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Part 1: Ibadah

1. Taharah, Ritual Purity

The Muslims have paid great attention to *Taharah* (ritual purity) and have written lengthy treat about it. They make their children get accustomed to it and teach it in their places of worship and instruction. The leaders of all the schools of fiqh have considered it a basic condition for the validity of 'ibadah (worship), and I am not exaggerating when I say no other religion had given importance to *Taharah* to the extent of Islam.

Taharah literally means purity, and in the terminology of the legists it implies the removal of hadath or khabath. The latter pertains to such physical impurities as blood and excrements. Hadath is a ritual condition which occurs to a person consequent to his performing an act that prohibits him from performing salat and necessitates the performance of wudhu or ghusl or tayammum. The tahara from hadath is not achieved unless accompanied by the intention (niyyah) to seek nearness to God (taqarrub) and obey His command regarding it. As to the tahara of the hands, clothes and utensils from najasah (impurity), it requires no niyyah; rather, if the wind carries a defiled (najis) piece of clothing and it falls into a 'large quantity' of water (al-mil al-kathir, details follow), it attains tahara automatically.

Water brings about tahara from both hadath and khabath. This accords with these statements of God Almighty:

وَيُنَزِّلُ عَلَيْكُمْ مِنَ السَّمَاءِ مَاءً لِيُطَهِّرَكُمْ بِهِ...

And He sends down upon you water from heaven to purify you thereby... (***8:11***)

وَأَنْزَلْنَا مِنَ السَّمَاءِ مَاءً طَهُورًا

And We sent down from heaven pure water. (***25:48***)

Tahur means that which is itself pure and capable of purifying others as well. Considering that water is found either in a small (qalil) or a large quantity (kathir), and includes juicy extracts, solutions and water in its natural form, the legists have divided water into two types: mutlaq (pure) and mudaf (mixed).

Al-Ma' al-Mutlaq (Pure Water)

Al-ma al-mutaq is water that has retained its natural state-the state possessed while coming down from the sky or welling from the ground that it is correct to apply the word 'water' to it without the addition of any adjective which would alter its natural state. That includes rainwater, seawater and water of river, well, spring and water derived from hail and snow.

Water is considered to remain in its 'pure' form if the change that occurs in it is due to factors usually unavoidable, e.g. mud, soil, stagnation, fallen leaves or collection of straw, etc., or the salt, sulphur, and other minerals that it contains at its source or picks up in its course. Al-ma al-Mutlaq is considered pure and purifying from both hadath and khabath by absolute consensus. As to the statement that has been narrated from 'Abd Allah ibn 'Umar, that he preferred tayammum to seawater, it stands refuted by these words of the Prophet(S).

من لم يطهره البحر فلا طهره الله

He whom the sea does not purify, will not be purified by God.

Al-Ma' al-Musta'mal (Used Water)

When najasah is removed from the body, a piece of clothing or a utensil by pure water, the water separating from the object purified, either freely or by wringing, is called 'ghusalaah' or 'musta'mal' by the legists. It is impure (najis) because it is water in 'small quantity' (al-ma' al-qalil) that has come into contact with the impurity and has consequently become najis, irrespective of whether it has itself undergone any change or not. Accordingly, it cannot remove khabath or hadath.

A group of legists belonging to different schools observe: If this water separating from the washed object undergoes a change by the najasah, it is najis. Otherwise its state would be the state of the washed object-if najis then najis, and if tahir then tahir.

This observation will not be correct unless we take into account the state of the object being washed before water has reached it, for the object containing najasah is purified by the water poured over it and the water separating from it would be najis due to having come into contact with najasah.

If water is used for removing hadath, it is considered pure (tahir) but not purifying (mutahhir). This is the

preponderant opinion of the Hanafi school and the apparent view of al-Shafi'i and Ahmad. According to one of the two opinions narrated from Malik, it is both pure and capable of purifying[1].

The Imamiyyah say: The water used for non-obligatory wudhu and ghusl --e.g ghusl al-tawbah or ghusl al-jumu'ah-is pure as well as capable of purifying from both hadath and khabath; i.e. it is valid to use it for ghusl, wudhu' and for removing najasah. As to the water used for performing obligatory ghusl -such as ghusl al-janabah and ghusl al-hayd-the Imami legists concur that it can remove najasah, but they differ concerning its ability to purify from hadath and the validity of wudhu' and a second ghusl with it.

A Subsidiary Issue

About a person in the state of janabah (the state of major ritual impurity following sexual intercourse) who dips himself in al-ma al-qalil after cleansing the locale of najasah and makes niayyah for purification from the hadath, the Hanbalis observe: The water will be considered used and the janabah too will not be removed; he will have to repeat the ghusl.

The Shafi'i, Imami and Hanafi schools state: The water will be considered used, though the janabah will be removed and he will not have to repeat the ghusl[2].

The people of the Middle Ages stood in need of this and similar issues, which have been discussed in voluminous works of fiqh, because water was more scarce and expensive in those days than oil is today. But now, after human knowledge has become capable of transporting water from under the ground to every house in the highest of mountains, our interest in this issue is like the interest shown to historical relics kept in museums.

Mixed Water (al-Ma' al-Mudaf)

Al-ma al-mudaf is either water extracted from fruits, e.g. lime and grape juice, or that which was pure initially before something was added to it that changed its character, e.g. rose-water and soda-water. It is tahir, but does not purify khabath as per the consensus of all schools except the Hanafi. The Hanafis consider valid the removal of khabath with any non-oily liquid, except that which has changed by cooking, and al-Sayyid al-Murtada from among the Imamiyyah has concurred with them.

All the schools, except the Hanafi, also concur that it is not valid to perform wudhu or ghusl with al-ma' al-mudaf. According to Ibn Rushd's Bidayat al,-mujtahid wa nihayat al,-muqtasid[3] and Majma ' al-'anhur[4] Abu Hanifah has considered valid the performance of wudhu with date-wine (nabidh al-tamr) during travel. Further, it has been mentioned in Ibn Qudamah's al-Mughni[5] according to Abu Hanifah it is valid to perform wudhu with al,-ma al-mudaf. Al-Shaykh al-Saduq, an Imami, held that it is valid to perform wudhu and ghusl al-janabah with rose-water.

The Hanafis have relied for proving the validity of wudhu with al-ma' al-mudaf on this Qur'amc verse:

...فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبً ...

...And when you can find no water, then have recourse to wholesome dust... (***5:6***)

They say: The verse means, 'when you cannot find water, mutlaq or mudaf'; accordingly when al-ma' al-mudaf is available, it is not valid to resort to tayammum. The same verse has been relied upon by the imams of other schools to prove its invalidity. They observe: The word al-ma in the verse brings to one's mind al-ma' al-mutlaq and not al-ma al-mudaf.

Hence the meaning of the verse will be: If you do not find al-ma' al-mutlaq, then resort to tayammum. In this case the presence and absence of al-ma al-mudaf would be irrelevant. This is the correct opinion, because when you ask water from the owner of a cafe or someone else, he will not give you juice or soda, and it is a known fact that the subjects of the Shari'ah laws are understood on the basis of common usage.

This difference of opinion of the imams of fiqh concerning the interpretation of the word al-ma' in the verse is similar to the difference between men of letters concerning the meaning of a couplet or philologists concerning the meaning of a particular word. This difference is one of understanding and ijtihad and not of jurisprudential principles and sources.

Al-Kurr and al-Qullatan

All the schools concur that if the colour, taste or smell of water changes as a result of corning into contact with najasah, it will become najis, irrespective of its being qalil or kathir, flowing or stationary, mutlaq or mudaf. But if the smell of water is changed by the diffusion of the smell of najasah without its coming into contact with it (such as where there is a carcass nearby and the air carries its smell to the water) the water will remain tahir.

But in the case where najasah mixes with water without changing any of its qualities (colour, taste and smell), Malik, in one of the two opinions narrated from him, says: It is tahir whether it is qalil or kathir. The other schools observe: It is najis if qalil, and tahir if kathir.

But they differ in their definition of kathir. The Shafi'is and the Hanbalis[6] state: 'Kathir' is that which has reached two qullahs (literally meaning jar, pot, bucket and olla) in accordance with the tradition: If water has reached two qui/ah s it is not affected by khabath Two qullahs equal 500 Iraqi ritl (1 ritl is approximately 330 grams). Some scholars of al-'Azhar consider it equal to 12 tanakah. The Imamniyyah observe: 'Kathir' is that which is at least equal to a kurr, because of the tradition:

إذا بلغ الماء قدر كر لم ينجسه شيء

If water has reached the extent of a kurr nothing makes it najis.

A kurr is equal to 1200 Iraqi ritl and approximately to 27 tanakah. The Hanafis say: 'Kathir' means a quantity of water whose other end remains motionless if one end of it is disturbed.7

From this discussion it becomes clear that the Malikis do not take into consideration the measures qullatan or kurr, and there is no specific quantity for water in their opinion. Hence 'qalil' and 'kathir' quantities are similar for them in that when one of the qualities is changed they become najis, not otherwise. Their opinion has been favoured from among the Imammiyyah by Ibn Abi 'Aqil who has acted on the general import of the tradition:

الماء طهور لا ينجسه شيء إلا ما غلب ريحه أو طعمه أو لونه

Water is pure, and nothing makes it najis except that which affects its smell, taste or colour.

But this tradition is general ('amm) and the tradition of qullataln and kurr is particular (khass), and the particular enjoys precedence over the general.

The Hanafis also do not take into account qullatan and kurr relying instead on movement, and regarding this movement I have not found any trace in the Qur'an and the Sunnah.

A Subsidiary Issue

The Shafi'i and the Imami schools observe: Liquids other than water, e.g. vinegar and oil, become najis merely on coming into contact with najasah, be their quantity qalil or kathir, and regardless of any change that may affect them.

This opinion corresponds with the principles of the Shari'ah because that which is understood from the Prophet's statement:

إذا بلغ الماء قلتين لم ينجسه شيء

al-ma al-mutlaq. The Hanafis say: The rule applicable to other liquids is the same as that of al-ma al-mutlaq in relation to their being qalil and kathir, and hence only their qalil, and not kathir, quantity will become najis on contact.

It has been mentioned in the Hashiyah of Ibn 'Abidin8: The rule applicable to liquids, as per the most correct opinion, is the one applicable to water, and even if urine falls into a juice of kathir quantity it will not be polluted, and if blood from someone's foot mixes with the juice it will not become najis.

Flowing and Stationary Water (al-Jari wa al-Rakid)

The schools differ concerning flowing water. The Hanafis observe: Every kind of flowing water-irrespective of its being qalil or kathir and regardless of its connection to a source-will not become najis solely on contact. Rather, if there is najis water in one vessell and (tahir water in another and both of them are poured together from a height so that they mix in the air before coming down, all the water will be tahir.

Similar is the case if the two are made to flow on the ground9. Thus the criterion is flow, and wherever and in whatever manner it is achieved, flowing water will enjoy the status of al-ma al-kathir. But if it does not flow, then it is like qalil even if it is connected to a source.

On this basis, they have ruled that when rainwater falls on najis ground and does not flow on it, the ground will remain najis.

Consequently, according to the Hanafis, water which does not become najis on coming into contact with najasah is of two types: first, a body of stationary water whose other end remains motionless when one end of it is disturbed; second, flowing water, irrespective of its mode of flow. As to al-ma al.-qalil that becomes najis on coming into contact with najasah, it is a body of stationary water whose other end is set in motion if one end of it is disturbed.

The Shafiis neither differentiate between flowing and stationary water nor between one connected to a source and one not connected. The criterion is simply its quantity, qalil or kathir. Hence kathir, which is a body of water at least equal to qullatan, will not become najis on contact, and that which is less than qullatan will become najis, whether flowing or stationary, and whether welling from a source or not.They rely on the unqualified nature of the tradition:

إذا بلغ الماء قلتين لم يحمل خبثا

They say: When -water is flowing and there is najasah in it, if the body of the flow containing the najasah has reached the quantity of qullatan without there being a change in its qualities, all the water will be tahir; and if the quantity of the body is less than qullatan, it will be najis, although the water above and beneath the flowing body of water will be tahir.

They interpret a flowing portion (jiryah) as the body of water between the two banks of a stream. Therefore, according to the Shafi'is the difference between flowing and stationary water is that stationary water is considered altogether as a single body of water, while flowing water, although its parts are connected with each other, is divided into flowing portions, each such portion having a separate status and becoming najis only if it is qalil and not otherwise.

Consequently, if one's hand is najis and one washes it in one of the portions of flowing water and this portion is less than qullatan, it is not valid for one to drink from it or perform wudhu with it, because it is najis. One must wait for the next portion or move upstream or downstream.

A great difference is noticeable between the opinions of the Shafi'i and the Hanfai schools concerning flowing water; the Hanafis consider flowing water–even if little–as capable of purifying.

This is indicated by their example of two vessels of water, one tahir and the other najis, and the water becomes tahir if the two waters are mixed in a state of flow. The Shafi'is, on the other hand, do not give credence to flow even if it is a big stream and consider each 'flowing portion' separately despite the portions being connected with each other.

The Hanbalis say: Stationary water becomes najis solely on contact if it is less than qullatan, irrespective of whether it is connected to a source or not. But flowing water does not become najis unless its qualities (colour, smell and taste) change. Thus the rule applicable to it is the rule applicable to al–ma al–kathir , even if it is not connected to a source. This opinion is close to the one held by the Hanafis.

As to the Maliki view, we have already mentioned that in their opinion qalil does not become najis solely by contact. They also do not differentiate between stationary and flowing water. To sum up, they do not differentiate between qalil and kathir , flowing and stationary, and water connected to a source and otherwise.

The only criterion for them is the change of qualities due to najasah. Hence if najasah changes any one of the qualities of water it becomes najis, otherwise it remains tahir irrespective of whether it is flowing or stationary, qalil or kathir.

The Imamiyyah state: Flow has no effect at all and the criterion is the existence of a source of flow or the presence of kathir quantity. Hence if water is connected to a source if through a trickle–it will fall under the rule applicable to kathir. That is, it will not become naiis solely on contact even if it is qalil and stationary, because of the preservative power and abundance of the source.

When water is not connected to a source, if it amounts to a kurr nothing will make it najis except the change of one of its qualities; but if it is less than a kurr , it will become najis on contact irrespective of its being stationary or flowing, except where it flows downstream, where the upstream part will not become najis by an insignificant contact.

It follows that the presence or absence of flow is equal in the eyes of the Irnamiyyah, and it is observable that they stand apart from the other schools in considering the source of flow a criterion and in applying to the water connected to it the rule applicable to al–ma al–kathir even though it may appear to be qalil.

Al–'Allamah al–Hilli is an exception here, because he does not attach any importance to source and considers water to become najis solely on contact if its quantity is less than a kurr. Rainwater, during

rain, is considered by the Imamiyyah as equivalent to water connected to a source and al-ma al-kathir.

It does not become najis by contact and purifies the earth, clothes, vessels and other objects solely by raining upon them after the najasah itself is removed from them.

Purifying Najis Water

1. Concerning al-ma al-qalil that has become najis by contact without any of its qualities having undergone a change, the Shafi'is observe: If water is added to this najis water so that they together add up to qullatan, it will become both tahir and mutahhir, irrespective of whether the water added is tahir or najis.

And if this water is later separated after its coming together, it will retain its taharah. Therefore, if a person has two or more vessels, all containing najis water, and all their water is collected in a single place so that their total volume reaches qullatim, it will become both tahir and mutahhir[10] .

The Hanbalis and most Imami legists state: Al-ma al-qalil is not purified after it is increased to a kurr or qullatan irrespective of whether the added water is najis or tahir, because adding najis water to another of its kind does not make the whole tahir. And similarly al-ma al-qalil which is tahir becomes najis by coming into contact with najis water.

Hence it is necessary for purifying it that it be connected to a kurr quantity or to water having a source of flow as per the Imami view, and to qullatan as per the opinion of the Hanbalis.

2. If the qualities of al-ma al-kathir have changed because of najasah, it will become tahir if the change vanishes; it will not require anything else. This is the opinion of the Hanbali and the Shafi'i schools.

The Imamiyyah say: If al-ma al-kathir does not have a source of flow it will not become tahir on the vanishing of the change; rather, it is necessary to add a kurr of tahir water to it after the vanishing of the change, or to connect it with a source of flow, or there be rain over it.

And if water has a source of flow it becomes tahir solely by the vanishing of the change even if it is qalil. The Malikis observe: Water which has become najis is purified by pouring al-ma al-mutlaq over it until the qualities of the najasah disappear.

The Hanafis state: Najis water becomes tahir on flowing. Thus if there is najis water in a tub and water is poured over it to make it overflow, it will become tahir. Similarly, if there is najis water in a pool or a pit, and then another pit is dug beside it at a distance, even if small, and the water is made to flow in the channel between them so that it gathers in the other pit, it will become tahir.

Now if this water becomes najis a second time after becoming stationary in the second pit, a third pit will be dug to repeat the same process, and the water will again become tahir. This process can go on

infinitely.

Therefore a body of water that could not be used while it was stationary, can validly be used for wudhu' if caused to flow in any manner, even if it contains a carcass or people urinate in its downstream part without producing any observable effect in the flow. All this despite the knowledge that it is not connected to any ource of flow11.

Al-Najasat

Dog: It is najis except in the opinion of Malik, though he says: A vessel licked by a dog will be washed seven times not because it is najis, but because of ta'abbud (obedience to the command of the Lawgiver).

The Shafi'i and the Hanbali schools observe: A vessel licked by a dog will be washed seven times, of these once with dust. The Imamiyyah state: A vessel licked by a dog will be washed once with dust and then twice with water.

Pig: It is similar to a dog in the view of all the schools except the Imami which considers it necessary to wash on contamination with it seven times with water only. Similar to it is a dead juradh, which is a large land rat.

Corpse: The schools concur regarding the najasah of the carcass of a land animal-other than man-which possesses blood which flows on coming out. As to the human corpse, the Maliki, Shafi'i and Hanbali schools consider it tahir.

The Hanafis consider it tahir. The Hanafis consider it najis though it becomes tahir after ghusl. The Imami view is the same though they restrict it to the corpse of a Muslim. There is a consensus among all the schools concerning the (ahiuah of the musk derived from the musk-deer.

Taharah

Blood: The four Sunni schools concur upon the najasah of blood. Among exceptions to this is the blood of a martyr as long as it is on his body, the blood retained in the body of a slaughtered animal, and the blood of fish, lice, flea and bug.

According to the Imamiyyah, the blood of every animal whose blood flows on coming out is najis irrespective of whether it is human blood or not, the blood of a martyr or a non-martyr. They consider the blood of an animal which does not flow out, whether it is a terrestrial or sea animal, as tahir. Similarly, they consider the blood retained in a slaughtered animal as tahir.

Semen: The Imami, the Maliki and the Hanafi schools consider the semen of human beings and other animals as najis, though the Imamis exclude the animals whose blood does not flow out and regard their

semen and blood as tahir.

The Shafi'is regard the semen of human beings as well as other animals, except the dog and the pig, as tahir. According to the Hanbalis, human semen and that of animals used for food is tahir and that of other animals najis.

Pus: It is najis in the opinion of the four schools and tahir according to the Imamis.

Human Urine and Excrement: They are considered najis by consensus.

Animal Excrement: Animals other than man, are either birds or other animals, and among the two are those which are used for food and those which are not. Among the birds that are eaten is the pigeon and the hen, and of those which are not eaten are the eagle and the falcon (although Malik permits all of them for food).

Among animals other than birds, there are some which may be used for food, e.g. the cow and the sheep, and others which are unlawful, e.g. the wolf and the cat (although Malik allows them).

The schools differ in their opinions regarding the tahara of animal excrement. The Shafi'is say: Every kind of animal excrement is najis. The Imamis state: The excrement of all birds is tahir, so also that of every animal whose blood does not flow on coming out.

But those animals whose blood flows on coming out, if permissible for food--e.g. the camel and the sheep-their excrement is tahir; if not-such as the bear and other beasts of prey-their excrement is najis. The excrement of every animal whose lawfulness for eating is doubtful is tahir.

The Hanafis observe: The excrement of animals other than birds is najis. Among the birds themselves, those which excrete in mid-air--e.g. the pigeon and the sparrow-their excrement is tahir, and those which excrete on the ground--e.g. hens and geese-their excrement is najis.

According to the Hanbali and the Maliki schools, the excrement of animals permitted for food is tahir, and that of animals forbidden for food whose blood flows on coming out, is najis, irrespective of its being a bird or any other animal. All the schools concur that the excrement of any animal that eats human excrement is najis.

Liquid Intoxicants: All the schools consider it najis. The Imamiyyah add a further qualification: that which is intrinsically liquid. By this condition they include an intoxicant that dries due to an external factor. Hence it continues to remain najis. An Imami legist states: Both the Sunni and Slui 'ulama' concur regarding the najasah of liquor, except a small group from among us and them whose opposition is not taken notice of by the two sects.

Vomit: The four schools consider it najis while the Imamiyyah regard it as tahir.

Madhy and Wadhy: The Shafi, the Maliki and the Hanafi schools consider both the secretions najis, while the Imamiyyah consider both tahir. The Hanbalis differentiate between these secretions of animals that make lawful food and others which may not be used for food.

They regard these secretions of the former as tahir and of the latter as najis. 'Madhy' is the thin genital discharge emitted while caressing, and wadhy is a dense discharge emitted following micturition.

In the same manner as the four schools differ with the Imamiyyah in considering the vomit, rnadhy and

wadhy as najis, the Imamiyyah differ with the other schools concerning the najasah of the sweat of a junub person whose janabah is consequent to an unlawful sexual act. They say: The sweat of one who becomes junub by fornication, sodomy, masturbation or copulation with an animal and perspires before performing the ghusl, is najis.

Left-over: The Hanafi, the Shafi'i and the Hanbali schools state: The left-over of a dog and pig is najis. They also concur that the left-over of an ass and a donkey are tahir , though not mutahhir (purifying). Rather, the Hanbalis observe: Wudhu may not be performed by the water left-over by any animal whose meat is not eaten, except a cat and that which is smaller than it in e.g. rat and weasel.

The Hanafis have added to the left-over of the dog and the pig: the left-over of a drunk person immediately after drinking, the left-over of a cat immediately after eating a mouse, and the left-over of a wolf, lion, panther, leopard, fox and hyena[12].

The Imamiyyah state: The left-over of a najis animal--e.g. dog and pig-is najis, and that of a tahir animal is tahir , irrespective of its permissibility for food, the left-over of every animal is subordinate to its own tahirah and najasah.

The Malikis observe: The left-over water of a dog and a pig is tahir, and may be used for drinking and wudhu[13].

Rules of the Closet

The Shafi'i, the Maliki and the Hanbali schools concur that it is not haram to face, or keep one's back to the qiblah while relieving oneself in a closet or in open air, provided there is a screen. However, they differ concerning relieving oneself outdoors without a screen. The Shlafi'is and the Hanbalis do not prohibit it, and the Malikis do.

The Hanafis say: It is reprehensible to the extent of being haram, whether it be in closed or open space[14].

The Imamiyyah observe: 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.

All the schools concur that al-ma' al-mutahhir removes najasah from the urinary and anal outlets. The four schools also concur that stones also suffice for purifying the two outlets. The Imamiyyah say: The urinary outlet is not purified except with water; as to the anal outlet there is an option, either to use water or to wipe it thrice with stones or a tahir rag, provided the excrement has not spread around the outlet, in which case only water may be used.

According to the Imami, the Shafi'i and the Hanbali schools repetition is necessary when stones and the like are used for wiping, even if purification is achieved the first time. The Malikis and Hanafis do not consider repetition necessary ·and regard the purification of the outlet as sufficient. Similarly, the Hanafis allow the removal of najasah from the two outlets with any tahir liquid other than water.

Al-Mutahhirat (The Purifiers)

Al-ma' al-mutlaq: It is tahir and mutahhir by consensus.

Other liquids: Only according to the Hanafis is any tahir liquid, e.g. vinegar and rose-water, mutahhir.

The Ground: It purifies the soles of the feet and the sole of shoes in the opinion of the Imami and the Hanafi schools provided it is walked on or they are rubbed on it and the actual najasah is thereby removed.

The Sun: The Imamiyyah observe: The sun purifies the earth and other fixed objects, such as trees (including leaves and fruit), buildings and poles. Similarly, it purifies straw mats among movable things, not carpets and sofas. The condition for its purifying is that these objects should dry solely as a result of the sun's heat without the aid of wind.

The Hanafis state: Drying purifies the ground and trees irrespective of its being achieved by the sun or the wind. The Shafi'i, the Maliki and the Hanbali schools concur that the ground is neither purified by the sun nor the wind; rather it requires the pouring of water over it.

They differ concerning the manner of its purification.

Al-Istihalah (Transformation): It is the changing of one substance to another (e.g. the changing of deer's blood into musk). It results in purification, by consensus.

Fire: The Hanafis say: The burning of najasah by fire purifies provided the actual najasah disappears. They consider najis clay as tahir when it is turned into fired clay and najis oil tahir when made into soap. The Shafi'i and the Hanbali schools observe: Fire is not among the mutahhirat. They hold an extreme position in this regard and consider even the ash and smoke of a najis object as najis. The Malikis regard the ash as tahir and the smoke as najis.

According to the Imamiyyah fire plays no part in purification and the criterion in it is istihala. If najis wood

is transformed into ash or najis water into steam they become tahir. But if wood becomes charcoal and clay becomes earthenware, the najasah will remain because transformation has not occurred.

Tanning: The Hanafis observe: Tanning purifies the skin of a carcass and every other najis animal, except pigskin. As to the skin of a dog, it becomes tahir by tanning and fit to be prayed on[15]. The Shafi'is say: Tanning is mutahhir, except for the skin of the dog and the pig. The Malikis, the Hanbalis and the Imamis do not consider tanning as mutahhir, although the Hanbalis allow the use of a najis tanned skin where liquids are not involved, so that its use does not lead to the spread of najasah.

Carding: The Hanafis say: Cotton is purified. on being carded.

Disposition: According to the Hanafis, when a part of wheat and the like becomes najis, if a part of it equal to that which had become impure is disposed of by being eaten, gifted or sold, the remainder will be purified[16].

Rubbing: The Hanafis say: Semen if removed by rubbing does not require water, because taharah is achieved by rubbing.

Wiping: The Hanafis observe: An object which has a polished surface, e.g. iron, copper and gold becomes tahir solely by wiping and does not require water. The Imamis state: The removal of najasah from the body of an animal, achieved in any manner, is sufficient for purification; but vessels, clothes and the human body require to be purified by water after the removal of najasah.

Saliva: The Hanafis say: if the breast or a finger becomes najis, they become tahir on being licked thrice[17] .

Boiling: The Hanafis state: if najis oil or meat is boiled on fire, they become tahir. A group of Imamiyyah legists observe: The grape juice on boiling becomes najis, and when two-thirds of it evaporates on boiling it automatically becomes tahir.

Conditions Requiring Wudhu

Discharge of Urine, Faeces and Wind

There is a consensus among Muslims that discharge of urine and excrement, as well as wind, cause Wudhu" to break. The coming out of a worm, stone, blood and pus breaks the Wudhu" in the opinion of the Shafii, Hanafi and Hanbali schools and not in the opinion of the Malikis if these things have been produced in the stomach. But if they are not produced in the stomach (e.g. as when someone has swallowed a. pebble and it comes out) the Wudhu' will break. The Imamis observe: The Wudhu" will not break unless these things are discharged stained with excrement.

Discharge of Madhy and Wadhy

According to the four schools their discharge breaks the Wudhu", but doesn't according to the Imamiyyah . The Malikis exempt a person who suffers with a chronic flow of madhy.

Loss of Consciousness

If someone loses his senses due to intoxication, madness, fainting or epilepsy, Wudhu" is broken, by consensus of all the schools. As to sleep, the Imamiyyah say: Sleep breaks the Wudhu" when it prevails over the mind, the hearing and the vision so that the person asleep neither hears nor understands the talk of those present nor sees anyone of them, irrespective of whether he is lying down, standing or sitting. The Hanbali view is nearly the same. The Hanafi observe: If a person who has performed Wudhu" sleeps lying down or reclining on one of his sides, his Wudhu' breaks. But if he dozes while sitting, standing, kneeling or prostrating, it will not. Hence if one sleeps in his salam in any of its postures, his Wudhu' remains intact even if he sleeps for a long period[18].

The Shafi'is state: If (the sleeping posture is such that) the outlet of the wind is pressed firmly like a capped bottle, the Wudhu' is not broken by sleep, otherwise it is broken. The Mailikis differentiate between heavy and light sleep. Hence if sleep is light the Wudhu' remains intact; so is the case if the person in Wudhu' sleeps deeply for a short period while his outlet is blocked. But if he sleeps soundly for a long duration, his Wudhu' will break irrespective of whether the outlet is blocked or not.

Emission of Semen

In the opinion of the Hanafis, the Mailikis and the Hanbalis, emission of semen breaks the Wudhu'; it does not in the opinion of the Shafi'is. The Imamiyyah state: Emission of semen requires ghusl and not Wudhu'.

Touch

The Shafi'is observe: If a man in Wudhu' touches (the skin of) an ajnabi woman (any woman apart from wife and female relations within prohibited degrees of marriage) without there being any intervening medium (like clothing), his Wudhu' will break. But if the woman is not an ajnabi –such as one's mother or sister–the Wudhu' will not break. The Hanafis say: Wudhu' is not broken except by touch accompanied with erection.

The Imamiyyah say: Touch has absolutely no effect. That was concerning touching women. As to a person in Wudhu' touching his frontal or rear private parts without intervening medium, the Imami and the Hanafi schools do not regard that as invaliding Wudhu'. The Shafi'is and the Hanbalis say: Wudhu' is invalidated by such a touch regardless of its being with the palm of one's hand or its back.

The Malikis are said to differentiate between touching with the palm–in which case the Wudhu' is

broken–and touching with the back of the hand–in which case it remains intact[19].

Vomiting

According to the Hanbali school, vomiting in general breaks Wudhu'. In the opinion of the Hanafis it does so only when it fills the mouth. In the opinion of the Shafi'i, the Imami and the Maliki schools, it does not break the Wudhu'.

Blood and Pus

According to the Imamiyyah, the Malikis and the Shafis, anything that comes out of the body from a place other than the two outlets–e.g. blood and pus–does not invalidate the Wudhu". The Wudhu" is broken, say the Hanafis, if it spreads from its source. The Hanbalis say: The Wudhu" is broken if the quantity of blood or pus coming out is large.

Laughter

There is a consensus among all the Muslims that laughter makes salat batil. It does not invalidate the Wudhu", during or outside salat, except in the opinion of the Hanafis, who say: Wudhu" is broken if one laughs during Salat, but not if laughter occurs outside it.

Meat of a Slaughtered Animal

Only the Hanbalis consider the Wudhu' to break if a person eats the meat of a slaughtered animal.

Istihadah Blood

Al–'Allamah al–Hilli, one of the major Imami legists, writes in al–Tadhkirah : The discharge of istihada blood, if its quantity is little, requires Wudhu'. Other Imami 'ulama', except Ibn Abi 'Aqil, have also adopted this view. Malik observes: Wudhu' is not compulsory for a woman having istihadah discharge.

The Objects of Wudhu'

Legists consider hadath to be of two kinds: minor and major. Minor hadath requires only wutdu, and the major one is of two types: that which requires only ghusl and that which requires both ghusl and Wudhu'. The details will be given shortly. The presence of the minor hadath (al–hadath al–'asghar) is a hindrance to the performance of the following acts:

1. Wajab and mustahabb salat, as per the consensus of all the schools. The Imamiyyah have excepted the funeral prayer (salm al–janazah), observing: It is not necessary to be tahir for salat al–janazah, though it is mustahabb to be so, considering that it is a prayer and not salat in its real sense. This will be further discussed in its proper place.

2. Tawaaf, like salat, is not valid without taharah according to the Mailiki, Shafi'i, Imami and Hanbali schools, in accordance with the tradition :

الطواف في البيت صلاة

(Tawaaf in the Sanctuary is salat). The Hanafis say: One who performs tawaaf of the Ka'bah in a state of hadath performs it validly, though he sins thereby.

3. According to the four schools, tahirah is wajib for performing prostration (sujud) made obligatory by the recitation of certain verses of the Qur'an and the prostration performed to express gratitude (shukr). The Imamiyyah consider it mustahabb.

4. All the schools concur that it is prohibited to touch the script of the Qur'an without taharah, but they differ regarding the permissibility of someone in a state of minor hadath writing the Qur'an, reading it from a script or from memory, touching it through an intervening medium and wearing it as an amulet.

The Malikis observe: It is not permissible for him to write it or touch its binding even through an intervening medium, though he may read it from a script or from memory. But they, i.e. the Malikis, differ among themselves regarding carrying it as an amulet.

The Hanbalis state: Writing it and carrying it as an amulet with a cover is permissible.

The Shafi'is say: It is not permissible to touch its cover even if detached from it and its hanger while it is hanging from it, though it is permissible to write it, carry it as an amulet, and to touch a cloth embroidered with Qur'anic verses.

The Hanafis observe: It is not permissible to write or touch the Qur'an even if it is written in a different language; but it is permissible to read it from memory.

According to the Imami school, it is haram to touch Arabic script of the Qur'an without an intervening medium, irrespective of whether the script is in the Qur'an it If or somewhere else. But it is not haram to recite or write it, or carry it as an amulet and to touch its non-Arabic transcription, excepting the glorious name, 'Allah,' which it is haram for a person in a state of hadath to touch, regardless of the language in which it is written and irrespective of whether it occurs in the Qur'an or elsewhere.

The Essentials of Wudhu' (Fara'id al-Wudhu')

Niyyah

It means the intention to perform an act with a motive of obedience and submission to the command of God Almighty. The schools concur that niyyah is essential for wudhu' and its time is at the

commencement of Wudhu".The Hanafis say: The validity of salat does not depend upon a Wudhu" performed with niyyah.

Hence if a person washes to cool or cleanse himself and it includes those pans of the body which are washed in Wudhu' and then performs salat, his salat is valid, because the purpose of the Wudhu' is to attain taharah and it has been achieved. But they exclude water which is mixed with water left over by a donkey or mixed with date-wine, considering niyyah necessary in these cases20.

Washing the Face

'Washing the face' means causing water to flow over it, and it is obligatory to do it once. Its extent lengthwise is from the place where the hair grow to the end of the chin. The Shafi'is observe: It is also obligatory to wash the area under the chin. Its extent breadth-wise, in the opinion of the Imamis and the Malikis, 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), while in the opinion of the other schools it is the area between the two earlobes.

The Imamiyyah consider it wajib to start washing the face down from the top and invalid to do its reverse. The four schools say: That which is wajib is to wash the face, irrespective of how it is done and from where it starts, though it is better to start from the top.

Washing of Hands

The Muslims concur that it is wajib to wash the hands along with the elbows once. The Imamiyyah consider it wajib to start from the elbows and consider its reverse batil (invalid). Similarly, they consider it wajib to wash the right hand before the left. The other schools observe: That which is wajib is to wash them, in any manner, though washing the right hand first and starting up from the fingers and washing towards the elbow is better.

Wiping the Head

The Hanbalis observe: It is wajib to wipe the whole head and the ears. In their opinion washing suffices in place of wiping, provided the hand is passed over the head. The Malikis say: It is wajib to wipe the whole head except the ears.

The Hanafis regard as wajib the wiping of one-fourth of the head. It also suffices if the head is dipped in water or water is poured over it.

The Shafi'is state: It is wajib to wipe a part of the head, even if little. Washing and sprinkling also suffice in place of wiping.

The Imamiyyah observe: It is wajib to wipe a part of the frontal part of the head and the wiping of a

minimal area is sufficient. It is not valid to wash or sprinkle. They also consider it wajib that the wiping should be with the wetness of the earlier act of the Wudhu' performed (i.e. the washing of hands).

Hence if hands are rinsed anew with water for wiping the Wudhu' will become batil. The other four schools consider it wajib that new water be used21. As to wiping the turban ('imamah), the Hanbalis permit it, provided an end of the turban hangs down in the manner termed taht al-Hanak. The Hanafis, the Shafi'is and the Mailikis say: It is valid in the presence of an excuse, not ithout it.

The Imamis observe: It is in no manner valid to wipe the turban because of the words of the Qur'an وامسحوا برؤوسكم (and wipe your heads), and the turban is not-'head'

The Two Feet

The four schools state: It is wajib to wash the two feet along with the ankles once. The Imamiyyah observe: It is wajib to wipe the two feet with the wetness of the earlier act of Wudhu' from the head of the toes to the ankles.

By 'ankle' is implied the raised bone of the foot It is valid to wipe the left foot before the right one in the opinion of all the schools, though it is against precaution (khilaf al-'ihtiyat') in the view of the Imamiyyah and against preference (khilaf al-'awla) in the opinion of the other four ·schools.

The difference of opinion concerning the wiping or washing of the feet has its basis in the interpretation of the sixth verse of Surat al-Maidah:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ

O believers, when you stand up to pray, wash your faces, and your hands up to the elbows, and wipe your heads, and your feet up to the ankles (***5:6***)

Those interested in investigating the meaning of the verse should refer to al-Razi's exegesis of the Qur'an.

The four schools allow the wiping of shoes and socks instead of washing the feet, while the Imamis consider it as invalid in accordance with this statement of

Imam 'Ali ('a):

ما أبالي أمسح على الخفين أو على ظهر عير بالفلاة

I see no difference between the wiping of the shoes and wiping the back of a wild ass.

Sequence (al-Tartib)

It is in accordance with what the verse mentions: First the face, then the hands, and then the head, followed by the feet. This sequence is wajib and a condition for the validity of Wudhu" in the opinion of the Imamis, Shafi'is and Hanbalis.

The Hanafis and the Malikis say: The observance of the sequence is not wajib and it is permissible to start with the feet and end with the face.

It is the observance of continuity in the washing of the different parts, i.e. to proceed immediately to the next act after having completed the earlier. The Imamis and the Hanbalis consider it wajib, the former adding a further condition that the part washed earlier should not dry before beginning washing the next. Hence if the whole of the part washed earlier dries the Wudhu' will become batil and it will be wajib to start it anew.

The Hanafis and the Shafi'is say: Continuity is not obligatory, though it is reprehensible (makruh) to separate the washing of the different parts without any excuse, and on the presence of an excuse the karahah disappears.

The Malikis observe: The observance of continuity is wajib only when the person performing Wudhu' is conscious of it and when no unforeseen incident takes place (e.g. spilling of the water he had brought for performing Wudhu'). Hence if he washes the face and forgets to wash the hands, or when he lacks the amount of water he believes to be necessary for taharah, he may complete the Wudhu' from where he had left off, even if a period of time has passed.

Conditions of Wudhu'

Wudhu" has certain conditions. Among them are: The water used should be mutlaq and tahir and must not have been used for removing khabath or Hadath, as per the details given while discussing water. There should be no hindrance such as illness in the way of using water or any urgent need for it.

Moreover, the parts of the body involved in Wudhu' should be tahir and without a covering that might prevent water from reaching the skin. Also there should be sufficient time. The last condition will be dealt with in detail in the chapter on tayammum. All or most of these conditions are accepted by all the schools.

The Imamiyyah further consider it necessary that the water and the vessel used for Wudhu' should not have been usurped, and the place where Wudhu' is performed and where its water falls should be legitimate and not encroached land. If either of these two conditions does not exist, the Wudhu' will be batil. In the view of the other schools the Wudhu' will be valid though the performer of such a Wudhu' will have sinned[22].

Mustahabbat of Wudhu'

The number of acts recommended (mustahabb) in Wudhu' is very large. They include starting by washing the hands, rinsing the mouth and drawing water into the nose. The Hanbalis consider the last two wajib. Wiping the ears is also among them, though the Hanbalis consider it wajib as well and the Imamis impermissible. Brushing the teeth and facing the qiblah while performing Wudhu' is recommended and so is the reciting of traditional prayers. It also includes, in the opinion of the four schools, the washing of the face and hands twice and thrice.

The Imamis observe: Washing once is wajib, twice mustahabb, and thrice bidah (heretical) and the person doing so is a sinner if he performs it as a religious duty. But if he does not, there is no sin upon him, although the Wudhu' will become batil on his wiping (the head) with this water[23]. There are many other recommended acts which are mentioned in voluminous books.

Doubt Regarding Taharah and Hadath

If a person certain of having been tahir doubts whether a hadath has occurred, he remains tahir. But if a person certain of hadath having occurred doubts having achieved tahirah later, his hadath shall remain. That is, he shall act in accordance with his earlier certainty and brush aside the subsequent doubt. This is based on the following tradition.

لا تنقض اليقين أبدا بالشك، ولكن تنقضه بيقين مثله

A condition of certainty is never invalidated by a doubt, but it can be invalidated by a certainty resembling it.

This principle has not been disregarded by anyone except the Mailikis, who say: If a person is certain of having been tahir and doubts later about the occurrence of hadath, he is considered tahir. But they do not differentiate between the two situations.

If both taharah and hadath have occurred and it is not known which of the two was subsequent so as to be made the basis, the Hanafis consider the person in such a situation tahir while the Imami authorities consider his hadath to prevail.

The Shafi'is and the Hanbalis observe: The opposite of the earlier condition will be accepted. Hence if he possessed taharah earlier he will now be considered in the condition of hadath and vice versa.

There is a fourth view which takes the condition prior to the occurrence of the taharah and hadath by denying the effect of both, because both possibilities being equal are nullified by the conflict, leaving the prior condition to be relied upon. That which is nearer to caution in this matter of ritual is always to renew

taharah irrespective of whether the prior condition is known or unknown.

The Imamis and the Hanbalis say: When a person performing Wudhu' doubts whether he has washed a particular part or wiped his head, if the doubt occurs while performing the Wudhu' he will repeat the doubtful part and complete rest of the Wudhu'. But if the doubt occurs after the completion of Wudhu' it will not be heeded, because it is a doubt which has occurred in an 'ibadah after its completion.

Al-'Allamah al-Hilli has narrated in al.-Tadhkirah from some Shafi'is that they do not differentiate between a doubt occurring during Wudhu' and one occurring after its completion. They consider it wajib to restart from the place of doubt and to complete the Wudhu' in both the situations.

The Hanafis observe: Every part of the Wudhu' will be viewed separately. Hence if there occurs a doubt concerning a particular part before moving on to the next it will be repeated and not otherwise. For example, if he doubts having washed his face before starting washing his hands, he will restart from the face, and if he has started washing the hands he will carry on without heeding the doubt

All the schools concur that the doubt of a chronically uncertain person (kathir al-shakk) is not a valid doubt; i.e. his doubt has no value and it is wajib for him to carry on without heeding it, whatever the circumstances.

1. Ibn Qudamah, al-Mughni, vol. 1, p. 19
2. Ibn Qudamah in al-Mughni, vol. 1, p. 22, 3rd ed., and Ibn 'Abidin, vol. 1, p. 140, printed by al-Maymaniyyah
3. p. 32, 1354 H. ed
4. p. 37, Istanbul
5. vol. 1, p. 12
6. The Hanbalis observe: Al-ma 'al-kathir does become najis on contact, provided the najasah is not urine or excrement. On contact with the two it will become najis, irrespective of whether its qualities have changed or not, unless it happens to be like those puddles visible on the way to Makkah (Ibo Qudamah, al-Mughni, vol. 1).
7. Apart from these, there are other definitions of al-ma ' al-kthir which have been omitted. Among them are those which state that al-kathir is forty qullah s, 2 pails (dalw), and 40 pails.
8. vol. 1, p. 130, printed by al-Maymaniyyah
9. Ibn 'Abidin, vol. 1, p. 131
10. Sharh al-Muhadhdhab, vol. I, p. 136
11. Ibn 'Abidin, vol. 1, p. 131
12. Ibn 'Abidin, vol. 1, p. 156
13. Ibn Qudfunah, al-Mughni, vol. 1, p. 47, 3rd ed
14. al-Fiqh 'ala al-madhahib al-'arba'ah, vol. I, bahth qada' al-Hajah
15. al-Fiqh 'ala al-madhaib al-'arba'ah, vol. 1, mabhath izalat al-najasah
16. Ibn 'Abidin, vol. 1, p. 119
17. Ibn 'Abidin, vol. 1, p. 215
18. al-Shi'rani, al-Mizia, mabhath asbab al-hadath
19. Ibn Rushd, al-Bidayah wa al-nihayah, mabhath nawiqid al-Wudhu'
20. Ibn 'Abidin, vol. 1, p. 76
21. Ibn Qudamah, al-Mughni, vol. 1, fast mash al-ra's and al-'Allamah al-Hilli, al-Tadhkirah
22. Ibn 'Abidin, vol. 1 p. 128, and Sharh al-Muhadhdhab, vol. 1, p. 251
23. Aqa Ridla al-Hamadani's Misbah al-faqih

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 not[1].

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'

ولا جنبا إلا عباري سبيل

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 pans, 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:

I. 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 ghusls 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 ghusal-'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 Shfai'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 pans 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 Hnafis 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 ghalsil 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, Mfiliki 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 nof 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.

Niyyah, 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 Shfafi'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 tayamnuun.. 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 pans 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 thee 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 inheritance[4].

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 ni.yyah 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 it[5] 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 alli 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 جنانك، 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, mabhath 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)

Al-Tayammum

Performing tayammum (as a substitute for Wudhu') is justified under certain circumstances. It is performed in a particular manner and with specific substances and there are certain rules which are applicable to it.

Conditions in which Tayammum is Performed

The schools differ concerning the permissibility of tayammum by a healthy person who is not travelling, in the event of his not finding water (for Wudhu'). The question is, does the absence of water justify the performance of tayammum only in the state of journey or ill-health, or is the permissibility general and includes the state of health and non-travel?

Abu Hanifah observes: A healthy person who is not travelling will neither perform tayammum nor salat if he is unable to find water[1]. He cites verse 6 of Surat al-Ma'idah as the basis of this opinion:

وَإِنْ كُنْتُمْ مَرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا

If you are sick or on a journey, or if any of you comes from the privy, or you have touched women, and you can find no water, then perform tayammum on wholesome dust…. (***5:6***)

The verse (the Hanafis say) is explicit that the sole unavailability of water does not justify tayammum unless the person is sick or on a journey. Therefore, if tayammum is limited to a sick person and a traveller, a healthy person who is not travelling has no obligation to perform salat in this situation because he cannot acquire tahara.

The remaining schools concur that a person not possessing water will perform tayammum and offer salatt regardless of his being a traveller or not, and irrespective of his being healthy or sick. This is in consonance with the following mutwatir tradition accepted by all the schools:

إن الصعيد الطيب طهور للمسلم، وان لم يجد الماء عشر سنين.

Wholesome dust is surely a purifier for a Muslim even if he does not find water for ten years.

These schools omit the condition of travel mentioned in the verse since it also implies the usual non-availability of water during journeys in the past.

Apart from this, if the argument of Abu Hanifah be accepted, the position of a traveller and a sick person

would be more taxing than that of a non-travelling healthy person, because salat will be wajib on the two and not on the latter.

The Shafi'is and the Hanbalis say: If water available is not sufficient for performing complete tahara, it is wajib to perform as much of it as is possible with water and to do tayammum for the remaining parts. Hence if he has water which is only sufficient for washing the face, he will wash the face and then resort to tayammum.

The other schools observe: The presence of insufficient water is equivalent to its absence, and nothing is wajib in such a situation except tayammum.

However, the issue of non-availability of water does not have that applicability in our times because water is available in sufficient quantity for all people and at all places, at home as well as during travel.

The reason the legists dealt in detail with the wujub of searching for water and the extent of effort to be made, and with the case when there is a danger to one's life, ions or honour from robbers and wild animals and the case where he finds a well without a bucket, and the case where he has to pay more than the usual price for it, etc., was that travellers used to face great difficulty in obtaining water.

Harm to Health

The schools concur that among the reasons justifying tayammum is the harm the use of water may do to one's health or the probability of such a harm. Anyone who fears falling ill, or fears that his illness would become more acute or prolonged or that its cure would become more difficult, can reason to tayammum for tahara instead of using water.

A Subsidiary issue

Where there is no time for using water (such as when a person wakes up in the morning and finds so little time left for the wajib salat that if he intends to procure water for fahiuah he would have to perform its qada after the appointed time while if he resorts to tayammum he would be able to perform it ada') is it wajib for such a person to perform tayammum or must he perform tahara with water?

The Malikis and the Imamis observe: He should perform salat by making tayammum, but must repeat the salat with Wudhu'.

The Shafi'is say: In no situation is tayammum permissible in the presence of water.

The Hanbalis differentiate between the states of journey and stay, observing: If such a situation arises during a journey, he must perform salat with tayammum without being required to repeat it, and if it arises during a state of non-travel, there will be no justification for tayammum.

The Hanafis state: Tayammum is permissible in such a situation for performing those supererogatory

(nafilah) salats which have a specific time of performance, e.g. the sunnah salats after the noon and sunset prayer. But tayammum is not permissible for a wajib salat if water is available, even if there is insufficient time; rather, he will do wu4u' and perform the qada', and if he performs it with a tayammum during the appointed time, he will have to repeat it after the time has passed.

The Substance on which Tayammum is Performed

There is a consensus among the schools regarding the wujub of performing tayammum on 'wholesome dust' (al.-sa'id al-tahur) in consonance with the verse and the noble tradition

خلقت الأرض مسجدا وطهورا

(The earth has been created a place for performing prostration and as a purifier). Tayyib means 'pure', and 'pure' means that which has not come into contact with najiisah. The schools differ concerning the interpretation of the word 'sa'id'.

The Hanafis and a group of Imamis understand it to mean the ground surface and therefore permit tayammum on dust, and sand and rocks and prohibit it on minerals such as quicklime, salt, arsenic, etc.

The Shafi'is interpret it as soil (turiib) and sand and consider tayammum wajib on these two if they contain fine dust. They do not permit tayammum on stones.

The Hanbalis take it to mean only dust and hence tayammum is not valid in their opinion if performed on sand and stones. This is also the opinion of most Imami legists, though they allow it on sand and rocks in case of necessity.

The Malikis take the word sa'id rather liberally and include in its meaning dust, sand, rocks, snow and minerals provided they have not been moved from their place. But they exclude gold, silver and precious stones and do not permit tayamnuun on them under any condition.

The Manner of Performing Tayammum

The schools concur that tayamnuun is not valid without niyyah. Even the Hanafis observe: It is required in tayammum though not in wuu; and as they accept that tayammum removes hadath like Wudhu' and ghusl, they allow the niyyah of removing hadath to be made for its performance just like the niyyah of permissibility of salat (istibahat al-salat).

The other schools state: Tayammum only permits hadath without removing it. Hence a person performing tayammum should make niyyah of permissibility of that which requires tahara and not niyyah of removal of hadath But an Imami legist says: The niyyah of removal of hadath is valid with the knowledge that tayammum does not remove it, because the niyyah of removal of hadath necessarily

implies the niyyah of permissibility.

