (sodomy), as this being another subject. As there is consensus that sodomy (*liwat*) is *haram* (unlawful), and its penalty is death. And one who commits sodomy (sexual intercourse) with an animal should be censured (*ta'zir*) if he does it thrice, and in the fourth time he should be killed. That who commits sodomy with a corpse (dead person), his punishment is like that who does so with a living person, and his *ta'zir* should be severer. The elaboration of all this will be given in *kitab al- hudud* (punishments).

<sup>2</sup> Due to absence of *qurbah*, and his (*kafir*) being *najis* (*al- Tawdih*, vol. I, p.18).

<sup>3</sup> That means entering from one door and going out from another one.

<sup>4</sup> That is he can't go out of them (unless by *tayammum*), and the same rule is applied for the menstruant and woman in state of *nifas*.

It is reprehensible (*makruh*) for a *junub* person to eat and drink, though this reprehensibility can be tempered with *madmadah* and *istinshaq* (drawing water into the nose). Also it is *makruh* for him to recite more than seven verses of the Qur'an other than the '*Aza'im*'. The *karahah* is aggravated if it exceeds 70 verses, and becomes severer by reciting more beside touching the Qur'an,<sup>1</sup> and sleeping (with state of *janabah*) till performing the *ghusl* or ablution or *tayammum*, and also the *khidab* (to dye hair with paint).<sup>2</sup>

### Method of Ghusl:

Its essentials are five: 1- *Niyyah*; 2- its continuity till the last act of *ghusl*; 3- washing the skin (*basharah*) in a way commonly known as *ghasl*; 4- absence of anything on the body that may prevent water from reaching the skin; 5-and sequence (*tartib*): to start with the head, washing next the right half of the body and then the left half.

The sequence is dropped with submerging the whole body in water (*irtimas*).<sup>3</sup>

*Sunan of Ghusl*: starting with *niyyah* (intention) when washing the hands, followed by washing the head, with passing the hand over the body so as to make the water reach all the parts, *istidharan*,<sup>4</sup> urination before the *ghusl*, *istibra'* - which is done by washing the locale (penis) from the *maq'adah* to origin of the penis thrice, and from it to the top of glans (*hashafah*)<sup>5</sup> thrice, pulling it then with a sudden jerk thrice. Added to these, washing the hands thrice before inserting them in the utensil, with *madmadah* and *istinshaq*, and *ghusl* with a *sā'* (measure of capacity).<sup>6</sup>

### Three Issues:

<sup>1</sup> Except the script, as otherwise touching it is *haram*.

<sup>2</sup> What is meant is to dye the hair of the beard: *khadb*: is the blood-red paint (*Majma' al- bahrayn*, vol. II, p.51).

<sup>3</sup> By *irtimas* it is meant that one submerges the whole body under water all at once, in a way that the water covers the skin in a short time.

It is sufficient too (achieves the same rule) to stand under exuberant flowing water and raining, in a way that the same description is attained- (*al-Masalik*, vol. I, p.53).

<sup>4</sup> *Istidhar* is seeking precaution by something (*Majma' al- bahrayn*, vol. III, p.392).

<sup>5</sup> *Hashafah* is the part (top) of the male organ covered by foreskin prior to circumcision (*Majma' al- bahrayn*, vol. V, p.38).

<sup>6</sup> It is equal to two kilos and nine hundred grams (*Mukhtasar al- Minhāj*, vol. I, p.87).

**First:** when the person performing *ghusl al- janabah* finds, after completing the *ghusl*, a doubtful wetness: if he has already urinated or performed *istibra'*, he is not required to repeat (the *ghusl*), but if not, he should restart anew.

**Second:** If a *hadath* occurs of the person (performing *ghusl*) after washing some of his parts, it is said: He should repeat the *ghusl* outright from the head. And some legists observe: it is sufficient to complete the acts of *ghusl*, and some others said: he should complete the *ghusl* and perform then the ablution for *salat*, which is preponderant.

**Third:** It is not permissible for the *junub* to depute someone else to perform acts of *ghusl* instead of him, with ability to perform them himself, and it is *makruh* for him to seek help of another one in performing the *ghusl*.

## Section Two: The Hayd

It includes its exposition and relevant issues.

First of all, *hayd* (menstruation) is the periodic blood discharge experienced by women during specific days, related to termination of the period of '*iddah*,<sup>1</sup> the least of which has a limit (*hadd*).<sup>2</sup> It is usually black or red, thick and warm, and comes out in spurts with ardour.

It may be confused (doubted) with blood of '*udhrah*,<sup>3</sup> but can be recognized through the cotton, which if comes out stained it means blood of '*udhrah*. Any discharge that occurs before a girl reaches the age of nine years cannot possibly be menstrual.<sup>4</sup> The same is observed in regard of the blood coming out from the right side. The minimum period of menstruation is three days and maximum is ten, and so also is the minimum period of purity. Is it stipulated for the three days to be successive, or is it sufficient for them to be within ten days? The first saying is preponderant. The blood seen by the woman after reaching the age of menopause is not *hayd*.

<sup>1</sup> The '*iddah* is infinitive, and means number of months or *quru'* for the woman, or giving birth to a child she conceived from the man she is observing '*iddah* for. It is said: It is a prescribed period which a woman has to pass after her divorce or her husband's demise (for her remarriage). Plural of '*iddah* is '*idad*, and origin of all is '*add* (enumeration) - (*Tahdhib al- lughah*, vol. I, p.89).

<sup>2</sup> It is three days.

<sup>3</sup> '*Udhrah* is *bakarah* (virginity) - (*al- Sihah*, vol. II, p.738).

Tha'lab has reported from Ibn al- A'rabī that he said: "'*Udhrah* is seal of virgin girl (*bikr*).'" Ibn Ahmar said: "The *bikr* is called '*adhra'* (virgin) due to her *diq* (contraction).'" (*Tahdhib al- lughah*, vol. II, pp.310-311).

<sup>4</sup> But it is blood of *istihadah*.

It is said: The age of menopause for a Qurayshi woman is 60 years, and for a non-Qurayshi and a non-Nabati<sup>1</sup> woman is 50 years.

Every (blood) discharge seen by any girl before reaching the age of three years is not menstrual, whether she be a beginner or of a periodic menses (*'adah*).<sup>2</sup>

The blood discharge that occurs for a woman in the age between three and ten years, which can most likely be menstrual, is definitely *hayd*, whether it be of the same nature or of a different one.

The woman becomes of a periodic menses (*'adah*) when seeing the blood discharge occurring at once, ceasing then within the least period of purity and upwards. Then she sees it again with that same *'iddah*, with no heed to be paid to difference of blood colour.

Five points:

1) It is agreed unanimously among the legists that the woman having menses is not required to perform *salat* or fast on seeing the blood.<sup>3</sup> There is disagreement regarding the girl newly starting to menstruate. She is required to observe precaution for worship till passage of three days, according to the traditions.

2) If blood discharge occurs for a period of three days and ceases then, occurring then before the tenth day, all of the blood will be considered *hayd*. If it exceeds ten days, she can refer to the elaboration I shall state in the section of *istihadah*. If it doesn't come out but only after ten days, the first one (within three days) will be considered a single *hayd*, and the second discharge is a resumed *hayd*.

3) If it ceases before completing ten days, she has to perform *istibra'*

---

<sup>1</sup> The Qurashi woman is that whose lineage from the paternal side goes back to al- Nadr ibn Kinanah. She is more common than the Hashimi woman. (See *al- Rawdah*, vol. I, p. 98; and *jamharat al- nasab*, pp.21-22).

The Nabati woman is that who descends from Nabat, which is a name used for three generations: one of Arab origin, the second is Arami, and the third is a miscellany (*khalit*). It is apparent that what is intended here is that related in origin to the Arabs (see *Ta'rikh al- Arab qabl al- Islam*, vol. III, pp.11-13; and *Madrasat al- Kufah*, p.9; and *al- 'Arabi*, issue No.131, pp.96-100).

<sup>2</sup> *'Adah* is derived from *mu'awadah*: which is here: seeing the blood, intermittently, time after another, with both of which agrees the time of discharge of blood, such as the first of every lunar month for instance (*al- Masalik*, vol. I, p.59).

<sup>3</sup> That is, when seeing it in time of her periodic menses, not all the time (see *al- Masalik*, vol. I, p.60).

with the cotton.<sup>1</sup> If it (cotton) comes out clear, she can perform *ghusl*, and if it comes out stained (with blood), the beginner should wait till attaining purity or passage of ten days.

The girl having periodic menses is required to perform *ghusl* in one day or two days after her period. But if the discharge continues to the tenth day, and ceases afterwards, she will have to perform the *qada'* of the *sawm* (fasting). If it exceeds the ten days, what she has done would be sufficient.

4) When she attains purity, her husband can have sexual intercourse with her before performing the *ghusl*, though this being *makruh*.

5) If menstruation occurs when time of prayers falls due, and with the end of time of purity and *salat*, she will have to perform the *qada'*. But if it be before that, she is not required to perform *qada'*. If she attains purity before end of time, even to an extent of purification and performing one *rak'ah*, it will be *wajib* on her to perform the *salat (adā')*,<sup>2</sup> and the *qada'* when falling short of performing the *wajib*.<sup>3</sup>

### Rules Applicable to a Ha'id:

1. All that which is forbidden for a *junub* person is also *haram* for a menstruating woman (that requires *taharah*), like *salat*, *sawm*, *tawaf* and touching the script of the Qur'an. It is *makruh* for her to carry the Qur'an, and touch its margin; even if she attains *taharah*,<sup>4</sup> her *hadath* will not be removed.

2. The fast (*sawm*) is not required of her.

3. It is not permissible for her to remain in the mosque, and it is *makruh* for her to pass through it.

4. It is not permissible for her to recite anything of *surahs* of '*azā'im*

<sup>1</sup> *Istibra'* is seeking the exemption (*bara'ah*) of the vulva from blood. Its manner is according to what is reported in some traditions from al- Imam al- Sadiq (A), who said, when asked: How does the menstruating woman (*tamith*) recognize her purity? "She relies with her left leg on the wall, inserting the *kursuf* (cotton) with her right hand (into her vagina). If it (blood) be as little as head of fly, it will appear on the cotton..." (see *al- Masalik*, vol. I, p.61).

<sup>2</sup> In accordance with the *riwayah*: "whoever realizes one *rak'ah* has realized the whole time" (*al- Tawdih*, vol. I, p.23).

<sup>3</sup> That is: with falling short of *adā'* (performing *salat* in its due time), she has to perform the *qada'*, as per consensus, in respect of the *salats* of '*asr* (afternoon), '*isha*' (evening) and *subh* (morning) ..." (see *Jawahir al- kalam*, vol. III, p. 212).

<sup>4</sup> Before her *naqā'* (cleanness).



and it is *makruh* for her to recite other than them. But she is required to prostrate when reciting the verse of *sajdah*,<sup>1</sup> and also on hearing it, in accordance with verdicts of legists.<sup>2</sup>

5. There is consensus regarding it being *haram* for her husband to have sexual intercourse with her before termination of her *hayd*. But it is permissible for him to enjoy with other than the *qubul* (vagina). If he deliberately and knowingly copulates with her (during *hayd*) he must atone (pay *kaffarah*). Some legists said: it is not *wajib* upon him to atone. The first saying is nearer to caution (*ahwat*).

The legists observe that he must atone by giving a dinar in charity if the intercourse occurs during the initial days of *hayd*, a half dinar if in the middle of this period, and a quarter if in its last days.<sup>3</sup>

If intercourse is repeated at a time when atonement does not differ, it (*kaffarah*) must not be repeated. It is also said: it should be repeated. The first saying is *aqwa* (nearer to truth). If it differs, it should be repeated.

6. It is forbidden to divorce a *ha'id* if the divorcer has consummated the marriage, or is not travelling.

7. On her attaining *taharah*, she should perform the *ghusl*, which is exactly like *ghusl al- janabah*. But it differs in that ablution should be performed prior to *ghusl* or following it, with performing the *qada'* of *sawm* not the *salat*.

8. It is *mustahabb* for her to perform *wudu'* for every and each *salat*, with sitting in her chapel for the period of time of her *salat*, remembering Allah the Exalted. *Khidab* is *makruh* (reprehensible) for her.

### Section Three: Istihadah

#### Parts and Rules

*Istihadah* blood is usually yellowish, cold, thin and flows out slowly.

<sup>1</sup> Due to non-stipulation of *taharah* for recitation *sajdah*, because of generality of its prescription, according to the traditions reported in this connection. (see *al- Tawdih*, vol. I, p.24).

<sup>2</sup> By hearing (*istima'*) it is meant: listening to the reciter, which is permitted for her though obligating the *sujud*. She has to prostrate also when hearing without listening, because of generality of the text - (*al- Masalik*, vol. I, pp.63-64).

<sup>3</sup> By beginning, middle and end of *hayd* is meant: three parts of its period, and this differs according to difference of menses. Thus the second one is the middle for that having three menses, and the first for that one having six menses... and so an and so forth (*al- Masalik*, vol. I, p.64).

With this description it may agree with the *hayd*, as yellowishness and *kudrah*<sup>1</sup> during days of *hayd* are *hayd* and during days of *tuhr* are *tuhr*.

Every blood seen by the woman, that goes out within less than three days, without being a pus (blood of *qurh*)<sup>2</sup> or injury, is blood of *istihadah*. So also be every blood exceeding the maximum period of menses and transcending the ten days, or exceeding the maximum period of *nifas* (postpartal discharge), or be with the pregnancy as per preponderant view, or with menopause age (or before puberty).

When blood discharge exceeds ten days, of a menstruating woman, her *hayd* will be mixed with her purity. She will be either a beginner (*mubtadi'ah*) or of a periodic menses - stable or disturbed.

- The Beginner: She considers the nature of the blood.<sup>3</sup> If it resembles blood of *hayd*, it is *hayd*; and that which is like *istihadah* blood is *istihadah*, on condition that its period be not less than three days and not more than ten days. If its colour be one and the same, or not having the two conditions of distinction,<sup>4</sup> she has to refer to the periodic menses of her women (relations)<sup>5</sup> - if they agree. It is also said: or the menses of the likes among nationals of her country. If they be different of her, she has to fix seven days every month for her *hayd*, or ten per a month and three from the other, having an option to choose one of them. It is said: ten days, and some legists said: three. The first saying is more preponderant.

- The woman having menses:

### 1. One who is of fixed menses:

She can consider her menses as *hayd*, and every other blood as *istihadah*.

If a *tamyiz* (distinction) accompanies her menses, it is said: she follows the rules of menses. Some legists said: she follows rules of *tamyiz*. Some others observed: she has option to choose. The first saying is more preponderant.

Herewith are some important points:

<sup>1</sup> *Kudrah* (disturbance) is the opposite of *safw* (clearness) - (*al- Mukhtar*, vol. I, p.564).

<sup>2</sup> *Qurhah*: is a sore pimple emerges out of the body (*Majma' al- bahrayn*, vol. II, p.403, freely).

<sup>3</sup> In regard of number of its (menses) days (*al- Tawdih*, vol. I, p.27).

<sup>4</sup> They are: the like of it being not less than three days, and not more than ten days (*al- Masalik*, vol. I, p.68).

<sup>5</sup> By women here it is meant, the relatives (kins) from the parents side, or one of them (*al- Madarik*, vol. II, p.15).

**First:** If her menses be regular in number and period. When she notices that the number precedes or lingers behind that period, she has to follow the number for her *hayd* and cancel the time, because the menses may advance and linger, whether she saw it in the form of *hayd* blood or not.

**Second:** when her *'adah* be connected to a blood other than menses.

a. when she sees the blood discharge occurring before and during the menses period: if its period is not exceeding ten days, it is considered *hayd*, but if it exceeds the menses will be considered *hayd*, and that which preceded it will be *istihadah* blood.

b. The same rule is applicable if she sees it during and after the menses.

When she sees it before, during and after the menses: if it is not exceeding days then the *hayd* is time of menses; and both the sides are *istihadah*.

**Third:** When her menses be fixed in number:<sup>1</sup> if her menses occurs once a month, with a specific number, but seeing it occurring in some month twice exactly within days of menses, this is considered *hayd*.

But if it occurs for a period longer than that of the menses, this will be considered *hayd* if it does not exceed ten days. If it exceeds the ten, she can consider the blood discharge through period of her menses to be *hayd*, and the rest will be *istihadah*.

## 2. Woman of Disturbed Menses:<sup>2</sup>

She has to follow the *tamyiz*, acting according to it, and cannot leave the *salat*, unless after elapse of three days, as per verdicts of legists.

When she loses the distinction, there are three issues:

**First:** If she remembers the number but forgets the time, it is said: she behaves the same as the *mustahadah*, and performs *ghusl* for any time in which termination of *hayd* blood is expected, with performing the *qada'* of *sawm* she missed during the menses.

**Second:** When she remembers the time and forgets the number: If she remembers in the initial days of her menses, she has to complete it for three days, performing what the *mustahadah* has to perform. She has to perform single *ghusl* on the termination of *hayd*, and *qada'* of fasting for ten days on precaution basis (*ihtiyat*), unless the time she caught be less than ten days.

<sup>1</sup> I have taken this title from *Kitab al- Talaq, al- maqsad al- khamis*, chapter two; see: *al- Rawdah*, vol. VI, p.58).

<sup>2</sup> That means the woman forgetting the number, or period of time, or both of them (*al- Tawdih*, vol. I, p.27).

**Third:** When she forgets both of them: she considers the blood discharge occurring every seven or six days a month, or ten days of a month and three of another, to be *hayd* blood, as long as the suspicion remains.

### The Rules:

- When the *istihadah* blood stains the cotton without soaking it, her duty is to perform ablution for every *salat* while changing the cotton. Thus she may not perform two *salats* with a single *wudu'*.

- When the blood soaks the cotton without flowing from it, her duty is to perform one *ghusl* for midday and afternoon *salats*, and change the cotton.<sup>1</sup>

- When the blood flows after soaking the cotton, her duty is to perform two *ghusls* daily: the first for the midday and afternoon prayers together, and the second for the sunset and night prayers together. By this she becomes pure. But if she commits any *khalal* in these things her *salat* will be invalid, and if she makes any *khalal* (defect) in the *ghusls* her *sawm* will be invalid.

### Section Four: Nifas

The *nifas* blood is a uterine discharge that occurs during or after childbirth. There is no limit to its little amount, as it may be one moment.<sup>2</sup>

If a woman gives birth, but seeing no blood discharge, she will have no *nifas*. If she sees blood before childbirth, it is *tuhr*. The maximum period of *nifas* is ten days, as per the preponderant view of legists.

If she be pregnant with two children, but parturition of one of them slackens (lingers), she considers start of her *nifas* to be with childbirth of the first one, and number of her days (of *nifas*) with childbirth of the second.

If she gives birth, but seeing no blood until in the tenth day (after parturition), this will be considered *nifas*.<sup>3</sup>

<sup>1</sup> After daybreak, if she is not fasting, otherwise she can perform it prior to daybreak to the extent of performing it certainly or suspiciously (*al-Masalik*, vol. I, p.74).

<sup>2</sup> The moment is mentioned only for exaggeration in shortness of period, like the Imam's saying: "give *sadaqah* even if with one date, and even half a date" (*al-Masalik*, vol. I, p.76).

<sup>3</sup> That is in the tenth day exactly not another day, it will be *nifas*. And this with its termination in the tenth day, or her menses with *hayd* be for a period of ten days, or she be a beginner, or disturbed. Otherwise she will have no *nifas*. (*al-Masalik*, vol. I, p.77).

If she sees blood after childbirth, becoming pure then, and seeing the blood discharge then in the tenth day or before it, both the bloods and the one in between will be considered *nifas*.

All that is forbidden for the menstruating woman is *haram* also for the *nufasa'*, and the same rule concerning the *makruh* things. It is not permissible to divorce her. The manner and conditions for *ghusl* of *nifas* are exactly like those of *ghusl al- hayd*.

### Section Five: Rules Pertaining to the Dead

They are five, which will be discussed in the following sections:

#### First: *al- Ihtidar*<sup>1</sup>

It is *wajib* to make a dying person face the *qiblah*, by making him to lie on his back, with his face and soles of his feet facing the *qiblah*.

It is *wajib* with *kifāyah* (*wajib kifā'i*, i.e. if some persons perform it, others will be relieved of duty of performing it). Some legists consider it to be *mustahabb*.

It is *mustahabb* to do *talqin*<sup>2</sup> to the dead person, by dictating to him the two witnesses (*shahadatayn*), *iqrar* (admission) with the Prophet and the Imams (peace be upon them), and words of *faraj*.<sup>3</sup> It is also *mustahabb* to carry him to his *musalla*<sup>4</sup> (oratory), with making him hold a lamp if his death occurs at night, with someone reciting the Qur'an for him. It is also recommended to shut his eyes when he dies, close his mouth, extending his hands to his sides,<sup>5</sup> covering him with a garment, and hastening in preparing him for burial, unless there is uncertainty concerning the corpse (whether it

<sup>1</sup> *Ihtidar* is *sawq* (i.e. death, be at the point of death), we seek God's help on it. It is called so due to presence (*hudur*) of angels near him, or attendance of his family and relations, or presence of believers for performing funeral acts, or to sending for his mind, as reported in the traditions. (See *Tahdhib al-lughah*, vol. IX, p.232; and *al- Madarik*, vol. II, p.52).

<sup>2</sup> By *talqin* it is meant: *tafhim*, i.e. to instruct and make one understand. It is said: a "*laqin* boy" to mean an intelligent boy. The dying person (*muhtadir*) should follow him (*mulaqqin*) by tongue and heart. If he can't by tongue he can follow him by heart. (*al- Rawdah*, vol. I, p.400).

<sup>3</sup> See *al- Madarik*, vol. II, p.56, to know the *faraj* words.

<sup>4</sup> It is the location he dedicated in his house for *salat*, or in or on which he used to perform *salat*. (*al- Masalik*, vol. I, p.78).

<sup>5</sup> With his shanks (legs) if they were contracted, so as to make the body more submissive and tractable for acts of *ghusl*, and easier for inserting into the *kafan*. (*al- Rawdah*, vol. I, p.402).

belongs to a Muslim or a non - Muslim), *istibra'* has to be performed for him with signs of death,<sup>1</sup> or he may be left in that state for three days.

It is *makruh* to make iron lie on his belly, and also to be attended by a *junub* or a menstruating woman.

### Second: *Taghsil* (Bathing the dead)

It is *wajib kifā'i*, and so also is *takfin* (providing with shroud), burial and performing the *salat* over the dead. The most entitled person to perform it is the most entitled one to inherit him.<sup>2</sup>

If the *awliya'* be men and women, the men are *awla* (most entitled), and husband is more entitled to perform the *ghusl* to his wife than any other one in managing her affairs. It is permissible for the *kafir* (infidel) to perform *ghusl* of a Muslim, if neither a Muslim nor a consanguine Muslim woman be present. It is also permissible for a non-Muslim woman to perform *ghusl* to a Muslim woman, when neither a Muslim woman, nor a consanguine kin man be present there. Also a man can perform *ghusl* to his *maharim* (women) with their clothes be there, if they be non-Muslim, and so also can the woman. It is not permissible for a man to give *ghusl* to a girl who is not *mahram*<sup>3</sup> to him, unless she be of less than three years. And so also is the woman. He can give *ghusl* to her without any clothes covering her. It is permissible<sup>4</sup> to give *ghusl* to everyone declaring the two witnesses - though not believing in the Truth - except the Ghulat and Khawarij.

There is consensus that one who is martyred and killed in battle with infidels, in the presence of the Imam, will be neither given *ghusl*, nor provided with *kafan*, but be prayed upon. So also is the one who is ordered to be put to death, he is ordered to perform *ghusl* before putting him to death, with no *ghusl* to be given to him after death.

<sup>1</sup> Signs of death are like: sinking of his temples, slanting of his nose, dilatation of his skin, and dislocation of his arm. (*al- Masalik*, vol. I, p.80).

<sup>2</sup> That means the precedence is to be given to that who stands in the order applicable to inheritance, even if he be a relative. If the inheritor be single, he will be distinguished with inheritance. If inheritor be more than one, precedence should be given to the male over female, and to the *mukallaf* over others, and to the father over the son and grandfather. (*al- Rawdah*, vol. I, p.406).

<sup>3</sup> By *mahram* it is meant: the woman with whom marriage is totally *haram*, due to affinity, or fosterage or relationship by marriage; hence the wife's sister and daughter of the woman with whom marriage is not consummated are not among the *maharim*. (*al- Masalik*, vol. I, p.81).

<sup>4</sup> Or rather it is *wajib* due to proclamations with unanimities, and since it is a prelude for praying upon him, which is *wajib*.

If the part of the dead body found includes the chest, or it be the chest alone, all the rules applicable to a complete corpse will apply to it, and it will be given *ghusl*, and *kafan*, prayed upon, and be buried. But if the part found does not contain the chest, it would be given *ghusl* if it contains a bone, and then buried by wrapping it in a piece of cloth. And so also is the foetus that has completed four months. And if it (part) does not contain a bone, it will be wrapped in a piece of cloth and buried without a *ghusl*. And the same rule is applied for the foetus into which the breath of life (*ruh*) has not entered.<sup>1</sup>

If the dead body is not attended by a Muslim or a *kafir* or a consanguine (*mahram*) woman, he can be buried without *ghusl*, and a non - Muslim woman is not allowed to approach him. And so also is the woman. It is reported that her face and hands can be washed.

It is *wajib* to remove the *najasah* from the body first, and to wash it with water containing a little of *sidr*.<sup>2</sup> The *ghasil* should start by first washing the head, then the right half of the dead body and then the left. The least of *sidr* to be added to the water is the amount that can be called *sidr*, and it is said: the amount of seven leafs. Then camphor<sup>3</sup> can be added to the water in the same manner mentioned for *sidr*, and the last wash has to be performed with *qarah* water,<sup>4</sup> just like *ghusl al- janabah*.

There is disagreement regarding performing ablution for the dead body, and the preponderant view is that it is not *wajib*. It is impermissible to suffice with less than the above -mentioned *ghusls* (three) unless in exigency cases. In case of non-availability of camphor and *sidr*, the *ghusls* can be performed with *qarah* (plain) water. It is said: The *ghusl* is not dropped due to absence of the things that are to be added to water; and there is disagreement regarding this.

If *ghusl* is not possible due to non-availability of water, or the body being burnt or affected by a disease (like *judari* - smallpox) in such a manner that it

<sup>1</sup> It is meant the foetus of less than four months, as declared by the legists. (see *al- Masalik*, vol. I, p.83).

<sup>2</sup> *Sidr* is Nabk tree (*al- Mukhtar*, vol. I, p. 292).

<sup>3</sup> Camphor: is a fragrant tree of the species of laurel trees, whose origin is south of China. Its leafs are eternal, and flowers are yellowish white, from which camphor is extracted.

Camphor is also used for a perfume substance extracted from the Camphor tree, which is used in medicine and *tahnit* (*al- Munjid fi al- lughah*, p.191, freely).

<sup>4</sup> Ibn al- A`rabi says: “*Qarah* is that which is free (refined) of everything, and that which is not mixed with anything else.” Hence it is said: “a *qarah* water.” (*Tahdhib al- lughah*, vol. IV, p.42).

might cause the flesh to fall apart on being washed, it would be resorted to *tayammum* by dust (*turab*), in a way similar to that performed by a disabled living person.<sup>1</sup>

The method of bathing the dead: is to make him lie on a *sajah*,<sup>2</sup> in a way facing the *qiblah*. The dead body should be washed in a place under shade (*zillal*)<sup>3</sup> with a cavity being dug for the water. It is *makruh* to send him through the *kanif*,<sup>4</sup> and there is no objection to the *balu'ah*.<sup>5</sup> And then to rip his shirt, and to take it off from underneath, with covering his privy parts, and softening his fingers leniently.

The *ghusl* starts with washing the head with foam<sup>6</sup> of *sidr*, followed by washing his anal outlet with the *sidr* and *hurud*,<sup>7</sup> then his hands.<sup>8</sup> It should be started with the right half of his head, then every part should be washed thrice in every wash, with wiping his belly in the first two washes,<sup>9</sup> unless the dead be a pregnant woman. The *ghasil* should be on the right side of the dead body, washing his hands with every wash (to the dead), drying them with a towel.

It is reprehensible for the *ghāsik*: to make the dead lie between his legs, or to make him sit, or to clip his finger - nails, or to wave his hair (*tarjil*).<sup>10</sup>

<sup>1</sup> It is performed with the living person striking the earth by his hands, and wiping the palms of the dead person first, and their back then after wiping the forehead, as per the precepts (of the Prophet [S]). And also this can be done in case of non-availability of water for all kinds of washes, as they have the applicability of one *ghusl*, with absoluteness of reports, and not mentioning the plurality (*ta'uddud*)- (see *al- Tawdih*, vol. I, p.32).

<sup>2</sup> *Sajah* is a plank of special wood (teak - of Indian tree). (see *al- Masalik*, vol. I, p.86).

<sup>3</sup> *Zill* means *fay'* that screens between man and light of sun or alike. (*Majma' al- bahrayn*, vol. V, p.416).

<sup>4</sup> *Kanif* is the place (enclosure) prepared for water - closet. (see *Majma' al- bahrayn*, vol. V, p.116).

<sup>5</sup> It means the cesspool of water, like rain and alike, not the cesspool of urine which is called *kanif*. (See *al- Masalik*, vol. I, p.87).

<sup>6</sup> *Raghwah* is the froth that it (*sidr*) throws up while striking it with water. (see: *Majma' al- bahrayn*, vol. I, p.192).

<sup>7</sup> *Hurud* is the saltwort (a plant). It is called so because it destroys the filth. (see *Majma' al- bahrayn*, vol. IV, p.200; *Tahdhib al- lughah*, vol. IV, p.205; *al- Masalik*, vol. I, p.87; and *al- Munjid*, p.126).

<sup>8</sup> That is the hands of the dead -thrice- up to half the arm, i.e. the *mirfaq* (elbow), before every wash. (see *al- Masalik*, vol. I, p.87).

<sup>9</sup> Before them, with all reserve against discharge of something after *ghusl*. (see *al- Rawdah*, vol. I, p.414).

<sup>10</sup> *Tarjil* of the hair is to curl and frizzle the hair, and also to make it hang



The *ghāsil* also should wash the dead in an opposite way, and if he is obliged he can wash him the *ghusl* of people of disobedience.

### Third: Takfin

It is *wajib* to use three pieces for *kafan*: the first is called *mi'zar*<sup>1</sup> (apron), the second is the *qamis* (which covers the body from shoulders to the shanks); and the third called *izar*<sup>2</sup> (wrapper). In emergent cases one piece suffices. It is impermissible to provide *kafan* made of silk.

It is *wajib* to rub the seven parts of a dead body which touch the ground while prostrating with camphor, except the person that dies in the state of *ihram*, as the camphor should not be used for him. The minimum amount (of camphor) is one dirham, and better than it is four dirhams, while the most perfect is 13 dirhams and one - third. When necessary he can be buried without camphor. It is impermissible to perfume the dead with other than the camphor and *dharirah*.<sup>3</sup>

### Sunan of Takfin:

It is recommended for the *ghāsil* to perform *ghusl* before providing *kafan* for the dead, or perform the ablution of *salat*.

Also it is *mustahabb* to provide him with 'Ibri *hibarah*,<sup>4</sup> not embroidered with gold, and a piece of cloth (tatter) for his thighs, with the length of three and a half cubits, and a width of about one span. Both of its ends should be tied to a *haqwiyyah*,<sup>5</sup> wrapping the two thighs of the dead with its hanging down parts, so tightly, after placing some cotton in between his rumps. And if it is feared that some discharge (excrement) may be emitted (of the dead), there is no objection to insert some cotton into his anal

loose by a comb. (see *al- Mukhtar*, vol. I, p.236).

<sup>1</sup> *Mi'zar* resembles a loin - cloth extending from the navel to the knees. (*al- Rawdah*, vol. I, p.415).

<sup>2</sup> *Izar*: a cloth covering the whole body. (see *al- Rawdah*, vol. I, p.415).

<sup>3</sup> *Dharirah*: is the fragments of cane of scent, which is brought from India. (see *Majma' al- bahrayn*, vol. II, p.307).

<sup>4</sup> *Hibarah*: is a Yemeni dress (*thawb*). It is called 'Ibri due to making it in a town in Yemen. (see *al- Rawdah*, vol. I, p.417; *al- Masalik*, vol. I, p.90; *al- Madarik*, vol. II, p.100; and *Majma' al- bahrayn*, vol. III, p.394).

In *Mu'jam al- buldan*, vol. IV, p.78, it is written with *fathah*: 'Abri, in relation to a name of a country, and so also in *Taj al- 'arus*, edition of Kuwait, vol. XII, p.511, and it seems to be the right one.

<sup>5</sup> *Haqw*: is the groin (lions), which is the part of the body on either side between the ribs and the haunch - bone.

outlet. Also a turban has to be made, wrapping with it his head, with its two ends brought out from under the palate (*taht al- hanak*),<sup>1</sup> and casted over his chest.

The woman's *kafan* differs from that of the man in that a wrapper has to be added to the woman to cover her breasts, beside a *namat*<sup>2</sup> and instead of the turban a veil or mask (*qina'*)<sup>3</sup> may be put on her head.

Also the *kafan* should be made of cotton, with sprinkling *dharirah* on the *hibarah* and wrapper and *qamis*. The *hibarah* should be placed over the wrapper, with the *qamis* inside it. On the *hibarah*, *qamis*, *izar* and two stalks the name of the dead, with stating that he declares the *shahadatayn*, may be written. And it is *mustahabb* to inscribe the names of Infallible Imams (peace be upon them) all of them. All that can be done with the soil taken of the cemetery of al- Imam al- Husayn (peace be upon him), if not found, it can be done by the finger.<sup>4</sup> In case of non - availability of *hibarah*, another wrapper can be used instead of it.

Further, the *kafan* should be sewed with threads taken from it, and it should not be moistened with the *riq'*<sup>5</sup> (saliva). It is *mustahabb* also to insert into the *kafan* two palm - leaf stalks, but if not available, two stalks of *sidr*. And if not found, then of the *khilaf*<sup>6</sup> tree, otherwise, palm leaves of a mellow tree. One of these palm leaves can be inserted on his (dead) right side, beside

<sup>1</sup> *Taht al- hanak* is to fold a part of the turban and pass it under the chin.

The *hanak* is the part under the chin containing the teeth. (see *Majma' al- bahrayn*, vol. V, p.263).

<sup>2</sup> *Namat*: is a woolen cloth, having stripes contradicting its colour, and it covers the whole body, over everything. (see *al- Rawdah*, vol. I, p.419).

<sup>3</sup> *Miqna'* and *miqna'ah*: is the cloth with which the woman veils her head. The *qina'* is wider than the *miqna'ah*. (see: *al- Mukhtar*, vol. I, p.552).

<sup>4</sup> By this it is meant: If it is not possible to inscribe these things with earth (*turbah*) of al- Husayn (A), it is sufficient to make a sign to it (symbolic). This can be done by passing the finger on the *kafan* without using any other thing. But this must be preceded by writing with water and mud, as per the abundant reports with consensus. And so also is the case regarding script of the Qura'n, as no difference is there between it and Name of the Almighty, as per the *hadith*: "Take of the Qur'an whatever you like for whoever you will." (See *al- Tawdih*, vol. I, p.34; and *al- Masalik*, vol. I, p.92, freely).

<sup>5</sup> *Riq* means *ridab* (saliva). (see *Mukhtar al- Sihah*, vol. I, p.266).

<sup>6</sup> *Khilaf* is a tree of *safsaf* as called by people of Sham (Syria). If it be not found he can resort to pomegranate, and if unavailable then a mellow tree.

As per the traditions, the length of every palm - leaf (*jarid*) is equal to the bone of forearm of the dead. If it be longer or shorter than it with four fingers, no objection to it. (See *Majma' al- bahrayn*, vol. V, p.55; and *al- Masalik*, vol. I, pp. 93-94).

his collar - bone (*tarquwah*)<sup>1</sup> attached to his skin. And the second one can be placed on his left side in between the *qamis* and *izar*. The camphor can be crushed by his hand, letting what is left of the seven parts touching the ground in prostration (*sujud*), to spread on his chest, with folding the left side of the wrapper onto its right side, and the right onto the left.

It is *makruh* (reprehensible), to provide a *kafan* made of linen, and to make *akmam*<sup>2</sup> (sleeves) for the elementary *kafans*, or to write on them with blackness. It is *makruh* also to put a bit of camphor inside his ears or eyes.

### Three Issues:

1) When *najasah* (urine or excrement) is emitted from the dead body after *takfīn*, if it comes into contact with his body it should be washed with water. And so also if it comes into contact with the shroud, unless this occurs after placing him in the grave, where it should be cut off. Some legists have obligated its *qard* (gnawing) absolutely.<sup>3</sup> The first saying is preponderant.

2) The husband is responsible for the *kafan* of his wife, even if she be wealthy. But it is not compulsory for a husband to provide for other expenses than the *wajib*. The amount necessary for the *kafan* of the man, and other expenses of burial are taken from the legacy of the deceased before the satisfaction of the claims of his debtors, the beneficiaries of his will and his heirs. If the deceased does not leave behind any wealth, enough for *kafan* he will be buried without a *kafan*.<sup>4</sup> It is not *wajib* upon the Muslims to provide him with a *kafan*, as spending wealth is *mustahabb* on the basis of charity, and so also in respect of other expenses, like providing the camphor and *sidr* or other things.

3) If anything of the deceased, of his hair or body, falls apart, it should be thrown into his grave.

### Fourth: Inhuming the Body (*muwarat*)

It has traditional (*masnun*) preliminaries, like: the person partaking in funeral may walk behind the coffin, or to one of its sides. The coffin has to

<sup>1</sup> *Tarquwah* is a collar - bone, which is one of the two bones of the neck. (see *al- Rawdah*, vol. I, p.421).

<sup>2</sup> *Kumm* is the sleeve, which is the part of a garment covering the arm.

<sup>3</sup> Whether after lowering him into the grave, or before that.

<sup>4</sup> If the Muslims have a public treasury (*bayt al- mā*), it is *wajib* to provide the *kafan* of an indigent person from it, and so also are the other expenses. Also it can be provided from *zakat*, if possible, or the *khums* if he be meritorious to them. (see *al- Masalik*, vol. I, p.96).

be carried from its four ends (quadrilateral), starting with its right frontal part, turning from behind it to the left. It is *mustahabb* to inform the believers with the death of the believer, and the onlooker to the coffin to say: praise be Allah's Who has not made me among *al- Sawad al- mukhtaram*.<sup>1</sup>

The coffin has to be put on the ground when approaching the grave, with his (dead) legs close to the grave for the man, and toward the *qiblah* for the woman. Carrying the coffin can be done in three stages (*dufu'āt*),<sup>2</sup> with lowering the body of the man into the grave with his head, and the woman in a breadth-wise way. Also someone has to enter the grave bare-footed for receiving the body, who will uncover his (dead) face and untie his buttons. It is *makruh* for the relatives to undertake these *sunan*, except in case the dead be a woman. It is *mustahabb* to recite a certain supplication while lowering the body into the grave.

### Essentials & Sunan of Burial:

The Essentials: It is *wajib* to inhumate the body in the ground. If a person dies on a ship (far away from land) the body should be thrown into the sea, either made heavy (by tying iron or a stone to it), or placed in a firm coffin or a barrel which can be capped, if it was not possible to retain it for burial on land.

It is *wajib* also to make the body lie on the right side, facing the *qiblah*. But if it be of a non-Muslim woman pregnant of a Muslim man, it is *wajib* to keep her back to the *qiblah*.<sup>3</sup>

### Sunan of Burial:

The *sunnah* in respect of the grave is to dig it up to the height of man's stature, or up to the collar-bone (*tarquwah*) with making a *lahd* (tomb) for it facing the *qiblah*. Also the person undertaking the burial acts has to untie the

<sup>1</sup> The *sawād* may mean the person, and may indicate the common people.

And by *mukhtaram* it is intended: the perishable among people, in particular that who perishes without insight, or in general, as a sign of consent to actual existing situation. (see *Majma' al- bahrayn*, vol. III, p.72, and *al- Rawdah*, vol. I, p.431).

<sup>2</sup> According to a group of legists, among whom the compiler of *al- Mu'tabar*. The coffin has to be placed near the grave, and carried to it then in two lifts, and in the third, it is lowered into the grave. (see *al- Masalik*, vol. I, p.98).

<sup>3</sup> If it be a woman he should keep her back to the *qiblah*, so that her child to come facing the *qiblah*, according to the dictum: "The face of child is toward back of his mother." (see *al- Masalik*, vol. I, p.100).

knots of the *kafan*, from the head and feet, placing beside the dead a little of clay (*turbah*) of al- Imam al- Husayn (A). Then he has to dictate to him (*talqin*), pray for him, and *yashruj*<sup>1</sup> (tack-baste) the *labin* (bricks), and come out from the end of the grave. After that the attendants have to pour down the dust upon him, with backs of hands, saying: "We all belong to Allah, and to him we shall return." The grave should be made at the height of four fingers, made quadrilateral, with pouring the water over it from the side of the head. The additional water has to be poured on the middle of the grave, with placing the hand on it, asking God to have mercy upon the dead, and the *wali* dictating to him after departure of people, with loud voice.

It is *mustahhab* to hold a consolation meeting (*ta'ziyah*) before and after the burial. It is enough to be witnessed by the *awliya'* of the dead.

It is *makruh* to spread out the *saj* (teak) but only when necessary, and for the uterine relation to pour down dust upon his *rahim* (relation). It is reprehensible also to plaster or renew the grave,<sup>2</sup> and bury two dead bodies in one grave, and transferring the dead from a country to another, unless it be to one of the holy shrines. Further it is *makruh* to recline upon the grave, or walk over it.

### Fifth: Some relevant issues

1) It is *haram* to reopen the grave, or to transfer the dead to another country, after burying them. It is *haram* also to tear (rip) the garment over other than the father and brother.

2) It is *wajib* to bury the martyr in his clothes, to take off his slippers and fur, irrespective of whether being stained with blood or not, as per the preponderant view of most legists. No difference is there between his being killed with iron or any other thing.

3) The rule applicable to the boy and insane person, when being martyred, is the same one applied to the sane adult.

4) If the baby dies inside the womb of a pregnant woman, it should be amputated and brought out<sup>3</sup> of the womb. If the woman conceiving a living

<sup>1</sup> *Sharj al- labin*: is to stow and level the raw brick (*labin*), even if by mud, so as to prevent the dust from penetration. (see *al- Masalik*, vol. I, p.101).

<sup>2</sup> Al- Shaykh al- Hilli confined the *karahah* (abomination) in doing this after obliteration only, not in the outset. (see *al- Masalik*, vol. I, p.102).

<sup>3</sup> This can be done when taking the baby away be impossible without amputation. Otherwise it becomes illegitimate.

It is *wajib* to observe the most lenient and lenient method in taking it away, like treatment or alike. Also this is conditioned with being certain of

child dies, her belly should be cut open (on the left side) and the baby should be taken away, with sewing the location then.

### The Recommended Ghusls:

The well-known among them are twenty-eight *ghusls*, sixteen of which are related to time:

Friday *ghusl*, whose time extends from daybreak to the time when the sun passes the meridian (*zawal*), and it is preferable to perform it near to *zawal*. It is permissible to hasten and perform it on Thursday when there is possibility of non-availability of water, and also to perform its *qada'* on Saturday. And six *ghusls* in the month of Ramadan; the first night, night of half the month, the seventeenth, nineteenth, twenty-first and twenty-third nights, and night of '*Id al- Fitr*. Beside days of two feasts (greater and lesser bairams), day of Arafat, night of half of Rajab, its seventeenth day and twenty - seventh day,<sup>1</sup> the night of half of month of Sha'ban, day of Ghadir,<sup>2</sup> and day of Mubalahah.<sup>3</sup>

Seven *ghusls* are related to acts like:

*Ghusl* of *ihrām* (for *hajj*), *ghusl* for pilgrimage to (shrine of) the Prophet (peace and benediction be upon him and his Progeny), and paying visit to the (Infallible) Imams (peace be upon them), *ghusl* of one missing the *salat* of total eclipse of the sun with complete disappearance of the sun, if he intends to perform its *qada'*, as per the preponderant view among legists, beside *ghusl* of repentance whether it be out of libertinism or disbelief, *ghusl* for *salat al- hajah* (need) and *ghusl* for *salat al- istikharah* (seeking God's will).

Five *ghusls* are related to place, as follows:

*Ghusl* for entering the Haram (God's House), one for entering al-Masjid al- Haram, another for Ka'bah, and Medina and Masjid al- Nabi(S).

### Four Issues:

1. The *ghusl* which is *mustahhab* for the act and place has to be

---

death of the baby, as if it is doubted it is *wajib* to wait. This should be performed by women or the husband, and then by uterine men, then by strangers. What is permitted to the doctor is permitted here. (*al- Masalik*, vol. I, p.105).

<sup>1</sup> It is the day of mission (*mab'ath*) of the holy Prophet (*al- Rawdah*, vol. I, p.686, freely).

<sup>2</sup> It is the eighteenth of Dhu al- Hijjah. (see *al- Rawdah*, vol. I, p.686).

<sup>3</sup> It is the twenty-fourth of Dhu al- Hijjah, as per the most authentic narrations. (see *al- Rawdah*, vol. I, p.686).

performed in advance,<sup>1</sup> while the *ghusl* which is *mustahhab* for time has to be performed after it sets in.

2. In case of there being several recommended *ghusls*, the *niyyah* of nearness (*qurbah*) is not enough, unless the person states the cause. Some legists say: if an obligatory *ghusl* is added to them, his *niyyah*<sup>2</sup> would suffice. The first saying is nearer to preponderance.

3&4. Some of our *fuqaha* said: It is *wajib* upon that who proceeds towards a crucified person to see him,<sup>3</sup> to perform *ghusl*, if this be done by him on purpose, after three days. And so also regarding *ghusl*<sup>4</sup> of newly-born child. But *istihbab* (recommendation) is more preponderant in these cases as per verdicts of legists.

### Third Rukn: The Dust Taharah

It has four sections

#### Section One: Conditions in which *tayammum* is performed

1) Non-availability of water: In that case it should be sought, by shooting at the distance of *ghalwah*<sup>5</sup> (bowshot) of two bows, in all the four

<sup>1</sup> Excepted of this is the *ghusl* of *tawbah* since it is *wajib* to hasten to do it (repentance). And the same rule is applied in proceeding to see the crucified person, as the seeing with the proceeding is the cause of recommendation. Hence their *ghusl* should be delayed till after doing them. (see *al- Masalik*, vol. I, p.107).

<sup>2</sup> In the current copies, it is stated thus: "intention of *qurbah*."

<sup>3</sup> Not only proceeding to see him is sufficient for *wujub* (obligation) or *istihbab* (recommendation), as indicated by generality of the expression. But rather it is the proceeding with sighting. As per the preponderant view of legists, this *ghusl* is *mustahabb*, irrespective of whether the crucified be sentenced by law or not. (see *al- Masalik*, vol. I, p.108).

<sup>4</sup> It means: "And so also some of our *fuqaha*' gave verdicts in *wujub* of *ghusl* of the newly - born child."

<sup>5</sup> *Ghalwah* is an extent (distance) of the shoot (throw) by a moderate thrower, with a usual tool.

The *sahlah* (plain) land is that which is free from stones, trees, height and slope and other things that screen the penetration of eyesight, preventing it from discovering the surface of the earth.

The *haznah* land is opposite the *sahlah* (plain) land. This extent should be observed from all sides, in a way it covers the surrounding land entirely, which is intended by the four sides. (see *al- Masalik*, vol. I, p.109).

directions, if the ground be *sahlah* (plain), and one bowshot if it be rugged (*haznah*). If he misses the shoot till the appointed time becomes narrow,<sup>1</sup> he will fail to hit, but his *tayammum* and *salat* will be valid, as per the preponderant view of legists.

No difference is there between non-availability of water in origin and availability of water not enough for acquiring *taharah*.<sup>2</sup>

2) Unability to find water: The person who has no money to afford for buying water is like that who finds no water. So also is the one who finds water but sold with a price detrimental to him. If it be not detrimental to him, he is obliged to buy it at once, even if it be with a price exceeding several times the usual price. The same is true in respect of tools (for extracting water).

3) Fear of danger: There is no difference in permissibility of *tayammum*, whether the cause be presence of danger to one's life, properties or honour from robbers and wild animals, or fearing of severe sickness, or the *shayn*<sup>3</sup> resulted from using the water. And also in case of having water for drinking and fearing thirstiness if using it (for *taharah*); in all these cases it is permissible for him to perform *tayammum*.

## Section Two: The Substance on which Tayammum is Performed

It is everything that can be called earth (soil, dust, *turab*). It is not permissible to perform *tayammum* on minerals, or ashes, or crushed plant like *ushnan* (glasswort) and flour. It is permissible to perform *tayammum* on quicklime, gypsum, dust of grave and the dust used for *tayammum*. It is prohibited to perform it on the usurped earth, the *najis* (impurity) and mire (*wahal*),<sup>4</sup> when earth (*turab*) be available.

When soil is mixed with minerals, but the soil (*turab*) be overwhelming

---

It is estimated with 200 to 300 cubits, and some others estimated it to be 300 up to 400 cubits. The parasang is equal to 25 *ghalwabs*.

<sup>1</sup> By insufficiency of time, it is meant finding not enough time to procure water for *taharah* and performing at least one *rak'ah* in due time. (see *al-Masalik*, vol. I, p.110).

<sup>2</sup> As per the traditions reported, and for not replacing (*tajazzi*) the *hadath*. By this he refutes the claim of Ahl al- Sunnah, as he gave verdict in distinguishing between acquiring *taharah* with water and *tayammum*, in the parts remained not involved. (see *al- Tawdih*, vol. I, p.4; and *al- Masalik*, vol. I, p.110).

<sup>3</sup> *Shayn*: is the coarseness that appears on the surface of skin, through which disfigurement is caused. (See *Majma' al- bahrayn*, vol. VI, p.273).

<sup>4</sup> *Wahal*: is the thin mud. (see *al- Munjid fi al- lughah*, p.891).



and predominant, it is permissible to perform *tayammum* on it, otherwise it is impermissible. Performing it on *sabkhah*<sup>1</sup> (moorland) and sand (*raml*) is *makruh*. It is *mustahabb* to perform it on *turab* of hillock and elevated places of earth (*ruba*).<sup>2</sup> In case of non - availability of *turab*, he can perform *tayammum* on dust of his dress, or saddle - cloth or mane (*'urf*) of his horse. If all these things are unavailable, he can perform *tayammum* on mire (*wahal*).<sup>3</sup>

---

<sup>1</sup> The *sabkhah* land: is the wet salty land (blotting). (See *al- Rawdah*, vol. I, p.452).

<sup>2</sup> *Ruba* is plural of *rabwah*, which means the hillock and monticule, or whatever is higher than the plain land. (See *al- Sihah*, vol. VI, p. 2349; and *al- Masalik*, vol. I, p.113).

<sup>3</sup> If it was not possible to dry it, and striking on it then; otherwise it would be given precedence over the dust of the mentioned things.

There is a provision here that it should be the origin of *wahl* (mire), on which *tayammum* is valid to perform. (See *al- Masalik*, vol. I, pp.113-114).

### Section Three: Manner of Performing Tayammum

*Tayammum* is not valid if performed before setting in of time of *salat*, and it is valid if very little time left<sup>1</sup> for obligatory *salat*. There is disagreement regarding its validity with availability of enough time. Prohibition is nearer to precaution.

The *wajibs* in *tayammum* are: the *niyyah* and its continued validity, and sequence (*tartib*): striking with the palms on the earth, wiping the upper part of the forehead where the hair grows, to the upper part of the nose (including the eye-brows), then striking a second time and wiping the entire back of the hands. It is also said: the whole face and the two arms (to the elbows) have to be wiped. The first saying is more preponderant.<sup>2</sup>

One stroke is sufficient for the forehead and back of hands if *tayammum* is performed instead of ablution. But in case of performing *tayammum* for major impurity and in place of *ghusl*, two strokes are obligatory.

It is also said: for each of them two strokes are necessary, and some said: one is sufficient for both (ablution and *ghusl*).

If the hands (*kaffayn*) are amputated, their wiping will be dropped and only wiping the forehead is to be performed. If a part of them is cut, he can wipe the rest of hands.

It is *wajib* to cover the parts of the body involved in *tayammum* entirely, as if something of them is left unwiped, *tayammum* will be invalid. It is *mustahabb* to shake the hands (*naḥḍ*)<sup>3</sup> afterstriking them on the earth.

If a person performs *tayammum* with *najasah* being present on his body, his *tayammum* is valid, like one performing *taharah* with water while *najasah* be still there on his body. But in regard of *tayammum*, shortage of time should be observed.

<sup>1</sup> In a way that no time is left but for performing one complete *salat*. Presumption is sufficient for determining in sufficiency of time, as when it becomes clear for him then that enough time was there (for procuring water), he is not required to repeat that *salat*. (See *al- Tawdih*, vol. I, p.42, and *al- Masalik*, vol. I, p.114).

<sup>2</sup> Sequence (*muwalat*), *mubasharah* (performing the acts immediately) and purity of the parts (involved in *tayammum*) are *wajib*. This is learnt from the texts (*nusus*) and some unanimities. The rule of *maysur* (available-accessible) is applied in every impracticable (infeasible) act mentioned above. (see *al- Tawdih*, vol. I, p.42)

<sup>3</sup> *Naḥḍ* of the hand: is to move it for freeing it from traces of dust. (*al- Rawdah*, vol. I, p.459, margin).

### Section Four: The Rules of Tayammum

They are ten:

1. If a person performs a *salat* with *tayammum*, he is not required to repeat it, irrespective of whether he be on travel or not. It is said: If a person deliberately commits *janabah*, fearing then a harm to be done to his health by using water (for *ghusl*), he can perform *tayammum* and *salat*, with repeating the *salat* afterwards. So also is the rule in respect of that who is curbed from going out by crowd of Friday congregational prayers. And also is the case with that who finds *najasah* on his body, but having no water sufficient for removing it. As per the preponderant view of the legists, he is not required to repeat the *salat*.

2. It is *wajib* upon the person to search for water and exert efforts to procure it. But if he falls short of this and performs *salat* (with *tayammum*), finding the water then in his *rahl*<sup>1</sup> (luggage), or with his comrades, he is required to acquire *taharah* and repeat the *salat*.

3. If both the ways of acquiring *taharah*, i.e. with water and the substance on which *tayammum* is performed, due to restriction (*qayd*),<sup>2</sup> or imprisonment in a *najis* place, some legists said: he should perform *salat* and repeat it then. Some others said: he has to delay the *salat* until the disappearance of the excuse (of unavailability of water and substance of *tayammum*), performing the *qada'* of *salat* then after the appointed time passes. It is also said: He is not required to offer the *salat* (*fard*), as *ada'* and *qada'*, which is the most preponderant view.

4. If water becomes available after the performance of *tayammum*, but before beginning the *salat*, he has to perform *taharah* (as his *tayammum* becomes invalid). If it becomes available after completing the *salat*, he is not required to repeat. But if water becomes available while he is performing the *salat*, some legists said: if that happens before his first *ruku'*, he should restart anew (as both the *tayammum* and *salat* become *batil*). Some others said: he can complete the *salat*, even if availability of water happens after saying the *takbirat al- ihram*,<sup>3</sup> as per the more confirmed verdicts of legists.

<sup>1</sup> The *rahl* is the house of man and the luggage he carries with him. (see *al- Mukhtar*, vol. I, p.237).

<sup>2</sup> In the case of a person who is imprisoned in a place where there is neither water nor any substance on which *tayammum* is performed (both the ways of acquiring *taharah*), with no one being there to perform them in place of him. (see *al- Tawdih*, vol. I, p.43).

<sup>3</sup> That is: he can continue the *salat* with this *tayammum*, even if he has not performed any of its *arkan* (essentials) but the *takbirat al- ihram*.

5. After one performs *tayammum*, he will be like one who has performed *taharah* with water, and everything which is permissible for the latter will be permissible for him.

6. When a dead body, a person in state of minor impurity (*hadath*), and one in state of major impurity (*junub*) happen to be in one place, having water that is sufficient for only one of them: if it be owned by one of them, it will belong to him exclusively to use it. But if it be a property of all of them, or of no owner, or a possession of an owner who permits using it, preference is given to the *junub* to use it for acquiring the *taharah*. Some other legists said: Rather, it is preferable to use it for performing *ghusl* to the dead person<sup>1</sup> alone. But there is disagreement and uncertainty regarding this view.

7. If a person in state of *janabah* performs *tayammum* in place of *ghusl*, and then a minor *hadath* occurs (from him), he is required to perform *tayammum* again in place of *ghusl*, irrespective of whether his *hadath* (impurity) be minor or major.<sup>2</sup>

8. If the justification for performing the *tayammum* disappears and the person becomes able to use the water, his *tayammum* will be invalid. But if water becomes unavailable again, he will be in need of repeating the *tayammum*. *Tayammum* never becomes invalid by passing of the appointed time of *salat*, unless a *hadath* occurs or water becomes available.

9. When some of his parts are afflicted with ailment and he fears harm be done to them by using water or wiping them, it is permissible for him to perform *tayammum*, but not to differentiate (partition) in *taharah*.<sup>3</sup>

10. It is permissible to perform *tayammum* for funeral *salat* with availability of water, with *niyyah* of *nadb*, but it is not permissible for him to perform any other *salat* with this *tayammum*.

<sup>1</sup> It will be permissible if all the *taharat* (purities) can be acquired altogether with this water: i.e. the person in state of *hadath* performs ablution with it and the water be accumulated then. Then the one in state of *janabah* performs the *ghusl*, accumulating the water then and performing the *ghusl* to the dead person. (See *al- Masalik*, vol. I, p.117).

<sup>2</sup> Because the *hadath* breaks the *tayammum* in general, and it cannot be removed with presence of *janabah*, since purpose of *tayammum* is only acquiring permissibility (for *salat*) not removing the *hadath*. There are indisputable reports and unanimities supporting this view. (see *al- Tawdih*, vol. I, p.44).

<sup>3</sup> With the *niyyah* of *ghusl* not *wudu'*, according to the reports and unanimities indicating impermissibility of segmenting and dividing the *taharah*. (*Ibid*).

## Fourth Rukn: The Najasat and their Rules

### The *Najasat* (impurities):

#### 1&2. Urine and excrement:

The urine and excrement of any animal which is not used for food, and whose blood flows on coming out, whether it be *haram* in kind like the lion, or that the prohibition has befallen it such as the *jallāl*<sup>1</sup> (which eats human excrement), are *najis*. But there is disagreement (among legists) regarding the *raji*<sup>2</sup> (excrement) and urine of the animal whose blood does not flow on coming out. And so also regarding excrement of the *jallāl* hen, and its being *tahir* is a preponderant view among legists.

3. Semen: the semen of every animal,<sup>3</sup> whether lawful or forbidden for food is *najis*. But there is disagreement regarding the semen of the animal whose blood does not flow on coming out, and its being *tahir* is preponderant according to reports.<sup>4</sup>

4. Corpse: No carcass is *najis* except that of an animal which possesses blood that flows on coming out. The parts amputated of the body of that animal becoming *najis* on death, are *najis*, whether it be alive or dead. And every inanimated part<sup>5</sup> - like bone and hair - is *tahir*, except that which is *najis* in kind and by itself such as the dog, pig and *kafir* (infidel), as per the verdicts of legists.

*Ghusl* becomes *wajib* on one touching a corpse after it has turned cold and before it is given the bath. So also is the rule regarding a person who touches an amputated part of a dead (or living) person if it contains a bone. But if the person touches an amputated part containing no bone, or a corpse of a dead animal whose blood flows on coming out other than man, he is

<sup>1</sup> And alike animals, like that which is copulated by man, and person drinking the milk of the sow (she - pig) - (See *al- Tawdih*, vol. I, p.44).

<sup>2</sup> Abu 'Ubayd says: The *raji* means both the dung and excrement, as it has returned from its former state, after being food or fodder, or other alike things. (see *Tahdhib al- lughah*, vol. I, p.364; and *Majma' al- bahrayn*, vol. IV, p.335).

<sup>3</sup> Including also the human being, male and female, and other alike creatures. (see *al- Madarik*, vol. II, p.265).

<sup>4</sup> As per the *usul* (principles), due to absence of any indication to it in reports. (see *al- Tawdih*, vol. I, p.45).

<sup>5</sup> This is restricted in ten things, which are: bone, finger - nail, gloven hoof, horn, claw, hair, fur, wool, feathers, and eggs when covered with the upper eggshell. There is consensus among legists that all these things are *tahir*. (see *al- Madarik*, vol. II, p.272).

required to wash his hand.

5. Blood: The blood of every animal whose blood flows on coming out (having blood - vessel), is *najis*. But the blood which perspires on coming out like blood of fish and alike, is *tahir*.

6&7. Dog and Pig: They are *najis* by themselves (*'aynan*), and their saliva (licking) is *najis*. If a dog *naza* over (copulates with) another animal, causing it to give birth,<sup>1</sup> the proper name to be given to the produce (the newly - born) should be observed in applying the rules (applicable to the dog). All other animals are not *najis*.

There is disagreement regarding the fox, rabbit, land rat, and frog, and their being *tahir* is a preponderant view.

8. Intoxicants:

There is disagreement regarding their being *najis*,<sup>2</sup> and most of the legists consider them to be *najis*. The same rule is applied to their squeezed liquid (juice)<sup>3</sup> when boiling and becoming more intensive (though not intoxicating).

9. The Beer: It is *najis* by consensus.

10. The *kafir* (infidel): This includes everyone who dissents from Islam (renegade),<sup>4</sup> or who embraces it but denying and renouncing all the

<sup>1</sup> See *Kashkul al- Bahrani*, vol. III, pp.111-112).

The male *naza* on the female means: copulated with her. (see *al- Munjid fi al- lughah*, vol. I, p.803).

<sup>2</sup> All the schools (of Islamic law) consider drinking them to be *haram*, but they differ regarding their being *najis* or *tahir*. Some legists consider them to be *tahir*. For example, the eminent Jurisprudent Ahmad ibn Muhammad al- Ardabili believes in *taharah* of wine, while his disciple al- Amir Fadl Allah ibn al- Sayyid Muhammad al- Astrabadi has written a treatise in refutation of his tutor. (See *Rawdat al- jannat*, vol. I, p.80).

<sup>3</sup> By juice here is meant: the grape juice, and by boiling we mean its being upside down (agitating), by itself or by another factor. And by *ishtidad* we mean its being dense and acquiring thickness. For determining this it should be resorted to the common usage (*'urf*).

Al- Muhaqqiq al- Shaykh Ali says: The *najasah* is acquired by boiling alone, while the compiler (al- Hilli) in his *al- Mu'tabar* holds: By boiling it becomes *haram*, but does not become *najis* unless with its acquiring thickness and density. (see *al- Madarik*, vol. II, p.292; *al- Masalik*, vol. I, p. 123, freely; and *Jāmi' al- maqāsīd*, vol. I, p.16).

<sup>4</sup> The discussion here concerns their (Khawarij) being *tahir*, not issue of dealing or making a covenant with them. Some *fuqaha'*, among whom al- Sayyid Muhsin al- Hakim, consider Ahl al- Kitab (People of the Scripture) to be *tahir*.

essentials and precepts of Islam, like the Khawarij and Ghulat. There is some disagreement regarding the *najasah* of the sweat of a *junub* person whose *janabah* is consequent to an unlawful sexual act, and sweat of the camels eating the human excrement, and the disfigured, and their being *tahir* is more believed by the legists. Other than these is not *najis* by itself, but is affected by *najasah* on contact with other *najis* things.

The urine of mule, ass and all beasts is *makruh* (abominable).

### Rules of Najasat:

It is *wajib* to remove the *najasah* from the clothes and body, when intending to perform the *salat*, *tawaf* (circumambulation) round the Ka'bah, and when entering the mosque, and also from the utensils before using them. But those exempted in the clothes and body (from removing) are: that against which it is very hard to guard, like the blood of wounds and sores that does not cease to flow,<sup>1</sup> even if it be plentiful, and the blood with the quantity less than the Baghli dirham,<sup>2</sup> and any *masfuh*<sup>3</sup> blood (coming out of the body) which is not among the three bloods. Every blood whose quantity is more than this, should be removed if it be gathered. But if it be spread, some legists said: it is exempted; and some others gave verdicts to non - obligation of removing it, unless it becomes enormous. The first saying is more preponderant.

*Salat* is permissible with that through which the *salat* can never be fulfilled singly,<sup>4</sup> even if it be contaminated with *najasah* that cannot be exempted when being on other than it.

The clothes should be wrung of all the *najasat*, except of the urine of

<sup>1</sup> The blood that does not cease or stop. It means: when it stops it will not be exempted. (*al- Masalik*, vol. I, p.124).

<sup>2</sup> Al- Baghli (or al- Baghalli): is an attribution to Ra's al- Baghl, who was a Jew man used to coin the Persian dirhams, during the caliphate (era) of Umar ibn al- Khattab.

The size of a Baghli dirham is the same as hollow sole of the palm, which is the lower part of the inside of the hand. It is measured with the joint of the thumb and joint of the forefinger. (See *al- Masalik*, vol. I, p.125; *al- Rawdah*, vol. I, p.290, margin, freely).

<sup>3</sup> By the *masfuh* blood he means: the blood coming out of the body. Excepted of it: the three kinds of blood, due to thickness of their *najasah*, and added to them is the blood of a *najis* animal by itself and blood of the corpse. (See *al- Masalik*, vol. I, p.125).

<sup>4</sup> It is reported that al- Qutb al- Rawandi has restricted this in five things: cowl, hand of hem, slippers, sandal, and sock. (See *al- Madarik*, vol. II, p.320).

the nursing (infant), as pouring water on it suffices.

If location of *najasah* is known certainty, it can be washed. If it be unknown, all the doubtful places should be washed.

The garment and body should be washed twice when stained with urine. When the wet garment be contaminated on contact with the dog or pig or infidel, the locality of contact should be washed. If it be dry, it is *mustahabb* to sprinkle water on it. In case of contact with the body, it is *wajib* to wash it, if it was wet. Some (legists) said: it can be wiped when being dry, but no proof on this is found in traditions.

If a person falls short of removing the *najasah* from his clothes or body, and begins the *salat*, he should repeat the *salat* whether it be in the appointed time or after the time of *fard* (obligatory) *salat* has passed. If he has not become aware of the *najasah* (during *salat*) and come to know after completing the *salat*, he will not have to repeat it at all.<sup>1</sup>

Some legists said: he should repeat if appointed time of *salat* be still there. The first opinion is more correct. When he sees the *najasah* while performing the *salat*: if he can take off the (*najis*) dress and cover the private parts by another one, it is *wajib* on him to do so and continue the *salat* (which will be valid). If that act be not possible but with an act invalidating the *salat*, he should restart anew. If a nursemaid of a child (boy) has only one dress, she has to wash it once everyday. If she makes that wash at the end of the day before noon prayers, that will be better.<sup>2</sup>

If the *musalli* has two dresses, one of them being *najis*, but he knows not which one by itself, he can perform one *salat* with each one of them singly, as per the most correct opinion. The same rule is applicable to the numerous clothes, unless the appointed time for *salat* be short and not enough, the case where he can perform the *salat* naked.

It is *wajib* to throw away the *najis* dress and pray naked, if he has no other one. If that be impossible, he can perform the *salat* with it and repeat the *salat* afterwards. Some legists said: he is not required to repeat, the opinion which is more preponderant.

When the sun dries the urine and other (alike) *najasat*<sup>3</sup> out of the earth, *bawar*<sup>4</sup> and *husur*<sup>1</sup> (straw mats), its location becomes *tahir*. And so also is

<sup>1</sup> That is: whether within the appointed time (for *fard*) or after its passage.

<sup>2</sup> So as to attain four prayers with purity (*al- Tawdih*, vol. I, p.49).

<sup>3</sup> By *najasat* other than the urine I mean: any liquid similar to urine in respect of absence of *jirm*, like the *najis* water and blood whose *jirm* is removed. (See *al- Masalik*, vol. I, p.129).

<sup>4</sup> *Bawari*, is plural of *burya'*, which means the plaited canes.



every immovable thing, like the plants and buildings.<sup>2</sup>

The fire purifies by transformation (*istihalah*), and the ground purifies the soles of the feet and sole of shoes and slippers. The rainwater does not become *najis* while falling down, or while flowing, whether from a *mizab* (gutter) or alike, unless when be affected by the *najasah* on contact.

The water used for removing and washing the *najasah* becomes *najis* (as it has come into contact with impurity), irrespective of whether it be of the first wash or the second, and whether it be stained with *najasah* or not, and whether the *najasah* itself is still there on the object washed or it be purified. The same rule is applied in regard of the vessel, as per the most correct opinion.<sup>3</sup>

In regard of the *dhanub*<sup>4</sup> it is said: if it is thrown on the *najasah* of ground, the ground will become pure with its remaining pure.

### The Vessels & Utensils:

It is not permissible to use vessels made of gold, or silver, for food and drinking, or for other purposes. It is said: it is *makruh* to use silver - plated utensils. It is also said: It is *wajib* to avoid the location of silver. There is disagreement regarding permissibility of acquiring and possessing them for other than use (for food and drink), and prohibiting this is more preponderant. It is not *haram* to use other than the gold and silver, such as all kinds of minerals and jewels, even if their prices be double the prices of gold and silver. The utensils of polytheists are pure unless proved to be *najis* definitely.<sup>5</sup>

It is not permissible to use anything made of skins of animals, except those which are slaughtered according to the Islamic law. It is *mustahabb* to avoid the skins of animals forbidden for food, until their skins be tanned after slaughtering them according to the Islamic law.

<sup>1</sup> *Husur* is plural of *hasir*, which means plaited palm leaves.

<sup>2</sup> Besides the fruits when being ready for gathering, and everything fixed into a wall or ground including the wood or other things, which are purified by drying solely as a result of the sun's heat (rays) without the aid of wind (commonly known to be dry). (See *al- Tawdih*, vol. I, p.50).

<sup>3</sup> That is: the water separating from the object (vessel) purified can never be pure.

<sup>4</sup> *Dhanub*: is the bucket (*dalw*) filled with water. (See *al- Mukhtar*, vol. I, p.224).

<sup>5</sup> As per the *hadith* reported from al- Imam al- Sadiq (A): "Everything has to be deemed pure until you be sure of its being *najis*." (See *al- Masalik*, vol. I, p.132).

