GRAND AYATOLLAH
As-Sayyid Mohammad Hussain Fadhlullah

The MANIFEST EDICTS

(A Manual of Islamic Practise)

Translated by
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بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

In the Name of God, the
Compassionate, the Merciful

Translator's Introduction

In carrying out the task of translating this book, I have aimed at conveying the meaning in standard English, in the main, from a predominantly juridical Arabic text. I hope I have succeeded in that.

I also hope that this translation will help, in some measure, to make this subject accessible to people, who are unable to read and/or understand Arabic, and who are keen on understanding Islamic jurisprudence and matters of religious implications.

Although I have been liberal in translating the author's introduction, I have done my level best to adhere to the text, although not slavishly.

However, I have decided to use the same Arabic terminology appearing in italic letters that is common to the subject matter, such as *halal* and *haraam* (licit and illicit) with their equivalent in English, as a first reference. I have done so to ensure consistency, for the majority of these terms denote specific meanings on which the *mukallaf* (the person obligated to observe the precepts of religion) rely in acting upon the *fatwa* (religious edict). Thereafter, I have confined the use to the Arabic term.

To further guide the reader through the maze of this broadly technical terminology, I listed the words and phrases, with their English definitions, in alphabetical order under the **Glossary**. It is worth noting though that the glossary is solely my contribution and does not constitute a section of the book. Where I opted for the English dictum rather than the Arabic, I found it necessery at certain instances, to put the Arabic words between brackets after the English, such as "rational judgement" – *ad-daleel al-aqli*. This has been done to reinforce the translated word or phrase and remove any ambiguity; you may find many of these words in the Glossary.

Where I thought the meaning of the text would be enhanced or rendered more understandable, I have shown the additional description, which I must hasten to add that it does not constitute part of the original text, within square brackets.

The use of masculine pronouns, such as he, his, him, and himself, refers, where applicable, to both the sexes.

For the translation of Qur'anic verses, I used "Holy Qur'an", translated by M.H. Shakir, published by Tahrike Tarsile Qur'an Inc. P.O. Box 1115, Elmhurst, New York 11373, USA, although I have made some modifications as I deemed fit. For the benefit of those who would wish to trace the Qur'anic quotations, I have used crescent-shaped brackets to enclose the information concerning the numbers of *surahs* (chapters) and *ayahs* (verses), with an oblique to separate the two; the first part refers to the *surah,* and the second to the *ayah,* at the end of the quotation.

This translation is based on the Arabic second edition of 1419H. (1998 C.E.), published by Darul Malaak, Beirut, Lebanon. It also contains four sections on *Zakat* (alms) tax, *Khums* (20% tax) on net earnings, enjoining what is good and forbidding what is evil, and Self-defence, which were taken from the first edition, 1420 H. (1999 C.E), of *"Fiqh ash-Shari'a"* - Jurisprudence, the expanded Manual of Islamic Practice, by the same author and the same publisher.

In its second edition, it has been decided to change the title of the Book to "The Manifest Edicts", which is closer to the Arabic Title "Al-Fataawal Wadhiha". The title in the first edition was "Clear Guide to Islamic Rulings".

I would like to express my thanks to Hujjatul Islam as-Sayyid Hussain ash-Shami, the Director General of Dar al-Islam Foundation, London UK, who most generously gave of his time in solving difficulties that arose during the translation.

Nevertheless, no matter how wide the knowledge you have, and how sincere and good the effort you put in such work, it remains far from perfect for perfection is God's exclusive preserve. I, therefore, urge the readers to write in, should they find it necessary to raise any point or make any remark insofar as the translation is concerned.

In the end, I pray to the Almighty, to forgive me any inadvertent mistake or error of judgement I may have made in the course of this translation.

Najim al-Khafaji, BA, FIL
London, 2004 UK.

Publisher's Introduction

Ar-Risalah al-Amaliyyah, or Manual of Islamic Practice, is a reference book for Muslims. That is, in conducting themselves, on a spiritual, as well as mundane, level, they should observe what Allah, the Exalted, has ordained lawful and refrain from embarking on that which He has declared unlawful.

In the second half of the twentieth century the spread of Islam in the West gained momentum. In part, this has been due to the migrations of Muslims to the new lands, especially from the Arab World, and in another to people embracing Islam. Regrettably, the first and second generations among Muslims immigrants started to lose their mother tongue, particularly in its written form. Their first language has become that of the host countries, be it English, French, Spanish etc.

The Religious Authority, or *Marji',* Grand Ayatullah as-Sayyid Mohammad Hussain Fadhlullah is known for his knack in recognising the needs of the contemporary world. He is aware of Muslims ideological and juridical needs. Thanks to his novel approach in jurisprudence and his wide grasp of the modern world needs, the intelligentsia, especially among the younger generations, see in him a representation of a trend which was set by Martyr Ayatullah as-Sayyid Mohammad Baqir as-Sadr in the mid seventies, and thus follow his *fatwa* in ever increasing numbers.

To martyr as-Sadr goes the credit of making a leap in the way *fiqh* (jurisprudence) is presented to the public at large. His was down-to-earth approach; in his Manual of Islamic Practice, *"al-Fatawal Wadhiha"* – The Manifest Edicts, he made the rather complex subject matter of *fiqh* more accessible to the laity. "The Manifest Edicts" has been expanded and further improved by Ayatullah Fadhlullah.

Among its main objectives, Dar al-Malaak aims to disseminate Islamic thought, knowledge, and culture among Muslim communities. We hope this translation will fulfill, in some measure, the needs of Muslims, especially those living in foreign lands, and guide them through the maze and complexities of their day-to-day life.

Finally, we urge the readers and institutions alike to provide us with their comments on this translation, so that we could take any remarks into account in future editions. Praise be to Allah, Lord of the worlds.

Dar al-Malaak
Berut, Lebanon
Jamadil Akhira, 1425H. (July, 2004 C.E.)

Glossary

Ada': Lit: on time; when prayer, or any other act of worship, is performed on its prescribed time. *(Compare qadha).*

Adnal hil: Nearest point to the area of *Haram* where *ihram* can be worn, its *niyyah* can be renewed.

Adhan:

The call to prayer.

Al'amr bilma'rouf wannahi anil munkar:

Enjoining what is good and forbidding what is wrong (or evil).

al-Hakim ash-Shari':

Jurist or *Marji'*.

(a.s.):

An acronym for "*Alaihis salam*": May peace be with him/them.

Asr:

Afternoon prayer.

Ayah:

Lit: sign; verse of the Holy Qur'an.

Ayahs of Sajdah:

The four Qur'anic Verses in the Chapters: Iqra', an-Najm, as-Sajdah, and Fussilat; it is obligatory to prostrate oneself on hearing them recited.

Ba'adaz zawaal:

After the disc of the sun descends towards the West. (See zawaal).

Basmalah:

An acronym for "*Bismillahir Rahman ar Rahim*", In the Name of Allah, the Compassionate, the Merciful.

Batil:

Lit: null and void, or invalid and unlawful, e.g. A contract becomes *batil* when it does not satisfy the divine laws of Islam.

Dhuhr:

Lit: noon; lunchtime prayer.

Dhikr:

Remembrance: the utterance of *"subhanal lah, wal hamdu lillah, wala illaha illa lah, wallahu akbar"* – Glory be to Allah; praise be to Allah; there is no god but Allah; Allah is great, which is usually made during the third and fourth *ruku'* of a prayer.

Dirham:

A unit of weight. 3.456 grams of silver.

Eid:

Festivities marking the end of the fasting season, or festivities of sacrifice after performing *hajj*.

Farsakh:

A unit of distance, equivalent to eleven kilometers.

Fatwa:

Religious edict.

Fidya:

Redemption (from certain religious obligations) by a material donation or a ritual act.

Fiqh:

Jurisprudence.

Ghusl:

Obligatory bathing that is required after certain acts or occurrences, as a prelude to some acts of worship.

Hadith:

Prophetic traditions: sayings and actions of Prophet Mohammad (s.a.w.).

Hady:

Sacrificial offering, as part of *hajj* rituals.

Hajj:

The pilgrimage of Mekka undertaken according to the prescribed ritual during the month of Thil Hijja.

Hajjatul Islam:

A Muslim's maiden pilgrimage to Mekka, that is obligatory when you can afford the journey.

Hajjul Ifraad:

A type of *hajj* which is applicable to those who live in Makkah or at a certain distance from it.

Hajjul Qiraan:

The performance of *hajj* and *umrah* at the same time.

Hajji-ut-Tamatu:

A type of *hajj* which is applicable to those living outside Makkah, i.e. away from the prescribed distance.

Halal:

Lawful for use, consumption, or to act upon.

Haraam/Muharram:

Unlawful or forbidden for use, consumption, or to act upon.

Harakat:

Marks or symbols, such as *shaddah, maddah, tanween, hamzatul wasl or qat'*, appearing above the Arabic characters or below them that denote and aid the proper pronunciation of the words, both independently and in relation to other words in the sentence.

Haram:

Lit: sacred, holy; the complex of the Grand Mosque (*al masjidil haraam)* in Makkah and the surrounding area.

Haydh:

A woman's monthly period.

Heddet tarakhus:

The point at the periphery of a town where, for example, *adhan* could be heard. This concerns distances to determine whether prayer should be said *tamam* or *qasr*.

Ibadaat:

Acts of worship.

Ijarah:

Hire.

Ihram:

The special two-piece seamless attire worn by pilgrims. Also, the state of ritual consecration during which the pilgrim should abstain from certain acts, such as not combing, not shaving, and observing sexual continence.

Ihtiyat:

Lit: precaution, or prudence; a level of religious legal judgement by a jurist.

Ihtiyat wujubi:

Obligatory precaution that must be adhered to. Again, a level of religions legal judgement by a jurist.

Ihtiyat mustahab:

Voluntary precaution. A level of juridical judgement.

Ijtihad:

Lit: exertion; the process of arriving at judgements on points of religious law using reason and the principles of jurisprudence *(usul al-fiqh)*.

Inshallah:

God willing.

I'tikaf:

Lit: seclusion; applying oneself zealously for the service of Allah, for a given period, usually in a mosque.

Iqamah:

A shortened form of *adhan*, heralding the inauguration of prayer.

Istihadhah:

Undue menses, or lesser *haydh*.

Istikharah:

The process of asking Allah for guidance in certain matters you are unable to decide on, through, for example, consulting the verses of the Holy Qur'an.

Istisqa':

prayer for rainfall.

Itq:

Freeing of a slave.

Jabirah:

Lit: splint; a generic name used for any form of dressing applied to any part of the body as a result of injury or illness.

Jamarat:

Places of the three stone slabs (or pillars) representing the devil, at Mina (See *rami*).

Janabah:

The state of being ceremonially unclean, especially after a sexual act that may or may not lead to ejaculation.

Jihad:

Lit: effort or striving; holy war against the infidels, especially in self-defence.

Kafir:

Unbeliever.

Kaffarah:

Atonement, or expiation: making repayment for some failure to act, harm done to others, etc.

Khabath:

material uncleanliness *(najasah)* such as blood and urine.

Khums:

A type of religious tax, equivalent to one fifth of net taxable income.

Kurr:

A unit of volume, equivalent to 384 liters of water.

Madhalim:

Material or moral restitution or compensation to people you have wronged.

Maghrib:

Sunset prayer.

Maghsoub:

Usurped or acquired by unlawful means.

Mahaarim:

One's immediate relatives – according to a certain classification detailed in *Shari'a* law.

Makrouh:

Abominable act.

Manasikul Hajj:

Pilgrimage rites.

Marji':

Lit: reference point for emulation, or religious authority; a cleric whose knowledge and probity qualify him to be followed in all points of religious practice and law by the generality of Shia Muslims.

Mu'amalaat:

Transactions.

Mubah:

(Of water and other equity); free for public use.

Mujtahid:

A clergyman who has studied sufficiently and achieved the level of competence necessary to interpret *shari'a* law (see *Ijtihad*).

Mukallaf:

Comopos mentis; the person obligated to observe the precepts of religion.

Musafir:

Traveller.

Mustahab:

A voluntary, and meritorious, act of worship (see *wajib* – obligatory).

Mudhaf:

(Of water); mixed, not pure.

Mutahirat:

Purifying agents.

Mutlaq:

(Of water); pure, not mixed.

Muwakkil:

Mandator, i.e. the person who uses the services of an agent for performing a devotional act for him.

Najasah:

Ritual impurity.

Najis:

Some things are inherently *najis*. Others can become *najis* through contact with an inherently *najis* substances.

Nifas:

Bleeding that occurs after childbirth, miscarriage, or abortion.

Nisab:

Minimum amount of property liable to payment of *zakat*.

Niyyah:

Intention: to designate the prayer, or any other act of worship, one is performing, in that its sole purpose is to seek proximity to Allah.

Niyyah of qurbah:

The intention for prayer, or any other act of worship, made with a view to seeking nearness to Allah.

Niyyah of al Qurbal mutlaqah:

The intention for prayer, or any other act of worship, made with a view to seeking nearness to Allah, but without designating whether it is *ada'* or *qadha'*.

Qadha':

In lieu: when prayer is performed at a later time (see *ada'*).

Qasr:

A concession for a *musafir* (traveller) to perform a two-*raka'a* prayer instead of the full four *raka'a* one, (see *tamam*).

Qiblah:

The direction, of the Ka'ba, one must face while praying.

Qiyam:

Standing upright during prayer.

Qunoot:

The raising of both hands for supplication in prayer.

Raddil madhaalim:

Making amends, or paying reparations.

Raka'a, ruku':

The bowing position in prayer.

Rami:

Throwing seven pebbles or small stones at *Jamarat* on *Eid* day, part of *Hajj* rituals, (see *Jamarat*).

(s.a.w.):

An acronym for *"Sallal lahu alaihi wa aalihi wa sallam"* May peace be with him, i.e. the Prophet and his pure progeny.

Sadaqah:

Alms giving.

Sajdatay-as Sahu, or Sujood as-Sahu:

The two compensatory prostration in lieu of any omission or commission in prayer due to forgetfulness.

Salah/t:

Prayer.

Salatul ayaat:

Prayer for signs, or natural phenomena.

Salatul ihtiyat:

Precautionary prayer.

Salatul lail:

Night voluntary prayer.

Sawm:

Fasting.

Sa'y:

Seven laps of brisk walking between the mounts of Safa and Marwah - an obligatory part of *hajj* rituals.

Shari'a:

Religious law.

Shari'i:

Islamic or legal.

Subh:

Dawn prayer.

Sujood:

Prostration.

Sunnah:

Modes, practices, customs, and traditions of the Prophet Mohammad (s.a.w.).

Surah:

Any chapter of the Holy Qur'an.

Taharah:

Ritual purity.

Tahir:

The state of being ritually pure, the opposite of *najis*.

Takbir:

The utterance of *"Allahu Akbar":* God is Great.

Takbiratul Ihram:

The utterence, at the start of prayer, of *"Allahu Akbar"*: God is Great.

Talbiyah:

Lit. waiting or standing for orders; the utterence of *"labaik allahuma labaik, labaik la sharik laka labaik, Innal hamda wann'imat laka wal mulk, la sharika lak"* - I stand up for Your service, O God ! I stand up for Your service! Verily Yours is the praise, the beneficence, and the dominion! There is no partner with You.

Tamam:

A full four-*raka'a* prayer, (see *qasr*).

Taqiyyah:

Dissimulation about one's religious beliefs in order to protect oneself, family, or property from harm.

Taqleed:

The following, by a lay person, of learned cleric *(Mujtahid)* in matters of religious practice.

Taqseer:

Cutting one's hair, clipping one's moustache or beard, or cutting off the nails - an act that heralds the exit from the state of *ihram*.

Tarwiyah:

Lit. satisfying thirst, or giving attention; the 8th day of hajj.

Tasbeeh:

The statement of *"subhana rabiyal adhemmi wabihamdih/subhana rabiyal al a'ala wabihamdih"* – Glory be to my Lord, the Great, and praise belongs to Him/ Glory be to my Exalted Lord, and praise belongs to Him, usually made during *ruku'/ sujood* in prayer.

Tashahhud:

The statement of faith, *"Alhamdu lilla, Ashhadu alla illah illal lah, wa ashhadu anna Mohammadan abduhu wa rasuluhy, etc"* – I bear witness that there is no god but Allah and that Mohammad is His Messenger, etc. usually made in prayer from a sitting position after the second *ruku'* and third (in *Maghrib*) and fourth (in *Duhur, Asr,* and *Isha'*).

Tashreeq:

Lit. drying meat in the sun; a name given to the 11th and 12th days of Thil Hijjah after the sacrifice at Mina during Hajj.

Tasleem:

The concluding statement of prayer, *"assalamu alaika ayyuha nabiyu warahmatullahi wabarakatuh, assalamu alaina wa'ala ibadillahis saliheen, assalamu alaikum warahmatullahi wabarakatuh"* - Peace be with you, O Prophet and God's mercy and blessing. Peace be with us, and with the righteous servants of God. Peace be with you [all], and God's mercy and blessing.

Tawaf:

Circumambulation - Turning seven times around the Ka'ba.

Tawafun Nisa':

Lit. women's circumambulation: an integral part of hajj devotion, on performance of which and that of its prayer, sexual relations between man and wife could resume.

Tawsilat:

Acts of worship that are embarked on for the good which will result from observing them.

Tayammum:

Lit. Intending or proposing to do a thing; dry ablution, i.e. using dust instead of water, as in the cases of *wudhu* and *ghusl* when, for specific reasons, these acts are not possible.

Thawab:

Reward from God in return for good deeds.

Ulema:

Scholars or doctors of religion.

Ummah:

Islamic community.

Umrah:

Lesser hajj, or visitation that can be performed at any time, except on the days of *hajj* in the month of Thil Hijjah.

Umrah Mufradah:

A voluntary type of *umrah.*

Umrat-ut-Tamattu:

A visitation ritual that is obligatory before performing hajj.

Urf:

Generally accepted practice, custom, or usage.

Wajib:

An obligatory act of worship, (see *mustahab* – a voluntary act).

Wajibun aini:

The obligation that falls on every adult Muslim.

Wajbun kifa'i:

A collective divinely imposed obligation on the Muslim community; however, if only one Mulsim carried it through, the rest would automatically be absolved of the responsibility of carriying it out.

Waqf:

Religious endowment.

Wudhu:

An act of ablution that is required before the performance of certain actions.

Wuquf:

Devotional stay at Arafat, Mash'ar and Mina as part of hajj rituals.

Witr:

A single *rak'a* that forms the final part of *salatul lail* – night voluntary prayer.

Zakat/h:

Lit. purification; a kind of religious tax: a portion of property bestowed in alms, as a sanctification of the remainder to the proprietor.

Zawaal:

The zenith of the sun, just before it declines towards the West.

Preamble to the Science of Jurisprudence

Introduction

In the Name of Allah, the Compassionate, the Merciful.

**May Praise be to Allah, Lord of the Worlds,
and Peace and Benediction be with the Seal of the Prophets,
Mohammad, his Pure Progeny and Companions.**

When Allah, the Exalted revealed to the Seal of the Prophets the most honorable of Heavenly Messages, He has guaranteed that it is on a par with man's nature. Allah has further ensured that this Message encompasses man's whole being from the cradle to the grave.

This is clearly manifested in the Islamic *Shari'a* Law. It is the law for all aspects of life that guides man's steps throughout, taking into account his special aptitudes and circumstances.

The Need for *Ijtihad*

The main sources of the *shari'a* are the Holy Book and the *Sunnah* (modes, practices, customs, and traditions of the Prophet Mohammad (s.a.w.). Had the rules of *shari'a* been expressed in a straightforward and explicit manner, the process of arriving at such rules from the Book and *Sunnah* would have been accessible for many people. But, it had not been the case, i.e. the rules have permeated the body of the Book and *Sunnah* in such a way that the process has called for scientific effort in the study, comparison and deduction of the rules. Such scientific effort becomes even more necessary, its tools and means more complex and subtle, because of the time separating us from that of revelation. This is particularly so when we know that the time lag had been responsible for the loss of many a *hadith* (Recorded account of the sayings and actions of Prophet Mohammad (s.a.w.).

There has also been the need to verify the veracity of narrators of *hadith*, let alone coping with the change of modes of expression; such

change has made it necessary to develop new ways of making the text more intelligible. False *hadiths* that have pervaded the authentic ones have called for extra vigilance and scrutiny. Furthermore, the advances in the pace of life and its complexities have created unprecedented situations calling for new rulings that should be deducted from a body of laws.

All these and other reasons have led to making the job of deriving the legal ruling a rather complicated one requiring toil and research, although this may not be the case in some instances where the rules are very clear.

The Need for *Taqleed*

In all its spheres, life has continuously posed man with situations drawing on experience. So, no mater what discipline of life you are in, you will know that practising it requires certain knowledge and expertise, and that part of this may generally be available; however, a greater part is not easily accessible, in that it requires scientific skill. For example, in the field of public health, it is commonplace that when you are exposed to cold weather, you may catch cold. Yet, when it comes to the advice on precaution to avoid falling ill and prescribing medications, this is, to a large extent, the exclusive domain of the doctor, or chemist, who are trained in this field. The same goes for the other fields, such as construction, agriculture, and industry.

Every human being is therefore aware that he cannot shoulder the responsibility of scientific research in each and every discipline. This is because it is beyond man's ability and life span on the one hand. If, on the other, this were the case, it was bound to restrict man's thorough coverage of all the different spheres. Hence the recognition by the human race of the specialization of groups of people in the various disciplines. This has been a kind of distribution of work man has adopted by virtue of his nature since the dawn of history.

Islam is not an exception; it has followed this example by devising the principles of *Ijtihad* (lit. exertion: the process of arriving at judgements on points of religious law using reason and the principles of jurispridence) and *Taqleed* (the following, by a lay person, of a learned jurist *'Mujtahid'* in matters of religious practice). *Ijtihad* is the specialization in the science of *Shari'a*, and *Taqleed* is the trust of the laity put in the experts in this field.

Every *Mukallaf (Compos mentis:* The person obligated to observe the precepts of religion), who needs to know the rules of *Shari'a* law, should rely on his religious general knowledge for a start. For those aspects of religious dictates, the *mukallaf* is ignorant of, he should rely on the *Mujtahid* (a jurist who has studied sufficiently and achieved the level of competence necessary to interpret *Shari'a* law). Allah the Most High, did not make it incumbent on everybody to assume the responsibility of *Ijtihad* and toil to arrive at the legal judgement, only as a way to saving time and managing resources in all arenas of life. Allah, Almighty, also did not require the lay person to try to derive the legal judgement directly from the Book and *Sunnah.* He made it obligatory on them to know such rulings from the learned *ulema* (scholars or doctors of religion).

Thus, *taqleed* has become a religious obligation. Accordingly, *taqleed* means the charging with responsibility. It has been termed as such because it entails entrusting the *mujtahid* with the responsibility as though you are putting a necklace around his neck. In a way it is a symbolic contract between the lay man and the *mujtahid* before Allah. That said, *taqleed* does not mean blind bigotry and believing in other peoples' ideas ignorantly and without proof.

Therefore, there is a difference between someone expressing an opinion and you hasten to adopt it without trying to verify or substantiate it, and an express one that you follow with the full knowledge that those proposing it stand to bear the consequences of your advocating it. The first kind resembles aping which is censured by both the *shari'a* and logic; the second is the true following that has been sanctioned by the law of life.

To make *taqleed* a water-tight enterprise, some jurists have ruled that it is obligatory on the *mukallaf* to follow the most erudite among the *mujtahids,* where they have expressed different legal opinions. Others have made it clear that the lay person has to follow those jurists renowned for their probity; all of this is in a bid to safeguarding the follower's interest in achieving the correct legal opinion of his religious authority. They have also been unflinching in their opinion of requiring the follower to switch allegiance to the jurist who is believed to be more capable and more knowledgeable than the one he follows in *taqleed.* This approach has been adopted to steer *taqleed* clear from blind following and fanaticism.

This has been the route followed by the believers from the days of the

Imams (a.s.) to our present time. The Imams (a.s.) had made it their duty to instruct the faithful in the different regions to resort to the following of the jurists there; they did not tolerate any dereliction of duty in this regard.

Prohibition of *Taqleed* in the Fundamental of Religions

While allowing *taqleed* in matters of *halal* (Lawful for use, consumption, or to act upon) and *haraam* (unlawful or forbidden for use, consumption, or to act upon) in the branches of religion in the way we have described, the *shari'a* law did not allow the *mukallaf* to resort to *taqleed* in matters of religious beliefs. This is because what is required of him in the fundamentals of religion is that he should reach his own conviction in the belief of his Lord, Prophet, Imam, and religion. The *shari'a* has called upon every human being to be responsible for the tenets of his religion, instead of following other people and entrusting them with such a responsibility. The Holy Qur'an is unequivocal in rebuking anyone who bases his approval or disapproval of religion on aping others, such as their forefathers, under the pretext of preserving their way, or as an excuse of doing away with searching for the truth.

Of course, the fundamentals of religion are (a) well defined, (b) generally in line with the human nature in such a way that understanding them directly and clearly is commonplace in the main, and (c) playing an essential part in the human life. For all these reasons, it is quite natural for the *shari'a* to call upon man to make a direct effort in looking for these fundamentals and satisfying himself with the truth. In most cases, such search for the truth is not an arduous one. However, if there were any hitches on the way, man is capable of going that extra mile to attain certainty, for his faith is an integral part of his being.

Nevertheless, the *shari'a* has catered for man's individual intellectual and cultural differences. Hence the tolerance in demanding the minimum from him in reaching his own conclusions and eventually having peace of mind in a measure commensurate with his own capacity.

Ijtihad and *Taqleed*, Ever-present Principles

Since all the sources of *shair'a* are preserved in the Holy Book and the numerous *hadiths,* the need for *ijtihad* as a scientific skill has to be ever present. This is to follow those sources and deduce legal opinions from

them. It is quite natural too that the expertise of the jurists is widened as time goes; thus equipping contemporary ones with the skills necessary to making them more competent in arriving at legal judgements. This is one of the reasons why lay people should not stick by the opinion of any jurists for a long time during the occultation period [, i.e. of the twelfth Imam] it is like adhering to the advice of a doctor despite the advances of medicine made after his departure.

That is why the relationship between the follower and the *marji'* (lit. reference point for emulation, or religious authority - a jurist who, by virtue of whose knowledge and probity, is qualified to be followed in all matters of religious practice and law by the generality of Shia Muslims) is a dynamic one. It is further strengthened by the sanctity bestowed on the *marji'* in his capacity as the deputy of the Awaited Imam (a.s.).

The Role of *Ulema* in the *Shari'a*

The *shari'a* has recognized the existence of ijtihad and *taqleed* as two continuous practices going hand in hand with The Holy Book and *Sunnah*. It has also identified the *mujtahid* as playing a pivotal role in the religious affairs of the laity. It has therefore used everything possible to guarantee the successes of both the practices so that they may deliver their message at all times.

On the one hand, the *shari'a* has made *ijtihad wajibun kifa'i* (a collective obligation imposed on the Muslim community), as will be discussed in section 17 of the chapter on *Taqleed* and *Ijtihad*.

Allah, the Exalted, has urged the believers to acquire knowledge and study the sciences of *shari'a*, **"..why should not then a company from every party among them go forth that they may apply themselves to obtain understanding in religion, and that they may warn their people when they come back to them that they may be cautious"** *(9/122)*.

On the other hand, Allah has made it clear that the believers should hold fast to the *ulema* and have recourse to them, **"..So ask the followers of the Reminder [Message], if you are not firm in the knowledge of the clear arguments and scriptures"** *(16/43-44)*. The *ulema* were also praised by the *sunnah*; The Prophet (s.a.w.) was quoted as saying, *"The ulema* are the inheritors of the Apostles". It has also been narrated from him, *"Oh Allah! Have mercy on my successors"*. And when he was asked as to who his successors were, he replied, *"Those who come after me, narrate my hadiths and Sunnah, and impart the same to the people"*.

There is many a *Hadith* where the *shari'a* has induced the believers to be closer to the *ulema* to make use of their knowledge that it has deemed the looking into face of the *alim* akin to an act of worship.

The enormous responsibility the *shari'a* has placed on the shoulders of the *ulema* is equal to the stringent requirements it has laid down for conducting themselves; a conduct that exudes piety, faith, honesty, and probity; a conduct free from any pomposity that may be induced by scientific achievement. This is designed to make them true inheritors of the Prophets (a.s.).

It has also been related from Imam al-Askari (a.s.), ***"Whomsoever among the jurists was mindful of his own soul, careful of his own faith, acting contrary to his own whims, submissive to the dictates of his Creator, the generality are allowed to follow him in matters of religious practice".***

This is indicative of the meaning of the Prophetic tradition, *"The jurists are the repositories of the prophets, so long as they remained untainted by worldly gains".*

The *hadiths* have also stressed the practicable and continued need for *ijtihad* as well as its continued legal legitimacy, in that the religion shall not be bereft of *ulema* competent enough to be firm in the doctrine, refuting the fallacies spread against it, and disseminating its true message to the people.

This has further been stressed by the Prophetic *Hadith, "Throughout the centuries, the bearers of this religion shall be just people, who rebut the false interpretations of the impostors, the malice of the misguided, and the claims of the ignorant, in the same way the blow torch dissipates the impurities of iron".*

Sources of the *Fatawa*

Before we conclude this introduction, we have to mention, although briefly, the sources we relied on in issuing these *fatawa (singular fatwa* – religious edicts) which we called "manifest". As is evident, the two main sources are the Holy Book, and the *Sunnah* that has been handed down by pious and trusted transmitters, irrespective of their denomination. As for *qiyas* (deduction by analogy) and *istihsan* (application of discretion in a legal decision), and other principles, we do not see any legal justification to espouse.

Despite its being a contentious issue between theologians and experts of the study of *hadith* whether rational judgement *(ad-daleel al-aqli)* should be admissible as a vehicle to reaching a legal decision, we could be considered among its supporters. That said, we are yet to see a single legal opinion that may require substantiating by way of rational judgement. All what can be proved by reason is already proved by the Book or *Sunnah*.

As for the so-called *ijma'* (consensus of the authorties in a legal question), it is not a source for arriving at a legal judgement besides the Book and the *Sunnah* in some cases.

Thus, the only two sources for *fatwa* are the Book and the *Sunnah*. We pray to Allah, the Most High, to make us among those who hold fast to them, **".. therefore, whoever disbelieves in Satan and believes in Allah, he indeed had laid hold on the firmest handle, which shall not break off, and Allah is Hearing, Knowing"** *(2/256)*.

Divisions of this Book

We have inauguranted this discourse with *taqleed,* discussing the rules governing the follower, *ijtihad,* and *ihtiyat.* Then, we discussed the obligation *(takleedf)* and its requirements, concluding with the classification of legal rules and regulations into four categories.

1. *Ibadaat* (acts of worship).
2. Funds, both public and private.
3. Personal conduct.
4. Public conduct.

We pray to Allah Almighty to guide us in His path. There is no success except with the help of Allah: **".. And with none but Allah is the direction of my affair to a right issue; on Him do I rely, and to Him I turn"** *(11/88)*; and may the last of our prayers be: Praise be to Allah, Lord of the worlds.

Taqleed and *Ijtihad*

Foreword

1. In the religion of Allah there are orders and prohibitions. He holds His creation accountable for them. There is no way the *mukallaf* would know that he carried out a devotion prescribed by Allah, and refrained from what He has decreed unlawful, only if he is, in all what he upholds or forsakes, a *mujtahid* in the rules of *shari'a* law, or a follower of a competent authority, or one who practices *ihtiyat* (prudence, or precaution: level of legal opinion, or *'Muhtat'* - a person who is neither a *mujtahid* nor a follower, but bases his religious practice on either his own knowledge and *ijtihad* in the precepts of religion or follow a *mujtahid*).

This is true of matters that are not commonplace, such as the obligations of fasting, prayer, the prohibition of adultery and usury. The same is also true of matters that are clearcut, i.e. they do not require a lot of effort or study, like some obligations, and the majority of the *mustahab* (voluntary and meritorious act of worship, and most of the *mubah* (permissible act); such is known by people with a religious upbringing; an example of this is the obligation on a wife of observing a waiting period after the death of her husband; the same goes for a young wife who is divorced after the marriage has been consummated; taking to remembrance and *dua'* (supplication) and the permissibility of consuming fruits. These rules require none of these: *ijtihad, taqleed,* or *ihtiyat.*

Taqleed is not called for in reaching personal satisfaction through applying one's own acquired knowledge in accepting what is true or distinguishing between the nature of things. To give an example, you may be able to differentiate between water, wine, and vinegar when they are presented to you; the *marji'* may not, since he is absent. Therefore, you must exercise your discretion according to your knowledge.

2. *Ijtihad* is the scientific capability of a person to deduce a legal opinion from the whole body of principles of the faith.

Ihtiyat is the execution, by the *mukallaf*, of any act which may involve an order or an obligation where prohibition is not possible. It is also refraining from doing that which may prove prohibitive or *haraam* and where it is not possible that it is an obligatory one.

3. *Taqleed* is emulating a jurist as a paradigm. It is realized by acting, or intending to act, as may the circumstances dictate, upon the *fatwa* of a given *mujtahid*. This is sufficient for *taqleed* to be considered sound; this also opens the way for the follower to stick by the *fatwa*, even after the death of the *mujtahid* he was following, as will be discussed later.

Taqleed

4. *Taqleed* is the most practical way for people to resort to. It is quite natural to seek the guidance and help of those specialized in the different disciplines. *Taqleed* is therefore an obligatory duty on everybody who has not attained the level of *ijtihad*.

The person who should be followed must be adult, sane, of legitimate birth, believer, *mujtahid* (practising *ijtihad* is a prerequisite) and just. As for the condition that the *mujtahid* be male, it is also a matter for contemplation. As a matter of *ihtiyat*, it is also conditional that the *mujtahid* be among the living, if he was to be followed for the first time. This should not be the case, if the follower were to adhere to the *fatwa* of the *mujtahid*, he followed during his life time, even after his death; this is also true, if the follower has sought the approval of a fully-fledged living *mujtahid* for remaining on his following of the dead mujtahid.

5. Suppose there were many jurists around, is it permissible to emulate anyone of them, or does it have to be the most erudite among them?

A. It is not obligatory to emulate the most knowledgeable. It suffices to follow any one of them, provided that he is a practising *mujtahid* as has been discussed.

6. How can a person know the *mujtahid* so described?

A. He can be recognized by a number of ways, among which are:

a. The testimony of two just witnesses among the competent *mujtahids*, or luminaries, who are capable of scientific appraisal. The meaning of 'just' will be discussed under paragraph (27) of this chapter.

b. The follower's own experience and first hand knowledge, i.e. if he has the knowledge which allows him to express an opinion, even though

he is not a *mujtahid* himself. Finally, any other means that may lead the follower to reach certitude that particular *alim* he has followed is a jurist. Thus, he can be justified in following the jurist in matters of religious practice.

An example of this method is the jurist popularity, in that it could be widely believed within the circles of *ulema* and dignitaries, or within the *ummah* (world-wide Islamic community) at large, that he is capable of deducing legal opinion. This may lead to personal satisfaction that the *alim* you have entrusted your religious affairs to is really *mujtahid.*

7. Is it permissible to switch one's following from one jurist to another?

A. Yes, it is.

8. In *taqleed*, is it good enough to follow a particular jurist in certain matters and another in other matters?

A. Yes, it is permissible, provided that when you switch to another jurist in a particular matter, you should stick by his *fatwa*, especially when you know that changing your mind again would certainly entail committing a wrong-doing *(Mukhalafah)*. For example, if you have shifted to a jurist who is of the opinion that a given act is *haraam,* then changed course again to another jurist who sees it is *wajib* (an obligatory act of worship), you are not allowed to change again.

9. The follower can know the *fatwa* of his jurist by one of these ways:

a. Face to face contact.

b. The *fatwa* can be communicated to him through two witnesses of impeccable character. Their testimony should serve as an evidence.

c. The follower can be notified by a person of unblemished character, or another whom he knows to be truthful, and reluctant to tell lies, even though he may be just or devout in all his conduct; we describe this type of person as 'trusted', and wherever we mention such an adjective, it also covers that of the "just".

d. The follower may find the *fatwa* in a book written, or endorsed, by the *marji'*, such as the dispensations on matters of religious practice *(ar-risalal amaliyah)*.

10. Suppose that the follower came to know, from two different people - both are of impeccable character, of two conflicting *fatwa*. What should he do?

A. If the two sources were quoting two different dates for their knowledge of the *fatwa,* the follower has to act on the *fatwa* with the more recent date. For example, the first person may be talking of a *fatwa* he knew of a year ago, whereas the second may be talking of a *fatwa* he knew of a month ago; the *fatwa* which should be acted upon should be the one related by the second person.

If both of them were talking of the particular *fatwa*, quoting the same date, the follower should not rely on any one of them. Instead, he must resort to *ihtiyat* until the matter is clarified.

11. The follower may doubt that the *fatwa* of the *marji'* has changed, and that it is possible that he has already changed to a new one. In this case, he must stick by the previous *fatwa* on the basis that it is still valid, unless there is a legal proof to the contrary.

The follower may doubt that the *marji'* has failed in meeting all the conditions necessary to be *marji'*. In this case, he must take the initiative to investigate the matter. During the investigation period, he must adhere to the *fatwa* of his existing *marji'*. If he finds out that the *marji'* is still fulfilling all the conditions, he should stay loyal to him.

He may find out that the *marji'* has fallen short of satisfying all the conditions. He may not find anything. Yet, the doubts have dented his confidence. In such a case, he should change to the *marji'* who fulfils all the conditions. As for legitimizing his past acts, he should resort to the new *marji',* if he knows how to go about it. Otherwise, he should consider them correctly executed.

12. While offering prayer, the follower may experience a situation where he thinks it could have detracted from the validity of his prayer. He may not be that conversant with the guidelines of rectifying the situation. What should he do, especially when it is known that he cannot ask about the remedial action while praying?

A. It suffices that he does what he believes to be right under the spur of the moment. However, he should consult this *marji'* for the right directive and act upon it. He cannot forsake such a consultation and rely solely on the action he took there and then.

13. If the *marj'* dies, what should the follower do?

A. He has the choice of sticking by the *marji'* or changing to another one.

14. If the follower chose to change to another *marji'*, how should he go about the acts of worship he had performed, such as prayer and fasting?

A. He is not required to repeat any of the previous acts of worship, where the opinion of the newly adopted *marji'* differs from the previous one in such matters where the person who is not conversant with the rules cannot be held responsible. For example, under the previous *marji'*, the follower was required to say once, the *tasbih* (utterance of *subhanal lahi wal hamdu lillahi, wala illaha illal lahu wallahu akbar*) in the third and fourth *raka'a* (the bowing position in prayer) of prayer. However, under the new *marji'*, he must repeat it three times. Differences of this kind do not warrant repeating previous prayers.

However, the differences between the two *marji'* may be in the rules governing *wudhu* (ablution required before the performance of certain acts of worship), *taymum* (lit. intending or proposing to do a thing – dry ablution, i.e. using dust instead of water, as in the cases of *wudhu* and *ghusl* when, for specific reason, these acts are not possible), *ghusl* (obligatory bathing which is required after certain acts or occurrences), or the fundamental parts of prayer. In such a case, the person who is not aware of the rules would be held accountable, when contravening them.

In *ghusl*, for example, the previous *marji'* may not call for the sequential washing of both the sides of body, whereas the new believes that the order of washing must be observed. Here, the follower should regard all his bygone acts of worship [of this nature] as null and void. Thus, he should hasten to repeat the same, time permitting. If not, he should perform them *qadha* (in lieu - when any act of worship is performed at a later time, see *ada'*).

15. The agent or the guardian of any person should act according to the *taqleed* of that particular person, for the simple reason that if he were to resume his affairs in person, he would certainly abide by the *fatwa* of his own *marji'*.

However, if a certain action runs counter to the agent's own *taqleed,* he should resort to *ihtiyat*. This is the case in *ibadaat* (acts of worship). Insofar as *mu'amalaat* (transactions) are concerned, the agent should act according to the remit of the power of attorney without exception.

As for the actual person, he should be acting pursuant to his own *taqleed,* in that he has to consider the opinion of his *marji'* as the final authority; this should be the case not only when conducting his own

affairs, but rather in all matters relating to him. For example, a particular person embarks on a given transaction, by selling one Pound sterling in cash to be repaid in a Pound sterling and a half at a later date; his arbiter in so doing is the *fatwa* of his own *marji'*. That said, the other party to the deal happened to be following a *marji'* who sees otherwise. In such a case, the second party should abide by the *fatwa* of his *marji'*, thus ruling the deal to be null and void, and the money received by the first party illicit. He should therefore not allow himself to be party to such a transaction.

Any two parties may enter into a sale contract which involves offer by the seller and acceptance by the buyer. In this case, it is not permissible to either party to rule the deal valid, unless it concurs with the opinion of their respective *marji'*. The party who concludes that it does can go ahead, should the other party be intent on agreeing on the text of the contract.

The only exception here is when a person commits a wrong-doing through ignorance, i.e. not knowing the rules. In such a case, his action is deemed correct.

Ijtihad

16. *Ijtihad* is a collective type of obligation *(wajibun kifa'ie)*, i.e. it is imposed on the Muslim community at large, in that if some members take it upon themselves to discharge it, the rest are absolved of the responsibility. Conversely, if all Muslims neglect the obligation of *ijtihad*, all will be deemed sinful.

The *Shari'a* has not prescribed a ceiling for the number of *mujtahids*. It is determined by the need that may arise from time to time.

17. *Ijtihad* is of two types:

One is complete; the jurist who attains this level of *ijtihad* is called "an absolute *mujtahid*" – *mujtahid mutalq*. Such a *mujtahid* is capable of deducing legal opinion from its respective source in the different fields of *fiqh* (jurisprudence).

The other is incomplete; the jurist who manages thus far is partially equipped, i.e. having attained *ijtihad* only in some branches of the *Shari'a*. Thus, he is capable of deducing a limited legal opinion.

Both the *mujtahids* can practice *ijtihad*, within the bounds of their own capability, of arriving at legal judgements from their respective sources.

Each one of them can express his views and *fatwa*. However, they are dissimilar in some other aspects as will be discussed in the following paragraph.

18. If the fully-fledged, or absolute, *mujtahid* meets all the conditions laid down by the *shari'a* for the *marji'*, discussed under para (4), the *mukallaf* can follow him. The *mujtahid* can also exercise general guardianship *(wilayah aammah)* over the affairs of Muslims, provided that he is competent all round.

The absolute *mujtahid* qualifies to head the judiciary; by virtue of this, he is called judge, or religious authority, *(al hakimush shari'i)*.

The fledgling *mujtahid* cannot exercise general guardianship over the affairs of Muslims, but his legal judgement, [i.e. in a judiciary setting], has a legal force, even in cases where he might not be more knowledgeable than some other *mujtahids*. It is permissible for the common man to follow his legal opinion, although his knowledge could be inferior to that of some other *mujtahids*.

There falls under the definition of guardianship of the *mujtahid* such things as safeguarding the affairs of minors, such as the orphan and the mentally handicapped, and public endowments, should they have no guardians of their own. The guardianship of the *mujtahid* over such affairs could be direct or through intermediaries.

If the mujtahed appointed someone for this purpose, then he passed away, is the appointee justified in continuing to exercise his attorney?

A. If the dead *mujtahid* had appointed the agent *(wakeel)* to run the affairs of a particular party on his behalf, the attorney should no longer be operative after the death of the *mujtahid*. The agent should therefore turn to a living *mujtahid*.

However, if the deceased had granted the person guardianship, by such wording as, "I make you the guardian over the possessions of the orphan", it remains enforceable, even after his death.

If the religious authority *(al-hakimush sharai'i)* rules in a case based on the public interest, all Muslims should uphold the ruling. There should be no excuse for anyone who may think that such public interest is not important. To give an example, the *shari'a* has prohibited the monopoly of certain essential merchandise, leaving it to the religious

authority to use his discretion to ban free trading in other types of goods by fixing such prices to serve the public interest. If he exercised such mandate, he must be obeyed.

19. It is forbidden for someone who is not *mujtahid* to issue a *fatwa*. However, it is not forbidden for someone who is a *mujtahid*, but not wholly qualified to be *marji'*, to issue a *fatwa* by way of making his opinion known; it is forbidden for him, though, to declare himself an authority for the others to follow.

20. It is forbidden for someone to be judge, if he is not trained and consequently qualified in the discipline. By the same token, it is forbidden for defendants to be tried by him; the same goes for those who are called to give evidence before him. Any judgement of a compensation, for instance, passed in favour of any party of a lawsuit is unlawful to be had.

However, it is permissible for the side to have redress before such a judge. Should his judgement on the matter be sound, and the disputed claim relates to something tangible *(ainan)*, he should receive back the same; if it was debt, he should obtain the permission of the religious authority to restore it.

21. The fully-fledged *mujtahid* may pass judgement in a dispute between two persons. Provided that he spares no effort in applying justice, no other *mujtahid* shall have the right to overturn the decision, even if the latter is absolutely sure that the party in whose favour the judgement was passed is not in the right.

22. Suppose the *mujtahid* passed judgement in a disputed ownership of a house in favour of the plaintiff. There might be someone who knows that the house belongs to the defendant. Should this person conduct himself in terms of what he knows of truth, or according to the judgement of the *mujtahid*? For instance, if he were to rent the house, whom should he approach, the first party or the second?

A. He should act according to his own knowledge. As for those who are not in a position to know for sure that the house does not belong to the plaintiff, they should abide by the judgement of the *mujtahid*; it is not permissible for them to disobey it.