The best way of reconciling all these opinions for a person performing tayammum is that he make niyyah of seeking the nearness of God (qurbatan ila Allah) by obeying the command pertaining to tayammum, irrespective of whether this command pertains to it as such or arises from the command of salat or some other act which requires the performance of tayammum.

The schools, in the same way as they differ in interpreting the word sa'id, also differ in their interpretation of the words wajh (face) and aydi (hands) occurring in the verse.

The four Sunni schools and Ibn Babawayh, an Imami, say: By wajh is meant the whole face including the beard, and by yadayn, the hands and the wrists along with the elbows. Accordingly, the parts of the face and arms to be wiped in tayammum are exactly the same as (are washed) in wut/.ii'. Thus the hands will be struck twice (on that upon which tayammum is valid), and the first time the whole face will be wiped and the second time the two arms from the end of the fingers to the elbows.

The Malikis and the Hanbalis say: The wiping of hands is fard up to the wrist-bones, and sunnah up to the elbows.

The Imamis state: The word wajh is to be interpreted as 'part of the face because ba' in the verse فامسحوا بوجوهكم connotes the meaning of a part (tab'id) when prefixed to an object (maf'ul). And if the ba' does not signify a part, it will have to be considered superfluous because the verb imsahu is transitive by itself. The part of the face that must be wiped in their opinion is from the upper part of the forehead where the hair grow, to the upper part of the nose including the eye-brows.

They say: By yadayn is meant only the hands (kaffan); since the word yad in Arabic has various meanings and the most common of them in usage is kaff 2.

Accordingly, the manner of performing tayammum in the Imami school is by first striking on the earth with the palms and wiping the face from where the hairs grow to the upper part of the nose, then striking a second time and wiping the entire back of the right hand with the left palm and then the entire back of the left hand with the right palm.

The Imamis also consider sequence to be wajib; hence if the hands are wiped before the face, the tayammum becomes invalid. Similarly, it is necessary to start from the top and proceed downwards; doing the opposite would invalidate it. Most of them consider striking on the earth as wajib, so that if one only places his hands on it without striking, the tayammum becomes batil.

The Hanafis observe: If dust settles on his face and one places his hand on it and wipes it, he can do without striking the earth.

All the schools concur that the taharah of the parts of the body involved in tayammum is a necessary condition, irrespective of whether it is the wiping or the wiped part. The same applies to the substance

on which tayammum is being performed.

They also concur that it is ntial to remove one's ring while performing tayammum and that just moving it, as in Wudhu'.', is not sufficient.

They differ concerning continuity; the Imamis and the Malikis require it between its different parts. Hence if there is a time gap between them which vitiates continuity the tayammum becomes invalid.

The Hanbalis say: Both continuity and sequence are wajib if the tayammum is for minor hadath, but none for major hadath The Shafi'is require sequence, not continuity. The Hanafis require neither sequence nor continuity.

The Rules of Tayammum

1. All the schools, except the Hanafi, concur that it is not valid to perform tayammum for a salat before its time has arrived. The Hanafis say: Tayammum is valid before the arrival of time.

The Imamis observe: If one performs tayammum before the time of salat for any other purpose for which tayammum is permissible and then the time of salat arrives while his tayammum is still intact, he may perform salat with that tayammum.

The Imamis and the Hanafis allow the performance of two salats with a single tayammum.

The Shafi'is and the Malikis say: It is not permissible to offer two obligatory (fard.) salats with a single tayammum. The Hanbalis allow them, both as ada and qada'.

2. After one performs tayammum in accordance with the Shari'ah, he will be like one who has performed tahara with water, and everything which is permissible for the latter will be permissible for him. The tayammum is broken by all those kinds of major and minor hadath which require renewal of Wudhu" or ghusl, as well as on the disappearance of the excuse of unavailability of water or disease.

3. If water becomes available after the performance of tayammum but before beginning the salat, tayammum becomes invalid in the opinion of all the schools. If it becomes available while he is performing the salat, some Imamis say: If that happens before his first ruku', both the tayammum and salat become batil, and if after the ruku, he will complete the salat, which will be deemed valid.

The Shafi'is, Malikis and Hanbalis in one of the two opinions narrated by them, as well as some Imamis state: After saying the takbirat al-'ihriun, he will continue the salat without paying attention, and the salat will be valid because God Almighty says: ولا تبطلوا أعمالكم (And do not make your acts invalid). The Hanafis observe: Such a salat will be invalid. The schools concur that if the justification (for performing tayammum) disappears after the performance of the salat while its time is still there, one is not obliged to repeat the salat again.

If a person in state of janabah performs tayamnuun in place of ghusl and then a minor hadath occurs and there is water enough for only perfomring Wudhu', will Wudhu' be wajib along with the repetition of tayammum in place of ghusl.

The Malikis and most Imamis observe: He will perform tayamnuun in the place of ghusl.

The Hanafis, Shafi'is, Hanbalis and a group of Imamis state: He will perform Wudhu' because the tayammum was in place of janabah and was broken by something other than janabah. Hence he will not become junub again unless the janabah recurs, and he will be considered as being affected only by the minor hadath.

The Hanbalis differ from all the other schools in their acceptance of tayammum for material najiisah present on the body3.

If both the ways of acquiring taha.rah (i.e. with water and tayamnum) are not possible (such as in the case of a person who is imprisoned in a place where there is neither water nor any substance on which tayamnuun is performed, or he is so ill that he can neither perform Wudhu" nor tayamnuun and there is no one to help him in peforming them) will it be wajib to perform salat without taharah? Furthher, presuming that the salar is wajib and he performs it, must he repeat it after taharah becomes possible?

The Malikis say: He is not required to perform salat, neither ada nor qada.'.

The Hanafis and the Shafi'is observe: It will remain wajib, either as ada or qada'. In the opinion of the Hanafis, the meaning of performing it ada' is that he will simulate the movements of a musalli, while the Shafi'is require him to perform real salat. After the excuse disappears he will repeat this salar as required by the Shari'ah.

Most Imamis state: He is not required to offer it as ada',though it will remain wajib as qada'.

The Schools and the Verse Concerning Tayammum

It became clear from our discussion on the topics of al-ma al-mudaf , the causes which break the Wudhu", and tayammum, that the difference of opinion among the schools of Islamic fiqh relates mostly to the interpretation of the words of the verse dealing with tayammum:

وَإِنْ كُنْتُمْ مَرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُمْ مِنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ

If you are sick or on a journey, or if any of you comes from the privy, or you have touched women and you can find no water, then perform tayammum on wholesome dust and wipe your faces.... (***5:6***)

The legists first differ concerning one on whom tayammum is obligatory in the event of unavailability of water: is it one who is sick or on a journey, or does it also apply to a healthy non-traveller?

Is the meaning of 'touching' women sexual intercourse or just touching them with the hand? Does the word 'water' mean only plain water (al-ma al-mutlaq) or does it include al-ma al-mudaf as well? Does the word sa'id mean just dust or does it signify the surface of the earth, irrespective of its being dusty, sandy or rocky? Does the word wajh mean the complete face or just a part of it? Does the word yad imply only the hand or does it include the hand and the forearm? Here we will give a summary of the opinions discussed:

1. Abu Hanifah observes: Tayammum is not valid in the absence of water for a healthy person who is not travelling, and thus salat is also not wajib upon him because the verse permits only a sick person and a traveller to perform tayammum in the absence of water.

The four schools say: Touching a woman who is a 'stranger' (ajnabiyyah) with the hand has exactly the same effect as returning from the privy and breaks the Wudhu'.

The Imamis state: Sexual intercourse breaks the taharah and not touching with the hand.

2. The Hanafis say: The meaning of فلم تجدوا ماء فتيمموا is water, either mutlaq or mudaf. The other schools say: The word 'water' occurring in the verse is commonly understood to mean plain water and not al-ma al-mudaf.

3. The Hanafis and a group from among the Imamis observe: The word sa'id means dust, sand and rock.

The Shafi'is say: It means only dust and sand. According to the Hanbalis it means only dust. The Malikis state: It includes dust, sand, rock, snow and minerals.

The four schools say: By wajh in the verse is meant the whole face.

The Imamis say: It means only a part of it.

4. The four schools observe: The word aydi should be interpreted as including the hands, wrists and elbows.

The Imamis consider it to mean only the hands.

This difference of opinion among the schools, if it proves anything, proves that this divergence of views is superficial, not substantial, and one of language and not of principle. It resembles the difference between philologists concerning a particular word or between men of letters concerning the interpretation of a verse or couplet. This is the reason why we find that legists belonging to the same school differ among themselves exactly like one school differing with another.

1. Ibn Rushd, al-Bidayah wa al-nihayah, i, 63, 1935 ed. and Ibn Qudamah, al-Mughni, i, 234, 3rd ed.).
2. Ibn Rushd, al-Bidayah wa al-nihayah, i, 66
3. al-Fiqh 'ala al-madhahib al-'arba'ah, mabhath arkan al-tayammum

2. Salat, Ritual Prayer

Salat

بِسْمِ اللَّـهِ الرَّحْمَـٰنِ الرَّحِيمِ

Salat (prayer) is either obligatory (*wajib*) or supererogatory (*mandub*).The most important of prayers are the obligatory prayers performed daily five times, and there is consensus among Muslims that a person who denies or doubts their *wujub* is not a Muslim, even if he recites the *shahadah*, for these prayers are among the 'pillars' (*arkan*) of Islam. They are the established necessity of the faith (*al-Din*) that does not need any *ijtihad* or study, *taqlid* or questioning.

The schools differ regarding a person who does not perform the *salat* (*tarik al-salat*) due to laziness or neglect though believes in its *wujub*. The Shafi'is, Malikis and Hanbalis observe: He will be killed.

The Hanafis state: He will get perpetual imprisonment unless he starts performing the *salat*.

The Imamis state: Whoever neglects any *wajib* duty such as *salat, zakat, khums, hajj* and *sawm*, will be chastened by the *hakim* in a manner deemed appropriate by him. If he does not yield to remonstrance, he will be chastened a second time, and if he does not turn penitent, a third time. And if he continues in the same manner, he will be killed the fourth time (al-Shaykh al-Kabir, *Kashf al-Ghita*, 1317 ed., p79).

The Daily Supererogatory Prayers (Rawatib)

Supererogatory prayers are of various kinds, and among them are those which are performed along with the obligatory daily prayers (*fara'id*). The schools differ regarding the number of their *rak'ahs*. The Shafi'is consider them to be eleven *rak'ahs*: two before the morning (*subh*) prayer, two before the noon (*zuhr*) prayer and two after it, two after the sunset (*maghrib*) prayer,two after the night ('*isha'*) prayer and a single *rak'ah* called *'al-watirah.'*

The Hanbalis consider them to be ten *rak'ahs*; two *rak'ahs* before and after the noon prayer, two after

the sunset and the night prayer, and two *rak'ahs* before the morning prayer.

According to the Malikis there is no fixed number for the supererogatory (*nawafil*) prayers performed with the obligatory *salat*, though it is best to offer four *rak'ahs* before the *zuhr* and six after the *maghrib* prayer.

The Hanafis classify the *nawafil* performed along with the *fara'id* into '*masnunah'* and '*mandubah'*.[1] The '*masnunah'* are five: two *rak'ahs* before the *subh*; four before the *zuhr*, and two after it, except on Friday; two after the *maghrib* and two after the '*isha'* prayer.

The '*mandubah'* are four: four –or two– *rak'ahs* before the '*asr*, six after the *maghrib*, and four before and after the '*isha'* prayer.

The Imamis observe: The *rawatib* 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*; it is called *'al-watirah'*), eight *rak'ahs* of the midnight prayer (*salat al-layl*), two *rak'ahs* of *al-shaf'*, a single of *al-watr*,[2] and two *rak'ahs* before the morning prayer, called '*salat al-fajr'*.

The Time of Zuhr and 'Asr Prayers

The *fuqaha'* begin with *salat al-zuhr*, because it was the first *salat* to be declared obligatory, followed by the '*asr*, the *maghrib*, the '*isha'*and the *subh* prayer, in that order. All the five prayers were made obligatory on the night of the Prophet's cosmic journey (*al-Isra'*), nine years after the beginning of his mission (*bi'thah*). Those who hold this opinion cite as proof verse 78 of the *Surat al-Isra'* which stipulates all the five prayers:

أَقِمِ الصَّلَاةَ لِدُلُوكِ الشَّمْسِ إِلَىٰ غَسَقِ اللَّيْلِ وَقُرْآنَ الْفَجْرِ ۖ إِنَّ قُرْآنَ الْفَجْرِ كَانَ مَشْهُودًا

***"Perform salat from the declining of the sun to the darkening of the night and the recital of the dawn; surely the recital of the dawn is witnessed."*(*Qur'an 17:78*)**

The schools concur that *salat* is not valid if performed before its appointed time and that the time of the *zuhr* prayer sets in when the sun passes the meridian. They differ concerning its duration.

The Imamis say: 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 between these two specific periods is the common period for the two *salats*.

This is the reason they consider it valid to perform both the prayers successively during their common period.[3] But if the time remaining for the end of the day is sufficient only for performing the *zuhr* prayer,

the ‘*asr* prayer will be offered first with the *niyyah* of *ada’* and later the *zuhr* prayer will be performed as *qada’*.

The four Sunni schools observe: 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 when the length of the shadow exceeds the height of the object, the time for the *zuhr* prayer comes to an end. Here the Shafi’is and the Malikis add: These limits are for an unconstrained person (*mukhtar*); and for one who is constrained (*mudtarr*), the time for *zuhr* prayer extends even after an object’s shadow equals its height. The Imamis consider the time when an object’s shadow equals its height as the end of the time of *fadilah* (honor) for the *zuhr*, and when it equals twice the height of the object as the time of *fadilah* for the ‘*asr* prayer.

The Hanafis and the Shafi’is state: The time of ‘*asr* prayer begins when the length of an object’s shadow exceeds its height and continues upto sunset.

The Malikis say: For the ‘*asr* prayer there are two times, the first for ordinary circumstances and the second for exigencies. The former begins with an object’s shadow exceeding its height and lasts until the sun turns pale. The latter begins from when the sun turns pale and continues until sunset.

The Hanbalis observe: One who delays offering the ‘*asr* prayer till after an object’s shadow exceeds twice its height, his *salat* will be considered *ada’* if performed before sunset, though he will have sinned because it is *haram* to delay it until this time. They are alone in all the schools in holding this opinion.

The Time of Maghrib and ‘Isha’ Prayers

The Shafi’i and the Hanbali schools (in accordance with the view of their respective Imams) state: The time for the *maghrib* prayer begins when the sun sets and ends when the reddish afterglow on the western horizon vanishes.

The Malikis say: The duration for the *maghrib* prayer is narrow and confined to the time required after sunset to perform the *maghrib* prayer along with its preliminaries of *taharah* and *adhan*, and it is not permissible to delay it voluntarily. But in an emergency, the time for the *maghrib* prayer extends until dawn. The Malikis are alone in considering it impermissible to delay the *maghrib* prayer beyond its initial time.

The Imamis observe: The period specific to the *maghrib* prayer extends from sunset[4] for a duration required to perform it, and the specific period of the ‘*isha’* prayer is the duration required to finish it before midnight. The time between these two specific periods is the common time for both *maghrib* and ‘*isha’* prayers. Hence they allow the joint performance of these two *salats* during this common time.

That was with respect to someone who is in a position to act out of free choice (*mukhtar*), but as to a person constrained by sleep or forgetfulness, the time for these two *salats* extend until dawn, with the

period specific for the *'isha'* prayer becoming the time required to perform it just before dawn and the specific period for the *maghrib* prayer becoming the time required to perform it just after midnight.

The Time of Subh Prayer

There is consensus among the schools, with the exception of the Maliki, that the time for the morning prayer begins at day-break (*al fajral-sadiq*) and lasts until sunrise. The Malikis say: The *subh* prayer has two times: for one in a position to act out of free choice it begins with daybreak and lasts until there is enough twilight for faces to be recognized; for one in constrained circumstances it begins from the time when faces are recognizable and continues up to sunrise.

1. The Hanafis use two terms ('fard' and 'wajib') for something whose performance is obligatory and whose omission is impermissible. Hence they divide obligation into two kinds: fard and wajib. 'Fard 'is a duty for which there is definite proof, such as Qur'anic text, mutawatir sunnah, and ijma' (consensus).'Wajib' is a duty for which there is a Dhanni (non-definite) proof, such as qiyas (analogy) and khabar al-wahid (isolated tradition). That whose performance is preferable to its omission is also of two kinds: 'masnun' and 'mandub'. 'Masnun' is an act which the Prophet (S) and the 'Rashidun' caliphs performed regularly, and 'mandub' is an act ordered by the Prophet (S) though not performed regularly by him (S). That which it is wajib to avoid and whose performance is not permissible is 'muharram' if it is established by a definite proof. If based on a Dhanni proof, it is 'makruh', whose performance is forbidden.
2. According to the Hanafis, the salat al-watr consists of three rak'ahs with a single salam. Its time extends from the disappearance of twilight after sunset to dawn. The Hanbalis and Shafi'is say: At minimum it is one rak'ah and at maximum eleven rak'ahs, and its time is after the 'isha' prayer. The Malikis observe: It has only one rak'ah.
3. There are among 'ulama' of the Sunni schools those who agree with the Imamis on performing the two salats together even when one is not travelling. Al-Shaykh Ahmad al-Siddiq al-Ghumari has written a book on this topic, Izalat al khatar 'amman jama'a bayn al-salatayn fi al-hadar.
4. There is no difference regarding the definition of sunset between the Imamis and the other four schools. But the Imamis say that the setting of the sun is not ascertained simply by the vanishing of the sun from sight, but on the vanishing of the reddish afterglow from the eastern horizon, for the east overlooks the west and the eastern afterglow, which is a reflection of sun's light, pales away as the sun recedes.

That which is rumored regarding Shi'is that they do not break their fast during Ramadan until the stars become visible, has no basis. In fact they denounce this opinion in their books on fiqh with the argument that the stars may be visible before sunset, at the time of sunset or after it, and declare that "one who delays the maghrib prayer till the stars appear is an accursed man (mal'un ibn mal'un)."

They have said this in condemnation of the Khattabiyyah (an extremist sect which deviated from Shi'a), the followers of Abu al-Khattab, who held this belief. Thanks to God that they are now one of the extinct sects. Imam al-Sadiq a.s. was told that the people of Iraq delay the maghrib prayer until the stars become visible. He answered, "That is on account of Abu al-Khattab, enemy of Allah."

The Qiblah

The schools concur that the Ka'bah is the *qiblah* of the one who is near it and is able to see it. They differ regarding the *qiblah* of one who is away from the Ka'bah and unable to see it.

The Hanafis, Malikis, Hanbalis and a group of Imami legists observe: The *qiblah* of one at a distance is the direction of the Ka'bah and not the Ka'bah itself.

The Shafi'is and most Imamis state: It is *wajib* for one who is near the Ka'bah as well for one at a distance, to face the Ka'bah itself. Thus, if it is possible to ascertain that one is facing the Ka'bah itself, one must do so; otherwise the probability (*zann*) that one may be facing it, is sufficient. It is obvious that one who is far away from the Ka'bah is in no way capable of ascertaining that he is facing the Ka'bah, considering that the earth is spherical. Consequently, the *qiblah* of one away from the Ka'bah will be the direction of the Ka'bah and not the Ka'bah itself.

Ignorance of the Qiblah (Direction)

It is *wajib* for a person ignorant of the *qiblah* to inquire and strive to determine its exact or approximate direction[1], and in case neither of the two is possible, the four Sunni schools and a group from among the Imamis say: He may perform *salat* in any direction; his *salat* will be valid and it will not be *wajib* for him to repeat it except in the opinion of the Shafi'is.

Most Imamis observe: He will perform *Salat* in four directions to comply with the command for *salat* and to ascertain its proper performance. But if there isn't sufficient time for performing *salat* four times or if one is incapable of performing it in four directions, he may perform *salat* in the directions that he can.

A Subsidiary Issue

If a person prays not facing the *qiblah* and comes to know about his mistake, the Imamis state: If the error is known during the *salat* and the correct *qiblah* lies between his two hands, the part of the *salat* already performed will be valid and he will have to correct his direction for the remaining part of the *salat*. But if it is known that he has been praying facing the east, or the west, or the north with his back towards the *qiblah* (this is with reference to Lebanon where the *qiblah* lies to the south), the *salat* will be invalid and he will perform it anew.

If the error is known after performing the *salat*, it should be performed again if its time is still there, not otherwise. Some Imamis say: The *salat* will not be repeated if there is only a little deviation from the *qiblah*, irrespective of whether its time is still there or not.

But if it has been performed facing east or west [the right or the left (90 degrees off)], it should be

repeated if its time is there, not otherwise. If the *salat* is performed with one's back to the *qiblah* (180 degrees off), it should be repeated regardless of whether its time is still there or has passed.

The Hanafis and the Hanbalis observe: If after inquiring and striving to find the *qiblah* one is unable to ascertain its approximate direction and performs *salat* in a direction which turns out to be wrong, he must change his direction accordingly if the mistake is known during the *salat*, and if it is known afterwards his *salat* is valid and he has no further obligation.

The Shafi'is say: If it becomes certain that there has been a mistake in determining the *qiblah*, it is *wajib* to repeat the *salat*, but if there is only a likelihood of mistake, the *salat* is valid irrespective of whether the probability arises during the *salat* or after it.

As to one who neither makes an inquiry nor an effort to determine the *qiblah*, but by chance performs the *salat* in the right direction, the Malikis and Hanbalis consider his *salat* to be invalid (*batil*).

The opinion of the Imamis and the Hanafis is that his *salat* is valid provided he has no doubts while praying and was sure about the direction of the *qiblah* at the time of starting the *salat*, because, as pointed out by the Imamis, in such a situation it is correct for him to make the *niyyah* of acquiring nearness (*qurbah*) to God.

1. The command to face Masjid al-Haram has come in verse 144 of Surat al-Baqarah (...So turn your face towards Masjid al-Haram), and the leave to turn in any direction in verse 115: (To God belong the East and the West; where ever you turn there is the Face of God). Some scholars have held that the former verse abrogates the latter.
Others disagree and point out that there is no abrogation involved here, nor is it a case of one being particular and the other general. The way to reconcile the two verses, they point out, is that the former verse applies to those who know the direction of the qiblah and commands them to turn towards it. The latter verse specifically applies to one who is at a loss regarding its direction and orders him to perform salat in any direction he wants. This opinion seems to be more credible.

The Rules of Modesty

This issue is one of those from which numerous by laws are derived,such as those specifying the parts of one's body that must be covered ('*awrah*) and the parts of another person's body which it is *haram* to look at, those relating to the difference between *maharim* (relatives through lineage or marriage with whom marriage is prohibited) and non-*maharim* persons in this regard, the difference in this regard due to sameness or difference of sex, the difference between looking and touching and similar rules which are discussed below.

1. Looking at One's Own Body

The schools differ concerning covering of one's '*awrah* (private parts) from one's own view and whether it is *haram* for one to uncover one's '*awrah* in privacy.

The Hanafis and the Hanbalis observe: In the same way that it is not permissible for a person to expose his '*awrah* in the presence of anyone for whom it is not permissible to look at it, it is not permissible for him to expose it when alone without necessity, as arises at the time or bathing or answering the call of nature.

The Malikis and Shafi'is say: It is not unlawful but reprehensible (*makruh*) to be bare without necessity.

The Imamis state: It is neither *haram* nor *makruh* when no one else is looking at it.

Ibn Abi Layla holds an uncommon opinion that prohibits one from baring oneself even for bath for the reason that water is inhabited by living beings (*al-Majmu' Sharh al-Muhadhdhab*, ii, 197).

2. Woman and Her Maharim

The schools differ concerning the parts of the body a woman must cover in the presence of her *maharim* (except the husband) and Muslim women.[1] In other words, what constitutes the '*awrah* of a woman in the presence of Muslim women as well as her *maharim*, both through lineage and marriage?

The Hanafis and the Shafi'is say: It is *wajib* for her to cover the area between the navel and the knees in their presence.

The Malikis and the Hanbalis observe: She must cover the area between the navel and the knees in front of women, and in the presence of her *maharim*, her whole body except the head and the arms.

Most Imamis state: It is *wajib* for her to cover her rear and private parts in the presence of women and her *maharim*; to cover other parts as well is better though not *wajib*, except where there is a fear of sin.

3. Women and 'Strangers'

About the extent of the body to be covered by a woman in the presence of a 'stranger' (any male apart from the *mahrim*), the schools concur that it is *wajib* for her to cover her whole body except the face and hands (up to the wrists) in accordance with the verse 31 of *Surat al-Nur:*

وَلاَ يُبْدِينَ زِينَتَهُنَّ إِلاَّ مَا ظَهَرَ مِنهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ

...And reveal not their adornment save such as is outward; and let them cast their veils over their

bosoms (***Qur'an 24:31***)

considering that 'outward adornment' (*al-zeenah*) implies the face and hands. The word *'al-khimar'* (whose plural '*khumur'* occurs in the verse) means the veil which covers the head, not the face, and the word '*al-jayb'* (whose plural '*juyub'* occurs in the verse) means the chest. The women have been commanded to put a covering on their heads and to lower it over their chests. As to verse 59 of *Surat al-Ahzab*:

يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمنينَ يُدْنِينَ عَلَيْهِنَّ من جَلاَبِيبِهِنَّ

'O Prophet, say to your wives and daughters and the believing women that they draw their veils close to them…, (***Qur'an 33:59***)

the word '*al-jilbab'* (whose plural *jalabib* occurs in the verse) does not mean a veil covering the head; rather it is a shirt or garment.

4. Man's 'Awrah

The schools differ concerning the parts of man's body which it is *haram* for others to see and for him to expose. The Hanafis and the Hanbalis state: It is *wajib* for a male to cover the area between the navel and the knees before all except his wife. It is permissible for others, irrespective of their being men or women, *maharim* or strangers, to look at the rest of his body when there is no fear of sin.

The Malikis and the Shafi'is say: There are two different situations for a male with respect to the extent he can expose his body: the first, in the presence of men or those women who are his *maharim*; the second, in the presence of women who are not his *maharim*.

In the former instance he is only supposed to cover the area between the waist and the knees, while in the latter it is *haram* for a woman stranger to look at any part of a man's body. Though the Malikis exclude the face and the arms if looked at without any sensual motive, the Shafi'is do not permit any exception[2].

The Imamis differentiate between the parts of other person's body which can be looked at and those parts of one's own body which ought to be covered. They observe: It is *wajib* for a male to cover only his rear and private parts, though it is *wajib* for women who are not his *maharim* to abstain from looking at any part of his body except his head and hands (upto the wrist).

To summarize the Imami opinion, it is permissible for a male to view the body of other men and his female *maharim* except the rear and private parts provided no sensual motive is involved. Similarly, a woman can view the body of another woman and her male *maharim* excepting the rear and private parts provided no sensual motive is involved.

5. Children

Concerning the body of a child, the Hanbalis say: It is not prohibited to touch or look at the body of a child below seven years. It is not permissible to look at the rear and private parts of a male child between the age of 7 to 9 years, and for 'strangers' the whole body of a female child above the age of seven.

The Hanafis observe: No part of the body of a boy of four years and below is prohibited from being looked at. Above this age only his rear and private parts are prohibited from being looked at as long as sexual desire has not awakened in him. If he reaches the age of sexual desire, the rule applicable to adults will be applicable to him with respect to both the sexes.

The Malikis state: It is permissible for a woman to look at and touch the body of a boy below the age of eight years, and only look at it till the age of twelve. A boy above the age of twelve is considered similar to an adult. It is permissible for a man to look at and touch the body of girl below two years and eight months, and to look at, though not touch, till she reaches the age of four years.

According to the Shafi'is, the rules applicable to an adult apply to an adolescent male child. But if a child is below that age and is also incapable of describing what he sees, all parts of his body can be looked at. But if he can describe what he sees with a sexual interest, he will be considered similar to an adult. As to a girl below the age of adolescence, only if she has developed sexual appeal will she be considered similar to a full-grown woman, not otherwise, though it will be *haram* for anyone except someone who looks after her to look at her parts.

The Imamiyyah observe: It is *wajib* to cover one's '*awrah* in front of a child of discriminating age, who can describe what he sees, though it is not *wajib* before the one who is incapable of doing so, because (in this respect) he is similar to an animal. That was regarding the covering of the body in the presence of a child, but with respect to looking at a child's '*awrah*, al-Shaykh Ja'far in his book *Kashf al-ghita'* states: It is not *wajib* to abstain from looking at the parts of a child below five years, though it is absolutely impermissible to look at them with a sexual interest.

From what I have been able to ascertain from the traditions of the Ahl al-Bayt, the age limit for the permissibility of looking at the child's '*awrah* is six years, not five.

6. Woman's Voice

All the schools concur that listening to the voice of a woman is not prohibited, except where pleasure is involved or when there is a fear of sin. The (Imami) author of *al-Jawahir*, at the beginning of the chapter on marriage, has mentioned as his proof the continuing practice of Muslims belonging to different periods and regions, the sermons of Fatimah (sa) and her daughters, the innumerable instances of conversations of the wives of the Prophet (S), the Imams and the '*ulama'* – which cannot possibly be

considered as having taken place due to emergency – and also the holding of mourning and wedding ceremonies by women in the presence of men from early times, the conversations between opposite sexes while conducting transactions, as well as the Qur'anic verse:

ولا تَخْضَعْنَ بِالْقَوْلِ

Be not complaisant in your speech.. (***Qur'an 33:32***),

in which not speech itself but its manner and complaisance have been prohibited.

7. The Colour, Not the Shape

The schools concur that it is *wajib* to cover (the body's) colour, not its shape. This writer comments: If the colour of the covering is similar to the colour of the skin, so that it is not discernable from it, as in the case of skin-coloured stockings, the presence or absence of covering will be equal.

8. The difference between Looking and Touching

Every part that is permissible to touch, may be looked at, and every part that is *haram* to be looked at may not be touched. Here there is a general consent among the schools because touching involves greater pleasure than looking, and no legist of any school claims concomitance between the permissibility of looking and the permissibility of touching.

Hence, though it is permissible for a man to look at a female stranger's face or hands, it is not permissible for him to touch her except in an emergency such as for medical treatment or for rescuing her from drowning. The following tradition has been narrated from al-Imam al-Sadiq (as):

(هل يصافح الرجل المرأة ليست له بذي محرم؟ قال: (لا، إلاّ من وراء ثياب.

(Al-Imam al-Sadiq (A) was asked:) "Can a man shake hands with a woman who is not his *mahram*?" The Imam (A) replied: "No, unless there is a cloth in between."

The Hanafis exclude shaking hands with an old woman from the prohibition. In the book of Ibn 'Abidin (vol.1, p.284) it is stated: It is not permissible to touch the hands or face of a young woman even with the assurance of absence of any sexual motive. As to an old woman who has no sexual appeal, there is nothing wrong in shaking hands with her with the assurance of absence of a sexual motive.

The Imamis and the Hanafis allow touching the body of any *mahram* provided no sexual motive or pleasure is involved.

The Shafi'is prohibit touching even those parts of a *mahram's* body which it is permissible to look at. It is even not permissible in their opinion for a person to touch the belly or back of his mother, pinch her ankles or feet or kiss her face. Similarly, it is not permissible for a person to ask his daughter or sister to press his legs. (al-'Allamah al-Hilli, *al-Tadhkirah*, vol.2, beginning of "bab al-zawaj").

9. The Difference Between Exposing and Looking at

The Imamis observe: There is no concomitance between the permissibility of exposing the body and the permissibility of looking at it. Hence it is permissible in their opinion for a man to expose the whole of his body except his rear and private parts, while it is not permissible for a non-*mahram* woman to look at it. I have not found anyone expressing this opinion in the numerous books of the four Sunni schools.

10. Old Women

God Almighty says in the Qur'an:

وَالْقَوَاعِدُ مِنْ النِّسَاءِ اللاَّتِي لاَ يَرْجُونَ نِكَاحاً فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ وَأَنْ يَسْتَعْفِفْنَ خَيْرٌ لَهُنَّ وَاللَّهُ سَمِيعٌ عَلِيمٌ

And such women as are past child-bearing and have no hope of marriage, it is no sin for them if they put off their clothes, so be it that they flaunt no ornament; but to abstain is better for them, and God is All-hearing, All-knowing. (***Qur'an 24:60***)

This noble verse indicates that it is permissible for old women who have no desire for marriage due to their old age "to expose their face and a part of their hair and arms, and such other parts which aged women usually keep exposed. The traditions of the Ahl al-Bayt (as) also point to the same, on condition that such exposure be not with the intent of display. Rather, it is to allow them to come out for fulfilling their needs, though it is better for them to keep themselves covered."3

This permission is with the assumption that it is not permissible to expose any of the above-mentioned parts of the body if there is fear of its leading to something *haram*, because a woman, regardless of her elderly age, may remain sexually attractive. Therefore, if there is any likelihood of that kind, the rule applicable to her will be the rule applicable to young women.

Islam is lenient with respect to elderly women and strict regarding young women. But in practice we observe the opposite of what the Qur'an has ordered. We see shamelessness and display of charms among some young women, while elderly women keep themselves covered and are reserved. So where God is strict, they are lenient, and where He is lenient, they are strict.

1. Verse 31 of Surat al-Nur mentions those before whom women can expose their adornment, and among them are Muslim women. Thus the verse prohibits a Muslim woman from exposing herself before a non-Muslim woman. The Shafi'is, Malikis

and Hanafis construe this prohibition as implying tahrim.

Most Imamis and Hanbalis say: There is no difference between Muslim women and non-Muslim women. But according to the Imamis, it is makruh for a Muslim woman to expose herself before a non-Muslim woman, because she may describe what she observes to her husband.

2. al-Fiqh 'ala al-madhahib al'arba'ah, vol.1, mabhath satral-'awrah.

3. Al-Jawahir, at the beginning of "bab al-Zawaj".

Wajib Covering During Salat

The schools concur that it is *wajib* upon both men and women to cover those parts of their bodies during *salat* which should ordinarily be kept covered before 'strangers'. Beyond that their positions differ. Is it *wajib* for a woman to cover, fully or partly, her face and hands during *salat*, although she is not required to do so outside *salat*? Is it *wajib* for a man to cover other parts of his body during *salat* apart from the area between the navel and the knees, though it is not *wajib* to do so outside *salat*?

The Hanafis observe: It is *wajib* upon a woman to cover the back of her hands and the soles of her feet as well, and upon a man to cover his knees in addition to the area between the navel and the knees.

The Shafi'is and Malikis say: It is permissible for a woman to keep her face and both the palms and the back of her hands uncovered during *salat*.

The Hanbalis state: It is not permissible for her to expose any part except the face.

The Imamis observe: It is *wajib* for both men and women to cover only those parts of their body during *salat* which they are supposed to cover ordinarily in the presence of a 'stranger'. Hence it is permissible for a woman to expose during *salat* that part of her face which is washed during *wudu'*; her hands up to the wrists, and her feet up to the ankles both the back as well as the palms of hands and the soles of feet. For a man, it is *wajib* to cover the rear and the private parts, though better to cover the entire area between the navel and the knees.

The Requirements for the Covering during Salat

The covering should meet the following requirements where the ability and freedom to meet them exist:

1.Taharah

The purity of the covering and the body are necessary for the validity of *salat* in the opinion of all the schools, although each of them concedes certain exceptions in accordance with the following details:

The Imamis state: Blood from wounds and sores, irrespective of its quantity, is considered excusable on

the dress as well as the body if its removal entails difficulty and harm (*mashaqqah wa haraj*). A blood spot smaller than the size of a dirham coin, regardless of its being due to one's blood or that of someone else, is also excusable provided that: it is in a single place and not in different places; it is not the blood of *hayd*, *nifas* and *istihadah*; it is not the blood of anything intrinsically *najis*, such as dog and pig, or the blood of a dead body (*maytah*).

Also excusable is the impurity (*najasah*) of anything that does not constitute part of essential dress during *salat*, e.g. a sash, cap, socks, shoes, ring, anklet and that which one carries with oneself, e.g. knife or currency. The *najasah* of the dress of a woman rearing a child, irrespective of whether she is the mother or someone else, is exempted on condition that it be difficult for her to change it and that she washes it once every day. In other words, in their opinion every *najasah* on dress or body is exempted in conditions of emergency (*idtirar*).

The Malikis observe: Cases of uncontrolled discharge of urine or excrement, as well as piles, are excusable; so is any impurity on the body or clothes of a woman suckling an infant that may be soiled by the infant's urine or faeces. So also are exempted the body and clothes of a butcher, surgeon and scavenger. Also exempted is: blood – even that of a pig – if it is less than the size of a dirham coin: the discharge from boils, the excrement of fleas, and other things which need not be mentioned because they occur rarely.

The Hanafis say: *Najasah*, blood or anything else, if less than the size of a dirham coin is exempted. Also exempted in emergencies is the urine and excrement of a cat and mouse. Tiny splashes – as small as the point of a needle – of urine, the blood that unavoidably stains a butcher, and the mud on roads – even if it is usually mixed with *najasah* and provided the *najasah* itself is not visible – are exempted. Consequently, they consider *najasah* in a small quantity as exempted, such as the urine of an animal eating which is *halal*, if it covers a fourth of the clothes and less than one–fourth of the body.

According to the Shafi'is, every *najasah* which is in such a small quantity that the eye cannot see it is exempted. So is the mud on roads which is mixed with a small quantity of *najasah*, worms present in fruits and cheese, *najis* liquids added in medicines and perfumes, excrements of birds, *najis* hair in small quantity if they do not belong to a dog or a pig, and other things as well which are mentioned in detailed works.

The Hanbalis say: Minute quantities of blood and pus are exempted, and so is the mud on roads whose *najasah* is certain, as well as the *najasah* that enters the eyes and washing which is harmful.

2. Wearing Silk

There is consensus among the schools that wearing silk and gold is *haram* for men both during and outside *salat*, while it is permissible for women. This is in accordance with this statement of the Prophet (S):

حرّم لباس الحرير والذهب على ذكور أُمتي، وأحلّ لإناثهم

"Wearing silk and gold is unlawful for the men of my ummah, while it is lawful for its women".

Accordingly, the Imamis observe: A man's *salat* is not valid if he wears pure silk and any clothing embroidered with gold during it, regardless of whether it is a waistband, cap, socks, or even a gold ring. They allow wearing silk during *salat* in times of illness and during war.

The Shafi'is state: If a man performs *salat* while wearing silk or over something made of it, it will be considered a *haram* act, though his *salat* will be valid (al-Nawawi, *Sharh al-Muhadhdhab,* iii, 179). I have not found an express statement in the books of the remaining schools concerning the validity or invalidity of *salat* performed in silk, though the Hanafis as well as the Hanbalis (in accordance with one of two narrations) concur with the Shafi'is regarding the general rule that if there is any command prohibiting something which is not directly connected with *salat* such as the command prohibiting usurpation - the *salat* will be valid if it is not observed and the person will be considered as having performed a *wajib* and a *haram* act together. Accordingly the *salat* performed in a dress of silk is valid.

The author of *Al-fiqh 'ala al-madhahib al-'arba'ah* reports a consensus (for the Sunni schools) that that it is valid for a man constrained to perform *salat* while wearing silk, and it is not *wajib* for him to repeat it.

3. Lawfulness of the Clothing

The Imamis consider it necessary that the clothing worn be lawfully owned. Hence if a person performs *salat* in usurped clothes with the knowledge of their being so, his *salat* is *batil* (invalid). This is also the opinion of Ibn Hanbal in one of the two statements narrated from him.

The other schools regard *salat* in usurped clothes as valid on the grounds that the prohibition does not directly relate to *salat* so as to invalidate it.

The Imamiyyah are very strict concerning usurpation, and some of them even observe: If a person performs *salat* in clothes in which a single thread is usurped, or carries with him an usurped knife, dirham, or any other thing, his *salat* will not be valid. But they also say: If one performs *salat* in usurped clothes out of ignorance or forgetfulness, his *salat* is valid.

4. The Skin of Animals Not Used for Food

The Imamis are alone in holding that it is invalid to perform *salat* while wearing the skin (even if tanned) of an animal whose flesh is not allowed to be eaten, as well as anything consisting its hair, wool, fur or feathers. The same is true of clothes bearing any secretion from its body- eg. sweat and saliva - as long as it is wet.

Hence, even if a single hair of a cat or any such animal happens to be present on the dress of a person

performing *salat* and if he performs it with the knowledge of its presence, his *salat* is invalid (*batil*).

They exclude wax, honey, the blood of bugs; lice, fleas and other insects which have no flesh, as well as the hair, sweat and saliva of human beings.

They also consider *salat* invalid if any part of a dead animal (*maytah*) happens to be on the clothes, irrespective of whether the animal is one used for food or not, whether its blood flows when cut or not, and its skin is tanned or not.

A Subsidiary Issue

If there is only a single clothing to cover the body and that too is *najis* to an extent that is not excusable, what should one do if he has no alternative other than either performing *salat* in the *najis* clothing or in the state of nature?

The Hanbalis say: He should perform *salat* in the *najis* clothing, but it is *wajib* upon him to repeat it later.

The Malikis and a large number of Imamis observe: He should perform *salat* in the *najis* clothing and its repetition is not *wajib* upon him.

The Hanafis and the Shafi'is state: He should perform *salat* naked and it is not valid for him to cover himself with the *najis* clothing.

The Place of Salat

A Usurped Place

The Imamis consider *salat* performed in a usurped place and usurped clothing as invalid (*batil*) provided it is done voluntarily and with the knowledge of the usurpation. The other schools observe: The *salat* performed in a usurped place is valid, though the person performing it will have sinned, since the prohibition does not relate directly to *salat*; rather, it relates to dispensations (of property). Their position in this regard is the same as in the case of usurped clothing.

What a great distance between this opinion of the four schools the a usurper's *salat* is valid in usurped property, and the opinion of the Zaydiyah that because of the prohibition on the use of anything usurped, it is not valid even for the true owner to perform *salat* in his property as long as it remains usurped.

The Imami view represents a middle position, because they consider as valid the *salat* of the true owner and anyone whom he permits, and regard as invalid (*batil*) the *salat* of the usurper and anyone whom

the owner has not granted permission. The Imamis also permit *salat* in vast stretches of (owned) land which are either impossible or difficult for people to avoid, even if the permission of the owner has not been acquired.

Taharah (purity) of the Place

The four Sunni schools observe: The place should be free from both wet and dry *najasah* (impurity). The Shafi'is overdo by saying: The *taharah* of all that which touches and comes into contact with the body or clothes of the *musalli* is *wajib*.

Therefore, if he rubs himself against a *najis* wall or cloth or holds a *najis* object or a rope laying over *najasah*, his *salat* will be invalid (*batil*). The Hanafis require only the location of the feet and the forehead to be *tahir*. The Imamis restrict it to the location of the forehead, i.e. the place of *sajdah*. As to the *najasah* of other locations, the *salat* will not be *batil* unless the *najasah* is transmitted to the body or clothing of the *musalli* (the person performing *salat*).

Salat performed on a Mount

The Hanafis and the Imamis require the place to be stationary; hence it is not valid in their opinion to perform *salat* while riding an animal or something that swings back and forth, except out of necessity, because one who has no choice will perform *salat* in accordance with his capacity.

The Shafi'is, Malikis and Hanbalis observe: *Salat* performed on a mount is valid even during times of peace and despite the ability to perform it on the ground, provided it is performed completely and meets all the requirements.

Salat inside the Ka'bah

The Imamis, Shafi'is and Hanafis state: It is valid to perform *salat*, *faridah* or *nafilah*, inside the Ka'bah.

The Malikis and the Hanbalis say: Only *nafilah*, not *faridah*, is valid therein.

A Woman's Prayer beside a Man

A group of Imami legists observe: If a man and a woman perform *salat* in a single place so that she is either in front of him or beside him, and there is neither any screen between them nor does the distance between the two exceed 10 cubits, the *salat* of the one who starts earlier will not be invalid (*batil*), and if both start simultaneously, the *salat* of both will be *batil*.

The Hanafis say: If the woman is in front or beside a man, the *salat* will be invalid (*batil*) if performed in a single place with no screen at least a cubit high between them, the woman has sex appeal, her shanks

and ankles are adjacent to his, the *salat* is not a funeral prayer, and the *salat* is being jointly performed, i.e. either she is following him or both are following a single imam.

The Shafi'is, the Hanbalis and most Imamis are of the view that the *salat* is valid, though the manner of performance is *makruh*.

The Locale of Sajdah

The schools concur that the place where the forehead is placed during prostration should be stationary and should not be inordinately higher than the location of the knees (during *sajdah*). They differ regarding that on which *sajdah* is valid.

The Imamis state: It is valid to perform *sajdah* only on earth and those things which grow on it and are not used for food or clothing. Therefore, a person cannot perform *sajdah* on wool, cotton, minerals and that which grows on the surface of water, for water is not earth.

They permit *sajdah* on paper because it is made of a material which grows on earth. They argue their position by pointing out that *sajdah* is an '*ibadah* prescribed by the Shari'ah that depends for its particulars on textual evidence (*nass*). The legists of all the schools concur regarding the validity of *sajdah* on earth and that which grows on it, thus Imamis restrict it to that because there is certainty. They offer as further evidence these traditions of the Prophet (S):

لا تتم صلاة أحدكم حتى يتوضأ كما أمر الله، ثُمّ يسجد ممكناً جبهته مِن الأرض

The *salat* of any of you will not be valid unless he performs *wudu'* as instructed by God and then performs *sajdah* by placing his forehead on the earth.

خلقت الأرض مسجداً وطهوراً

The earth has been created a *masjid* (a place for performing *sajdah*) and a purifier.

Khabbab says: "We complained to the Prophet (S) regarding the excessive heat of sun-baked ground on our foreheads, but he did not accept our complaint."
Had it been valid to perform *sajdah* on carpets, why would they have complained?

Imamis permit *sajdah* on cotton and linen in the case of *idtirar* (emergency).

The four schools observe: It is valid to perform *sajdah* on anything, including even a part of one's turban, provided it is *tahir*. Rather, the Hanafis permit *sajdah* on one's palm even without an emergency, though it is considered as *makruh*.

Adhan (Call for Prayer)

Adhan literally means ‘announcement’, and in the Shari’ah it means the announcement made in specific words at the time of *salat*. It was introduced in the first year of the Hijrah at Madinah. The cause of its introduction, in the opinion of the Imamis, was that Gabriel came down with the *adhan* in a message from God to the Prophet (S). The Sunnis say that ‘Abd Allah ibn Zayd saw a dream in which he was taught the *adhan* by someone. When he related his dream to the Prophet (S), he approved it.

Adhan is a Sunnah

The Hanafis, Shafi’is and Imamis say: *Adhan* is a *sunnah* which has been emphatically recommended (*mu’akkadah*).

The Hanbalis observe: It is a *kifa’i fard* for non-traveling men in villages and towns to make the *adhan* for the five daily prayers.

The Malikis state: It is a *wajib kifa’i* in towns where the Friday prayer is held, and if the people of such a place abandon *adhan* they will be fought on that account.

Adhan is Invalid in Certain Cases

The Hanbalis observe: It is not valid to make *adhan* for a funeral prayer (*salat al-janazah*) or for a supererogatory prayer (*al-salat al-nafilah*) or for one performed to fulfil a vow (*al-salat al-mandhurah*).

The Malikis say: It is not valid for a supererogatory or funeral prayer or for an obligatory daily prayer performed after the lapsing of its time (*al-salat al-fa’itah*).

The Hanafis state: It is not valid for the prayers performed on the two ‘*ids* (‘*idayn*), for the prayer performed on the occurrence of an eclipse (*salat al-kusuf*), for prayers made for rain (*istisqa’*), and for *tarawih* and *sunnah* prayers.

The Shafi’is do not consider it valid for *janazah*, *mandhurah* and *nawafil* prayers.

The Imamis observe: The Shari’ah has introduced *adhan* only for the five daily *salat*s, and it is *mustahabb* for them, whether performed as *ada’* or *qada’*, with a group (*jama’ah*) or singly (*furada*), during journey or stay, both for men and women. It is not valid for any other *salat*, *mustahabb* or *wajib*, and the *mu’adhdhin* will call out "*al-salat*" three times on occasions of *salat al-kusuf* and ‘*Idayn*.

The Conditions for Adhan

The schools concur that the conditions for the validity of *adhan* are: maintaining continuity of its recital and the sequence of its different parts, and that the *mu'adhdhin* be a sane Muslim man.[1] *Adhan* by a child of discerning age is valid. All the schools concur that *Taharah* is not required for *adhan*.

The schools differ regarding other aspects. The Hanafis and the Shafi'is say: *Adhan* is valid even without *niyyah*. The other schools require *niyyah*.

The Hanbalis consider making *adhan* in any language other than Arabic as being unconditionally valid. The Malikis, Hanafis and Shafi'is state: It is not valid for an Arab to make *adhan* in any other language, though it is valid for a non-Arab to make it in his own tongue, for himself and his co-linguals.

The Imamis observe: *Adhan* is not valid before the arrival of the time of *salat* except in the case of *salat al-fajr*. The Shafi'is, Malikis, Hanbalis and many Imamis permit the making of the *adhan* of announcement before the dawn. The Hanafis do not permit it, making no difference between *salat al-fajr* and other *salat*s. This opinion is closer to caution.

The Form of Adhan

The following is the form of *adhan*:

Allahu akbar -- four times according to all the schools and twice according to the Malikis.

Ashhadu an la ilaha illallah -- twice according to all the schools.

Ashhadu anna Muhammadan rasul Allah - twice according to all the schools.

(It is Mustahabb (recommended) to also say at this point:Ashhadu anna Aliyyan wali Allah - twice according Imamis only.It means I bear witness that 'Ali is protected by Allah (from any evil))

Hayya 'ala al-salat -- twice according to all the schools.

Hayya'ala al- falah -- twice according to all the schools.

Hayyah 'ala khayril-'amal -- twice according to the Imamis only.

Allahu akbar-- twice according to all the schools.

La ilaha illallah -- once according to the four schools and twice according to the Imamis.
The Malikis and Shafi'is permit repetition of the last line, considering it *sunnah*; that is the *adhan*, according to them, is not invalid if it is recited only once, as the Imamis hold.

The author of *al-Fiqh 'ala al-madhahib al-'arba'ah* mentions a consensus among the four Sunni schools

regarding '*al-tathwib*' being *mustahabb*. *Al-tathwib* means reciting the words *"al-salatu khayrun min al-nawm"*, ('*Salat* is better than sleep') twice after "*hayya 'ala al-falah* ".The Imamis prohibit it.2

Iqamah (A call immediately before prayer)

For both men and women it is *mustahabb* to recite *iqamah* before every daily obligatory *salat*, with the *salat* immediately following it. The rules applicable to *adhan*, such as continuity, sequence, its being in Arabic, etc., apply to *iqamah* as well. Its form is as follows:

Allahu akbar - -twice according to all the schools except the Hanafis who require it four times.
Ashhadu an la ilaha illallah -- once according to the Shafi'is, Malikis and Hanbalis and twice according to the Hanafis and Imamis.