Of the vessels which are used for drinking wine, that which can be used is only the one which is smeared with tar and anointed after washing it. It is *makruh* to use those which are made of wood, or gourd (*qar'*)<sup>1</sup>, or porcelain (*khazaf*),<sup>2</sup> which are not anointed.

A vessel licked by a dog should be washed thrice, once with dust and twice with water, as per the most correct opinion. And a vessel licked by *juradh*<sup>3</sup> or stained with wine should be washed by water thrice, and seven times is better. But that which is licked by other animals has to be washed once, and thrice is nearer to precaution.



<sup>1</sup> Gourd (*qur'*) is popular name of a yearly plant, of the family of *qar'iyyat* (represented by the melon and cucumber). It can be eaten cooked when being soft. But when it ripens, its wooden rind can be used as a utensil for liquids. (See *al- Munjid fi al- lughah*, p.622).

<sup>2</sup> The *khazaf* (crookery) is plural of *khazafah*, which is everything made of clay and heated with fire, and turned into fired clay (earthenware). (See *al- Munjid fi al- lughah*, p.177).

<sup>3</sup> The *juradh* is a male land rat, living in open spaces. It is larger than the jerboa. Its colour is dingy, with blackness on its tail. (See *Majma' al- bahrayn*, vol. III, p.179).

## Kitab al- Salat

To have full knowledge of *salat* it is necessary to demonstrate four pillars (*arkan*):

### First Rukn: The Preliminaries of Salat

They are seven:

#### First: Number of Prayers

The obligatory prayers are nine:

The daily (five times), Friday prayer, *salat* of two feasts (lesser and greater bairams), eclipses (solar and lunar), earthquake, prayer of *ayat*, *tawaf* prayer, *salat* over the dead, and prayer of vow (*nadhr*) and alike.<sup>1</sup>

Other prayers are *masnun*.

### The Daily Obligatory Prayers:

They are five prayers, including seventeen *rak'ahs* in presence<sup>2</sup> (when be resident): the morning prayer two *rak'ahs*, the *maghrib* three, and each of rest is four *rak'ahs*, of which two *rak'ahs* are omitted on travel.<sup>3</sup>

The supererogatory prayers (*nawafil*):

According to authentic traditions, the *nawafil* - when being present-are 34 *rak'ahs*: eight before the *zuhr*, eight before the '*asr*', four after the *maghrib*, two after the '*isha*' (recited while sitting and counted as a single *rak'ah*, called *al- wutayrah*), eight *rak'ahs* of the midnight prayer (*salat al-layl*), two *rak'ahs* of *al- shaf'* and a single *rak'ah* of *al- watr*, and two *rak'ahs* before the morning prayer called *salat al- fajr*.

When travelling, the *nawafil* of the *zuhr* and '*asr*' with the *wutayrah* are to be omitted, as per the most correct opinion.

All the *nawafil* have to be performed in two *rak'ahs* with *tashahhud* and *taslim*, except the *watr* and *salat al- A'rahi*.

---

<sup>1</sup> By alike to *nadhr* I mean: the pledge ('*ahd*), the oath (*yamin*), and carrying out prayers on behalf of others even through hiring. (See *al-Masalik*, vol. I, p.137).

<sup>2</sup> By *hadar* it is meant: everywhere in which it is *wajib* to perform the four-*rak'ah* prayers in four, either by considering it as a hometown (*watan*) or place of residence.

<sup>3</sup> The rule applied in case of travel is applied in fear (*khawf*). (See *al-Masalik*, vol. I, p.137, freely).

Concerning the other prayers they will be exposed in their due place God - willing.

## Second: The Times of Prayers

Their duration and rules:

The specific period of the *zuhr* prayer extends from the moment the sun crosses the meridian up to a period required to perform it, and the specific period of the '*asr*' prayer is the duration required to perform it just before sunset. The time of the *zuhr* is definitely from beginning of this duration to the extent of performing it *ada'*, and of the '*asr*' from its end. The time between these two specific periods is the common period for the two *salats*.

The period specific to the *maghrib* prayer extends from sunset, from its beginning for a duration required to perform it (three *rak'ahs*). And the specific period of the '*isha*' prayer begins after it (*maghrib*) for the duration required to perform it before midnight. The time between these two specific periods is the common time for both *maghrib* and '*isha*' prayers, with time of the '*isha*' being from the end of this period for duration required to perform four *rak'ahs*.

The time for the morning prayer begins at daybreak (*al- fajr al- thani*) - widely spread in the horizon - and lasts until sunrise.

The *zawal*<sup>1</sup> is defined when the shadow of an object exceeds after it lessens,<sup>2</sup> or with the sun's inclination to the right eyebrow of a person facing the *qiblah*. While the sunset is known through the disappearance of the disc of the sun, and some (legists) said: it is known by vanishing of the reddish afterglow on the eastern horizon, which is a more correct view.

Other schools (of law) hold: The time of the *zuhr* prayer begins when the sun crosses the meridian and continues till the shadow of an object becomes as long as its height. And time of the '*asr*' begins after completing the *zuhr* prayer until the object's shadow equals twice its height,<sup>3</sup> and the additional shade<sup>4</sup> equals the first shadow. It is also said: Rather when it

<sup>1</sup> *Zawal* of the sun: means its inclination away from centre of sky, and deviation from the circle of midday.

<sup>2</sup> That is the excessiveness of the shadow of the object after its diminishing, or its occurrence after its non-existence, as the case with Mecca, San'a' and Madinah in some epochs. (See *al- Rawdah*, vol. I, pp.477-481; and *Jawahir al- kalam*, vol. VII, pp.97-98).

<sup>3</sup> That is: The object's shadow becomes equal twice its height.

<sup>4</sup> By shade is meant: the person's shadow (*zill*) that occurs after the sun passes the meridian. (See *al- Masalik*, vol. I, p.141).

becomes equal to the stature of the person.<sup>1</sup> Some legists said: when the shadow equals four feet for the *zuhr*, and eight feet for the *‘asr*.

These limits are for an unconstrained person (*mukhtar*), and for one who is constrained (*mudtarr*) the time extends even after these limits till when the sun sets.

And also time of the *maghrib* begins from sunset till when the reddish afterglow vanishes. And of the *‘isha’* begins when the reddish afterglow vanishes till the one-third of night, for an unconstrained person. But in an emergency case the time extends until midnight; and some schools said: it extends until dawn.

Also time of the morning prayer begins with daybreak until rise of reddish glow (*humrah*), for one in a position to act out of free choice. For one in constrained circumstances it continues up to sunrise.

### Time of Daily Nawafil:

- Of the *zuhr* prayer: from the time when the sun crosses the meridian until when the shadow of an object becomes longer than it with two feet.

- Of the *asr* prayer: until when shadow exceeds the object with four feet. It is also said: it extends until the duration of offering it out of free choice be still there. Some other schools observe: its time extends as long as the time of *faridah*. The former saying is more preponderant. If the time passes while the person has performed only a single *rak‘ah* of the *nafileh*, he can complete it as mitigated<sup>2</sup> as possible with the initial time of the *faridah*. But if he hasn't already performed any *rak‘ah* of the *nafileh*, he is required to start the *faridah*. It is impermissible to perform it after the sun's crossing the meridian except on Friday, with adding four *rak‘ahs* to its *nafileh*, two of which be for the *zawal*.

- *Nafileh* of *maghrib*: its time sets in after performing the *maghrib* prayer and lasts until when the reddish afterglow on the western horizon vanishes (as long as the duration of offering the *faridah*). But if he reaches this time without offering the *nafileh* at all, he has to start the obligatory prayer.

- The *nafileh* of *‘isha’*: it is two *rak‘ahs* after the *faridah*, recited while sitting, and its time extends as long as the duration of performing the *faridah*.

<sup>1</sup> The basis for it is man's stature being most often seven feet, measured with his own foot. (See *al- Rawdah*, vol. I, p.488).

<sup>2</sup> By mitigating (*takhfif*) the prayer, it is meant: being content with the least sufficient acts, like reciting *Surat al- Fatihah* alone, and one *tasbih* for the *ruku'* and *sujud* (prostration). (See *al- Masalik*, vol. I, p.143).

They should be offered as the seal of all the *nawafil*.

- Time of *salat al- layl* begins after midnight, and extends until daybreak, and it is better to be offered as closely as he can to daybreak. It is not permissible to offer it before midnight, except for a traveller who is restrained with his diligence, or a youth caring much to offer it, and offering it *qada'* is better. The end of its time is daybreak (the second). If it sets in while he has not performed four *rak'ahs* of it (night prayer), he is required to start the two *rak'ahs* of *fajr* before the obligatory *salat* (morning), until the rising of the eastern reddish afterglow, when he should engage in the *faridah*. But in case of his having performed four *rak'ahs* (of *salat al- layl*), he has to complete them lightened even if dawn sets in.

- Time of two *rak'ahs* (*nafileh*) of *fajr* begins after daybreak (*al- fajr al- awwal*). It is permissible to perform them before this time, and repeating them after it is recommended. Their time extends until rising of the reddish afterglow, when the time of *faridah* be more preponderant.

### **Qada' of Daily Prayers:**

It is permissible to perform the *qada'* of the five obligatory prayers at any time, unless the appointed time of *faridah* be too short to offer it, when being present. And so also the other obligatory prayers.

The person can perform the *nawafil* prayers unless the time of *faridah* sets in, and so also their *qada'*.<sup>1</sup>

### **Their Rules:**

1. In case of occurrence of any excuses obstructing the *salat*, such as insanity and *hayd* (menses), after passage of time of acquiring purity and offering the *faridah*, it is *wajib* to perform its *qada'*. If this occurs before that time, a person is not required to perform the *qada'*, as per the most correct opinion. When the obstruction disappears, and there is still time enough for performing the purity with a single *rak'ah* of the *faridah*, he is required to offer the *salat* as *ada'*, and it will be valid as per the verdicts. If he ignores to do that, he is required to perform the *qada'*. When time is left for offering the *asr* prayer before sunset, and for the '*isha*' before midnight, he is required to offer that specific *faridah* in its time. If the time left before sunset was enough for acquiring *taharah* and performing five *rak'ahs*,<sup>2</sup> he is required to

<sup>1</sup> That is: he can also perform the *qada'* of *nawafil*, with observing the space of time before setting in of time of a *faridah*.

<sup>2</sup> But four of these five *rak'ahs* belong in origin to the *zuhr* prayer, or the period of other than the former one for the *asr* prayer. If it be intercepted with

offer both the *faridahs*.

2. When a boy who voluntarily observes the provision of time, attains puberty with that which does not invalidate the purity, and the time being still there (for *faridah*), he is required to start anew, as per the most correct opinion. And if the time left was not enough for offering a single *rak'ah*, he will count the *naflah* to be the base, with no need to renew the *niyyah* of the obligatory *salat*.

3. If a person has a way to recognize the time definitely, it is impermissible for him to depend fully on conjecture. If he loses certainty he has to exert himself.<sup>1</sup> If his strong suspicion tells him of setting in of the time (of *faridah*) he can offer the *salat*. But when he comes to know of non-veracity of his presumption before setting in of the specific time, he should restart again.

When the time sets in while he has already been engaged in prayer - even before the *taslim* - he is not required to repeat, as per the verdicts. If a person performs prayer before its appointed time, either intentionally, or on account of forgetfulness or ignorance, his *salat* is invalid.

4. The *qada'* of the obligatory prayers missed should be performed in their same sequence. That is, when one begins the *qada'* of a *faridah* remembering then (while praying) that he has to offer another one prior to it (in sequence), he can change his *niyyah*, as long as the change be possible.<sup>2</sup> Otherwise, he can restart the former one in sequence (*murattabah*).<sup>3</sup>

5. The primary (*mubtada'*)<sup>4</sup> *nawafil* are reprehensible at: sunrise, sunset, its standing up in the sky, after morning prayer and after *'asr* prayer.

But no objection is there to prayers having certain causes, like *ziyarah*

---

the *zuhr* prayer, there are two opinions. (See *Jawahir al- kalam*, vol. VII, p.259).

<sup>1</sup> That is: he has to strive to determine and recognize the time through the indicating signs, even with surmise.

<sup>2</sup> The possibility is attained with not performing a *rak'ah* extra to the number of *rak'ahs* of the prayer to which the change is made. If the former be morning prayer he can change his *niyyah* to it if he has not performed the third *rak'ah*. And so also if the former be the *maghrib* if not performing the fourth *rak'ah*. In case of the two *salats* being equal in number of *rak'ahs*, the change (of *niyyah*) will be possible, unless the *salat* be completed. (See *al-Masalik*, vol. I, p.148).

<sup>3</sup> That is the former one, and his calling the former as the '*murattabah*' comes out of permissibility. (See *al-Masalik*, vol. I, p.148).

<sup>4</sup> They are the prayers offered by the person voluntarily. (See *al-Rawdah*, vol. I, p.494).

(visit to shrines) prayer, *hajjah* (need) prayer, and sequenced *nawafil*.

6. It is *mustahabb* to hasten in offering the *nawafil* missed in the evening even during the day (*nahar*), and those missed in the day even at night, with no need to wait until daytime.

7. It is preferable to offer every *salat* in its initial specific time, except the *maghrib* and '*isha*' for one pouring forth from Arafat, as delaying them till reaching the Muzdalifah is preponderant, even if this reaches to a quarter of night. In respect of the '*isha*' it is better to delay it till the decline of the reddish evening twilight. One who desires to do the supererogatory deeds can delay the two *faridahs* of *zuhr* and '*asr*' till after completing their *nawafil*. For the menstruating woman it is permissible to delay the *zuhr* and *maghrib* prayers.<sup>1</sup>

8. When one presumes to have performed the *zuhr* prayer, starting to offer the '*asr*': if he remembers while being engaged in prayer, he can change his *niyyah*. But when he comes to know only after completing the *salat*: if he has offered the *zuhr* prayer in its initial time, he will repeat after offering the *zuhr* prayer, as per the principles of the *madhhab*. But if that be in the common time (of *zuhr* and '*asr*'), or it sets in while he is praying, that would suffice and he will offer the *zuhr* prayer.

---

<sup>1</sup> The prayers of '*asr*' and '*isha*' are to be advanced in their initial time of *fadilah*, when one *ghusl* will suffice for both the *salats* in the appointed time, as *ghusl* for both of them is incumbent upon her. (See *al- Masalik*, vol. I, p.150).



### Third: The Qiblah

It includes: *qiblah*, one facing the *qiblah*, the obligatory observations and rules of *khalal* (error).

#### 1) The Qiblah:

There is consensus that the Ka'bah is the *qiblah* of one being in the Masjid, and the Masjid is a *qiblah* of one in the Haram<sup>1</sup> (near and able to see it). And the Haram is the *qiblah* of one who is away and unable to see it, as per the most correct opinion. The *qiblah* of one away from the Ka'bah will be the direction of the Ka'bah and not the Ka'bah itself. Thus if he is unable to see it, he can pray in its direction, as the case with that living in a place upper than it. For a person praying inside it, he can face whichever of its walls he likes, with a bad grace in case of *faridah*. If a person prays on its (Ka'bah) surface (roof), he has to project some indicabefore him toward which he can pray. Some others said: He has to lie on his back and pray (pointing) to the al- Bayt al- Ma'mur (Mosque on Fourth). The first opinion is more correct, and he is not required to raise anything before him. And so also is the rule when he prays toward its door while its being open. If the row of worshippers extends from inside the Mosque to the extent that some of them being out of the direction of Ka'bah, the *salat* of those outside the Ka'bah will be invalid.

The people of every district can perform the prayer toward the *rukn* (corner) complying to their direction.<sup>2</sup> The people of Iraq pray toward the Iraqi *rukn*, which contains the (black) stone. The people of Sham toward the Shami *rukn*, people of Maghrib toward the Gharbi (west) *rukn*, and of Yemen toward the Yemeni *rukn*.

The people of Iraq and those following them can pray with making the Fajr to their left shoulder, Maghrib to the right, the Jadi opposite to (behind)

---

<sup>1</sup> Its boundaries are:

- Northwards, from al- Madinah; the Tan'im, which is located on four legal miles of al- Masjid al- Haram.
- Southwards: from Arafat, with a distance of about 13 legal miles to al- Masjid al- Haram.
- Eastwards, from Najid: with a distance of 8 legal miles of al- Masjid al- Haram.
- Westwards: from Jaddah, with a distance of 10 legal miles of al- Masjid al- Haram.

<sup>2</sup> That is, they turn their faces toward the - fanciful - line linking them to the *rukn* of the Ka'bah on their direction.

the right, and the sun's eye (centre) - when passing the meridian - to the right eye brow.<sup>1</sup>

It is *mustahabb* for them to take the left side of the worshipper praying beside them.<sup>2</sup>

## 2) One Facing the Qiblah:

It is *wajib* to inquire and strive to determine the direction of the *qiblah*. If a person fails to recognize it, he can rely upon the signs (*amarat*) indicating the probability (*zann*). If he strives (*ijtihad*)<sup>3</sup> to determine its direction, and another one informs him of its being the opposite of his exertion, some (legists) said: he can rely upon his *ijtihad*. And I strongly hold that: if the informer was more trustable in his heart, he can rely upon him.

If he has no way to *ijtihad*, and a disbeliever informs him of its being to so and so direction, it is said: he is not required to act according to his information. But I emphasize on this view: if the probability guides him to the right (direction), he can rely upon it.

The country's *qiblah* can be made the dependable basis, unless it is known that it was based on the wrong direction. That having no means to strive and exert efforts (to find the right direction) like the blind man, he can rely upon another person. In case neither certainty nor probability is possible: if there be sufficient time, he may perform each *salat* in four directions, every time in one direction. But if there isn't sufficient time, he may perform the *salat* in the directions that he can within the appropriate time. In case time be not enough except for only a single *salat*, he may perform it in any direction he wills.

It is *wajib* on the traveller to face the *qiblah*. It is not permissible for him to perform any *faridah* while being on the mount (*rahilah*), except in

<sup>1</sup> Al- Jadi: Tropic of Capricorn: a name of polar star revolving near to the North Pole, with a diameter of three degrees. It is situated on the equator. Therefore it be a sign of *qiblah* for people of centre of Iraq, when making it behind the right shoulder.

But if it be on the right or north of the pole, it can't be made a sign of *qiblah* for people of middle of Iraq. (See *al- Rawdah*, vol. I, p.505, the margin, freely).

<sup>2</sup> See *Risalat al- tayasur fi al- qiblah*, of al- Muhaqqiq (al- Hilli); and *fi al- Muhadhdhab al- bari'*, "*kitab al- salat*."

<sup>3</sup> By '*ijtihad*' here is meant to make an inquiry and an effort to acquire the signs indicating the probability of the direction. (*al- Madarik*, vol. III, p.158).

exigency cases,<sup>1</sup> and face the *qiblah*. If that be not possible for him, he may perform the prayers he can with facing the *qiblah*, turning toward the *qiblah* whenever his mount deviates from it.

If one is incapable of doing so, he may face the *qiblah* with *takbirat al-ihram* alone. If that also be not possible for him, his *salat* will be valid even if he be not facing the *qiblah*. And so also is one who is compelled to *salat* (*mudtarr*) - walking - with non - sufficiency of time. If the rider be in a state in which he can perform the *ruku'*, *sujud* and essential acts of *salat*, is it permissible for him to offer the *faridah* on the mount voluntarily? Some legists said: He can, and some others said: No he can't, which is more preponderant.

### 3) What Needs Istiqbal:

*Istiqbal* (facing the *qiblah*) is *wajib* in the following: in essential acts (*fara'id*) of the *salat* if possible, in time of slaughtering (an animal), for the person during *ihdhar* (dying hour), burial, and performing *salat* over him.

For the *nawafil* it is preferable to face the *qiblah*. It is permissible to offer them while riding the mount in travel and when staying at home, and to other than the *qiblah* with *karahiyyah* (reprehension), and emphasis is laid in time of residence.

Facing the *qiblah* is not *wajib* where one is incapable of determining it, like *salat* of chasing, and when slaughtering the *sa'ilah* (leaping) and *mutaraddi*<sup>2</sup> animal, in a way that it is not possible to turn them toward the *qiblah*.

### 4) Rules of Error

A. The blind person has to resort to another one (in determining the *qiblah*) due to his inability to strival (*ijtihad*). If he relies upon his opinion with presence of a person able to see, because of a sign he found, his *salat* will be valid. Otherwise, he is required to repeat.

B. If a person prays towards some direction either out of probability or insufficiency of time, and comes to know about his mistake; if there is only a little deviation<sup>3</sup> from the *qiblah*, the *salat* will not be repeated. Otherwise, he

<sup>1</sup> As in cases of *salat* of chasing, or the sickness curbing from getting down, or fear, and other excuses. (see *al- Masalik*, vol. I, p.158).

<sup>2</sup> The *mutaraddi*, is the mount that retreated and fell down from a mountain or a wall in a well ... (see *Majma' al- bahrayn*, vol. I, p.181).

<sup>3</sup> That is: between the east and west; (see *Jawahir al- kalam*, vol. VIII, p. 24; and *al- Madarik*, vol. III, p. 151).

has to repeat if its (*salat*) time is still there. Some others said: If the *salat* is performed with one's back to the *qiblah*, it should be repeated regardless of whether its time is still there or has passed. The first opinion is stronger as per the verdicts. But if the error is known during the *salat*, he will have to repeat the *salat* whenever it be.<sup>1</sup> But if he prays with a little deviation from the *qiblah*, he will have to correct his direction for the remaining parts of the *salat*, and he is not required to repeat.

C. If a person (ignorant of the *qiblah*) strives to determine the direction of the *qiblah* for a *salat*, when the time of another *salat* sets in, if a new doubt comes to his mind he has to repeat the *ijtihad*. Otherwise, he can consider the former *ijtihad* as the base.

#### Fourth: The clothing during Salat

It includes several issues:

1. It is impermissible to use for covering during *salat*: the skin of a carcass even if it be of an animal used for food, whether being tanned or not. And skin of an animal forbidden for food, which being *tahir* when alive, that which can be immolated, is pure, but cannot be used for covering during *salat*. Is using it for other purposes in need of tanning? Some legists said: Yes it needs tanning. And some others observed: No. the second view is more preponderant, though it is *makruh*.

2. The wool, hair, fur and feathers of animals used for food, are *tahir*, whether being shorn of an alive, or *mudhakka* (legally slaughtered) animal or a carcass, and it is valid to perform *salat* while wearing it. If it is plucked out of a corpse, the locale of touch should be washed. And so also is the case with the dead (inanimated) parts of the dead, if being *tahir* when alive. Of the animals which are intrinsically *najis*,<sup>2</sup> when alive, all these parts<sup>3</sup> are *najis*, as per the most correct opinion. *Salat* is invalid in all these things, if being of animals forbidden for food, even if taken (clipped) of a legally slaughtered animal (*mudhakka*), except the pure *khazz* (silk). In regard of the one adulterated with soft hair of rabbit and fox, there are two views, the most correct of which is prohibition.

3. *Salat* is valid in fur of the squirrel (*sinjab*), since it does not eat meat.<sup>4</sup> Some other legists observe: it is impermissible. The first opinion is

<sup>1</sup> In the appointed time (of *faridah*) and outside it.

<sup>2</sup> Like the dog, pig, and animals whose food is human excrement.

<sup>3</sup> By 'these parts' I mean: the feathers, hair, soft hair and wool.

<sup>4</sup> What is meant by this is that it is not a beast which eats meat, so that to prohibit performing *salat* in its skin. (see *al- Madarik*, vol. III, p.170).

more correct as per the verdicts (of legists). In regard of hair of foxes and rabbits, there are two views, the most correct of which is prohibition.

4. It is not permissible for men to wear pure silk, or pray in it except in time of war, and in emergency cases, like the coldness preventing from taking it off. But it is permissible for women in general. In regard of the things with which the *salat* can never be performed singly - such as a waistband and cap - there is disagreement (among legists), and its being *makruh* is more preponderant. It is permissible to use it for saddle (of a horse) and bedding (carpets), as per the most correct opinion. *Salat* is valid in a clothing embroidered with silk.<sup>1</sup> If it be mixed with something permissible for *salat*, in a way it can't be called pure silk, it can be worn outside and during *salat*, whether its proportion be more than the silk or less than it.

5. It is not permissible to perform *salat* in an usurped dress. If its owner permits for other than the usurper or to him to use it, *salat* will become valid in it, though usurpation is ascertained. If its owner grants general permission, it will be permissible for other than the usurper to use it, as apparent (from verdicts).

6. It is not permissible to perform *salat* while wearing something covering the outside (back) of the foot, like *shumshuk*, but *salat* is valid with anything having leg (*saq*) like half - boots and socks. It is *mustahabb* to pray with Arab sandal.

7. *Salat* is valid in all other material (covering) on condition that it be lawfully owned, permitted, and pure. And the rules of *najis* clothing have been manifested before.

It is permissible for a man to pray in one dress; while for the woman, it is only permissible in two dresses: a *dir'* (coat of mail) and *khimar* (veil), covering all parts of her body, except the face, back of her hands, and outside of her feet, with disagreement in regard of the feet.

It is permissible for the man to pray naked, provided that he covers his frontal and rear private parts. In case he having no dress, he can cover them with anything available, even with leaves. If nothing is found to cover these parts, he can pray naked standing up, if feeling safe from being seen by anyone.<sup>2</sup> If no safe is felt, he can pray while sitting. In both the cases, he has to make a sign for the *ruku'* and *sujud*.

<sup>1</sup> That is to sew it (silk) on the hems of sleeves, skirt (of dress) and around the collar. (*al- Masalik*, vol. I, p.164).

<sup>2</sup> That is: to be safe from being sighted by anyone; i.e. be sure of non - presence of an onlooker.

The bondmaid and girl can pray without veil. If the bondwoman is emancipated during the *salat*, it will be *wajib* upon her to cover her head. If she needs to exert much effort, she can restart anew. And so also the girl (*sabiyyah*) when attaining maturity (*bulugh*) during *salat* through that which does not invalidate it.

8. *Salat* is *makruh* in black clothes except the turban and half - boots, and in one thin dress for men. If it be transparent<sup>1</sup> (telling of what is under it) *salat* will be invalid in it. It is also *makruh* to wear a wrapper (*izar*) over the shirt (*qamis*), or to wrap himself with the *samma'*,<sup>2</sup> or to pray in a turban without a *hanak*. It is *makruh* for the man to wear *litham*, and for the woman to wear *niqab* (veil). If it be preventing from reading (before the eyes), it will be *haram*. *Salat* is *makruh* in a tied *qaba'*<sup>3</sup> (outer garment), except during war, or to lead a (congregational) prayer without a *rida'* (cloak), or to hold a projected thing made of iron, or to wear a garment of an accused<sup>4</sup> owner. It is *makruh* for the woman to pray wearing an anklet producing a sound. *Salat* is *makruh* in a clothing having images, or in a ring having a picture.

### Fifth: Place of Salat

*Salat* is valid if performed in all places, provided that the place be lawfully owned or permitted to use by its owner. Permission can be (granted) through exchange (substitute) like fare (hire) and alike, and through permission (*ibahah*).

It (*ibahah*) is either be express (plain) such as saying: 'pray in it' (place), or through *fahwa* (purport, intent), like permitting him to be in it, or with general common permission, as in case of presence of a sign indicating that the owner does not detest.

<sup>1</sup> In colour and size. (*Jawahir al- kalam*, vol. VIII, p.236).

<sup>2</sup> It is reported that the Prophet(S) has forbidden from wrapping the *samma'*.

Abu 'Ubayd said: Al- Asma'i says: It means to wrap oneself with the clothing till covering all the body, without raising one side of it so as to make a chink from which he can bring out his hand. He may lie with this state.

Abu Ubayd says: The *fuqaha'* interpret it thus: It is to wrap oneself with a single garment, lifting it from one of its sides, and placing it on his shoulder, from which his anus can be seen. (see *Tahdhib al- lughah*, vol. XI, p.371; and *al- Nihayah*, vol. II, p.336).

<sup>3</sup> *Qaba'* is an outer garment worn over the clothes. (see *al- Munjid fi al- lughah*, p.607).

<sup>4</sup> That means: its owner is known or charged with negligence in respect of *najasah*, or using unlawful clothes. (see *al- Masalik*, vol. I, p.169).

*Salat* is invalid if performed in an usurped place, neither by the usurper, nor by any other one having knowledge of the usurpation. If he prays in it intentionally with the knowledge of its being usurped, his *salat* is *batil*. But if his praying in the usurped place be out of forgetfulness or ignorance of the usurpation, his *salat* will be valid. If he be ignorant of prohibition of the usurped place, he will not be excused. If the time be short when he intends to go out, his *salat* will be valid. But if he performs the prayer without busying himself with going out, his *salat* will be invalid.

If a person happens to be in a place owned by another one with his permission, but he (owner) orders him to leave, it will be *wajib* upon him to leave the place. If he ignores this order, and prays in this place, his *salat* will be *batil*. He can pray on his way out if the time be too short (to offer the *faridah*).

It is not permissible for a man to perform *salat* with a woman praying beside or in front of him, whether she is performing the same *salat* or another one, and whether she be a *mahram* to him (with whom marriage is forbidden), or a stranger. Some legists said: It is *makruh*, which is more preponderant. But prohibition or aversion will be removed when there being a screen or a distance between the two exceeding 10 cubits. And if she be behind him with a distance enough for locale of her *sujud*, adjacent to his feet, there will be no prohibition. In case of their being in a single place where they cannot keep at a distance from each other, the man should pray first and then the woman. There is no objection to his performing *salat* in a *najis* place if its *najasah* be in such a small quantity that it cannot transmit to his clothing, or to his body, with the locale of forehead being *tahir*.

It is *makruh* to perform *salat* in the bathroom, water closet, locales of kneeling down of camels,<sup>1</sup> holes of ants, water streams, wet salty land (moorland), ice, among the graves, except when being a screen even with an extent of '*anazah*,<sup>2</sup> or a distance of ten cubits between him and them. And also in fireplaces, wine shops (public - houses) if *najasah* has not transmitted to them, *jaddahs*<sup>3</sup> of roads and houses of magians. But it is permissible to

<sup>1</sup> It is reported that the Prophet(S) has prohibited from performing *salat* in a '*tan* of camels. Ibn al- Sakkit is reported to have said: The a '*tan* is a place of kneeling down of camels round the water. (*Tahdhib al- lughah*, vol. II, p.175).

<sup>2</sup> The '*anazah* is equal to half the spear, or a bit larger. It contains *zujj* (ferrule) like that of spear. (*Tahdhib al- lughah*, vol. II, p. 138).

<sup>3</sup> It is reported that the Prophet(S) said: "Do not stop at the dirt - roads, and don't perform *salat* on them, as they are abodes of serpents and beasts. And never ease nature there, as they be places of execration. (*Tahdhib al- lughah*, vol. XII, p.303).

perform *salat* in the synagogues and churches.

It is *makruh* to perform *salat* while there being kindled fire or pictures before the person performing *salat*, as per the most correct opinion. It is also *makruh* to offer the *faridah* inside the Ka'bah, and on its surface.

*Salat* is *makruh* also in stables of horses, donkeys and mules, but no objection is there to perform prayer in sheep - folds, and a house in which a magian is living - with the exception of the Jew and Christian. It is *makruh* to pray with a Qur'an opened before him, or a wall infiltrating from a cesspool in which it was used to urinate.<sup>1</sup> Some other legists observed: It is *makruh* to pray in front of a person (face to face) or an opened door.

### Sixth: The Locale of Sujud

It is not valid to perform *sajdah* on anything except on earth, (and whatever grows on it which is not used for food or clothing). Therefore a person cannot perform *sajdah* on leather, wool, soft hair, and those things extracted from earth, such as minerals, salt,<sup>2</sup> *'aqiq* (carnelian), gold, silver and asphalt, except out of necessity. It is invalid also to prostrate on those things not growing on earth, if known to be used for food, such as bread and fruits. In regard of the cotton and linen, there are two views the most well - known of which being the prohibition. It is not valid too to perform *sajdah* on mire (*wahal*), but in emergency he can make a sign indicating *sujud*. It is valid to prostrate on *qirtas* (paper),<sup>3</sup> but it is *makruh* when it has some writing on it.<sup>4</sup> *Sajdah* is not permissible if performed on some part of his body, but if it be not possible to perform *sajdah* on earth due to heat of sun - baked ground, he can prostrate on his garment. If this be not possible, he can do that on his hand.<sup>5</sup>

<sup>1</sup> Or in which excrement is voided, as this being incompatible to consecration of *salat*. (*al- Masalik*, vol. I, pp.176-177).

<sup>2</sup> As in the case of the Town of al- Salif, which is situated at a distance of 100 kms to the north of the Town of al- Hudayyidah. This town is unique in nature of its land, whose structure being not soil (*turab*), but salt alone, nothing else. (see the Kuwaiti Journal - al- 'Arabi, issue No. 176, pp. 80-98).

<sup>3</sup> Know that permission to perform *sajdah* on *qirtas* is outside the principle (*asl*), and established through a special evidence, which is the narration of Safwan al- Jammal, and Dawud ibn Farqad, reported from al- Imam al- Sadiq and al- Kazim (peace be upon them). (see *al- Masalik*, vol. I, pp. 178-179).

<sup>4</sup> Despite the *musalli* (person performing prayer) being able to see, and no prohibition is there. Otherwise it was not deemed *makruh*. (*al- Masalik*, vol. I, p.179).

<sup>5</sup> The *sujud* has to be performed on its back (of hand), so as to achieve



All those things mentioned above are considered especially as locale of forehead, not of other parts which touch the ground while prostrating. Also the locale of *sajdah* should be either owned, or lawfully permitted; and free from (wet and dry) *najasah*.<sup>1</sup>

If the *najasah* be in a restricted or enclosed place, such as the house and similar places, and the person knows not its place, he is required not to perform *sajdah* on any place. But it is permissible to prostrate in spacious places, for warding off the hardship.

### Seventh: Adhan<sup>2</sup> and Iqamah<sup>3</sup>

The discussion includes four points:

#### 1) Cases requiring Adhan & Iqamah:

*adhan* and *iqamah* are recommended for the five obligatory (daily) prayers, whether performed *ada'*, or *qada'*, and whether performed singly or as congregational (*jama'ah*). This is applied in respect of the male and female, provided that the woman should recite them in a low voice.<sup>4</sup>

Some legists said: They are two conditions for congregational prayer. The first view is more correct according to verdicts. They become more emphatically recommended in prayers recited aloud and become stronger even in prayers of *zuhr* and *maghrib*. It is not valid to make *adhan* for supererogatory prayers, or obligatory prayers other than the five daily prayers (like *al- ayat* and *tawaf*); but the caller (*mu'adhdhin*) will call out '*al-salat*' three times. One who performs *qada'* of the five (daily) prayers, is required to make *adhan* and *iqamah* for every *salat*. If he makes *adhan* for

---

succession between the two parts involved in *sujud*. If he reverses, his *sujud* will be invalid. (*al- Masalik*, vol. I, p.180).

<sup>1</sup> Even if it be not transmitted. (*Jawahir al- kalam*, vol. VIII, p.445).

<sup>2</sup> *Adhan* literally means announcement, and in the Shari'ah it means the announcement made in specific words at the times of *salat*. (*al- Madarik*, vol. III, p.254).

<sup>3</sup> *Iqamah*: is an infinitive of *aqama*, which means: resided in the place; or *masdar* of *aqama al- shay'*, meaning: to establish it, from which the following is taken: they establish the prayer.

In the Shari'ah: the specific words (*adhkar*) recited in time of rising up (*qiyam*) to the *salat*. (see *al- Madarik*, vol. III, p.254).

<sup>4</sup> Rather, reciting it in a low voice is a condition (*shart*), since reciting it loudly entails its being heard by a stranger man. But with absence of a stranger, the woman has option to choose between saying it in a low voice or aloud, though low voice is preferable. (*al- Masalik*, vol. I, p.181).

the first one from a collect, making *iqamah* for the rest, he will get less honour. On Friday one can pray in this way: The *zuhr* prayer by making *adhan* and *iqamah*, with *iqamah* only for the '*asr*. And so also in case of the prayers of *zuhr* and '*asr* in Arafat.

When the *imam* performs the congregational prayer, and some people come (after completing it), they are not required to make *adhan* or *iqamah*, with aversion, as long as the first group has not separated. When their lines (*sufuf*) disperse, the others (new comers) will be required to make *adhan* and *iqamah*. If the *munfarid* (one intending to pray singly) makes *adhan*, but changes his mind then and intends to pray with a group, he has to repeat the *adhan* and the *iqamah*.

## 2) The Caller (mu'dhdhin):

The conditions for caller to *salat* are: he should be a sane Muslim man (male). And maturity (*bulugh*) is not a condition, but *adhan* by a child of discerning age (*mumayyiz*) is valid.

It is *mustahabb* that he be just, *sayyit*<sup>1</sup> (of fine voice), not blind, having knowledge of times (of prayers), with purity, standing on a high place (height).

If a woman makes *adhan* for women, it will be valid. If a person prays singly without making *adhan* - out of inadvertence - he has to restart with making *adhan*, facing the *qiblah* (for starting the *salat*), if he has not performed the *ruku'* yet. In another narration, a different view is held regarding this. He is to be paid a fare from the treasury (*bayt al- mal*), if no volunteer is found to make it.

## 3) The Form of Adhan:

*Adhan* is not valid before the setting in of the time of *salat*, except in the case of *salat al- subh* (morning), as it is permissible to make *adhan* (of announcement) before the dawn. But it is *mustahabb* to repeat it after daybreak (*tulu'* of dawn).

The *adhan* is of eighteen *fasls*:

- *Takbir (Allahu akbar)*: four times;
- Witnessing that no god is there but Allah (*Ashhadu an la ilaha illa Allah*): twice;
- Witnessing with the Message (*Ashhadu anna Muhammadan*

<sup>1</sup> *Sayyit* means one whose voice is thin, and it is recommended that his voice be fine and good. (see *al- Madarik*, vol. III, p.271).

*Rasulullah*): twice;

-*Hayya 'ala al- salat*: twice;

-*Hayya 'ala al- falah*: twice;

-*Hayya 'ala khayr al- 'amal*:<sup>1</sup> twice;

-*Allahu Akbar*: twice;

-*La ilaha illa Allah*: twice.

For *iqamah*, every *fasl* is recited twice, with adding “*qad qamat is-salat*” twice, after the last *takbir*, beside omitting one of last two *tahlils*.

Sequence (*tartib*)<sup>2</sup> is a condition for validity of *adhan* and *iqamah*.

There are seven recommended things for *adhan* and *iqamah*:

-facing the *qiblah*;

-to stop at the end of every section;

-to be deliberate in reciting the *adhan*;

-to make haste (*yahdir*)<sup>3</sup> in *iqamah*;

-not to utter other words during the recitation of *adhan* and *iqamah*;

-to separate between them with two *rak'ahs* (or a sitting), or a *sajdah*, except in the *maghrib* prayer, as it is preponderant to separate between them with a step or a pause (*saktah*).

<sup>1</sup> Al- Qawshachi (d. 879 H), one of leading Asha'irah *mutakallimun*, reported in the conclusion of treatise of Imamah in *Sharh al- Tajrid*, that 'Umar (ibn al- Khattab) declared on the *minbar* (pulpit): “Three things (habits) were made during the lifetime of the Messenger of Allah(S), and I forbid and prohibit them, and punish the one doing them: *mut'ah* (temporary marriage) of women, *mut'ah* of *hajj* and '*hayya 'ala khayr al- 'amal*'. (see: *Sirat al- Halabi*, vol. II, p.110; *al- Bahr al- zakhkhar al- jami' li- madhahib 'ulama' al- amsar*, vol. I, p.192; *al- Rawd al- nadir*, vol. I, p.542; *al- Nass wa al- ijtiha*, pp.203-204; *al- Ghadir*, vol. VI, p.213; and *al- Sirat al-mustaqim ila mustahiqqi al- taqdim*, 1st edition, 1386 H.

<sup>2</sup> No doubt is there in condition of observing sequence between them (*adhan* and *iqamah*) and their parts, since one reciting them contrary to the *sunnah* will be deemed as not following the *sunnah*. Because it is a worship (ritual) commanded by the Law-giver, so it should be recited in the way reported. (*al- Madarik*, vol. III, p.283).

<sup>3</sup> *Hadara* in his recitation and *adhan* means: hastened. (*al- Mukhtar*, p.126). *Hadr*: is hastening in it, through shortening the pause in every part (*fasl*) not omitting it; due to *karahah* of arabicizing them, even if by leaving the *waqf* (pausing) at all. *Taskin*, (quiescence) is preponderant to arabicizing (parsing), as it is originally in Arabic, and parsing is shunned in the Shari'ah. If he arabicizes, he will be considered as one leaving the preferable, but his *iqamah* will not be invalidated. (See *al- Rawdah*, vol. I, p.582).

-to raise his voice if he be a male. All these things will be emphatic in the *iqamah*.

*Tarji'*<sup>1</sup> (re-echoing) in *adhan* is *makruh*, except when it being for notification. It is *makruh* also to say *tathwib: al- salatu khayrun min al-nawm* (*salat* is better than sleep).<sup>2</sup>

#### 4) Rules of Adhan:

1. When a person sleeps during (recitation of) *adhan* or *iqamah* and wakes up, it is *mustahabb* for him to continue, and it is permissible for him to consider the part recited as the base. And so also is the rule when he faints.

2. If he makes *adhan* and apostatizes after that, it will be permissible to consider his *adhan* as valid, and another one has to make the *iqamah*. But if his apostatization occurs during the *adhan* and resumes (turns back) again, some legists said: he has to repeat.

3. It is *mustahabb* for one hearing the *adhan* to copy (reiterate) it with himself.<sup>3</sup>

4. When the caller (*mu'adhdhin*) says: *qad qamat is-salat*, speaking will be emphatically *makruh*, with a strong *karahiyyah*, except in relation to deliberation and disposal of worshippers.

<sup>1</sup> *Tarji'* in *adhan*: is something commonly known. And *tarji'* of voice means to re-echo the voice in the throat (mouth), like the recitation of people of intonation (*alhan*). (See *al- Mukhtar*, p.235; *al- Madarik*, vol. III, p.289); and *al- Masalik*, vol. I, p.189).

<sup>2</sup> Rather, prohibition is more preponderant, since the *adhan* and *iqamah* are two *sunnahs* ordained in the Shari'ah, like other rituals, so any addition to them is a prohibited legislation. Likewise adding the phrase "*Muhammad wa aluhu khayr al- bariyyah*" is prohibited, though they are the best of mankind. (*al- Masalik*, vol. I, p.190).

Furthermore, al- Shahid al- Awwal and al- Shahid al- Thani said: It is not permissible to believe in legitimacy of other parts in *adhan* and *iqamah*, like witnessing to *wilayah* of Ali (peace be upon him). As not every factual reality can be inserted into the legally prescribed rituals (*'ibadat*), specified by the Almighty Allah, since inserting these things will be regarded a heresy (*bid'ah*) and legislation, similar to addition of a *rak'ah* or *tashahhud* or alike things to the *salat*.

As a whole, all this is among the rules of faith, not of the parts of *adhan*. (See *al- Rawdah al- bahiyyah fi sharh al- Lum'ah al- Dimashqiyyah*, vol. I, p.573).

<sup>3</sup> The time of copying of the part (*fasl*) is due after completing it by the caller, or altogether with him. (*al- Rawdah*, vol. I, p.585).

5. It is *makruh* for the *mu'adhdhin* to turn his face to the right or left, but he has to keep it to the direction of the *qiblah*, when reciting the *adhan*.

6. If several persons exert themselves and contest each other to recite the *adhan*, precedence should be given to the most knowledgeable<sup>1</sup> one. If their degree of knowledgeability be equal, lots should be drawn to settle the matter.

7. When there being a group of people, they can make *adhan* altogether. It is better even, if there be sufficient time, that each one of them recites the *adhan*, one after the other.

8. If the *imam* (of a congregational prayer) hears the *adhan* of a *mu'adhdhin*, it is permissible for him to deem it sufficient for establishing the congregational prayer, even if that caller was intending to pray singly (not with a group).

9. When a *hadath* occurs during recitation of *adhan* or *iqamah*, the caller is required to perform purity and consider the part recited as the base. And it is better for him to repeat the *iqamah*.

10. When a *hadath* occurs during *salat*, the person (performing the *salat*) should perform purity (ablution) and repeat the prayer: He is not required to repeat the *iqamah* except if he has uttered some words (other than the texts of *iqamah*).

11. If a person praying behind an *imam* incompetent to be followed, he can make *adhan* and *iqamah* for himself. If he fears missing the *salat* he can restrict the recitation to two *takbirs* alone, with the section: *qad qamat is-salat*. If the Imam makes error in any of the sections of *adhan* (*fusul*), it will be *mustahabb* for the *ma'mum* to utter its expressions.

## Second Rukn: Acts of Salat

They include *wajib* and *masnun* acts:

The obligatory acts are eight:

### First: Niyyah

It is an essential *rukun* of *salat*, if an error is made in it, whether

<sup>1</sup> By "most knowledgeable" (*a'lam*) here it is intended: the one having more knowledge of rules of *adhan*, among which being the times, not the general knowledge. Precedence is to be given to the most knowledgeable over the other, when they be equal in '*adalah* or *fisq* (libertinism). If they differ, the just ('*adl*) one will be given preference. So also preference is to be given to the *mubsir* (able to see) over the blind, and to the one most observing to *adhan* in the appointed time. (*al- Masalik*, vol. I, p.192).

intentionally or out of forgetfulness, the *salat* will be invalid.

Its essence is the intention to bring to mind the form of *salat*. Its content (*qasd*) required for *salat*, is four things: whether it is obligatory or supererogatory, *qurbah* (nearness to God), specification of the *salat*, and *ada'* or *qada'*. No consideration is to be given to the words uttered.<sup>1</sup>

Its time: is in the initial part of *takbir*. Its rule should continue up to the end of *salat*, which can be achieved by not breaking the first *niyyah*. If a person intends to come out of the *salat*, it will not be invalidated, as per the verdicts of legists. So also is the rule when he intends to do something incompatible to *salat*; but if he does it the *salat* will be *batil*. And so also when he intends to do a hypocrite act of *salat*, or of other than the *salat*.

Changing (converting) the *niyyah* is permissible in certain places: like converting the *niyyah* of the *zuhr* prayer on Friday to a supererogatory prayer, in respect of that who forgot to recite *Surat al- Jumu'ah* and recited another *surah*. And also in case of changing the present *faridah* to a precedent one, despite sufficiency of time.

### Second: Takbirat al- Ihram

*Salat* never materializes without *takbirat al- ihram*, even if making an error in it out of forgetfulness.

Its formula is to say: "*Allahu akbar*," and no other form is permissible. *Salat* does not become valid with its meaning. If a person errs in one of its letters his *salat* will never materialize. If he cannot recite it in Arabic, like the A'jam,<sup>2</sup> it is obligatory for him to learn it. It is not permissible for him to begin the *salat* when sufficient time is there (before learning it). If time be not enough, he can make the *ihram* (consecration) with its translation into his own tongue. The dumb person can utter it when he has ability to do so. If he be unable to speak at all, he can pass it through his heart with its content, with making a gesture. The sequence of words is *wajib*, that is the word '*Allah*' should precede '*akbar*', and the reverse '*akbar Allah*' will not suffice for entry into *salat*.

The one praying with choice in the seven *takbirs*, can make any of them as *takbirat al- iftitah*.<sup>3</sup> If he recites the *takbirah* and makes the *niyyah* to

<sup>1</sup> Since it is known to be a heartfelt matter, having no connection to the tongue. So pronouncing it will be deemed nonsense, or rather innovating some strange thing in the *Din*. Saying it as a ritual (*'ibadah*) may be deemed unlawful legislation. (*al- Madarik*, vol. III, pp.312-313).

<sup>2</sup> The A'jam is that who cannot declare and speak out of his intention, though being of the Arabs. (*al- Mukhtar*, p.415).

<sup>3</sup> *Takbirat al- iftitah* is *Takbirat al- ihram* itself. In section of *Mandubat*

*iftitah*, reciting then the *takbirah* and making the *niyyah* to *iftitah*, his *salat* will be *batil*. But if he recites the *takbirah* for the third time, making the intention to *iftitah*, his *salat* will materialize then.

It is *wajib* to recite the *takbirah* while standing , and if one recites it while sitting, when having the ability to do so while standing, or when embarking on rising up, his *salat* will not materialize.<sup>1</sup>

The *masnun* acts of *takbirah* are four:

- to utter the word ‘Allah’ without any extension (*madd*) in its letters.
- to pronounce ‘akbar’ with the paradigm (*wazn*) of *af’al*.
- the *imam* should pronounce the *takbirah* in a way it can be heard by those praying behind him (*ma’mum*).
- the *musalli* (one performing prayer) is required to raise his hands up to his ears.

### Third: Qiyam

*Qiyam* (standing) is a *ruk’n*, when one is able to stand. When one makes any error in it, whether intentionally or inadvertently, his *salat* will be *batil*. If one is able to stand independently, it will be *wajib* upon him to stand. Otherwise (if be unable), he is required to recline on any support enabling him to stand. It is reported also, that it is permissible to recline on a wall, with presence of ability to stand.

If one not capable regains his ability (to stand) during *salat*, it will be *wajib* upon him to stand and perform the remaining part in accordance with his ability. Otherwise, he can pray sitting. Some legists said: The extent of this is to be unable to walk to the length of time of performing his prayer. The former opinion is more correct. If one performs *salat* sitting, regains ability to stand for performing *ruku’*, it will be obligatory on him to do so. Otherwise, he may perform it sitting. If one cannot stand, he may perform *salat* sitting, and if this too be not possible, he may pray lying down (on the right side) facing the *qiblah*, in the same position that a dead body is placed in the grave). If it is not possible to perform *salat* while lying on the right side, he can pray lying on his back. The latter two<sup>2</sup> can make gestures with

---

*al- salat* it will be made clear that the *musalli* turns his face toward the *qiblah* by seven *takbirs*, one of which being *wajib*.

<sup>1</sup> Irrespective of whether this being made intentionally or out of forgetfulness, or whether his being *imam* or *ma’mum*. (See *Jawahir al-kalam*, vol. IX, p.224; and *al- Masalik*, vol. I, p.199).

<sup>2</sup> By the latter two is meant: the one lying on the right side, and one lying on his back. (*Jawahir al- kalam*, vol. IX, p.266, freely).

their heads, for *ruku'* and *sujud*. Every person must perform *salat* in accordance with his ability, and if one becomes unable to do some act of *salat* during it, he may move from the previous state to the new situation which has come into existence. Hence, if a fully capable person loses his ability during *salat*, he may perform the remaining part sitting. If one performs it sitting loses his ability (to sit) he may pray while lying on his right side.<sup>1</sup> If this be not possible for him, he may pray while lying on his back, and vice versa. One unable to perform *sujud*, he may lift up the thing (clay) on which he may prostrate. If this be not possible for him, he can make gestures (by blinking his eyes).

The *masnun* acts for this section are two: one performing *salat* sitting has to do *tarbi'*,<sup>2</sup> during the *qira'ah* (recitation of two *surahs*), and fold his legs during *ruku'*. Some legists said: he has to do *tawarruk*<sup>3</sup> during *tashahhud*.

#### Fourth: Qira'ah

*Qira'ah* is *wajib*, and reciting *Surat al- Fatihah* is necessary in every two-*rak'ah* prayer, and in the first two *rak'ahs* of every four-*rak'ah* and three-*rak'ah* prayer. It should be recited completely. *Salat* is invalid when any error is made even in a single letter intentionally, even in the *tashdid*, and so also its parsing (*i'rab*). The *basmalah* is a part of the *surah*, which cannot be omitted in any circumstance. Its translation<sup>4</sup> into any other tongue does not suffice. The order of its words and verses should be followed in the way it is reported. If one reverses the order intentionally, he is required to repeat it. If he does this out of forgetfulness he may complete the *qira'ah* unless he has performed the *ruku'*. If he has already made the *ruku'*, he may continue his *salat*, even if he remembers.

One unable to recite it correctly is required to learn it. If time be not sufficient, he may recite of it so much as is feasible. If this be not possible, he may recite of the Qur'an so much as is feasible. Or he can say the *tasbeih* or *tahlil* or *takbir* to the extent of *qira'ah* (of *Surat al- Fatihah*), but he is required to learn afterwards. The dumb has to move his tongue making a

<sup>1</sup> On the right side; but if he can't, then by lying on the left side. (*al-Tawdih*, vol. I, p.73, freely).

<sup>2</sup> What is meant by *tarbi'* here is: to set up his thighs and shanks, as if he intends to stand up not to sit down. (*al-Masalik*, vol. I, p.203).

<sup>3</sup> *Tawarruk* means: to sit on the left hip, bringing out his feet from beneath, as will be elaborated in *tashahhud*. (*al-Masalik*, vol. I, p.203).

<sup>4</sup> Translation into Persian or any other language, voluntarily downright, and resolutely, due to non-compliance. (*Jawahir al-kalam*, vol. IX, p.299).



gesture of recitation, with passing it through his mind.<sup>1</sup> The *musalli* has an option between reciting *Surat al- Fatihah* and saying the *tasbeih* in the last two *rak'ahs* of four-*rak'ah* prayers. But for the *imam*, it is better to recite the *surah*.

Reciting a complete *surah* after *al- Hamd* in the first two *rak'ahs*, is *wajib* in the daily obligatory prayers, with presence of sufficient time and ability to learn for one having an option (*mukhtar*). Other legists said: It is not *wajib*, and the first view is nearer to caution. If he recites the other *surah* before *al- Fatihah*, he will be required to repeat it after *al- Fatihah*.

It is neither permissible to recite any of the *Surahs* of '*Aza'im*', nor that *surah*, the recitation of which causes missing of time of the *faridah*, nor to join between two *surahs*. Some legists consider this to be *makruh*, which is more correct.

It is *wajib* to recite aloud the two *surahs* (not the other recitations) in the morning prayer, and the first two *rak'ahs* of *maghrib* and '*isha*' prayers. The *qira'ah* in *zuhr* and *asr* prayers is to be done, except for the *basmalah*, in a low voice in their first two *rak'ahs*, and also in the third *rak'ah* of *maghrib* and the last two *rak'ahs* of '*isha*' prayers. The minimum level of voice considered loud is that a person nearby be able to hear it, and the minimum for low voice is that the person himself be able to hear it. Reciting aloud is not prescribed for women.

The *masnun (sunnah)* in this connection is to recite aloud the *basmalah* in the two *surahs* that to be recited in a low voice (*zuhr* and '*asr*'), and to recite them in a *tartil* way, and to follow the punctuation marks (locations of *waqf*). Also reciting another *surah* after *al- Hamd* in the supererogatory prayers is a *sunnah*.

It is *sunnah* too to recite the short *surahs* like *al- Qadr* and *al- Jahd* in *zuhr*, '*asr*' and *maghrib* prayers, and *al- A'la* with *al- Tariq* or alike in '*isha*' prayer. In the morning prayer it is *sunnah* to recite *al- Muddaththir* and *al- Muzzammil* and alike. Also to recite *Surat al- Insan* in *zuhr* prayer on Monday and Thursday, and *al- Jumu'ah* and *al- A'la* in *Maghrib* and '*isha*' prayers in the night of Friday, and also in its morning prayer with *al- Tawhid*. Further, it is *sunnah* to recite *Surat al- Jumu'ah* and *al- Munafiqun* in *zuhr* and '*asr*' prayers of Friday. Some legists consider it *wajib* to recite these two *surahs* in *zuhr* and '*asr*' prayers of Friday, but this view is not authenticated. It is *sunnah* to recite short *surahs* in *nawafil* of *zuhr* and '*asr*'

<sup>1</sup> With making a gesture, and the conclusion is that: he has to do whatever he can, of its requisites, as can be understood from the *riwayah*. (*al- Tawdih*, vol. I, p.74).

prayers, in a low voice, but in the night *nawafil* he can recite the long *surahs* aloud. When time be not sufficient he can read shorter ones. It is also *sunnah* to recite *Surat al- Kafirun* in the seven locales,<sup>1</sup> and it permissible to start it with *Surat al- Tawhid*.<sup>2</sup>

Also it is *sunnah* to recite *al- Tawhid* thirty times in the first two *rak'ahs* of *salat al- layl*, and long *surahs* in the other *rak'ahs*. The *imam* (of congregational prayer) has to recite the *surahs* in a voice hearable to others, but without reaching the degree of shouting. And so also the two witnesses (*shahadatayn*), preferably. If he passes by an *ayah* of mercy, he may request it, and if he passes by an *ayah* of *niqmah* (indignation) he can seek God's protection against it.

### Seven Issues:

1. Saying "*Ammīn*" (Amen) after completing recitation of *Surat al- Fatihah*<sup>3</sup> is *haram*. Some legists say: it is *makruh*.
2. Sequence (*muwalat*) in recitation is a condition for its validity. If a person recites other than the *surahs* during *qira'ah*, he is required to repeat the *qira'ah*. The same rule is applied when he intends to stop the *qira'ah* and keeps silent. Other legists say: he has to restart the *salat* anew. But if he keeps silent during the *qira'ah* without the intention of stopping (the *qira'ah*), or intends to stop but does not stop, he can continue his *salat*.
3. It is reported that the *Surahs al- Duha* (Noonday) and *al- Inshirah* are considered as one *surah*, and so also *al- Feel* and *Quraysh*; so reciting each of them singly in every *rak'ah* is not valid. Reciting the *basmalah* between them is necessary, as per the most correct opinion.
4. If a person recites in a low voice that which should be recited aloud, or vice versa, whether out of ignorance or forgetfulness, he is not required to repeat.

<sup>1</sup> That is: in the first two *rak'ahs* of *zuhr* prayer, and of the four *rak'ahs* of *naflah* of *maghrib* prayer, and of the eight *rak'ahs* of *naflah al- layl*, and *naflah* of morning prayer, and of morning prayer if he has not performed it till spreading of the *subh* and rising of the reddish glow, and of *mustahabb* prayer of *ihram*, and *tawaf* prayer. In every *rak'ah* of these, he recites in the first *Surat al- Kafirun*, and in the second one *Surat al- Tawhid*. (See *al- Masalik*, vol. I, p.209).

<sup>2</sup> That is, if he reverses in these seven localities, and recites in the first *rak'ah* *Surat al- Tawhid*, and in the second *Surat al- Jahl*, it will be valid.

<sup>3</sup> Because the word "*Ammīn*" is not of the Qur'an, but it is a verbal noun used for invocation, and not an invocation by itself. (*al- Masalik*, vol. I, p.210; and *al- Madarik*, vol. III, pp.272-273).

5. R12 *tasbihs* instead of *al- Fatihah*<sup>1</sup> is sufficient, in this form: “*Subhanallah, wal- hamdu lillah, wa la ilaha illallah, wallahu - akbar*” thrice. Some legists said: ten *tasbihs* are sufficient. In another narration: nine, and yet in another one: four. The first view is nearer to caution.

6. It is *wajib* upon one reciting any of *Surahs* of ‘*Aza’im* in *nawafil* to prostrate when reaching the verse of *sajdah*. And so also is the rule when another one recites it and he hears it. After that he is required to stand up and recite the rest of the *surah*,<sup>2</sup> following it with *ruku’*. If the locale of *sujud* be in the last part of the *surah*, it is recommended for him to recite *al- Fatihah*, so as to perform *ruku’* with *qira’ah*.

7. The *Mu’awwidhatan* are part of the Qur’an,<sup>3</sup> and reciting them in obligatory and supererogatory prayers is sufficient.

### Fifth: The Ruku’

*Ruku’* is *wajib* once in every *rak’ah*, except in eclipse and *ayat* prayers.<sup>4</sup>

It is a *rukn* in *salat* which becomes *batil* when any error occurs in it (*ruku’*), whether intentionally or inadvertently, the elaboration of which will be given later on.

Its *wajib* acts are five, as follows:

1. Kneeling down till the palms of the *musalli* reach his knees. If his hands be so long that they can reach his knees without kneeling down, he is required to kneel down in the same way as the ordinary person. If a person be unable to kneel down due to an impediment, he may perform it in accordance with his ability.<sup>5</sup> If he is unable absolutely to perform it, making a gesture will be sufficient. If he be inbornly like one kneeling down, or due

<sup>1</sup> In the third and fourth *rak’ahs* of daily prayers. (*Jawahir al- kalam*, vol. X, p.26).

<sup>2</sup> That is: the *surah* which he has not completed, due to performing *sajdah* of ‘*azimah*’.

<sup>3</sup> They are *Surat al- Falaq* and *Surat al- Nas*. They are called so because the Prophet(S) used to recite them for seeking God’s protection against evil for al- Hasanayn (al- Hasan and al- Husayn) (A). An opposition against their being part of the Qur’an was raised by some abnormal people among Ahl al- Sunnah. (*al- Masalik*, vol. I, p.212).

<sup>4</sup> That is: except in eclipse prayer, and *al- ayat* prayer - like earthquake and lightning.

<sup>5</sup> There is no doubt about doing what is possible, as per the Infallible Imam’s saying: What is feasible is not omitted with that which is impossible. (*al- Madarik*, vol. III, p.386).

to a hindrance, it is *wajib* on him to add slight kneeling so as to make a discerning motion indicating the *ruku'*.

2. Tranquillity and to stay motionless to the extent enough to say the words of *ruku'* with ability. If the *musalli* be sick and unable to do this, he is not required to do it, as the excuse be for *ruku'* itself.

3. Raising the head from *ruku'*, as it is not permissible to perform *sajdah* straight away before returning to the standing position, unless when there being an excuse. If he be unable to return to the standing position unless with leaning on a support, it will be *wajib* on him to use a support.

4. Calmness while standing up, which means that: he should stand straightly and stay motionless even if it be for a little while.

5. Reciting the *tasbih* during *ruku'*. Some legists said: the *dhikr* is sufficient, even if be *takbir* or *tahlil*, regarding which there is disagreement (among legists). The least sufficient formula for one having option, is a single complete *tasbihah*, thus: "*Subhana Rabbi al- 'azim wa bi- hamdih*"<sup>1</sup>; or just "*Subhanallah*" thrice.<sup>2</sup> In emergency, the shorter formula once is sufficient. There is disagreement regarding saying *takbir* for *ruku'*, and its recommendation is more correct as per the verdicts.

### The Masnun Acts of Ruku'

It is *sunnah* to say *takbir* for *ruku'* standing, with raising the hands near to the ears, letting them down then and performing the *ruku'*, by placing the hands - open-fingered - on his knees. When an excuse be for one of them he may put the other one, with returning his knees backwards,<sup>3</sup> straightening his back and extending his neck parallel to his back. It is *sunnah* also to recite a supplication before the *tasbih*, and to say *tasbih* thrice, or five times, or seven and so on, with the *imam* raising his voice in words of *dhikr*. It is *mustahabb* to say after returning to the standing position: "*Sami'allahu li-man hamidah*", with reciting an invocation after it.

It is *makruh* to perform the *ruku'* while placing his hands under his clothes.

### Sixth: Sujud

*Sujud* (prostration) is *wajib* twice in each *rak'ah*. They are both a *rukn* in the *salat*, which will become *batil* if any error in performing them occurs

<sup>1</sup> The meaning of *Subhana Rabbi*: is to consider God far above what is mean, and the qualities of creatures.

<sup>2</sup> *Subhanallah*: means to consider God far above having a wife and children (*Taj al- 'arus*, vol. VI, p.445).

<sup>3</sup> See *Jawahir al- kalam*, vol. X, p.105.

in every *rak'ah*, whether intentionally or inadvertently. But the *salat* will not become *batil* when an error occurs in one of them inadvertently.

The *wajib* acts of *sujud* are six as follows:

1. to lay on the ground all the seven parts: the forehead, two palms, two knees, and the big toes.
2. to lay the forehead on that which is valid to make *sajdah* on. It is not valid to lay it on a roll of the turban.
3. to bend down in *sujud* till the locale of his forehead becomes to the level of his *mawqif* (part of standing), unless there being a little height to the measure of a brick no more. If any hindrance be there that prevents this, it will be sufficient to do what is within capability. If he be unable to make *sujud* and needs to elevate that thing (clay) on which he wants to prostrate, he will be required to do so. And if this be not possible too, he will gesture.
4. saying *dhikr* during *sujud* ("Subhana Rabbi al- A'la wa bi- hamdih", or "Subhanallah" thrice). Some legists said: It is distinguished with *tasbih*, exactly as that one mentioned in the *ruku'*.
5. to stay motionless (calm) is *wajib* unless when there be a preventing emergency.
6. to raise the head from the first *sajdah* till straightening motionless, and there is disagreement regarding *wujub* of *takbir* for entering into *sujud* and raising the head from it. Its *istihbab* is more correct.

The *mustahabb* acts in *sujud*:

- to say *takbir* for *sujud* while standing,<sup>1</sup> falling down to *sujud* then, starting with laying the palms first on the ground;
- the locale of *sujud* should be at the same level of his place of standing, or lower;
- to make the nose touch the ground (*irgham*),<sup>2</sup>
- to recite a supplication;
- to add to the single *tasbih* so much is feasible;

<sup>1</sup> That is: returning to a standing position from *ruku'* before entering into *sujud*.

<sup>2</sup> *Irgham* with the nose: is to place the nose on the ground altogether with other seven parts involved with *sujud*. It is derived from *ragham* which means *turab* (soil, earth, dust), that is: he has to make the nose stick to the earth. (*al- Masalik*, vol. I, p.220).

In a *hadith* it is said: "When any one prays, he has to stick his forehead and nose to the earth, till *raghm* comes out from it", meaning: till (so as) he subjugates and be humbled. And *ragham* means *thara'* (soil; humus). (*Tahdhib al- lughah*, vol. VIII, p.132).

- to recite a supplication between the two *sajdahs*;
- to sit leaning on his hips;
- to sit motionless after the second *sajdah*;
- to recite a *dhikr* while returning to the standing position.<sup>1</sup>
- to recline on his hands before raising his knees.

It is *makruh* to squat<sup>2</sup> between the two *sajdahs*.

### Three issues:

First: If a person has a hindrance that preventing him from laying his forehead on the ground, like a tumour (*dummal*) not covering the whole forehead, he is required to dig a hole so as to make the healthy part touch the ground. If this be not possible, he may perform *sujud* on any of the two brows. If there be an impediment, he can make *sujud* on his chin.

Second: The *sajdahs* of Qur'an are fifteen, four of which are *wajib*, which are in the following *Surahs*: *Luqman*, *Ha'* *Mim al- Sajdah*, *al- Najm*, and *al- 'Alaq*. And eleven ones are *masnun (sunnah)*, in the following *Surahs*: *al- A'raf*, *al- Ra'd* (Thunder), *al- Nahl* (Bee), *Bani Isra'il*, *Maryam*, *al- Hajj* (in two places), *al- Furqan*, *al- Naml*, *Sad*, and *al- Inshiqaq*. Besides, *sujud* is *wajib* in the four '*Aza'im* *Surahs* on the reciter and listener. It is *mustahabb* for the hearer, as per the verdicts. In the rest ones it is *mustahabb* (recommended) in any case.

In these *sajdahs*, neither *takbir*, nor *tashahhud*, nor *taslim* is required. Also neither *taharah*, nor facing the *qiblah* is a condition for their validity as per the most correct opinion. If a person forgets them, he can perform them afterwards.

Third: Performing two *sajdahs* of thankfulness (*shukr*) is *mustahabb* in time of renovation of blessings, and repelling of indignation, and following the prayers. *Ta'fir*<sup>3</sup> is *mustahabb* in between them.

<sup>1</sup> From the second sitting; saying: - in state of rising - "*Bi hawlillahi wa quwwatihi aqumu wa-aq'ud*". In an authentic *hadith* reported in *al- Jawahir* vol. X, p. 186, it is said that al- Imam Ali (A) used to do so.

<sup>2</sup> Squatting is of two kinds: one is to stick the two rumps to the ground, and erect his legs, with placing the palms on the ground like squatting of the dog. This is the *makruh* kind, from which forbiddance is ordained.

The second kind: is to place his rumps on his heels, between the two *sajdahs*, and this is the way intended by Ibn Abbas to be a *sunnah*. (*al- Jawahir*, vol. X, p.195; *Tahdhib al- lughah*, vol. III, p.31; and *al- Masalik*, vol. I, pp.220-221).

<sup>3</sup> *Ta'fir*: means that the *musalli* has to wipe his forehead, during *sujud*, on

### Seventh: Tashahhud

#### 1. Its essentials:

*Tashahhud* is *wajib* once in the two - *rak'ah* prayer (morning), and twice in the three - and four - *rak'ah* prayers, (the first after the second *rak'ah* which is not followed by *taslim*, and the second in the last *rak'ah* which is followed by *taslim*). If an error is committed in one or both of them, intentionally, the *salat* will be rendered *batil*.

The *wajib* acts required for each *tashahhud* are five: sitting for a time enough to perform it, two witnesses, sending benediction for the Prophet Muhammad and his Family (peace be upon them).

Its form is: "*Ashhadu an la ilaha illallah wahdahu la sharika lah, wa ashhadu anna Mahammadan Rasulullah*", adding after it a benediction for the Prophet and his Progeny. That who cannot utter the *tashahhud* properly, is required to utter what he can in accordance with his ability, within the appointed time, but it will be *wajib* on him to learn the part he is unable to perform.

#### 2. The *masnun* acts of *tashahhud* are:

- to sit on the hips (*mutawarrrik*). Its form is: to sit on the left hip, bringing his two legs out, making the outward of his left foot to the ground and the outward of the right foot to the sole of the left one. Also it is *sunnah* to recite *tahmid* (*al- hamdu lillah*) and a supplication in addition to the *wajib* recitation.

### Eighth: Taslim

It is *wajib* as per the most correct opinion. Without performing it, the *musalli* cannot finish the *salat*. It consists of two formulas: the first is: "*al- Salam 'alayna wa 'ala 'ibadillah al- salihin*", and the second is: "*al- Salam 'alaykum wa rahmatullahi wa barakatuh*".

Reciting each of them is sufficient to finish the *salat* with. If a person recites one of them the other one will be *mustahabb*.

The *masnun* acts of *taslim* are the following:

- one offering the *salat* singly has to recite one *taslim* toward the *qiblah*, with gesturing by blinking the rear of his eyes to the right side. But the *imam* may gesture by his face, and so also does the *ma'mum*. If some other person be there on his left, he will be required to gesture with his face too.

---

the '*afar*, which is the dust (earth). (*Majma' al- bahrayn*, vol. III, p. 408; *al- Masalik*, vol. I, pp.222-223).