Ihtiyat

23. *Ihtiyat* is the third way to pious deeds.

It is of two kinds. The first requires repetitive action; the second does not require it.

Here is an example taken from the obligation of prayer. In the repetitive action, the *mukallaf* may not be aware that, in certain circumstances, it is obligatory on him to perform *Dhuhr* prayer by way of *qasr* (a shortened form of prayer - a concession for a *musafir* 'traveller' to perform a two-*raka'a* prayer instead of the full four-*raka'a* one; see *tamam*), i.e. two *raka'a* instead of four; it could also be the case that what is required of him is that he must say it *tamam* (a full four-*raka'a* prayer; see *qasr*). Yet he is at loss as to the right course of action. If he resorts to *ihtiyat*, he must offer that particular prayer in both modes, that is to say, once *qasr* and the other *tamam*.

In the second, which does not require repetitive action, the *mukallaf* may not be aware of the rule governing *iqamah* (a shortened form of *adhan*, heralding the inauguration of prayer), in that he does not know whether it is *wajib* or *mustahab* (a voluntary, and meritorious, act of worship; see *wajib* – obligatory). Should he choose to apply *ihtiyat*, he could utter *iqamah* and other prayer. This does not entail repetition.

Both the types of *ihtiyat* are permissible, regardless of whether or not the *mukallaf* was capable of arriving at the legal requirement with utmost precision, by way of *taqleed*, or indeed was not in a position to do so.

24. However, this does not mean that the layman can do away with *taqleed* by taking to *ihtiyat*. This is because acquiring knowledge, of the manner through which *ihtiyayt* is achieved, requires wide expertise in the field of jurisprudence. It is therefore necessary that the person who applies *ihtiyat* be conversant with all the situations which may entail obligatory action to be taken, on the one hand. On the other hand, he should also be acquainted with all the things that may require him to steer clear from committing what could be *haraam*.

25. In addition to that, applying *ihtiyat* may not be feasible at all, in that the devotee may be apprehensive that his action may put him at loggerheads with the dictates of Allah, the Exalted, in any case. Thus, he will not be in a position to ascertain that he complied with what Allah has decreed lawful or otherwise, unless he has full and specific knowledge of the rules.

26. There is many a situation where the worshipper is not quite sure that he has conducted himself in the most acceptable manner insofar as the legal requirements are concerned. Hence the need for prior knowledge of the rules governing his conduct. This is because falling

back on *ihtiyat* at a given situation may not be feasible without that knowledge. For example, the doubt in the number of *raka'a* in prayer requires the worshipper to be aware of the rules, so that he could take remedial action. The worshipper must also acquire knowledge of the means of addressing any inadvertent additions or omissions in a given act of worship.

In general, it is incumbent on every *mukallaf*, man and woman, to be knowledgeable in matters of religion and the laws governing them. Equipped with such acquired knowledge, the *mukallaf* will be capable of dealing with any eventuality.

Dereliction of duty under the pretext of ignorance, as to whether or not they are obligatory, is not excusable; so is improperly discharging them due to lack of detailed knowledge. To absolve oneself of the responsibility before Allah, the Most High, one should be sensitive to what is required of him in discharging his obligations, such as prayer and fasting, in the most acceptable manner.

Probity

27. As we have already concluded, probity is one of the conditions the *marji'* should fulfil. It is also a legal requirement in numerous other situations, such as:

Probity could be defined as strict adherence to the Islamic *shari'a* law. Allah Almighty has declared in His Holy Book, **"Continue then in the right way as you are commanded, as also he who has turned (to Allah) with you, and be not inordinate (O men!), surely He sees what you do"** *(11/112)*. He also said, **"And that if they should keep to the (right) way, We would certainly give them to drink of abundant water.."** (16/72).

That said, probity should come naturally and be constant, as though it is part and parcel of the character of the person thus described. There is no difference here between refraining from commissioning a cardinal sin or a petty one, nor between embarking on a tiring obligatory act of worship or any other act, so long as submission of the devotee is an integral part of obeying what Allah has ordained *halal*, and shunning what He has decreed *haraam*. As for him who is lethargic vis-a-vis Allah's laws, he is among those referred to in the *ayah* (lit. a sign - a unit, or verse, of the Holy Qur'an), **"And seek assistance through patience and prayer, and most surely it is hard thing except for the humble ones"** *(2/45)*.

Among other instances where probity should be manifest are public guardianship of Muslim affairs, the judiciary, leading congregational prayer, giving evidence in court, and witnessing a divorce procedure. All these responsibilities call for anyone involved in them to be an impeccable character and unwavering faith in the dictates of the *shari'a*. The heavier the responsibility, the more deep-rooted rectitude is required, for it is the safety net against lapses. This is true of the high standard of morality and integrity required of those who take it upon themselves to be *marji'*.

28. Probity can be proven by any of the following:

a. First hand information and personal experience.

b. Testimony of two witnesses of unblemished character.

c. Testimony of a trusted person *(thiqah)*.

d. The person in question can readily be identified, through the way they conduct themselves, to be righteous, pious, and God-fearing; this is sufficient to call them thus, without the need to reach certainty.

29. If the just person succumbs to his frailties and, in a moment of indiscretion, commits a sin, they can no longer be described as being upright. If they repent, they may be recognized thus afresh, so long as obedience of Allah is the overriding characteristic of their psyche.

Obligation and its Requirements

Obligations

1. *Taqleed* (obligation to observe the precepts of religion) is a bestowal of grace by Allah, the Most High, on man, in that He has distinguished man from the rest of His creation by giving him the power of reasoning to control his needs and shoulder responsibility. If man appreciates this honour by obeying Allah, he will be rewarded. Should he fall foul of the rules and demonstrate disobedience, he will earn the wrath of Allah and His punishment, for he did not do himself any good, by encroaching upon Allah's right, and not safeguarding the trust put in him, **"Surely We offered the trust to the heavens, the earth and the mountains, but they refused to be unfaithful to it and feared from it, and man has turned unfaithful to it; surely he is unjust, ignorant"** *(33/72)*.

It is obligatory, both by virtue of the *shari'a* law and logic, on the disobedient to repent for his transgression and turn to his Creator. If he does not take to penance, this will count as another act of disobedience. Repentance can be achieved by showing remorse for one's trespasses, thus taking a decision to abstain from committing what is sinful in the future.

Requirements of Obligation

The following are the general requirements of obligation:

2. Adulthood *(Buloogh)*: no one shall be obligated to observe the precepts of religion before he or she attains adulthood. Adulthood is determined by a legal criterion, the details of which will follow. A non-adult shall not be held accountable in the Hereafter. For example, if he or she were to lie or not hold prayer, they should not expect to be punished.

However, one should take note of the following:

3. a. This should not mean that the guardian abdicates his responsibility in shaping the behaviour of the minor. It should be his duty to steer him in the right direction and punish him, if need be, when he deviates. He must guard against his falling victim to Allah's wrath,

when the time for obligating him with observing the precepts of religion comes. The more time and effort he puts in preparing him, using all means at his disposal, the better results he yields in making him closer to Allah, who said, **"O You who believeÀ Save yourselves and your families from a fire whose fuel is men and stones; over it are angels stern and strong; they do not disobey Allah in what He commands them, and do they are commanded"** *(6/66)*.

Should the guardian do what is required of him to make his offspring follow the right path, he cannot be culpable.

4. b. Relieving the minor from the responsibility in the other world should not mean that one should not appreciate his obedience, and subsequently the correctness of any acts of worship performed by him. It is *mustahab* for him to do what is expected of an adult, be they obligatory or voluntary acts of worship, provided that they do not adversely affect his well being. A seven year old boy, for example, should become familiar with saying prayer. When he completes his ninth birthday, he should get to terms with observing fast, even if during part of the day, should he not be able to carry on because of thirst or hunger.

5. c. Although the guardian is not legally duty-bound, yet he is by no means completely exempt from some of the consequences of the minor's actions such as compensating other parties for the damage done to their property. However, it is obligatory on him to come up with the compensation when the minor attains adulthood; this will further be discussed under the appropriate heading in this book.

6. Reason *(aql)*, in the sense that the *mukallaf* can use his reasoning capacity in such a way as to recognize the responsibility he is being charged with.

Thus, neither the mentally-retarded *(majnoon)*, nor the feeble-minded *(ablah)*, can be charged with *takleef*.

7. If the mental situation of any person fluctuates between insanity and sanity, *takleef* shall be remitted in the first situation; it is applicable in the second.

A person could be so mentally-handicapped or feeble-minded that he may not be capable of discerning certain obligations. Yet, he may be able to discern others. For example, a person with a mental age of a child may not be able to understand the rituals of *hajj* (pilgrimage to Makkah) and thus cannot perform them. But, he could be fully aware of the fact that

man cannot kill his fellow being. Imposition of obligations on such a person may be upheld in situations where he can comprehend the consequences of his actions; the opposite is true.

8. Ability *(qudrah)*. Allah, the Most High said, **"Allah does not impose upon any soul a duty, but to the extent of its ability"** *(2/286)*.

If it is not within anyone's ability to fulfil the responsibility he is charged with, no recriminations shall ensue. That is, irrespective of the nature of the obligation, be it a command - such as in the case of an ill person who cannot offer prayer - or the inability of another person to steer clear from what Allah has ordained unlawful, such as a drowning person, who cannot extricate himself from the danger.

9. The worshipper may not be completely unable to carry out the obligation, but doing so may cost him his life. In this case, the obligation ceases to operate with a view to preserving one's life, except in two cases:

a. When the conditions are right, there may be a case for *jihad* (lit. an effort or striving - a religious duty enjoined specially for fighting the infidels and repelling evil from Muslims); in this case it becomes obligatory.

b. When the person is threatened with death, if they were not to kill another Muslim without lawful reason. In this case, they have to manifest obedience to Allah by not complying with the order, even if this leads to exposing their own life to the peril of death.

10. There may arise a situation where it is difficult for the *mukallaf* to make up his mind as to which of two concurrent obligations he should carry out first. As a result, he may fail to carry out either.

For example, a person may have to perform an obligatory prayer in the remaining short time, lest its prescribed time should elapse. It is within their ability and choice to do either at the expense of the other. Here, the obligation of the lesser importance should be abandoned. Very often, the *mukallaf* cannot determine the matter, only by having recourse to the *mraji'* to show him which course of action to adopt.

11. When an obligation becomes enforceable, there is no difference whether the *mukallaf* abdicates his responsibility towards obeying what Allah has ordained, or by embarking on an action be fully knows will contribute to disobedience.

For example, a person may postpone saying prayer, preferring to

travel by rail. Here, he may know very well that this journey is going to diminish his ability to perform prayer. This too is a type of rebellion against Allah's ordinance. It is therefore not permissible to embark on such ventures, unless in an emergency.

12. Being Muslim is one of the general condition for *takleef* to become operative. An unbeliever is therefore not expected to be charged with any type of religious duty. Should the unbeliever embrace Islam, he can start afresh with carrying out religious obligations, i.e. he need not perform, say, past prayers or fast by way of *qadha'*.

Adulthood and its Signs

13. As has already been discussed, adulthood is one of the requirements of *takleef*. Adulthood can be realized when any of the following features becomes all evident:

a. Secretion of semen, whether in one's sleep or while awake, as a result of a sexual intercourse, or otherwise.

b. The appearance of pubic hair, of the rough type, not down.

c. Completing fifteen lunar years of age for a male, and nine for a female as a matter of *ihtiyat wujubi*. It is preferable though that on his thirteenth birthday, a boy should be ready for *takleef;* thus be should not take lightly any obligation imposed on an adult.

14. If in doubt as to whether or not they have attained adulthood, boys and girls should assume that they have not until they are satisfied that it is the case.

15. Doubt may creep into the mind of a person that they are not capable of obeying Allah, the Exalted. They should not assume that they are incapable; they must spare no effort to observe religious dictates until proven incapable.

Acts of Worship *(Ibadaat)*

Foreword

1. Allah, the Exalted, has ordained that the *mukallaf* carry out certain acts for His sake as a sign of submission to Him. Such devotions shall not be considered properly executed unless they are embarked upon with the *niyyah of qurbah* to Him. These observances are called acts of worship.

There are other things which Allah has recommended that His servants carry out. But He did not make it obligatory that they carry them out on the same principle of *niyyah of qurbah*. Thus, the servant is free to observe such acts either for Allah's sake or for the person's own reasons. Either way, they should both be appropriate and proper. These devotions are called *Tawsilaat* (done for their expected good).

2. In *Shari'a* Law, *Ibadaat* consists of *taharah (wudhu, ghusl,* and *taymum)*, prayer, *adhan* 'the call to prayer', *iqamah* "the inaugural part of prayer; a shortened form of *adhan*", and prayer itself), fasting, *i'tikaf* "applying oneself zealously to the service of Allah, usually in a mosque", *hajj, umrah, tawaf, zakah, khums, jihad* (lit. an effort or striving. Holy war - against the infidels, especially in self-defence), *kaffarah, itq* "freeing of a slave".

Others, among obligatory as well as recommended devotions, could be personal hygiene, of body and clothes, spending one's money on spouse and relatives, maintaining one's kinship, teaching *shari'a* rules, shrouding the dead and burying them, settlement of debt, returning what is deposited in trust, giving counsel to those who seek it, being good to one's parents, returning the greeting, fighting oppression, enjoining what is good and forbidding what is evil, rescuing the human soul in peril, reciting the Holy Qur'an, and paying respect to the holy shrines of the Prophet (s.a.w.) and the Imams (a.s.).

3. What is meant by *niyyah of qurbah* (intention of seeking proximity to Allah, the Most High) is that you should commission the action for His sake. This should be your motive for embarking on the action. Of a secondary importance is whether the reason for the action was fear of

Allah's punishment, desire of His reward, or love of and faith in that He is worthy of obedience. Holding such a worship would be proper if it stemmed from the intention of seeking closeness to Him. Making the *niyyah* by specifying that particular act of worship is *wajib* or *mustahab* is immaterial.

4. If the *mukallaf* carried out the obligation, such as maintaining his spouse, with the *niyyah of qurbah,* they would spare themselves the scourge of Allah's wrath and reap, by Allah's grace, His reward. If, however, their reasons for commissioning the action were, say, their love for their wife *per se,* they would ward off the punishment, but would not qualify for the reward.

By the same token, if the rich spend of their wealth in any of the avenues of good, with the *niyyah of qurbah,* they would certainly warrant Allah's reward, and their benevolence would fall under the banner of *sadaqah.* If they did not contemplate such a *niyyah,* they would not achieve the reward. However, in most circumstances, Allah would make them a favour by accepting their deeds, for He is the Most Benevolent.

5. If the *mukallaf* carried out the obligation with the *niyyah of qurbah* and the personal motive, in such a way that if there was no personal motive they would have carried it out any way, they would be spared the punishment and reap the reward. As for obligatory acts of worship, the *mukallaf* should not expect to be spared the punishment, unless they take to the devotions with the *niyyah of qurbah* in mind.

6. The *niyyah of qurbah* would materialize whether or not the worshipper was able to determine the particular act of worship. For example, holding prayer facing the *qiblah* (the direction of Ka'ba one must face while in prayer) is an obligatory segment of prayer. The worshipper may be aware of the direction of *qibah,* whereby they can say their prayer with the *niyyah of qurbah.* However, identifying where the *qiblah* could be may require the worshipper to ask. If the matter is not resolved, they may be required to pray twice in two different directions with the *niyyah of qurbah* and without giving preference to any of the two prayers being the required one.

7. Should the worshipper know that a given action was not sanctioned by Allah, it is forbidden for them to commission it with the *niyyah of qurbah.* If they go ahead with it, this will constitute an innovation *(bid'ah)* which is *haraam.* However, if they were not sure whether or not

it was called for and that they were inclined to commission it in the hope that it was, they shall not be deemed sinful. This is called *ihtiyat*, which has already been discussed.

8. Hypocrisy is commissioning the act with the intention of earning people's praise and admiration.

In *ibadaat*, this is *haraam* because any act of worship performed for this motive is *batil* (null and void, e.g. a contract becomes *batil* when it does not satisfy the divine laws of Islam). The person who commissioned the action would be deemed sinner; this, of course, is irrespective of whether they embarked on the action to covet human praise alone or theirs and that of Allah. As is evident from the *hadith* this is *shirk* (ascribing partners to Allah).

In voluntary acts of worship, showing off is not *haraam;* as such the action shall not be deemed *batil*. For example, if someone provides for the poor, kin folk, and be good to one's parents, not for anything else other than earning praise, love, and seeking fame in return, their deed would be deemed proper. Accordingly, they shall not be dubbed wrongdoers. However, they might not earn greater reward from Allah, the Most High.

9. If hypocrisy took place after the worshipper had finished the devotion, it would not invalidate the devotion. For example. Having completed their prayer, someone attempted to talk about it to the others to impress them.

10. The person may be sincere in their devotion, having trust in Allah, yet they are ill spoken of and how irreligious they may be. In such a case, there is no harm in their showing off how religious they are just to rid themselves of that accusation. They are justified in their works and their devotion is valid.

11. It is *makrouh*, but not *haraam*, to boast about one's devotions and good deeds. **".. Therefore, do not attribute purity to your souls; He knows him best who guards 'against evil'** *(32/53). The exception being that if the others were going to benefit from talking of one's experience as it may spur them into obeying Allah's dictates, and that this possibility was the overriding motive of the worshipper.*

12. There is no harm in the worshipper taking pride in their devotion, if they were accidentally seen performing an act of worship. This is

because such a feeling is not *makrouh* and it does not detract from their name.

13. What is not of hypocrisy is one's zealous involvement in worship with the intention of winning others over to be devout or to set a good example and make godliness closer to their hearts. This should, though, be free from self-aggrandizement. Otherwise, it is hypocrisy that is *haraam*.

14. Pomposity is the feeling of doing Allah a favour by one's devotion. The person might think that they paid back to Allah all His dues. Although this is *haraam*, yet it does not invalidate the worship. However, the reward for it might not be granted.

Yet, there is neither harm nor sin in feeling elated by one's devotion.

15. A given act of worship may entail some physical or psychological benefits. If the worshipper embark on such a worship for the sake of Allah and those benefits - such as performing *wudhu* with the *niyyah of qurbah* and seeking personal hygiene - would commissioning the act be valid?

A. If the *niyyah* was a sufficient motive for the worshipper to embark on that act of worship, i.e. even without considering the benefits, the act is valid. If the urge for commissioning the action was not exclusive for Allah, i.c. coupled with those additional benefits, the prayer shall be deemed *batil*.

16. Faith is a fundamental condition for the acceptability of any worship.

17. Uttering the *niyyah of qurbah* for any act of worship is not a condition. It is a frame of mind.

18. Generally speaking, taking to voluntary acts of worship discretely is more superior than performing them openly. The exception is that of a devotee embarking on a public worship to make the devotion a catalyst to Allah's Obedience.

19. Standing in for a living person, i.e. performing acts of worship for them, is not permissible. For example, one cannot perform prayer for a relative, a friend, or any other living soul. This goes for both obligatory and voluntary prayer. Such a devotion by proxy is not acceptable. *Mustahab hajj, tawaf,* and *umrah* fall outside such prohibition. In a special case, which will be discussed later, obligatory *hajj* performed by proxy should be valid.

However, this does not mean that a person cannot carry out certain other voluntary obligations, in all the avenues of good, on behalf of other people. Providing for the poor and performing visitation to the holy shrines are just two examples of such works.

Should a person feel the need to do another one a service by way of worship, they are free to do so by performing that particular act of worship directly, i.e. without the *niyyah* of performing it by proxy. They could then ask Allah to accept it and register its *thawab* (reward) for the intended person, in the trust that it will be accepted.

20. It is permissible to perform all acts of worship, be they *wajib* or *mustahab,* for someone who had passed away. Likewise, performing such acts directly by the person carrying out the devotion and dedicating the potential *thawab* to the deceased, as has already been discussed in the previous pragraph, is in order.

21. Just volunteering to perform acts of worship for another person is in order, so is hiring someone for the same purpose. However, there is a fundamental condition for the validity of the work. The overriding objective for the person charged with the task should be the fear of Allah, the Exalted that they could be receiving the remuneration without their being ready and able to fully honour the commitment.

It is sufficient for the hired person to acquire this minimum level of *niyyah of qurbah,* without which any act of worship would not be deemed acceptable. Should the hired person be ready to receive payment at any rate, i.e. without being able to receive the money unless they carried the work out, their proxy shall not be in order and the work not be deemed sound. This is because their objective has been pure business, in that they were not mindful of their duty towards Allah and safeguarding His right.

22. Regardless of a person's sincere worship and submission to his Creator, it is *haraam* to assume that they are beyond His punishment. By the same token, it is *haraam* for them to give up all hope on Allah's mercy and forgiveness, irrespective of what misdemeanors or sins they may have committed.

Assumption of being spared Allah's chastisement or being denied His mercy are among cardinal sins.

23. Acts of worship are not confined to certain devotions such as prayer and fasting. From a *shari'a* law standpoint, a person can transform all work in different spheres of life to acts of worship, if they

carried them out for the sake of life to acts of worship, if they carried them out for the sake of Allah and in the trust that they meet with His acceptance.

This was an outline of the rules and regulations of *ibadaat*. We will discuss each of which in some detail in the following order:

a. First things first. Prayer is the backbone of all acts of worship.

b. We have given preference to matters of *taharah* because it is a prerequisite for prayer.

c. We shall touch on the rules of *hajj* since they have been discussed extensively in a separate treatise called *"manasikul Hajj"*.

d. although *zakah* and *khumus* are among *ibadaat*, yet we shall discuss them under section two of the Book because their financial implications are more salient and two more important. *Jihad* will be discussed under section four because it falls within the remit of the code of general conduct.

Accordingly, we will deal with *ibadaat*, starting with *taharah*, then prayer and fast, then *i'tikaf*, followed by *hajj* and *umrah*. We will conclude the first section with *kaffarah*.

Section One

Taharah
Rules Governing Water

Chapter One:

Wudhu (Ablution)

Chapter Two:

Ghusul (Ceremonial Bathing)

Chapter Three:

Rules Concerning the Dead

Chapter Four:

Tayammum (dry ablution)

Chapter Five:

Najasah (ceremonial uncleanliness)

Chapter Six:

Mutahirat (Purifying Agents)

Rules Governing Water

Foreword

Prayer is the most important act of worship. It is the pillar of religion. The Law-giver has ordained that the person saying prayer must be *tahir* of *khabath* (material uncleanliness *'najasah'*, such as blood, urine, excrement, dead bodies etc.) and *hadath* (immaterial uncleanliness) that requires *wudhu* or *ghusul*, such as *janabah*.

Khabath could be removed by washing with pure *(tahir)* water and other means like soil or dust which should restore *taharah* to the *najas* objects.

Hadath could be eliminated and *taharah* restored by *wudhu* or *ghusul* with pure water or by *taymmum* with dust.

Discussion of all aspects relating to this area shall ensue, *Inshallah* (God willing).

Since *tahir* water is the main purifying agent, we have to talk about it and its types. Matters of discussion shall revolve around whether water can be deemed *tahir*, and retain its characteristics in order to be used for purifying and cleansing *najis* objects.

Types of Water

1. Water can be classified into two types, pure and mixed, each of which has its own set of rules.

Pure Water is that type of water mentioned in the Qura'nic *ayah* (verse or sentence of the Holy Qur'an), **"..And We have made of water everything living, will they not then believe?"** *(21/30)*.

It is the running water that flows through the water grid to our homes, hotels, public baths etc. It is that water we and the animals drink, with which plants and trees grow and get nourished; it is that which we use to wash our bodies and clothes. Among this type of water is sea water, the water that results from the thawing of ice, snow, and hail, and mineral water.

Mixed Water is pure water laced with some other substance, causing it to lose its properties, to the extent that it could no longer be described as water. Examples of such mixed water are tea and rose water. It could also be water extracted or pressed from certain types of fruit, e.g. melon water and lemon juice.

2. Both types of water, pure and mixed, are *tahir*. You may use them for drinking or any purpose. The rules governing them are as follows:

a. Pure can be used for cleansing and purifying *najis* objects, such as utensils, clothes; it could be used for washing our bodies. Mixed water cannot be used as such.

b. Pure water can be used for *wudhu* or *ghusul*. You cannot use mixed water for these purposes.

Hence the juridical technical term: Pure water is pure in itself and can be used in restoring *taharah* after occurrences of *hadath* or *khabath;* although mixed water is pure in itself, it cannot remove *hadath* or do away with *khabath*.

c. Pure water is not affected when it comes into contact with *najasah*, except in certain circumstances discussed in paragraphs (8) and (9) of this section.

Mixed water is prone to *najasah* and becomes *najis* on contact. Any source of *najasah* that meets with solid things turns them *najis*, irrespective of the amount of mixed water.

d. If pure water became *najis, taharah* could be restored to it once it is replenished with abundant water, such as rain water, as shall be discussed later. As for mixed water, it will not become *tahir* again, if it got *najis* irrespective of its mass.

3. Liquids, which do not fit the description of water, such as oil and milk fall under the category of mixed water. Thus, they cannot be used to clean things from *khabath* or *hadath;* they become *najis*, if they meet with *najasah*. *Taharah* can never be restored to them, should they become *najis*.

4. Suppose you poured water from a jug full of rose water on a *najis* floor, only that part of the rose water, which came into contract with the floor, becomes *najis*. That is, *najasah* will not spread to the contents of the jug. As a general rule, in every situation that involves liquid movement in the direction of a *najis* object, what becomes *najis* is that part which comes into direct contact with the *najis* object, not the rest

that remained intact.

The same rule applies to pure water. Please refer to paragraph (9) of this section.

5. Pure water has its own properties, taste, and colour. Its taste or colour may alter by adding some salt or dye to it. In this case, it is called altered water; nevertheless, it will not lose its properties as pure water. It should therefore be governed by the same rules. However, if the change was drastic, in that strange characteristics would emerge, it might change into mixed water. Thus, it would fall beyond the pale of the rules regulating pure water.

6. Pure water may change in character in this way, yet you cannot tell the extent of change. In such a case, you should resolve the matter by assuming that it still is pure water, until proved otherwise.

Pure water could change so much so that it might turn into mixed one. However, this change may gradually diminish, if we, for example, can manage to minimize the level of colouring by adding more pure water to it in such a manner that it should eventually restore much of its original colour and taste. Nevertheless, we could still not be quite sure as to the level of the remaining change. In this case, we should conclude that it still is mixed water until the contrary is proven.

Abundant and Little Water

7. Water can be divided into two categories:

a. Abundant water:

a. 1. Any water connected to a source supplying it with a continuous flow can be called abundant, such as that of wells, springs - whether flowing or not, streams, rivers, whether their supply comes from springs underground water, or molten snow. This is so, irrespective of the level of abundance or scarcity beheld by the naked eye, because abundance here is judged by the level of the source of supply.

a. 2. For rainfall to be judged abundant, it has to be flowing on a hard surface, albeit in a little quantity. It will still qualify for the title to "abundant water" even after it forms some sort of pool or puddle; it remains thus so long as rain continues falling.

a. 3. Stagnant water, which has no source of supply, can be called abundant, if its quantity amounts to a *kurr* (a unit of volume equivalent

to 384 liters) or more.

Kurr will be discussed in paragraph (10).

b. Little water is that which is not abundant, i.e. it has no source of supply, does not amount to *kurr*, and not rainwater.

Rules Governing Abundance and Scarcity

8. Whether it be abundant or little, water is *tahir* and can render things *tahir* from *hadath* or *khabath*. There are, though, some differences as to the manner of cleansing with abundant and little water, as will be discussed under the section dealing with *mutahirat* (purifying agents), *Inshallah*.

However, they are different as to their susceptibility to *najasah*. Because abundant water is really abundant and has a source of supply, it is not affected by *najasah* when it finds its way to it. So, if, say, urine or blood found their way into it, it can still retain its *taharah*. That is why abundant water is described as immunized *(mu'tasim)*, for its abundance makes it impervious to *najasah*.

When the water is little, it is liable to become *najis* as soon as it meets with anything *najis*, such as urine and blood, or liquids that have become *najis* as a result of contacting *najasah*, like water and milk. The same goes for solid things, on the premise of *ihtiyat wujubi;* for example, a spoon may get contaminated with blood. If you wipe the blood off and place the spoon in a bowl containing little water, the water becomes *najis*.

9. If the *najasah* occurs in any part of the water, that is little, all the water becomes *najis*.

However, if the *najis* object was in a lower place and little water was poured on it from above, the *najasah* will affect the point of contact only. Let us imagine the opposite, in that the little water was pointed to the source of *najasah* from below, the *najasah* would impregnate the upper reaches of the column of water not the rest of the column.

The same rule applies when you point the water in a horizontal line to the source of *najasah*, i.e. only the contact point becomes *najis*.

To sum up, if the water was in fast flow in any direction and hit a *najis* object, only the contact point becomes *najis*, not the rest of the water.

10. In paragraph (7) we mentioned that *kurr* water is one of the types

of abundant water. It is the water that weighs approximately 377kg. [or 384 liters].

11. If *kurr* water was confined to one or more places, it would still retain its properties as abundant and immunized water, so long as the two compartments or more that hold it are connected with one another. Thus, it will not become *najis* on contact.

12. Water may be flowing or in some sort of movement, such as the water in the storage tanks in our homes. These tanks may be feeding smaller tanks, such as cisterns that are situated below them. Here, we may imagine two situations:

a. The quantity of water in the tank could amount to a **kurr** or more.

b. The quantity of water therein is less than a *kurr*. But, if the water that is trapped in the pipe network and in the smaller tank is taken into consideration, it could amount to a *kurr*.

In the first case, the water in the main tank, as well as that in the smaller one, is immunized water so long as the water flows from the bigger tank to the smaller one freely. Thus, if for example, blood falls in either tank, neither will become *najis*. The water in the smaller tank could not be immunized, if it is not connected to a flowing source; so, should *najasah* meet with it, it turns *najis*.

In the second case, the water in the smaller tank is immunized, i.e. it does not become *najis* on contact as long as it remained connected to the main tank, whereas the main one is not immunized. So, if *najasah* comes its way, it becomes *najis*.

13. Any water, no matter how little it was, connected to a source of abundant water is deemed immunized. To give an example, suppose there was a brook holding little water. This water was being replenished with either rainfall, or another tributary with continuous water supply; it might as well be fed with water through a pipe, connected to a big reservoir. The water in the brook is judged immunized, so long as the water supply remained constant.

It is worth noting that the float in the cistern in a bathroom regulates the flow of water in it. If the cistern does not hold enough water that could amount to a *kurr,* the contents can be described as little water. However, it ceases to be deemed little as soon as you flush the water, thus allowing the cistern valve to open and refill the container. There and then the water in the container becomes abundant and immunized.

The water running from a shower can be considered abundant, if the flow of water through its holes was fast and unbroken. It should be deemed little, if the water through the shower holes was dripping, even though the gaps between the chain of drops were negligible.

14. One may come across a small storage tank and becomes doubtful as to its capacity, i.e. whether it constitutes a *kurr or* not. One should resort to considering its contents as little and apply the rules thereof, in that the water it contains becomes *najis* as soon as it is soiled with *najasah.*

15. Also, one may come across water below the quantity of a *kurr* flowing on the face of the earth and become doubtful as to whether or not it is connected to an abundant source of water. The rule applicable here is the one concerning little water, unless the doubt was based on prior knowledge that this flowing water was connected to an abundant source of supply; in this case, it should be considered *tahir*, if it comes into contact with *najasah*, provided that its properties did not change.

16. Suppose there was a tank, whose capacity is more than *kurr*, full of water; some of the water was used up. We then became doubtful about the remaining quantity of water, i.e. whether it amounts to a *kurr*. How should we treat it?

A. It should be deemed as though it is *kurr* water.

17. In paragraph (7) it was mentioned that rain water is considered among the types of abundant water. However, it should be so abundant that it flows on any hard surface. This means that it does become *najis* if it contacts a source of *najasah.*

Suppose that a drop of this rain water fell on a *najis* object, such as dead body, that drop of water would not become *najis,* whether it remained attached to the dead body or fell of it, so long as the rainfall was continuous.

If rainfall formed a puddle and a *najis* object fell in it, it does not become *najis* so long as the rainfall continued. The same rule applies to the water coming down drain pipes, in that if it contracts *najasah,* it should not become *najis* because it is regarded as immunized water. Rain water falling on tree leaves and streaming downwards to the ground is treated in the same way.

However, rain water leaking from a roof should not qualify for abundant and immunized water. This is because the link between the

leaked water and that of the rain was not sustained. Continuity of rainfall is immaterial.

18. In paragraph (7), it was mentioned that spring water is considered among the types of abundant water. It is noteworthy that there should be no difference between springs that provide water all year around and seasonal ones. The water of these springs is deemed abundant and immunized. However, the water of the seasonal ones is deemed as such, only so long as the water keeps flowing.

How does abundant water become *najis*?

19. In paragraph (7), we have stressed that all types of water do not become *najis* on contact with *najasah*. However, we further said that those types of water become *najis* when the *najasah* causes an alteration of either colour, odour, or taste. If the properties of such water change due to a fourth element, such as that it becomes heavier or lighter, yet retains its original attributes, it does not become *najis*.

20. Of no effect is the changing of the properties of abundant water that got mixed with an originally *tahir* object that became soiled with *najasah*. Of course, if the properties of the water change as a result of the *najasah* found in the *najis* object, it will no doubt become *najis*.

For example, a quantity of water became *najis* and discoloured as a result of getting soiled with blood; this contaminated water was poured in, or found its way to, a storage tank containing water to the tune, of a *kurr* or more; as a result the latter became yellowish in colour. In this case, the water in the storage tank becomes *najis*.

21. It is unimportant too if the properties of abundant water were altered without being soiled with *najasah*.

For example, if the smell of a nearby source of *najasah* spread to the water, it does not become *najis*.

22. The change in the properties of water discussed in the aforesaid paragraphs does not necessary mean that it becomes complete, i.e. acquiring the exact attributes of the *najis* object. It suffices for the water to be deemed *najis*, if discoloration, different smell, or taste takes place.

For example, if the water turns into yellow as a result of blood falling into it, it should become *najis*.

23. Suppose that *najis* object was dropped in the water. The effect of this was non-existent due to either the object, the water or something else not related to either of them. Had it not been for this, the effect would have been tangible. Would the water be judged as *najis*?

A. There is a number of issues to be considered here:

a. If no change in the water properties can be detected, this could be attributed to the fact that the *najis* object which soiled the water has, for example, neither colour nor smell to give to the water. In such a case, the water is deemed *tahir*.

b. The untraceable change could be attributed to the colour of the water before it was soiled with it, in that it had the same colour.

For example, the colour of the water could be red due to a dye which was added to it; if blood was dropped into such water, it should leave no trace, in that it acquired the same hue of the water. On such an assumption, the water becomes *najis*.

c. The *najis* object may have its own characteristics which are different from those of the water. However, the untraceable effect on the water could be tracked back to something else beyond both the water and the *najasah*. For example, the cold weather could contribute to the untraceable effect of smell left in the water of a rotting carcass. On this premise, the water should retain its *taharah*.

24. If the water is of the type which is abundant and some of it gets polluted with *najasah,* does the *najasah* spread to all the water, or should it remain confined to the contaminated part?

A. Should the remaining water qualify as abundant water, it will still be deemed immunized water and shall therefore not become *najis*.

This could be illustrated in the following examples:

a. Suppose you have a big pond and blood seeped into one of its sides, turning the colour of the water into yellow. Now, would the water on the opposite side become *najis* before the colour of the blood permeates it? The Answer is no, so long as the quantity of the water in the non-affected part amounts to a *kurr*.

b. Suppose there was a stream containing flowing water, the quantity of which was less than a *kurr;* it was connected to a main supply of water. Assume *najasah* soiled the middle of the stream, causing discoloration of the water in that part. Should the entire water become *najis*?

The answer is that part of water falling between the position of *najasah* and the source of supply should not be affected by the *najasah*. As for the part of water falling down stream, if there was still a trickle of clean water running from the source through the affected area, and forming a link between the water upstream and that of downstream, the *najasah* will be confined to the affected parts only. If all changes, that part of water falling down stream will become *najis*.

How should one go about restoring *taharah* to water that was rendered *najis*?

25. If water, that is little, becomes *najis*, *taharah* can be restored to it by connecting it to a source of abundant and immunized water. For example, if the water in a bowl becomes *najis*, you can make it *tahir* again by placing it under running water of a tap. Thus, as soon as the tap water blends with the water in the bowl, it becomes *tahir* again, i.e. without waiting for the tap water to spread to all parts of the bowl. Another example could be rainwater, in that it restores *taharah* to *najis* water, provided that the rainfall is continuous.

Indeed, the water discussed in both the examples becomes immunized, so long as it remained connected to the tap water and rainwater. Furthermore, the bowl itself becomes *tahir* as well at the point of contact.

Should abundant water become *najis* as a result of getting mixed with a *najis* object, its *taharah* can be restored if two things were present:

a. The change that occurred in the properties of the water must be removed, irrespective of whether this is done gradually, i.e. by passage of time, or by adding more clean water to it.

b. The water can be replenished, while still unchanged, with abundant and immunized water amounting to a *kurr*, or by rainwater.

Both the objectives can be achieved in one go. We can turn, say, tap water on the water that got affected by *najasah*, allowing it to permeate the entirety of the *najis* water, through continuous supply, until the *najasah* is removed and the water becomes *tahir* again.

To further illustrate this, consider the following examples:

a. Suppose a water storage tank turns smelly. You may leave it for some time, to allow the bad smell to disappear. You can then add clean water to it, thus turning it *tahir* again.

b. Suppose the water in that tank turned yellow as a result of getting polluted with blood. You may add fresh water to it, using a utensil of a kind until the coloration is diluted and eventually disappears. Then the tap should be turned on or the water exposed to rainfall. There and then its *taharah* is restored.

Evaporation of *Najis* Water

26. If the *najis* water evaporated and by way of condensation turned into water again, the latter is *tahir*. The same goes for all other kinds of fluids, apart from pure water, such as rose water and milk, and even urine which passes through the same process.

How would the water used for cleaning be treated?

27. Would the water used for removing *najasah*, by way of *ghusul*, or *wudhu* still be treated as *tahir* or deemed *najis?* and can it be reused in restoring *taharah* to *najis* objects?

A. It should not become *najis*, unless it comes into contact with *najasah* itself, and it was little, or it gets altered by any of the attributes of the *najasah* as has already been discussed. If it becomes *najis*, it cannot be reused for restoring *taharah*. If it did not, i.e. retaining its original properties, it can be used to remove *najasah*, and perform *wudhu* or *ghusul*.

What to do when in doubt?

28. If a person has doubts as to the *taharah* or otherwise of the water, he should resolve the matter by considering it *tahir*. That is unless he had prior knowledge that it was *najis* and he was not in a position to tell whether it had become tahir or remained *najis*. According to this hypothesis, the water should be deemed *najis*, unless the contrary is established.

Chapter One

Wudhu (Ablution)

Foreword

1. In *Shari'a* law, *wudhu* consists of washing the face, hands, wiping the front part of the head and the upper parts of the feet.

The way to go about *wudhu* is to wash your face with pure and clean water, starting from the hairline down to the farthest end of the chin. Then wash the right hand, starting from the elbow down to the finger tips. The left arm must be treated in exactly the same way.

Having washed both hands, you should wipe the front part of the head with the wetness left in your right palm, even with one finger. Wiping the upper part of the right foot should come next. The way to do it is by placing your right hand or palm on the tips of the right foot and pulling it up to the end of the foot. The same should be applied to the left foot.

In so doing, you should aim for completing the wiping process in such speed that you should not allow the moisture in your hands to evaporate. This will be elaborated later on.

Wudhu is called for as a way of *taharah*. The person performing it is rendered *tahir*. The *taharah* which one confers on themselves is upheld until they pass urine, stool or any other *hadath*. Later, we will discuss the things or occurrences that nullify *wudhu* as well as the requirements of *wudhu*.

Wudhu is an act of worship; it will, therefore, not be in order, if it is not observed with the *niyyah of qurbah*. That is, it is carried out either for showing regard for Allah's dictates, or that He is worthy of worship, or for yearning for His reward or fear of His punishment. The person performing *wudhu* should therefore do it for the sake of Allah.

In as much as *wudhu* is both an act of submission and a voluntary one, it becomes obligatory in some situations, such as for performing prayer

and other acts of worship as will be discussed in detail later on.

Wudhu cannot be performed without water for the latter is the means with which the person can wash their face and hands, and wipe their head and feet. Hence the term *"taharah ma'iyyah"*, or ritual cleansing with water.

Wudhu should follow a certain procedure. That is, there are conditions to be satisfied, parts to the completed and occurrences that break the *wudhu*. It has obligatory integral parts as well as *mustahab* ones, etc, as follows:

1. Requirements of Water Used for *Wudhu*

2. These are:

a. Water must be *mutlaq* (Pure, i.e. not mixed), in that *wudhu* will not be deemed in order if it was performed with *mudhaf* (mixed, i.e. not pure) water, such as rose water.

Example

Suppose there were two utensils, one containing pure water and the other rose water and both were *tahir*. They look so identical that you cannot distinguish between them. In this case, you should perform *wudhu* with one of them and repeat it with the other. In so doing you will be sure of the validity of their *wudhu*.

b. Water must be *tahir* as *wudhu* is deemed null and void, if it was performed with *najis* water.

c. Water must be *mubah* (free for public use); *wudhu* is therefor not in order, if it was performed without the permission of the owners.

Examples

A person knew that one of two cans, full of water, was *najis* and the other *tahir*. Let us assume that one belongs to them and the other belongs to someone who did not want to give them permission to use it. The person in question must do away with both the cans.

If they performed *wudhu* using water from either of them, their *wudhu* is not valid, unless they were aware which one of them is *najis* or it belongs to the other person. They should therefore avoid that particular can and are free to use the other one for performing *wudhu*.

If *wudhu* water was *tahir*, it is not conditional that is should have never been used before, such as for *wudhu, ghusl,* or removing ***khabath*** as has been discussed in para. (27) concerning the Rules of Water.

There is therefore no restrictions on using any water, that is both ***mutlaq*** and *mubah,* for *wudhu.*

3. Is *wudhu* in order if the water was *mubah,* but the can containing it *maghsoub* (usurped, i.e. acquired by unlawful means)?

A. If the person performing *wudhu* was using the water by scooping it from the can, his *wudhu* is valid. Yet, they would be committing a sin. If the use of water was by immersing one's face in the water, and it was widely believed that such action is disallowed, the *wudhu* is not in order. However, apparently the *wudhu* is valid due to the fact that it is commonly believed the utensil itself has not been used.

It is not necessary for the validity of *wudhu* that drops of water scattered from the limbs and other parts of the body of the person performing *wudhu* should fall in a place that is *mubah.*

4. *Wudhu* performed with water contained in gold or silver utensil is in order.

5. *Wudhu* is not permissible with water owned by others, except with their explicit or implicit permission. Doubt as to their acceptance or otherwise is not sufficient.

It is permissible though to drink and perform *wudhu* in water of rivers, streams, springs, with abundant source of supply, as is commonly acknowledged; the owners have no right to prevent other people from using it [for those purposes].

It is also permissible to perform *wudhu* with water dedicated for public use, of the kind found in mosques, schools, and other public places. That is, unless it is commonplace that such water is for the exclusive use of the worshippers frequenting the mosque or students of the school.

Example

Suppose that someone knew that the water was for the exclusive use of the worshippers who frequent the place. Having performed *wudhu* with this intention, they did not say prayer in that place for one reason or the other. Would their *wudhu* be in order?

A. Yes, the *wudhu* would be in order.

6. He who performes *wudhu*, not knowing or forgetting that the water is *(najis, mudhaf), or maghsoub,* should know that his *wudhu* remains valid, unless he deliberately persuaded himself of forgetting. The same rule applies to the person who unlawfully gained possession of the water. Performing *wudhu* with *najis* or *mudhaf* water is absolutely forbidden.

Requirements that should be satisfied by the worshipper embarking on wudhu

7. Without the fulfillment of the following requirements, *wudhu* is not deemed in order.

a. Parts of the body, i.e. the face, hands, head, and feet, that are washed and wiped during the course of *wudhu* should be *tahir*. If the person, performing *wudhu* embarked on it with any of them bearing *najasah, wudhu* is considered inconclusive. However, this should not mean that they must clean all these parts at the outset. That is, if for example, on embarking on *wudhu,* the person washed his face only to find out that his left hand was unclean, he must get it cleaned, and get on with the rest of *wudhu. Wudhu* thus performed is in order.

The criterion is therefore that every part of the body should be *tahir* when he washes or wipes it.

This is also true of the head and feet. It is sufficient for that part of head or foot to be *tahir* to be wiped, i.e. not the whole head or foot. This is going to be elaborated later on.

b. It is not essential for the place of *wudhu* to be *mubah* to perform *wudhu* in it. This could though be the case, if we were to apply the principle of *ihtiyat mustahab* (voluntary precaution).

c. *Whudhu* should not pose any grave danger to one's well being. If the danger is of the sort which is prohibited by *shari'a* law for the worshipper to stray, ***tayammum*** becomes *wajib*. But if they go against the grain of this injunction, their *whudu* will be void. ***Tayammum*** should also be sought as an alternative to *wudhu*, if the latter should pose a lesser degree of danger, e.g. mild fever.

d. The *niyyah of qurbah,* in that it should be the prime motivation for the worshipper to embark on *wudhu* as it is a religious observance that is being upheld in pursuit of achieving proximity to Allah and for His sake.

Any act of worship is of no value without such *niyyah* as has already been discussed.