Ashhaduanna Muhammadan Rasulullah -- once in the opinion of the Shafi'is, Malikis and Hanbalis, and twice according to the Hanafis and Imamis.

Hayya 'ala as-salat -- once in the opinion of the Shafi'is, Malikis and Hanbalis, and twice according to the Hanafis and Imamis.

Hayya 'ala al-falah -- once in the opinion of the Shafi'is, Malikis and Hanbalis, and twice according to the Hanafis and Imamis.

Hayya'ala khayr il-'amal -- twice according to the Imamis only.

Qad qamat is-salat -- twice in the opinion of all schools, except the Malikis who recite it once.

Allahu akbar -- twice in the opinion of all the schools.

La ilaha illallah -- once in the opinion of all the schools.

A group of Imami legists observe: It is valid for a 'traveler' and a person in a hurry to recite each sentence of the *Adhan* and *Iqamah* only once.

1. The Imamis observe: It is mustahabb for a woman to say adhan for her salat, though not as a call to prayer. Similarly it is mustahabb for women while holding their own jama'ah that one of them make the adhan call and the iqamah in a manner that men do not hear it. The four Sunni schools consider iqamah as mustahabb and adhan as makruh for women.
2. Ibn Rushd in Bidayat al-Mujtahid (1935 ed.) vol.1, p.103, says: "Others have said: The phrase 'al-salatu khayrun min al-nawm' should not be recited because it is not a masnun part of the adhan, and this is the opinion of al-Shafi'i. The cause for the disagreement is whether it was said (as part of the adhan) during the time of the Prophet (S) or during that of 'Umar." It is stated in Ibn Qudama's al-Mughni, (3rd ed.) vol.1, p.408: "Ishaq has said that this thing has been innovated by the people and Abu 'Isa has said: 'This tathwib is something that the learned (ahl al-'ilm) have regarded with distaste. It is that on hearing which Ibn 'Umar left the mosque.'"

The Essentials (Arkan) of Salat

The validity of the *salat* is dependent upon *taharah* (purity) – both from *hadath* and *khabath*, the time of performing it, facing the *qiblah*, and wearing sufficient clothing. The fulfilment of these conditions (called s*hurut*) before starting the *salat* is necessary, and they have been discussed in detail in the preceding sections. *Salat* also comprises certain essentials (*arkan wa fara'id*) which are performed as parts of *salat*.

They are many, and among them are the following:

1. Intention (Niyyah)

The schools –– or rather the legists of each school among themselves –– differ regarding the content of the *niyyah* (intention) required for *salat*, that is, whether it is necessary to specify the *salat* (such as its being *zuhr* or '*asr* prayer), whether it is obligatory or supererogatory, complete (*tamam*) or shortened (*qasr*), in time (*ada'*) or late (*qada'*), and so on.

The essence of the *niyyah*, as mentioned in the chapter on *wudu'* (ablution) is the intention to perform an act with the motive of obedience to a command of God Almighty. Specification of a particular *salat*, whether it is obligatory or supererogatory, *ada'* or *qada'*, is dependent upon the intention of the *musalli*. Thus if he intends to perform a supererogatory *salat* at the beginning and performs it with this intention, it will be supererogatory; if he intends to perform an obligatory *salat*, such as *zuhr* or '*asr* prayers, it will be so.

But if he does not intend anything it will be a waste of labour, though it is impossible for one not to intend anything. Because any act performed by a sane person cannot be without an intention regardless of whether he expresses it in specific words or not, and irrespective of whether he is attentive to his intention or not. Therefore, all the schools concur that expressing the *niyyah* in words is not necessary. Similarly, it is also ordinarily impossible for one who knows the difference involved to intend *zuhr* while performing '*asr* and an obligatory *salat* while performing a supererogatory one.

However discussions regarding *niyyah* and its various forms were not in vogue among the pioneering scholars of the *shari'ah*. It would be good to quote here the observations of two great scholars, Ibn al–Qayyim from among the Sunni legists, and Sayyid Muhammad, the author of *al–Madarik*, from the Imamiyyah.

The former observes in his *Zad al–Ma'ad* as quoted in the first volume of Ibn Qudamah's *al–Mughni*: "The Prophet (S) used to say '*Allahu Akbar'* when he stood for prayer and did not say anything before it. He did not expresss the *niyyah* in words, such as saying: 'I perform such and such prayer in four *rak'ahs* facing the *qibla* as an *imam* or *ma'mum* (one who follows the *imam*). Neither did he mention whether it

was *ada'* or *qada'* nor its time.These ten are later elaborations and no one has ever narrated them from him (S) in either *sahih* or *da'if* form. And neither the *tabi'un* nor the four imams have opted for them."

The latter, in *Madarik al-Ahkam* (mabhath al-niyyah awwal al-salat) observes: "That which is inferable from the sources of the *shari'ah* is that *niyyah* is a simple matter and all that it involves is the intention to perform an act in obedience to God, the Exalted. This is something which no sane person can do without while turning to perform an act of worship (*'ibadah*)."

Here some scholars have observed: If God were to enjoin the performance of *salat* or any other '*ibadah* without a *niyyah*, it would have amounted to something impossible. Al-Shahid has mentioned in *al-Dhikra* that our earlier scholars did not mention *niyyah* in their books on *fiqh.* They would state: 'The first *wajib* in *wudu'* is washing the face, the first *wajib* in *salat* is *takbirat al-ihram*'. The reason for this is that that which is essential in regard to *niyyah* is something inescapable, and anything in addition to it is not *wajib*. That which confirms this is that *niyyah* has not been mentioned in the context of any of the '*ibadat* – and particularly not in their case – and the traditions describing the *wudu*, *ghusl* and *tayammum* of the Prophet (S) do not make any mention of it.

2. Takbirat al-Ihram

Salat does not materialize without '*takbirat al-ihram*.' Its name derives from the statement of the Prophet (S):

مفتاح الصلاة الطهور و تحريمها التكبيرة و تحليلها التسليم.

Taharah (purity) is the key to *salat*; its consecration (*tahrim*) is the *takbirah*; and its termination (*tahlil*) is *taslim.*

It means that with *takbirat al-ihram* it becomes *haram* to speak and perform any act incompatible with *salat*, and by reciting *taslim* those acts which were prohibited after reciting the *takbir* become permissible again.

Its formula is '*Allahu akbar'*, and according to the Imamis, Malikis and Hanbalis no other form is permissible. The Shafi'is observe: Both *"Allahu akbar"*, and *"Allahu al-'akbar"* (with the addition of *alif* and *lam* to "*akbar*") are permissible. The Hanafis state: Any other synonymous words such as '*Allahu al-'a'zam'* and *'Allahu al-'ajall'* will do.

All the schools, excepting the Hanafi, concur that it is *wajib* to recite it in Arabic, even if the *musalli* is a non-Arab. If he cannot, it is obligatory for him to learn it; and if he cannot learn, he may translate it into his own tongue. The Hanafis observe: It is valid to recite it in any language even if one can recite it in Arabic.

There is consensus among the schools that at the time of reciting *takbirat al-ihram* all the conditions necessary for *salat* (such as *taharah*, facing the *qiblah*, covering the body etc.) should be present, and that it should be recited – when one has the ability to do so – while standing stationarily, and in a voice that he can hear. The word '*Allah'* should precede '*akbar'*, and the reverse, '*akbar Allah'*, will not suffice for entry into *qiyam*.

3. Qiyam (standing)

The schools concur that *qiyam* is *wajib* in the obligatory *salat*s from the beginning of *takbirat al-ihram* until going to *ruku'*, and that standing uprightly, stationarily and independently are its requisites.

Hence it is not valid to recline on any support when one is able to stand without it. If one cannot stand, he may perform *salat* sitting, and if this too is not possible, while laying down on the right side facing the *qiblah* (in the same position that a dead body is placed in the grave).

This is the opinion of all the schools except the Hanafis, who state: A person who cannot sit will perform *salat* laying down on his back with his feet pointing towards the *qiblah*, so that his gestures in lieu of *ruku'* and *sajdah* are made towards the *qiblah*.

If it is not possible to perform *salat* while laying on the right side, the Imamis, Shafi'is and Hanbalis permit him to perform *salat* laying on his back by making gestures with his head. If gesturing with the head is not possible, he will gesture with the eyelids.

The Hanafis say: If his state is as bad as that, the duty of *salat* will no longer apply to him, though he will have to perform it *qada'* when his condition improves and the hindrance is removed.

According to the Malikis, a sick person such as this is not required to perform *salat* and it is also not *wajib* for him to perform its *qada'*.

The Imamis, Shafi'is and Hanbalis state: The duty of *salat* does not disappear in any situation; if he is unable to gesture by blinking his eyes he will pass the *salat* through his mind and move his tongue for reciting the *qira'ah* and *dhikr*. If he is unable to move the tongue he will imagine it in his mind as long as his mind works. To sum up, *salat* is *wajib* upon those who are fully capable and those who are not so capable. It may not be neglected in any situation, and every person must perform it in accordance with his ability.

Hence it is performed while standing, then sitting, then laying down on one's side, then laying down on one's back, then gesturing by blinking the eyes, and passing it through the mind, in that order. A fully capable person as well as one not capable will 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* or one not capable regains it, either of them will perform the remaining part in accordance with his ability.

Therefore, if he performs one *rak'ah* (unit) standing and is then unable to stand, he will complete it sitting, and if he performs the first *rak'ah* sitting and then regains the strength to stand, he will complete the remaining *salat* standing.

4. Qira'ah (reciting)

The schools differ whether the recitation of *Surat al-Fatihah* is *wajib* in every *rak'ah* (unit), or in the first two *rak'ahs*, or in all the *rak'ahs* without there being any other alternative. They give different answers to the following questions: Is the *bismillah* an essential part of *al-Fatihah* or is it valid to omit it? Is it *wajib* or *mustahabb* to recite aloud or in a low voice? Is it *wajib* to recite another *surah* after *al-Fatihah* in the first two *rak'ahs*? Can the *tasbih*[1] replace the *surah*? Is *takattuf* (the folding of arms during *salat*) a *sunnah* or is it *haram*? And so on.

The Hanafis observe: It is not compulsory to recite only *Surat al-Fatihah* in the daily obligatory *salats*, and anything recited from the Qur'an may take its place, because God the Exalted, says:

فاقرَأوا ما تيَسَّرَ من القُرآن

'Therefore recite of the Qur'an so much as is feasible' (***73:20***) (*Bidayat al-mujtahid*, vol.1, p.122 and al-Shi'rani's *Mizan*, "bab sifat al-salat").

The recital from the Qur'an is *wajib* in the first two *rak'ahs*; but in the third *rak'ah* of the *maghrib* prayer and the last two *rak'ahs* of '*asr* and '*isha'* prayer there is an option between reciting from the Qur'an or saying the *tasbih* or keeping quiet (al-Nawawi, *Sharh al-Muhadhdhab*, vol.3, p.361).

Moreover, the Hanafis say: It is valid to skip the *basmalah* because it is not a part of any *surah*. Neither reciting aloud nor in a low voice are *mustahabb*, and a *musalli* praying alone is free to recite in a voice that he alone can hear or in a voice hearable to others. There is no *qunut* in *salat* with the exception of *salatal-watr*. As to *takattuf*, it is *masnun* (a *sunnah*) but it is not *wajib*, and its preferable form is for a man to place the palm of his right hand on the back of his left hand below the navel, and for a woman to place her hands on her chest.

The Shafi'is state: *Surat al-Fatihah* is *wajib* in every *rak'ah*, without there being any difference in this regard between the first two *rak'ahs* and the other *rak'ahs* and between *wajib* and *mustahabb salat*s.

The *basmalah* is a part of the *surah* and cannot be omitted in any circumstance. The recitation should be aloud in the morning prayer and the first two *rak'ahs* of *maghrib* and '*isha'* prayers; the remaining recitals are to be in a low voice. The *qunut* is *mustahabb* only in the morning prayer, and is to be performed after rising from the *ruku'* of the second *rak'ah*. Similarly, it is *mustahabb* to recite another surah after *al-Fatihah* only in the first two *rak'ahs*. *Takattuf* is not *wajib* but a *sunnah* for both the sexes, and its

preferable form is to place the right hand palm on the back of the left hand between the chest and the navel and towards the left side.

According to the Malikis, reciting *Surat al-Fatihah* is necessary in every *rak'ah*, without there being any difference in this regard between the earlier and later *rak'ahs* and between *fard* and *mustahabb salats*, as observed earlier by the Shafi'is. It is *mustahabb* to recite another *surah* after *al-Fatihah* in the first two *rak'ahs*.

The *basmalah* is not a part of the *surah* and it is *mustahabb* to omit it altogether. Reciting aloud is *mustahabb* in the morning prayer and the first two *rak'ahs* of *maghrib* and '*isha'* prayers. *Qunut* is to be recited only in the morning prayer.

Takattuf is valid in their opinion, though it is *mustahabb* to keep the hands hanging freely in the *fard* prayers.

The Hanbalis consider *al-Fatihah* to be *wajib* in every *rak'ah*, and to recite a *surah* after it in the first two *rak'ahs* as *mustahabb*. The morning prayer and the first two *rak'ahs* of *maghrib* and '*isha'* prayers are to be recited aloud. The *basmalah* is a part of *surahs* though it will be recited in a low voice and not aloud. *Qunut* is to be recited in *Salat al-watr* and not in any other *salat*. *Takattuf* is a *sunnah* for both men and women and its preferable form is to place the right hand palm on the back of the left hand below the navel.

It is evident that *takattuf*, which the Sunni legists call '*qabd'* and the Shi'a legists call '*takfir'* – i.e. to conceal – is not *wajib* in the opinion of any of the four Sunni schools.

The Imamis state: Reciting *Surat al-Fatihah* is necessary in the first two *rak'ahs* of every *salat* and no other *surah* can replace it. But it is not *wajib* in the third *rak'ah* of *maghrib* and the last two *rak'ahs* of four-*rak'ah* prayers; rather, one has an option between it and *tasbih. Tasbih* means the recitation of:

سبحان الله و الحمد لله و لا الهَ الا الله و الله اكبر

thrice, though even once is sufficient. It is *wajib* to recite another complete *surah* in the first two *rak'ahs*, and the *basmalah* is a part of the *surahs* which cannot be omitted in any circumstance.

It is *wajib* to recite aloud only the *surahs* and 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.

Qunut is *mustahabb* in the five daily prayers and its place is the second *rak'ah* after the recital of the *surahs* and before *ruku'*. 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. The schools concur that reciting aloud is not prescribed for women, nor is reciting in a voice lower than what can be heard by herself. If a *musalli* voluntarily recites loudly something which is to be recited in a low voice and vice versa, his/her *salat* will be invalid, if this is not done due to ignorance or forgetfulness.

The Imamis also considers saying "*Ammin*" (Amen) during *salat* to be *haram* and doing so invalidates the *salat*, irrespective of whether one is praying individually or in group prayer as an *imam* or *ma'mum*,because it is something adopted by the people, and nothing adopted by people is capable of being included in the *salat*.

The four Sunni schools concur that it is *mustahabb* in accordance with the narration of Abu Hurayrah that the Prophet (S) said:

When the imam says, "*ghayr il maghdubi 'alaymhim wa la-ddallin*,' then say: "*Ammin.*"

The Imamis negate the authenticity of the above tradition.

Most Imamis consider *takattuf* (putting hands over each other) renders the *salat* invalid (*batil*) because there is no explicit text (*nass*) in support of it. However, some of them say: *Takattuf* is *haram* and the one who does it has committed sin, though his *salat* is not invalid. A third group from among them observe: It is *makruh* (discouraged) and not *haram*.

5. Ruku' (bowing)

There is consensus among the schools that *ruku'* is obligatory (*wajib*) in *salat* but they differ regarding the extent to which it is *wajib* and the necessity of staying motionless in that position. The Hanafis observe: What is obligatory is to bend down in any possible manner, and staying motionless is not obligatory. The remaining schools consider it obligatory to kneel down until the palms of the hands of the *musalli* reach his knees and to stay motionless during bowing.

The Shafi'is, Hanafis and Malikis state: It is not obligatory to recite anything during *ruku'*, though it is sunnah that the *musalli* say: "*Subhana Rabbi al-'azim"*.
The Imamis and the Hanbalis consider *tasbih* to be obligatory during *ruku'* and its formula in the opinion of the Hanbalis is *"Subhana Rabi al-'azim*", and according to the Imamis "*Subhana Rabbi al-'azim wa bi hamdih*" or just "*SubhanAllah*" thrice. It is encouraged (*mustahabb*) in the opinion of the Imamis to add after the *tasbih*, a benediction for Muhammad (S) and his Family (*Allahumma salli 'ala Muhammadin wa Ale Muhammad*).

The Hanafis say: It is not obligatory to return to the standing position after *ruku'*, and it is sufficient, though *makruh* (discouraged), to perform *sajdah* (prostration) straightaway. The other schools consider it obligatory to return to the standing position and *mustahabb* to recite the *tasmi'*, which is to say: "*Sami 'allahu li man hamidah*" (God hears one who praises Him). According to the Imamis, it is obligatory to

stay motionless in this standing (*qiyam*).

6. Sujud (prostration)

There is consensus among the schools that *sujud* (prostration) is obligatory twice in each *rak'ah*. They differ regarding its details, as to whether itis obligatory to prostrate with all the seven parts of the body touching the ground while performing it or if it is sufficient to lay on the ground only some of them. These seven parts are: the forehead, the palms, the knees and the big toes.

The Malikis, Shafi'is and Hanafis state: It is obligatory to lay only the forehead on the ground in *sujud*, and laying down the other parts is encouraged (*mustahabb*).

The Imamis and the Hanbalis observe: It is obligatory to lay on the ground all the seven parts while performing *sujud*. It has been narrated from the Hanbalis that they add the nose to these seven, thus making them eight. The difference of opinion regarding reciting *tasbih* and being motionless during *sujud* is similar to the difference mentioned concerning *ruku'*. Those who consider them obligatory there, consider them here as well.

The Hanafis do not consider it obligatory to sit between the *sajdahs*; the remaining schools consider it obligatory.

7. Tashahhud

Tashahhud is at most recited twice in *salat*; the first, after the second *rak'ah* of *zuhr*, '*asr, maghrib* and '*isha'* prayers, which is not followed by *taslim*; the second in the last *rak'ah* of the two-, three-, and four-*rak'ah* prayers, which is followed by *taslim*.

The Imamis and the Hanbalis state: The first *tashahhud* is *wajib*. The remaining schools consider it *mustahabb* and not *wajib*. The second *tashahhud* is considered *wajib* by the Shafi'is, Imamis and Hanbalis, and *mustahabb* by the Malikis and Hanafis (*Bidayat al-mujtahid*, vol.1, p.125).

The following are the forms of *tashahhud* observed by the different schools:

The Hanafis

التحيات لله والصلوات والطيّبات، والسلام عليك أيّها النبي ورحمة الله وبركاته، السلام علينا وعلى عباد الله الصالحين، أشهد أن لا إله إلاّ الله، وأشهد أنّ محمداً عبده ورسوله

"attahiyyatu lillahi wassalawatu wattayyibatu wassalamu 'alayka ayyuhaannabiyyu warahmatullahi wabarakatuhu,assalamu 'alayna wa 'ala`abadillahi assaliheena, ash-hadu anna la ilaha illa Allah, waAsh-haduanna Mohammmedan 'abduhu warasuluhu."

The Malikis

التحيات لله الزاكيات لله الطيّبات الصلوات لله، السلام عليك أيّها النبي ورحمة الله وبركاته، السلام علينا وعلى عباد الله الصالحين، أشهد أن لا إله إلاّ الله وحده لا شريك له، وأشهد أنّ محمداً عبده ورسوله

"Attahiyyatu lillah, azzakiyyatu lillah, attayyibatu assalawatu lillah.Assalamu alayka ayyuha annabiyyu warahmatu allahi wabarakatuhu,assalamu alayna wa ‘ala ‘abadi Allahi assaliheena, ash–hadu anna la ilaha illa Allah, wa ash–hadu anna muhammadan ‘abduhu warasuluhu.

The Shafi’is

التحيات المباركات الصلوات الطيبات لله، السلام عليك أيّها النبي ورحمة الله وبركاته، السلام علينا وعلى عباد الله الصالحين، أشهد أن لا إله إلاّ الله، وأشهد أنّ سيدنا محمداً رسول الله

"Attahiyyatu almubarakatu assalawatu attayyibatu lillah, assalamu ‘alayka ayyuha annabiyyu warahmatu allahi wabarakatuhu, assalamu alayna wa ‘ala ‘abadi allahi assalaiheena.Ash–hadu anna la ilaha illa Allah, wa ash–hadu anna sayyidana muhammadan rasulu Allah."

The Hanbalis

التحيات لله والصلوات والطيبات، السلام عليك أيّها النبي ورحمة الله وبركاته، السلام علينا وعلى عباد الله الصالحين، أشهد أن لا إله إلاّ الله وحده لا شريك له، وأشهد أنّ محمداً عبده ورسوله، اللّهم صلِّ على محمد

"Attahiyyatu lillahi wa–assalawatu wa–attayyibatu. assalamu ‘alayka ayyuha annabiyyu warahmatu allahi wabarakatuhu, assalamu alayna wa ‘ala ‘abadi allahi assalaiheena. Ash–hadu anna la ilaha illa Allah, wahdahu la shareekalah,wa ash–hadu anna sayyidana muhammadan ‘abduhu wa– rasuluhu. Allahumma salli ala Muhammadin."

The Imamis

أشهد أن لا إله إلاّ الله وحده لا شريك له، وأشهد أنّ محمداً عبده ورسوله، اللّهم صلِّ على محمد وآل محمد

"Ash–hadu anna la ilaha illa Allah, wahdahu la shareeka lah,wa ash– hadu anna muhammadan ‘abduhu wa–rasuluhu. Allahumma salli ala Muhammadin wa ‘‘Ali Muhammad."

8. Tasleem

The Shafi'is, Malikis, and Hanbalis observe: *Tasleem* is *wajib* (obligatory). The Hanafis do not consider it *wajib* (*Bidayat al-Mujtahid*, vol. 1, p. 126).

The Imamis differ among themselves, a group considers it *wajib*, while others, including al-Mufid, al-Shaykh al-Tusi and al-'Allamah al-Hilli, regard it as *mustahabb*.

Tasleem (farewell) has only one form in the opinion of the four Sunni schools, and it is:

السلام عليكم ورحمة الله

"Assalamu alaikum warahmatu allah".

The Hanbalis say: It is obligatory to recite it twice. The others consider reciting once as sufficient.

The Imamis state: *Tasleem* consists of two formulas; the first is:

السلام علينا وعلى عباد الله الصالحين

"Assalamu alaina wa 'ala 'ibadi allahi assaliheen".

The second:

السلام عليكم ورحمة الله وبركاته

"Assalamu alaikum wa rahmatu allahi wa barakatuh".

One of them is *wajib*. Hence if a person recites the former, the latter will be *mustahabb*, and if he recites the latter, he will stop at it. As to:

السلام عليك أيّها النبي ورحمة الله وبركاته

"Assalamu alaika ayyuha annabiyyu wa rahmatu allahi wa barakatuhu", it is not a part of *tasleem*, and is a *mustahabb* addition to the *tashahhud*.

9. Sequence (tartib)

Proper sequence (*tartib*) is *wajib* between the different parts of *salat*. Hence the *takbirat al-ihram* must precede reciting (*qira'ah*), the *qira'ah* must precede *ruku'*, the *ruku'* must come before the *sujud*, and so on.

10. Continuity

Continuity (*muwalat* and *tatabu'*, i.e. to occur one after another) is *wajib* between the parts of *salat* and between the different portions of a part. Therefore, the reciting (*qira'ah*) must begin immediately after the *takbirah* and *ruku'* must similarly follow the *qira'ah*, and so on. The verses, words and letters must not be recited in a manner breaking continuity.

1. 'tasbih' means: saying "subhanallah wal-hamdu lillah wala ilaha illallahwallahu akbar"which is usually recited three times in the third and theforth rak'ahs (units).Also 'qunut' means rasing both hands toward the sky and holding them infront of the chest or face and then reciting a supplication, like askingfor forgiveness. It could be some verses of Qur'an or not. However it should be in Arabic for obligatory prayers.

Error and Doubt During Salat

The schools concur that a wilful violation of any *wajib* act in prayer invalidates it. However mistake (*sahw*) can be compensated by performing *sujud al-sahw* as described below.

The Hanafis state: The form of *sujud al-sahw* is that the *musalli* should perform two *sajdahs* followed by the recitation of *tashahhud* and *taslim*, prayer and benediction for the Prophet (S). This *sujud* should be performed after the *taslim*, provided there is sufficient time (for the *salat*).

Hence if, for instance, someone makes an involuntary error in *al-fajr* prayer and finds that the sun has risen before his performing *sujud al-sahw*, he is not required to perform it any more. The cause necessitating *sujud al-sahw* is the *musalli's* omitting an obligatory part or repeating an essential part (*rukn*) --such as *ruku'* or *sujud*. If numerous lapses occur (in a single *salat*), the two *sajdahs* will suffice for them all, because their repetition is not valid in their opinion. And if there occurs a lapse in the *sujud al-sahw* it requires no rectification (*Majma' al-'anhur*, vol.1, "bab sujud al-sahw").

The Malikis observe: In its form, *sujud al-sahw* consists of two *sajdahs* followed by *tashahhud* without any supplication and benediction for the Prophet (S). As to the place of this *sujud*, in the event that it is on account of an omission or due to both an omission and an addition, it will be performed before the *taslim*; but if the cause is only an addition, then after the *taslim*.

Moreover, *sujud al-sahw* atones for an involuntary omission of a *mustahabb* part of *salat*; hence if the omitted part is a *fard* (obligatory) part of *salat*, it cannot be compensated by *sujud al-sahw* and must be performed.

However, if the mistake is one of involuntary addition -- such as an extra *ruku'* or two, or one or two additional *rak'ahs* -- it is atonable by *sujud al-sahw*.

The Hanbalis say: It is valid to perform *sujud al-sahw* before or after the *taslim*. It consists of two *sajdahs* followed by *tashahhud* and *taslim*. Its causes are involuntary addition or omission as well as doubt. An example of addition is to perform an additional *qiyam* (standing) or *qu'ud* (sitting). One who sits where he is supposed to stand or vice versa will perform *sujud al-sahw*.

Where there is an omission, the following procedure is to be followed in their opinion. If he remembers the omission before starting the *qira'ah* of the next *rak'ah*, it is *wajib* for him to perform the part omitted as well as *sujud al-sahw*; and if he comes to remember it only after starting the *qira'ah* of the next *rak'ah*, the former *rak'ah* will be annulled and the latter will take its place and *sujud al-sahw* will also be performed.

To illustrate the same, if a person forgets *ruku'* in the first *rak'ah* and becomes aware of it after performing the *sujud* (of the same *rak'ah*), he will perform the *ruku'* and then repeat the *sujud*, and if he becomes aware of it only after starting the *qira'ah* of the second *rak'ah*, the former *rak'ah* will be considered null and void and the second *rak'ah* will take its place.

An example of doubt necessitating *sujud al-sahw* is the case when one doubts whether he has performed the *ruku'*, or has a doubt regarding the number of *rak'ahs* performed. Here he will consider that portion of the *salat* he is sure of having performed as the basis and will perform the remaining, and carry out *sujud al-sahw* on finishing it. Two *sajdahs* suffice for several mistakes, even if their causes differ, and a lapse committed by someone prone to making mistakes will not be considered a lapse.

According to the Shafi'is, the place of *sujud al-sahw* is after the *tashahhud* and benediction of the Prophet (S) and before the *taslim*. Its mode of performance is like the one prescribed by the above-mentioned schools. The reasons for its performance are: omission of an emphasized (*mu'akkadah*) *sunnah*, a little additional recital, the recital of *al-Fatihah* by mistake, the following of an imam whose *salat* is vitiated, a doubt in the number of *rak'ahs*, and the omission of a specific part.

The Imamis differentiate between the rules applicable to cases of doubt and those applicable to errors. They state: No attention will be paid to a doubt arising concerning any act of *salat* after its completion, or the doubt of a *ma'mum* regarding the number of *rak'ahs* if the imam has ascertained their number and vice versa, with each of them referring to the memory of the other.

No significance is attached to the doubts of a person who doubts excessively, and similarly to a doubt with respect to any act of *salat* arising after entry into its subsequent act. Hence if a doubt occurs

regarding the reciting (*qira'ah*) of *al-Fatihah* after starting the *qira'ah* of the subsequent *surah*, or regarding the *surah* after having gone into the *ruku'*, or with respect to the *ruku'* after having entered the *sajdah*, the *salat* will be continued without heeding the doubt.

But if the doubt occurs before starting the performance of the subsequent act, it is *wajib* to rectify it. Hence a person who has doubt regarding the recital of *al-Fatihah* before starting the subsequent *surah*, will recite it, and similarly the *surah* if he has a doubt concerning its recital before entering the *ruku'*.

As to *sujud al-sahw*, it should be done for every omission and addition, except for reciting aloud instead of in a low voice and vice versa -- as it does not entail anything -- and except for any omission or addition that does not pertain to the essentials (*arkan*) of *salat* because their omission or addition invalidates the *salat* irrespective of its being wilful or by mistake.

The *arkan*, in their opinion, are the following five: *niyyah* (intention), *takbirat al-ihram*, *qiyam*, *ruku'* and the two *sajdahs* of a *rak'ah*. It is not obligatory to perform any part omitted by mistake after the *salat* except *sajdah* and *tashahhud*, which are alone required to be performed among the forgotten parts.

These will be performed after the completion of the *salat* followed by *sujud al-sahw*, which consists of making two *sajdahs* and reciting

بسم الله وبالله، اللّهم صلّ على محمد وآل محمد

in the state of prostration, followed by *tashahhud* and *taslim*.

The number of *sujud al-sahw* required is equal to the number of causes entailing it. They consider the mistake of a person committing excessive mistakes and a mistake committed while rectifying one, as no mistake.

Doubt in the Number of Rak'ahs

The Shafi'is, Malikis and Hanbalis observe: If the *musalli* has a doubt regarding the number of *rak'ahs* performed, he will consider the number of *rak'ahs* he is certain of having performed as the base and will complete the *salat* by performing the rest.

The Hanafis state: If the *musalli's* doubt in *salat* is for the first time in his life, he will repeat it from the beginning. But if it occurs to him that he has doubted in *salat* earlier as well, he will think for quite a while and will act in accordance with what seems more probable to him. But if the doubt remains (even after thinking), he will consider the number of *rak'ahs* he is certain of having performed as the base.

The Imamis state: If the doubt concerning the number of *rak'ahs* performed occurs in a two-*rak'ah salat* (such as *salat al-subh*, the *salat* of a traveler, *salat al-jumu'ah*, *salat al-'idayn* and *salat al- kusuf,* or in

salat al-maghrib or in the first two *rak'ahs* of '*isha'*, *zuhr* and '*asr* prayers, the *salat* will become invalid and it will be *wajib* to start it again from the beginning. But if the doubt occurs in the *rak'ahs* subsequent to the first two *rak'ahs* of the four-*rak'ah* prayers, he will perform *salat al-ihtiyat* after completing the *salat* and before performing any act incompatible with *salat*.

For example, 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*. He will then perform as *ihtiyat* (caution) a single *rak'ah* while standing or two *rak'ahs* while sitting. If the doubt concerns his being in third or fourth *rak'ah*, he will consider it the fourth *rak'ah* and complete the *salat* and follow it up with a single *rak'ah* standing or two *rak'ahs* sitting by way of caution.

If the doubt concerns his being in second or fourth *rak'ah*, he will consider it the fourth *rak'ah*. He will then offer two *rak'ahs* standing. 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 it two *rak'ahs* standing and two *rak'ahs* sitting.

According to them, the reason for performing these *rak'ahs* is to preserve the prescribed form of *salat* and avoid additions and omissions. Their point is illustrated by the example of a person who has a doubt between its being third or fourth *rak'ah*. He will consider it to be the fourth *rak'ah* and perform a single *rak'ah* separately after completing the *salat*. If his *salat* has been complete, the additional *rak'ah* performed separately will be considered as *nafilah*, and if the *salat* had been incomplete, the separate *rak'ah* will complement it.

However, this manner of performing *salat al-ihtiyat* (cautionary prayer) is particular to the Imamis. They limit this procedure to the obligatory *salat*s, and among them to *zuhr*, '*asr* and '*isha'* prayers only. As to the *nafilah* prayers, the *musalli* is free to consider the minimum or maximum *rak'ahs* probably performed as the basis, provided such supposition does not invalidate the *salat* (such as where he doubts his being in second or third *rak'ah* with the knowledge that the *nafilah* comprises only two *rak'ahs*; here he will consider the minimum number of *rak'ahs* probably performed as the basis).

It is better in all *mustahabb* prayers to consider the minimum ascertainable number of *rak'ahs* as the basis. If a doubt concerning *rak'ahs* arises in *salat al-ihtiyat*, the maximum number of *rak'ahs* probably performed will be made the basis, except where doing so invalidates the *salat*, in which case the minimum number of *rak'ahs* will be the basis. Some Imamis observe: One is free to choose as the basis either the minimum or maximum *rak'ahs* probably performed.

The Friday Prayer

Its Wujub (necessity)

There is consensus among all the Muslims regarding the Friday prayer (*salat al-jumu'ah*) being *wajib* in accordance with the words of God, the Exalted:

يَاأَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِي لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ

***O believers, when proclamation is made for prayer on the Day of Congregation* (*yawm al-jumu'ah*) *hasten to God's remembrance and leave trading aside* (*Qur'an 62:9*)**

as well as the *mutawatir* traditions narrated both by Shi'i and Sunni sources.

They differ as to whether its *wujub* is conditional to the presence of the ruler or his deputy in it or if it is *wajib* unconditionally.

The Hanafis and the Imamis state: The presence of the ruler or his deputy is necessary; the Friday prayer is not *wajib* if neither of them is present. The Imamis require the ruler to be just ('*adil*); otherwise his presence is equal to his absence. To the Hanafis, his presence is sufficient even if he is not just.

The Shafi'is, Malikis and Hanbalis attach no significance to the presence of the ruler, and a large number of Imamis observe: In the absence of a ruler or his representative and the presence of a just *faqih*, there exists an option between performing either the Friday or the *zuhr* prayer, although preference lies with the performance of Friday prayer.[1]

Conditions

The schools concur that the requirements for other *salat*s (such as *taharah*, covering the body, and facing the *qiblah*) also apply to Friday prayers, that its time is from when the sun crosses the meridian up to when the shadow of an object equals its height, and that it can be performed in a mosque as well as any other place, except in the opinion of the Malikis who don't consider it valid except in a mosque.

There is also consensus that it is *wajib* for men and not for women, and that one who performs is not required to perform the *zuhr* prayer, and that it is not *wajib* for the blind, and that it is not valid except when performed in *jama'ah* (congregation).

They differ regarding the minimum number of persons required to form a *jama'ah*; the Malikis state: Its minimum is 12, excluding the imam. The Imamis consider it to be 4, excluding the imam. In the opinion of the Shafi'is and Hanbalis, it is 40, including the imam; according to the Hanafis it is 5, though some of them say it is 7.

The schools, except the Hanafi, concur in its being prohibited for someone upon whom the Friday prayer

has become *wajib* and its conditions fulfilled, to travel after the sun has crossed the meridian before performing it. The Hanafis allow it.

The Friday Sermons

There is consensus that the two sermons are required for convening the Friday prayer and that they are to be delivered before the *salat*, though after the setting in of its time and not earlier. They differ regarding the *wujub* of standing while delivering them. The Imamis, Shafi'is and Malikis require it, but not the Hanafis and Hanbalis.

As to their content, the Hanafis say: The sermon will be considered delivered even by a minimal *dhikr*, such as uttering "*al-hamdulillah*" or "*astaghfirullah*", though such brevity is *makruh*.

The Shafi'is observe: It is necessary in both the sermons to praise God, invoke blessings on the Prophet (S), to exhort to piety, to recite a verse in at least one of the sermons, though reciting it in the first is better, and to supplicate for the faithful in the second sermon.

According to the Malikis anything considered by custom as a sermon suffices, provided it includes exhortation and announcement of good news.

The Hanbalis consider it essential to praise God, invoke blessings on the Prophet (S), recite a verse and counsel piety.

The Imamis state: It is *wajib* in each of the sermons to praise and extol God, invoke blessings on the Prophet (S) and his Family (A), preach, and recite something from the Qur'an, and in the second sermon, to implore God's forgiveness and to pray for the faithful.

The Shafi'is and Imamis observe: It is *wajib* for the preacher to separate the two sermons by sitting down for a short while between them.
The Malikis and Hanafis consider it *mustahabb*.

According to the Hanbalis, the sermon should be delivered in Arabic, if possible.

The Shafi'is consider Arabic necessary if the people are Arabs, and if they are non-Arabs, the preacher should preach in their language even if he is well-versed in Arabic.

The Malikis say: It is *wajib* to preach in Arabic even if the people are non-Arabs and do not understand a word of Arabic. If there is no one among them who knows Arabic, there is no obligation to perform the Friday prayer.

The Hanafis and the Imamis do not consider Arabic a condition for delivering the sermons.

Its Mode of Performance

The Friday prayer comprises two units (*rak'ahs*), just like the morning prayers. The Imamis and the Shafi'is observe: After *Surat al-Hamd* of each *rak'ah*, it is *mustahabb* to recite *Surat al-Jumu'ah* in the first *rak'ah* and *Surat al-Munafiqun* in the second.

The Malikis state: *Surat al-Jumu'ah* will be recited in the first *rak'ah* and *Surat al-Ghashiyah* in the second. According to the Hanafis, it is *makruh* to confine to a particular *surah*.

1. Al-Shahid al-Thani in al-Lum'ah, vol.1, "bab al-salat", fasl 6, observes: The wujub of salat al-jumu'ah duing the occultation of the Imam is obvious in the opinion of most 'ulama'... and if there has been no claim of ijma' regarding its not being wajib, the opinion that it is wajib 'ayni would have been extremely strong. Therefore, the least that can be said is that there is an option between it (salat al-jumu'ah) and the zuhr prayer, with the Jumu'ah (prayer) enjoying preference".

The 'Id Prayers

The schools differ concerning the prayers performed on the two '*Ids* (festivals), *al-Fitr* and *al-'Adha*, as to whether they are obligatory (*wajib*) or recommended (*mustahabb*). The Imamis and the Hanafis observe: It is *wajib* for every individual if the conditions mentioned in Friday prayer are fulfilled. If some or all of these conditions do not exist, there is no obligation in the opinion of the two schools, except that the Imamis add:

In the absence of conditions necessary for its *wujub*, one can perform it as *mustahabb* either singly or in *jama'ah*, during both journey and stay.

According to the Hanbalis it is *fard kifa'i*. The Shafi'is and the Malikis consider it a highly recommended practice (*sunnah mu'akkadah*).

In the opinion of the Imamis and the Shafi'is its time is from sunrise until the sun crosses the meridian. According to the Hanbalis, its time is from when the sun rises to the height of a spear until it crosses the meridian.

The Imamis say: Delivering of two sermons is *wajib* here as in the Friday prayer. The other schools consider it as *mustahabb*. All the schools concur that the sermons are to be delivered after the *salat*, as against the Friday prayer, in which they are delivered earlier.

According to the Imamis and the Shafi'is it can be validly performed individually as well as in *jama'ah*. The other schools consider perfoming in *jama'ah* is necessary for *salat al-'Id*.

As to the mode of its performance, it comprises two units (*rak'ahs*) performed differently by the various

schools in the following manner:

The Hanafis

Takbirat al-ihram will be said after making the *niyyah*, followed by the praise of God. Then will follow three more *takbirahs*, with an interval of silence equaling three *takbirahs*, and it is also correct to say:

سبحان الله والحمد لله ولا إله إلاّ الله والله أكبر

"Subhana Allahi wa alhamdu lillahi wa la ilahailla Allah wa Allahu Akbar".

Then will follow the recital of *Surat al-Fatihah*, another *surah*, then *ruku'* and *sujud*, in that order. The second *rak'ah* will begin by reciting *Surat al-Fatihah*, which will be followed by another *surah*, three *takbirahs*, *ruku'* and *sujud*. After this the *salat* will be completed.

The Shafi'is

After saying the *takbirat al-ihram*, the *Du'a' al-Istiftah*[1] will be recited, followed by seven *takbirahs*, reciting after every two of them in a low voice:

سبحان الله والحمد لله ولا إله إلاّ الله والله أكبر

"Subhana Allahi wa alhamdu lillahiwa la ilaha illa Allah wa Allahu Akbar";
then after *ta'awwudh*

اعوذ بالله من الشيطان الرجيم

(*A'udhubillahi mina al-shaitani al-Rajeem*), *al-Fatihah* and *Surat Qaf* will be recited, followed by *ruku'* and *sujud*.

After standing up for the second *rak'ah* and saying a single *takbirah* for it, five more *takbirahs* will be added, reciting after every two of them:

سبحان الله والحمد لله ولا إله إلاّ الله والله أكبر

"Subhana Allahi wa alhamdulillahi wa la ilaha illa Allah wa Allahu Akbar".
This will be followed by *al-Fatihah* and *Surat Iqtarabat*, and then the *salat* will be completed.

The Hanbalis

The *Du'a' al-Istiftah* will be recited followed by six *takbirahs* reciting after every two of them in a low voice:

الله أكبر كبيراً، والحمد لله كثيراً، وسبحان الله بكرة وأصيلاً، وصلّى الله على محمد وآله وسلم تسليماً

"Allahu akbaruKabeera, wa alhamdu lillahi katheera, wa subhana allahi bukratan waaseela, wa salla allahu ala Muhammadin wa alihi wa sallama tasleema".

This will be followed by *ta'awwudh*, *basmalah*, *al-Fatihah* and *Surat Sabbihisma Rabbik*.

The *rak'ah* will be then completed. Upon standing up for the second *rak'ah*, five *takbirahs*, apart from the *takbirah* for the *qiyam*, will be said, reciting after every two of them what was mentioned concerning the first *rak'ah*. Then the *basmalah* will be followed by *Surat al-Ghashiyah* and *ruku'* and the *salat* will then be completed.

The Malikis

After the *takbirat al-ihram*, six more *takbirahs* will be said, followed by *al-Fatihah, Surat al-A'la, ruku'* and *sujud*. Then standing up for the second *rak'ah* and saying the *takbirah* for it, five more *takb'irahs* will be said, followed by *al-Fatihah, Surat al-Shams* or a similar *surah*; the *salat* will then be completed.

The Imamis

The *takbirat al-ihram* will be followed by *al-Fatihah* and another *surah*. Then five *takbirahs* will be said with *qunut* (raising and holding hand in front of body for supplication) after each of them, then *ruku'* and *sujud* will follow. After standing up for the second *rak'ah*, *al-Fatihah* and another *surah* will be recited, followed by four *takbirahs*, each of them followed by *qunut*. Then the *ruku'* will be performed and the *salat* completed.

1. According to the Sunni schools, Du'a al-Ifititah or Du'a al-Istiftah is:

سبحانك اللّهم وبحمدك وتبارك اسمك وتعالى جدّك ولا إله غيرك

The Prayer of the Eclipses

The four Sunni schools observe: The solar- and lunar- eclipse prayer is an emphasized *sunnah*, but not *wajib*.The Imamis state: It is obligatory for every *mukallaf* (sane mature person).

It does not have a special form in the opinion of the Hanafis; rather it is to be performed in two *rak'ahs* like a *nafilah* prayer, each *rak'ah* comprising a single *qiyam* and *ruku'*. The *musalli* is free to perform it in two, four, or more *rak'ahs*.

According to the Hanbalis, Shafi'is and Malikis, it has two *rak'ahs*, with each *rak'ah* having two *qiyams* and two *ruku's*. After the *takbirat al-ihram*, *al-Fatihah* and another *surah* will be recited, followed by *ruku'*: After rising from the *ruku'al-Fatihah* and another *surah* will be recited, followed by *ruku'* and *sujud*. Then standing up for the second *rak'ah*, it will be performed like the first, and the *salat* completed. It is also valid to perform it in the manner of a *nafilah salat*.

There is consensus that it can be performed singly as well as in *jama'ah*, except that the Hanafis observe regarding the lunar eclipse prayer: It has not been enacted for *jama'ah*, and has to be performed singly, at home.

As to its time, all the schools excepting the Malikis concur that it begins and ends with the eclipse. The Malikis say: Its time begins when the sun is at a spear's height above the horizon and continues until noon.

The Hanafis and the Malikis say: A two-*rak'ah salat* is recommended at the time of any fearsome incident, such as an earthquake, thunderbolt, unusual darkness, epidemic, etc.

According to the Hanbalis, it is recommended only for earthquakes. The schools concur that this *salat* does not have an *adhan* and *Iqamah*, though an announcer will call out "*al-salat*" three times according to the Imamis, and "*al-salat jami'ah*" according to the other schools.

The Imamis observe: The *salat* is *wajib* upon every individual during solar and lunar eclipses, earthquakes, and on the occurrence of all unsettling celestial phenomena such as the sky's darkening or becoming extraordinarily red, strong winds, big sounds, etc.

If performed in *jama'ah*, the imam will recite only the *surahs* on behalf of those following him, just as in the daily prayers.The time for performing the *salat* for solar and lunar eclipses is the period of their occurrence, and one who does not perform them at that time will perform them later as *qada'*.

There is no specific time for *salat*s to be performed consequent to earthquakes and similar fearsome incidents; rather, it is *wajib* to perform these *salat*s as soon as they occur, though in the event of delay they can be performed as *ada'* as long as one is alive.

Its mode of performance is that after *takbirat al-ihram*, *al-Fatihah* and another *surah* are recited, followed by *ruku'*. Upon rising from the *ruku'*, *al-Fatihah* and a *surah* will be repeated, followed again by *ruku'*. 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';* this will be repeated till five *ruku's* are performed in the second *rak'ah* as well. Then will follow two *sajdahs*, *tashahhud*, and *tasleem*.

Thus altogether there are ten *ruku's*, and every five of them is followed by two *sajdahs*, both in the first and the second *rak'ah*s.

Prayer For Rain

Prayer for rain (*salat al-'istisqa'*) has been expressly mentioned in the Qur'an and the Sunnah, and there is consensus concerning it. God Almighty says:

وَإِذْ اسْتَسْقَى مُوسَى لِقَوْمِهِ...

When Moses prayed for water for his people,... (***Qur'an 2:60***)

فَقُلْتُ اسْتَغْفِرُوا رَبَّكُمْ إِنَّهُ كَانَ غَفَّاراً * يُرْسِلْ السَّمَاءَ عَلَيْكُمْ مِدْرَاراً

And I said: 'Ask forgiveness of your Lord; surely He is ever All-forgiving, and He will loose heaven upon you in torrents. (***Qur'an 71:10-11***)

A tradition reports that once when the people of Madinah were facing drought and the Prophet (S) was delivering a sermon, a man stood up and said: "Horses and women have perished. Pray to God to give us rain."The Prophet (S) extended his hands and prayed.

Anas narrates: "The sky was (clear) like a piece of glass. Then the wind began to blow. The clouds emerged and gathered and the sky poured forth its blessings. We went forth wading through the pools till we reached our homes. It continued to rain till the next Friday, and the same person stood up again and said: 'O Prophet of Allah, houses have fallen and the caravans have been detained. So pray to God to stop it'. The Prophet (S) smiled and then said: 'O God, make rain around us, not upon us.' Then I looked at the sky and saw it (i.e. the clouds) split and form a garland around Madinah."

The occasion for this *salat* is drought, scanty rainfall, and drying up of springs. The schools concur that if

rain is delayed even after performing the *salat*, it is *mustahabb* to repeat it. If it is preceded by three days of fasting and the people go forth on foot, in a humble and supplicating manner, accompanied by their women and children, their elderly, men and women, and cattle, it will be more conducive for invoking Divine mercy.

There is consensus that it is valid to perform it individually as well as in *jama'ah*, and that it does not have an *adhan* and *iqamah*; it is *mustahabb* for the imam to deliver a sermon after the *salat*. As to its mode, the schools concur that it comprises two *rak'ahs* to be performed like the two *rak'ahs* of *salat al-'id* in accordance with what each school specifies in that regard. The Malikis and the Hanafis say: It is like *salat al-'Id* though without the additional *takbirat*.

The Imamis observe: It is *mustahabb* after every *takbirah* to recite *qunut* imploring the mercy and blessing of God and seeking rainfall.

The four Sunni schools state: This kind of supplication will be mentioned by the preacher after the *salat* during the sermon, not in the *salat* itself.

Salat al-Qada'

There is consensus among the schools that it is *wajib* to perform *qada'* of every obligatory *salat* omitted either intentionally, or on account of forgetfulness, ignorance or sleep, and that there is no *qada'* for a woman for the prayers left during *hayd* and *nifas*, because *salat* is not *wajib* during these periods. The schools differ regarding one who is insane, unconscious or intoxicated.

The Hanafis state: *Qada'* is *wajib* upon one who loses his senses by consuming a *haram* intoxicant, such as wine or something of its kind. As to someone insane or in a swoon, he is not required to perform *salat* in the following two situations: firstly, if the state of swoon or insanity continues for a period exceeding five *salats* (hence if it lasts for less than that period the person should perform its *qada*.'); secondly, if the recovery from insantiy or swoon does not occur at the time of *salat* (hence if he recovers and does not perform the *salat* its *qada'* will be *wajib* upon him).

The Malikis are of the opinion that an unconscious or insane person has to perform *qada'*. An intoxicated person will perform *qada'* if the cause of intoxication is the drinking of something *haram*; but if it is something *halal* (such as sour milk) there is no *qada'* for it.

According to the Hanbalis, an unconscious person and one intoxicated by something *haram* will perform *qada'*, though an insane person is not required to do so.

The Shafi'is state: An insane person whose state of insanity extends over the entire period of *salat* will

not perform its *qada'*. The same applies to one in a swoon or one intoxicated, provided he is not responsible for his state.

The Imamis consider it *wajib* for anyone who has consumed an intoxicant to perform *qada'*, irrespective of whether he drinks it knowingly or unknowingly, voluntarily or out of an exigency or under duress. As to an insane person and one in a swoon, they have no *qada'* to perform.