### The Masnun Acts of Salat

There are five *masnun* acts for *salat*, as follows:

1<sup>st</sup>: *Tawajjuh*:

It is recommended to turn the face toward the *qiblah* with six *takbirs* in addition to *takbirat al- iftitah*, in this way: to say *takbir* thrice, reciting a supplication then, saying two *takbirs* and reciting an invocation, with saying another two *takbirs* and making *tawajjuh* then.<sup>1</sup> He has an option to express the *niyyah* after any of these seven *takbirs*, whichever he chooses, when the start of *salat* will be at it.

2<sup>nd</sup>: *qunut*: It is to be recited before the *ruku'* and after the *qira'ah* (of two *surahs*) of the every second *rak'ah*. It is *mustahabb* for the *musalli* to invoke (God) with the reported *adhkar*, or whatever he likes, the least of which can be three *tasbihs*. In Friday prayer there are two *qunuts*, one in the first *rak'ah* before *ruku'*, and the other in the second *rak'ah* after the *ruku'*. If he forgets it he can recite it as *qada'* after the *ruku'*.

3<sup>rd</sup>: Busying the sight: it is *sunnah* to keep the sight to the locale of *sujud* while standing, to the palms in state of *qunut*, to the space between the legs during *ruku'*, toward the edge of nose during *sujud*, and to the *hijr* (lap) during *tashahhud*.

4<sup>th</sup>: Where to keep the hands:

The hands have to be placed on the thighs adjacent to the knees while standing. In state of *qunut*, they should be in front of the face, and during *ruku'* on the knees. During *sujud* the palms should be placed on the ground adjacent to the ears, and in state of *tashahhud* on the thighs.

5<sup>th</sup>: Ta'qib:

The best *ta'qib* (*dhikr* following the *salat*) is *tasbih* of al- Zahra' (peace be upon her),<sup>2</sup> and after it other supplications according to narrations reported. Otherwise, whatever is feasible.

### Conclusion

The Invalidating Causes of Salat

They are of two kinds:

Acts which invalidate the *salat*, whether done intentionally or by

<sup>1</sup> Saying: "*Wajjahtu wajhi lilladhi fatara assamawati wal-ard 'alim al-ghayb wash-shahadati hanifan musliman, wama ana min al-mushrikin*", as reported in *al- Wasa'il*, vol. IV, p.724, in brief).

<sup>2</sup> Its form is saying *takbir* 34 times, *al- Hamdu lillah* 33 times, and *Subhanallah* 33 times. (*al- Rawdah al- bahiyyah*, vol. I, pp.634-635).



mistake; which include any act invalidating the *taharah* whether be willful insertion or discharge; like urine and excrement and alike secretions that break the ablution. Beside *janabah* and *hayd* (menstruation) and similar discharges requiring *ghusl* (ritual bathing).

Other legists observed: if a *hadath* requiring *wudu'* occurs by mistake, he can perform the ablution anew, without heeding the doubt. But this view is not authenticated.

The second kind of invalidating acts are those acts which do not vitiate the *salat* unless they be done willfully. They include: placing the right hand on the left one, regarding which there is disagreement; turning the face backwards; giggling (laughter), doing many acts other than acts of *salat*; uttering voluntarily two or more letters;<sup>1</sup> weeping on account of worldly woes; eating and drinking according to some legists, except in *salat al- watr* (night prayer) for one afflicted with thirstiness, and intending to fast the daybreak of that night, but not keeping his back to the *qiblah*. There is disagreement regarding braiding the hair for men (whether it invalidates *salat* or not), and its being *makruh* is more correct.

The reprehensible acts are: turning the face to the right or left; yawning; stretching the limbs; futile playing; blowing the locale of *sujud*; expectorating; spitting; cracking the fingers; groaning (saying *Ah*), moaning with one letter; and retaining the urine or excrement or wind.

If his half - boots (*khuff*) be tight, it is *mustahabb* for him to take it off.

#### Four Issues:

1. if one sneezes during *salat*, it is *mustahabb* for him to say *al- Hamdu lillah*. So also when another one sneezes, it is recommended for him to say *tasmit* to him (*yarhamuka Allah*).

2. When the *musalli* is saluted with a salutation containing the word *salam* it is permissible (or *wajib*) for him to return it with a similar salutation. Hence the reply of '*salam 'alaykum*' will be the same, not '*wa 'alaykum as-salam*', according to a view of some legists.

3. It is permissible for the *musalli* to recite a supplication containing *tasbih*, or *tahmid*, or seeking some lawful things of world and hereafter (*rizq*

<sup>1</sup> According to a *hadith* reported by 'Ammar al- Sabati, that he inquired from Abu Abd Allah (A) about the rule regarding a person hearing the knocking at the door while praying: can he hem (hawk) so as to make his bondmaid or his wife hear him, and come toward him; or make signals to her with his hand indicating that someone is at the door, to see who is it? He (A) replied: There is no objection to this. (*al- Madarik*, vol. III, p.463, in brief).

and *barakah*), standing and sitting, in state of *ruku'* or *sujud*. It is not permissible for him to ask for something unlawful, as doing so will invalidate his *salat*.

4. It is permissible for the *musalli* to discontinue his *salat* when fearing loss of property, or flight of a debtor (*gharim*),<sup>1</sup> or fall of a child (in a pit or well) or alike cases. It is not permissible to discontinue the *salat* voluntarily (willfully).

### Third Rukn: Other Prayers

It has several sections:

#### Section One: The Friday Prayer<sup>2</sup>

First: Specifications of Friday Prayer:

The Friday prayer comprises two *rak'ahs* just like the morning prayer, and one performing it is not required to perform the *zuhr* prayer. It is *mustahabb* to recite its *surahs* loudly (*jahr*). Its time is from when the sun crosses the meridian up to when the shadow of an object equals its height. If its time ends while the *musalli* is still performing it, he will be considered as one completing one *Jumu'ah* prayer, whether being an *imam* or *ma'mum*. The Friday prayer will be missed with passage of its appointed time, and it is not *wajib* to perform it *qada'* as a Friday prayer but as a *zuhr* prayer.<sup>3</sup>

When it becomes *wajib*, while the person starts the *zuhr*, he will be required to endeavour to come up with it. If he catches it he has to offer it; otherwise he is required to repeat the *zuhr*, not sufficing with the first *salat*.

<sup>1</sup> *Gharim*: is that who is indebted. (*al- Mukhtar*, p.473).

<sup>2</sup> Ibn Hibban al- Tamimi al- Busti is reported to have said: The first Friday prayer was gathered and established in al- Madinah, by Abu Umamah As'ad ibn Zurarah. The number of worshippers was forty men, who assembled in a meadow called Naqi' al- Khadamat, belonging to Tribe (*harrah*) of Banu Bayadah. After that Ka'b ibn Malik, whenever hearing the *adhan* of Friday, used to say: God's mercy be upon Abu Umamah As'ad ibn Zurarah.

<sup>3</sup> What is intended by this: the obligation of time should be fulfilled at noon, and this may be the purpose (*murad*) of that who answered one inquiring about this, by intending the *qada'* with the linguistic meaning, which is doing the act (*Jawahir al- kalam*, vol. XI, pp.142-143).

Some legists say: This is a figurative expression, i.e. intending the metaphor, since when the *zuhr* be a substitute for the *Jumu'ah*, it has been similar to *qada'*. (*Jawahir al- kalam*, vol. II, pp.142-143, freely).

If he be assured to have sufficient time for a sermon and two light (brief) *rak'ahs* (by reciting only *al- Hamd*), the Friday prayer will be *wajib*. But if he be certain or presumes that time be not enough for doing so (the sermon and two *rak'ahs*), then the appointed time for the *Jumu'ah* will expire, and he is required to offer the *zuhr* prayer.

But for one not reaching or attending the sermon and the beginning of the *salat* (Friday), realizing the first *rak'ah* with the *imam*, he is required to perform the Friday prayer. And so also is the rule if he joins the *salat* while the *imam* is kneeling down in the second *rak'ah*, according to the view of some legists. But if he recites the *takbirat al- ihram* and kneels down, doubting then that the *imam* was in state of *ruku'* or has raised his hands, his *salat* will not be considered as Friday prayer, and he will be required to offer the *zuhr* prayer.

### Conditions of Friday Prayer:

The Friday prayer does not become *wajib* but with the following conditions:

1. Presence of a just ruler (Infallible Imam) or his deputy appointed by him. If the *imam* dies during the *salat*, the *salat* will not be rendered *batil*, and the *jama'ah* (worshippers) may prefer a leader from among them to complete the *salat*. And so also when an unexpected accident befalls the leader (*imam*) that invalidates the *salat*; like swoon, insanity or a *hadath*.

2. Number of persons required:

Some legists believe that the minimum number of persons required to form a *jama'ah* (for Friday prayer) is five including the *imam*, and some others state: its minimum is seven. The former view is more correct. If they disperse during or after the sermon, before entering into *salat*, there will be no *wujub* to offer it. But if they enter into *salat* even with a *takbir*, completing it will be *wajib* even when only one person be left.

3. The Friday Sermons:

The two sermons are a requirement for convening the Friday prayer, and they are to be delivered before the *salat*. It is *wajib* in each of the sermons to praise and extol God, invoke blessings on the Prophet(S) and his Family (peace be upon them), preach,<sup>1</sup> and recite something from the Qur'an

<sup>1</sup> It includes: exhorting to piety, urging to obedience, warning against disobedience and deception by the world and alike. There is no definite term specific for this, and its denomination is sufficient, like: Obey Allah or fear the wrath of Allah, or alike. Obligation of urging to obedience and restraining from insubordination may be probable. (*al- Rawdah*, vol. I, pp.659-660).

(a short *surah*). Some legists consider one *ayah* with full meaning to be sufficient.

According to a narration reported by Sama'ah: "It is *wajib* to praise and extol God, to exhort to God - fearing (piety) and recite a short *surah* from the Qur'an, and sit down for a while. Then it is *wajib* for the preacher to stand up again, praise and extol God, invoke blessings on the Prophet(S) and his Family(A), and leaders of Muslims, and to implore God's forgiveness for the faithful men and women.

It is permissible for the preacher to deliver the sermons before the sun's crossing the meridian, in a way that with finishing the sermons the sun crosses the meridian. It is also said: it is invalid to deliver them unless until after *zawal*. The first view is more correct.

It is *wajib* to deliver the sermons before the *salat*, and if the *imam* starts the *salat* before the sermons, the Friday prayer will be invalid. It is *wajib* for the preacher to stand while delivering the sermons, when having ability to stand.<sup>1</sup>

It is *wajib* for the preacher to separate the two sermons by sitting down for a while.

Is *taharah* a condition for delivering the two sermons? There is disagreement regarding this requirement, and its being not a condition is more emphasized in verdicts of legists. Also he is required to raise his voice to the extent that it can be heard by a considerable number of worshippers upwards, but there is disagreement regarding this.

4. Condition of *jama'ah*, as the Friday prayer is not valid except when performed in *jama'ah*(congregation). If the original *imam* be present, it will be *wajib* on him to attend and lead the *salat*. If any impediment keeps him from presence, it will be permissible for him to depute another one (to lead the *salat*).

5. The condition of non - presence of another Friday prayer, on a distance of three miles,<sup>2</sup> as if two Friday prayers coincide together (with the mentioned distance) both of them will be deemed *batil*. But if one of them is established before the other, even with *takbirat al- ihram*, the latter will be rendered *batil*. And if the former is not realized, he will be required to repeat

<sup>1</sup> Al- Mas'udi is reported to have said: Mu'awiyah was the first to prescribe the rule (*sunnah*) of sitting while reciting the sermon. (*Muruj al-dhahab*, vol. III, p.226).

<sup>2</sup> By mile here I mean the legal mile, which is four thousand cubits, each equal to length of human arm, which is the part from the elbow up to the tips of fingers. The parasang equals three miles. (*al- Manhaj*, vol. I, p.158, freely).

it as *zuhr* prayer.

### **Second: Provisions of obligating the Jumu'ah:**

There are seven conditions for *wujub* of the Friday prayer: *taklif* (puberty),<sup>1</sup> malehood (*dhukurah*); being free (not a slave); presence in region of residence (*hadar*);<sup>2</sup> being free from blindness, disease and lameness; not being a withered old man; with the distance between him his (his residence) and the place of Friday prayer being not more than two parasangs (parasang = 3¼ miles).

If all these people take the trouble to attend the *salat*, the Friday prayer will be *wajib* on them and can be established with them, except that who has not attained puberty, and the woman, and the slave (with disagreement among the legists). If a *kafir* (infidel) attends, the *jumu'ah* will be invalid and not established by him, though it being *wajib* on him.

The Friday prayer is *wajib* on Ahl al- Sawad,<sup>3</sup> and also on urban people with fulfilment of requirements and conditions. Further, it is obligatory on tent - dwellers, like the bedouins (nomads) if they be inhabitants (residing).

Following are important issues:

1. Friday prayer is not *wajib* on one who is freed partially. If his master (*mawla*) contracted *muhayat*<sup>4</sup> with him, the *jumu'ah* will not be *wajib* on him, even if it occurs on the same day of his relief, as per the most correct opinion. And so also is the rule regarding the *mukatab*<sup>5</sup> and the *mudabbar*.<sup>6</sup>

2. One upon whom the Friday prayer is not *wajib*, has an option to offer the *zuhr* prayer in its initial time. But it is *wajib* on him to delay it till the passage of the appointed time of the Friday prayer, or rather it is not recommended for him. And if he attends the Friday prayer after that, it will

<sup>1</sup> It is not *wajib* on the immature, and the insane whose insanity continues till the lapse of the appointed time of *salat*. (*Jawahir al- kalam*, vol. XI, p.258).

<sup>2</sup> As it is not obligatory upon the traveller.

<sup>3</sup> Like the inhabitants of villages and rural areas.

<sup>4</sup> *Muhayat* in the earning of the slave: means that they (slave and his master) divide the time according to agreement between them, in a way that his (slave's) earning be all the time to that for whom it has come out through division. (*Majma' al- bahrayn*, vol. I, p.485).

<sup>5</sup> *The Mukatab*: is the slave who made an agreement with his master on freeing himself in return of a sum of money he pays in instalments, in a way that whenever he pays an instalment a part of his body will be freed according to the amount of money.

<sup>6</sup> *The Mudabbar*: is the slave who bequeathed his master (*mawla*) to free him after his death.

not be *wajib* on him.

3. It is prohibited for someone upon whom the Friday prayer has become *wajib*, to travel after the sun has crossed the meridian (before performing it), due to its becoming *wajib*. Travel is *makruh* after daybreak (*fajr*).

4. There is disagreement in regard of *wujub* of listening to the sermons, and also the prohibition of speaking during the sermon, but it does not vitiate the *salat*.

5. Validity of the Friday prayer requires the *imam* to have: full sanity, faith (Islam), justice (*'adalah*), being a male, being of pure birth. And no objection is there to his being a slave. But there is disagreement about validity of *salat* if the *imam* be leprous,<sup>1</sup> maimed (*ajdham*),<sup>2</sup> and permissibility is preponderant according to verdicts of legists. And so also is the blind.

6. If a traveller makes an intention (*niyyah*) to stay for ten days or more in a country, the Friday prayer will be *wajib* on him. And so also is the rule when he does not intend to settle in a certain country, but stays there for thirty days.

7. The second *adhan* for Friday prayer is a heresy (*bid'ah*),<sup>3</sup> and some legists consider it to be *makruh*. The first opinion is preponderant as per the verdicts of legists.

8. Trading (sale) is prohibited on Friday after the *adhan*<sup>4</sup> of midday. If one sells something, the sale will be valid, though he will have sinned, as per the most correct opinion. If one of the two parties of trading be of those upon whom the Friday prayer has not become *wajib*, the trading will be lawful for him, and unlawful for the other.

9. If neither the *imam* nor his deputy be present, but congregation and two sermons be possible, some legists said: it is *mustahabb* to perform the

<sup>1</sup> Leprosy (*baras*): a foul cutaneous disease, characterized by dusky red or livid tubercles on the face or all the body, with painful scratching (*al- Munjid fi al- lughah*, p.34).

<sup>2</sup> *Judham* is a disease like leprosy, characterized by falling down of flesh and limbs. It is called so due to maiming and mutilation of fingers. (*al- Munjid fi al- lughah*, p.83).

<sup>3</sup> It is deemed to be a *bid'ah* (heresy) due to the fact that it was neither practised during the lifetime of the Prophet nor during the epoch of predecessors. (*al- Masalik*, vol. I, p.245).

<sup>4</sup> The same rule in trading is applied in similar cases like: reconciliation (*sulh*), marriage, *khul'* (repudiation), divorce, and other contracts and transactions. (See *al- Masalik*, vol. I, p.245; and *al- Jawahir*, vol. XI, p.305).

Friday prayer. Some others hold the view of impermissibility. The first view is preponderant.

10. In case the *ma'mum* fails to perform the *sujud* (after catching the *ruku'*) with the *imam* in the first *rak'ah* (due to crowd); if he be able to prostrate and come up with him before the *ruku'* (i.e. before rising from the second *ruku'*), it will be valid. Otherwise,<sup>1</sup> it will be sufficient to follow the *imam* in the two *sajdahs* (of the second *rak'ah*), with making the *niyyah* of the first *rak'ah*.

If he makes the *niyyah* of the second *rak'ah*, some legists consider this to be invalidating the *salat*, and some others said: he should discontinue the *sajdahs* and prostrate for the first *rak'ah* and complete the *salat* with another one. The former opinion is more correct.

### Etiquette of Jumu'ah:

They include: *ghusl* (ritual bathing), performing twenty-*rak'ahs* as supererogatory prayers: six during sun expansion, six when it rises up, six before it crosses the meridian, and two in time of *zawal* (when the sun crosses the meridian).

If he delays the *naflah* till after the sun crosses the meridian, it will be valid. But performing it before this time is preferable, and it is permissible for him to perform six *rak'ahs* of *naflah* between the two *faridahs*. It is recommended for the *musalli* to betake himself so early<sup>2</sup> toward al- Masjid al- A'zam, after shaving his head, clipping his finger - nails, trimming his moustache, being of sobriety of demeanour (*sakinah*) and veneration<sup>3</sup> (*waqar*), perfumed, wearing his best clothes, reciting a supplication before taking the direction of *qiblah*, with the orator being eloquent and persevering on (daily) prayers in their appointed times.

It is *makruh* for him to utter other words than the sermon during reciting it.

It is *mustahabb* for the *imam* (of *jumu'ah*): to put on a turban, whether he be in winter or summer, wear a Yemeni *burdah* (garment), reclining on a

<sup>1</sup> That is: even if he could not join and reach him before his rising from the second *ruku'*.

<sup>2</sup> It means to go out after daybreak (dawn), and it is preferable to perform the *fajr* prayer in it, and continue till performing the Friday prayer. (*al-Masalik*, vol. I, p.247).

<sup>3</sup> *Sakinah* in limbs means: moderation and sobriety in their movement (demeanour). *Waqar* in the self means its tranquillity and steadiness, in a way necessitating reverence and tendency to obedience and submission. (*al-Masalik*, vol. I, p.248).

support, greeting the worshippers,<sup>1</sup> and sitting before the (first) *khutbah*.

If the *imam* starts (the first *rak'ah*) with reciting a *surah*, he is required to change it to *Surat al- Jumu'ah*. And so also in the second (*rak'ah*), he has to discontinue it (any *surah* other than the *Munafiqun*) and recite *al- Munafiqun* unless he has gone beyond half the *surah*,<sup>2</sup> except in *Surat al- Jahl* and *Surat al- Tawhid*.

It is *mustahabb* for one performing the *zuhr* prayer on Friday to recite the two *surahs* (in two *ruk'ahs*) in a loud voice. It is preferable to perform it in al- Masjid al- A'zam. If the leader (*imam*) of *jumu'ah* prayer be incompetent to be followed, the *ma'mum* will be permitted to pray ahead of him. And it is preferable for him to perform two *rak'ahs* with the *imam* and complete them after the *imam's* reciting the *taslim* of *zuhr* prayer.

## Section Two: The 'Id Prayers

Its Conditions:

It is *wajib* for every individual if the conditions mentioned in Friday prayer are fulfilled, with presence of the (Infallible) Imam (A).

It is *wajib* when performed in group (*jama'ah*), and no one is permitted to linger behind except with a legal excuse, when he can perform it individually as a *nadb* (recommended). In the absence of conditions necessary for its *wujub*, one can perform it as *mustahabb* either singly or in *jama'ah*.

Its time is from sunrise until the sun's crossing the meridian. If it is missed, no *qada'* is required.

The mode of its performance is: to say *takbirat al- ihram*, followed by reciting *al- Fatihah* with another *surah*, which is preferable to be *al- A'la*. Then five *takbirahs* will be said with *qunut* after each of them,<sup>3</sup> then *ruku'* and *sujud* will follow. After performing two *sajdahs*, he stands up without saying *takbir*, when he recites *Surat al- Fatihah* with another *surah*, which is preferable to be *al- Ghashiyah*. Then he says four *takbirahs* with four *qunuts*<sup>4</sup> following them. This will be followed by a fifth *takbirah*. Then the

<sup>1</sup> That is as soon as he ascends the *minbar* (pulpit), when it be *wajib* to respond to his greeting, collectively.

<sup>2</sup> That is: in that case he is not required to change the *surah*. It is preferable to reach half the *surah*. (See *al- Madarik*, vol. IV, pp.88,89).

<sup>3</sup> That means, five *qunuts* be recited after five *takbirs*, with five *qira'ahs*.

<sup>4</sup> It has excessiveness, since if the *takbirs* be four, four *qunuts* between them will not be possible but three. It is more proper to say: he has to say a *qunut* after every *takbir*. (*al- Masalik*, vol. I, p.251).



*ruku'* will be performed and *salat* will be completed.

Thus, the total extra (*takbirs*) than the ordinary will be nine: five in the first *rak'ah* and four in the second, other than *takbirat al- ihram* and two *takbirs* for two *ruku's*.

### Sunan of Salat al- 'Id:

The *sunan* of 'Id prayer are: performing it outdoors in the desert, except in Mecca,<sup>1</sup> making *sujud* on the ground, the *mu'adhdhin's* saying "*al- salat*" thrice, as no *adhan* (prescribed form) is there but for the five daily prayers. Also the *imam* has to go out bare-footed, walking with sobriety in demeanour and reverence (*waqar*), remembering God the Glorious, eating something before going out for *salat* of 'Id al- Fitr, and after coming back from *Adha* prayer (eating) from his sacrifice animal, with saying *takbirahs* in *Fitr* prayer after four *salats* the first of which being the *maghrib* on night of 'Id al- Fitr and the last one being *salat al- 'id*; and in the 'Id al- Adha after 15 prayers, the first of which being the *zuhr* prayer of *yawm al- nahr* (slaughter) for one being in Mina.

In other regions he is required to say after ten prayers:

*Allahu akbar* twice (and there is disagreement regarding the third one),

*La ilaha illallah wallahu akbar*,

*Al- hamdu lillahi 'ala ma hadana*,

*Wa lahu sh-shukru 'ala ma awlana*.

With this addition in 'Id al- Adha:

*Wa razaqana min bahimatil - an'am*.

It is *makruh* to go out holding a weapon,<sup>2</sup> and to perform any *naflah* prayer before or after the *salat*, except when one being in Masjid al- Nabi(S) in al- Madinah, where he has to perform two *rak'ahs* before going out.

### Five Issues:

1. There is disagreement regarding additional *takbir*, and its being *mustahabb* is more correct. And if its *wujub* is supposed, does *qunut* become *wajib*?

Its being not *wajib* is more preponderant. And if it be *wajib*, is certain

<sup>1</sup> Where he can perform the *salat* in al- Masjid al- Haram.

<sup>2</sup> Because this contradicts the submission and sobriety, and also the saying of Amir al- Mu'minin (A): "The Prophet(S) forbade from going out in the two 'Ids holding a weapon, except when there being an apparent enemy. (See *al- Madarik*, vol. IV, p.117).

wording assigned for it? No definite wording is assigned obligatorily.

2. When 'Id prayer coincides with Friday prayer, one who attends the 'Id prayer has an option to attend the *Jumu'ah* or not, and the *imam* (of 'Id) is required to inform them (worshippers) of this in his sermon. Some legists said: This permission (*tarkhis*) is distinguished for one being far away from his hometown - like people of suburbs -for averting the hardship of returning, the view which is more correct as per verdicts of legists.

3. Two sermons are to be delivered after the 'Id prayer, and delivering them before the *salat* is a heresy (*bid'ah*). Listening to the sermons is not *wajib* but *mustahabb*.

4. The *minbar* (pulpit) is not required to be shifted from the mosque, but it is *mustahabb* to make a *minbar* - like of mud.

5. When sun rises, travel will be prohibited until after performing the 'Id prayer, if he be one upon whom this *salat* has become *wajib* (as per the texts). There is disagreement regarding his going out after the dawn, and before the sun's rising, and permitting the travel is preponderant.

### Section Three: The Prayer of the Eclipses

#### Its Cause, Mode of Performance and Rule

It becomes *wajib* during solar-and lunar-eclipse: *kusuf*<sup>1</sup> of the sun and *khusuf*<sup>2</sup> of the moon, and earthquake. Does it become *wajib* in other cases like darkening wind and other sky frights? Some legists said: Yes (it becomes *wajib*), the view which is more preponderant according to reported traditions. Some others said: No, but it is *mustahabb*, while others said: it is *wajib* only on the occurrence of unsettling celestial phenomena such as the sky's darkening or strong fearsome winds.<sup>3</sup>

Its time: during eclipse, it begins with its beginning and ends with its vanishing, but if time (of *kusuf*) be not enough for performing it, it will not

<sup>1</sup> The sun's *kusuf* means; it disappears and passes from view during day time, due to interception of the moon between it and the earth. (*al- Munjid fi al- lughah*, p.685).

<sup>2</sup> *Khasafa* means: its light vanishes and disappears. (*al- Munjid fi al- lughah*, p.178).

<sup>3</sup> Zurarah and Muhammad ibn Muslim are reported to have said: We said to Abu Ja'far (A): "Shall we pray for these (fearsome) winds and sky's darkenings that occur sometimes?" He said: "For all sky's fearsome phenomena, such as darkening or stormy wind, or panic, you should perform *salat al- kusuf* till they calm down. (*Wasa'il al- Shi'ah*, vol. V, p.144).

be *wajib*.<sup>1</sup> And so also is the rule in incidence of strong winds and other fearsome phenomena, if we believed in its (*salat*) *wujub*. It (*salat*) becomes *wajib* during earthquake though it does not last for long time, and one is required to offer it as *ada'* even when it has become quiet. For that who has no knowledge of the eclipse till time of *salat* passes away, its *qada'* will not be *wajib*, except when all the disc of the sun disappears completely. In other cases other than the *kusuf* no *qada'* is required. In case one is aware of the any unsettling phenomenon, but does not pray out of negligence or oblivion, offering of the *salat* as *qada'* for all the phenomena will become *wajib* on him.

Its mode of performance is that after *takbirat al- ihram*, *al- Fatihah* and another *surah* are recited, followed by *ruku'*. Upon rising up from the *ruku'*, *al- Fatihah* and the rest of the second *surah* will be recited if he has not completed it, from the part he stopped at. And if he has completed it, a complete *surah* will be recited after the *Fatihah*. This will continue until five *ruku's* are performed, and they will be followed by two *sajdahs*. On standing up for the second *rak'ah*, *al- Fatihah* and another *surah* will be recited, followed by a *ruku'* with the same order. Then will follow two *sajdahs*, *tashahhud* and *taslim*.

It is *mustahabb* to offer the *salat* in *jama'ah*, prolonging the *salat* to the extent of duration of *kusuf*, and to repeat the *salat* if he finishes it before the vanishing of *kusuf*. Also, it is *mustahabb* to make the *ruku'* as much as the time of his *qira'ah*, to recite long *surahs* when space of time be sufficient, to say the *takbir* with every rising up from every *ruku'*, except in the fifth and tenth *ruku's*, when he has to say: "*Samai 'allahu liman hamidah*", and to make five *qunuts*.

### Its Rulings:

1. When the eclipse occurs simultaneously with the time of a present *faridah* (obligatory *salat*), one has an option between performing whichever he wills, unless the time be too short to offer the *faridah*, when he will be required to offer it first. Some other legists said: Offering the *faridah* first is absolutely<sup>2</sup> preferable.

The first view is more correct:

2. If the *kusuf* coincides with the time of *salat al- layl* (night prayer), the prayer of eclipse will be performed first, even if this entails missing the

<sup>1</sup> That is: if duration of *kusuf* (eclipse) be not enough for performing its *salat*, it will not be *wajib* to offer it.

<sup>2</sup> Irrespective of whether its time becomes short or not.

*naflah* (night prayer). Then the *naflah* will be performed as *qada'*.

3. It is permissible to offer the eclipse prayer while riding on the mount and walking. Other legists said: This is not permissible except with an excuse, the view which is more correct as per the verdicts.

#### Section Four: Salat Over the Deceased

It has several divisions:

##### 1. Upon whom to pray:

It is *wajib* to perform *salat* over the Muslim who proclaimed the two witnesses, and the child of six years (upwards) on whom the rule of Islam is applied,<sup>1</sup> with no difference between male and female, or freeman and slave.

It is *mustahabb* to perform the *salat* over one born alive of less than this age. But no *salat* is required over a foetus (*suqt*),<sup>2</sup> even if it is born alive.

##### 2. Conditions of the *musalli*:

Precedence in *salat* over the deceased is given first to the one more entitled to his inheritance. The father is given priority over the son, and the son over the grandfather, the brother and uncle. The full brother - from the same father and mother - comes then in the category before all others not related to one of them (father and mother). The husband is given precedence in performing the *salat* over his wife over all other male relatives even if they be of stronger degree of agnation. When there be many *awliya'*, precedence will be given to the male over female, and to freeman over the slave. It is necessary for the *wali* to possess all the conditions and prerequisites of leadership (*imamah*), otherwise another one will be given precedence. If equally qualified men gather for *salat*, the person most learned in its rules will be preferred for leading it, followed by one who has the best *qira'ah*, then the eldest, and then one having the most comely face. No one has right to lead the *salat* but with the permission of the *wali*, irrespective of whether he possesses all requirements of *imamah* or not, with having the condition of *taklif* (maturity).

The original *imam* (usual leader) has more right to be preferred to lead

<sup>1</sup> The rule of Islam is established through its begetting from Muslim father and mother, or its being a foundling (*malqut*) in a house of Islam, or found dead in it, or in Dar al- Kufr (un- Islamic region) in which there be a Muslim individual competent to procreation and production. (*al- Masalik*, vol. I, p.262).

<sup>2</sup> The *suqt* is the foetus that is miscarried and falls out of mother's womb before being perfectly formed. Some being perfect which completed four months in the womb, and some imperfect which have not completed four months. (*Majma' al- bahrayn*, vol. IV, pp.253-254).

the *salat*. The Hashimi (one belonging to Tribe of Banu Hashim) is given precedence over all others if the *wali* has given him precedence, when having all qualifications of *imamah*.

A woman can act as an *imam* for women, but it is *makruh* for her to come forward ahead of them, and she has to stand with them in their same row, and so also is the rule in regard of naked men.<sup>1</sup> In other cases, the *imam* has to stand ahead of the row of worshippers, even if only one person was praying behind him. When women follow a man as their *imam* they should stand behind him, and in case men are following him they (women) are required to stand behind them. If there be a menstruant woman among them, she is required to single herself out of their row recommendably.

### 3. Manner of the Salat:

Five *takbirs* are obligatory, but reciting a supplication between them is not required. Even if we suppose it to be *wajib*, we cannot obligate a specific wording definitely.

The best wording is that one reported by Muhammad ibn Muhajir from his mother - Umm Salamah - from 'Abu Abd Allah (A) who said: "When performing a *salat* over a deceased, the Messenger of Allah(S) used to say 5 *takbirs*, recite the *shahadatayn* after the first *takbir*, *salawat* on the prophets and supplication after the second, invocation for the faithful after the third, supplication for the deceased after the fourth, and end with the fifth without reciting anything after it.

If the deceased be a hypocrite, the *musalli* should suffice with four *takbirs*, leaving the place after the fourth.

It is *wajib* (for the *musalli*) to make *niyyah*, face the *qiblah*, with making the head of the body to his right.

*Taharah* is not a condition for this *salat* and it is not permissible for the *musalli* to stand far behind the dead body. The *salat* over the dead is valid only after performing *ghusl* (bathing the dead) and *takfin* (providing with *kafan*). If the dead has no *kafan* (shroud), it is sufficient to place it in the grave, cover its privy parts, and the *salat* will be performed after that.

The *sunan* of the *salat* are: the *imam* stands at the middle of the male body and breast of female. If the dead be both a man and a woman, the man (dead body) should be laid in front of the *imam*, and the woman behind him, with her chest adjacent to the middle part (waist) of the dead body of the

<sup>1</sup> That means: And so also is the rule when naked men follow a naked *imam*, as it is *makruh* for the *imam* to stand ahead of the row of worshippers, but he is required to stand in their row. (See: *Jawahir al- kalam*, vol. XII, p.25).

man, so as to let the *imam* stand in the place of *fadilah*. If the dead be a child, it is *sunnah* to place it behind the woman. Also, one performing the *salat* should be purified, taking off his slippers, raising his hands in the first *takbir* altogether with other *musallin*, and in other *takbirs* according to some narrations. After the fourth *takbir* it is *mustahabb* to recite a supplication for the deceased if he be a believer, and against him (cursing) if he be a hypocrite, and invocation for *mustad'afun* (weakened) if he be so. When a body is found and it is not known whether it belongs to a Muslim or a non-Muslim, the *musalli* will ask God to gather him with that whom he used to follow; and if it be for a baby, he will beg Allah to make it of good benefit for its father and pre-emptor for him. When finishing the *salat*, the *musalli* will stand in his place till the *janazah* is raised. The *salat* should be performed in usual locales, and it is permissible to offer it in a mosque. It is *makruh* to perform *salat* twice.

#### Five issues:

1. If a person joins the *salat* (*al-mayyit*) in the middle, he can continue to perform it with the *imam*, and when finishing the *salat* he can complete the parts left of the *salat* in their sequence. In case the dead body be raised or buried, he may complete the missing parts even if it be on the grave.
2. If a *musalli* says one *takbirah* or more before the *imam*, it is *mustahabb* for him to repeat it with the *imam*.
3. It is permissible to perform the *salat* on the grave within one day and one night for that who has not performed *salat* over the dead, and he will never be required to pray after that.
4. The *salat* over the deceased can be performed at any time, except when the time for a due *faridah* becomes too short to offer it.<sup>1</sup> But if there be fear on the dead - with presence of enough space of time - the *salat* over the deceased will be performed before other prayers.
5. If after one performing a part of the *salat* over a dead body another dead body is brought, one has an option between restarting the *salat* over both of them, or completing the first *salat* over the first dead and repeating another one over the second.

---

<sup>1</sup> That is: when time be too short to complete the *faridah* (daily prayer), then it is *wajib* to offer the *faridah* first as time is specified for it. (*Al-Tawdih*, vol. 1, p.94).

### Section Five: The Recommended<sup>1</sup> Prayers

They are of two parts:

- The daily supererogatory prayers, to which I referred before.
- And other prayers which are divided into two kinds:

**First:** Those which are not specified by time, and they are so many, among which I refer to the following:

1) prayer for Rain:

It is a recommended *salat* and its time is due when the rivers go deep (into the ground) and rains become scanty.

Its mode of performance is similar to the *'Id* prayer, that it comprises two *rak'ahs*, but it is *mustahabb* after every *takbirah* to recite *qunut* imploring the mercy and blessing of God and seeking rainfall, with reciting whatever feasible of supplications. Otherwise, he can recite the invocations reported from Ahl al- Bayt (Household of the Prophet), peace be upon them.

The *masnun (sunnah)* acts of this *salat* are thus: It should be preceded by three days of fasting, and the people go forth on the third day which is *mustahabb* to be the Monday. If this be not possible it can be the Friday. It is *sunnah* that people go forth to the desert, bare-footed, in a humble and supplicating manner, accompanied by their women and children, their elderly men and women. It is not to be performed in the mosque, and the *dhimmi* should not be expelled out of the gathering, and also the children must be separated from their mothers. When the *imam* finishes the *salat*, it is *mustahabb* for him to invert his cloak,<sup>2</sup> face the *qiblah*, say a hundred *takbirs* loudly, a hundred *tasbihs* to his right, *tahlil* a hundred times to the left, addressing the people, praising God a hundred times, with people following him in all these. Then he has to deliver a sermon after the *salat*, with imploring God as much as he can. If rain is delayed even after performing the *salat*, it is *mustahabb* to repeat it till God's mercy be showered over them.

The occasions for this *salat* are scanty rainfall and drying up of springs and wells.

2) *Salat al- Istikharah*:

3) *Salat al- Hajah* (asking God to achieve some need).

4) *Salat al- Shukr* (as gratitude to God for fulfilling some demand).

<sup>1</sup> They are the prayers to which the legislator invited and attracted, i.e. the *mandubat*. (See *Jawahir al- kalam*, vol. XII, p.126).

<sup>2</sup> By turning its right side to the left and vice versa. (*al- Rawdah*, vol. I, p.691).

5) *Salat al- Ziyarah*<sup>1</sup> (performed when making pilgrimage to shrines of Imams (A) and their sons).

**Second:** Those prayers specified in certain times:

They include five prayers:

**1) Nafilah of Month of Ramadan:**

According to narrations, it is *mustahabb* to perform one thousand *rak'ahs* during Month of Ramadan, in addition to the ordinary daily *nawafil*.

They are: twenty *rak'ahs* in every night, eight after the *maghrib*, twelve after the '*isha*', as per the verdicts. Also, in every night of the last ten days of the month: thirty in the aforementioned order,<sup>2</sup> and in the three odd (*ifrad*) nights,<sup>3</sup> a hundred in each night.

According to another narra, one has to perform the hundred *rak'ahs* in the odd (*ifrad*) nights only, which means his being required still to offer eighty *rak'ahs*, ten in every Friday night, with prayer of Ali and Fatimah and Ja'far (peace be upon them).

In the last Friday, twenty *rak'ahs* as *salat* of al- Imam Ali (A), and twenty others after the *isha*' of that Friday as *salat* of Fatimah (A) are to be performed.

a. Prayer of Amir al- Mu'minin (A) is thus: four *rak'ahs* with two *tashahhuds* and two *taslims*, reciting in every *rak'ah* *Surat al- Fatihah* once and *al- Tawhid* fifty times.

b. Prayer of Fatimah (peace be upon her):

Two *rak'ahs*, reciting in the first *rak'ah* *al- Fatihah* once and *al- Qadr* a hundred times. In the second *rak'ah* *al- Fatihah* once and *al- Tawhid* a hundred times.

c. Prayer of Ja'far: It is four *rak'ahs* with two *tashahhuds* and two *taslims*, by reciting *al- Fatihah* once in the first *rak'ah* and *Surat al- Zalzalah* once in the second. Then the *musalli* says "*Subhanallah wal- hamdu lillah*

<sup>1</sup> No problem is there in legitimacy of all these prayers, as per the (Qur'anic) texts and legists' verdicts. Also no problem in legality of consulting God *Subhanah*, in order to decide one's procedure (*istikharah*) ... etc. (*al- Tawdih*, vol. I, p.95).

<sup>2</sup> To perform eight *rak'ahs* after the *maghrib*, and other *rak'ahs* after the '*isha*'. (*al- Masalik*, vol. I, p.277).

<sup>3</sup> They are: the nineteenth, twenty - first and twenty - third nights.

*Ifrad* is plural of *fard*, which means: unique and unparalleled; as these three nights have no parallel throughout the whole year, or in that month. (*al- Rawdah*, vol. I, p.694 - as stated in the text and margin).



*wa- la ilaha illallah wallahu akbar*” fifteen times, followed by *ruku‘* and saying the *tasbih* ten times after it, and after rising his head, in his *sujud*, after rising up from it, in the second *sujud* and again after rising up from it. The total result will be saying this *tasbih* seventy - five times in every *rak‘ah*.

The *surahs* to be recited in other *rak‘ahs* are the following: *al- ‘Adiyat* in the second; *al- Fath* in the third, and *al- Ikhlas* in the fourth.

It is *mustahabb* to recite at the end of the last *sajdah* its specific supplication.

**2) Prayer of Fitr night:**

It is two *rak'ahs*, by reciting *al- Fatihah* once and *al- Ikhlas* a thousand times in the first *rak'ah*, and *al- Fatihah* once and *al- Ikhlas* once in the second.

**3) Prayer of Day of al- Ghadir:<sup>1</sup>**

It is the eighteenth of Dhu al- Hijjah, half an hour before the sun crosses the meridian.

**4) Prayer of night of half of Sha'ban.****5) Prayer of night and day of *mab'ath* (mission of the Prophet).**

The details and what is recited in these prayers are mentioned in books of *'ibadat*.<sup>2</sup>

**Conclusion**

It is permissible to perform all the supererogatory prayers sitting, but standing is preferable. It is preferable too to perform two *rak'ahs* sitting, in lieu of a single *rak'ah* (standing).

**Fourth Rukn: The Tawabi' (Subsidiary Issues)****Chapter One: Error and Doubt During Salat**

It is either willful, or *sahw* (by mistake), or doubt (*shakk*).

**A) The willful violation:**

A willful violation of any *wajib* act in *salat* renders it invalid, whether the violated act be a *shart*,<sup>3</sup> or part<sup>4</sup> of the *salat*, or manner (mode),<sup>5</sup> or that which to be given up.<sup>6</sup> And so also is the rule when doing something whose leaving off is *wajib*, or neglecting an obligatory act, out of ignorance of its

<sup>1</sup> Ghadir Khumm: is the place where the Messenger of Allah(S) appointed Ali (A) as his successor (*khalifah*), after completing Farewell Pilgrimage (*Hijjat al- Wada'*), on the eighteenth of Dhu al- Hijjah.

<sup>2</sup> They are called nowadays *Kutub al- Ad'iyah* (books of prayers), like *Misbah al- mutahajjid* of al- Shaykh al- Tusi, and *Mafatih al- jinan* of al- Shaykh Abbas al- Qummi.

<sup>3</sup> Like ablution and covering (*tasattur*).

<sup>4</sup> Such as *qira'ah* and *sujud*. (*Jawahir al- kalam*, vol. XII, p.228).

<sup>5</sup> Like *jahr* (loudness) and *ikhfat* (low voice).

<sup>6</sup> Like speech, turning the face (to the left or right) and laughing loudly (giggling).

*wujub*,<sup>1</sup> except the loudness and inaudibility (*ikhfat*) in their due places. If one be ignorant of the usurpation of the clothing in which he performs the *salat*, or the place of *salat*, or *najasah* of the clothing or the body, or locale of *sujud*, he is not required to repeat the *salat*.

### Subsidiary Issues

1. When one performs ablution with usurped water, having knowledge of its being *maghsub*, and performs prayer with it, he will be required to restart the *taharah* (ablution) and prayer. But if he be ignorant of its usurpation, he is not required to repeat any of them.

2. If one be unaware of the skin's being of a dead animal (*maytah*), but comes to know of that after performing prayer in it, he will not be required to repeat the *salat* if it be tanned by a Muslim, or be purchased from Muslims' market. But in case he takes it from a non - Muslim, or finds it thrown down on the ground, he will be required to repeat the *salat*.

3. If one performs prayer in clothes not knowing of their being of the kind in which *salat* is valid, he will be required to repeat the *salat*.

### B) Error by Mistake (*sahw*):

If one makes an error by mistake (*sahw*) in a *rukn* of *salat*, such as in the *qiyam* till he makes *niyyah*, or in the *niyyah* till saying *takbirat al- ihram*, or in the *takbir* till *qira'ah*, or in the *ruku'* till making *sajdah*, or in the *sajdah* till performing the other *ruku'*, he will be required to restart anew.

Other legists observe: He is required to omit the addition and perform the missed part, with which the *salat* will be valid. Some others said: This rule is applied only to the last two *rak'ahs*, and if this occurs while he be in the first two *rak'ahs*, he will be required to restart the *salat* anew. The first view is more correct as per the verdicts (i.e. the *salat's* being *batil* is more correct).

And so also is the rule in the event that he performs an additional *rak'ah*, or *ruku'*, or two *sajdahs*, when he will be required to repeat the *salat*, whether this be by mistake (*sahw*) or intentionally.

Some legists said: If one doubts performing the *ruku'* and performs it then, remembering that he has already performed it, he can continue the *salat*, as reported by al- Shaykh al- Tusi and 'Alam al- Huda (al- Sharif al-

<sup>1</sup> It is stated before that omitting any *wajib* act in *salat* intentionally invalidates the *salat*. He has mentioned the rule for omitting any act out of ignorance; so the two issues are united in locale and different in condition. (al- Masalik, vol. I, p.282).

Murtada). This being *batil* is more preponderant.<sup>1</sup>

When a *rak'ah* is omitted: if he remembers it before doing any invalidating act, he will be required to perform it and complete the *salat*, even if it be a two-*rak'ah* prayer. But if he remembers after doing an invalidating act-irrespective of its being willful or by mistake - he will be required to start the *salat* again from the beginning.

If the act done be one invalidating the *salat* willfully, not by mistake, such as speech, there is disagreement among the legists; and the *salat's* being valid is more correct. And so also when forgetting the *taslim* and remembering it then (before doing an act invalidating the *salat*, when he is required to complete the *salat* even if it be a two-*rak'ah* one).

If the omission occurs to two *sajdahs*, not knowing whether they belong to two *rak'ahs* or one *rak'ah*, the precaution will be preponderant.<sup>2</sup>

If they be of two *rak'ahs* not knowing of which of them? Some legists say: He is required to repeat the *salat*, since the first two *rak'ahs* would not be safe from violation (error) certainly. And the most correct opinion says that no repetition is required, but he should atone by *sujud al- sahw*.

### Violations of Wajib Acts:

Some of these errors are of no effect and the *salat* can be continued without any atonement, and some can be atoned for without *sujud (sajdata al- sahw)*; and some can be atoned for by *sajdata al- sahw*.

The first group includes: one who forgets *qira'ah*, or the *jahr* (loudness), or *ikhfat* in its due place, or reciting of *Surat al- Fatihah*, or the second *surah* till starting the *ruku'*, or the *tasbih* of *ruku'*, or staying motionless in it till rising his head, or rising of the head from *ruku'*, or staying motionless till *sujud*, or *tasbih* of *sujud*, or making the *sujud* on the seven parts, or staying motionless in it till the second *sujud*, or the *tasbih* of the second *sujud*, or making *sujud* on the seven parts, or staying motionless in it till rising his head from it.

The second group consists of: that who forgets the recital of *Surat al-*

<sup>1</sup> There is pun here, as by invalidity (*butlan*) he may mean invalidity of *salat*, and may intend by it the view of al- Shaykh al- Tusi and of al- Sharif al- Murtada. He may also intend both of them.

<sup>2</sup> That is to act as if they be of two *rak'ahs*, repeating the *salat* then, so as the repetition be not made before the forgotten part, due to absence of any proof preponderating any of the two options, where there may be doubt in obedience. Then certainty should be acquired of exemption. (*al- Tawdih*, vol. I, p.98).

*Fatihah* till reciting the subsequent *surah*, is required to recite *al- Fatihah* anew and a *surah*. And so also is one who forgets the *ruku'*, and remembers it before having entered the *sujud*, when he will be required to stand, perform the *ruku'* and the *sujud* then. And so is the case with that who forgets the two *sajdahs*, or one of them, or the *tashahhud*, remembering that before starting the *ruku'*, when he will be required to return and perform the missing part, standing and reciting the necessary *qira'ah* or *tasbih*, performing then the *ruku'*. The two *sajdahs* of *sahw* are not required in these two places, while some legists believe in their *wujub*. The first view is more correct. If he forgets benediction on the Prophet and his Family (A) till making the *taslim*, he can recite them as *qada'* after *taslim*.

The third: one who forgets a *sajdah* or *tashahhud*, not remembering till having gone into the *ruku'*, is required to perform them or one of them as *qada'*, followed by two *sajdahs* of *sahw*.

### **Doubt in Number of Rak'ahs:**

1<sup>st</sup>: If the doubt concerning the number of *rak'ahs* performed occurs in a two-*rak'ah salat*, such as morning prayer, *salat* of a traveller, *salat al-Idayn* when being *wajib*, eclipse pra(*kusuf*), or in *maghrib* prayer, that *salat* will become invalid and it will be *wajib* to start it again from the beginning.

2<sup>nd</sup>: When the doubt occurs in any of acts of *salat*: if he remembers it in its due time (before starting the performance of the subsequent act), it is *wajib* to rectify it (do it) and complete the *salat* then. But if he starts the subsequent act, he can go on in his *salat* without heeding the doubt, irrespective of whether this act be an essential part (*ruk'n*) or not, and whether he be in the first two *rak'ahs* or the last ones, as per the most correct opinion.

### **Subsidiary Issues**

When one be certain of making the *niyyah* of *salat*, but doubts whether his intention be specified for the *zuhr* or '*asr* prayer, or a *wajib* or supererogatory *salat*, he will be required to say the *niyyah* again with specification.

3<sup>rd</sup>: When the doubt concerning the number of *rak'ahs* performed occurs in a four - *rak'ah* prayer: if it be in the first two *rak'ahs*, it will be *batil* and it will be *wajib* to restart it anew. And so also is the rule if he doubts the number of *rak'ahs* performed.

But if one be certain of performing the first two *rak'ahs*, doubting the

*rak'ahs* subsequent to them, it will be *wajib* on him to perform *salat al-ihhtiyat*.

There are four issues<sup>1</sup> in this connection:

1) If a doubt arises after the completion of the two *sajdahs* of the second *rak'ah* as to whether it is the second or the third *rak'ah*, he will take the greater number of *rak'ahs* as his basis and complete the *salat* by reciting the *tashahhud* and *taslim*. He will then perform as *ihhtiyat* (caution) a single *rak'ah* while standing or two *rak'ahs* sitting.

2) If the doubt concerns his being in the third or fourth *rak'ah*, he will consider it the fourth *rak'ah* and complete the *salat* (by *tashahhud* and *taslim*), and follow it up with a single *rak'ah* standing or two *rak'ahs* sitting by way of caution.

3) If the doubt concerns his being in the second or fourth *rak'ah*, he will consider it the fourth *rak'ah*. He will then offer two *rak'ahs* standing, after saying *tashahhud* and *taslim*.

4) If there is a doubt regarding its being second, third or fourth *rak'ah*, he will assume it to be the fourth *rak'ah*, and offer following *tashahhud* and *taslim* two *rak'ahs* standing and two *rak'ahs* sitting.

Some points have to be mentioned here:

a. If he presupposes one of two sides of locale of doubt, he will take his presupposition as the base, considering it to be as certainty.

b. Is it necessary to recite *al-Fatihah* in *salat al-ihhtiyat*, or he has an option between it and *tasbiḥ*? Some legists believe in the first opinion since it is a single prayer and no *salat* is accepted but with it. Some others hold the second view (option of *tasbiḥ*), as it takes the place of a third or fourth *rak'ah*, and by it the option is established as it is established for the replaced *rak'ah*. The first view is more correct.

c. When doing any invalidating act before *salat al-ihhtiyat*: some legists said: it will invalidate the *salat* and make *salat al-ihhtiyat* unnecessary, as it is liable to be complementary,<sup>2</sup> while the *hadath* prevents this. Other legists said: *salat al-ihhtiyat* does not become invalid because it is a single *salat* (*munfaridah*), and its being a substitute never obligates equalizing it with the original (replaced) *salat* in all the rules.

d. If there occurs a lapse in the *sujud al-sahw*, it requires no

<sup>1</sup> That means the issues with which the affliction becomes general. Otherwise, the forms of doubt are more in number than all these. (*al-Madarik*, vol. IV, p.254).

<sup>2</sup> That is because *salat al-ihhtiyat* is subject to be a complement to the *salat* in which he doubted.

rectification and he can continue his *salat*. And so also is the rule when the *ma'mum* makes a flaw by mistake, as he should depend on the *imam*. No attention will be paid to the doubt of the *imam*, if the *ma'mum* is to correct him by signaling his mistake. The mistake (*sahw*) of a person committing excessive mistakes is considered as no mistake. The word 'excessive mistakes' is used in places usually known to be so. Some other legists said: It is used for one making mistakes thrice in one *faridah*, and some said: for one making one mistake in three *faridahs*. The first view is preponderant.

e. One who doubts the number of *rak'ahs* of a supererogatory prayer, will take the greater number as the base, but it is preferable to take the least number as the base.

### Conclusion: Sujud al- Sahw

It is ordained for the locales we mentioned before,<sup>1</sup> for one speaking by mistake, or saying *taslim* in other than its proper place, or for one who has a doubt regarding its being the fourth or fifth *rak'ah*. Some legists said: *Sujud al- sahw* is ordained for every omission and addition, except for that one which pertains to *arkan* of *salat* as it invalidates the *salat*.

It is *wajib* for the *ma'mum* to perform this *sujud* with the *imam*, in case he makes the error entailing *sujud al- sahw*. If any one of them commits that mistake alone, he will be required to apply the rule on himself.

Time of performing this *sujud* is due after *taslim* for every omission and addition, and some legists said: it is to be performed before *taslim*, and some believe in distinction.<sup>2</sup>

Its mode of performance is that: making *niyyah*, followed by *takbir* (*mustahabb*) and performing two *sajdahs*, rising his head then and making a light *tashahhud* and *taslim*. Is *dhikr wajib* in this *sujud*? There is disagreement in this regard.<sup>3</sup> And if it be *wajib* are there definite words for it? The answer is in negative as per the most correct view. If one neglects it intentionally, this will not render the *salat* invalid, but he will be required to perform it even after a long time.

<sup>1</sup> The text of which begins thus: "whoever forgets a *sajdah* or the *tashahhud*, not remembering till...".

<sup>2</sup> Distinction between addition and omission, that is the *sujud al- sahw* has to be performed after the *taslim* for addition and before the *taslim* for omission.

<sup>3</sup> It is emphatically recommended to recite a certain *dhikr* in each of *sajdata al- sahw*, whose form is thus: *Bismillah wa billah, as- salamu alayka ayyuhanabi wa rahmatullahi wa barakatuh*. (*al- Minhaj*, vol. I, p.157).

## Chapter Two: Salat al- Qada'

Causes of missing the *salat*, the *qada'* and its relevant issues.

### The Causes of Omission:

Some of them need no *qada'*, such as: immaturity, insanity, swoon (as per verdicts of legists), *hayd* (menses), *nifas*, original *kufir*<sup>1</sup> and inability to perform the acts that make the *salat* valid like ablution or *ghusl* (ritual bathing) or *tayammum*.

Some legists observed: he is required to perform it *qada* when the hindrance is removed. The first view is preponderant. In other than these cases, it is *wajib* to perform *qada'* of every obligatory *salat* omitted either intentionally or an account of forgetfulness - except the Friday and two '*Ids* prayers - and sleep even if containing all the time (of *faridah*). Also *qada'* is *wajib* for anyone who has consumed an intoxicant, like wine or soporific, since it causes loss of sanity most often. One eating harmful food making him go into swoon, is not required to perform the *qada'* of an omitted *salat*. If a Muslim apostatizes or a *kafir* (infidel) embraces Islam and then becomes *kafir* (apostatizes), he will have to perform *qada'* for the prayers left during period of his apostasy.

### Salat al- qada':

It is *wajib* to perform *qada'* of every left *salat* if it be obligatory. And it is *mustahabb* when it be an emphatically recommended *nafileh*. If *salat* is left due to a disease not causing the loss of sanity, the recommendation will not be emphasized. It is *mustahabb* for one to pay out a *mudd* as *sadaqah* (alms) for every two *rak'ahs* (unperformed). If this be not possible he can give out a *mudd* for every day (five prayers left).

The *qada'* of a missed *salat* should be performed in its similar appointed time (time of *dhikr*) unless this causes shortage in time of a present *faridah*. The sequence should be maintained in the performance of the prayers missed. Thus the *qada'* of one missed earlier will be performed before the *qada'* of one missed later. Hence the *zuhr* will be offered before the '*asr*, the '*asr* before the *maghrib* and the *maghrib* before the '*isha*', whether this be for a present day or *salats* of a missed day. If he misses some prayers they will be not offered before the present (due) ones. Some legists said: they can be offered before them. The first view is more correct.

<sup>1</sup> He avoided with this the opposition with apostasy, as it does not drop the *qada'*. (*al- Rawdah*, vol. I, p.729).



If one be required to offer a *salat* but he forgets it and performs the *salat* whose time is due (presently), he will not be required to repeat it.<sup>1</sup> But if he remembers it during the *salat* he will be required to rectify and change to the former one. If he starts the present obligatory *salat* with remembering (the left one), he will be required to repeat. If he starts a *naflah*, remembering during it that he has not offered a *faridah*, he will be required to restart the *faridah*.

If a person with an outstanding complete *salat* intends to perform it during journey, he should perform it completely, and one performing a *qasr* prayer as *qada'* at home will perform it *qasr*.

### Relevant Issues:

1. If a person misses any *faridah* of daily prayers, he will be required to perform the *qada'* of the morning, *maghrib* and four *rak'ahs* for another *salat* left. Some legists hold the view: He should perform the *qada'* of all five (daily) prayers. The first view is more correct as per the reported narrations.

If number of prayers left be unknown to him, he will be required to perform prayer as *qada'* till he becomes nearly assured that he has fulfilled (his duty).

2. If he forgets a certain prayer, not knowing how many times, he has to perform as many as he can of that *salat* till fulfilment becomes mostly predominant. But if he misses several prayers, unknowing their number and which ones, he will be required to offer prayers of several days till he be assured that the obligatory prayers have been included within them.

3. One who leaves the *salat* with the intention of its being lawful to leave it, should be killed if he was born in a Muslim family. Or he should be made to repent and turn from sin, if he has embraced Islam after being infidel. If he refuses repentance he should be killed.<sup>2</sup> In case he claims to have probable suspicion, he will be exempted from punishment. But if he be not deeming ignorance of *salat* as lawful, he should be rebuked and censured (*ta'zir*). If he returns to this act (again) he should be censured. If he repeats it

<sup>1</sup> There is no disagreement regarding the validity of the present (due) *faridah* if performed before the missing one, out of forgetfulness. When he remembers during the *salat* he can shift to the former *salat*, obligatorily in the view of those believing in advancing the missing *salat*, and *istihaban* in the view of those believing in extension (prolongation).

<sup>2</sup> In many *sahih* reports it is stated: One leaving out the *salat* (deliberately) is verily a *kafir* (infidel).

The rule on leaving out the *salat* is applied on leaving a necessary condition or part like *taharah* (purity) and *ruku'* (*al- Madarik*, vol. IV, p.308).

for a third time he should be killed. Some legists said: he should be killed in the fourth time, the view which is nearer to precaution.

### Chapter Three: Salat al- Jama'ah<sup>1</sup>

It has several sections:

First: *Jama'ah* is *mustahabb* in all the obligatory prayers. It is more emphasized in the daily prayers, and does not become *wajib* but only in Friday prayer and *'Idayn* (two Bairams) with fulfilment of conditions. It does not become *wajib* in any supererogatory prayers except the *istisqa'* prayer, and two *Ids* when their conditions of obligation be defective.

The congregational prayer can be followed with joining it while the *imam* be in state of *ruku'*, as per the most correct opinion. The minimum number of persons required for *jama'ah* is two, one of them being the *imam*. The *jama'ah* should be conducted in a single place and there should be no separating partition between the *ma'mum* and the *imam*. It is not valid if there exists between them an obstacle which prevents from seeing the *imam*. Women are excepted, and they can follow a male *imam* despite the presence of a partition provided the acts of the *imam* are not uncertain for them. It is not valid if the *imam* be in a place higher than that of the *ma'mum*, with some built separation like a wall, with disagreement among the legists. It is permissible for the *imam* to stand on a steep ground. Also it is valid when the *ma'mum* stands on a high built place. There should not be an unusual distance between the *ma'mum* and the *imam* without there being a connection through the continuity of the rows. But no objection is there with continuity of the rows.

It is *makruh* for the *ma'mum* to follow the *imam* in performing the *qira'ah* of two *surahs*, except when the *salats* where it is loud and he be

---

<sup>1</sup> Al- Imam Ja'far ibn Muhammad al- Sadiq (peace be upon him) is reported to have said: The ever first congregational prayer was held, when the Messenger of Allah (peace and benediction be upon him and his Progeny) was praying, followed by Amir al- Mu'minin Ali ibn Abi Talib, when Abu Talib and Ja'far passed by them. Abu Talib said to Ja'far: Be in touch with (join) the wing of your cousin. When the Messenger became aware of his presence, he advanced forward to lead them in prayer, when Abu Talib left them delighted.

He (al - Imam al- Sadiq) said then: That was the first ever *jama'ah* held in that day. (See *Diwan Shaykh al- Abatih*, p.106; *al- Ghadir*, edition of Beirut, vol. VII, p.396; *Bihar al- anwar*, vol. XXXVIII, p.207; al- Saduq's *al- Amali*, Beirut, *majlis* No. 76, p.410; *al- Darajat al- rafi'ah*, p.69; *Rawd al- jinan* of Abu al- Futuh al- Razi, vol. VIII, p.472; *Usd al- ghabah*, vol. I, p.287.

unable to hear the *imam's* recital clearly even the growling (*hamhamah*).<sup>1</sup> Some legists consider it *haram*. Others said: it is *mustahabb* for the *ma'mum* to perform the *qira'ah* in the *salats* where it is silent. The first view is preponderant. If the *imam* be incompetent to assume the leadership, *qira'ah* of two *surahs* will be *wajib* upon the *ma'mum*.

Following the *imam's* actions by the *ma'mum* (*mutaba'ah*) is *wajib*. If the *ma'mum* raises his head before the *imam* (from the *ruku'*) intentionally, he can continue the *salat*.<sup>2</sup> But if this be out of forgetfulness, he can return to state of *ruku'*.<sup>3</sup> And so also is the rule when he goes down for *sajdah* or *ruku'*. The *ma'mum* should not stand ahead of the *imam*.

It is *wajib* to make *niyyah* of *jama'ah* (*i'timam*) with identifying a certain *imam*. If there be two *imams* before him, and he makes *niyyah* of following both of them or one of them without identifying him (by name) his *salat* will be invalid. If two persons perform the *salat* with each one saying: I was the *imam*, the *salat* of both of them will be valid. But if each one says: I was a *ma'mum*, their *salat* will be invalid. So also is the rule when they doubt their concealed intention.

It is valid for a person offering a *faridah* (daily prayer) to follow one offering a *faridah* though they be different (one offering the *zuhr* can follow one offering the *asr*). Also one offering *naflah* prayer can follow one offering a *faridah*. And one offering a *naflah* with one offering a *faridah* can follow one offering a *naflah* prayer in certain places. It is said also: absolutely.

It is *mustahabb* for the *ma'mum* to stand on the right of the *imam* if he be a male alone, and behind him if there being a group (*jama'ah*) or a woman. If the *imam* be a woman, the women should stand on her sides. And so also when a naked man leads a prayer of naked men, as he should sit down and they should sit beside him, with projecting his knees ahead of them.

It is recommended for one offering a *salat* singly to repeat his *salat*, when he comes to know that the one performing that *salat* was offering it as

<sup>1</sup> *Hamhamah* means: Hearing the voice without distinguishing the identity of letters.

<sup>2</sup> That is: he (the *ma'mum*) continues in his state sluggishly, till the *imam* comes up with him. He is not required to return (to *ruku'* or *sujud*) as this invalidates the *salat* if done sluggishly. (See *al-Masalik*, vol. I, p.307).

<sup>3</sup> That is: It is *wajib* upon him to return to the former state and continue to perform it (*ruku'* or *sujud*) with the *imam*. He will not be required to atone for that addition though it be an essential part (*ruk'n*). But if he does not return, he will be considered as having done this deliberately.

*jama'ah*, whether he be *imam* or *ma'mum*. If a *ma'mum* completes the *qira'ah* before the *imam*, he will be recommended to recite the *tasbih* till the *imam's* entering the *ruku'*. It is *mustahabb* that men of virtue stand in the first row of *jama'ah*.

It is *makruh* to let the boys (lads) stand in the first row. It is *makruh* for the *imam* to stand alone, but he is required to wait till the rows be filled. Also it is *makruh* for the *imam* to offer a *naflah* prayer when the *salat* (*faridah*) is established, and in time of rising to perform it when the *mu'adhdhin* calls: *qad qamatis-salat*, as per the most correct opinion.

Second: The conditions necessary for the *imam* are: faith, 'adalah (justice), sanity, chastity of birth,<sup>1</sup> and maturity (*bulugh*) as per the most correct opinion. He should not be praying sitting with standing *ma'mums*, nor illiterate<sup>2</sup> while the *ma'mums* be literate. Being a freeman is not necessary as per the most correct opinion.

Being a male is necessary when the *ma'mums* be males, or males and females. A woman can act as an *imam* for women, and so also the hermaphrodite (*khuntha*).<sup>3</sup> A woman cannot act as an *imam* for men, or *khuntha*.

The *qira'ah* of the *imam* should be perfect, and if he intones (*yulhin*) in *qira'ah* it will not be valid to follow him by one knowing *qira'ah*, as per the most correct opinion. And so also is the one who alters the (*makhraj* of) letters like the *tamtam*<sup>4</sup> and the like.<sup>5</sup>

It is not a condition for the *imam* to make *niyyah* of *imamah*.

The *imam* of the mosque, or the ruler, or master of the house is preferred for leading the *jama'ah*. And the Hashimi has priority over the non - Hashimi, when possessing qualifications of *imamah*. If a number of persons are eager to lead the prayers (for sake of *thawab*), the one whom the *ma'mums* prefer on the basis of the preferential qualities will be preferred. If they differ, it is better that one who has the best *qira'ah*, followed by the most learned in *fiqh*, then the one who has migrated earliest, then the most

<sup>1</sup> He avoided to refer to the bastard, as there is a consensus about his being incompetent to act as an *imam*. (*Jawahir al- kalam*, vol. XIII, p.324).

<sup>2</sup> By the illiterate, is meant: that who knows not the obligatory recital (of *surahs*), as he stated in *al- Mu'tabar*: (*al- Masalik*, vol. I, p.349).

<sup>3</sup> The *khuntha*: is that who has both the male and female organs. (*al- Munjid fi al- lughah*, p.197).

<sup>4</sup> The *tamtam* (mumbler) is that who mumbles, i.e. hesitates in the letter *ta'*. (*al- Mukhtar*, p.79).

<sup>5</sup> Like the *fā'fā'*: who can't utter the letter *fā'*. (*Jawahir al- kalam*, vol. XIII, p.343, freely).

aged, then the most handsome, in that order.

It is *mustahabb* for the *imam* to recite the *shahadatayn* (two witnesses) in a way that they can be heard by the *ma'mums* behind him.

When the *imam* dies or goes in a swoon, a proxy should be appointed for carrying out the remaining parts of the *salat*. And so also is the rule when some emergency happens to the *imam*, it will be permissible for him to appoint a proxy for carrying out the *salat* for him, even if he does this voluntarily.

It is *makruh* for a local resident to pray behind a traveller, to appoint a proxy for the one remaining behind (*masbuq*),<sup>1</sup> or to appoint as a leader a maimed, leprous, the one chastised after turning from sin, and the uncircumcised (*aghlaf*), and also the leadership of one disliked by the *ma'mum*. It is *makruh* also to appoint the A'rab<sup>2</sup> as an *imam* for the immigrants,<sup>3</sup> and the *mutayammim* (one praying with *tayammum*) as an *imam* for *mutatahhirin* (those praying with *wuda'*).

Third: rules of the Jama'ah:

1. If a person were to trust someone and pray behind him, later (after the *salat*) coming to know that he is a *fasiq* or *kafir* (infidel) or having not purified himself, it is not *wajib* upon him to repeat the prayer. But if he be aware of his (*imam's*) being a *fasiq* (or a *kafir* or a *junub*), he will be required to repeat the *salat*.<sup>4</sup> If he comes to know of that during the *salat*,

<sup>1</sup> That is: it is *makruh* to appoint as proxy the behindhand one other than the other *ma'mums*, when any accident befalls the *imam* preventing him from continuing the *salat*, whether his delay be one *rak'ah* or more. (*al- Rawdah*, vol. I, p.805, the margin).

<sup>2</sup> He is a nomadic Arab living in tents in wilderness. (*al- Rawdah*, vol. I, p.804).

Al- Azhari has previously said: the people setting down in the desert, or lives next door to Bedouins, following their traditions and customs, are called A'rab.

<sup>3</sup> The Muhajir: is the urban, (city - dweller) who is opposite to Bedouin, or the immigrant from land of blasphemy to an Islamic country. (*al- Rawdah*, vol. I, p.804).

<sup>4</sup> Al- Muttaqi said: al- Qasim ibn Umamah is reported to have said: Umar (ibn al- Khattab) has led a congregational prayer while being *junub* (ritually impure); and he has then repeated his *salat*, but the people haven't repeated.

Then Ali (A) said to him: Those who performed the *salat* with you were supposed to repeat their *salat*. So they followed the verdict if al- Imam Ali (A).

Al- Qasim said: Ibn Mas'ud held the same view of Ali (peace be upon him). He said: It is reported by Abd al- Razzaq and al- Bayhaqi. (*Kanz al-*

some legists said: he should repeat, and some observed: he shifts his *niyyah* from *jama'ah* to single prayer and continues the *salat*, the view which is more correct.

2. If a person joins the *jama'ah* while the *imam* be in state of *ruku'*, with his fearing of missing the *ruku'*, he can make the *niyyah* (for *jama'ah*) and perform the *ruku'* with the *imam*. It is permissible for him also to make the *niyyah* and the *ruku'*, walking with state of *ruku'* till joining the row of worshippers.

3. If a *khuntha* (hermaphrodite) and a woman gather in one place (for *jama'ah* prayer), the *khuntha* should stand behind the *imam*, with the woman standing behind him, as per the rule prohibiting the standing opposite to each other (woman to man). Otherwise, according to *nadb* (emphatic recommendation).

4. If the *imam* stands in an inward niche,<sup>1</sup> the *salat* of one standing opposite to him will be valid, not the *salat* of those standing beside him if they be unable to see him, but the *salat* of the rows behind the first row will be valid, since they can see those seeing him.

5. The *ma'mum* cannot forsake the *jama'ah* from the *imam* without a forcible reason (excuse). But he can shift his *niyyah* to single prayer (*infirad*), when his *salat* will be valid.

6. It is valid to pray in one ship and in several ships, irrespective of whether these ships be connected to each other or separated.

