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Ghusl

A ghusl (ritual bath) is required after the following different states of ritual impurity:

1. Major ritual impurity, as caused, e.g., by sexual intercourse (janizbah).
2. Menstruation (hayd).
3. Childbirth (nifas).
4. Death (mawt).

These four kinds of ghusl are recognized by all the schools. The Hanbalis add a fifth to this list: the ghusl of a non-Muslim (kafir) on his embracing Islam.

The Shafi'i and the Imami schools observe: If a kafir embraces Islam while being in a state of janabah, he will be required to perform the ghusl of janabah, not for embracing Islam; but if he is not in a state of janabah, he will have no obligatory (wajib) ghusl to perform.

The Hanafis say: No ghusl will be wajib upon him (on embracing Islam), irrespective of whether he is in a state of janabah or not¹.

The Imamiyyah add to the above four ritual baths two more:

1. Ghusl al-mustahadah (i.e. the bath required of a woman at the end of her periods when she has intermittent discharge of blood).
2. The ritual bath after touching a corpse.

They consider it wajib for a person who has touched a corpse after it has turned cold and before it has been given a ritual bath, to perform a bath (more details will follow). From what has been mentioned it becomes clear that the number of obligatory baths are four in the opinion of the Hanafis and the Shafi'is, five in the opinion of the Hanbalis and the Malikis, and six in the opinion of the Imamis.

Ghusl al-Janabah

The state of janabah, which makes a ghusl obligatory, occurs in two situations.

1. On the discharge of semen, whether in sleep or the waking state. The Imami and the Shafi'i schools say:

The discharge of semen makes the ghusl wajib, regardless of whether one is sexually aroused or not. The Hanafis, the Malikis, and the Hanbalis observe: Ghusl is not wajib unless the discharge is accompanied with pleasure.

Hence if the discharge is due to a stroke, or cold or disease, and without sexual arousal, no bath is required. But if the seminal secretions are released internally without coming out of the body, ghusl is not wajib except in the opinion of the Hanbalis.

A Subsidiary Issue

If a person on waking up finds wetness in his cloth and is unable to ascertain whether it is semen or madhi, the Hanafis state that ghusl is wajib. The Shafi'i and Imami schools say: It is not wajib because the pre-existence of taharah is certain while the occurrence of hadath is doubtful. The Hanbalis observe: if he has seen something before sleeping which had excited him or thought about it, ghusl will not be wajib; and if the sleep was not preceded by any cause entailing such excitement, ghusl will become wajib on the presence of any dubious wetness.

2. The insertion of the glans (the part of the male organ covered by foreskin prior to circumcision) into the vagina or anus. The schools concur that the mere insertion of the glans makes ghusl wajib, even if no emission occurs, though they differ regarding the conditions, whether the sole insertion necessitate ghusl irrespective of its mode or if only a particular manner of insertion requires ghusl.

The Hanafis consider ghusl wajib on the fulfillment of the following conditions:

- i. Puberty (bulugh): Hence if only one of the partners has attained puberty the ghusl will be wajib only on the one who has attained puberty. If both of them have not attained puberty, ghusl is not wajib on either.
- ii. There should be no thick sheath preventing the warmth of the locale from being felt.
- iii. The person with the passive role should be a living human being. Hence if it is an animal or a corpse, ghusl is not wajib.

The Imami and the Shafi'i schools say: The insertion of the glans suffices for making ghusl wajib, irrespective of whether the person has attained puberty or not, is the active or the passive partner, or if there exists a sheath or not, whether it is by choice or under duress, and whether the passive participant is alive or dead, a human being or an animal.

The Hanbalis and the Malikis observe: Ghusl is wajib on both the partners if a sheath preventing the sensation of pleasure from being felt is not used, regardless of whether the passive participant is a human being or an animal and dead or alive.

As to puberty, the Malikis state: Ghusl is wajib upon the active partner if he is a mukallaf and the passive participant is capable of having intercourse. It is wajib upon the passive partner if the active partner is an adult. Hence, if a boy has intercourse with a woman, ghusl will not be wajib upon her if she does not have an orgasm. The Hanbalis further stipulate that the male should not be less than ten years and the female not less than nine.

Acts Whose Validity Depends Upon Ghusl al-Janabah

All those acts which are dependent (for their validity or permissibility) upon Wudhu' are also dependent upon ghusl al.-janabah, such as salat, tawaf and touching the script of the Qur'an. To this is added halting in a mosque, with all the schools concurring that it is not permissible for a junub person to remain in a mosque, though they differ regarding the permissibility of his passing through it, such as when he enters from one door and leaves through another.

The Malikis and the Hanafi's say: It is not permissible unless necessary.

According to the Shafi'is and the Hanbalis, passing is permissible though remaining is not.