The Mode of Performing Qada'

The Hanafis and Imamis observe: A person who has omitted an obligatory *salat* will perform its *qada'* exactly in the manner he would have performed it *ada'*. Hence 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*. Similar is the rule respecting recital in a high or low voice. Hence if *maghrib* and *'isha'* prayers are performed *qada'* during daytime, their recital will be loud, and in the *qada'* of *zuhr* and *'asr* prayers during night the recital will be in a low voice.

The Hanbalis and the Shafi'is state: The one who intends to perform the *qada'* of a *qasr* prayer during journey will perform it *qasr* in accordance with the *salat* missed by him. But if he happens to be staying (*hadr*), it is *wajib* upon him to perform it complete as *qada'*. This was with respect to the number of *rak'ahs*.

As to its recital in a high or low voice, the Shafi'is say: The one who performs the *qada'* of *zuhr* at night will recite in a loud voice and one performing *qada'* of *maghrib* during daytime will do so in a low voice. The Hanbalis require all *qada'* prayers to be recited in a low voice, irrespective of their being those that are recited in a high voice or low, and regardless of whether the *qada'* is performed during daytime or at night, except where the person performing it is an imam and the *salat* is one which is recited in a high voice and it happens to be nighttime.

The schools, excepting the Shafi'i, concur that 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 if *maghrib* and *'isha'* prayers are missed, the former will be offered before the latter, as is the case while performing them *ada'*.

According to the Shafi'is, the maintaining of sequence in prayers missed is *sunnah* and not *wajib*. Hence the *salat* of a person who performs the *'isha'* prayer before the *maghrib* prayer is valid.

Proxy for Acts of Worship

There is a general consensus that appointing a proxy for carrying out prayers and fasts for a living person is not valid in any situation irrespective of whether he is capable or incapable of performing them himself. The Imamis state: It is valid to appoint a proxy for carrying out fasts and prayers on behalf of a

dead person. The four Sunni schools observe: It is not valid in the case of a dead person, in the same manner as it is not valid for a living one.

The schools concur that appointing a proxy for Hajj is valid in the case of a living person provided he is incapable of performing it himself, and with greater reason in the case of a dead person. An exception are the Malikis who say: The appointing of a proxy, both for a living or a dead person, is of no consequence.

The Imamis are alone in observing that it is *wajib* for a child to perform the *qada'* of the fasts and prayers left unperformed by its father. But they differ among themselves, and some of them state: It is *wajib* to perform all that which has been missed by the father, even if intentionally. Others say: It is necessary to perform the *qada'* of only those acts which he has been unable to perform due to illness or some similar cause. There are others who observe: Nothing except that which has been missed by him during death-illness is to be performed as *qada'* by the child. According to some others, the *qada'* of the mother will also be performed by the child in the same manner as that of the father.

Salat al-Jama'ah

The Muslims are one voice regarding *salat al-jama'ah* (congregational prayer) being a ceremony and symbol of Islam. It was performed perpetually by the Prophet (S) and by the Caliphs and the Imams after him. The schools differ as to whether it is *wajib* or *mustahabb*.

The Hanbalis state: It is *wajib* upon every person capable of it. But if he forsakes the *jama'ah* and prays individually, his *salat* will be valid, though he will have sinned.

The Imamis, Hanafis, Malikis and most Shafi'is observe: It is neither *wajib* individually (*'ayni*) nor collectively (*kifa'i*) but is an emphasized *mustahabb*.

According to the Imamis, the Shari'ah has ordained *jama'ah* only for *wajib*, not for *mustahabb* prayers, except *istisqa'* and *'idayn* prayers despite the absence of its conditions. The four schools consider it ordained for both *wajib* and *mustahabb* prayers.

Conditions for Jama'ah

The following conditions have been laid down for the validity of *jama'ah*:

1. Being a Muslim. There is a consensus about it.

2. Sanity. They concur regarding it.

3. According to the Imamis, the Malikis and the Hanbalis, in one of the two opinions narrated from Imam Ahmad, *'adalah* (i.e. 'justice' of the imam) is necessary. The Imamis cite as their evidence the Prophet's statement, "A woman will not act as an imam for a man, nor a *fajir* (a libertine) for a believer", the consensus of the Ahl al-Bayt ('a), as well as the reason that the *imamah* in *salat* is suggestive of leadership, and a *fasiq* is not competent to assume it under any circumstance. But they also observe: If a person were to trust someone and pray behind him, later coming to know that he is a *fasiq* person, it is not *wajib* upon him to repeat the prayer.

4. Being a male is necessary, and a woman cannot act as an imam for men, though other women can follow her as their imam according to all the schools except the Malikis who say: A woman cannot act as an imam even for women.

5. The Malikis, Hanafis and Hanbalis consider maturity as a requirement for the imam. The Shafi'is are of the opinion that it is valid to follow a child of discriminating age (*mumayyiz*). The Imamis have two opinions; in accordance with the first, maturity is necessary, and according to the second the *imamah* of an adolescent *mumayyiz* is valid.

6. As per consensus, the minimum number of persons required for *jama'ah* is two, one of them being the imam; this does not include the Friday prayer.

7. The *ma'mum* should not stand ahead of the imam, in the opinion of all the schools except the Malikis, who observe: The *salat* of the *ma'mum* will not be invalid even if he stands ahead of the imam.

8. The *jama'ah* should be conducted in a single place and there should be no partitions. The Imamis state: 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. The *jama'ah* is not valid if there exists between the imam and a male *ma'mum* an obstacle which prevents the latter from seeing the imam or seeing those ahead of him who see 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.

The Shafi'is observe: A distance of more than 300 cubits between the imam and the *ma'mum* is not objectionable provided there exists no obstacle.

The Hanafis are of the opinion that if a person whose house adjoins a mosque follows the imam from his house with only a wall separating them, his *salat* will be valid, provided the actions of the imam are known to him. But if the house and the mosque are separated by a road or stream, following the imam is not valid.

The Malikis state: The difference of place does not preclude the validity of following the imam; hence if the imam and the *ma'mum* are separated by a road, stream or wall, the *salat* will be valid as long as the *ma'mum* is capable of ascertaining the acts of the imam.

9. There is consensus that it is necessary for the *ma'mum* to make the *niyyah* of following the imam (*niyyat al-'iqtida'*).

10. The identity of the *salat* of the *ma'mum* and the imam. The schools concur that following the imam is not valid if the two *salats* differ in their *arkan* and *af'al* (acts) (such as the daily prayers as compared to the *salat* of funeral or '*id*), they differ regarding the remaining matters.

The Hanafis and the Malikis observe: It is not valid for a person offering *zuhr* prayer to follow one offering *'asr*, and for one offering *qada'* to follow someone offering *ada'*, and vice versa.

The Imamis and the Shafi'is consider all these as valid. The Hanbalis consider it invalid to offer *zuhr* prayer behind someone offering *'asr* and vice versa, but they consider valid the offering of *zuhr* prayer as *qada'* behind someone performing it *ada'*.

11. The *qira'ah* of the imam should be perfect. Hence the schools concur that it is not valid for a person knowing *qira'ah* to follow one who does not know it, and if he does so his *salat* will be invalid. According to the Hanafis, the *salat* of both the imam and the *ma'mun* will be invalid; and they have a sound ground for holding the opinion that an illiterate person should follow, as far as it is possible, someone whose recital is correct, and it is not valid for him to pray singly where he can pray with a correct *qira'ah* by attending a *jama'ah*.

Following the Imam

There is consensus that one praying with *wudu'* can follow an imam who prays with *tayammum* and that it is obligatory for the *ma'mun* to follow the imam in the recital of the *adhkar* such as:

سبحان ربّي العظيم،سبحان ربّي الأعلى، سمع الله لمن حمده

They differ concerning following him in the *qira'ah*.

The Shafi'is observe: The *ma'mum* should follow the imam in the *salats* that are recited silently and not in those that are recited loudly, and it is *wajib* for him· to recite *al-Fatihah* in all the *rak'ahs*.

The Hanafis state: He should not imitate the imam either in the *salats* where the *qira'ah* is silent nor in those where it is loud; rather, it has been narrated from Imam Abu Hanifah that the *qira'ah* of a *ma'mum* behind the imam is a sin (al-Nawawi, *Sharh al-Muhadhdhab*, vol. 3, p. 365).

According to the Malikis, the *ma'mum* should perform the *qira'ah* in the *salats* where it is silent, not in the *salats* where it is loud.

The Imamis do not consider it *wajib* (for the *ma'mum*) to perform *qira'ah* in the first two *rak'ahs*, but

consider it *wajib* in the third *rak'ah* of *maghrib* prayer and the last two *rak'ahs* of the four-*rak'ah* prayers.

All the schools concur concerning the *wujub* of following the imam's actions by the *ma'mun,* but differ in their interpretation of the term 'following' (*mutaba'ah*).

The Imamis state: The meaning of *mutaba'ah* is that every act of the *ma'mum* should neither precede the corresponding act of the imam nor follow it after an inordinate delay; rather it should be either simultaneous or follow it with a small lag.

In the opinion of the Hanafis, *mutaba'ah* is achieved by performing simultaneously or immediately afterwards or with some lag, the acts performed by the imam. Hence if the *ma'mum* performs *ruku'* after the imam has raised his head from the *ruku'* but before his going down for *sajdah*, he will be considered as having 'followed' the imam in the *ruku'*.

The Malikis say: The meaning of *mutaba'ah* is that every act of the *ma'mum* should take place after the corresponding act of the imam without preceding it or occurring simultaneously with it or following it after excessive delay, so that the *ma'mum* will perform *ruku'* before the imam has raised his head from it.

The Hanbalis are of the opinion that *mutaba'ah* implies that the *ma'mum* should neither precede the imam in any of the acts of *salat* nor delay any act after the imam has performed it. Hence the *ma'mum* should not enter *ruku'* after the imam has finished it, and the imam should not have ended the *ruku'* before the *ma'mum* has entered it.

Joining the Jama'ah in the Middle

If a person joins the *jama'ah* after the imam has finished one or more *rak'ahs*, the schools concur that he will make the *niyyah* for *jama'ah* and continue to perform it with the imam. But the question is whether he will consider the *rak'ahs* being performed along with the imam as the initial part of his *salat* or the end part of it. For example, if he performs only the last *rak'ah* of *maghrib* prayer with the imam, there remain two more *rak'ahs* which have to be performed; now, will the third *rak'ah* which he has performed with the imam be considered his third *rak'ah* as well with the first two *rak'ahs* remaining to be performed, or will it be considered his first *rak'ah*, with the second and the third *rak'ah*s remaining to be performed?

The Hanafis, Malikis and Hanbalis observe: The part of the *salat* which the *ma'mum* performs with the imam will be considered the end part of the former's *salat*. Therefore if he performs only the last *rak'ah* of *maghrib* prayerin in *jama'ah*, it will be considered his last *rak'ah* as well, and he will perform after it a *rak'ah* in which he will recite *al-Fatihah* and another *surah*, followed by *tashahhud*, and in the next *rak'ah*, *al-Fatihah* and a surah. To put it briefly, in such a situation he will offer the third *rak'ah* before the first two *rak'ahs* by considering the part of his *salat* performed with the imam as the end part, and the part performed without the imam as the initial part.

The Shafi'is and the Imamis state: The part of the *salat* which the *ma'mum* performs with the imam will

be considered the initial part of his *salat*, not the end part of it. Hence if he performs the last *rak'ah* of *maghrib* prayer with the imam, he will count it as his first *rak'ah* and will stand up for performing the second *rak'ah*, which will include *tashahhud*, and will follow it up with the third *rak'ah* that will be the end part of his *salat*.

Preference for the Imamah

The Hanafis say: If equally qualified men gather for *salat*, the person most learned in its rules will be preferred for leading it, followed by one with the best *qira'ah*, then the most pious, then the one whose acceptance of Islam was earlier, then the eldest, then the superior in character, then the most handsome, then the noblest in respect of lineage, and then the most cleanly dressed, in that order. If they are all equal in respect of these qualities, the selection will be by casting lots among them.

The Malikis are of the opinion that the ruler or his deputy will lead the prayers, followed by the imam of the mosque, then the master of the house, then the one most learned in *hadith*, then the most just, then the one having the best *qira'ah*, then the most devout (*al-'a'bad*), then the one preceding others in his acceptance of Islam, then the one having the best lineage, then the one with the best character, and then the one who is best dressed, in that order. If they are equal in these respects, lots will be cast among them.

The Hanbalis observe: The most learned in *fiqh* (Islamic law) and having the best *qira'ah* will be preferred, followed by one who excels only in *qira'ah*; then comes the one who excels in the rules of *salat*, then the one who excels in *qira'ah* but does not know the *fiqh* of *salat*, then the most aged, then the person with the best lineage, then the one who has migrated earliest, then the most God-fearing (*al-atqa*), and then the most pious (*al-awra'*), in that order. If they are equal in these qualities, lots will be cast.

The Shafi'is prefer the ruler, and then the imam of the mosque, then the one most learned in *fiqh*, then the one having the best *qira'ah*, then the most ascetic (*al-azhad*), then the most pious (*al-awra'*), then the one who has migrated earliest, then the most eloquent, then the best in terms of lineage,then the best in character, then the cleanest in matters of dress, body and craft, then the one with the best voice, then the most handsome, and then a married person, in that order. In the event of their being equal in respect of these qualities, lots will be cast.

The Irnamis state: If a number of persons are eager to lead the prayers for the sake of the *thawab* (spiritual reward) of *imamah* and not for any worldly purpose, the one whom the *ma'mums* prefer on the basis of the preferential qualities mentioned in the Shari'ah with a religious intent in mind and not with mundane intentions, will be the imam. But if they differ, it is better that a *faqih* be preferred, followed by one who has the best *qira'ah*, then the most eloquent, and then one who enjoys a preference in accordance with the Shari'ah.

Salat During Travel (Salat al-Musafir)

The schools concur that the shortening (*qasr*) of prayers during travel is limited to the obligatory four-*rak'ah* prayers. Hence *zuhr*, *'asr* and *'isha'* prayers will be performed in two *rak'ahs*, like the morning prayer. The schools differ as to whether *qasr* is obligatory during travel or if there is an option between it and complete *salat*?

The Hanafis and the Imamis observe: It is obligatory and has to be performed.
The other schools state: There is an option and a person may either perform it *qasr* or complete.

Conditions for Qasr

Qasr requires the following conditions:

1. There is consensus that travelling over a certain distance is a condition. The distance in the opinion of the Hanafis, is 24 parasangs in the direction of journey; below this, *qasr* is not permissible.

The Imamis consider it to be 8 parasangs in the direction of journey or to and fro together.[1]

The Hanbalis, Malikis and Shafi'is regard it as 16 parasangs, only in the direction of journey, though it does not matter if the distance travelled is less than this distance by two miles (eight miles, in the opinion of the Malikis).

A parasang is equal to 5.04 km (*al-Fiqh 'ala al-madhahib al-'arba'ah*, vol. 4, "mabhath shurut al-qasr"). Hence the minimum distance to be travelled in the opinion of the Hanafis, the three other schools, and the Imamis is 120.96 kms, 80.64 kms and 40.32 kms respectively.

2. The schools concur that the intention to travel the complete distance should be present at the start of the journey, and that the intention of a 'follower' – such as wife, servant, captive or soldier – is subject to the intention of the 'commander' whom he follows, provided that the one under command knows the intention of that commander or leader; in the event of ignorance he/she will perform the *salat* complete.

3. *Qasr* is not valid in the opinion of the four schools except after leaving behind the buildings of a town.

The Imamis observe: Leaving the constructed areas is not sufficient; rather, it is necessary that either the walls of the town should disappear from sight or its *adhan* should not be hearable. The limit they have set for the beginning of the journey is also the limit for terminating it; i.e. 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*.

4. The journey should be for a legitimate purpose. Hence if it is for an illegitimate purpose, such as a journey for the sake of committing theft, etc., he may not pray *qasr* in the opinion of all the schools,

except the Hanafis, who observe: He will pray *qasr* in all journeys, even if the journey is an illegitimate one; at the most he will be sinning by performing an unlawful act.

5. In the opinion of the four schools, the traveller may not pray in a *jama'ah* being led by a local imam or another traveller whose *salat* is complete. If he does so, it is *wajib* for him to perform the complete *salat*.

The Imamis do not accept this condition and consider it valid for a person whose *salat* is complete to pray behind a person praying *qasr* and vice versa, provided each performs his own duty. Therefore, if a traveler prays behind a local resident the *zuhr*, *'asr* and *'isha*' prayers, he will perform two *rak'ahs* and *tashahhud* along with the imam and say the *taslim* individually, while the imam continues with his *salat* till its end. And if a local person prays behind a traveller, he will perform two *rak'ahs* in *jama'ah* and complete the remaining part of his *salat* individually.

6. The *niyyah* of *qasr* is essential for the *salat* being so performed. Hence if a person prays without making *niyyah* of *qasr*, he will perform that *salat* complete in the opinion of the Hanbalis and the Shafi'is.

The Malikis state: It is sufficient to make the *niyyah* of *qasr* in the first *qasr salat* of the journey, and it is not necessary to repeat it in every *salat*.

The Hanafis and the Imamis observe: The *niyyah* of *qasr* is not a condition for *qasr* becoming *wajib*, so that if one does not make it he will have to perform it complete, because the actual status of a duty is not altered by intentions. Moreover, such a person has intended the journey from the very beginning. However, the Imamis say: If a traveller intends to stay at a particular place and later changes his mind, he will offer *qasr* as long as he has not performed any complete *salat*. Hence if he performs even one complete *salat* and then changes his plan of staying there, he will continue to perform *salat* completely.

7. His intention should not be to stay continuously at one place for: fifteen days in the opinion of the Hanafis, ten days in the opinion of the Imamis, and four days in the opinion of the Malikis and the Shafi'is, and a period during which more than 20 *salats* become *wajib* in the opinion of the Hanbalis. The Imamis further add: If he is 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.

8. The traveller's nature of work should not require continuous travel – e.g. one who hires out his beast of burden or a tradesman whose trade requires continuous travelling – so that he is unable to stay at home for the stipulated period of days. This condition has been upheld only by the Hanbalis and the Imamis.

9. The traveler should not be a nomad who has no fixed house and keeps moving from place to place. Only the Imamis have expressly stated this condition.

10. The Hanafis, Hanbalis and Malikis observe: If a traveller changes his mind and intends to return to

the place from where he began his journey, in the event of his not having travelled the distance required for performing *qasr*, his journey will be considered concluded and he will perform his *salat* complete. But if he has travelled the distance stipulated by the Shari'ah, he will pray *qasr* till returning back to his native place.

The Shafi'is say: Whenever a person decides to tum back in the course of his journey, he will perform his *salat* complete (al-Ghazali, *al-Wajiz*, "salat al-musafirin"). This implies that he will start performing *salat* complete on his way back despite having travelled the stipulated distance, because the absence of the mention of any conditions proves inclusiveness and generality.

The Imamis state: If one desists from his journey or becomes hesitant before covering the stipulated distance, it is *wajib* for him to offer his prayers completely; and if the stipulated distance has been covered, he will pray *qasr*. The continuous presence of the intent of journey is a condition as long as the stipulated distance has not been travelled, but after it has been covered, the subject is, of necessity, realized and its existence no longer depends upon intention.

There is consensus among the schools that every condition that entails *qasr* is also a condition for the validity of breaking one's fast during journey, though some schools have added other conditions for the validity of breaking the fast which will be mentioned in the chapter on fasting. The Imamis add no further conditions; they observe:

مَن أفطر قصر، ومَن قصر أفطر

i.e. one who breaks the fast (consequent to travelling) will perform his *salat* as *qasr*, and he who performs *salat* as *qasr* will break his fast.

Successive Performance (Jam') of Two Salats

Malik, al-Shafi'i and Ahmad consider it permissible while travelling to perform *zuhr* and '*asr* prayers, as well as *maghrib* and *'isha'*, successively by either advancing the performance of one of them or delaying the performance of the other. Abu Hanifah observes: It is not valid to perform two *salats* successively for the excuse of journey under any circumstance.

The meaning of 'advancing' their successive performance is to perform *zuhr* and '*asr* prayers in the time meant for *zuhr*, and by 'delaying' is meant their successive performance in the time specified for '*asr*.

Ignorance and Forgetfulness

The Imamis observe: 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.

The Imamis further state: 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, he will perform it *qasr*. 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 or a place where he intends to remain for ten days, he will perform the *salat* complete. Hence the criterion is the time when the *salat* is performed and not the time when it becomes *wajib*.

1. Provided he returns within one day and one night, because in this case his journey has taken up all his day. Some others among them say: One should perform qasr if he intends to return within 10 days.

The Invalidating Causes of Salat (Mubtilat)

The following causes render *salat* invalid:

1. Speech. Its minimum is anything composed of two letters, even if they are meaningless and of a single letter if it makes sense (such as the word قِ which is a verb in the imperative case of the root *waqa*).

The salat will not become *batil* by uttering a single letter which has no meaning and by an involuntary sound comprising many letters.

The Hanafis and the Hanbalis do not differentiate between intentional speech and anything spoken by mistake in respect of its being a cause that invalidates *salat*.
The Imamis, Shafi'is and Malikis observe: *Salat* is not invalidated by anything spoken by mistake provided it is short and does not vitiate the form of the *salat*.

The Imamis and the Malikis are of the opinion that *salat* is not invalidated by clearing the throat, irrespective of whether it is done due to necessity or not. The other schools consider it a cause that invalidates *salat* if done needlessly but not otherwise, such as for clearing one's voice for better phonation or for signalling the imam to correct himself.

The schools concur that it is valid to supplicate during *salat*, seeking blessing and forgiveness from Allah, *subhanahu*, except that the Hanafis and the Hanbalis restrict this supplication to what has been mentioned in the Qur'an and the Sunnah, or that which is sought only from God, such as *rizq* (provision) and *barakah*.

To recite *tasbih* (*subhan Allah*) to indicate that one is performing *salat*, or to guide the imam, or to correct his mistake, is not considered as a speech that invalidates *salat*.

The four Sunni schools state: Included in speech that invalidates *salat* is the returning of *salam*. Hence if someone says *salam* to a person who is praying and he returns the *salam* verbally, the *salat* becomes invalid. However, there is no harm if the *salam* is returned by a gesture.

The Imamis observe: It is *wajib* for the *musalli* to return a salutation which contains the word *'salam'* with a similar salutation, though not any other salutation such as 'good morning', etc. They also specify that the form of the salutation being returned should be exactly like the initial salutation without any difference. Hence the reply of *'salam 'alaykum'* will be the same without *alif* and *lam*, and the reply of *'al-salam 'alaykum'* will be with the *alif* and *lam*.

2. Every action which destroys the form of the *salat* invalidates it. The schools concur that the form is destroyed by any act which gives an onlooker the impression that the person performing that act is not praying.

3. There is a consensus regarding eating and drinking though they differ regarding the quantity that invalidates *salat*.

The Imamis observe: Eating and drinking invalidate *salat* if they distort the form of *salat* or violate any of its conditions, such as continuity, etc.

The Hanafis observe: Every form of eating and drinking invalidates *salat* irrespective of the quanity consumed, even if it is one sesame seed or a drop of water and regardless of whether it is done intentionally or otherwise.

The Shafi'is state: Any food or drink which reaches the stomach of a *musalli*, irrespective of its being a small or a large quantity, invalidates *salat* if the *musalli* does so intentionally and with the knowledge of its being *haram*. But if done out of ignorance or forgetfulness, a small quantity will not invalidate *salat,* though a large quantity will.

According to the Hanbalis, a large quantity will invalidate *salat*, whether consumed intentionally or by mistake, and a small quantity only if consumed intentionally, not otherwise.

4. The occurrence of any minor or major *hadath*, which causes the *wudu'* or the *ghusl* to break, will also invalidate *salat* in the opinion of all the schools except the Hanafis, who observe: It will invalidate *salat* if it occurs before the last *qu'ud* (sitting) by a duration equal to *tashahhud*, and if it occurs after it and before *taslim*, the *salat* will not become invalid.

5. The schools concur that laughter invalidates *salat*, though the Hanafis apply to it the same rule that they apply to *hadath*, as mentioned above.

* * *

Considering the importance of the causes that invalidate *salat* and their number and diversity, and considering that each school has its own opinion which at times concurs or differs with the opinions of other schools, it would be appropriate to give a summary of these causes in accordance with the opinion of.each school separately.

The Shafi'is observe: The causes invalidating *salat* are: *hadath*, which necessitates the performance of *wudu'* or *ghusl*; speech; crying; groaning, in certain situations; inordinate movement(S), a doubt concerning *niyyah*; indecision concerning discontinuing the *salat* while continuing to perform it; shifting one's *niyyah* from one *salat* to another, except where it is an obligatory *salat*, for it is valid to change one's *niyyah* to that of a supererogatory *salat* in order to perform the obligatory *salat* with *jama'ah*; exposure of the *'awrah* when one is capable of covering it; nakedness, as soon as a covering becomes available; the presence of *najasah* to an inexcusable extent, when one does not speedily remove it from himself; the repetition of *takbirat al-ihram*; intentional omission of a *rukn*; praying in *jama'ah* behind an imam who is not fit for *imamah* due to his *kufr*, etc; performing an additional *rukn* intentionally; the reaching of any food or drink to the stomach; turning away with the chest from the *qiblah*; and wrongly performing a *rukn* involving movement before other acts.

The Malikis say: *Salat* is invalidated by: omitting a *rukn*, intentionally or by mistake, if the *musalli*, thinking that his *salat* is correct, does not remember having omitted it until after *taslim* and the passage of an inordinate duration; intentionally performing an additional *rukn*, such as *ruku'* or *sujud*; performing *tashahhud* out of place while sitting; laughter, both intentional and otherwise; eating and drinking intentionally; speaking intentionally and not for correcting the imam; vomiting, if intentional; puffing intentionally with the mouth; occurrence of anything that causes *wudu'* to break; exposure of the *'awrah* or any part of it; *najasah* falling on the *musalli*; inordinate movement; performing four additional *rak'ahs* in a four-*rak'ah salat* knowingly or by mistake; doing *sujud* before *taslim*; inadvertent omission of three *masnun* acts from among the *sunan* of *salat* and then failing to perform *sujud al-sahw*.

The Hanbalis state: The causes that invalidate *salat* are: any inordinate movement; the presence of *najasah* to an inexcusable extent; turning one's back to the *qiblah*; incidence of any *hadath* breaking the *wudu'*; intentional exposure of the *'awrah*; reclining heavily on a support without any excuse; returning to perform the first *tashahhud* after starting the *qira'ah*, provided the *musalli* is aware and conscious of it; performing an additional *rukn* intentionally; intentionally changing the sequence of the *arkan*; mispronunciation that results in a change of meaning despite being capable of proper pronunciation; intending to disrupt the *salat* or indecision regarding it; a doubt regarding *takbirat al-ihram*; laughter, speech, both intentional or otherwise; saying *taslim* intentionally before the imam; eating and drinking, even if due to forgetfulness or ignorance; needlessly clearing the throat; any puffing that may be construed as phonation of two letters; and weeping if not out of the fear of God.

According to the Hanafis, the causes that invalidate *salat* are: speech, whether intentional, by mistake,

or due to ignorance; any supplication (*du'a'*) not out of the Qur'an or Sunnah; any inordinate movement; turning the chest away from the *qiblah*; eating and drinking; clearing the throat without reason; saying "*uff*" (i.e.'fie; or 'ugh'; an expression of anger or displeasure); groaning; saying "Ah!" (*ta'awwuh*); weeping loudly; saying "*al-hamdulillah* " on sneezing; saying "*Inna lillah*..." on hearing some bad news and "*al-hamdulillah* " on hearing some pleasing news; saying "*subhan Allah*" or "*la ililha illallah*" as an expression of surprise; availability of water for one praying with *tayammum*; the rising of the sun for one offering the morning prayer or its crossing the meridian for one performing *salat al-'id*; the falling off of a bandage from one who attains recovery; wilful occurrence of *hadath*, but if the *hadath* is involuntary it will not invalidate the *salat*, though one will have to perform *wudu'* again and recommence the *salat* from where he had left it. 1

The Imamis observe: The causes that render *salat* invalid are: ostentation (*riya'*); uncertainty in *niyyah*; performing any act of *salat* while having made up one's mind to discontinue it; changing one's intent from a preceding *salat* to a subsequent *salat*, such as from *zuhr* to *'asr*. However, the transition from *'asr* to *zuhr* prayer is permissible; hence if a person makes the *niyyah* of performing *'asr* prayer with the idea that he has performed the *zuhr* prayer and remembers during it that he has not performed the prayer, it is valid for him to shift his *niyyah* to offering the *zuhr* prayer. Similarly, it is permissible to shift from the *niyyah* of *jama'ah* to *niyyah* of performing it individually; but the opposite is not valid. However, it is valid for a person performing an obligatory *salat* individually to change his *niyyah* to that of a supererogatory *salat* in order to perform the obligatory *salat* with *jama'ah*. *Salat* is also invalidated by an additional *takbirat al-ihram*. Hence if one says *takbirah* for a *salat* and then repeats it, the *salat* becomes invalid and a third *takbirah* will be necessary. Again if he says *takbirah* for the fourth time, the *salat* will become invalid and a fifth *takbirah* will be neressary; thus every even *takbirah* results in the *salat* becoming *batil* due to the addition of a *rukn*, and becomes valid again by every odd *takbirah*.

Among the causes that invalidate *salat* is the incidence of *najasah* to an extent not excusable, when the *musalli* is unable to remove it without any inordinate movement that may vitiate the form of the *salat*. The availability of water during *salat* for a person praying with *tayammum* invalidates both the *tayammum* and *salat*, provided it becomes available before performing the *ruku'* of the first *rak'ah*; if later, he will complete the *salat* which will be valid. *Salat* will also be invalidated by: the absence of certain conditions, such as the covering and the lawfulness of a particular location; the occurrence of a *hadath*; intentional deviation with the whole body from the *qiblah* either to the right or the left or any other direction in between; speaking voluntarily and weeping on account of one's worldly woes; laughter; any act that destroys the form of *salat*; eating and drinking; the intentional addition or omission of a part; and the omission, intentional or otherwise, of a *rukn* from among the five *arkan*. The five *arkan* are: *niyyah*, *takbirat al-ihram*, *qiyam*, *ruku'* and the two *sajdahs* of every *rak'ah*.

Crossing over in Front of the Musalli

The schools concur that someone's passing from in front of the *musalli* does not invalidate the *salat*, but they differ regarding its impermissibility.

The Imamis state: It is neither impermissible for a person to pass from in front of the *musalli,* nor for the latter (to pray in such a place). But it is *mustahabb* for the *musalli* to place before him an 'obstruction' if there is no barrier before him to prevent passers. The 'obstruction' can be a stick, a rope, a pile of earth, etc. which the *musalli* may place before him as a mark of veneration for *salat*, which signifies detachment from the creation and attention towards the Creator.

The Malikis, Hanafis and Hanbalis observe: It is *haram* to cross over in front of a *musalli* in any circumstance, irrespective of whether he has placed an obstruction or not. Rather, the Hanafis and the Malikis add: It is *haram* for the *musalli* to create interference for passers-by if he can keep out of their way.

According to the Shafi'is, it is *haram* to cross over in front of the *musalli* if he has not placed an obstruction, and if he has done so, it is neither *haram* nor *makruh*.

1. This is a summary from 'al-Fiqh 'ala' al-madhahib al-'arba'ah.

3. Siyam, Fasting

Fasting in the month of Ramadan is one of the `pillars' of the Islamic faith. No proof is required to establish its being obligatory (*wajib*) and one denying it goes out of the fold of Islam, because it is obvious like *salat,* and in respect of anything so evidently established both the learned and the unlettered, the elderly and the young, all stand on an equal footing.

It was declared an obligatory duty (*fard*) in the second year of the Hijrah upon each and every *mukallaf* (one capable of carrying out religious duties, i.e. a sane adult) and breaking it (*iftar*) *is* not permissible except for any of the following reasons:

1. *Hayd* and *nifas*: The schools concur that fasting is not valid for women during menstruation and puerperal bleeding.

2. Illness: The schools differ here.

● The Imamis observe: Fasting is not valid if it would cause illness or aggravate it, or intensify the pain, or delay recovery, because illness entails harm (*darar*) and causing harm is prohibited (*muharram*).

Moreover, a prohibition concerning an *`ibadah* (a rite of worship) invalidates it. Hence if a person fasts in such a condition, his fast is not valid (*sahih*). *A* predominant likelihood of its resulting in illness or its aggravation is sufficient for refraining from fasting. As to excessive weakness, it is not a justification for *iftar* as long as it is generally bearable. Hence the extenuating cause is illness, not weakness, emaciation or strain, because every duty involves hardship and discomfort.

● The four Sunni schools state: If one who is fasting (*sa'im*) falls ill, or fears the aggravation of his illness, or delay in recovery, he has the option to fast or refrain. *Iftar is* not incumbent upon him; it is a relaxation and not an obligation in this situation. But where there is likelihood of death or loss of any of the senses, *iftar is* obligatory for him and his fasting is not valid.

3. A woman in the final stage of pregnancy and nursing mothers.

● The four schools say: If a pregnant or nursing woman fears harm for her own health or that of her child, her fasting is valid though it is permissible for her to refrain from fasting. If she opts for *iftar,* the schools concur that she is bound to perform its make up (*qada'*) later. They differ regarding its substitute (*fidyah*) and atonement (*kaffarah*).

– In this regard the Hanafis observe: It is not at all *wajib.*

– The Malikis are of the opinion that it is *wajib* for a nursing woman, not for a pregnant one.

– The Hanbalis and the Shafi`is say: *Fidyah is wajib* upon a pregnant and a nursing woman only if they fear danger for the child; but if they fear harm for their own health as well as that of the child, they are bound to perform the *qada'* only without being required to give *fidyah.* The *fidyah* for each day is one *mudd,* which amounts to feeding one needy person (*miskin.*). [1]

● The Imamis state: If a pregnant woman nearing childbirth or the child of a nursing mother may suffer harm, both of them ought to break their fast and it is not valid for them to continue fasting due to the impermissibility of harm. They concur that both are to perform the *qada'* as well as give *fidyah,* equalling one *mudd,* if the harm is feared for the child. But if the harm is feared only for her own person, some among them observe: She is bound to perform *qada'* but not to give *fidyah,* others say: She is bound to perform *qada'* and give *fidyah* as well.

4. Travel, provided the conditions necessary for *salat al-qasr,* as mentioned earlier, are fulfilled as per the opinion of each school.

● The four Sunni schools add a further condition to these:

● The journey should commence before dawn and the traveler should have reached the point from where *salat* becomes *qasr* before dawn. Hence if he commences the journey after the setting in of dawn, it is *haram* for him to break the fast, and if he breaks it, its *qada' will* be *wajib* upon him without a *kaffarah.*

● The Shafi'is add another condition, which is that the traveller should not be one who generally travels continuously, such as a driver. Thus if he travels habitually, he is not entitled to break the fast.

● In the opinion of the four Sunni schools, breaking the fast is optional and not compulsory. Therefore, a traveller who fulfils all the conditions has the option of fasting or *iftar.* This is despite the observation of the Hanafis that performing *salat* as *qasr* during journey is compulsory and not optional.

● The Imamis say: If the conditions required for praying *qasr* are fulfilled for a traveler, his fast is not acceptable. Therefore, if he fasts, he will have to perform the *qada'* without being liable to *kaffarah.* This is if he starts his journey before midday, but if he starts it at midday or later, he will keep his fast and in the event of his breaking it will be liable to the *kaffarah* of one who deliberately breaks his fast.

And if a traveler reaches his hometown, or a place where he intends to stay for at least ten days, before midday without performing any act that breaks the fast, it is *wajib* upon him to continue fasting, and in the event of his breaking it he will be like one who deliberately breaks his fast.

5. There is consensus among all the schools that one suffering from a malady of acute thirst can break his fast, and if he can carry out its *qada'* later, it will be *wajib* upon him without any *kaffarah,* in the opinion of the four schools. In the opinion of the Imamis, he should give a *mudd* by way of *kaffarah.* The schools differ in regard to acute hunger, as to whether it is one of the causes permitting *iftar,* like thirst.

● The four schools say: Hunger and thirst are similar and both make *iftar* permissible.

● The Imamis state: Hunger is not a cause permitting *iftar* except where it is expected to cause illness.

6. Old people, men and women, in late years of life for whom fasting is harmful and difficult, can break their fast, but are required to give *fidyah* by feeding a *miskin* for each fast day omitted: similarly a sick person who does not hope to recover during the whole year. The schools concur upon this rule excepting the Hanbalis, who say: *Fidyah is mustahabb* and not *wajib.*

7. The Imamis state: Fasting is not *wajib* upon one in a swoon, even if it occurs only for a part of the day, unless where he has formed the *niyyah* of fasting before it and recovers subsequently, whereat he will continue his fast.

Disappearance of the Excuse

If the excuse permitting *iftar* ceases––such as on recovery of a sick person, maturing of a child, homecoming of a traveller, or termination of the menses––it is *mustahabb* in the view of the Imamis and the Shafi`is to refrain (*imsak*) from things that break the fast (*muftirat*) as a token of respect. The Hanbalis and the Hanafis consider *imsak* as *wajib,* but Malikis consider it neither *wajib* nor *mustahabb.*

Conditions (Shurot) of Fasting

As mentioned earlier, fasting in the month of Ramadan is *wajib* for each and every *mukallaf.* Every sane adult (*al-baligh al-`aqil*) *is* considered *mukallaf.* Hence fasting is neither *wajib* upon an insane person in the state of insanity nor is it valid if he observes it. As to a child, it is not *wajib* upon him, though valid if observed by a *mumayyiz.*

Also essential for the validity of the fast are Islam and *niyyah* (intention). Therefore, as per consensus, neither the fast of a non-Muslim nor the *imsak* of one who has not formed the *niyyah is* acceptable. This is apart from the afore-mentioned conditions of freedom from menses, puerperal bleeding, illness and travel.

As to a person in an intoxicated or unconscious state:

● The Shafi`is observe: His fast is not valid if he is not in his senses for the whole period of the fast. But if he is in his senses for a part of this period, his fast is valid, although the unconscious person is liable to its *qada',* whatever the circumstances, irrespective of whether his unconsciousness is self-induced or forced upon him. But the *qada' is* not *wajib* upon an intoxicated person unless he is personally responsible for his state.

● The Malikis state: The fast is not valid if the state of unconsciousness or intoxication persists for the whole or most of the day from dawn to sunset. But if it covers a half of the day or less and he was in possession of his senses at the time of making *niyyah* and did make it, becoming unconscious or intoxicated later, *qada' is* not *wajib* upon him. The time of making *niyyah* for the fast in their opinion extends from sunset to dawn.

● The Hanafis, an unconscious person is exactly like an insane one in this respect, and their opinion regarding the latter is that if the insanity lasts through the whole month of Ramadan, *qada'* is not *wajib* upon him, and if it covers half of the month, he will fast for the remaining half and perform the *qada'* of the fasts missed due to insanity.

● The Hanbalis observe: *Qada' is wajib* upon a person in a state of unconsciousness as well as one in a state of intoxication, irrespective of whether these states are self-induced or forced upon them.

● In the opinion of the Imamis, *qada' is* only *wajib* upon a person in an intoxicated state, irrespective of its being self-induced or otherwise; it is not *wajib* upon an unconscious person even if his loss of consciousness is brief.

Muftirat

The *muftirat* are those things from which it is obligatory to refrain during the fast, from dawn to sunset. They are:

2. Eating and drinking (*shurb*) deliberately. Both invalidate the fast and necessitate *qada'* in the opinion of all the schools, though they differ as to whether *kaffarah is* also *wajib.* The Hanafis and the Imamis require it, but not the Shafi`is and the Hanbalis.

A person who eats and drinks by an oversight is neither liable to *qada'* nor *kaffarah,* except in the opinion of the Malikis, who only require its *qada'.* Included in *shurb* [drinking] is inhaling tobacco smoke

2. Sexual intercourse, when deliberate, invalidates the fast and makes one liable to *qada'* and *kaffarah,* in the opinion of all the schools.

The *kaffarah is* the manumission of a slave, and if that is not possible, fasting for two consecutive months; if even that is not possible, feeding sixty poor persons. The Imamis and the Malikis allow an option between any one of these; i.e. a *mukallaf* may choose between freeing a slave, fasting or feeding the poor. The Shafi'is, Hanbalis and Hanafis impose *kaffarah* in the above-mentioned order; i.e. releasing a slave is specifically *wajib,* and in the event of incapacity fasting becomes *wajib.* If that too is not possible, giving food to the poor becomes *wajib.*

The Imamis state: All the three *kaffarahs* become *wajib* together if the act breaking the fast (*muftir*) *is* itself *haram,* such as eating anything usurped (*maghsub*), drinking wine, or fornicating. As to sexual intercourse by oversight, it does not invalidate the fast in the opinion of the Hanafis, Shafi`is and Imamis, but does according to the Hanbalis and the Malikis.

3. Seminal emission (*al-'istimna'*): There is consensus that it invalidates the fast if caused deliberately. The Hanbalis say: If *manhy is* discharged due to repeated sensual glances and the like the fast will become invalid:

● The four schools say: Seminal emission will necessitate *qada'* without *kaffarah.*

● The Imamis observe: It requires both *qada'* and *kaffarah.*

4. Vomiting: It invalidates the fast if deliberate, and in the opinion of the Imamis, Shafi`is and Malikis, also necessitates *qada'.* The Hanafis state: Deliberate vomiting does not break the fast unless the quantity vomited fills the mouth. Two views have been narrated from Imam Ahmad. The schools concur that involuntary vomiting does not invalidate the fast.

5. Cupping (*hijamah*) *is muftir* only in the opinion of the Hanbalis, who observe: The cupper and his patient both break the fast.

6. Injection invalidates the fast and requires *qada'* in the opinion of all the schools. A group of Imami legists observe: It also requires *kaffarah* if taken without an emergency.

7. Inhaling a dense cloud of suspended dust invalidates the fast only in the opinion of the Imamis. They say: If a dense suspended dust, such as flour or something of the kind, enters the body the fast is

rendered invalid, because it is something more substantial than an injection or tobacco smoke.

8. Application of kohl invalidates the fast only in the opinion of the Malikis, provided it is applied during the day and its taste is felt in the throat.

9. The intention to discontinue the fast: If a person intends to discontinue his fast and then refrains from doing so, his fast is considered invalid in the opinion of the Imamis and Hanbalis; not so in the opinion of the other schools.

10. Most Imamis state: Fully submerging the head, alone or together with other parts of the body, under water invalidates the fast and necessitates both *qada'* and *kaffarah.* The other schools consider it inconsequential.

11. The Imamis observe: A person who deliberately remains in the state of *janabah* after the dawn during the month of Ramadan, his fast will be invalid and its *qada'* as well as *kaffarah will* be *wajib* upon him. The remaining schools state: His fast remains valid and he is not liable to anything.

12. The Imamis observe: A person who deliberately ascribes something falsely to God or the Messenger (S) (i.e. if he speaks or writes that God or the Messenger said so and so or ordered such and such a thing while he is aware that it is not true), his fast will be invalid and he will be liable to its *qada'* as well as a *kaffarah.*

A group of Imami legists go further by requiring of such a fabricator the *kaffarah* of freeing a slave, fasting for two months, and feeding sixty poor persons. This shows the ignorance or malice of those who say that the Imamis consider it permissible to forge lies against God and His Messenger (S).

The Various Kinds of Fasts

The legists of various schools classify fasts into four categories: *Wajib, mustahabb* (supererogatory), *muharram* (forbidden), and *makruh* (reprehensible).

Obligatory fasts

All the schools concur that the *wajih* fasts are those of the month of Ramadan, their *qada',* the expiatory fasts performed as *kaffarah,* and those performed for fulfilling a vow. The Imamis add further two, related to the Hajj and solitude in masjid (*i`tikaf*). We have already dealt in some detail with the fast of Ramadan, its conditions and the things that invalidate it. Here we intend to discuss its *qada'* and the *kaffarah* to which one who breaks it becomes liable. Other types of obligatory fasts have been discussed under the related chapters.

Qada' of the Ramadan Fasts

1. The schools concur that a person liable to the *qada' of* Ramadan fasts is bound to perform it during the same year in which the fasts were missed by him, i.e. the period between the past and the forthcoming Ramadan. He is free to choose the days he intends to fast, excepting those days on which fasting is prohibited (their discussion will soon follow). However it is *wajib* upon him to immediately begin their *qada'* if the days remaining for the next Ramadan are equal to the number of fasts missed in the earlier Ramadan.

2. If one capable of performing the *qada'* during the year neglects it until the next Ramadan, he should fast during the current Ramadan and then perform the *qada' of* the past year and also give a *kaffarah* of one *mudd* for each day in the opinion of all the schools except the Hanafi which requires him to perform only the *qada"* without any *kaffarah.*

And if he is unable to perform the *qada'*--*such* as when his illness continues throughout the period between the first and the second Ramadan--he is neither required to perform its *qada '* nor required to give *kaffarah* in the opinion of the four schools, while the Imamis say: He will not be liable to *qada'* but is bound to give a *mudd* as *kaffarah* for each fast day missed.

3. If one is capable of performing the *qada'* during the year but delays it with the intention of performing it just before the second Ramadan, so that the *qada'* fasts are immediately followed by the next Ramadan, and then a legitimate excuse prevents him from performing the *qada'* before the arrival of Ramadan, in such a situation he *will* be liable only to *qada'* not to *kaffarah.*

4. One who breaks a Ramadan fast due to an excuse, and is capable of later performing its *qada'* but fails to perform the *qada '* during his lifetime:

● The Imamis observe: It *is wajib* upon his eldest child to perform the *qada'* on his behalf.

● The Hanafis, Shafi`is and Hanbalis state: A *sadaqah* of a *mudd* for each fast missed will be given on his behalf.

● According to the Malikis, his legal guardian (*wali*) *will* give *sadaqah* on his behalf if he has so provided in the will; in the absence of a *will* it is not *wajib.*

5. In the opinion of the four schools, a person performing the *qada'* of Ramadan can change his intention and break the fast both before and after midday without being liable to any *kaffarah* provided there is time for him to perform the *qada'* later.

The Imamis observe: It is permissible for him to break this fast before midday and not later, because continuation of the fast becomes compulsory after the passing of the major part of its duration and the time of altering the *niyyah* also expires. Hence if he acts contrarily and breaks the fast after midday, he

is liable to *kaffarah* by giving food to ten poor persons; if he is incapable of doing that, he will fast for three days.

Fasts of Atonement (Kaffarah)

The fasts of atonement are of various kinds. Among them are atonement fasts for involuntary homicide, fasts for atonement of a broken oath or vow, and atonement fasts for *zihar.* These atonement fasts have their own rules which are discussed in the related chapters. Here we shall discuss the rules applicable to a person fasting by way of *kaffarah* for not having observed the fast of Ramadan:

● The Shafi`is, Malikis and Hanafis say: It is not permissible for a person upon whom fasting for two consecutive months has become *wajib* consequent to deliberately breaking a Ramadan fast to miss even a single fast during these two months, because that would break their continuity. Hence, on his missing a fast, with or without an excuse, he should fast anew for two months.

● The Hanbalis observe: If he misses a fast due to a legitimate excuse, the continuity is not broken.

● The Imamis state: It is sufficient for the materialization of continuity that he fast for a full month and then a day of the next month. After that he can skip days and then continue from where he had left. But if he misses a fast during the first month without any excuse, he is bound to start anew; but if it is due to a lawful excuse, such as illness or menstruation, the continuity is not broken and he/she will wait till the excuse is removed and then resume the fasts.

Furthermore:

● The Imamis further observe: One who is unable to fast for two months, or release a slave or feed sixty poor persons, has the option either to fast for 18 days or give whatever he can as *sadaqah.* If even this is not possible, he may give alms or fast to any extent possible. If none of these are possible, he should seek forgiveness from God Almighty.

● The Shafi'is, Malikis and Hanafis state: If a person is unable to offer any form of *kaffarah,* he will remain liable for it until he comes to possess the capacity to offer it, and this is what the rules of the Shari'ah require.

● The Hanbalis are of the opinion that if he is unable to give *kaffarah,* his liability for the same disappears, and even in the event of his becoming capable of it later, he will not be liable to anything.

The schools concur that the number of *kaffarahs will* be equal to the number of causes entailing it. Hence a person who breaks two fasts will have to give two *kaffarahs.* But if he eats, drinks or has sexual intercourse several times in a single day:

● The Hanafis, Malikis and Shafi`is observe: The number of *ka ffarahs will* not increase if *iftar* occurs

several times, irrespective of its manner.

● The Hanbalis state: If in a single day there occur several violations entailing *kaffarah,* if the person gives *kaffarah* for the first violation of the fast before the perpetration of the second, he should offer *kaffarah* for the latter violation as well, but if he has not given *kaffarah* for the first violation before committing the second, a single *kaffarah* suffices.

● According to the Imamis, if sexual intercourse is repeated a number of times in a single day, the number of *kaffarahs will* also increase proportionately, but if a person eats or drinks a number of times, a single *kaffarah* suffices.

Prohibited Fasts

All the schools except the Hanafi concur that fasting on the days of *`Id al-Fitr* and *`Id al-Adha is* prohibited (*haram*)*:*

● The Hanafis observe: Fasting on these two *`Ids is makruh* to the extent of being *haram.*

● The Imamis say: 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.

● The Shafi`is are of the opinion that fasting is not valid on the days of *Tashriq* both for those performing Hajj as well as others.

● According to the Hanbalis, it is *haram* to fast on these days for those not performing Hajj, not for those performing it.

● The Hanafis observe: Fasting on these days is *makruh* to the extent of being *haram.*

● The Malikis state: It is *haram* to fast on the eleventh and the twelfth of Dhu al-Hijjah for those not performing Hajj, not for those performing it.

All the schools excepting the Hanafi concur that it is not valid for a woman to observe a supererogatory fast without her husband's consent if her fast interferes with the fulfillment of any of his rights. The Hanafis observe: A woman's fasting without the permission of her husband is *makruh,* not *haram.*

The Doubtful Days

There is consensus among the schools that *imsak is* obligatory upon one who does not fast on a "doubtful day" (*yawm al-shakk*) that later turns out to be a day of Ramadan, and he is liable to its *qada'* later.

Where one fasts on a doubtful day that is later known to have been a day of Ramadan, they differ as to

whether it suffices without requiring *qada':*

● The Shafi'i, Maliki and Hanbali schools observe: This fast will not suffice and its *qada' is wajib* upon him.

● In the opinion of the Hanafis, it suffices and does not require *qada'.*

● Most Imamis state: Its *qada'* is not *wajib* upon him, except when he had fasted with the *niyyah* of Ramadan.

Supererogatory Fasts

Fasting is considered *mustahabb* on all the days of the year except those on which it has been prohibited. But there are days whose fast has been specifically stressed and they include three days of each month, preferably the `moonlit' days (*al-'ayyam al-bid*), which are the thirteenth, fourteenth and fifteenth of each lunar month.