He who performed an obligatory *wudhu* for Allah, his *whudu* is in order. Thus, it is immaterial whether such *wudhu* was performed after the prescribed time for prayer or before it. By the same token, the person who performed a voluntary *wudhu* out of submission to Allah and that it is *mustahab*, such *wudhu* is in order, irrespective of the time of conducting it.

8. It is also immaterial to specify in the *niyyah of qurbah* whether you are carrying out the *wudhu* as an obligation or a voluntary act, since your motives are gaining Allah's pleasure.

9. Continuity of the *niyyah*, during the course of *wudhu*, is a must. However, a wandering mind would not detract from this continuity so long as one is aware that they are still holding the *niyyah*, so much so that if someone asked them what they were doing, they can come up with a positive answer, i.e. performing *wudhu* for the sake of Allah.

10. Because there was not ample time to perform both *wudhu* and prayer, ***tayamum*** had become obligatory on someone. Yet, they contravened the injunction and performed *wudhu*. Would it be acceptable?

A. *Wudhu* thus performed is in order, except in one situation. It is the case of a person, claiming that the prayer, whose time has become very short, made it obligatory on them to perform *wudhu* rather than ***tayammum.*** This is in spite of the fact that they know that the ruling in the circumstances necessitates ***tayammum*** not *wudhu*. In this case the *wudhu is batil.*

If the worshipper performed *wudhu* out of ignorance, or did so on voluntary basis, i.e. *wudhu* is called for as an act of worship in itself, or for, say, the recitation of Holy Qur'an, the *wudhu* is in order.

11. In a situation where there is little water, hardly sufficient to use for *wudhu*, using it to quench one's thirst takes precedence over that of *wudhu*. The person in that situation can perform ***tayammum.*** If however they could put up with thirst and preferred *wudhu* to drinking the water, their *wudhu* can be deemed valid.

12. Performing *wudhu* with the object of hypocrisy detracts from the validity of *niyyah of qurbah*. *Wudhu* thus performed is *batil.*

A sense of achievement for performing *wudhu* should not downgrade

the *niyyah of qurbah*, and render *wudhu batil*, although the *thawab* is not as good.

Should the desired effect be cleanliness, cooling down, or shrugging off lethargy etc., which are considered among the benefits of *wudhu*, it should not adversely affect the *niyyah of qurbah*, so long as the main motive is trust in Allah, the Most High.

Requirements of *Wudhu*

There are three conditions that should be satisfied when performing *wudhu*.

13. a. It should be up to the person to carry out the procedure of *wudhu* themselves. That is, they are not permitted to depend on other people to do it for them, except for a valid reason, e.g. incapacity or emergency. However, seeking the help of other people in, say, pouring water from a pitcher or a jug into the hand of the person performing the *wudhu* can be tolerated. The same goes for any other part of the procedure of *wudhu*, such as bringing one's face closer to the water poured from a jug. Certain situations, such as sickness, may permit the help of others to carry out the procedure of *wudhu*. However, the person party concerned should hold the *nuyyah* themselves. The second party should do the washing of the face and hands of the sick person; where the state of the person permits, the helper may intervene in holding their right hand to do the wiping of the head and the feet. If this was not possible, the helper should do it for them.

14.b. The actions that form the whole procedure of *wudhu* should be carried out without pausing. Also, no time should unnecessarily be allowed to pass between any one action and the other, lest it should let dryness creep in to the former part of the body before finishing the one in hand. However, there is no harm in any part becoming dry due to high temperature or fever.

15.c. The order of the different steps of *wudhu* should be adhered to. That is, you should start with washing the face before the right hand; the latter should take precedence over the left hand so on.

16. Should someone contravene this order inadvertently or deliberately, they should restart with the right order, giving due attention to observing constancy. If in rectifying the order one upsets constancy, rendering it void, they should repeat the *wudhu*.

2. Parts of *Wudhu*

These are four. Washing the face and hands, and wiping the head and feet.

a. Washing the face

17. The area that should be washed: After initiating the *niyyah,* the person should wash his face by pouring water on it from the top at the point of the hairline down to the tip of the chin. As for the breadth of the face, it should be the area that falls within the expanse of an open hand between the thumb and the middle finger. However, the person is not required to pay attention to what is left of the face, only as a matter of making sure that what is required of them has been carried out.

18. Those with hairy forehead or who are bald should assume that they are not different from any other ordinary person. As for those with bigger, or smaller, than the normal face, they should resort to the thumb and middle fingers which are proportionate to their face. The person with disproportionate fingers should resort to using the average size fingers of theirs.

19. It is not compulsory to wash what is underneath facial hair. It is obligatory though to wash the exposed parts of the hair. This applies to both men and women. It also covers beard hair. The only conditions is that the hair should be thick and capable of covering that particular area of the face, e.g. moustache and eyebrow. If, however, it was so thin that the flesh underneath it shows, it is obligatory to wash it as well as the said hair.

20. It is not obligatory to wash the eyes while they are open, neither is it obligatory to wash the mouth, the interior of nose, the whole length of a beard, and the extended part of hair dangling over a forehead.

The Manner of Washing

21. a. It is obligatory to start washing the face from the top to the bottom; so, if one starts with the middle area of the face or the chin, *wudhu* shall not be deemed valid. This should, however, mean that one should religiously follow the hierarchy of organs in the face, e.g. washing the whole of the forehead, then moving to the eyes, and so on. If water is to stream down from the forehead either down the right eye and cheek, or the left side, the *wudhu* is in order.

22. b. It is obligatory that water poured over the face be with the aim of *wudhu*. This could be done in any of the following ways, taking into account that the starting and finishing points be top to bottom:

i. Pouring water with one's hand, then using it to cover the entirety of the face.

ii. Placing the face under the tap.

iii. Immersing the face in a tub full of water, or

iv. Any other means.

Wudhu performed with such aim is acceptable. If however the water came into contact with the face, without contemplating the aim of *wudhu*, then, on a second thought, the person decided to give it a go with the intention of performing *wudhu*, it is not acceptable.

Examples

i. Assume water, such as that of rain, was falling over the face of a person then streaming down. Under the spur of the moment, they decided to perform *wudhu* with it. Such *wudhu* is not good enough. Conversely, if at the outset, they were intent on *wudhu* by standing in the rain, provided that the water covers all their face, even though they did not use their hand in the washing, their *wudhu* is valid.

ii. Setting about washing their face or head without the intention of performing *wudhu*, a person decided on having a *wudhu* with the water covering their face. The *wudhu* is unsound. Conversely, if they went about having a *wudhu* from the very start, observing the washing from top to bottom, the *wudhu* is faultless.

23.c. The water should directly reach the skin, i.e. there should be no barrier masking the outer skin. It is therefore obligatory on the worshipper to be aware of the areas affected, such as the immediate area surrounding the eyes and eyebrows. Vague knowledge of non-presence of an object masking the skin would not be sufficient to forgo proper investigation to ascertain the existence or otherwise of the barrier. This rule becomes even more applicable, if the person was absolutely sure of the presence of something, yet they were not sure of its effect in preventing or not preventing the water from reaching the skin directly.

24.d. The quantity of water used for *wudhu* should be sufficient to cover the whole face and be capable of flowing over it. Conversely, if it

was little, yet the worshipper used it as though they were applying some sort of ointment, it would not be acceptable.

b. Washing the Hands

The second of *wudhu* requirements relates to washing the two hands, starting with the right hand.

25. The area that should be washed starts from the elbow and ends with the fingertips.

If the forearm was amputated, washing should be carried out of what is left of it. Should the whole forearm be amputated, i.e. from the elbow, or above it, washing it becomes redundant.

26. The hair growing on the arm and hand should be washed alongside them, irrespective of whether it was thin or thick.

27. Fissures at the back of the hand which are caused by cold weather should be washed thoroughly, especially when they are deep. Superficial cracks do not warrant thorough washing. If someone cannot determine whether the cracks were superficial or severe ones, no washing to the interior parts of the cracks should be required.

28. If any part of the hand or forearm got exposed as a result of an injury, the exposed part must be washed. If a piece of flesh was left attached to the main body of flesh, it should be washed, even if it was only left attached by a piece of skin.

Manner of Washing

Washing the hands should be carried out in exactly the same way as that of the face.

29. a. You should start from the elbow downward, ending with the fingertips. Of no consequence in starting with fingers, or the middle of the forearm, upward.

30. b. The intention to embark on *wudhu* should be present right at the outset, i.e. the moment the water comes into contact with any part of the body designated for washing. If, for example, a person immersed their arm in water without contemplating *wudhu*, yet having moved and taken it out, they thought of having *wudhu*, it would not be good enough.

31. c. The person performing *wudhu* should make sure that there is nothing, such as dirt or deposits formed after sweat had evaporated, left on the skin which may form a barrier to the water reaching the skin. Such dirt or deposits, no matter how minuscule they may be, have to be removed before setting out about washing those parts of the body designated for *wudhu*. As for the dirt which may form under the nails, you are not required to remove it. That said, if the dirt extends to the areas, which it is obligatory to wash, it has to be removed, e.g. when you cut your nails, thus exposing the dirt.

The general rule is that whichever bare skin intended for washing must be washed, not its hidden parts. When in doubt as to whether this or that part is of the exposed type or otherwise, you should not worry. That is, unless you were sure that that particular part is among the exposed parts, and that this certainty turned into doubt at a later stage, in which case you have to wash it.

Picking a prick that is embedded in the skin or flesh is not called for, unless it was protruding and forming some sort of barrier to water reaching the immediate area of skin.

It is also not compulsory to remove any crusts that had formed over a healed wound.

32. d. The quantity of water used for *wudhu* should be sufficient to cover the whole face and capable of flowing over it. Conversely, if it was so little that as though one were applying some sort of ointment, it would not be acceptable.

c. Wiping the Head

Wiping the head is the third of the parts of *wudhu*. It should be done with the moisture still left in the right hand.

The area that should be covered

33. Wiping should be applied to the front area of the head above the forehead to the summit. Trying to reach the scalp while wiping is not obligatory. Wiping the hair in that area would be sufficient, provided that the hair is not overgrown. Should this be the case that the worshipper gathered their hair in the area intended for wiping and

carried it out, the wiping will not be deemed good enough. The same rule applies to the long hair from other parts of the head, if it were piled up over the immediate area wiping and got wiped.

Means of Wiping

34. Wiping should be applied with the palm, or the fingers, of the right hand, not its back. The minimum is wiping with one finger. It is *mustahab* to do it with three fingers, using the palm of the hand should do. And if the latter was not possible, using the arm should be the alternative.

Manner of Wiping

35. No particular way is called for. You can do the wiping, horizontally, diagonally, upward, downward, etc. The most important thing to be observed is that wiping should be done with moisture left in the right hand, and that it should be done immediately after washing the face and hands is over and done with. If a person used new water, irrespective of the quantity used, to wipe their head, their *wudhu* will be deemed null and void.

36. If the moisture in the right hand got mixed with a moisture from the other parts of *wudhu,* in a way or another, would this invalidate the wiping?

A. No, it would not, unless the water was new, i.e. other than water left on the parts of the body already washed.

37. If the moisture in the right hand dried up, would this bring the *wudhu* to an end?

A. The person performing *wudhu* could use the moisture left in any other part of the body, such as beard, moustache, and eyebrows. If all the parts up, *wudhu* should be repeated.

However, if the drying was recurrent, because of, say, hot weather or sickness, ***tayammum*** should be applied.

38. Nothing, no matter how small or flimsy it may be, should come in the way between the hand performing the wiping and what is being wiped. *Jabirah* (lit. splint; a generic name used for any form of dressing applied to any part of the body as a result of injury or illness) is the only exception, i.e. wiping could be done with the moisture left therein.

d. Wiping the Feet

The fourth integral part of *wudhu* is wiping the top of the feet.

The part to be wiped

39. It is obligatory to wipe the upper part of feet, starting from the fingertips to the ankle; as for the width to be covered, any area will do. Wiping should be in order on a feet with normal hair growth. If, however, the growth was out of the ordinary, the worshipper must ensure that the skin is wiped, i.e. wiping the hair only is not good enough.

If some fingers, or part of the foot, were missing, wiping what is left of it will do. Should the whole foot be missing, no wiping is required.

The limb performing the wiping

40. As a matter of *ihtiyat,* it is obligatory to wipe the right foot with the right hand and left foot with the left hand. It is essential that the wiping is carried out with the palm or the fingers.

How to go about wiping

41. What is applicable to wiping the head is applicable to wiping the feet. That is wiping should be carried out with the moisture left from the *wudhu* water in the hand. As for the rest of the rules, please refer to paras. (36-38).

42. No doubt, the proper way to perform wiping is by placing the palm of the hand or its fingers on the fingertips of the foot and gradually dragging it to the ankle. It would more likely suffice, if the whole hand was placed on the upper part of the foot and pulled upwords.

3. *Wudhu* Performed *with Jabirah*

43. *Jabirah* could take the form of bandage, plaster, etc used to protect an injured part of the body. *Wudhu* of *Jabirah* is the one where the *jabirah* replaces the skin in applying the wiping. Such *wudhu* will be deemed in order in given circumstances.

People nursing wounds, broken bones, or lesions may have different requirements when performing *wudhu,* as will be discussed:

44. a. The unsound non-***wudhu*** part of the body may adversely be affected by the use of water, but washing poses no danger to the parts intended for *wudhu*. The worshipper should go about washing those parts in the normal way.

45. b. If the unsound non-***wudhu*** part of the body would be affected by washing *wudhu* parts because of its proximity to those parts, it is obligatory on the worshipper to resort to *tayamum* instead.

46. c. If the cut, fracture, or pimple was in the immediate area of *wudhu* parts, and the place was *tahir* and open, in that it could be washed without the fear of worsening the injury, the worshipper should go about *wudhu* in the normal way.

47. d. The injury could be in a *wudhu* part. The place is *tahir* and bandaged. That the place could, after the bandaged is removed, be washed without any danger to the injury. However, since the removal of the bandage needed professional attention to remove, that was not available, *wudhu* and wiping over *jabirah* is sufficient, although one should, as a matter of voluntary *ihtiyat,* do both, i.e. *wudhu* and *tayamum*, if the *jabirah* was placed on any of the *tayamum* parts.

48. e. Let us assume that it was made possible for the water to reach the injured area without disturbing the bandage. In this case, *wudhu* becomes obligatory, provided that the order of steps of *wudhu* is observed, i.e. from top to bottom.

49. f. Suppose that the bandaged injury was in one of the parts that should be washed in *wudhu,* that it was possible to undo the bandage, and that proper *wudhu* could be conducted without undue damage. The only problem is that the place of the injury became *najis* with, for example, blood or puss, and that it was not feasible to render it *tahir*. In such hypothesis, *wudhu* would be good enough with wiping the *jabirah*. That is, regardless of whether the *najis* place was common to both *wudhu* and *tayamum,* such as forehead, or other parts, such as nose, cheek, and foot.

50. g. In the undoing of bandage and rendering the place *tahir,* much ado may ensue that may lead to worsening the injury or delaying its recovery. It may as well affect the general well-being of the person; it is therefore obligatory that they perform *wudhu*. They should, however, avoid what could pose threat to their health.

Accordingly, if the injury was masked, wiping should be applied to the bandage itself, thus avoiding any potential damage. If the injury was not

dressed, it is sufficient to wash the bordering area. The alternative wiping will then be as good as washing and the original wiping, as the case maybe. It is immaterial though whether the injury was self-inflicted, in which case the perpetrator be deemed sinful, or it was caused by the others.

51. *Jabirah* could be covering a part of the body that should be washed, i.e. the face and hands. It could be masking a part that is intended for wiping, i.e. the front part of the head and feet. It could be in the hand responsible for performing the wiping.

In the first case, wiping the *jabirah* should lawfully be a substitute to washing the part it masks. In the second one, wiping the *jabirah* itself should lawfully be a substitute to the actual wiping of that part it masks, if nothing was left unmasked. In the third instance, wiping should be performed to the *jabirah* when washing is performed on that part, and it should then be used for wiping instead of the original wiping, if no exposed part was to be found with which wiping should be conducted.

In order for the *jabirah* to be a lawful substitute for the actual skin it should fulfill the following requirements:

52. a. It should be *tahir*. What is of importance here is that the outer part of *jabirah* should be *tahir*, i.e. not what is inside it, in that there is no harm in its hidden part being *najis*. According to this premise, if the *jabirah* was *najis*, it is possible to restore *taharah* to its exposed part by securely wrapping it with a *tahir* piece of cloth. Then one can wipe it with a moist hand.

53. b. The *jabirah* or bandage should not be out of what is generally accepted as normal both in size and appearance. So, if it was disproportionate to the area surrounding the injury, wiping it would not do. It should therefore be made smaller where feasible. Therefore, if the *jabirah's* place was not in the forehead or the hands, the most applicable practice is a combination of wiping and *tayamum*, as a matter of *ihtiyat*. If it was in the forehead or feet, performing *wudhu* of *jabirah* should do, even though the *jabirah* was covering the whole part.

So long as the *jabirah* falls within what is generally accepted as normal, it should not be curtailed or trimmed. However, it is permissible to cover it with something else, even if this was not needed, provided that it forms part of it.

54. c. *Jabirah* should not cover all parts of the body that must be washed in *wudhu*. Conversely, a combination of *jabirah whudu* and *tayamum* should be the norm. However, *wudhu* by way of wiping cannot be ruled out.

55. d. It should be *mubah*, in that wiping cannot be acceptable, if the *jabirah* was *maghsoub*.

56. Unlike the case in the clothes of a male performing prayer, where pure gold or linen, or the hide of an animal whose meat is not fit for human consumption, cannot be worn, there is no harm in using a *jabirah* made of these products.

57. Should there be more than one *jabirah* on any given part of the body destined for washing and there were parts still not covered, those parts must be washed or wiped as is applicable.

58. If there was a need for dressing a cut, it is obligatory to wash and render the surrounding area *tahir* before dressing it with a *tahir* bandage, just to ensure that there should not be a need later on to cleanse the area.

What should be done to other forms of masks?

59. Any other form of screen surrounding the skin or attached to it cannot be treated in the same way as those *jabirahs* just discussed.

However, if that mask was a kind of medicine whose application was necessary to the immediate area of the part that sustained the injury, *wudhu*, including wiping the area, could be carried out.

60. Accordingly, if, for example, paint was present on any part of the *wudhu* parts, and it was very difficult to remove, the person performing *wudhu* must perform *tayamum*. If the stain was in a part which is applicable for both *tayamum* and *wudhu*, both should be carried out, as a matter of voluntary *ihtiyat*, althought it is more likely, that *wudhu* alone should be good enough.

61. A *najis* substance, such as a combination of solidified puss and medicine, may form a crust on a healing injury, making it difficult for *wudhu* water to reach the skin. If this barrier was not in the parts of the body applicable for both *wudhu* and *tayamum*, the latter should be performed. And if it was in those parts, the person should perform both *tayamum* and *wudhu*. Here the place of *najasah* should not be touched; instead it should be covered with a piece of cloth that is *tahir* over which

wiping should be performed. However, if by lapse of time the crust turned into something else that blended with the skin, it should be treated as part of it. In this case *wudhu* cannot be ruled out, either by washing the surrounding area of the injury, or masking it by a *tahir* piece of cloth and wiping over it.

62. In addition to the people who sustained wounds, fractures, and the like, any person, who is not feeling well for any reason and fearing that the use of water might undermine their health further, should take to *tayamum* instead.

63. People who have not received any injury, but whose *wudhu* part or parts came into contact with *najasah,* should perform *tayamum.* It is not permissible for them to mask the *najasah* and wipe it, as is the case in the *wudhu* of *jabirah.*

Whether the part that became *najis* is among those parts which are used in *tayamum* and *wudhu,* or the latter alone, is immaterial.

64. The *jabirah* must be removed when no subsequent harm is foreseen. Conversely, it must be left where it is; all rules governing *jabirah* should therefore be observed, even with the possibility of recovery.

The Effects of *Wudhu* of *Jabirah* and its Rules

65. If a person with *jabirah* reckoned that he would be able to remove the *jabirah* and perform proper *wudhu,* had he waited until later in the day to say prayer, which had become due, he should do so. However, if he preferred to perform *wudhu* of *jabirah* and say prayer in the earlier part of prayer time, this will not be sufficient.

If, however, the person, in the previous example, believed that waiting is not going to change anything, he is allowed to hasten to prayer as early as he could. If in the course of time for prayer, his excuse of having the *jabirah,* was no longer sustainable, i.e. contrary to his belief, he should repeat both the *wudhu* and prayer.

66. A sick person had performed *wudhu* of *jabirah.* Having said prayer during its prescribed time, his condition remained unchanged until the time of the following prayer. Since he did not break his *wudhu,* can he still say prayer with the same *wudhu,* i.e. of *jabirah,* although he can now perform proper *wudhu,* having no valid reason not to do so?

A. Yes, he can say prayer with the original *wudhu* of *jabirah,* although it is preferable to perform *wudhu* afresh and say prayer, as a matter of voluntary precaution *(ihtiyat mustahab).*

67. Should there be no excuse for retaining the *jabirah* before the expiry of prayer time, yet removing it may take up all what is left to the prescribed time, *wudhu* is not permissible. *Tayammum* should be performed instead.

68. A person mistakenly believed that harm would befall him if he was to wash the injured part of his body. So, he bandaged it and performed *wudhu* of *jabirah.* Such *wudhu* is not good enough *(batil).*

69. If we were to reverse the example in the preceding paragraph, would *wudhu* and washing be acceptable?

A. This *wudhu* is deemed *batil,* if the harm was real, i.e. of the kind which sensible people would normally avoid. Whether the harm was great or minor is immaterial, unless it was negligible.

70. The above rule applies to the person who discovers that they were in the wrong as to belief that harm could come their way. Nevertheless, they shied away from performing *wudhu* of *jabirah,* and took to *wudhu* or *ghusl* instead.

4. Circumstances Where *Wudhu* Becomes *Wajib* or *Mustahab*

71. *Wudhu* in itself is a manifestation of obedience to Allah; it is a means of seeking closeness to Him and eagerness to achieve His reward. At the same time, it becomes *wajib* for other acts of worship, such as prayer, be it *wajib* or *mustahab;* this means that a *mustahab* prayer performed without *wudhu* is not acceptable, although the person has the choice not to embark on it at the outset. Also, of no consequence is whether the prayer was performed on its prescribed time *(ada)* or at a later time *(qadha').* *Wudhu* is also *wajib* for the prayer of *ihtiyat* (reserve or precautionary prayer), the details of which shall be discussed in paragraphs at a later stage.

Wudhu is obligatory for performing parts of a forgotten prayer, *tawaf* prayer, and *tawaf* of *umrah* and *hajj.* These things are called objectives *(ghayaat)* that make performing *wudhu wajib,* in that it would not be good enough without them.

72. *Wudhu* is *mustahab* for a voluntary *tawaf* and all rituals performed during *hajj*, for *du'a* (supplication), reciting the Holy Qur'an, prayer for the dead, staying at the mosque, and performing visitation rites to the holy shrines.

These things are called the *mustahab* objectives of *wudhu* because they can still be accepted even without *wudhu;* nevertheless, with *wudhu*, they are more complete and more superior.

73. When we discussed what is required of the person setting out to perform *wudhu*, we have already said that *niyyah of qurbah* is obligatory without which *wudhu* would not be deemed in order. Such *niyyah* is realized by setting one's mind on performing ***wudhu*** either because it is called for in itself, or the person is desirous to achieve any of its *wajib* or *mustahab* objectives.

Since *wudhu* is *mustahab*, renewing it, even if it was not broken, is recommended too. In some narration, it has been described as enriched light.

Rules Governing the Person with Broken *Wudhu*

74. Such a person is not allowed to touch the writing, print, engraving, etc of the Holy Qur'an, not even a single letter or a punctuation mark. The prohibition covers the whole of the body of the person, including their hair. It is permissible, to touch the paper or cover, the names of *surah* (chapter), and the numbers.

75. The same applies to the Qur'anic diction, contained elsewhere, such as in a letter, book, card, or ring.

76. It is permissible to touch the name of "Allah" and His attributes found outside the Holy Book.

77. He who wants to come into contact with the writing of the Holy Book can perform *wudhu* for this purpose in particular, lest they should touch it, especially kissing, without *wudu*, and thus committing a *haraam* act.

5. Things that Invalidate *Wudhu*

Technically, it is anything that renders *wudhu* void, i.e. by breaching the state of *tahrah*. Each one of these things is called *hadath*. These are:

78. a. Passing urine. Apart from semen on ejaculation of which *ghusl*,

and not *wudhu,* becomes obligatory, fluids secreted by male or female reproductive organs do not invalidate *wudhu;* neither do they render the place they come into contact with *najis.* This will be discussed in the Chapter dedicated to Types of *Najasah.*

79. b. Passing stool. Passing urine or stool invalidates *wudhu,* irrespective of the way they are brought about, be it natural through sexual organs, or drawn, or through an opening in the body, such as the one done on medical grounds.

80. If urine and stool found their way outside the body, not from the natural passage, e.g. through an incision, they invalidate *wudhu,* provided that their passing was not brought about by artificial means. If the latter was the case, it does not invalidate *wudhu.*

81. A person resorted to using a syringe to facilitate passing stool. If some of the water only seeps out, *wudhu* remains intact. If, however, there was faeces mixed, with or without, the water no matter how small the quantity was, *wudhu* is deemed broken. Doubt as to any or none of it was secreted should not invalidate *wudhu.*

82. c. Breaking wind from the posterior, i.e. there is no consequence to wind coming out from any other source.

83. d. Deep sleep, madness, drunkenness, and passing out.

84. e. *Istihadhah* (undue menses). This will be discussed in some detail under the topic of *ghusl.*

85. Regardless of the number of *hadaths,* one *wudhu* would restore *taharah* to the person.

86. It is not obligatory on the person performing the *wudhu* to set their mind on removing a particular *hadath,* neither should they contemplate that they are performing *wudhu* to eliminate the *hadath.* It suffices to carry *wudhu* out with the *niyyah of qurbah.*

87. It is alright for a person who has performed *wudhu* to invalidate it, so long as they were in a position to renew their *wudhu,* in that water was available and they were able to use it. They can also invalidate *wudhu,* even if they were aware they could not renew it before the prescribed time of prayer; this is the case even with the knowledge that they could become unable to do it, depending on performing *tayammum* instead. After the prescribed prayer time has become due, they cannot invalidate *wudhu* so long as they were not in a position to renew it.

The Incontinent and the One with Intestinal Ailment

According to jurists, the person afflicted with any of the two disorders is described as suffering from ongoing *hadath*. Rules governing both the cases vary.

88. a. There may be a respite for either during which *taharah* could be restored and prayer performed on time, even if it is curtailed as to include *wajib* sections only. The sick person should therefore wait for that point in time, be it at the start, middle, or end of the whole duration, to hasten to *wudhu* and prayer. Outside that time, the rules governing the person in a state of *hadath* should be applied.

89. b. The *hadath* might be continuous, or with so little room that one can hardly become *tahir* again, let alone say the whole prayer. In this case, they should perform *wudhu* and prayer. They are allowed to perform two prayers or more with one *wudhu,* for they are deemed in a state of *taharah,* so long as no other *hadath,* such as sleep, takes place, or one recovers to go to lead a normal life, even though for one day.

90. c. There may be a period of respite, yet it is so short that it can hardly accommodate both the *taharah* and part of the prayer. The person should wait until that time comes to perform *wudhu* and say prayer; he needs not worry if the *hadath* occurs during prayer. He should carry on with prayer, even though he may not encounter any trouble or difficulty in renewing *wudhu.* However, on a *mustahab* note, it is more befitting if he did not say two prayers or more with one *wudhu.* It is advisable if he performs one *wudhu* for each and every prayer, including the voluntary one, and that of *ihtiyat.*

There is however no need for a separate *wudhu* for *sujood* (prostration) *tashahhud* (statement of faith: bearing witness that there is no god but Allah and that Mohammad is His Messenger) which might be performed after the worshipper had finished prayer, having forgotten to say them.

91. Any prayer performed with an unbroken *wudhu* is good enough, i.e. if a person performed *wudhu* for a particular prayer and maintained their *wudhu* to perform a second prayer both prayers are acceptable.

92. Just as the incontinent and the person suffering from an intestinal ailment can say their prayer, after having performed *wudhu,* so can they touch the writing of the Holy Qur'an.

93. Should the people mentioned in the preceding paragraph do their best not to allow urine and solid waste spread to the body and clothes?

A. Yes, they should do so, especially with the aid of modern devices. Furthermore, they should render *tahir* the foreskin of penis, anus, and what has become *najis* as a result of coming into contact with najasah, i.e. of body or clothes.

6. Deficient and Doubtful *Wudhu*

While *wudhu* could be deficient, i.e. not performed properly, doubt is the uncertainty that creeps into the mind as to whether *wudhu* was performed as it ought to be.

94. If a person was certain that he maintained his *wudhu* and *taharah,* yet after a while he became doubtful as to whether or not he sustained a *hadath,* he should assume that his *wudhu* and *taharah* are still intact.

But if the person was certain that a *hadath* occurred to him, yet he doubted as to whether or not he performed *wudhu* to remove the *hadath,* he should assume that the *hadath* still exists and no *wudhu* was performed. However, if he inadvertently said prayer, i.e. without *wudhu,* the prayer is deemed *batil;* accordingly, he should say prayer afresh should there still be time for it; otherwise it has to be said *qadha'.*

95. A person knew he had performed *wudhu* and sustained a *hadath.* However, he did not know which came first. What should he do?

A. The judgement that applies to him is as though he is in a state of non-*taharah* because of the *hadath.* He should therefore perform *wudhu* for that which it called for. Neither the knowledge, or otherwise, of time of the occurrence, nor which of them came first is of any significance.

96. If, during prayer, someone became doubtful as to whether or not he performed *wudhu* prior to the prayer in progress, he should perform *wudhu* and say his prayer afresh.

97. If, on finishing prayer, a person had doubts about not having *wudhu,* the prayer stands. However, he should perform *wudhu* for the next one. This does not apply to the doubt occurring before embarking on prayer, which should have been addressed at the time and according to the rules.

For example, a person, who has just finished prayer, had doubts about the procedure of *wudhu,* in that he was not sure whether the

washing of face and hands he carried out prior to prayer had been for the purpose of cleaning or *wudhu*. However, he knows very well that when he hastened to prayer he was not aware of this. On this assumption, *wudhu* has to be performed afresh and the prayer repeated. Should the doubt arise after the appointed prayer time, there should be no need to perform it by way of *qadha'*.

98. A person, who was in the process of performing *wudhu*, realized that he had skipped an integral part of it. He should make good the defect and follow it through with the subsequent steps, observing in all what he does the necessary rules. The same applies in the case of a person who has just finished *wudhu*, if it was feasible to complete it without infringing upon the requirements. The lapse could have been realized after a while. And it just so happened that it was not possible to rectify the situation with due regard to the rules because of the length of time or for any other reason. In this case, there is no doubt that *wudhu* has to be renewed.

99. A person, who is in the process of performing *wudhu*, doubted that he might have skipped certain parts of *wudhu*. He should make good the subject of his doubt, following the same lines in the previous point.

Example

The person may have doubt about washing his right arm while he is busy washing the left arm, or wiping the head, and so on. He should go back to make good the part he doubted and the parts that follow it in that order.

The doubt could be about something else. For example, while he was busy washing the right arm, the person realized that he might not have washed it properly, i.e. from the elbow to the fingertips. Such doubt should be overruled, irrespective whether the doubt took place before embarking on the next step of before it.

If the doubt arose after finishing *wudhu*, one should not pay attention to it. The doubt might revolve around wiping the left foot, i.e. the last part of *wudhu*. The person should rectify it if the chain of steps of *wudhu* was still intact, or he has not engaged himself in some other business, such as drying his hands up, or embarking on prayer.

100. After finishing *wudhu,* a person harbored doubt as to whether or not he moved the ring in his finger to allow the water to reach the skin under it. In this case, he must start his *wudhu* afresh.

101. A person was not sure of the presence or otherwise of a mask of the sort which may prevent water from reaching the skin. That is, he did not know whether it was there before he started *wudhu* or after he has finished it. The *wudhu* is in order, if he was aware of the presence of the screen and took necessary action to remedy the situation at the time. If this was not the case, he should perform new *wudhu.*

102. A person, with a second *wudhu,* performed prayer. After finishing prayer, he realized that the first *wudhu* was *batil* for this reason or the other. The second *wudhu* should do; accordingly, his prayer is in order. Moreover, he needs not perform a new *wudhu* for a subsequent prayer.

103. A person performed *wudhu* and said prayer. He then performed a second *wudhu.* He came to know that one of the two *wudhus* was *batil* because, he was, for example, certain that he did not wipe his head. He neither needs to repeat the prayer, nor performs a new *wudhu* for a impending prayer.

104. A person had a *wudhu* and said prayer. He then broke his *wudhu* through *hadath.* He performed a new *wudhu* and said another prayer. He then realized that one of the two *wudhus* was *batil.* He should renew his *wudhu* and repeat whatever prayers he has said.

105. A person performed *wudhu* twice. He performed prayer thereafter. He then realized that he sustained a *hadath;* he could not tell when the *hadath* took place, i.e. after the first or the second *wudhu.* The prayer stands, if it was likely that he was aware of the *hadath* and its consequences at the time. It is obligatory though that he performs a new *wudhu* for the next prayer.

106. On finishing *wudhu,* a person knew that he skipped a part thereof. He however does not know if the skipped part was among the *wajib* ones, such as wiping the head, or *mustahab,* e.g. rinsing the mouth. The *wudhu* stands.

107. A person was sure that he embarked on *wudhu* and performed a great part of it, such as washing the face and hands. However, due to unforeseen circumstances, which upset his concentration, he was not sure whether he finished the *wudhu.* Such *wudhu* is *batil;* he has to repeat it.

108. On finishing *wudhu,* a person was absolutely sure that he did not carry out certain steps of ***wudhu.*** For example, he wiped over the bandage in his foot instead of wiping the foot itself. However, he did not know whether what he had done was justified, such as in the case of *wudhu* of *jabirah,* or his action was brought about inadvertently. In either case, he should not worry as his *wudhu* stands.

Etiquette and Voluntary Acts of *Wudhu*

There are certain *mustahab* works and manners pertaining to *wudhu.* Should the worshippers feel the urge to do and uphold them, they will be rewarded. If not, they will not be punished.

109. Prior to embarking on *wudhu,* a person could wash his hands, rinse his mouth, and sniff water. Once he starts with the original parts of *wudhu,* he may, if he so wishes, wash his face and hands [from the elbow to the fingertips] twice. The second washing will be considered *mustahab.*

At the point of pouring water, it is *mustahab* to say, *"Bismillahi wa Billah; Allahuma Ij'alni Minat Tawwabeen, waj'alni Minal Mutatahhireen",* (In the name of Allah, O Lord! Make me among the repentant ones, and gather me together with those who wish to be *tahir*).

On finishing *wudhu,* you recite, *"Alahamdu Lillahi Rabil "Aalameen".* (May praise be to Allah, Lord of the Worlds).

Guidelines on Using the Toilet

As has already been discussed, urinating and passing stool are among the things that invalidate *wudhu.* We are going to discuss the rules of conduct when using the toilet.

Hadith has it, *"Whoever felt the need to use the toilet should be aware not to sit facing the qiblah or turning their back to it".*

There are some rules that have to be observed when urinating or passing stool.

110. One should cover his sexual parts from the gaze of adults, and those who have not attained adulthood, if they were looking to those parts in a dubious way.

Women can look at the sexual parts of their counterparts, if there was a need for it, such as medical examination.

Woman are free not to cover their genitals from their spouses and vice versa. Genitals here mean the posterior and anterior. However, covering the sexual parts from the gaze of adults, and those who have not attained adulthood, is obligatory at all time, except in emergencies.

111. Famous jurists agree on the total ban of sitting, during passing urine or stool, with one's front side or back pointing to the direction of *qibah.* The only exceptions are situations of difficulty or potential damage. However, it is most evident *(al adhhar)* that there should be no prohibition, but there is no harm in upholding it on the basis of *ihtiyat.*

112. Removing the *najasah* from the place and rendering it *tahir.*

113. The place through which urine has passed should be made *tahir* on contact with abundant water. If water was little, two washes must be performed; one for removing the *najasah.* Should the *najasah* disappear, it is evident that one wash would do. Should the water be kept running to the tune of two washes or more, it is apparent that one wash is sufficient. That said, in all the cases, washing more than once is more preferable as a matter of *ihtiyat.* However, no fluid, other than water, can do the job.

114. Should faeces go beyond the immediate area of the anus, water should be used for cleansing. If this was not the case, the person is free to use either water or any other means, such as toilet paper or stones. Yet, water remains superior to any other object of cleansing.

We have to stress though that if excrement was laced with something else, e.g. blood which could have made the anus and the area around it *najis,* it is obligatory to use water alone to restore *taharah* to the place.

115. Should there be no alternative to cleansing with stones and the like, these should be *tahir* and more than one; if need be, three have to be used, as a matter of *ihtiyat.*

There is no harm if, after the *najasah* has been removed by any means, there remains either smell or colour.

116. It is not permissible to use other people's property to pass urine or stool, unless with their permission, be it explicit or implicit. Nor is it permissible for someone, other than the students, to use schools' toilets, especially if it was known that they are there for the exclusive use of students and staff.

117. One should not be mindful to avoid coming into contact with water which has been used for cleansing the organs after passing urine or

stool. Nevertheless, there are some restrictions, in that the used water should not have undergone any change, such as colour and smell; the *najasah* should not have spread to areas other than the passage points; it should not have polluted other areas in an extraordinary way; the used water should not carry any trace of *najasah.*

However, this used water is not good enough to either remove *khabath* or eliminate *hadath.*

118. After they have passed urine, it is *mustahab* for men to ensure that no more urine is left in the urethra. This is called *istibra'* in Arabic.

This could be achieved by wiping three times, over the area from the anus up to the root of the penis. By placing the thumb over the penis and the index finger below it, it should be pulled up to the glance three times, and jerked three times.

119. The advantage of this is to ensure that wetness [other than semen] that have passed through the penis be considered *tahir*, if the person has performed *istibra'*. This is unlikely when the person has not, in that any wetness that may be detected is treated as urine, which renders the place *najis* and consequently invalidates *wudhu.*

If women detect any wetness, doubting whether it is urine or any other fluid that is not *najis,* it should be deemed *tahir*, unless they are certain that it is urine.

Chapter Two

Ghusul (Ceremonial Bathing)

Foreword

1. By *ghusl* we mean washing the whole body, from the summit of the head to the tiptoes. The manner in which *ghusl* should be conducted will follow. *Ghusl* could be *mustahab* or *wajib*.

The *wajib* is divided into two categories. *Wajib* for itself, such as the *ghusl* of the dead. It derives its being compulsory not for anything else, but for its being *wajib*.

The second one is *wajib* for being a precursor to another obligation, such as the *ghusl* of *janabah*, which becomes *wajib* when prayer becomes due. There are various types of this category. *Ghusl*s of *janabah, hadath, istihadhah, nifas,* and coming into contact with a dead body. By adding *ghusl* of the dead to the ones we have just mentioned, we will have six obligatory *ghusl*s.

*Mustahab ghusl*s are numerous. They have their own time and place. It suffices to mention two of these; the *ghusl* on Fridays and that for assuming *ihram* for *umrah* or *hajj*.

*Ghusl*s, whether *wajib* or *mustahab,* are acts of worship like *wudhu*. So, none shall be deemed proper unless it is coupled with the *niyyah of qurbah*. Such will be acknowledged as *taharah* and cleaning.

2. Any *ghusl,* falling outside the pale of the injunctions of *shari'a,* shall neither be deemed an act of worship nor *taharah*. Thus, it has no worth in religion. Accordingly, should a person opt for performing *ghusl* outside what Allah, the Exalted, has ordained as *wajib* or *mustahab,* such *ghusl* shall not be considered of any effect. As such, *ghusl* is different in this regard from *wudhu*. As has already been discussed, ***wudhu*** is a devotion and is called for in itself at all times and places because it is *mustahab*. When a person performs *wudhu* with the *niyyah of qurbah,* the *wudhu* is accepted and he is deemed *tahir*.

Each of these five types of *ghusl* has been made *wajib* for a purpose, which the jurists call a major *hadath*. By giving it this name they wanted to differentiate it from things which render *wudhu* null and void, i.e. minor *hadath*. That is, *wudhu* is a kind of *tahrah* from minor *hadath* whereas *ghusl* is a kind of ***taharah*** from major *hadath*.

3. Any act of worship, such as prayer, that calls for *taharah* from minor *hadath*, i.e. by *wudhu*, should call for *taharah* from major *hadath*, as has already been discussed in para(71).

4. There are certain things that bar the worshippers, experiencing a minor *hadath*, from resuming them until they perform *wudhu*. by the same token, those who have gone through a major *hadath*, are barred until they perform *ghusl*. So long as they remain in a state of *najasah*, they are not allowed to, for example, touch the writing of the Holy Qur'an as discussed in para (47).

However, there are other forbidden things because of some major *hadath*, such as *janabah* and *haydh*. These will be discussed under their respective headings.

5. If a person experiences both the *hadaths*, i.e. minor, which makes it necessary to perform *wudhu*, and major that requires them to perform *ghusl*, performing *ghusl* will suffice for both of them. That is they need not perform *wudhu*. The same goes for performing *mustahab ghusl*, i.e. not precipitated by major *hadath*.

However, *ghusl* makes *wudhu* redundant in all the situations but one. It is the *ghusl* of *istihadhah*, the discussion on which will follow, where, in certain situations, the woman in question has to perform *wudhu* in addition to *ghusl*.

6. The reasons for *ghusl* may be more than one, such as a man experiencing *janabah* and touching a dead body, or a married woman just becoming *tahir* from *haydh* to experience *janabah*. One *ghusl* should suffice.

How should one go about performing *ghusl*?

7. All the five types of *ghusl* that are obligatory for themselves and all *mustahab ghusl*s should be carried out in the same way.

However, *ghusl* of the dead is different. This will be discussed under its respective heading.

Requirements

Ghusl is a means of restoring *taharah* to the human body, using water.

8. It is important that the water intended for *ghusl* should satisfy certain conditions. These are the same as the ones required for the water used for *wudhu*. That is, it should be pure, *tahir* and free. Thus, all what has been discussed in paras. (2) to (6) in the Chapter on ***Wudhu*** is relevant here.

9. The conditions which the worshipper should satisfy are (a) they should ensure that the parts of body which came into contact with *najasah* must be made *tahir* again, (b) they should be in good health, lest *ghusl* should aggravate their poorly state of health, and (c) the *niyyah of qurbah* should be present.

All this has been discussed in para (7) of the Chapter on *Wudhu*. One of the requirements the worshipper, performing *wudhu,* has to observe is that the place where they wipe their feet should be free as a matter of voluntary *ihtiyat*. As there is no wiping in *ghusl,* there is not such a conditions, including *niyyah,* to be fulfilled by a worshipper performing *wudhu* is of relevance here.

In para (13) of *Wudhu,* it was stressed that the person should perform *wudhu* themselves. Here, in *ghusl,* it is incumbent on them to perform it themselves too.

The Manner of *Ghusl*

According to *shari'a, ghusl* can be performed in two ways:

10. The step-by-step way which involves pouring water over the head and neck and washing them thoroughly. Next should come the rest of body. You are free to start with the right or left hand sides; should you so choose, you may pour water on both the parts in one go. No matter which way you opt for, you should ensure that you cover all parts of the body, including hair, washing each of which thoroughly.

As a matter of voluntary *ihtiyat,* you should include the neck, after it has been washed with the head once, with the rest of the body. It is apparent, however, that you should not worry about the step-by-step washing, if it was possible to wash the entirety of the body, head and neck included, in one go under, say, a water fall. This is because what is

of consequence according to *shari'a* is that the rest of the body should not be washed before the head; rather the head should come first.

However, without the *niyyah,* it is not sufficient to turn that part of the body in the water, as such movement is not considered part of the washing.

11. The second way of performing *ghusl* is by dipping the whole body in water, irrespective whether the quantity of water was *kurr* or less; what is important though is that water must cover fully all parts of the body. Should the body hair be dense, you should ensure to run your hand through it to ascertain that water reaches the scalp once you are inside the water. Any part of the body which remains outside the water must be washed instantly. The *niyyah* should be made at the start of the process of submerging the body. However, it should also be sufficient, if it was made prior to getting into the water so long as it is maintained.

12. In both ways of *ghusl,* hair, be it dense or thin, should be washed, making sure the skin it covers is washed. However, it is not *wajib* to wash the inside of, say, the nostrils or the hidden parts of the lips. In the event of doubt whether a particular part of the body is of the upper or hyper derma, you need not worry about washing it. That is, unless you were pretty sure that it was of the skin, then you have the doubt that it somehow had changed to be part of the hyper derma.

13. The step-by-step *ghusl* is more superior than immersing the whole body in water. However, the person is free to change their mind and perform the step-by-step method instead of the other one.

Occurrences Precipitating *Wudhu* while Performing *Ghusl*

14. Someone may feel the need to, say, urinate while performing any of the five types of obligatory *ghusl.* What should they do?

A. They should go ahead with *ghusl* which should be deemed in order. However, such *ghusl* cannot substitute *wudhu,* i.e. they should perform *wudhu,* even though repeating *ghusl* and *wudhu* is recommended, as a matter of voluntary *ihtiyat.*

Should the person opt for switching from the step-by-step *ghusl* to immersing the whole body in water, after they have experienced the *hadath,* they are free to do so. Such *ghusl* shall forgo the need for *wudhu* as the case maybe.