The Imamiyyah observe: It is not permissible (for a junub person) either to remain or pass through Masjid al-Haram and al-Masjid al-Rasul; but he may pass through and not remain, in other mosques, in accordance with verse, 43 of the Surat al.-Nisa'

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i.e., junub persons should not enter the place- of worship in mosques except as passerby. The Imamis exclude the above-mentioned two mosques on the basis of particular proofs.

As to the reciting of the Qur'an, the Mailikis state: It is forbidden for a junub person to recite anything from the Qur'an except a little for the sake of protection or citing it as a proof. What the Hanbalis observe is close to this view.

The Hanafis say: It is not valid except where the junub person is a teacher of Qur'an and he instructs by pronouncing each word separately. The Shafi'is consider it Haram to even recite a single word except when it is with the intention of remembrance, such as saying the tasmiyah

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before meals.

The imamiyyah observe: It is not Haram for a junub person to recite the Qur'an except the four surahs called al-'azaim al-'arba'ah, which are Iqra', al-Najm, Ha' Mim, Sajdah and Alif Lam Mim Tanzil; reciting a part of them is also Haram. Apart from these surahs, its recital is permissible, though if it exceeds seven verses it is considered makruh (reprehensible), and the karahah (reprehensibility) is aggravated if it exceeds 70 verses.

The Imamiyyah have added (to things dependent upon ghusl al-janabah) fasting during Ramadan and its qada'; they observe: The fast is not valid if a person remains junub, intentionally or forgetfully, at dawn. But if he sleeps during the day or at night and wakes up in the morning to find that he had an emission during sleep his fast remains valid. The Imamiyyah are alone among the schools in holding this view.

The Essentials of Ghusl al-Janabah

That which is wajib in a Wudhu' is also wajib in ghusl al-janabah—such as that the water used should be talhir and mutlaq, the prior taharah of the body (from khabath), and the absence of anything on the body that may prevent water from reaching the skin, as already mentioned while discussing Wudhu'. Niyyah is also wajib, except in the opinion of the Hanafis who do not consider it among the conditions for the validity of ghusl.

The four Sunni schools do not require any particular manner of performing the ghusl and consider it sufficient that it should include the whole body in any possible manner, irrespective of whether one begins from the top or the bottom. The Hanafis add that rinsing the mouth and drawing water into the nose is also wajib. They also say: It is mustahabb to start with the head, washing next the right half of the body and then the left half.

The Shafi'i and the Maliki schools observe: It is mustahabb to start with the upper parts of the body before moving to the lower parts, except the private parts, which it is mustahabb to wash first.

According to the Hanbalis, washing the right half before the left is mustahabb.

The Imamiyyah recognize two forms of ghusl al-janabah : tartib (in order) and irtimas (by immersion). In the tartib form, one pours water on himself. Here they consider it wajib that the start should be made with the head, followed by the right half and then the left. If he breaks this order by washing first that which is to come later in the order, the ghusl would be invalid. In the irtimas form one submerges the whole body under water all at once, and if any part of the body remains unsubmerged it will not suffice.

In the opinion of the Imamiyyah ghusl al-janabah dispenses the need for Wudhu'; they observe: Every ghusl requires Wudhu' except ghusl al-janabah. The other four schools do not differentiate between ghusl al-janabah and other baths, in that none of them suffices where Wudhu' is a requirement.

Menstruation (al-Hayd)

Lexically Hayd means 'flood' and in the terminology of the legists it is the periodic blood discharge experienced by women during specific days. Its effect is abstention from 'ibadah and termination of the period of 'iddah of a divorcee (if it is the third mense after the divorce). It is usually black or red, thick and warm, and comes out in spurts, though its qualities may differ from those mentioned depending upon constitution.

The Menstruating Age

All the schools concur that any discharge that occurs before a girl reaches the age of 9 years cannot possibly be menstrual; it is due to disease or injury. The same is true of the discharge of a woman who has reached the age of menopause. The schools differ concerning the age of menopause. The Hanbalis consider it to be 50 years, the Hanafis as 55, and the Malikis as 70.

The Shafi'is observe: As long as a woman is alive she can have menses, though generally it ceases at the age of 62 years.

The Imamiyyah say: The age of menopause for a non-Qurayshi woman and one whose being Qurayshi is doubtful is 50 years, and for a Qurayshi woman 60 years.

The Period of Menstruation

The Hanafis and the Imamis state: The minimum period of menstruation is three days and the maximum ten. Hence any discharge that does not last up to three days or exceeds ten days is not considered hayd.

The Hanbalis and the Shafi'is observe: The minimum period is one day and night and the maximum 15 days.

According to the Malikis, its maximum period for a non-pregnant woman is 15 days. They do not specify any minimum period.