Among them is the day of `Arafah (9th of Dhu al-Hijjah). Also emphasized is the fasting of the months of Rajab and Sha'ban. Fasting on Mondays and Thursdays has also been emphasized. There are other days as well which have been mentioned in elaborate works. There is consensus among all the schools that fasting on these days *is mustahabb.*

Reprehensible (Makrah) Fasts

It is mentioned in *al-Fiqh `ala al-madhahib al-'arba`ah* that it is *makruh* to single out Fridays and Saturdays for fasting. So is fasting on the day of Now Ruz (21st March) in the opinion of all the schools except the Shafi`i, and fasting on the day or the two days just before the month of Ramadan.

It has been stated in Imami books on fiqh that it is *makruh* for a guest to fast without the permission of his host, for a child to fast without the permission of its father, and when there is doubt regarding the new moon of Dhu al-Hijjah and the consequent possibility of the day being that of *`Id.*

Evidence of the New Moon

There is a general consensus among Muslims that a person who has seen the new moon is himself bound to act in accordance with his knowledge, whether it is the new moon of Ramadan or Shawwal.

Hence it *is wajib* upon one who has seen the former to fast even if all other people don't, 2 and to refrain from fasting on seeing the latter even if everyone else on the earth is fasting, irrespective of whether the observer *is `adil* or not, man or woman. The schools differ regarding the following issues:

1. The Hanbalis, Malikis and Hanafis state: If the sighting (*ru'yah*) of the new moon has been confirmed

in a particular region, the people of all other regions are bound by it regardless of the distance between them; the difference of the horizon of the new moon is of no consequence. The Imamis and the Shafi`is observe: If the people of a particular place see the new moon while those at another place don't, in the event of these two places being closeby with respect to the horizon, the latter's duty will be the same; but not if their horizons differ.

2. If the new moon is seen during day, either before or after midday, on 30th Sha'ban, will it be reckoned the last day of Sha'ban (in which case, fasting on it will not be *wajib*) or the first of Ramadan (in which case fasting is *wajib*)*?* Similarly, if the new moon is seen during the day on the 30th of Ramadan, will it be reckoned a day of Ramadan or that of Shawwal? In other words, will the day on which the new moon is observed be reckoned as belonging to the past or to the forthcoming month?

The Imamis, Shafi`is, Malikis and Hanafis observe: It belongs to the past month and not to the forthcoming one. Accordingly, it is *wajib* to fast on the next day if the new moon is seen at the end of Sha'ban, and to refrain from fasting the next day if it is seen at the end of Ramadan.

3. The schools concur that the new moon is confirmed if sighted, as observed in this tradition of the Prophet (S):

صوموا لرؤيته وأفطروا لرؤيته

(`Fast on seeing the new moon and stop fasting on seeing it').

They differ regarding the other methods of confirming it.

● The Imamis observe: It is confirmed for both Ramadan and Shawwal by *tawatur* (i.e. the testimony of a sufficiently large number of people whose conspiring over a false claim is impossible), and by the testimony of two *`adil* men, irrespective of whether the sky is clear or cloudy and regardless of whether they belong to the same or two different nearby towns, provided their descriptions of the new moon are not contradictory. The evidence of women, children, *fasiq* men and those of unknown character is not acceptable.

● The Hanafis differentiate between the new moons of Ramadan and Shawwal; they state: The new moon of Ramadan is confirmed by the testimony of a single man and a single woman, provided they are Muslim, sane and *`adil.* The Shawwal new moon is not confirmed except by the testimony of two men or a man and two women. This is when the sky is not clear. But if the sky is clear––and there is no difference in this respect between the new moon of Ramadan and Shawwal––it is not confirmed except by the testimony of a considerable number of persons whose reports result in certainty.

● In the opinion of the Shafi`is, the new moon of Ramadan and Shawwalis confirmed by the testimony of a single witnesss provided he is Muslim, sane, and *`adil.* The sky's being clear or cloudy makes no

difference in this regard.

● According to the Malikis, the new moon of Ramadan and Shawwalis not confirmed except by the testimony of two *`adil* men, irrespective of the sky's being cloudy or cloudless.

● The Hanbalis say: The new moon of Ramadan is confirmed by the testimony of an *`adil* man or woman, while that of Shawwalis only confirmed by the testimony of two *`adil* men.

4. There is consensus among the schools, excepting the Hanafi, that if no one claims to have seen the new moon of Ramadan, fasting will be *wajib* after the thirtieth day allowing thirty days for Sha'ban. According to the Hanafis, fasting becomes *wajib* after the twenty-ninth day of Sha'ban. This was with respect to the new moon of Ramadan. As to the new moon of Shawwal:

● The Hanafis and the Malikis observe: If the sky is cloudy, thirty days of Ramadan will be completed and *iftar will* be *wajib* on the following day. But if the sky is clear, it is *wajib* to fast on the day following the thirtieth day by rejecting the earlier testimony of witnesses confirming the first of Ramadan regardless of their number.

● The Shafi`is consider *iftar* as *wajib* after thirty days even if the setting in of Ramadan was confirmed by the evidence of a single witness, irrespective of the sky's having been cloudy or clear.

● According to the Hanbalis, if the setting in of Ramadan was confirmed by the testimony of two *`adil* men, *iftar* following the thirtieth day is *wajib,* and if it was confirmed by the evidence of a single *`adl,* it is *wajib* to fast on the thirty-first day as well.

● In the opinion of the Imamis, both Ramadan and Shawwal are confirmed after the completion of thirty days regardless of the sky's being cloudy or clear, provided their beginning was confirmed in a manner approved by the Shari`ah.

The New Moon and Astronomy

This year (1960) the governments of Pakistan and Tunisia have decided to rely upon the opinion of astronomers for the confirmation of the new moon with a view of putting an end to confusion 3 and the general inconvenience resulting from not knowing in advance the day of `Id, which at times comes as a surprise, and at other times is delayed despite all the preparations.

This decision of the two governments has become an issue of heated controversy in religious circles. The protagonists of the move observe that there is nothing in the religion that disapproves of reliance on the opinion of astronomers; rather it is supported by this verse of Surat *al-Nahl:*

وَعَلامَاتٍ وَبِالنَّجْمِ هُمْ يَهْتَدُونَ

"…And way marks; and by the stars they are guided." (***16. 16***)

The antagonists state: The decision contradicts the above-mentioned prophetic tradition-

صوموا لرؤيته وأفطروا لرؤيته

That, because the word *ru'yah* (sighting) implies sighting the moon with the eyes, which was common among the people during the time of the Prophet (S). As to using a telescope or relying on astronomical calculations, they are inconsistent with the literal import of the tradition, they point out.

In fact, none of the sides has advanced sound reasons, because `guidance by the stars' implies determination of land and sea routes with the help of the stars, and not determination of days of months and new moons. As to the tradition, it does not contradict sound scientific knowledge, because `seeing' is a means for acquiring knowledge and not an end in itself, as is the case with any means that helps confirm facts.

However, in my opinion, the judgment of astronomers do not lead to certain knowledge, nor do they remove all doubts as removed by vision, because their judgments are based on probability not on certainty. This is evident from their divergent judgments about the night of the new moon as well as the time of its occurrence and the period that it remains (above the horizon).

If a time comes when the astronomers attain accurate and sufficient knowledge, so that there is consensus among them and they repeatedly prove to be right to the extent that their forecasts become a certainty like the days of the week, then it will be possible to rely upon them. Rather, then it will be obligatory to follow their judgments and to reject everything that goes against them. 4

1. Approximately 800 grams of wheat or something similar to it.
2. But the Hanafis observe: If he testifies before a qadi who rejects his testimony, it is wajib upon him to perform its qada' without liability to kaffarah (al-Fiqh `ala al-madhahib al-'arba`ah).
3. In 1939 the `Id al- Adha was observed on Monday in Egypt, on Tuesday in Saudi Arabia, and on Wednesday in Bombay.
4. Refer to the discussion on this issue in the first volume of our book Fiqh al-'Imam Jafar al-Sadiq (`a), the section on the proof of the new moon at the end of section on fasting bab al-sawm.

4. Zakat and Khums

Zakat

Zakat is of two kinds: on property and on individuals. The schools concur that payment of *zakat* is not valid without *niyyah*. Its obligation depends on the following conditions:

Conditions for Zakat on Property

1. The Hanafis and the Imamis observe: Sanity and adulthood are necessary for liability to *zakat*; hence the property of a child or an insane person is not liable to it.[1]

The Malikis, Hanbalis and Shafi'is state: Neither sanity nor adulthood is required: it is *wajib* on the property of a minor as well as an insane person and the guardian is responsible for its payment from his ward's property.

2. The Hanafis, Shafi'is and Hanbalis say: *Zakat* is not *wajib* upon a non-Muslim (*al-Fiqh 'ala al-madhahib at-'arba'ah*). According to the Imamis and the Malikis, a non-Muslim is as liable to it as a Muslim, without there being any difference.

3. Complete ownership is necessary for the incidence of *zakat*. Every school has elaborate discussions concerning the definition of 'complete ownership.' What is common in their observations is that the owner should have complete control over the property and must be able to dispense of it at his will. Hence lost property or property usurped from its owner – though he will retain its ownership – will not be liable to *zakat*. As to debt, it will be liable to *zakat* only after the creditor has recovered it (for example, the wife's dower owed by the husband), for a debt is not possessed unless collected. The rule applicable to the debtor will be discussed later.

4. A lunar year of uninterrupted possession for property other than grain, fruits and minerals. Details are given below.

5. The possession of a certain minimum (*nisab*) which differs with the kind of property liable to *zakat*, will be explained later.

6. Is a debtor who possesses property to the extent of the *nisab* liable to *zakat*? In other words, does debt prevent liability to *zakat*?

The Imamis and the Shafi'is state: The property's freedom from debt is not a condition; hence a debtor will be liable to *zakat* even if the debt covers his entire property equaling the *nisab*. Rather, the Imamis say: If one borrows something on which *zakat* is payable, in a quantity equaling its *nisab* and it remains in his possession for a year, the borrower shall be liable to *zakat*.

According to the Hanbalis, debt prevents liability to *zakat*. Hence a debtor who possesses property

should first meet his debt; he will pay *zakat* if the remainder reaches the *nisab* limit, not otherwise.

The Malikis are of the opinion that debt prevents the incidence of *zakat* on gold and silver, not on grain, livestock and minerals. Therefore a debtor possessing gold and silver in the quantity of *nisab* is supposed to meet the debt, and *zakat* is not *wajib* upon him. But if the debtor possesses something other than gold and silver in the quantity of the *nisab*, he is liable to *zakat*.

The Hanafis observe: if the debt is a duty owed to God (*haqq Allah*). such as the obligation of *hajj* and *kaffarah,* and persons have no claims against him, such a debt does not prevent liability to *zakat*. But if the debt is owed to persons or to God when there is such a claim against him as outstanding *zakat* whose payment is demanded by the ruler (*imam*), such a debt prevents liability to *zakat* on all kinds of property except crops of the field and fruits.

All the schools concur that ornaments, jewelry, one's dwelling, clothes, household articles, mount, weapons and other things of personal use such as instruments, books and tools are not liable to *zakat*. The Imamis also exclude gold and silver ingots. Related details are given below.

Kinds of Property Liable to Zakat

The Noble Qur'an considers the needy as real sharers in the wealth of the rich. Verse 19 of *Surah al-Dhariyat* states:

وَفِي أَمْوَالِهِمْ حَقٌّ لِلسَّائِلِ وَالْمَحْرُومِ

And in their possessions is a share for the beggar and the deprived (***51:19***)

The verse does not differentiate between wealth acquired through agriculture, industry or trade in respect of this right, and hence the legists of all the schools acknowledge it as *wajib* in livestock, grain, fruits, currency and minerals.

However, they differ in delimiting some of these categories, in specifying the *nisab* applicable to some of them, and the size of the share of the needy in some others. Thus the Imamis consider it *wajib* to pay one-fifth (*khums*) from the profits of trade, while the four schools prescribe one-fortieth (2 1/2%) on merchandise. The same applies to minerals, from which the Hanafis, Imamis and Hanbalis prescribe payment of *khums* while the remaining two schools that of 2 1/2%. The following description gives the details of the points of agreement and difference of the schools.

Zakat on Livestock

There is a consensus that *zakat* is *wajib* upon three kinds of livestock: camels, cattle, sheep and goats. They concur that *zakat* is not *wajib* upon horses, mules and donkeys, except when they form a part of

merchandise. The Hanafis consider horses to be liable to *zakat* only when these include mares.

Conditions for Zakat on Livestock:

There are four conditions for the incidence of *zakat* on livestock:

1. The *Nisab*:

The *nisab* of camels is as follows:

If the number of camels is 5, one sheep: if it reaches 10, two sheep: for 15, three sheep; and for 20, four. All the schools agree on this prescription. But if the number of camels reaches 25, the *zakat* according to the Imamis is 5 sheep, and a camel in its second year according to the other four schools. However, the Imamis consider that as *zakat* of 26 camels; thus if the number of camel reaches this limit they form a single *nisab*.

The schools concur that 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.

The schools also concur that there is no additional *zakat* for camels over 91 and below 121. For this number the different opinions of the schools and their details can be found in elaborate works.

There is consensus that there is no *zakat* on less than 5 camels, as well as on the number above a particular *nisab* and below the next *nisab*.

Nisab of Cattle:

The *zakat* for every 30 cattle is a *tabi'* or *tabi'ah* (an ox or cow in its second year); for every 40, a *musinnah* (cow in its third year). Thus for 60, the *zakat* is two *tabi'*; for 70, one *tabi'* and one *musinnah*; for 80, two *musinnah*; for 90, three *tabi'*; for 100, two *tabi'* and one *musinnah*; for 110, two *musinnah* and one *tabi'*; for 120, three *musinnah*, or four *tabi'*, and so on. No *zakat* is levied on a number which exceeds a certain limit but falls short of the next higher limit. All the schools concur regarding the above-mentioned *nisab*.[2]

'Tabi' is a cow which has completed a year and entered the second, and *musinnah* is one which has entered the third year. The Malikis define *tabi'* as one which has completed two years and entered the third, and *musinnah* as one which has completed three years and entered the fourth.

The *Nisab* of Sheep:

The schools concur that the *zakat* for 40 sheep is one sheep; for 121, two; for 201, three.
The Imamis state: If their number reaches 301, the *zakat* is four sheep up to 400; from then on for each

extra 100 the *zakat* is one sheep.
The four Sunni schools observe: the *zakat* for 301, like that for 201, is three sheep up to 400, on which four sheep become due: thereafter for each extra 100 the *zakat* is one sheep.
There is consensus among the schools that a number between any two limit is exempt from *zakat*.

2. Grazing: 'Grazing livestock' is that which grazes freely on public pastures for most of the year and whose owner does not bear the cost of providing it with grass except rarely. This is a condition on which all the schools excepting the Maliki concur. The Maliki levy *zakat* on both 'grazing' and 'non-grazing' livestock.

3. One Year of Ownership: All the livestock in the *nisab* should be owned by its owner for a complete lunar year. Thus if its number falls short of the *nisab* even by one during the year, it will not be liable to *zakat* even if the *nisab* materializes at the end of the year (e.g. if a person owns 40 sheep at the beginning of the year and after a few months their number is reduced by one for some reason, such as sale, gift or death, and later becomes 40 again, *zakat* will not be levied at the end of the year). The Imamis. Shafi'is and Hanbalis concur regarding this condition, while the Hanafis observe: If the number falls below the *nisab* during the year but is resumed at the end of it, *zakat* will be levied as if the *nisab* had existed throughout the year.

4. The animals should not be those intended for work, such as an ox used for tilling or a camel for transport. Hence there is consensus among the schools, excepting the Maliki, that *zakat* is not levied on animals used for work, irrespective of their number. According to the Malikis, *zakat* is levied on both working as well as other animals without any difference.
The schools concur that if a person possesses many kinds of livestock of which no single kind reaches the number required for *nisab*, it is not *wajib* upon him to consider them jointly (thus if he has less than 30 cattle and less than 40 sheep, it is not *wajib* to make up the *nisab* of the cattle with the sheep or vice versa).

The schools differ where two persons jointly own a single *nisab*. The Imamis, Hanafis and Malikis state: They are not liable to *zakat*, together or singly, unless the share of each one of them separately reaches the *nisab* limit. The Shafi'is and the Hanbalis observe: Wealth owned jointly is liable to *zakat* if it reaches the *nisab* limit, even if each share falls short of it.

Zakat on Gold and Silver

The legists prescribe *zakat* on gold and silver if their respective *nisabs* are reached. According to them the *nisab* of gold is 20 *mithqal* (4.8 grams) and that of silver 200 dirhams (2.52 grams). They further require that the *nisab* be owned for one complete year. The rate of *zakat* on these two is 2 1/2%.
The Imamis observe: *Zakat* is *wajib* on gold and silver coins used as money, not on ingots or jewellery.

The four Sunni schools concur that *zakat* is *wajib* on gold and silver ingots in the same manner as on

money coined from them. They differ regarding *zakat* on jewelery made of them; some consider it *wajib*, others don't.
The above remarks concerning *zakat* on gold and silver coins will suffice, for they have practically no role in our times. As to bank-notes, the Imamis prescribe the payment of one-fifth (*khums*) of the surplus left after a year's expenses. Details are given below.
The Shafi'is, Malikis and Hanafis state: *Zakat* is not *wajib* on bank-notes unless all the conditions including *nisab* and the completion of a year are fulfilled.
The Hanbalis say: *Zakat* is not *wajib* on bank-notes except when converted into gold or silver.

Zakat on Crops and Fruits

The schools concur that the rate of *zakat* on crops of the field and fruits is 10% if irrigated by rain or river water, and 5% if irrigated by Artesian wells and the like.
There is also consensus among the schools, excepting the Hanafi, that the *nisab* for crops and fruits is 5 *wasq* (60 *sa'*, approx. 910 kg). There is no *zakat* under this limit. The Hanafis prescribe *zakat* irrespective of the quantity of the produce.

The schools differ regarding the kinds of crops and fruits on which *zakat* is *wajib*. The Hanafis prescribe *zakat* on all fruits and crops and all agricultural produce except wood, hay and Persian cane.
The Malikis and the Shafi'is prescribe *zakat* on everything that is stored as a provision, such as wheat, barley, rice, dates and raisins.
The Hanbalis require *zakat* on everything that is weighed and stored from among fruits and grains.
The Imamis do not levy *zakat* on anything except wheat and barley among grains, and dates and raisins from among fruits. Apart from these, it is *mustahab*, not *wajib*.

Zakat on Merchandise

'Merchandise' (*mal al-tijarah*) consists of property whose ownership is acquired through commercial transactions made for profit. It is necessary here that the ownership be acquired through the owner's own activity; hence, if acquired through inheritance, there is consensus that it will not be considered merchandise.

According to the four Sunni schools, *zakat* is *wajib* on merchandise. The Imamis consider it *mustahab*.
The zakat is paid from the price of the commodities of trade at the rate of 2 1/2%.
The schools concur that a year's passage is necessary for the incidence of *zakat*. It is considered to begin from the time commercial transactions commence. When a year passes and profit is made, *zakat* becomes payable.

The Imamis observe: The capital should remain undiminished throughout the year. Thus if it is reduced during the year, *zakat* will not be levied. When restored, the new year will be reckoned from the date of recovery.

According to the Shafi'is and the Hanbalis, the criterion for liability to *zakat* is only the position at the end of year. Thus if the *nisab* is not reached at the beginning of the year or during it but only at its end, *zakat* becomes *wajib*.

The Hanafis state: The criterion is the position at the beginning and the end of the year not what happens in its middle. Thus if at the beginning of the year a person owns merchandise fulfilling the *nisab* and its value falls below this limit during the year recovering to reach the limit at the end of the year, he will be liable to *zakat*. But if the *nisab* is not reached either at the year's beginning or end, *zakat* will not be levied.
Also, the value of merchandise should reach the *nisab*. On evaluation its total value will be compared with the *nisab* of gold and silver; *zakat* will be levied if it equals or exceeds any of them, not if it is less than the *nisab* of silver. The authors of *al-Fiqh 'ala al-madhahib al-'arba'ah* (1922) calculate this *nisab* as 529.2/3 Egyptian piasters.

The Character of Liability

The schools differ as to whether *zakat* pertains to the property itself that is liable to *zakat*, so that one entitled to receive it has a share in it together with the owner (like all property owned jointly by partners), or if it is a personal liability like other debts, though it pertains to a specific property, like the debt pertaining to the legacy of a deceased person.

The Shafi'is, Imamis and Malikis state: *Zakat* is *wajib* upon the zakatable property itself and its recipient is a real co-sharer in it with the owner in accordance with the statement of God, the Most High:

وَفِي أَمْوَالِهِمْ حَقٌّ لِلسَّائِلِ وَالْمَحْرُومِ

And in their wealth is a share for the beggar and the deprived. (***51:19***)

They point out that there is also a *tawatur* of traditions stating that God has made the rich and the poor partners in wealth. However, the Shari'ah has out of lenience permitted the owner to pay *zakat* out of his other assets not subject to *zakat*.

The Hanafis observe: The incidence of *zakat* pertains to the property subject to *zakat* itself. It is like the claim of a mortgagor over mortgaged property and is not met except by being handed over to the recipient.

Two views have been narrated from Imam Ahmad, one of which agrees with the Hanafi position.

Classes Entitled to Receive Zakat

The schools concur that there are eight different classes of those who deserve to receive *zakat* as mentioned in the following verse of *Surat al-Tawbah*:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ

***The sadaqat are for the poor* (*fuqara'*) *and the needy* (*masakin*)*, their collectors* (*'amilin*)*, those whose hearts are to be conciliated* (*mu'allafatu qulubuhum*)*, the ransoming of slaves* (*riqab*)*, debtors* (*gharimin*)*, in God's way* (*sabil Allah*)*, and the traveler* (*ibn al-sabil*) *...* (*9:60*)**

The views of the schools in determining these classes are as follows:

1. The Needy (Faqir)

According to the Hanafis, '*faqir*' is someone who owns less than the *nisab* even if he is physically fit and earning. As to one who owns any property equal to the *nisab* of its category after providing for his basic needs – such as house, articles, clothes, and etc. – it is not valid to spend *zakat* on him. The proof they offer is that *zakat* becomes *wajib* upon one who owns assets equal to the *nisab* of anything and one who is himself liable to *zakat* cannot receive it. According to the other schools, the criterion is need, not ownership: *zakat* is *haram* for a needy person although he may own one or several *nisabs*, because the word *'faqr'* means need. God, the Exalted.says:

يَاأَيُّهَا النَّاسُ أَنْتُمْ الْفُقَرَاءُ إِلَى اللَّهِ

O men, you are the ones that have need of God. (***35:15***)

The Shafi'is and the Hanbalis say: One who possesses half of what suffices him will not be considered *faqir*; consequently it is not permissible for him to receive *zakat*.

According to the Imamis and the Malikis, '*faqir*' in the context of the Shari'ah is one who does not possess a year's provision for himself and his family. Thus one who owns property or livestock not sufficient to provide his family for a whole year can be given *zakat*.
The Imamis, Shafi'is and Hanbalis further observe: It is not permissible for one capable of earning to receive *zakat*.
The Imamis and the Malikis permit him to receive *zakat* and it may be given to him.

The Imamis state: One's claim to be *faqir* will be accepted without requiring a witness or an oath, provided he has no visible wealth and the falsehood of his claim is not known. This is because once two

men came to the Prophet (S) while he was distributing *sadaqah* and asked him to give them something from it. The Prophet (S) lifted his eyes and fixing his glance on them said: "If you like I will give it to you, for there is no share in it for one who is well-provided or one who makes an earning." Thus he left it to them to benefit from *zakat* without requiring witness or oath.

2. Al-Miskin

The Imamis, Hanafis and Malikis consider *'miskin'* to be one who is worse off than a *faqir* person.
The Hanbalis and the Shafi'is, however, define *faqir* as someone worse off than a *miskin* because, they say, *'faqir'* is one who has nothing or lacks even half of what he needs, while *'miskin'* is one who possesses more than half of what he needs, and he is provided the other half from *zakat*.
Whatever be the case, there is no essential difference between the schools in their interpretation of the tenns *'faqir'* and *'miskin'*, for the objective is that *zakat* be used to fulfil the urgent need for housing, food, clothing, medical care, education, and such other needs.

The schools, excepting the Maliki, also concur that it is not permissible for one liable to *zakat* to give it to his parents, grandparents, children, grandchildren or wife. The Malikis allow its payment to grandparents and grandchildren because their maintenance is not one's obligation in their opinion.

There is also consensus that it is valid to give *zakat* to brothers, uncles and aunts. However, the prohibition on giving of *zakat* to one's father and children pertains only to the share meant for the two classes of the needy (*fuqara'* and *masakin*). Hence if they belong to a class other than these two, they are permitted to receive it, e.g. if the father or the son is a warrior fighting in the way of God, or one of 'those whose hearts are to be conciliated,' or a debtor whose debt arises out of a legitimate act, or one involved in a case of peacemaking, or a collector of *zakat*, because these classes of recipients are entitled to receive it even if they are well off (Al-'Allamah al-Hilli, *al-Tadhkirah*, vol. 1, "Bab al-Zakat").

However, it is preferable to give *zakat* to a relative whose maintenance is not *wajib* upon the giver.

The schools differ regarding the transfer of *zakat* from one town to another. The Hanafis and the Imamis observe: It is preferable and more meritorious to spend the *zakat* on the residents of the town except where some urgent need necessitates its transfer to another place.
The Shafi'is and the Malikis do not permit the transfer of *zakat* from one town to another.
The Hanbalis allow its transfer to a place at a distance where *salat* does not become *qasr* on one making the journey, and forbid its transfer beyond that distance.

3. Al-'Amilin

A per consensus, by *'amilun 'alayha'* in the verse is meant the collectors of zakat.

4. Al-Mu'allafatu qulubuhum

They are those who are won over by paying a part of *zakat* in the interest of Islam. The schools differ as to whether this category still holds or if it has been abrogated, and if not abrogated whether this winning over is restricted to non-Muslims or includes Muslims of weak conviction as well.

The Hanafis observe: This principle was introduced in the Shari'ah at the advent of Islam when the Muslims were weak. But now, when Islam has become firmly established, this provision has no applicability due to the absence of its cause.

The other schools have elaborately discussed the different kinds of 'those whose hearts are to be conciliated,' and their observations may be summarized as follows:
The regulation holds and has not been abrogated; the share of *zakat* pertaining to *al-mu'allafatu qulubuhum* can be given to a Muslim as well as a non-Muslim, on condition that this bestowal secures the advantage of Islam and Muslims. The Prophet (S) gave *zakat* to Safwan ibn Umayyah who was an idolater, and to Abu Sufyan and his like, after they embraced Islam, as a measure of precaution to safeguard Islam and Muslims from their malice.

5. Al-Riqab

It implies the buying of slaves with *zakat* fund to set them free. This provision clearly shows that Islam devised numerous ways to end slavery. In any case, this provision has no practical application in our times.

6. Al-Gharimin

They are the debtors who have fallen in debt for some non-sinful cause. The schools concur that they may be given *zakat* to help them repay their debts.

7. Sabil Allah

The four Sunni schools consider it to imply those warriors who have volunteered to fight for the defence of Islam.
The Imamis observe: Apart from warriors, this category includes building of mosques, hospitals, schools and other public works.

8. Ibn al-Sabil

It means a traveler cut off from his hometown and means. Hence it is valid to give him *zakat* to an extent that will enable him to reach his hometown.

Subsidiary Issues

1. The schools concur that it is *haram* for one belonging to the Bani Hashim to receive *zakat* from someone who is not a Hashimite himself. But he may receive *zakat* from a Hashimite.

2. Is it permissible to give one's entire *zakat* to a single *miskin*?

The Imamis permit it even if it makes the recipient well off by being given all at once.
The Hanafis and the Hanbalis state: It may be given to a single person if this does not make him sufficiently provided.
The Malikis permit giving of one's entire *zakat* to a single recipient provided he is not a collector of *zakat*, because he may not take more than the remuneration of his work.
The Shafi'is are of the opinion that it is obligatory to so spread out the *zakat* as to include all the eight categories, if they exist; in the absence of some of them it should be distributed among the categories present. A minimum of three persons from each category should receive it.

3. The property liable to *zakat* is of two types. First, that which is possessed for a year, such as livestock and merchandise. In this case, *zakat* does not become obligatory before the completion of a year. A 'year' in the opinion of the Imamis means eleven months of possession of the property liable to *zakat* and the setting in of the twelfth month.

The second type does not require the passage of a year, such as fruits and grains, and *zakat* becomes *wajib* upon them at the time of harvest. As to the time of payment, there is consensus that it is when the fruits are gathered and dried in the sun, and when the crop is harvested and the straw and husk removed. One who delays taking out the *zakat* after its time has arrived and its payment has become possible is a sinner (though he remains liable to it), because he has delayed the carrying out of a time-bound obligation and been negligent.

Zakat al-Fitr

Zakat al-fitr is also called '*zakat al-abadan*' (the *zakat* of the bodies). Its pertinent issues include the following questions: by whom it is to be paid? for whom? what is its quantity, its time of payment, and who are its eligible recipients?

Those on Whom it is Wajib

The four Sunni schools state: *Zakat al-fitr* is *wajib* upon every financially capable (*qadir*) Muslim, major or minor. Thus it is *wajib* for a guardian to pay it out from the property of his ward to the needy.
A financially capable person in the opinion of the Hanafis is one who owns property equal to a *nisab* of *zakat* or something equal in value after meeting all his needs. According to the Shafi'is, Malikis and Hanbalis, it is one who possesses anything in excess of his and his family's food on the day and night of

the 'Id, apart from such essential needs as house, clothes and other necessities. The Malikis add: One who is capable of borrowing will be considered capable if he hopes to repay it.

According to the Imamis, *zakat al-fitr* is *wajib* only upon a capable sane adult. Therefore it is not *wajib* on a child's property or that of an insane person in accordance with the tradition:

رُفع القلم عن ثلاثة: عن الصبي حتى يحتلم، وعن المجنون حتى يفيق، وعن النائم حتى يستيقظ

The (lawgiver's) pen has absolved these three of obligations: 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.

A financially capable person in their opinion is one who possesses, either actually or potentially, a year's provision for himself and his family - such as when he possesses an asset that he can utilize or a skill by which he can earn.

The Hanafis observe: It is *wajib* for a capable person to pay the *zakat al-fitr* for himself, his minor children, his servant, and his major child if he happens to be insane. But if the major child is sane, his *zakat* is not *wajib* upon the father. Also the wife's *zakat* is not *wajib* upon the husband.
The Hanbalis and the Shafi'is consider it *wajib* to pay the *zakat al-fitr* for oneself as well as those whose maintenance is *wajib* upon one, such as wife, father and son.

The Malikis say: It is *wajib* for oneself and for those one is maintaining; they include: one's indigent parents; sons, who have no means of their own, provided they are still young and incapable of earning themselves; indigent daughters who have not yet been married; and wife.

The Imamis state: It is *wajib* to pay *zakat al-fitr* 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, and regardless of their being children or adults, Muslims or non-Muslims, relatives or strangers. Hence if a guest comes to his house moments before the new moon for the month of Shawwal is sighted and joins the family, it becomes *wajib* to pay *zakat al-fitr* for him as well. Similarly, if a child is born to him or he marries before or at the time of sunset preceding the night of *'Id al-fitr*. But if the child is born, or he marries, or a guest arrives, after sunset, it will not be *wajib* to pay the *fitrah* for them. Anyone whose *fitrah* is *wajib* upon another is not required to pay his own *fitrah* even if he is wealthy.

Its Quantity

The schools, excepting the Hanafi, concur that the *wajib* quantity of *fitrah* per head is one *sa'* (approx. 3 kg) of wheat, barley, dates, raisins, rice, maize or any other staple crop. The Hanafis consider half a *sa'* of wheat per head as sufficient.

Time of Wujub

The Hanafis observe: Its *wujub* commences from the dawn of the day of *'Id* and continues till the end of life, because *zakat al-fitr* is among those obligations which do not have a time limit and it is valid to pay it early or late.

The Hanbalis say: It is *haram* to delay its payment beyond the day of *'Id* and it may be paid two days before the *'Id*, though not earlier.

The Shafi'is state: The time of its *wujub* extends from the last part of Ramadan (i.e. from a little before sunset on the last day of Ramadan) up to the first part of Shawwal. It is *sunnah* to set it aside during the early part of the day of *'Id* and *haram* to delay it beyond the sunset of the day without an excuse.

There are two narrations from Imam Malik, and in accordance with one of them its *wujub* commences from sunset on the last day of Ramadan.

The Imamis observe: *Zakat al-fitr* becomes *wajib* with the falling of the night of the *'Id*, and its payment is *wajib* from sunset up to noon on the day of *'Id*; it is meritorious to pay it before *salat al-'Id*. But if no deserving person (*mustahiqq*) is found at that time, it should be set aside with the intent of giving it at the first opportunity. If the payment is delayed beyond this time despite the presence of a deserving recipient, it remains *wajib* to pay it later because this obligation is not annulled in any situation.

Mustahiqq

The schools concur that those entitled to receive ordinary *zakat*, as per the Qur'anic verse:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ

are also entitled to receive *zakat al-fitr*.
In the place of paying in kind, it suffices to pay the price of the cereals, and it is *mustahabb* to give it to one's needy relative, and then to the neighbours, as there is a tradition which says:

جيران الصدقة أحقّ بها

The neighbour of (someone paying) *sadaqah* is more entitled to receive it.

1. Except that sanity and adulthood are not considered essential for liability to zakat on crops of the field and fruits in the opinion of the Hanafis.
2. The Hanafis observe: The number of cows between the two limits is exempt from zakat except when their number is between 40 and 60. After 40, zakat will be levied n each extra cow at the rate of 2 ½% of a musinnah (al-Fiqh 'ala al-madhahib al-arba'ah, bab al-zakat).

Khums

The Imamis assign a separate chapter to *khums* in their books on *fiqh*, after the chapter on *zakat*, and its basis is verse 41 of *Surat al-Anfal*:

وَاعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ

Know that, whatever booty you take, the fifth of it is God's and the Messenger's, and the near kinsman's and the orphans', and for the needy and the traveler (***8:41***)

They do not confine the scope of the term *'ghanimah'* to the spoils of war acquired by Muslims, but consider it to include seven categories, mentioned below along with what information we could gather about the view of other schools regarding each category:

1. Booty acquired in war: All the schools concur that it is liable to *khums*.

2. Minerals: It includes everything that is of value extracted from the earth – apart from soil – e.g. gold, silver, lead, copper, mercury, petroleum, sulfur, etc.
The Imamis observe: It is *wajib* to pay *khums* (20%) on minerals if their value reaches the *nisab* of gold, which is 20 dinars, or the *nisab* of silver, which is 200 dirhams. There is no *khums* below this limit.

The Hanafis state: There is no *nisab* for minerals, and their *khums* is *wajib* irrespective of value.
The Malikis, Shafi'is and Hanbalis are of the opinion that there is no levy if the mineral extracted is lesser in value than the *nisab*, but if it reaches that limit it is liable to *zakat* at the rate of 2 1/2%.

3. *Rikaz*: It consists of articles of value buried at a place whose inhabitants have perished and there is no sign left of them, such as sites which the archaeologists excavate for this purpose.

The four schools state: *Khums* is *wajib* on *rikaz*, and it has no *nisab* and therefore entails *khums* irrespective of its worth.
The Imamis observe: *Rikaz* is like minerals with respect to *nisab* and liability to *khums*.

4. The Imamis say: That which is 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.
In the opinion of the four schools, there is no levy on such things, whatever their value.

5. The Imamis observe: *Khums* is *wajib* upon the surplus remaining after a person has made provision for himself and his family for a period of one year, irrespective of his profession and the mode of income – trade or industry, agriculture or office work, or work on daily wages, or real estate, gift or something else. Hence if there remains a single piaster or anything of that value after a year's expenditure, it is

liable to *khums*.

6. The Imamis state: If a person comes to acquire some illegitimate wealth which gets mixed with his legitimate wealth and neither the quantity of the *haram* wealth nor its owner is known, he is obliged to pay *khums* from his whole wealth in the way of God. If he does so, his remaining wealth will become *halal* irrespective of whether the illegitimate portion was lesser or greater than a fifth.

But if the illegitimate wealth is identifiable, it is obligatory to return it itself; and if it is not identifiable but its quantity is known, he will return that quantity fully even if it equals all his wealth. If he knows the people from whom he has embezzled it without knowing the quantity of the portion due to them, he is bound to seek their satisfaction by reaching a settlement or seeking their pardon. In short, the payment of *khums* from adulterated wealth is correct only when both the quantity and the owner of its illegitimate portion are not known.

7. According to the Imamis, if a *dhimmi* purchases land from a Muslim, the *dhimmi* is personally liable to pay its *khums*.

Uses of Khums

The Shafi'is and the Hanbalis observe: *Khums* will be divided into five parts, of which one part will be the share of the Prophet (S) and used for the benefit of Muslims. Another part will be the share of *dhawi al-qurba*, and they are those who have descended from Hashim through their fathers, irrespective of any distinction between the rich or the poor among them. The three other parts will be spent on orphans, the poor and the travelers, whether they belong to the Bani Hashim or not.

The Hanafis consider the share of the Prophet as annulled after his demise. As to the *dhawi al-qurba* (i.e. those belonging to Bani Hashim), they are like other poor in receiving *khums*, they say; they will be entitled to it on account of their need, not by virtue of their kinship with the Prophet (S).
The Malikis state: The ruler (*imam*) has complete authority over *khums* funds and he may use it for any purpose that he deems fit.

According to the Imamis, the shares of God, the Prophet (S) and the *dhawi al-qurba* will be paid to the Imam (A) or his representative, to be spent for the benefit of the Muslim community. The other three parts are to be given to the orphans, destitutes and travelers belonging exclusively to Banii Hashim.

We conclude this chapter with al-Shi'rani's words in his *Kitab al-mizan* (the chapter on *zakat al-ma'din*). He says:

The ruler (*imam*) is authorized to tax the mine owners in accordance with the interest of the public exchequer to avoid the concentration of wealth in the hands of mine owners who may thereby seek political power and spend money on the troops. This would lead to evil (political) consequences (*fasad*).

This is another way of expressing the "modern" view that capital enables the capitalists to gain control of the government. 406 years have passed since the death of the author of this opinion.

5. Hajj, The Pilgrimage

The Hajj

The Acts of the Hajj

At the beginning, in order to make it easier for the reader to follow the opinions of the five schools of fiqh about various aspects of Hajj, we shall briefly outline their sequence as ordained by the Shari'ah.

The Hajj pilgrim coming from a place distant from Mecca assumes *ihram*[1] from the *miqat*[2] on his way, or from a point parallel to the closest *miqat,* and starts reciting the *talbiyah*.[3] In this there is no difference between one performing *'Umrah mufradah* or any of the three types of Hajj (i.e. *tamattu, ifrad, qiran*). However, those who live within the haram[4] of Mecca assume *ihram* from their houses.'[5]

On sighting the Holy Ka'bah, he recites *takbir* اللَّهِ أَكْبَر (i.e. 'God is the greatest') and *tahlil* لا إله إلا الله (i.e. 'There is no god except Allah') which is *mustahabb* [6] (desirable, though not obligatory). On entering Mecca, he takes a bath, which is again *mustahabb.* After entering al-Masjid al-Haram, first he greets the Black Stone (*al-Hajar al-'Aswad*) - if possible kisses it, otherwise makes a gesture with his hand - then makes the *tawaf* (seven fold circumambulation of the Ka'bah) of the first entry, which is *mustahabb* for one performing *Hajj al-'ifrad* or *Hajj al-qiran.* Then he offers the two *raka'at* of the *tawaf,* again greets the Black Stone if he can, and leaves al-Masjid al-Haram. After this, he remains in the state of *ihram* in Mecca. On the day of *tarwiyah,* i.e. the eighth day of the month of Dhu al-Hijjah, or if he wants a day earlier, he goes forth towards 'Arafat.

If the pilgrim has come for *'Umrah mufradah* or *Hajj al-tamattu;* he performs the *tawaf* of the entry, which is obligatory (*wajib*) for him, and prays the two *raka'at* of the *tawaf.* Then he performs the *sa'y* between Safa and Marwah, and, following it, the *halq* (complete head shave) or *taqsir* [7] (partial shortening of the hair of the head). Then he is relieved of the state of *ihram* and its related restrictions, and things prohibited in *ihram* become permissible for him, including sexual intercourse.[8] Then he proceeds from Mecca after assuming *ihram* for a second time, early enough to be present at the *wuquf* (halt) at 'Arafat (referred to as *'mawqif; i*.e. the place of halting) at noontime on the ninth of Dhu al-Hijjah. Assumption of *ihram* on the day of *tarwiyah,* i.e. eighth Dhu al-Hijjah, is preferable.

The Hajj pilgrim, irrespective of the type of Hajj he intends to perform, turns towards ‘Arafat, passing through Mina. The period of the *wufuq* at ‘Arafat is, for the Hanafi, Shafi’i, and Maliki schools, from the noon of the ninth until the day break of the tenth; for the Hanbali school, from the daybreak of the ninth until the daybreak of the tenth; and for the Imamiyyah, from noon until sunset on the ninth, and in exigency until the daybreak of the tenth. 9 The pilgrim offers invocations (*dua'*) at ‘Arafat, preferably (*istihbaban*) in an imploring manner.

Then he turns towards Muzdalifah (also called al–Mash'ar al–Haram), where he offers the *Maghrib* and *Isha'* prayers on the night of the ‘Id (i.e. the tenth of Dhu al–Hijjah). Offering the two prayers immediately after one another is considered *mustahabb* by all the five schools. According to the Hanafi, Shafi'i, and Hanbali schools, it is obligatory to spend this night (i.e. the night of the ‘Id) at Muzdalifah; for the Imamiyyah, it is not obligatory but preferable. After the daybreak, he makes the *wuquf* at al–Mash'ar al–Haram, which is *wajib* for the Imamiyyah and *mustahabb* for other schools. And at Muzdalifah, preferably, he picks up seven pebbles to be thrown at Mina.

After this, he turns towards Mina before sunrise on the day of ‘Id. There he performs the ritual throwing of stones, called *ramy,* at Jamarat al–‘Aqabah, no matter which of the three kinds of Hajj he is performing. The *ramy* is performed between sunrise and sunset, preferably (*istihbaban*) accompanied by *takbir* and *tasbi* سُبْحَانَ اللَّهِ (i.e. proclaiming God's glory by saying ‘How far God is from every imperfection!').

Then if a non–Meccan on *Hajj al–tamattu*; he should slaughter the sacrificial animal (a camel, cow or a sheep), by agreement of all the five schools. However, it is not obligatory for one on *Hajj al–'ifrad;* again by consensus of all the five schools. For one on *Hajj al–qiran*, the sacrifice is obligatory from the viewpoint o the four Sunni schools, and for the Imamiyyah it is not obligatory except when the pilgrim brings the sacrificial animal (*al–hady*) along with him at the time of assuming *ihram*.

For a Meccan performing *Hajj al–tamattu*; the sacrifice is obligatory from the viewpoint of the Imamiyyah school, but not according to the four Sunni schools.

After this, he performs the *halq* or *taqsir*, irrespective of the kind of Hajj he is performing. After *halq* or *taqsir*, everything except sexual intercourse becomes permissible for him according to the Hanbali, Shafi'i and Hanafi schools, and according to the Maliki and Imamiyyah schools, everything except intercourse and perfume.

Then he returns to Mecca on the same day, i.e. the day of the ‘Id, performs the *tawaf al–ziyarah*, prays its related two *raka'at*, regardless of which kind of Hajj he is performing. After this, according to the four Sunni schools, he is free from all restrictions including that of sexual intercourse. Then he performs the *sa'y* between Safa and Marwah if on *Hajj al–tamattu;* by agreement of all the five schools. For the Imamiyyah school, the *sa'y* after *tawaf al–ziyarah* is also obligatory for one performing *Hajj al–qiran* and *Hajj al–'ifrad*. But for other schools, it is not obligatory if the pilgrim had performed the *sa'y* after the

tawaf of first entry, otherwise it is.

For the Imamiyyah, it is obligatory for all the types of Hajj to perform another *tawaf* after this *sa'y*. Without this *tawaf*, called *tawaf al-nisa*; one is not relieved of the interdiction of abstinence from intercourse.

Then the pilgrim returns to Mina on the same day, i.e. the tenth, where he sleeps on the night of the eleventh, performs the threefold throwing of stones (*ramy al jamarat*) during the interval from the noon until the sunset of the eleventh– by consensus of all the five schools. For the Imamiyyah, the *ramy* is permissible after sunrise and before noon. After this, on the day of the twelfth, he does what he had done the day before. All the legal schools agree that he may now depart from Mina before sunset. And if he stays there until sunset, he is obliged to spend the night of the thirteenth there and to perform the threefold *ramy* on the day of thirteenth.

After the ramy, he returns to Mecca, before or after noon. On entering Mecca, he performs another *tawaf*, *tawaf al–wada'* (*the tawaf* of *farewell*), which is *mustahabb* for the Imamiyyah and Maliki schools and obligatory for the non–Meccans from the viewpoint of the remaining three. Here the acts of the Hajj come to conclusion.

The Conditions (Shurut) that make the Hajj Obligatory (Wajib)

The conditions (shurut) which make the Hajj obligatory (*wajib*) for a Muslim are: maturity (*bulugh*), *sanity* (*'aql*), and 'capability' (*istita'ah*).

The Proviso of Bulugh

The Hajj is not obligatory for children, regardless of whether a child is of the age of discretion (*mumayyiz*) or not (*ghayr mumayyiz*). For a *mumayyiz* child, the Hajj is voluntary and valid. However, it does not relieve him/her of the obligation to perform the obligatory Hajj (called *hijjat al–'Islam*) later as an adult possessing *istita'ah*; this, in case he/she does not attain adulthood before the wuquf. On this all the five schools of fiqh are in agreement.

It is permissible for the guardian (*wali*) of a *ghayr mumayyiz* child to take him along on the Hajj pilgrimage. In that case, he puts on the child the dress of *ihram*; instructs him to say the *talbiyah*, if the child can say it well, or otherwise says it himself on the child's behalf; and is cautious lest the child commits some act unlawful (*haram*) for the pilgrims (*hujjaj*). The accompanying guardian also tells him to perform every act that the child can perform himself, and what he cannot, the guardian performs it on the child's behalf.

The schools of fiqh differ on two questions relating to the Hajj of a *mumayyiz* child: firstly, whether his Hajj is valid, irrespective of the permission of the guardian; secondly, whether he is relieved of the obligation of Hajj if he attains adulthood before *mawqif*. According to the Imamiyyah, Hanbali, and Shafi'i

schools, the guardian's permission is a provision for the *ihram* to be valid. According to Abu Hanifah, the idea of validity is inapplicable to the child's Hajj, even if *mumayyiz,* and regardless of whether he obtains the permission of the guardian or not; because, according to him, there is nothing to a child's Hajj except its significance as an exercise (*Fath al–Bari, al–Mughni, al–Tadhkirah*).

According to the Imamiyyah, Hanbali and Shafi'i schools, if the child attains adulthood before *mawqif,* his obligatory duty of Hajj (*hijjat al–'Islam*) is thereby fulfilled. And according to Imamiyyah and Maliki schools, the duty is fulfilled if he renews *ihram* (as an adult), otherwise not; which means that he should start the Hajj all over again from the beginning. (*al–Tadhkirah*)

Insanity

Basically the condition of insanity relieves a person of all duties. Even if he was to perform the Hajj, and presumably in the way expected of a sane person, it would not fulfil his obligatory duty were he to return to sanity. If his insanity is periodic, when regained for a sufficiently long interval it is *wajib* for him to perform the Hajj with all its conditions and in all its details. However, if the interval of sanity is not sufficient to perform all the acts of the Hajj, he is quit of the obligation.

Istita'ah

All the five schools of fiqh agree that *istita'ah* is a requirement for the Hajj duty to become obligatory as mentioned by the Qu'ranic verse:

مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا

(***"... whoever is able to make his way there"***) 10.

However, there is disagreement about the meaning of *istita'ah.* In hadith it has been defined as consisting of *"al–zad wa al–rahilah". 'Al–rahilah'* implies the expenses of to and fro journey to Mecca, and '*al–zad*' stands for the expenses required for transport, food, lodging, passport fees, and the like. Moreover, the funds needed to meet such expenses must come out of the surplus after paying one's debts, after arranging for one's family's livelihood, meeting the requirements of one's source of income (such as land for a farmer, tools for a craftsman, capital for a tradesman, and so on), and without compromising the security of his life, property and honour.

All schools agree about it except the Malikis, who say that the duty of Hajj is obligatory for anyone who can walk. The Malikis also do not consider the necessity of providing for the living expenses of the family. Rather, they consider it compulsory for one to sell off his essential means of life, such as land, livestock, tools, and even books and unessential clothes. (*al–Fiqh 'ala al–madhahib al–'arba'ah*).

If a person upon whom the Hajj duty is not obligatory due to absence of *istita'ah,* takes upon himself the

burden and performs the Hajj, in case he attains *istita'ah* afterwards, is his first Hajj sufficient or should he perform the Hajj once again? According to the Maliki and Hanafi schools, yes, repetition is not compulsory. According to the Hanbali school, yes, but a duty left unattended, such as an unpaid debt, must be discharged.

According to the Imamiyyah school, it does not suffice the obligation of Hajj if he attains *istita'ah* afterwards, because the provisional is inseparable from the provision both in its presence and its absence. The Hajj performed before the attainment of *istita'ah* is considered supererogatory (*nafl*). Later, with its realization, repetition of the Hajj becomes obligatory.

Immediacy (al-Fawr)

The Imamiyyah, the Maliki, and the Hanbali schools consider the obligation (*wujub*) of the Hajj duty to be immediately applicable (*fawri*); i.e. it is not permissible to delay it from the moment of its possibility. It is sinful to delay, though the Hajj performed with delay is correct and fulfils the obligation. The author of *al-Jawahir* says:

The immediacy of the obligation of Hajj means that it is necessary to take initiative to perform the Hajj in the first year of attaining *istita'ah*, and failing that at one's next earliest opportunity....Thereafter, there is no doubt about the sinfulness of the delay if one were to forgo the first opportunity in the case of absence of another.

According to the Shafi'i school, the obligation of Hajj is not immediate (upon attainment of *istita'ah*); rather one may delay it and perform it when he wishes.[11] According to Abu Yusuf, the Hajj is an immediate obligation. Muhammad ibn al-Hasan considers delay (*tarakhi*) permissible. Abu Hanifah has no explicit text on the matter, though some of his contemporaries state that he implicitly believes in the immediacy of the obligation.