Occurrences Precipitating *Wudhu* while Performing *Ghusl*

15. In the process of performing *ghusl,* a person did something that required them to perform *ghusl.* How should they go about it?

A. Should the *ghusl* be required as a result of doing the same thing that required the first *ghusl,* such as *janabah,* starting afresh is recommended as a matter of obligatory *ihtiyat.*

The need for a second *ghusl* may arise after committing an act that is different from that which brought about the first *ghusl,* in that they might be performing *ghusl* of *janabah* and touched a dead body. Here, they are free to finish the original *ghusl* with the same *niyyah;* this should, however, be on the premise that finishing the *gusl* be alright. They should though repeat the *ghusl,* this time around, on the premise that it is called for by virtue of *shari'a* law. They could also call the first *ghusl* off and start a new one. Should they opt for submerging themselves in water, they are free to do *niyyah* for *ghusl* of *janabah* or touching a dead body or both, if the option was for the step-by-step way of *ghusl.*

Ghusl of *Jabirah*

16. In the chapter of *wudhu,* we discussed *wudhu* of *jabirah* which is made incumbent on the person suffering an injury or illness that needed a bandage of some sort on the parts of the body that should be washed in *wudhu.*

Here we are addressing the *ghusl* of *jabirah.*

a. If the person is nursing a cut or an ulceration, they can perform *ghusl.* However, it is sufficient to wash the area surrounding the place of the injury. They can also resort to ***taymmum.***

b. If the person is having a splint secured to, say, the fractured limb, he can have *ghusl.* It is sufficient that he wipes over the *jabirah* as though he was in the same position of a person, experiencing the same injury, but performing *wudhu.*

c. The person having a fracture but not wearing a splint should take to *tayammum;* it is not sufficient that he performs incomplete *ghusl.*

This should be the norm, if *ghusl* in an appropriate way was not feasible. However, if it was, and without difficulty or endangering one's health, conducting proper *ghusl* should be the basis.

How should one go about doubt in *ghusl*?

17. If *ghusl* became necessary and the worshipper was not sure whether he performed *ghusl* or not, it is *wajib* that he should perform *ghusl*. In another situation, the person knew that he had entered the bathroom to perform *ghusl* for, say, ***janabah;*** after he had gone out, he had a lingering doubt as to whether or not he had performed *ghusl*. In this case, he should perform *ghusl* as though he was still in a state of *janabah*.

18. In the process of performing *ghusl* or shortly after it, the person started doubting that he did not do *ghusl* properly, in that he did not pour water on the head and neck first, rather he washed them as part of the whole body. Such *ghusl* should be deemed in order, so long as the person feels that he washed his body all in one go, for what is required is that one should not start washing the body before the head.

19. A person opted for the step-by-step *ghusl*. After finishing, he realized that he did not wash one part of his body. What should he do?

A. Should that part be the head, the neck, or thereof, it is obligatory that he washes it and repeat the *ghusl*. If the missed part was elsewhere in the body, such as a hand or a foot, washing it alone should do.

20. After having *ghusl,* a person had doubted whether he observed the order of parts when washing. What should he do?

A. He should consider the *ghusl* in order.

21. Should the doubt arise from whether the person washed the whole of the head and neck or part thereof, he should assume that the *ghusl* was in order.

The same ruling applies in the case where the person is in the next stage of washing, i.e. washing the body, after having finished with the head and neck. He should carry on and finish off what he started with.

However, if the doubt centered around washing or not washing the head and neck, or part thereof, before going to the next stage of washing the body, it is obligatory that he washes the parts in doubt.

22. Should the person, in the process of washing the body, doubt whether he washed an arm or some other part, it is obligatory on him to resume washing the suspected part. This is irrespective of whether the doubt arose after taking bath or during it. Whether the part in doubt was on the left side or on the right one of the body is also immaterial.

23. Should the doubt revolve around the correctness, or otherwise, of the washing, such as the person might have thought that he used *najis* or mixed water in performing the *ghusl,* he should assume that the *ghusl* was in order. There should be no need to repeat it. It is immaterial if the doubt took place during or after the *ghusl;* nor does it matter at what stage of the washing process the doubt crept in.

1. Ghusl of Janabah and its Rules

How does *janabah* come about?

Janabah is an abstract thing. It occurs due to ejaculation of semen or sexual intercourse. Being in a state of *janabah* is true of males and females.

Secreting Semen

24. Passing semen through the penis, be it during sleep or awake, willfully or forcibly, during sexual union or otherwise, requires *ghusl.* Whether the quantity passed is little or large is immaterial.

25. Liquids, which may or may not be semen, could be passed by the male organ. How should they be treated?

A. There is a number of issues which need addressing: (a) The semen should be passed with pleasure, (b) thrown out suddenly and with force, and (c) the body should experience relaxation after its passing. Should the liquid passed lack any of these characteristics, there is no way it can be semen, provided that the person is healthy.

As for the semen passed by a sick person, it suffices to consider it thus, even if it lacked the force when it was passed, i.e. (b) above. Should one description of the remaining two be absent, no consequential effect of the kind normally associated with the passing of semen should be considered.

26. Q. A person performed *ghusl* for *janabah.* Upon finishing he could still trace some sort of liquid coming out of his male organ. He could not tell whether or not it is semen. Does he have to perform *ghusl* again?

A. If the person passed urine prior to the *ghusl,* such *ghusl* is in order. Otherwise, the wetness should be treated as semen, and accordingly, he has to repeat the *ghusl.*

The person had performed *ghusl* before passing urine, then passed urine. They had slight doubt that their urine might be laced with semen. In such a case, they need not worry.

27. Q. A person noticed a sort of wetness; he could not tell whether it was semen or urine. What should he do?

A. If, prior to the presence of the wetness, the person was in a state of *taharah,* without having had *wudhu* or *ghusl,* it is obligatory that he should perform both.

Should he be obliged to perform *wudhu* for something he did, he should perform *wudhu* and not *ghusl.*

Should he find himself obliged to perform *ghusl* for some act he commissioned, he has to perform *ghusl* and need not worry about *wudhu.*

Sexual Union

28. We have already mentioned that *janabah* comes about due to secreting semen either through sexual intercourse or any other way.

What we are addressing here is sexual intercourse. Sexual union comes about as a result of inserting the penis in the woman's vagina, regardless of the level of penetration, i.e. be it full or partial, and whether there has been ejaculation or not. Should this be the case, both parties enter into a state of *janabah,* and must therefore have *ghusl.* Whether the parties to the sexual act were sane or insane, willing or coerced is immaterial.

29. The man is free to get engaged in wedlock sex, even if he knew he was not going to be able to perform *ghusl* and should therefore take to *tayammum* to say prayer. Whether he embarked on the sexual act before or after the time of prayer had become due is immaterial too.

Is it necessary to have *ghusl?*

Ghusl of *janabah* is a devotion in itself. Notwithstanding, it becomes obligatory as a precursor to other acts of worship. Such shall not be deemed sound, unless *ghusl* is performed. Accordingly, acceptance of the five daily prayers is dependant on having a *ghusl.* That is, irrespective of whether the prayer in hand was said *ada'* or *qadha'.* This is also true of any parts of prayer that might be said after the main prayer has been performed. Just as *ghusl* is conditional to the acceptance of an obligatory prayer, so is it conditional in voluntary prayer because no prayer shall be

considered valid without the person performing it being in a state of *taharah*. The same goes for *tawaf* of *hajj* and *umrah*, and their prayer.

However, like *wudhu, ghusl* is not an essential requirement for saying prayer for the souls of the dead. Nor is it a condition for performing the two *sujoods*, usually performed after finishing prayer for certain commissions or omissions thereof *(sajdatay-as-sahu)*. Nevertheless, being in a state of *taharah* when performing these two acts of worship is recommended as a matter of *ihtiyat mustahab* (voluntary precaution).

30. Unlike *wudhu, ghusl* is essential for:

a. A voluntary *tawaf*, i.e. it is not required for *tawaf* itself; rather because a person in a state of *janabah* should not enter the Ka'ba, let alone perform *tawaf* there. However, should the person inadvertently enter The Holy Mosque and perform *tawaf*, it should be in order.

b. Fasting during the month of Ramadhan or fasting ***qadha*** at other times of the year. The person in a state of *janabah* should have a *ghusl* before dawn, as a matter of *ihtiyat*, for the acceptability of their fast. More details will be discussed in the chapter dedicated to fast. However, *ghusl* is not essential for voluntary fast, in that the person can remain in a state of *janabah* and wake up thus.

c. *I'tiqaf;* a person in a state of *janabah* cannot take to this form of worship knowingly. However, should they unintentionally complete their *I'tikaf* while still in a state of *janabah*, it should be in order.

More details on certain things which a person in a state of *janabah* cannot embark on until he becomes *tahir* again will follow.

What to do when in doubt?

31. Should a person in a state of *janabah* perform *wudhu* and say prayer without realizing he has to perform *ghusl* instead, his prayer is invalid. Accordingly, he should perform *ghusl* and repeat that prayer.

A person may experience the coming out of semen unconsciously, such as in a dream. Should semen come out and the person was not aware of it, he then performed *wudhu* and prayer, only to find out that he was in a state of *janabah*, he has to have ***ghusl*** and repeat his prayer.

32. A person may notice that either his clothes or body are stainned with semen. If he is absolutely sure that the semen belongs to him and that he did not have ***ghusl*** for ***janabah,*** he should do so. He is not required

to repeat any prayer that has been said and whose time has passed, if he thinks that he has performed it before the *janbah*. However, he has to say, by way of qadha, any prayer he performed after he knew of the *janabah*.

The same person, i.e. who suspected that he breached the state of *wudhu*, before he performs *ghusl*, he should perform it to say prayer afresh, so long as there is still time to say it. However, such *ghusl* is not good enough for other prayers as *wudhu* must be had.

Things a person in a state of *janabah* should not do until he becomes *tahir* again

We have already mentioned that whatever makes *ghusl* incumbent on a person, he should abstain from touching the print of the Holy Qur'an, unless he becomes *tahir* again. However, it is not forbidden for him to touch the name of "Allah" and His attributes wherever it may be found outside the Qur'anic text; nor is it forbidden for him to touch the names of the prophets and the imams (a.s.).

There are other things which are forbidden for a person in a state of *janabah:*

33. Reciting any of the four *ayahs* of *sajdah*. These are verses 15/as-Sajdah, 37/ Fussilat, 62/an-Najm, and 19/al-Alaq. This should be applied as a matter of voluntary *ihtiyat*.

34. Staying at, and passing through, the two holy places, The Grand Mosque in Makkah and the Prophet's Mosque in Madinah.

35. Staying at any other mosque, except for the following:

a. Where there are two gates for the mosques, where the person in a state of *janabah* can enter from one and exit from the other without staying.

b. Entering the mosque could be for taking away certain things which belong to the person, such as a book. There should be no staying at the mosque.

By comparison, the two prohibitions in (b) and (c) do not extend to *al-Masjidil Haraam* at Makkah and the Messenger's Mosque at Madinah; they are confined to other mosques.

36. Is it permissible for the person in a state of *janabah* to enter the holy shrines where the prophets and the imams are buried?

A. Apparently, it is permissible, However, it, as a matter of *ihtiyat,* is desirable to avoid entering these shrines.

37. The prohibition imposed on the person in a state of *janabah* not to enter mosques is a universal one, i.e. it covers all mosques be they fully operational or derelict all over the globe.

38. If someone is not sure whether a certain building or a place were part of the main building of the mosque, in that you could not describe it as mosque, do the rules governing the mosque extend to the suspect building?

A. Here, one should follow the practice of the people in whose area the mosque is found. If they were treating the building in question as a mosque, the rules concerning a mosque should apply. Otherwise, they do not.

39. Should the person in a state of *janabah* be unable to restore *taharah* to his body, they should not be employed in any lawful capacity which may entail staying in the mosque. However, should the employment contract be taken out with a person, in a state of *janabah*, who does not mind staying in the mosque, such contract is lawful. Should the hired person renege on his pledge to carry the work out because they were in a state of *janabah*, they have the right to do so. The employer though has the right to annul the contract.

40. The prohibitions imposed on a person in a state of *janabah* are confined to those who know of the state they are in. As for those who are not aware of such a state or are doubtful, they practically are outside the remit of the prohibitions.

How should one go about performing *ghusl* of *janabah?*

41. Generally speaking, all that has been discussed in paragraphs (10) to (13) of this chapter applies to *ghusl* of *janabah.*

It is obligatory to hold *niyyah* of *qurbah.* There is no difference here whether the *ghusl* was to be performed to carry out a recommended devotion, such as touching the print of the Holy Qur'an, or an obligatory one, like prayer. It is advisable to refer to paragraph (77) of the Chapter on *wudhu.*

42. A duly performed *ghusl* of *janabah* can be as good as any other *ghusl,* provided that the intention was confined to it.

Should a person not be in a position to determine whether he has to perform any of two *ghusls,* for example *janabah* or touching the dead, yet he performed *ghusl* intending it to be that which is incumbent on him to perform, the *ghusl* is in order.

However, should he be aware that he has to perform both the *ghusls,* yet he performed either one or both of them with the *niyyah* present, the *ghusl* is in order. If he performed the *ghusl* without the *niyyah* for either, the *ghusl* is *batil.*

2. Ghusl of *haydh*

Types of Blood

43. Blood could come out from the female organ, in instances other than child birth. It is of several types:

a. The bleeding an adult woman experiences every month. It is called *haydh* blood. The woman concerned should perform *ghusl* to restore her *taharah* at the end of her menstrual cycle. The *ghusl* is described as that of *haydh.*

b. Some bleeding caused by an injury or disease in the womb, or that which is normally found in the aftermath of surgery.

c. The blood resulting from rupturing the membrane of virginity.

d. Any other bleeding is called *istihadha.*

There are certain rules governing the woman experiencing *haydh,* among which is that she should stop praying, refrain from doing such things as staying in the mosque and stop having intimate sexual encounter with her husband.

As for the woman who is experiencing any of the second or third types of bleeding, she should become *tahir* by washing the affected place with water where possible, i.e. without subjecting herself to any harm. That is, these two types of blood do not call for any *ghusl* or ***wudhu.***

The blood of *istihadhah* requires *wudhu* or *ghusl* in a manner which will be discussed in detail. The woman experiencing *istihadhah* is obligated to uphold such a requirement and say her prayer, unlike the woman experiencing *haydh.*

Requirements of *haydh* Blood

For the blood to be considered that of *haydh,* it should fulfill certain conditions:

44. a. The woman should have completed nine years of age and not exceeded fifty. Nine years is, as matter of *ihtiyat,* the legal age of adulthood; fifty is the age of menopause. As for the woman who cannot determine whether she has reached the age of menopause, she must conclude that she has not; accordingly, she must continue to conduct herself as though she is still having her monthly period, whenever she experiences it. As for the nine-year old, who experiences bleeding, she must treat it as *haydh,* if she has completed nine years of age. If she was still undecided as to her true age, she should not consider it as such.

Continuity of bleeding during the first three days of the period is widely held as the norm. The first two nights and three days should complete the said three days. For example, if the woman's period starts early on Saturday, the continuous bleeding should take her to the sunset of Monday. However, if it starts at the midday or evening of Saturday, it should continue to the midday of Tuesday. Intermittent periods when the bleeding stops would not detract from the principle of continuity.

In our opinion, however, continuity of bleeding is not of consequence. Accordingly, prayer should be abandoned when the woman experiences bleeding and resumed at the intervals when the bleeding stops, and so on until the three-day duration is complete. This is so, if the woman was, at the outset, in a position to tell that bleeding would continue for three days.

That said, in the case of non-continuity, it is desirable, as a matter of *ihtiyat wujubi,* to combine that which a woman in a state of *istihadhah* is required to do and what a woman in *haydh* is not required to do.

45. b. The bleeding should not continue for a period in excess of ten days. If it does, the whole period should not be considered as *haydh;* some of it might be treated as *haydh* as will be discussed. This is so because from a *shari'a* point of view *haydh* does not exceed ten days in total.

46. c. The woman should have had at least ten days of a state of *taharah* before the start of a new menstrual cycle. So, if she had experienced a monthly period then became *tahir* only to experience another bout of bleeding in, say, nine days, the new blood would not

count as that of *haydh;* this is so because the period of *taharah* intervening any two intervals of *haydh* should not be less than ten days, as a matter of *shari'a* law.

What we mean by ten days is the period consisting of ten days and the nine nights falling between the first day and the last one. By *taharah* we mean that the woman is free from *haydh* blood, regardless whether she was completely free from blood or experiencing *istihadhah* blood.

47. For the woman to fall under the banner of a woman experiencing *haydh* according to the preceding description, the blood should come out from the female organ. If the blood remained inside, it would not fit the description of *haydh* blood, no matter how long it remained trapped. If at the outset it came out, it is sufficient to be treated as *haydh* blood, although some of it may still be trapped inside.

How can a woman recognize *haydh* blood?

There might be a few cases where the woman cannot determine whether the bleeding she is experiencing is that of *haydh.*

48. a. The doubt may be based on the possibility of the blood being that which is resulting from an internal injury or ulceration, i.e. the second category. Should this be the case, she should treat it as that of the second category. Accordingly, she should not worry about satisfying the requirements of *haydh* or *istihadhah.*

49. b. The uncertainty may arise from the belief that the blood could be that which has resulted from rupturing the membrane of virginity, i.e. the third category. If this was the case, the woman could check the situation by inserting a piece of cotton in her genitals. After a short while, she should extract it. If the blood formed some sort of a ring like shape on the piece of cotton, the blood should be that of the virginity membrane. If the piece of cotton was socked with blood, it should be that of *haydh.*

Should the woman choose not to apply this investigation, and carry on with any act of worship, such as prayer or fast, such a worship is *batil,* until she is pretty sure that she has become *tahir* from *haydh* again.

However, if investigating by using a piece of cotton was not feasible for any reason, the woman should act in the light of her experience of *haydh* and non-*haydh* periods. If she is a novice, or she could not count

on her experience in this regard, she must treat the blood as that of virginity.

50. c. Should the bleeding instance be neither that of an injury/ ulceration, nor virginity, yet the woman cannot determine whehter it is that of *haydh* or *istihadha,* she can resort to one of the following two methods:

1. Where possible, she should resort to applying *ihtiyat,* in that she should not embark on the kind of things a woman in *haydh* usually refrain from, and do the things which a woman in *istihadha* is required to do, such as *wudhu, ghusl,* and prayer until such time comes when the bleeding stops. Wherever we mention *ihtiyat* with regard to women we mean the aforesaid one.

2. She could resort to applying one of two legal ways of determining whether the bleeding she is experiencing is that of *haydh:*

a. Verifying it by way of its characteristics, or

b. Confirming it on the basis of past experience of the menstrual cycle.

Verification by Characteristics

51. *Haydh* blood has certain characteristics which set it aside. It is often either dark or red, warm, and comes out gushing. *Istihadhah* blood is in the main void of such characteristics. It is yellow in colour.

Allah, the Most High, has characterized *haydh* blood as such to make it distinctly and readily known as that of *haydh,* so that whenever the woman experiences it, be it during her menstrual cycle or during other days, she should treat it as *haydh* blood.

However, she should keep an eye on the bleeding for three days from the time she first saw the blood. If it continued, provided that it has the characteristics of *haydh* blood for the three-day period, she can conclude that it is that of *haydh;* she should therefore abide by the "dos and donts" required by *shari'a* law. This is so irrespective of whether or not the blood retained the characteristics of *haydh* blood or turned into yellow in colour.

The blood may stop or lose any of the characteristics of *haydh* blood before the three-day period. If this was the case, it goes without saying that it is not *haydh* blood; rather an *istihadha* one. Accordingly, it is obligatory on the woman to take to the procedure requited by that of a

woman in *istihadhah,* in that she should carry out all acts of worship, she abstained from during that period, by way of *qadha.*

Verification by Past Experience

52. Should the blood not bear the characteristics of that of *haydh,* such as it was yellow, the woman should resort to applying the yardstick of her known menstrual cycle; she should conclude that it is that of *haydh.* likewise, if such blood appears before one or two days of the time of her monthly period. Should it appear outside the days thus described, she should conclude that the blood is that of *istihadha.*

However, the woman must not lose sight of the fact that she should observe the blood for three days, as has already been discussed, and act accordingly.

For the woman to rely on her past experience insofar as her monthly period is concerned to determine the nature of bleeding, she must be in a position to tell when her period usually starts. If she has a regular period, yet she forgot when it would start, what should she do?

A. If the blood has the characteristics of *haydh* blood, she should consider herself having *haydh* in the light of the first premise (verification by characteristics). Should the blood not contain the characteristics of *haydh* blood, she should consider herself as having *istihadha* so long as she was not aware of the date of her period.

A woman experienced bleeding, not bearing the characteristics of *haydh* blood, believing that it would continue for, say, a week or more than the duration of her period. It so happened that she was aware that the time for her period was either in the first half or the second half of the week. If this was the case, she should resort to applying *ihtiyat* throughout the duration. Thus, she should uphold the prohibition imposed on a woman in *haydh* and do that which a woman in ***istihadha*** is required to do. However, we will discuss in some detail the rules governing the woman who has forgotten the time of her monthly period.

53. How does the menstrual cycle happen?

A. It materializes when the woman sees *haydh* blood at a certain time of the month and sees it again at the same time of the following month. It also comes about at regular intervals, such as a woman experiencing *haydh* at intervals of half a month separating one menstrual cycle from the other.

If the woman gets used to seeing the blood at the beginning of every lunar calendar month for, say, five days, does it follow that ascertaining that it is a *haydh* blood should be based on its appearing at the start of the month and continuing for five days?

A. No, it suffices that it should appear within that period, in that if a blood that is yellow in colour appears on the second day of the said period and continues till the fifth day, it should be considered *haydh*.

A woman's period follows a certain pattern, in that she notices the blood at the start of every month. Sometimes it continues for three days or more. Which of the days, she experiences the yellow blood, should be considered that of *haydh*?

A. The first three days of the month.

Verification of *haydh* by Characteristics and Past Experience

54. During her menstrual cycle, the woman may experience bleeding that is yellow in colour. It might continue after the lapse of the days of period. That which continued has the characteristics of *haydh* blood. Should such blood, fulfilling the requirements of *haydh* blood, be present, all the blood should be considered *haydh* blood, although some of it fits the description of menstrual cycle and some of the characteristics.

However, if red blood appears few days before the time of menstrual cycle continues to its due time, all the blood should be treated as *haydh* blood, in accordance with the preceding general guidelines.

To sum up, any blood which cannot be judged as that of *haydh* or *istihadhah* should be treated as that of *haydh*, provided that it fulfills the conditions mentioned in any of the two principles previously discussed, i.e. the blood may have the characteristics of *haydh* blood, or its appearance may coincide with the time of the menstrual cycle or slightly ahead of it. Otherwise, it should be deemed *istihadhah*.

The Monthly Period May not be Determined on the Basis of Characteristics

55. If *haydh* recur two consecutive times at the beginning of the month, it should be treated as such, i.e. *haydh* blood. The woman should treat the blood that appears after that particular time as *haydh*, albeit it is yellow, as has already been discussed.

However, the same situation may be experienced by the woman with the exception that she is not sure that it is *haydh;* nevertheless, it has the properties of *haydh* blood; so she treated it as such. At the same time of the third month, she saw yellow blood, that did not fit the description of *haydh* blood. How should the woman in question go about treating such instances?

A. She should act as though she has a regular period.

The Pregnant Woman and the Period

56. What we have discussed applies to an non-pregnant woman. As for a pregnant woman, juridical opinion is divided as to her experiencing both the pregnancy and having a period at the same time.

However, what we are inclined to is that the two cannot coincide. Yet, the woman in question should not abandon *ihtiyat,* if she comes to see blood during the time of her monthly period, or if the said blood bears the characteristics of *haydh* blood, particularly when it appears after the monthly period in twenty days. She should uphold the prohibitions imposed on a woman in *haydh,* and the commissioning of the acts required by a woman in *istihadhah.*

When should the woman in *haydh* perform *ghusl?*

57. Should there be any possibility within ten days from the start of the period that bleeding stopped, the woman should hasten to ascertain the extent of the stoppage. If she is sure that her period came to an end, she should perform *ghusl.* Conversly, three situations may arise:

a. The woman may have a regular and definite period; the bleeding would not exceed the duration of her period; she would be deemed in a state of *haydh* so long as there is blood after checking.

b. The woman may not have a definite period, in that once her *haydh* may take seven days and another eight. Such a woman should consider herself in a state of *haydh* if there are traces of blood after checking; that is, within the ten-day duration of *haydh.* This is so if the traceable blood has the properties of *haydh* blood. If not, it is *istihadhah* blood.

c. The woman may have a regular definite period of, say, a week. Upon checking she finds that there is still blood, after one week and prior to the ten-day duration. If she was in a state of *istihadhah* before the start

of her period, and the *istihadhah* blood continued to the time of *haydh,* she should end her *haydh* by the end of her known period; she must deem whatever blood that is left as that of *istihadhah.*

Should she be *tahir* before the onset of her period, it is left to her discretion. If she is pretty sure that bleeding would continue and exceed the ten-day duration, she must end her *haydh* by the end of her known period and consider the remaining days as *istihadhah.*

If she is hoping that bleeding would stop before the end of the ten-day duration, she must add one day at least to the duration of her known period, thus considering herself in *haydh,* and carrying out her obligations as though she is in a days of *istihadhah.* She is allowed to add two days of her period and continue discharging her obligations as though she is in a state of *haydh* for the entire duration.

If upon checking within the ten-day duration, the woman found out that there was no more blood, yet she was not absolutely certain that it was not the end of bleeding, in that it might reappear within the ten-day duration, what should she do?

A. If she was sure that bleeding would resume, she must not pay attention to the interval. Accordingly, she must act as though bleeding did not stop. If she was not sure of the reappearance of blood, she must perform *ghusl* and pray. Should bleeding not resume within the ten-day duration, her actions are in order; if not, she must act as though she was still in *haydh* during the entire duration.

For example, a woman experienced bleeding for four days. She became *tahir,* thus performing *ghusl* and resuming her acts of worship for two days. She then experienced bleeding for three days. She must treat the entire period of nine days as though she was in *haydh.* As a result, whatever religious duties she discharged during the fifth and sixth days are not in order.

This is what jurists meant when they have ruled that the interval of *taharah* falling between two periods of bleeding is considered an integral part of *haydh,* if the whole period does not exceed ten days.

Checking for the stoppage of bleeding or not by using a piece of cotton or by any other way, is obligatory on every woman who thinks that her period may have stopped. Should a woman take to *ghusl,* without making sure that the bleeding had stopped, in the belief that it did, such a *ghusl* is not in order, unless it was proven that she really was

free from blood when she had ***ghusl.*** However, if she was absolutely certain of her being free from blood, without checking, it is not obligatory on her to resort to checking; thus, she may have *ghusl* and take to prayer.

What if blood exceeds the ten-day duration?

As has already been discussed that if the flow of blood stops before the lapse of three days, it should be deemed *istihadhah* blood. This is so because the minimum duration of a menstrual cycle is three days.

However, should the flow of blood continue for more than ten days, which is the maximum duration of a menstrual cycle, it follows that some of that blood is not that of *haydh*. In other words, the blood in question could have started as *haydh* blood, yet it turned into that of *istihadhah*. The question is: How would the woman pin point when the change took place, i.e. is it from the point the blood flow going beyond the ten-day duration or earlier than that?

Assuming that the change took place after the lapse of the said duration, the woman ceased all acts of worship during this period. And on the second assumption that the change happened prior to the expiry of the ten-day period, she must resume, by way of *qadha,* all acts of worship for the duration she missed. How could she reconcile the situation?

A. The situation varies according to the type of monthly period of the woman. Thus, there are five different categories:

58. a. A woman with a monthly period that is specific in terms of the date it starts and the number of days it lasts.

Upon experiencing the flow of blood, such a woman should conclude that the blood is that of *haydh*. Should it exceed ten days, she should treat the days of her period as *haydh,* even if the characteristics of the blood were not of *haydh* blood; the excess is *istihadhah,* even if it fits the definition of *haydh* blood. She must apply the same measure, if the flow of blood starts prematurely or after the date of her period, provided that its duration is more than ten days.

Accordingly, she must treat the blood appearing during her known days as *haydh* and the remainder *istihadhah*. She should then take to any acts of worship, by way of *qadha,* that she abandoned during that period.

Should the period start at a different date and continue for more than ten days, the woman must treat as *haydh* a number of days equivalent to her normal menstrual cycle. The remainder should be treated as *istihahdhah.*

What if the woman does not complete her menstrual cycle in time?

59. Suppose that a woman's *haydh* starts at the beginning of the month and continues for a week. She experienced the flow of blood on the fourth day and continued for two weeks. How should she go about calculating the duration of *haydh*? Would she treat the blood that she experienced during her usual time of *haydh,* i.e. four days which are the fourth, the fifth, the sixth, and the seventh of the month, or should she resort to considering the period from the fourth until the tenth so that it does coincide with the number of days during which she usually have her period?

A. The woman in question should perform, by way of *qadha,* all acts of worship she abandoned during the days which fell outside the days of her usual period.

Take the same woman in the previous example. Suppose this time her *haydh* started a week earlier than usual. The flow of blood continued until the fifth of the month. Would she consider the duration of her *haydh* that which falls within her usual period, i.e. five days from the first to the fifth, or should she add two more days from the previous days to the five days to remedy the shortfall to complete a week?

A. Here, the woman is not required to perform any acts of worship she abandoned during some of the days, i.e. those which she added to the five days to make up for the shortfall. However, it is more likely that she should compensate any acts of worship during the days, that fall outside her usual period days, she missed. She is not allowed to complete the week by adding any days falling outside her known days of *haydh.*

60. b. Some women may have their period during a fixed term but not necessarily at the same time every month.

Any woman in this category, should treat the flow of blood as *haydh,* if it has the properties of that of *haydh.* If the flow of blood continues beyond ten days, she must consider only those days that are equivalent to the number of days during which she usually have her period, starting

with the onset of the flow of blood; the remainder should be deemed *istihadhah.*

61. c. Some women may have their period during a fixed time but not necessarily for the same number of days every month.

Any woman in this category may treat as *haydh* blood any blood that fits the properties of that of *haydh;* she may consider that the flow of blood started at the usual menstrual cycle. If she experienced any flow of blood that continued more than ten days, she has the choice to treat as *haydh* six or seven days of the whole duration; the remainder should be treated as *istihadhah.*

What if the woman forgets the time of her period?

The ruling in the case of such a woman varies in line with the category of her period as has lalready been discussed in the preceding paragraphs.

a. The woman who has a fixed term period could forget how many days her period usually lasts. Such a woman should be guided by the type of blood that is appearing during her menstrual cycle. That which fits the definition of *haydh* blood should be treated as such, and that which is not, should be deemed as *istihadhah,* provided that the whole duration of blood flow does not exceed ten days. If it does, she should resort to guess work; should she be inclined to consider the duration of her period five days, for example, she should stick to those days.

Should she think that the duration is more seven days, it is obligatory on her to observe the prohibitions imposed on a woman in *haydh,* and the obligations required to be discharged by a woman in *istihadhah* insofar as the number of days in excess of seven days is concerned. This is so up to and including a duration of ten days. The rest should be deemed *istihadhah.*

For example, *haydh* may set in on the first of the month and continue for more than ten days to cease on the thirteenth. If she believes that her period is nine days, it is obligatory on her to treat seven of those days as *haydh,* apply *ihtiyat* for the two days ending with the ninth, and consider herself experiencing *istihadhah* for the period of the tenth to the thirteenth.

b. The woman who has her period on a particular date every month, but with irregular number of days each time, may forget the date of her

period. If she experiences any flow of blood for at least three days and not more than ten days, she should treat the blood that carries the properties of *haydh* as such, and that which does not as *istihadhah*.

If the duration of the menstrual cycle exceeds ten days, there may arise two scenarios.

b.1. Assume that the woman is aware that her monthly period has fallen within these thirteen days without being able to determine when. In such a case, it is obligatory of her to do what a woman in *istihadhah* is required to do and refrain from that which a woman in *haydh* is prohibited to do during those thirteen days, regardless of whether the type of blood was that of *haydh* or *istihadhah*.

b.2. Assume that the woman does not know that her monthly period falls within these thirteen days. In this case, she must consider the blood that fits the description of *haydh* blood as *haydh*, provided that it is not more than ten days and not less than three. The blood which falls under the banner of *istihadhah* must be treated as such.

Should all the blood be the same type, such as that of *haydh*, she must observe six or seven days of it as *haydh* and the rest *istihadhah*. If the blood is that which fits the definition of *istihadhah* blood, all of it should be treated as *istihadhah*.

c. The woman who has a fixed term/date period may be prone to forgetting how days her period usually lasts or this occurrence or that. For such a case there could be different situation:

c.1. She may forget the duration of her period but not the time. The ruling in this case is identical to that of a woman with a fixed date period. However, once such a woman experiences the blood flow, which must be of *haydh* type, for more than ten days, and since she is not sure whether her period days fall within this flow, she must treat the number of days of her period as *haydh* and the rest *istihadhah*.

c.2. She may forget the time of her period but not the duration. Such should assume the state of *haydh* as soon as she experiences the blood flow, even if it is not bearing the characteristics of *haydh* blood. She must do this for three days. Treatment of the period in access of three days must be determined by the type of blood, i.e. whether it is that of *haydh* or *istihadhah*. If it is *haydh* blood, she must treat it as such for up to ten days. If not, she must consider it as *istihadhah*.

Should the blood flow exceed ten days, the ruling in this case is that of a woman with a fixed term period which has already been discussed.

c.3. Some woman may forget both the time and duration of their period. A woman in such a situation must resolve it by reference to the previous two cases. That is, she should do what a woman in *istihadhah* is required to do and do not embark on that which a woman in *haydh* is prohibited from, even if she can have a guess as to the number of days of her periods; this is so because giving more weight to the time factor is more important than that of the duration and so on.

62. d. A woman may have an irregular period, both in duration and time. She must resolve her situation by treating the onset of blood as *haydh* so long as it exhibits the characteristics of *haydh* blood. Should her period continue for more than ten days, there may be two possible situations:

d.1. The blood type and colour could be that of *haydh* throughout the period. If this is so, she could treat the duration at the onset of the blood flow as *haydh* up to six or seven days, as she deems fit. The remaining duration should be considered *istihadhah*.

d.2. Both the blood type and colour could be changing. If this has been the case, the woman should treat the blood which is more akin to the characteristics as *haydh*; the exceptions being that:

d/2/a. The duration of the blood in question be less than three days, the ruling on such a case is the same as in (d/1).

d/2/b. The duration of the blood under discussion be more than ten days. The ruling on such a case is that discussed para (d/1).

d/2/c. There may be two separate duration of the blood in question. These are separated by a duration where the blood takes a different hue. The total of the two duration may not exceed ten days. However, if the intervening duration is added to the total, it is bound to increase to more than ten days. Suppose that the total duration was fifteen days divided into three equal segments. In such a case, the woman should treat the first five days as *haydh*, the second five-day duration as *istihadhah*, and so does the third, for it has followed on from the ten-day period.

63. e. The Beginner, i.e. the woman who witnesses the blood glow for the first time. She may treat the blood bearing the characteristics of *haydh* as *haydh* blood as has already been discussed. However, should the

period exceed ten days, there may be two possible situations, like those of a woman with an irregular period.

e.1. Should the blood be that of the type of *haydh,* she may mimic the menstrual cycle of her woman folk, i.e. go for the same number of days of their period and treat the rest as *istihadhah.* If the monthly period of her relatives was not universal or if she did not have relatives, she should treat six or seven days of her first experience of a period as *haydh;* she must observe *ihtiyat* for the remaining three or four days that complete the ten-day duration; that is, she must abstain from any acts of worship which a woman in *haydh* is not supposed to embark on, and uphold those acts a woman in *istihadhah* is required to do.

Second time round, she must treat the first three days of the blood flow as *haydh,* and observe *ihtiyat* for the remaining six or seven days.

e.2. Both the blood type and colour could be changing. If this has been the case, the woman should treat the blood which is more akin to the characteristics of *haydh* blood as *haydh;* that said, she should note exceptions in the case of a woman with an irregular period already discussed.

Should bleeding continue for more than ten days, it could be one of two types

64. The blood in excess of ten days, which is governed by the aforesaid rules, should have the following properties:

a. The blood flow must continue for ten days until the eleventh day.

b. The blood flow could be intermittent, in that it appears for a while then stops, but before the lull duration continues for ten days, it resumes again.

If the duration of stoppage be ten days, both the durations [the one preceding the intervening duration and that which follows it] should be treated as *haydh* as has already been discussed. That is, the rules governing the flow of blood for more than ten days do not apply.

65. Summation.

The following ten cases may help the woman in identifying the appropriate ruling applicable to her own case:

a. Any woman may experience *haydh* blood for three to ten days. It

may then stop for ten days only to resume for another three to ten days. The two duration of blood flow are deemed *haydh;* the intervening duration is one of *taharah.*

b. A woman experiencing an intermittent flow of *haydh* blood, within a ten-day period, i.e. that which appears for three days, then stops for a short spell only to resume again, should treat all the blood during this time, including the short breaks, as *haydh.*

c. A woman experiencing a flow of ***haydh*** blood for a period of less than three days, only to resume after a day, two, or more, should treat all as *haydh* blood.

d. A woman experiencing a flow of *haydh* blood for a period of three days or more, which changes in colour to yellow for several days only to return in the form of *haydh* blood, may treat such blood as *haydh,* provided the entire duration does not exceed ten days.

e. A woman, not one with an irregular period, experiencing a flow of blood, that is yellow in colour, should treat such blood as *istihadhah* and not *haydh.* The same goes for a woman with a fixed term monthly period, even though the flow of blood may continue throughout the days of her period.

A woman with a specific date of period, should treat the yellow blood appearing outside the days of her period as *istihadhah.* That which appears during her days of period should be treated as *haydh.*

f. A woman may experience the appearance of yellow blood which later turns into *haydh* blood and continues for at least three days. Such a woman should consider herself having *istihadhah* on the days of undue menses and having *haydh* in those days when the blood flow is that of *haydh.*

g. A woman with a fixed term/date menstrual period may experience a flow of blood during the time of her period; yet it may stop before the completion of the duration of the period. Suppose this woman's period starts at the beginning of the month and continues for a week. If she has her period for, say, five days only to stop another five days and resume for seven days, can she deem the latter duration, of seven days, her monthly period because it tallied with the number of days of her actual period?

A. No, she must consider the blood of the first duration of five days that of *haydh,* although it is yellow in colour and the blood flow during

the seven days *istihadhah,* although it exhibits the characteristics of *haydh* blood.

h. A woman with a fixed date menstrual period may experience the flow of blood prematurely. Suppose it starts three days or more earlier and continues during the days of period and beyond. Should the total duration be not more than ten days, there is no doubt that it should be considered *haydh* as early as two days prior to the date of period, regardless of whether it was red or yellow in colour. Prior to this, the blood that has the properties of *haydh* blood should be treated thus, and that which fits the definition of *istihadhah* blood should be deemed as such.

i. A woman with a fixed term/ date menstrual period may experience a flow of blood before the time of her period; yet it may continue even after the completion of the duration of the menstrual cycle bringing the total to more than ten days. She must regard the blood that coincided with the days of her period as *haydh* and the rest, i.e. prior to the time of her period and after it, as *istihadhah.* She must make up for the acts of worship during the moratorium periods, i.e. before and after the time of her period, by way of *qadha.*

f. A woman with a fixed term monthly period may experience the flow of *haydh* blood for three days of more; it may stop only to reappear, bringing the total duration from the onset of blood to more than ten days. Here there may arise a number of cases.

f.1. Should the duration of blood, from first sight, be equal to the duration of her period, she must consider it *haydh.*

f.2. If it is less than the duration of her period, she must deem as *haydh* the duration of blood during the earlier experience, and the remainder *istihadhah.*

f.3. If the duration of blood and that of the stoppage are equal to the duration of her period, the ruling applicable to such a case is the same as that in (f.1).

f.4. Should the duration of her monthly period be more than the woman in the preceding case by, say, one day or more, she must regard those days falling within her period days as *haydh,* provided that they are not less than three days; the periods of lull should be deemed those of *taharah* and the rest *istihadhah;* thus, she is not required to remedy the shortfall of her period from the second duration.

The same applies to a woman with a fixed term/date monthly period, if she experiences a premature flow of blood as described in the preceding paragraph.

The Need for *ghusl* of *haydh*

66. Neither prayer nor fasting can be performed with *haydh* blood. No act of worship, be it obligatory or voluntary, can be performed by a woman, in *haydh,* unless she restores *taharah* to herself by way of *ghusl* after her period has stopped. This is because *haydh* blood causes a *hadath* as viewed by *shari'a* law; such a *hadath* persists, even after *haydh* ceases, until the woman had *ghusl.*

Ghusl shall neither be in order nor qualify to lift the *hadath,* unless it is performed after *haydh* blood has ceased.

67. Both the *ghusl*s, i.e. those of *janabah* and *haydh,* are one in their consequential effects on the acts of worship. In other words, any act of worship by the *mukallaf* shall not be in order unless they performed *ghusl.* So, whatever is required of a person in a state of *janabah,* as discussed in paragraph (39) of the Rules of *Ghusl,* should be required of a woman in a state of *haydh* or *nifas.* For example, the woman, whose period has come to an end, should perform *ghusl* or *tayammum* before dawn breaks, if she were to fast. Should she take *ghusl*/*tayammum* lightly, she must make up for the missed acts of worship by way of *qadha'.*

Forbidden Things for Women in *Haydh*

68. Just as the things, discussed in paragraphs (45/48) of the Rules of *Ghusl,* are forbidden to a person in a state of *janabah,* so are they to a woman in a state of *haydh.*

Neither such a woman nor her husband are allowed to have sexual intercourse. Sexual union is feasible only after the woman has become clean of *haydh* blood and had *ghusl,* or at least cleaned her genitals. Should the husband let loose his desire for sex and eventually had intercourse, he would be deemed sinful; however, both shall not *incur kaffarah.* That said, the man can enjoy sexual intimacy with his wife short of a sexual intercourse. Yet, it is *makrouh* that he should resort to caressing those parts of his wife's body between the belly button and knees.

69. If the man had sex with his wife either before or during *haydh,* she would be liable for both the effects, i.e. those of *haydh* and *janabah.* Should she choose to have *ghusl* of *janabah,* while still in *haydh,* this shall be deemed in order. The effect of *haydh* remains.

Other Rules Regulating Woman in *haydh*

70. A woman in a state of *haydh* should, after becoming *tahir,* compensate for the missed days of obligatory fasting, be they for Ramadhan or those for a vow. However, she is not required to say, by way of *qadha',* the five daily prayers, the prayer for a vow and the prayer for *ayaat* (natural phenomena).

The divorce of a woman in *haydh* shall be *batil,* unless she is pregnant, her marriage has not been consummated, or her husband is absent. This will be discussed in detail later. Should she be divorced in the belief that she was *tahir* which later proved to be inconclusive, the divorce is *batil.*

If, however, she was divorced with the belief that she was in *haydh,* yet she was actually *tahir,* what would become of the divorce?

A. If the husband was certain that she was in a state of *haydh* and that initiating such a divorce would never materialize, the divorce is null and void *(batil),* although it was carried out during a state of *taharah,* because in truth the husband was not intent on divorce.

However, he may or may not be aware of the *haydh;* yet he is not aware that *taharah* from *haydh* is a condition to the validity of divorce. Such a divorce is conclusive.

71. Voluntary *ghusl*s and *wudhu* of a woman in *haydh* shall be in order. It is *mustahab* for her to perform *wudhu* and sit where and when she usually performs her daily prayer, facing the *qiblah* to chant the praise of Allah.

Ghusl of Haydh and How it Should be Performed

72. In itself *ghusl* of *haydh* is a devotion, yet it is compulsory for performing obligatory prayer. Thus, the prayer shall not be in order unless the woman has had *ghusl* in conclusion of her period.

For the way to go about this *ghusl,* please refer to paragraphs (10) and (11). However, *niyyah* of qurbah, as discussed in paragraph (53) of *ghusl* of *janabah,* is paramount. Furthermore, all the rules governing the

situations discussed in paragraph (54) of the same Chapter are applicable in the case of the woman having *ghusl* after her period has ended.

3. Rules Concerning Women in *Istihadhah*

The Blood of Istihadhah

73. *Istihadhah* blood is different in properties from that of *haydh*. In the main, it is yellow, cold, thin, and flows slowly. However, sometimes it may have the features of *haydh* blood. None of the four conditions of *haydh* blood discussed in paragraph (56) applies to *istihadhah* blood, in that a girl below nine years of age and a woman over fifty may experience it. It may occur just before a full-blown *haydh* or after it, or even in between, provided the latter happens within a period of less than ten days. Insofar as volume is concerned, there is no limit to *istihadhah*, in that the blood may appear for a day or part thereof; it may continue [on and off] for months or years.

74. *Istihadhah* is deemed a *haydh* which in turn calls for the restoration of *taharah*. So, if a woman has performed *wudhu*, only to experience the flow of *istihadhah* blood, her *wudhu* shall be rendered *batil;* thus, she should restore *taharah* to herself in the manner discussed in paragraph (89). That said, no consequences shall be attributed to *istihadhah* blood if it remains trapped inside the uterus.

Types of *Istihadhah* and the Effect on Performing Prayer

75. *Istihadhah* is divided into three categories in the light of the volume of blood flow, i.e. being either scant or abundant. So, the types may be labeled minor, medium, or major. This classification may be reached at after the woman has checked, by placing a piece of cotton [or a tampon] inside the female organ, or by any other device.