The Imamis say: The minimum period between two menstruations is the maximum period of hayd, i.e. 10 days.

A Subsidiary issue

The schools differ concerning Hayd during pregnancy, as to whether any discharge of blood during it can be considered Hayd. The Shafi'i, Maliki and most Imami legists observe: Hayd can accompany pregnancy. The Hanafis, the Hanbalis and al-Shaykh al-Mufid from among the Imamiyyah say: Hayd can never occur during pregnancy.

Rules Applicable to a Ha'id

All that which is forbidden for a junub person is also haram for a Hayd (a menstruating woman), such as touching the script of the Qur'an, staying in a mosque, etc. Salat (prayer) and Sawm (fast) are not required of her during this period, though she will have to perform the qada' of the sawm of the month of Ramadan.. The qada of Salat is not required of her in accordance with the ahadith and for saving her from the strain of performing the large number of daily prayers omitted.

It is forbidden to divorce a Hayd; though in the opinion of the four Sunni schools, if given it is valid, although the divorcer will be considered as having sinned. Such a divorce is void in the opinion of the Imamiyyah if the divorcer has consummated the marriage, or is not travelling, or if the divorcee is not pregnant. Thus the divorce of a Hayd who is pregnant, or whose marriage has not been consummated, or whose husband is away from home, is valid. This has been discussed in detail in the chapter on divorce.

All the schools concur that ghusl al-hayd does not suffice for Wudhu' and the Wudhu' of a Hayd prior to ghusl does not remove her hadath. There is also consensus regarding it being haram to have sexual intercourse with her during hayd. As to any other kind of sexual contact with her between her navel and knees, the Imamis and the Hanbalis say: It is permissible unconditionally, regardless of there being any covering in between or not.

The preponderant (mashhur) Maliki opinion is that it is not permissible even if there is a covering in between. The Hanafis and the Shafi'is say: It is haram without a covering and permissible with it.

Most Imami legists observe: If a person overcome by sexual desire has intercourse with his ha'id wife, he must atone by giving a dinar in charity if the intercourse occurs during the initial days of the hayd, a half dinar if in the middle of this period, and a quarter if in its last days.

The Shafi'is and the Malikis say: It is mustahabb and not wajib to give charity. As to the woman, there is no atonement for her in the opinion of all the schools, though she will be considered a sinner if she is willing and co-operative.

The Manner of the Ghusl

The ghusl al-hayd is exactly like ghusl al-janabah in that the water used should be tahir and mutlaq, the body should be tahir, there should be nothing preventing the water from reaching the skin, the niyyah should have been made, and-according to the Imamis-the start should be made with the head, followed by the right and then the left half of the body. Also, according to the Imamis it is sufficient to submerge the entire body under water.

The other four schools consider it sufficient to wash the whole body in any manner, as already

mentioned while discussing ghusl al-janabah.

Al-'Istihadah

Istihadah is a term used by the legists for the blood discharge which occurs outside the periods of hayd and nifas (postpartal discharge) and which cannot be considered hayd (such as a discharge occurring after the maximum period of hayd or within its minimum period). It is usually yellowish, cold, thin and flows out slowly as opposed to Hayd.

The Imamis regard a mustahadah (a woman undergoing istihadah) to be of three kinds:

1. Sughra (minor), when the blood stains the cotton without soaking it. Her duty is to perform Wudhu' for every salat while changing the cotton. Thus she may not perform two salat with a single Wudhu'.
2. Wusta (medium), when the blood soaks the cotton without flowing from it. Her duty is to perform one ghusl every day before daybreak, change the cotton, and to perform Wudhu' before every salat.
3. Kubra (major), when the blood flows after soaking the cotton. Her duty is to perform three ghushs daily, the first before the daybreak prayer, the second for the midday and afternoon prayers and the third for the sunset and night prayers. Most Imami legists observe: It is also wajib in this situation to perform Wudhu' and change the cotton.

The other four schools do not recognize these categories, as they do not consider it obligatory for a mustahadah to perform ghusl. Al-Sayyid Sibiq in *Fiqh al-sunnah* (1957, p. 155) observes: "She has no wajib ghusl to perform for any salat or at any time except a single ghusl on the termination of hayd; that is, the ghusl is for Hayd and not for istihadah. This has been the opinion of the majority (jumhur) of scholars of the former and later generations."

According to the four schools, those things which are prohibited during hayd, such as reading and touching the Qur'an, entering a mosque, itikaf, tawaf, sexual intercourse, etc.—as already mentioned in detail while discussing the acts prohibited for one in the state of major impurity—are not prohibited during istihadah².

The Imamiyyah say: The 'minor' type of mustahdha is considered as being in a state of minor ritual impurity. Hence nothing that requires a Wudhu' is permissible for her unless she performs Wudhu'. The 'medium' and 'major' types are regarded as being in a state of major impurity.