Secondary Issues Related to Istita'ah

Women and the Hajj

Are there any additional conditions for women with regard to performance of the Hajj? All the five schools agree that it is not required that a woman should obtain the husband's permission for the obligatory Hajj duty, nor may he prevent her from undertaking it. However, there is a difference of opinion about whether the Hajj is obligatory upon her or not if she does not find a husband or a *mahram* [12] to accompany her on the journey.

According to the Imamiyyah, Maliki and Shafi'i schools, the *mahram's* company or that of the husband is not at all a condition, regardless of whether she is young or old, married or unmarried; since the *mahram's* company is a means of her safety, not an end in itself. Accordingly, we have two cases: either

she feels confident of her security on the journey, or she doesn't. In the first case, the Hajj is obligatory upon her and the *mahram's* company is irrelevant. In the second case, she lacks the requirement of *istita'ah,* in spite of the *mahram's* company.

Accordingly, there is no essential difference between a man and a woman in this respect.

According to the Hanbali and Hanafi schools, the company of the husband or *mahram* is a provision for the woman's Hajj, even if she were old. It is not permissible for her to perform the Hajj without his company. The Hanafi school further stipulates the condition that her location should be at a distance of three days' journey from Mecca.

Bequest (al–Badhl)

Al–Mughni, a text of Hanbali fiqh, states: "If a person bequeaths money to another, it is not binding upon him to accept it, and it does not make the recipient *mustati'* (possessing *istita'ah*), irrespective of whether the bequeathed is a relative or a stranger, regardless of whether the bequest suffices for the expenses of the journey and food. According to al–Shafi'i, if the bequest is made by one's son, enough to enable him to undertake the Hajj journey, the Hajj becomes obligatory. This is because it enables him to perform the Hajj without having to bear a stranger's favour or without any accompanying encumbrance or harm.

According to the Imamiyyah school, if the bequest is an unconditional gift made without the provision of performing the Hajj by the recipient, the Hajj is not binding, irrespective of who makes the bequest. But if the bequest is made with the condition that one perform the Hajj, the acceptance of the bequest is binding and may not be rejected, even if the bequest is made by a stranger; since it makes him *mustati '* to undertake the pilgrimage.

Marriage

What if one has only enough money either to get married or to perform the Hajj? Which of them is prior? The Hanafi text *Fath al–qadir* (vol. II, *"Bab al–Hajj"*) mentions this question being put to Abu Hanifah, who, in his reply, considered that priority lies with the Hajj. The generality (*itlaq*) of this answer in which he gives priority to the Hajj, taking into consideration that marriage is obligatory under certain conditions, allows us to conclude that for Abu Hanifah delay in Hajj is not permissible.

According to the Shafi'i, Hanbali and Imamiyyah scholars, marriage has priority if there is likelihood of distress (*haraj*) or difficulty (*mashaqqah*)in refraining from marriage. In that case priority does not lie with the Hajj. (*Kifayat al–'akhbar, al–Mughni, al–'Urwat al–wuthqa*)

Khums and Zakat

Payment of the *khums* and *zakat* has priority over the Hajj. The condition of *istita'ah* is not realized until

both are paid off, like other kinds of debts.

Istita'ah by Chance

If someone travels to a place in the vicinity of the holy city of Mecca, on business or for some other purpose, and his stay continues until the Hajj season, and if it is possible for him to reach the Holy Ka'bah, he thereby becomes *mustati'*. And if he were to return home without performing the Hajj, by consensus of all the schools, he is not relieved of the obligation.

Istinabah (Deputation)

The Islamic duties (*'ibadat*) are divisible into three categories, depending on a duty's nature whether it mainly involves bodily acts or financial expenditure.

1. The purely bodily *'ibadat* are those which, like fasting (*sawm*) and prayer (*salat*), do not involve any financial aspect. According to the four Sunni schools, such duties cannot in any circumstance be delegated to a proxy (*na'ib*), either on behalf of a living or a dead person. But according to the Imamiyyah school, taking a *na'ib* is permissible on behalf of a dead person, though not for a living person, to perform *sawm* and *salat* for him, and under all circumstances.

2. The purely financial *'ibadat* are those which do not involve bodily acts, such as *khums* and *zakat.* In such *'ibadat,* all legal schools agree, it is permissible to take a *na'ib.* It is permissible for one to depute another to take out *zakat* and pay other kind of alms (*sadaqat*) from his assets.

3. The duties which involve both bodily and financial aspects, such as the Hajj, which requires such bodily acts as *tawaf* (circumambulation of the Ka'bah), *say'* (to and fro movement between Marwah and Safa), *ramy* (the symbolic throwing of stones), and financial expenditures such as for the journey and its accompanying requirements.

All the five legal schools agree that one who is capable of undertaking the Hajj in person and fulfils all the conditions thereof, should do so himself in person. It is not permissible for him to depute another to undertake it, and if he does so it would not relieve him of his obligation to perform it himself. If he does not do it in his life, according to the Shafi'i, Hanbali and Imamiyyah schools, he is not relieved of the duty because of the preponderance of the financial aspect, and it is obligatory to hire someone to perform the Hajj with a similar expenditure. In case he does not make a will for the Hajj, the amount should be taken out from his undivided heritage.[13]

According to the Hanafi and Maliki schools, he is relieved of the obligation due to the bodily aspect; but if he mentions it in his will, the expense is taken out from the one third of his inheritance—like all other bequests—and if he doesn't, *istinabah* is not obligatory.

The Physically Incapable (al-Qadir al-'Ajiz)

One who meets all the financial conditions for the Hajj pilgrimage but is incapable of undertaking it personally due to old age or some incurable disease, all the legal schools agree, is relieved of the obligation of performing the Hajj in person, for God says:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

(*... **and He has laid no impediment in your religion ....***). 14

However, it is obligatory upon him to hire someone to perform the Hajj for him. But if he doesn't, is it a negligence of a duty whose fulfilment continues to remain upon him? All the legal schools, with the exception of the Maliki, agree that it is obligatory upon him to hire someone to perform the Hajj for him. The Maliki says that the Hajj is not obligatory upon one who is incapable of undertaking it in person. (*al-Mughni, al-Tadhkirah*)

Furthermore, if a sick person recovers after deputing someone to perform his Hajj, is it obligatory upon him on recovery to perform the Hajj in person? According to the Hanbali school, another Hajj is not obligatory. But according to the Imamiyyah, Shafi'i and Hanafi schools it is obligatory, because what was fulfilled was the financial obligation, and the bodily obligation has remained unfulfilled.

Istinabah in al-Hajj al-Mustahabb

According to the Imamiyyah and Hanafi legal schools; one who has performed the *Hijjat al-'Islam,* if he wants to depute another for a voluntary, *mustahabb* Hajj, may do so, even if he is capable of undertaking it in person. But according to the Shafi'i school, it is not permissible. There are two narrations from Ahmad ibn Hanbal, one indicating prohibition and the other permission.

According to the Maliki school, it is permissible for an incurable sick person and for one who has performed the obligatory Hajj to hire another for the Hajj. The Hajj so performed is valid, though *makruh* (reprehensible). It is not considered as the Hajj of the hirer (*mustajir*) and is counted as the *mustahabb* Hajj of the hired (*ajir*).

The hirer gets the reward for providing assistance in the performance of the Hajj and shares the blessings of the prayers offered. When the Hajj is performed for the benefit of a dead person, irrespective of whether he has asked for it in his will or not, it is counted neither as fulfilment of the duty (*fard*) nor as a supererogatory (*nafl*) act, nor does it relieve him of the duty of the obligatory Hajj. (*al-Fiqh 'ala al-madhahib al-'arba'ah*).

The Conditions for the Na'ib

The *na'ib* should fulfil the conditions of: *bulugh* (adulthood), *'aql* (sanity), belief in Islam, exemption from the duty of obligatory Hajj, and ability to perform the Hajj properly. A man may represent a woman and a woman may represent a man, even if both the *na'ib* and the one whom he represents have not performed the Hajj before. 15

Should the *na'ib* commence the journey from his own place or that of the deceased whom he represents, or from one of the *mawaqit*? According to the Hanafi and Maliki schools, the *na'ib* should commence the pilgrimage journey from the place of the deceased, if he has not specified the starting point; otherwise according to his wish.

According to the Shafi'i school, the pilgrimage commences from one of the *mawaqit;* if the deceased person has specified one, then the *na'ib* must act accordingly, otherwise he is free to choose one of the *mawaqit.*

According to the Hanbali school, the *na'ib* must start from the place that the deceased was obliged to begin from if he had performed the Hajj himself, and not from the place of his death. If the deceased person had attained *istita'ah* at a place to which he had migrated, later returning to his own place, the *na'ib* should start from the place of migration, not from the deceased person's home, except when the distance (between his home-town and the place of migration) is less than what is required for *qasr* in prayers performed by a traveller. 16

According to the Imamiyyah school, the Hajj is classified into *miqati* (i.e. one which starts from one of the *mawaqit*) and *baladi* (i.e. one which starts from the town of the deceased). If the deceased has specified one of these two kinds, then the one specified.

If he has not specified, any one of the two may be performed. Otherwise the Hajj is *miqati* and, if possible, starts from the *miqat* nearest to Mecca, or else the *miqat* nearest to the town of the deceased. The cost of *al-Hijjat al-miqatiyyah* is taken out from the undivided legacy in the case of obligatory Hajj, and the expense exceeding the cost of *al-Hijjat al-miqatiyyah* is taken from the one third. (*al-Jawahir*)

Delay by the Na'ib

Once the *na'ib* is hired, it is obligatory for him to act with immediacy. He may not postpone the Hajj beyond the first year. Also, it is not permissible for him to depute another, since the duty is his own. If we do not know that he actually went on the pilgrimage and performed all its essential acts, or if we doubt whether he performed them correctly and properly or not, or whether he failed to fulfil any of its obligatory essentials, then we assume that he acted correctly and properly, unless there is proof to the contrary.

Change of Purpose by the Na'ib (al-'Udal)

According to the Hanafi and Imamiyyah schools, if one specifies to the *na'ib* a particular kind of Hajj; such as *Jajj al-'ifrad,* or *Hajj al-qiran;* then it is not permissible for him to make any change. However, if a particular town was specified as the starting point and the *na'ib* starts from another town, the purpose of the one who hires him is considered as fulfilled if the said specification was not really intended by the hirer; i.e. if by mentioning the route he meant the Hajj itself, and not the route specifically. (*al-Tadhkirah, al-Fiqh 'ala al-madhahib al-'arba'ah*).

1. `Ihram' is the state of pilgrim sanctity, which a pilgrim of Hajj or `Umrah assumes on reaching miqat (see note No. 2). A pilgrim in the state of ihram is called muhrim. (Tr.)
2. Miqat (pl. mawaqit) refers to a number of stations outside Mecca from where the pilgrims intending Hajj or `Umrah assume ihram. They are: (1) Dhu al-Hulayfah (specifically, Masjid al-Shajarah); (2) Yalamlam; (3) Qarn al-Manazil; (4) al-Juhfah; (5) three points situated in the valley of al-`Aqiq: al-Maslakh, al-Ghamrah, and Dhat al-`Irq. Those pilgrims whose houses are nearer to Mecca than to any of the above mawaqit, assume ihram from their houses. (Tr.)
3. The talbiyah is wajib according to the Imamiyyah, Hanafi, and Maliki schools, and mustahabb according to the Hanbalis. Its time is the moment of beginning of ihram.
4. The area roughly within a radius of six miles, with the Holy Ka'bah at the centre, is called 'haram', the sacred and inviolable territory of the sanctuary of the Holy Ka'bah. See the brief discussion under the subheading; "The Limits of the Harams of Mecca and al-Madinah" in the present article. (Tr.)
5. According to the Imamiyyah school, Hajj al-tamattu` is obligatory for non-Meccans, and Meccans may choose between Hajj al-qiran and Hajj al-'ifrad. According to the four Sunni schools, there is no difference between a Meccan and a non-Meccan with regard to choice of any particular kind of Hajj, except that according to the Hanafi school Hajj al-tamattu` and Hajj al-qiran are makruh for the Meccan.
6. The tawaf of the first entry or the arrival (called tawaf al-qudum) is mustahabb from the viewpoint of all except the Maliki school, which regards it as obligatory.
7. According to the Imamiyyah school, one is free to choose between halq and taqsir if on `Umrah mufradah'. But a pilgrim on Hajj al-tamattu` is required to perform taqsir. Also according to the Imamiyyah, it is obligatory for one on `Umrah mufradah to perform, after the halq or taqsir, a second tawaf, the tawaf al-nisa', before which sexual intimacy is not permissible to the pilgrim. According to the four Sunni schools, one is free to choose between halq and taqsir in both. They do not require the pilgrim of Hajj or 'Umrah to perform tawaf al-nisa; and according to the Maliki school halq or taqsir is not obligatory on one performing `Umrah mufradah.
8. According to the Imamiyyah school, the mutamatti` (pilgrim on Hajj al-tamattu' and its conjugate `Umrah) acquires tahlil (i.e. relief from ihram) after taqsir, even when he brings along with him the sacrificial animal (hady). But according to the other schools, the mutamatti` who assumes ihram for `Umrah from the miqat obtains tahlil on halq or taqsir when not accompanied by hady, but if he has brought along with him the hady, he remains in the state of ihram. However, according to them, the pilgrim of `Umrah mufradah obtains tahlil regardless of whether the hady accompanies him or not. The author of al-Mughni, after making the above statement, says, "I have not come across a contrary opinion on this matter."
9. According to the Imamiyyah school, the halt in Arafat is obligatory for the entire period of time. But according to the other schools, a moment of halt is sufficient. All the legal schools are in agreement that offering the zuhr (noon) and `asr (afternoon) prayers immediately after one another is mustahabb, because the Prophet (S) had done so.
10. The Qur'an, 3:97
11. Although the times have tended to support this opinion, and even though the traditions in favour of immediacy (al-fawr) of the duty of Hajj are open to criticism and controversy, but it leads towards negligence, and gradually towards abandonment of this sacred rite. Accordingly, the stress on immediacy is preferable, being more conducive from the viewpoint of the necessity to preserve the vitality of the Islamic faith.
12. Mahram is a male relation with whom marriage is not permissible; viz; father, grandfathers, sons, grandsons, brothers,

sons and grandsons of one's sister or brother, etc.

13. The Imamiyyah, Shafi'i, and Maliki schools permit hiring another person to perform the Hajj for a fee. The Hanafi and Hanbali schools do not consider it permissible. Nothing more than the expenses of journey, food and lodging may be given to the hired, they say.

14. The Qur'an, 22:78.

15. One who has not performed the Hajj before is called sarurah. According to the Shafi'i and Hanbali schools, if one who has not performed the Hajj before, undertakes it on behalf of another, the Hajj performed is considered his own. But according to the Maliki, Hanafi, and Imamiyyah schools, the Hajj performed depends on his intention (niyyah).

16. The minimum distance required for qasr in zuhr, 'asr and 'isha' prayers is 8 parasangs (approximately 44 km or 27.5 miles). (Tr.)

Al-'Umrah

The Meaning of 'Umrah

The word *'umrah* in common speech "visit", but in the Shari'ah it means paying a visit to the *Bayt Allah al-Haram* (the Sacred House of God, i.e. the Holy Ka'bah) in a specific form.

The Kinds of 'Umrah

The 'Umrah is of two kinds: the first which is performed independently of the Hajj (called *al-'Umrat al-mufradah al-mustaqillah 'an al-Hajj*), and the second kind which is performed in conjunction with the Hajj (*al-'Umrat al-mundammah ila al-Hajj*). The *al-'Umrat al-mufradah,* the independent 'Umrah, all the five legal schools agree, can be performed at all times of the year, though it is meritorious to perform it during the month of Rajab according to the Imamiyyah, and in Ramadan according to the four Sunni schools.

The time of the conjugate 'Umrah, which is performed before the Hajj and in the course of the same journey by the Hujjaj coming to the Holy Makkah from distant countries, by consensus of all five schools, extends from Shawwal to Dhul Hijjah. However, there is disagreement among legists about the month of Dhul Hijjah, whether the entire month or only the first ten days belong to the Hajj season. Anyone who performs the conjugate 'Umrah is considered relieved of the obligation to perform the *al-'Umrat al-mufradah* by those who believe in its being obligatory.

Difference Between the Two Kinds of 'Umrah

The Imamiyyah scholars make a distinction between *al-'Umrat al-mufradah* and *'Umrat al-tamattu',* citing the following reasons:

1. The *Tawaf al-nisa'* (to be explained later) is obligatory in *al-'Umrat al-mufradah,* not in the *'Umrat al-tamattu;* and according to some jurists is forbidden.

2. The time of *'Umrat al-tamattu'* extends from the first of the month of Shawwal to the ninth of Dhu al-Hijjah, whereas *al-'Umrat al-mufradah* can be performed at all times of the year.

3. The pilgrim (*mu'tamir*) performing the *'Umrat al-tamattu'* is required to shorten his hair (*al-taqsir*), whereas the *mu'tamir* of *al-'Umrat al-mufradah* can choose between shortening his hair or completely shaving his head (*al-halq*), as shall be explained later.

4. The *'Umrat al-tamattu'* and the Hajj occur in the same year, which is not the case with *al-'Umrat al-mufradah.*

Karrarah, in his book *al-Din wa al-Hajj 'ala al-madhahib al-'arba'ah,* says that, according to the Maliki and Shafi'i schools, for the *mu'tamir* of *al-'Umrat al-mufradah* all things are permissible, even sexual intercourse, after the shortening of hair (*al-taqsir*) or the head shave (*al-halq*), irrespective of whether he brings along with him the sacrificial offering (*al-hady*) or not. But according to the Hanbali and Hanafi schools, the *mu'tamir* gets away with *al-taqsir* or *al-halq*, if he does not bring the sacrificial offering; otherwise he remains in the state of *ihram* until he gets through the Hajj and the 'Umrah on the day of sacrifice (*yawm al-nahr*).

The Conditions of the 'Umrah

The conditions for the 'Umrah are essentially the same as mentioned in the case of the Hajj.

The Status of 'Umrah

According to the Hanafi and Maliki schools, the 'Umrah is not obligatory but a highly recommended *sunnah* (*sunnah mu'akkadah*). But according to the Shafi'i and Hanbali schools and the majority of Imamiyyah legists, it is obligatory (*wajib*) for one who is *mustati',* and desirable (*mustahabb*) for one who is not *mustati:* In support, they cite the Qur'anic verse:

وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ

(***Perform the Hajj and the 'Umrah for Allah.***)1

(*Fiqh al-Sunnah,* vol. V; *al-Fiqh 'ala al-madhahib al-'arba'ah; al-Jawahir; al-Mughni*)2

The Acts of the ‘Umrah

According to *al–Fiqh ‘ala al–madhahib al–'arba’ah,* whatever is *wajib* or *sunnah* for the Hajj is also *wajib* and *sunnah* for the ‘Umrah. But the ‘Umrah does differ from the Hajj in certain respects: there is no specific time for performing the ‘Umrah; it does not involve the halt (*wuquf*) in the plain of ‘Arafat; neither the departure thenceforth to al–Muzdalifah; nor the *ramy al–jamarat*.[3]

The Imamiyyah book *al–Jawahir* mentions that: "The obligatory acts (*af'al* or *a'mal*) of the Hajj are twelve: *ihram;* the *wuquf* at ‘Arafat; the *wuquf* at al–Mash'ar al–Haram; the entry into Mina; the *ramy;* the *dhibh* (sacrifice); its related *taqsir* or *halq;* the *tawaf* (the sevenfold circumambulation of the Ka'bah), and its related *raka'at* (units of the length of prayers); the *sa’y*; the *tawaf al–nisa',* and its related *raka'at.* The obligatory acts of *al–‘Umrat al–mufradah* are eight: *niyyah* (intention); *ihram*[4] *; tawaf* and its related *raka'at;* the *sa’y;* the *taqsi;* the *tawaf al–nisa';* and its related *raka'at."*

This indicates that all the legal schools agree that the acts of the Hajj exceed those of the *‘Umrah* by the acts associated with the *wuquf.* Moreover, the Imamiyyah school considers it obligatory for the performer of the *al–‘Umrat al–mufradah* to perform a second *tawaf,* the *tawaf al–nisa'.* Similarly the Maliki school differs from others in considering *halq* or *taqsir* as non–obligatory for *al–‘Umrat al–mufradah.*

Two Subsidiary Issues

1. The obligation (*wujub*) of *al–‘Umrat al–mufradah* is not connected with the *istita’ah* for the Hajj. If, supposedly, it is possible for a person to go to Mecca at a time other than that of the Hajj and not possible at the time of the Hajj, then the ‘Umrah instead of the Hajj becomes obligatory for him. If he dies without performing it, its expense is taken out from his heritage."[5]

Similarly, if one has *istita'ah* for *Hajj al–'ifrad* instead of the ‘Umrah, it becomes obligatory upon him; because each of them is independent of the other. This applies to *al–‘Umrat al–mufradah.* As to *‘Umrat al–tamattu’,* which shall be explained later, its *wujub* depends upon that of the Hajj, since it is a part of it.

2. According to the Imamiyyah, it is not permissible for one intending to enter the Holy Mecca to cross the *miqat* or enter its *haram* (sacred precincts) without getting into the state of *ihram,* even if he has performed the Hajj and the ‘Umrah many times before. Only when the exit and entry recur several times during month, or when after entering the city as a *muhrim* he goes out and re–enters for a second time in less than thirty days, it is not obligatory. Therefore, *ihram* with respect to entry into Mecca is comparable to the *wudu'* before touching the Holy Qur'an. This clearly demonstrates the baselessness of the lie that the Shi’ah do not consider al–Bayt al–Haram as sacred, and that they pretend to perform the Hajj for the sake of polluting the holy sanctuaries. (!)

According to Abu Hanifah, it is not permissible to go beyond the *miqat* and enter the *haram* without *ihram*, but entry into the remaining area is permissible without *ihram*. Malik does not agree with this, and

two opinions are ascribed to al-Shafi'i on the matter.

This much of discussion about the 'Umrah is sufficient for throwing light upon it, so that the reader may grasp its difference with the Hajj, though only in some aspects. What we shall say later will offer further clarification.

1. The Qur'an, 2:196.
2. According to al-Mughni, Ahmad ibn Hanbal did not consider the 'Umrah as being obligatory for Meccans, for the reason that the most important act of the 'Umrah is tawaf (circumambulation of the Ka'bah) which they do and it suffices them.
3. In the book al-Fiqh 'ala al-madhahib al-'arba'ah, it is the author's want to give the text followed by a commentary and notes. In the text, he states the points of consensus of all the four Sunni schools, the different position of each is given in the commentary. What we have quoted here is taken from the text, not from the commentary.
4. According to al-Din wa al-Hajj 'ala al-madhahib al-'arba'ah, by Karrarah, one of the things which distinguishes the 'Umrah from the Hajj is that its ihram is not assumed from any of the mawaqit specified for the Hajj. From the Imamiyyah viewpoint, there is no difference between the miqat for one performing 'Umrah and the miqat for one on Hajj with regard to ihram.
5. The Imamiyyah author of al-Madarik says: "The better known and sounder of opinions is that the obligation of 'Umrah is independent of the obligation of Hajj." The author of al-Jawahir states, "The statements of fuqaha' are not free of confusion... the one which appears sounder is that those who live far away from Mecca are relieved of the obligation of 'Umrah mufradah, and that which is obligatory upon them is 'Umrat al-tamattu; whose wujub is related to that of Hajj.

The Forms of Hajj

All the five legal schools agree that there are three kinds of Hajj: *tamattu'*, *qiran,* and *ifrad.* They also agree that by *Hajj al-tamattu'* is meant performance of the acts of the 'Umrah during the months of the Hajj. The acts of the Hajj itself are performed after getting through the 'Umrah. They also agree that by *Hajj al-'ifrad* is meant performing the Hajj first and then, after getting through the acts of the Hajj, getting into the state of *ihram* for performing the 'Umrah and its related acts. The four Sunni legal schools agree that the meaning of the *Hajj al-qiran* is to get into *ihram* for the Hajj and the 'Umrah together. Then the *talbiyyah* uttered by the pilgrim is لبيك اللهم بحج وعمرة .

According to the Imamiyyah school, the *Hajj al-qiran* and *Hajj al-'ifrad* are one and the same. There is no difference between them except when the pilgrim performing the *Hajj al-qiran* brings the *hady* at the time of assuming the *ihram*. Then it is obligatory upon him to offer what he has brought. But one who performs the *Hajj al-'ifrad* has essentially no obligation to offer the *hady*.

In brief, the Imamiyyah do not consider it permissible to interchange two different *ihram*'s,[1] or to perform the Hajj and the 'Umrah with a single *niyyah* (intention) under any condition; but the other legal schools permit it in *Hajj al-qiran.* They say that it has been named *'al-qiran'* because it involves union between the Hajj and the 'Umrah. But the Imamiyyah say that it is because of the additional feature of the *hady* accompanying the pilgrim at the time of *ihram*.[2]

According to the four Sunni legal schools, it is permissible for the pilgrim, Meccan or non–Meccan, to choose from any of the three forms of the Hajj: *al–tamattu*; *al–qiran,* or *al–'ifrad*, without involving any *karahah* (*reprehensibility*). Only Abu Hanifah considers *Hajj al-tamattu'* and *Hajj al-qiran as makruh* for the Meccan.

The four Sunni legal schools also differ as to which of the three kinds of Hajj is superior to the others. The best according to the Shafi'i school is *al–'ifrad,* and *al–tamattu'* is superior to *al–qiran.* According to the Hanafi school, *al–qiran* has greater merit than the other two. The best according to the Maliki school is *al–'ifrad,* and according to the Hanbali and Imamiyyah schools is *al–tamattu'.*

According to the Imamiyyah school, *Hajj al-tamattu*' is obligatory upon one living at a distance of over forty–eight miles from Mecca, and he may not choose any other kind except in emergency. The *Hajj al-qiran* and *Hajj al–'ifrad* are performable by the people of Mecca and those living around it within a distance of forty–eight miles, and it is not permissible for them to perform except one of these two kinds. The Imamiyyah base their argument on this verse of the Qur'an:

فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ تِلْكَ عَشَرَةٌ كَامِلَةٌ ذَٰلِكَ لِمَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ

...if any one wishes to continue the 'umra on to the hajj, He must make an offering, such as he can afford, but if he cannot afford it, He should fast three days during the hajj and seven days on his return, Making ten days in all. This is for those whose household is not in (***the precincts of***) ***the Sacred Mosque.....*** (***2: 196***)

Moreover, according to the Imamiyyah school, it is not permissible for one obliged to perform the *Hajj al-tamattu'* to change over to something else, except for the problem of shortage of time available, or, in the case of women, due to impending menses. In those cases it is permissible to change either to *al–qiran* or *al–'ifrad* on condition that the 'Umrah is performed after the Hajj. The limit of the shortage of time is failure to be present at the *wuquf* in 'Arafat until noon.

For one whose duty is *al–qiran* or *al–'ifrad,* such as the natives of Mecca or those from its surrounding region, it is not permissible to change to *al–tamattu',* except in exigency (such as the fear of impending menses). After explaining this position of the Imamiyyah school, the author of *al–Jawahir* says, "I have not come across any different opinion on this matter."

And all the five legal schools agree that the *hady* is not compulsory for one performing *Hajj al–'ifrad,* though better if performed voluntarily.

1. According to al–Jawahir, al–Madarik, al–Hada'iq and other Imamiyyah works on fiqh, it is not permissible for one already in the state of ihram to assume ihram for another purpose, until he completes all the acts of the rite (Hajj or 'Umrah) for which he had assumed ihram.

2. Ibn 'Aqil is alone among Imamiyyah legists in agreeing with the Sunni legists in that the acts of both the Hajj and the 'Umrah may be performed with a single ihram in Hajj al-qiran.

The 'Ihram

Mawaqit al-'Ihram

The *ihram* is compulsory for all the various kinds of Hajj as well as' 'Umrah, and is regarded as their basic element (*rukn*) by the Imamiyyah, and as obligatory by other schools. All the five schools agree that the *miqat* of the people of al-Madinah from where they assume *ihram* is Masjid al-Shajarah, also known as Dhu al-Hulayfah;1 for the pilgrims of al-Sham (which includes the Syrians, the Lebanese, the Palestinians and the Jordanians, noting further that the routes have changed from what they used to be in the past), Morocco and Egypt the *miqat* is al-Juhfah;2 for the pilgrims of Iraq, it is al-'Aqiq;3 for those from Yemen and others who take the same route, it is Yalamlam. 4

According to the Imamiyyah, *Qarn al-Manazil*5 is the *miqat* for the people of al-Ta'if and those who take their route towards Makkah. But according to the four Sunni schools, it is the *miqat* of the people of Najd. The *miqat* for those from Najd and Iraq according to the Imamiyyah is al-'Aqiq. All the legal schools agree that these *mawaqit* also apply to those who in their journey take similar routes, even though they may not be natives of those regions.

For instance, if a Syrian starts on Hajj from al-Madinah, it is permissible for him to assume *ihram* from Dhu al-Hulayfah; if he starts on Hajj from Yemen, his *miqat* is Yalamlam; if from Iraq, then al-'Aqiq, and so on. If one does not pass the mentioned *mawaqit* on his route, the *miqat* for him is the place parallel to any one of them.

If someone lives at a place nearer to Makkah than any of the prescribed *mawaqit,* then he assumes *ihram* from the place of his residence. For, someone who resides in Makkah itself, his *miqat* is Makkah. For one performing the *al-'Umrat al-mufradah,* the *mawaqit,* according to the Imamiyyah, are the same as for the Hajj.

Ihram Before Miqat

The four Sunni legal schools agree on the permissibility of assuming *ihram* before the point of *miqat,* but disagree as to which has greater merit. According to Malik and Ibn Hanbal, *ihram* before *miqat* is more meritorious (*afdal*). According to Abu Hanifah, the merit lies in assuming *ihram* while starting the Hajj journey from one's town: Two opinions are ascribed to al-Shafi'i in this regard.

However, according to the Imamiyyah school, *ihram* before *miqat* is not permissible except for one who intends to perform the 'Umrah in the month of Rajab and is afraid of missing it if *ihram* is delayed until *miqat* is reached, and for one who makes a vow (*nadhr*) to assume *ihram* before the *miqat.* (*al-Tadhkirah, Fiqh al-Sunnah*)

Ihram after Miqat

There is consensus among all the legal schools that it is not permissible to cross the *miqat* without *ihram,* and one who does so must return to the *miqat* for assuming *ihram.* If he does not return, according to the four Sunni schools, his Hajj is correct though he should offer a *hady* in atonement. But if there be any impediment, such as fear of insecurity on the way or shortage of time, there is no sin. This, regardless of whether there are other *mawaqit* before him on his path or not.

According to the Imamiyyah, if he has deliberately neglected to assume *ihram* at the *miqat* while intending to perform the Hajj or the 'Umrah, if he does not turn back to the *miqat,* there being no other *miqat* before him from which he can assume *ihram,* his *ihram* and Hajj are invalid, whether he had a valid pretext for not returning or not.

But if his failure to assume *ihram* at *miqat* was on account of forgetfulness or ignorance, if it is possible to return, he must do so; but if it is not possible, then from the next *miqat* before him. Otherwise he ought to assume *ihram* as far as possible outside the *haram* of Makkah, or within it; though the former is preferable. (*al-Tadhkirah, al-Fiqh 'ala al-madhahib al-'arba'ah*)

Ihram before the Hajj Months

According to the Imamiyyah and Shafi'i schools, the *ihram* before the months of the Hajj is invalid if assumed with the purpose of Hajj, though it is valid when assumed for the purpose of the 'Umrah. They cite in this regard the Qur'anic verse:

الْحَجُّ أَشْهُرٌ مَعْلُومَاتٌ

The pilgrimage is (performed in) the well-known months... **(*2:197*)**

But according to the Hanafi, Maliki and Hanbali schools, it is permissible with *karahah.* (*al-Tadhkirah, Fiqh al-Sunnah*)

The Mustahabbat of Ihram

There is no disagreement among the legal schools with respect to the *ihram* being an essential *rukn* of the 'Umrah and all the three forms of the Hajj, namely, *tamattu; qiran* and *ifrad*. Also, there is no

difference of opinion that *ihram* is the first act of the pilgrim, irrespective of whether his purpose is *'Umrah mufradah,* or any of the three forms of Hajj. There are certain *wajibat* and *mustahabbat* related to the *ihram.*

The legal schools agree that it is *mustahabb* for anyone intending *ihram* to cleanse his body, clip his fingernails, shorten his moustaches, and to take a bath (even for women undergoing *hayd* or *nifas,* for the aim is cleanliness). It is also *mustahabb* for one intending Hajj to abstain from cutting the hair of his head from the beginning of the month of Dhu al–Qi'dah, to remove the hair from his body and armpits, and to enter *ihram* after the *zuhr* (noon) or any other obligatory prayers. It is also *mustahabb* to pray six, four or at least two *raka'at.* However, freedom from the state of ritual impurity (*hadath*) is not a condition for the *ihram* to be valid.

According to the Hanafi and Maliki schools, if water is not available, one is relieved of the duty to take the bath (*ghusl*), and *tayammum* as an alternative is not permissible. According to the Hanbali and Shafi'i schools, *tayammum* substitutes *ghusl.* The Imamiyyah jurists differ on this matter, some consider it permissible, others not.

According to the Imamiyyah school, it is *mustahabb* to leave the hair of the head uncut, but according to the Shafi'i, Hanafi and Hanbali schools, it is *mustahabb* to shave the head. (*al–Fiqh 'ala al–madhahib al–'arba'ah*)

According to the Hanafi school, it is *sunnah* for one who wants to assume *ihram* to scent his body and clothes with a perfume whose trace does not remain after *ihram* except the smell. According to the Shafi'i school, it is *sunnah,* except when one is fasting, to apply perfume to the body after the bath. Also, perfuming the clothes does not matter. According to the Hanbali school, one may perfume the body; and the clothes with *karahah.* (*al–Fiqh 'ala al–madhahib al–'arba 'ah*)

According to the Hanafi, Maliki and Shafi'i schools, it is *mustahabb* for the *muhrim* to pray two *raka'at* before assuming *ihram* after the noon prayer or any other obligatory prayer. If he has no obligatory prayer to make at the time of *ihram,* he should offer six, or four or at least two *raka'at* for the *ihram.* (*al–Jawahir*)

Al- 'Ishtirat

Al–Muhaqqiq al–Hilli, the Imamiyyah scholar, in his work *Tadhkirat al–fuqaha',* says that for one intending *ihram* it is *mustahabb* to make a condition with God at the time of assuming *ihram,* by saying:

اللهم اني أريد ما أمرتني به، فإن منعني مانعٌ عن تمامه وحبسني عنه حابسٌ فاجعلني في حل.

O God, indeed I wish to fulfill Thy command, but if any impediment keeps me from completing it or a barrier obstructs me from it, exonerate me.

Abu Hanifah, al-Shafi'i, and Ahmad ibn Hanbal also consider it *mustahabb.* However, this *ishtirat* does not help in relieving one of the obligations of the Hajj if he were to encounter an impediment which keeps him from getting through it.

The Wajibat of Ihram

The *wajibat* of *ihram,* with some difference between the legal schools on some points, are three: *niyyah* (intention); *talbiyah;* and putting on of the clothes of *ihram.*

Al-Niyyah

Obviously *niyyah* or intention is essential to every voluntary act; for every such act is motivated by conscious intent. Therefore, some scholars have pointed out that had we been assigned a duty to be performed without intention it would have been impossible to be carried out. However, when the question of intention is raised in relation to the pilgrim (of the Hajj or the 'Umrah), what is meant is whether he becomes *muhrim* solely on account of the *niyyah* or if something else is required in addition, acknowledging that *ihram* is void if assumed frivolously or absent-mindedly.

According to the Hanafi school, *ihram* is not considered to commence solely with intention unless it is accompanied by the utterance of the *talbiyah* (*Fath al-qadir*). According to the Shafi'i, Imamiyyah and Hanbali schools, the *ihram* is assumed merely by *niyyah* (*al-Jawahir, Fiqh al-Sunnah*). The Imamiyyah add that it is obligatory for the *niyyah* to coincide with the commencement of *ihram*, and it is not sufficient for the act of niyyah to occur in the course of assuming *ihram*.

Also while making the niyyah it is essential to specify the purpose of *ihram*, whether it is Hajj or 'Umrah, whether it is *Hajj al-tamattu*; *Hajj al-qiran* or *Hajj al-'ifrad*, whether he is performing the Hajj for himself or as a na'ib of someone else, whether for the obligatory Hajj (*Hijjat al-'Islam*) or for something else. If one assumes *ihram* without specifying these particulars, postponing their determination to future, the *ihram* is invalid. (*al-'Urwat al-wuthqa*).

According to the Hanafi text *al-Mughni*, "It is *mustahabb* to specify the purpose of *ihram*. Malik is of the same opinion. Two opinions are ascribed to al-Shafi'i. According to one of them, it is adequate if one assumes *ihram* with a general, non-specific purpose of pilgrimage... without determining the exact purpose, whether Hajj or 'Umrah. The *ihram* thus assumed is valid and makes one a *muhrim* .... Afterwards, he may select any of the kinds of pilgrimage." All the five schools agree that 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. (*al-Jawahir; al-Mughni*)

The Talbiyah

That the *talbiyah* is legitimate in *ihram* is acknowledged by all the five schools, but they disagree as to its

being *wajib* or *mustahabb*, and also about its timing. According to the Shafi'i and Hanbali schools, it is sunnah, preferably performed concurrently with *ihram*. However, if the intention to assume *ihram* is not accompanied by *talbiyah*, the *ihram* is correct.

According to the Imamiyyah, Hanafi[6], and Maliki schools, the *talbiyah* is obligatory, though they differ about its details. According to the Hanafi school, pronouncement of *talbiyah* or its substitute –such as *tasbih*, or bringing along of the sacrificial animal (*al–hady*)– is a provision for *ihram* to be valid. According to the Maliki school, the *ihram* neither becomes invalid if *talbiyah* is recited after a long gap of time, nor if it is not pronounced altogether. However, one who fails to pronounce it must offer a blood sacrifice.

According to the Imamiyyah, neither the *ihram* for *Hajj al–tamattu*; nor *Hajj al–'ifrad*, nor their conjugate 'umrahs, nor for *al–'Umrat al–mufradah*, is valid without *talbiyah*. However, one who intends to perform *Hajj al–qiran* may choose between. *talbiyah*, *ish'ar*[7] or *taqlid*; *ish'ar* for this school being exclusively restricted to a camel, though *taqlid* may apply to a camel or the other forms of *hady*.

The Formula of Talbiyah

لبيك اللهم لبيك، لا شريك لك لبيك، إن الحمد والنعمة لك والملك لا شريك لك

All the legal schools agree that *taharah* is not a proviso for pronouncing *talbiyah*. (al–Tadhkirah).

As to its occasion, the *muhrim* starts reciting it from the moment of *ihram*, being *mustahabb* for him to continue it—all the five schools agree—until the *ramy* of *Jamarat al–'aqabah*. To utter it loudly is *mustahabb* for men (not for women), except in mosques where prayers are offered in congregation, particularly in the Mosque of 'Arafat. According to the Imamiyyah school, it is *mustahabb* to discontinue reciting the *talbiyah* on sighting the houses of Makkah. A woman may recite the *talbiyah* just aloud enough to be heard by herself or someone near her. It is also *mustahabb* to proclaim blessings on the Prophet and his Family (S). (*al–Tadhkirah; Fiqh al–Sunnah*).

The Muhrim's Dress

All the five schools agree that it is not permissible for a *muhrim* man to wear stitched clothing, shirts or trousers, nor may he cover his face. Also, it is not permissible for him to wear shoes (*khuffan*) except when he cannot find a pair of sandals (*na'lan*),[8] and that after removing the covering on the back of the heels from the base. A woman, however, should cover her head, keep her face exposed, except when she fears that men may ogle at her.

It is not permissible for her to wear gloves, but she may put on silk and wear shoes (*khuffan*). According to Abu Hanifah, it is permissible for a woman to wear gloves. (*al–Tadhkirah;* Ibn Rushd's *al–Bidayah wa al–nihayah*).

The book *al-Fiqh 'ala al-madhahib al-'arba'ah,* under the heading 'That which is required of one intending *ihram* before he starts to assume it', states, "According to the Hanafi school, among other things he wears *izar* (loin-cloth) and *rida'* (cloak). The *izar* covers the lower part of the body from the navel to the knees. The *rida'* covers the back, the chest and the shoulders, and its wearing is *mustahabb.*

According to the Maliki school, it is *mustahabb* to wear *izar, rida* and *na'lan;* but there is no restriction on wearing something else that is not stitched and does not encircle any of the parts of the body.

According to the Hanbali school, it is *sunnah* to put on a new, white and clean *rida'* and *izar* together with a pair of *na'lan* before assuming *ihram.* According to the Shafi'i school, the *rida'* and *izar* should be white, new or washed ones.

According to the Imamiyyah school, the *rida'* and the *izar* are obligatory, preferably (*istihbaban*) of white cotton. The *muhrim* may put on more than these two pieces of clothing on condition that they are not stitched. Also it is permissible to change the clothes in which one commenced *ihram,* though it is better to perform the *tawaf* in the same *rida'* and *izar* as worn at the beginning.

All the requirements of the dress for *salat* apply to the dress of *ihram,* such as *taharah,* its being non-silken for men, not made of the skin of an animal eating whose flesh is not permissible. According to some Imamiyyah legists, clothing made of skin is not permissible (in *salat* and *ihram*).

In any case, the disagreement between the legal schools about the *muhrim's* dress is very limited. This is well indicated by the fact that whatever is regarded as permissible by the Imamiyyah is also considered permissible by the remaining schools.

Restrictions of Ihram

There are certain restrictions for the *muhrim,* most of which are discussed below.

Marriage

According to the Imamiyyah, Shafi'i, Maliki and Hanbali schools, it is not permissible 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, and if he does, the contract is invalid.

Furthermore, according to the Imamiyyah school, he may not act as a witness to such a contract.

According to Abu Hanifah, marriage contract is permissible and the contract concluded is valid.

According to the Hanafi, Maliki, Shafi'i and Imamiyyah schools, it is permissible for the *muhrim* to revoke divorce of his former wife during the period of her *'iddah.* According to the Hanbali school, it is not permissible. From the viewpoint of the Imamiyyah, if one enters a marriage contract with the knowledge

of its prohibition, the woman becomes *haram* for him for life merely by the act of concluding the contract, even if the marriage is not consummated. But if done in ignorance of the interdiction, she is not prohibited to him, even if consummation has been affected. (*al–Jawahir Fiqh al–Sunnah; al–Fiqh 'ala al–madhahib al–'arba'ah*).

Intercourse

All the five legal schools agree that it is not permissible for the *muhrim* to have sexual intercourse with his wife, or to derive any kind of sexual pleasure from her. If he performs intercourse before *tahlil*[9] (i.e. relief from the state of *ihram*) his Hajj becomes void, although he must perform all its acts to the conclusion. Thereafter, he must repeat the Hajj the next year, performing it 'separately' from his spouse.[10] The seclusion is obligatory according to the Imamiyyah, Maliki and Hanbali schools, and voluntary from the viewpoint of the Shafi'i and Hanafi schools. (*al–Hada'iq; Fiqh al–Sunnah*).

Moreover, according to the Imamiyyah, Shafi'i, and Maliki schools, besides the fact that his Hajj becomes invalid, he must sacrifice a camel in atonement, and according to the Hanafi school, a sheep.

All the five legal schools agree that if he commits intercourse after the first *tahlil* (*i*.e. after the *halq* or *taqsir* in Mina, after which everything except intercourse—and also perfume according to the Imamiyyah school—become permissible for the pilgrim), his Hajj is not void, nor is he called upon to repeat it. Nevertheless, he must offer a camel, according to the Imamiyyah and Hanafi schools and according to one of the two opinions ascribed to al–Shafi'i. But according to the Maliki school, he is obliged to offer a sheep only. (*al–Hada'iq; Fiqh al–Sunnah*).

If the wife yields willingly to intercourse, her Hajj is also void, and she must sacrifice a camel in expiation and repeat the Hajj the year after. But if she was forced, 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 the wife was not in the state of *ihram,* but the husband was, nothing is required of her, nor is she obliged to offer anything in atonement, nor is anything required of the husband on her account. (*al–Tadhkirah*).

If the husband kisses his wife, his Hajj is not void if it does not result in ejaculation. On this all schools are in agreement. But according to the four Sunni schools, he is obliged to make a sacrificial offering in atonement even if it be a sheep. The Imamiyyah author of *al–Tadhkirah* says, the sacrifice of a camel is obligatory only if the kiss is taken with sexual desire, otherwise he should sacrifice only a sheep. If he ejaculates, the Hajj is void according to the Maliki school, but remains valid according to the other schools, although he should make an offering in atonement, which is a camel according to the Hanbali school and a group of Imamiyyah legists, and a sheep according to the Shafi'i' and Hanafi schools. (*al–Hada'iq; al–Mughni*).

Use of Perfume

All the legal schools agree that the *muhrim,* man or woman, may not make use of any perfume, either for smelling, or for applying on himself, or for scenting edibles. Indeed it is not permissible to wash the dead body of a *muhrim,* or to perform *hunut* upon it by applying camphor or any other kind of perfumery. If the *muhrim* uses perfume forgetfully or on account of ignorance, he needs not make any offering in atonement according to the Imamiyyah and Shafi'i schools. But according to the Hanafi and Maliki schools, he must make a sacrificial offering (*fidyah*). In this relation two different opinions are ascribed to Ahmad ibn Hanbal.

However, when one is forced to use perfume on account of disease, it is permissible and no *fidyah* is required. According to the Imamiyyah school, if one uses perfume intentionally, he must offer a sheep, irrespective of the use, whether applied to the body or eaten. However, there is nothing wrong in the *Khaluq* of Ka'bah even if it contains saffron, and the same applies to fruits and aromatic plants. (*al–Jawahir*).

Use of Kohl

Al–Tadhkirah states: "There is consensus among the Imamiyyah legists on the point that darkening the eyelids with kohl or applying a kohl containing perfume is not permissible for the *muhrim,* man or woman. Apart from that (i.e. *ihram*) it is permissible." According to the author of *al–Mughni,* "Kohl containing antimony is *makruh,* and does not require any *fidyah*. I haven't come across any different opinion on this topic. However, there is no *karahah* in use of kohl without antimony, as long as it does not contain any perfume."

Shortening of Nails and Hair; Cutting of Trees

All the five legal schools agree about impermissibility of shortening the nails and shaving or shortening of the hair of the head or the body in the state of *ihram, fidyah* being required of the offender.[11] As to cutting of trees and plants within the *haram,* all the legal schools agree that it is impermissible to cut or uproot anything grown naturally without human mediation.

Al–Shafi'i' states that there is no difference between the two with regard to the prohibition, and *fidyah* is required for both: cutting of a big tree requires *fidyah* of a cow, and of other plants of a sheep. According to Malik, cutting of a tree is a sin, though nothing is required of the offender, regardless of whether it has grown with or without human mediation.

According to the Imamiyyah, Hanafi, and Hanbali schools, cutting of something planted by human hands is permissible and does not require a *fidyah;* but anything grown by nature requires *fidyah,* which is a cow according to the Imamiyyah for cutting a big tree and a sheep for cutting smaller plants. According to the Hanafi school, the owner of the tree is entitled to a payment equivalent to the cost of the *hady.*

(*Fiqh al–Sunnah, al–Lum'ah*)

All the five schools agree that there is no restriction for cutting a dry tree or for pulling out withered grass.

Looking into a Mirror

It is not permissible for a *muhrim* to look into a mirror, and all the five schools agree that there is no *fidyah* for doing so. However, there is no restriction on looking into water.

Use of Henna

According to the Hanafi school, it is permissible for the *muhrim,* man or woman, to dye with henna any part of his body, except the head. According to the Shafi'i school, it is permissible, with the exception of hands and feet. According to the Hanafi school, dyeing is not permissible for the *muhrim,* man or woman. (*Fiqh al–Sunnah*) The predominant view among the Imamiyyah legists is that dyeing is *makruh* not *haram.* (*al–Lum'ah*)

Use of Shade; Covering the Head

All the five schools agree that it is not permissible for the *muhrim* man to cover his head voluntarily. According to the Maliki and Imamiyyah schools, it is not permissible for him to immerse himself under water until the head is completely submerged, although it is permissible for him, all the five schools except the Shafi'i agree, to wash his head or pour water over it. The Malikis say that with the exception of the hands it is not permissible to remove dirt by washing. If he covers the head forgetfully, nothing is required of him according to the Imamiyyah and Shafi'i schools, but a *fidyah* is required according to the Hanafi school.

All the schools, with the exception of the Shafi'i, agree that it is impermissible for the *muhrim* to shade himself while moving. Neither it is permissible for him to ride an automobile, an aeroplane or the like, which are covered by a roof. But it is permissible while walking to pass under a shadow.[12]

Stitched Clothing and Ring

All the five schools agree that it is forbidden for the *muhrim* man to wear stitched clothes and clothes which encircle body members, e.g. turban, hat and the like. These are permissible for women, with the exception of gloves and clothes which have come into contact with perfume. According to the Imamiyyah school, if the *muhrim* wears stitched clothes forgetfully, or in ignorance of the restriction, nothing is required of him. But if one wears them intentionally to protect himself from heat or cold, he should offer a sheep. Also according to them it is not permissible to wear a ring for adornment, but it is permissible for other purposes. Also, it is not permissible for woman to wear jewellery for the sake of adornment.

‘Fusuq' and Jidal'

God, the most Exalted, says in the Quran:

...فَلَا رَفَثَ وَلَا فُسُوقَ وَلَا جِدَالَ فِي الْحَجِّ...

....There should be no obscenity, neither impiety, nor disputing in Hajj ....' **(*2: 197*).**

In the above verse, the meaning of ‘*rafath*' is taken to be sexual intercourse, to which reference has been made earlier. *‘Fusuq'* is taken to mean lying, cursing, or commission of sins. In any case, all of them are forbidden for the pilgrims of Hajj and the non-pilgrims as well. The stress here is meant to emphasize abstention from them in the state of *ihram*. The meaning of *jidal'* is quarrelling. According to an Imamiyyah tradition from al-'Imam al-Sadiq (*‘a),* he is reported to have said, "It (i.e. *jidal'* in the above-mentioned verse) means using such expressions as ‘Yes, by God!' or ‘No, by God!' in conversation. This is the lowest degree of *jidal"*

According to the Imamiyyah school, if the *muhrim* tells a lie for once, he must offer a sheep; if twice, a cow; if thrice, a camel. And if he swears once taking a veritable oath, there is nothing upon him; but if he repeats it three times, he is obliged to sacrifice a sheep.