7. If the *ma'mum* starts a *naflah* prayer, and the *imam* says *takbirat al-ihram* after that, he (*ma'mum*) should discontinue his prayer and join the *jama'ah* if he fears missing the *salat*, or he can complete two *rak'ahs* and join the *jama'ah* then (out of recommendation). If his prayer (*ma'mum*) was a *faridah* (daily prayer), it will better for him to shift his *niyyah* to *naflah* and perform two *rak'ahs*. But if the *imam* be *imam al- asl*<sup>2</sup> (original), he (*ma'mum*) should discontinue his prayer and join the *jama'ah*.

8. If a person joins the *jama'ah* after the *imam* has finished one or more *rak'ahs*, he will make the *niyyah* for *jama'ah* and continue to perform it with the *imam*, considering it the initial part of his *salat* and completing the remaining parts alone. If he joins the *jama'ah* while the *imam* has entered the fourth *rak'ah*, he can make the *niyyah* and continue to perform it with the

---

<sup>1</sup> (*ummal*) vol. IV, p.223).

<sup>1</sup> It means the niche that is inserted into the mosque, not the wall. (*al-Masalik*, vol. I, p.319).

<sup>2</sup> That is: the *imam* reciting *takbirat al- ihram*. In *al- Jawahir: Imam al- asl* (peace be upon him).

*imam*. When the *imam* says the *taslim*, he will stand up for performing the remaining parts, reciting *al- Fatihah* and another *surah* in the second *rak'ah* including *tashahhud*, and will follow it up with the third and fourth *rak'ahs* in which he can recite *Surat al- Fatihah* or *tasbihat*.

9. If he joins the *jama'ah* while the *imam* has raised his head from the *ruku'* of the last *rak'ah*, he will make the *niyyah* and *takbirat al- ihram*, followed by two *sajdahs*. When the *imam* says the *taslim*, he will stand up and complete the *salat* with another *takbir*. Some legists observed: he can consider the first *takbir* as the base and start the *salat* with it. The first view is preponderant. But if he joins the *salat* after the *imam* has raised his head from the last *sajdah*, he will make the *takbirat al- ihram* and sit down with the *imam*. When the *imam* says the *taslim* he will stand up, facing the *qiblah*, and start the prayer without reciting another *takbir*.

10. It is permissible for the *ma'mum* to recite the *taslim* before the *imam*, and depart the *jama'ah* for a pressing need<sup>1</sup> or another thing.

11. If the women stand in the last row, when some men come to join the *jama'ah*, they (women) should go behind if the men find no place before them to stand in.

12. In case the *masbuq* is appointed a proxy (for carrying out the *salat*), he will be required to make a gesture for the *ma'mums* to recite the *taslim* on their completing the *salat*. He then will stand up and perform the remaining parts.

### Conclusion: Concerning the Mosques

It is *mustahabb* to build the mosque uncovered and without a roof,<sup>2</sup> with the *midat*<sup>3</sup> (lavatory) erected at the entrance, and a minaret beside the wall not in its central part.

It is *mustahabb* for the comer to advance his right leg on entering, and for one going out to advance his left, to look after his shoe (sandal),<sup>4</sup> and to recite a supplication on entering and going out.

<sup>1</sup> Like an illness, or urination, or fear of missing something, or forgetfulness, or any other cause. (*Jawahir al- kalam*, vol. XIV, p.66).

<sup>2</sup> Nor overshadowed unnecessarily, in accordance with the traditions reported confirming that the Prophet(S) did so. (*Jawahir al- kalam*, vol. XIV, p.75).

<sup>3</sup> The *midat* (lavatory) is a purifier: a place or a room for personal ablutions. (*Tahdhib al- lughah*, vol. XII, p.99). Nowadays it is a part of what is called public utilities.

<sup>4</sup> To be sure of its being free from *najasah*.

It is permissible to annul what he destroyed in itself, and it is *mustahabb* to repeat it. It is permissible to use the tools of the mosque in another one. It is *mustahabb* to sweep the mosque and saddle (the horse) in it.

The prohibited acts (in the mosque) are: making decorations,<sup>1</sup> painting its walls with pictures,<sup>2</sup> selling its tools, grasping a part of it for the roads or corporeal properties. If anyone takes anything from the mosque, he should return it to its place, or to another mosque. If traces of the mosque vanish, taking possession of it will be unlawful. It is impermissible to bring *najasah* into the mosque, nor removing *najasah* inside it, nor taking out the stones from it.<sup>3</sup> If anything of the kind is taken out, it should be restored to it.

It is *makruh* to make the mosques raised (high), to build a balcony for them, or sanctuaries penetrated into the wall, and to make them a road.

It is *mustahabb* to avoid (in the mosque): selling and buying, (empowering) the insane people,<sup>4</sup> executing the sentences (rules), identifying<sup>5</sup> the wanderers,<sup>6</sup> carrying out the punishments, chanting the poetry, raising the voice,<sup>7</sup> practising handicrafts,<sup>8</sup> and sleeping.

It is *makruh* to enter the mosque with smell of onion or garlic in the mouth, expectorating, spitting, killing the lice (when doing so one should

<sup>1</sup> That is to engrave decorations on the walls, with gold, or ordinary painting. (*al- Rawdah*, vol. I, p.543).

<sup>2</sup> If they (pictures) be for animate living creatures. Otherwise, it is *makruh* just because it is a painting. (*al- Masalik*, vol. I, p.327).

<sup>3</sup> Al- Shahid al- Thani added to them the mattress or a part of it. If it be sweepings, it will be *mustahabb* to take it out, and so also is the *turab* (dust). (*al- Rawdah*, vol. I, p.545).

<sup>4</sup> Including the boys (lads), with uncertainty of their being pure. But for a boy of a discriminating age (*mumayyiz*), whose purity is ascertained, and known of observing the obligatory prayers in their appointed times, it will not be *makruh* to let him offer the prayer in the mosque. Rather, he should be habituated to this act as training him on offering the prayers. (*al- Rawdah*, vol. I, p.546).

<sup>5</sup> Through searching and seeking, i.e. by giving information about them and indicating to them, or crying aloud and asking after them. (*al- Rawdah*, vol. I, p.547, the text and margin, freely).

<sup>6</sup> Al- Layth said: *Dallah*: is the wandering (astray) camel which is lost with unknowing its owner. It is used for he -and she- camel. Its plural is *dawall*. (*Tahdhib al- lughah*, vol. XI, p.467).

<sup>7</sup> To the extent exceeding the ordinary level, even in reciting the Qur'an. (*al- Rawdah*, vol. I, p.545).

<sup>8</sup> Like sharpening the arrows.



cover them with earth), uncovering the privy parts,<sup>1</sup> and throwing stones.

### Subsidiary Issues:

1. When the churches and synagogues are demolished: if their owners have obligation (*dhimmah*), it will be impermissible to dispose with them. In case they be in battlefield, or perishing of their owners, it will be permissible to use them for mosques.

2. Performing the inscribed (daily) prayers in the mosque is better and more preferable than in the house, but for the *naflah* prayer the contrary is better.

3. Performing the *salat* in the mosque equals (in reward) a hundred prayers, in the tribe mosque equals twenty - five prayers and in the market (bazaar) equals twelve prayers.

## Chapter Four: Fear & Chasing Prayers

First: Fear (*khawf*) prayer<sup>2</sup>:

It is performed in two *rak'ahs* (shortened) during travel, and *jama'ah* when performed at home (*hadar*).

When performed singly: some legists observed: it can be shortened (*qasr*), and others said: it is performed completely (four *rak'ah* - prayers). The first view is more correct as per verdicts and traditions.

When performed in *jama'ah*, the *imam* has two options: he either leads the prayer of a group and then of another group, the second of which will be considered as recommended (*nadb*), according to the view permitting one offering an obligatory prayer to follow one offering a *naflah* prayer. Or he can pray in the form offered by the Messenger of Allah (peace and benediction be upon him and his Progeny) in Dhat al- Riqaa.<sup>3</sup>

Hereunder we discuss its conditions, mode of performance, and rules.

### Conditions of Khawf Prayer:

<sup>1</sup> In the mosque, though feeling safe from onlooker. That is when there being no onlooker. Otherwise, it will be *haram* (unlawful). (*Jawahir al-kalam*, vol. XIV, p.130).

<sup>2</sup> It is also called: *Salat Batn al- Nakhl* (prayer of tree interior), and it is not proved through our ways (of transmission). Therefore the compiler (of this book) said: "if we believe in permission of the following (*iqtida'*)". (*al-Tawdih*, vol. I, p.115).

<sup>3</sup> It is a locality near to al- Madinah, at the distance of three miles. (*al-Masalik*, vol. I, p.332).

When the enemy be not facing the *qiblah*, with having a might and force with which feeling secure of attacking the Muslims is absent, and Muslims be of a great number that they be able to constitute two sects (groups), each of which can undertake the task of resisting the enemy, and the *imam*'s needing not to divide them into more than two detachments.

### Mode of Performance:

If it be a two - *rak'ah* prayer, the *imam* can perform one *rak'ah*, and rise up to offer the second, when those following him will be obliged to make *niyyah* of praying singly, completing the *salat* and going then to face the enemy. Then the other party (*firqah*) can recite the *niyyah* and *takbirat al-ihram*, entering in the second *rak'ah* with the *imam* which will be considered their first *rak'ah*.

When the *imam* sits for performing the *tashahhud*, he will be required to prolong it, till those following him rise up, complete the *salat* and sit down, when he completes the *tashahhud* and *taslim* with them.

Then the disagreement occurs in three things: singleness of the *ma'mum*, anticipation of the *imam* to the *ma'mum*<sup>1</sup> till he finishes (*ruku'* and *sujud*), and leadership of one sitting to one standing.

If the prayer be a three - *rak'ah* one, he will have two options: either performing a single *rak'ah* with the first group, and two *rak'ahs* with the second one, or vice versa.

Also it is permissible for him (*imam*) to offer a single *rak'ah* with every *firqah*.<sup>2</sup>

### Its Rules:

1. Any *sahw* (flaw by mistake) occurs on the part of the worshippers during their *mutaba'ah* (following) to the *imam*, will require no atonement. In case of forsaking the *jama'ah* (*infirad*), the rule of this *sahw* will be as stated before in *bab al- sahwa*.

2. Holding a weapon (machine - gun) during the (*jama'ah*) *salat* is *wajib*. But when there be a *najasah* on it, holding it becomes impermissible according to view of some legists, and permissible as per the most correct opinion. And if it be so heavy that hinders performance of duties (obligatory acts) of the *salat*, it will be impermissible to hold it.

<sup>1</sup> Waiting for him (*ma'mum*) to join in the second *rak'ah* and *tashahhud*. (*al- Tawdih*, vol. I, p.115).

<sup>2</sup> If this can attain the object. (*al- Tawdih*, vol. I, p.115).

3. If the *imam* commits an error (*sahw*) requiring *sajdata al- sah*w, when the second group enters the *salat* with him, and when he recites the *taslim* and performs the *sujud* (of *sahw*),<sup>1</sup> following him will not be *wajib* upon this group.

### Second: The Chasing Prayer:

Chasing prayer is also called prayer of extreme fear, like when the event ends with engagement (in fight) and striking with swords. Thereat one can perform the *salat* in accordance with his ability, standing or walking or on a mount, facing the *qiblah* with *takbirat al- ihram*, and continuing so if possible. If this be not possible, he can face (the *qiblah*) as much as he can, and if this be not possible at all, he may pray to whichever direction in accordance with his capacity.

If getting down be not possible, he can perform *salat* on the mount, performing *sujud* on the saddlebow (*qaraboos*). If this be not possible, he can make gestures,<sup>2</sup> and if he is unable to gesture, he can perform prayer by *tasbih*.<sup>3</sup> This *salat* needs no *ruku'* or *sujud*, and the *musalli* has to say, instead of every *rak'ah*: *Subhanallah walhamdu lillah wa la- ilaha illallah wallahu akbar*.

### Subsidiary Issues:

1. If one starts the *salat* by gesturing but feeling safe during it, he can complete his *salat* by performing the *ruku'* and *sujud* of the rest of prayer, with no need to repeat the parts he performed by gesturing. Some legists said: He can continue if he has not turned his back toward the *qiblah* during the *salat*. And so also is the rule when the fearsome event occurs while he has performed a part of his *salat*, when he will be required to complete the *salat al- khawf* with no need to repeat what he has already performed.

2. when a person sights a blackness, thinking it to be an enemy and shortening his prayer accordingly, or praying by making gestures,

<sup>1</sup> That is: if he (*imam*) performs the two *sajdahs* of *sahw*, it is not *wajib* upon the *ma'mums* to follow him according to the view of some legists, as they were not to follow him in state of *sahw*. (*al- Tawdih*, vol. I, p.116, freely).

<sup>2</sup> Making gestures with the head. If this be not possible, he will gesture with the eyelids, like a sick man. (*al- Masalik*, vol. I, p.337).

<sup>3</sup> This *tasbih* should be preceded by *niyyah* and *takbir*, and followed by *tashahhud* and *taslim*. In the *maghrib* prayer three *tasbihs* are to be recited, with *tashahhud*. If he has a doubt regarding the number of *tasbihs*, his *salat* will be invalid. (*al- Masalik*, vol. I, p.337).

discovering then his being mistaken, he will not be required to repeat. And so also is the rule when the enemy advances toward him, and he praying by making gestures out of fear, finding out then presence of an intervening barrier that prevents the enemy from approaching him.

3. If a person fears a flood or a beast of prey, he can perform the extreme fear prayer.

### A Supplement

One sinking in mire and one sinking in water, can perform their *salat* in accordance with their capacity, making gestures for the *ruku'* and *sujud*. No one of them is required to shorten his prayer (the four - *rak'ah* prayers) except during travel or when feeling scared.

## Chapter Five: Salat During Travel (Salat al- Musafir)

Its Conditions:

**First:** Considering the Distance

Travelling over a certain distance, along one complete day<sup>1</sup> is a condition, that is for two *barids*: 24 miles.

One mile is equal to four thousand cubits, each with the measure of one arm, whose length is 24 fingers, as per what is commonly known among people, or the eyeshot of the earth. If the distance be four parasangs, and the traveller intends to return to his original place (that is 8 parasangs in the direction of journey or to and fro together), then travelling along a complete day will be complete and shortening the *salat* will be *wajib* upon him. But if he travels to and fro and returning over three parasangs along one day, *qasr* of prayer will be not permissible for him, though *niyyah* of *qasr* was present. If the destined place has two routes, the farther one being on the distance required for performing *qasir*; when he follows it he will be required to shorten his prayer, even if this being out of his inclination to seek permission (*rukhsah*).

**Second:** Having intention to travel the complete distance. As if one intends to travel less than the complete distance, and later changes his mind intending another distance, he will not be required to shorten his *salat*, even if the travelled distance exceeded the distance required for performing *qasr*. If by returning to the place from where he began his journey, the stipulated distance will be covered, he will pray *qasr*. And so also is the rule when he

<sup>1</sup> The average time for burdens, starting with daybreak and ending with sunset, due to appearance of walking day in this. (*al- Tawdih*, vol. I, p.117).

searches for his mount which ran away, or for one indebted to him, or a fugitive. If one goes out for expecting a company (companions): when they be available he can travel with them; and if the journey covers the complete distance (required for *qasr*), he will be required to pray *qasr* in travel and in place of his stay. If he has not travelled the complete distance he will perform his *salat* complete till finding the company when he can travel with them.

**Third:** One should not desist from his journey with stay during it. As if he makes the *niyyah* to travel the complete distance, and starts the journey, but on the way he owns a house in which he has resided previously for six months, he will be required to perform his *salat* complete during travel and in his own house. So also is the rule when he makes the *niyyah* to stay (reside) in a place in the middle of the complete distance. When the distance between him and his property (house) or the place where he intended to reside in, be one required for shortening the *salat*, he will be required to perform the prayer *qasr* in the course of travel in particular.

If he has several homes (*mawatin*), he will have to consider the distance to the first one. When it be the one required for performing *qasr*, he will shorten his *salat*. His journey will be discontinued in his home, where he should pray complete. He then has to take into consideration the distance between his two homes, if it be less than the complete distance (required for *qasr*), he will perform his *salat* complete in the way, due to discontinuity of his journey. But if he has travelled the distance stipulated by the Shari'ah, he will pray *qasr* in his second route till reaching his native place.

The native place (home) in which he should pray complete, is every locality in which he owns a property (*milk*)<sup>1</sup> in which he resided for six months and upwards, whether being consecutive or separated.

**Fourth:** The journey should be for a legitimate<sup>2</sup> purpose, whether it be *wajib* like the obligatory pilgrimage (*Hijjat al- Islam*), or *mandub* (recommended) like making pilgrimage to the Prophet(S), or *mubah* (allowable) such as a journey for trading. Hence if it be for an illegitimate purpose, such as a journey for the sake of following a tyrant,<sup>3</sup> or hunting for

<sup>1</sup> Using this term generally (*milk*) requires no differentiation between a house and another owned property. With this generalization the 'Allamah and his successors have determined, to the extent that they declared that a single tree by sufficient in this regard. (*al- Madarik*, vol. IV, p.443).

<sup>2</sup> That means: permissible in general so as to include anything other than the forbidden. (*al- Masalik*, vol. I, p.343).

<sup>3</sup> That is: following him in his tyranny, not unwillingly, or merely on the way, or for convincing him to do him a lawful act, and alike. (*al- Masalik*,

amusement, he may not pray *qasr*. But if hunting be for supplying sustenance for himself and his family, he will pray *qasr*. If it be for merchandise, some legists said: he will break his fast not praying *qasr*, a view regarding which there is disagreement.

**Fifth:** The traveller should not be a nomad who has no stationary house and keeps moving from place to place, like the bedouin who seeks the towing, *mukari* (muleteer), sailor, merchant looking for markets, and postman.

The rule stipulated for him is that his intention should not be to stay continuously for ten days at one place. If he stays for ten days and intends to travel after that, he will pray *qasr*. Some legists said: This condition is stipulespecially for the hirer (*makari*),<sup>1</sup> seaman (*mallah*), and the *ajir* (employee). The first view is more correct. If he stays for five days, he will pray complete according to some legists.

Others said: He performs prayers of *zuhr* and '*asr* as *qasr* without breaking his fast, but the evening prayers (*maghrib* and '*isha*') as complete. The first view is preponderant as per verdicts of legists.

**Sixth:** Disappearance of walls of town and not hearing the *adhan*. The traveller is not permitted to pray *qasr*, but only when either the walls of the town from which he set for the journey disappear from sight or its *adhan* be not hearable.<sup>2</sup> It is not permissible for him to shorten his prayer before fulfilling this condition, even if the intention for travel be made at night. If a person is returning back home, he is supposed to pray *qasr* until he sees the walls of his town or is able to hear its *adhan*. Some legists observed: He performs the prayer as *qasr* on setting for the beginning of the journey and complete on returning home. The first view is more correct. If he makes *niyyah* to stay continuously at a place other than his town for ten days, he should pray complete, and if less than this period he should pray *qasr*. If he becomes hesitant or unable to decide for how long he will stay at a particular place, he will continue to perform *qasr* for thirty days, and after this period it will be *wajib* for him to perform complete *salat* even if it happens to be a single one. If a traveller intends to stay at a particular place (for ten days) and later changes his mind, he will offer *qasr*. But if he performs even one

---

vol. I, p.344).

<sup>1</sup> *Mukari* is one who lets out his mule to another person, driving it with him. So his work needs continuous travel and no stay in his town, as he is prepared for travel most often. (*al- Rawdah*, vol. I, p.785).

<sup>2</sup> In a way that he be unable to discern clearly its (*adhan*) sections, with a legal allowance to two connected or different marks. (*al- Tawdih*, vol. I, p.120).

complete *salat*, he will continue to perform *salat* completely.

*Qasr* of *salat* requires making intention to travel (the complete distance), unless the distance be four (parasangs), and he has no intention to return to his town on the same day, according to some legists. If he be in one of the four homes: Mecca, Medina, al- Masjid al- Jami' in Kufah, and Ha'ir,<sup>1</sup> he has an option between praying complete or *qasr*, but performing *salat* completely is preferable.

The *salat* of one who intentionally performs complete *salat* while travelling, is *batil*, and he is supposed to repeat it *ada'* if its time has not elapsed, and *qada'* if it has elapsed. But if a person who is ignorant about *qasr* being *wajib* does so, he will not repeat the *salat*, irrespective of whether its time has elapsed or not. If a person performs it complete out of forgetfulness and then remembers while its time has not elapsed, he will repeat the *salat*, and if he remembers it after its time has elapsed, he will not repeat it. If a traveller performs complete accidentally, it will be invalid, and he will repeat it as *qasr*.

If the time of a *salat* sets in while a person is at home and capable of performing it, and he sets out on his journey before performing it and time be still there, he will perform it complete as time of *faridah* be still there, according to some legists, and *qasr* considering the condition of *ada'* according to others. Some legists said: He has an option (either complete or *qasr*). Some said: He performs it complete when enough time be there, and *qasr* when time be too short; but *qasr* is more correct. But if the time of a *salat* comes while a person is travelling and he does not perform it till he has reached his native place, he will perform the *salat* complete as per the most correct opinion.

It is *mustahabb* to recite following every *salat* the *tasbih* thirty times: *Subhanallah wal- hamdu lillah wa la- ilaha illallah wallahu akbar*, for mending the *faridah*.

*Mutaba'ah* of the local *imam* is not *wajib* upon the traveller when praying behind him, but he can perform his own duty and say the *taslim* individually.

### Subsidiary Issues:

1. If he travels a distance when interdicted by a hindrance, he should see: if the distance covered be to the extent that *adhan* be not hearable, he

<sup>1</sup> By Ha'ir is meant the Ha'ir of al- Imam al- Husayn (A), which includes whatever contained by the Husayni enclosure. (*Majma' al- bahrayn*, vol. III, p.280).

should pray *qasr*, if he has not changed mind of travelling. But if the distance be to the extent he can hear the *adhan* (of his town), or in the event he changes his mind,<sup>1</sup> he will pray complete, irrespective of whether his journey be by land or by sea.

2. If one travels some distance, and then be repulsed by strong wind: if it be to an extent he can hear the *adhan*, he should pray complete. Otherwise, he will pray *qasr*.

3. If a traveller, intending to stay at other than his town for ten days, changes his mind and intends to return to his town and stay continuously there, in the event of his not having travelled the distance (required for performing *qasr*), he will perform his *salat* complete to and fro and at home.

4. When one starts a prayer with intention of *qasr*, changing his mind then to stay in that place, he will perform it complete. If a traveller intends to stay for ten days, and enters the *salat*, but changes his mind then to travel, he will perform his *salat* complete, the view regarding which there is disagreement. In the event of renewing his *niyyah* after finishing his *salat*, *qasr* will not be permissible for him as long as he be still staying (*muqim*).

5. What is considered in *qada'* of *salat* is the *salat* missed not its being obligatory. One who intends to perform the *qada* of a *qasr* prayer at home has to perform it *qasr*. Some legists say: the consideration for *qada* is the state of *wujub*.<sup>2</sup> The first view is more correct.

6. If he intends to travel the complete distance and his journey covers a distance where the *adhan* be not hearable for him and prays *qasr*, but then he changes his mind (intends to return), he will not be required to repeat his *salat*.

7. When time of the *naflah* of *zuhr* prayer sets in, but he does not perform this prayer and sets out on a journey, it will be *mustahabb* for him to perform it *qada'* even during travel.

<sup>1</sup> Even if it be due to his hesitation in travel and not travelling. (*Jawahir al-kalam*, vol. XIV, p.362).

<sup>2</sup> It is meant by it: when the duty of the *mukallaf* differs in the outset and end of time of *salat*, with being present in the outset of time (of *faridah*) and travelling then, or travelling in the outset and reaching home at the end, missing the *salat* in this state. Would the consideration be in performing its *qada'* in state of *wujub* in the outset of time (of *faridah*)? Or in state of missing in the end of its time? The second view is more correct. (*al-Madarik*, vol. IV, pp.483-484).





## Kitab al- Zakat

### Section One: Zakat on Property<sup>1</sup>

#### Conditions for Zakat on Property:

*Zakat* is *wajib* on the adult, sane, freeman, who has complete ownership and able to dispense the property at his will.<sup>2</sup>

There is consensus regarding maturity being a condition for *zakat* on gold and silver.

In respect of a child and a minor, the guardian or executor is responsible for payment of *zakat* from his ward's property.

If he be responsible for it (*zakat*), and works for himself,<sup>3</sup> having a complete ownership (*maliyy*), he receive the profit, and it will be *mustahabb* for him to pay the *zakat*. But if he be not the owner, or the guardian, he will be a guarantor, and the profit will go to the orphan, with no liability to *zakat*.

*Zakat* on the child's grains and livestock is *mustahabb*, and some legists believe in its *wajib*. Whatever be the rule, the guardian is responsible legally to pay the *zakat*. Some said: the rule regarding the insane is the same regarding the child. But his property being not liable to *zakat* is more correct, except in regard of the *samit* (soundless)<sup>4</sup> - if the guardian (*wali*) trades for him (insane) - *istihaban*.

*Zakat* is not *wajib* upon the slave (*mamluk*), irrespective of whether he has complete ownership or this be deemed lawful for him. If his master puts in his possession a property, making him able to dispense it, paying *zakat*

---

<sup>1</sup> Property (*mal*) has no real external existence as other estates (*a'yan*), but it is a considerable reality (essence) the sane people extract from the external things (essences, assets), with which their livelihood can be sustained. Hence, the grains and foods are property (*mal*) since people are in need of them for sustenance and life. So also the other things having the same description, such as clothes and houses or alike, from which the wisemen extracted a casual descriptive meaning, for which the word *mal* is used. Then gold and silver were chosen as a standard unit and measure for dealings and transactions.

<sup>2</sup> Dispensation in the origin of property, as there is no *zakat* on the legally forbidden property, such as the mortgager who is unable to redeem the mortgage (*rahn*) even through selling it. (*al- Rawdah*, vol. II, p.13).

<sup>3</sup> By being responsible for it we mean: Transferring it to his ownership through a legal dealing like a loan. (*al- Masalik*, vol. I, p.356).

<sup>4</sup> What is intended by soundless (*samit*) property: Gold and silver, and its opposite is the *natiq* (speaking, articulate), which is the livestock. (*al- Madarik*, vol. V, p.23).

will not be *wajib* upon him. Some legists said: He will have complete ownership and *zakat* will be *wajib* upon him. Others observed: He will not be owner of property, and *zakat* will be *wajib* upon his master. The same rule is applied to the stipulated *mukatab* (non - Muslim).

If he (*kitabi*) be emancipated (*mutlaq*), and a part of him be set free, his share will be liable to *zakat* if it equals extent of the *nisab*.

Complete ownership is a condition for the incidence of *zakat* on all kinds of articles, and the owner should have complete control over the property with being able to dispense it at his will. If something in a quantity equalling its *nisab* is gifted to a person, the lunar year of possession should not be counted until after receiving it. And so also when something is bequeathed to him, the year of possession will be considered after death (of testator) and acceptance (of executor).

If one purchases something in a quantity equalling its *nisab*, its year of possession is reckoned from date of contract (transaction), not after the three days.<sup>1</sup> If an option additional to three days is stiby the seller or both seller and buyer, the basis will be retaining the ownership, and what is considered is from time of contract. And so also when one borrows something on which *zakat* is payable, the year of possession will be counted from time of having complete control over the property, and the borrower shall be liable to *zakat*.

The *ghanimah* (booty) will not be considered owned through one year except after *qismah* (allotment). If the ruler (*imam*) allots a share (*qist*), the year of possession will be considered on it if its owner be present, but if he be absent, it will be considered in time of reaching his hand (having complete control over it). If he vows during the lunar year to pay a *sadaqah* from the property equalling the *nisab* (essence of *nisab*), the lunar year will be considered interrupted due to its specification for *sadaqah* (alms).

Having complete control over the property with ability to dispense it is a necessary condition for the incidence of *zakat* on all kinds of articles. And ability to free the property from obligations<sup>2</sup> (debts and claims) is considered in liability (*daman*) not in obligatoriness (*wajub*).<sup>3</sup>

<sup>1</sup> That is: not after the three days which belong to the purchaser in particular for buying the animal, during which he has an option to ratify the sale or annul it. This subject will be discussed in detail in Kitab al- Tijarah, in chapter three.

<sup>2</sup> That means: reaching the *zakat* to one entitled to receive it.

<sup>3</sup> When a *nisab* be owned by its owner for a complete lunar year, *zakat* will be *wajib* on it even if he cannot find one entitled to receive it. But if the *nisab* is spoiled before he be able to pay the *zakat*, he will not be required to pay it. If the damage be partial, the *zakat* will be diminished with the amount

Hence *zakat* is not *wajib* on property usurped from its owner, or that whose owner is absent if not being under control or dispensation of his deputy (*wakil*) or guardian (*wali*), nor on mortgage (*rahn*) - as per principles of *madhhab* - , nor on endowment (*waqf*), nor the lost property or of unknown owner. But if he (owner) retains its ownership after elapse of several years, it will be recommended for him to pay its *zakat* if it remains in his possession for a year. Also the debt it will be liable to *zakat* only after the creditor has recovered it, as the debt is not possessed unless recollected. If delay in recovering it be on the part of its creditor, some legists said: the *zakat* will be *wajib* on its owner. Some others said: *zakat* will not be *wajib*. The first view is nearer to precaution.

*Zakat* is *wajib* on the *kafir* (infidel), but his paying it is not valid. If the property is spoiled, he will not be responsible for its payment, even if he has neglected it. As to the Muslim who could not pay it out (to one entitled to receive it), and it deteriorates, he will not be responsible for its payment. If he be able but neglects and misuses, he will be responsible for its payment. The insane and child will not be responsible if the *wali* neglects (to pay the *zakat*), while this be *wajib* in case of grains and livestock.

### Kinds of Property Liable to Zakat:

*Zakat* is *wajib* upon three kinds of livestock: camels, cows and sheep. And also upon gold, silver, and four grains: wheat, barley, dates and raisins. Apart from these, it is *mustahabb*, not *wajib*.

It is *mustahabb* on all agricultural produce, i.e. on everything that is weighed and stored from among fruits and grains, except vegetables: such as *qatt*,<sup>1</sup> eggplant, cucumber, and alike. In regard of merchandise (*mal al-tijarah*) there are two views: *wujub* and *istihbab*, which is more correct. Horses are liable to *zakat* only when these include mares. No *zakat* is there on other than these, except what shall be mentioned later on. There is no *zakat* on mules, donkeys and slaves. If an animal is born from two animals, one of which being liable to *zakat*, this newly - born one will be counted among the livestock liable to *zakat*.

### Zakat on Livestock:

Conditions for Zakat:

---

of the part damaged. (*al- Masalik*, vol. I, p.360; *al- Madarik*, vol. V, p.33).

<sup>1</sup> Qatt: a land grain, that bedouins use as food after pounding and cooking it. (*al- Munjid fi al- lughah*, p.608).

**First: the *Nisab*:**

On the camels it is 12 *nisabs*: Five, each one constitutes five. If the number of camels reaches 26, they form a single *nisab*; then 36, then 46, then 61 (the *zakat* of which is one camel). Then the *zakat* of 76 and 91 camels is two camels. When their number reaches 121, so forty or fifty is the *nisab*.

For the cattle (cows) there are two *nisabs*: thirty and forty always.

For the sheep there are five *nisabs*: the *zakat* for 40 sheep is one sheep; for 121, two; for 201, three sheep. If their number reaches 301, the *zakat* is one sheep for each 100 sheep. Other legists say: their *zakat* will be four sheep up to 400; from then on for each extra 100 the *zakat* is one sheep, which is a more correct opinion.

The benefit is in the *wujub* and responsibility. The *faridah* is *wajib* on every one of *nisabs* of these things. A number between any two limits is exempt from *zakat*.

It has become customary to call the camels not liable to *zakat* (*wajib*) as *shanaq*,<sup>1</sup> and of the cattle as *waqas*,<sup>2</sup> and of the sheep as '*afw*', all of which having the same meaning.

Nine camels constitute a *nisab* and a *shanaq*: the *nisab* is 5 camels, and the *shanaq* is 4. That means: if the four camels are spoiled, nothing will be diminished of the *zakat* (*faridah*).

And so also the 39 cows constitute a *nisab* and a *waqas*: as the *faridah* is in the 30, and the extra ones are '*afw*',<sup>3</sup> till the number reaching 40.

And so also if the number of sheep reaches 120: their *nisab* is 40 which is liable to *zakat*. The '*afw*' is the extra number, up to 121 sheep (when their *zakat* is two sheep). And so also the number between any two limits stated, is exempt from *zakat*, until it reaches the *nisab* Limit. When two persons jointly own a single *nisab*, with fulfilment of conditions of living together,<sup>4</sup>

<sup>1</sup> Abu Sa'id says: It is called *shanaq* because nothing was taken of it, and it is hanged to what follows it of which *zakat* is taken. (*Tahdhib al- lughah*, vol. VIII, p.327).

<sup>2</sup> Abu 'Ubayd says: *waqas* is everything intermediating between two *faridahs*. (*Tahdhib al- lughah*, vol. IX, p.221).

<sup>3</sup> By using the word *waqas* for extra, the Muhaqqiq means: '*afw*' (exemption) till their number reaches forty. In *al- Masalik* (vol. I, p.367) and *al- Jawahir*, (vol. XV, p.90): They are liable to *waqas*.

<sup>4</sup> Like joining in one pasturage, drinking fountain, in going back from pasture, having one male (*fahl*), milk giver, and *mahlab*, with distinction. (*al- Madarik*, vol. V, p.66).

and being in one place, they are not liable to *zakat*, together or singly, unless the share of each one of them separately reaches the *nisab* limit. And so also if a person possesses two kinds of livestock of which no single kind reaches the number required for *nisab*, it is not *wajib* upon him to consider them jointly, even when the distance separating them be far remote.

### Second: Grazing (*sawm*):<sup>1</sup>

*Zakat* is not *wajib* on the grazing livestock, and the *sikhal* (lamb)<sup>2</sup> except when they graze freely on pastures without their mothers. Grazing on pastures should continue for a complete lunar year, as when they graze for less than a year even with one day, the owner should restart the year in time of restarting the grazing. But no consideration is to be paid to one moment, and some legists said: The period considered for grazing and foddering is the most usual norm. The first view is more correct. If the animal fodders by itself to a considerable extent, its year (of ownership) will be concluded, as it will not be called grazing livestock any more.

And so also is the rule when the grazing animal be prevented by an obstacle like snow or alike, and be foddered by its owner or another person with or without his (owner's) permission.

### Third: One Year of Ownership

A complete lunar year of ownership is considered for all the livestock, gold and silver liable to *zakat* (when their *nisabs* are reached), merchandise (*mal al- tijarah*), and the horses, on which *zakat* is recommended.

Its limit is: ownership for eleven months, and when the twelfth month begins, paying the *zakat* will be *wajib* with appearance of the new moon, even if the days of the year have not been complete. If any of the conditions is breached during the year, this year will not be considered, such as when their number falls short of the *nisab* and he (owner) complements them or substitutes them with their kind or with similar things, as per the most correct opinion. Some legists observe: If he does so for escaping (payment of *zakat*), then *zakat* will be *wajib* upon him. Others observe: It is not *wajib* upon him, which is more preponderant. The lambs are not considered jointly

<sup>1</sup> *Sawm*: fast passing; and the *sawam* and *sa'imah*: the camels sent forth for grazing on pasture and be not foddered in origin. (*Tahdhib al- lughah*, vol. XIII, pp.111-112).

<sup>2</sup> *Sikhal*: plural of *sakhlah*, which means lamb, produce of sheep. But he used it here to mean produce of sheep, cattle and camels, taking the term used with the particular meaning for the general meaning. (*al- Rawdah*, vol. II, p.24, note No. 1).

with the mothers as one *nisab*, unless the share of each one of them be separately owned by its owner for a complete lunar year. When the *nisab* be damaged after completion of ownership for a lunar year: if this is caused by negligence on the part of its owner, he will be responsible for payment of *zakat*. But if he has not neglected, he will discount from the *zakat* to an amount proportional to amount of damaged part of the *nisab*.

If a (male) Muslim apostatizes<sup>1</sup> before completion of one year, *zakat* will not be *wajib* upon him, and his heirs will reconsider one year of possession. But if his apostasy occurs after completion of one lunar year of possession, he will be required to pay the *zakat*. If apostasy be not inborn, the year of possession will not be considered as concluded, and *zakat* will be *wajib* upon him on completion of the year, as long as it be still there.

#### Fourth: Be not Intended for Work

The animals should not be those intended for work,<sup>2</sup> as *zakat* is not levied on animals used for work (irrespective of their number), even if they graze.

The obligation (*faridah*) can be expounded through the following:

##### 1. The Faridah:

*Zakat* is *wajib* upon these kinds of livestock: on camels: if the number of camels is 5, one sheep (is the *zakat*); till it reaches 25 (when its *zakat* be 5 sheep). If the number reaches 26, they form a single *nisab*, and the *zakat* will be 5 sheep with a camel in its second year. Then the *zakat* of 36 camels, is a camel in its third year; of 46 camels, a camel in its fourth year; of 61 camels, a camel in its fifth year; of 76 camels, two camels in their third year; of 91 camels, two camels in their fourth year. There is additional *zakat* for camels when reaching the number 121, and for every fifty camels, the *zakat* is a camel in its fourth year, and for every forty, a camel in its third year.

If it be possible to levy one of two *zakats* on every number, the owner will have an option to pay whichever he likes.<sup>3</sup>

<sup>1</sup> He avoided reference to a Muslim woman as her apostasy does not interrupt the lunar year, but the rule regarding her is the rule of one who desisted from creed (*millah*). (*al- Masalik*, vol. I, p.373).

<sup>2</sup> Those intended for work, as watering or irrigating or grinding (*tahn*) or alike.

<sup>3</sup> Such as when the number be 200, when he will have an option between paying four sheep in their fourth year, or five sheep in their third year, referring by this to the fact that the estimation should be determined in a way that no shortage be there in the share of the poor. ( *al- Masalik*, vol. I, p. 374).

The *zakat* of every 30 cattle is a *tabi'* or *tabi'ah* (an ox or cow in its second year); for every 40, a cow in its third year (*musinnah*).

## 2. The Substitutes (*Abdal*):

If a person upon whom *zakat* of a she - camel in its second year becomes *wajib*, but he doesn't possess it, a he - camel in its third year will be sufficient. If they both be not in his possession he will have an option to purchase whichever is feasible. Whoever is required to give as *zakat* a camel of a certain age, but he doesn't have it and has an elder one, he can give it taking in return two sheep or 20 dirhams. But if what he owns be younger, he will be required to give with it two sheep or 20 dirhams. The choice in this connection is up to him not to the worker,<sup>1</sup> irrespective of whether its market - price be equal to this or less or more than it. If the ages differ in more than one degree, the legal price (two sheep or 20 dirhams) will not be doubled, and he will be required to pay the market - price, as per the most correct view. And so also is the rule when the ages be more than five years, except the camels.

3. It is permissible for one possessing the *nisab* liable to *zakat*, to pay out from other than kind of the *faridah* with its market - price, but it will be better to pay of the kind. And so also is the rule regarding all other kinds of properties liable to *zakat*.

Regarding the sheep paid as *zakat*, it is said that its least be a sheep in its fifth year (*jadha'*), or a goat in its sixth year. Other legists observe: the least of *zakat* is whatever called a sheep. The first view is more correct. Neither the sick, nor the decrepit, nor the one - eyed one, is acceptable as *zakat*.

The owner has no option, and if he doubts the ages of his livestock, lots should be cast among them to choose one which has to be paid as *zakat*.

## Subsidiary Issues:

*Zakat* is *wajib* on the kind (property itself) not on the obligation (*dhimmah*). If one be able to deliver it to one entitled to receive it but falls short of this, he will be considered as having neglected and will be responsible for payment of the *zakat* when the property is spoiled. And so also is the rule when he be able to deliver it to the *sa'i* (collector) or to the *imam*.

<sup>1</sup> That is: the choice in paying the maximum and minimum, and in conciliation by paying two sheep or 20 dirhams to the owner, not to the collector and the poor. (*al- Madarik*, vol. V, p.84).



If one delivers to a woman a *nisab* as a dowry (*mahr*), and it remains in her possession for one year, but he divorces her before consummation of marriage and after completion of a year, half of it (*nisab*) will be spared for him,<sup>1</sup> and she will be required to pay the share of the poor.

If half the *nisab*<sup>2</sup> (of livestock) perishes as a result of negligence (*tafrit*), the *zakat* collector can take his right from the livestock itself (the other half of the husband), and the husband can claim it from her, as she is responsible for payment of *zakat*.<sup>3</sup>

When one has a *nisab* in his possession for several years, and he has paid its *zakat* of each year out of other than it (*nisab*), he will be required to repay the *zakat* from the *nisab* itself. If he has not paid the *zakat*, it will be *wajib* upon him to pay the *zakat* of one year.

If a person possesses more than a *nisab*, the *zakat* will be levied on the *nisab*, and it will be propitiated from the extra number. And so also is the rule for every year till the number is reduced to less than the *nisab*. If he possesses 26 camels, and they remain in his ownership for two lunar years, the *zakat* levied on him will be a she - camel in its second year with 5 sheep.<sup>4</sup> With the passage of three years on their ownership, their *zakat* will be a camel in its second year and 9 sheep.

The *nisab* constituted of two kinds of livestock like goats and sheep, or cows and buffalo, or genuine camels and Khorasanite camels (*Bakhati*), is liable to *zakat*. Their owner has an option to pay the *zakat* from any kind of the two he likes.

If the owner says: one (lunar) year of ownership of my property is not completed, or: I have paid the *zakat* that is *wajib* upon me, it should be accepted of him and he will not be required to give an evidence, nor to make an oath. If two witnesses give testimony against him, their testimony should be accepted.

If a person possesses many kinds of livestock, he has an option to give whichever he chooses as *zakat*. If the animal that is *wajib* to be paid as *zakat* of the *nisab* be sick, it should be left and another one should be taken with equal price. If all the animals whose number reaches the *nisab* limit are sick,

<sup>1</sup> That is: half the *nisab*; completely without any defect, as no payment is required from him to the poor, i.e. he is not liable to pay any *zakat*.

<sup>2</sup> The share belonging to the divorcee, which is liable to *zakat*.

<sup>3</sup> That is: The husband can claim from the wife the share taken by the collector.

<sup>4</sup> That is: a sheep in its second year for the first lunar year, and five sheep for the second lunar year. (*al- Tawdih*, vol. I, p.130, freely).

he will not be required to purchase a sound one.

It is not valid to take the *rubba* as *zakat*, which is the mother up to 15 days, and some legists said: up to 50 days. Also it is not valid to take the *akulah* (glutton), which is the fat one prepared to eat to excess; nor the *fahl al- dirab*<sup>1</sup> (bull). It is permissible to pay as *zakat* out of the sheep of another town (country) even if it be of less value. The male or female will do, due to possibility of giving this name to it.

### Zakat on Gold and Silver:

The Nisab:

No *zakat* is levied on gold till it reaches twenty dinars (*mithqals*), when its *zakat* be 10 carats.<sup>2</sup> No *zakat* is there on the extra amount till it reaches 4 dinars, when the *zakat* will be two carats.

If the amount of gold be less than 20 *mithqals*, it will not be liable to *zakat*, and so also if it be less than 4 *dinars*.<sup>3</sup> And for every additional four dinars, the *zakat* is two carats, to whatever extent it reaches. Some legists observe: no *zakat* is levied on a property till it reaches the amount of 40 dinars, when their *zakat* will be one dinar. The first view is preponderant according to authentic traditions.

The *nisab* of silver is 200 dirhams, on which the *zakat* is 5 dirhams. And *zakat* on every extra 40 dirhams is one dirham. No *zakat* is there on any extra amount less than 40, and also no *zakat* is there on less than 200 dirhams.

One dirham is equal to 6 daniks, and every danik is equal to 8 seeds of medium barley grains. Ten seeds are equal to 7 *mithqals*.

### Conditions for Zakat:

The conditions making the *zakat* obligatory are: when gold and silver be coined as dinars and dirhams, engraved as dealing coin, or what is used in trade transactions,<sup>4</sup> with passage of one year, till all the *nisab* exists throughout the year. If it be diminished during the year, or kinds of *nisab*

<sup>1</sup> It is the male needed usually for beating the livestock. (*al- Rawdah*, vol. II, p.27).

<sup>2</sup> Then the proportion will be in carats: 1/40, that is: a quarter of tenth.

<sup>3</sup> By less than four dinars here we mean: the extra four after twenty.

<sup>4</sup> Including the coins that were used in trading and forsaken then. (*al- Minhaj*, vol. I, p.199).

change with another kind or with the same kind,<sup>1</sup> the *zakat* will not be *wajib*. And so also is the rule when the owner is forbidden from dispensing it, whether the prevention be legal like endowment (*waqf*) and mortgage (*rahn*), or compulsory like usurpation.

No *zakat* is levied on jewellery (made of gold or silver): whether be lawful like the bracelet for women, and ornament of the sword for men; or unlawful like anklet for men, girdle for women, the utensils made of gold and silver, and musical instruments made of them. Some legists observe: *Zakat* is *mustahabb* on jewellery. And so no *zakat* is levied on ingots, old silver, and *tibr*.<sup>2</sup>

Other legists said: If he converts them into gold and silver to escape payment of *zakat*, it will be *wajib* upon him to pay the *zakat* even if a lunar year of ownership has not completed. Some legists said: payment of *zakat* is *mustahabb*, according to reported traditions.

But if bank - notes (dirhams and dinars) be cinto gold and silver after passage of one lunar year, *zakat* will be *wajib* on them unanimously.

---

<sup>1</sup> By same kind (*jins*) it is meant: the specific reality, as when gold is exchanged with gold. And by another kind we mean: the other coin (cash) as when exchanging gold with silver. (*al- Masalik*, vol. I, p.384).

<sup>2</sup> *Tibr*, its singular is *tibrah*, meaning: the gold that is not made coins or unfashioned, or left as ore. (*al- Munjid fi al- lughah*, p.58).

### Rules for Gold and Silver:

1. No consideration is to be given to difference in desired quality when the two elements be equal. Rather, each one can be joined to the other. When paying the *zakat*, he may give of the better quality voluntarily, or otherwise he can pay (*zakat*) from every kind according to the amount determined for it.

2. No *zakat* is there on adulterated dirhams, (made of other metals) except when their unmixed amounts reach the *nisab* limit, and he does not extract the adulterated out of the pure ones.

3. When a person has adulterated dirhams; if amount of silver ones is recognized, he can pay the *zakat* as pure silver for them and<sup>1</sup> for the whole. But if this be unknown for him, and he pays (*zakat*) of the whole out of the unmixed ones out of precaution, it will suffice too. If he bargains, he will be required to clear them so as to determine the amount of the obligatory *zakat*.

4. As to debt, if the debtor leaves it alone for one year, its *zakat* will be *wajib* upon him not on the debtor. But if the debtor stipulates payment of *zakat* of debt on the creditor, some legists said: the condition is valid and binding. Others observed: it is not binding, which is more correct.

5. If a person buries (hides under ground) some money and forgets its place, or inherits something that never reaching his hand but only after passage of several years,<sup>2</sup> it will be *mustahabb* for him to pay its *zakat* for one year.

6. If a person leaves means of support (*nafaqah*) for his family, which will be vulnerable to damage, it will not be liable to *zakat* if the owner be absent. But when he be present it will be *wajib* upon him to pay the *zakat*. Some legists observed: *zakat* will be *wajib* in both the cases. The first view is confirmed by many traditions.

7. *Zakat* is *wajib* on every property only when it reaches the *nisab* limit by itself. Thus if the number or amount of any kind (of property) falls short of the *nisab*, it will not be valid to make up the *nisab* with another kind; such as when a person possesses 10 dinars and a 100 dirhams, or 4 camels and 20

<sup>1</sup> By (and) here we mean (or), by which we intend to say: or he can bring out a quarter-tenth of the total amount, as by this paying a quarter-tenth of the unmixed amount is fulfilled, and this can be achieved with equality of the rate of fraud in every dirham. Otherwise, he will be required to pay out the unmixed or its value. (*al- Madarik*, vol. V, p.123).

<sup>2</sup> By 'reaching his hand' it is meant: his having complete control over it by himself or his proxy, even if it be not in his hand. (*al- Madarik*, vol. 5, p.125).

cattle (cows).

## Zakat on Crops and Fruits:

### Kind of Zakatable Crops:

No *zakat* is levied on any crops produced from the earth except the four kinds: wheat and barley among grains, and dates and raisins from among fruits. And *zakat* is *mustahabb* on other grains which can be weighed such as corn,<sup>1</sup> rice, lentils, Indian peas, sult,<sup>2</sup> and '*alas*.<sup>3</sup>

### Conditions of Zakat:

*Nisab* of crops is: 5 *wasags*. Each *wasag* is equal to 60 *sa'a* (measure of capacity), and the *sa'a* is equal to 9 Iraqi *ritls* (pounds) and 6 civil *ritls*, each of which is equal to four *mudds*. Each *mudd* is equal to two and a quarter *ritls*.<sup>4</sup> Thus the *nisab* will be 2700 Iraqi *ritls*.<sup>5</sup> There is no *zakat* under this limit, but any extra quantity even if be little is liable to *zakat*.<sup>6</sup>

The limit of *nisab* liable to *zakat* being everything that is called wheat, or barley, or dates or raisins. Some legists said: *zakat* becomes *wajib* when the tree produce grows red, or yellow, or the green sour grapes grow in bunches. The first view is more correct as per the traditions reported.

Time of paying *zakat* of crops is when they be cleared, and of dates when reaping them, and of raisins when picking it. And *zakat* becomes *wajib* on crops only when their ownership is acquired through plantation, not through other means like purchasing and donation. *Zakat* is taken from produce of agriculture, and no *zakat* is levied on it after that, even if it remains for years. *Zakat* is not *wajib* but only after taking out the share of the ruler<sup>7</sup> and all provisions,<sup>1</sup> as per the most correct opinion.

<sup>1</sup> Corn is seeds of plants which grow in ears, and are made into bread. They can be eaten as boiled or roasted. (*al- Munjjid fi al- lughah*, p.235).

<sup>2</sup> Al- Layth said: *sult* is the huskless and hairless barley, that grows in the bottom. The people of Hijaz cool themselves in summer with its stalk. (*Tahdhib al- lughah*, vol. XII, p.384).

<sup>3</sup> The '*alas*: is some sort of wheat, having two seeds in the husk. It is the food of people of Sanaa. (*al- Mukhtar*, p.405).

<sup>4</sup> *Mudd* is equal to one and a third *ritl* by people of Hijaz, and two *ritls* by people of Iraq. (*al- Sami fi al- asami*, of al- Maydani, p.303).

<sup>5</sup> In kilogrammes the *nisab* is about 848 kgs. (*al- Minhaj*, vol. I, p.241).

<sup>6</sup> That means: It has only one *nisab* without '*afw*. (*al- Rawdah*, vol. II, p.34).

<sup>7</sup> It means the taxes imposed by the government on crops and plants. (*al-*

### Subsidiary Issues:

1. The agricultural produce that is irrigated by letting water flow on it, or xerophilously (*ba'l*)<sup>2</sup> or '*idhyān*,<sup>3</sup> its *zakat* will be one - tenth. But whatever is irrigated by water - wheel (*daliyah*), and sprinkler led by a camel (*nadih*), its *zakat* will be half - tenth. If two ways are followed together, the *zakat* will be reckoned on the greater quantity.<sup>4</sup> If they be equal in quantity, one - tenth will be taken of half the produce and half - tenth of the second half as *zakat*.

2. If a person possesses date - palms or plants in distant regions, some of which ripen before the others, all of them should be considered jointly and be treated as the same produce in one place. Then the *zakat* will be taken from whatever has ripened and reached the *nisab* limit, and then from the remnant, whatever be its amount. But if the fruits that do not reach the *nisab* limit ripen before, we should wait in respect of obligatoriness of *zakat*, for ripening of the fruits that can reach the *nisab* limit, irrespective of whether all the fruits and crops break forth or become ripe at one time, or the two cases differ in produce.

3. If one owns palms that break forth once a year, and others that break forth twice; some legists observed: the second kind should not be added to the first, since its produce is considered the fruit of two years. Other legists observed: it can be gathered. The second view is more correct, as per the traditions reported in this regard.

4. It is invalid to take the mature dates as *zakat* of dried dates, nor the grapes for raisins. If the *zakat* - collector takes them and they dry and decrease in quantity, he can reclaim the diminution.<sup>5</sup>

---

*Rawdah*, vol. II, p.36, the margin).

<sup>1</sup> They constitute the expenses spent on plants till they give produce. (*al-Rawdah*, vol. II, p.35, the margin).

<sup>2</sup> *Ba'l* means when the roots are saturated by the land, whose water draws near the surface, where they join the roots of trees. Thus they become needless to watering, or the roots can reach a river or a stream. (*al-Masalik*, vol. I, p.394).

<sup>3</sup> Al- Asma'i says: The '*idhy* is the plant that is irrigated by rain. (*al-Mukhtar*, p.58).

<sup>4</sup> Multiplicity is considered according to the number of irrigations, as when the plants are saturated thrice by flowing water, and four times by water - wheel, irrespective of whether their time be the same or not.

<sup>5</sup> The necessity of impermissibility of taking (the substitute) is an obligation, as *zakat* remains levied on the owner's property. With supposing its changing to raisins or dates, when the owner intends to pay it as *zakat*, it

﴿

5. If after the owner dies while being in debt, the fruit comes out and reaches the *nisab* limit, the inheritor will not be required to pay the *zakat* of the produce. But if the debt is settled and the remainder reaches the *nisab* limit, *zakat* will not be *wajib* upon the inheritor, since it will be treated as property of the dead (*mal al- mayyit*). If it becomes dates while the owner is alive, and he dies after that, *zakat* will be *wajib* (upon the inheritor), even if his debt covers all his legacy. If the legacy be less than the debt, apportionment should be made between those liable to *zakat* and creditors, according to view of some legists. Other legists observed: priority is given to *zakat*, since it pertains to the legacy itself before pertaining of debt to it. The second view is stronger.

6. If one possesses palms whose goodness of fruit has not come to light yet, he will be liable to *zakat*. And so also is the rule when he buys fruit with the condition stipulated for validity of sale.<sup>1</sup> If he comes to own a fruit after that,<sup>2</sup> the *zakat* will be on the one giving possession (seller) of it. It is more proper to consider the fruit to be dates, due to pertaining of the *zakat* to what is usually called as dates not *busr* (unripe dates).

7. The rule applied in regard of the land produce on which *zakat* is *mustahabb*, is the rule of the four crops: in respect of amount of *nisab*, quality of what is taken as *zakat* of it, and manner of irrigation.

### Zakat on Merchandise

Definition: Merchandise (*mal al- tijarah*) consists of property whose ownership is acquired through commercial transactions made for profit. If acquired through inheritance or gift, it will not be considered merchandise that is liable to *zakat*. And so also is the rule when one owns it for self acquisition.<sup>3</sup> So also when he buys something for merchandise, and he intends then self acquisition (*qinyah*).

### Conditions for Zakat:

---

will be valid, but the shortage will be claimed from him. Also he can claim the addition if there be any addition. (*Jawahir al- kalam*, vol. XV, pp.244-245).

<sup>1</sup> That is: with fulfilment of the condition considered for selling the fruit, when it is sold before appearance of goodness, which means its breaking forth and gathering to it...etc. (*al- Masalik*, vol. I, p.398).

<sup>2</sup> That is: after pertaining of *wujub* in the *nisab*.

<sup>3</sup> That is: acquisition for individual use, like furniture or food utensils.

**First: *Nisab*<sup>1</sup>:**

The capital should remain undiminished throughout the year. Thus if it is reduced during the year, *zakat* will not be levied. When some period passes with claiming from him (owner) the capital and it increases then, the lunar year of the assets will be reckoned from the date of purchasing, and year of addition will be reckoned from the date of its incidence.

**Second: Presence of a claim with Capital or Additional:**

If one's capital be a hundred, and a person claims from him even one particle (*habbah*),<sup>2</sup> *zakat* will not be levied. Some legists said: if several years pass with his capital being less than the *nisab*, it will be recommended for him to pay the *zakat* for one year.

**Third: Passage of One Year:**

The *nisab* liable to *zakat* should remain undiminished throughout a lunar year. If the capital is reduced, or its owner intends it for self acquisition, the year will be concluded. If the *nisa* remains in possession of its owner for less than a year, when he purchases with it commodities for trading: some legists said: the year of the accidental property will be the same year of the original capital. Others said: he should restart reckoning the year. If the capital be less than the *nisab*, the new year will be reckoned from the date of its reaching the *nisab*.

**Rules of Zakat:**

1. *Zakat* on merchandise pertains to the price of the commodity not the property itself, and it is evaluated by dinars and dirhams.

**Subsidiary Issue:**

If the commodity reaches the *nisab* through one of the two cashes (coins) not the other, it will be liable to *zakat* due to its reaching the *nisab*.

2. If a person owns one of the zakatable *nisabs* of trade, such as 40 sheep or 30 cattle, *zakat* on merchandise will not be levied and *zakat* on

<sup>1</sup> The *nisabs* of merchandise are the same of dirhams and dinars, not others, even if the merchandise be of another kind. (*al- Tawdih*, vol. I, p.135).

<sup>2</sup> By particle (*habbah*) it is meant: the legally known *habbah*, which is used for measuring the carat. So it should be made of gold. But the grain of crops is insignificant since it is not considered as real estate. (*al- Masalik*, vol. I, p.401).



property becomes *wajib* on him, and he will not be required to pay both the *zakats*. This view makes ambiguous the opinion of *wajib* of the *zakat* on merchandise. Some legists observed: But the *zakats* can be collected together, one obligatory and the other recommendedly.

3. If one changes 40 grazing livestock with 40 grazing livestock for trade purpose, the *zakats* on property and on merchandise will not be *wajib*, and their year will be reckoned anew. Other legists observed: *zakat* on property becomes *wajib* with completion of the year, not the *zakat* on merchandise, since difference in kind (*'ayn*) can never confute the *wajib* with attainment of the *nisab* in the property. The first view is more confirmed.

4. If profit is achieved in *mudarabah*<sup>1</sup> (speculation), the *zakat* on capital will be *wajib* on the owner, due to his ownership alone of the property, and *zakat* of profit will be paid by both of the *zakat* - collector and owner. Then the share of the owner (of the profit) will be added to his property and the *zakat* will be taken out of it then, since his capital constitutes the *nisab*. It is not *mustahabb* to take *zakat* from the share of the collector except when it fulfils the *nisab*. Can it be taken before conversion of the commodity into money? Some legists said: No, since it constitutes a protection for the capital. Others observed: Yes, it can be taken since the entitlement of the poor to receive it has excluded it from being a protection. The second view is preponderant as per the reports and traditions.

5. Debt does not prevent *zakat* on merchandise even if the owner has no asset to discharge the *zakat* but from it. And so also is the rule in regard of *zakat* on property, since it pertains to the property itself.

---

<sup>1</sup> *Mudarabah* is derived from *daraba* in the ground, and proceeding on it for trade. It is done by paying a sum of money, of gold or silver, to someone to engage in risky financial transactions with a view to profit. (*Majma' al-bahrayn*, vol. II, p.107; *Tahdhib al-lughah*, vol. XII, p.21).

### Subsidiary Issues:

1. *Zakat* is *mustahabb* on the produce of the 'aqar<sup>1</sup> (real estate) acquired for growth. If it reaches the *nisab* limit, with passage of a lunar year, *zakat* will be *wajib* on it. *Zakat* is not *mustahabb* on houses, neither on clothes, nor tools, nor commodities taken for acquisition.

2. When the horses be grazing mares and be owned for a complete lunar year, the *zakat* of every antique ('*atiq*)<sup>2</sup> horse will be two dinars, and of every *birdhun*<sup>3</sup> (draft - horse) one dinar.

### Classes Entitled to Receive Zakat:

People entitled to receive *zakat* are categorized into seven<sup>4</sup> classes:

#### 1. The Needy and Miskin:

The *faqir* (poor) and *miskin* (indigent) in the context of the Shari'ah are those who do not possess a year's provision for himself and his family. Some legists observed: They are ones who own less than one of the *nisabs* liable to *zakat*. Both the terms were being used to give the same meaning, and some people used to differentiate between the two,<sup>5</sup> in the verse 60 of *Surat al- Tawbah*. The first view is preponderant as per the traditions and proofs. *Zakat* is *haram* for one physically fit for earning provision for himself and his family, since he is regarded as a rich man. So also is one who has a trade from which he can earn provision. One who owns property (or livestock) not sufficient to provide his family for a whole year can be given *zakat*. Some legists observed: He should be provided with what can

<sup>1</sup> 'Aqar, lexicographically means land, and here it includes: orchards, inns, bathrooms and alike. (*al- Madarik*, vol. V, p.185).

<sup>2</sup> By old (antique) horse is meant one whose parents are noble Arabian in origin. (*al- Masalik*, vol. I, p.408).

<sup>3</sup> *Birdhun*: is the Turkish horse. (*Majma' al- bahrayn*, vol. VI, p.213).

<sup>4</sup> He made seven categories on the basis of unity of meaning of the needy and indigent. The more commonly known classification is eight, with differing of the two (*faqir* and *miskin*).

The advantage arises when the payer intends to distribute the *zakat* as to include all the eight categories, that is he can divide it into eight parts.

The compiler (of this book) has changed his mind and made then eight classes in another book. (see: *al- Masalik*, vol. I, p.409).

<sup>5</sup> Like Abu 'Amr ibn al- 'Ala' and Muhammed ibn Sallam from Yunis. (*Tahdhib al- lughah*, vol. IX, pp.113-114).

See verse 60 of *Surat al- Tawbah*.

fulfil his provision and urgent needs, but this is not a condition. On this basis, *zakat* can be given to the owner of 300 (dinars), but it is *haram* for the owner of 50, considering the incapability of the former to earn what fulfils his urgent needs, and capability of the latter.

The needy can receive the *zakat* even when he has a house in which he lives, or a servant working for him, if he cannot do without them.<sup>1</sup> One's claim to be poor will be accepted, and he will be treated as per his claim, whether true or false.<sup>2</sup> If both the cases (truth or falsehood) are not proved, his claim will be accepted without requiring a witness or an oath, irrespective of whether he be physically fit or unfit. And so also is the rule when he has a capital (asset) and he claims its being deteriorated. Some legists said: He will be required to make an oath to prove its damage.

It is not *wajib* to inform the poor that what is paid to him is *zakat*. If he be of those who keep aloof from taking it though being entitled to receive it, it can be given to him as a grant. If it (*zakat*) is given to him on the claim he be poor but known then to be well-provided, it should be restored from him if this be feasible. If it be not feasible it will be reckoned as an obligation on the receiver, and the giver will not be responsible for its payment, irrespective of whether the payer be the owner, or the *imam* or the collector. And so also is the rule if the receiver is known to be *kafir* (disbeliever) or *fasiq* (libertine), or a relative whose maintenance is *wajib* upon the giver, or a Hashimite, and the payer be of another class.

## 2. Zakat Collectors:

They are collectors of the alms (*sadaqat*),<sup>3</sup> who should have four qualities: maturity (*taklif*), faith, justice (*'adalah*) and *fiqh*<sup>4</sup>- if they be

<sup>1</sup> Indispensability to the servant is attained when the employer takes up the habit of employing a servant, though he be capable of serving himself. Or when he needs a servant for a chronic disease or alike. (*al- Masalik*, vol. I, p.410).

<sup>2</sup> Also, it will be accepted of him if he claims to be having a large family, or engagement in knowledge-seeking that justifies abandoning endeavour, provided the falsehood of his claim is not known without an oath. (*al- Masalik*, vol. I, p.410).

<sup>3</sup> *Ummal al- sadaqat* are those who go about for collecting and gathering the alms (*zakat*), through taking, writing, calculating, keeping in mind and dividing. (*al- Madarik*, vol. V, p.208).

<sup>4</sup> *Fiqh* is a condition for that who works as a guardian of a minor lacking it. But absolute *fiqh* is not a condition for him, rather that (*fiqh*) which pertains to *zakat*. This is the intent of the compiler when saying: "if they be content with what can fulfil their need... etc". The compiler is satisfied for

content with what can fulfil their need it will be valid and they should not be Hashimite. There is disagreement among legists regarding their being freemen. The ruler (*imam*) has an option between determining fixed wages for them or remuneration for a fixed period (for their work).

### 3. Al- Mu'allafatu Qulubuhum:

They are the disbelievers who are won over by paying a part of *zakat* in the interest of Islam, and *jihad*. There is disagreement as to whether this category still holds or if it has been abrogated.

### 4. Fi al- Riqab:

It implies three categories: the *mukatabun*, and the slaves who are under distress (*shiddah*),<sup>1</sup> and the slaves bought and set free with *zakat* funds, though not being in distress, but provided they be not entitled to receive *zakat*.

Some legists added to these a fourth category: He is that upon whom *zakat* becomes *wajib* but cannot find anything to pay. For this person a slave should be bought with *zakat* funds and set free, the view regarding which there is disagreement among the legists.

The *mukatab* is to be given of this share if he does not have what he can spend on his *kitabah* (being of the people of Scripture). If he spends it in any other place, restoring it will be permissible, with presence of this state. Some legists said: it is not permissible. If he is given from the share of the poor, it will not be permissible to restore it. If he claims to be made scriptural, some legists observed: it will be accepted, while some others said: it will not be accepted, except with requiring a witness or an oath. The first view is preponderant and more confirmed. If his master (*mawla*) believes him, it will be accepted of him (the claim).

### 5. Al- Gharimun:

They are the debtors who have fallen in debt for some non - sinful cause. They may be given *zakat* to help them repay their debts. But if their debts be for sinful cause, they will not be given *zakat* to repay their debts.

If a *gharim* turns from sin, he may be given of the share of the poor,

---

the considered one with: inquiring the '*ulama*', and he approved of it in *al-Bayan*. (*al- Masalik*, vol. I, p.412).

<sup>1</sup> When being under charge of their master, or that who is given mastery over them. The reference in this regard is the established usage. (*al- Rawdah*, vol. II, p.47).

and it will be permissible for him to pay himself as *qada*. If he has no knowledge of where he has spent it, some legists observed: he will not be given, and others said: he will be given, which is more confirmed.

If a poor person be indebted to the owner, it is permissible for the owner to settle the account by counterclaiming an equal amount due.<sup>1</sup> And so also if the debtor is dead, as it will be permissible to give his heir of the *zakat* to repay his debt, and also to be counterclaimed an equal amount due.<sup>2</sup>

If the debtor spends from the share of *gharimun*, in other than the *qada*, it will be restored from him as per the reports and proofs. If he claims to be indebted, his claim will be accepted if the creditor believes him. And so also is the rule if his claim be proved neither true nor false. Some legists observed: His claim will not be accepted. The former view is more confirmed by traditions.

## 6. Fi Sabil Allah:

It means the *jihad* in particular, and implies those warriors who have volunteered to fight for defence of Islam. Some legists observe: Apart from warriors, this category includes building of bridges, mosques, hospitals, *hajj*, and helping the visitors, which is confirmed by principles of school (*madhhab*). The invader can be given from *zakat* funds even if he be rich owning property sufficient to provide his family. If he invades, the *zakat* will not be restored from him. But if he doesn't invade, it should be restored from him.

If the *imam* is absent, the share of *jihad* will be deducted, and spent on public interests. Also *jihad* may be obligated despite absence of urgent need to it,<sup>3</sup> when this share will remain with incidence of that estimation.

So also is the share of *zakat* collectors, and that of *al- mu'allafatu qulubuhum*, will be deducted, and the *zakat* will be levied on other categories.

## 7. Ibn al- Sabil:

<sup>1</sup> That is: he can claim the debt from the *zakat*, i.e. he may reckon it on account of the *zakat* due on him without contradiction. (*Jawahir al- kalam*, vol. XV, p.363).

<sup>2</sup> That is: if one having a large family has a credit on a member of his family, it will be permissible for him to counterclaim him with the *zakat*, due to non-*wujub* of discharging the debt on the one having a large family. (*al- Rawdah*, vol. II, p.49, the margin).

<sup>3</sup> Such as when the Muslims be invaded by an enemy from which Islam's territory and law (*baydat al- Islam*) is feared.

it means a traveller cut off from his hometown and means, even if he be well-provided in his hometown, and so also is the guest, provided that is travel be for a legitimate purpose. Hence it is valid to give him *zakat* to an extent that will enable him to reach his hometown. If his travel be for sinful purpose, he will not be given *zakat*. And if anything remains of *zakat* (given to *ibn al- sabih*), he should return it to the payer. Some legists said: He is not required to return it.

### Qualities of Mustahiqq:

#### First: Faith

It is not permissible to give *zakat* to a *kafir* (infidel), nor to one believing in other than the Truth. In respect of a non - believer,<sup>1</sup> it is permissible to give him *zakat al- fitr*, particularly to the weakened one (*mustad'af*). It is valid to give *zakat* to children of believers not of others. If a non - Muslim gives his *zakat* to followers of his creed, and be enlightened then, he will be required to repay the *zakat*.

#### Second: 'Adalah (justice)

Many legists considered it a condition for entitlement to receive *zakat*, while others considered the following: avoiding the major sins, like drinking liquor and adultery (*zina*), not the minor sins, though their perpetrator will be counted among debauchees. The first view is most precautionary.

---

<sup>1</sup> It will be reserved for him till finding a believer. Some legists observed: It is permissible then to give the *zakat* to the weakened (*mustad'af*). (*al-Tawdih*, vol. I, p.140).

**Third: Not being among those whose maintenance is *wajib* upon the owner:**

They include: one's indigent parents, and higher, the sons and down in order, the wife, and *mamluk* (slave). It is valid to give it to other than these relatives, though being very close, such as the brother and paternal uncle.

If one whose maintenance is *wajib* be the collector, it will be permissible for him to take a share of the *zakat*, and so also is the warrior, the *gharim* (debtor), *mukatab* and *ibn al- sabil*, who should take excess of his essential needs to an extent sufficient to cover his expenses of travel, like travel supplies.

**Fourth: Not being a Hashimite:**

If one be a Hashimite, it will be *haram* for him to receive *zakat* from someone who is not a Hashimite himself. But he may receive *zakat* from a Hashimite. If one belonging to Banu Hashim be incapable of providing himself of the share of *khums* (one - fifth), it will be permissible for him to receive *zakat* even from a non - Hashimite. Some legists say: the amount he takes should not exceed his urgent need.