If the piece of cotton is not saturated with blood, the woman should conclude that she has a minor *istihadhah*. She is therefore required, as a matter of *ihtiyat wujubi*, to change the tampon, clean her genitals, and perform *wudhu* for each and every prayer, be it *wajib* or *mustahahb*. However, she is not required to renew her *wudhu* for precautionary *ruku'*, the forgotten parts of prayer, and the *sajdatay-as-sahu;* please refer to paragraph (46) on the General Guidelines on Prayer.

It is not recommended that she performs two prayers in one *wudhu.*

Should the blood soak the tampon without dripping from it, the *istihadhah* is a medium one. She is therefore required, as a matter of *ihtiyat wujubi,* to change the tampon, clean the towel or change it, [if it is of the disposable type], have one *ghusl* everyday before *subh* ***(fajr)*** prayer coupled with a *wudhu* for this prayer. There is no harm in delaying the *wudhu* until *ghusl* has been performed. In addition to that, she must have *wudhu* for each and every prayer; it is advisable that she does not perform two prayers in one *wudhu.*

Should the blood drip from the tampon and/or flow outside the female organ, the *istihadhah* is a major one. The woman is required, as a matter of *ihtiyat wujubi,* to change the tampon and towel, clean her genitals, perform three *ghusl*s in a day, one for *subh* prayer, a second for *dhuhr* and *asr* prayers, and a third for *maghrib* and *isha'* prayers. Such *ghusl*s would relieve her from performing *wudhu.*

76. In all the above cases, the woman, having performed whatever is required of her of *ghusl* and *wudhu,* should hasten to perform prayer. That said, she is free to perform any *mustahab* acts of worship prior to the prayer, such as *adhan* and *iqamah,* and during prayer, such as *qunoot.*

If she is lethargic in taking to prayer, she should perform the process of restoring *taharah* to herself again and say prayer.

77. If the woman in a state of *istihadhah,* even of the major type, discharges whatever obligations required of her in order to perform her prayer, she is allowed to say any other prayer, provided that she performs *wudhu* for each and every prayer; thus, she is not required to renew *ghusl.*

General Rules on *Istihadha* Type of Blood

78. After the woman had become clean of *istihadhah,* she did hasten to restore *taharah* ro herself. Is she justified in so doing?

A. She should have hastened to restore *taharah* which is incumbent on her and say prayer. If the flow of blood ceases during the process of restoring *taharah* or prayer, she should, as a matter of *ihtiyat wujubi,* renew both the *taharah* and the prayer. If the flow of blood ceases after prayer, she is not required to repeat it. However, if she is experiencing a medium or major *istihadhah,* it is obligatory on her to have *ghusl* for the next prayer.

79. Should there be a chance of the blood stopping to allow for both the *ghusl* and the prayer, the woman should seize it even with the delay. If she performs prayer ahead of such an opportunity, her prayer is *batil,* although it is performed with *ghusl* and *wudhu.* Should such an opportunity be squandered so much so that prayer is deliberately delayed, she be deemed sinful. However, there is no harm in such an omission due to forgetfulness; she is therefore required to restore *taharah* to herself and perform prayer.

The woman may not be aware of this opportunity; she may then say prayer according to what her situation warrants. However, there may be a short respite from the flow of blood, to the extent that there may be room for both the *taharah* and the prayer. In such a situation, she should renew the process of restoring *tahrah* to herself and say prayer.

80. The woman in a state of *istihadha* may inadvertently forget to check the extent of her *istihadhah* by way of the tampon already discussed. She may as well choose to ignore the checking process. In both the cases, she is not allowed to be contented with what she has performed, unless she ascertains that she has done is acceptable.

81. If the end of *istihadha* materializes and the woman restores *taharah* to herself, she may hasten prayer; she may as well postpone prayer to a later stage within its time scale. Accordingly, she should revert to the state prior to the *istihadhah* insofar as *tahrah* and prayer are concerned.

82. Should the stage of *istihadhah* shift from a lesser one to the next stage, she is required to discharge her obligations pursuant to the new stage. For example, a woman with a medium *istihadha,* having had *ghusl* before *subh* prayer, discovered at around *maghrib* time, that she was having a major *istihadhah.* She is required to have *ghusl* for *maghrib* and *isha'* prayers.

82. Should the reverse happen, i.e. from an advanced stage of *istihadhah* to a lower one, she should for one time perform the process of restoring *taharah* to herself according to her previous situation. After that, she should discharge her obligations in the light of the new situation.

83. The woman in a state of *istihadhah,* of all types, can enter any mosque and stay there, irrespective of whether she has performed *taharah* for her daily prayers.

Divorcing a woman in a state of *istihadhah* even a major one, is

allowed, i.e. contrary to divorcing a women in ***haydh.*** However, a women in ***istihadha*** should not attempt to touch the print of the Holy Qur'an, unless she becomes *tahir* again as dictated by her situation. In other words, she can only touch the print of the Holy Qur'an if she was in a state of *taharah* permitting her to say prayer.

Rules Governing Medium and Major *Istihadhahs*

84. A woman experiencing a medium *istihadhah* before or after dawn could not have *ghusl* of *subh* prayer because she was asleep, for example. She should have *ghusl* for *dhuhr* and *asr* prayers and son on.

Should the medium *istihadhah* start after *subh* prayer, she should have *ghusl* to be able to say *dhuhr* and *asr* prayers; she is not required to renew *ghusl* for *maghrib* and *isha'* prayers. Should the *istihadhah* start after *dhuhr* and *asr* prayers, she should have *ghusl* for *maghrib* and *isha'* prayers.

If the medium *istihadhah* continues for a second day, the *ghusl* becomes obligatory from that day, irrespective of the time of the previous *ghusl,* i.e. before dawn, at midday or sunset.

85. A woman in a state of *istihadhah* should do her best, during prayer, to trap the blood inside her uterus, by sanitary towels and the like, where possible and without due harm. However, should the blood flow outside the female organ, she must repeat the prayer, taking the necessary precautions. That said, she is not required to renew *ghusl.*

86. A woman with a major *istihadhah* had *ghusl* for *dhuhr* prayer and *asr* prayer. She chose to say *dhuhr* prayer and delay *asr.* She must have a new ghusl for *asr* prayer. The same goes for *maghrib* and *isha'* prayers, should the woman choose to say them separately.

87. Should the woman experiencing a major or a medium *istihadhah* carry out what is required of her of *ghusl,* her husband can approach her for sex. That said, it is permissible for him to do so, even if she has not performed *ghusl,* as a matter of voluntary precaution.

88. A woman in a state of minor or medium *istihadhah* can fast, regardless of whether or not she became *tahir* by way of *ghusl* or *wudhu.* evidently, the fast of a woman in a state of major *istihadhah* is also in order. Its validity does not hinge upon carrying out the daily *ghusl*s, let alone the nightly ones.

Women experiencing medium and major *istihadhah,* who want to perform *ghusl,* can be guided by the General Guidelines of *ghusl.*

4. Rules on *Nifas*

89. *Nifas* means a woman in labour. *Nifas* blood is that which flows as a result of child birth. There are certain rules which regulate the *nifas* occurrence. These are similar to the rules governing a woman in *haydh.* A woman in *nifas* should abstain from all acts of worship. She must have *ghusl* after she is done with *nifas.*

90. *Nifas* may come about even with a premature child birth, let alone a full-blown one.

91. There is not a minimum amount to *nifas* blood. It may be deemed as such even with one drop of blood. Should ten days from the date of the child birth elapse with no blood in sight, there can be no *nifas,* even though blood may pour out profusely after that period.

The upper ceiling for *nifas* is ten days from the sighting of blood not child birth. So, if it is sighted on the seventh day of child birth, the end of such period shall be the seventeenth day.

92. Should the blood be sighted immediately after the woman's giving birth to her child, then stops for a day or so, then resumes before the end of the ten-day period, the entire period should be treated as *nifas.*

93. A woman giving birth to a twin, sighted blood after giving birth to the first baby. It then stopped. It resumed after giving birth to the second baby. Does the intervening period count as a period of *taharah* or *nifas.*

A. This time, even though it may be for one minute, counts as a period of *taharah.* Such a woman should cater for two periods of *nifas.*

94. The blood appearing during the time of labour just before child birth does not count as *nifas,* irrespective of whether it linked up with the blood of child birth or was separate. It should also not be considered *haydh,* unless one is sure of that; alternatively, it is *istihadhah.*

As for the blood which a pregnant woman may sight before going into labour, it should be treated according to the rules concerning the blood of a pregnant woman which has already been discussed in paragraph (56) of the Rules on *Haydh* in this Chapter.

95. The rule of the minimum ten-day gap between one period of *haydh* and the other does not apply to the gap separating *haydh* blood, before child birth, from that of *nifas*.

96. Once *nifas* blood ceases and the woman becomes clean again, the state of *nifas* ends. This being so even if the blood stops after one day or part thereof of child birth. Please refer to paragraph (91) of this Chapter.

97. A woman in a state of *nifas* may have a fixed term *haydh* of less than ten days. The *nifas* blood may continue to exceed the duration of her period. If she is certain that *nifas* would continue beyond ten days from the time of sighting the blood, she should end it, have *ghusl,* and render herself in a state of *istihadhah.* If she has hoped that the blood would cease before the lapse of the ten-day period, she has the choice of extending her *nifas* period by two days or more, provided that the total duration does not exceed ten days. She should then deem herself in a state of *istihadhah.*

98. A woman in a state of *nifas* may not have a fixed term *haydh.* The *nifas* blood may continue. She must observe *nifas* and refrain from embarking on acts of worship so long as the duration does not exceed ten days. Should the blood stop before the ten-day period, she must consider it *nifas.* The same rule applies to the woman with a fixed term *haydh* of ten days.

99. *Nifas* blood may continue beyond ten days, If a woman does have a fixed term *haydh,* she should deem *nifas* a number of days equal to that of her *haydh* and the remainder *istihadhah.* It then follows that she must perform, by way of ***qadha',*** the acts of worship she missed for the period beyond the days of her *haydh.* If a woman does not have a fixed term *haydh,* she must regard as *nifas* ten days and the excess *istihadhah.*

100. Should a woman in a state of *nifas* with fixed term *haydh* forget the duration of her monthly period, the rules applicable to her are those concerning a woman with a fixed term *haydh* discussed in paragraph (75) of this Chapter.

101. A woman in a state of *nifas* is treated in the same way as that in a state of *haydh,* in that she must resort to checking the state of blood flow or otherwise whenever she thinks that there is a possibility of the blood stopping, as has already been discussed under the Rules of *Hyadh.*

102. *Nifas* blood may continue beyond ten days. For example, it may last a month. The woman in question should consider herself in a state of

nifas for a duration equal to the number of days of her *haydh*, if she has a fixed term *haydh*. She may as well observe ten days if indeed her *haydh* duration is ten days of there was not a fixed number of days. It then follows that she must regard herself as though she is in a state of *istihadhah* for ten days, which is the minimum period of *taharah* necessary to separate *nifas* from the forthcoming *haydh*.

After that, she must wait for her *haydh* to come. She should then treat the blood as that of *haydh*, even though it does not have the properties of *haydh* blood. If a woman does not have a fixed term *haydh*, she should be guided by the nature of the blood to determine whether it is that of *haydh* or *istihadhah*.

103. The rules applicable to a woman in a state of *nifas* are the same as those for her peers in a state of *haydh*, in that she is not allowed to touch the print of the Holy Qur'an, stay in the mosque, have sex, or have a divorce. The same goes for refraining from any acts of worship, such as prayer or fast, so long as she remained in *nifas*. However, she should perform, by way of *qadha*, the days of fast she may have missed. She is allowed the things a woman in a state of *haydh* is allowed.

The manner of *ghusl* for a woman in *nifas* is identical to that of *haydh*, *istihadhah*, and *janabah* as has already been described.

Chapter Three

Rules Concerning the Dead

Should a Muslim die it shall become incumbent on other Muslims, to cater for certain things, by way of *wajibun kifa'ie* (a collective obligation imposed on the Muslim community). That is, since burying a dead Muslim is one of these obligations, it suffices if only one individual discharges the duty; the rest members of the ***ummah*** are absolved of it.

1. Throws of Death

104. Dying sets in when one's term in this life is fast approaching. It is the moment when the ghost is given up. May Allah give us strength to face that moment. It is widely the view of jurists that when the throws of death set in, the dying person should be laid on their back, with their feet pointing to the *qiblah;* this view is based on *ihtiyat* though. It is *mustahab* to take the necessary steps to bury the dead person as soon as possible. However, if there is any doubt that they are not dead yet, it is obligatory to wait until they are pronounced dead.

The *ulema,* may Allah be pleased with them, have mentioned that if the throws of death take a longer time, it is *mustahab* to move the person to the place where they used to worship. It is also *mustahab* to coach them in reciting the statement of faith, i.e. bearing witness that there is no God but Allah, that Mohammad is His Messenger, and that the Imams are Mohammad's successors. If the person passes away, it is *mustahab* to close his eyes and mouth, stretch his legs and arms, and cover his body; it is also *mustahab* to recite *ayahs* from the Holy Qur'an and inform fellow believers of the person's death so that they could take part in his funeral.

Ghusl of the Dead

105. It is obligatory to accord the dead body a proper *ghusl* before its burial. Should it be buried without *ghusl* for any reason, it is *wajib* to exhume it and give it the appropriate *ghusl* where possible, i.e. barring any encroachment on the body's sanctity and precipitating discord or

quarrel among the dead person's relatives. Otherwise, *tayammum* should be performed to the body, in a manner that will be discussed.

106. *Ghusl* of the dead makes up for obligatory *ghusl*s of *janabah* or *haydh*.

Who should be accorded *ghusl?*

It is obligatory to perform *ghusl* to a dead body if the following points were present:

107. a. The dead person must be Muslim; Muslim children and the mentally ill are treated likewise; a four-month foetus must as well undergo *ghusl*.

Shia and Sunni Muslims are alike, for the common denominator is Islam. It is not obligatory to perform *ghusl* to the body of an unbeliever.

Should it become unfeasible to differentiate between two dead bodies, i.e. one might belong to a Muslim and the other to a non-believer, it is *wajib* to accord both bodies proper *ghusl* and funeral rites.

108. b. The dead person should not be a martyr, for it is not obligatory to perform *ghusl* to a martyr's body, in that they should be buried, after prayer has been said for their soul, without ***ghusl,*** embalming, or shrouding.

By "martyr", we mean the person who gets martyred in a legitimate battle in the cause of Islam. That said, such a martyr should have died before any other Muslim could manage to attend to them while they still have a breath of life in them. Should such a person be found alive and then dies, it is obligatory to perform *ghusl* to their body.

The place where a martyr falls has no bearing on bestowing martyrdom on him, i.e. whether his body is found in the battlefield or outside it.

The Lawgiver has covered a group of people under the definition of martyr, such as a woman in a state of *nifas*, a person dying under the rubble, a drowned person, those who die defending their property or family members. However, putting those people on a par with martyrs works on the level of *thawab per se*; it does therefore not extend to exempting their bodies from *ghusl*.

109. c. The dead person should not have faced his death consequent to a punishment. That is, no *ghusl* should be performed to the body of a

person who was lawfully killed for murder, nor him who was lawfully stoned to death for committing adultery.

However, prior to dealing the capital punishment to such people, they must be ordered to have *ghusl* of the dead, camphor should be applied to their body, which should be shrouded with the wrapper and the shirt, normally used to cover a dead body. Once they give up the spirit, their body should be wrapped with the third piece of the shroud used to cover the whole body. Prayer should be said for their soul and they should be buried in Muslim graveyards.

To sum up, all the dead should be accorded the appropriate *ghusl,* apart from martyrs and those lawfully killed in punishment.

Who should carry out *ghusl?*

110. It is obligatory on every adult who is capable of carrying out this religious obligation. The type of obligation here is that of *wajibun kifa'i.* However, if none, among Muslims come forward to discharge it, all shall be deemed sinful.

The Way Ghusl, or the Alternative *Tayammum,* Should be Conducted

111. Three different washes should be carried out:

a. Once using water with lotus *(sidr)* leaves.

b. The second using water with camphor.

c. The third using pure water.

When a person in a state of *ihram* dies, while still barred from using perfume, it is not advisable to add camphor to the water intended for washing his body, nor should his body be embalmed with it. You can neither apply perfume to his body nor his shroud.

112. Just as it is obligatory to observe the order of the three *ghusls,* so is it obligatory to observe the order of washing the body parts. That is, you should start with the head and neck first, then the right and left sides respectively. There should be a *niyyah* of *qurbah* in each and every one of the three *ghusls.*

Should more than one person take part in performing *ghusl* of the dead, the *niyyah* of the person who is taking overall charge of the process is what would eventually count.

Getting paid for carrying out the task of *ghusl* is permissible, provided that it does not run contrary to the *niyyah* of *qurbah* and that the person carrying out the task would not treat what they are paid as the price for the *ghusl* water, for example. Remuneration received should be treated in the same way as the price paid for the shroud, lotus, and camphor as well as that provided gratuitously.

Care must be taken not to use more camphor or lotus in *ghusl* water than necessary, lest the water should turn into mixed *(mudhaf)*, nor less than necessary.

113. The dead body can be accorded *ghusl* immediately after the soul has departed and before coldness creeps into it. It is permissible to perform *ghusl* to the dead body with the clothes on. It is not permissible for the person carrying out the *ghusl* to look at the dead person's private parts, nor is it permissible to touch them with their hands during the process of *ghusl*. However, it is permissible for a husband and wife to do so.

114. In the event of non-availability of either lotus or camphor or both, washing the body three times with pure water should suffice; however, *niyyah* should be made in lieu of the non-availability of each and every one of lotus and camphor. *Tayammum* should, as matter of *ihtiyat*, be added to the three *ghusl*s.

115. Where, for any reason, it proves impossible to accord *ghusl* to the dead body, *tayammum* should be performed once instead of the three *ghusl*s. However, performing three *tayammums* should as a matter of *ihtiyah*, not be ruled out.

However, *tayammum* is not warranted, unless *ghusl* is absolutely not feasible, in that should there be the slightest chance that the cause for not performing *ghusl* might be lifted, it is advisable to wait until it is no longer possible to do so for fear of the body decomposing.

116. Should *ghusl* become possible after *tayammum*, and before burial, the latter shall be rendered *batil;* it should therefore follow that *ghusl* becomes *wajib* (obligatory). If *ghusl* becomes possible after burial, it is *haraam* (forbidden) to exhume the body for this purpose, for what alternative option has been taken at the time is in order. The same applies if lotus and camphor become available after burial.

Requirements of *Ghusl*

117. The water used for performing *ghusl* for the dead body should be free and *tahir*. Lotus and camphor should as well be *tahir*. All materials should be *mubah*. The body should be free from any substances that may constitute a barrier to water reaching the skin.

118. Any *najasah* which may be found on any part of the dead person's body should be removed. However, should any *najasah* come into contact with any part of the body that has been washed, or after the entire *ghusl* procedure, only that contaminated part should be rendered *tahir*, i.e. there is no need for *ghusl* again. That is, so long as burial has not taken place. If any secretion of either urine or semen is detected, there shall be no need for renewing the *ghusl*, even tough this may happen before the body is carried to its resting place; making the affected area *tahir* would suffice.

Requirements to be Fulfilled by the Person Conducting the *Ghusl*

119. a. Adulthood; but if a discerning boy carries out a book *ghusl*, it would be in order.

120. b. Sanity, in that the *ghusl* conducted by a mentally handicapped person would not be good enough.

121. c. Islam, in that ***ghusl*** conducted by an unbeliever would not be good enough.

122. d. Parity of sex between the dead person and the one who is conducting the *ghusl*, i.e. a dead male/ female should be washed by their counterpart. Husband and wife are exempt from this ruling.

However, a male or female can perform *ghusl* to a dead non-discerning child, be it male or female, even if the dead child is over three years of age. What we mean by a non-discerning child is him who has not attained the age where they feel that they should apply the standards of decorum.

Mahaarim, by way of blood relation, breast-feeding, or marriage, can perform *ghusl* to one another, without looking at the private parts of the dead.

123. e. The person conducting the *ghusl* can be the next of kin of the dead one; in this case they do not require a permission from any other quarter. Should the person coming forward to do the *ghusl* not be the next of kin, they should seek the permission of the next of kin.

The rules of inheritance should be applied to determine who among the next of kin should be given precedence over the other. In such a pegging order the husband, in relation to the wife, comes first; then the first category of relatives, the second, the third and so on. However, in each category, the adults take precedence over non-adults.

Should the next of kin not come forward to perform the *ghusl,* or drag their feet by not permitting the others to do it, or because they are absent and cannot be contacted, the *marji',* then the just among the faithful, should have the say in the matter.

124. Should the dead person have directed in their will that a particular person cater for their funeral, is it obligatory on such a person to carry out what he has been charged with? And if they respond, do they have to ask for the permission of next of kin?

A. No, they are free to refuse the task. Should they accept the task, they are not required to ask for the permission of next of kin, although seeking permission is, as a matter of *ihtiyat,* advisable. Should this be the case, the next of kin is not allowed to compete with them to execute the will.

Should someone ask, in their will, that a particular person oversee the procedure of their funeral, it is permissible for them to decline so long as the person is still alive. Once they die, the appointed person cannot retract. Should they take charge of the task, they are not required to seek the permission of next of kin. Moreover, it is within their right to prevent the next of kin or others from embarking on the funeral procedure without the appointee's permission. This means that the appointee has precedence over the next of kin in this regard.

3. Embalming

125. Embalming is the process of applying camphor with the palm to the seven spots in the human body normally used during prostration. These are the forehead, the two hands, the two knees, and the two feet toes. It is *makrouh* to apply any camphor to the eyes, nose, ears, or face. It is not obligatory to observe any order in applying the camphor to the seven parts of the body. Apparently, any amount of camphor would do. However, it is preferable that the amount used should weigh seven *mithqal sayrafi* (32.257 grams).

Applying camphor is obligatory to the dead body that warrants *ghusl,* i.e. apart from those who die while in a state of *ihram* for *hajj* or *umrah* (see para. 111). Embalming comes after *ghusl;* if the dead body be accorded *tayammum* instead, embalming should come after *tayammum.*

It is not obligatory to observe an order of which should come first, i.e. shrouding or embalming. Embalming can be implemented during shrouding or after it; it can be done before that; however, it is advisable that it should be done before shrouding.

The camphor has to be *tahir, mubah,* powdery, and having smell.

In taking change of this process, *niyyah* is not obligatory. Any adult person, irrespective of their faith, can do it; it can also be accepted from a non-adult if they were up to the job.

4. Shrouding

126. After *ghusl* and embalming have been performed, the dead body should be wrapped in three pieces. This is so, regardless of whether it was male, female, transsexual, sane or insane, young or old. The same goes for the dead foetus of four months; if it is less than that, it should be wrapped in any way possible and buried.

The first of these pieces of cloth is called the wrapper *(mi'zer),* which wraps that part of the dead body between the belly button and knees, the shirt *(qamis),* which is used to cover the area from the top of the shoulders to the middle of the shin, and the overall sheet *(izar)* which is used to cover the entire body from the summit of the head to the tiptoes.

It is necessary though that each of these three pieces be capable of covering the piece that lies under it.

127. *Niyyah* as well as seeking permission of the next of kin are not required in taking charge of the shrouding procedure.

Shrouding shall be good enough, regardless of who has done it, be they young or grown ups, provided that they know what they are doing.

Should circumstance prevent the procurement of three pieces, the next best thing is using one piece that is sufficient to cover the entire body; if not, that which can cover most parts of the body, if not, that which can cover the genitals.

Requirements of the Shroud

128. It is obligatory that each of the three pieces of shroud, intended for a dead male or female, should be *tahir,* even from the sort of *najasah* which may be excusable in prayer, as a matter of compulsory *ihtiyat.* It should be *mubah,* not made of linen - as a matter of *ihtiyat,* nor made with gold, nor of the hide, hair or fur of an animal whose meat is not *halal* for human consumption, and not made from the hide of an animal whose meat is *halal;* yet there is no harm in using a shroud made of the hair or fur of such animal.

However, all these constraints should disappear when circumstances are not favorable. Nevertheless, shrouding cannot be done away with, only when it proves impossible to have it done. Accordingly, if there is no other way but to use a shroud that is *najis,* or made of linen, or the use of which is prohibited, where choice can be an option, it has to be used in shrouding the dead. That said, it is not at all permissible to use a shroud that is *maghsoub,* because its existence or otherwise is the same.

There is no harm in a shroud made of a blend of linen and some other material, provided that the non-linen material is predominant. Should this be the case, both man and woman can be shrouded with it. Should it be made of synthetic linen, there is also no harm in using it.

Should the shroud become *najis,* it is obligatory to remove it and clean the place. This is so, even if after the dead body has been laid to rest. As for the process of rendering the shroud clean, it is left to the discretion of the *mukallaf,* but with due attention to preserving the sanctity of the dead body; it could be done by either using water, where possible, or cutting out the *najis* spot, or any other way without losing sight of the fact that one should eventually leave the shroud virtually intact; if need be, it can even be replaced altogether.

Should doubt creep in as to the propriety of the shrouding procedure, one must resolve the matter by assuming that it is in order.

5. Prayer for the Soul of the Dead

129. After the dead body had been washed, embalmed, and shrouded, it is obligatory, as a matter of *wajib kifa'ie,* to say prayer for the departed soul. All dead Muslims are equal in this treatment, be they Shia or Sunni, pious or not, male or female, sane or insane, old or the six-year old - who has learned the meaning of prayer before this age.

Prayer for the dead is an act of worship; thus, it is not good enough without the *niyyah* of *qurbah.* The requirements the person conducting such a prayer should fulfil are the same for the person conducting the *ghusl* of the dead, discussed in para. (119) and the ensuing ones, except for the homogeneity of the sexes.

Requirements of the Prayer

130. For the prayer to be said and made good enough a number of conditions has to be fulfilled.

The corpse should be found and made available for prayer, because there is not such a thing as praying for an non-existent corpse.

The dead body should be laid on its back, with its private parts covered either with the shroud or any other cover, in the event of non-availability of a shroud.

The person conducting the prayer should face the *qiblah,* close to the body; the dead person's body should be to the right hand side of the person conducting the prayer, provided that there is no barrier between the two. The prayer should be conducted in a standing, not a sitting, position, unless there is a good reason for choosing the latter.

Taharah is not a condition for the validity of the prayer for the dead. It shall be in order, if it is performed without *wudhu,* by a person in a state of *janabah,* or by a person whose body is *najis* or wearing a garment that is *nakis.* Neither the clothes worn during the prayer nor the place where the prayer is performed have to be *mubah.*

How to go about praying?

131. After making the *niyyah* of *qurbah,* the person conducting the prayer should utter "*Allahu Akbar* - Allah is great" five times, i.e. the number of daily prayers. After the first one they should bear witness that there is no god but Allah and that Mohammad is His Messenger; after the second, they should invoke peace and benediction for the Prophet and his pure progeny; after the third, they can pray for the welfare of the believers; after the fourth, they can invoke Allah's grace to be merciful on the soul of the dead person; with the utterance of the fifth one, the prayer comes to an end.

Keeping unbroken chain of all the utterances, invocations and supplications is essential. While those taking part in the prayer are involved in it, there should be no talking or actions not related to the prayer in order to preserve its sanctity.

Rules Concerning the Prayer

132. If the dead person used to hold a lofty religious position, it is possible that prayer for his soul is repeated, even after his burial, provided that it should not exceed the first day and night after the burial. Performing prayer for any longer period is *makrouh*.

133. Should there be more than one body at one time, is it possible to hold one prayer for all of them?

A. Yes, it is possible; this can be achieved in one of two ways.

a. The corpses should be laid before the person conducting the prayer one in front of the other in a way similar to the formation of ranks in a congregational prayer.

b. The corpses can be laid in a gradation formation, in that one body is laid first, the second is placed with its middle aligned with the head of the first corpse and so on. The position of the person leading the prayer *(imam)* should be in the middle.

The *imam* should use the dual pronoun if there were two corpses and the plural pronoun, if there were more than two corpses.

134. This prayer can be said individually and in a congregation. Those who are led in prayer should recite the five *takbirs (Allahu Akbar);* they should also recite the invocations. The *imam* does not need to be just.

Should a person join in the prayer, they should start their prayer from the beginning, i.e. do five *takbirs* and all the other supplications. If the *imam* finishes before them, they should finish what is left of prayer with or without the supplications where possible.

135. If doubt during the prayer, or reluctance to say it, may set in one must not let it take over, in that they must say the prayer properly. Should there still be doubt about saying it properly after one has finished it, there will be no need to repeat it. However, if the person knew that it was not properly performed, it should be started again.

136. The body could have been buried without prayer or with one that is *batil,* for a reason or another Prayer should be held over the grave, if it has already not turned into dust.

The Form of Prayer for the Dead

137. We give below the form of this prayer.

1. *Allahu Akbar*

(Ashhadu alla ilah illal lah, , Wahdahu la sharik lah); Ilahan wahidan fardan samadan hyyan qayuman da'iman abada; Lam yettakhith sahibatan wala waladan, (Wa ashhadu anna Mohammadan abduhu wa rasuluh); Ja'a bil huda wa dinil haqi liyudhirahu alad dini kulihi walaw karihal mushrikoon.

2. *Allahu Akbar*

(Allahuma sali ala Mohammadin wa aali Mohammad); Wa barik ala Mohammadin wa aali Mohammad; Wa trarhham ala Mohammadin wa aali Mohammad; Ka afdhala ma sallayta wa barakat wa tarahhamta ala Ibrahim wa aala Ibrahim; Innaka Hamidun Majeed.

3. *Allahu Akbar*

(Allahumma ighfir lil mo'mineena wal mo'minaat); wal Muslimeena wa Muslimaat, al ahya' minhum wal amwaat, wa tabi' baynana wa baynahum bil khayrat; innaka ala kulli shay'in Qadeer.

4. *Allahu Akbar*

(Allahum ighfir lihathal mayyit; Allahumma inna hathal mussajja quddamana abduka wabnu abdik, wabnu amatik; waqad nazala Bika wa Anta khyaru Manzool; Waqaf ihtaja ila Rahmatika wa Antal Ghaniyyu an iqabih; Allahumma inna la na'lamu minhu illa khayra, wa Anta a'alamu bihi minaa; Fa'in kana muhsinan fazid fi ihsanih, wa in kana musi'an fatajawaz anh, wahshurhu ma'a khayrati ibaadikas saliheen, wa hasuna 'ulla'ka rafiqa.

5. *Allahu Akbar*

With this fifth *takbir* the prayer concludes.

The phrases between brackets, after each *takbir,* would suffice, i.e. there shall be no need to recite the remainder of *du'a* (supplication).

Should the dead body be that of a woman, you have to say, after the fourth *takbir, (Allahumma ighfir lihathihil mayyita).* That is using the feminine pronoun for this main phrase and the remainder of the *du'a.*

6. **Burial**

138. Burying a dead Muslim, male or female, is obligatory, by way of *wajibun kifa'i.* This obligation also extends to Muslim children, including

a dead foetus of less than four months; it should be wrapped in a piece of cloth and buried. Should any part of the dead body fall off, such as nail, tooth, hair, it should be buried, preferably with the body, as a matter of voluntary *ihtiyat*.

How should burial be carried out?

After the body has been washed, embalmed, shrouded, and the special prayer performed for the soul of the dead person, it has to be buried in a pit in the ground. This is so as to prevent vultures and animals from devouring it; it is also necessary to insulate the living from the dangers and smell which could be posed by a decomposing body. The body should be laid to rest on its right side with the face and the front pointing towards the *qiblah*. Thus, the face should be to the right and the feet to the left in relation to the *qiblah*. Should the direction of the *qiblah* not be determined due to lack of knowledge, the body should be laid to face any direction the *qiblah* believed to be in. If this is not feasible too, any direction would do.

A seafarer or traveller dying at sea can be buried there. The body could be weighted, placed in a solid water-proof container and thrown overboard into the sea, after it has been accorded the required funeral rites. This should however be as l last resort, especially if it is not feasible to preserve the body from decomposing and/or bury it in the mainland.

The Place of Burial

139. Burial should take place in the ground. However, placing the body in a coffin and burying it would be in order. That said, lawful burial would not materialize by deposing the body in a place and having a building over it; this cannot be allowed, even on a temporary basis in the hope that the remains may sometime in the future be moved somewhere else, such as the holy places, for a final burial. Should this be resorted to, it would constitute postponing the religious duty which calls for a swift and proper burial of the dead. So there is no alternative to burying in the ground.

The plot of land where the body would finally rest should satisfy the following:

a. The land should be lawfully *mubah*. Accordingly, it is not

permissible to use for burial a land owned by others without their permission, neither can a land which is *waqf* (covenanted) for purposes other than burial be used for burial.

b. It is not permissible to bury a dead Muslim in a place that is despised, such as rubbish tips.

c. It is not permissible to bury a dead Muslim in the graveyards dedicated to the unbelievers. Nor is it permitted to bury a dead unbeliever in Muslim cemeteries.

Should a non-Muslim woman get lawfully pregnant by a Muslim, the baby is treated in the same way as its father. If she dies after the spirit has entered the foetus causing the baby to die as well, she must be buried in the graveyards of Muslims. However, she must be laid to rest on her left side with her back to the *qiblah,* so that the foetus should face the *qiblah.*

That said, it is advisable, as a matter of *ihtiyat mustahab,* that the foetus is right cheek be pointed towards the ground and its left cheek upward; this positioning requires placing the woman's body on its right side.

It is highly recommended and more meritorious if the dead are buried in the Muslim country they happened to be living in. However, it is *mustahab* to transport the dead body for burial in the holy places, such as Najaf and Kerbala.

140. Digging out the grave with a view to exhuming the body is *haraam,* unless one is absolutely sure that it has turned into dust. However, the following cases are exempt:

a. Exhuming the body is in the interest of the dead person. Among such cases could be that the place where it is buried may be a cause for denigrating its sanctity, such as the place being a rubbish tip or a sewer; fear for the body from the animals or being washed away by flooding; exhuming could be in execution of an instruction contained in the dead person's will, such as his wish to be buried in another place. In other words, the overriding purpose behind the exhumation should be striking the right balance between the interest of the dead and that of the public or particular people.

b. Exhuming the body should be allowed to forestall any potential dispute, such as examining the body to determine the cause of death and subsequent evidence and rights.

c. Exhuming is allowed, should there be a case for making good any shortcomings, barring prayer, as has already been discussed. In this case, one must not lose sight of the fact that preserving the dignity and sanctity of the body should be paramount.

d. Should there be a substantial amount of money buried with the body which belongs to someone else who insists on retrieving their money, exhuming the body can be permitted.

digging a grave in order to bury another body in its place cannot be justified.

Other Rules Concerning the Dead and their Funeral

Providing for the funeral of the dead could involve the following:

141. a. Whoever, other than the next of kin, comes forward to take part in any action concerning the funeral of a dead person should seek the permission of the next of kin as has already been discussed in paras (125 – 126).

142. b. All reasonable funeral expenses should be taken from the estate of the deceased. What is meant by reasonable expenses is all that which is lawfully required for burial, taking into account the sanctity of the dead person. Such expenses take precedence over debt, inheritance, and the requirements of the will.

Whatever extra expenses, over and above the minimum reasonable expenses, such as money spent to buy a better quality shroud or a better plot of land for burial, and expenditure on mourning assemblies and feeding the guests, should not be defrayed from the estate.

Should the heirs and next of kin of the deceased keep the funeral expanses to the reasonable minimum, they can pay for it from the estate, regardless of the existence of the young and minors among the heirs.

Should the adults among the heirs choose to spend more than the reasonable minimum amount, they should meet the extra expenditure from their share of inheritance. If there are any young or minor heirs, they should not be made to contribute towards the excess amount.

If people, other than the heir, take it upon themselves to spend more than the required reasonable funeral expenses, they should not ask the heirs to meet the extra spending, unless what they have done was with the heirs implicit or explicit instructions.

If the deceased has directed in his will to spend more on his funeral, all such expenses should be defrayed from his bequeathable one-third of the estate.

143. c. What has been discussed in the preceding paragraph does not cover the wife who dies and leaves a husband, in that all expenses arising from her funeral should be borne by the husband. This is so, irrespective of whether she was rich, young, sane or insane, their marriage did not consummate, the marriage contract was a temporary one (as a matter of *ihtiyat*), or she was revocably divorced and died while observing the waiting period *(iddah)*.

Furthermore, the responsibility of the husband in catering for the funeral of his wife does not stop at a certain limit, in that he remains liable, regardless of whether he is young or old, sane or insane, rich or poor, financially able or resort to borrowing for that purpose, provided that he does not put himself in an untenable situation - when borrowing.

Should husband and wife die at the same time, the funeral expenses should be met from her estate, nor her husband's. If she has instructed, in her will, that her funeral expenses be met from her own money and that such a will found its way to execution, it is not obligatory that anything of the expenses should be charged to the husband.

144. d. If a person dies without leaving any estate, his immediate relatives, who usually pay for his living and other expenses at his life time, should meet the expenses arising from his funeral. If this is not feasible, Muslims should, as a matter of *ihtiyat,* do that. Funeral expenses can, in such a case, be met from *zakat* money, if it is available; whoever, comes forward to pay for the cost of burial can, if they so wish, deem the payment *zakat.*

145. e. If there was doubt as any Muslims has come forward to cater for the burial, it is obligatory that this be addressed. Should it be known that lawful funeral provisions were not properly catered for, this has to be put right.

However, should the *mukallaf* doubt the propriety of providing for the funeral, they have to assume that it was properly implemented.

146. f. There is no harm in getting paid funeral services, provided that it does not run counter to the *niyyah* of *qurbah.*

147. g. All funeral provisions normally accorded to the dead with a complete body, should be accorded to the body with missing part/s. That

is, a body without limbs, a skeleton without flesh, or a body with part breast to the latter in full should, as a matter of *ihtiyat mustahab,* all be accorded *ghusl* and shrouding; camphor should be rubbed in the those parts of the body where the procedure calls for. Prayer has to be performed for the departed soul.

Should there be a piece of bone, of the dead body, with flesh on it, it should be wrapped in a pieces of material and buried; prayer here is not obligatory. If pieces of boneless flesh were found, they should be wrapped in a piece of material and buried without *ghusl.*

As for any parts of a living person's body that get amputated, nothing of the aforesaid procedures should apply to them. They have to be wrapped in a piece of cloth and buried.

148. h. It is not permissible to mutilate or apply dissection to a dead body of a Muslim. Any action which may entail denigrating the integrity of Muslim, living or dead, is not permissible.

That said, there are cases for autopsy and the like where certain situations necessitate waiving the conditions, among which are the following:

a. A dead foetus could pose a threat to a pregnant woman. Extra care must be taken to safeguard the well-being of the mother, even if extricating the foetus leads to its own mutilation. Should the surgery call for the expertise of a specialist not related to the woman, there is no objection to their carrying it out, provided that the procedure is confined to that part of the woman's body that needs attention.

If the situation is reversed, every step should be taken to save the living foetus, even if this leads to operating on the woman by way of a Caesarean.

b. Should the medical profession call for training in autopsy on a Muslim's dead body, this could be allowed, provided that there was still the need for more doctors. The criterion by which the number of doctors needed for this sort of work should be judged by the death of ill people due to the non-availability of a doctor.

149. i. It is not permissible to pluck out locks of hair or nails of the dead body, either before, during, or after *ghusl.* Should this be the case, any removed parts should be buried with the body, for it is, as a matter of *ihtiyat,* more meritorious and *mustahab* to do so.

Ghusl for Touching the Dead

150. There shall be no *ghusl* required from a person touching a dead body while the body is still warm. However, that part of the body which comes into contact with the dead one becomes *najis,* should there be moistness and that this moistness crept into the part of the body of the living. In this case, only that part should be made *tahir.*

There shall be no *ghusl* too for a person coming into contact with a dead body after *ghusl* has been performed on it, irrespective of the presence or otherwise of dampness or moisture.

Should a person come into contact with a dead body, after the body has cooled and before *ghusl* has been performed, he has to render the part of their body that made the contact *thair* as well s have *ghusl* for touching a dead body.

151. Irrelevant to the consequences of touching is whether the dead body is that of a male or female, sane or insane, old or young (including a dead foetus after the spirit has entered it). Irrelevant too is whether the contact is made with the hands or any other part of the body which has feeling, barring hair for example. If this was the case, *ghusl* becomes obligatory.

Of no effect on the *ghusl* being obligatory is whether the touching is done on purpose and with intent or inadvertently. All parts of the body involved in the touching or being touched are treated the same, be they exposed or hidden, such as the tongue, teeth, and nail, except hair.

152. Should there be scattered parts of the dead body, i.e. containing bone, they must be washed, if they were touched. For the *ghusl* to be obligatory, it is not a condition that the entire dead body, or a larger chunk of it, should be there. However, it is not obligatory to have *ghusl* for touching only flesh or bone. That said, there is, as a matter of *ihtiyat,* nor harm in having *ghusl* for touching the bone of a dead person.

In the event of any part of a living person getting removed, it is obligatory to have *ghusl* after having come into contact with it. That is, if the severed part is boned flesh.

You should be led by the general guidelines discussed in paras (7) and those that followed it for conducting *ghusl* of touching a dead body.

153. It is permissible for a person who has become liable to *ghusl* of touching a dead body to enter the mosques and holy shrines and stay

there as long as it takes. They should be governed by the same rules concerning those who have done something which warrants *ghusl;* these rules have already been discussed in paras (3) and (4).

Mustahab Ghusls

154. Voluntary *ghusl*s are numerous. Whoever caters for them should expect a reward. Those who choose not to shall not be considered sinful. Right at the top of the list is the *Juma' ghusl.* It is possible to have this *ghusl* during the period from dawn till the end of the day. However, having it before noon is more superior to delaying it until after midday. In the event of not finding water on the day, one can postpone the *ghusl* to the next day and perform it by way of *qadha'.*

155. Among other voluntary *ghusl*s are the following:

a. *Ghusl*s for the inaugural days of both *Eidul Fitr* and *Eidul Adhha.*

b. *Ghusl* for the eighth and ninth (Arafat) days of Thil Hijjah.

c. *Ghusl* for the first, the seventeenth, the nineteenth, the twenty first, the twenty third, and the twenty fourth nights of Ramadhan.

d. *Ghusl* for wearing *ihraam.*

e. *Ghusl*s for entering: the *Haram,* Makkah, and *al-Masjidil Haraam.*

f. *Ghusl* for seeking repentance.

g. *Ghusl* for the visitation of the shrine of Imam Hussain (a.s.); this is confined to actually paying respect to his tomb, i.e. not paying tribute from afar.

h. *Ghusl* for taking *istikharah* (The process of asking Allah for proper guidance in certain matters you are unable to decide on, through, for example, consulting the verses of the Holy Qur'an).

i. *Ghusl* for *istisqa'* (prayer for rainfall).

156. It is to be noted though that the aforesaid *ghusl*s fall into three categories. The first requires the *ghusl* at a certain time, such as the *ghusl* for the first day of the *Eid,* the second for entering into a place, such as entering Makkah, the third for commissioning a certain action, such as the *ghusl* for wearing *ihraam.* So, the said *ghusl*s have to be has with due attention to the time, place, and action (devotion).

Should anything that breaches the *ghusl* happen before commissioning the action, in the same way *wudhu* may be breached, one has to renew the *ghusl*.

The worshipper should be led by the general guidelines of *ghusl* discussed in paras (7) and those that followed it for conducting those *mustahab ghusl*s. All such *ghusl*s make up for *wudhu* as has already been discussed in para (5).

Chapter Four

Tayammum

1. *Tayammum* comprises (a) wiping of the forehead and eyebrows, using the inside of the hands and (b) wiping the upper parts of the two hands with the inside of one another.

Like *wudhu* and *ghusl, tayammum* is an act of worship which cannot be deemed good enough unless it is done with the *niyyah* of *qurbah. Tayammum* is performed using dust or soil as opposed to using water in *wudhu* and *ghusl.*

Tayammum is an alternative to *wudhu* and *ghusl* where both are not feasible. That is why it is called an emergency *taharah.*

Why should *tayammum* be justified?

Water may not be available for the person to perform either *wudhu* or *ghusl* for prayer as may the case be, or it could be available, but they cannot use it due to illness or any other reason.

In the event of availability of water and feasibility of using it, *tayammum* cannot be sanctioned. It therefore follows that *wudhu* or *ghusl* becomes obligatory. However, there are two rare exceptional cases:

a. *Tayammum* could be conducted for performing prayer for the souls of the dead, although such prayer can be said without *wudhu* or *tayammum.*

b. If, at the time of going to bed, a person remembered that they were not in a state of *taharah,* by way of *wudhu,* some jurists have permitted this alternative route. Yet, we are not so sure that this can be sanctioned.

For *tayammum* to be a last resort there must exist two reasons:

1. Non-availability of Water

By this we mean the following:

2. a. Non-availability of water within the entire area within the

mukallaf's reach, so long as there is still time to perform prayer. Neither the scarcity of water, nor its characteristics should have any bearing on this factor. In such a case, *tyammum* becomes obligatory.

3. b. Water could be available within the vicinity of the *mukallaf*. Yet, fetching it may place them in an untenable situation, irrespective of whether the difficulty was material or moral. The *mukallafs* can in this case resort to *tayammum* instead of *wudhu*. However, if they chose to bear such a difficulty arising from fetching the water and got hold of it, they have to take to *wudhu* which will be deemed good enough.

4. c. Water could be available within the vicinity of the person and within their reach. Yet fetching it may pose some external or internal dangers to their life, such as the route to it may be fraught with dangers or the person may not be fit to travel the distance to have access to it, especially there may not be other people whom they can ask for help. The ruling in this case is the same as in the preceding one.