Therefore, they are prohibited from everything requiring a ghusl. They are like a haid as long as they have not performed what has been considered wajib for them. Once they have performed this wajib, they are considered tahir and it becomes valid for them to perform salat, enter a mosque, perform tawaf and have sexual intercourse. The Imamis regard the manner of performing ghusl-'istihadah to be exactly similar to the mode of ghusl al-hayd.

Nifas

The Imamis and the Malikis state: The nifas blood is a uterine discharge that occurs during or after childbirth, not before it.

The Hanbalis say: It is a discharge which occurs during or after parturition or up to two or three days before it, along with signs of labour.

According to the Shafi'is, it occurs only after parturition and not during or before it.

The Hanafis observe: It is a postpartal discharge. In the opinion of the Shafi'is, Hanafis and Malikis, ghusl is wajib upon a woman after giving birth, even if she has not had nifas; the Imamis and Hanbalis do not consider it wajib.

All the schools concur that there is no minimum period of nifas, though the maximum period is 10 days as per the preponderant Imami view, 40 days in the opinion of the Hanbalis and the Hanafis, and 60 days in the opinion of the Shafi'is and the Malikis.

In a Caesarian delivery the woman will not have nifas, although this form of birth will bring to end the 'iddah of a divorcee.

Nifas is like Hayd in that salat and sawm are not permissible, the qada of the latter is wajib, sexual intercourse, entering or making a halt in a mosque, touching the script of the Qur'an is haram, and so on.

The manner and conditions for this ghusl are exactly like those of ghusl al-Janaba.

Touching a Corpse (Mass al-mayyit)

If a person touches a human corpse is it obligatory for him to perform a Wudhu' or a ghusl or is neither obligatory upon him?

The four schools observe: Touching a dead body does not result either in a minor or major hadath; i.e. neither Wudhu' nor ghusl is required. But it is mustahabb for a person who has given bath to a dead body and not just touched it, to perform ghusl.

Most Imamis say: Ghusl becomes wajib on touching a corpse after it has turned cold and before it is given the bath provided in the Shari'ah. Hence if it is touched before turning cold and immediately after death or after it has been given ghusl, such a touch will not require anything.

The Imamis do not differentiate between the corpse of a Muslim and a non-Muslim in relation to the ghusl becoming wajib to touch. Similarly they do not differentiate between the age of the dead body, whether it is of an adult, or a child or even a four-month foetus. There is also no difference between a touch prompted by necessity or by choice.

Further, the person touching may be sane or insane, an adult or a child. Hence the ghusl will become wajib on an insane person on attaining sanity and on a child on attaining puberty. The Imamis even require a person who touches an amputated part of a dead or living person to perform ghusl if it contains a bone.

Accordingly, if he touches an amputated finger of a living person, ghusl will become wajib. Also, if a tooth separated from a corpse is touched. But if a separated tooth of a living person is touched ghusl will be wajib only if it has flesh attached to it and not otherwise.

Though the Imamis require ghusl on touching a corpse, they regard such a person as being in minor hadat, i.e. he is prohibited from only those acts which require a Wudhu' and not those which require ghusl. There, it is valid for him to enter a mosque and remain in it, and to recite the Qur'an.

The ghusl required on touching a corpse is performed like ghusl al-janabah.

The Rules Pertaining to a Dead Body

These will be discussed in the following sections:

1. Al-Ihtidar

Al-Ihtidar is to make a dying person face the qiblah. The schools differ regarding the manner in which this is to be done. The Imamis and the Shafi'is observe: He will be made to lie on his back with the soles of his feet facing the qiblah, so that if he sits up he will be facing it.

The Malikis, the Hanbalis and the Hanafis state: He will be made to recline on his right side with his face towards the qiblah, in the same manner as he would be buried.

As the schools differ in the manner of turning the dying man to face the qiblah, they also differ regarding its being obligatory. The four schools and a group from among the Imamis consider it mustahabb and not wajib, though the preponderant Imami view is that it is wajib kifa'i (explained below) like giving ghusl to the dead and their burial. It is observed in the Imami work Misbah al-faqih. The wujub of making those approaching death to face the qiblah includes both adults and children.

It should be noted that all those things which will be mentioned as wajib with reference to a dead body are all wajib kifai, i.e. if some persons perform it, others will be relieved of the duty of performing it, but if no one performs it, they will all be responsible and liable for its neglect.

2. The Ghusl of a Corpse

The schools concur that a shahid, i.e. one who is martyred in battle with infidels, will not be given ghusl.³ The schools, excepting the Shafi'is, also concur that it is not permissible to give ghusl to a non-Muslim;

the Shafi'is consider it permissible. There is also consensus that a foetus of less than four months does not require ghusl.