Also it is permissible for a Hashimite to receive the *mandubah* (recommended *zakat*) from a Hashimite and a non - Hashimite.

Those for whom receiving the obligatory *zakat* is *haram* include: the children of Banu Hashim (in particular) as per the most correct opinion, who are represented nowadays<sup>1</sup> by sons of Abu Talib, al- 'Abbas, al- Harith, and Abu Lahab.

**Those Responsible for Collecting the Zakat:**

They are three: the owner, the ruler and *zakat* - collector.

The owner has the right to spread out the *zakat* obligatory on him by himself, and the agent appointed by him. It is more proper to carry it to the *imam* (ruler), and the recommendation becomes more emphatic in visible properties such as the livestock and crops.

If the *imam* claims it, it should be given to him. And if the owner distributes it in this case (demanded by the *imam*), some legists said: it will

---

<sup>1</sup> By 'nowadays' he avoided reference to the era of the Prophet(S), as they numbered more than these, like Hamzah (A). But they became extinct and the offspring left is only for the ones mentioned. (*al- Masalik*, vol. I, p.425).

be invalid if paid by the owner. Some others observed: it will be accepted of him though he will have sinned. The first view is more correct. The guardian of minor is regarded as the owner in having *wilayah* (responsibility) of payment.

The ruler (*imam*) has to appoint a collector for receiving the *sadaqat*, which should be paid to him on his claim.<sup>1</sup> If the owner says: "I have paid what I am obliged to", his claim will be accepted without requiring a witness or an oath.

It is not permissible for the collector to spread out the *zakat* except with the permission of the *imam*. When the *imam* permits him, it will be valid for him to take his share and distribute the remainder.

In case of absence of the *imam*, it can be paid to an Imami confidential *faqih* (having all qualifications of *fatwa*), as he knows better where to spend it. It is preferable to spread it out as to include all the categories, with distinguishing a group of every category. It is valid to give one's entire *zakat* to a single category, and even to a single person from among some categories.

It is not permissible to delay taking it out and keeping it, with intention to pay it to people other than the residents, or to residents of another town while there being eligible recipients in his town. One who delays taking it out after its time has arrived and its payment has become possible, is a sinner and will remain liable to pay it, as he has delayed the carrying out of a time-bound obligation and been negligent.

And so also when some person has assets belonging to some other one, but he abstains from giving it to him on his claiming it, or entrusted to spend something in a certain place but he doesn't execute the will, or given some money for carrying it to someone else.

In case no one entitled to receive *zakat* is found, it will be valid to transfer it to another town. If the property is damaged while transfer, he will not be responsible for its payment, except when this be done with negligence. If one's assets be in other than his town, it will be preferable and more meritorious to spend the *zakat* on the residents of the owner's town. But it is valid to give a substitute in his town, and if he transfers the *zakat* to his town, he will be responsible for payment when it is deteriorated.

In respect of *zakat al- fitrah*, it is preferable to pay it in the town where the owner resides, even if his assets be in another town, as it is obliged upon

---

<sup>1</sup> There is no doubt in this, since the *zakat* - collector is a deputy of the *imam*, and he is invested with authority from him. So disobeying his orders will be considered a contradiction to the *imam*. (*al- Madarik*, vol. V, p.261).



him as a debt. If he determines *zakat al- fitrah* from a property not in his possession, he will be responsible for its transfer from that town despite presence of an eligible recipient in that town.

### Subsidiary Issues:

1. If the *imam* or collector receives the *zakat*, the owner's obligation will be redeemed, even if it be deteriorated after that.

2. If the owner finds no eligible recipient (*mustahiqq*) for the *zakat*, it will be preferable for him to set it aside. If death hour approaches, it will be *wajib* upon him to bequeath it (to someone).

3. When the slave bought and set free by the *zakat* dies with no heir be there, he will be inherited by supervisors (*arbab*) of *zakat*. Some legists said: he will be inherited by the *imam*. The first view is more correct.

4. If the *sadaqah (zakat)* needs measuring or weighing, the fees will be paid by the owner. Some legists observed: it will be deducted from the *zakat*. The first view is more confirmed by reports and proofs.

5. If the needy has two or more conditions entitling him to receive *zakat*, like need (*faqr*), *kitabah*, and invasion, it will be valid to give him a separate share for every condition.

6. The minimum amount given to the needy is the limit levied on the first *nisab*: ten carats or five dirhams. Some legists said: the limit levied on the second *nisab*: two carats or one dirham. The first view is preponderant as per opinion of more legists. There is no limit for the quantity of *zakat* if given at once. If payment succeeds one another till making one sufficiently provided for one year, the remainder (of his provision) will be *haram* for him.

7. If the *imam* receives the *zakat*, it will be *wajib* upon him to invoke a blessing upon its payer. Some legists said: it is *mustahabb*, which is more confirmed by reports.<sup>1</sup>

8. It is *makruh* to possess what is paid as *sadaqah* voluntarily, irrespective of whether the *sadaqah* be *wajib* or recommended (*mandubah*). But no objection is there to that when he recovers it through inheritance or alike.

9. It is *mustahabb* to brand the livestock given as *sadaqah (zakat)*, in the strongest and most visible place like earlaps of sheep, thighs of camels and

<sup>1</sup> The original reference in this issue is the verse 103 of *Surat al- Tawbah*: "Take thou alms out of their wealth, thou wildest cleanse them and purify them thereby, and pray for them; verily thy prayer is assurance (of peace) for them..."

cows. On the branding iron it should be written for what purpose they were taken: *zakat*, or *sadaqah*, or *jizyah* (tribute).

### Time of Payment:

It is *wajib* to pay the *zakat* on the setting in of the twelfth of Rajab. Delaying it is not permissible except when there be some hindrance, or waiting for an eligible recipient. If the owner sets it aside, delaying it for one or two months will be permissible.

It is more confirmed in reports that if the delay be for a legitimate reason, it will last as long as the reason be there without any limit. If it be an improvisation,<sup>1</sup> it will be impermissible, and the owner will be responsible for payment if it is deteriorated.

Also it is not valid to pay it before time of *wujub*. If the owner prefers hastening in payment, he may pay its equal as a loan, but it will not be considered as *zakat*, and the word haste will not be applied to it. When time of *wujub* sets in, he can reckon what he paid as a part of *zakat* like a debt in liability of the needy, provided that the receiver remains to be entitled to receive it, and the *wujub* (of *zakat*) remains in the property.

If the *nisab* is reached by borrowing, *zakat* will not become *wajib*, irrespective of whether the asset be present in kind or damaged, as per the most correct opinion.

If the *mustahiqq* (eligible recipient) becomes not entitled to receive the *zakat*, it should be retrieved from him. It is permissible for him to abstain from giving back the *zakat* in kind, but he may pay its price like a credit. If retrieving it is not possible (in kind or its price), the owner will be fined the *zakat* from the capital remaining in his hand. If the eligible recipient remains entitled to receive the *zakat*, with fulfilment of conditions of *wujub*, it will be permissible for the owner to reclaim it and pay a substitute for it. Because it has not been determined, and he may change his mind and keep it away from the one to whom it was paid too.

### Subsidiary Issues:

1. If the owner gives a sheep (as *zakat*), and it grows fatter, it will not be permissible for him to retrieve the property itself with disappearance of need, and the needy has to pay its price. And so also is the rule when the

---

<sup>1</sup> *Iqtirah* (improvisation) in origin is: the extemporized speech, and speaking or doing on the spur of the moment without meditation. What is intended here is to delay paying out the *zakat* without a legitimate reason. (*al-Masalik*, vol. I, p.434).

addition be separate like an offspring (lamb). But if he gives a sheep, it will not be *wajib* on him to give the lamb.

2. If the *zakat* paid becomes less (decreases), some legists observed: he can retrieve it, and the *faqir* will not be required to pay anything, because the purpose is obligation of payment of the price in time of receiving.

3. If the needy becomes rich with the capital when a lunar year passes, it will be permissible to take it into his account, and the owner will not be responsible for taking and giving it back. But if he becomes rich with other than it (capital), the credit will be recovered.

### The Niyyah:

What is considered is the intention of the payer if he be the owner. If he be the collector the *imam* or proxy, it will be valid to undertake the *niyyah* by both the payer and the owner.

In respect of the child and insane person the *niyyah* will be made by the guardian, and receiving the *zakat* for them will be undertaken by the *imam* or collector. It (*niyyah*) is required in time of payment, but if he makes the *niyyah* after payment, it may be valid.

The essence of *niyyah* is the intention to perform an act with the motive of nearness to God,<sup>1</sup> *wujub* or *nadb* (recommendation) and its being *zakat* on property, or *zakat al- fitrah*. It is necessary to state the kind of property from which the *zakat* is to be paid out in the *niyyah*.

### Subsidiary Issues:

When one says: "If my absent property still exists, this is its *zakat* (setting aside a certain amount), and if it be damaged, this will be a *nafilah*", it will be valid. But it will be invalid when he says: "or *nafilah*".

When he possesses two equal properties, liable to *zakat*, one of which is present and the other in another town, it will be valid if he pays out the *zakat* with the intent of being from one of the two properties. And so also when he says: If my absent property is intact.

If he pays out from his absent property, with the intent of its being intact, discovering then its being damaged, it will be permissible for him to transfer it (*niyyah*) to another property, as per the more correct opinion.

If he makes *niyyah* for a property he expects its arrival, it will not be

<sup>1</sup> Since it is a worship (*'ibadah*). So if he makes a mistake in the *niyyah* during payment, it will not be valid till he makes the *niyyah* properly even after a while, due to not considering it associated to the payment. (*al-Tawdih*, vol. I, p.144).

valid even if it reaches him<sup>1</sup> (comes into his possession).

If the *niyyah* is not made by the capitalist (owner of asset), but by the collector or the *imam* in time of payment, it will be permissible for the collector to take it reluctantly. But if he takes it voluntarily, it will be invalid according to view of some legists. Others observed: it will be valid, which is preponderant.

## Section Two: Zakat al- Fitrah

### ① Those on Whom it is Wajib:

There are three conditions making this *zakat* obligatory:

#### 1) Taklif:

It is neither *wajib* on the child, nor on the insane, nor on a person in swoon when month of Shawwal sets in.

#### 2) Freedom:

It is not *wajib* on the *mamluk* (slave), even if it is said: he is financially capable. Also it is not *wajib* on the *mudabbar* (preconcerted), nor on a bondwoman (begetter of a child),<sup>2</sup> nor on the contracted (*mashrut*) *mukatab*, nor on the freed (set free) of whom nothing is emancipated. And if anything is set free of him, it will be liable to *zakat* proportionately. If he be provided by his master (*mawla*), *zakat* will be *wajib* on him (*mawla*) not the slave.

#### 3) Financial Capability:

*Zakat* is not *wajib* on the needy, who does not own one of the zakatable *nisabs*. Some legists said: It is not *wajib* on that who is entitled to receive it (to whom it is valid to pay it).

The criterion considered is his not possessing, either actually or potentially, a year's provision for himself and his family, which is more confirmed by traditions.

It is *mustahabb* for the needy to pay it out. The least of that is to pay out one *sa'* after passing it through hands of all members of his family. It is

<sup>1</sup> Because he has paid the *zakat* before having complete control over it (complete ownership). (*al- Tawdih*, vol. I, p.144).

<sup>2</sup> She is the female slave who has given birth to a child for her *mawla* (master), so she will be set free after the death of the master, from her child's share, if there be a share for her child. (*al- Rawdah*, vol. II, p.12, the margin).

*wajib* to pay *zakat al- fitrah* (with fulfilment of conditions) for oneself and for all those whom one feeds (on the night of *'id al- fitr*, irrespective of whether their maintenance is *wajib* upon one or not (recommended), like the wife, children and the like,<sup>1</sup> or a guest and the like,<sup>2</sup> and regardless of their being children or adults, freemen or slaves, Muslims or non - Muslims.

The *niyyah* is considered a condition in fulfilling the duty. It is not valid to take it out from the *kafir* (infidel), even if it be *wajib* upon him. If he embraces Islam, he will be exempted of it.<sup>3</sup>

### Important Issues:

1. If one reaches the age of puberty before the setting in of month of Shawwal, or embraces Islam, or an insane regaining sanity, or possesses what makes him financially capable, it will be *wajib* upon him to pay out the *zakat*. If this happens after setting in of the month (of Shawwal), it will be recommended for him to pay it, if he has not performed the *salat al- 'Id* yet. And so also is the rule if he comes to own a slave or a child is born for him.

2. It is *wajib* to pay *zakat al- fitrah* for the wife and *mamluk* (slave), even if they be not among those he is maintaining, when no any other one is providing them. Some legists observed: It will not be *wajib* but only with maintenance. There is diregarding this view.

3. Everyone whose *zakat* has become *wajib* on other than him, he will be exempted of paying it, even if it be *wajib* upon him when being alone, like the rich guest and wife.

### Subsidiary Issues:

1. If one has a slave living far away but known to be alive: if he be capable of earning and providing himself or be under provision of his master, *zakat* will be *wajib* upon the master (*mawla*). If he be maintained by other than his master, the *zakat* will be *wajib* upon the maintainer.

2. If the slave be owned by two partners, the *zakat* will be *wajib* upon both of them. If he be maintained by one of them, the *zakat* will be *wajib* upon the maintainer.

<sup>1</sup> Like (indigent) father, mother and grandfather and other uterine relations who are maintained by the owner. (*Jawahir al- kalam*, vol. XV, p.494).

<sup>2</sup> Including the strangers who are maintained by him. (*al- Tawdih*, vol. I, p.145).

<sup>3</sup> According to the tradition: Islam exonerates all the acts done before it. (See *Musnad Ahmad ibn Hanbal*, vol. IV, pp. 199, 204, 205).

3. If the master (*mawla*) dies while being indebted: if it occurs after the setting in of the moon, the *zakat* of his slave will be taken from his assets. If his legacy be short of providing this, it will be dealt out in portions as to include the debt and *zakat al- fitrah*. If he dies before the setting in of the month, *zakat* will not be *wajib* upon anyone, except with consideration to his (master's) being a provider of him.

4. When a slave is bequeathed (in a will) as a heritage to a person, and the bequeather dies then... if the person accepts the bequest before the setting in of the month, *zakat* will be *wajib* upon him. But if he accepts the bequest after the setting in of the month, he will be exempted of it. Another view says: it will be *wajib* upon the heirs, regarding which there is disagreement. If the slave is granted to him as a gift but he does not take hold of him (slave), the *zakat* will not be *wajib* upon the one to whom he is granted. If the donor dies, *zakat* will be *wajib* upon the heirs. Other legists said: If he accepts and dies, when the heirs receive the *zakat* before the appearance of the new moon, it will be *wajib* upon them, regarding which there is disagreement.

## ② Its Kind and Quantity:

### a. Kind:

The criterion is to pay out from what is usually used as food, like wheat, barely, their flour and bread made of them, dates, raisins, rice and milk (and *aqit*).<sup>1</sup> When having other than these, their market - price should be paid out. It is better to pay out the dates<sup>2</sup> first, then the raisins, then what is usually used by everyone as food.

### b. Its Quantity:

The *wajib* quantity of *fitrah* per head is one *sa'* (approx. 3kg) of all the mentioned foods. Each *sa'* is equal to four *mudds*, which are equal to nine Iraqi *ritls*. For milk, it is four *ritls*. Some legists call it: *madani*. No assessment is there for the substitute of the *wajib*, rather the criterion considered is market price.

Some legists estimated it with one dirham, and others with four daniks of silver (1/6 of a dirham). But this view is not reliable, and it may be

<sup>1</sup> *Aqit*: is something extracted from the curdled milk (yoghurt). It is baked and left till it is separated to curdle and whey. One piece is called *aqitah*. (*Tahdhib al- lughah*, vol. IX, p.241).

<sup>2</sup> The dates is preferred since it is quicker in advantage, and less costly, due to its containing food (*qut*) and *adam* (nourishment)... (*al- Masalik*, vol. I, p.450).

reduced because of divergence of prices.

### ③ Time of Wujub:

The *zakat al- fitrah* becomes *wajib* with the setting in of the month of Shawwal. It is not permissible to set it aside before this time, except with the intent of credit, as per the most correct opinion. It is valid to pay it out after that time, and it is meritorious to delay it till before *salat al- 'Id*. If the payment is delayed beyond this time (*salat*), it remains *wajib* to pay it later. But if time of *salat* passes when he has not set it aside yet, some legists said: it will be annulled. Others said: he should pay it as *qada'*, and others said: as *ada'*. The first view is more confirmed in traditions.

If payment is delayed after setting it aside despite presence of a deserving recipient, it remains *wajib* to pay it later. If payment is delayed with absence of a deserving recipient, he will not be responsible for its payment. It is not permissible to transfer it to another town with presence of a deserving recipient in his town, and he will be responsible for payment. But it is permissible when no deserving recipient is present, and he will not be responsible for its payment.

### ④ Were to Spend It:

*Zakat* on property can be taken out by the owner. It is preferable to give it to the *imam* or the one appointed by him. If this be not possible, it can be paid to the Shi'ah *fuqaha'*. The non - believer or *mustad'af* (weakened) cannot be given the *zakat* but only when there is no deserving believer. It can be given to the children of believers even if their fathers be debauchees. The needy is not to be given less than a *sa'a*, except when there found a group of deserving persons for whom the *zakat* is not enough (to be distributed among them). It is permissible to give one's entire *zakat* to a single *miskin* even if it makes him well off by being given all at once.

It is *mustahabb* to give it to one's needy relative, and then to the neighbors.<sup>1</sup>

<sup>1</sup> According to a tradition reported from the Prophet(S): "No *sadaqah* is accepted while there is a needy uterine relative." Also the *hadith*: "The neighbor of (someone paying) *sadaqah* is more entitled to receive it."

It is *mustahabb* to single out men of virtue, knowledge and asceticism with it, and prefer them to others in order. (*al- Masalik*, vol. I, pp.453-454).







## Kitab al- Khums

### Chapter one: It is *wajib* on seven categories

#### 1) Booty acquired in war:

It includes whatever acquired and not acquired by warriors, like land and alike, provided that it is not usurped from a Muslim or covenanted, whether it be little or much.

#### 2) Minerals:

It includes everything that is of value extracted from the earth - apart from soil-whether manufactured like gold, silver and lead, or not manufactured like ruby, beryl, and kohl, or fluid like tar, petroleum and sulfur.

On these minerals, it is *wajib* to pay *khums* (one - fifth) after making provision for the owner and his family. Some legists said: it is not *wajib* but only when its limit reaches 20 dinars, as reported in traditions. The first view is more correct.<sup>1</sup>

#### 3) Treasure (*rikaz*):

It consists of articles of value buried under the ground. If it reaches 20 dinars and being in the abode of war or abode of peace, with no sign left of inhabitants of that place, *khums* will be *wajib* on it. If a person finds it in a bought property (*milk*), he should try to explain it to the seller.<sup>2</sup> If the seller comes to recognize it, he will be more entitled to it. But if he can't recognize it, it will be given to the purchaser, and will be liable to *khums*. If one buys a fish, finding in it then something, he will be required to pay its *khums*, and the surplus will be his own, without being required to look for its owner. And so also is the rule when he buys a mount finding inside its belly something of value.

#### A Subsidiary Issue:

---

<sup>1</sup> That is: most of the Companions (of the Prophet [S]) have not considered any *nisab* in it, but rather obligated the *khums* on the surplus remaining after making the provision, though it be little. (*al- Masalik*, vol. I, p.459).

<sup>2</sup> Through describing it with its doubt - eliminating specifications. (*al- Tawdih*, vol. I, p.149).

When a person comes to find a treasure in a barren land belonging to abode of Islam, if it contains coins or Aadii<sup>1</sup> coins, he will be required to pay out its *khums*, and the surplus left will be his own.

If it contains Islamic coins, some legists consider it as a find (*luqtah*). Some others said: the finder will be its owner and will be required to pay its *khums*. The first view is more correct.

4) Whatever retrieved from the sea through diving, e.g. pearls and corals, is liable to *khums* if its value is one dinar or more after deducting the cost of retrieval. If something is taken from it without diving, it will not be liable to *khums*.<sup>2</sup>

### Subsidiary Issue:

Ambergris (Anbar): if it is retrieved (from the sea) through diving, the criterion considered for it will be its value being one dinar. But if it is taken from the surface of the water or the beach, the rule applied to minerals will be applied to it.

5) The surplus remaining after one making provision for himself and his family for a period of one year, irrespective of his profession and made of income: trade or industry or agriculture, is liable to *khums*.

6) If a *dhimmi* purchases land from a Muslim, the *dhimmi* is personally liable to pay its *khums*, irrespective of whether its being of that upon which *khums* has become *wajib* like the land conquered by force, or the one upon which *khums* is not *wajib* like the land whose inhabitants embraced Islam without force.

7) The property mixed with illegitimate wealth:

If the legitimate wealth gets mixed with illegitimate wealth, and neither the quantity of the *haram* wealth nor its owner is known, he is obliged to pay *khums* from his whole wealth.

### Subsidiary Issues:

<sup>1</sup> Aadii: it is an ancient title used for things belonging to Tribe of Aad, people of Hud. It means here: unless its coins belong to the Islamic era, whether be old or modern.

He most probably distinguished the Aadii due to the fact that the treasure buried there containing always old coins. (*al- Masalik*, vol. I, p.463; *al- Madarik*, vol. V, p.374).

<sup>2</sup> That is: *khums* is not levied on it only with regard to this reason, and this never contradicts the *wajib* of *khums*, as it is considered a profit. (*al- Madarik*, vol. V, p.376).

1. *Khums* is *wajib* upon the treasure,<sup>1</sup> irrespective of whether the finder be a freeman, or a slave, a child or old man. And so also is the rule in respect of the minerals and diving.

2. a lunar year of ownership is not reckoned for anything of the *khums*, but the *khums* levied on profits of trades can be delayed as precaution for earning.

3. When the lessor disagrees with the lessee regarding the treasure: if they disagree regarding its possession, the claim of the lessor will be accepted with his oath. But if they disagree regarding its quantity, the claim of the lessee will be accepted.

4. *Khums* is *wajib* after making the provision of which extracting the treasure is in need, like escalating and (metal) casting and like.

## Chapter Two: Uses of Khums

*Khums* will be divided into six parts: three of the Prophet(S), which include: shares of God, the Prophet(S) and the *dhawi al- qurba* (i.e. those belonging to Banu Hashim), will be paid to the Imam (A) or his representative (to be spent for the benefit of the Muslim community).

The share received by the Prophet(S) or the Imam (A) will be transferred to his heir (successor) after his demise.

The other three parts are to be given to the orphans, destitutes and travellers. Some legists said: it is divided into five parts. The first view is more known. These three categories should belong exclusively to 'Abd al-Muttalib consanguineously. If they belong exclusively on maternal side, they will not be entitled to receive any share of *khums*, as per the most correct opinion. It is not *wajib* to contain the whole category, but if one<sup>2</sup> of each

<sup>1</sup> It is reported that the Prophet(S) said in his testament to al- Imam Ali (A): O Ali, Abd al- Muttalib has enacted five laws in the pre-Islamic era, which Allah has made applicable in Islam... and he once found a treasure, from which he paid out the *khums* and gave it as *sadaqah* in the way of God. At that time Allah, the Mighty and Glorious, revealed the verse:

“And know ye (O believers) that whatever of a thing ye acquire a fifth of it is for God, and for the Apostle and for the (Apostle's) near relatives...”(8:41). (*al- Khisal*, of al- Saduq, vol. I, pp.312,313; *al- Sirah al- Halabiyyah*, vol. I, p.5).

<sup>2</sup> Since what is intended by 'the orphans and needy' in the holy verse, is the species (sex), like the wayfarer (*ibn- al- sabil*) in the verse of *zakat*, not the public. This is either due to inability of containing, or all be addressed by it. That is, it is *wajib* upon all people to pay (*khums*) to all the indigent people, in a way that some pay to some others. (*al- Madarik*, vol. V, p.403).

category is given the *khums*, it will be valid.

### Important Issues:

1. Those entitled to receive the *khums* include all who descend by birth from Abd al- Muttalib, who are Banu Abi Talib, al- ‘Abbas, al- Harith and Abu Lahab, males and females. In regard of deserving of Banu Abd al- Muttalib, there is disagreement among the legists, and their not deserving it is more confirmed in traditions.

2. Is it permissible to distinguish a certain category? Some legists said: Yes, and others said: No, which is most precautionary.

3. The ruler (*imam*) has to divide the shares among the three categories according to their need. If a surplus remained from it, he is authorized to take it, but if it falls short of satisfying all the categories he will be required to complement it from his own share.

4. The traveller cut off from his hometown and means (*ibn al- sabil*) is not considered needy (*faqir*), but he becomes in need in the town where he be entitled to receive the *khums*, even if he be wealthy in his hometown. Regarding application of the same rule on the orphan, there is disagreement among the legists, as some accepting and some refusing. The first view is most precautionary.

5. It is not valid to transfer the *khums* to another town while there being a deserving recipient in the original town. If it is transferred with this condition, the payer will be responsible for payment. But it is permissible when no deserving recipient is found in own hometown.

6. Faith (*iman*) is a condition considered in the deserving recipient (*mustahiqq*), with disagreement among the legists. But ‘*adalah* (justice) is not a condition, as per the verdicts of school legists.

### Two Subsidiary Issues:

First: The *Anfal*<sup>1</sup> (spoils):

They are the booties that the *imam* especially deserves, as were deserved by the Prophet(S). They are in five categories:

- The land taken (occupied) without fighting, irrespective of whether its people have departed (been driven away of) it or have surrendered it

---

<sup>1</sup> By *anfal* here it is meant: the booties belonging specially to the Imam in addition to his counterpart. These *anfal* (spoils) belonged to the Messenger of Allah(S) during his lifetime, and to the Imam succeeding him after his demise. (*al- Masalik*, vol. I, p.473).

voluntarily.<sup>1</sup>

- The barren (uncultivated) land, whether being owned and its inhabitants have perished, or not possessed by anyone, like *mafawiz* (waterless plains, deserts) and sea - sides.

- The mountain tops and what they contain inside, with bowels of valleys and thickets (jungles).

- when abode of war (*dar al- harb*) is conquered, then all feudal estates (*qata'i'*)<sup>2</sup> and *safaya*<sup>3</sup> that were owned by its ruler will become booties for the Imam (conqueror), if they be not usurped from a Muslim or *mu'ahad* (covenanted). He has the right too to select from among the booties that number of horses, garments or bondmaids or other things as he likes, but without unfairness.

- And all the booties taken by the warriors without the Imam's permission, they will be his (A) own.

Second: How to use the Anfal:

1. It is not permissible to use these *anfal* without his (Imam's) permission. If one does so, he will be considered as usurper. If a profit is made of this, it will be given to the Imam (A).

2. If the Imam refuses to take a part of his shares, the surplus of this cut will be given to him lawfully, and he will be required to discharge the debt.

3. Taking the *manakih* (bondmaids),<sup>4</sup> *masakin* (dwelling - places)<sup>5</sup> and *matajir* (trades)<sup>6</sup> are considered public (*mubah*) in time of occultation, though all or some of these belong to the Imam in origin. It is not *wajib* to take out the share of the present deserving recipients of *khums* from these

<sup>1</sup> Without fighting, like the state of Bahrayn. (*al- Rawdah*, vol. II, p.84).

<sup>2</sup> *Qati'ah* (a feudal estate): it is an immovable property, contrary to the *sawafi* which are movable. (*al- Rawdah*, vol. II, p.85, the margin).

<sup>3</sup> *Safaya*, plural of *safiyah* which means: the booty and alike that is selected by the kings personally for themselves. (*al- Rawdah*, vol. II, p. 84, the margin).

<sup>4</sup> *Manakih* means the bondmaids who are taken prisoners during era of occultation, when it will be permissible to buy them, though there will be *khums* on them, but it is not *wajib* to pay it out. It is permissible to have sexual intercourse with them as they are considered under complete control of the owner. (*al- Masalik*, vol. I, p.475).

<sup>5</sup> *Masakin* means: the places taken for residence in the land distinguished for him (peace be upon him)... (*al- Masalik*, vol. I, p.475).

<sup>6</sup> *Matajir* means: the spoils seized from warriors during era of occultation, though all or some of them belong actually to the Imam (A). (*al- Masalik*, vol. I, p.476).

public properties.

4. It is *wajib* to give the obligatorily - taken *khums* to the Imam if he be present. But when he is absent, some legists observed: it will be considered public (*mubah*). Some others said: it should be reserved and then bequeathed (in a will) in time of appearance of sign of death. Others said: it should be buried. It is also said: half of it should be given to the one entitled to receive it, and the share distinguished for executors (of will) or burial.<sup>1</sup> Other legists said: His (Imam's) share should be given to the present categories too, as the Imam is required to make sufficient provision for the deserving recipient in case he has no full provision. This is *wajib* upon him when he is present just as it is *wajib* upon him in his absence. The last view is more correct.

6. Distribution of the Imam's share among the present categories should be undertaken by one who has the legal right to represent him,<sup>2</sup> who will be responsible for performing the acts *wajib* upon the absent.



<sup>1</sup> That means: through bequest, as it can be bequeathed to others, or recommended to be buried when he can bury it.

<sup>2</sup> The true representative of the Imam is the just fully qualified Imami jurisprudent (*faqih*), as he represents the (Twelfth) Imam and is appointed by him. (*al- Masalik*, vol. I, p.476).

## KITAB AL- SAWM (FASTING)

Its Pillars (Arkan), Parts and Additions:

### The Arkan:

#### Rukn One

Fasting (in the month of Ramadan) is to refrain from *mufṭirat* with making intention (*niyyah*), which is either a pillar (*rukṇ*) in it or a condition of its validity. Its being a condition is more confirmed by reports and proofs.

In the month of Ramadan, it is sufficient to make an intention to perform the *sawm* with the motive of nearness to God Almighty.

In respect of this *niyyah* being valid for a certain vow (*nadhṛ*), some legists agreed on this and others disagreed. The second view is more confirmed by reports and proofs.

In other cases an intention with specification of a particular *sawm* should be made. It is not valid to make the *niyyah* with the motive of *qurbah* (nearness to God) without specifying a particular *sawm*.

The *niyyah* should be present at the beginning of fasting time, or be made at night<sup>1</sup> (*bayyata*), with continuing its rule.

If one forgets to make it at night he can renew it at daytime, between daybreak and *zawal* (when the sun crosses the meridian). When the sun passes the meridian, the time of *niyyah* will be deemed as missed, whether the fasting be obligatory or recommended (*nadb*). Some legists observed: its time extends up to sunset for supererogatory *sawm*. The first view is preponderant as per reports. Some legists observed: Month of Ramadan is distinguished alone in permissibility of making the *niyyah* in advance before its setting in.

If one forgets to make the *niyyah* when it sets in and starts fasting, the former *niyyah* will be sufficient. Some legists said: making one *niyyah* for the whole month of Ramadan is valid.

It is not valid to perform in the month of Ramadan any other kind of fast. If one intends to perform fast of other than the month of Ramadan,

---

<sup>1</sup> By presence (*hudur*) of *niyyah* in the first part of fasting, it is meant: making it during the last part of night. *Tabyit* of *niyyah* means: making it before that, during the night. This is made *wajib* since falling short of both of these deliberately, entails passage of a part of fast without *niyyah* which invalidates it, due to contradicting its conditions, as fasting can never be partitioned. (*al- Madarik*, vol. VI, p.21).



whether obligatory or recommended, it will be valid as a *niyyah* for month of Ramadan, not the specification of his *niyyah*.<sup>1</sup>

It is not permissible to hesitate in making the *niyyah* between *wajib* and *nadb*, but one of the two should be specified in particular when making the intention.

If one makes *niyyah* of obligatory *sawm* in the last day of the month of Sha‘ban as a doubtful day, it will not be valid as a *niyyah* for one of the two cases: *wajib* or *nadb*. If he makes the *niyyah* of *mandub* fasting, it will be valid as *niyyah* of month of Ramadan, if that day turns out later to be a day of Ramadan.

If he fasts on a doubtful day with the *niyyah* that if it be of Ramadan it will be *wajib*, and otherwise it will be *mandub*, some legists said: this will suffice, but others observed: it will not suffice and its *qada’* is *wajib* upon him. The second view is more correct. When a person enters upon the morning not fasting (of the last day of Sha‘ban), turning out later to be a day of Ramadan, he will be required to renew the *niyyah*, and it will suffice. But if this (turning out to be a day of Ramadan) be after the sun crosses the meridian, he will be required to refrain from eating and drinking and he is liable to its *qada’* later.

### Subsidiary Issues:

1. If one makes the *niyyah* of not fasting on a day of Ramadan, renewing his *niyyah* before the sun crosses the meridian, some legists observed: it will not suffice and he is liable to its *qada’* later. The more predominant view is validity of his *sawm*.

2. If one makes the *niyyah* of fasting, changing his *niyyah* later to break the fast but does not stop fasting, renewing his *niyyah* then to fasting, it will suffice and be valid.

3. The *niyyah* made by the *mumayyiz* ( a boy of discriminating age who can describe what he sees), is valid, and his fast is legally accepted of him.<sup>2</sup>

<sup>1</sup> But intending to fast other than the month of Ramadan, when being unaware of the month, it has the unanimous agreement of all legists apparently, as recognized by some of the Companions in the doubtful day. (*al- Madarik*, vol. VI, p.31).

<sup>2</sup> Though his worship be for training purpose (exercise), as previously stated in regard of *salat*. (*al- Tawdih*, vol. I, p.155).

## Rukn Two:

### A. The Muftirat

The muftirat are those things from which it is obligatory to refrain during the fast, from dawn to sunset. They are:

1. All ordinarily eaten things, such as bread and fruit, or not ordinarily eaten, like stones and hail. They include too all drunk liquids, even the non – ordinary ones, such as flower waters, and trees juice (squeezed out liquid).

2. Sexual intercourse in the *qubul* (frontal part of woman) unanimously, and also in the rear part (anus) as per some verdicts, which will invalidate the woman's fast. There is disagreement regarding invalidation of fast by sodomy (*liwat* – copulation with a boy or an animal), though it is a forbidden (*haram*) act. And so also regarding the fast of the *mawtu'* (one with whom copulation was practised). It is more confirmed in reports and proofs to follow the *wujub* of *ghusl* in the rule of fornication.<sup>1</sup>

3. Deliberately ascribing something falsely to God or his Messenger or the Infallible Imams (peace be upon them). Some legists said: it invalidates the fast, and some said: it doesn't, which is more predominant.

4. Fully submerging the head (alone or with other parts) under water. Some legists observed: it is *makruh* not *haram*. But its being *haram* is more correct. Does practising it invalidate the fast? Some legists observed: No. This view is more predominant.

5. Inhaling a dense cloud of suspended dust, which is considered *haram* and invalidating the fast according to most of the legists.

6. Deliberately remaining in the state of *janabah* (ritual impurity) after the daybreak (dawn) during month of Ramadan, without necessity, as per the most famous narrations, with some disagreement.

If one sleeps in state of *janabah* without making the *niyyah* to perform the *ghusl* (ritual bathing), and gets up after daybreak with this state, his fast will be invalidated. But if he makes the *niyyah* of *ghusl*, his fast will be valid. If he awakes and sleeps again with the *niyyah* of performing the *ghusl*, but enters upon the morning with state of *janabah*, his fast will be invalid and he is liable to its *qada'* later.

7. Seminal emission (*istimna'*) and discharging the semen due to caressing (his wife or any other woman), both invalidate the fast if caused deliberately. If one gets up during daytime having a venereal (wet) dream

<sup>1</sup> That means: every copulation requiring *ghusl* invalidates the fast of its doer.

(*ihtilam*) after making *niyyah* of fast, his fast will not be invalidated. And so also is the rule when semen is discharged due to repeated sensual glances, or sensual hearing (the voice of a woman), if caused in deliberately.

8. Injection with *jāmid* (hard material) is permissible (in Ramadan), but with liquid is unlawful and invalidates the fast, with some disagreement among the legists.

### Subsidiary Issues:

1. All those mentioned causes invalidating the fast are so considered when done deliberately, irrespective of whether it be knowingly or unknowingly. But if it be by mistake (*sahw*), it will not invalidate the fast, whether the fast be obligatory or *mandub*. And so also if one be coerced to break the fast or when something is inserted in his mouth by feeding – cup forcibly.

2. The permissible acts include: sucking the ring,<sup>1</sup> chewing the food for the child, mouth feeding the bird, tasting the food (broth), infusing in water for men. Brushing the teeth with tender (humid) and dry brush is *mustahabb* for *salat*.

### B. Consequential requirements:

1) Atonement (*kaffarah*) is *wajib* together with *qada'* in seven cases: eating and drinking (deliberately), sexual intercourse with disappearance of glans penis into the woman's frontal or rear part (vulva or anus),<sup>2</sup> deliberately remaining in state of *janabah* till after daybreak, sleeping (in state of *janabah*) without making the *niyyah* of performing the *ghusl* till daybreak, seminal emission (*istimna'*), and inhaling a dense cloud of suspended dust.

2) Atonement is not *wajib* but only in the fast of month of Ramadan, its

<sup>1</sup> As done by the Master of martyrs al- Imam al- Husayn (A) with his son Ali al- Akbar, when he gave him his finger ring to suck it when thirst strained him. (See *al- Rawdah al- bahiyyah*, vol. II, p.132).

<sup>2</sup> There is unanimous agreement among the '*ulama*' regarding the *wujub* of *qada'* and *kaffarah* upon one copulating with his wife from the frontal part (vulva). But the disagreement pertains to intercourse from the rear part (anus), and the most correct opinion equalizes it to copulation from the vulva, as the term sexual intercourse involves both the states, the cause entailing the *wujub* of *qada'* and *kaffarah*. (*al- Madarik*, vol. VI, p.75).

It is out of scope here to discuss the legitimacy of copulation from the anus, in respect of its lawfulness, prohibition, and reprehension, since no legist believes in its lawfulness.

*qada'* after the sun crosses the meridian, specific vow (*nadhr*), and fast related to *i'tikaf* if it be *wajib*.

In other than these, *kaffarah* is not *wajib* such as: expiatory fasts performed as *kaffarah*, those performed for fulfilling unspecific vow, and the *mandub* one, though the fast be invalidated.

### Subsidiary Issue:

When one eats by an oversight thinking then his fast to be invalidated and breaking his fast consequently, his fast will be invalid and he is required to perform its *qada'* later. In regard of *kaffarah* there is disagreement, and its *wujub* is more correct and preponderant.

If one is coerced to break his fast or forced to eat something in a way against his will, his fast will not be invalidated. If he discontinues his fast due to frightening, he will be required to perform its *qada'* and he is not liable to *kaffarah*, with disagreement among the legists.

3) The *kaffarah* in the month of Ramadan is the manumission of a slave, and if that is not possible, fasting for two consecutive months. If that is not possible, feeding sixty poor persons, with having an option between one of these, i.e. a *mukallaf* may choose between freeing a slave, fasting or feeding the poor. Other legists impose *kaffarah* in the above – mentioned order. It is also said: All the three *kaffarahs* become *wajib* together if the act breaking the fast (*muftir*) is itself *haram*, and one of these *kaffarahs* if the *muftir* is *halal*. The view of option (*takhyir*) is more preponderant.

4) When a person breaks his fast for a period, with making a vow to fast in a specific time, he will be liable to *qada'* and an optional big *kaffarah*. Some legists observed: he is liable to *kaffarah* of a broken oath. The first view is more correct.

5) Deliberately ascribing something falsely to God, the Messenger(S), or the Imams (peace be upon them), is *haram* for the one fasting and other people, though there is more emphasis on the fasting one. But neither *qada'* nor *kaffarah* is required of him, as per the reports and proofs.

6) Fully submerging the head under water is unlawful for the fasting person, as per the most correct view. Some legists considered *kaffarah* and *qada'* to be not *wajib*, but some observed: both are *wajib* upon him. The first view is more predominant.

7) Injection with solid material is permissible as per narrations and unanimity, but injection with fluid is *haram*, and requires *qada'* as per the most correct opinion.

8) Where one sleeps in the state of *janabah* with the intention of performing the *ghusl* (before dawn): if he awakes and sleeps again in the same state, and awakes again and sleeps with the intention of performing the

*ghusl* but remains so till daybreak, he will be liable to *kaffarah* as per the most well – known view, with disagreement among the legists.

9) *Qada'* of *wajib* specific fast is *wajib* in nine things:

- embarking of the *muftir* to perform the act (breaking the fast) without observing the dawn, though being able to so doing;
- breaking the fast having confidence in one informing him of not setting in of the dawn, with being capable of inquiring and ascertaining of its setting in, when it has set in;
- neglecting to act according to the reporting of one informing of its (dawn) setting in, and breaking the fast with supposing the teller to be telling a false news;
- breaking the fast with supposing the night (time of *iftar*) to have set in, discovering then his wrong supposition;
- breaking the fast due to the darkness misleading of the setting in of night, as when he supposes its not setting in he will not break the fast;
- deliberate vomiting, as when vomiting surpasses and vanquishes him (be involuntary), he will not break the fast;
- injection with a fluid;
- getting in of the water for one cooling himself, not for one performing *madmadah* (rinsing the mouth) with intention of *taharah*;
- remaining in the state of *janabah* and sleeping again till after the dawn, with intention of performing the *ghusl*.

When semen is discharged due to repeated sensual glances to a foreign woman, this requires *qada'* according to view of some legists. Some others observed: it (*qada'*) is *wajib* upon him (perpetrator), which is more correct. If the woman be his wife, he will not be liable to *qada'*.

### Subsidiary Issues:

a. If one rinses his mouth with a medicine for curing some disease, or inserts in his mouth beads (*kharaz*) or alike for some useful (*sahih*) purpose (not futile), and it enters his throat involuntarily, his fast will not be invalidated. But if he does this in vain, he will be liable to *qada'* according to view of some legists. Others said: *qada'* is not *wajib* upon him, and this view is more predominant.<sup>1</sup>

b. Swallowing the remainder of food left between the teeth is *haram* for

<sup>1</sup> This is according to the *hadith* of exemption (from *qada'*), and permissibility of *madmadah* (rinsing the mouth), tasting the food and sipping the *riq*. (*al- Tawdih*, vol. I, p.159).

the fasting person. If he swallows it deliberately, its *qada'* will be *wajib* upon him, with *kaffarah* as per the more correct opinion. But no *qada'* is required of him if this be done by oversight (*sahw*).

c. Fast is not invalidated when anything reaches the belly through other than the mouth (throat, gullet), except the injection with fluid. Some legists observed: pouring out the medicine into the urethra to let it enter the belly invalidates the fast, with disagreement among the '*ulama'*'.

d. Swallowing the mucus and saliva does not invalidate the fast, even if deliberate, unless it separates from the mouth. Also any refuse coming down from the head, when flowing and overleaping the throat involuntarily, does not invalidate the fast. But it invalidates if swallowed deliberately.

e. Everything having taste (flavour), like the chewing-gum,<sup>1</sup> invalidates the fast according to some legists. Other legists consider it inconsequential (not invalidating the fast), which is more correct.

f. If a person enters upon the dawn with a remainder of food in his mouth, he should throw it away. If he swallows it, his fast will be invalidated, and he will be liable to *qada'* and *kaffarah*.

g. If a person who has seen the new moon himself, refrains from fasting, he will be liable to *qada'* and *kaffarah*.

10) It is permissible to have sexual intercourse before the daybreak, within a duration sufficient for fulfilling it and performing the *ghusl* (before setting in of dawn). But if he be assured of insufficiency of time and has the sexual intercourse, his fast will be invalidated and he is liable to *kaffarah*. If he does this with supposing presence of sufficient time: if this be with observing the duration, nothing will be required of him. But if he does it with negligence of duration of time, he will be liable to *qada'*.<sup>2</sup>

11) The number of *kaffarahs* will be equal to the number of causes entailing it (like eating or sexual intercourse or alike). Hence a person who breaks two fasts will have to give two *kaffarahs*. If one eats, drinks or has sexual intercourse several times in a single day, some legists said: the number of *kaffarahs* will increase proportionately. Some observed: the number of *kaffarahs* will increase if *takfir* intervenes it.<sup>3</sup> Others said: the

<sup>1</sup> Chewing – gum: gum of pine – tree, rice, pistachio, cypress (*sarw*), *yanbut* and *butm* (terebinth) – ( *al- Qamus al- muhit*, vol. II, p. 314).

<sup>2</sup> The *wujub* of *qada'* in state of negligence, may be entailed from non fulfilment of *imsak* (refraining from *muftirat*) throughout the daytime, with which compliance is not achieved. (*al- Madarik*, vol. VI, p.109).

<sup>3</sup> That is: the *takfir* intervening between the two acts, despite oneness of kind and time. (*al- Rawdah*, vol. II, p.99).

number will not increase, whether the cause be the same or different, which is preponderant.<sup>1</sup>

### A Subsidiary Issue:

When a violation entailing *kaffarah* occurs, followed by an excuse breaking the fast, like travel or menses (*hayd*) or alike, some legists said: that person will not be liable to *kaffarah*. Others are of the opinion of *wujub* of *kaffarah* upon him, which is more correct.

12) A person breaking the fast in the month of Ramadan, knowingly and deliberately, will be liable to *ta'zir* (chastisement) in the first time. If he repeats breaking the fast, he will be liable to *ta'zir* again. If this act is repeated for a third time he should be killed.

13) Whoever copulates with his fasting wife forcibly in the month of Ramadan (during time of fasting), will be liable to two *kaffarahs*, and nothing is required of her. But if she submits to him willingly, the fast of both of them will be invalidated, and everyone will be liable to *kaffarah* individually, and to *ta'zir* of 25 lashes. And so also is the rule when coercion to sexual intercourse is perpetrated with a foreign woman. Some legists observed: he is not liable to *ta'zir* but to two atonements only.

14) If one liable to fast for two consecutive months is unable to fast, he has the option either to fast for 18 days or give whatever he can as *sadaqah*. If none of these are possible, he should seek forgiveness from God Almighty, and this will be his *kaffarah*.

15) It is valid for a donor to voluntarily pay the *kaffarah* for that upon whom *kaffarah* is *wajib*, provided that the condition of death is observed (after his death).

### C. Makruhat in Fasting:

The reprehensible things for the fasting person are nine:

- *mubasharah* with the wife by kissing, touching and caressing;
- application of kohl (during the day) having a *sabir* (aloes, extracted from a bitter tree), or musk;
- drawing of blood with a cupping – glass (*hijamah*);
- going to the bathroom in this state;
- drawing up of the *sa'ut* (snuff – through the nose), in a way not exceeding the throat;

<sup>1</sup> Like eating and drinking on one hand, and injection with fluid on the other hand. (*Jawahir al- kalam*, vol. XVI, pp.303 – 305).

- smelling the aromatic plants, especially the narcissus (*nergis*);
- injection with solid material (*jamid*);
- moistening the dress on the body;
- sitting of the woman in the water.

### Rukn Three:

#### Time Proper for Fasting

The proper time for fasting is daytime not the night. If one makes a vow to fast at night it will not be concluded. So also is the rule when he annexes it to daytime.

Fasting on the days of '*Id al- Fitr* and '*Id al- Adha* (Lesser and Greater Bairams) is prohibited (*haram*). If one makes a vow to fast them, it will not be concluded.<sup>1</sup> If one makes a vow to fast some day and it coincides in one of the two '*Ids*, his fast will be invalid. There is disagreement among the legists concerning whether this person is liable to *qada'* or not. The view of those considering its *qada'* not *wajib* is more correct.

So also the fasting on the days of *Tashriq* is prohibited only for those who are at Mina. The days of *Tashriq* are the eleventh, twelfth and thirteenth of Dhu al- Hijjah.

### Rukn Four

#### Conditions of Fasting:

Fasting is *wajib* for each and every sane, adult Muslim. Hence fast of a non – Muslim is not valid, though it is *wajib* upon him. It is neither *wajib* also upon an insane person in the state of insanity, nor upon a person in an unconscious state (*ighma'*). Some legists observed: if he makes the *niyyah* before going into swoon, his *niyyah* will be acceptable and he will be considered as a fasting person. The first view is more correct.

Fast is valid if observed by a *mumayyiz*, and by a sleeping person if he has made the *niyyah* before sleeping, even if his sleep continues till night. If he doesn't conclude his fast with *niyyah* despite its being *wajib* upon him,

<sup>1</sup> Concerning prohibition of fasting the two '*Ids* (Lesser and Greater Bairams) and invalidity of their fasts, it is according to the compiler's clause in *al- Mu'tabar*: "It is a unanimous agreement of *fuqaha'* of Islam."

Regarding non-fulfilment of his vow, it is in accordance with the view of our *ulama'* and most of the Sunni *ulama'* because it is a sin. Hence his vow will not be permissible... (*al- Madarik*, vol. VI, p.135).



and remains in state of sleep till daybreak, and continues to the time when the sun crosses the meridian, he will be liable to *qada'*.

Fasting is not valid for women during menstruation (*hayd*) and puerperal bleeding (*nifās*), irrespective of whether the excuse occurs before sunset, or ceases after dawn. But it is valid for the menstruant woman if she performs the obligatory *ghusl* and purification.

The fast of a traveller, if the conditions required for praying *qasr* are fulfilled, is not acceptable, except in the three days of *badal al- hady*,<sup>1</sup> and 18 days of *badal al- budnah*,<sup>2</sup> for one proceeding from 'Arafat before sunset deliberately, and the stipulated vow in travel or at home, according to a well – known view. Can this person (traveller) perform *mandub* fast? Some legists said: No, he can't, and some said: Yes, he can. Others observed: it is *makruh* for him, which is more correct. All this is valid if observed by a person in state of residence (*muqim*).<sup>3</sup>

Fast is invalid for a person who deliberately remains in the state of *janabah* and neglects the *ghusl* till the daybreak, though being capable to perform it (*ghusl*). If he awakes in this state after the dawn, his fast will not be accepted as *qada'* for Ramadan. Some legists considered it invalid even as *nadb* (recommended). If it be in the month of Ramadan, his fast will be valid. So also is the specific vow, and fast of the ill person unless when it aggravates his illness.

### Subsidiary Issues:

1. The *bulugh* (maturity) which makes worships *wajib* are: *ihtilam* (having a venereal dream), *inbat* (hair – growing in the pubic region), or reaching fifteen years for men and nine years for women, as per the more correct opinion.

2. Boys and girls should be trained to fast before attaining puberty, with

<sup>1</sup> The *hady*: is a cattle carried to Makkah to be sacrificed. (*al- Mukhtar*, p.693).

<sup>2</sup> The *budnah* is the animal offered for sacrifice on 'Id al- Adha. It is called so due to fleshiness of its body. It includes the camel, she – camel, and cow in the view of most lexicographers. The *fuqaha'* distinguished it to the camels.

In this place it means: slaughtering a camel or she – camel (*naqah*). (*al- Rawdah*, vol. II, p.270, margin).

<sup>3</sup> He is the one intending to reside for ten days in a town other than his hometown, or one hesitating in residence for thirty days. He is also the one who generally travels continuously (*kathir al- safar*), and one travelling for committing a sin. (*al- Masalik*, vol. II, p.47).

more emphasis on them when reaching the age of seven and having capability to this.

## Various Kinds of Fasts

### First: Obligatory Fasts:

They are six kinds: fast of the month of Ramadan, the expiatory fasts performed as *kaffarah*, fast of *mut'ah (hajj)* blood,<sup>1</sup> fasts performed for fulfilling a vow, fast related to *i'tikaf* (seclusion in the mosque) in certain times,<sup>2</sup> and the *qada'* of *wajib* fasts.

### Sign, Conditions & Rules of Month of Ramadan

1. Sighting the new moon indicates the beginning of the month of Ramadan, and a person seeing it is himself bound to act in accordance with his knowledge. And so also if he gives testimony of seeing it and his testimony be repudiated. Also a person who has seen the new moon of Shawwal can break his fast. For that who has not seen it (new moon of Ramadan), he is not bound to fast, except when being sure of passage of thirty days of Sha'ban, or the new moon be seen generally<sup>3</sup> (by a large number of people). If this is not achieved and sighting the new moon be confirmed by two observers, some legists said: it is not accepted. Others observed: it is accepted with presence of '*illah* (cause).<sup>4</sup> Some others said: it will be accepted upon the whole, which is more predominant, irrespective of whether they belong to the same or another town. If the sighting of the new moon has been confirmed in close-by towns like Kufah and Baghdad, fast will be *wajib* upon the people of both the places, not the places separated by a big distance like Iraq and Khurasan. But, rather only the people of the region where its sighting has been confirmed.

<sup>1</sup> It is the fast that the *mukallaf* should perform when lacking the means to sacrifice a *hady*, due to financial straits (distress). Its period is three days during the pilgrimage (*safar al- hajj*) and seven days when returning home. (*al- Rawdah*, vol. II, p.104, the margin, freely).

<sup>2</sup> As when it becomes obligatory by a vow and alike. And the third day when he performs *i'tikaf* (seclusion) for two days as *nadb*, and the like. (*al- Masalik*, vol. II, p.51).

<sup>3</sup> It is confirmed by the testimony of a sufficiently large number of people whose conspiring over a false claim is impossible, and with whose testimony a supposition close to certainty is acquired. (*al- Rawdah*, vol. II, p. 109).

<sup>4</sup> By '*illah* is meant: presence of a hindrance (screen) preventing from seeing the new moon, such as clouds and alike. (*al- Masalik*, vol. II, p.51).

The sighting of the new moon is not confirmed by the evidence of a single witness as per the more correct opinion, nor by testimony of women. No consideration is to be paid to the calendar, nor to number of days (completing thirty days for Sha‘ban), nor to disappearance of the new moon behind the *shafaq* (evening twilight),<sup>1</sup> nor to seeing it on the thirtieth day of Sha‘ban during day before the sun crosses the meridian, nor to its encircling,<sup>2</sup> nor to fasting after five days of the initial sighting of the new moon in the past year.<sup>3</sup>

It is *mustahabb* to fast the thirtieth day of Sha‘ban with the intention of *nadb*. If it later known to have been a day of Ramadan, his fast will suffice without requiring *qada’*. But if he fasts it with the *niyyah* of its being of Ramadan, for some sign, some legists said: his fast will suffice.

Others observed: it will not suffice, the view which is more confirmed by verdicts and proofs. If he doesn’t fast this day, and the new moon of Shawwal is seen on the 29<sup>th</sup> of Ramadan, he will be liable to its *qada’*. And so also is the rule when the sighting of the new moon on the 30<sup>th</sup> night of Sha‘ban.

When there is doubt regarding the new moon of any month, the past month will be considered thirty days. In case the sky be cloudy in the beginning (*istihlal*) of all the year’s months, every month will be reckoned thirty days. Some legists observed: they should be diminished because of the established usage of decreasing (one day). Others said: It should be acted according to the narration of counting five days (after the first new moon of the past year). The first view is more correct.

If a person be in a place where he cannot recognize the beginning of the month, such as the captive or prisoner, he can fast a complete month according to probability. If this suspicion remains, he will be not liable to anything. If this coincides in the month of Ramadan or after it, it will suffice

<sup>1</sup> It means: When the new moon sets after the *shafaq*, this indicates its being of two nights. Hence the *qada’* of past day may be performed when it be reckoned a day of Ramadan. But the rule is other than this, as no attention should be paid to this, since the Messenger of Allah(S) said: “Fast on seeing the new moon and stop fasting on seeing it”, while it still belongs to the past night, and the basis is freedom from obligation, so no *qada’* is required. (*al-Mukhtasar al-nafi’*, vol. I, p. 96, the margin).

<sup>2</sup> Through appearance of the light in its body (*jirm*) in a circular way. (*al-Rawdah*, vol. II, p. 114).

<sup>3</sup> That is: if observing the new moon was confirmed in the past year, he will count five days from its beginning, and fast the fifth day. As if the new moon was seen on Sunday in the past year, the beginning of the next Ramadan will be Thursday. (*al-Masalik*, vol. II, p.55).

for Ramadan. But if it coincides before Ramadan, he will be liable to *qada'*.

The time of *imsak* (refraining from *muftirat*) is the setting in of the second *fajr* (dawn). And time of *iftar* (breaking the fast) begins when the sun sets, and its limit is when the reddish afterglow on the eastern horizon vanishes. It is *mustahabb* to delay the *iftar* till after performing the *maghrib* prayer, except when his self has tendency toward eating (or other *muftirat*), or he be invited to *iftar*.

## 2. Conditions of Fasting:

They are in two parts:

First: Those with which fast becomes *wajib*, which are:

a. *Bulugh* (puberty), sanity, as fasting is neither *wajib* upon a child till he reaches age of puberty, nor upon an insane till he regains sanity before daybreak. If they attain puberty or sanity after daybreak, fasting will not be *wajib* upon them, as per the more correct opinion. So also is the person in an unconscious state. Some legists said: His fast is valid if he makes the *niyyah* before losing his senses. Otherwise, he will be liable to *qada'*. The first view is more correct.

b. Freedom from illness, as if one recovers from illness before the *zawal* (when the sun crosses the meridian), without eating or drinking anything, fast will be incumbent upon him. But if this occurs after having something or his recovery be after midday, it will be *mustahabb* for him to refrain from things that break the fast (*muftirat*) and he will be liable to *qada'* later on.

c. Residence and its rule: fasting is not *wajib* upon the traveller, and it is not valid if observed by him, but he is required to perform its *qada'* later on (when returning to his hometown). If he fasts with having knowledge of the rule, it will not be valid. But it will suffice if he has no knowledge of its rule.<sup>1</sup> If he reaches his hometown, or a place where he intends to stay for at least ten days (without performing any act that breaks the fast), it is *wajib* upon him to continue fasting just like a sick person when recovering from illness. Within this condition, there comes the rule regarding one who generally travels continuously such as a driver or salesman (crew) or merchant, and alike, unless he resides for at least ten days.

d. Purity from menstruation and puerperal bleeding (*nifas*), as fasting is not *wajib* upon women during these periods, and it is not accepted from them, and they are liable to *qada'* later on.

<sup>1</sup> According to the Qur'anic verse: "... and whosoever is ill or on a journey (he shall fast) the same number of other days..." (2: 184).

### Conditions entailing *wujub* of *qada'*:

They are: *bulugh* (puberty), sanity and Islam. Hence *qada'* is not *wajib* upon a child, except when he attains puberty before daybreak. And so also is the insane person. As per the *kafir* (disbeliever), *qada'* is not *wajib* upon him, except when he embraces Islam with setting in of dawn. But if his embracing Islam occurs during daytime, it will be *mustahabb* for him to refrain from *muftirat*, and fasting the next days will be *wajib* upon him. Some legists observed: If he embraces Islam before midday, he has to fast that day. If he fails to fast, he will be liable to *qada'*. The first view is more correct.

### Complementary Rules:

One who breaks a Ramadan fast or some of its days due to an excuse, like childhood, or insanity, or *kufi* by birth, he will not be liable to *qada'*. And so also if he misses it due to swoon (*ighma'*). Some legists said: he will be liable to *qada'* unless he has formed the *niyyah* before going into the unconscious state. The first view is more correct.

*Qada'* is *wajib* upon the apostate, irrespective of whether his apostasy be instinctive or out of disbelief. It is *wajib* also upon women having menstruation and puerperal bleeding (after being pure of *hayd* and *nifas*), and every one failing to fast after it being incumbent upon him, if no one has performed it for him.<sup>1</sup>

*Muwalat* is *mustahabb* in *qada'* of Ramadan fasts as a precautionary for freedom of obligation (i.e. performing the *qada'* of fasts during the same year in which the fasts were missed). Some legists observed: Separation (*tafriq*) is *mustahabb* for differentiating (between Ramadan and its *qada'*). Others said: He can follow the *qada'* in six days and skip for the next days separately, according to a narration. The first view is more correct.

### Subsidiary Issues:

1. If one misses the fast of Ramadan completely or some of its fasts due to an excuse, like illness, and dies because of that illness, it is not *wajib* upon anyone to perform the *qada'* for him. If his illness continues up to the forthcoming Ramadan, he will not be liable to its *qada'* as per the more

<sup>1</sup> He intends by this: paying out the *fiḍyah* (ransom) by the old man, old woman, and one suffering from a malady of acute thirst (*'utash*), and one whose illness continues to the next Ramadan. In such cases *fiḍyah* (ransom) can substitute for *qada'*. (*al- Masalik*, vol. II, p.60).

correct opinion, but he should pay *kaffarah* of every day of fast missed of the past Ramadan equalling one *mudd*. If he recovers from his illness in the period intermediating the two Ramadans, but he delays the fast with having the intention to perform the *qada'*, he will perform only the *qada'* without any *kaffarah*. But if he neglects fasting without any legitimate excuse, he will be required to perform the *qada'* with paying the *kaffarah* of every day missed equalling one *mudd* of food.

2. It is *wajib* upon the *wali* (guardian) to perform the *qada'* of the obligatory fasts missed by the deceased, whether they be of Ramadan or other obligatory fast (like vow), and whether due to illness or any other excuse (like travel). The guardian is not required to perform the *qada'* of that fast missed by the deceased who was capable of performing its *qada'* but he neglected it, except that fast missed due to travel, as its *qada'* should be performed even if the person dies in travel, according to a narration.<sup>1</sup> The *wali* (one required to perform the *qada'* for the deceased) is the eldest male child of the deceased. If the eldest child be a female, she will not be required to perform the *qada'* on behalf of her father. If he has two or more guardians (*awliya'*) equal in age, they will be required equally to perform the *qada'* on his behalf (deceased), with disagreement among the legists. If someone volunteers to perform the *qada'*, the guardian will not be liable to *qada'*. There is disagreement among the legists regarding performance of the *qada'* of the fast missed by the woman (mother).

3. If the deceased has no guardian, or his eldest child be a female, no *qada'* will be required. Some legists observed: A *sadaqah* of a *mudd* for each fast missed will be given on his behalf, from his legacy. If he be required to fast for two consecutive months, the guardian will fast for one month, and give a *sadaqah* from his legacy (deceased) for the second month.

4. A person performing the *qada'* of Ramadan can change his intention and break the fast before midday, due to an excuse. But it is not permissible for him to break it after midday, and if he acts contrarily he will be liable to *kaffarah*, by giving food to ten poor persons, with a *mudd* for each person. If he is incapable of doing that, he will fast for three days.

5. If one forgets to perform *ghusl al-janabah*, and remains in this state for some days or the whole month, he will be liable to *qada'* of the *salat* and

---

<sup>1</sup> It is the *hadith* reported by Mansur ibn Hazim, that he asked Abu Abd Allah (al- Sadiq) (A): If one travels during the month of Ramadan and dies in journey, what is the rule in his regard? He (A) replied: The *qada'* should be performed on his behalf. And if a woman menstruates during the month of Ramadan and dies in this state, no *qada'* is required on her behalf. And so also is the rule regarding falling ill in Ramadan. (*al- Masalik*, vol. I, p.63).

of the fasts missed, according to view of some legists. Others observed: he will be required to perform the *qada'* of *salat* not the fast, which is more correct.

6. If one enters upon the morning of the thirtieth day of Ramadan, as fasting, but the sighting of the new moon (of Shawwal) has been confirmed in the past night, he will be required to break the fast and perform the 'Id prayer. If the sighting (*ru'yah*) has been confirmed after the midday, the time of *salat* will be regarded as missed.

### **Fasts of Atonement (Kaffarah):**

They are of twelve kinds, divided into four categories:

1<sup>st</sup>: That which obligates fast with another option, which includes: atonement fasts for involuntary homicide, as its three traits are altogether *wajib*. The same rule is applied to one deliberately breaking the fast with a prohibited thing in the month of Ramadan, according to a *hadith*.

2<sup>nd</sup>: that which requires fast when failing of another option. It includes six cases: atonement fasts for homicide by mistake,<sup>1</sup> for *zihar*,<sup>2</sup> for breaking the fast of *qada'* of the month of Ramadan after midday, fasts for atonement of a broken oath, and proceeding (*ifadah*) from 'Arafat deliberately before the sunset. There is disagreement regarding fast for atonement of penalty of hunting<sup>3</sup> (*sayd*), and considering it in the same order is more correct.

Included in these, the fast for atonement of the man's tearing his dress as mourning for his wife or children, and atonement fast for the woman's scratching her face and depilating hair of her head (in mourning for her husband or children).

3<sup>rd</sup>: The cases where there is option for fasting or another act.

They include five cases: Fasts for atonement of one breaking the fast of one day of Ramadan, atonement of breaking the vow (*nadhr*) and covenant, of an obligatory *i'tikaf*, and atonement of shaving the head (in state of *ihram* for *hajj*).

<sup>1</sup> This atonement is stated emphatically in the holy Qur'an, when the Almighty Allah says: "...and whose killeth a believer by mischance, should (set) free a believer-slave..." till He says: "... but he who findeth not (means) to do this, should fast for two months consecutively..." (4: 92). See *al-Madarik*, vol. VI p.240.

<sup>2</sup> *Zihar*. means a husband telling his wife: You are to me like the back of my mother.

<sup>3</sup> Hunting here means: the ostrich, the wild cow, the deer and alike, not the generally- known hunting. (*op.cit*).

The same rule is applied to a woman clipping her hair in time of misfortune.

4<sup>th</sup>: That which becomes incumbent (*wajib*) preponderated over other than it, with having an option either to perform it or the other one. It is of two kinds:

A. That which requires succession (*tatabu'*): It is the atonement fast for one copulating with his bondmaid when being in state of *ihram* (for *hajj*) with his permission.

All the fasts require succession except four ones:

- the fasts performed for fulfilling a vow (*nadhr*) devoid of succession, including fast for fulfilling an oath or pledge ('*ahd*);
- the fast performed as *qada'* of Ramadan fasts;
- the fast performed as atonement of penalty for hunting (in state of *ihram*);
- fasting for seven days as a substitute for *hady* (when returning from *hajj*).

B. The fast requiring no succession: If one breaks the fast requiring succession for a legitimate excuse, he will take it the basis if performed during midday. But if he breaks the fast with no legitimate excuse, he will be required to repeat, except in three situations:

1. One upon whom fasting of two consecutive months has become *wajib*, and he has fasted one month and one day or more of the second, he will take it as the base. If he discontinues the fasting before that, he will be bound to start anew.

2. One upon whom fasting for a full month has become *wajib* due to a vow, and he fasts for fifteen days breaking the fast (before completing the month), his fast will be valid and he will take it as the base. But if he breaks the fast before the fifteenth day, he is bound to start anew.

3. One performing the fast of three days as a substitute for *hady* (sacrifice in *hajj*): if he fasts the *yawm al- tarwiyah* (eighth of Dhu al- Hijjah) and day of the halt (*wuquf*) in 'Arafat, breaking the fast on the day of slaughter (*yawm al- nahr*), it is permissible for him to take it as the basis after passage of Ayyam al- Tashriq (13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> of Dhu al- Hijjah). If it be less than this, he is bound to start anew. And so also is the rule if he separates between the two days and the third one by *iftar* (breaking the fast) of other than the '*id* (bairam), he is bound also to start anew.

The same rule is applied to one upon whom fasting for a full month has become *wajib* as atonement for homicide by mistake or for *zihar*, due to his



being a *mamluk* (slave),<sup>1</sup> the view regarding which there is disagreement among the legists.<sup>2</sup>

It is not permissible for one upon whom fast for a full (continuous) month has become *wajib*, to start his fast in a time when he cannot remain safe and capable of fulfilling his duty.<sup>3</sup>

One upon whom fasting for two consecutive months has become *wajib*, cannot fast the month of Sha‘ban except when fasting even one day before it. It is not permissible for him too to fast Shawwal with one day of Dhu al-Qi‘dah and suffice with it. And so also is the rule in regard of the month of Dhu al-Hijjah with one day of the next month.<sup>4</sup>

Some legists observed: One who commits homicide in the forbidden months (*hurum*), is required to fast two months of them, even if they include the ‘*id* and days of Tashriq, as per the *hadith* reported by Zurarah. The first view is more correct.

### Second: Supererogatory Fasts (*Mandub*):

Fasting is considered *mustahabb* (*mandub*) in all the days of the year (except those on which have been prohibited), as it is a shelter (*junnah*) against Fire.

A. But there are 14 days whose fast has been specifically stressed, and they include three days of each month, preferably the first Thursday, the last Thursday of each month and the first Wednesday in the second ten days. It is *mustahabb* for one delaying them to offer their *qada’*. But delaying them from summer till winter voluntarily is permissible. If he fails to offer them, it will be *mustahabb* for him to give alms of a dirham or one *mudd* of food for each day.

Also emphasized are the fasts of the ‘moonlit’ days (*al- ayyam al- bid*)

<sup>1</sup> As the atonement fast that is incumbent upon the slave, due to *zihar* or homicide by mistake, is one month, i.e. half the period of the freeman. (*al- Rawdah*, vol. II, p. 132, the margin).

<sup>2</sup> The cause of disagreement lies in specification of the texts reported in this regard, on vow (*nadhr*) and the like. (*al- Madarik*, vol. VI, p.253).

<sup>3</sup> It is sufficient for the materialization of continuity that one upon whom fasting for two months has become *wajib*, fasts for a full month and one day of the next month. And one who is unable to fast for a full month, can fast at least for fifteen days. For one required to fast three days as a substitute for *hady*, he can fast at least the day of *tarwiyah* and day of ‘Arafat. (*al- Madarik*, vol. VI, p.254).

<sup>4</sup> Rather, it will not be considered for him except when being fasted after the days whose fasting is prohibited. (*al- Tawdih*, vol. I, p.169).

which are the thirteenth, fourteenth and fifteenth of each lunar month, the Yawm al- Ghadir (18<sup>th</sup> of Dhu al- Hijjah), the birthday of the Prophet(S), (17<sup>th</sup> of Rabi' al- Awwal), the day of his mission (Yawm al- Mab'ath – 27<sup>th</sup> of Rajab), Yawm Dahw al- Ard (25<sup>th</sup> of Dhu al- Qi'dah), and fast of the day of 'Arafah (9<sup>th</sup> of Dhu al- Hijjah) provided that it does not weaken him to the extent he be unable to perform the supplication, and confirmation of seeing the new moon.<sup>1</sup> Also emphasized are the fasts of the day of 'Ashura' (10<sup>th</sup> of Muharram) in the way of mourning, the day of Mubalahah,<sup>2</sup> every Thursday, every Friday, 1<sup>st</sup> of Dhu al- Hijjah, and fasts of the months of Rajab and Sha'ban.

B. *Imsak* (refraining from *muftirat*) as a token of respect – though it be not a fast – is *mustahabb* in seven places: homecoming of a traveller, or when he reaches a place where he intends to reside for ten days after the midday or before it, when he has broken his fast; for the sick person when recovering from his illness; for the *ha'id* and *nufasa'* on termination of the menses and puerperal bleeding during daytime; for the non – Muslim on embracing Islam; for the child when attaining puberty; and for the insane and one in swoon on recovery and regaining his consciousness.