5. d. Water could be available within the persons' neighborhood and within their reach. Yet having access to it may prove impossible due to the reticence of the owners, or buying it may be very expensive, i.e. beyond the financial ability of the person. The ruling in this case is the same as in (3.b).

6. e. Water could be available within the people's neighborhood and within their reach, Yet having access to it may pose some problems, such as commissioning a forbidden act in the course of fetching it. The ruling in this case is the same as in (3.b).

2. The Use of Water May not be Viable

Despite the availability of water, using it for *wudhu* or *ghusl* may not be viable for any of the following reasons:

7. a. The short time left for prayer.

8. b. Potential danger to one's health.

9. c. Difficulty arising from the use of water, although not bordering on risking one's well-being, in that both the water and the weather could be very cold.

10. d. Using the available quantity of water may result in subjecting the person performing *wudhu* or *ghusl* to thirst, nuisance, or it may endanger his health.

The danger posed could extend to the humans and/or other creatures.

11. e. Should there be a *najasah* on the body or clothes of the *mukallaf*, and there is an amount of water sufficient for either removing the *najasah* or performing *wudhu*, restoring *taharah* to the *najis* things takes precedence to using the water in performing *wudhu*. *Tayammum* should therefore be applied.

12. In the cases where *tayammum* is allowed, yet the *mukallaf* may, against most of the odds already discussed, manage to fetch it and eventually perform *wudhu* or *ghuls*, both shall be in order.

However, the only case where *wudhu* or *ghusl* is deemed *batil* is when performing either of them constitutes danger to or damages one's health.

13. It suffices to rely on the testimony of a trusted person to resolve the question of non-availability of water. It suffices too when a trusted doctor tells of the dangers to one's health from using water. That said, even apprehension that using water may endanger one's health would warrant desisting from using it.

Substances Used for *Tayammum*

14. It is obligatory to use for *tayammum* the earth or that which is garnered from it, provided that it be *tahir* and *mubah*. This could be dust, stone, sand, or clay. Indeed, *tayammum* shall be deemed good enough if it is done with mortar, stone, cement, tiles, and marble so long as their original material is extracted from the ground. *Tayammum* shall also be in order even if it is performed by hitting the hands against a wall, so long as the wall is made, even in part, with ordinary building material.

15. It is not essential that the material used for *tayammum* leaves any trace on the parts of the body *tayammum* has been performed on. For example, performing *tayammum* with polished clear stone is as good as performing it with dust.

16. The material used for *tayammum* should fulfil the following conditions:

a. It should be quantifiable, not grains of dust so minute that they are considered negligible.

b. It should not be mixed with water in such a quantity that it turns into mud.

17. In case, there does not exist a material satisfying the above two conditions, *tayammum* can be performed with whatever dust or mud. However, if both the materials were available at the same time, dust should take precedence over mud. However, if it is feasible to dry the mud or gather the dust to form a quantifiable amount of soil, *tayammum* could be performed with either of the said materials.

18. *Tayammum* would not be good enough, if it was performed with that which cannot be called of the earth matter; this may include gold, iron, steel, copper, lead, and the like, or precious stones, such as agate, turquoise, pearl, and coral, or minerals, such as salt, antimony, and ash. Prohibitive too is the use of all that which is used for food and clothing. Furthermore, it is not permissible to use wood, or glazed building materials for *tayammum.*

19. Should the earthly material be found mixed with non earthly one, such as salt, performing *tayammum* using such a blend cannot be deemed good enough, unless the amount of the non-eartly material is so negligible that you cannot call the material other than earthly.

20. Those who may not be able to get hold of any material to perform *tayammum* are allowed to say prayer without it. Should they, thereafter, be in a position to use either water or earth they should do so and repeat each and every prayer previously performed without *wudhu* or *tayammum.* If the situation persisted until the time for prayer was up, the person concerned does not have to perform prayer by way of *qadha',* even though the latter should, as a matter of *ihtiyat,* be advocated.

The Way *Tayammum* Should be Performed

21. The person performing *tayammum* should hit with the inside of both the hands the source material of *tayammum;* this has to be done in one blow. With both the hands, the forehead, including the temples, should be wiped. The boundaries of this area should be the hair line to the upper part of the nose, close to the eyebrow. It is recommended, however, that both the eyebrows are included in the wiping of the forehead.

Then one should wipe the back of the hand from the forearm to the fingertips with the inside of the right hand; the back of the left hand should receive the same treatment, this time with the inside of the right hand.

It is *mustahab* to shake the hands after hitting the earth and before wiping.

Should there be long hair covering the forehead and temples, it should be lifted to expose both for wiping. As for the hair that may grow in them, it should be wiped.

22. To sum up, the parts of the body that wiping should be applied to are four: the forehead, both temples, both eyebrows - as a matter of *mustahab,* and the back of both the hands. The parts of the body with which wiping is carried out are the insides of the hands.

Every part that is wiped should be completely covered by the wiping. However, it is not essential that the part that is doing the wiping should cover the area being wiped. For example, it is sufficient for the forehead to be wiped with parts of both the hands, provided that they are used together and at the same time.

23. What is obligatory of hitting the earth with the inside of the hands is once, irrespective of the purpose of *tayammum,* i.e. be it instead of *wudhu* or *ghusl.* However, it is more meritorious to use two blows, one for the forehead and temples and one for the back of hands, especially when *tayammum* is performed instead of *ghusl.*

24. There may be a case for not performing *tyammum* fully, i.e. for a valid reason. This could be a person with an amputated hand who has no alternative but to use the other hand only. Also, whatever left of the hand can serve as a full one. Should a person be unable to hit the earth hard with his hands. It suffices that he places it gently on the earth. Should a person be unable to perform *tayammum* themselves, they can seek the help of an other person to do it for them, provided that the helper uses the hands of the disabled person for the task.

Should hitting the earth with the inside of the hands prove problematic, the *mukallafs* can use the back of their hands. If any of the parts intended for *tayammum* is covered by a *jabirah,* the same rules applicable to the person performing *wudhu* should apply in *tayammum,* i.e. by wiping over it.

Conditions to be Met When Performing *Tayammum*

25. a. *Tayammum* materials should be *tahir* and *mubah* as has already been discussed in para (14). So, it is not possible to perform *tayammum*

with a *najis* earth, nor can you use an earthly material owned by the others without their consent.

26. b. The *niyyah* of *qurbah* should be present because *tayammum* is an act of worship, i.e. it cannot be deemed good enough without the *niyyah*. It is not necessary to name in the *niyyah* whether *tayammum* is being performed instead of *wudhu, ghusl,* or an emergency cause for *taharah.*

However, should there be two breaches of *taharah,* one requiring *wudhu* and the other *ghusl,* and there is not enough time to perform both, two *tayammum*s should be performed. There and then, each of which must be performed with that particular purposes, i.e. one instead of *wudhu* and the other instead of *ghusl.*

27. c. The steps required for performing *tayammum* should be followed in an orderly fashion, such as not starting with wiping the hands before the forehead and temples.

28. d. Where possible *tyammum* must be carried out by the persons themselves.

29. e. Removing that which could mask the surface of a wiping, or a wiped, part, such as ring.

30. f. Ensuring the interdependence and uninterrupted flow of the actions of *tayammum,* i.e. those of hitting the earth and wiping.

31. g. The place where the person performing *tayammum* is present should be *mubah,* i.e. not *maghsoub.* If the latter was the case, *tayammum* would be *batil.* However, if the *tayammum* material was used on the floor of a usurped place directly, it should be deemed *batil.* But should the *tayammum* material be placed in, say, a container on the *maghsoub* place, *tayammum* should be ruled good enough.

32. There are certain things which the person performing *tayammum* can do, by way of *mustahab* acts.

a. The immediate parts of *tayammum* should be *tahir,* i.e. not necessarily the other parts of the body.

b. The starting point of wiping should be from the hairline downward insofar as the forehead is concerned not the other way round. Likewise, wiping of the back of the hands must start from the forearm to the fingertips.

c. *Tayammum* for prayer has to be embarked on after the time for prayer has set in.

Things That Can Invalidate *Tayammum*

33. When *tayammum* is performed instead of *wudhu,* it could be broken, or made obligatory, in the same way *wudhu* could. Also it can no longer be sustained when *wudhu* becomes feasible while there is still time for restoring *taharah* by using water. Should *wudhu* become feasible for a short while, yet the person concerned does not take the initiative to perform it, he can no longer rely on an existing *tayammum,* i.e. he has to renew it.

34. When *tayammum* is performed instead of *ghusl,* it could be broken, or made obligatory, in the same way *ghusl* could. Also *tayammum* can no longer be sustained when *ghusl* becomes feasible while there is still time for restoring *taharah* with the use of water. However, the substitute *tayammum* cannot be rendered null and void by that which calls for *wudhu;* for example, should a person in a state of *janabah* perform *tayammum* and then sleep, or pass urine, his *tayammum,* for *janabah,* would remain intact. He should perform *wudhu* for committing that sort of minor *hadath* where possible; conversely, *tayammum* has to be performed instead of *wudhu.*

The same thing applies to a woman having had *tayammum* instead of *ghusl* of *haydh.*

35. In the unlikelihood of finding water, a person could have *tayammum* instead of *ghusl* for touching a dead body; they may need to perform *wudhu* for, say, having slept or passed urine. One *tayammum* would suffice, in that they are not required to perform a second *tayammum* instead of *wudhu.*

Doubting the Validity of *Tayammum*

36. If, after having had *tayammum,* the person realized that they did not do it as it should be done, they have to repeat it. Should they think that they, say, forgot to wipe the back of the left hand, they should hasten to do so, provided that there is no time lag. Conversely, they should repeat the whole procedure of *tayammum.*

37. All the other cases of doubt concerning *tayammum* should be treated in the same way as their counterparts in *wudhu.* These have already been discussed in paras (94, 96, 97, 100, and 101) of the Chapter on *Wudhu.*

Chapter Five

Najasah

1. Types of *Najasah*

Technically, *najasah* is any kind of uncleanliness *(khabath)* which may require the Muslim to remove it by washing before embarking on prayer. The opposite of *najasah* is *taharah.*

1. Any object is *tahir* and should be treated as such, except for the source of *najasah* itself and the things that become *najis* on contact with *najasah.*

2. According to *shari'a* law, *najis* objects/substances are those which are intrinsically *najis*, in that they did not acquire the *najasah* through coming into contact with something else which is unclean.

As for the things at the receiving end, they are inherently *tahir* objects that become *najis* on contact with the source of *najasah.* For example, urine is *najis* in itself, but your hand which may get contaminated with the urine becomes *najis* because of the contact.

We shall be discussing types of things that are inherently *najis;* we will give the opinions of other jurists in the matter and state our view where difference of opinion arises.

a. b. Urine and Excrement.

The liquid and solid waste matter passed from the human/animal body is inherently *najis,* i.e. it cannot be rendered *tahir.* How this waste matter is passed outside the body, be it through the natural passages or through other means, is irrelevant to the fact that it still be deemed *najis.* However, there are some exceptions:

3. a. *Tahir* are the droppings of all kinds of birds by they of the type whose meat is fit for human consumption, such as pigeons, or not, such as hawks.

4. b. *Tahir* is the dung or droppings of animals or birds, whose meat is *halal* such as sheep, cattle, camel, horse, mule, and chicken, provided that they are not fed on excrement for such a length of time that it may find its

way into its body mass. Should this be the case, it shall be rendered *haraam* for consumption; and its waste is also deemed *najis*.

5. c. Body waste of creatures such as the scorpion and the beetle are not *najis*.

6. Our clothes may come into contact with a body waste of some sort. If we are not in a position to determine whether or not it is of the *najis* type, we should treat each case according to its merits, as follows:

a. We should first reach a conclusion as to the source of the body waste. Should we conclude that it belongs to an animal whose meat is not fit for human consumption, we have to assume that it is *tahir*, regardless of its species, i.e. being animal or bird.

b. We may not be in a position to tell whether the body waste in question belongs to an animal that cannot be identified, i.e. animal of prey or otherwise. In this case, we have to assume that it is *tahir*.

c. The body waste should be deemed *tahir* too, if we could not determine whether it belongs to an animal with or without body mass.

7. c. Semen

Human and animal semen is *najis*. The semen of such animals as fish and insects, whose blood circulation is not achieved through pumping [cold blooded animals], as is the case humans and animals, is *tahir*.

Man's semen is quantifiable. However, there is no evidence that women have semen. Accordingly, they are not required to have *ghusl* of *janabah*, should they be sexually aroused.

8. Liquids, other than semen and urine, may be passed through man's anterior. Such secretions are *tahir*. It is not obligatory to cleanse the human organ from them. You may refer to para (78) of the Chapter on *Wudhu* for more details.

9. d. and e. Dog and Pig.

These two animals are inherently *najis*, in that everything in them, be it flesh, bones, hair, teeth, etc, is *najis*. They remain *najis* whether alive of dead. All species of dog are *najis*, be they watch dogs, hunting dogs, or police dogs.

However, this does not cover marine mammals, such as seals.

10. Animals of all kinds, including fox, rabbit, scorpion, and mouse, but not dog and swine, are *tahir*.

11. f. Dead Corpse.

As has already been discussed, given animals, such as dogs and pigs, are *najis* in themselves. When they die, *najasah* is compounded.

What we are addressing here is the animal that is *tahir*. As soon as it dies its body becomes *najis*. It should be noted, however, that a dead body is that which belongs to an animal which has bot been ceremonially slaughtered, i.e. in accordance with the procedure sanctioned by *Sharia* law. How the animal faced its death, i.e. died of natural causes, got killed, smothered, or slaughtered not according to Islamic code, is immaterial. That is, it shall still be dubbed dead.

12. Certain groups of animal can still be *tahir* even after they die, such as fish, fly, and scorpion that has already been mentioned.

13. In the unlikelihood of concluding that the blood circulation system of a particular animal, reptile, or otherwise, we should assume that its dead body is *tahir*.

14. Man, like animal, becomes *najis* after death. A Muslim's dead body becomes *tahir* once *ghusl* of the dead has been performed on it. Please refer to para (136) of the Chapter on *Ghusl*.

15. After the unborn baby reaches a stage where it can move, then dies, say by way of miscarriage, it becomes *najis*. If it dies before such a development stage, it is important, as a matter of *ihtiyat,* that it be treated in the same way. A dead chic inside an unhatched/hatched egg warrants the same treatment, i.e. it is *najis*.

16. Those parts of the dead body which contain life become *najis* after death. As for those parts where normally blood does not flow, such as hair, wool, fur, teeth, bone, feather, beak, nail, horn, and claw, do not become *najis*. Whether or not the animal is of the kind whose meat is fit for human consumption has no bearing on the those parts being *tahir*.

However, this does not mean that such parts of the dead body are impervious to *najasah,* in that if they come into contact with any juices, or moisture, of the dead body they turn *najis*.

17. Any part of the body of a living animal gets dislodged, chopped, or falls off becomes *najis*. However, anything that peels of the human or animal body, such as dandruff, the crust of a healing wound, and acne, is considered *tahir*.

18. In the same way the feathers of a dead bird are *tahir*, the egg found inside a dead bird is *tahir* too, provided that its shell has formed - not necessarily of the hard type.

19. Is the milk found in the breast of a dead animal *najis*?

A. Should the dead animal be of the type whose meat is fit for human consumption, such as sheep, the milk found in their breast is *tahir*. If it is of that whose meat is not edible, such as cat, the milk is *najis*.

20. Is the musk gland found in the male of a type of deer *tahir?*

A. It is *tahir* whether it was taken from a living or a dead deer.

21. Is rennet *tahir?*

A. Yes, it is *tahir* in the same way the wool and hair of a dead animal is.

22. Doubt may arise as to the source of either meat, fat, or leather, i.e. whether taken from an animal which has been killed according to Islamic *shari'a* law so that we deem it *tahir*, or from a dead animal so that we consider it *najis*.

It should be deemed *tahir*, irrespective of who owned it, be him Muslim or unbeliever.

23. However, there are other aspects that could attract a different ruling. That is, as a dead body is *najis*, it is, by the same token, *haraam* to eat its meat, or say prayer wearing any product made of its hide.

Accordingly, it is not permissible to consume the meat of a suspect corpse found in the possession of a non-Muslim. However, prayer performed using leather from the same source is permissible.

That said, anything of the this sort being handled by a Muslim, giving assurance that they go about trading with it on the basis that it is *halal*, it is permissible to eat or use. There is one exception though, in that, should it be known that the Muslim trader acquired the goods without proper checking as to their origin, they become *haraam* to eat or use. More details about what is *halal* or *haraam* will be discussed in its appropriate place, especially those of prayer and food.

Should a person be in a position to know that the meat, fat, or hide has been taken from an animal that has not been killed according to Islamic code of practice, it is both *haraam* and *najis*, irrespective of who owns it, i.e. an unbeliever or a Muslim.

24. g. Blood.

Blood is inherently *najis,* regardless of the source it comes from, i.e. be it human or animal.

However, there are some exceptions:

25. a. Blood of animals, which are not known for having a circulation system, similar to that found in humans and other animals, such as fish, is *tahir.*

26. b. Any blood retained inside the corpse of a slaughtered animal or its liver, is *tahir.*

27. c. Blood sucked by insects, such as flee and louse, is *tahir.*

28. The clot of blood, which may be found in an egg, is *najis,* as a matter of *ihtiyat.*

As for blood which could lace milk while milking is both *najis* and turns milk *najis.* The same goes for the small seed [in the conception process] which may develop into a clot, in that any blood seeping therefrom should be deemed *najis.*

29. Any suspect red stains found on your clothes should be deemed *tahir.* Should you suspect whether the yellowish fluid seeping from a wound or ulcer is *tahir* or not, you have to assume that it is *tahir.*

30. A person could conclude that the stain soiling their clothes is that of blood. Yet he cannot tell if it came from, say, a sheep to be deemed *najis,* or a fish to be considered *tahir.* In the final analysis, it should be assumed that it is *tahir.*

31. A person may establish that the blood found on his clothes or body could be his, that was sucked from their body by mosquito, or that of any other human/animal. Such blood is *najis,* in which case it should be cleansed.

32. h. Liquid Intoxicants

Luminaries among our jurists considered among things that are *najis* liquid intoxicants. However, we think that it is more likely that alcohol, and every other intoxicant, be it liquid or solid, is *tahir,* although liquid intoxicant should, as a matter of *ihtiyat,* be avoided.

Accordingly, although liquid intoxicants are forbidden, they are not *najis.* It then follows that things coming into contact with them do not require to be washed or cleansed. From a *najasah/taharah* angle also,

solid intoxicants, such as hashish, are *tahir,* albeit they have been declared *haraam* to use.

33. The same applies to grape juice, if it is boiled and turned thicker in texture, yet it did not lose its two thirds. That is, although it is, as a matter of *ihtiyat haraam* because of boiling, it is *tahir.* Should it lose two thirds of its original quantity by way of boiling, it should be both *halal* and *tahir.*

34. Grape juice may boil or reach that stage by bubbling but not necessarily with fire. I is *haraam* because it is wine. This is so, because brewing intoxicants from grapes is done in this way.

35. Juices produced from dates and raisins are *tahir,* regardless of whether or not they boil as a result of the use of fire. The are *halal,* if they are boiled with fire or the like. However, if they are left to ferment in time, they are *haraam* because they will turn into intoxicants, although they still retain their *taharah.*

In the light of the above beer is *haraam* because it may lead to drunkenness; it is however not *najis.*

36. Among things considered *najis* are unbelievers. However, it is more likely that they are *tahir,* be they of the People of the Scripture or unbelievers. That said, it is advisable, as a matter of *ihtiyat mustahab,* to avoid them, especially unbelievers. People of the Book are those who belong to religions, such as Judaism, Christianity, and Magianism, that have been deemed abrogated by the advent of Islam.

37. Sweat

The sweat of both the bodies of human and animal, which are *tahir,* is *tahir,* even the sweat of a person in a state of *janabah* or *haydh.* However, some jurists are of the opinion that sweat could be *najis* in two cases:

38. a. A person may get into a state of *janabah* by way of committing an unlawful sexual intercourse such as adultery. Some jurists have ruled that the sweat of such a person is *najis.* However, we believe that it is *tahir.* That said, it is advisable, as a matter of *ihtiyat mustahab,* not to say prayer with the clothes that were exposed to the sweat.

39. b. Should an animal get used to feeding on excrement, its sweat is *najis* so is its urine, especially camels. We espouse such an opinion and advise, as a matter of *ihtiyat wujubi,* that it be advocated.

The ruling passed on such an animal remains in force until it is weaned from feeding on excrement for some time and revert to feeding naturally. That is, during its rehabilitation period, its meant remains *haraam* and so does its body waste, including sweat.

2. Things that Become *Najis*

Tahir water could become *najis* on contact with a *najis* matter. This has been discussed in detail in the Chapter on Water, paras (8) onward.

Things *tahir*, other than water, could become *najis* too on contact with *najis* matter.

40. a. Liquid *najasah,* such as urine or blood, getting into contact with a solid object, such as garment, earth, or body, renders the object *najis.* However, only the point of contact becomes *najis.*

41. b. Should the aforesaid *najasah* find its way to a *tahir* liquid, such as milk, the *najasah* permeates the entirety of the liquid, i.e. it all becomes *najis.*

With reference to both the examples, we have to stress that the difference between liquid and solid objects is not confined to the surface area of the liquid which becomes *najis,* but the depth too. Whereas the *najasah* remains localized when contacting a solid thing unless it penetrates the object, the *najasah,* which finds its way to the liquid, turns it all *najis.*

Certain things may have dual existence. For example, honey could be set or liquid. Should it come into contact with the *najasah* while in a set form the rule discussed in para (40.a.) has to be applied. If it is liquid, the rule discussed in para (40.b.) should be applied.

The parameters for determining the material as having liquid properties are:

1. Its liquidity should contain some sort of moisture similar to that of water. Thus, molten gold does not fit this definition; accordingly, it is treated in the same way as any other solid object, such as clothes or wood, contacting a source of *najasah,* in that only the point of impact becomes *najis.*

2. The texture should be so liquid that if you scoop some of it, it immediately levels up. If the texture is so thick that if you scoop some of it, the rest of the material is not capable of filling in the gap quickly, it

cannot be called liquid; rather, it is set. Insofar as *najasah* is concerned, the ruling here is identical to that applied to clothes and furnishings; thus, when blood comes into contact with the material in question only the point of contact becomes *najis*.

42. c. The source of *najasah* could be dry, such as dry blood or pig's hair. Should it come into contact with a substance that is liquid, the entire liquid turns *najis*.

43. d. Both the *najis* and the *tahir* things could be dry. Should they come into contact with one another, the ruling depends largely on the dryness or wetness of both of them. For example, if both were dry, no *najasah* should creep into the *tahir* thing on impact; also the *tahir* object would not be *najis*, if it came into contact with the source of *najasah*, should there be slight wetness of the type that does not spread; if, however, one or both the objects were moist with the type of moisture that spreads on contact, the point of impact of the *tahir* object would become *najis*.

In short, the spread of *najasah* from any source to the *tahir* object depends on two main factors, the first is the contact and the second the presence of wetness.

44. If, according to the aforesaid cases, a *tahir* object became *najis* and the latter came into contact with another *tahir* object, would it render it *najis*, and how far would the chain of *najasah* go on?

A. The *tahir* object becomes *najis*, if it meets with the *najasah* directly, or through a second medium only, i.e. if there was more than one medium, no *najasah* would befall the *tahir* object.

It is noteworthy, though, that if the first medium, which turned *najis*, was liquid, it affects the second medium and turns it *najis* too. If it was solid, it would turn it *najis* as well, as a matter of obligatory precaution. That is, there is no difference between the liquid and the solid second object, in that they are both affected by the *najasah*. The third object should not be rendered *najis* in all circumstances.

Examples:

1. Suppose the floor of a room became *najis*. On walking with wet feet on the floor, your feet became *najis*. You stepped on a rug while your feet were still wet. In the final analysis, your feet were *najis*, as a matter of obligatory precaution, because there is only one medium, of the solid

type, that separates them from the original *najasah,* i.e. the floor. As for the rug, it should not be *najis* because there are two media separating it from the original *najasah,* i.e. the floor and the feet, and none of which is liquid.

2. *Najis* water was spilt on the floor. Suppose you stepped on the floor while it was still wet. Needless to say that the floor has become *najis* as a result of the secondary source of *najasah* of the liquid type. Two media separate your *najis* feet, i.e. the liquid [water] and the floor. However, since your feet are separated by two media, they are ruled *tahir.*

Rules Dealing with Doubting the Spread of *Najasah*

45. In the event of doubting the spread, or otherwise, of *najasah* to a *tahir* object, you should not pay attention if you did not know whether or not the original source was *najis.* However, you should be able to ascertain that the original source had become *najis* on contact by adopting the following legal criteria:

a. The availability of a tangible evidence.

b. The testimony of a trusted person. Whether the *tahir* object was in their possession or not is irrelevant.

c. The testimony of the owner of the object, Should they say that it was *najis,* it should be treated as such, regardless of the way they acquired the object, even if it was *maghsoub;* of no effect too is their being adult or close to adulthood, and untrustworthy.

46. The person may be in a position to tell that the *tahir* object could have come into contact with a *najis* object, yet they are not sure that wetness was involved. In this case, they should assume it is *tahir.* Moreover, even if they know that either or both objects had some sort of wetness and that when the contact between them took place while there was no wetness, they should assume that the object is *tahir.*

Conversely, the person should conclude, either directly or indirectly - through legal proof, that the object became *najis* as a result of the presence of wetness at the time of contact.

47. In the event of doubt arising about *najasah* taking place, it is not obligatory that the person should enquire or check. They should regard the suspected object as *tahir* until proven otherwise, i.e. either directly or indirectly. Even if, after checking, they think that *najasah* had occurred,

they should not rely on this until they become absolutely certain that *najasah* did realy occur.

3. Rules Concerning *Najasah*

Among the rules governing a *najasah shari'a* has stipulated are the following:

a. *Taharah* is a Condition for Performing Prayer

48. The most important of these rules is that both the body and the clothes of the worshipper, intending to perform compulsory or voluntary prayer, must be *tahir*. The same should be observed when performing precautionary *ruku'* and the parts of prayer that have been missed. However, *taharah* is not a condition for performing *sajdatay-as-sahu, adhan, iqamah,* or supplication after prayer. Yet, one should observe *taharah* voluntarily.

There are exceptions though to saying prayer with *najasah;* these will be discussed in para (57) and thereafter.

Accordingly, if any part of the person's body or clothes become *najis,* they should hasten to render it *tahir* again or change it and wear another garment that is *tahir.*

49. Should the body or parts thereof become *najis* and means for rendering it *tahir* were not available, prayer should be said there and then. This is so because prayer cannot be waived for any reason. However, one should use whatever water available to render all the parts, or some of them, that were affected by *najasah, tahir* where possible.

The same should apply to the clothes, especially where there is no other garment available to perform prayer with.

50. Where *najasah* affects both the body and clothes, rendering the body *tahir* should take precedence over clothes.

51. Should the *najasah* be found in two places of either your clothes or body, and there be not enough water to clean both, the bigger affected spot must be cleaned first. If they were of the same magnitude, the choice of cleaning either is yours.

52. Should not there be enough water for performing both the *wudhu* and removing the *najasah* from one's body, removing the *najasah* should

come first; *tayammum* should be the alternative. This has already been discussed in para (11) of the Chapter on *Tayammum.*

53. Suppose a person has two garments and one of which became *najis.* However, it was not feasible to tell which one was *tahir.* What should they do?

A. Praying with either is not good enough, unless it is rendered clean and *tahir.* If not, prayer must be performed twice, one with each of the two garments.

54. Whoever knowingly performs prayer while their body or clothes are *najis,* the prayer is *batil.* This is so, if they were aware that *taharah,* of both the body and clothes, is conditional to saying prayer.

55. A person may have said prayer in the belief that he was in a state of *taharah.* After he has finished prayer, he could trace some *najasah;* he needs not worry, in that his prayer is in order and that he is not required to repeat it, even if there was still time for saying it.

Indeed, neither the knowledge of the person that he was *tahir* when he embarked on the prayer, nor the belief that he took necessary action to restore *taharah* to the affected area/s prior to prayer, has any bearing on the end result, as outlined in the preceding paragraph.

Furthermore, a person may harbour doubt that either his body or clothes were *najis.* He then concludes that they were *tahir* in the light of para (47). If, after having said prayer, he found out that he was *najis,* he needs not worry for his prayer shall be deemed valid.

56. Should a person be aware that either his body or clothes were *najis,* and forgot about it and said prayer, such a prayer is *batil.* If he remembers while there is still time for prayer, he should hasten to perform it; otherwise, he should say it by way of *qadha'.*

57. While praying, a person realized that the clothes he was wearing were *najis,* even before embarking on prayer. His prayer is *batil;* accordingly, he should cut it short, render his clothes *tahir* and resume prayer.

However, should the person be aware, while performing prayer, that his clothes were *najis* before embarking on prayer, yet he was not aware of this when he embarked on it, he should, time permitting and as a matter of obligatory *ihtiyat,* resume prayer with *taharah.*

58. Should the person who became aware during prayer that his clothes were *najis* before he started prayer, he must, if time was short for repeating it, hasten to clean or change his clothes while performing prayer. That said, he should observe the decorum of prayer; otherwise, he should continue his prayer with the *najis* clothes. However, in both cases, it is *mustahab,* as a matter of *ihtiyat,* to perform prayer by way of *qadha'.*

59. a. While praying a person's body or clothes may become *najis.* Should he know of the incident, he must hasten to restore *taharah* to the affected part of his body or clothes or change the latter and resume prayer.

b. If this is not feasible due to, for example, doing that which invalidates prayer, such as talking or creating a long gap, he should cut short his prayer, restore *taharah* and start afresh.

c. If either action is not possible for fear of prayer's time running out, even for one *ruku',* he should carry on with the prayer which will then be deemed valid.

However, where time is available even for just one *ruku,* it is obligatory on the person offering the prayer to resort to one of the two courses of action in (a) and (b), circumstances permitting, to guarantee that one *ruku'* falls within the appointed time of prayer.

60. The same must be applied in the event of a person realizing, during prayer, that *najasah* has contaminated either his body or clothes, without his being able to pin point the actual time of *najasah* occurring, i.e. before prayer or after starting it. He should conclude that it occurred during prayer.

b. The Spot of *Sujood* has to be *Tahir*

61. It is a prerequisite that the spot where you place your forehead in prostration in prayer - i.e. that area where the actual contact with the forehead takes place - be it earth, paper, wood, etc., has to be *tahir.*

62. If performing *sujood* on something *tahir* is not feasible, doing so on something not *tahir* is allowed.

63. Should a person realize, after having finished his prayer, that he performed *sujood* on something not *tahir,* his prayer shall be in order, i.e. he does not have to repeat it. The same applies if the mistake is discovered immediately after lifting the head from *sujood.*

c. Using *Najis* Things

64. Eating or drinking *najis* things or substances is not allowed; this will be elaborated later on. However, there may be a case for making use of them outside the remit of prayer, food, and drink.

d. Selling *Najis* Things

65. Liquid substance that become *najis* can be sold and bought so long as they can be of use from a *shari'a* perspective as well as custom. An example of this is oil used for medicine.

As for non-liquid based objects/substances, which may become *najis,* there is no doubt that it is permissible to trade in them, for the simple reason that *taharah* can be restored to them.

Things that are inherently *najis* cannot be traded in. For example, you cannot sell alcohol; and although you can sell pigs to non-Muslims, who allow their consumption, shying away from it, as a matter of *ihtiyat,* is advisable. It is not permissible to trade in dogs, unless they are trained for hunting, for example. It is permissible to trade in other things so long as there is benefit in them.

That said, it is permissible to trade in other types of merchandise, provided that they have legitimate benefits.

e. Non-permissibility of Defiling Mosques

66. Desecrating any mosque is not allowed. If found, any *najasah* should be removed immediately, as a matter of *wajib kifa'ie.*

Not permissible too is bringing inside the mosque articles, or animals, that are inherently *najis,* such as dogs.

67. The extent of non-permissibility of any act of sacrilege covers the mosque's floor, walls, and all building material and fittings, such as windows and doors; furnishings and the pulpit. Other fixtures and chattel that have been donated to the mosque by way of endowment covenant are also covered. However, the obligation, by way of *wajib kifa'ie,* to restore *taharah* to the defiled places is confined to the building structure, i.e. it does not extend to the fixtures, fittings, and other items of movable property.

68. Should the mosque or its contents become *najis* by the action of a

particular person, they must hasten to render the place *tahir* again, because they have more responsibility for rectifying the situation. However, this does not waive the public duty *(wajib kifa'ie)* of the others.

69. The rules pertaining to the defining of mosques so far discussed apply to the holy shrines.

70. Also, it is not permissible to desecrate the Holy Qur'an. Should it become *najis,* one should hasten to remove the *najasah* from its print, paper, and cover.

f. Saying Prayer While Still Bearing *Najasah*

A person performing prayer is allowed to bear the following types of *najasah*:

71. a. Blood and pus resulting from cuts and ulcers. Although they are *najis*, yet you can say prayer with the presence of such *najasah* so long as the injury has not healed. There is no limit to the quantity of such blood or pus, and irrespective of its source, i.e. be it in an exposed area of the body or an internal injury or ailment.

The license to overlook such blood is predicated on the difficulty to remove the source of *najasah* or changing one's clothes. The yardstick of determining this is what is widely believed as difficult and untenable. If there was such a consensus, even the old one who can manage to change their clothes to *tahir* ones without difficulty cannot be allowed to do so.

However, it is not obligatory on the person posed with such a problem to take necessary steps to stop the blood or pus spreading to their clothes so long as this type of *najasah* is allowed. Ointments and other medications used in the recovery process, as well as sweat, are covered by the same ruling.

Should doubt about the nature of any blood found on the body or clothes arise, it is obligatory to render the affected place *tahir*.

A person may not be in a position to tell whether the injury or ulceration in their body had healed. What should they do if they still detect oozing of blood or pus produced in an infected wound in the body?

A. They should assume that the injury is still unhealed; accordingly, they are not obliged to render the affected area *tahir,* until they are absolutely certain that the injury has completely healed.

72. b. Any area stained with blood which is less than the size of one *dirham shari'i* (the square area of one part of an average male's index finger) is allowed, i.e. without removing it, provided that it fulfills the following requirements:

1. The blood should not be that of a dog or a pig which are inherently *najis*.

2. It should not be that of an animal whose flesh is not allowed for consumption, such as rabbit or hawk, as a matter of *ihtiyat*.

3. It should not be that of *haydh, istihadha,* or *nifas*.

4. It should not be that of an animal's dead corpse.

Should the stains of blood spread over a wider area of the person who is performing prayer, the total area should be the yardstick, in that the stains must be added up; if in total, they be equal to the size of *dirham shari'i,* it must be concluded that they are not allowed; should the total be less, prayer can be accepted.

Suppose that the little blood which is less than the quantity allowed by law penetrated to the other side of the garment or to another piece of clothing, what would the worshipper do?

A. If the penetration was confined to only one garment, it is allowed. Should it spread to a second garment, the total area of the stains on both the garments should be taken into account; if both the stains reach the target of *dirham shari'i,* prayer is not allowed with such soiled clothes. This is so, irrespective of whether the secondary staining occurred to a separate garment or to the lining of the original garment.

Should a little amount of water become *najis* as a result of blood finding its way to it, and a drop of this water turned *najis* and soiled the clothes of a person performing prayer, they are not allowed to say prayer with the soiled clothes, even if it was less than the area of a *dirham shari'i.* This is so because the license is confined to blood.

In the event of doubt arising about the size of the stain as to whether or not it amounts to the level allowed, prayer should be in order regardless. This is so, even if the person concerned found out to the contrary after they have finished their prayer, in that they are not required to repeat it, albeit there was still time for saying it afresh.

73. c. *Najis* items of clothing and jewellery, of the sizes which are not capable of covering one's private parts, such as socks, head cap, ring, and

bracelet can be worn during prayer. However, the following clothing items are exempt from this allowance.

1. Garments, such as those made of a dead corpse's hide.

2. Garments soiled with the body waste of an animal whose flesh is not allowed for consumption, especially where the *najasah* can still be seen. The same goes for the garment hosting parts of such an animal. Prayer performed with such soiled items of clothing is *batil,* not only because of the *najasah* but for the necessity to remove the waste and parts of those animals from the clothes.

3. Garments made of the hair of such forbidden animals, such as dog and pig, cannot be worn during prayer. Indeed, prayer said with the worshipper wearing any garment made of, say, the fur of a rabbit, whose flesh is not *halal* to eat, cannot be sanctioned.

74. d. Things that are carried during prayer which could be either soiled with *najasah* or are inherently *najis.*

As for the article soiled with *najasah,* it is covered by the allowance, and thus the worshipper is allowed to carry it in prayer. This is so, even if it was of the type with which prayer can be performed, such as a big handkerchief, let alone that which prayer cannot be performed with.

That which is inherently *najis* can also be tolerated, even if it was part of a dead carcass, provided that carrying it would not entail its coming into direct contact with the worshipper's body or clothes.

Chapter Six

Purifying Agents *(Mutahirat)*

As has already been discussed *najis* things are of two types. The first is that which is naturally *najis*, and the second is that which has turned *najis* as a result of coming into contact with an inherently *najis* thing. However, we now turn to when and how to render *najis* things *tahir* again.

1. Restoring *Taharah* to Things that are Inherently *Najis*

Intrinsically *najis* things cannot be rendered *tahir* apart from the following:

1. a. A dead body, even that of a Muslim, is *najis*, as has already been discussed in para (14) of the Chapter on *najasah*. This type of *najasah* is inherent. However, *taharah* can be restored to the dead body by giving it a proper *ghusl* as explained in para (111) of the Chapter on Rules Concerning the Dead.

Ghusl is therefore one of the *mutahirat*. As for an animal's dead carcass, which is inherently *najis*, it does not become *tahir* with *ghusl* or any other means. Accordingly, its hide would not become *tahir* through any industrial process.

2. b. Should the inherently *najis* thing be transformed into a completely different thing both in substance and form, such as urine turning into vapour then liquid again and the carcass of a dead dog turning into dust, it becomes *tahir*.

However, the inherently *najis* thing remains *najis*, if no complete transformation takes place, such as turning the hide or hair of a dead carcass into manufactured goods.

3. c. Blood sucked by insects from whatever source, be it human or animal becomes *tahir* by way of sucking and becoming part of the insect's blood. The same goes for animals, such as fish, whose blood is *tahir*, in that if the human or other animal's blood is transfused with its blood, it becomes *tahir*.

The same ruling applies in the case of organ transplant, i.e. from a *najis* source to a *tahir* one; for example a dog's eye transplanted in another animal that is *tahir*.

2. Restoring *Taharah* to Things that Became *Najis*

Although there are many ways of restoring *taharah* to things that became *najis*, water remains the prime purifying agent.

There are certain requirements for the water to be a purifying agent:

4. a. Water should be *tahir*, as using *najis* water in restoring *taharah* is not permitted.

5. b. The properties of water should not change as a result of the washing or purifying process so much so that it would turn *najis*. This has been discussed in para (19) of the Chapter on Rules Concerning Water.

6. c. The water remain pure water throughout the washing or purifying process. Should it change or turn into a mixed type of water before the process is over, the *najis* thing would not become *tahir*.

For example, if a dyed garment is washed with water so much so that the water turns coloured, before the washing process is complete, the *najis* garment would not become *tahir*. However, if the water can still be called as such in spite of a hint of colouring, there is no harm in that.

7. d. The actual *najasah* should be removed from the object that has become *najis*, either before or during the process of washing. However, there is no harm in any smell, colour, or any attribute left in the affected area so long as the very *najasah* is not physically there. Should doubt creep in as to the removal or otherwise of the *najasah*, *taharah* cannot be considered restored, until certitude is achieved that it has been removed.

8. e. Washing should be achieved with water thoroughly covering the area affected by *najasah* either by pouring water onto it or immersing it into abundant water. One wash would be sufficient to render the *najis* thing *tahir* again.

9. The aforesaid condition, i.e. washing through saturation, does not extend to the innermost part of the thing that has become *najis*. For example, should bread, soap, wood, or earthen ware become *najis* so much so that the *najasah* penetrated it to the core, it suffices that water reaches those parts, albeit in the same level of saturation, to render them

tahir. To achieve this result, the thing soiled by *najasah* should be left in water or water poured on it for a longer period.

Better still is drying the *najis* object, then applying water to render it *tahir* again. For example, dough that turned *najis* could be baked then purified; drying the dough then turning it into bread would not achieve the required result.

Liquids that have become *najis* may be subjected to the same routine. For example milk turned into cheese; *taharah* could be restored to the cheese by leaving it in water. However, you cannot restore *taharah* to the milk that has become *najis;* so is the case with all kinds of liquids, except water. Restoring *taharah* to water that turned *najis* has been discussed in para (25) of the Chapter on the Rules Concerning Water.

There is though a number of cases where *taharah* can be achieved, but with some extra steps:

10. a. Utensils that have become *najis* as a result of a pig drinking water from them can be rendered *tahir* again by washing them seven times.

11. b. Utensils that have become *najis* as a result of rats dying in them can be restored to their original state of *taharah* by washing them seven times.

12. c. Utensils that have been licked by a dog can be rendered *tahir* again by applying a mixture of soil and water first, then washing them once with a lot of water.

13. d. Clothes contaminated with urine, of a suckling baby or otherwise, should first be washed to remove the urine, then washed a second time with little of a lot of water.

In all the cases where we said that more than one wash should take place, succession of the washes is not obligatory.

Using little water for restoring *taharah* to things that have become *najis* hinges on the following:

14. a. The water should be *tahir* as is the case in abundant water.

15. b. It should be pure and remain so throughout the washing process.

16. c. The physical *najasah* should be completely removed from the thing to be rendered *tahir* again.

17. d. The water must cover all the area affected by *najasah;* the innermost part of the object is exempt from this condition as is the case in abundant water.

18. e. The little water should be poured onto the *najis* object to be rendered *tahir*, not by immersing the latter in it.

Therefore, restoring *taharah* to the *najis* object requires one wash only after removing the very *najasah;* accordingly, it does not need a second wash or other complementary things.

The exemptions to the these rulings are the following:

19. a. and b. Utensils used for food and drink that turned *najis* through licking by a pig or a rat dying in them can be rendered *tahir* again by several washes like the routine of abundant water, already explained.

20. c. Utensils used for food and drink that turned *najis* by dog's lapping can be restored to their original *taharah* if they are treated with a mixture of *tahir* soil and water first, then washed twice.

21. d. Clothes or body getting contaminated with urine can be made *tahir* again by washing them once, i.e. after they have been washed to remove the very *najasah.*

22. e. Clothes and fabrics, such as curtains and furnishing, that are susceptible to be soiled with *najis* liquids, such as urine, have to be wrung or squeezed to allow the water to drain out.

23. No allowance is given for the cases discussed in the preceding two paras. When it comes to contamination with the urine of a baby since the ruling is universal insofar as urine is concerned.

24. f. Generally speaking, food and drink utensils turning *najis* cannot be deemed *tahir* again, if washed with little water. However, washing could be sanctioned if it was done three times in such a way that each time water is poured into the utensils, then rinsed by turning the water inside to cover all its parts only to be poured out.

25. To render a fixed utensils *tahir* by washing with little water, you need to pour the water into the vessel, turn it around, using a hand or any other implement, so that it covers its entirety and then drain it; this has to be dome three times.

26. Just as it is possible to render *tahir* hard surfaces, which do not retain water, so is it feasible to render *tahir* soft surfaces after the *najasah*

has been removed. This could be achieved by pouring water over it in such a way that it fits the definition of washing, albeit the poured water may penetrate deep into it.

Other Purifying Agents

27. Transformation *(istihalah)* of the thing that has become *najis* is capable of restoring *taharah* to it. For example, a *najis* piece of wood turns to ashes and *najis* water turning into vapour only to turn through distilling to water again.

28. When in doubt as to the transformation actually took place, you should conclude that the thing that has undergone the transformation is *tahir*.

29. The third purifying agent is sunlight. It renders the earth and all that is on it of buildings, trees, vegetation, etc. *tahir*.

However, you should remove the *najasah* first from the object to be rendered *tahir* by sunlight; the second requirement is that the intended object should be wet. Moreover, drying up should come about as a direct result of sunshine, although there may be other contributory elements, such as wind.

30. The fourth purifying agent is the earth. By earth we mean our globe and all that is in it of soil, rock, sand, stone, plaster, and lime. Tarmac is included in the definition of earth.

However, it is essential for the validity of purifying *najis* things by the earth that the following requirements be fulfilled.

a. The thing that has become *najis* is the sole of the foot or the footwear, be it socks, shoes, slippers, etc, including artificial legs and walking sticks.

b. The *najasah* that may have contaminated these things must have come about as a result of walking, or standing, on the earth, in that if the *najasah* came about from other sources, the earth cannot work as a purifying agent in this regard.

The earth being *tahir* at the outset is not a condition for it to work as a purifying agent; however, it has to be dry to be able to work as purifying agent.

Once you rub the *najis* thing against the earth or walk over it, *taharah* is restored to it, However, the intended object is not going to be *tahir,* if

you wipe the *najasah* off by using soil or stone independent of the earth. It is advisable though that the *najasah* is removed first, using any means for that, then the next stage in restoring *taharah* to the *najis* thing should be by walking or rubbing against it.

31. When in doubt as to the source of the *najasah,* in that, i.e. whether from the earth or any other source, restoring *taharah* to the *najis* thing by way of earth would not suffice. Water should be used to render it *tahir* again.