Cupping (Hijamah)

All the five schools agree on permissibility of cupping in case of necessity, and the four Sunni schools permit it even when not necessary as long as it does not require removal of hair. The Imamiyyah legists disagree on this issue; some of them permit it and others not. (*al-Tadhkirah; al-Fiqh ‘ala al-madhahib al-'arba'ah*)

Hunting (al-Sayd)

All the five schools are in agreement about the prohibition on hunting of land animals, either through killing or through *dhabh*, and also on guiding the hunter or pointing out the game to him in the state of *ihram*. Also prohibited is meddling with their eggs and their young ones. However, hunting of the animals of water is permitted and requires no *fidyah*. This, in accordance with the Qur'anic verse:

أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ

Permitted to you **is** ***the game*** **of** ***the sea*** **and** ***the food*** **of** ***it, as a provision for you*** **and** ***for the journeyers; but forbidden to you*** **is** ***the game*** **of** ***the land, so long as you remain in the state*** **of** ***ihram:*** **and** ***fear God, unto whom you shall be mustered.*** **(5:96)**

The prohibition on hunting within the precincts of the *haram* apply to the *muhrim* and the *non-muhrim* (*muhill*) equally. However, outside the *haram*, the prohibition applies only to the *muhrim*. If the *muhrim* slaughters a game, it is considered *maytah* (a dead animal not slaughtered in accordance with ritual requirements), and its flesh is unlawful for all human beings. The five legal schools agree that the *muhrim* may kill a predatory bird called *hada'ah*, crows, mice and scorpions. Others include wild dogs and anything harmful.

According to the Imamiyyah and Shafi'i schools, if the game hunted on land resembles some domestic beast in shape and form (like the Oryx, which resembles the cow), he has the choice between:

(1) giving the meat of one of similar beasts of his livestock in charity after slaughtering it;

(2) estimating its price and buying food of the amount to be given in expiation and charity to the needy, distributing it by giving two *mudds* (the *mudd* is a dry measure equal to 800 grams) to every individual;

(3) fasting, a day for every two *mudds.*

The Malikis hold the same viewpoint, except that, they add, the price of the hunted animal itself should be estimated, not that of its domestic equivalent. The Hanafis say that one who hunts in the state of *ihram* should arrange for the estimated price of the hunted animal, whether there is a domestic animal similar to it or not. When the price has been estimated, he is free to choose between:

(1) purchasing livestock of the money and giving its meat away in charity;

(2) giving it from his own livestock;

(3) purchasing food of the amount to be given away in charity;

(4) fasting, a day for every *mudd* of food to be given away. (*al-Tadhkirah; Fiqh al-Sunnah*) In this connection all the legal schools base their position on this Qur'anic verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلُ ذَٰلِكَ صِيَامًا لِيَذُوقَ وَبَالَ أَمْرِهِ عَفَا اللَّهُ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمُ اللَّهُ مِنْهُ وَاللَّهُ عَزِيزٌ ذُو انْتِقَامٍ

***O believers, slay not the game while you are in the state* of *ihram. Whosoever* of *you slays it wilfully, there shall be reparation—the like* of *what he has slain, in livestock, as shall be judged by two men* of *equity among you, as offering on reaching the Ka'bah;* or *expiation—food for poor persons* or *the equivalent* of *that in fasting, so that he may taste the mischief* of *his action. God has pardoned what* is *past; but whoever offends again, God will take vengeance on him; God* is *All-mighty, Vengeful.* (*5:95*)**

The meaning of the phrase: يَحْكُمُ بِهِ ذَوَا عَدْلٍ in the above verse is that two equitable (*'adil*) witnesses should judge whether a certain domestic animal is similar to the hunted wild beast. The meaning of the phrase: هدياً بالغ الكعبة is that he should slaughter the equivalent livestock and give its meat in charity on arrival in Makkah.

According to the Imamiyyah work *al-Shara'i',* "Every *muhrim* who wears or eats anything forbidden for him should slaughter a sheep, regardless of whether his action was intentional, forgetful, or on account of ignorance."

The Imamiyyah and Shafi'i schools agree that no expiation (*kafarah*) is required of someone who commits a *haram* act forgetfully or in ignorance, except in the case of hunting, in which case even killing by mistake requires *kaffarah.*

The Limits of the Harams of Makkah and of Al-Madinah

The prohibition of hunting and cutting of trees applies both to the *haram* of Makkah and that of al-Madinah. According to *Fiqh al-Sunnah,* the limits of the *haram* of Makkah are indicated by signs in five directions, which are one-meter-high stones fixed on both sides of the roads. The limits of the *haram* of Makkah are as follows: (1) the northern limit is marked by al-Tan'im, which is a place at a distance of 6 km from Makkah; (2) the southern limit is marked by Idah, 12 km from Makkah; (3) the eastern limit is al-Ja'ranah, 16 km from Makkah; (4) the western limit is al-Shumaysi, 15 km from Makkah.

The limits of the *haram* of the Prophet's shrine extend from 'Ir to Thawr, a distance of 12 km 'Ir is a hill near the *miqat,* and Thawr is a hill at Uhud.

Al-'Allamah al-Hilli, an Imamiyyah legist, states in his work *al-Tadhkirah* that "the *haram* of Makkah extends over an area of one *band* by one *band* (1 *band* =12miles), and the *haram* of al-Madinah extends from 'Ayir to 'Ir. 13

1. Dhu al-Hulayfah, nowadays known as Bi'r `Ali or Abyar `Ali, is at a distance of about 486 kms. from Makkah to the north and 12 km from al-Madinah. (Tr.)
2. Al-Juhfah, lies a distance of about 156 km from Makkah to the north-west. (Tr.)
3. There are three points in the valley of al-`Aqiq, 94 km from Makkah in the north-east, from where ihram is assumed: al-Maslakh, al-Ghamrah, and Dhat al-`Irq. According to the Imamiyyah fuqaha', it is permissible to assume ihram from any of these points, though al-Maslakh is considered best, then al-Ghamrah, and then Dhat al-Irq. (Tr.)
4. Yalamlam is a mountain of the Tahamah range, lying at a distance of 84 km from Makkah (Tr.)
5. Qarn al-Manazil, the miqat for those coming from al-Ta'if, lies at a distance of 94 km east of Makkah.
6. According to the Hanafi school, bringing along of hady substitutes the talbiyah, as mentioned by Ibn `Abidin and the author of Fath al-Qadir.
7. "Ish'ar" here means slitting the right side of the camel's hump. By "taqlid" is it meant the hanging of an old horseshoe in the neck of the hady, which is meant to identify the sacrificial animal as such.
8. The nal has a sole, but is devoid of the covering on the sides and the back of the foot at the heels. The khuff is the common shoe, which covers the foot on the sides and the heels.

9. After performing ramy al jamarat and halq, everything except intercourse and perfume becomes permissible to the pilgrim—such as wearing of stitched clothes and other things. This is called al-hill al-'awwal (or "the first relief" from the restrictions of ihram). After the last tawaf all things including intercourse become permissible to him. This "second relief"—to be explained later--is called al-hill al-thani.

10. According to al-Tadhkirah, it is necessary during the next Hajj that the `separation' should take place from the point where the misdemeanour was committed during the first Hajj. The meaning of `separation' (tafriq) is that the two should not be alone together without there being present a third muhrim, whose presence acts as a deterrent.

11. According to the Imamiyyah, 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 is sacrifice of two sheep.

12. The author of al-Tadhkirah ascribes impermissibility of shadowing oneself while moving to Abu Hanifah, and the author of Rahmat al-'ummah ascribes to him permissibility.

13. Al-Mughni states, "Those knowledgeable about al-Madinah do not know of any Thawr or `Ir," but it is possible that names have changed with time.

Tawaf

Tawaf is an essential part (*rukn*) of 'Umrah, and the *tawaf al-ziyarah* (also called *'tawaf al-'ifadah'*) is a *rukn* of the *Hajj al-tamattu; Hajj al-'ifrad* and *Hajj al-qiran*. As said earlier, the assumption of *ihram* is the first act of the pilgrim regardless of whether he comes for *'Umrah mufradah* or for any of the three types of Hajj.

Now, after the assuming of *ihram,* what is the next step for the pilgrim? Is it *tawaf,* or *wuquf,* or something else? The answer is: it depends on the purpose (*niyyah*) with which the pilgrim assumes *ihram.* If it is 'Umrah, then the next step is *tawaf,* regardless of whether it is *'Umrah mufradah* or *'Umrat al-tamattu.'* Thus *tawaf* is the second step for the *mu'tamir* (pilgrim intending 'Umrah), by agreement of all the legal schools.

However, if the purpose of *ihram* is Hajj only--such as in the case of pilgrim on *Hajj al-'ifrad,* or one intending to perform the *Hajj al-tamattu'* after getting through the acts of 'Umrah--the second step is (as shall be explained later) *wuquf* in 'Arafat.

In other words, one who enters Makkah with the sole purpose of 'Umrah or *Hajj al-tamattu'* performs *tawaf* before everything else, then *sa'y* and then *taqsir.* After this, if on *Hajj al-tamattu',* he assumes *ihram* for a second time; but he is not required to perform another *tawaf* after this *ihram.* The *tawaf* (pertaining to the Hajj acts), as we shall explain, comes after getting through the *wuquf* at 'Arafat and passage through Mina.

Kinds of ‘Umrah in View of the Ahl al-Sunnah

The imams of the four Sunni schools distinguish between three kinds of *tawaf:*

1. Tawaf al-Qudum

It is the *tawaf* performed by the ‘outsiders', (i.e. those coming from outside Makkah and from beyond its outskirts within a radius of 88 km) on entry into Makkah. It is similar to the two *raka'at* of *salat* performed as *tahiyyat al-masjid* (*lit.* ‘greeting of the mosque'), and so is also called *‘tawaf al-tahiyyah"* The four Sunni schools agree on its being *mustahabb,* and no penalty is required for default according to all except the Malikis who require a blood sacrifice.

2. Tawaf al-Ziyarah

This *tawaf* (also called *‘tawaf al-'ifadah'*)is performed by Hajj pilgrims after getting through the acts of Mina, the *ramy* of *jamarat al-‘aqabah,* the sacrifice (*dhibh*), and the *halq* or the *taqsir.* The pilgrim performs this *tawaf* on returning to Makkah. It is called *‘tawaf al-ziyarah'* because it is performed on the visit (*ziyarah*) to the Ka'bah after leaving Mina. It is called *‘tawaf al-'ifadah'* because the pilgrims pour forth (*‘ifadah'* means ‘pouring forth') into Makkah from Mina. It is also called *‘tawaf al-hajj'* because by consensus of all the schools it is *rukn* of the Hajj.

After performing this *tawaf* all things become permissible for the (Sunni) Hajj pilgrim, even sexual intimacy with women. The Imamiyyah, who disagree, say that sex is not permitted before performing the *sa'y* between Safa and Marwah followed by a second *tawaf,* which they call *‘tawaf al-nisa'.'* This shall be further clarified presently.

3. Tawaf al-Wada’

It is the last *tawaf* performed by the *Hujjaj* before departing from Makkah. The Hanafi and Hanbali schools consider it obligatory, though all that is required of the defaulter is a sacrifice. The Malikis consider it *mustahabb* and do not require any penalty for the default. Al-Shafi'i has two opinions on this matter. (*al-Mughni, al-Fiqh ‘ala al-madhahib al-'arba'ah, Fiqh al-Sunnah*)

Kinds of Tawaf from the Imamiyyah Viewpoint

The Shi'ah agree with the Sunni schools about the legitimacy of the above three kinds of *tawaf,* and regard the second *tawaf* i.e. *tawaf al-ziyarah* as a rukn of the Hajj whose omission makes the Hajj invalid.[1] However, the first kind, i.e. *tawaf al-qudum* is considered *mustahabb,* and may be omitted. Regarding the third, i.e. *tawaf al-wada;* they agree with the Maliki school in its being *mustahabb,* there being nothing on the defaulter.

However, the Shi'ah add another kind of *tawaf* to the above three, the *tawaf al-nisa',* which they consider obligatory, its omission being impermissible in *'Umrah mufradah* as well as in all the three kinds of Hajj (i.e. *tamattu; qiran,* and *ifrad*). They do not permit its omission except in case of *'Umrat al-tamattu;* considering the *tawaf al-nisa'* performed during the course of *Hajj al-tamattu'* as sufficient.

The schools of the Ahl al-Sunnah state that there is no obligatory *tawaf* after the *tawaf al-ziyarah,* after which sexual intimacy is permissible. The Shi'ah say that it is obligatory upon the pilgrim, after performing *tawaf al-ziyarah* and the *sa'y,* to perform another *tawaf,* the *tawaf al-nisa;* which derives its name precisely because of the sanction of permissibility of relations with women (*nisa'*) following it.

They say that if the pilgrim defaults in regard to this *tawaf,* sexual relations are forbidden for man and woman (for men even the conclusion of marriage contract), unless he/she performs it in person or deputes another to perform it on his/her behalf; and if he/she dies without performing it or without deputing someone to do it for him/her, it is incumbent upon the heir (*wali*) to have it performed on the behalf of the dead person.

According to them, even in case of a *mumayyiz* child who fails to perform the *tawaf al-nisa'* while performing the Hajj, even if he omits it by mistake or on account of ignorance, women are forbidden to him after adulthood nor he may conclude a marriage contract (*'aqd*) unless he performs it himself or deputes another for the job.

To summarize, the Shi'ah consider three *tawaf's* to be obligatory for the pilgrim on the *Hajj al-tamattu':* (1) the *tawaf* of the conjugate 'Umrah, of which it is *rukn;*(2) the *tawaf al-ziyarah* (or *tawaf al-hajj*), which is a *rukn* of the Hajj; and (3) the *tawaf al-nisa',* which is also an obligatory part of it, though not a *rukn* similar to the *Surat al-Fatihah* in relation to the *salat.* The Ahl al-Sunnah agree with the Shi'ah in all except *tawaf al-nisa;* which they do not recognize. However, of a pilgrim on the H*ajj al-'ifrad* or *Hajj al-qiran,* only two *tawaf's* are required by the Shi'ah.2

Entry into Makkah

All the schools agree that it is *mustahabb* for one entering Makkah to take a bath, pass through its heights during the approach towards the city, enter through Bab Bani Shaybah, raise his hands on sighting al-Bayt al-Haram, pronounce *takbir* and *tahlil,* and to recite whatever he can of certain prayers prescribed by tradition. The Malikis, however, disagree about the *istihbab* of raising the hands for the *du'a'.*

Thereafter, he approaches the Black Stone; if possible kisses it or caresses it with his hand or else just makes a gesture with his hand, and prays.

According to the Imamiyyah, it is *mustahabb* while entering the *haram* of Makkah to be barefooted, to chew the leaves of a plant called *'adhkhir'* used for refreshing the mouth, or to clean the mouth to purge its odour.

The Conditions (Shurut) of Tawaf

According to the Shafi'i, Maliki, and Hanbali schools ritual purity (*taharah,* i.e. freedom from *hadath* and *khabath*) is required; thus the *tawaf* of one who is *Junub* or a woman undergoing *hayd* or *nifas*, is not valid. Also, it is necessary to cover one's private parts completely as in *salat.*

The author of the *Fiqh al–Sunnah* (p. 154, 1955) says: "In the opinion of the Hanafis, freedom from *hadath* is not an essential requirement. However, it is an obligation whose omission may be compensated through a blood sacrifice. So, if one performs *tawaf* in the state of minor impurity (*hadath asghar*) his/her *tawaf* is valid, though one is required to sacrifice a sheep. If *tawaf* is performed in the state of *janabah* or *hayd,*[3] the *tawaf* is valid, though the sacrifice of a camel is required during the pilgrim's stay in Makkah."

According to *al–Fiqh 'ala al–madhdhib al–'arba 'ah* (vol.I, p. 535, 1939)*:* "The *taharah* of the clothes, the body, and the location of prayer (in *salat*) is (only) a highly recommended sunnah (*sunnah mu'akkadah*) from the Hanafi viewpoint; (this is true) even of *tawaf*, there being no penalty even if all the clothes are completely ritually unclean (*najis*)*."*

According to the Imamiyyah, *taharah* from *hadath* and *khabath* is a proviso for validity of an obligatory *tawaf*. In the same way, covering the private parts (*satr al–'awrah*) with a ritually clean cloth legitimately owned (*ghayr maghsub*) is also a requirement. Moreover, it should not be made of silk or the skin of an animal whose flesh may not be eaten, nor made of golden fabric –requirements which are the same as for *salat.*

It may be said that the Imamiyyah are even more stringent with regard to *tawaf* than *salat.* They consider a blood spot of the size of a *dirham* as pardonable for one performing *salat,* but not for one performing *tawaf.* Further, they consider wearing of silk and gold as impermissible even for women during *tawaf* (which is permissible for women in *salat*). According to the Imamiyyah, circumcision is a requirement for *tawaf* without which it is invalid, both for an adult man and a child (*al–Jawahir, al–Hada'iq*).

The manner of Performing Tawaf

According to the Imamiyyah and Hanbali schools, the purpose or *niyyah* must be specified in every *tawaf;* but according to the Maliki, Shafi'i and Hanbali schools, a general *niyyah* for the Hajj is sufficient and no separate *niyyah* for *tawaf* is required. (*al–Jawahir, Fiqh al–Sunnah*) As pointed out earlier, *niyyah as* a motive behind all voluntary actions is an inevitable and necessary matter; as such, debate and controversy regarding it is futile.

Ibn Rushd, in his *Bidayat al–mujahid, writes:* "The Sunni legists are in consensus on the opinion that every *tawaf* whether obligatory or not, begins from the Black Stone (and according to the *Fiqh al–Sunnah ends* thereat). The pilgrim, if he can, kisses it, otherwise touches it with his hand. Then, with

the Ka'bah on his left, starts moving towards the right to make the seven circumambulations, walking with a moderately fast pace (*ramal*) during the first three rounds and with an ordinary pace during the last four rounds. (The *ramal*[4] applies to the *tawaf al-qudum* performed on entry into Makkah by the 'Umrah and Hajj pilgrim, not one on *Hajj al-tamattu*; also no *ramal* is required of women pilgrims). Then he kisses al-Rukn al-Yamani" (the south-western corner or *rukn* of the Ka'bah which falls before the one with the Black Stone mounted on it during the anti-clockwise rounds made during *tawaf*.—Tr.).

According to the Imamiyyah, there are certain things obligatory (*wajib*) in *tawaf* they are as follows:

1. The *niyyah,* to which reference has already been made.

2. The *tawaf* should be made on foot, and in case of inability on a mount. Many Imamiyyah fuqaha' do not recognize this requirement and a group of them explicitly permit *tawaf* on a mount. They cite the precedent of the Prophet (S) who performed *tawaf* on camelback, according to traditions in *al-Kafi* and *Man la yahduruhu al faqih.*

3. The condition that the *tawaf* should begin and end at the Black Stone is stated in this manner in many books of fiqh: "The *tawaf* should be begun at the Black Stone, so that the first part of one's body is in front of the first part of the Black Stone. Then the pilgrim begins moving with the Black Stone on his left, ending the last circumambulation exactly in line with the point where he commenced his first, thus ensuring that the seven rounds are completed without advancing or falling behind a single step or more.

The danger of advancing or falling behind necessitates that the first circumambulation should commence at the beginning of the Black Stone; because if begun in front of its middle, one cannot be sure of having advanced or fallen behind some steps; and if one began from its end, then the beginning may not be said to have commenced from the Black Stone ...." and so on and so forth.

The author of the *Jawahir al-kalam* makes elaborate critical remarks about this kind of meticulousness, which show his balanced and moderate taste and temperament. This is the substance of what he has to say: "The difficulty and the exasperating *haraj* (impediment) inherent in realizing such a requirement is not concealed .... To give it consideration is to fall into silly scruples. The debate is similar to the depraved and unseemly musings of madmen.[5] And it has been narrated of the Prophet (S) that he performed *tawaf* on camelback, and attaining this kind of precision is infeasible when on a mount."

That which can be understood from the remarks of the author of *al-Jawahir* is that he agrees with the author of *al-Shara'i'*, who confines himself to this statement, without adding another word: "It is obligatory to begin and end the *tawaf* at the Stone." It means—as is also apparent from his above-mentioned remarks—that in the opinion of the author of *al-Jawahir* it is sufficient to fulfil this condition in the commonly understood sense. Al-Sayyid al-Hakim, in *al-Munsik*, holds a similar position when he says, "The pilgrim performing *tawaf* should begin a little before the Stone with the intent of performing what is really obligatory. When he performs in this fashion he knows that he began at the Stone and finished thereat."

4. The Ka'bah must be on the left during *tawaf*. According to al-Sayyid al-Khu'i, it is sufficient to realize this requirement in the commonly understood sense (i.e. without giving scrupulous attention to precision); slight shifts of direction do not matter as long as the movement meets the requirement in the ordinary sense. According to him the only crucial factor is satisfaction of the requirement in its ordinary sense.

5. The Hajar Isma'il must be included in *tawaf*. That is the circumambulation should be made around it and without entering it, 6 and it should be kept to the left while making the *tawaf*. Thus if one passes between it and the Ka'bah during *tawaf* making it fall to his right, the *tawaf* becomes invalid.

6. The body should be completely out of the Ka'bah (because God says وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ which means that *tawaf* should be made around and outside the Ka'bah, not inside it). Also if one were to walk on its walls or on the protruding part of its walls' foundations, the *tawaf* would be invalid.

7. The *tawaf* should be performed between the Ka'bah and the rock called *Maqam Ibrahim*, which is a stone on which Abraham ('a) stood during the building of the Ka'bah.

8. The *tawaf* should consist of seven rounds, no more and no less. Obviously, recognition of these points requires an informed guide to indicate them to the pilgrims.

After finishing *tawaf* it is obligatory to offer two *rak'ah's* of *salat* behind the Maqam Ibrahim regardless of the crowd; but if it is not possible, one may offer the prayer in front of it, and if that, too, is not possible, anywhere in al-Masjid al-Haram. It is not permissible to begin a second *tawaf* without performing the two-*rak'ah prayer*. If one forgets performing them, it is obligatory on him to return and perform them. But if returning were not feasible, he can offer them wherever he can. This is true of the obligatory *tawaf*. But if the *tawaf* were a *mustahabb* one, he can offer the two rak'ah's wherever he can. (*al-Tadhkirah, al-Jawahir*, *al-Hada'iq*)

This shows that the jurists of all the legal schools are in agreement over certain points: the *tawaf* starts and ends at the Black Stone; the Ka'bah should be on the left during *tawaf*; the *tawaf* should be made outside the Ka'bah; seven rounds should be made; kissing the Black Stone and the Rukn is *mustahabb.* However, they disagree with respect to the permissibility of break between successive rounds of the *tawaf*.

According to the Maliki, Imamiyyah, and Hanbali schools, continuity without break (muwalat) is obligatory. According to the Shafi'i and Hanafi schools, it is sunnah (i.e. *mustahabb*) to observe muwalat, so if there is a substantial break between the rounds without any excuse, the *tawaf* is not invalidated. (*Fiqh al-Sunnah*). Similarly according to Abu Hanifah, if one leaves off after the fourth round, he must complete his *tawaf* if he is in Makkah; but if he leaves Makkah, he must compensate it with a blood sacrifice. (*al-Tadhkirah*)

The schools disagree with respect to the necessity of the *tawaf* being undertaken on foot. The Hanafi,

Hanbali, and Maliki schools consider it obligatory. According to the Shafi'i school and a group of Imamiyyah scholars it is not obligatory and one may perform *tawaf* on a mount. Also, they disagree with respect to the *two-rak'ah* prayer (*rak'atan*) after *tawaf*. According to the Maliki, Hanafi, and Imamiyyah schools, the *rak'atan*—which is exactly like the daybreak prayer—are obligatory. The Shafi'i and Hanbali schools regard it as *mustahabb*.

The Mustahabbat of Tawaf

The book *Fiqh al-Sunnah*, discussing the topic under the heading "*Sunan al-tawaf*;" states, "Of things which are sunnah in *tawaf* are: kissing the Black Stone while starting the *tawaf*, accompanied with *tahlil* and *takbir,* to raise the two hands as in *salat*, to greet the Stone by drawing one's hands upon it (*istilam*), to kiss it soundlessly, to lay one's cheek on it if possible, otherwise to touch it only." Other *mustahabbat* are: *idtiba* 7 for men, *ramal*, and *istilam* of *al-Rukn al-Yamani*.

According to *al-Lum'at al-Dimashqiyyah*, an Imamiyyah work, of things *mustahabb* in *tawaf* are: to halt in front of the Black Stone, to make the prayer later offered with the hands raised, to recite the Surat al-Qadr, remember Allah—subhanahu wa ta'ala—, to walk peacefully, to draw one's hand on the Black Stone, to kiss it if possible otherwise to make a gesture, to draw one's hand on every corner of the Ka'bah every time one basses by or to kiss it, 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, and to keep oneself as near as possible to the Ka'bah. To speak during *tawaf* apart from *dhikr* and recitation of the Qur'an, is *makruh.*

The Ahkam of Tawaf

According to the Imamiyyah, if a woman undergoes *hayd* during *tawaf* she discontinues *tawaf* and performs *sa'y,* if it happens after the fourth round. Then she completes the *tawaf* after attaining *taharah,* and she is not required to repeat the *sa'y.* But if the *hadath* occurs before completing the fourth round, she waits until the day of 'Arafah. If by that time she regains *taharah* and is in a position to complete the remaining acts, she does so. Otherwise her Hajj is converted to *Hajj al-'ifrad.*

As mentioned earlier, the Hanafis permit *tawaf* for a woman in the state of *hayd,* and do not require *taharah.* According to the Hanafi work *Fath al-Qadir,* one who leaves three or fewer rounds of the *tawaf al-ziyarah* should sacrifice a sheep; if four, he remains in the state of *ihram* as long as he does not complete the rounds of *tawaf.* But if he leaves off more than four rounds, it is as if he had not started the *tawaf* at all.

According to the Imdmiyyah, if after completing the rounds of *tawaf* one doubts whether he performed them correctly as required by the Shari'ah or whether he performed the exact number of rounds, his doubt is of no consequence. His *tawaf* is considered valid and complete 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, such as when he doubts whether he made seven or eight rounds. If he is certain of

having performed seven rounds, then 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. It is preferable in such a case to complete the present *tawaf* before starting afresh.8 This is true of a *wajib tawaf*. In case of a *mustahabb tawaf,* the basis is the least number of rounds under seven one is certain of having performed, regardless of whether the doubt occurs during or after the last round.

For the non-Imamiyyah schools, the rule is the least number of rounds one is certain of having performed—a rule which is similar to the one they apply to the doubt in the number of *rak'ah's* of *salat.*

These are the *ahkam,* the *mustahabbat,* and the *wajibat* of *tawaf,* which, like the *ruku'* and *sujud* in *salat*, is always the same in all cases, whether as a part of the *'Umrah mufradah, 'Umrat al-tamattu; Hajj al-qiran,* or *Hajj al-'ifrad,* and regardless of whether it is *tawaf al-ziyarah, tawaf al-nisa; tawaf al-qudum,* or *tawaf al-wada'.*

As mentioned above, the *tawaf* is the next act after *ihram* in *'Umrat al-tamattu;* but in the Hajj its turn comes after the pilgrim has gone through the rituals of Mina' (on the *'Id* day) as shall be explained later.

1. According to the author of al-Hada'iq, Hajj is invalid if tawaf is omitted intentionally, but not if omitted by mistake; although it is obligatory to perform it after omission.
2. According to Ibn Rushd, in his Bidayah, the four Sunni schools agree that the pilgrim of Hajj al-ramattu 'and its related `Umrah is required to perform tawaf twice; the one on Hajj al-afrad is required to perform tawaf once. They disagree regarding Hajj al-qiran, in which case according to al-Shafi`i, Malik, and Ahmad ibn Hanbal, one tawaf is required, but two according to Abd Hanifah.
3. According to al-Jawahir, al-Masalik al-`Urwat al-wuthqa and other works of Imamiyyah fiqh, it is not permissible for one in the state of janabah or hayd to enter or pass through al-Masjid al-Haram or Masjid al-Rasul (al-Madinah), to say nothing of tarrying (makth) therein. However, it is permissible for one in the state of janabah or hayd to pass, without stopping or halting, through other mosques.
4. `Ramal' means walking fast, without running or making a rush. According to the Imamiyyah work al-Lum`ah, ramal is mustahabb in the first three rounds of tawaf—a position which is exactly the same as that of the four Sunni schools.
5. The author of al-Jawahir makes this remark when comparing those who stipulate such kind of conditions for tawaf to others with a similar attitude with regard to the niyyah of salat.
6. Hajar Isma`il ibn Ibrahim (`a) is the place where his house was built, and there he buried his mother.
7. By `idtiba is meant the style of wearing the rida' whose hanging sides are drawn under the right armpit and then thrown over the left shoulder. In the book al-Fiqh `ala al-madhahib al-'arba`ah, the istihbab of idtibta'is ascribed to the Hanafi, Shafi`i, and the Hanbali, not to the Maliki, schools.
8. This is in agreement with the fatawa of al-Sayyid al-Hakim and al-Sayyid al-Khu'i.

Sa'y

All the schools agree that *sa'y* follows the *tawaf*, or its *rak'atayn* for those who consider them *wajib.* So also they agree that one who performs *sa'y* before *tawaf* should revert and perform his *tawaf* first and then the *sa'y.* I haven't come across any opinion holding that the *sa'y* must immediately follow the *tawaf* (*muwalat*). 1

The Mustahabbat of Sa'y

According to the book *Fiqh al–Sunnah,* it is *mustahabb* to ascend the hills of Safa and Marwah, and, facing the Holy Ka'bah, to pray to God for some religious or secular matter. It is well known that the Prophet (S), going out from Bab al–Safa until he could see the Ka'bah. Facing it, he thrice declared the Unity of God and magnified Him; then praising God he said:

لا إله إلا الله وحده لا شريك له، له الملك، وله الحمد، يحيي ويمت، وهو على كل شيءٍ قدير،

لا إله إلا الله وحده، أنجز وعده، ونصر عبده، وهزم الأحزاب وحده

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 powerful over every thing. There is no god except Allah. He is One. He has fulfilled His promise and granted victory to His slave, vanquishing all the parties (*of the infidels*). *He is One.*

The *mustahabbat* of *sa'y* according to the Imamiyyah book *al–Jawahir* are the following: to draw one's hand on the Black Stone; to drink from the water of Zamzam and to sprinkle it on oneself; to leave [al–Masjid al–Haram] through the door facing the Black Stone; to ascend the Safa; to face al–*Rukn* al–'Iraqi; to praise God (*hamd*) and magnify Him (*takbir*)*;* to prolong one's stay at al–Safa; and, after seven *takbirs,* to say three times:

لا إله إلا الله وحده، لا شريك له، له الملك، وله الحمد، يحيي ويميت،

وهو حيٌ لا يموت، بيده الخير، وهو على كل شيءٍ قدير.

After this he recites the prayer recommended by tradition (*al–du'a' al–ma'thur*).

As can be seen from the above, there is no divergence in this matter between the Shi'ah and the Sunni schools, except for some difference of expressions used. Also, I have not come across any jurist who regards *taharah* (from *hadath* and *khabath*) as obligatory for *sa'y;* most of the schools have expressly stated its being only *mustahabb* and the same is true (except for the Shafi'i) of the drawing of the hand (*istilam*) on the Black Stone before leaving for *sa'y*.

Also, all the schools are explicit about the *istihbab* of covering the distance between 'the Milayn' (an expression used by the Hanafis and Malikis) or 'the intervening distance' (*wasat al–masafah,* an expression used by Shafi'is) or 'between the Minaret and the Alley of the Pharmacists' (as Imamiyyah say) with a fast pace (*harwalah*).2 Without doubt, an informed guide is necessary to enable the pilgrims to recognize the points designated as 'Milayn' or 'the Alley of the Pharmacists' (*Zuqaq al–'Attarin*), or 'the Minaret'.

The Way of Performing Sa'y

Although there is agreement between the schools about the necessity of *sa'y,* they disagree about its being an essential part (*rukn*) of the rites of Hajj. According to the Imami, Shafi'i, and Maliki schools, it is a *rukn;* according to Abu Hanifah, it is not a *rukn,* though a *wajib*. Two different traditions are narrated from Ahmad ibn Hanbal. (*al–Tadhkirah, Fiqh al–Sunnah*)

All are agreed on the number of *ashwat* (sing. *shawt*) being seven, and that the performer of *sa'y* (i.e. *sa'i*) should begin at Safa going towards Marwah, and return again to Safa,3 covering this distance seven times. Thus the pilgrim makes four *ashwat* going from Safa to Marwah and three *ashwat* while returning from Marwah to Safa, beginning his first *shawt* from Safa and finishing the seventh at Marwah.

The schools disagree as to the permissibility of making the *sa'y* on a mount in spite of the ability to walk, and all of them, with the exception of the Hanbalis, permit it regardless of whether one can walk or not. The Hanbalis say that it is permissible only for one who cannot walk.

I have not come across any opinion regarding continuity (*muwalat*) between the *ashwat* as *wajib*4, with the exception of the Hanbalis, who, as also mentioned by the author of *al–Fiqh 'ala al–madhahib al–'arba'ah,* consider it *wajib*. Also, it is said of Malikis that according to them if the gap between the *ashwat* were to become inordinate, one should begin *sa'y* afresh; but if the gap were not prolonged, such as when one discontinues for selling or purchasing something, it is forgivable.

Note

Al–Sayyid Muhsin al–Hakim, in his book on the rites of Hajj, says, "It is obligatory, while going and returning, to keep one's face turned towards one's destination .... Therefore, if someone were to turn his face away from it or were to walk backwards, or in a lateral way, it is not correct. However, there is nothing wrong in turning the face this way and that way while continuing to face the destination in the

course of movement."

He means that it is obligatory that the body should face Marwah while going and should be toward Safa while returning, and it is not permissible to make the approach with only a shoulder facing the direction of the destination—as may happen due to overcrowding of the pilgrims; also, while moving, the face in particular should remain in the right direction.

Al-Sayyid al-Khu'i makes a similar statement in his work on the rites of Hajj; his words are: "It is *wajib* to face Marwah while going and to be towards Safa while returning. Thus if one turns his back towards Marwah while going and towards Safa while returning, it does not satisfy (*lam yujzi',* i.e. the conditions for a correct *sa'y*). Also, one should not turn towards his right or left, neither should he turn back either during the going (*dhahab*) or during the return (*iyab*).

The Ahkam of Sa'y

One who cannot perform the *sa'y,* either on foot or on a mount, may depute another to perform it on his/her behalf, and the Hajj would be correct. There is nothing wrong in looking to the right or the left or turning back to look during the coming and the going.

If someone makes more than seven *ashwat* intentionally, his *sa'y* is invalid, but not if the lapse was unintentional. If one were to have doubts about the number of the *ashwat* performed after finishing his *sa'y,* it is assumed to have been correct and nothing is required of him. The author of *al-Jawahir* bases this *hukm* about the doubt after finishing on the principle of negation of *haraj,* as well as on tradition.

However, if the doubt were to occur before finishing the *sa'y,* the author of *al-Jawahir* says that there is no difference of opinion about, nor any objection against, the invalidity of the *sa'y* in case of any doubt about the number of the *ashwat* performed, whether of having exceeded or fallen short of the required number. In both cases the *sa'y* at hand is invalid. If one suspects one's having begun from Safa, his *sa'y* is correct. But if he thinks that he might have started from some other place, it is invalid. Also if one suspects the number of *ashwat* already performed, and does not know how many one has completed, one's *sa'y* is invalid.

If one has recorded the number of *ashwat* performed, but doubts whether one 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. (*al-Jawahir*)

According to the other schools, the rule is to take the minimum one is certain of having performed, as in the case of *salat.* (*Kifayat al-'akhyar*)

According to Abu Hanifah the Hajj is not invalid even if the *sa'y* is omitted altogether, because it is not a *rukn* and can be made good by a sacrifice. (al-Shi'rani's *al-Mizan*)

1. Al-Sayyid al-Hakim says: "It is not obligatory to hasten to perform the sa'y after finishing the tawaf and its salat, but it is also not permissible to delay voluntarily until the next day." Al-Sayyid al-Khu'i says, "It is binding on one not to make a considerable delay without need in performing the sa'y after the tawaf and its salat, and it is not permissible to delay it intentionally until the next day." I say, these verdicts of the two scholars are supported by sahih ahadith.
2. Harwalah is a kind of walk which resembles that of a camel when it wants to pick up speed. According to the Imamiyyah, if the one performing the sa'y is riding, he should spur it to make the beast walk faster.
3. The author of al-Mizan quotes Abu Hanifah to the effect that he does not see any objection in the converse, i.e. performing of the sa'y by starting at Marwah and finishing at Saf'a.
4. Al-Sayyid al-Hakim in his book on the manasik of Hajj says that muwalat (continuity of succession) is not required in the ashwal of the sa'y, and it is permissible to separate or interrupt them—even after a single shawt—and to pick up the count again after the break.

Taqsir

According to Ahmad ibn Hanbal and Malik, it is necessary to shave (*halq*) or shorten the hair (*taqsir*) of the entire head. According to Abu Hanifah the same of a one-fourth portion of the head is sufficient; according to al-Shafi'i cutting of three hairs suffices. (Karrarah's *al-Din wa al-Hajj*)

According to the Imamiyyah, in *taqsir* one has the free choice of performing it by shortening either the hair of the head, the beard, or the moustaches or the fingernails.

All the five schools agree that *taqsir* is an obligatory rite, though not a *rukn.* According to al-Sayyid al-Hakim, its relationship to Hajj is the same as that of the *salam* with respect to the *salat,* because the *muhrim* is relieved after it of his state of *ihram* in the same way as one performing the *salat* is after the salam.

The *taqsir* or the *halq,* whatever be the divergence of opinion about them, is to be performed once during 'Umrah *mufradah* and twice during *Hajj al-tamattu'*. The details follow.

Taqsir in 'Umrah

According to the Imamiyyah, one performing *'Umrat al-tamattu'* has to perform *taqsir* after the *sa'y*; it is not permissible for him to perform *halq.* After it, everything forbidden to him in the state of *ihram* becomes permissible. But if he performs *halq,* he should sacrifice a sheep. However, if he is on 'Umrah *mufradah,* he may choose between *halq* and *taqsir*, regardless of whether he brings along with him the *hady* or not.

If the *taqsir* is omitted intentionally, in case one had planned to perform *Hajj al-tamattu'* and had

assumed *ihram* before performing the *taqsir*, his 'Umrah is invalid and it is then obligatory upon him to perform *Hajj al-'ifrad:* that is, the rites of Hajj followed by '*Umrah mufradah,* and it is better for him to do Hajj again the next year.[1]

According to non-Imamiyyah schools, one has a choice between *taqsir* and *halq after* finishing his *sa'y*. As to relief from the state of *ihram*, if one were performing a non-tamattu' 'Umrah, he obtains relief from *ihram* after *halq* or *taqsir*, regardless of whether the *hady* accompanies him or not. But if one is performing '*Umrat al-tamattu*; he is relieved of *ihram* if not accompanied by the *hady; but* if accompanied he remains in the state of *ihram*. (*al-Mughni*)

Taqsir in Hajj

The second type of *taqsir* is a part of the rites of all the various kinds of Hajj-tamattu', *qiran,* or ifrad--to be performed by Hajj pilgrim after the *dhabh* or *nahr* (animal sacrifice) in Mina. All the schools agree that here one has a choice between *taqsir* and *halq, halq* being more meritorious. They disagree, however, in regard to one with matted hair, whether he must shave his head or if, like others, he also has a choice between *halq* and *taqsir*. The Hanbali, the Shafi' i, and the Maliki schools prescribe only *halq* for him, but the Imamiyyah and the Hanafi give him the same choice as others.

All the legal schools agree that women don't have to perform *halq,* rather, they may perform only *taqsir*.

Abu Hanifah and a group of Imamiyyah legists say that one who is bald, completely or partially, as when only the frontal portion of the head is hairless, must nevertheless draw the razor over the [hairless portion of the] head. The rest only consider it *mustahabb* (*al-Hada'iq, Fiqh al-Sunnah*).

According to the Imamiyyah, the *halq* or the *taqsir* is obligatory in Mina. Therefore, one who departs without *halq* or *taqsir* should return to perform either of the two, regardless of whether his lapse was intentional or not, and despite the knowledge or out of ignorance. However, if it is difficult or infeasible for him to return, he may perform it wherever he can.

As to the rest, they say that it should be performed within the haram. (*Fiqh al-Sunnah*)

All agree that sex is not permitted after the *halq* or the *taqsir*. The Malikis include perfume as also being impermissible. The Imamiyyah include with the above two hunting (*sayd*), which is forbidden because of the respect for the sanctity of the haram. Apart from these three things, the rest are permissible by the consensus of all the five schools. For the four Sunni schools, everything, including sex, becomes permissible after the *tawaf al-ziyarah*. As for the Imamiyyah, sex and perfume are not allowed until after the *tawaf al-nisa'*.

We conclude this section with the words of al-'Allamah al-Hilli in his *Tadhkirah:*

If [the pilgrim] departs from Mina without *halq* or *taqsir,* he returns to perform it there--an obligation if

within the reach of possibility. But if his returning is not possible, he performs *halq* wherever he is, sending his hair to be carried to Mina to be buried there, which if he cannot there is nothing upon him .... The time for *halq* is on the day of ‘Id, by consensus, for the Almighty has said [in Qur'an]:

وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحِلَّهُ

***"And do not shave your head until the sacrifice reaches its* [*specified*] *destination."* (*2:196*);**

and the place of the sacrifice (*hady*) is Mina on the day of ‘Id. It has been recorded that the Prophet (S) performed first *ramy,* then *nahr,* and then *halq,* at Mina on the ‘Id day.

We shall have occasion to refer to the *hukm about* the *ha1q* performed prior to the *dhabh* while discussing later the rites of Mina.2

1. This agrees with the fatwas of al-Hakim and al-Khu'i. Al-Hakim, however, distinguishes between one who forgets (nasi) and one who is ignorant (jahil); he excuses the first not the latter, who is included with the willful defaulter (`amid).
2. This agrees with the fatwas of al-Hakim and al-Khu'i. Al-Hakim, however, distinguishes between one who forgets (nasi) and one who is ignorant (jahil); he excuses the first not the latter, who is included with the willful defaulter (`amid).

The Wuq’uf

The Wuq’uf in ‘Arafat

The pilgrim performing *‘Umrah mufradah* or *Hajj al-tamattu’* first assumes *ihram,* then performs *tawaf* offers the *rak’atayn,* then performs *sa’y*, then *taqsir*. This order is obligatory, and in it while the *ihram* precedes all the other steps, the *tawaf* precedes the *salat*, the *salat* is prior to the *sa’y*, and at the end is *taqsir*.1

The Second Rite of Hajj

The rites of Hajj, as in the case of ‘Umrah, start with *ihram*. However, the rite which is next to *ihram* in the case of Hajj, and is considered one of the *arkan* of Hajj by consensus, in the *wuquf* (halt) in ‘Arafat, there being no difference whether one is on *Hajj al-'ifrad* or *Hajj al-tamattu*; although it is permissible for those on *Hajj al-'ifrad* or *Hajj al-qiran* to enter Makkah to perform a *tawaf* after assuming *ihram* and before proceeding to ‘Arafat. This *tawaf* (called *tawaf al-qudam*) resembles the *rak’atayn* called *tahiyyat al-masjid*, recommended as a mark of respect to a mosque.

Al-Sayyid al-Hakim, in his book on the rites of Hajj, says, "It is permissible for one intending *Hajj*

al–qiran or *al–'ifrad* to perform the mustahabb *tawaf* on entering Makkah and before proceeding to *wuquf* [in 'Arafat]." Ibn Hajar, in *Fath al–Bart bi Sharh al–Bukhari,* writes: "All of them [the four legal schools] agree that there is no harm if one who has assumed *ihram* for *Hajj al–'ifrad* performs a *tawaf* of the (Holy) House," that is, before proceeding to 'Arafat. One on *Hajj al–tamattu',* as said, should perform the *tawaf* of '*Umrat al–tamattu'* instead of the *tawaf al–qudum.*

Before the Halt in 'Arafat

There is consensus among the legal schools that it is *mustahabb* for the Hajj pilgrim to go out from Makkah in the state of *ihram* on the day of Tarwiyah (the 8th of Dhu al–Hijjah), passing towards Mina on his way to 'Arafat.

According to the Imamiyyah books *al–Tadhkirah* and *al–Jawahir*, it is *mustahabb* for one intending to proceed towards 'Arafat not to leave Makkah before offering the *zuhr* and '*asr* prayers. The four Sunni schools say that it is *mustahabb* to offer them at Mina. (*al–Mughni*)

In any case, it is permissible to proceed to 'Arafat a day or two before that of Tarwiyah, in particular for the ill, the aged, women, and those who are claustrophobic. Also it is permissible to delay until the morning of the 9th so as to arrive at 'Arafat by the time when the sun crosses the meridian (*zawal*).

I have not come across any jurist who considers it *wajib* to spend at Mina the night before the day of *wuquf* at 'Arafat, or to perform some rite there. Al–'Allamah al–Hilli, in his *Tadhkirah,* writes: "To spend the night of 'Arafah at Mina for resting is *mustahabb;* but it is not a rite, nor is there anything against one who doesn't do it." *Fath al–Bari* and *Fath al–Qadir* have something similar to say.

The word 'rest' (for *istirahah*) used by al–'Allamah al–Hilli does not need to be explained, for travel in the past used to be exhausting; so he considered it *mustahabb* for the pilgrims to stay for the night at Mina so as to arrive looking fresh and in good spirits at 'Arafat. But travel today is quite a pleasure. Therefore, if one spends the night of 'Arafah in Makkah, going to 'Arafat the following morning, or after the *zuhr* prayer, passing through Mina on his way—as the pilgrims' practice is nowadays—that is sufficient and there is nothing wrong in that. The pilgrim will return to Mina later after the halt in 'Arafat, for the *ramy al–Jamrah*—but to that we shall come later.

The Period of the Halt in Arafat

There is consensus among the legal schools that the day of the halt in 'Arafat is the 9th of Dhu al–Hijjah, but they disagree as to the hour of its beginning and end on that day. According to the Hanafi, the Shafi'i, and the Maliki schools, it begins at midday on the 9th and lasts until the daybreak (*fajr*) on the tenth. According to the Hanbali school, it begins from the daybreak on the 9th until daybreak on the tenth. According to the Imamiyyah, from midday on the 9th until sunset on the same day, for one who is free to plan; and in case of one in an exigency, until the following daybreak.

It is *mustahabb* to take a bath for the *wuquf* in 'Arafat, to be performed like the Friday bath. There is no rite to be performed in 'Arafat except one's presence there: one may sleep or keep awake, sit, stand, walk around or ride a mount.

The Limits of ‘Arafat

The limits of 'Arafat are ‘*Arnah*, *Thawbah*, and from *Nimrah* to *Dhu al–Majaz*, which are names of places around 'Arafat. One may not make the halt in any of those places, neither in *Taht al–'Arak*, because they are outside 'Arafat. If one were to make the halt in any of those places, his Hajj is invalid by consensus of all the schools, with the exception of the Maliki, according to which one may halt at ‘*Arnah* though he will have to make a sacrifice.

The entire area of 'Arafat is *mawqif* (permissible for the *wuqaf*) and one may make the halt at any spot within it by consensus of all schools. Al–'Imam al–Sadiq (‘a) relates that when the Prophet (S) made the halt at 'Arafat, the people crowded around him, rushing along on the hoof–prints of his camel. Whenever the camel moved, they moved along with it. (When he saw this), the Prophet said, "O people, the *mawqif* is not confined to where my camel stands, rather this entire 'Arafat is *mawqif,"* and pointed to the plains of 'Arafat. "If the *mawqif* were limited to where my camel stands, the place would be too little for the people." (*al–Tadhkirah*)

The Conditions Applicable to the Halt

Taharah (ritual purity) is not a condition for the halt at 'Arafat, by consensus of all the schools.

According to the Imamiyyah and the Maliki schools, the halt at ‘Arafat must be made with prior intention (*niyyah*) and with the implied knowledge that the place where he is halting is indeed 'Arafat. Thus if he were to pass on without knowing, or know without intending the wuquf it is not considered *wuquf* as such.

According to the Shafi’i and the Maliki schools, neither intent nor knowledge is a condition. All that is required is freedom from insanity, intoxication, and loss of consciousness. According to the Hanafis, neither intent, nor knowledge, nor sanity is a condition; whosoever is present in 'Arafat during the specific period, his Hajj is correct, intent or no intent, whether he knows the place or not, whether sane or insane. (*Fiqh al–Sunnah, al–Tadhkirah*)

Is it necessary to make the halt in 'Arafat for the full specified period, or is it sufficient to be present there for some time, even if it is for a single moment?

According to the Imamiyyah, 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; in the case of the latter, the period lasts until the daybreak of the tenth.

So one who can make the halt from noon until sunset for the entire period, it is *wajib* upon him; although halt not for the entire period but halt for a part of it is *rukn* [that is without it the Hajj would not be valid], the rest being merely a *wajib.* This means that if someone omits the halt his Hajj is invalid for not performing a *rukn* of it. But if one makes a short halt, he has omitted only a *wajib* which is not *rukn,* and so his Hajj does not lose its validity [on this account]. Moreover, if someone cannot make the halt for the entire *ikhtiyari* period, due to some legitimate excuse, it is sufficient for him to make the halt for a part of the night of ‘Id.

According to the Shafi'i, the Maliki, and the Hanbali schools, mere presence even if for a single moment, is sufficient. (*al–Fiqh ‘ala al–madhdhib al–'arba ‘ah, Manar al–sabil*)

According to the Imamiyyah, if one leaves ‘Arafat intentionally before the midday, he must return and there is nothing upon him if he does. But if he doesn't, he must sacrifice a camel, and if that is beyond his means fast for 18 days in succession. But if the lapse were by oversight and he does not discover it until the time is past, there is nothing upon him, on condition that he is present at the halt in *al–Mash'ar al–Haram* in time. But if he remembers before the period expires, he must return as far as possible, and if he doesn't he must sacrifice a camel.

The Malikis say that one who makes the halt in ‘Arafat after the midday and leaves ‘Arafat before the sunset, he must repeat the Hajj the following year if he does not return to ‘Arafat before the daybreak (on the 9th). But all other legists say that his Hajj is complete. (Ibn Rushd's *Bidayah*)

According to *al–Fiqh al–musawwar ‘ala madhhab al–Shafi'i,* "if one forgets and omits the halt, it is obligatory upon him to change his Hajj into ‘Umrah, and then complete the remaining rites of Hajj after performing its rites; also he must repeat the Hajj in the immediate following year."