C. The supererogatory fast does not become *wajib* through starting it, and one doing so may break his fast at any time. It is *makruh* to start it after midday.

### Third: Reprehensible (Makruh) Fasts:

The *makruh* fasts are four:

- Fasting on the day of 'Arafah by one enfeebled to an extent he be unable to perform the supplication (of 'Arafah).

<sup>1</sup> He intends by this, that the recommendation to fast this day (of 'Arafah) is stipulated with two conditions:

One: its not causing his weakness to an extent he falls short of performing the supplication, i.e. the part which he intends to recite, quantitatively and qualitatively.

That means: reciting the supplication in that day is preferable to fasting.

Second: sighting of the new moon should be confirmed, i.e. its seeing should be confirmed by the testimony of a considerable number of people whose reports result in certainty, without probability of its belonging to the past night, for beware from fasting the '*Id*' day.

<sup>2</sup> It is the 24<sup>th</sup> of Dhu al- Hijjah, in which the Messenger of Allah(S) maledicted (*bahala*) the Christians of Najran with Amir al- Mu'minin, Fatimah, al- Hasan and al- Husayn (peace be upon them).

*Mubalahah* (malediction) means: to call Allah to reveal wrath on the liars. (*al- Madarik*, vol. VI, p. 269; *al- Rawdah*, vol. II, p. 135, the margin).

- Fasting on the day when there is doubt regarding the new moon.
- Supererogatory fasting on journey, except three days in al- Madinah for appealing to a demand (*hajjah*).
- It is *makruh* for a guest to fast without the permission of his host, and it may not be valid if forbidden by him (host).
- Fasting of a child without the permission of his father.
- Supererogatory fast by one invited to a banquet (food).

#### Fourth: Prohibited Fasts:

The prohibited fasts are nine: fasting on the days of 'Id al- Fitr and 'Id al- Adha; fasting on the days of Tashriq only for those who are at Mina, as per the authentic narrations. Also *haram* are the fasts of: thirtieth day of Sha'ban with the intention of its being obligatory, fast of vow (*nadhr*) made for perpetrating a *haram* act (*ma'siyah*), fast of silence (keeping silent). And prohibited is *sawm al- wisal* (continuity), which is performed by making the *niyyah* to fast a day and night till the early morning (dawn). Some legists said: It is to fast two days with a night in between.

Also it is not valid (*haram*) for a woman to observe a supererogatory fast without her husband's consent or with his forbidding her, if her fast interferes with the fulfilment of any of his rights, and so also is the slave (*mamluk*) without his master's consent. Also it is *haram* to intend an obligatory fast on journey, except the exempted cases (fasts).<sup>1</sup>

#### Supplementary Issues:

1. The illness that requires breaking the fast is one that is feared to be aggravated by fast. A predominant likelihood of its resulting in illness or its aggravation is sufficient for refraining from fasting. So also is the rule when a sign necessitates this, like confirmation of a knowledgeable physician. If a person fasts in such a condition, with being sure that it entails harm (*darar*), his fast is not valid and he will be required to offer its *qada*'.

2. If the conditions required for *qasr* are fulfilled for a traveller, *iftar* will be *wajib* upon him. Therefore, if he fasts, he will have to perform its *qada*'. But if he does so out of ignorance (*jahl*), no *qada* is required of him.

3. The conditions required for shortening the *salat* (*qasr*) are considered in breaking the fast, in addition to forming the *niyyah* in the past night (*tabyit*). Some legists observed: They are not considered, but starting his

<sup>1</sup> The excepted cases are three:

- the vowed fast on journey and at home (while travelling and residing);

journey before midday is sufficient for *qasr*. Others even said: This is not considered too, and he should perform his *salat* as *qasr* even if he sets in his travel before sunset. The first opinion is more correct. Every journey fulfilling the conditions for *qasr* (of *salat*) entails breaking the fast, and vice versa, except the travel for merchandise hunting (*sayd al- tijarah*), as per a view of some legists.

4. Those who are required to perform the *salat* complete during travel, are required to fast. They are those who generally travel continuously (such as drivers), unless when one intends to reside for ten days in his hometown or another town. Some legists said: They are all required to perform their *salat* as complete except the *mukari* (muleteer).

5. The traveller cannot break his fast except when his hometown walls disappear from sight, or its *adhan* be not hearable. If he breaks his fast before fulfilment of this condition, he will be liable to *qada'* and *kaffarah*.

6. The old man (withered) and old woman and one suffering from a malady of acute thirst can break their fast in Ramadan, but are required to give *fidyah* by feeding a *misikin* for each fast day omitted, with one *mudd* of food. If they acquire capacity to perform the *qada'* (of *fast*), it will be *wajib* upon them to offer it. Otherwise, no *qada'* is required of them. Some legists observed: If the old man and old woman become unable to fast, no *kaffarah* is required of them as the fast is not *wajib* upon them. But if they find capacity to endure fast with hardship (*mashaqqah*), they are required to give *kaffarah*. The first opinion is more correct as confirmed by traditions.

7. It is permissible for a woman in the final stage of pregnancy and nursing mothers to refrain from fasting in the month of Ramadan. But they are bound to perform its *qada'* later with giving a *fidyah* of one *mudd* of food for every fast day omitted.<sup>1</sup>

8. If one sleeps and his sleep continues for the whole period of the fast; no *qada'* is required of him if he has formed the *niyyah* before sleep. But if he has not formed it, he will be liable to *qada'*. No *qada'* is *wajib* upon the insane and one in swoon, irrespective of whether this state occurs for several days or a part of the day, and whether they have formed the *niyyah* before

---

- the three days during the pilgrimage as a substitute for *hady* (sacrifice);  
 - and the 18 days as a substitute for camel sacrifice (*budnah*). (*al-Madarik*, vol. VI, p. 284).

<sup>1</sup> If they fear harm for their child. But if they fear harm for their own health, the commonly known view says: they refrain from fasting, but are bound to perform its *qada'* later without giving *kaffarah*. This case resembles the case of the sick person, or rather every one fearing harm for his own health. (*al-Masalik*, vol. II, p. 86, freely).

insanity or swoon or not, and whether they were treated with that which breaks the fast or not, as per the more correct opinion.

9. It is *makruh* for one allowed to break the fast in the month of Ramadan, to eat and drink greedily, and so also to exaggerate in sexual intercourse. Some legists believe in its prohibition. The first view is more correct.





## KITAB AL- I‘TIKAF

Its manner, parts and rules

### First: Conditions of I‘tikaf

*I‘tikaf* means the lengthy staying (in a mosque) for practising rites of worship. It is not valid but only when performed by a Muslim *mukallaf* (a sane adult person).

#### Its Conditions:

1. *Niyyah*: It is *wajib* to make the *niyyah* (intention) to perform *i‘tikaf* with the motive of *qurbah* (seeking God’s pleasure). If it be offered to fulfil a vow (*nadhr*) a *niyyah* of *wujub* should be formed, and if it be *mandub* (recommended), a *niyyah* of *nadb* should be made. In case a person stays for two days (in a mosque) the third day will be *wajib* upon him, as per the more correct opinion, with renewing the *niyyah* of *wujub*.

2. Fasting: *I‘tikaf* is not valid but only when performed in a time where fasting is accepted from one liable to fasting. If one performs *i‘tikaf* during the ‘*Id al- Fitr* or ‘*Id al- Adha*, it will not be valid, and so also is the *i‘tikaf* of women during menstruation and puerperal bleeding.<sup>1</sup>

3. The Period (number of days):

The minimum period valid for *i‘tikaf* is three days. Hence, if a person forms a *niyyah* of unlimited (*mutlaq*) *i‘tikaf*, it will be *wajib* upon him to stay for three days (in a mosque). So also is the rule when the *qada*’ of one day of *i‘tikaf* becomes *wajib* upon him, as he will be required to retire for three days so as to validate that day. A person starting a recommended (*mandub*) *i‘tikaf* has the option of continuing or discontinuing it. If he stays (in a mosque) for two days, the third day will be *wajib* upon him. And so also when he performs *i‘tikaf* for three days followed by two other days, when the *i‘tikaf* of the sixth day becomes *wajib* upon him.

If a person enters into *i‘tikaf* in one day or two days before the ‘*Id*, his *i‘tikaf* will not be valid. And if he makes a vow to perform the *i‘tikaf* of three days without their nights, some legists said: it will be valid, and others observed: it will not be valid, since by his going out of restriction of *i‘tikaf*, the *i‘tikaf* of that day will be invalid.

Succession in the days of *i‘tikaf* performed as fulfilment of a vow is not

---

<sup>1</sup> Or the traveller, as no evidence is found among the evidences of *i‘tikaf*, that establishes its (*i‘tikaf*) validity if performed by the traveller after stipulating the fast for its acceptance. (*al- Tawdih*, vol. I, p. 173).

*wajib* if they be more than three days. But one should intend to perform the *i'tikaf* for three days followed by other three days, and up in that order, except when he stipulates the succession in words or indication.

4. Place of *I'tikaf*: *I'tikaf* is not valid but only when performed in the main mosque (al- Masjid al- Jami'). Some legists observed: It is only valid if performed in the Four Mosques: Mosque (Haram) of Makkah, Masjid al- Nabi (Prophet's Mosque), Kufah main Mosque, and Basrah Mosque. Others add to them of al- Mada'in Mosque.<sup>1</sup>

Condition of place of *i'tikaf*: it is every mosque in which the Prophet or his executor has led a congregational prayer. Some legists said: it is every mosque in which a Friday prayer (Salat al- Jumu'ah) was established by the Prophet or his *wasī*, with no difference between a man and a woman.

5. Permission of the Guardian: *I'tikaf* by the slave is only valid with permission of his master, and so also the wife as it should be with the permission of her husband. When the guardian gives permission, he has the option to forbid (the permitted one) before starting the *i'tikaf* and after it, except when two days have passed (on *i'tikaf*), or the *i'tikaf* be made *wajib* through a vow and the like.

### Two Subsidiary Issues:

- When the slave concludes a contract of *muhaya'ah*<sup>2</sup> (agreeing on earning of the slave), it will be permissible for him to perform *i'tikaf* in the days made his share, even without his master's permission.

- If the slave is manumitted during *i'tikaf*, he will not be required to continue it, except when he has started the *i'tikaf* with the permission of his master.

6. Keeping on the stay in a mosque: If one's going out (from the mosque) be for illegal reasons, his *i'tikaf* will be invalid, irrespective of whether his going out be optional or forcible.

If his *i'tikaf* has lasted for less than three days, it will be invalid. But with passage of three days before his going out, it will be valid. If one makes a vow to perform *i'tikaf* for certain days, and goes out (from the mosque) before completing those days, all the days of *i'tikaf* will be invalid if he has

<sup>1</sup> Al- Mada'in: is a town near Baghdad, containing Chosroes Arch (Iwan Kisra). It is called with plural name due to its vastness and greatness. The ascription to it is Mada'ini. (*al- Munjid*, vol. I, p. 752, in brief).

<sup>2</sup> This is permissible for him if the *muhaya'ah* covers the least period of *i'tikaf*, and it does not interfere with the fulfilment of any of his (slave) master's rights. (*al- Madarik*, vol. VI, p. 327).



stipulated the succession, and he will be required to start anew.

It is permissible for one performing *i'tikaf* to go out for urgent needs, like easing nature, taking a ritual bath, participating in funerals, visiting a patient, attending funeral ceremony of a believer and giving testimony or other necessary needs. If he goes out (of *i'tikaf*) for fulfilling such needs, several acts will be not permissible for him such as: sitting, walking under the shade, performing prayers outside the mosque except in the Haram of Makkah, where he can pray wherever he wishes.

If he goes out of the mosque by mistake (*sahwan*), his *i'tikaf* will not be invalidated.

### Subsidiary Issues:

1. If one makes a vow to perform *i'tikaf* in a certain month without stipulating the succession, and fulfils a part of his vow (*nadhr*) failing to complete performance of *i'tikaf* of other days, the *i'tikaf* days performed will be valid, and he will be required to offer the *qada'* of the days omitted. But if he has pronounced the succession (by words), he will be required to start anew.

2. If he makes a vow to perform *i'tikaf* in a certain month, but he finds no way to realize (recognize) it till it passes (ends), like the prisoner or forgetful one, he will be required to perform its *qada'*.

3. If one makes a vow to perform *i'tikaf* of four days, but he fails to fulfil his vow of one of these days, he will be liable to its *qada'*. But he will be required to add two other days to it so as to validate the *i'tikaf* of that day.

4. If one makes a vow to perform *i'tikaf* of one day no more, it will not be concluded. If he makes a vow to perform *i'tikaf* of the second day of arrival of Zayd (*qudum* Zayd), it will be valid provided that he adds to it two other days.

## Second: Parts of I'tikaf

I'tikaf is divided into two parts:

*Wajib* (obligatory) and *Mandub* (recommended). The obligatory *i'tikaf* is that which has become *wajib* through a vow and alike. And the *mandub* is that which a person intends to perform voluntarily.

The first kind becomes *wajib* with starting it. While for the second kind, it is not *wajib* to continue it but only after passage of two days, when the third day becomes *wajib*. Some legists observed: it does not become *wajib*. The first view is more correct.

- If he stipulates willful *ruju'* (desisting from) when making the vow, he will have the option to desist whenever he likes, with no *qada'* being

required of him. But if he has not made such a stipulation, it will be *wajib* upon him to start anew the fulfilment of his *nadhr* if he has already broken it.

### Third: Rules of I'tikaf

They are in two parts:

**First:** the restrictions for *i'tikaf*: Six things are prohibited for one during *i'tikaf*: caressing, kissing and copulation with his wife; smelling the perfume; causing seminal emission (deliberately); making deals (selling and buying); and *mumarat* (dispute).<sup>1</sup>

Some legists observed: The same things prohibited for the *muhrim* (in *hajj*) are unlawful for one in state of *i'tikaf*. But this view has not been confirmed by all legists, as it is not prohibited for one in *i'tikaf*: wearing the stitched clothing, shaving the hair, eating of the hunted animals, and contracting marriage (for himself or on behalf of another).

It is permissible for him to look into and consider his living and living affairs, and plunging into *mubah* (licit) acts and matters.

All the things mentioned above that are prohibited during daytime for one in state of *i'tikaf*, are also prohibited for him during night except the *iftar*.

If one dies before completing fulfilment of his obligatory *i'tikaf*, some legists observed: It is *wajib* upon his *wali* (guardian-executor) to perform it. Others said: someone should be hired to fulfil it. The first view is more correct.

**Second:** The Invalidating Acts:

1. All those things that invalidate the fast (*muftirat*) invalidate the *i'tikaf*, such as sexual intercourse, eating and drinking and seminal emission. If one breaks the fast in the first and second days, giving a *kaffarah* will not be *wajib* upon him, except when the *i'tikaf* be *wajib*. But if he breaks his fast in the third day (of *i'tikaf*), he will be liable to *kaffarah* (atonement). Some legists obligated the *kaffarah* in case of sexual intercourse alone, being content with *qada'* for other *muftirat*, the view which is more predominant.

One *kaffarah* is sufficient for copulation during night, and so also for copulation in daytime in other than the month of Ramadan. But if the sexual intercourse be during Ramadan, it will require two *kaffarahs*.<sup>2</sup>

<sup>1</sup> *Mumarat* means here: to quarrel over a worldly or religious affair, for only proving conquest or superiority, as happens for many knowledge claimants. This kind of quarrel (*jidat*) is prohibited (*muharram*). (*al- Masalik*, vol. II, p. 109).

<sup>2</sup> As per the text (*nass*) with unanimities, with the *kaffarah* of a broken

2. Apostasy obligates leaving the mosque, and invalidates the *i'tikaf*. Some legists said: it does not invalidate the *i'tikaf*, and if he returns (to the mosque) he will consider the past period as the basis. The first view is more correct.

3. If a person coerces his wife to have sexual intercourse with him, while they be in state of *i'tikaf* at daytime in the month of Ramadan, he will be liable to four *kaffarahs*. Some legists observed: two *kaffarahs* are sufficient. The second view is more correct.

4. If a woman is revocably divorced while being in state of *i'tikaf*, she will be required to go out (of the mosque) toward her house, and to perform the *qada'* of *i'tikaf* if it be *wajib*, or two days passed over it. Otherwise she will perform the *qada'* as *nadb* if *i'tikaf* be *mandub*.

5. If one trades, i.e. buys and sells something during *i'tikaf*, some legists observed: it will invalidate his *i'tikaf*. Others said: it does not invalidate his *i'tikaf* though he will have perpetrated a sin, which is more correct.

6. If one performs *i'tikaf* for three days separately (not successively), some legists observed: it is valid, since succession (*tatabu'*) is not *wajib* but only through stipulation (in advance). Others said: it is not valid, which is more correct.




---

vow if it (*i'tikaf*) be performed to fulfil a vow (*mandhur*), when it constitutes a third *kaffarah*. The atonement of *i'tikaf* is the same one of Ramadan (breaking the fast), as per the apparent reports in this connection. (*al-Tawdih*, vol. I, p. 176).



## KITAB AL- HAJJ

It has three pillars (*arkan*).

### RUKN ONE: The Preliminaries

#### 1<sup>st</sup>: Meaning of Hajj:

Lexicographically *hajj* means *qasd* (visit, betaking oneself to).

Legally it is used for a set of rites (*manasik*) performed in the specific places (*masha'ir*).<sup>1</sup> It is an obligatory duty (*fard*) ordained by the Shari'ah on every Muslim fulfilling the following conditions, from among men, women and hermaphrodites.

It is obligated by the Islamic Law (Shari'ah) once in lifetime for Muslims who can afford, which is called *Hijjat al- Islam*. Its obligation (*wujub*) is immediately applicable (*fawri*), i.e. it is not permissible to delay it from the moment of its possibility. And delaying it with fulfilment of conditions is a major sin (a violation of propriety, *mubiqah*).

*Hajj* may become *wajib* through *nadhr* (making a vow), and its likes, and through *ifsad* (vitiation), and hiring for *istinabah* (deputation). It should be started anew with recurring of the reason vitiating it.

Any other kind of *hajj* is *mustahabb*. It is *mustahabb* for one not fulfilling the conditions, like one lacking the *zad* and *rahilah* (expenses required for food, lodging and transport, and those of to and fro journey to Mecca) to take the trouble to do it, irrespective of whether this being difficult for him or easy. And so also is the rule for the slave who is permitted by his master.

#### 2<sup>nd</sup>. The Conditions for Hajj:

##### Hijjat al- Islam:

The conditions (*shurut*) which make the *hijjat al- Islam* obligatory (*wajib*) for a Muslim are five:

##### 1- Maturity and Sanity:

*Hajj* is not obligatory for a child, nor for an insane person. For a *mumayyiz* child, the *hajj* is voluntary and valid. If a child performs the *hajj*,

---

<sup>1</sup> That means the specific places for worship (bodily acts), like *tawaf* (circumambulation of the Ka'bah), *sa'y* (to and fro movement between Safa and Marwah), and halt (*wuquf*) at 'Arafat.

or the guardian undertakes it on his/her behalf or on behalf of the insane, it does not relieve him/her of the obligation to perform *hijjat al- Islam*. If the *mumayyiz* child or insane person volunteers to perform the *hajj (nadbah)*, and each one attains puberty (for the child) or regains sanity (for the insane) before the Mash'ar (*wuquf*), it will relieve him/her of the obligatory *hajj (hijjat al- Islam)*, with some disagreement among the legists. The *mumayyiz* child can put on the dress of *ihram*, though it is not *wajib* upon him/her. It is permissible for the guardian (*wali*) of a *ghayr mumayyiz* child to put on the dress of *ihram* on his behalf (*nadbah*). And so also it the insane person.

The guardian (*wali*) is that who has financial guardianship, such as the father, paternal grandfather, and executor (*wasi*). Some legists said: The mother has *wilayah* of *ihram* for her child. The additional *nafaqah* (expenditure), is binding upon the *wali* not the child.

## 2- Freedom:

*Hajj* is not obligatory upon the slave, even if his master gives him permission. If he takes the trouble to undertake it with his (master's) permission, his *hajj* will be valid, but it does not relieve him of the obligation to perform *hijjat al- Islam*. But if he acquires manumission before the halt (*wuquf*) in al- Mash'ar al- Haram, it will relieve him of *hijjat al- Islam*. If his *hajj* is vitiated, and he be manumitted after that, he will consider the vitiated *hajj* as the basis, with giving a sacrifice of a camel (*badanah*) and being liable to its *qada'* later on, and it will relieve him of the obligation to perform *hijjat al- Islam*. But if he is manumitted after passing the two halts (at Muzdalifah and 'Arafat), *qada'* will be *wajib* upon him, and it will not relieve him of *hijjat al- Islam*.

## 3- Al- Zad wa al- Rahilah:

They are conditions that should be fulfilled to attain *istita'ah*, which is a requirement for the *hajj* duty to become obligatory. And the person (intending to perform *hajj*) is not required to sell his trade clothes,<sup>1</sup> nor his servant, nor the house for providing for expenses of *hajj*. *Zad* stands for the expenses required for food, lodging, transport (and passport fees) and the like. The *rahilah* implies the expenses of to and fro journey to Mecca. The funds needed to meet such expenses must come out of the surplus after paying one's debts, and they should be bought even if their prices be costly with capability to provide them. Some legists said: if these expenses exceed the commonly equal prices, meeting them will not be *wajib*. The first view is

<sup>1</sup> That means the clothes he used for his body (by putting them on).

more correct.

If the person be in debt and he has the ability to discharge it, it will be *wajib* upon him to repay it (and meet these expenses after that). But if he is prevented from it, and he owns no other source, he will not be required to perform the duty of *hajj*. If he owns some fund and there is a duty upon him left unattended, such as an unpaid debt to the amount equal to his fund, *hajj* will not be *wajib* upon him, except when the surplus remained after paying the debts be sufficient to meet expenses of *hajj*. It is not *wajib* to borrow money to meet the expenses of *hajj*, except when he has funds required to arrange for his family's livelihood (without compromising the security of his life, property and honour), in excess to the exceptions mentioned above.

If a person has enough money to perform the *hajj*, while he has strong tendency to get married, the *hajj* will have the priority to marriage, even if forsaking marriage causes him distress or difficulty. If one is bequeathed the money enough to meet expenses of *zad* and *rahilah*, and essential needs for him and his family, *hajj* will be *wajib* upon him. If a person bequeaths money to another, it is not binding upon him to accept it.

If one is hired to help another doing the acts of *hajj*, and the *zad* and *rahilah* or a part of it, with maintenance of his family be bequeathed to him, *hajj* will be *wajib* upon him. If he undertakes the duties of *hajj* for himself, it will relieve him of the obligatory duty of *hajj* (*hijjat al- Islam*).

If one is financially incapable (*ghayr mustati'*) to perform the obligatory *hajj*, be hired to perform the *hajj* for another one (as a proxy), this *hajj* will not relieve him of the obligation, and he will be required to undertake it for himself when acquiring the *istita'ah* (capability).

#### 4- Provision for Essential Needs:

One intending to perform the *hajj* should have funds enough to arrange for his family's livelihood (*ma'unah*) until his return from *hajj*, in addition to the funds required to meet the expenses of *hajj*. But if the funds he owns fall short of providing for this, *hajj* will not be *wajib* upon him. And if another capable one undertakes the *hajj* on his behalf,<sup>1</sup> this will not relieve him of

<sup>1</sup> The scripts may have made a mistake in this phrase, according to al-Shaykh Muhammad Hasan (may God be pleased with him), who said: it is more correct to make it in the passive voice thus: if the *hajj* be performed for one having capability to undertake it, he will not be relieved of the obligation duty (*fard*), as one who undertakes *hajj* on behalf of another who fulfils all the conditions there of (*mustati'*) is either a proxy deputed by him, or one volunteering to undertake it for him. In both the cases, the *hajj* should be *mustahabb*, which cannot be a substitute for the obligatory duty (*wajib*). This

the obligation (*fard*), irrespective of whether he has the capability to provide for *zad* and *rahilah* or not. Also if a person upon whom *hajj* is not *wajib* due to absence of *istita'ah*, takes upon himself the burden and performs the *hajj*, it does not suffice for the obligation of *hajj*. It is not *wajib* upon the son to bequeath his own money to his father to perform the *hajj*.

### 5- Ability to Travel:

This implies: good health, safety of the road (way) to Mecca, physical capability to ride the mount (means of transport), and having sufficient time to cover all the distance of to and fro journey.

If one be sick to an extent that he fears his illness be aggravated by travel, it will not be *wajib* upon him to undertake the *hajj*. But he will not be relieved of the obligation when there is likelihood of becoming sick with ability to travel. But if an enemy prevents him, or he be physically incapable of undertaking it personally due to old age, or absence of the company in spite of urgent need to him, the *hajj* will not be *wajib* upon him.

If one is incapable of undertaking the *hajj* personally due to some impediment, like disease or an enemy (danger), it is obligatory upon him to hire someone to perform the *hajj* for him, as per the confirmed traditions reported. Some legists said: It is not *wajib* upon him to depute someone. If he deposes another and the impediment continues to remain, he will not be liable to *qada'*. But if the impediment is removed (recovering from sickness) after deputing someone to perform his *hajj*, it will be obligatory upon him to perform it in person. If he dies after recovery (removal of impediment) and before fulfilment of the obligation, its *qada'* should be performed by his executor (with the amount taken out from his heritage).

If one is incapable to travel due to deformity or disfigurement, he will be relieved of the bodily and financial obligations according to view of some legists. Others said: it will be obligatory upon him to depute another one to perform the *hajj* for him. The first view is more correct.

If one is required to practise a violent movement or escape (from an enemy) but he feels incapable of undertaking it, the *wujub* of *hajj* will be dropped, and he will be required to offer it in future when acquiring the *istita'ah*. If he dies before attaining the ability, with this state, it will not be *wajib* upon anyone to perform the *qada'* for him. *Hajj* is not *wajib* upon one not having the essential means of life, such as tools like *qirbah* (waterskin)

---

be in addition to considering *mubasharah* (performing the obligation himself) in the obligatory *hajj*, with having capability (*istita'ah*). (*Jawahir al- kalam*, vol. XVII, p. 275).



and utensils of food (*zad*).

In case there be two routes before him to follow in his journey to Mecca, and he be prevented from following one of them, he can tread the other one, irrespective of whether it be farther or nearer. And if an enemy be there in the route to Mecca, that no way is there to repulse him but with (paying him) money, some legists said: the obligation of *hajj* will be dropped, even if it be of little amount. Some others observed: If one takes upon himself the burden and performs the *hajj*, when having the *istita'ah*, it will be regarded as a meritorious act of him. And if another person bequeaths that money to him, it will be *wajib* upon him to perform the *hajj*, due to absence of the impediment.

If that one (bequeather) says to him: accept, and you should pay yourself, *hajj* will be not *wajib* upon him.

The marine route is like the land route, in case there is likelihood of security it is *wajib* to follow it. Otherwise, the obligation will be dropped. Where there is possibility of travelling through the land and the sea with equal degree of safety, he will have an option to travel through whichever route he chooses. If one of the roads is distinguished with safety, it will be *wajib* upon him to tread it. If both the ways be dangerous to the same extent, the obligation will be dropped.

If one dies after assuming *ihram* and entering the Haram (of Mecca), he will be considered as relieved of the obligation of *hajj*. Some legists said: assuming *ihram* is sufficient for relieving him. The first view is more correct. But if he dies before that (assuming *ihram*), his executor will be required to perform the *qada'* for him, if it be *mustaqirr* (obligatory). And no *qada'* is required if it be not *mustaqirr*. *Hajj* becomes *mustaqirr* in the *dhimmah* (obliged) when all the conditions and provisos be fulfilled but the person delays and doesn't take initiative to perform it.

*Hajj* is obligatory upon the disbeliever, but it is not accepted of him if he performs it. If he embraces Islam after assuming *ihram*, he will be required to reassume *ihram*. If it is not possible for him to return to the *miqat* (place where *ihram* is assumed), he can assume *ihram* from his place. If he assumes *ihram* and realizes the halt (*wuquf*) in the Mash'ar, it will not relieve him of the obligation, except when he reassumes *ihram*. If this be not possible for him due to shortage of time, he can assume *ihram* even from 'Arafat.

If a Muslim performs the obligatory *hajj* and apostatizes afterwards, he will not be required to repeat as per the more correct opinion. And if he be not *mustati'* when being a Muslim and becomes *mustati'* (fulfilling conditions of *hajj*) on apostasy, *hajj* will be *wajib* upon him, and will be accepted of him if he repents. If one assumes *ihram* in state of Islam, and

apostatizes and repents again, his *ihram* will not be invalidated as per the more correct opinion. The *mukhalif*<sup>1</sup> (opposer) who is enlightened (guided to the right path) is not required to restart the *hajj* except when he violates a *ruk'n* (essential part) of it.

Is sufficiency (arranging for family's livelihood) from a profession or property or trade, regarded a condition for the *hajj* to be *wajib*? Some legists said: Yes it is a condition, in accordance with the narration of Abu al- Rabi'. Others observed: No, as per the Qur'anic verse: "And pilgrimage to the House is a duty unto Allah for mankind, for him who is able to make his way there." (3:97), which is more predominant.

If one fulfils all the conditions of *hajj*, but performs it as *mutasakki'* (takes upon himself the burden, or on foot, or with the bequest of another, this will relieve him of the obligation (*fard*). Walking to Mecca is preferable for one upon whom the *hajj* duty has become *wajib*, provided that it does not weaken him. If it weakens him, riding is preferable.

#### Four Issues:

1. When one who fulfils all the conditions of undertaking the *hajj* dies before performing it, it is obligatory to hire someone to perform the *hajj* with the expenditure taken out from his undivided heritage. In case there be an unpaid debt and the heritage falls short of covering all the duties left unattended, it (heritage) should be divided into shares to redeem the debt and the similar expenditure of *hajj* (*ujrat al- mithl*).

2. The *qada'* of *hajj* is to be performed from the nearest places. Some legists said: one hired to perform the *qada'* should be chosen from the town of the deceased. Others observed: if the heritage be of a sufficient amount, the person can be hired from his own town. Otherwise, from wherever it is possible. The first view is more correct.

3. It is not permissible for one upon whom the obligatory *hajj* (*hijjat al- Islam*) has become *wajib*, to perform the *hajj* on behalf of another, whether it be an obligatory or voluntary one. And so also is the rule regarding one upon whom *hajj* has become *wajib* due to vow (*nadhr*) or invalidation.

4. Presence of a *mahram* is not a condition for women with regard to performance of the *hajj*, but likelihood of feeling confident of security on the journey is sufficient. Her performing the voluntary *hajj* (recommended) is

---

<sup>1</sup> The term '*mukhalif*' from point of view of the Imamiyyah, is used for every one who hinders and contradicts any essential Islamic law (*hukm*), like denying or refusing the legally determined caliphate which is stipulated with '*ismah*' (infallibility).

not valid but only with permission of her husband. But she is not required to obtain his permission for the obligatory *hajj* duty. And so also is the rule with regard to the woman passing a revocable '*iddah*'. But for the woman in an irrevocable '*iddah*',<sup>1</sup> she is free to travel without obtaining his permission.<sup>2</sup>

### Conditions of Hajj obligated by Vow, Oath and Pledge

They are two:

#### First: Sanity & Maturity:

The vow made by a child (immature) and an insane person (to perform the *hajj*) does not fulfil his obligatory duty (both are quit of obligation).

#### Second: Freedom:

The vow made by a slave is not valid except with obtaining the permission of his master. If the master gives him the permission to make a vow, and he makes the vow, it will be *wajib* upon him to fulfil it. It will be permissible for him to take initiative to perform the *hajj* even though his master forbids him. So also is the rule regarding the married woman. That is: She is not allowed to make a vow to perform *hajj*, but only after obtaining her husband's permission.

#### Three Subsidiary Issues:

1. If a person makes a vow to perform the *hajj* without specification (generally), but fails to fulfil it due to an impediment (obstacle), he can delay performing the *hajj* till the vanishing of the hindrance. If he be capable to perform the obligation and dies before performing it, someone should be hired to perform the *qada'* for him, with the amount taken out from his undivided heritage. No *qada'* is required if the deceased was not capable of performing the *hajj* before dying. If he has determined a specific date (for performing *hajj*), but he fails to fulfil it in spite of having ability to do so, its *qada'* should be performed for him. If he fails to perform the duty due to a legitimate excuse, such as illness or an enemy, till he dies, it will not be

<sup>1</sup> That is: the revocably divorced woman (*mu'taddah*) is treated as the wife, in respect of stipulating validity of her recommended, not the obligatory *hajj* with obtaining permission of her husband. (*al- Madarik*, vol. VII, p. 92).

<sup>2</sup> Because the marital bond between the two has been dissolved, and he has become a stranger for her. Thus his permission is not considered necessary, like that of any stranger. (*al- Madarik*, vol. VII, p. 93).

*wajib* to perform the *qada'* for him. And if he makes a vow to perform the *hajj* or invalidates his *hajj* while he being weak (lean), it is *wajib* upon him to depute someone to perform it for him, and it will be meritorious of him.

2. If one makes a vow to perform the *hajj*, with making a *niyyah* of performing the obligatory duty of *hajj* (*hijjat al- Islam*), they (vow and *niyyah*) will be interlaced (i.e. each will suffice for the other). But if he makes a general *niyyah* (without specifying the purpose), some legists said: if he performs the *hajj* with the intention of *nadhr*, it will relieve him of the obligation. But if he makes the *niyyah* of *hijjat al- Islam*, it will not relieve him of the *nadhr*. Some legists observed: either one does not suffice for the other, the view which is more correct.

3. If a person makes a vow to perform the *hajj* on foot, it is *wajib* upon him to fulfil this *nadhr*, with standing in times of crossing (i.e. standing in the ship if he be obliged to traverse with it). If he rides (any means of transport) all the road or for a part of distance, some legists said: he will be required to perform the *qada'* by walking the portion in which he boarded the ship. Others observed: he should perform its *qada'* (repetition) on foot, since what he has violated is the stipulated attribute. The second view is more correct. If he fails to do this, he can board (the ship) and drives an animal, according to view of some legists. Other legists said: he boards but never drives. Some legists even hold: if his *niyyah* be general one (without specifying a certain time) he can expect the capability from the attribute. If his intention be specified in a certain time, he will be relieved of the obligation, due to his inability to fulfil it. The first view is more predominant. Driving an animal is a *nadb* (recommended act).

### Istinabah (Deputation)

The proxy (*na'ib*) should fulfil the conditions of: *bulugh* (adulthood), *'aql* (sanity), belief in Islam, and exemption from the duty of obligatory *hajj* (with ability to perform *hajj* properly).

Deputation of a disbeliever is not valid, due to his inability to make the *niyyah* of *qurbah* (seeking God's pleasure). Also the Muslim cannot represent the non-Muslim, nor the opposing Muslim (*mukhalif*) except when he be the father of the proxy. Further it is not valid to depute the insane, due to infliction of his mind with a disease preventing him from forming the intention. And so also the deputation of a *ghayr-mumayyiz* child (that has not reached the age of discretion).

Regarding deputation of a child in the age of discretion (*mumayyiz*), some legists observed: it is not valid of him due to his being of those who

have been absolved of obligation by the (lawgiver's) pen.<sup>1</sup>

Other legists said: his *niyabah* is valid, since he is capable of performing the *hajj* in person *nadban* (recommendedly).

It is *wajib* upon the proxy (*na'ib*) to make the intention of *niyabah* (representation), and specify the one whom he represents by name. The deputation of a slave is valid only with obtaining the permission of his master.

The *niyabah* of one upon whom the *hajj* has become *wajib* (fulfilling conditions of obligation), is not valid, but only when he becomes unable to undertake it even on foot. And his undertaking the *hajj* voluntarily is not valid too. If he volunteers to undertake it, some legists said: it will relieve him of the duty of the obligatory *hajj*, which is a *tahakkum* (arbitrariness). If this person performs *hajj* for another, it will not relieve both of them of the duty of the obligatory *hajj*.

It is permissible for one who has performed the *Hijjat al- Islam* to perform '*umrah* (pilgrimage journey to Ka'bah), if '*umrah* has not become *wajib* upon him. Likewise, it is permissible for one who has performed the '*umrah* to undertake the *hajj* for another, if the obligatory *hajj* has not become *wajib* upon him.

It is valid to depute one who has not fulfilled the conditions of *hajj*, even when his *hajj* be the obligatory one (*Hijjat al- Islam*). A woman may represent a man and also a woman.

If one who is deputed (to perform *hajj* for another) dies in the pilgrimage journey after assuming *ihram* and entering the Haram, it will relieve one whom he represents of the obligation. But if he dies before this, it will not relieve of the obligation, and he will be required to give back the portion of expenses of to and fro journey that was not fulfilled. Some legists consider assuming *ihram* as sufficient for relieving of the obligation. The first view is more correct as per the reported traditions.

It is *wajib* upon the proxy to specify the kind of *hajj* he is deputed to undertake, whether it be *tamattu'*, or *ifrad* or *qiran*.

It is narrated that: if one specifies to the proxy a particular kind of *hajj*, such as *hajj al- ifrad* or *hajj al- qiran*, but he (proxy) intends *hajj al- tamattu'*, it will be valid, due to his making change of purpose ('*udul*) to a preferable kind. But this is valid in case the *hajj* be *mandub*, or when the hirer intends to undertake the preferable kind, not when the duty be specified as *hajj al-*

<sup>1</sup> In accordance with the tradition: "The (lawgiver's) pen has absolved these three of obligation: a child, till he reaches the age of puberty; an insane person, until he regains sanity; and a person in sleep, until he wakes up."

*qiran* or *hajj al- ifrad*.

However, if a particular route is specified by the hirer to be followed for *hajj*, it will not be permissible for the proxy to change the route if a certain purpose be intended by the hirer.<sup>1</sup> Some legists observed: it is permissible upon the whole. One deputed to undertake *hajj* for someone, cannot hire himself to perform *hajj* for another unless he performs the *hajj* for the former one. It may be permissible if that *hajj* be not the obligatory one.

If the proxy is restrained before assuming *ihram* and entering the Haram, he should give back (to the hirer) a part of the expenses paid to him proportionate to the unfulfilled acts. If he promises to undertake the *hajj* in future, he will not be required to return it to him. Some legists said: he is required.

When the payment (of hiring) falls short of meeting all the expenses of *hajj*, the hired will not be obliged to complete the acts of *hajj*. So also when something remains of the wages (of hire), the hirer may not claim the remainder from the hired.

It is not permissible to hire someone for performing the obligatory (*wajib*) *tawaf*, on behalf of one able to do it in person, except when there be an excuse, like swoon or gluttony (acute hunger) and the like. Otherwise, it is *wajib* on everyone to undertake it himself in person. If a person is carried by another one who performs the *tawaf* for him altogether, it may be counted as *tawaf* for each of them.

If one volunteers to perform the *hajj* on behalf of a dead person, it will relieve him (the dead) from the obligation duty of *hajj*.

The atonement that becomes incumbent upon the proxy due to an error in performing the acts should be taken out of his own money.<sup>2</sup> And if his *hajj* is invalidated, he will be required to perform it in the next year. Is he required to give back the amount to the hirer? There are two sayings in this regard.<sup>3</sup> If the hirer gives him a free hand, the hired is required to take the

<sup>1</sup> And his passing by holy sanctuaries, like al- Madinah, if visiting them is stipulated by the hirer on the hired wherever reaching them. (*al- Masalik*, vol. II, p.173).

<sup>2</sup> By this he intends: the atonements of *ihram*. They should be taken from the proxy's wealth because they are considered as penalty for an offence (sin) perpetrated by him (proxy), or surety in return for a damage he caused. Therefore it pertains to the offender. (*al- Madarik*, vol. VII, p. 133).

<sup>3</sup> By "two sayings" he meant:

In regard the one invalidating his *hajj*, when offering its *qada'*, is his first *hajj* considered the obligatory duty, and hence it can be called invalid? And

initiative to perform the *hajj*, unless the term (*ajal*) be stipulated. It is not valid for a proxy to represent two persons in one year. If two persons hire him, the priority should be given to the former one. If the two contracts and time of undertaking coincide, both of them will be invalid. If the proxy be unable to undertake the *hajj*, he can offer a sacrifice (*hady*), without being liable to *qada*'.

One upon whom two different pilgrimages have become *wajib*, such as *Hijjat al- Islam* and *hajj* obligated by a vow (*nadhr*), but an impediment keeps him from undertaking them, can hire two persons to perform both the *hajj* duties for him in the same year.

It is *mustahabb* for the proxy (*na'ib*) to specify the one whom he represents by name, in all the places, and in every act of the *hajj* and '*umrah*. He is recommended also to give back the expense exceeding the cost of *hajj* to the hirer, after completing the acts. Further, the *mukhalif* (opposer) is recommended to reperform the *hajj* in person on being guided to the right path, though the *hajj* performed be sufficient to relieve of the obligation duty.

It is *makruh* for the woman who has not performed the *hajj* before (*saruah*), to represent another in performing the *hajj*.

### **Eight Issues:**

1. When a person recommends (in his will) for the *hajj* to be performed on his behalf, without specifying the amount of expenses (*ujrah*), the basis will be the equal expenditure of *hajj* (*ujrat al- mithl*). And it will be taken out from his undivided legacy if the *hajj* be *wajib*, and from the one-third of his legacy if it be *mandub*. The hired (*ajir*) deserves the wages through a contract. If he does not fulfil any of the stipulated conditions, he will be given the similar expenditure (*ujrat al- mithl*), according to view of some legists. Others observed: no wages should be given to him.

---

the second one be deemed as penalty? Or vice versa? If we believe that the first *hajj* be his duty (*fard*) and the second be a penalty, then the hirer will be relieved of the duty of the obligatory *hajj*, by fulfilling it, and the hired will be entitled to take his fares.

But if we believe in invalidation of the first *hajj*, and the complement be as a penalty, with the second *hajj* being his obligatory duty, all these will be bidding for the *na'ib*, and the fares will be restored from him if the hiring be exclusively specified to a certain time which has passed. But if it be in general (*mutlaq*), the contract of hiring will remain in force, and it will be *wajib* upon the hired to perform the *hajj* on behalf of the hirer. (*al- Madarik*, vol. VII, p.134).

2. When one recommends (makes a will) for the *hajj* to be performed on his behalf (after his death), without identifying its times; if the resolution (*iradah*) of repetition is not known of him, performing the *hajj* once will be sufficient. But if the determination of repetition is known of him, the performance of *hajj* for him should be repeated till consuming one-third of his legacy.

3. If one makes a will for performing *hajj* on his behalf every year, with some amount to be taken out from his heritage which falls short of meeting the expenses of *hajj*, the sums of money dedicated for two years should be gathered so as to hire someone to undertake the *hajj* for one year. If these sums fall short, an amount will be taken out from the expenditure of the third year and added to them.

4. If some deposit is committed to another's keeping, and its owner dies while having not performed *Hijjat al- Islam*, with being aware that his heirs will not undertake it for him, it will be permissible for him to take out an amount from his deposit (*wadi'ah*) and hire someone to perform it for him, as this is excluded of the property (inheritance) of the heirs.

5. If the proxy assumes *ihram* for the hirer, it will not be permissible for him to change the *niyyah* then for himself. And if he completes the acts of *hajj* with this *niyyah*, it will be considered as fulfilled for the benefit of the hirer, and he (proxy) deserves the wages. And it seems to me as invalid and not relieving of the obligation for both.

6. When one asks in his will for undertaking the *hajj* for him with specifying the amount of expenditure; if the specified amount be equal to one third of his legacy or less, it will be valid, irrespective of whether the *hajj* be *wajib* or *mandub*. If it be more (than the one-third), and the *hajj* be *wajib* without taking permission of the heirs, the similar expenditure will be taken out from his undivided heritage, and the additional fees to be taken out from the one-third of the legacy. If the *hajj* be *mandub*, the hired should start it from the town of the deceased, if the one-third be sufficient to meet the expenses. If it falls short of meeting all the expenses, the *hajj* will be performed for him for a part of the route. If the amount specified in the will falls short of meeting the expenses of the *hajj* to the extent that no any hired desires to do with it, it will be spent in charitable aspects for the sake of God. Some legists observed: it will be returned to be included in the inheritance.

7. If one asks in his will for performing two kinds of *hajj* for him, one being the obligatory duty and the other be *mustahabb*, the priority should be given to the *wajib* one. If both of them be *wajib* and the legacy falls short of meeting the expenses of them both, it should be divided into equal parts.

8. If a person who has not performed the obligatory *hajj* (*Hijjat al- Islam*), makes a vow to undertake another *hajj*, and dies after fulfilling all the



conditions to do it, the amount of expenditure of the obligatory *hajj* should be taken out from his undivided heritage, while that of the vowed one be taken out from the one-third. If the legacy be insufficient but for *Hijjat al-Islam*, it should be used to fulfil it, and the vowed one is to be performed for him by another one out of recommendation. Some legists viewed the expenditure of both the vowed *hajj* and *Hijjat al-Islam* should be taken out from the undivided heritage, and dividing the inheritance when it falls short of meeting all the expenses of both. The second view is more correct. In a narration it is said: If one makes a vow to perform a *hajj*, but dies before fulfilling the *Hijjat al-Islam*, the amount required for undertaking it will be taken out from his undivided heritage, and the expenditure of the vowed *hajj* will be taken out from the one third of his legacy. Taking out an equal amount for both the kinds of *hajj* is a more correct view, since both are obligatory upon him.

### The Forms of the Hajj

There are three kinds of *hajj*: *tamattu'*, *qiran*, and *ifrad*.

#### 1) *Hajj al- Tamattu'*:

Its form is thus: he assumes *ihram* from the *miqat* for '*umrat al-tamattu'*', enters with it Mecca, performs the circumambulation round the Ka'bah, offers two *rak'ahs* (of *tawaf* of '*umrah*') in the *Maqam* of Ibrahim, performs the *sa'y* between Safa and Marwah seven times, and lastly shortens hair of the head (*taqsir*).

It is preferable then for him to assume another *ihram* for the *hajj* from Mecca, on the day of Tarwiyah, or till the time when he can realize the halt at al- Mash'ar al- Haram. Then he turns towards 'Arafat, where he halts until sunset, and from there he proceeds to the Mash'ar where he halts till after the daybreak. After this he turns towards Mina, where he performs *halq* (shaving the hair of the head) on the day of Nahr (sacrifice), and slaughter his *hady* (sacrificial animal), and performs the threefold throwing of stones (*Jamrat al- 'Aqabah*).<sup>1</sup>

After the *ramy*, he returns to Mecca, on the same or next day, performs *tawaf* of *hajj* with its two *rak'ahs*, followed by *sa'y* and after it *tawaf al-nisa*<sup>2</sup> with its two *rak'ahs*. Then he returns to Mina where he throws the

<sup>1</sup> *Jamarat* of Mina are three, with a space of an arrow shot between every two stones. Among them is *Jamrat al- 'Aqabah* which follows Makkah, and it should be pelted alone on *yawm al- nahr* (day of sacrifice). (*Majma' al-bahrayn*, vol. III, p. 249).

<sup>2</sup> With which all the forbidden things for him become lawful, such as

remaining stones.

He is free to stay at Mina till performing the *ramy* of the three stones on the eleventh, and repeating the same act on the twelfth. Then he departs from Mina after midday (*nafr*).<sup>1</sup> It is permissible for him to stay till the second *nafr*. After this he returns to Mecca for performing the two *tawafs* (*tawaf al-hajj* and *tawaf al-nisa'*), and the *sa'y*.

This kind of *hajj* is obligatory upon people living around Mecca within a distance of twelve miles and more from every side. Some legists believe the distance to be forty-eight miles. If these people change their purpose to *hajj al-qiran* or *al-ifrad*, in *Hijjat al-Islam* out of free will, this will not relieve them of the obligation. But it is permissible in emergency only.

### Conditions of Hajj al- Tamattu':

#### *Niyyah:*

The time of undertaking this *hajj* is months of *hajj*, i.e. Shawwal, Dhu al- Qi'dah, and Dhu al- Hijjah. Some legists believe it to be within ten days of Dhu al- Hijjah. Others said: nine days of Dhu al- Hijjah, and others observed: Its time is until the daybreak of *yawm al-nahr* (10<sup>th</sup> of Dhu Hijjah). On the whole, one precise in reaching at time of assuming the *ihram* and embarking on the *hajj*, has to begin his journey in a time when he knows that he can realize the *manasik* (rites of *hajj*). He can perform the *hajj* and *'umrah* together in one year.

He is required to assume the *ihram* from inside (*batn*) Mecca, and the preferable place is the Masjid, the best of which is the Maqam of Ibrahim, and after it from under the Mizab.

If one assumes *ihram* for *'umrat al-tamattu'* in other than the months of *hajj*, *tamattu'* in them will be impermissible for him.

So also is the rule when he performs a part of them during months of *hajj*, without his being required to offer a *hady* (sacrificial animal). So also is the case when one assumes *ihram* from a *miqat* with free will. If one assumes *ihram* for *hajj al-tamattu'* from other than Mecca, it will be invalid. And if he enters Mecca with this *ihram*, it will be *wajib* upon him to reassume *ihram* from it, as per the more correct opinion.

---

having sexual intercourse with his wife.

<sup>1</sup> The verb '*na fara*' for the pilgrims, means they proceed toward Mecca. (*al-Munjid fi al-lughah*, p. 824).

The first *nafr* is on the second day of the ten days.

The second *nafr* is on the third day. (*Majma' al-bahrayn*, vol. III, p. 500).

If this be not possible for him, some legists: said: it will be valid and relieve him. But the most correct view says: he has to assume *ihram* anew wherever he be, even at 'Arafah, if this act was not performed intentionally by him. There is disagreement among the legists regarding exempting him of offering the *hady*.<sup>1</sup>

It is not permissible for one in state of *tamattu'* to depart Mecca till after performing the *hajj*, since it has become incumbent upon him, unless it be in a way where he be not required to reperform his '*umrah* again.<sup>2</sup> If he renews another '*umrah*, the second one will be considered as '*umrat al-tamattu'*.<sup>3</sup>

If he enters Mecca with this '*umrah*, and fears shortage of time of attaining to the *rukn* of halt at 'Arafat, it will be permissible for him to shift his *niyyah* to *hajj al- ifrad*, with being required to offer '*umrat al- ifrad*. And so also is the woman during menses (*hayd*) and that in puerperal bleeding (*nufasa'*), when their excuse prevents them from *tahallul* and assuming *ihram* for the *hajj*, due to insufficiency of time for *tarabbus* (waiting for termination of blood discharge). If her excuse (blood emission) recurs while she has performed four *tawafs*, her *hajj al- tamattu'* will be valid, and she will be required to perform the *sa'y* then, followed by the remaining acts (*manasik*), with performing, after attaining her purity, the left part of *tawaf*. She will be exempted of the '*umrah mufradah* in case her *hajj al- tamattu'* be validly fulfilled.

## 2) Hajj al- Ifrad:

Its mode of performance is thus: A person assumes *ihram* from the *miqat*, or from wherever *ihram* for *hajj* is permissible for him. He proceeds then to 'Arafat where he offers the halt (*wuquf*). Then he turns toward the Mash'ar where he offers the halt. He then goes to Mina where he performs the acts required of him, followed by circumambulation round the Ka'bah, offering two *rak'ahs* of *tawaf*, making *sa'y* between Safa and Marwah, followed by *tawaf al- nisa'* and its specified two *rak'ahs*.

After fulfilling the acts of *hajj* and making *tahallul* (of *ihram*), he is required to perform '*umrah mufradah*, starting it from the nearest point to the

<sup>1</sup> As obligating it is a consequence to incidence of *tamattu'*, and if that has not occurred, it would not be obligated. (*al- Masalik*, vol. II, p. 196).

<sup>2</sup> Such as when he goes out of it in state of *ihram*, or returns to it before passage of one month. (*al- Masalik*, vol. II, p. 200).

<sup>3</sup> That is: the second one will be '*umrat al- tamattu'*, and the first one be '*umrah mufradah*. (*al- Madarik*, vol. VII, p. 175, freely).

Haram. It is permissible to perform it in other than the months of *hajj*. If he assumes *ihram* with it from another place, and goes out then to the nearest point of *tahlil* (relieving from *ihram*), his first *ihram* will be insufficient and he will be required to start it anew.

This kind of *hajj* (*al- ifrad*) *hajj al- qiran* are obligatory upon the people of Mecca and those living around it within a distance of twelve miles. It is not permissible for them to perform the *hajj al- tamattu'* except in emergency.<sup>1</sup>

Is changing the *niyyah* (to *tamattu'*) voluntarily permissible? Some legists said: Yes, and others observed: No. The second view is more predominant. In case of permitting him to change (the *niyyah*), offering a *hady* will not be compulsory for him.

The conditions of this *hajj* are three: *niyyah*, performing it during the months of *hajj*, and assuming *ihram* from his *miqat* or from the house (residence) of his family if it be nearer to Mecca than any of the *mawaqit* (stations of assuming *ihram*).

### 3) *Hajj al- Qiran*:

The acts and conditions for the pilgrim performing *hajj al- qiran* are the same as *hajj al- ifrad*, and there is no difference between them except when the pilgrim performing *hajj al- qiran* brings the *hady* at the time of assuming the *ihram*.

When he says the *talbiyah*, these acts will be recommended for him: to slash (*ish'ar*) the sacrificial animal (*hady*) brought by him,<sup>2</sup> that is: to rip (cut open) its hump (*sanam*) from the right side, and to smear its side with its blood. And if he has brought an animal (*budn*) with him, he has to go between its legs and slash it from the right and left sides. Also he has to perform *taqlid*, which is performed by hanging an old horseshoe in the neck of the *hady*. The *ish'ar* and *taqlid* are to be exclusively performed for the cows and sheep.

It is permissible for the pilgrim performing *hajj al- qiran* or *al- ifrad* to offer the *tawaf* on entering Mecca,<sup>3</sup> on condition that he renews the *talbiyah*

<sup>1</sup> The emergency that entails the change of *niyyah* to another kind, is fearing the incidence of impending menses, with non-possibility of delaying the *'umrah* till termination of her menses. (*al- Madarik*, vol. VII, p. 189).

<sup>2</sup> *Ish'ar* of the *budnah* means: to slit the right side of the camel's hump with a knife, and cut it open so as to let blood shed from it. (*al- Taqfiyah fi al- Lughah*, p. 389).

<sup>3</sup> That is: *tawaf* of the *hajj*, which can be performed prior to the halt (*wuquf*). Also it is permissible for them to perform its *salat* (two *rak'ahs*) and

with every *tawaf*, so as not to be relieved of *ihram*, as per the view of some legists. Others said: The pilgrim performing *hajj al- ifrad* is permitted to relieve himself of *ihram* not that performing *al- qiran*. Indeed, *tahallul* is not permissible to any one of them except with forming the *niyyah*. But it is more proper for them to renew the *talbiyah* in the wake of *salat al- tawaf*. Changing to *hajj al- tamattu'* is permissible only for one performing *hajj al- ifrad* on entering Mecca, not the one performing *al- qiran*. When the Meccan be far from his family (house), and performs the *Hijjat al- Islam* from one of the *miqats*, it will be *wajib* upon him to assume *ihram* from it (that *miqat*).

If one upon whom *hajj al- tamattu'* has become *wajib* resides in Mecca for a year or two years, his duty will not change, and he will be required to go out toward a *miqat* when intending to perform *Hijjat al- Islam*. If this be not possible for him, he can go outside the Haram. If it be not possible for him to go out, he can assume *ihram* from his place. If he enters into the third place as a resident, and performs his *hajj* then, his duty will change to *hajj al- qiran* or *hajj al- ifrad*. If one owns two houses, one in Mecca and the other in another town, his duty will be the *hajj* of the place in which he stays more. If periods of stay in both the places be equal, he can perform whichever kind of *hajj* he likes.

Those performing the *hajj al- qiran* or *al- ifrad* obligatorily are exempted of bringing the *hady* (sacrificial animal), but if their *hajj* be *mustahabb*, they will not be exempted of offering a sacrifice.

It is not permissible to perform the *hajj* and the '*umrah* with a single *niyyah* (intention), or to interchange two different *ihrams*,<sup>1</sup> or to make a *niyyah* for two different *hajjs* or '*umrahs*, in one and the same year.

If one does so, it will be considered as fulfilment of one of the duties, with disagreement among the legists.

### The Mawaqit of Ihram:

Kinds of *miqat*:

The *mawaqit* (points of assuming the *ihram* for all kinds of *hajj*) are six:

- The *miqat* of the people Iraq is valley of al- 'Aqiq, the best point of which is al- Maslakh, followed by al- Ghamrah, and then Dhat al- 'Irq.

<sup>1</sup> *sa'y* in advance to *wuquf*, except the *tawaf al- nisa'*, unless in exigency. (*al- Masalik*, vol. II, pp. 204-205).

<sup>1</sup> Through making the *niyyah* to assume *ihram* for the *hajj* before *tahallul* by the '*umrah*, or by '*umrah* before fulfilling the acts of *hajj*. (*al- Madarik*, vol. VII, p. 212).

- The *miqat* of the people of al- Madinah is Masjid al- Shajarah,<sup>1</sup> or in exigency al- Juhfah.
- The *miqat* of the people of al- Sham is al- Juhfah.<sup>2</sup>
- For the people of Yemen is Yalamlam.
- For the people of Ta'if is Qarn al- Manazil.

If someone lives at a place nearer to Mecca than any of the prescribed *mawaqit*, then he assumes *ihram* from the place of his residence.

One starting his *hajj* from one of the *mawaqit*, is obliged to assume *ihram* from it. When one starts his *hajj* from a route not leading to any of the *mawaqit*, some legists said: he assumes *ihram* from the place which he believes most likely to be parallel to the closest *miqat*. And so also is that who starts his *hajj* from the sea. This rule is applicable to both the *hajj* and 'umrah.<sup>3</sup> In regard of the boys (not reaching the puberty age), they should be stripped of stitched clothing from on the Fakhkh well.<sup>4</sup>

### Rules of Mawaqit of Ihram:

1. If one assumes *ihram* before reaching any of these *mawaqit*, his *ihram* will be invalid, except for one making a vow to assume *ihram* for the *hajj* in its months (of *hajj*), or for one intending to perform 'umrah mufradah in the month of Rajab, and is afraid of missing it if *ihram* is delayed until *miqat* is reached.<sup>5</sup>
2. Whoever assumes *ihram* before reaching one of the *mawaqit*, his *ihram* will not be valid, and passing by it (*miqat*) is not sufficient, unless he

<sup>1</sup> This mosque is situated at a place known as Dhu al- Hulayfah, at a distance of six miles from al- Madinah. (*al- Rawdah*, vol. II, p. 224, freely).

<sup>2</sup> For the pilgrims of al- Sham, they can take the land route through al- Madinah, and by sea through Jaddah. (*al- Rawdah*, vol. II, p. 224).

<sup>3</sup> That is: in these *mawaqit*. So whoever comes to Mecca, whether on *hajj* or 'umrah, and passes by it, it will be *wajib* upon him to assume *ihram* from it. (*al- Madarik*, vol. VII, p. 226).

<sup>4</sup> By stripping the boys is meant: stripping them of stitched clothing in particular. (*al- Madarik*, vol. VII, p. 227).

Fakhkh: is a well at a distance of one parasang from Mecca, in which al- Husayn ibn Ali ibn al- Hasan (the third) was killed. (*al- Tawdih*, vol. I, p. 195; *Maqatil al- Talibiyyin*, pp. 435-455).

Delaying the stripping from the *miqat* to the Fakhkh well is permissible for them, due to their weakness and inability to tolerate heat and coldness.

<sup>5</sup> Hence the legists have permitted for him to assume *ihram* before reaching the *miqat*, so as the 'umrah be performed in the month of Rajab, seeking its reward. (*al- Madarik*, vol. VII, p. 229).

renews his *ihram* from the beginning. One delaying his *ihram* till after the *miqat* due to an excuse, and the excuse disappears then, is required to return to the *miqat*. If this be not possible for him, he can reassume the *ihram* from the place where the excuse has disappeared. If he enters Mecca, he has to go out toward the *miqat*. If this be not possible, he may go outside the Haram. If it be not possible, he can assume *ihram* from Mecca. And so also is the one who has failed to assume *ihram*, out of forgetfulness, or has not intended the *nusk*,<sup>1</sup> and also the resident of Mecca if his duty be *hajj al- tamattu'*. But if he intentionally delays it, his *ihram* will be invalid except when he returns to the *miqat*. If this not possible for him, his *ihram* will be invalid.

3. If one forgets to assume *ihram*, not remembering but after completing performance of all the acts and rites of *hajj*, he will be required to perform its *qada'* if his *hajj* be the obligatory duty (*wajib*) according to view of some legists. Others observed: It is valid and will relieve him of the obligation. The second view is more confirmed by narrations and reports.

### Second Rukn: The Acts of the Hajj

The obligatory acts of *hajj* are twelve: Assuming *ihram*, halt at 'Arafat, halt at al- Mash'ar al- Haram, turning toward Mina, performing the *ramy* of *jamarat*, to slaughter the sacrificial animal, to perform the *halq* or *taqsir* (at Mina), performing the *tawaf*, offering its two *rak'ahs*, to perform the *sa'y*, *tawaf al- nisa'*, and lastly performing its two *rak'ahs*.

The *mustahabb* acts to be performed before turning the face toward the Ka'bah (*tawajjuh*) are: to give a *sadaqah*, to perform two *rak'ahs*, to stand at his house door, to recite *Surat al- Fatihah* from before, on the right and left sides, with Ayat al- Kursi (verse 2:255), to recite invocation of *faraj* and reported supplications, to say on riding the mount (starting the journey): "*Bismillah ar-rahman ar-rahim*" (In the Name of Allah, the Beneficent the Merciful), *Bismillah, wa billah wallaho- akbar*, and to recite the reported (*ma'thur*) invocation on the way of journey to Mecca.

### The Ihram

Mustahabbat of Ihram:

To abstain from cutting the hair of his head from the beginning of the month of Dhu al- Qi'dah, if he intends to perform *hajj al- tamattu'*. This is

<sup>1</sup> Like the one not intending to enter Mecca, when passing by the *miqat*, and he changes his intention then after crossing it (*miqat*). (*al- Madarik*, vol. VII, p. 234).

more emphasized on appearance of new moon of Dhu al- Hijjah, as per the more correct view.

Also it is *mustahabb* for one intending *ihram* to cleanse his body, clip his fingernails, shorten his moustaches, remove the hair from his body and armpits by coating it with the removing ingredient. If it has already been overlaid, it will be valid, unless fifteen days have passed.

It is *mustahabb* to take a bath for *ihram*. Some legists observed: if he cannot find water, he can perform *tayammum*. If one takes a bath, and eats what is forbidden for the *muhrim* or puts on those clothes forbidden to wear by the *muhrim*, it will be *mustahabb* for him to repeat the *ghusl* (bath). It is permissible for him to perform the *ghusl* before reaching the *miqat*, if he is afraid of missing the water in it. If he finds it there, he may renew the *ghusl* preferably. It is valid to take a bath in the initial hours of the daytime for his day, and in the outset of evening for his night, unless he sleeps. If one assumes *ihram* without taking a bath or offering a *salat*, and remembers then, he can make up for what he has missed and assume *ihram* again.

It is *mustahabb* also to assume *ihram* consequent to *salat al- zuhr* or any other obligatory prayer. If this be not possible,<sup>1</sup> he may perform six *rak'ahs* for the *ihram*, or at least two *rak'ahs*, reciting in the first one: *Surat al- Fatihah* and *al- Kafirun*, and in the second *rak'ah*: *al- Fatihah* and *al- Tawhid*. Then he may offer the *naflah* (supererogatory prayer) of *ihram* in consequence to these *rak'ahs*, even when it coincides with the time of an obligatory *salat* (*faridah*); offering the *naflah* first on condition that it does not entail shortage of time for the *faridah*.

## A) The Wajibat of Ihram:

### 1. Al- Niyyah:

It is to intend by the heart to do four things:

- to assume *ihram* for *hajj* or *'umrah* with the intention of *taqarrub*

<sup>1</sup> What is understood from this statement is that: the six *rak'ahs* of *ihram* are not required when one performs the obligatory *salat*, but should be offered if the pilgrim fails to perform the noon prayer or any other *faridah*.

But it is not so, as the *sunnah* prescribes on the pilgrim to offer the six *rak'ahs* first, and perform then the *zuhr* prayer or any other *faridah*, assuming *ihram* after that.

If time of assuming the *ihram* does not coincide with appointed time of any *faridah*, the pilgrim will be required only to offer the traditional six *rak'ahs* or two *rak'ahs* of *ihram*, followed by assuming the *ihram*. (*al- Masalik*, vol. II, p. 230).



(seeking God's pleasure);

- to specify the purpose of *ihram*, whether it is *hajj al- tamattu'* or *al- qiran* or *al- ifrad*, whether for the obligatory *hajj (Hijjat al- Islam)* or for a *mandub* pilgrimage, or for something else.

If he assumes *ihram* with a specific intention and utters the words of another purpose of *ihram*, he has to follow his intention. If he makes an error in the *niyyah* intentionally or by mistake, his *ihram* will be invalid.

If he assumes *ihram* for *hajj* and '*umrah* in the months of *hajj*, he will have choice either to perform the *hajj* or '*umrah, in case none of them has been determined for him. If this be during other than the months of *hajj*, it (*ihram*) will be specified for the '*umrah. Most of the legists believe in invalidity of the former *ihram* (in *hajj* months), and necessity of renewing the intention. If one assumes *ihram* with the intention to follow another person's intention, his *ihram* is valid if the other person's purpose is specific and known by him. If he be unaware of the purpose of the other person's *ihram*, he can perform *hajj al- tamattu'* out of precaution. If one forgets the purpose of his *ihram*, he will have choice between performing the *hajj* or '*umrah, if none of them has been incumbent on him.***

## 2. The Four Talbiyahs:

No *ihram* for *tamattu'* or *ifrad* will be accepted unless by reciting the *talbiyah*. The dumb person can make a gesture with passing it through the mind.

For one performing *hajj al- qiran*, he is free to assume his *ihram* with *talbiyah*, or with *taqlid* (hanging a sandal on the sacrificial animal) or *ish'ar*, as per the more correct opinion. Starting with whichever of them will make the other choice as *mustahabb*.<sup>1</sup>

The formula of *talbiyah* is thus: "*Labbayka Allahuma labbayk, labbayka la sharika laka labbayk*". Some legists added to these: "*Innal- hamda wanni'mata laka wal- mulk, la sharika lak*". Others said: he has to say: "*Labbayka Allahumma labbayk, labbayka innal- hamda wan ni'mata laka wal- mulk, la sharika laka labbayk*". The first formula is more confirmed in reports and traditions.

If one forms the *niyyah* of *ihram*, and wears the two dresses (*rida'* and

<sup>1</sup> That means: if he starts with *talbiyah*, the *ish'ar* or *taqlid* will be *mustahabb*; and if he starts with each of these two, the *talbiyah* will be *mustahabb*. In generalizing that starting with whichever of the three, will obligate the *istihbab* of the rest, there is wholeness (*ijmal*). (*al- Masalik*, vol. II, p. 235).

*izar*), but fails to pronounce the *talbiyah*, doing that which is forbidden for the *muhrim*, he will not be liable to offer a blood sacrifice (*kaffarah*), if his *ihram* be for *hajj al- tamattu'* or *al- ifrad*. And so also if his *ihram* be for *hajj al- qiran* and he has not performed *ish'ar* nor *taqlid*.

### 3. Wearing Ihram Dresses:

The two dresses (*rida'* and *izar*) are *wajib*, and *ihram* is not valid with wearing what is impermissible to wear in *salat*. Is it permissible for women to wear silken clothing for *ihram*? Some legists said: Yes, in accordance with permissibility of wearing it for them during *salat*. Others observed: No, it is not permissible, which is more precautionary (*ahwat*). It is permissible for the *muhrim* to put on more than two pieces of clothing (on condition that they are not stitched). Also it is permissible to change the clothes in which one commenced *ihram*. When he intends *tawaf*, it is preferable to perform it in them. If these two dresses are not brought and instead the person has a *qaba'* (outer garment), he can put it on inversely, by placing its skirt on his shoulders.

### Restrictions of Ihram:

1. It is not permissible for one who has assumed *ihram* to assume another one, until performing the acts for which he assumed *ihram*. If he assumes *ihram* for *hajj al- tamattu'*, enters Mecca, and assumes *ihram* for *hajj* before performing the *taqsir* out of forgetfulness, he will not be liable to anything. Some legists said: he must offer a blood sacrifice. Considering it *mustahabb* is more correct. But if he does this intentionally, his *'umrah* will be invalid and his *hajj* will be *mabtul* (cut off), according to view of some legists. Others said: he may keep on his first *ihram* (as valid) and his second *ihram* will be invalid. The first view is confirmed in reports and traditions.

2. If one makes the *niyyah* for performing *hajj al- ifrad*, and enters Mecca, it will be permissible for him to perform *tawaf*, *sa'y* and *taqsir*, making it as *'umrat al- tamattu'*, unless he has offered *talbiyah*. If he has recited the *talbiyah*, his *ihram* will be concluded. Some legists said: no consideration is to be paid to the *talbiyah*, but the intention determines the purpose of *ihram*.

3. If the guardian assumes *ihram* for the ward (boy), he has to denude him of any stitched clothing on the Fakhkh Well (at a distance of a parasang from Mecca), and perform for him all the *wajib* acts incumbent upon a *muhrim*, keeping him away from all forbidden acts. If the boy perpetrates any sin (violation) entailing *kaffarah*, it will be *wajib* upon the *wali* to take this atonement out from his funds. The guardian is responsible for performing all the acts which the ward failed to perform, including *talbiyah*,

*tawaf* and *sa'y* or other acts. He is also required to take out the expenses of *hady* out from his own funds. It is reported that if the ward be of discriminating age (*mumayyiz*), it will be permissible to command him to fast as a substitute for *hady*. If he be unable to fast, the *wali* may fast on his behalf, if offering the *hady* be not possible for him.

4. If one makes a condition with God at the time of assuming *ihram*, to relieve it at the place of assuming it, but some impediment keeps him from fulfilling his condition, he may relieve himself of *ihram*. Will he be exempted of offering the *hady*? Some legists said: Yes, and others observed: No, he will not be exempted. The second view is more correct. The benefit of stipulation (*ishtirat*) is to permit *tahallul* in time of constraint. Some legists hold this view: *tahallul* is permissible without making a condition. The first view is more correct.