They differ where the foetus has completed four months. The Hanbalis and the Imamis observe: It is wajib to give it ghusl. The Hanafis observe: If it is born alive and then dies or is still-born in a fully developed state, its ghusl is wajib.

According to the Malikis, giving ghusl will not be wajib unless a similar baby is considered by knowledgeable persons as capable of survival.

The Shafi'is state: If it is born after six months ghusl will be given, and even if born before six months if all parts of its body have fully developed. But if it is not born fully developed but is known to have been alive, then ghusl will be given but not otherwise.

A Subsidiary Issue

If a part of a corpse is destroyed by fire or disease or is eaten by an animal, will the ghusl of the rest be wajib?

The Hanafis say: Ghusl will not be wajib unless most of the body or half of it with the head is present.

The Malikis consider ghusl to be wajib if two-thirds of the body is present.

The Hanbalis and the Shafi'is observe: Ghusl will be given even if a small part of the body remains.

The Imamis state: If the part of the dead body found includes the chest or a part of it containing the heart, all the rules applicable to a complete corpse will apply to it and it will be given ghusl and kafan (shroud) and prayed upon. But if the part found does not contain the chest or a part of it, it would be given ghusl if it contains a bone and then buried by wrapping it in a piece of cloth. And if it does not contain a bone, it will be wrapped in a piece of cloth and buried without a ghusl.

The Person Giving Ghusl (Ghasil)

It is wajib that the ghasil and the maghsul (the dead person being given ghusl) belong to the same sex: men should give ghusl to men and women to women.

The Imami, Shafi'i, Maliki and Hanbali schools consider it permissible for either husband and wife to give ghusl to the other on death.

The Hanafis say: It is not permissible for husband to give ghusl to his wife because her death dissolves the marital bond. The wife, however, can give ghusl to her dead husband because she is in his 'iddah; i.e. the marital bond exists in relation to her while it is non-existent in relation to the husband.

If she dies after his divorcing her and the divorce is irrevocable, there is consensus that neither of them can give ghusl to the other.

But if it is a revocable divorce, the Imamis allow either of them to give ghusl to the other. The Hanafis and the Hanbalis observe: Such a wife can give ghusl to the dead husband but not vice versa. The Malikis and the Shafi'is state: Neither of them may give ghusl to the other. Moreover, they do not differentiate between a revocable and an irrevocable divorce.

The Imamis allow a woman to give ghusl to a boy of under three years, and allow a man to give ghusl to a girl of less than three years. The Hanafis permit up to four years and the Hanbalis up to seven years. The Malikis observe: A woman can give ghusl to a boy up to the age of eight years and a man can give ghusl to a girl of two years and eight months.

The Manner of Bathing the Dead

The Imamis say: It is wajib that the dead body be washed thrice; at first with water containing a little of sidr, then a second time with water containing a bit of camphor, and a third time with plain water. The ghasil should start by first washing the head, then the right half of the dead body and then the left.

The four Sunni schools observe: Washing only once with plain water is wajib, and the two additional washings are mustahabb. There is no specific manner of giving the ghusl and it is valid in any manner it takes place, just like ghusl al-janabah. The use of sidr and camphor is not wajib in the opinion; rather, it is mustahabb if camphor or a similar perfume is added to the water used for the last wash.

Niyah, the plainness (itlaq) and ritual purity (taharah) of the water used, the removal of najasah from the dead body, and the removal of anything preventing water from reaching the skin, are indispensable for the validity of the ghusl.

The Imamis state: It is makruh to give ghusl to a dead body with hot water. The Hanafis say: Hot water is better. The Hanbali, Maliki and Shafi'i schools observe: Cold water is mustahabb.

All the schools concur that camphor is not to be added to water used for the ghusl of a person that dies in the state of ihram of hajj. Similarly, they are of one opinion that in the state of ihram one must abstain from all kinds of perfumes.

If ghusl is not possible due to the non-availability of water, or the body being burnt or affected by a disease in such a manner that it might cause the flesh to fall apart on being washed, there is a consensus that tayammum would be resorted to in place of ghusl.

As to the method of the tayammum, it is like the tayammum performed by a living person. Details follow in the discussion on tayammum. A group of Imami legists says: It is wajib to perform the tayammum thrice, the first in place of washing with water containing sidr, the second in place of water containing

camphor, and the third in place of washing with plain water. But the authorities among them consider a single tayammum as sufficient.

Hunut

Hunut means rubbing the seven parts of a dead body which touch the ground while prostrating with camphor after ghusl; these are the forehead, the two palms, the knees, and the heads of the big toes of the feet. The Imamis alone among the schools consider hunut as wajib in this manner, and in this regard there is no difference between an adult and a child, even if an aborted foetus, nor between a male and a female, the only exception being a person in ihram of hajj. In addition to the seven locations, they regard the hunut of the nose as mustahabb.