3. How can one ascertain that the purifying process has really taken place?

32. When in doubt whether or not a *najis* thing has undergone a purifying routine, you should assume it is still *najis,* until proven otherwise either personally or by way of a lawful evidence.

33. A lawful evidence could be achieved by any of the following ways:

a. An unambiguous testimony that the disputed object is *tahir.*

b. The testimony of a person of an unblemished character.

c. The testimony of the person who used to own the disputed object of have right of disposal over it. For example, a servant testifying that she has rendered a dish *tahir.*

34. Should you be in a position where you cannot determine whether a particular thing is *tahir* or *najis,* having known that it had been in either state once before, you must conclude that it is *tahir,* unless the contrary is proven.

Section Two

Prayer

Rules Governing Prayer

Chapter One:

The Daily prayers

Chapter Two:

Other Prayers

Chapter Three:

General Gidelines of Prayers

Chapter Four:

The Common Parts of Prayer

Chapter Five:

General Guidelines

Rules Governing Prayer

Forewrod

In Islam, prayer is the most important act of worship. It is the pillar of religion, as it has been narrated in *hadith*. Also, it has been related from the Prophet (s.a.w.) that, *"It is the first of man's deeds that is considered. If it is deemed in order, the rest of his actions shall be examined. If not, the rest of his deeds can no longer be considered". "Its similitude is that of a flowing river. So long as you wash five times a day in this river, you achieve thorough cleanliness. The same goes for prayer; whenever you perform a prayer, you rest assured that your sins that fall between prayers shall be forgiven"*, said the Prophet (s.a.w.).

Mu'awiyah bin Wahab asked Imam As-Sadiq (a.s.) about the best of deeds, that is best loved by Allah, which could bring man closest to his Lord. He said, *"I do not know of anything, apart from knowledge, more meritorious than prayer. Do not you see that the good servant of Allah, Jesus son of Mary (a.s.) said,* **"... and He has enjoined on me prayer and poor-rate so long as I live"** (19/31).

Our Imam Abu Abdullah As-Sadiq (a.s.) took very seriously the task of urging people to keep up prayer. When Abu Basir was led in to Um Hamidah, the Imam's wife to pay his respects on the Imam's death, it was reported that both cried. Afterwards she was quoted as saying, *"O Father of Mohammad ! I wished you were there when Abu Abdullah was in the throws of death. It was an amazing scene; he opened his eyes and asked for all our kin to be gathered together; she added that we did so. He looked at them and said, "Our intercession is not going to be granted to any one who takes prayer lightly".*

Types of Obligatory Prayer

1. Prayer is divided into two categories. Obligatory and voluntary. The obligatory ones are six:

a. The five daily prayers. These are *subh, dhuhr, asr, maghrib,* and *isha'*.

b. *Tawaf* prayer.

c. *Ayat* (signs) prayer.

d. Prayer for the souls of the dead. Please refer to para (129) of the Chapter on Rules Concerning the Dead.

e. Prayer, on *qhada'* basis, of the eldest son for his dead father, as will be discussed in some detail.

f. Prayers of the two *Eids (al-Fitr and al-Adhha)*, only if it be held by the Imam or a just ruler representing him.

Practically, though, it could be said that, at the time of the occultation of Imam Al-Mahdi (a.s.), the prayers of the two *Eids* are not obligatory, for lack of requirements. However, the obligatory prayers are those mentioned in (a) to (e). The rest are voluntary and *mustahab*. They do not become *wajib* except by any of the general *wajib* reasons, such as *nadhr* or oath.

The Format of Prayer

2. The maximum number of *ruku'* in compulsory prayers is four, as in *isha';* the minimum is two, as in *subh*. As for voluntary prayers, the minimum is one *ruku'*, which is that of *wutr* (an odd number of *ruku''*).

However, *ruku'* os one of the main units of a prayer, the only exception is the prayer for the dead as it comprises a number of *takbirs* not *ruku'*.

The first *ruku'* of every prayer, apart from *Ayat* prayer and the two *eids* prayers can be carried out thus:

After *niyyah*, the worshipper should start with *takbiratul ihram*, i.e. by saying *(Allahu Akbar)*. Once that said, you are truly in prayer.

Recitation of *suratul fatihah*, followed by another *surah*, comes next.

After that comes bowing, i.e. by placing one's hands on one's knees and uttering *(Subhana Rabiyal Adheemi wa Bihamdih)* – Glory be to my Lord, the Great, and praise belongs to Him.

Going back to an upright standing position.

Assuming a posture of *sujood*, by placing one's hands, knees, and toes on the prayer mat; as for the forehead it should be placed on something earthly, wood, or paper.

While in this position, you should say *(Subhana Rabiyal Al 'ala wa Bihamdih)* – Glory be to my Exalted Lord, and praise belongs to Him.

Raising the forehead and going back to a kneeling position to be followed by another *sujood.*

Should the prayer be that of one *tuku'* the worshiper should, while still in a kneeling position say the following, *(Ashhadu Alla Illah Illal Lah, Whadahu La Sharikah Lah, Wa Ashhadu Anna Mohammadan Abduhu Wa Rasuluh, Allahumma Sali Ala Mohammadin Wa Aali Mohammad)* - I bear witness that there is no god apart from Allah, Who is unique and without pattners. I also bear witness that Muhammad is His servant and Messenger. O God ! Bless Mohammad and the progeny of Muhammad. This is called *tashahhud.*

Then *Tasleem,* i.e. *(Assalamu Alaikum Wa Rahmatul Lahi Wa Barakatuh)* – May peace be with you (all), and Allah's mercy and blessing, should be said. This is the shortened format of *tasleem. Tassleem* concludes the prayer.

Should the prayer consist of two *ruku'* such as that of *subh,* the worshipper should go back to a standing position before *tashahhud* and *tasleem* and repeat what they have done in the first *ruku'* apart from *takbiratul ihram.*

Upon lifting the forehead from *sujood,* they should assume a sitting upright position and say both *tashahhud* and *tasleem,* thus concluding prayer.

In a three-*raka'* prayer, like that of *maghrib,* the worshipper should confine themselves to saying *tashahhud* at the end of the second *ruku* and go back to an upright standing position and say *(Subhanal Lahi Wal Hamdu Lillahi, Wala Illaha Illal Lahu, Wallahu Akbar)* – Glory be to Allah, and praise be to Allah, there is no god but Allah, and Allah is greater. This is called *dhikr.* They should then go to a bowing position followed by the two *sujoods,* and back to the upright sitting position to say *tashahhud* and *tasleem.*

In a four-*rak'a* prayer, such as that of *dhuhr,* no *tashahhud* or *tasleem* should be said at the end of the third *ruku.* Instead, the worshipper should go back to the upright standing posture to repeat the routine of the third *ruku,* then perform the two *sujood, tashahhud* and *tasleem.*

Among the *mustahab* acts in prayer is *qunoot* (the raising of both hands for supplication) in the second *ruku'* after reciting *al-fatihah* and a second *surah,* - but before bowing. This could be done in a two, three, or four-*rak'a* prayers.

Accordingly, *ruku'*, the two *sujoods*, and the utterances during *ruku'* and *sujood* are fixed parts in every main unit *(ruku')* of prayer. *Takiratul ihram* is a part and parcel of the first *ruku'*, *tashahhud* and *tasleem* are parts of the last *ruku*, recitation [of the two *surahs*] are integral parts of the first and second *ruku'*. *Dhikr* is a part of the *ruku'* that comes after the second one. If prayer is not going to be concluded in the second *ruku*, it takes an extra part, i.e. *tashahhud* after the second *sujood* has been performed.

3. So the most important parts of prayer are the following:

a. *Takbiratul Ihram.*

b. Recitation.

c. *Ruku'* (bowing).

d. *Sujood* (prostration).

e. *Dhikr.*

f. *Tashahhud.*

g. *Tasleem.*

4. In addition to the aforesaid parts, there are other requirements which should be fulfilled. These are of two kinds. The first category should be fulfilled by the worshipper, the second category has to do with prayer itself.

General guidelines for the worshipper:

a. The person should be *tahir* and has performed *wudhu.*

b. Their body and clothes must be *tahir.*

c. Their private parts should be covered.

d. Clothes worn during prayer should not be made of parts of a dead animal of that whose flesh is not sanctioned for human consumption. Male worshippers should not be wearing gold or silk. As for carrying parts of the dead body of an animal, an inherently *najis* thing, or that which has become *najis*, it does not invalidate prayer. Wearing clothes whose material could be suspect, i.e. whether or not the animal was slaughtered according to Islamic practice, is allowed.

It is more likely however that there is no harm in carrying, in prayer, anything that belongs to an animal whose flesh is not fit for human consumption. Yet, it is strongly recommended, as a matter of *ihtiyat*, that one has to shy away from it.

e. Facing the *qiblah,* i.e. the direction where the Holy Ka'ba is situated, in prayer.

f. The intention behind offering the prayer should be that of seeking closeness to Allah, the Exalted.

g. When praying, the worshipper should designate the name of that particular prayer. For example, when praying *subh,* making *niyyah* to say it should be with the exclusive objective of achieving nearness to Allah.

As for the general requirements of prayer itself, they are as follows:

a. Adherence to the order of parts/units that comprise prayer, in that *takbiratul ihram* should come before recitation, and the latter before *ruku,* and so on.

b. Succession of the acts of prayer should be observed, in that there must not be a break or a long pause between its parts.

c. Placing the forehead during *sujood* on the earth, a piece of wood, a paper, or the like, as will be discussed.

This is a skeleton run on prayer and how it should be conducted within the prescribed conditions.

There are though other parts and special requirements where some prayers differ from the others. The prayer of the two *Eids,* for example, consists of additional *takbirs.* The daily prayers have to be performed on their appointed time. However, we shall be discussing the following:

a. Outlining all types of prayer and how to conduct each one of them.

b. Outlining the general guidelines, and parts, of prayer and discussing briefly the rules governing each one of them.

c. Outlining the general rules of prayer in the form of:

1. Things that invalidate prayer,
2. Saying prayer by way of *qadha',*
3. Shortcomings in prayer,
4. Doubt in prayer,
5. Congregational prayer,
6. The differences between obligatory and voluntary prayers.

Chapter One

The Daily Prayers

1. The Five Daily Prayers

We have already mentioned that the obligatory prayers are six. The most important among which are the five daily prayers. Accordingly, we will divide the discussion on these obligatory prayers into two chapters, one for the daily prayers and the other for the rest of them.

Foreword

The obligatory daily prayers are five. Although they share certain common rituals and rules, they differ in some respects. These prayers comprise seventeen *ruku'*. There are however thirty four *ruku'*, in a day and a night, which are voluntary. These are called the daily super-erogatory *(nawafil)* devotions. They are also called arranged super-erogatory performances *(nawafil murattabah)* because they are characterized by their own appointed times to distinguish them from the other optional prayers which have no predetermined time.

Fajr Prayer and its twin Voluntary One

5. *Fajr* prayer is the first of the daily prayers. The Holy Qur'an has described it as the Prayer of *Fajr* (dawn): **"..and the morning recitation; surely the morning recitation is witnessed"** (17/78). It is also called by another name, i.e. *Subh,* because morning starts with dawn. It consists of two *ruku'*. A male worshipper should recite *al-Fatiha* and the other *surah* at his own voice pitch, as will be discussed in para (97) of the Chapter on General Guidelines.

6. There is a prescribed time for *Fajr* prayer. It starts with dawn until sunrise. Its time span is roughly an hour and a half.

Fajr is the inaugural part of daylight which precedes sunrise. This light appears in the horizon as a column surrounded by darkness. The column then starts expanding sideways as well as upwards.

The amount of *Fajr* is the actual spread of light horizontally which is readily distinguishable from the darkness of night.

As for the duration before that, where the light is a mere column, it is called false dawn. Prayer cannot be performed during that spell of time.

7. The time *Fajr* prayer draws to an end with sunrise. However, the ideal time for prayer should, from a *shari'a* standpoint, be before sunrise. Prior to sunrise there should appear in the horizon the morning glow, which heralds the rising of the sun. With the appearance of that glow, the prime time for *Fajr* prayer ends.

Should a person delay the saying of prayer till the time of the glow, thus performing it before sunrise, they would have missed the superior time of *Fajr*. However, they are deemed as though they have discharged what is required of them; thus they should not be deemed guilty.

8. There is a voluntary prayer which could be said either before or in tandem with *Fajr* prayer. It is a two-*rak'a* prayer identical to that of *Fajr*. Once embarked on, the worshipper must perform it with the *niyyah of qurbah*.

9. The time of this prayer starts with the last sixth portion of the night. Its time continues until sunrise, However, it is more meritorious, as a matter of *ihtiyat*, that it should not be delayed till the time of the morning dusk when the end of the prime time for *Fajr* prayer sets in.

10. Accordingly, this voluntary prayer should not be performed before the last sixth of the night. There is one exception though, in that it could be said immediately after *salatul lail* (night prayer) which is another form of voluntary prayer that will be discussed in some detail.

11. *Fajr* voluntary prayer should be performed before the obligatory *Fajr* one. Should the time for saying the obligatory one become critical, the voluntary prayer could be said after it, but before sunrise.

Dhuhr Prayer and its Twin Voluntary One

12. *Dhuhr* prayer is the second of the daily prayers. It is called the middle prayer. The Holy Qur'an has reiterated its importance, **"Attend constantly to prayers and to the middle prayer and stand up truly obedient to Allah"** (2/238).

it has been said that it was named thus because it falls half way between two daily prayers, i.e. those of *fajr* and *asr*.

13. *Dhuhr* consists of four *ruku'*. However, it could be reduced to two *ruku'* as a concession for a person on the move *(musafir)* in accordance with a certain criterion that will be discussed in the Chapter on the General Guidelines and Rules of the daily prayers.

The recitation of the two *surahs* in the first two *ruku's* should be inaudible *(ikhfat)*, apart from the *basmalah*. However, *dhuhr* prayer performed on a Friday can be recited audibly *(jahr)*. Recitation of *tasbeeh* (The utterance of *"Subhanal Lahi, wal Hamdu Lillahi, wala Illaha Illal Lahu, Wallhau Akbar"* – Glory be to Allah, Praise be to Allah, there is no god but Allah, and Allah is Greater) in the remaining two *ruku'* should be done in a whispered manner *(ikhfat)* all the time.

14. The time for *dhuhr* prayer starts half way between sunrise and sunset, i.e. midday. The start of time for *dhuhr* prayer is called *zawaal*. that is, the start falls in the second period of the day.

Zawaal may be determined through a number of ways.

15. a. Once you have fixed the times of both sunrise and sunset, you can determine *zawaal* being the half way mark between the two.

16. b. By the way of shade. When the sun shines it creates a shadow for the object it shines on. For example, a wall situated exactly between North and South. At the start of the day, the wall will have a shadow on the opposite side of the sun, i.e. to the West. So long as the sun keeps rising, the shadow keeps shrinking. At the point of *zawaal*, it more or less, disappears insofar as its western side is concerned. Thereafter, the shadow begins to form on the eastern side of the wall.

Once one notices the complete disappearance of the shadow from the western side and its appearance on the eastern one, they should conclude that the time for *dhuhr* prayer has come.

17. c. The third method of determining *zawaal* is by identifying the direction of the South. By setting your face towards the South and noticing the decline of the sun towards your right-hand side eyebrow, you should conclude that the time for *dhuhr* has come.

18. The time for *dhuhr* can extend as far as sunset. However, if a person has not said both the prayers, i.e. *dhuhr* and *asr*, so much so that there will be ample time to say both save one, they should assume that the time for *dhuhr* is up for the sake of saying *asr*.

However, if there are but five minutes left, assuming that each *ruku'* takes one minute, the person should start saying *dhuhr* and immediately on completion should say *asr*.

19. However, although the time for *dhuhr* may extend to sunset, it is better to say it on its prime time, which by the way, does not extend to sunset. It starts with the time of *zawaal* and ends when the shadow of any object reaches one seventh of its height. So, if, say, a wall was seven meters high, its shadow should be four meters long.

20. *Dhuhr* obligatory prayer has a voluntary sister. The latter comprises four prayers, each of which comprises two *ruku'*. It should be said with the *niyyah of qurbah*.

21. The time of this voluntary prayer is as that of *dhuhr*. It can be said before the obligatory one. Yet, should the worshipper delay saying *dhuhr* at an earlier time, thus missing its prime, it is preferable to start saying the obligatory one.

22. Accordingly, it is not permissible to bring forward voluntary *dhuhr* prayer, i.e. to say it before time. However, there are two exemptions:

a. On a Friday, a person can say voluntary *dhuhr* prayer before *zawaal*.

b. Should you be aware that you might, around *zawaal* time, be attending to some sort of a private business, you can say this voluntary prayer before *zawaal*.

Asr Prayer and its Voluntary Sister

23. This is the third obligatory daily prayer. Its format is identical to that of *dhuhr*. The only difference is in the *niyyah* where the worshipper should specify that it is *asr* they are performing.

However, there is also no substitute for *asr*, as in the case of *dhuhr* where Friday prayer can substitute it on certain occasions.

24. The time for *asr* prayer is *zawaal*. However, it must be performed after *dhuhr*. Accordingly, the worshipper is not allowed to switch, especially if they are aware of the prohibition. Should they nevertheless do so, they have to say *dhuhr* and repeat *asr* after it.

25. Should a person realize, during *asr* prayer that he did not say *dhuhr* before that, he must assume that the prayer in progress is that of *dhuhr*. Once he has finished with it, he should say *asr*.

26. Should the person be unaware until he has finished the prayer in hand, it *(asr)* shall be in order, irrespective of whether he started the prayer at the start of *zawaal* or midway. He must though perform *dhuhr* after that.

In exactly the same situation, a person who is not aware of the rules can be excused for saying *asr* before *dhuhr*. That is, he is required to repeat his prayer.

27. The time for *asr* prayer is until sunset. Should there not be ample time to accommodate both the prayers, i.e. those of *dhuhr* and *asr* takes precedence over *dhuhr*, contrary to the earlier time where it is obligatory to start with *dhuhr* first.

28. However, the ideal time span for *asr* is *zawaal* till the shadow, already discussed, extends between two and six sevenths of the original height of the object (i.e. the wall in the example given above).

29. There is a voluntary prayer which may be said between *dhuhr* and *asr*. It consists of four prayers of two-*rak'a* each, i.e. similar to the voluntary *dhuhr* prayer. However, it could be reduced to either three or two prayers of two-*rak'a* each. Should there not be enough time for *asr*, it is preferable to say *asr*, then the voluntary one.

Maghrib Prayer and its Voluntary Sister

30. This is the fourth of the obligatory daily prayers. It comprises three *ruku'*. The *niyyah* of qurbah is an integral part of it. In the first two *ruku'*, the recitation of the two *surahs* should be audible. Recitation of *tasbeeh- in the third ruku'* should be inaudible.

31. The time for *maghrib* prayer starts with sunset, i.e. the disappearance of the sun disc beyond the horizon. However, the disappearance of the sun to the naked eye shall not be complete unless the bronze glow in the East disappears. When the latter vanishes, the actual time for *maghrib* starts. That said, there is no harm, from a *ihtiyat* perspective, to wait for the disappearance of that glow from the East, but it is not essential.

32. *Maghrib* time could extend to midnight, i.e. between sunset and dawn. There are though some exceptions. Women in *haydh* could delay prayer until after midnight till dawn. So do the person who has been asleep all the time and that who forgot about saying the prayer.

However, the ideal time span for *maghrib* starts with the start of its time and ends with the early part of the night, i.e. with the disappearance of twilight. The disappearance of the twilight should be complete after roughly one hour of sunset.

33. In the event of delaying *maghrib* until just before midnight, so much so that there is only time for performing four *ruku'*, it is obligatory to defer *maghrib* and say *isha'* instead. Should there be ample time to accommodate saying five *ruku'*, *maghrib* should be performed, to be immediately followed by *isah'*.

34. There is a voluntary prayer that goes hand in hand with *maghrib*. It consists of two prayers of two-*rak'a* each with the *niyyah* of *qurbah*. However, one can confine it to only one two-*rak'a* prayer.

35. The time for this prayer goes in tandem with that of its sister, *maghrib* prayer. It is obligatory to delay it until one has finished *maghrib*. its ideal time though is that of its sister, *maghrib*.

Isha' Prayer and its Voluntary Sister

36. This is the fifth and last of the obligatory daily prayers. It consists of four *ruku'*.

37. Its format is similar to that of *dhuhr*, in that the *niyyah of qurbah* should be identified as saying *isha'*. The other difference is that the recitation of the two *surahs* in the first two-*ruku'* should be audible.

38. The time for *isha'* prayer starts with sunset till midnight, i.e. the same as that of *maghrib*. However, one should not say it before *maghrib*. Should a person do so deliberately, their prayer is deemed *batil*. They should, therefore, say *maghrib* followed by *isha'*.

If a person inadvertently or through ignorance said *isha'* before *maghrib*, they are not required to repeat it, regardless of whether they performed it at the start of the time or half way through it. They should therefore say *maghrib* only.

39. Should a person embark on *isha'* prayer in the belief that he has already said *maghrib*, then realized this was not the case, he must immediately change his *niyyah* to that of praying *maghrib* and finish it thus. Afterwards, he should say *isha'*. The only exception is the situation where the worshipper has passed the point in prayer where taking

remedial action is not feasible, i.e. going into the fourth *ruku'*. In such a case, he must start both the prayers afresh.

Isha' prime time is the first third of the night. Should this time be up before the worshipper could say the prayer, they would miss the extra reward. However, they would not be deemed guilty as long as they say it before midnight.

40. After *isha'* prayer the worshipper can say a two-*ruku'* voluntary prayer from a sitting position. Bending for *ruku'* would be considered as good as an ordinary *ruku'*. However, this prayer would count as one *ruku'* because it is said while the worshipper is seated. Its time span is that of *isha'*, and so long as the worshipper can perform it after *isha'* and before midnight, it should be accepted by Allah, the Exalted.

Night Prayer

41. Night prayer, or *salatul lail,* is very highly meritorious. It consists of six prayers, the first four of which comprise two *ruku';* the fifth prayer also has two *ruku'* and called *shafi'* whereas the sixth has one *ruku'* and called *watr*. Accordingly, the total *ruku'* of this prayer is eleven. However, if they so wish, the worshipper may confine it to *shafi'* and *watr* or to *watr* only.

42. The time span of this prayer starts from midnight, as has already been discussed in para (32), to *fajr,* when the time for *subh* or *fajr* prayer sets in. However, the prime time for night prayer is the last third of night, usually called *sahar* [in Arabic].

It is to be noted, though, that no wrongdoing be committed for not observing those voluntary prayers. That said, observing them should carry great favour with Allah, the Most High.

2. *Juma'* Prayer

43. *Juma'* prayer is amongst the greatest of Islam's observances. Allah says in the Holy Qur'an, **"O you who believe ! When the call to prayer of Friday is made, hasten to the remembrance of Allah and leave off trading; that is better for you, if you know"** (9/62).

It has been related from Imam As-Sadiq (a.s.), *"Allah shall spare the body of the believer, who has set foot in pursuit of [observing] Juma' [prayer], from Hellfire".*

Juma' prayer could supersede *dhuhr* prayer as will be discussed. Allah, the Most High, has put it in a separate category to distinguish it from the other prayers, in that He made it obligatory that it should be said in context of a congregational prayer. He ordained that one should be held in any one area, that everybody should be expected to attend, except for a valid reason.

Thus, it can be said that *Juma'* is a weekly gathering for the worshippers and the faithful, that starts with preaching and dissemination of education and knowledge through the two sermons and ends with devotion and seeking audience with Allah through the prayer itself.

The format of the prayer is identical to that of *subh,* except for the *niyyah.* However, it may diverge from *subh,* in that it is *mustahab* to perform two *qunoots,* the first before the first *ruku'* and the second after going into an upright position after the second *ruku'.* In order for it to be accepted, *Juma'* prayer has to be observed within the following framework.

Conditions for Observing Juma' Prayer

44. a. It has to be held congregationally. Accordingly, for *Juma'* prayer to be performed correctly, all the conditions of a congregational prayer have to be fulfilled, as will be discussed in detail.

45. b. The number of worshippers should not be less than five including the *imam.* Thus, any smaller number would not be sufficient to hold it; instead they can say *dhuhr* prayer.

46. c. *Juma'* prayer must be preceded by two sermons by the *imam;* the bare minimum of these sermons could be that the *imam* stands up to address the worshippers by chanting the praise of the Almighty, enjoining God-fearing, and reciting a *surah* from the Holy Book.

That done, he should retire for a short time, only to stand again for the second sermon. After praising Allah and thanking Him for His graces, he should invoke peace to be with Mohammad and the Imams of Muslims, and ask forgiveness for the believers.

After that, the prayer should be held. The *imam* must raise his voice so that those present can hear him. Insofar as the sermon is concerned, it is not a condition that only Arabic be used albeit it is preferable, as a matter of voluntary precaution; that said, any Qura'nic quotations have

to be in Arabic. Should the audience not be conversant with Arabic, the *imam* may resort to the language they understand.

47. d. There should not be another *Juma'* prayer held in the same vicinity, i.e. within a radius of roughly five and a half km.. Should there be two *Juma'* prayers, i.e. within the same neighbourhood, both will be deemed *batil,* if they were started at the same time. In the event of one of them starting where the first had finished, the one started later will be deemed *batil.* However, if one of the two prayers has been deemed *batil,* for any reason, it should not affect the outcome to the other prayer.

However, there may be a case for two *Juma'* prayers that were held in a prohibited proximity, as has already been explained, without any of the two congregations knowing. Both the prayers are in order, irrespective of whether they finished at the same time or having started at different times and finished at the same time.

Rules of Juma' Prayer

48. Holding *Juma'* prayer becomes an absolute obligation in the presence of a just ruler, i.e. in the person of the Imam or his representative. By "just ruler", we mean the person or persons who legitimately rule and uphold justice and fairness between the ruled.

49. Should there be no just ruler, holding *Juma'* prayer is obligatory too. However, its being obligatory is a matter of choice to start with; and its being obligatory as a matter of necessity to finish with. That is, the worshippers have to observe the obligation at midday of *Juma',* either by holding *Juma'* prayer in congregation according to the aforesaid conditions or by holding *dhuhr* prayer. However, whichever prayer the worshipper performed, it will suffice. That said, holding *Juma'* prayer is more superior and more meritorious. Saying that holding *juma'* prayer as a matter of fixed obligation may have a justification.

50. Five worshippers may choose to hold *Juma'* prayer pursuant to the second rule. Among them there may exist a person who is known to be of an unblemished character and thus fit to deliver the sermon and lead the prayer. Should such a prayer be held, it becomes absolutely obligatory on all worshippers to attend and take part in it. This is because holding it has come about as a response to the call to *Juma'* prayer which must be answered. This is the third rule.

51. The following categories of worshippers may be excused of holding *Juma'* prayer in the light of the third rule:

a. Those whose attending the prayer may cause them undue difficulty, harm, or put them in an untenable situation.

b. The blind.

c. The sick.

d. Women.

e. The elderly.

f. The traveller whose journey justifies his saying his prayer *qasr*.

g. Those who live 8-10 kms. away from the place where the prayer is held.

All such people are exempt from attending and taking part in *Juma'* prayer thus described. However, should they choose to take part in it, it will be in order.

Should those, described in point (g), choose to travel to the place where *Juma'* prayer is held, they have to take part in it.

52. When the call to *Juma'* prayer is initiated, those who are obligated with the duty of attending the prayer are not justified in carrying on with trade or work or any other business which may hold them back from performing it. However, if the nature of business does not constitute such a barrier, there is no harm in it.

54. Just as it is obligatory to attend *Juma'* prayer and take part in it pursuant to the third rule, so is it obligatory to attend the two sermons and be attentive to what is being preached. Should a person become lethargic and not attend in good time for the sermon as well as the prayer itself, so much so that they missed the sermon, it shall be accepted.

55. The time span for *Juma'* prayer is from the beginning of noon. As a matter of *ihtiyat* and pursuant to what is lawfully required, those holding it should not delay it beyond noon, or *zawaal,* any longer. It should be performed within the boundaries of the prime time of *dhuhr* prayer. Better still, it should be held in the earlier part of the time span. That is, despite the fact that the time for *Juma'* prayer extends from *zawaal* till the time for *asr* prayer.

Ostensibly, delivering the two sermons before *zawaal* is not permitted.

56. Should the worshipper miss *Juma'* prayer, they are not justified in holding it, even though its time has not elapsed. Instead, they must say *dhuhr* prayer.

3. General Guidelines of Daily Prayer

1. Code of Practice

The worshipper has to observe a voluntary etiquette called for in performing the obligatory daily prayers. However, they cannot be held accountable should they choose not to observe the said rituals which are of two types. The first is performed before starting prayer and the second after it is done with. The first consists of *adhan* and *iqamah* and the second consists of supplication *(ta'qeeb)*. We shall discuss these in some detail later on.

1. *Adhan* and *Iqamah*

57. Linguistically, *adhan* is informing. Technically, it is a specific liturgy, heralding the onset of time for prayer. Thus, there is an informative type of *adhan,* letting the worshippers know that it is time for prayer; it is *mustahab,* irrespective of whether or not the person announcing it wanted to pray. There is another *adhan* with which one inaugurates prayer, which is again *mustahab* for the person intending to say prayer, regardless of the point in time within the time span they wanted to start it.

58. Linguistically, *iqamah* has many connotations, one of which is promotion. Technically, it is a procedure applied immediately before the start of the actual prayer, including the announcement that, "Prayer has begun".

The Components of *Adhan* and *Iqamah*

59. *Adhan* consists of eighteen parts:

Allahu Akbar, (Allah is greater). Four times.

Ashhadu alla ilaha illalallah, (I bear witness that there is no god but Allah), twice.

Ashhadu anna Muhammadar rasulullah, (I bear witness that Muhammad is the Messenger of Allah), twice.

Hayya alas salah, (Hasten to prayer), twice.

Hayya alal falah, (hasten to salvation), twice.

Hayya ala khayril amal, (hasten to the most noble of actions), twice.

Allahu Akbar, (Allah is greater), twice.

La ilaha illalallah, (I bear witness that there is no god but Allah), twice.

However, there is no harm in confining the above utterances to one time each, in case one is in a hurry.

60. *Iqamah* has a lot in common with *adhan;* these are the utterances of *iqamah.*

Allahu Akbar, (Allah is greater). Four times.

Ashhadu alla ilaha illalallah, (I bear witness that there is no god but Allah), twice.

Ashhadu anna Muhammadar rasulullah, (I bear witness that Muhammad is the Messenger of Allah), twice.

Hayya alas salah, (Hasten to prayer), twice.

Hayya alal falah, (hasten to salvation), twice.

Hayya ala khayril amal, (hasten to the most noble of actions), twice.

Qad qamatis salah, (Prayer has begun), twice.

Allahu Akbar, (Allah is greater), twice.

La ilaha illalallah, (I bear witness that there is no god but Allah), twice.

According to *shari'a* law, the formats of both *adhan* and *iqamah* are what we have appended above. It is, therefore, not permissible for the worshipper ot add anything more as though it were part of the said formats. However, any inadverent words, i.e. not a deliberate ploy by the worshipper to give the impression that it is part thereof, can be tolerated. Yet, as a matter of *ihtiyat,* it is advisable to abandon it in *iqamah.*

Requirements of *Adhan* and *Iqamah*

There is a number of conditions that must be met in *adhan* and *iqamah:*

61. a. The *niyyah of qurba,* because both, i.e. *adhan* and *iqamah,* are acts of worship.

62. b. *Adhan* should precede *iqamah,* in that if *iqamah* is recited first, it should be deemed in order whereas the *adhan* should not.

63. c. The order of the utterances detailed in both the *adhan* and the *iqamah* should be adhered to. Should the worshipper make a mistake by reciting one line prematurely, they should take remedial action by reverting to the proper order.

64. d. Sequential implementation of each and every part of both the *adhan* and the *iqamah* is a must. There should also not be a pause between *iqamah* and prayer. A break between *adhan* and *iqamah* can be tolerated, especially in view of the fact that it is *mustahab* to perform a two-*rak'a* voluntary prayer, or any other devotion, between the two.

65. e. The setting in of prayer time, in that reciting them before the time has come is not in order. The only exception is *adhan* of *fajr,* i.e. it can be embarked on before the actual time of the *Fajr* prayer itself, provided that this does not entail misleading others [into believing that *fajr* prayer has come]. However, it should be repeated when the actual time sets in.

66. f. Both the *adhan* and *iqamah* must be recited in classical Arabic.

67. g. It is a prerequisite that the worshipper is in a state of *taharah* while reciting *iqamah;* they should set their faces in the direction of *qiblah* while in a standing posture. These requirements are *mustahab* in *adhan.* It is *makrouh* to engage in ordinary conversation during *adhan* and *iqamah.* This becomes even more *makrouh* when the caller of *iqamah* recites, "Prayer has begun".

Adhan or *iqamah* by a woman is not good enough for a man, even if they are related to one another, as a matter of obligatory *ihtiyat.* The same rule applies in the case of an insane person and a boy not capable of rational action.

Prayers Which Requires *Adhan* and *Iqamah*

68. It is *mustahab* for the worshipper, engaged in performing the five obligatory daily prayers, to recite *adhan* and *iqamah* for each and every prayer whether it is performed *ada'* or *qadha',* be him healthy or sick, man or woman, staying put or travelling. The recommendation to recite them becomes even more emphatic for men in particular. *Shari'a* has placed special emphasis on *iqamah,* i.e. more than *adhan.*

69. There should be no *adhan* or *iqamah* for voluntary prayers, such as the prayer for portents *(Ayat)* and the two *Eids* prayers.

When should *adhan* become redundant?

The importance of *adhan* diminishes in a number of cases:

70. a. When the worshipper hear another *adhan;* however, if they choose to recite *adhan* there is no harm in that.

71. b. Should the worshipper embark on saying a number of prayers by way of *qadha'* in one session, they are free to recite one *adhan* throughout. They have to recite *iqamah* for each and every prayer. That said, if they choose to recite *adhan* for each and every prayer, this would be good enough.

72. c. The worshipper may choose to say two prayers, such as *dhuhr* and *asr* after *zawaal,* or *maghrib* and *isha'* after sunset. One *adhan* for both the prayers would suffice. Should they choose to recite *adhan* for the second prayer, there is no harm in that. However, the only exceptions to this routine are the combined prayers of *dhuhr* and *asr* at Arafat and the combined *maghrib* and *isha'* prayer at *Muzdelifah* on the eve of *Eidul Adhha.* The *mukallf* should though be mindful of their obligation when combining *Juma'* prayer with *asr* and avoid reciting *adhan* for *asr* prayer, in that the *adhan* for Juma' prayer would suffice.

When should *adhan* and *iqamah* become redundant?

73. In a congregational prayer, one *adhan* and one *iqamah* by the *imam* or any of the worshippers would suffice, i.e. the worshippers taking part in the prayer need not recite either.

74. On entering a place where congregational prayer is either still in progress or has just finished, the worshipper can say their prayer without the need for either *adhan* or *iqamah.* That is, as long as the participants in that prayer have not dispersed. It is irrelevant too if the worshipper joined in the prayer as an *imam* or one of those following the *imam,* or said their prayer alone.

That said, should the worshipper choose to recite *adhan* and *iqamah,* they are free to do so, provided they do not contravene the code of conduct, in that they should respect the atmosphere of congregational

prayer. However, it is strongly recommended, as a matter of *ihtiyat*, that they refrain from reciting *adhan*.

What would happen if the worshipper said his prayer with neither *adhan* nor *iqamah?*

75. Should the *mukallaf* say his prayer without *adhan* or *iqamah*, this would not detract from the prayer; and they would not incur any penalty. In case they start their prayer and remember at some stage that they did not recite *adhan* and *iqamah*, they need not cut short the prayer to recite them. However, they would be justified in taking remedial action, if they remembered in the first *ruku'*, provided that it is done before actually going to *ruku'*.

The same thing applies in the case of forgetting the *iqamah;* nonetheless, this should apply even after performing *ruku'* in both the cases, i.e. *adhan* and *iqamah* or *iqamah* only. Cutting short one's prayer for the sake of upholding these two devotions or either is called for.

b. Supplications.

It is *mustahab* to invoke Allah's mercy after prayer has been said. This may take different forms, some of which could be chanting the praise of the Almighty and thanking Him for His bounties; chanting His praise in the way *Fatimah*, daughter of the Prophet (s.a.w), used to do could be another route; this entails saying (*Allahu Akbar*) 34 times, (*Alhamdu Lillah*) 33 times, and (*Subhanallah*) 33 times.

Imam Mosa Al-Kadhim (a. s.), was quoted as saying, *"Any believer going about observing an act of worship, as ordained by Allah, should be rest assured that their prayer would be answered".*

Among the *mustahab* things in the supplications after prayers is the recitation of *Suratul Fatiha* and the *ayah of al-Kursi.*

In an authentic *hadith* from Imam Al-Baqir (a.s.), it has been related that he said, *"The bare minimum of supplication after the obligatory prayer is saying: O Allah! I ask You of all the grace You know, and seek refuge with You from all the evil You know; O Allah! I ask You to bestow favour on me in all my affairs, and seek refuge with You from the shame of this world and the torment of the hereafter".*

2. The Time of Prayer

76. Embarking on prayer before its prescribed time is not allowed; nor can assuming or thinking that the time has come be tolerated. Should this happen, the worshipper must make sure that the actual time for prayer has set in, and only then can they say their prayer.

77. From a *shari'a* viewpoint determining the exact time for prayer time could be achieved by any of the following:

a. First hand knowledge.

b. Indisputable evidence.

c. The *adhan* of the caller to prayer, provided they are knowledgeable and of an upright character.

d. The testimony of a person who is both knowledgeable and of unblemished character.

78. Suppose that a person said his prayer in the knowledge that prayer time has come in the light of one of the aforesaid ways. On finishing prayer he discovered that the time has not started yet. What should he do?

A. If the whole prayer was over and done with outside the prescribed time, it would not count. Should the appointed time set in while the person is still praying, even if he is in the concluding part thereof, i.e. *tasleem,* it would count as a fully-fledged prayer.

79. Someone may say his prayer without making sure that prayer time has started. He realized that the time has actually started. His prayer is good enough. However, should he realize that the time has set in while he is still praying or after he has finished it, such a prayer is *batil* (invalid).

80. On finishing his prayer, a person could not determine whether he has said it on time or before it. Such a prayer would not suffice, especially when determining the actual time for prayer was still a matter for debate at that moment in time.

81. Should there not be enough time left for saying prayer within its time span, the person is not justified in delaying it. He should therefore hasten to say it in its entirety within the approved time span.

However, should the person keep putting off prayer or forgetting about it to the extent that only a very short time is left to perform one *ruku',* which could on average be done in one minute, he should hasten to say prayer.

If there was not enough time left even to perform one *ruku'*, albeit in a shortened form, prayer time is deemed as though it has come to an end. Thus, saying it turns from *ada'* to *qadha'*.

82. For a good reason, the person may not be in a position to say his prayer at the earlier part of its time. Can he embark on prayer at the earlier segment of time, although he may perform it in a kneeling position, or with *najasah*, for example? Or should he wait until just before the end of the period to allow for the possibility of alleviating his position to say the prayer while he is in good shape?

A. People with valid reason can embark on prayer at its earliest possible time. This is so even there was a possibility that their situation might improve with time. Should the reason for saying prayer in not an ideal enough form be lifted while time is not up, they do not have to repeat their prayer. That is so, provided that the state the person were experiencing did not entail encroaching upon an essential part *(rukn)* of the prayer.

83. The worshippers can, at the start of the time of an obligatory prayer, say any voluntary or compensatory *(qadha')* prayers before they embark on the obligatory prayer. That is, so long as they are absolutely sure that they would be able to perform the obligatory prayer after that in the form it has been ordained.

However, it is *mustahab* to hasten to prayer at its prime time because doing so is more superior and more meritorious. The best of times in which to perform an obligatory prayer is the closest to the start of its time span, thus allowing for its twin voluntary prayer, should it have one, to be said.

3. Numbers of *Ruku's*

84. We have already mentioned that the total number of *ruku's* of the five obligatory daily prayers is seventeen and the total number of *ruku's* of the eighteen optional prayers is thirty four.

The total number of *ruku's* [of the obligatory prayers] is ordained on the *mukallaf* who is at home, i.e. not on a journey. Thus, those at home should say *dhuhr, asr*, and *isha'* four *ruku'* each; it is called *tamam* prayer. Should the worshipper embark on a legitimate journey, the obligatory four-*rak'a* prayers would be reduced to two-*rak'a* ones; a number of voluntary prayers would no longer be required.

Accordingly, a traveller should say *dhuhr* with two *ruku'* in the same way he says *subh;* the same goes for *asr* and *isha'*. This is called *qasr* prayer, for Allah says, **"And when you journey in the earth, there is no blame on you if you shorten the prayer"** (4/101). There is no *qasr* in *maghrib* and *subh*.

That said, we turn now to discussing what we mean by those at 'home' who are required to say the four-*rak'a* prayers fully *(tamam)* then the nature of travel which entails *qasr* prayer; and the rules of *qasr* prayer which emanate from a legitimate travel.

Those at 'home'

85. Presence is an opposite state of travel. It means that the individual is present at their place of domicile. What we mean by 'home' is town, village, etc where the person lives, in the following sense:

Classification of 'home'

86. a. Historically, the town where the person's parents and family live and where they were born, is 'home'. It therefore follows that they should say *dhuhr, asr,* and *isha'* prayers in full. That is, irrespective of whether they are still residing there or moved out to live somewhere else, so long as there is even the slightest possibility of returning to live there one day. Should the person decide not to return to live in their original town, they are no longer required to say their prayer, on visiting it, in full. They should instead pray *qasr*.

87. b. Once a person moves to a new town and takes it for a lifetime residence, they should say their prayer in full. The same ruling applies to the person's spouse and their dependants.

88. c. In the event of a person taking a town for residence for a long period of time, which cannot be treated as a journey, such as a student enrolling in a university away from their home town, they should say their prayer in full. The same applies to their spouse and dependants.

89. d. Anyone, who does not fit any of the previous three cases, decides to take as home anywhere, that neighbourhood or town would become their 'home'. They, their spouse and dependants should say their prayer in full. The most appropriate example one can think of in this regard is an employee in a company which decides to relocate; thus choosing to stick by his employer and move house to a different town.

So long as the person is within the boundaries of his 'home', he is required to say his prayer in full.

Should he embark on a journey, it is obligatory on him to say his prayer *qasr* according to the following guidelines:

90. A person may have two 'home'.

Examples

a. A student moving house to spend some five years working for his degree in town (x), only to return to his home town on completion of his study. So, both places are now considered his 'home'.

b. A business person moves between his residence in his home town and his holiday home, at summer resort (x), spending in the process five months of the year in the latter and the remaining months in his home town residence. He has to say his prayer in full, [i.e. without the concession of *qasr* for a traveller].

c. A person may have two residences in two different towns, such as one has two wives, spending one week here and the other there so long as he lived or stayed thus indefinitely.

91. A person may have a 'home' fitting the description of any of the four categories already discussed. Should he become undecided as to relinquishing it, this does not render that 'home' as non-existent.

92. You may pose the question that many people choose to migrate to far away lands in pursuit of either lawful work or study. Should those people, who stay years on end in their adoptive country, say their prayers in full, or should they be allowed to say them *qasr*?

A. Should the immigrants decide not to return to their native country, they must act as though the country they immigrated to is their homeland, in that they should say their prayers in full. That is, irrespective of whether they decided to stay for a long or a short period of time. Thus, their adoptive country becomes their 'home', i.e. of the fourth category already discussed under 92(d).

If the immigrants did not contemplate the idea of not returning to their homeland, their situation would be determined by the length of time they intend to stay in the second country. Should the period of their stay be, say, four years or more, the second country would be deemed as

'home'. Thus, they will be required to say their prayers in full. Their new 'home' would be of the third category (91.c) already discussed.

If the period of their stay be shorter, i.e. one of two years, the second country would not count as 'home'. It will be treated as any country other than their own. Accordingly, their religious duty is to say their prayers in full; that is, if their travel fits the definition which will be discussed in paras. (168) onward of this Section. Otherwise, their obligation will be *qasr*. However, if the stay was for two years, the ruling regarding it as a 'home' could also cover it.

Requirements of Lawful Travel

By 'lawful travel' we mean that kind of travel which warrants saying the four-*rak'a* prayer *qasr* (shortened). However, *qasr* would not come about if the travel did not satisfy the following:

93. a. The distance covered in a journey should not be less than eight *farsakh,* (i.e. roughly forty three and one fifth km). Whether this distance is covered in one direction or in both directions is immaterial. That is, if may cover the outward and the return journeys. The other thing which does not affect the result is the time spent in travelling, i.e. be it few minutes, hours, or days. The periphery of the town, be it big or small, should be taken as a point for calculating the distance.

94. b. The entire distance should be in the mind of the travelling person, i.e. until it is all covered.

Example 1: If a passenger was either asleep or unconscious during the trip so much so that they were not aware that they were travelling, such a journey is of no consequence.

Example 2: A person headed towards a point which covers half of the distance in question. Upon reaching their destination, they had second thoughts about going further, thus covering, say the second half of the distance. So long as the entire distance was not intended to be covered at the outset, such a travel is of no consequence, although they covered the entire distance.

Example 3: The same ruling applies to a person intending to cover the entire distance, yet while en-route, i.e. half way, they became reluctant whether to carry on with their journey. Such a person will not be allowed

to say their prayer *qasr,* even if they covered the whole distance at that lethargic pace. This is so because there was no continuity in their intention to complete the journey to their intended destination.