5. When the constrained pilgrim is relieved of *ihram*, he will not be exempted of the obligation of *hajj* in the forthcoming year if it were *wajib* (*Hijjat al- Islam*). But if it be *mandub*, he will be relieved of it.

### **B) Mandubat of Ihram:**

It is *mandub* for men to utter the *talbiyah* loudly, and repeat it while sleeping and awakening, and during going upward and downward (into the valley). If his *ihram* be for obligatory *hajj*, he has to continue pronouncing the *talbiyah* till the day of 'Arafah at midday. If it be for '*umrat al- tamattu*', so till sighting the houses of Mecca. If it be for '*umrah mufradah*', he may choose between discontinuing the *talbiyah* on entering the Haram, or sighting the Ka'bah. Some legists observed: if he has gone out of Mecca for assuming the *ihram*, he has to discontinue the *talbiyah* on sighting the Ka'bah. If he has assumed *ihram* from outside Mecca, he may discontinue it on entering the Haram. All these things are permissible for him.

It is recommended for the pilgrim taking the route of al- Madinah, to utter the *talbiyah* loudly, on reaching the Bayda'.<sup>1</sup> If he has come to Mecca on foot, so he has to utter the *talbiyah* concurrently with *ihram*.

It is *mustahabb* to pronounce the specification of the purpose of *ihram*, whether it is '*umrah mufradah*', or *hajj al- ifrad*, or *al- tamattu*'. Also it is *mustahabb* for him to make a condition (*ishtirat*) with God to relieve it (*ihram*) wherever he is constrained.<sup>2</sup> If it is not for *hajj*, then for '*umrah*'. It

<sup>1</sup> Bayda': is a special land situated between Mecca and Medina, at a distance of one mile from al- Hulayfah, toward Mecca. (*Majma' al- bahrayn*, vol. II, p. 18).

<sup>2</sup> A per the reported saying: "O God, I wish to fulfil Thy command, but if

is *mustahabb* to assume *ihram* in cotton clothing, preferably the white cotton. If his assumption of *ihram* be from Mecca, it is *mustahabb* for him to utter the *talbiyah* loudly, on reaching the Abtah (a route of tiny stones).

### Restrictions of Ihram:

They include forbidden (*muharramat*) and reprehensible (*makruhat*) acts:

The forbidden things are twenty:

1. Hunting (*sayd al- barr*): prohibited is hunting of land animals, either through killing or through *dhabh* (eating), even if one be in state of *tahallul* (of *ihram*). Prohibited are also guiding the hunter and pointing out the game to him, closing the road and slaughtering. If the *muhrim* slaughters a game, it will be considered *maytah* (a dead animal), and its flesh is unlawful for the *muhill* and *muhrim*. Also prohibited is meddling with their eggs and their young ones. The locusts are counted among the land animals (*sayd al- barr*).

*Sayd al- bahr* (game of the sea) is not prohibited, which includes the oviparous and those producing (germinating) young ones inside water.

2. Intercourse:

It is not permissible for the *muhrim* to have sexual intercourse with his wife, or to derive any kind of sexual pleasure from her. Also it is prohibited for the *muhrim* to contract marriage for himself or on behalf of another. Also he may not act as another's agent for concluding a marriage contract, or as a witness, even if he can tolerate that as a *muhill*.<sup>1</sup> No objection or restriction is there to all these after relief from *ihram*. Prohibited is also the kissing, sensual glancing, and *istimna'* (seminal emission).

### Subsidiary Issues:

1. When the husband and wife differ regarding consummation of marriage, one claiming it in state of *ihram* and the other denying, the claim

---

any impediment keeps me from completing it or a barrier obstructs me from it, exonerate me where Thou constrained me, as it is a predestination Thou hath decreed for me." (*al- Wasa'il*, vol. IX, p. 22, *bab* 16 of *ihram* sections).

<sup>1</sup> By saying "even if he can tolerate that as a *muhill*" he intends to draw the attention to this exception, in contrary to al- Shaykh (may God's mercy be upon him) who restricted the prohibition of establishing the witness of marriage upon the *muhrim*, as he can tolerate it while being in state of *ihram*.

The predominant view is general prohibition on giving a witness (for *muhrim* and *muhill*), but its evidence is not explicit. (*al- Madarik*, vol. VII, p. 312).

to be accepted is of that claiming relief of *ihram*, for preponderating the validity. But if the denier be the woman, she will be entitled to half the *mahr* (dowry), because of his (husband's) confession to an interdiction preventing the copulation. And it is meritorious to give her the full *mahr*.

2. If he acts as an agent for contracting marriage while he being in state of *ihram*, and he consummates the marriage, the contract will be invalid if it be before *tahallul* of the *muwakkil* (one for whom he works as an agent). But if it be after *tahallul*, it will be valid. It is permissible for the *muhrim*<sup>1</sup> to revoke divorce of his revocably divorced wife, and buy bondmaids.

3. Use of perfume: Use of perfume is forbidden for the *muhrim* except *khaluq* of Ka'bah, even in his food. But when one is forced to eat something having perfume, or touch the perfume, he will be required to take hold of his nose. Other legists observed: only musk, ambergris (*'anbar*), saffron, aloes-wood, camphor and *vars*.<sup>2</sup> are forbidden for the *muhrim*. The first view is more correct.

4. Stitched Clothing: it is forbidden for men only, and there is disagreement regarding its prohibition for women, and permitting it for them is more correct, whether in exigency or free will. There is unanimity among the legists regarding permissibility of *ghilalah* (gown) for the menstruating woman. It is permissible for men to wear *sirwal* if he can't find the *izar*, and also to wear *taylasan* (green robe) having buttons, without buttoning it.

5. Use of Kohl: it is forbidden for the *muhrim* to darken the eyelids with kohl or apply a kohl containing perfume, no difference for men and women.

6. looking into the Mirror: according to the more correct view.

7. Wearing the *khuffan* (slippers) and whatever covers the outer part of foot. It is permissible in exigency. Some legists said: he has to cut them open, but this habit is no more followed.

8. *Fusuq*, which means *kidhb* (lying, impiety).

9. *Jidal* (disputing); which means: using such expressions as: No by God!', and 'Yes, by God!', in conversation.

10. Killing body vermins, even the lice. But shifting them from a place

<sup>1</sup> What is intended here is the legitimacy of revoking the divorce and the purchase of bondmaids and their illegitimacy. Otherwise, the predominant rule is prohibition when *mubasharah* (having sexual intercourse) is intended while being in state of *ihram*. (*al- Madarik*, vol. VII, p. 318).

<sup>2</sup> *Vars* is a kind of plant similar to sesame which grows in Mina. (*al- Rawdah*, vol. II, p. 240). Al- Shahid al- Thani said: It grows on the barks of trees growing in Yemen. (*al- Masalik*, vol. II, p. 254).

to another of the body is permissible, with casting aside the ticks (*qurad*) and *halam* (big ticks).

11. Wearing a ring for adornment is not permissible, but it is permissible if wearing it be out of a *sunnah*. Forbidden is also for a woman to wear jewelry for the sake of adornment, and whatever she was not used to wear usually, as per the predominant view. There is nothing upon her if she wears what she used to wear (jewelry), but it is forbidden for her to display it to her husband.

12. Use of any oil (paint) containing perfume is forbidden after assuming the *ihram*. It is also *haram* if it is used before the *ihram* if it be of the kind whose perfume remains (felt) till assumption of *ihram*. It is forbidden too to use any oil containing no good perfume, voluntarily after the *ihram*, but it is permissible in exigency (like ointment for treatment).

13. Removing the hair, little or much, is forbidden in state of *ihram*. But it is permissible only in emergency.<sup>1</sup>

14. Covering the head: it is not permissible for the *muhrim* to cover his head voluntarily, or to immerse himself under water until the head is completely submerged (*irtimas*). If he covers the head forgetfully, nothing is required of him but to throw away the cover, and renew the *talbiyah* preferably. But it is permissible for a woman to use shadow while moving about, with uncovering her face. It is permissible for her to lower her veil from the head to the tip of her nose.

15. Use of Shade: It is forbidden for the *muhrim* to shade himself while moving. But it is permissible in case of emergency. If he accompanies a diseased or a woman, use of shade will be exclusively permitted for the sick and the woman alone.

16. Cupping (*Hijamah*): It is not permissible but only in case of necessity. Some legists observe: it is *makruh*. Others believe in prohibition of scratching the skin so harshly that it leads to discharge of blood. And so also in regard of brushing the teeth. Reprehensibility is more correct.

17. Shortening the finger-nails.

18. Cutting the trees and plants is forbidden for the *muhrim* if grown within the Haram. But it is permissible if grown within the *muhrim's* property, by his mediation. It is also permissible to uproot the fruit trees, *idhkhar*, palm trees, and the scaffolding woods as per a narration.

19. Washing the body of a *muhrim* (after his death) by applying

<sup>1</sup> As in case when treatment of a wound can never be made but with removal of the hair. (See *al- Madarik*, vol. VII, p. 351; *al- Masalik*, vol. II, p. 262).

camphor or any other kind of perfumery, is not permissible.

20. Holding a weapon without necessity is forbidden. Some legists said: it is *makruh*, which is predominant.

### The Makruhat for the Muhrim:

They are ten:

It is reprehensible (*makruh*) to assume *ihram* in clothes dyed with blackness and *'usfur* (yellow dye) and alike; to sleep in them; to assume *ihram* in dirty clothes even if be pure; to wear clothes having a different colour of the origin; to dye with henna for adornment; for a woman also to dye with henna even before assumption of *ihram* if she associates with it; to wear *niqab* (veil) for a woman (with disagreement among the legists); to enter the bathroom (in state of *ihram*); to embrocate (*tadlik*) the body in bathroom; to say *labbayk* to a caller; and to use *rayahin* (aromatic plants).

### Conclusion

It is *wajib* upon every one entering Mecca to assume *ihram*, except for that whose entrance comes after an *ihram*, before passage of one month, or who enters recurringly like the wood-cutter and mower (weed-cutter). Some legists observed: it is permissible for one entering Mecca for the sake of fighting to enter it as *muhill*, as the Prophet(S) entered it in the year of conquest (*fath*) with the *mighfar*<sup>1</sup> on his head.

Assumption of *ihram* for a woman is the same as that for a man to the exclusion of the exceptions mentioned before. When she reaches the *miqat* it will be permissible for her to assume *ihram* even if she be menstruating (*ha'id*), but she is not allowed to perform *salat* of *ihram*. If she ignores *ihram* thinking it to be impermissible for her, she will be required to return to the *miqat* and assume *ihram* from it. If she is kept from returning with an impediment, she can assume *ihram* from the place where she be. If she has entered Mecca, she has to go out to the nearest point of *tahallul*. If any barrier prevents her from going out, she may assume *ihram* from Mecca.

### The Halt in 'Arafat

It is *mustahabb* for a pilgrim performing *hajj al- tamattu'*, to proceed to 'Arafat on the day of Tarwiyah (8<sup>th</sup> of Dhu al- Hijjah), after performing the two *salats* of *zuhr* and *'asr*, with the exception of a constrained one like a withered old man and one who fears overcrowding. He has to pass towards

<sup>1</sup> Mighfar: is a chain mail (*zarad*) woven to the measure of the head, and worn under the hood. (*al- Mukhtar*, vol. I, pp. 476-477).

Mina and spends the night till daybreak of the day of 'Arafah, but not to go beyond the Muhassir Valley but after sunrise.

Proceeding is *makruh* if done before dawn, except for some necessity, such as illness or fear.

It is *mustahabb* for the *imam* (leader of pilgrims) to stay in it till sunrise. Also it is *mustahabb* to recite the ordained supplication while proceeding, and take a bath (*ghusl*) for the *wuquf* in 'Arafat.

### **Manner of Halt:**

It is of two kinds: *Wajib* and *Mandub*.

**A.** The *wajib* acts are: to form the *niyyah*, and stay in it ('Arafat) till sunset.

The limits of 'Arafat are: 'Arnah, Thawiyyah, Namirah, Dhu al- Majaz, and Taht al- Arak. One may not make the halt in any of these places, because they are outside 'Arafat. If one were to make halt in any of these, his *haji* is invalid.

If one proceeds before sunset, out of ignorance or forgetfulness, nothing will be required of him. But if he does this intentionally, he will be required to atone for it with sacrificing a camel. If this be not possible for him, he has to fast for 18 days in succession. But if he returns before sunset, he will not be liable to anything.

### **The Rules Applicable to 'Arafat:**

1. Halt at 'Arafat is a *ruk'n* (essential part) in *haji*, and if it is omitted intentionally, the *haji* will be invalid. But if one fails to make it forgetfully, and he remembers before the period expires, he must return as far as possible, and if he misses the halt at 'Arafat, he can make up by halting at the Mash'ar.

2. There are two kinds of periods for the halt, depending on whether one arrives at a time of his own choice (*ikhtiyari*) or the time is forced upon him by circumstances beyond his control (*idtirari*). In the case of the former, the period of halt for him is from midday on the ninth until sunset on the same day. If one omits it intentionally, his *haji* will be invalid. In the case of the latter (*idtirari*), the period lasts until the daybreak of the tenth (*yawm al-nahr*).

3. If one forgets to make the halt at 'Arafat, he must return to it and make the halt for a part of the night, even if this lasts till the daybreak of the tenth (*yawm al-nahr*), on condition that he be present at the halt in al-Mash'ar before sunrise. But if he thinks most likely of missing the halt (in al-Mash'ar) it is sufficient for him to be present at al-Mash'ar before



sunrise, where his *hajj* will be complete. And so also is the rule when he forgets the halt in ‘Arafat, and doesn’t remember but only after the halt in al-Mash‘ar before sunrise.

4. If one makes the halt in ‘Arafat before sunset, failing to be present at al- Mash‘ar until before midday, his *hajj* will be valid.

5. If the circumstances would not let him to make the halt in ‘Arafat in the daytime and he makes it (forcibly) at night, failing to be present in al-Mash‘ar till sunrise, his *hajj* will be invalid. Some legists said: he has to return to the Mash‘ar even if he can be present before midday, which is preferable.

**B. The Mandub Acts:**

They include:

- to make a halt in the left side of the mountain, on its foot (left of one coming toward Mecca);
- to recite the supplication reported from Ahl al- Bayt (peace be upon them), or other supplications;
- to invoke a blessing upon himself, his parents and all the believers;
- to pitch his tent with speckled skin;
- to stand on the plain;
- to collect his luggage;
- to fill the vacancies in him and with himself;
- and to recite a *du‘a* standing.

It is *makruh* to make the halt on the top of the mountain; riding a mount; and sitting.

### The Halt in al- Mash‘ar

Its Mustahabbat:

It is *mustahabb* to walk modestly when proceeding toward al- Mash‘ar, and to say when reaching the red sandhill, on the right side of the road: “O God, have mercy upon my situation, increase in my deed, render my *Din* sound, and admit my rituals (of pilgrimage).” It is also *mustahabb* to delay the *maghrib* prayer until Muzdalifah is reached whereat the *maghrib* and the ‘*isha*’ prayers should be offered together, even if this lasts till the first quarter of the night. If an impediment curbs him from doing so, he can offer his *salat* on the way. Recommended for him is to offer the *maghrib* and ‘*isha*’ prayers together, with a single *adhan* and two *iqamahs*, without any supererogatory prayers (*nawafil*) in between, with delaying the *nawafil* of *maghrib* till after the ‘*isha*’ prayer.

### Manner of Wuquf:

Wajibat of Halt: *niyyah* and halt in al- Mash'ar al- Haram. The limits of al- Mash'ar are from al- Ma'zamayn<sup>1</sup> to al- Hiyad, towards the valley of Muhassir. The halt should be made only in al- Mash'ar, and it is permissible in case of overcrowding, to ascend the heights towards the hill, which is one of the limits of Muzdalifah.

If one makes the *niyyah* of the *wuquf* in al- Mash'ar, but be overcome with sleep, or swoon, or loss of sanity, his *wuquf* will be valid. Some legists said: it is not valid. The first view is more predominant.

The time of (*ikhtiyari*) halt in al- Mash'ar is after daybreak. Whoever leaves advertently and knowingly from the Mash'ar before the daybreak and after being there for the whole or part of the night, his *hajj* is not invalidated if he had halted at 'Arafat, although he must sacrifice a sheep. If he had left the Mash'ar on account of forgetfulness, there is nothing upon him.

It is permissible for women and those who have an excuse for not halting or fear detriment, to proceed before daybreak, with nothing being required of them.

### Mustahabbat of the Mash'ar:

It is *mustahabb* to halt in al- Mash'ar after offering the *fajr* prayer, to pronounce the prescribed supplication, or what contains *tahmid*, praise to God, with sending benediction on the Prophet and his Progeny (peace be upon them).

It is *mustahabb* for one performing *hajj* for the first time to put his feet on the ground of the Mash'ar. Some legists said: it is *mustahabb* for him to ascend the Quzaha, and remember God on it.

### Five Issues:

1. The *ikhtiyari* time of halt in al- Mash'ar is the entire period between the daybreak and the sunrise on the tenth. The *idtirari* time extends to midday on the day of 'Id.
2. If someone does not perform it altogether either in the *ikhtiyari* period for the night or in the *idtirari* period, his *hajj* is invalid. But it will be valid if the default was on account of forgetfulness or a legitimate excuse, on

<sup>1</sup> It is said that the Ma'zamayn are: a strait situated between a place called Jam' and 'Arafah, and another one is between Mecca and Mina. (See *Mu'jam al- buldan*, vol. II, p. 163; vol. V, p. 40).

condition that he had performed the halt at ‘Arafat. So one who fails to make the halts at ‘Arafat and the Mash‘ar, neither in the *ikhtiyari* nor in the *idtirari* period, his *hajj* is invalid irrespective of whether this be done intentionally or forgetfully.

3. If one fails to halt at ‘Arafat, and reaches the Mash‘ar before sunrise, his *hajj* is valid. But it will be invalid if he fails to be present in al- Mash‘ar. If he makes the halt at ‘Arafat, it will be permissible for him to proceed to the Mash‘ar till before the midday (*zawal*).

4. Whoever misses the *hajj*, can change his *niyyah* of *ihram* to ‘*umrah mufradah*, and it is *wajib* upon him to perform the *hajj* the year after, if the *hajj* intended was a *wajib* one, with the kind obligatory upon him: *tamattu’* or *qiran* or *ifrad*.

5. Whoever misses the *hajj*, will be exempted of its acts and rites. It is *mustahabb* for him to stay at Mina till the passage of Ayyam al- Tashriq, performing then the acts of ‘*umrah* with which he relieves himself of obligation (*tahallul*).

## Conclusion

It is *mustahabb* for one reaching al- Mash‘ar, to gather seventy pebbles (for *jamarat*) before leaving for Mina. It is permissible to gather them from any other place, but it should be within the Haram, except the mosques. Some legists said: with the exception of al- Masjid al- Haram and Masjid al- Khayf.

Three conditions are prescribed for them: they should be of the material called stone (*hajar*);<sup>1</sup> taken from a place within the limits of Haram; and should be *bikr* (first-hand, not used before).<sup>2</sup>

It is *mustahabb* that they be *bursh* (spotted), soft, as small as tip of finger, dappled, with navy blue colour, and picked up.

It is *makruh* that they be hard or smashed (*mukassar*).

It is *mustahabb* for other than the *imam* to proceed before sunrise (within a short time), but it is not permissible for him to go beyond Valley of Muhassir but only after sunrise.

The *imam* may delay his proceeding till rising of the sun. *Mustahabb* is also to perform the *sa’y* in the Valley of Muhassir (by walking hastily on

<sup>1</sup> By calling it *hajar* (stone), he intended to avoid other things like: jewellery, kohl, arsenic, and carnelian. (*al- Masalik*, vol. II, p. 289).

<sup>2</sup> It means: stones that were not used before for valid *ramy* (of *jamarat*); as if they were pelted without *niyyah*, or failing to strike the known target, they will be considered as *bikr* (not used). (*al- Rawdah*, vol. II, p. 284).

foot), with saying: "O God, make Thee my accountability sincere and sound, accept Thee my repentance, respond Thee to my call, and make amends for my successors and descendants after me." If he fails to make the *sa'y* in it, it is *mustahabb* for him to return to it and do the *sa'y*.

### At MINA, and its RITES:

On reaching Mina, the pilgrim has to recite the prescribed supplication.

Three rites are obligatory at Mina (on the day of 'Id), which are: (1) *ramy* of the Jamrat al- 'Aqabah; (2) *al- dhabh* (slaughtering of the sacrificial animal); (3) *al- halq* (shaving the head).

#### 1) Ramy of Jamrat al- 'Aqabah:

Its *wajib* conditions are: the *niyyah*; number of pebbles being seven (for each *ramy*); pelting them should be made in a way called *ramy*; and the pebbles must strike the known target.

If they strike another place and descend down to the Jamrah, it will be valid. But if they fail to strike the target and be completed (finished) through a motion by another, like an animal or man, it will be invalid. So also is the case when he doubts whether the pebbles thrown have struck the target or not. It is also invalid if he places the pebbles on (*taraha*) the Jamrah without *ramy*, it will not suffice.

There are six *mustahabbat* for *ramy*: *taharah*; to recite the prayers prescribed by tradition while intending the *ramy*; to stand at the distance of ten to fifteen cubits from the Jamrah; to pelt them in a tossing manner (*hadhf*),<sup>1</sup>; to recite prescribed prayers with every pebble; to do the *ramy* on foot, but it is permissible if done while riding a mount; to perform the *ramy* facing the Jamrah and the *qiblah* with the exception of the *ramy* of Jamrat al- 'Aqabah on the day of 'Id, which is *mustahabb* to perform with one's back towards the *qiblah*.

#### 2) The second *wajib* act at Mina is the *dhabh* (slaughtering the sacrificial animal).

It has several parts:

##### The Hady:

<sup>1</sup> *Hadhf*: means a certain way of tossing in which the pebble is held under the thumb and tossed by the back of the index finger. They should be tossed in Mina. (*Tahdhib al- lughah*, vol. VII, p. 328; *al- Nihayah*, vol. II, p. 26).

It is *wajib* upon one performing *hajj al- tamattu'* only not upon any other pilgrim, irrespective of whether his *hajj* being obligatory or supererogatory. If the Meccan performs *hajj al- tamattu'*, the *hady* (sacrifice animal) will be *wajib* upon him. If he be a slave having permission from his master, the option is left to his master either to offer the *hady* on his behalf or to command him to fast. If the slave reaches one of the two *miqats* manumitted, he will be required to offer the *hady* with having ability, otherwise fast is required of him.

*Niyyah* is a condition for *dhabh*, and it is permissible to be formed by the slaughterer on behalf of the pilgrim. Slaughtering the sacrificial animal should be made nowhere but in Mina.

Only one *wakil* (one deputed to slaughter) can be deputed to make the *niyyah* of slaughtering on behalf of one pilgrim in an obligatory *hajj*. Some legists said: one *wakil* can perform the *dhabh* on behalf of five or seven pilgrims in emergency cases, when they be very intimate companions used to sit together at one eating table (*khuwan*). The first view is more predominant. But this is permissible in *mandub* kinds of *hajj*.

It is not *wajib* to sell the clothes of adornment for *hady*, but fast is sufficient. If the *hady* (sacrifice animal) strays (loses the way) and gets slaughtered by other than its owner, it will relieve the owner of the duty of *dhabh*. It is not permissible for the pilgrim to take out of the flesh of the *hady* he slaughters in Mina (if there being deserving believers), but it should be given to the deserving people of Mina.

Slaughtering (*dhabh* or *nahr*) should be made on the day of Nahr (the tenth of Dhu al- Hijjah), prior to *halq*. If one delays the *dhabh* till after the day of Nahr, it will be valid although the delay is a sin. It is permissible to delay the *dhabh* until the third day or even until the end of Dhu al- Hijjah.

### Requirements of the Hady:

- a. It must belong to cattle, such as camel, cow, sheep or goat.
- b. The camel should be of five years and has entered its sixth. And for the cow or the goat, it should be of one year and has entered its second. As to the sheep, it must have entered its second year.
- c. The sacrificial animal must be free of any defect, and it must not be one-eyed, lame, sick or old and decrepit. It should not be castrated (male) or without horns or with broken ones, missing or mutilated ears or tail, or *mahzulah* (emaciated), which is the one on whose rumps there is no fat (*shaham*).

If he buys it with the condition it being not lean, and it appears to be lean afterwards, it does not suffice. If it comes to be fatty then, it will be acceptable. So also is the rule when he purchases it to be fleshy but it comes

to be lean after that. If he buys it with the condition it be free of defect, but it turns to be defective afterwards, it will neither be sufficient nor acceptable.

It is *mustahabb* that the *hady* animal be fleshy, looking well, with black pupil of the eye, kneeling down in blackness, and walking likewise, i.e. it has a shadow in which it walks (very fleshy). Some legists observed: all these positions should be black.

*Mustahabb* is also that the *hady* be brought on the night of 'Arafah. It is preferable to be of the *budn*,<sup>1</sup> female camel and cow, and male sheep and goats. It is *mustahabb* to slaughter the camel while it be standing, and tied from its foot to the knee, and it should be stabbed from the right side.

*Mustahabb* is also to recite a supplication while slaughtering, and for the pilgrim to put his hand on that of one who slaughters, and it is preferable that the *hajj* pilgrim should slaughter the *hady* himself, if he be able to do so.

It is *mustahabb* to divide the *hady* into three thirds: a third of the flesh to be given to the poor believers; another third to be gifted to other believers (even the well off); and the remaining third may be consumed by the pilgrim. Some legists said: it should be eaten of the flesh of the *hady*, a view which is more predominant among the legists.

It is *makruh* to sacrifice the buffalo, bull or *mawju'* animal (whose ovum veins have been crushed) as *hady*.

### **The Substitute Duty (*al- Badal*):**

When the pilgrim cannot find the *hady* but possesses the means to acquire one, he may deposit the means with someone for buying it within a period extending to the end of Dhu al- Hijjah, according to view of some legists. Others hold this view: his duty of *hady* is changed into that of the fasts, which is more correct.

When he cannot find the *hady* nor possesses means to acquire one, its substitute is to keep fasts for ten days, three of which for successive days, are to be kept during the *hajj* days: one day before the day of Tarwiyah, the day of Tarwiyah and day of 'Arafah. If he fails to fulfil this, he may fast the days of Tarwiyah and 'Arafah, delaying fast of the third day till after *nafr*. If he misses the fast of Tarwiyah, he may postpone it till after the *nafr* (proceeding to Mecca). It is permissible to keep their fasts from the first day of Dhu al- Hijjah, after starting the acts of *hajj al- tamattu'*. It is permissible to keep their fasts in any day of Dhu al- Hijjah. If he fasts for two days and

<sup>1</sup> It is written in linguistic books as *budun*, and in the holy Qur'an, thus:  
 "And the *budn* (camels) We have made them for you among the signs of God."

breaks the fast on the third day, this will not suffice and he will be required to keep the fasts anew, except when the third day be the 'Id, when he can fast it after the *nafr*.

Fasting these three days is not valid but only when it be kept during Dhu al- Hijjah, after engaging in the acts of *hajj al- tamattu'*. If month of Dhu al- Hijjah comes to an end while he has not fasted these three days, he will be liable to offer a sacrifice (*hady*) the next year. If he finds the *hady* after fasting them-even before entering into the fast of the remaining seven days-the *hady* will not be *wajib* upon him, and he can continue his fast. It is preferable for him to offer the *hady*.

The fasting of the remaining seven days should be kept on returning home, and it is not necessary that their fasts be successive according to the most correct opinion. If he resides in Mecca, he should keep waiting for a period equalling that which he needs for returning home, on condition that it doesn't exceed one month.

If one upon whom the fasts (of ten days) has become *wajib* dies without fulfilling the fasts, his *wali* (executor) should fulfil this duty on his behalf and fast the three days only not the seven. Some legists believe in *wujub* of offering the *qada'* of all the ten days, which is more predominant.

If the sacrifice of a camel is obligatory upon someone through *nadhr* (vow) or *kaffarah* (except *kaffarah* of *wuquf*), and he cannot arrange it, he must sacrifice seven sheep (one after another), and if that is not possible then he must fast for 18 days. If one upon whom the *hady* be *wajib* dies, its amount should be taken out from his undivided legacy.

### ***Hady of Hajj al- Qiran:***

The sacrifice of one performing *hajj al- qiran* cannot be taken out of the possession of its driver (one who brings it), and he has free hand to substitute and dispense with it, even after performing *ish'ar* or *taqlid* on it.

But when he brings it in the *ihram* assumed for *hajj*, he should make the sacrifice nowhere but in Mina. But the *hady* brought along in the *ihram* of *'umrah* is to be slaughtered inside Haram of Makkah (in Hazwarah). If the *hady* dies before reaching its destination, it is not *wajib* to offer its substitute, since it is not *madmun* (implied in the pilgrim's responsibility). But if it be *madmun* (guaranteed) like the *kaffarat*, its substitute should be offered.

If the *hady* brought (by the pilgrim) fails to reach the destination, it is permissible to sacrifice or slaughter it, marking it with a sign indicating its being a *hady*.<sup>1</sup> If any limb (hand or leg) of it is broken, it may be sold, and it

<sup>1</sup> By submerging its horseshoe in its blood and striking with it the side of

is preferable to give its price in charity (*sadaqah*) or offer its substitute. This *hady* does not become liable to be given in charity but only through *nadhr* (vow). If the *hady* is stolen without negligence on the part of its owner, he will not be responsible for its substitution. If it goes astray and one who finds it slaughters it on behalf of its owner, it will suffice as relieving of duty for the owner. If it goes astray, and its owner finds it after bringing its substitute, he should slaughter it, not the latter. If he slaughters the latter, he will be required to slaughter the former one (original) through *nadb* (emphatic recommendation), except when it be vowed (*mandhur*).

It is permissible to get on the back of the *hady* on condition that this be not detrimental to it, and drink of its milk if this doesn't cause any harm to its issues.

The *hady* (of any kind it be) is as obligatory as the *kaffarahs* (with sacrifice made as *fidyah* and the one vowed). It is not permissible to give its flesh to the butcher, nor to take any part of its skin, nor to eat its flesh (by the owner). If one eats the flesh of a *wajib* sacrifice (*hady*), he should give its price in charity.

If one makes a vow to sacrifice a camel, it will be *wajib* upon him to fulfil his vow if he has determined the place of *nahr*; even if he says generally to slaughter it in Makkah (without specification).

It is *mustahabb* to eat (a third) of the flesh of the *hady* brought (*siyaq*), giving one third to the poor believers, and another third to other believers, like *hady al- tamattu'*. And so also is the *udhiyyah* (sacrifice).

### **The Udhiyyah (sacrifice):**

Its time in Mina is four days, the first of which is the day of *Nahr*; and in other places it is three days.

It is *mustahabb* to eat of the flesh of *udhiyyah*. No harm is there in reserving its flesh. It is *makruh* to take it out of Mina, but it is permissible to take out the flesh of another person's sacrifice.

The obligatory *hady* suffices for the *udhiyyah*, and making them together is preferable. One who cannot find the sacrifice, he may give its price in charity (*sadaqah*). If the price of each one differs from the others, he can collect the highest, the medium and the lowest prices together, and give in charity one third of the whole amount.

It is *mustahabb* to sacrifice the animal bought by the pilgrim, as sacrificing the animal raised by him is *makruh*. It is also *makruh*

---

its (camel's) hump. (*al- Masalik*, vol. II, p. 312).



(reprehensible) to take something of the skins of sacrificed animals, or to give some to the slaughterer. Giving them in charity is preferable.

### 3) The third act in Mina after the *dhabh* is *halq* or *taqsir*.

When the pilgrim completes the *dhabh*, he has free choice of performing *halq* (shaving the head) or *taqsir*.<sup>1</sup>

*Halq* is preferable to *taqsir*, and it is more emphasized in *hajj al-sarurah* (the obligatory duty of *hajj* done for the first time), and for one with matted hair. Some legists said: only the *halq* is valid and can suffice to relieve him of the duty. The first view is more predominant.

It is unanimously agreed that women don't have to perform *halq*, rather they are required to perform only *taqsir*, even with cutting a very little portion of the hair.

When the pilgrim completes his rites in Mina on the day of 'Id (*ramy*, *dhabh*, and *halq*), he returns to Mecca to perform the *tawaf al- ziyarah*, offering its related two *rak'ahs*, and perform the *sa'y* between Safa and Marwah. If these acts are done prior to *taqsir* intentionally, the pilgrim is required to atone by sacrificing a sheep. But if this be done by him out of forgetfulness, there is nothing upon him, but he has to repeat the *tawaf* according to a more correct view.

The *halq* (or *taqsir*) should be performed in Mina. Therefore, one who departs without *halq* (or *taqsir*) should return to Mina to perform either of the two, an obligation if within the reach of possibility. But if his returning is not possible, he performs *halq* or *taqsir* wherever he is, sending his hair to be carried to Mina to be buried there, which if he cannot there will be nothing upon him. For one who is bald, completely or partially, he must draw the razor over the (hairless portion of the) head.

The sequence of these acts (rites) should be observed on the day of Nahr: first *ramy* (of *Jamrat al- 'Aqabah*), then the *dhabh* (slaughtering the sacrificial animal), and then the *halq* (or *taqsir*). If the pilgrim does any of the acts before the other contrarily to this sequence, he is not required to repeat though he will have sinned.

<sup>1</sup> Either *halq* or *taqsir* is sufficient, and *halq* is fulfilled through shaving the head to the extent that it can be said: he shaved his head.

*Taqsir*: is fulfilled by shortening either the hair of the head, the bread or the moustaches, or the fingernails of one hand or foot by an iron tool or any other manner; and *halq* is contrary to *taqsir*, as per the predominant traditions. (*al- Tawdih*, vol. I, p. 214).

### Subsidiary Issues:

1. The places of *tahli'l* are three:
  - a. after the *halq* or *taqsir*, as everything becomes permissible for the pilgrim thereupon, except the perfume, sex (sexual intercourse) and hunting;
  - b. when he performs the *tawaf al- ziyarah* the use of perfume becomes permissible for him;
  - c. after performing the *tawaf al- nisa'* and offering its related two *rak'ahs*, the sex becomes permissible for him.

It is *makruh* to wear stitched clothes, before completing the *tawaf al- ziyarah*. Also use of perfume is *makruh* before completing the *tawaf al- nisa'*.
2. It is better to return to Mecca, after completing rites of Mina, where he has to make the *tawaf al- ziyarah* and *sa'y* on the same day (tenth of Dhu al- Hijjah). If he delays it, he can do it (departure) the next day. This is more emphasized for one performing *hajj al- tamattu'*. If he delays it, his *tawaf* and *sa'y* will suffice, though he has sinned. It is permissible for one doing *hajj al- qiran* or *al- ifrad* to delay this act (returning to Mecca) and do it on any other day during Dhu al- Hijjah with *karahiyyah*.
3. It is meritorious for one departing toward Mecca for performing the *tawaf* and *sa'y* to take a bath (*ghusl*), to shorten his fingernails, to shorten his moustaches, and to recite supplications when standing at the door (entrance) of the Masjid.

## TAWAF (Circumambulation Round the Ka‘bah)

It has three parts:

### 1<sup>st</sup>) Preliminary provisos (*shurut*):

They are of two types: obligatory and *mandub* requirements:

#### The *wajib* requirements:

Purity (*taharah*, i.e. freedom from *hadath* and *khathath*), removing the *najasah* from the clothes and body; being circumcised<sup>1</sup> for men; which is not observed for women.

The *mandub* requirements are eight:

- to take a bath (*ghusl*) before entering Mecca. If any excuse occurs, he may take a bath after entry, preferably to do it from the well of Maymun, or Fakhkh. If this be not possible for him, he can take a bath in his residence place;
- to chew the leaves of a plant called '*idhkhir*' used for refreshing the mouth (for kissing the Black stone);
- to pass through Mecca heights during the approach towards the city;
- to enter through Bab Bani Shaybah, after halting at it;
- to walk barefooted, with calmness and solemnity;
- to do ritual bathing for entering al- Masjid al- Haram;
- to send blessing upon the Prophet(S);
- and to recite whatever he can of certain prayers prescribed by tradition.

### 2<sup>nd</sup>) The Manner of Performing Tawaf:

It includes *wajib* and *mandub* requirements:

#### A. The *wajib* requirements are seven:

1. *Niyyah* (with specifying the purpose in every *tawaf*).

<sup>1</sup> This condition is to be imagined in a man who embraces Islam, and wants to get circumcised while he fulfils the conditions for performing the obligatory *hajj*, so what should he do?

Abu ‘Abd Allah (al- Sadiq) [A] is reported to have said: He should not go to *hajj* till doing the circumcision. (*al- Madarik*, vol. VIII, p. 118).

Circumcision: to cut off the foreskin of glans penis. (*al- Mukhtar*, vol. I, p. 169).

2. To begin *tawaf* and end it at the Black Stone, in a way that the first part of one's body be in front of the first part of the Black stone. Then he moves with the Black Stone on his left, ending the last *tawaf* in line with the point where he commenced his first, ensuring thus that the round is completed without advancing or falling behind a single step or more.

3. The Ka'bah must be on the left during *tawaf*.<sup>1</sup>

4. The Hajar Isma'il must be included in *tawaf*.

5. The *tawaf* should consist of seven rounds, no more no less.

6. The *tawaf* should be performed between the Ka'bah and the rock called Maqam Ibrahim.

7. The body should be completely out of the Ka'bah, i.e. the *tawaf* should be made around and so outside the Ka'bah, not inside it. If one were to walk on its walls or on the protruding part of its walls' foundations, the *tawaf* would be invalid.

After finishing the *tawaf*, it is obligatory to offer two *rak'ahs* of *salat*. If one forgets these two *rak'ahs*, he should return and perform them. But if returning be not feasible, he can offer them wherever he can. If one dies without offering this *salat*, his *wali* (executor) should perform its *qada'* for him.

### Six Issues:

1. Any addition to seven rounds in the obligatory *tawaf* is not permissible, as per the more widely-held opinion, and in the supererogatory *tawaf*, is *makruh*.

2. *Taharah* is a condition in the obligatory *tawaf*, not the *mustahabb* one, to the extent that it is permissible to start the *mandub tawaf* without *taharah*, though being on purity is more meritorious.

3. The two *rak'ahs* of *tawaf* should be performed in the Maqam Ibrahim, and it is not permissible to offer them in any other place. If this be not possible due to the crowd, one may offer them behind the Maqam or to any of its sides.

4. If one makes the *tawaf* with a *najis* (ritually impure) dress knowingly, his *tawaf* is invalid. But if he be unaware of its being *najis* and

<sup>1</sup> *Tawaf* on the left means: to make the Ka'bah on the left while doing the *tawaf*. If he faces it, or keeps it to his back, or to his right, even with one step, it will be insufficient, and he will be required to start afresh.

A slight shift of direction (to the right) does not matter as long as the movement meets the requirement in the ordinary sense. (*al- Madarik*, vol. VIII, p. 128).

he comes to know during *tawaf*, he can take it off and complete his *tawaf*. But if his unawareness continues till after completing the seven rounds, his *tawaf* will be valid.

5. It is permissible to offer the two *rak'ahs* of obligatory *tawaf*, even in the times when they are *makruh*, due to setting in of time of *nawafil*.

6. If one is not certain of having performed seven rounds, as in the case when he doubts whether he is in his fifth or sixth, his *tawaf* is invalid and he should start afresh. If he remembers the diminishing (of rounds) after returning home, he may depute someone to do the *tawaf* for him. If the least number of rounds he is certain of having performed is less than three, he can complete the *tawaf* on that basis, and nothing is required of him. And so also is the rule in regard of one discontinuing the obligatory *tawaf* (*faridah*) for entering the Ka'bah, or to go about to fulfil a duty (or a wish, for himself or another one, or an obligatory *salat* or *naflah*). And so also when he falls sick during his *tawaf*. If his illness continues to an extent that it becomes impossible to carry him to make the *tawaf*, another person should be deputed to do the *tawaf* for him. So also when a *hadath* occurs during the obligatory *tawaf*. If one enters into the *sa'y*, and remembers that he has not completed the seven rounds (of *tawaf*), he should return and complete his *tawaf* (from the least number he is certain of), if the rounds he has done be four or more.<sup>1</sup> Then he may go and complete the *sa'y*.

### B. The Mustahabbat of Tawaf:

The things *mustahabb* (*mandub*) in *tawaf* are:

- to halt in front of the Black Stone, praise and extol God and send blessings on the Prophet and his Progeny (peace be upon them);
- to make the prayer later offered with the hands raised;
- to draw one's hand on the Black stone (*istilam*);
- to kiss it if possible, otherwise to draw his hand on it. If his hand is amputated he can draw the amputated part on the Stone. If he has no hand at all, he can make a gesture;
- to recite the supplication: "This is my trust I have fulfilled, and my covenant I have undertaken, so as to acknowledge my execution of a promise. O God, in confirmation to Your Book..." to the end of the *du'a'*;
- to remember Allah –subhanahu- walking peacefully and solemnly,

<sup>1</sup> That is: if he has not gone beyond half the *tawaf* (fourth or fifth), he is required to start the *tawaf* and the *sa'y* afresh. If he makes the *sa'y* before completing the rounds of *tawaf* intentionally, his *sa'y* will be invalid due to intentional violation of sequence. (*al- Tawdih*, vol. I, p. 217).

with a moderately fast pace (*ramal*)<sup>1</sup> during the first three rounds and with an ordinary pace during the last four rounds;

- to say: "O God, I ask from Thee by Thy Name with which it can be walked on awnings of water..." to the end of the supplication;

- to draw one's hand on al- Mustajar –which is in front of the door and before al- Rukn al- Yamani- during the seventh round;

- to draw one's hand on its wall (of al- Mustajar);

- to stick one's abdomen and cheeks to its wall;

- to recite the prescribed supplication, and if he transcends al- Mustajar (near al- Rukn al- Yamani) he cannot return;

- to draw one's hand on every *ruk*n (corner) of the Ka'bah every time one passes by, the most emphasized of which is the Black Stone and al- Rukn al- Yamani;

- to make 360 *tawafs*, and if not possible 360 rounds, making the last *tawaf* with 10 rounds, with which the *karahah* is eliminated;

- to recite in the two *rak'ahs* of tawaf: *Surat al- Fatihah* with *al- Tawhid* in the first *rak'ah*, and with *Surat al- Kafirun* in the second. If one makes more than seven rounds by mistake (*sahw*), he should complete them in two sevens, performing the obligatory *salat (faridah)* first and the two *naflah rak'ahs* after completing the *sa'y*;

- to keep oneself as near as possible to the Ka'bah.

To speak during *tawaf*, apart from *dhikr* (remembrance) and recitation of the Qur'an, is *makruh*.

---

<sup>1</sup> '*Ramal*' means walking fast, without running or making a rush. It is called too: '*al- khabab*'. (*al- Masalik*, vol. II, p. 343).

### The Rules of Tawaf:

They are twelve issues:

1) *Tawaf* is an essential part (*rukhn*) of *hajj*, and if omitted intentionally one's *hajj* will be invalid. But if one fails to do it out of forgetfulness, he should perform its *qada'* even after completing all the *manasik* (rites) of *hajj*. If it be infeasible for him to return and do it, one may depute another one to perform it on his behalf. If after completing the rounds of *tawaf*, one doubts whether he performed them correctly or whether he performed the exact number of rounds, his doubt is of no consequence, and there is nothing upon him. But if the doubt occurs before finishing the *tawaf*, he should consider whether he has performed at least seven rounds. If he is certain of having performed seven rounds, and doubts his being in the eighth one, he has to discontinue the *tawaf* and there is nothing upon him, as his *tawaf* is considered valid. However, if he is not certain of having performed seven rounds, as in the case when he doubts whether he is in his sixth or seventh round, or in his fifth or sixth, in that case his *tawaf* is invalid and he should start afresh. This is true of an obligatory *tawaf*. In case of a supererogatory *tawaf*, the basis is the least number of rounds under seven he is certain of having performed, regardless of whether the doubt occurs during or after the last round.

2) If one makes more than seven rounds out of forgetfulness, remembering that before reaching the Rukn (al- Rukn al- Yamani), he can discontinue the *tawaf* and there is nothing upon him, as his *tawaf* is considered valid. Otherwise, it is *mustahabb* for him to complete them in two sevens.

3) One who remembers that he has not attained *taharah* after performing the *tawaf*, he should return, acquire *taharah* and start the *tawaf* afresh, in case his *tawaf* be a *wajib*, not a supererogatory one. He has also to repeat the *salat* of *tawaf*, with the same former intention whether *wajib* or *nadb*.

4) If one forgets to perform the *tawaf al- ziyarah*, not remembering till after returning home and having sexual intercourse with his wife, he will be liable to sacrifice a camel and return to Mecca to offer the *tawaf*, according to view of some legists. Others observed: he is not liable to any *kaffarah*, the view which is more correct. The first view is to be considered in regard of one who has had sexual intercourse after remembering his not making *tawaf al- ziyarah*. If one forgets *tawaf al- nisa'*, it will be permissible for him to depute someone for doing it on his behalf. And if he dies (before performing it), it will be *wajib* upon his *wali* to perform its *qada'* for him.

5) When one completes his *tawaf*, he will have free will to delay the

*sa'y* to the next day, but this is not permissible for him if he is capable to do the *sa'y* on the same day.<sup>1</sup>

6) It is *wajib* upon one performing *hajj al- tamattu'* to delay the *tawaf* and *sa'y*, till after making the two halts (at 'Arafah and al- Muzdalifah), and completing the rites of day of Nahr. It is not permissible to advance them but only for the sick person, a woman fearing from impending menses (*hayd*), and the decrepit old man. But advancing them (before *wuquf*) is permissible for one performing *hajj al- qiran* or *al- ifrad*, with aversion (*karahah*).

7) performing the *tawaf al- nisa'* prior to *sa'y* is not permissible for one performing *hajj al- tamattu'* or any other form of *hajj* in case he has free will. But it is permissible in emergency, and fear of impending menses.

8) If one performs *tawaf al- nisa'* before the *sa'y* inadvertently, it will suffice, but if he does this intentionally, it will be invalid.

9) Some legists hold the view that making the *tawaf al- nisa'* with the *rutullah* on the head is not permissible. Others confined impermissibility to *tawaf* of '*umrah* due to prohibition on covering the head.

10) One who makes a vow to perform a *tawaf* of four rounds, will be required to make two *tawafs*, according to view of some legists. Others said: fulfilment of his *nadhr* (vow) is not obligatory (as it is an illegal manner, like the *tawaf* one-footed). The first view may be more followed when one making the vow be a woman, to be content with the rule reported through traditions.

11) It is permissible for one performing *tawaf* to depend in counting the number of rounds performed, upon another one, as it is like an indication. If they both doubt the exact number of rounds, they have to rely on the previous rules.

12) *Tawaf al- nisa'* is *wajib* upon one performing the (obligatory) *hajj* and '*umrah mufradah*, not upon that performing *hajj al- tamattu'*. It is obligatory upon men, women, boys and *khuntha* (eunuch, the castrated).

---

<sup>1</sup> That is: to delay it to the next day though being capable to do it on the same day is not permissible. If he delays, it is considered a sin, but it will suffice, as per numerous reports in this connection. (*al- Tawdih*, vol. I, p. 220).



## The Sa'y

Its Preliminaries, Way of Performance & Rules

### First: Preliminaries:

There are ten *mustahabbat* to be done before the *sa'y*: *taharah*; to draw the hand on the Black Stone; to drink from the water of Zamzam; to sprinkle it on oneself by the *dalw* (bucket) opposite to the stone; to leave through the door facing the Black Stone; to ascend the hills of Safa; to face al- Rukn al- 'Iraqi; to praise God (*hamd*) and magnify Him (*takbir*); to prolong one's stay on the Safa; to say seven *takbirs* and seven *tahlils*; and lastly to say thrice:

"There is no god except Allah. He is One, and has no partner. To Him belongs the kingdom and the Praise. He gives life and makes to die, and He is the Living One Who dieth not. In His hand is all good, and He verily is powerful over every thing."

After this he recites the prayer recommended by tradition (*al- du'a' al- ma'thur*).

### Second: The Way of performing Sa'y:

It includes *wajib* and *mandub* acts:

#### A. The *wajib* acts:

*Niyyah*; to begin at Safa; to end with Marwah; to make seven *ashwat*, i.e. to cover this distance between Safa and Marwah seven times. Thus the pilgrim makes four *ashwat* going from Safa to Marwah and three *ashwat* while returning from Marwah to Safa, beginning from Safa and finishing the seventh at Marwah.

#### B. The *mandub* things:

It is *mustahabb* to perform the *sa'y* on foot, but if he does it on a mount it is forgivable; to walk on tips of his feet; to walk with a fast pace (*harwalah*) between the Minaret and the Alley of the Pharmacists (Zuqaq al- 'Attarin) whether on foot or on a mount. If he forgets the *harwalah*, he should return to the starting point and make the *harwalah*. It is *mustahabb* too to recite certain prayers while making the *sa'y*, on foot or on a mount. There is no objection against one who sits during the *sa'y* for taking rest.

### Third: The Ahkam of Sa'y:

1. *Sa'y* is an essential part (*ruk'n*) of the rites of *hajj*, and whoever omits it intentionally, his *hajj* is invalid. But if the omission is made out of forgetfulness, it will be *wajib* on the pilgrim to offer it. If he has departed the place, he should return and perform the *sa'y*. If this be not possible for him, he can depute another person to do it for him.

2. If someone makes more than seven *ashwat* intentionally, his *sa'y* is invalid, but not if the lapse was unintentional. If one has recorded the number of *ashwat* performed, but doubts whether he started the first one from Safa or Marwah, he should consider the number of his present *shawt* and the direction he is facing. If, for instance, the number is an even one (2, 4 or 6) and he is at Safa or facing it, his *sa'y* is correct, because this shows that he had begun at Safa. Similarly, if the number is odd (3, 5 or 7) and he is at Marwah or facing it. But if the case is reverse, that is in an even *shawt* he is facing Marwah or in an odd one facing towards Safa, his *sa'y* is invalid and should be begun anew.

3. If someone has doubt about the number of the *ashwat* performed, whether of having exceeded or fallen short of the required number, he should discontinue and repeat it. If he is certain of having fallen short of the required number (after finishing his *sa'y*), he is required to return and complete them. If he enters into the '*umrah*' believing his having completed the seven *ashwat*, and thus relieves himself of state of *ihram* and has sexual intercourse with his wife, remembering then that he has made less than seven *ashwat*, he will be required to sacrifice a cow, according to a narration, and to make the *ashwat* omitted. So also is the rule when he cuts his fingernails or shortens the hair of his head.

4. When the time of an obligatory *salat* (*faridah*) sets in while one making the *sa'y*, he can discontinue his *sa'y*, performs the *salat* and completes the *sa'y* then. So also is the rule when he discontinues the *sa'y* for doing something (like selling or purchasing).

5. It is not permissible to perform *sa'y* before *tawaf*, as it is not permissible to perform *tawaf al-nisa'* before *sa'y*. If one does so, he should make *tawaf* and start the *sa'y* anew. If, during the *sa'y*, he remembers that he has fallen short of seven rounds of *tawaf*, he should discontinue his *sa'y*, complete his *tawaf*, and return to complete his *sa'y* then.

### The Ahkam of Mina after Return:

#### A. Wajib Rules:

After completing all the rites in Mecca, such as *tawaf al- ziyarah*, *sa'y* and *tawaf al- nisa'*, the pilgrim must return to Mina to spend his night there. It is *wajib* upon him to spend in Mina the nights of the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> (Layali al- Tashriq). If he spends these nights at a place other than Mina, he must sacrifice a sheep for every night, except when he spends it at Makkah praying all the night, or leaves Mina after midnight. Some legists observed: on condition that he does not enter Makkah but after daybreak. Others said: if he spends the three nights at a place other than Mina, he must sacrifice three sheep, considering this for one who stays in Mina on the third night when the sun sets, or hasn't avoided hunting and sex.<sup>1</sup>

It is *wajib* to perform *ramy* of the three *jamar* everyday during the three days called *ayyam al- tashriq*, every *jamrah* with seven pebbles. In addition to conditions of *ramy* previously mentioned, sequence here is necessary: He begins at the first *jamrah* (al- Jamrat al- 'Ula), then the second *jamrah* called al- Jamrat al- Wusta, then he moves to the third point called Jamrat al- 'Aqabah, throwing seven pebbles in each of the three times in a fashion called *hadhf*. If he tosses them reversely, he should repeat the *ramy* of al- Jamrat al- Wusta followed by Jamrat al- 'Aqabah.

The time of *ramy* extends from sunrise till sunset. It is not permissible to perform it at night, except for ones having an excuse, like those who are afraid, or ill, or the shepherds, or slaves.

If one tosses four pebbles at one *jamrah*, and moves to the other and makes the *ramy*, the sequence is observed<sup>2</sup> and he has to return to the former

<sup>1</sup> The best rule is that which was stated by the compiler: the sacrifice (*fidyah*) is *wajib* upon one who discontinues stay in Mina on the third night (13<sup>th</sup> of Dhu al- Hijjah), who stays in Mina while the sun sets on the 3<sup>rd</sup> day, or who has not avoided hunting and sex (intercourse with his wife); as the *mabit* (staying on the night) of the 3<sup>rd</sup> night is *wajib* in these two cases. (*al- Madarik*, vol. VIII, p. 299).

To avoid hunting means to refrain from killing an animal. To avoid the women (sex) means to refrain from having sexual intercourse with women in the state of *ihram*. (*al- Masalik*, vol. II, p. 366).

<sup>2</sup> That is: if he performs *ramy* of four pebbles at one *jamrah* and shifts to the other one and tosses 7 pebbles, the sequence (*tartib*) is considered as observed. So he has to return to the first *jamrah* and complete the *ramy* by tossing the three missed pebbles, without requiring him to repeat the *ramy*.

But if he tosses three pebbles at one *jamrah* and moves to the other



one and completes its three pebbles omitted, without being required to repeat.

If the *ramy* of one day is forgotten, he may perform its *qada'* the next day in order, starting with the forgotten ones followed by the pebbles of the present day. It is *mustahabb* to perform the *ramy* of the day missed in the morning (after sunrise), and the due *ramy* at midday.

### B. Non-Wajib Rules:

If the *ramy* of one or more *jimar* is forgotten, the rite must be performed during the days of Tashriq, but if forgotten altogether until one reaches Mecca, the pilgrim is obliged to return to Mina to perform them if the days of Tashriq are not past; otherwise he must perform the rite himself the following year, or depute another to perform it. If the *ramy* is omitted intentionally, it will be *wajib* upon the pilgrim to perform its *qada'*. It is permissible for one who has an excuse –like sickness- that someone else may perform it for him.

It is *mustahabb* for the pilgrim to remain for the days of Tashriq in Mina; to toss the first *jamrah* on his right, stand and pray; and so also the second *jamrah* (facing the *qiblah*); tossing the third *jamrah* with his back to the *qiblah*, facing it (*jamrah*), without halting at it.

To say *takbir* (with every pebble thrown) in Mina is *mustahabb*, and some legists said: it is *wajib*. Its form is thus:

(الله اكبر، لا إله إلا الله والله اكبر. الله اكبر على ما هدانا، والحمد لله على ما أولانا ورزقنا من بهيمة الأنعام).

*Nafr* is permissible in the first *nafr* (departing Mina), which is on the 12<sup>th</sup> of Dhu al- Hijjah, for one who has not violated the prohibition on hunting and sex in the state of *ihram*; otherwise he is obliged to remain in Mina on the night of the 13<sup>th</sup>, and make the second *nafr* on the day of the 13<sup>th</sup>. The first *nafr* is to be done after midday, and the second one is before midday.

It is *mustahabb* for the *imam* to deliver a sermon informing in it the pilgrims of the time of two *nafrs*, and way of performing them, exhorting them to God's obedience.

After completing all the rites of *hajj* in Mecca, the pilgrim becomes free to go wherever he likes, except for one who has missed any of the rites, the case where he will be obliged to return to perform the omitted acts.

---

tossing at it seven pebbles, in that case he will be required to repeat the *ramy* with seven pebbles for each one. (*Jawahir al- kalam*, vol. XX, pp. 20-24).

### Subsidiary Issues:

1<sup>st</sup>. Whoever commits any sin that entailing punishment or *ta'zir* (reproof) or penalty (*qisas*), and takes refuge in the Haram, must be constrained in food and drinking till be compelled to go out. If he perpetrates that sin inside the Haram, he should be treated and encountered according to what his sin deserves.

2<sup>nd</sup>. Preventing anyone from inhabiting the Makkan houses is *makruh*. And some legists believe in its prohibition. The first view is more correct.

3<sup>rd</sup>. It is *haram* to construct any building higher than that of the Ka'bah. Some legists said: it is *makruh*, which is more predominant.

4<sup>th</sup>. Using a find (*luqtah*) found in the Haram is unlawful, irrespective of whether it be little or much, and the finder should keep on defining it to people for one year. He can give it in charity if he wishes, and he will not be responsible for compensation. He may keep it with him as a trust.

5<sup>th</sup>. If one ignores the *ziyarah* (visit) of the Great Prophet(S) intentionally, he should be forced to offer it, as this implies prohibited estrangement.

### The Mustahabbat:

On returning to Mecca after fulfilling the rites of Mina, it is *mustahabb* to perform the *tawaf al- wada'*. Before that it is *mustahabb* to offer six *rak'ahs* in Masjid al- Khayf, and more emphatically at the minaret in its center; so also on the hill after it toward the *qiblah* at a distance of 30 cubits, and from its right and left sides.

It is *mustahabb* to pass through Masjid al- Hasba' in al- Abtah, as this was practised by the Prophet(S), particularly for one making the 2<sup>nd</sup> *nafr* (on the 13<sup>th</sup>), and to lie down in it.

On returning to Mecca (after rites of Mina) it is *sunnah* for the pilgrim to enter the Ka'bah, more emphatically for one performing the obligatory *hajj* (*sarurah*), to take a bath, to pray on entering it, to offer two *rak'ahs* between the two columns (poles consequent to the door of Ka'bah) on the red marble, reciting in the first *rak'ah*: *Surat al- Fatihah* with *Ha' Mim al- Sajdah*, and in the second: *al- Fatihah* with verses equalling number of those of *Surat al- Sajdah*. It is *mustahabb* also to offer two *rak'ahs* in every corner of the Ka'bah, to recite the prescribed supplication, to draw his hand on the Arkan (of Ka'bah), more emphatically on al- Rukn al- Yamani, to offer 7 *tawafs* round the Ka'bah, to draw his hand on the al- Mustajar, to recite any *du'a'* he likes, to drink from water of Zamzam, to pray while going out, to leave from Bab al- Hannatin near al- Rukn al- Shami, to prostrate himself, to face the *qiblah*, to recite a supplication, to buy dates with one dirham and

give it in charity as a precaution for his *ihram*.

Performing *hajj* on duning camels is *makruh*.

It is *mustahabb* for one who performed the obligatory *hajj* to resolve upon undertaking *hajj* the next year, and *tawaf* is more preferable than the *salat* for one intending to stay in Makkah after the rites. But the contrary is preferable for the resident (*muqim*). Staying in Makkah after completing the rites is *makruh*.

It is *mustahabb* to pass through al- Mu'arras on the way to al- Madinah, and to offer two *rak'ahs* in it.

### Three Issues:

1. The Medina has a *haram*, whose limits are: from mount of 'Ayir to mount of Wa'ir (outskirts of al- Madinah). It is not permissible to cut its trees. But hunting in it is permissible, except in the area between the two Harrahs (Harrat Layla and Harrat Waqim), with highly emphasized *karahah*.

2. To visit the Prophet(S) is a highly *mustahabb* duty for the pilgrim.

3. Also *mustahabb* is to pay visit to Fatimah (peace be upon her) in the garden (*rawdah*) inside her father's mosque, with the tombs of the Infallible Imams (peace be upon them) at al- Baqi'.

### Conclusion

It is *mustahabb* to stay in al- Madinah (*mujawarah*) for a period, and to perform *ghusl* before entering it. It is emphasized that the recommended *salat* in the Prophet's Mosque should be offered between his tomb and the *minbar*, where a tradition says, is a 'garden of the gardens of paradise. It is *mustahabb* to fast for three days in al- Madinah for asking from God some need.

It is also *mustahabb* to offer a *salat* on the Wednesday night at pillar of Abu Lubabah,<sup>1</sup> and on Thursday night near the pillar consequent to the Maqam of the Messenger of Allah (God's peace and benediction be upon him and his Progeny).

To visit all other mosques of al- Madinah, Masjid al- Ahzab, Masjid al- Fath, Masjid al- Fadikh, and also the graves of the martyrs, in particular that of Hamzah(A), at Uhud, is also *mustahabb*.

To sleep in these *masajid* is *makruh*, and the *karahah* is more

<sup>1</sup> It is called Ustuwwanat al- Tawbah (repentance pillar), to which Abu Lubabah tied himself till his pardon was revealed to him from Allah. (*al-Madarik*, vol. VIII, p.282).

emphasized on sleeping in the Prophet's Mosque.

## Rukn Three: Appendices

### Section One: Ihsar and Sadd

*Sadd* means: to be interrupted by an enemy, and *ihsar* (hindrance) is to be kept from *hajj* by illness.

#### 1<sup>st</sup>. The *Sadd*:

If the interrupted person assumes *ihram* and be interrupted then, he may relieve himself of state of *ihram*, on condition that there is no safe route before him other than the interrupted route, or there is but his funds fall short of travelling through it. He may keep on state of *ihram*, even when he has another route, but it be longer with capability to afford for expenses of travel. If one fears missing the *hajj* (by following the longer route), he has to keep his *ihram*, and wait till fulfilment of the condition, when he can relieve of *ihram* by (performing) '*umrah* and perform *qada*' of *hajj* in the following year, the *wajib hajj* with *wajib* and *nadb* one with *nadb*. *Tahallul* is not permissible for him but only after offering the *hady* with making the *niyyah* of *tahallul*.

And so also is the rule in regard of one performing the '*umrah*, if he is prevented from reaching Mecca. If he has brought the *hady* with him, he will be required to offer the *hady* of *tahallul* according to view of some legists, while others believe in sufficiency of the *hady* brought by him, the view which is more predominant among the legists.

No substitute (*badal*) is there for the *hady* sacrificed with the intention of *tahallul*. If one cannot find it (*hady*) nor possesses means to acquire one, he should keep his state of *ihram*. If he relieves of state of *ihram*, neither hunting nor sex will be permissible for him.

*Sadd* means to hinder the pilgrim from reaching the two halts, and from reaching to Makkah. But curbing one from returning to Mina for performing *ramy* of the three *jimar*, and to stay there at night, rather the *hajj* performed despite this hindrance is considered valid, and the pilgrim can depute another one to perform the *ramy* for him.

#### Subsidiary Issues:

1. If the *muhrim* is hindered due to a debt, he cannot relieve of state of *ihram* if he be capable to redeem it. But *tahallul* is permissible for him if he be incapable. So also if he is detained wrongly.

2. If one postpones *tahallul* of *ihram* until the time of performing the *hajj* passes, *tahallul* with the *hady* will not be permissible for him, and he

may relieve of state of *ihram* by offering '*umrah*, and no sacrifice is required of him. But he has to perform its *qada'* if his *hajj* be a *wajib* one.

3. If pilgrim presumes recognition of the enemy before missing the *hajj*, *tahallul* will be permissible for him, but keeping his state of *ihram* is preferable. In case the enemy is revealed then, he may continue his *ihram*, but if missing the *hajj* coincides with revelation of the enemy, he can relieve of *ihram* by offering '*umrah*.

4. If one invalidates his *hajj* and be hindered then, he should atone with sacrificing a camel, and a sheep for *tahallul*, beside necessity of undertaking the *hajj* the following year. If the enemy is uncovered when there be sufficient time to repeat the *qada'*, it will be *wajib* upon him to do the *qada'* of *hajj*, which is considered a valid *hajj* performed as *qada'* in the same year, (i.e. he is not liable to offer *hajj* another time). As stated before that invalidation of *hajj* obligates another *hajj* the next year, the *hajj* related to penalty is still incumbent on him. If *tahallul* is not permissible for him, he may complete the acts in his invalid *ihram*, and perform the *qada'* the next year.

5. If the enemy cannot be repelled but through fighting, it will not be *wajib* on the pilgrim to fight, irrespective of whether safety or damage is mostly presumed. If the enemy demands money from the pilgrim (to let him go through that route), it is not obligatory upon him to bequeath it. If some legists believe in *wujub* of bequest, then it is good to do so if the amount was not unfair.

## 2<sup>nd</sup> . The Ihsar:

The *muhsar* is that who is kept from completing the rites of *hajj* in Mecca or two halts by some hindrance such as illness, when he will be required to send the *hady* he has brought with him (to be sacrificed). If he has not brought any animal, he can offer such a sacrifice (*hady*) as he can afford or send its price. *Tahallul* is not permissible for him till after the *hady* reaches its (specified) destination, which is Mina if he be on obligatory *hajj*, or Makkah if he be on '*umrah*. When the *hady* reaches its destination, *taqsir* and *tahallul* become permissible for the pilgrim, but not the sex (intercourse with his wife), until undertaking *hajj* the following year, if his *hajj* was *wajib*. Or the *tawaf al- nisa'* be performed by another one voluntarily.

If he comes to know that his sacrificial offering (*hady*) has not been slaughtered, his *tahallul* will not be invalidated, and he is required to offer another *hady* in the following year. If the hindrance is removed (recovery of illness) after sending the *hady*, he can follow and join the other pilgrims. If he reaches any of the two halts ('Arafat or Muzdalifah) in its due time, he can complete the rites of *hajj*, which will be considered valid. Otherwise, he



has to relieve of state of *ihram* through '*umrah*, and is required to perform *qada*' of the obligatory *hajj* the next year. *Qada*' of recommended *hajj* (*nadb*) is *mustahabb*.

If one performing the '*umrah* relieves from *ihram* (due to an excuse), he should perform its *qada*' on removal of the excuse. Some legists say: it is to be performed in the due month (involved in '*umrah*).

If some hindrance keeps one performing *hajj al- qiran* from completing the rites, and he relieves from *ihram*, it will be *wajib* upon him to undertake only *hajj al- qiran* the next year. Some legists observed: he should do only what is *wajib* upon him. If his *hajj* be *mandub*, he can offer any kind of *hajj* he wishes, but it is more meritorious for him to undertake the kind from which he relieved himself (of *ihram*).

It is narrated: One bringing the *hady* voluntarily has to set a time limit for its slaughter, with avoiding all the *muharramat* restricted for the *muhrim*. *Tahallul* is not permissible for him but only when the time of *dhabh* sets in, without requiring *talbiyah* of him. If he violates any of the restrictions prescribed for the *muhrim*, he is required to atone (*kaffarah*) *istihaban* (preferably).

## Section Two: Rules of Hunting

The *sayd* (hunting) is of two kinds:

1) That which requiring no *kaffarah* (permitted):

It includes the game of the sea (*sayd al- bahr*), the oviparous ones (which lay eggs) and those having chickens inside water, the Turkey hen (Habashi) and the cattle (livestock) even when they grow savage.

No *kaffarah* is required for: killing the beasts of prey (*siba'*), both land ones (livestock) and birds, except the lion whose killing requires a sacrifice of a male sheep from the killer if he does not use it, according to a feeble tradition.

Also no *kaffarah* is there for killing an animal produced by a wild male and a domestic female, or by an animal lawful for the *muhrim* and another one unlawful (hunting). It is better to observe its name.

It is permissible for the *muhrim* to kill the scorpion, mouce, snake, a predatory bird called *hada'ah*, crow, and flea.

Permissible is also to buy the turtledoves (*qumari*), *dabasiyy* (some kind of doves) and take them out of Mecca, but neither killing nor eating them is permissible.

There is disagreement regarding killing the wasp, and the predominant view is prohibition. No *kaffarah* is required of one killing it by mistake. But

killing it intentionally requires a *sadaqah* even with a handful of food.

2) Those requiring kaffarah (unpermitted):

They are of two kinds:

1- Those whose *kaffarah* has a substitute in particular, which include the livestock that have similar kinds of beasts, which are:

- Ostrich: killing it requires sacrificing a camel. If not possible, he should estimate its price and buy food (wheat) of the amount to be given in expiation and charity to the needy, distributing it by giving two *mudds* to every individual. Giving charity the surplus of 60 *miskins* is not binding.<sup>1</sup>

In case this be infeasible for him, he must fast a day for every two *mudds*. If he fails to do this, fasting for 18 days is required of him.

- Oryx and Zebra:

The expiation for killing each of them is one domestic cow. If not possible, the cow's price should be estimated, with which food (wheat) be bought of the amount to be given in expiation and charity to the needy, distributing it by giving two *mudds* to every individual. If it exceeds thirty individuals, giving the surplus is not binding. If not possible, fasting a day for every two *mudds* is sufficient. If he fails to do so, he should fast for 9 days.

- The Deer:

The expiation is one sheep, and if not possible, the sheep's price is estimated and with it wheat should be bought and given in charity to the needy, distributing it by giving two *mudds* to every individual. What is left of ten individuals is not to be given. If not possible, fasting a day for every two *mudds*. If he fails, fasting three days is sufficient.

Expiation for killing a fox and a rabbit is one sheep, according to the predominant view. If not possible he has the same three choices mentioned above.

- Smashing Eggs of Ostrich:

If the chicken moves inside it (egg), then its expiation is first-born of a camel, one for each egg smashed.

<sup>1</sup> That is: giving the surplus remained of the wheat purchased after giving two *mudds* to 60 needy persons, is not obligatory, if the price of one camel exceeds that of 120 *mudds*. Rather, the additional amount is his own, and it is not *wajib* to cover 60 *miskins* in giving the *sadaqah*, even if the price be less than that of 120 *mudds*, according to the traditions reported in this regard. (*al- Tawdih*, vol. I, p. 229; *al- Masalik*, vol. II, p. 415; *al- Jawahir*, vol. XX, pp. 193-197).

If smashed before its moving, then sending males of camels into their females capable of becoming pregnant, according to the number of the eggs. Whatever is produced is to be offered as *hady*. If this be not possible, then the expiation of every egg is one sheep. If not possible, feeding ten *miskins*. If not possible, then fasting for three days.

- Smashing Eggs of Sand-grouse and Partridge:

If its chicken moves, the expiation of every egg is first-born of sheep. Some legists said: for every egg is a foetus of sheep. If before moving, then the males of camels should be entered into females, and the produced ones should be offered as *hady*, according to the number of the eggs smashed. If this be not possible, the expiation will be like that of smashing eggs of ostrich.