Kafan (Shroud)

All the schools consider takfin (providing with kafan) of a dead body as wajib. The four Sunni schools observe: That which is wajib in takfin is a single piece of cloth covering the whole body, though the use of three pieces is mustahabb.

The Imamis state: The use of three pieces is wajib, not mustahabb; the first is called mi'zar and resembles a loinloth extending from the navel to the knees; the second is the qamis, which covers the body from the shoulders to the shanks; and the third, called izar, covers the whole body.

The kafan should possess all the qualities necessary irrespective of sex, for clothes worn while performing salat, such as their being tahir, mubah (lawfully owned), their not being made of silk, gold or the skin or fur of an animal which is not eaten, and other qualities which will be mentioned in their appropriate place.

The Imamis, the Shafi'is and the Hanafis consider the husband responsible for the kafan of his wife if he is capable of providing it. The Malikis and the Hanbalis say: It is not compulsory for a husband to provide the kafan of his wife even if she is indigent.

The amount necessary for the kafan and other expenses of burial is taken from the legacy of the deceased before the satisfaction of the claims of his debtors, the beneficiaries of his will, and his heirs, though not in preference over the share of the wife and the mortgage of a specific property.

The Death of an Indigent Person

The four schools and a group from among the Imamis observe: If the deceased does not leave behind any wealth, his kafan will have to be provided by the person who was supposed to maintain him when he was alive. But if he had no supporter, or had but he too is indigent, the kafan will be provided from the public treasury or from zakat if possible. Otherwise it will be the duty of all Muslims capable of

providing it to do so.

A group of Imami legists say: If a person dies a pauper and there exists no one who maintained him while he was alive, it is not wajib upon anyone to provide him with a kafan, because that which is wajib is the performance of an act and not the spending of wealth. Therefore spending wealth is mustahabb on the basis of charity, and in the absence of a charitable person he will be buried without a kafan.

The Salat Performed Over a Shahid

The schools concur that it is wajib to perform salat over Muslims and their children on death, irrespective of their sect and school of fiqh. They also concur that the salat is not valid unless performed after the dead body has been given ghusl and kafan, and that a shahid is not given ghusl and kafan, but is buried in his clothes.

The Shafi'is allow the option between burying him in his own clothes and removing them and giving him a kafan. The schools differ regarding offering salat over a martyr. The Shafi'is, the Malikis and the Hanbalis observe: Salat will not be offered over him.

The Imamis and the Hanafis state: It is wajib to offer salat over him in the same manner as over the other dead.

The Salat Offered for Children

The schools differ regarding salat over a baby; the Shafi'is and the Malikis say: salat will be performed over it if it had cried on being born; i.e. the rule applicable to salat is the one applied for establishing inheritance.

The Hanbalis and the Hanafis consider salat wajib over it if it has completed four months in the womb. The Imami view is that salat is not wajib over the bodies of Muslim babies unless they have reached the age of six years, though it is mustahabb over babies below it.

Funeral Salat in Absentia

The Imami, Maliki and Hanafi schools observe: In no situation is salat in absentia valid. They argue that if it had been performed by the Prophet (s) and the sababah, it would have become widely known and a tawatur would exist; moreover, facing the qiblah with the dead body's face turned towards it and the presence of the musalli (the person performing salat) at the body while performing the salat are among its necessary conditions.

The Hanbalis and the Shafis say: Salat in absentia is valid. The basis of their argument is that the Prophet (s) performed it on hearing the news of Najashi's death. This argument has been countered by

observing that this act was particular to the Prophet(s) or was particularly performed in the case of Najashi, and this explains why it was not repeated by the Prophet (s) when he heard of the death of prominent Sababah who died away from him (,s-).

The Awliya' of the Deceased

The Imamis state: The validity of the acts—whether ghusl, kafan, hunut or ,salat –wajib for preparing the corpse for burial depends upon the permission of the wali of the deceased. Any of these acts performed without the permission of the wali are void and their repetition is wajib.

The wali may carry out these himself or allow others to perform them. But where he neither carries them out himself nor permits others to perform them, his permission has no effect.

The Imamis give precedence to the husband in wilayah as regards the wife over all other relatives, and the awliya' besides the husband stand in the order applicable to inheritance. Hence the first category, which consists of her father and sons, has precedence over the second category, which includes her grandfather and brothers, which in turn has precedence over the third category to which paternal and maternal uncles belong.

The father is given priority over all others in the first category and the grandfather over the brothers in the second. Where no male exists in a category, the right to wilayah will belong to the female relatives. Where there are several brothers or paternal and maternal uncles, the funeral rites will depend upon the permission of all of them.