It is *mustahabb* for one performing the halt in 'Arafat to: observe *taharah;* face the Holy Ka'bah; and do a lot of *dua'* and *istighfar*, with due surrender, humility, and with a heart–felt presence before God.

The Wu’quf in Muzdalifah

The halt in Muzdalifah is the next rite after the halt in ‘Arafat, by consensus of all the schools. They also agree that when the Hajj pilgrim turns to Muzdalifah (where al–Mash'ar al–Haram is situated) after the halt in ‘Arafat, he is acting in accordance with the following Divine verse of the Qur'an:

فَإِذَا أَفَضْتُمْ مِنْ عَرَفَاتٍ فَاذْكُرُوا اللَّهَ عِنْدَ الْمَشْعَرِ الْحَرَامِ وَاذْكُرُوهُ كَمَا هَدَاكُمْ

When you pour forth from 'Arafat, then remember Allah in al–Mash'ar al–Haram, remembering Him in the way you have been shown. **(2:198)**

Also, there is agreement that it is *mustahabb* to delay the *maghrib* (sunset) prayer on the night preceding

the ‘Id day until Muzdalifah is reached. The author of *al–Tadhkirah* writes that when the sun sets in ‘Arafat, then one should go forth before the (*maghrib*) prayer towards al–Mash'ar al–Haram and recite there the supplication prescribed by tradition. The author of *al–Mughni* says, "It is *sunnah* (i.e. *mustahabb*) for one leaving ‘Arafat not to offer the *maghrib* prayer until Muzdalifah is reached, where at the *maghrib* and the *‘isha'* prayers should be offered together.

There is no difference regarding this, as Ibn al–Mundhir also points out when he says: "There is consensus among the ‘ulama', and no divergence of opinion, that it is *sunnah* for the Hajj pilgrim to offer the *maghrib* and the *‘isha'* prayers together; the basis for it is that the Prophet (S) offered them together.'"[2]

All the legal schools, with the exception of the Hanafi, agree that if one were to offer the *maghrib* prayer before reaching Muzdalifah and not offer the two prayers together, his *salat* is nevertheless valid despite its being contrary to what is *mustahabb.* Abu Hanifah does not consider it valid.

The Limits of Muzdalifah

According to *al–Tadhkirah* and *al–Mughni,* Muzdalifah has three names: Muzdalifah, Jam’, and al–Mash'ar al–Haram, its limits are from al–Ma'zamayn to al–Hiyad, towards the valley of Muhassir. The entire Muzdalifah is *mawqif,* like ‘Arafat, and it is legitimate to make the halt at any spot inside it. According to *al–Madarik,* it is a settled and definite matter among the Imamiyyah legists that it is permissible, in case of overcrowding, to ascend the heights towards the hill, which is one of the limits of Muzdalifah.

The Night at Muzdalifah

Is it obligatory to spend the entire night of ‘Id at Muzdalifah, or is it sufficient to halt in al–Mash'ar al–Haram even for a moment after the daybreak? (It is assumed, of course, that the meaning of *wuquf* is mere presence: one may be walking around, sitting or riding a mount, as in the case of the halt at 'Arafat).

According to the Hanafi, the Shafi’i, and the Hanbali schools, it is obligatory to spend the entire night at Muzdalifah and the defaulter is required to make a sacrifice. (*al–Mughni*) According to the Imamiyyah and the Maliki, it is not *wajib,* though meritorious. This is what Shihab al–Din al–Baghdadi the Maliki, in his *Irshad al–salik,* and al–Hakim and al–Khu'i have confirmed. However, no one has considered it a *rukn*.

As to halting in al–Mash'ar al–Haram after the daybreak, Ibn Rushd, in *al–Bidayah wa al–nihayah,* cites the consensus of the Sunni fuqaha' to the effect that it is one of the *sunan* (sing. *sunnah*) of the Hajj, not one of its *furud* (duties; sing. *fard*).

According to *al–Tadhkirah,* "It is obligatory to halt in al–Mash'ar al–Haram after the daybreak, and if

someone were to leave intentionally before the daybreak after halting there for the night, he must sacrifice a sheep. Abu Hanifah also says that it is obligatory to halt after the daybreak. The rest of the schools permit departure after midnight." Therefore, with the exception of the Imamiyyah and the Hanafi schools, others permit departure from Muzdalifah before the daybreak.

The Imamiyyah say that the time of halt in al-Mash'ar al-Haram is of two kinds: the first (*ikhtiyari*) is for one who has no reason for delaying, and that is the entire period between the daybreak and the sunrise on the day of 'Id; 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 ignorance, there is nothing upon him, as made explicit in the above quotation.

The second (*idtirari*) is for women and those who have an excuse for not halting between the daybreak and the sunrise; their time extends to midday on the day of 'Id. The author of *al-Jawahir* says that there is both textual evidence (from hadith) as well as consensus to support the above prescription, and the fatawa of al-Sayyid al-Hakim and al-Sayyid al-Khu'i are also in accordance with it. The latter has not stated midday as the *idtirari* time limit, but says that it is sufficient to make the halt after sunrise.

The Imamiyyah also say that the *wuquf* in the two specified periods of time is a *rukn* of the Hajj. Therefore, if someone does not perform it altogether either in the *ikhtiyari* period for the night or in the *idtirari* period, his Hajj is invalid if he hadn't spent the night there; but not if the default -was on account of a legitimate excuse, on 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 even if the failure was on account of a legitimate reason. It is obligatory upon him to perform Hajj the year after if the Hajj intended was a *wajib* one; and if it was a *mustahabb* Hajj, it is *mustahabb* for him to perform it the next year. (*al-Jawahir*)

The halt in al-Mash'ar al-Haram is held in greater importance by the Imamiyyah than the one in 'Arafat; that is why they say that one who loses the chance to be present at the halt in 'Arafat but participates in the halt at the Mash'ar before the sunrise, his Hajj is complete. (*al-Tadhkirah*)

Mustahabbat of the Mash'ar

According to the Imamiyyah it is *mustahabb* for one performing Hajj for the first time to put his feet on the ground of the Mash'ar. (*al-Jawahir*)

According to the Imamiyyah, the Shafi'i and the Maliki schools, it is *mustahabb* while leaving for Mina to gather seventy pebbles, for the *ramy al-jamarat,* at Muzdalifah. The reason for this, according to the author of *al-Tadhkirah,* is that when the Hajj pilgrim arrives in Mina he should not be detained by anything from the rite of the *ramy.* Ibn Hanbal is narrated to have said that the pebbles may be gathered from any place; and there is no disagreement that it suffices to gather them from whatever place one

wishes.

The maintenance of *taharah,* the pronouncing of *tahlil, takbir,* and *du'a'* (the prescribed one or something else) is also *mustahabb.*

1. Al-Shaykh `Abd al-Muta'al al-Sa`idi says: This order is obligatory in the rites of `Umrah, but in the rites of Hajj there is no order of sequence between the tawaf and the halq, or between the sa'y and the wuquf at 'Arafat. See al-Fiqh al-musawwar ala Madhhabal-Shafi'i.
2. This act of the Prophet (S) makes the grounds for the Imamiyyah for the permissibility of offering the two prayers together, because the Prophet (S) had said, صلوا كما رأيتموني اصلي "Pray in the same way as you see me praying." The fact that something is permitted at one time or a place suggests its permissibility in all places and at all times, unless there is some textual proof (nass) to show that it is particular and not general. But there is no nass in favour of its being particular (takhsis). Therefore, offering the two prayers together is permissible in general and at all times and in all places.

At Mina

All the schools are in agreement that the rites after the halt at al-Mash'ar al-Haram are those of Mina, and that departure from Muzdalifah is after the sunrise, and one who leaves before sunrise, passing beyond its limits, according to al-Khu'i, must sacrifice a sheep as *kaffarah.*

At Mina one performs several rites which continue from the Day of Sacrifice (*yawm al-nahr*), or the day of 'Id, until the morning of the thirteenth or the night of the twelfth. The *wajibat* of Hajj are completed in Mina. The three days following the day of 'Id (the 11th, 12th, and the 13th) are called *"ayyam al-tashriq."*1

Three rites are obligatory at Mina on the day of 'Id:
(1) *ramy* of the Jamrat al-'Aqabah;
(2) *al-dhabh* (slaughtering of the sacrificial animal);
(3) *halq* or *taqsir.*

Agreeing that the Prophet (S) performed first the *ramy,* then the *nahr* (or *dhabh*) and then the *taqsir,* the schools disagree whether this order is obligatory and if it is impermissible to change that order, or if the order is only *mustahabb* and may be altered.

According to al-Shafi'i and Ahmad ibn Hanbal, there is nothing upon one who changes the order. Malik says that if someone performs *halq* before the *nahr* or the *ramy,* he must make a sacrifice; and if he was performing *Hajj al-qiran* then two sacrifices. (Ibn Rushd's *al-Bidayah*). According to the Imamiyyah, it is a sin to change the order knowingly and intentionally, although repetition is not required. The author of *al-Jawahir* says, "I have not found any difference of opinion on this point", and *al-Madarik* states that the jurists are definite on this point.

Now we shall deal with each one of these rites under a separate heading.

1. There is disagreement about the Ayyam al–Tashriq as to whether they comprise two or three days. As to their naming, it is because during those days the pilgrims used to dry strips of the meat of the sacrificed animals in the sun.

Jamrat al ‘Aqabah

The Number of Jimar

Ramy al jimar, or the symbolic throwing of pebbles performed in Mina, is obligatory upon all pilgrims of the Hajj, whether *tamattu; qiran* or *ifrad.* This rite is performed ten times during the four days. The first *ramy,* in which only one point called Jamrat al–‘Aqabah is stoned, is performed on the day of ‘Id. On the second day, i.e. 11th of Dhu al–Hijjah, the three *jimar* are stoned, and again every three on the third and the fourth day. This applies to the Hajj pilgrim who spends the night of the twelfth in Mina; otherwise there is no *ramy* for him on that day.

Jamrah of the Tenth of Dhu al–Hijjah

The legal schools agree that it suffices to perform the *ramy* of the Jamrat al–‘Aqabah any time from sunrise until sunset on the tenth of Dhu al–Hijjah, but disagree as to its performance before or after that period. According to the Maliki, the Hanafi, the Hanbali and the Imami schools, it is not permissible to perform the *ramy* of the Jamrat al–‘Aqabah before the daybreak, and if performed without an excuse, must be repeated. They permit it for an excuse like sickness, weakness, or insecurity (fear).

According to the Shafi'i school, performing the rite earlier is unobjectionable, for the specified period is *mustahabb* not *wajib* (*al–Tadhkirah,* Ibn Rushd's *Bidayah*). However, if delayed until after sunset on the day of ‘Id, according to Malik, the defaulter must make a sacrifice if he performs the rite during the night or the next day. According to the Shafi’is, there is nothing upon him if he performs the rite of *ramy* in the night or the next day. (Ibn Rushd's *Bidayah*)

According to the Imamiyyah, the time of this *ramy* extends from sunrise until sunset on that day. If forgotten, the rite must be performed the next day. If again forgotten, on the 12th, and if one fails again, it can be performed on the 13th. But if one forgets until one has left Makkah, he may carry it out the following year, either himself or through a deputy who carries it out on his behalf.[1]

The Conditions of Ramy

There are certain conditions for the validity of *ramy al jamarat:*

1. *Niyyah:* stated by the Imamiyyah explicitly.

2. That each *ramy* must be carried out with seven pebbles; there is agreement on this point.

3. The pebbles must be thrown one at a time, not more; again there is consensus on this point.

4. The pebbles must strike the known target; there is also consensus on this point.

5. The pebbles must reach their target through being thrown (*ramy*)*;* thus if they are tossed in some other manner, it does not suffice according to the Imami and the Shafi'i schools, and is not permissible according to the Hanbali and the Hanafi schools. (*al–Mughni*)

6. The pebbles must be of stone, not of other material, like salt, iron, copper, wood or porcelain, etc.; this is accepted unanimously by all the schools except that of Abu Hanifah, who says that it is all right if pebbles are made of some earthen material, such as porcelain, clay or stone. (*al–Mughni*)

7. The pebbles must be 'new', that is, not used for *ramy* before; the Hanbalis state this condition expressly.

Taharah is not a condition in *ramy,* though desirable.

The Imamiyyah say that it is *mustahabb* that the pebbles be about the size of a fingertip and rough, neither black, nor white, nor red. The other schools say that their size must be about that of the seed of a broad bean (*baqila'*).

The Imamiyyah also say that it is *mustahabb* for the Hajj pilgrim to perform all the rites facing the *Qiblah,* with the exception of the *ramy* of the Jamrat al–'Aqabah on the day of 'Id, which is *mustahabb* to perform with one's back towards the *Qiblah,* since the Prophet (S) had performed this rite in that way. The other schools say that facing the *Qiblah* is *mustahabb* even in this rite.

Also, it is *mustahabb* to perform the *ramy* on foot (though riding a mount is permissible), not to be farther from the Jamrah than 10 cubits, to perform it with the right hand, to recite the prayers prescribed by tradition and other prayers. Following is one of the prayers prescribed by tradition:

اللهم اجعله حجاً مبروراً، وذنباً مغفوراً. اللهم إن هذه حصيائي، فأحصهن لي،

وارفعهن في عملي ... الله أكبر. اللهم أدحر الشيطان عني.

O God, make my Hajj a blessing, a forgiving of my sins. O God, these pebbles of mine, reckon them and place them high in my actions. God is Great. O God, repel Satan from me.

Doubt

What if one doubts whether the pebble thrown has struck its target or not? It is assumed not to have hit. If one doubts the number thrown, he may count from the least number of which he is sure he has thrown.
Jamrat al–'Aqabah is the first rite performed by the Hajj pilgrim in Mina on the day of 'Id, which is followed by the *dhabh,* then *halq* or *taqsir.* After that he proceeds to Makkah for *tawaf* the same day.

On this day, there is no other rite of *ramy* for him. Now we shall proceed to discuss the sacrifice (*hady*).

Hady

The second obligatory rite in Mina is the *hady* or animal sacrifice. The issues related to it are: (1) its kinds, *wajib* and *mustahabb,* and the various kinds of *wajib* sacrifice; (2) regarding those for whom the *hady* is *wajib;* (3) the requirements of the *hady;* (4) its time and place; (5) the legal rules about its flesh; (6) the substitute duty of one who can neither find the *hady* nor possess the means to purchase one. The details are as follow:

The Kinds of Hady

The *hady* is of two kinds; *wajib* and *mustahabb.* The *mustahabb* sacrifice is the one mentioned in the following verse of the Qur'an:

فَصَلِّ لِرَبِّكَ وَانْحَرْ.

***So pray unto the Lord and sacrifice* (*108:2*),**

which is interpreted as a commandment to the Prophet (S) to sacrifice after the 'Id day prayer. A tradition relates that the Prophet (S) sacrificed two rams, one white and the other black.

According to the Malikis and the Hanafis, the sacrifice is obligatory for every family once every year; it is, they say, similar to the *zakat al fitr:* The Imamiyyah and the Shafi'i schools say that the *mustahabb* sacrifice can be carried out in Mina on any of the four days, the day of 'Id and the three days following it (called *ayyam al–tashriq*).

But at places other than Mina the sacrifice may be carried out only during three days: the day of 'Id, and the 11th and the 12th. According to the Hanbalis, the Malikis, and the Hanafis, its time is three days whether in Mina or elsewhere. In any case, the best time for the sacrifice is after sunrise on the day of 'Id during a period sufficient for holding the 'Id prayer and delivering its two *khutbahs* (sermons).

The obligatory sacrifices, in accordance with the Qur'anic text, are four:

(1) The sacrifice related to *Hajj al-tamattu'* in accordance with the verse:

فَإِذَا أَمِنْتُمْ فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ

If in peacetime anyone of you combines the 'Umrah with the Hajj, he must offer such sacrifice as he can (***2:196***)

(2) The sacrifice related to *halq,* which is a *wajib* open to choice, in accordance with the verse:

فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ

But if any of you is ill or suffers from an ailment of the head, he must offer a fidyah either by fasting or by alms-giving or by offering a sacrifice. (***2:196***)

(3) The sacrifice related to the penalty (*jaza'*) for hunting, in accordance with the verse:

وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ

He that kills game by design, shall present, as an offering near the Ka'bah, a domestic beast equivalent to that which he has killed, to be determined by two honest men among you; (***5:95***)

(4) The sacrifice related to *"ihsar"* [some hindrance which keeps one from completing the rites of Hajj, such as illness or interruption due to an enemy], in accordance with the following verse (*al-Tadhkirah*):

إِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ

If you cannot; offer such sacrifice as you can afford (**2:196**)

Besides the above four, there are also the obligatory sacrifices related to any of the following: *'ahd* (pledge), *nadhr* (*vow*), *yamin* (oath). In what follows we shall discuss *hady* as one of the rites of Hajj.

For Whom is Hady Wajib?

The *hady* is not obligatory, by consensus of all the schools, upon one performing *'Umrah mufradah,* nor on one performing *Hajj al-'ifrad.* Similarly, there is consensus regarding its being obligatory upon the non-Makkan pilgrim on *Hajj al-tamattu'.* The four Sunni schools add that it is also obligatory upon the pilgrim on *Hajjal-qiran.*

According to the Imamiyyah, it is not obligatory on one on *Hajj al-qiran* except with *nadhr* (*vow*), or

when he brings along with him the sacrificial animal at the time of assuming *ihram.*

There is disagreement regarding whether the Makkan performing *Hajj al-tamattu'* must offer a sacrifice or not. According to the four Sunni schools, the *hady* is not *wajib* upon him. *Al-Mughni* states that "there is no disagreement among scholars that the sacrifice of *tamattu'* is not *wajib* on those living in the neighbourhood of al-Masjid al-Haram." The Imamiyyah say that if the Makkan performs *Hajj al-tamattu'* the *hady* is obligatory upon him." This is stated by *al-Jawahir* where it says, "If the Makkan were to perform *Hajj al-tamattu;* the *hady* is *wajib* upon him according to the widely held (*mashhur*) opinion [of the Imami fuqaha'].

The legal schools, however, agree that the obligatory *hady* is not one of the *arkan* of Hajj.

The Requirements of the Hady

The *hady* must meet the following requirements:

1. It must belong to cattle, such as camel, cow, sheep, or goat, by consensus of all the five schools. As stated by *al-Mughni,* according to the Hanafi, the Maliki, the Shafi'i and the Hanbali schools: if a sheep, it must be at least six months; if a goat, of one year; if a cow, of two years; and if a camel of five years. This agrees with the Imamiyyah view as stated by *al-Jawahir,* with the difference that the camel must have entered its sixth and the goat its second year.

Al-Sayyid al-Hakim and al-Sayyid al-Khu'i have said that it suffices if the camel has entered its sixth and the cow or the goat its third. As to the sheep, they add, to be cautious, the sheep must have entered its second.

2. The sacrificial animal must be free of any defect, and, by consensus, must not be one-eyed, lame, sick or old and decrepit. There is disagreement, however, regarding its acceptability in case of castration, being without horns or with broken ones, missing or mutilated ears or tail. Such are not acceptable according to al-Sayyid al-Hakim and al-Sayyid al-Khu'i, but acceptable according to the author of *al-Mughni.*

Al-'Allamah al-Hilli, in *al-Tadhkirah,* says that female camel and cow and male sheep and goats are to be preferred, although the permissibility of the converse in the two cases is not disputed by any school. The author of *al-Mughni'* says that the sex of the sacrificial animal is irrelevant.

The Time and the Place of the Sacrifice

As to the occasion of the sacrifice, it is, according to the Maliki, the Hanafi, and the Hanbali schools, the day of 'Id and the two days following it. Abu Hanifah adds that this time is specific for the sacrificial rite of *Hajj al-qiran* and *tamattu*; but for the others he sets no such time limit. The Malikis do not recognize any difference between various kinds of *hady,* as mentioned by *al-Fiqh 'ala al-madhahib al-'arba'ah.*

The Hanbalis say that if the sacrifice is made before its time, it must be made again. If after its time, in case of *mustahabb* the lapse of time cancels it; and in case of *wajib* it must be fulfilled. According to the Hanafis, slaughtering the sacrificial animal before the three days of 'Id is not sufficient, but is if done later though a *kaffarah* is required for the delay. According to the Shafi'is, the time of the obligatory sacrifice for *Hajj al–tamattu'* starts with *ihram;* therefore, performing it earlier [than the day of 'Id] is permissible, and there is no time limit for delaying, although it is best performed on the 'Id day. (*al–Fiqh 'ala al–madhahib al–'arba'ah*)

The Imamiyyah regard *niyyah* as being obligatory in slaughtering (*dhabh* or *nahr*), and say that its time is on the day of 'Id; although it is acceptable until the third day following it, or even until the end of Dhu al–Hijjah, although the delay is a sin. The author of *al–Jawahir* reports that there is no divergence [among Imami legists] on this point, even if the delay is without a [legitimate] excuse. It is not permissible, according to the Imamiyyah, to make the sacrifice before the 10th of Dhu al–Hijjah.

As to the place, it is the *Haram,* according to the Hanbali, the Shafi'i, and the Hanafi schools, which includes Mina 2 and other places, as mentioned above while discussing *ihram* and the limits of the *harams* of Makkah and al–Madinah.

According to the Imamiyyah, there are three conditions for slaughtering the *hady* in Mina:
(1) that the *hady* must have been brought in the *ihram* assumed for Hajj, not in the *ihram* for 'Umrah;
(2) the pilgrim should have halted for some time of the night with the *hady* in 'Arafat;
(3) he should have made the resolve to make the sacrifice on the day of 'Id or the following day.

Also the Imamiyyah say that the pilgrim of *Hajj al–tamattu'* may make the sacrifice nowhere but in Mina, even if his Hajj is supererogatory. But the *hady* brought along in the *ihram* of 'Umrah is to be slaughtered in Makkah. (*al–Tadhkirah*)

In any case, for all the schools offering of the sacrifice is legitimate and preferable at Mina. Ibn Rushd says that the consensus of the 'ulama' is in favour of slaughtering the *hady* at Mina. Secondly, the difference between the Imamiyyah and the other schools is that the Imamiyyah specify Mina, while others allow an open choice between Mina and other places inside the *haram* of Makkah.

The Flesh of the Hady

The Hanbalis and the Shafi'is say that the flesh of the *hady* whose slaughtering inside the *haram* is *wajib* is to be distributed among the poor inside it. The Hanafis and the Malikis say: it is permissible to distribute it inside or outside the *haram.* The Shafi'is say: one may not (oneself) eat the flesh of a *wajib hady,* but that of a voluntary or *mustahabb hady* is permissible. The Malikis say: with the exception of the sacrifice made as *fidyah* for hurting someone (*adha*), hunting, or sacrifice vowed (*nadhr*) specifically for the poor, and the voluntary *hady* which dies before reaching its destination; the flesh of the *hady* may be eaten in all cases. (*al–Mughni, al–Fiqh ala al–madhahib al–'arba'ah, Fiqh al–Sunnah*)

The Imamiyyah say: a third of the flesh should be given to the poor believers; another third to other believers, even the well-off; and the remaining third may be consumed by the pilgrim. (*al-Jawahir,* al-Sayyid al-Hakim and al-Sayyid al-Khu'i in their books on the *manasik* of Hajj).

The Substitute Duty (al-Badal)

All the legal schools agree that when the Hajj pilgrim 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 and the remaining seven on returning home. This is in accordance with the Divine verse: 3

فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ تِلْكَ عَشَرَةٌ كَامِلَةٌ

***But if he lacks the means let him fast three days during the pilgrimage* and *seven when he has returned; that* is *ten days in all.* (2:196)**

The criterion of capacity to offer the *hady* is ability to arrange one in the place, and when it can't be done the duty of *hady* is changed into that of the fasts. This holds even if the pilgrim should be a man of means in his own homeland. This is because the obligation is specific to the occasion and so is the capacity to fulfil it. A similar case is that of availability of water for *taharah.*

Dhabh by a Wakil

It is preferable that the Hajj pilgrim should slaughter the *hady* himself, though it is permissible to ask someone else to do it, because it is one of the rites in which delegation is possible. The one deputed (*wakil*) makes the *niyyah* of slaughtering on behalf of the one who deputes, and it is better that both of them should make the *niyyah* together. According to the Imamiyyah it is *mustahabb* for the pilgrim to put his hand on that of him who slaughters or at least be present at the time of slaughtering.

Shaykh ‘Abd Allah al-Mamqani, in *Manahij al-yaqin,* writes: "If the *wakil* makes an error in mentioning the name of the one who appoints him, or forgets his name altogether, there is no harm in it." There is a good point here, for it is related from one of the Imams (‘a) that in a marriage ceremony the *wakil* made a mistake while mentioning the bride's name or mentioned some other name. The Imam (*‘a*) said, "It doesn't matter."

Qani’ and Mu’tarr

In regard to the verse 36 of the *Surat al-Hajj:*

فَكُلُوا مِنْهَا وَأَطْعِمُوا الْقَانِعَ وَالْمُعْتَرَّ

***and eat of their flesh and feed with it the qani 'and the mu'tarr* (*22:36*)**

al-Imam al-Sadiq (*'a*) said, "The *qani'* is the (poor) man who is content with what you give him and does not show his displeasure and does not frown or twitch his mouth in irritation. The *mu'tarr* is one who comes to you for charity and presents himself."

The Substitute for Camel Sacrifice

If the sacrifice of a camel is obligatory upon someone, through *kaffarah* or *nadhr,* and he cannot arrange it, he must sacrifice seven sheep one after another, and if that is not possible fast for 18 days. (*al-Tadhkirah*)

Taqlid and Ish'ar

'Taqlid; in this context, means putting a shoe or the like in the neck of the sacrificial animal. *'Ish'ar'* means making an incision in the right side of the hump of a camel or cow and letting it be stained by blood. The Sunni jurists regard *ish'ar* and *taqlid* as *mustahabb* except Abu Hanifah, who says that the *taqlid* of the sheep and the camel is *sunnah,* but *ish'ar* is by no means permissible due to the pain it causes to the animal. (*al-Mughni*) We all favour kind treatment of the animals, and at the same time we are all Muslims. Islam has permitted the slaughtering of animals and even made it obligatory in case of *hady,* as Abu Hanifah also concedes by his act and verdict. In this light, *ish'ar* is more entitled to permissibility.

Charity to Non-Muslims

Al-Sayyid al-Khu'i, in his book on the rites of Hajj, says, "The Hajj pilgrim giving something in charity (*sadaqah*) or gifting the meat of the slaughtered animal, may give the latter to anybody he wishes, even a non-mu'min or a non-Muslim."

In general the Imamiyyah permit the giving of *non-wajib sadaqat* or making of endowment (*waqf*) in favour of a Muslim or a non-Muslim. Sayyid Abu al-Hasan al-'Isfahani, in his *Wasilat al-najat*, says: "In giving of *mustahabb sadaqah,* poverty or possession of iman or islam is not a condition for the recipient. He may be a well-to-do man, a non-'Imami, a Dhimmi, and a total stranger (not a blood relation of the giver of charity)." Al-Sayyid al-Kazim, in the appendices of *al-'Urwat al-wuthqa,* permits giving of *sadaqah* even to a warring infidel (*kafir harbi*).

The Burning or Burying of Slaughtered Animals

It is a custom among Hajj pilgrims nowadays that they offer money to whoever would accept the *hady*[4], which he on receiving either buries or throws away because the number of the slaughtered animals is great and nobody is around to make use of their meat.

Throughout whatever I have read I did not come across anyone who should raise a question about the permissibility or otherwise of this practice. In 1949 a group of Egyptian pilgrims asked the al–'Azhar for a fatwa, asking the permission for giving the price of the *hady* as help to the needy.

In reply, al–Shaykh Mahmud Shaltut, in Vol. 1, No.4 of the journal *Risalat al–'Islam* which was issued by the Dar al–Taqrib at Cairo, considered it obligatory to make the slaughter even if it should require burning or burial of the bodies of the slaughtered beasts.

I contested his opinion in a long article which appeared in two successive numbers of the above–mentioned journal in the year 1950. When the Dar al–'Ilm li al–Malayin, Beirut, wanted to bring out a new edition of my book *al–'Islam ma'a al–hayat,* I included it also with a title *"Hal ta'abbadana al–Shar' bi al–hadyfi hl yutrak fihi li–al fasad?"* ("Does the Shari'ah command us to make the sacrifice in order to rot?").

There, I have drawn the conclusion that the *hady* is obligatory only when one can find someone to eat it or where it is possible to preserve the meat through drying or canning. But when the sacrifice is solely carried out for destruction through burning or burying, its permissibility in the present conditions seems doubtful and questionable. Anyone who wishes to see the details of my argument may refer to the second edition of *al–'Islam ma'a al–hayat.*

Later I came across a tradition in *al– Wasa'il* which confirmed my position, and which the author had placed in the Book of *udhiyyah* (sacrifice) in a section entitled *"Bab ta'akkud istihbab al–'udhiyyah".* The tradition reads:

عن الصادق عن أبائه عن رسول الله (ص) أنه قال:

"إنما جُعل هذا الأضحى لتشبع مساكينكم من اللحم فأطعموهم."

From al–Sadiq ('a), from his ancestors, from the Prophet (S), that he said:
"This sacrifice has been instituted to feed the poor among you with meat. So feed them."

Although this tradition is related particularly to voluntary sacrifice, it also throws light on the purpose behind *al–hady al–wajib.*

1. This is in agreement with the fatwas of al–Hakim and al–Khu'i.
2. The distance of Mina from Makkah is one parasang (approx. 4 miles).
3. It may be noted that whenever there is an explicit text of the Qur'an there is also agreement and consensus between the Islamic schools of fiqh and no difference between the Sunni s and the Shi`ah. The divergence of opinion between them arises either on account of the absence of nass (text), or its being synoptic (mujmal), or its weakness, or its contrariety with another text, or in its interpretation and application. This is a definite proof of the fact that all of them are derived from a single source.

4. Al–Sayyid al–Hakim says, "The duty to offer the hady in sadaqah does not remain if one cannot do it... and when the poor man would not accept it without money, it is not obligatory."

Between Makkah and Medina

As mentioned, the first rite in Mina on the 10th is *ramy* of Jamrat al–'Aqabah, after that the offering of *hady,* and then thirdly, *halq* or *taqsir.* We have already discussed the third under the head "*Halq* or *Taqsir*." We have referred to the rule about doing the *halq* or *taqsir* before the *dhabh* when discussing the order of the rites under the head "In Mina", where the reader will find its details.

When the pilgrim completes his rites in Mina on the day of 'Id (such as *ramy* and *dhabh*), he returns to Makkah to perform the *tawaf al–ziyarah;* then he offers its related *rak'atayn* and performs the *sa'y* between Safa and Marwah. According to the four Sunni schools, he returns to Mina after that *tawaf* and everything becomes permissible to him thereupon, even sex. According to the Imamiyyah, he has to perform another *tawaf* the *tawaf al–nisa',* and offer its related *rak'atayn.* Sex does not become permissible to the pilgrim, from the Imamiyyah viewpoint, without this *tawaf* which we have already discussed in detail above.

The Night at Mina

After completing the *tawaf,* the pilgrim must return to Mina during what are called Layali al–Tashriq, which are the nights of the llth, 12th, and 13th––with the exception of him who being in a hurry departs after midday and before sunset on the 12th; there being nothing against him who leaves under these circumstances on the third day, in accordance with the verse:

فَمَنْ تَعَجَّلَ فِي يَوْمَيْنِ فَلَا إِثْمَ عَلَيْهِ

He that departs on the second day incurs no sin (***2:203***)

According to Abu Hanifah, to stay overnight in Mina is *Sunnah* not *wajib.* Those who consider it *wajib* agree that it is a rite and not a *rukn.* They disagree, however, regarding the necessity of *kaffarah* upon the defaulter. According to Ahmad ibn Hanbal, there is none; according to al–Shafi'i, a *mudd* (*al–Tadhkirah, al–Mughni, Fiqh al–Sunnah*); and according to Malikis, a sacrifice (al–Zarqani's *sharh* of Malik's *Muwatta'*).

According to the Irnamiyyah, "If one spends the night at a place other than Mina, there is nothing upon him if he spends it at Makkah praying all the night until morning; but if the night is spent there without prayer, or somewhere else, in prayer or otherwise, he must sacrifice a sheep, even if the default was on account of oversight or ignorance". (al–Sayyid al–Hakim's *Manahij al–nasikin*).

There is no obligatory rite for the nights in Mina, though spending them in prayer and worship is *mustahabb.*

Ramy during the Ayyam al-Tashriq

The schools agree that there is no rite except *ramy* of the three *jimar* every day during the three days called *ayyam al–tashriq,* regardless of whether the pilgrim is performing *Hajj al–tamattu; al–'ifrad* or *al–qiran. As* to the number of pebbles and other things they have been mentioned under "Jamrat al–'Aqabah."

According to the Imamiyyah, the time of *ramy* on each of the three days extends from sunrise until sunset, midday being the preferable hour. The other schools say that it extends from midday until sunset, and if done earlier should be repeated. Abu Hanifah permits *ramy* before midday only on the third day. *Ramy* after sunset is permissible only for those with a [valid] excuse.

All the five schools are in consensus about the number of *jimar* and the way of performing the *ramy* on the three days. Below is the way of its performance as described by *al–Tadhkirah* and *al–Mughni.*

The pilgrim performs *ramy* on each of the three days by throwing 21 pebbles, seven in each of the three times. He begins at the first *jamrah,* al–Jamrat al–'Ula, which is the farthest of them from Makkah and nearer to Masjid al–Khayf. It is *mustahabb* to toss the pebble in a fashion called *hadhf*[1], from the left side standing at Batn al–Masil, and to say *takbir* with every pebble that is thrown and to pray.

After that, he proceeds to the second *jamrah,* called al–Jamrat al–Wusta, halts at the left side of the way, and, facing the *Qiblah,* praises Allah and prays for blessings upon the Prophet (S), then moving ahead a little prays, and then throws the pebbles in the same way as above, then pauses and prays after the last pebble.

Then he moves on to the third point called *Jamrat al–'Aqabah,* and performs the rite of *ramy* as before, without any pause after finishing. With this the rites of *ramy* for the day are complete.[2]

The total number of pebbles thrown on the three days is 63 (that is, if one spends the night of the 13th in Mina), 21 each day.

With the seven thrown on the day of 'Id the total number is 70.

The author of *al–Tadhkirah,* after the above description, says that there is no difference of opinion about

it. The author of *al–Mughni* makes a similar remark, adding that Malik has opposed the raising of hands.

The description of the rites of *ramy* given by the author of *al–Mughni* is similar if not exactly the same as the one given above by the author of *al–Tadhkirah.*

All schools, except Abu Hanifah, agree about the order of the *ramy* of the *jimar,* and that if one of them is stoned out of turn, then it is obligatory to repeat the rite in the correct order. Abu Hanifah says that the order is not binding. (*al–Tadhkirah, al–Mughni*)

The *ramy* may be performed on foot or from a mount, though the former is better. It is permissible for one who has an excuse that someone else may perform it for him, and there is nothing upon one if he omits the *takbir,* the prayer or the pause after the second *jamrah.*

If the *ramy* is delayed by a day intentionally, or on account of ignorance or oversight, or is put over completely until the last day of *Tashriq* and is performed on a single day, the pilgrim does not incur a *kaffarah according* to the Shafi'is and the Malikis. Abu Hanifah says that if one, two, or three pebbles are delayed by a day, for every pebble delayed a poor man must be fed; if four are delayed by a day, a sacrifice becomes essential.

All the four schools are in consensus that if one does not perform the *ramy* at all until the days of *Tashriq* are past, he is not obliged to perform the rite later any time. But they disagree as to the related *kaffarah,* which, according to the Malikis is sacrifice regardless of some––even one––or all of the pebbles being omitted; according to the Hanafis the sacrifice is required for omitting all, and for fewer one must feed a poor man for every pebble omitted.

The *kaffarah* according to Shafi'is is a *mudd* of food for every pebble if two are omitted; for three a sacrifice becomes obligatory. (Ibn Rushd's *Bidayah, al–Mughni*)

The Imamiyyah say, 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 Makkah, 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; in any case there is no *kaffarah* upon him. (*al–Tadhkirah*) This agrees with the *fatawa* of al–Sayyid al–Hakim and al–Sayyid al–Khu'i, with the difference that the former regards the legal grounds in favour of the obligation of completion of the rite as stronger (*aqwa*), whereas the latter considers it as dictated by caution (*ahwat*), and both agree that intentional omission of *ramy* does not invalidate the Hajj.

We referred earlier to the consensus of all the schools that it is sufficient for the Hajj pilgrim to remain for only two days of Tashriq in Mina and that he may depart before the sunset on 12th; if he remains until sunset, it is obligatory upon him to stay overnight and perform the rite of *ramy* on the 13th. The Imdmiyyah, however, say that the permissibility of leaving on the 12th is only 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 13th.

Offering *salat* in the Masjid al–Khayf at Mina is *mustahabb,* so also on the hill called Khayf. (*al–Tadhkirah*)

On returning to Makkah after the rites of Mina, it is, according to Imamis and Malikis, *mustahabb* to perform the *tawaf al–wada;* which, according to Hanafis and Hanbalis, is *wajib* for non–Makkans and those who do not wish to stay on in Makkah after returning from Mina. There is no *tawaf al–wada;* nor any *fidyah,* for women who enter their periods before the departure, even from the viewpoint of those who consider the *tawaf* as obligatory; however, it is *mustahabb* for her to bid farewell to the House from the door nearest to it and without entering al–Masjid al–Haram.

Here we conclude the discussion about the rites of Hajj.

1. 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.
2. Al–Sayyid al–Hakim says that it is desirable that the third ramy should be done with one's back toward the Qiblah. According to al–Mughni it should be done facing the Ka'bah.

The Dhu al-Hijjah Moon

It happens often that the Dhu al–Hijjah new moon is established for a non–Imami scholar, and he declares its sighting, and the authorities of al–Haramayn al–Sharifayn make it compulsory for all pilgrims to follow his ruling, regardless of whether the new moon has been established for an Imami *mujtahid* or not. In such a case, what is an Imami pilgrim to do about the *wuquf* in ‘Arafat and other rites related to specific dates and times if he cannot act according to his own school of fiqh? Is his Hajj invalid if he makes the halt with others, performing all the rites simultaneously with them?

Al–Sayyid al– Hakim, in his *Manahij al–hajj* (1381 H.), p. 91, says: "When the non–Imami authority (*hakim*) rules that the new moon has been sighted, so that the halt in ‘Arafat takes place on the 8th of Dhu al–Hijjah and the halt in the Mash'ar on the 9th, then on the principle of *taqiyyah,* or the fear of being harmed, the halt with others is valid and relieves one of the duty. The same holds in case of a *na'ib* undertaking Hajj on another's behalf or one on a *mustahabb* Hajj of oneself or that of another. Also, there is no difference with respect to fulfilment of the duty whether he knows or not that the ruling (of the non–Imami *hakim*) is contrary to the reality."

Al–Sayyid al–Khu'i in *Manasik al–hajj* (1380 H.), p. 80, says: "When the new moon is established for a non–Imami *qadi* and he rules that it has been sighted, but the sighting of the new moon is not established for the Shi’ah ‘ulama', to follow others in making the halt is obligatory and satisfactory of the

Hajj duty if there is a probability of the ruling being correct. One who acts contrary to the dictates of *taqiyyah* and the possibility of being harmed, thinking that legal caution lies in acting contrary to them, has committed something forbidden and his Hajj is invalid."[1]

There is no doubt that God desires ease not hardship for His servants, and there is hardship in repeating the Hajj another time, even for one who has the means to undertake it more than once. But what should a poor man do who returns the next year to find the same thing to have occurred again? Should he keep on repeating the pilgrimage, two, three, or four times... until it coincides with the ruling of his school? May God's peace and benedictions be upon Amir al-Mu'minin, the Sayyid al-Wasiyyin, who said:

إن الله كلّف يسيراً ، ولم يُكلف عسيراً ، وأعطى على القليل كثيراً.

God has assigned duties which are easy to fulfil not difficult to cope with; and He rewards much for little.

Besides, we know that such kind of things happened during the era of the Infallible Imams (‘a) and not one of them is known to have commanded the Shi’ah to repeat the Hajj. It is on this basis that al-Sayyid al-Hakim, in *Dalil al-nasikin,* says, "To fall in with the ruling of the non-Imami *qadi* is permissible; this is in accordance with definitive practice from the times of the Imams (*‘a*), which has been to follow them (i.e. the non-Imamis) in the halt (at ‘Arafat), and no other alternative has ever been suggested."

However, al-Sayyid al-Shahrudi, in his *Manasik al-hajj,* says, "It is permissible to follow, in regard to this question, the *fatwa* of the absolute *mujtahid* (*al-mujtahid al-mutlaq*) who considers it permissible." To tell the truth, to me this kind of thing is not digestible when coming from a *mujtahid mutlaq,* although I have read and heard such things from more than one *mujtahid* whom the common people follow.

Because, a *mujtahid mutlaq* in his *fatwas* should either take an affirmative or a negative stand, and if he doesn't, has no right to be a legal authority (for *taqlid*). Someone may say that it is not a condition for being *mujtahid mutlaq* that he should never abstain from giving a definitive *fatwa* or give up caution (*ihtiyat*) in some matter, for ‘caution is the path of salvation' (*al-'ihtiyat sabil al-najat*). In answer I would say, this is an obvious fallacy.

Because, *ihtiyat* in a matter is something, and giving a *fatwa* to consult someone else is another matter. In fact when the *mujtahid* sees the necessity of *ihtiyat* in a matter, he does not give a *fatwa* upon it—as is the practice of legal authorities regarding several issues?

Here we affirm al-Hakim's position, because we understand from the necessary grounds for *taqiyyah that* the 9th is a requirement for *wuquf* in 'Arafat when that requirement can be satisfied in presence of security and absence of any fear of harm. But in case of insecurity and fear this condition does not stand, exactly like the requirement for *sajdah* (prostration) in *salat* that it should be made on something which is not edible or wearable (*ghayr al-ma'kul wa al-malbus*)—a requirement which applies to conditions when security is present and which falls in case of insecurity and fear.

1. Our teacher al–Sayyid al–Khu'i makes the absence of knowledge (that the fatwa of the non–Imami authority about the sighting of the new moon is contrary to fact) a condition for the Hajj being satisfactory of the duty. But al–Sayyid al–Hakim considers the knowledge of its contradiction with reality or absence of such knowledge indifferent to the Hajj (performed on the basis of the non–Imami faqih's declaration) being satisfactory of the duty. Here we affirm al–Hakim's position, because we understand from the necessary grounds for taqiyyah that the 9th is a requirement for wuquf in 'Arafat when that requirement can be satisfied in presence of security and absence of any fear of harm. But in case of insecurity and fear this condition does not stand, exactly like the requirement for sajdah (prostration) in salat that it should be made on something which is not edible or wearable (ghayr al–ma'kul wa al–malbus)—a requirement which applies to conditions when security is present and which falls in case of insecurity and fear.

Ziyarah of the Greatest Prophet (S)

The *ziyarah* of the Greatest Prophet– may Allah's peace and benedictions be upon him and his Family– is a highly *mustahabb* duty. He is reported to have said, "Whoever visits my grave after my death is like one who has migrated with me in my life." He also said, "A *salat* in my mosque is like a thousand ones offered elsewhere with the exception of al–Masjid al–Haram, as to which a *salat* there is equal to a thousand in my mosque." It is emphasized that the *mustahabb 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.'

To visit all other mosques of al–Madinah, like Masjid Quba, Mashrabat Umm Ibrahim, Masjid al–'Ahzab, etc. and also the graves of the martyrs, in particular that of Hamzah (*'a*) at Uhud, is also *mustahabb.* Also *mustahabb* is paying visit to the tombs of the Imams ('a) buried in al–Baqi', viz., al–'Imam al–Hasan, al–Imam Zayn al–'Abidin, al–Imam al–Baqir, and al–'Imam al–Sadiq, who upon whom all be peace and best of blessings.

As to the *ziyarah* of Fatimah ('a), the mother of al–Hasan and al–Husayn, it is as important as that of her father, of whom she is a part (*bidha'ah*). There are several reports about the location of her honoured tomb, of which the most probable seems to be the one according to which she was buried in her house adjacent to her father's mosque. When the mosque was extended by the Umayyads, the grave also came to be included inside it. This is what Ibn Babawayh (al–Shaykh al–Saduq) believed. We think this is highly probable, because it agrees closely with the tradition that her grave is in a garden between the grave (of the Prophet) and the *minbar.* Allah alone has knowledge of everything.

History of al-Haramayn al-Sharifayn

The Ka'bah

'It is the first temple ever to be built for men, a blessed place a beacon for the nations' (3:96) and the most ancient of them in the Middle East. It was first built by Ibrahim, the ancestor of the prophets, and Isma'il, his son, and the Qur'an quotes them praying as they raised its walls:

وَإِذْ يَرْفَعُ إِبْرَاهِيمُ الْقَوَاعِدَ مِنَ الْبَيْتِ وَإِسْمَاعِيلُ رَبَّنَا تَقَبَّلْ مِنَّا إِنَّكَ أَنْتَ السَّمِيعُ الْعَلِيمُ

And *when Ibrahim* and *Isma'il raised up the foundations* of *the House* (and *dedicated it, saying*): *'Our Lord, accept* this *from us; Thou hear all* and *know all'.* (2:127)

Isma'il gathered the stones and Ibrahim put them on one another until the walls were raised to the height of a man. Then the Black Stone was put in its place. According to tradition, the Ka'bah (*al-Bayt al-Atiq*) was nine cubits high and had an area of twenty by thirty cubits when Ibrahim ('a) built it. It had two doors, but was without a roof.

As to the Black Stone, it is said to have been brought by Gabriel from heaven. It is also said that Adam brought it along with him on his descent from Paradise, that at first it was snow-white and was blackened by the deeds of men, and so on. There is no harm in not believing any of these stories and the like, nor are we obliged to establish their verity, nor to know the origin of the Stone. All we are obliged to do is to revere it because the Prophet (S) considered it sacred and revered it. If someone asks the secret behind the Prophet's regarding this stone as sacred, all we can say is that only God and His Apostle know best.

According to some traditions the Ka'bah stood as Ibrahim and Isma'il had built it until it was rebuilt by Qusayy ibn Kilab, the fifth ancestor of the Prophet (S). The structure built by Qusayy stood until the time when the Prophet was 35 years old, when a great flood demolished its walls. The Quraysh rebuilt it. When the walls were raised to a man's height the clans disputed as to who should receive the honour of lifting the Black Stone into its place. They almost came to war with one another, if it was not for their making Muhammad the arbiter amongst themselves.

The Prophet's solution was to spread a cloak on the ground. Then taking up the Black Stone he laid it on the middle of the garment. "Let the eldest of each clan take hold of the border of the cloak," he said. "Then lift it up, all of you together." When they had raised it to the right height, he took the Stone and placed it in the corner with his own hands.

May God's benedictions and His mercy be upon you, O Apostle of God! You raised the Stone first with

your noble hands from the ground and then put it into its place again with your hands. Thus you made God and man well pleased with you. This event was a definite evidence of your superiority over all, and of your being a ‘mercy for all the worlds', before your declaration of the apostlehood as after it. Your act was a clear sign that you were the bearer of a Divine mission, and that those who rejected you were enemies and opponents of the truth and of humanity.

The Ka'bah remained in its condition until Yazid ibn Mu'awiyah became caliph and till ‘Abd Allah ibn al–Zubayr challenged his sovereignty over the Hijaz. Yazid's forces installed catapults on the hills around Makkah and bombarded the Ka'bah with tens of thousands of stones. The Ka'bah caught fire which finally demolished its structure. Ibn al–Zubayr repaired it as it was before without making any changes, and he put a wooden fence around it. When ‘Abd al–Malik ibn Marwan came to power, Ibn al–Zubayr was besieged by his forces under al–Hajjaj ibn Yusuf, who ultimately killed Ibn al–Zubayr after causing damage to a part of the Ka'bah. Al–Hajjaj rebuilt the demolished portions and made some changes in the walls as they used to be, and also had one of its doors (the ‘western door') blocked.

The Ka'bah remained in the altered condition after al–Hajjaj's repairs until the year 1040/1630 when its walls collapsed due to heavy rains. Thereafter the Muslims from every corner gathered together to restore it and collected contributions from various regions of the Muslim world to rebuild it in the form as it stands to this day.

The Prophet's Mosque

When the Prophet came to al–Madinah after the migration, the first thing that he built there was the mosque. Afterwards he built the houses by its side. At first its area was 30 by 35 metres, which the Prophet (S) extended, making it 57 by 50 metres.

There was no *minbar* in the mosque at the time of its making. The Prophet (S) used to deliver his sermons leaning against one of the pillars, which were made of trunks of date–palms. Later, the Companions built a wooden *minbar* with two steps. ‘Umar ibn al–Khattab, during his reign, extended the mosque by five metres on southern and western sides and fifteen on the northern. He left untouched the eastern side where the dwellings of the Prophet's wives were situated.

‘Uthman ibn ‘Affan demolished the mosque and rebuilt it, extending it in area by an amount almost equal to the one before by ‘Umar and left the houses of the Prophet's wives untouched. The building remained as ‘Uthman had made it until al–Walid ibn ‘Abd al–Malik demolished it again and extended it on all sides, and including even the houses of the Prophet's wives, together with that of ‘A'ishah, thus making the Prophet's tomb a part of the mosque.

The building constructed by al–Walid stood until 266/879 when al–Mahdi, the ‘Abbasid caliph, greatly extended its northern side. The building endured until the year 654/1256 when a fire broke out bringing down the roof and burning doors and the Prophet's *minbar.* The Mamluk sultan al–Zahir *rukn* al–Din

Baybars I (658–676/1260–1277) ordered its reconstruction and the mosque was restored to its original form before the fire.

In 886/1481, lightning struck the mosque destroying all the building except the chamber of the Prophet's tomb and a dome in the mosque's courtyard. It was rebuilt by the Mamluk king al–'Ashraf Sayf al–Din Qait Bay (872–901/1467–95) in a fashion better than before. In the 10th/16th century the Ottoman sultan Salim had it renovated, building the *mihrab* (niche) on the western side of the *minbar* and which is still there.

In the 13th/19th century the Ottoman sultan Mahmud II (1223–1255/1808–1839) had the green dome constructed. During the same century the mosque again needed repairs, which were carried out by the orders of the Ottoman sultan. This time, the engineers dismantled the old building little by little gradually building in its place the new structure which was completed in 1277/1861.

و صل اللهم على محمد و اهله الطاهرين و عرف بيننا و بينهم, و ارزقنا شفاعتهم يوم نلقاك,

يا مبدل السيئات بأضعافها من الحسنات... انك ذو الفضل العظيم

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