2- Those whose *kaffarah* has no *badal*: They are of five kinds:

- Pigeons: a name for every bird which coos and quaffs water. Some legists said: it is used for ring-dove.

Expiation for killing it is one sheep, on the *muhrim*, but on the *muhill* is one dirham in the Haram. Expiation for killing its chicken is a lamb for the *muhrim*, and half a dirham for the *muhill* inside the Haram.

If he be in state of *ihram* (*muhrim*) and inside the Haram, he will be liable to both the expiations (sheep and dirham).

The expiation for its egg: when the chick moves, one lamb; before moving one dirham on the *muhrim*, and a quarter the dirham on the *muhill*. If he be *muhrim* inside the Haram, then he is liable to one dirham and a quarter. The expiation for a domestic pigeon is the same for one of the Haram if it be killed in the Haram, with buying forage for the pigeon of the Haram of its price.

- Sand-grouse, Partridge & Francolin:

Expiation for killing every one of them is one lamb that has pasturized.

- Hedgehog, Lizard and Jerboa:

Expiation for killing each one of them is a young goat.

- Sparrow, Sky-Lark & Dowel:

Their expiation is one *mudd* of food (the *mudd* is a dry measure equal to 800 grams).

- Locust, Lice and others:

Expiation for every locust is one date, and span of food is predominant. For the lice, one can remove it a way of his body.

For killing a large number of locusts the expiation is sacrifice of one sheep. But if avoiding the killing is not possible, such as when they be on his way, in that case killing them is not considered a sin that requires a *kaffarah*. Everything that its *fidyah* is not estimated, then killing it requires the amount

equal to its price. Some legists observed: killing the duck, swan and skua (*kurki*) requires a sheep, which is arbitrary.

### Complementary Rules:

The *kaffarahs* incumbent on the *muhrim* for hunting in the point of *tahallul*, and on one relieved of *ihram* (*muhill*) inside the Haram, will be required together of the *muhrim* inside the Haram, till reaching the sacrifice of a camel, when it will not be multiplied for him.

Whenever the hunting is recurred by the *muhrim* forgetfully, he will be responsible for its expiation. If he does this intentionally, giving *kaffarah* will be *wajib* upon him for the first time, and it will not be repeated with repetition of hunting, and he will be among those on whom God will take vengeance. Some legists observed: it should be repeated with recurring of *sayd*.

The first view is more widely held among the legists.

*Kaffarah* is *wajib* upon the *muhrim* when he kills the game (*sayd*) whether intentionally or by mistake. If he shoots toward a game and his arrow kills another game, he will be liable to two *fidyahs*. And so also is the rule when he shoots a certain target but hits a game, when he will be responsible for payment of *kaffarah*. When a *muhill* buys eggs of Ostrich for a *muhrim*, and he cooks and eats them, the expiation for each egg on the *muhrim* will be offering one sheep, and on the *muhill* one dirham.

The *sayd* cannot come into possession of the *muhrim* through: hunting, or purchasing, or donation, or inheritance, when the game be within his access. But if it be in his hometown (far from him), there is disagreement among the legists, and the most predominant view says: he can possess. If the *muhrim* is obliged to eat the game, he may eat it but should give its *fidyah*. If he has a *maytah* (a game slaughtered by a *muhrim*), he has to eat the game if *fidyah* be within his capability; otherwise he eats the *maytah* (a dead animal not slaughtered in according with ritual requirements). If the game be owned (by someone), then its *fidyah* should be given to its owner. If it be not owned, he can give it in charity (*sadaqah*) to the needy. The *fidyah* (sacrifice) imposed on the *muhrim* should be slaughtered in Makkah if his *ihram* be for *'umrah*, and in Mina if his *ihram* be for *hajj* (*wajib*).

It is narrated that one upon whom it has become *wajib* to sacrifice a sheep as expiation for hunting, and he lacks the means to offer it, he should feed ten poor persons. If this be not possible for him he should fast for three days during the pilgrimage.

### Section Three: The Other Restrictions for Muhrim

They are seven:

### 1. Intercourse with wife:

It is not permissible for the *muhrim* to have sexual intercourse with his wife, so if he performs intercourse from the forepart (vulva) or posterior (anus), intentionally and with awareness of its unlawfulness, his *hajj* becomes void, although he must perform all its acts to the conclusion. Thereafter he must sacrifice a camel in atonement and repeat the *hajj* the next year separately from his wife, irrespective of whether his *hajj* be *wajib* or supererogatory. So also when he has sexual intercourse with his bondmaid while he being in state of *ihram*.

If the wife yields willingly to intercourse (while being in state of *ihram*), her *hajj* is also void and she must sacrifice a camel with repeating the *hajj* the year after. Further they should separate when reaching that place (in which they committed intercourse), till completing all the rites of *hajj* separately from each other. The seclusion means they cannot seclude themselves together unless with presence of a third person.

If she is forced (to intercourse), then nothing is required of her, but the husband is obliged to offer two camels, one on his own behalf, and the second on hers.

If he commits intercourse after the halt in al- Mash‘ar, even before performing the *tawaf al- nisa’*,<sup>1</sup> or after performing three or less *ashwat*, or he ejaculates in other than the vulva (between the rumps) before *wuquf*, his *hajj* will be considered valid, but he is required to sacrifice a camel in atonement, no more.

### A Subsidiary Issue:

If one invalidates the *hajj* he is offering as *qada’* of a *hajj* he invalidated the year ago, he will be obliged to do what was required of him before. If the *muhrim* performs *istimna’* (causes semen to discharge, masturbation),<sup>2</sup> he should sacrifice a camel in atonement. And there is disagreement regarding

<sup>1</sup> By ‘even’ it is meant: if the copulation occurs after performing *tawaf al- nisa’*, the sacrifice of a camel will be *wajib* upon him, which is not so. But it becomes *wajib* if the copulation occurs before performing *tawaf al- nisa’*, as it does not become permissible (copulation) except after performing *tawaf al- nisa’*.

<sup>2</sup> *Istimna’* means: to cause the semen to emit either through playing with the locale, or by his hand, or through flirtation with his wife (caressing), or any other means. The difference between it and the *istimat’* without insertion (copulation) is that *istimta’* is devoid of intention to mere seminal emission. (*al- Masalik*, vol. II, p. 477).

its invalidating the *hajj* or not, and the view of those believing in invalidation and *wujub* of *qada'* is more widely held among the legists.

If he commits intercourse after *tahlil* while she being *muhrim* with his permission, he is obliged to make an offering in atonement on her behalf, which is either a camel or a cow or a sheep. If he lacks the means to afford for this, he has choice either to sacrifice a sheep or fast for three days.

If he commits intercourse before *tawaf al- ziyarah*, he must offer a camel in atonement. If he cannot find the means, he may offer a cow or a sheep.

If the intercourse occurs after the *muhrim's* performing five *ashwat* of *tawaf al- nisa'*, he will not be liable to any *kaffarah*, and the number of *ashwat* he has performed will be the base. Some legists observed: making four *ashwat* or more is sufficient in this regard. The first view is more widely held among the legists.

If a *muhrim* contracts marriage for another *muhrim*, and that one consummates the marriage (copulates with his wife), both of them will be obliged to offer a *kaffarah*. So also is the rule when one contracting the marriage is relieved of *ihram*, according to a narration reported by Sama'ah.

If one in state of *ihram* for '*umrah* copulates with his wife before the *sa'y*,<sup>1</sup> his '*umrah* becomes void and he must offer a camel with performing its *qada'*, which is preferable to be done during the same month.

If he gazes a woman other than his wife and ejaculates as a result of this, offering a camel will be *wajib* upon him if he be well off, or a cow if his condition be of a middle level, or a sheep if he be in hard circumstances.

If he glances his wife and this results in ejaculation, nothing will be upon him.<sup>2</sup> But if his glance be with sexual desire and results in ejaculation, he will be obliged to offer a camel. If he touches her without a sexual desire, nothing is required of him. But if his touch be with desire (*shahwah*), he

<sup>1</sup> If the *muhrim* wife yields willingly to intercourse, her *hajj* is also void, and she must sacrifice a camel in expiation and repeat *hajj* the year after. But if she is forced, then nothing is required of her, and the husband is obliged to offer the camel on her behalf.

In regard of the *wujub* of separation in the '*umrah mufradah*, there are two views: one saying it is obligatory and the other says it is voluntary. If the copulation occurs after the *sa'y*, it will not be invalidated, but he is obliged to offer a camel unless he has fulfilled it. (*al- Masalik*, vol. II, p. 481).

<sup>2</sup> This should be restricted with his not being accustomed to ejaculation on glancing the women, or having bad intention. Otherwise, the *kaffarah* will be *wajib* upon him as in the case when the ejaculation be a result of repeated sensual glances. (*al- Masalik*, vol. II, p. 482).

must offer a sheep even if it has not resulted in ejaculation. If he kisses his wife, he must offer a sheep. If the kiss is taken with sexual desire, he will be obliged to offer a camel. So also if the ejaculation is resulted from flirtation with his wife (*muda'abah*). If he eavesdrops someone copulating with his wife, and this results in ejaculation, without glancing them, then nothing is required of him.

### A Subsidiary Issue:

If one performing *hajj* voluntarily invalidates his *hajj*, and be restrained then from completing his rites, he must offer a camel in atonement for invalidation, and a blood sacrifice for hindrance (*ihsar*), and performing its *qada'* the next year is sufficient.

### 2. Use of perfume:

If the *muhrim* uses any perfume, either for smelling, or for applying on himself—for the first time or perpetually- or for incense, or for scenting edibles, he will be required to sacrifice a sheep.

There is nothing wrong in the *khaluq* of Ka'bah even if it contains saffron, and the same applies to fruits like apples and citron, and aromatic plants such as flowers and nilofar.

### 3. Shortening of Nails:

The *kaffarah* for cutting a single nail is giving one *mudd* (800 grams) of food in charity. If all the nails of fingers and toes are cut in one sitting, the *kaffarah* is one sheep, but if done in several sittings, it will be sacrifice of two sheep. If one gives a verdict (*fatwa*) to a *muhrim* to shorten his nails, and this causes his blood to come out, sacrifice of one sheep will be required of that who has given the verdict.<sup>1</sup>

### 4. Stitched Clothing:

It is forbidden for the *muhrim* man to wear stitched clothes, and clothes which encircle body parts, e.g. turban, hat and the like. If he wears he should offer a blood sacrifice (sheep). If he is obliged to wear them to protect himself from heat or cold, it is permissible for him but he should offer a sheep.

<sup>1</sup> With no difference whether the *mufti* be *muhill* or *muhrim*, and without stipulating his being a *mujtahid*. But seemingly he should be competent to give verdicts (*ifta'*) in view of the *mustafti* (consultant, seeker of a judicial rule), so as to determine his being a *mufti*. (*al- Masalik*, vol. II, p. 485).

### 5. Shortening of Hair:

If the *muhrim* shaves or shortens his hair, he must either offer a sheep or feed ten poor persons, one *mudd* for each one. Some legists observe: he must feed six persons: two *mudds* for every one, or fasting three days.

If he touches (plays with) his beard or hair of his head and some of it falls down, he must give a handful of food in charity. But if this occurs during performing the ablution (or *ghusl*) for offering a *salat*, nothing is required of him.

If he depilates (*natafa*) the hair of one of his armpits, his *kaffarah* is feeding three needy persons. If he does this for both the armpits, he should offer a sheep.

It is forbidden for the *muhrim* to shade himself, or cover his head, or plaster it with mud, while moving, or submerge it completely under water (*irtimas*), or carry anything to cover it. If he does any of these, he should offer one sheep.

### 6. Jidal (quarrelling):

*Jidal* means using such expressions as 'Yes, by God', or 'No, by God'! in conversation. If the *muhrim* tells a lie for once, he must offer a sheep; if twice, a cow; if thrice, a camel. If he tells a truth he must offer three sheep. If less than three times, no *kaffarah* is required of him.

### 7. Cutting Trees of the Haram:

If one cuts a big tree (in the Haram), whether *muhrim* or *muhill*, he must offer a cow. If the tree be small, then one sheep, and for smaller plants, their estimated value.

If he uproots a tree from the Haram, he should return it to its place. If it dries he will be responsible for it. There is no restriction for cutting a dry tree or for pulling out withered grass, though the doer has sinned.

One applying any perfume oil on himself while being in state of *ihram*, even in exigency, he must offer a sheep, according to view of some legists. So also is the rule when he pulls out one of his teeth. There is disagreement among the '*ulama*' regarding all these.

It is permissible for him to eat any oil devoid of perfume, like cooking butter and sesame-oil. But applying them on oneself is not permissible.

### Conclusion: It includes several issues

1. If the *muhrim* commits various violations altogether, such as wearing stitched clothes, shortening the nails and use of perfume, he will be required



to offer one *kaffarah* (a sheep) for each cause, irrespective of whether he has committed them for once or twice, and whether he has offered the expiation for the first offence or not.

2. If sexual intercourse is repeated a number of times<sup>1</sup> (in a single day), the number of *kaffarahs* will also increase proportionately. If *halq* is repeated a number of times, if this be done in one time, the *kaffarah* will not increase proportionately. But if it is done in two separated intervals, the *kaffarah* should be repeated twice. In case wearing the stitched clothes or use of perfume is repeated a number of times in one sitting, the *kaffarah* will not increase. But if this is done in different times, the *kaffarah* should increase proportionately.

3. Every *muhrim* wears clothes forbidden for him or eats food forbidden for him,<sup>2</sup> he must sacrifice a sheep.

4. No *kaffarah* is required of the offender if his violation to restrictions is committed out of ignorance, or forgetfulness, or insanity, except for hunting, which entails *kaffarah* even if done by mistake.



<sup>1</sup> Repeating the copulation (*wat'*) is established by inserting (the penis) again (inside the vulva) after taking it away (i.e. finishing the copulation with orgasm). (*al- Masalik*, vol. II, p. 489).

<sup>2</sup> That means the cases for whose *fidyah* no text is revealed, like wearing the *khuff* (shoes), and eating meat of duck and goose. Otherwise, estimating its price and giving it in charity will be *wajib* upon him. (*al- Masalik*, vol. II, p. 491).



## Kitab al- ‘Umrah

### Its Manner, Condition of Wujub, Acts and Kinds

Its manner of performance:<sup>1</sup> One performing the ‘*umrah* has to assume *ihram* from the prescribed *miqat*, to enter Mecca and make the *tawaf* (sevenfold circumambulation of the Ka‘bah), to offer its two *rak‘ahs*, to perform the *sa‘y* between Safa and Marwah, and following it the *taqsir* (partial shortening of the hair of the head).

### Conditions of its Obligation:

The conditions (*shurut*) which make the ‘*umrah* obligatory (*wajib*) for a Muslim are the same for *haji*: maturity (*bulugh*), sanity (*‘aql*), and capability (*istita‘ah*). With fulfilment of all the conditions, it becomes *wajib* once in life.

It may become *wajib* too through *nadhr* (vow), and what comes within its sphere like hiring, invalidation, missing (*fawat*), entry to Mecca, with disappearance of the excuse, and non-repetition of the entry.

### The Acts of the ‘umrah:

They are eight: *niyyah*, assuming the *ihram*, *tawaf*, its two *rak‘ahs*, *sa‘y* between Safa and Marwah, *taqsir*, *tawaf al- nisa‘*, and its two *rak‘ahs*.

### Kinds of ‘umrah:

The ‘*umrah* is of two kinds: ‘*umrat al- tamattu‘* and *al- ‘umrah al- mufradah*.

#### 1. ‘umrat al- Tamattu‘:

It is *wajib* upon those living far from al- Masjid al- Haram. It is not valid but only when done during months of *haji* (from the first of the month of Shawwal to the ninth of Dhu al- Hijjah), which is not the case with *al- ‘umrah al- mufradah*. *Taqsir* is *wajib* in it, and *halq* (shaving the head) is not permissible. If the pilgrim (*mu‘tamir*) performs the *halq*, he should offer a blood sacrifice. *Tawaf al- nisa‘* is not obligatory in it.

#### 2. Al- ‘umrah al- Mufradah:

It is *wajib* upon those living in the precincts of al- Masjid al- Haram

---

<sup>1</sup> It is common between ‘*umrat al- tamattu‘* and ‘*umrah mufradah*.

(*hadiru al- Masjid*). It can be performed at all times of the year, preferably in the month of Rajab.

Whoever assumes *ihram* and enters Mecca, is permitted to make the *niyyah* to offer '*umrat al- tamattu*', but he is required to offer a blood sacrifice.<sup>1</sup> If he comes to Mecca in other than the months of *hajj*, the change of purpose ('*udul*') will not be permissible for him.

But if he enters Mecca with the *niyyah* of '*umrat al- tamattu*', it is not permissible for him to depart and change the purpose, till after completing the acts of *hajj*, since it is conjugate to the *hajj* (a part of *hajj* to be performed before it in the course of the same journey).

If he leaves (Mecca) to a distance with which he is not required to reassume an *ihram*,<sup>2</sup> it will be permissible for him. If he departs and reassumes an *ihram* for '*umrah*', he can make the *niyyah* of *tamattu*'.

*Al- 'umrah al- mufradah* is *mustahabb* in every month of the year, and the least period set for it is ten days.

It is *makruh* to perform two '*umrahs* with a separating period of less than ten days. Another view says: it is *haram*. The first view is more predominant among the '*ulama*'.

The relief of state of *ihram* can be achieved by *taqsir*. Some legists said: the *halq* is more meritorious.

After performing *taqsir* or *halq*, all things become permissible for him (that were forbidden for the *muhrim*) except sexual intercourse, which does not become permissible but after performing *tawaf al- nisa*'. And it (*tawaf al- nisa*') is obligatory in *al- 'umrah al- mufradah* after the *sa'y*, upon every *mu'tamir*, whether a woman, a castrated or a boy. It is obligatory to perform the '*umrah* with immediacy (immediately after completing the rites of *hajj*).



<sup>1</sup> This is permissible only in case when the '*umrah mufradah* has not become obligatory upon him, through one of causes of prescription. Otherwise, it will not be valid. (*al- Masalik*, vol. II, p. 498).

<sup>2</sup> Such as when he returns to Mecca before completing one month from the time of his *tahallul*, or from time of assuming the *ihram*. (*al- Masalik*, vol. II, p. 499).

## Kitab al- Jihad

It has four sections:

### Section one: Upon whom it is *wajib*

*Jihad* is obligatory upon every *mukallaf* (mature, sane) free-man, male and non-decrepit.

It is not *wajib* upon the non-mature, nor the insane, nor the woman, nor the decrepit old man, nor the slave.

Its *wujub* is *kifa'i*, (collectively) on condition that the Imam (ruler) or the deputy appointed by him for *jihad* is present.<sup>1</sup> It does not become *wajib* unless with the determination of the ruler, in accordance with the necessitating interest, or due to insufficiency on the part of those in charge of defence of the Islamic State, except with unanimity, or his assigning it on himself through a vow (*nadhr*) or alike.

Fighting may become *wajib* with the aim of averting the danger, such as when one be among people in a state of war against whom the enemy launches an invasion of which he fears threat to his life. Thereat he is obliged to help them (the invaded people) and fight the enemy for the sake of keeping off danger and self-defence, when it is not regarded *jihad*.

So also is everyone fearing from any danger or threat against his life, or property in general, though safety is predominant.

The excuses exempting one from the duty of *jihad* are four: blindness;<sup>2</sup> permanent disability;<sup>3</sup> a disease hindering from riding the mount and the enemy; and the poverty with which one becomes unable to afford for expenses of the road (to fight), providing his family, and to pay for purchasing the weapon. This differs according to circumstances and conditions.

### Three Subsidiary Issues:

---

<sup>1</sup> By Imam's presence he means: his being manifest (not hidden), well-to-do (open-handed), and having complete control and ability to dispense the money at his will. (*al- Masalik*, vol. III, p. 9).

<sup>2</sup> Full blindness is actualized through losing sight of the two eyes. Hence *jihad* is *wajib* upon the one-eyed and night-blind (*a'sha*) and the likes. (*al- Masalik*, vol. III, p. 12).

<sup>3</sup> Even if he finds a mount and someone to support him. Not included with these is the lame who is able to walk without hardship. (*al- Masalik*, vol. III, p. 12).

1. If one has fallen in debt, the creditor has no right to prevent him from *jihad* through spending the money he has. If the debt is due (time of repayment has set in), and the creditor is in hard circumstances, thereat he is entitled to demand his debt and prevent the debtor from *jihad*, a view which is not predominant among the '*ulama*'.

2. The parents are entitled to prevent their son from fighting, unless it has become specifically obligatory upon him in person.<sup>1</sup>

3. If the excuse (exempting one from *jihad*) appears again after breaking the war, he will not be exempted of duty of *jihad*, except when he be unable to fight, with disagreement among the legists.

If someone bequeaths funds and means to the indigent (*mu'sir*), *jihad* becomes *wajib* upon him. But if this be on basis of hiring, *jihad* will not be *wajib* upon that one given the wages. If a well-off person fails to fight (due to a legitimate excuse), he is obliged to provide someone else with the necessary means to fight. Some legists observed: it is *mustahabb* (not *wajib*), the view which is more predominant among the '*ulama*'. If one having capability to fight provides another one with means enabling him to fight on his behalf, he will be relieved of the obligation, unless it has been determined on him in person.

Invasion (fighting) is prohibited during the inviolable months (*hurum*), except when the enemy starts the aggression, or they be among those observing no *hurmah* (sacredness) of the months.

Fighting inside the Haram is permissible. It was forbidden but the verse of prohibition is abrogated.

Migrating from an atheist country is *wajib* upon those who feel unable of practising the rituals of Islam manifestly, though being capable of this. Migration remains in force as long as atheism is still there.

### Supplementary Issues: Murabatah

*Murabatah* means to station a close observation (*irsad*) to watch movements of the enemy for safeguarding the front havens (*thughur*). This act is *mustahabb* even though the Imam (ruler) be absent, since it does not contain any fighting, but only safeguarding (protection) and notification.

Whoever be unable to do this himself, can tie his horse in that front position (so as to be used by others who have no horse).

<sup>1</sup> Through an order from the Imam, or when the Muslims be unable to resist (the enemies) without him, when *jihad* be *wajib* upon him in person. Thereat taking their (parents) permission is not a condition for *jihad* like other individual ('*ayni*) duties. (*al- Rawdah*, vol. II, p. 384).

If one makes a vow to *murabatah*, it becomes *wajib* upon him to do it in person, despite the presence or absence of the ruler. So also when one makes a vow to spend some funds for the *murabitin* (those stationed in the front lines), it becomes *wajib* as per the most correct view.<sup>1</sup> Some legists said: it is forbidden, and he has to spend the vowed money in the way of God (charities), except when fearing from unsightliness (*shun'ah*). The first view is more predominant among the '*ulama*'.

If one lets himself for hire, it is *wajib* upon him to fulfil his vow, even if the Imam (ruler) be hidden. Some legists observed: if he finds the hirer or his heirs, he may give it back (refuse *murabatah*). Otherwise, he is obliged to perform it in person. The more predominant view says: *wujub* is more proper without going into details.

## Section Two: Who is to be Fought & Manner of Jihad

Who is to be fought:

It is *wajib* to fight against these three: the tyrants (*bughat*) against the Imam (leader) of Muslims; Ahl al- Dhimmah (aliens in a Muslim country), including the Jews, Christians and Magians (Magus), when breaching the provisions of *dhimmah* (protection), and other kinds of infidels and non-believers.

It is obligatory upon all Muslims to go out to fight these people (non-Muslims), either to hold them back (repulse) or to convert them to Islam. If they (enemies) start the aggression, it will be obligatory upon Muslims to fight them. But if they desist from fighting, it is *wajib* then on the Muslims to cease their war in accordance with the capability, the least of which be once a year. If the interest requires suspending the hostilities with them it will be permissible for the Muslims to do so, on condition that such decision be taken by the Imam or one authorized by him.

### How to Fight the Belligerents:

It is more proper to start the fight with the one nearer to him, except when the farthest one be of greater danger. To lie in wait is *wajib* when the number of enemies be great and the Muslims be less in number, till the Muslims reach the number sufficient for resisting and withstanding the enemy, whereat immediacy in fighting becomes *wajib*.

<sup>1</sup> That means: when one dedicates something (money) for the *murabitin* during the era of occultation (*ghaybah*); or when the Imam be unable to dispense the money or be not open-handed, though being manifest, the dedicated funds should be spent in charities (benevolence). (*al- Masalik*).

It is preferable not to start the fight with the enemies, except after inviting them to graces and excellent features of Islam (by uttering the *shahadatayn* and abiding by its rules).

The caller may be the Imam himself or the one appointed by him.

The invitation becomes needless when the enemy be aware of it, and fleeing the battlefield (turning the backs) is prohibited when the enemy be weaker in force before the Muslims, or less in number, unless for one maneuvering for battle (by changing his position): such as one seeking more spacious place, or water sources, or to keep his back to the sun, or levelling his armour, or one intent to join a company, whether small or large in number.

Fleeing the battlefield is not permissible even when death seems very imminent. Some legists believe in its permissibility in this case, applying God's command in His Holy Book: "... and cast not yourselves with your own hands into perdition ..." (2:195).

The first view is more predominant among the legists, in accordance with the Almighty's saying: "O' ye who believe! When ye meet a party, (the contingent of the infidels), then be firm." (8:45).

If the Muslims be less in number than this, firmness (resistance) becomes not obligatory. But if safety is more predominant, firmness becomes more meritorious. But when destruction seems more probable, departing the battlefield becomes *wajib*, as per the view of some legists. Others say: it is *mustahabb*, which is more predominant.

If one Muslim warrior finds himself alone in front of two disbelievers, standing firm then is not *wajib*. Some legists observed: it is *wajib*, the view which is reported in traditions.

It is permissible to fight the enemy through imposing the siege (*hisar*), martial law (preventing the pedestrians from coming and going), mangonel (*manjanīq*), demolishing the strongholds and houses, and any other means enabling the Muslims to defeat their enemies and achieve victory.

*Makruh* is to cut the trees, to throw fire toward the enemy, and to shower the water against the enemy except in emergency.

Prohibited is to diffuse poison (use poisonous ingredients) over the enemy. Some legists say: it is *makruh* (reprehensible).<sup>1</sup> The second view is more predominant among the '*ulama*'. If victory can never be achieved but only through this means, it becomes permissible then.

---

<sup>1</sup> Except when it causes depriving of a respected life (*nafs muhtaramah*), when it becomes *haram*, if victory can be achieved without it. But if triumph depends only on it, it becomes *wajib* then. (*al- Rawdah*, vol. II, p. 392).



If the enemies make of women or lads a protecting shield, the Muslims should abstain from fighting them, except in case when warriors join in a fierce battle. And so also when they take the Muslim captives as a shield, even if a captive is killed, when contending them be not possible but through this. In that case, the killer (of the captive) is not required to offer a blood-money (*diyah*), but only *kaffarah* is required of him. Some reports say: even *kaffarah* is not required.

If this be done by the invaders intentionally, though avoiding it be possible for them, *qisas* (penalty, requital) is obligatory on them, beside the *kaffarah*. It is not permissible to kill the insane, the lads and the women, even when they support the enemy in the fighting, with the exception of emergency.

Mutilating the body of the infidel (disfiguring it by amputating its parts like the nose or ear), and *ghadr* (playing false) are both not permissible for the Muslims.

It is *mustahabb* to start the fight after midday (after performing the prayers of *zuhr* and '*asr*'). But invading the enemy at night and fighting before the midday are reprehensible (*makruh*), except for a pressing necessity. *Makruh* is also to hamstring the mount even if it refrains from moving, and to fight without the ruler's permission.

Some legists say: it is forbidden.

Combating (*mubarazah*) is *mustahabb* when the Imam deputes someone for it, and it becomes *wajib* when he obligates it on someone.

### Two Subsidiary Issues:

1. If the polytheist calls for combat without stipulating any condition, helping his equal (*qirn*) will be permissible. If he stipulates that none other than a specific person can combat him, then fulfilling his condition is *wajib* upon the person called to combat. If he flees away and the militant sends for him, pushing him to fight becomes permissible. If he (*harbi*) does not call for him, combating him is not permissible. Some legists said: it is permissible unless he stipulates safety, until he returns to his company.<sup>1</sup>

2. If the polytheist stipulates not to be contended but by his like, and that one appeals to his companions for help, the latter will be considered as violator of covenant of safety. But if they volunteer (to help him) and he (*muharib*) prevents them, he is considered as having fulfilled his stipulation.

<sup>1</sup> Non-permissibility is stronger in fulfilment of requirement of the proviso (*shart*), as it does not vanish till that state changes, and he returns to his company. (*al- Masalik*, vol. III, p. 28).

If he does not curb them, fighting him with them is permissible.

### The Dhimam (Protection Covenants)

On Guarantor, Formula & Time:

The guarantor (one making the protection covenant) should be mature, sane and having free will.

This applies for the freeman, slave, male and female. If an adolescent or an insane person makes the protection covenant (*dhimmah*), it will not be concluded (not valid), but he should be returned to his place of safety.<sup>1</sup> So also is every belligerent who has entered the abode of Islam with the suspicion of being safe, as when hearing a word thinking it to be safety, or accompanying someone suspecting him to be a bringer of security.

One Muslim person can make a covenant of protection (*dhimmah*) for several belligerents, but it is not permissible for him to contract a protection covenant for a whole community or inhabitants of a region. Regarding concluding a protection covenant for a village or a fortress, there are two views: one permitting it, as al- Imam Ali permitted *dhimam* (protection covenant) by one Muslim for a certain fortress. The second view saying it is not permissible, which is more predominant among the legists. The holders of this view believe that the practice of al- Imam Ali (A) was confined to a specific event, and it should not be generalized for all cases. The ruler can conclude a protection bond for a group of belligerents, generally and particularly. So also is one appointed by the ruler to decide concerning a region for whose people he must conclude a protection covenant. Fulfilment of the covenant is *wajib*, unless it implies some condition contrary to the Islamic Law. If the concluder of the covenant is coerced to conclude it, it will be invalid.

### The Formula:

One concluding a protection covenant should say (to the disbeliever): "*Ammantuka*" (I make safe your life), or "*Ajartuka*" (I protect your life), or "You are under protection of Islam", or any other expression indicating this sense (import) explicitly and exactly, or any metonymy<sup>2</sup> understood to give

<sup>1</sup> This when the *harbi* claims his imagining the validity of safety bond. But if he comes to know of its invalidity and enters into abode of Islam, no consideration should be paid to him. The first view is held by the compiler. (*al- Masalik*, vol. III, p. 28).

<sup>2</sup> What is intended by this: every word indicating the *dhimam* with its meaning not through evidence (*sarih*, declaration), in a way that the intention

this meaning from the intent (*qasd*) of the concluder. But if he says: “No harm will befall you” or “Don’t be afraid” it is not considered as a protection covenant (*dhimam*), except when adding to these words a term indicating *aman* (safety or security).

### **Its Time:**

The proper time for concluding the protection covenant is before taking one as a captive or prisoner. And if the enemy seeks protection from the Muslims when their troops tower over the (bases of) enemies, it will be permissible to conclude a protection covenant with them, with observing the interest and advantage that could be acquired from this. If the disbelievers seek safety (*dhimmah*) after falling into captivity of Muslims, and one gives them safety, it will not be valid. If one Muslim admits that he has concluded a protection bond for a polytheist, it will be accepted of him if it was concluded in a time proper for concluding the safety bond.

If a belligerent (*harbi*) claims to be given safety by a certain Muslim person, and that one (Muslim) denies his claim, his (Muslim’s) saying will be accepted. If some hindrance intervenes between him and the reply, like death or swoon, no consideration should be given to the claim of the belligerent. In both the cases he should be returned to his place of safety, as he is at war with the Muslims.

If the belligerent concludes a safety covenant for himself, with the intention of inhabiting the abode of Islam, his money and property will be considered as a part of properties of Muslims.

But if he resorts to abode of war, taking it as residence, the safety covenant will be annulled for his life not the money. If he dies, the protection bond for the money will be broken too, if he has no Muslim heir, and his legacy will be considered as a *fay’*, belonging exclusively to the Imam (ruler), since he was not insured against it. So also is the rule when he dies in the abode of Islam. If he be enslaved after being taken as a captive by the Muslims, his money and property will be taken possession of by Muslims following to his enslaving.

If a Muslim enters into abode of war seeking safety (*musta’min*), and he steals something, this thing should be returned to its place, irrespective of whether its owner be in the abode of Islam or in the abode of war. If a Muslim is taken as a captive, and set free then by the disbelievers who stipulate his residing in the abode of war, with being safe from his hand, the

---

of safety can be understood exactly from the purpose of the concluder of protection bond. (*al- Masalik*, vol. III, p. 30).

residence will not be *wajib* upon him, and their funds will be unlawful for him with that condition. If they (disbelievers) set him free on condition that he pays them some amount of money, it is not *wajib* upon him to fulfil this condition.

If the *harbi* (disbeliever) embraces Islam, while owing a *mahr* (dowry), his wife (divorced) or her heir (if she is dead) has no right to claim it from him. If his embracing Islam occurs after her death (his wife), or she has embraced Islam before him and died then, demanding the *mahr* can be made by her Muslim heir not the *harbi* one.

### Conclusion: Section One:

The covenant can be concluded in accordance with the decree of the ruler, or the one assigned by him to govern. The conditions that should be observed for the ruler are: Maturity and full sanity, Islam and '*adalah* (justice).<sup>1</sup> Regarding malehood and freedom, some legists believe in necessity of their presence, with disagreement among the '*ulama*'. Compromise (suspending the hostilities) is permissible in accordance with a decision taken by one appointed by the ruler, not with a decision taken by the warriors, except when they appoint someone fulfilling the requirements of a ruler. If the ruler dies before giving the decree, the safety bond will become null and void, and the belligerents should be returned to their place of safety. Rulership can be attributed to two or more persons. If one of them dies, the decree taken by the rest will be considered null and void. The verdict taken by the ruler should be followed, except when it be inconsistent with the Islamic Law (*Shar'*). If he judges to put (someone) to death, imprisonment, or obtaining money from the disbelievers, and they embrace Islam, only the rule of killing will be considered null and void, not that of taking money or captivity (*saby*). If he determines a certain *fidyah* for the polytheist in lieu of Muslim prisoners of war, fulfilment of this *fidyah* is not *wajib* upon the Muslims, as there is no compensation for the freeman.

### Section Two:

---

<sup>1</sup> Full sanity is so important, since the rulership cannot be given to an insane, or intoxicated person or to one who has lost his senses, and their likes. And the condition of Islam is necessary since the rulership pertains fully to it according to reports. Concerning the '*adalah*', it is an essential condition since the debauchee is unjust and oppressor by nature, and having confidence in them is forbidden by the Almighty Allah.

In addition to malehood he stipulated knowledge (*fiqh*) in rules of *jihad*, which means having ability to exert in its issues, as intended by the term *ijtihad*. (*al- Masalik*, vol. III, pp. 35-36).

It is permissible for the commander of the army to allot certain fees for anyone guiding him to any advantage, such as drawing his attention to the defect of the fortress, or the secret country route. If the fees (*ju'alah*) be as a loan from his own property, he can stipulate its being of a known description and amount. If it be in kind (*'ayn*) it should be visible or described. If it be taken from funds of booty (spoils of war), like a bond-maid or dress, it can be unknown.

#### A Subsidiary Issue:

If the *ju'alah* (wages) be in kind, and the country be conquered peacefully (with safety covenant), and it be included within the spoils of war, it will be permissible for the one for whom it is allotted and its people in charge to agree on bequeathing it or holding it back in substitute. If they find it difficult, the truce covenant will be annulled, and they (disbelievers) should be returned to their place of safety. If the *ju'alah* (fees) be a bondmaid, who embraced Islam before conquest, it will be *wajib* to hand her over to him (one for whom the *ju'alah* is allotted), and her equal value can be given to him.

So also is the rule when she has embraced Islam after the conquest, and the one paid the wages (*maj'ul lah*) be a disbeliever. If she dies before the conquest or after it, no compensation is to be paid to him.

### The Prisoners of War

They include males and females. The females can be possessed through *saby* (captivity), even if the war is still broken out, and so also are the descendants (children).

If there was a suspicion (uncertainty) regarding his being a child (immature) or a mature, the growing of the hair on the pubes (*inbat*) should be considered, if there was no hair and his age be unknown, he should be included with the children.

The mature males should be put to death, if the war is still going on, unless they profess Islam. The ruler has the choice,<sup>1</sup> either to put them to death, or to cut off their hands and their feet from the opposite sides, letting their blood draw off till they die. If they are taken as captives after the war's

<sup>1</sup> What is apparent of this choice that it is a choice of desire not *ijtihad*, as putting them to death is required. This is in contrary to choice between remitting or other options, which is a choice of *ijtihad* in advantage of Muslims, not of desire (*shahwah*). Because the Imam (ruler) is a guardian of affairs of Muslims (*wali*), and he is competent to take the most proper decision to their interest.

coming to an end, it will not be permissible to put them to death, and the option will be up to the ruler, either to remit them, or take a *fidyah*, or enslave them.

If they embrace Islam after captivity, this rule will remain regarding them (remitting or *fidah* or enslaving). If the captive be unable to walk, killing him will not be permissible, since the Imam's judgement in his regard is not known (the way of putting to death). If a Muslim person comes upon suddenly and kills him, this will be considered an act in vain requiring neither *qisas*, nor *diyah*, nor *kaffarah*, though he is considered as having sinned.

The prisoner of war should be given food and water, despite the presence of an intention to kill him. It is *makruh* to kill him *sabran* (with long suffering) and to carry his head out of the battlefield.

It is *wajib* to bury the martyr not the *harbi*. If there was no way to discern and distinguish which body belongs to the martyr and which one is of the *harbi*, the one having a contracted (small) male member (penis) should be buried (a metaphorical reference to his being circumcised).

The rule regarding a captivated child is the same as that of his parents. If they profess Islam, or one of them embraces Islam, the child should follow his/her guide. If he is taken captive alone, he (child) should follow the guide of the one taking him as a prisoner.

### A Subsidiary Issue:

If the husband is taken as captive, the marriage contract will not be dissolved. But it will be annulled when he is enslaved, due to renewal of possession. If the captive is a child or a woman, the marriage contract will be annulled, since slavery is materialized through captivity. And so also is the rule when both the spouses are taken captives.

If both the spouses be *mamluk* (possessed), the marriage contract will not be broken, as no slavery has taken place. It is better to give the booty receiver (*ghanim*) the option to annul the contract.

If a woman is taken captive, and her family be reconciled (to free her) on setting free a captive detained in the hands of the polytheists, and he is set free, it is not *wajib* upon the Muslims to repatriate the woman. If she is freed (liberated) in exchange with a substitute, it is permissible, unless she has given birth to a child through marriage with a Muslim man.

### Two Subsidiary Issues:

1. If the warring disbeliever (*harbi*) embraces Islam inside the abode of war, his blood (life) should be spared, and his movable properties (personal estate) like gold, silver and furniture should be preserved, not the

immovables like land and real estate (landed property), as they belong to the Muslims. Also his minor children should be handed over to him, even though they include a conceived child (foetus, embryo). If a pregnant woman is taken captive, she will be considered as a slave (bond) herself not the child inside her womb. So also is the rule when the *harbi* woman be pregnant through a lawful sexual intercourse by a Muslim man.<sup>1</sup> If a Muslim man emancipates a *dhimmi* slave in fulfilment of a vow (*nadhr*) made by him, and he joins abode of war, when the Muslims take him as a captive, enslaving him will be permissible. Some legists observed: it is impermissible to enslave him due to ascribing to him devotion to Islam. If the emancipator be a *dhimmi*, he (the emancipated) will be enslaved unanimously.

2. If a slave of a *harbi* professes Islam when being at abode of war before his master, he will be considered as having controlled himself, on condition that he departs it (*dar al- harb*) before his master. But if he departs the abode of war after his master, he remains as a slave. Some legists do not stipulate his departure. The first view is more correct.

### Rules of Booty (*Ghanimah*):

Booty (*Ghanimah*): is every profit earned through investing a capital, like profit of trading or alike dealings, or anything acquired in war.

The booty acquired in war is of three kinds:

- 1) The movables, like gold, silver and furniture.
- 2) The immovables, like lands and real estate (*'iqar*).
- 3) The captives (*sabi*) like women and children.

The first kind is divided into two parts:

a. That whose possession by Muslims is lawful, which comes under *ghanimah* (booty). This portion is exclusively allotted for the booty takers, after *khums* and *ju'alah*. It is not permissible for them to dispense it at their will, but only after dividing and allotting. Some legists said: it is permissible for them to take only the essential and indispensable things, like what can be used as forage for the animals, and edible the food.

b. The second part includes those things that cannot be possessed, like wine and pig, which cannot be included in the booty. Rather it should be destroyed (if possible) like the pig, or that which is permissible to destroy it and keep it for pickling (*takhli*), like the wine.

<sup>1</sup> As when he has sexual intercourse with her by mistake, or through temporary marriage (*mut'ah*) contract if she be from among People of Scripture (Ahl al- Kitab). (*al- Masalik*).

### Subsidiary Issues:

1. If a booty receiver sells another one anything (of the booty), or grants him, it is not valid, and it may be said: it is valid if it be in proportion to his share, and the latter be more entitled to its possession as per the view of some legists. If this one goes out to the abode of war, he should give that thing (sold or bestowed to him) back to the booties, not to its giver. If the receiver be of other than the *ghanimun* (booty deserving), his entitlement to possess it will not be recognized.

2. Those things which are allowable in origin, such as games (hunted animals) and trees, should not be singled out to anyone, and it can be a joint property for all Muslims. If one holds something having a trace of possession like a hunted bird or a cut off tree while being in the abode of war, this thing is considered as a booty as per the predominant view.

3. If anything is found in abode of war, like a tent or weapon, that may belong to the Muslims or warring disbelievers, it is considered as a find. Some legists observed: it should be defined (introduced) for one year, and if its owner is not found it should be included in the booty, which is an arbitration.

4. If the *ghanimah* contains something that can be emancipated and given to one of the booty receivers (*ghanimun*), some legists said: his share can be emancipated, and it is not *wajib* upon him to purchase the shares of others. Others said: it cannot be emancipated except when the ruler makes it a part of his share or the share of a company he be one of them, with taking his approval, when he will be obliged to buy the shares of others if he be a well-off person.

2) The immovables (lands, real estate), belong to all the Muslims, and their *khums* (one-fifth) should be taken out. The ruler has choice between singling out their *khums* for those in charge of them and keeping them intact with taking out the *khums* from the surplus.

3) The women and children (offspring) are to be included in the booties, and should be given exclusively to the *ghanimun* (conquerers). One deserving them is required to estimate their *khums* and pay it out.

### Rules of Lands:

Every land that is conquered by force (through war) and being cultivated (in time of conquest), belongs to the Muslims as a whole.

The ruler has complete control over it and can dispense it, and it does not belong exclusively to the conquerer. Neither selling, nor bestowing, nor endowing it is permissible. The ruler is entitled to dispense its produce on certain interests, such as filling up the openings, aiding and supporting the



warriors, and building bridges.

If the land be barren in time of conquest (invasion), it should be considered as special property of the ruler, and it is not permissible for anyone to cultivate it, except with his permission if he be present. If anyone dispenses it without his (ruler's) permission, he will be obliged to pay its fees (*ujrah*). One cultivating it becomes its owner in time of non-presence of the ruler, without needing any permission.

Any land conquered peacefully, should be put under disposal of its *arbab* (masters), and they are required to pay the *musalahah* (reconciliation payment agreed upon) amount determined by the ruler. This land will be a special acquisition, and a property that can be sold and dispensed with all kinds of dispensation. If the owner sells it to a Muslim, it will be valid, and all the taxes on it will be transferred to the obligation of the seller.

This rule is applied when the reconciliation is concluded with the disbelievers on condition that the land be theirs. In case they be reconciled that the land belongs to the Muslims, and they are allowed to reside in it but are obliged to pay the *jizyah* (land-tax, tribute), its rule will be the same one applied in regard of a land conquered by force, i.e. if cultivated, belonging to the Muslims and if uncultivated (barren) belonging to the ruler.

If a *dhimmi* embraces Islam, this will exempt him of the taxes imposed on his land, and it will be considered as his personal property. So also is every land which its inhabitants profess Islam voluntarily while being on it, when it will be considered as their own property, and nothing is required of them except the *zakat* when its conditions be fulfilled.

## Conclusion

Every land whose inhabitants have abandoned without construction or cultivation, the ruler is entitled to make it the property of whoever cultivates it, and is required to pay its fees to its masters (conquerers).

And every barren land, will be the property of whoever hastens to cultivate it. If it has a known owner, he is required to pay its taxes.

If a Muslim person hires a house from a warring disbeliever, and that land (in which the house is situated) is conquered, the lease contract remains valid even when the Muslims possess this land.

## How to Divide the Booty:

When dividing the *ghanimah* (booty) it should be started with what the ruler has stipulated, such as the *ju'alahs*, plundered things (*salb*), and what he has stipulated for the killer. If he has not stipulated it, it should not be singled out for him. Then comes whatever is needed urgently for expenditure, as long as it remains intact till dividing it, such as the wages of

the protector, and one charged with taking care of the spoils, and the carrier.

Then the scanty allowance for the women, slaves and disbelievers, if they fought with the ruler's permission, as no share is allotted for these three categories.

Then the *khums* should be taken out. Some legists said: the *khums* should be taken out before all other charges, in application of the verse 41 of *Surat al- Anfāl*: "Know that whatever booty you take, the fifth of it is God's and the Messenger's ...". The first view is more predominant.

After that the four fifths should be distributed among the warriors, and those attending the fighting though not participating in fight, even the child who was born after acquisition and before the division. And this includes also whoever joins the warriors as reinforcement and support, even if it be after acquisition (victory) and before division.

Then one share should be given to every infantry man and, two shares to a horseman. Some legists observed: the horseman should be given three shares. The first view is more predominant among the legists.

If one has two horses or more, his share should be according to two horses no more. So also is the rule when they have fought aboard the ships, even if they dispense with the horses.

No share is to be allotted for the camels, mules and donkeys, but only a share is to be given to the horses even if they be not pure (not genuine). But no share is there for the old decrepit horse, or feeble collapsed one, or the young one unfit for riding, due to non-possibility of using them in war time. Some legists said: It is better to allot some share for them.

No share is to be allotted for the usurped horse if its owner be absent. But in case he is present, the share should be given to him. A share is to be allotted for the hired (taken on hire) and borrowed, and a share should be given to the fighter.

The condition which should be considered is one's being a cavalier (horseman) in time of obtaining the booty (*ghanimah*), not his entering into the war. The army shares the detachment in the booty, if it (detachment) has emanated from it. And so also is the rule when two detachments have emanated from it (army).

But if two armies go out from a country toward two different destinations, each one will not share the other. So also when the detachment goes out from among the ranks of the country army, the army (service-men) will not share it in the *ghanimah*, as it is not considered a *mujahid*.

Delaying the distribution of the booty in abode of war is *makruh*, except when there be a reasonable excuse. *Makruh* is also to dispense the justice (limits, ordinances of God).

### Subsidiary Issues:

1. One stationed for watching (*rasd*) for *jihad* does not obtain his livelihood from the treasury (*bayt al- mal*), except through receiving it. If he dies in time of payment, his heir will have the right to demand it, with disagreement among the legists.

2. Some legists said: Nothing is to be allotted for the bedouins from the booty, even if they fought beside the Immigrants (Muhajirun), but scanty allowance (dole) can be granted to them. By bedouins (Arabians) we mean those who have declared Islam (manifestly) without having faith in it, and who have been reconciled with the condition of exempting them from migration, and renouncing (ceding) their share.

3. No one deserves anything from *salb* (looting), or *nafal* (a gift determined by the ruler), in the beginning of the war (starting the fight), or in the return (second retrogression), except when the ruler stipulates a condition for him (determines a certain amount for doing a certain act).

4. The warring disbeliever (*harbi*) is not entitled to take possession of a property of a Muslim through *istighnam* (taking as spoil). If the disbelievers take the Muslims' properties (and their children's) as spoil, and they take them back, no way should be allowed against the freed ones. But the properties and slaves should be given to their masters before division. If they be recognized after division, their masters will have the right to get their equal value from the treasury. In another narration: their price has to be returned to their masters. The predominant view says that they should be returned to their owner, and the *ghanim* (one entitled to booty) claims their price from the ruler, when the *ghanimun* (booty acquirers) be dispersed.

## Section Three: Rules for Ahl al- Dhimmah

### From Whom Jizyah is Taken:

*Jizyah* (land-tax) should be taken from all those who confess to their religion, who include the Jews, Christians and those who are doubted to have a scripture (a Book), who are the Magians (Magus). No religion is accepted from other peoples except the Islam.

These three groups have to be acknowledged if they abide by the provisions of *dhimmah*, irrespective of whether they be Arabs or non-Arabs. If the warring disbelievers claim to be among them, and bequeath the *jizyah* (tribute), they will not be asked to present the evidence, and should be admitted in protection of Muslims. If the contrary is proved then, the covenant will be annulled (broken).

The *jizyah* should not be collected from lads (immature), insane people

and women. Regarding collecting it from a withered old man there are several views, one saying it should be taken from him, which is more predominant and confirmed in traditions. The other view says: it should not be taken. Another view says: the *mamluk* (slave) is exempted from it, and all other people are liable to pay it, even the monks and decrepit (crippled). It is obligatory on the poor, and there should be postponement to the time of ease (till he becomes wealthy).

If the *jizyah* is imposed on certain men and they stipulate it as a condition on women, the reconciliation covenant will be invalid. If the men are killed before concluding the contract of *jizyah*, and the women demand acknowledging them with bequeathing the *jizyah*, it will be accepted of them according to a view of some legists. Others observed: No, it is not valid, which is more correct. If this happens after the contract of *jizyah*, then *istishab* (associating the contract concluded with the men) will be better.

When the slave *dhimmi* (enjoying Muslim protection) is emancipated, he should be prevented from residing in abode of Islam, except with taking the *jizyah* from him. No *jizyah* is levied on the fully insane person. If he regains his sanity for a time only, the rule applied in his regard will be proportionate to his dominant condition. But if his regaining the sanity lasts for one year, it will be *wajib* upon him, even if he becomes insane again after that. Every boy attaining puberty should be commanded to profess Islam, or give the *jizyah*. If he abstains from this, he will be considered a *harbi* (a non-Muslim warring enemy of Islam).

### Quantity of Jizyah:

There is no fixed limit for the *jizyah*, but its estimation is in the hand of the ruler according to more convenient interest. The amount determined by Ali (peace be upon him) is considered to be according to requirement of convenience in that circumstance. In case of non-presence of what requires the estimation (of amount of *jizyah*), it will be more proper to take as much as it can accomplish the least required.

It is permissible to levy it (*jizyah*) on the heads (disbelievers), or on the land, and it is not permissible to impose it on both of them together. Some legists said: it is permissible for the first time, which is more predominant.

It is permissible to stipulate on them, in addition to the *jizyah*, to receive as guests (entertain) the passing soldiers, with making the entertainment public. If he confines it to the condition (*shart*), it is *wajib* upon him to spend on it (entertainment) more than the least amounts determined for the *jizyah*.

If the *harbi* embraces Islam before the completion of one lunar year, or after it but before paying the *jizyah*, he will be exempted from giving the

*jizyah* as per the more predominant view. If he dies after completion of the year, it will remain *wajib* upon him, and it should be taken out from his undivided legacy, such as in the case of debt.

### Conditions for Dhimmah:

1. Admittance of the *jizyah*.
2. Those admitted under protection of Muslims should not do anything inconsistent to conditions of safety, such as intending to fight the Muslims, or supporting the polytheists. Thus by this they will be considered as having violated the provisos of the covenant of protection (*dhimmah*), through infringing these two conditions.
3. The disbelievers should not harm or vex the Muslims, such as committing adultery with their women, or sodomy with their lads, or looting their funds or properties, or giving shelter to notables of polytheists (or spies) or spying out for them. If they practise any of these acts while avoiding them was stipulated in the provisos of the *hudnah* (covenant of *dhimmah*), it will be considered as violation to the covenant. But if it was not stipulated, the covenant will remain in force with them, but they should be punished according to the limit or *ta'zir* (censure) prescribed for the offences they have perpetrated. If any one of them reviles the Prophet (peace and benediction be upon him and his Progeny), the reviler should be put to death. If they allude to him with lower than reviling (*sabb*), they should be censured, if refraining from this was not a condition stipulated in covenant of *dhimmah*.
4. They should not display the abominations, like imbibing wine, practising usury in transactions, eating the pork, and committing fornication with *mahram* women (those with whom copulation is prohibited). If they display these acts, the covenant will be considered null and void. Some legists observed: it will not be violated, but rather they should be inflicted with the punishments prescribed in the Islamic Law, in accordance with their crimes.
5. The non-Muslims are not allowed to establish a new church, or ring the *naqus* (semantron), or to build too high buildings. If they violate this condition, they should be censured (*ta'zir*). If this condition was stipulated in the covenant, the *'ahd* will be considered null and void.
6. The rules applied to the Muslims should be applied to them. (*Ahl al-dhimmah*).

There are subsidiary issues in this connection:

- If they violate the covenant of *dhimmah* at abode of Islam, the ruler will have the right to return them to their place of safety. Has he the right to kill, or enslave or take *fidyah* from them? Some legists said: Yes, he is

entitled to do so, but there is disagreement regarding it among the legists.

- If he (*harbi*) embraces Islam after breaching the *dhimmah* covenant, and before taking any decision regarding him, he will be exempted from all the punishments, except leading him to place of safety, the *hadd* (executing the ordinances) and regaining what he has got. If he embraces Islam after enslavement or *mufadat* (redemption), he will not be exempted from these punishments.

- If the ruler dies, after having limited a certain utmost time for collecting the *jizyah*, or stipulated the perpetuity, it will be *wajib* upon his successor to accomplish his decision. But if the ruler has not specified a fixed date for *jizyah*, the successor will have the right to change that time in accordance with the advantage he sees for Islam.

It is *makruh* for the Muslim to begin salutation to the *dhimmi*. It is *mustahabb* for the Muslim to obligate the *dhimmi* to go along the narrowest routes.

### **The Rules of Buildings:**

#### **The Synagogues, Churches, Houses & Mosques**

##### **1. Synagogues and Churches:**

It is not permissible to embark on rebuilding synagogues and churches in abode of Islam. If they be renewed by someone, they should be obliterated and removed, irrespective of whether that country be newly established and originated by the Muslims, or conquered by them forcibly or peacefully (through reconciliation covenant), but on condition that the land belongs to the Muslims.

But no objection is there to this if done before the conquest, or when these churches be newly built in a land conquered peacefully when it belongs to or is owned by them (the Jews and Christians).

If a church of the latter form, in which they (non-Muslims) are allowed to continue their rituals of worship, is ruined, it is permissible for them to rebuild it. Some legists said: This is not permissible for them, if it be in a land belonging to the Muslims; but if it be in a land belonging to them (non-Muslims), there is no objection to it.

##### **2. The Houses (dwelling-places):**

It is not permissible for a *dhimmi* to rebuild a house higher than the houses of Muslims next door to his house. But it is permissible for him to build it to the same level of their houses. If he buys a house from a Muslim, he can keep it with its same height. If this house is ruined, it will not be

permissible for him to rebuild it to a level higher than that of a Muslim's house, but it should be to the same level of it.

### 3. The Mosques:

It is unanimously agreed among the legists that the non-Muslims are not allowed to enter al- Masjid al- Haram (Ka'bah), nor other mosques of Muslims (Shi'ah). If they are given permission by a permitter to enter, this permission is not valid,<sup>1</sup> neither inhabiting, nor passing through, nor *imtiyaran* (eating or bringing food into the mosque).

It is not permissible for them too to reside (dwell) in the Hijaz, according to a predominant view, and some legists said: by Hijaz is meant only Mecca and Medina. There is disagreement among the legists regarding passing through Hijaz (Mecca and Medina), and eating from its food. Whoever permits it, his punishment is three days. Some legists believe in non-permissibility of their dwelling in the Arab Peninsula, and some believe it to mean Mecca, Medina, Yemen and its districts. Some others said: it extends from 'Adn to the rural area (cultivated land) of 'Abbadan lengthwise, and from Tihamah and its next regions to the outskirts of al-Sham widthwise.

### The Covenant of Truce:

It is a contract on cease-fire and abstaining from fighting for a certain period of time. It is permissible only when it includes (insures) advantage for the Muslims, either due to smallness of their number in a way they be unable to resist the enemy, or to the *istidhar* (obtaining help from others to be stronger) which is to be got from it, or to look forward to embracing the Islam by non-Muslims with stopping the war and waiting.

But when there be no advantage for Muslims<sup>2</sup> (in truce), and the

<sup>1</sup> By 'permitter' he means: a Muslim, that is: the *dhimmi* is not allowed to enter the mosque of Muslims even when a Muslim gives him permission, as per unanimous agreement among the Imamiyyah scholars.

What is intended here is the view contrary to the view of most of Sunni *ulama'* who permit the *dhimmi* to enter the mosque with permission of a Muslim. (*al- Masalik*, vol. III, p. 80).

<sup>2</sup> That is: When there be no interest to be obtained from truce, it will not be *wajib* to conclude it, as it is *wajib* to fight the polytheists every year till they enter into Islam, or come under protection of Muslims (*dhimma*) if they have fulfilled its conditions. This is not considered as truce.

By 'disallowed truce' is meant: that truce whose term exceeds four months, since the term prescribed for truce is four months with presence of advantage (for Muslims) or without it. Because Allah the Exalted has

Muslims having enough strength and power to overcome the enemy, truce will not be permissible.

The period allowed for truce is only four months, and if it exceeds one year it is not permissible, as per a widely-held view.

Is it permissible to conclude the truce for more than four months? Some legists said: No, it is impermissible as per the holy verse: "... then slay the idolaters wherever ye find them ..." (9:5).

Other legists said: Yes, it is permissible, according to the verse: "And if they lean to peace, then leaneth thou too to it ..." (8:61).

It is not valid to conclude a truce contract for an unknown period, nor generally (without limiting the period) except when the ruler stipulates the option to annul it for himself whenever he wills.

When the truce is concluded on doing some prohibited act, like displaying the abominations, or returning the migrating women, abiding by it will not be *wajib* upon the Muslims. If a woman migrates, and her embracing the Islam be confirmed, returning her will not be permissible (to the non-Muslims), but her dowry (*mahr*) in particular can be returned to her husband (not the alimony or other expenses), if it was lawful (*mubah*). If it was unlawful, it is not permissible to return it or its equal value.

### Subsidiary Issues:

1. When a Muslim woman comes toward the (camp of) Muslims, it is not permissible to return her (to her people) as she is considered as a Muslim.

2. If her husband comes and demands her *mahr*, but she dies after his request, her dowry should be given to him.

If she dies before request (of her husband), her dowry should not be paid to her husband, with disagreement among the legists. If she comes and joins the Muslims and her husband divorces her irrevocably, he will not have the right to claim her *mahr*. But if he professes Islam during the revocable '*iddah* (period passed by a divorced woman), he will be entitled to take it (the *mahr*).

In regard of returning the men, it is permissible to return only that from whom no fear is there to cause a sedition due to having a large clan, and the

---

permitted cease-fire throughout this period, as in the holy verse 2 of *Surat al-Tawbah*: "So travel freely in the earth for four months ..." (9:2).

If the disbelievers ask for truce for that period, it is permissible to respond to them. But there is disagreement regarding permitting it for more than this period. (*al- Masalik*, vol. III, p. 83).



alike means of strength. Otherwise they should be forbidden from returning him.

If it is stipulated in the agreement of truce to return the men generally, the agreement will be invalid since this condition includes those who may cause riot and those who may not cause riot (by returning them). Every one whose returning has become *wajib*, should not be carried to his people, but he should be released and let go to them.

Concluding a truce agreement in general (*'umum*), or for the inhabitants of the country and districts, cannot be done but only by the ruler or his deputy appointed by him.

### Supplementary Issues:

1. From every *dhimmi* who has converted to another religion which is not acknowledged, no religion will be accepted except Islam, or otherwise he should be put to death. But if he converts to an acknowledged religion, such as when a Jew converts to Christianity or Magianism, some legists said: it should be accepted from him since *kufir* (atheism) is one *millah* (cult). Others said: it should not be approved of him, in accordance with the holy verse: "And whosoever seeketh any religion other than Islam (total resignation unto God) never shall it be accepted from him, and in the next world he shall be among the losers." (3:85)

If he returns again to his religion, it will be accepted from him as per the view of some legists. Others hold the view that it is not accepted, which is more predominant. If he persists on his religion and be killed then (as a punishment), will his children be enslaved (taken possession of)? Some legists said: No, in association with their former state (situation).

2. If Ahl al- Dhimmah commit (do) what is allowable in their statute (law), and forbidden in Islam, they should not be subjected to any punishment. If they declare it (abomination) publicly, they should be treated as per what their offence necessitates, according to the Islamic Law. But if they commit an offence not permissible in their Law, like sodomy and adultery, the rule applied in their case should be the same as that applied to Muslims. The ruler has the option to hand him (offender) to his people to punish him according to the rules of their statute (if their faith contains a penalty for the offence he has perpetrated).

3. If a disbeliever purchases a copy of the Qur'an, the selling transaction is not valid. Some legists said: it is valid, but he should not be allowed to have full control over it. The first view is more proper for extolling the holy Book. And so also are the books of the Prophet's *ahadith* (traditions). Some legists observed: it is permissible with aversion (*karahiyyah*). The latter view is more predominant among the legists.

4. If a *dhimmi* (one enjoying Muslim protection) makes a will to build a church or synagogue from his heritage (after his death), it is not valid and should not be executed since it is a sin (disobedience). And so also when he wills his money to be spent on inscribing the Torah and Bible, which will be invalid since they are both perverted. If he wills his money for a monk or a saint, it is permissible, as the *sadaqah* is permissible to be given to them.

5. It is *makruh* for a Muslim to be hired for doing preparations in the churches and synagogues, like construction or carpentry, or alike.

#### Section Four: Fighting the Tyrants (Ahl al- Baghi):

It is *wajib* to fight every one revolting against a just ruler, if the ruler or his deputy delegates for him in general or in particular, (someone to fight him). Refraining or lingering from fulfilling this order is a major sin.

If this task is fulfilled by someone who can take advantage or profit of it, the others will be exempted of it (*wajib kifa'i*), except when the ruler calls for him in person (*'ayni*, individually) to fight the tyrant.

Flight (escaping) from war against the tyrants is like flight from fighting the polytheists.

It is *wajib* to bear patiently and give the tyrants respite till they desist and turn back to the ruler's submission, or otherwise they should be killed. If a tyrant has a company to resort to (like people of Camel), it is permissible to give the finishing stroke to their wounded one, pursue (chase) their fleeing ones and kill the captives taken from them.

In case the tyrant has no company to resort to (like the Kharijites, Khawarij), then the purpose intended by fighting them should be to sow discord among them. Further, it is not *wajib* to give their wounded the finishing stroke, nor to pursue their fleeing ones, nor to kill their prisoners of war.

#### Subsidiary Issues:

1. It is not permissible to capture the children of tyrants as captives, nor to take possession of their women (nor to deem lawful copulation with them) as per unanimous agreement among the legists.

2. It is not permissible to take possession of their (tyrants') properties which were not owned by the troops, whether they be movables like the furniture, clothes and tools, or immovables such as the real estate (houses), according to teachings of Islam which command to spare blood (life) and property (*mal*) of people. Can the movable properties of the soldiers be taken? Some legists said: No, it is not permissible, due to the aforementioned reason. And some others believe in permissibility of taking them, acting according to the *sirah* of al- Imam Ali (peace be upon him). The latter

view is more predominant among the legists.

3. The tools and equipment that were used by the troops of tyrants in fighting in particular, should be distributed (among the Muslim conquerers) in this way: one share for the foot soldier; two shares for the horseman; and three shares for the one having two or three horses.

### Conclusion

Whoever refuses to pay out the *zakat*, not deeming it lawful, is not considered as an apostate, and it is permissible to fight him till compelling him to pay it.

Whoever insults (reviles) the just ruler, should be killed (as he is considered an infidel).

If a *dhimmi* fights by the side of the tyrants, he is considered as having violated the protection covenant (*dhimmi*). The ruler is entitled to seek the support of Ahl al- Dhimmah to fight the tyrants.

If the tyrant spoils (damages) a property or life belonging to a just follower of the (Infallible) Imam, during the war, he will be responsible for compensation (guaranteeing it). If anyone of them commits any sin or act requiring punishment or censure, and takes refuge in abode of war, his punishment should be executed in time of achieving victory.



## Kitab al- Amr bil- Ma'ruf wal- Nahy 'an al- Munkar (To Enjoin Good and Forbid Evil)

*Ma'ruf*: is every decent act, distinguished with a description indicating its excessive virtue, when its doer be aware of this, or is guided to it.

*Munkar*: is every evil and abominable act,<sup>1</sup> whose ugliness is identified by its doer, or he is led to it.

### Their Rules:

To enjoin good and forbid evil are both *wajib* as per unanimity among the legists. Their *wujub* is collective (*kifa'i*),<sup>2</sup> that is: when they be fulfilled by some able people, the others will be exempted from practising them. Some legists said: It is *wajib* only upon the notable persons (*a'yan*), which is more predominant among the legists.

The *ma'ruf* is divided into: *wajib* and *mandub* (*mustahabb*). To enjoin the *wajib* good is *wajib*, and to enjoin the *mandub* is *mandub*.

The *munkar* (evil) is not divided, as forbidding it is *wajib* entirely.

### Conditions for Forbidding Evil:

Forbidding evil does not become obligatory but only when fulfilling four<sup>3</sup> conditions:

First: The *munkar* should be recognized to be evil, so as to be assured of not being mistaken in considering the ugliness.

Second: One intending to forbid evil should be fully certain of the effect of his forbidding (on evil-doers). If he supposes or comes to know

---

<sup>1</sup> By abominable act (*qabih*) is meant: the *haram* (forbidden) act. Its definition is: it is every act whose doing is not allowed for anyone having awareness of it and capability; or one having similar qualities in a way bringing upon himself blame and censure. (*al- Masalik*, vol. III, p. 100).

<sup>2</sup> According to the Almighty's saying: "And that there should be among you a group who call (mankind) unto virtue and enjoin what is good and forbid wrong ..." (3:104). As the purpose legally intended is incidence of right conduct (*ma'ruf*), and removal of evil (*munkar*) without assigning a certain conductor by person. If these both things occur at the hands of some, the others will be exempted from them, which has the meaning of *wajib kifa'i* (collective duty). (*al- Rawdah*, vol. II, p. 413).

<sup>3</sup> There is no difference in stipulation these four conditions for enjoining to good or forbidding evil, and his specifying the forbidding does not indicate the outside aspect of stipulation. (*al- Masalik*, vol. III, p. 101).

well that his words cannot impress upon them, it is not *wajib* upon him to undertake the duty of forbidding evil.

Third: The doer (of duty of forbidding evil) should be determined and persistent on continuity and perseverance in doing the task. If he notices a sign of abstinence on part of the perpetrator of evil, or his (evil-doer) desisting from the evil, he should forbear and stop his forbidding.

Fourth: The act of forbidding evil should not entail or imply corruption or ruin for its doer. If one supposes any detriment or damage to himself or his property, or to any Muslim, it will not be *wajib* upon him to fulfil this duty.

### Degrees of Forbidding Evil:

Degrees of forbidding evil are three: first, by heart, which is *wajib* absolutely. Second by tongue, and third by hand.

It is *wajib* to repulse the abomination (*munkar*) by heart first (showing aversion to it), when one be sure of affecting the evil-doer by showing aversion to his evil act. But when one realizes that this means is insufficient to restrain the evil-doer from doing the evil, and finds that turning away from and forsaking the evil-doer being the only effective way to curb him from evil, it will be *wajib* to execute this means exclusively.

But when he (denier of evil) discovers that this way also is not enough to restrain one from doing the evil, he should move to disapproving of the evil by tongue, using the more lenient words first, followed by lenient ones till convincing the doer of evil to refrain from it.

When this means fails too, and one be sure that it is not possible to stop the doing of abomination but only by hand (by force), such as by beating or alike means, it is permissible to follow this means.

If restraining from evil cannot be performed but only through wounding or killing, is it *wajib* to do so? Some legists said: Yes it is *wajib*. Some others believe in non-*wujub* but only with taking permission of the ruler, which is more predominant among the legists.

### One Executing the Punishment:

No one is allowed to execute the punishment (*hadd*) except the Imam, when he be present, or his deputy who is assigned by him to fulfil it. In case of non-presence of the Imam, the *mawla* (master) is authorized to execute the *hadd* on his slave.

There is disagreement among the legists regarding the man's executing the *hadd* on his children and wife.

If a governor is appointed by a tyrant, and he be competent to execute

the *hudud* (punishments), is he entitled to execute them? Some legists said: Yes, he can on condition that he fully believes that he is undertaking this task with the permission of the True Imam. Other legists hold the view of non-permissibility, which is more precautionary.

If the ruler coerces him to execute the punishments, it will be permissible for him to submit to his order, unless it be an unjust killing; since no *taqiyyah* (dissimulation) is there in blood (putting to death).

Some legists observed: it is permissible for knowledgeable *fuqaha'* to execute the punishments, during occultation of the Imam, and they are also empowered to judge among people, with feeling in safe from sustaining damage or loss at the hands of the then ruler. It is *wajib* upon people to help them in fulfilling this mission.

It is not permissible for anyone to execute the punishments, or to judge among people, but only for one having full knowledge of all rules and precepts of Islam (a *mujtahid* jurisprudent), and judicial cognizance of all ways of deduction of rules and applying them according to the Islamic Law.

In case of presence of such a fully qualified Islamic jurisprudent competent to judge, it is permissible to appeal to him to settle any dispute, and it is *wajib* upon the litigant to respond to his rival when the *faqih* judge summons him to trial. If he (accused) refrains from responding to the judge's call, and prefers resorting to a tyrant judge, he will be considered as having committed an abomination (*munkar*).

If a tyrant ruler appoints a judge, coercing him to judge, it will be permissible to prosecute and sue the case with him with the purpose of warding off any harm may be afflicted by him, on condition that he should abide by truth and act according to it as possible as he can.

But if he is obliged to act according to *madhahib* (schools of Islamic Law) of the opponents (Sunnah), it is permissible for him only if it was inevitable but to follow them, unless it be unjust putting to death an innocent person. He is required to follow and apply the truth as possible as he can.