The other four schools have made no mention of the wali while discussing the ghusl and kafan, and this proves that his permission has no significance in their opinion for the performance of these rites. They do say who enjoys priority and has a better right to offer salat over the dead body.

The Hanafis observe: Those who have priority are: the ruler, then his representative, then the qadi, then the police chief, then the deceased person's imam in his life if he is better than the wali of the deceased, then the wali, and then as per the order applicable to authority with respect to marital affairs.

The Shafi'is say: The father of the deceased will come first, followed by the son, then the full brother, then the brother on father's side, and so on in the order of inheritance.

The Malikis state: Foremost is the person whom the deceased has appointed in his will for performing salat over his body seeking the barakah of the former's righteousness. After him comes the caliph, then the son, the grandson, the father, the brother, the brother's son, the grandfather, the paternal uncle, etc., in the descending order.

The Hanbalis give priority to the adil executor of the will, followed by the ruler, his representative, the father, the son, and so on in the order of inheritance⁴.

Uncertainty Concerning a Corpse

When a body is found and it is not known whether it belongs to a Muslim or a non-Muslim, if it is found in a Muslim locality it will be considered a Muslim's body; otherwise anyone who sees it has no obligation, for there is a doubt concerning the obligation itself.

Where the bodies of Muslims and non-Muslims are mixed and differentiating them is not possible, the Imamis, Hanbalis and Shafi'is observe: Salat will be performed on all of them with a conditional niyyah of "if he is a Muslim." The Hanafis say: The majority will be taken into consideration, and if the majority of bodies belong to Muslims, salat will be performed, not otherwise.

The Manner of the Samt

The dead body will be laid on its back and the musalli will stand not far behind it⁵ facing the qiblah with the head of the body to his right. There should be no intervening barrier in the form of a wall and the like and the musalli should be standing unless there exists a legitimate excuse. Then he will make niyyah and say takbir four times.

The Malikis observe: A prayer (du'a') is wajib after each of the four takbirat and the least that the musalli must say is

اللهم أغفر لهذا الميت

(O God, pardon this deceased). If the deceased is-a- child, the du'a' will be made for the parents. Salam will be said after the fourth takbir and the musalli will not raise his hands except in the first takbir. Accordingly, the following form will suffice:

الله أكبر اللهم أغفر لهذا الميت، الله أكبر. اللهم أرحمه وارحمنا، الله أكبر. اللهم تب عليه وعلينا، الله أكبر. اللهم أسكنه فسيح جناتك، السلام عليكم

The Hanafis say: God will be praised after the first takbir, salawat on the Prophet (s) will be said after the second, du'a after the third, and salam after the fourth. The musalli will not lift his hands except in the first takbir. The following form is sufficient:

الله أكبر سبحان الله وله الحمد، الله أكبر. اللهم صل على محمد، الله أكبر. اللهم أرحم هذا الميت، الله أكبر. السلام عليكم ورحمة الله، السلام عليكم ورحمة الله

The Shafi'is and the Hanbalis state: The surat al-Fatihah will be recited after the first takbir, salawat on

the Prophet (s) after the second, du'a after the third, and salam after the fourth. The musallli will lift his hands at every takbir. Hence the following form suffices:

الله أكبر ويقرأ الفاتحة، الله أكبر. اللهم صل على محمد، الله أكبر. اللهم أرحمنا وإياه، الله أكبر. السلام عليكم

According to the Imamis, five takbirat are obligatory in consonance with the number of daily obligatory prayers. The mussalli will recite the shahadatayn after the first takbir; salawat on the Prophet(s) after the second; du'a.' for the faithful, men and women, after the third; du'a.' for the deceased after the fourth; and end with the fifth without reciting anything after it. Lifting the hands at every takbir is mustahabb. The following is the minimum which is wajib:

الله أكبر أشهد أن لا إله إلا الله وأن محمدا رسول الله، الله أكبر. اللهم صل على محمد وآله، الله أكبر. اللهم أغفر للمؤمنين والمؤمنات، الله أكبر. اللهم أغفر لهذا الميت الله أكبر

Our intention in mentioning these short forms was to show the minimum which is wajib, otherwise all the schools have lengthy prescribed prayers which are mentioned in their appropriate place.

The four schools require taharah and covering of the private parts while performing salat over the deceased, in the same manner as in the daily obligatory prayers. The Imamis say: Here taharah and covering of the private parts are not conditions for its validity, though they are mustahaabb. This is because salat over the deceased is not salat in the real sense; rather it is a du'a.', and hence, in their opinion, the imam (in this salat) does not recite anything on behalf of the ma'mum.

This also explains why the four schools consider four takbirat as wajib over the deceased while the Imamis regard five takbirat to be wajib. Al-'Imam Ja'far al-Sadiq (a) says: "God has made five salats obligatory, and has appointed a takbir for the deceased in the place of each salat." He also observes: "The Prophet (s) used to say five takbirat over all the dead, and when God prohibited him from praying for the hypocrites (munafiqun.) he (s) would say five takbirat over those who were not hypocrites and four over the hypocrites without praying for them."

The Place of the Salat

The Shafi'is observe: It is mustahabb to offer salat over the deceased in a mosque. The Hanafi's consider it makruh to do so. The Imamis and the Hanbalis consider it permissible provided there is no fear of contaminating the mosque.

Time of Salat over the Deceased

The Shafi'is and the Imamis state: The salat over the deceased can be performed at any time. The Maliki, Hanbali and Hanafi schools say: The salat may not be performed over it at sunrise, midday and sunset

The Burial

The schools concur that it is not permissible, except where necessary, to place the body on the surface of the ground and to raise a tomb over it without digging, even if it is placed in a coffin. It is wajib to place it in a pit, where it would be secure and which would keep its smell from spreading. They also concur that the body should be laid to rest on its right side with its face towards the qiblah and the head to the west and the feet to the east.⁶

The Malikis say: To lay the body to rest in this manner is mustahibb and not wajib.

The Imamis observe: A woman must be lowered into the grave by her husband or anyone from among her maharim (male relatives within prohibited degrees of marriage), or by other women; if none of these are present, then any righteous person may do it.

The Hanbalis and the Hanafiis state: The husband becomes a stranger after dissolution of the marital bond on death. In al-Wajiz, al-Ghazfili, a Shafi'i, observes: "Only a man may lower the body into the grave. Therefore, if the deceased is a woman, her husband or mahram may perform it, and in their absence her slaves, followed by two eunuchs, her relatives and then strangers." This implies that a male stranger is preferred over a woman.

Disposing a Corpse into the Sea

If a person dies on a ship far away from land, if it is possible to retain it for burial on land, retaining it will be wajib. But if there is a fear of decay, it will be given ghusl and kafan and salat will be performed over it and then it will be placed in a firm coffin or a barrel which can be capped and thrown into the sea.

If this is not possible, a piece of iron or a stone will be tied to it. It is obvious that the legists have dealt with this and similar issues because during those days there was no means of preserving the body from decay.

But today, when it is possible to place it in cold storage or use other means which save the dead body from mutilation and harm, to retain the body becomes wajib even if it is for a prolonged period of time.

Making the Grave at Level with the Ground

All the schools concur that the sunnah in respect of the grave is to make it at level with the ground, because the Prophet (s) did so while making the grave of his son, Ibrahim. This sunnah is accepted by the Imamis and the Shafi'is.

The Hanbalis, Hanafis and Malikis say: To make it raised is better, only because to level the grave has become the slogan of some religious groups!

Reopening the Grave

All the schools concur that it is haram to reopen the grave, irrespective of whether the deceased is an adult or a child, sane or insane, unless the body is known to have decomposed and turned into dust or there is cause to be concerned for the body, such as where the grave is in the way of a flood or at the bank of a river, or it has been buried in a usurped land either forcefully or due to ignorance or negligence and the owner refuses to give permission and take compensation, or if it has been wrapped in an impermissible kind of kafan, or when something of value belonging to the deceased or someone else has been buried along with the body.

The schools differ regarding reopening where the body has been buried without a ghusl or after a ghusl which is not valid in the Shari'ah. In this regard, the Hanafis and some Imamis observe: It is not valid because it is irreverent and may cause mutilation of the corpse. The Hanbalis, Shafi'is, Malikis and most Imami legists observe: It may be reopened and ghusl and salat will be performed for it provided there is no fear of its having decayed.

Some Imamis further add: It may also be reopened where the establishment of a claim or right is dependent upon the examination of the body.

1. Ibn Qudamah, al-Mughni, i, 207).

2. al-Fiqh 'ala al-madhahib al-'arba'ah, vol. 1, mabath al-'istihadah

3. The Hanafis say: A martyr is someone who is killed unjustly, irrespective of whether it is in war or by a robber or dacoit. The requirement that they lay down for not giving him ghusl is that he should not be in a state of major Hadath at the time of death.

4. al-Fiqh 'ala al-madhahib al-'arba'ah, mabath al-'ahaqq bi al-salat 'ala al-mayyit).

5. The Shafiis and the Malikis permit salat to be offered over a dead body while it is placed on the back of a beast of burden or held on the hands or shoulders of men.

6. The description that the dead body's head would point towards the west and his feet towards the east applies to Lebanon, the author's homeland. (Editor)

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