By 'intention' we mean not only the individual's desire and choice, but their unwavering resolve that they are going to cover the entire distance. That is, irrespective of whether this feeling had emanated from their own free will to travel, or they were coerced, or had no choice.

95. c. Covering the distance should be in accordance with established practice *(urf),* in that it should be widely held that whomsoever covered it, it cannot be said that they do not come under the banner of 'traveller'. For example, if one chooses to jog some hundred meters away from their home, going in circles, and covering in the end the entire distance of over forty three km; such should not qualify for the definition of 'traveller'.

d. Nothing of the following should occur to the traveller before covering the said distance.

96. a. Passing through one's 'home'. Should the traveller get passed their 'home', or any other place they consider 'home', before completing the distance of just over forty three km., this would not count as a journey because it was interrupted by passing through one's 'home', before exhausting the whole distance.

97. b. Staying at any place on the way for a month before completing the entire distance - of just over forty three km. That is, regardless of whether the traveller intended, at the outset, to stay for a month, or kept delaying their departure many times on end for this reason or the other.

The one month mentioned here should be thirty days. Thus, any lunar month consisting of less than thirty days would not do.

98. c. Staying at a place en-route for ten days before covering the whole distance. Here the traveller must stay the entire period of ten days, having made up their mind on arrival at that place. The decision to stay the course for ten days is akin to staying thirty days without the intention to do so. [To sum up], any stay of ten days, so described, takes place in a journey [intended to] cover the whole distance, yet stops short of completing it, has no bearing from a *shari'a* viewpoint.

Jurists call "passing through one's 'home'", staying at any place on the way for a month before covering the entire distance, and "staying at a place en-route for ten days before covering the whole distance", [which appear under paras (96.a), (97.b) and (98.c)] the disrupters of travel.

Thus, the fourth of the characteristics of 'lawful travel' is that any of these 'disrupters' should not take place during the journey before the entire distance is covered.

So long as these four conditions are met, prayers have to be said *qasr*. However, some types of travel are exempt as will be discussed in paras (158) onward.

Additional Details and Applications Concerning the General Requirements

The First Requirement

99. Insofar as the first of the requirements is concerned, i.e. covering the distance, one may pose the following questions:

Is there any difference between covering the distance horizontally, like travelling on land, and vertically, such as in the case of air travel?

A. There is no difference between the two cases, provided that in the case of air travel, the traveller is not said to be still in the air space of their 'home'.

100. Should you cover the required distance, of just over forty three km., not necessarily in a straight line, would the traveller in this case qualify for *qasr* prayers?

A. Yes, they would. For example, suppose the 'home' of the traveller is located on the periphery of a circle, the distance of which, apart from what their 'home' occupies, is equal to the required distance for travel. Should they embark on walking the distance on route of the circle, this would suffice.

101. Should a person cover the required distance to and fro, i.e. by way of repeating a given segment of say five km., many times until the entire distance is covered, would they qualify for *qasr* prayers?

A. This does not count as a lawful travel and thus does not qualify for *qasr* prayers.

102. Suppose the road between two towns is not straight because of the terrain; it may twist and turn, etc. Should the required distance, for a return journey on such a road, be calculated as though it was a straight line?

A. No, the actual distance, including the twists and turns, should count, as long as the traveller covered it in the usual way, i.e. as everyone else does.

103. Suppose there were two villages in a mountainous terrain, one at the top of mountain, and the other at its foot. The road linking the two villages twists and turns. Drawing a straight nominal line between the two destinations will tell us that it falls far short of the *shari'i* distance. What is the criterion?

A. The criterion is that you calculate what the traveller covers of the actual road distance, including the twists and turns, should this be the usual route people take to get to either village.

104. Should you travel from your 'home' to another town and back, covering in the process the required distance of just over forty three km, you have to say your prayers *qasr*. This is because a return journey is considered one, unless it is interrupted by one of the 'disrupters' of travel mentioned in paras (98 to 100), in that should you choose to stay in the other town ten days and return home after that, no *qasr* must ensue.

105. What about if there are two routes to get to the second town, one is shorter than the other?

A. The traveller may choose the longer route which may constitute two thirds of the required distance, on the outward and the return journeys. They may have as well used the longer route for one leg of the journey and the shorter route, which may constitute one third of the required distance, for, say the return journey. In such a case, they qualify for *qasr* prayers. Should they choose to use the shorter of the two routes for the outward journey as well as the return one, no *qasr* prayers shall be allowed.

106. Suppose the traveller used one route for their outward journey and did not make up their mind as to the route they were going to use on the return journey, what should they do?

A. Should they use the longer route for the outward journey, they have to qualify for *qasr* prayers, so long as they were intent on using one of the two routes on their return journey. If they used the shorter of the two routes for the outward journey, and were undecided as to the route they were going to use on the return journey, no *qasr* prayer is allowed, although they might have made up their mind as to choosing the longer route on return.

Should one of the routes represent half the distance and the other one quarter, what is the ruling?

A. If the traveller used the longer route for their outward as well as return journey, it is obligatory on them to say their prayers *qasr*. Should they choose to use the shorter of the two routes, for both legs of the journey or for at least one of them, no *qasr* prayers should be performed. The same ruling applies, if they used the longer route for the outward journey and were not sure as to which of the two routes they were going to use for the return journey. That is, even if they later on resolved the matter and decided to use the longer route on return.

107. A traveller may cover the required distance, of just over forty three km., in order to get to their intended destination. It may just happen that another traveller embark on a journey just for the sake of driving a car to test its reliability. Does the same ruling apply to both the travellers?

A. Yes, the same ruling applies to both of them, in that they both should say their prayers *qasr*.

108. Determining the [*shari'i*] distance can be achieved in a variety of ways. First hand knowledge is one of them. The testimony of two witnesses of impeccable character is another. Through the report of a knowledgeable trustworthy person is a third. If any of these is hard to come by, the traveller should maintain full prayer *(tamam)*. The same ruling applies in the case of contradictory testimonies.

109. The traveller is not required to gauge the distance for himself to ascertain that he really covered the forty three and one fifth km. So long as he relied on one of the aforementioned ways, [i.e. in para. 110], he is allowed to say his prayer *qasr*. Again, if he does not come by any one of them and remained doubtful, he must say his prayer in full.

110. If while en-route a traveller realized that the distance he is covering is equal to that required by law *(shari'a)*, he should say his prayer *qasr*. That is, even only if a short distance is left to cover the entire distance. This is because what is of value is the start of the distance at the outset not when he came to know that it was equal to the required distance.

111. Should a traveller say his prayers *qasr* relying on one of the ways of determining the required distance, then realized he was wrong, his *qasr* prayers are null an void; thus, he has to repeat them in full.

112. On the understanding that he does not cover the entire distance in his trip, a traveller said his prayer in full *(tamam)*. In another case, he may have done so, in the light of the above-mentioned para. (111), out of doubt. The contrary was proved, in that he found out that he covered the entire distance as prescribed by law. In this case, he should repeat his prayers by way of *qasr,* should there still be time for that.

The Second Requirement

113. Insofar as the second of the requirements is concerned, i.e. the intended distance, you may pose the following questions:

Setting out on a journey, the traveller had no idea how far away their intended destination was. While en-route they found out that the distance warrants *qasr* prayers. How should they go about it?

A. They should say their prayers *qasr*. This is because what is of importance is the intention to get to one's destination, covering the distance, regardless of whether or not they are going to achieve that.

114. Should their aim be to travel to a destination which falls short of covering the entire distance, and upon reaching it, they decided to go further, what should they do?

A. This is considered as though they have just started their journey, i.e. the calculation of distance should start from the time and place they decided to continue their journey to a new destination. All the distance they covered before should not count. Now, if the total of the new distance and back would be equal to the required distance, they should say their prayers *qasr*. That is, provided that none of the 'disrupters' of travel did arise en-route.

Example:

A person decided to travel from their 'home' to a destination, the distance of which constitutes one third of the required distance. Upon getting there, he decided to go to another place, the distance of which again constitutes one third; he further decided to return home by the same route. Accordingly, the total distance covered will equal the required distance, i.e. one third of the outward journey and two thirds for the return one. Here, the person should say his prayer *qasr*.

115. Those who are in pursuit of things, such as a lost animal, pasture [for their animal to graze], and the tramp, are required to say their prayer in full.

116. The person may be intent on making the journey; yet they are not sure whether they are going to cover the entire distance, for this reason or the other. In such a case, the intention is deemed non-existent and thus *qasr* prayers shall not be in order. That is, if the chance of not completing the journey was slim.

117. Any one making their journey contingent upon certain things, which may or may not happen, are treated as though they are not serious in the first place. Thus, they should be treated as though they are still at 'home'; [accordingly, they should say their prayers in full].

118. The decision to travel and cover the required distance has no bearing on the fact that it is made independently or resulting from another decision, such as in the case of a wife accompanying her husband. There is also no difference between a member of a group travelling of their own accord and another traveller who is coerced to make the journey, like a soldier and a prisoner.

119. If the followers in travel are not aware of the intention of the person they are following, they should say their prayer in full, even if the journey took a long time. That is, unless while en-route they came to know of an alternative route; they should then act accordingly. In all circumstances, it is not incumbent on the followers to find out about the intention of the person they are following whether directly or indirectly.

120. If the followers harboured the intention of parting company with the person they are following at the first possible opportunity, what form should their prayers take?

A. 'Following' *per se* has no value at all. What is important is the intention to travel and cover the distance by any means possible. There is no doubt though that intending to break away from the person being followed runs counter to the intention of travel. Accordingly, prayers should be said in full. That is, unless the intention of the follower is far-fetched in which case the 'intention' to travel and cover the distance exist as a matter of course. It, therefore, follows that *qasr* becomes obligatory.

121. The travellers may aim for a destination, between which and their 'home' is the required distance, then change their mind and go to another destination which is away from their 'home' by the same distance. This

shift does not detract from the original intention of travel. Accordingly, they should remain committed to praying *qasr*.

The same applies in the case of the traveller intending to travel to one of any two destinations, without necessarily identifying which one he is intending to go to. That is, as long as both the destinations are located on the same required distance away from the traveller's 'home'.

122. They may embark on an intended travel. After covering some distance, they wavered for a while only to resolve the matter by reinforcing their original intention. How should they say their prayer, i.e. in full or *qasr?*

A. If they did not cover any segment of the road while still wavering, they can stick with *qasr,* even if what is left of the distance does not amount to the lawful distance. Indeed, the same applies even if they covered any stretch of the road during the period of wavering.

They may decide not to continue the journey, only to abrogate this decision by going back to their original intention and continued the journey. Should they, [during the decision making time], remain in the same place en-route, i.e. without returning, and resumed their journey there and then, it is obligatory on them to say their prayer *qasr*.

If they turned back and walked [or drove] for few miles, only to change their mind again and resume travel, the distance already covered will not count towards the calculation of the required distance. They have to start calculating it from the place they resumed their journey. If the remaining distance, together with the distance which will be covered on the return journey, does amount to the required distance, *qasr* is the norm; otherwise, they have to say their prayer in full *(tamam)*.

The Fourth Requirement

123. Insofar as the third requirement is concerned, considering the covering of the distance according to the established practice *(urf)*, as travel, one could pose the following questions:

In metropolitan cities, one can cover the required distance, from their 'home' to any other district in it and back, i.e. without even going out of the boundaries of the city. Does such a travel warrant *qasr?*

A. Such a travel does not fit the definition of 'travel', because moving

around in one's city, irrespective of its sprawling suburbia, does not amount to a journey; 'travel' should entail being away from one's 'home'.

124. On the way between town (a) and town (b) there may be other towns. The distance between the two towns is equal to that of the lawful distance, Should a person travel from their town (a) to town (b), they must say their prayer *qasr*.

These towns may expand, What should the worshippers do?

A. They should say their prayer *qasr,* unless the expansion of, and the interaction between, these towns were such that they form one sprawling metropolis, according to *urf.* This will be discussed further under para (175) onward.

The Fourth Requirement

125. Insofar as the fourth requirement, concerning the 'disrupters' of travel, is concerned, you may ask:

The person may be intent on staying at their 'home", which is on route to their final destination. However, due to unforeseen circumstances, they could not. Thus, they covered the entire distance as required by law. Do they have to say their prayer *qasr*?

A. They should not, because of their intention to stop on the way at their 'home'. Since staying or stopping at 'home' is considered one of the 'disrupters' of a journey, they were not determined to cover the entire distance of the journey at the outset. Thus, they lack the second of the four requirements.

126. What about the person who, when deciding on embarking on a journey, were not sure whether they were going to stop at their 'home'.

A. Such persons do not qualify for *qasr* prayers of the same reason [discussed in the previous answer].

127. A person on a journey not knowing, while on the way, they are going to stay ten days at a place, or one month without the intention of staying that long, before completing the whole distance. While still en-route, they dropped the idea of stopping on the way and thus stayed the whole course. What should they do?

A. They have to say their prayer *qasr*. The same ruling applies in the case of the travellers' deciding to stay at a place on the way for ten days, should they change their mind and continue their journey to their final destination.

128. Likewise, if on reaching a certain location on the way, they fancied the idea of staying for ten days only to drop it and complete their journey, i.e. *qasr* prayers should be the norm.

When does *qasr* start and when does it end?

We already know that when 'travel' fulfills the four requirements, it becomes obligatory that the worshipper say their prayer *qasr*.

So, when should the traveller begin applying *qasr* and when should it cease?

Let us start by answering the second part of the question:

1. When should qasr cease?

Qasr ceases for one of the following reasons:

a. Arriving at One's 'Home"

129. When the travellers get to their 'home' or town, their journey comes to an end. This applies to both ways, i.e. whether they started their journey from that town and returned to it or started somewhere else and ended in their town. It also applies to the traveller who adopted two towns, separated by the required distance, as their 'home".

Travel comes to an end when the traveller enter the point on the periphery of the town where building environment and the like could be seen. Conversely, the ruling of *qasr* should be upheld.

130. Arriving at one's 'home' for any reason, be it to stay or to pass by, renders the concession of *qasr* prayers redundant. It can though be applied again when the worshippers set out on a fresh lawful journey.

If the traveller is aboard a plane that passes in their space of their 'home", the 'travel' as such comes to an end. That is, unless the aircraft is flying on a very high altitude so much so that it is not, according to *urf* (established practice), considered among the air space of their home town.

131. The time, during which the traveller used to be present at their 'home', does not constitute a barrier to interrupting 'travel'. Example: A university student away from his 'home' decided to return to his original 'home' during the summer recess. Should he choose to go back to the town where he is studying during summer time, his travel comes to an end on getting there.

b. Staying for a Period of Ten Days

132. Having covered the required distance, a person decided to stay at a place for ten days. He is, therefore, called 'resident'. 'Residence' brings 'travel' to an end. Accordingly, this 'resident' person has to say his prayer in full, unless he starts a new journey.

133. The decision to stay ten days should have the ingredients, on the part of the decision marker, of confidence that he really is going to stay. However, whether this confidence stemmed from his own free will, feeling that he has no choice but to stay, or for reasons beyond his control, such as in the case of a prisoner, is immaterial. So, where confidence inspires certainty, or peace of mind, (Consult the meaning of 'peace of mind' and its requirements under para (21) of the Chapter on *Takleef*), this leads to the required result.

Accordingly, if the travellers wanted to stay ten days, yet they were not so sure that they would stay the whole period, or they might have anticipated an emergency, they are not considered to be 'resident', because of the absence of certitude that they would stay.

134. By 'ten days', we mean ten days and nine nights; the nights are those which fall between the first day and the last one. The beginning of the day is dawn. So, whoever decides to stay at a place from the dawn of the first day, say, of the month to sunset of the tenth day, this will be considered 'residence'. The same applies in the case of starting the ten-day period at midday of the first day, which should end at midday of the eleventh and so on.

The ten-day period does not have to be specific, i.e. any ten days would do.

However, should a person arrive in a town at the first night of the month and decides to stay ten nights, i.e. till the tenth night, this would not do. This is because the said period does not consist of ten days.

135. By 'staying' during the ten days, we mean that the traveller should stay overnight in that town and go about their affairs there. Also, they should not engage in any other lawful travel during that day. However, this does not mean that they are not free to move about within the vicinity of that town and its suburbs, and even nearby towns and villages, provided that the distance separating these and the town they chose to stay does not amount to the required distance [of just over forty three km].

136. By 'place of stay', we mean any particular place in a town, village, neighbourhood, etc. That is, splitting the stay, say, on two different places is not good enough. Thus, in order to interrupt 'travel' by way of 'stay', or residence, you have to be intent on spending the full ten days, or more, in one place.

137. Mere staying for ten days in one place, i.e. without the intention to do so, 'travel' will not be deemed to have been disrupted. Of the same nature too is someone contemplating staying at a place, making it contingent on, say the hope that the cold weather is not going to worsen, they stayed the ten days. In such cases, no *qasr* is warranted.

138. The obligation of prayer is not a requirement [for certain categories of people] of the ten-day period of stay. For example, if a woman in a state of *haydh* embarked on a journey and decided to stay for ten days, she should be described as such; she should therefore say her prayers in full once she became *tahir*. The same applies to a boy who has not yet attained adulthood; should he complete fifteen years of age during the ten-day period, he must say his prayers in full.

139. If the traveller, who had completed the ten-day period and thus said their prayer in full, decided to extend their stay, do they need to renew their intention to stay that extra period?

A. They should perform their prayers in full until they travel whenever they liked without the need for a new intention *(niyyah)*.

140. On arriving at a place, a traveller did not contemplate to stay ten days; accordingly, he performed his prayers *qasr*. He is free to change his mind and take up the option of staying the ten-day period. However, this period should start from the day he has made up his mind; so if it was the fifth day after his arrival, this should take his stay to the fifteenth day. Thus, he can be considered a fully-fledged 'resident' and should, therefore, observe prayers in full.

Should he reach a decision during the time of *dhuhr* or *asr* prayers, it is obligatory on him to say his prayers in full *(tamam)*.

141. Someone reached a decision to observe the ten-day stay. Before performing either *isha'* or *dhuhr* or *asr*, he changed his mind. He should observe *qasr* prayers. However, should he change his mind after he has said any of the four-*rak'a* prayers in full, he should stick with saying *tamam* prayers, for he is not allowed to say his prayers *qasr*.

142. A traveller, who has made up his mind to observe the ten-day period, forgot about their new situation and said either *isha'*, *dhuhr* or *asr* in full, i.e. as though they were still at home not in a travel. Would this be sufficient for them to uphold *tamam* prayers?

A. This should be sufficient. However, as for the prayer performed by a traveller instead of a full prayer by way of compensation, it would not do for the purpose of remaining observant of full prayers. That is, even if the compensatory prayers were for those missed during their 'stay'.

143. A traveller decided to observe the ten-day stay and thus said their prayer in full. Shortly afterwards, they changed their mind as to the 'stay'. However, they discovered that the prayer they performed in full was *batil.* In sush a case, they have to revert to *qasr.* This is because when something is deemed *batil,* all its consequences are deemed void as though it did not exist at the outset.

144. A person decided to observe the ten-day stay and started saying *dhuhr* prayer. Halfway through prayer, he changed his mind. What should he do?

A. The answer could be one of three:

a. If the decision to changing his mind occurred during the first two *ruku',* he should change his *niyyah* (intention) to *qasr* and finish his prayer as such.

b. Should he change his mind after the second *ruku'* leading to the third, but before he actually executed *ruku',* he should change to the *niyyah* of *qasr.* This entails canceling the third *ruku',* going to a sitting position, and thus finishing the prayer.

c. If he changed his mind after executing the third *ruku',* his prayer would be deemed null and void *(batil).* He should, therefore, say it again.

145. A traveller decided to drop the idea of observing the ten-day stay. However, he was not sure whether or not he said his prayers in full, so that he can maintain them as such. He should resolve the matter by assuming that he did not. This means that he should observe *qasr* prayers.

c. Staying for Thirty Days

146. The third reason for 'travel' coming to an end is staying in one place for thirty days, even without the intention to do so. This situation arises when travellers arrive at their destination, not knowing when they

are going to leave. If they remained undecided for thirty days, they should observe *qasr* prayers for all that period. Should they remain in that place beyond the thirty days, they must say their prayers in full. That is, even if they decided to leave the place in an hour's time.

147. The thirty-day period should consist of thirty days and twenty nine nights which fall between the first and the last days.

148. The lunar month of less than thirty days would not do for this purpose.

149. Should the travellers be frequenting a number of proximate places for thirty days, they must observe *qasr* prayers, even if the distance between these places was less than the established one. That is because the 'stay' all this time was not confined to one place.

2. When should qasr start?

150. Should *qasr* prayers start with setting out on the journey and covering the prescribed distance, taking account of the requirements, or after the said distance has been covered?

A. The stipulation of *qasr* starts from the moment the traveller sets out from their 'home', or the place in which they observed the ten-day stay, or the place where they spent thirty days due to indecision. The *qasr* starts with the first step with which they started the journey.

However, travelling from one's 'home' has a slight variation, in that the stipulation of *qasr* becomes operative when the traveller is longer visible to the naked eye from a point on the periphery of the built environment *(imran)*.

The sight of the built environment to the traveller is immaterial here. This criterion is constant, i.e. the magnitude of the buildings has no bearing on it; this runs counter to the fact, if *qasr* was linked to the disappearance of buildings because it varies according to the type of architecture in this country or that.

151. If the traveller can no longer be seen because of some sort of barrier, such as entering a tunnel, this is not sufficient for activating *qasr*. *Qasr* becomes operative only when the traveller disappears completely, in that they cannot be seen by, say, those who are bidding them farewell; and by the same token they cannot see those seeing them off. This assumes an open terrain, i.e. with no barriers; this is called *hed et*

tarakhus, i.e. the point from which the traveller is allowed to observe *qasr.*

152. Some one set on a journey from his home. He was not certain as to reaching *hed et tarakhus* to pray *qasr.* He should uphold *tamam* prayer until he is sure that he has reached the point.

153. Someone embarked on a journey. After few steps, they thought that they reached *hed et tarakhus.* They stopped to say prayer in its *qasr* format. Thereafter, they discovered they were wrong. What would become of their prayer?

A. Their prayer would be *batil.* On reaching a conclusion that they were still short of *hed et tarakhus* and wished to say prayer there and then, they have to say it in full. However, they are free to delay it until the have got passed *hed et tarakhus,* in which case they can say it *qasr;* that is, as long as there was still ample time [for prayer].

Adjourning Travel

154. A person set out on a journey. On covering some distance, they said their prayer *qasr.* Shortly afterwards, they decided to cancel the journey and return home. What would become of the prayer they said by way of *qasr*?

A. Should the distance covered in the outward journey, to the point where the decision to cancel it was taken, and back be equal to the approved distance [of just over forty three km], they must continue to observe *qasr* until they return.

If not, they have to repeat the prayer in full and on time where possible; otherwise, at some other times as a matter of obligatory precaution.

155. Suppose they covered half the distance where they decided to stay for ten days. How should they go about their prayer?

A. They should repeat it, as has already been mentioned in the answer of the previous question.

156. A resident of town (a) decided to travel to town (b). On getting as far as town (c) which is closer to his hometown (a), he said his prayer *qasr.* Immediately after that, he had second thoughts whereby he decided to go to town (d) which is also on the route to his provisionally intended destination, i.e. town (b), and return home.

Now, should the total distance, i.e. to and from, between towns (a) and (b), [their new final destination], be equal to the prescribed distance, his [*qasr*] prayer is in order. He should therefore, maintain *qasr* prayers. Conversely, he should repeat the prayer and maintain full ones.

157. The resident of town (a) already mentioned in para (156) had a variation in his plan, in that upon getting as far as town (c), he started observing *qasr* prayers. Having become undecided, he remained in the latter for a month; he then continued his journey to his originally intended destination, i.e. town (b). What would be come of the prayer he said *qasr*?

A. He must repeat them in full *(tamam)*.

To sum up, any person setting out on a journey, and intending to cover the whole prescribed distance [of just over forty three km], then said *qasr* prayers before any of the 'disrupters' of travel set in, it is obligatory on him to repeat his prayer in full.

Barring any 'disrupters', but prior to staying the course he changed his mind or actually returned home, he should take into account the actual distance covered and the one he decided to cover in the light of his new intention. Should he equal the prescribed distance, his *qasr* prayers are in order; otherwise, he must repeat them.

Who of the travellers is exempt?

There are two types of travellers who cannot be covered by the concession of saying *qasr* prayers. The first is he who travels in pursuit of a sinful act; the second is he whose travel is his means of earning a living.

1. The Traveller in Pursuit of a Sinful Act

Travelling for doing evil can be any of the following:

158. a. Any type of travel which aims to rebel against Allah's injunctions by committing that which is *haraam*, such as trading in intoxicants, killing the respected soul, highway robbery, aiding a wrongdoer, or preventing someone from discharging his lawful duty.

The main aim and motivation for travel could be a lawful thing in itself, such as going on a picnic. Should a misdeed be commissioned on the way, such as lying, backbiting, or eating that which is *najis*, this cannot be termed as 'travel in pursuit of a sinful act'.

159. b. Any type of travel which the travellers resort to as a means of escaping from discharging a lawful obligation, such as hiding with a view to avoiding paying a debt, especially when they are in a position to do so.

160. c. The travel which is *haraam* in itself, i.e. neither of the two previous ones, such as one making an oath that he would never travel on a rainy day, or one that was called upon not to travel by someone whom he should not disobey because of his solemn authority. Should he go ahead and embark on the journeys so described, the journeys themselves are deemed *haraam* and thus termed 'travel in pursuit of a sinful act'.

161. A person travelling in pursuit of a sinful act should not warrant such concession as saying *qasr* (shortened) prayer. Thus, he must say his prayer in full *(tamam)*.

162. In the first two categories of such a travel, the travellers may achieve that unlawful act they set out to so and want to return. If the distance of the return journey was equal to the prescribed one, they should say their prayer *qasr*, irrespective of whether or not they repented. Should the distance be less than that required by Islamic law, no *qasr* prayer is allowed.

Should the return journey, of the third category type, entail a sinful act also, no *qasr* prayer is allowed. If the commissioning of the *haraam* act be restricted to the outward journey, the ruling concerning the first two categories applies.

163. Trips made for hunting for pleasure are treated as a kind of 'travel in pursuit of a sinful act'. However, the person involved in such a travel should say their prayer in full in the outward journey; for the return journey, *qasr* prayer applies, if the distance of that leg is equal to that required by law. If hunting was a source of earning a living for the person embarking on it, they are covered by the same rules applicable to those journeying in pursuit of legitimate business.

164. Any one who sets out on a lawful journey, yet he commits another unlawful act on the way, such as using a usurped means of transport of passing through a usurped land, he should say his prayer *qasr*.

However, if a person usurped a car and drove off [for the required distance], as thieves do, he should say his prayer in full.

165. At its inception, travel may not be of the type that entails commissioning an unlawful act. While en-route, it could turn to be a

lawful one, such as a businessman embarking on a journey to strike a deal of grain; yet he turned to dabbling in intoxicants. Such change from a lawful activity to an unlawful one could happen while on the way, but prior to completing the journey; it could also happen after staying the whole course. These two cases have two different outcomes:

a. In the first case, the change nullifies the lawful travel; consequently, the prayer reverts to full *(tamam)*, from a *qasr* one. If the person has already said his prayer *qasr*, he has to repeat it in full this time round, time permitting; if not, he has to say it in full by way of *qadha*.

b. In the second case, the *qasr* prayers that have been said are deemed in order, because the lawful travel has already been initiated. Should he switch to a journey entailing committing a *haraam* act, he has to combine both, i.e. saying his prayers in full as well as *qasr*, as a matter of recommended precaution *(ihtiyat)*. Thus, each of *dhuhr*, *asr*, and *isha'* prayers has to be said once in full and a second time *qasr*. However, it is more likely *(al-aqwa)* that saying prayers in full is preferable.

166. There is though the case which is the reverse of the previous one, in that the traveller sets out intent on committing that which is *haraam* (unlawful), then renounces it by switching to that which is lawful. So, if the remaining distance, from where the switch took place, plus the distance of the return journey is equal to that required by law, their prayer should be *qasr*. It should be said in full before the switch takes place.

167. Applying the rule of *qasr* for the traveller embarking on a lawful journey, then switching to a lawful one should begin at the time and place of the change, without losing sight of the distance prescribed by law. That said, the rule is enforceable, even if the person concerned is still within the boundaries of the place where the change took place.

The same ruling applies to the person who went ahead and committed that which is *haraam* and returned home with the intention of covering the required distance [i.e. just over forty three km]. That is, *qasr* prayer applies from the start of the return journey, in that it is not contingent on going out of the [boundaries] of the town.

2. The Person Whose Means of Earning a Living Entail Travelling

168. People whose job, business, or profession necessitate travelling are not permitted to say their prayers *qasr*. The most vivid example of

such persons are the drivers of vehicles, especially when it entails making [long] journeys. This also applies to the persons who volunteer to work as drivers for other people gratuitously.

As for the persons who drive their car for leisure [for example], they cannot be treated as though travelling is part and parcel of their job. Nevertheless, they should say their prayer in full. This is because the criterion in reaching such a ruling is the frequency of travelling.

Categories of those whose job entails travelling are:

169. a. The persons who are required to travel due to the nature of their job, such as drivers, pilots, airhost/ess, seafarers etc.

170. b. The persons, although not required to travel as a direct result of the nature of their job, yet their job still entails some travel, which could, among other things, be called for, because they want to be away from their base to see matters for themselves directly, instead of deputizing others.

However, there are two categories of such travellers, [producing two different rulings]:

a. The destination covered by travelling, in this category, should be dispersed or temporary which should not be considered as the traveller's 'home', already discussed in paras (87 - 89). Such people should be saying their prayer in full at these destinations or on the way to them.

b. There must be a strong bond between the travelling persons and the place they are required to travel to, in that they treat it as their [second] 'home' by way of deciding to stay there, say, for a period of four years or more.

An example of such a person is a university student doing his degree away from his hometown; this has already been discussed in para (89). Thus, such a person should say his prayer in full in his second 'home', and say it *qasr* while travelling to and from it, unlike the previous case. This is because travelling is not the main feature of his job.

171. We will discuss below some examples drawn from real life situations so that the worshipper may be in a position to deduce the ruling for each case:

a. A student resident of town (a) commutes daily to his place of study in town (b) which is away from his town by the required distance. His obligation is to say his prayer in full, at his residence, place of study, and on the way to and from it.

b. Doing a course of six months or one year, the same student decided to stay a week, or more, in the place where he studies before he returned to spend, say, the weekend with his family. He has to say his prayer in full at both places and on the way.

c. Should the student choose to take the place of study as a [second] 'home', for embarking on a long-term course of study of, say, four years or more, he has to say his prayer in full at the place where he studies. During his journeys, he has to observe *qasr* prayer, provided that the distance between the two destinations is equal to the one required by law [or more].

d. What applies to the student [in the previous examples] should apply to any other person working away from 'home'.

e. A resident engineer, in charge of a project located away from his 'home', is required to travel between his place of work and his 'home' at different intervals, which could be long or short. He should say them in full throughout, i.e. be he present at either destination or on the move.

f. Soldiers of any ilk based away from their 'home' have to say their prayer in full. That is, regardless of the period of absence from 'home'. Similarly, should they be sent on a mission away from their base, whether individually or as part of a company of soldiers, they should observe prayers in full.

g. A school drop-out joined a six-month course in a learning centre located away from his 'home' by the minimum distance required by law or more. He has to say his prayer in full throughout, irrespective of whether he decided to commute regularly or make intermittent trips to and from the learning centre.

h. An engineer, doctor, administrator and the like were sent abroad for further study to widen their experience. Their absence may extend for one year. They are required to say their prayer in full at the place where they are studying or training.

i. Business men who set up a business away from their place of domicile by the same distance required by law. The nature of the business being set up requires them to be present there for a few days/weeks on end. They have to say their prayer in full. Both at the place of the business and while journeying.

j. A roving inspector and the like working for a bank or a company are required to say their prayer in full while they are on the move.

k. A contractor, a tradesman, and the like, who are required to travel the full required distance between a number of towns or villages to attend to certain jobs, are required to say their prayers in full while going about their work.

172. Unlike the previous situations, where full prayers are called for, we give below some other examples, apart from (e, f, and g), where *qasr* prayers be the norm:

a. Technicians on a call-out type of work in a particular vicinity happened to be asked by their employer to go outside their appointed area to do a job; as a result, they had to travel to the new place whereby they covered the distance required by law. In such a case, it is obligatory on them to observe *qasr* prayer, because it is a one-off task.

b. A company employee's job requires them to make one or two journeys a month outside their base on duty, thus covering the required distance. Their obligation is to say prayers *qasr*.

c. A religious instructor who goes about his job in his hometown. He may occasionally be required to travel to other towns to deliver sermons. He must say his prayers *qasr,* should he cover the required distance in this travel.

However, if travel was an integral part of his job such that he could be called a roving preacher, he must say his prayer in full. He should also be praying *tamam,* if he becomes a habitual traveller, even if these journeys arise from other things not related to his actual job.

d. Part-time taxi drivers have to say their prayer *qasr*, if they cover the required distance in any of their trips. This is because their original job does not entail travel and working as a driver is considered a temporary job.

If these persons embark on, say, one trip a year during which they are required to carry out very important work, such as *hajj* guidance, they must say their prayers in full.

e. Whomsoever becomes a habitual traveller not for business, but for leisure and voluntary devotional work, such as frequenting the holy shrines, they should observe *qasr* prayer. (Please see para (168).

f. Someone may mix work with pleasure, such as a painter or an artist, where they seek enjoyment by travelling from one place to the other. In the process, they earn a living from their paintings. Their obligation vis-

ä-vis prayers must be that they should perform them in full. This is because the criterion is the frequency of travel, albeit their prime concern is not earning a living by way of travelling.

g. Those whose job entails travelling as and when required and therefore say prayers in full are required to do likewise, when they make a journey that falls outside the requirements of their job. Example: A taxi driver taking his family on a trip to the holy shrines, he should say his prayers in full.

To sum up, any one working away from his 'home' should observe prayers in full whether during the journey to his workplace or at it. That is, if he does not take the workplace as a second home.

Should travel form an integral part of the job by the very nature of the job, he must be saying his prayer in full.

The person who is regarded as frequent traveller, although his job does not require him to travel, should also observe prayers in full.

Big and Small Towns

173. As you may be aware that (a) persons residing in their hometown are required to perform prayer in full, (b) the travelling persons deciding to stay in one place ten days are required to do the same, and (c) the travelling persons passing through their hometown must bring their journey to an end and observe prayer in full.

All of that may pose the question:

Where should one draw the line as to the boundaries of a town?

A. In straightforward situations, where the boundaries of towns and neighbourhoods do not overlap, the answer is simple, in that the last one sees of buildings should constitute the boundaries of a town.

But, if the town is a sprawling metropolis, whose buildings may extend and overflow into other towns, doubt could arise as to its known boundaries. That is, can overlapping towns, which may form one metropolitan city, be considered thus for the purposes of observing religious obligations or not?

A. The following will shed some light on the different situations in order to reach the legal opinion commensurate to each case:

174. a. Take town (x) for example whose old boundaries are known. As a result of either outward or inward expansion, i.e. of new

neighbourhoods springing here and there around it, these new built areas are considered part of the town. Accordingly, the last building on the periphery of the town should be taken as a guide to determine the required distance of travel away from it, which could eventually have a bearing on whether or not the traveller should say their prayer *qasr*.

Should the travellers choose to divide their ten-day stay in the town on a number of the town's new suburbs, they must say their prayer in full because they count as parts of the same town.

175. b. Two historically distinct towns may expand each in the direction of the other so much so that their buildings become almost one, such as Kufa and Najaf, and Baghdad and Kadhimain in Iraq. In such a case, each town retains its independence and distinction, i.e. they do not become one town.

So, if a Kufan travels to Kerbala and on the way back he got to Najaf, his travel will not cease; should he perform prayer at Najaf, it must be *qasr*. If a traveller sets out on a journey from Baghdad, intending to spend five days in Kufa and another five days in Najaf, he shall not be treated as a 'resident', unless he decides to stay in one of them [for the whole period of ten days].

176. c. Suppose one of the two towns, that later formed one metropolis, was small and the other big. Gradually, the smaller of the two got swollen up by its bigger sister. Both of them will lose their independence to form one metropolis, similar to the first case (174/a).

Precepts Concerning Prayers in Travel

As we have already explained, lawful travel - which necessitates covering the required distance according to certain stipulations - entails a concession to the travellers by making them say their prayers *qasr*.

The precepts concerning prayers while in a journey are as follows:

177. a. The four-*ruku'* prayers, i.e. *dhuhr, asr,* and *isha'* are reduced to two *ruku's* each.

178. b. The supererogatory prayers usually said at the same time of *dhuhr* and *asr* are dropped. Some jurists are of the opinion that *isha'* supererogatory prayer should be cancelled. However, there is no harm in performing it in the hope of attaining Allah's pleasure. The super-

erogatory prayers that usually go hand in hand with *maghrib* and *fajr* prayers, and Night prayer no doubt remain fixed.

179. There is a number of situations where the travellers, whose obligation is to say their prayers *qasr,* could be saying them in full:

a. They could knowingly be contravening the *shari'a* law vis-ä-vis *qasr* prayer. Such a prayer is null and void *(batil);* it is, therefore, incumbent on them to repeat it.

b. They may not be aware of the rule regarding *qasr* prayer. Their prayer should be good enough.

c. They may be aware of the dictate, yet their understanding of it falls short of being a comprehensive one. That is, they may decide to cover half the required distance in the outward journey and the other half in the return one in the knowledge that travelling thus does not require *qasr* prayer. Such a prayer is deemed in order.

d. The travellers may forget they are travelling, and thus say their prayer in full. If they remember, while still on the move, that it was an oversight, they have to repeat their prayer. If they did not remember until the time for prayers was up, they are not required to repeat the prayers by way of *qadha'.*

e. They are aware of the *shari'a* ruling concerning *qasr* prayer, yet they forgot about it at the moment they started their prayer. Since they did not forget about being in a state of travelling, rather forgetting the ruling, they should do as the persons in the previous examples had done.

f. The travellers may be under the impression that the distance they are covering in their travel from point (a) to point (b) falls below what is required by law. Thus, they said their prayer in full. If they realized that it was not, they should follow the rulings discussed under the previous two examples, i.e. (d) and (e).

180. d. Should praying in full be required, yet they say it *qasr,* it shall not be accepted; thus, it is obligatory on them to say it *tamam* (in full). That is, irrespective of whether they realized the lapse during the prayer or after it has been said.

There is one exception though; it concerns the travellers' observing the ten-day stay in the intended destination; if they, through ignorance, said their prayer by way of *qasr,* their prayer should be in order.

The persons may be required to say their prayer in full such as in a travel in pursuit of a sinful act or hunting for pleasure. Yet, they may not be aware that they should do so. Ruling that [their *qasr* prayer] is in order should not be ruled out, although repeating it is preferable, as a matter of *ihtiyat* (precaution).

181. e. The time for an obligatory daily prayer may set in while the persons concerned are still at 'home', yet they did not say it, because they embarked on a lawful journey. If they want to say that prayer in their travel, while there is still time, it is obligatory on them to say it by way of *qasr*.

182. f. An obligatory daily prayer becames due while the person was on a trip; if they decided to return home without saying [*qasr*] prayer. They arrived there while there was still time to say it. In this case, they should say it in full.

183. g. Due to forgetfulness, travellers set out to say prayer in full, while the prayer was still in progress, they realized that they had meant to say it *qasr*. Such a prayer be deemed *batil*, should they become aware after executing the third *ruku'*. Should they remember before that, they have to conclude it come the end of the second *ruku;* such a prayer should be in order. If they remember while they are still in a standing posture for the third *ruku'*, they have to cancel it, and go back to a sitting posture to say *tashahhud* and *tasleem*. Such a prayer is also in order.

184. h. It is *mustahab* for a traveller who is required to say *dhuhr, asr- and isha'* prayers *qasr*, to recite after each one of them the following invocation, *"Subahanal Lah, wal Hamdu Lillah, wala Illah Illal Lah, wal Lahu Akbar"*. (May Allah be exalted, May Allah be praised, There is no god, but Allah, and Allah is greater). Such supplication should be a sort of compensation for the third and fourth *ruku'* of each of the said prayers.

Chapter Two

Other Prayers

By 'other prayers', we mean those which are not required on a daily basis. Some of these are *wajib,* yet the majority are *mustahab.*

1. Prayer for Unusual Natural Phenomena *(Ayat)*

Ayat is the [Arabic] plural for *Ayah* which means a sign or a miracle. Allah says, **"And among His signs are the night and the sun and the moon"** (37/41). This prayer is called thus because of the reason it is held for. It is among obligatory prayers.

The Reasons Why it is Obligatory

185. These are the reason that the *Ayat* prayer becomes obligatory:

a. An eclipse of the sun, be it total or partial.

b. An eclipse of the moon, be it total or partial.

c. Earthquakes.

d. Events which may create fear and concern, such as severe darkness [in day light], wild wind, or thunder].

186. Should any of those four events occur, *Ayat* prayer becomes obligatory on every *mukallaf* who is in a position to say prayer, except women who are menstruating *(haydh)* or who are bleeding after childbirth *(nifas).*

187. When any of the first three events takes place, *Ayat* prayer becomes obligatory, regardless of whether the fear of the occurrence took hold over the majority of people. However, the obligation to say the prayer is confined to those people directly affected by the event, although they might have not noticed it because they were asleep, for example.

188. In order for the fourth event to warrant *Ayat* prayer, it had to cause alarm among most people. If not, it does not become obligatory to perform. What we mean by 'alarm or fear' is not necessarily that the

person becomes worried about the fate of the world or the country, rather the psychological tension they are in.

189. Should the cause of concern, as a result of the occurrence of the fourth event, arise in the minds of most people of a particular town, *Ayat* prayer becomes *wajib* on its people. If the concern is widespread, so much so that it engulfs residents of nearby areas and towns, they should do the same.

190. The obligation to say *Ayat* prayer should recur according to the cause. So, if there was an eclipse of the sun and a scaring lightening at the same time, two separate **Ayat** prayers have to be performed. In such a case, it is recommended that the worshippers bear in mind that they are saying these two prayers for their own respective reasons.

191. Certitude that the event did happen could be achieved either directly by the worshippers themselves or through the testimony of a person of an impeccable character or that who is trustworthy, or by the forecast of meteorologists, should it inspire confidence and peace of mind.

The Format of *Ayat* Prayer

192. This prayer consists of two *ruku's*, each of which entails five *ruku'* and two *sujoods*. To inaugurate it, one has to recite *takbiratul ihram* with the *niyyah of qurbah*. The worshipper should then recite *suratul Fatiha*, then another *surah*, following which the first *ruku'* should be performed. Then, after they have risen, *al-Fatiha* is recited, then another *surah* and so on until the five *ruku's* are performed; they should rise again and go for *sujood*. On performing the two *sujoods*, they should rise to begin the second *ruku*, whose five *ruku's* are performed in the same way as those of the first. After that *tashahhud* and *tasleem* are recited.

193. This prayer may be said in a shortened form. After reciting *al-Fatiha*, the second *surah* may be divided into five parts, one part being recited before each of the five *ruku's;* the *basmalah* is considered an *ayah*. Should any part be left from the *surah* the worshipper chose to read, it must be recited fully before the fifth *ruku'*. On performing *ruku'*, the worshipper should do the two *sujoods*, the second *ruku'* can be performed in exactly the same way.

194. If, for example, after the second *ruku'* of this short form of prayer, the worshippers completed reciting the *surah* they started prayer

with and did not confine it to one *ayah* only, they have, after the third *ruku'*, to recite *al-Fatiha* again, and start another *surah* after that. That is, regardless of whether the second *surah* was that they had just finished reciting. They should then recite one *ayah* or more of this *surah* and perform the fourth *ruku'*, then rise again to finish reciting it, provided that one complete *ayah* or more is left of it.

195. To sum up, there are four points worth noting in the shortened form of *Ayat* prayer; these are: (a) Any recitation short of one complete *ayah* is not acceptable, (b) At least, one *surah* must be completed in any of the two *ruku's* the prayer consist of, (c) On completing the *surah* before the fourth *ruku'*, the worshipper has to resume reciting *al-Fatiha* in the *ruku'* that follows it, and (d) No part of the *surah* should be left unrecited prior to performing the fifth *ruku'*.

Like any other obligatory prayer, all the general guidelines have to be observed in *Ayat* prayer, such as facing the *qiblah* and covering oneself.

The Time of *Ayat* Prayer

196. The time for the prayer in the case of an eclipse is from the beginning of the eclipse till the time when it begins to recede. Thus, it is permissible to take to this prayer at the outset of the eclipse. Its time becomes shorter as the eclipse begins to recede. However, its is preferable to start praying from the beginning to the eclipse. That said, it is not permissible for the *mukallaf* to delay it until such time that there is no room for accommodating but one *ruku'*. Yet, should anyone do such a thing either for a valid reason or for being intent on not upholding the obligation, he should still have to start praying immediately; in so doing, he would earn the reward as though he has said it in full, as is the case in an obligatory daily prayer.

197. The prayers for other unusual natural phenomena have no time span, especially when the time of the occurrence is so short that it is impossible to perform the prayer within it. Thus, it should be said as soon as the event takes place.

198. The same goes for an earthquake. Should the worshipper delay the prayer for the earthquake or any other dreadful event either for a valid reason or for ignoring the obligation so much so that the time is up, it is obligatory, in order to discharge one's duty, to say it, specifying neither *ada'* nor *qadha'*.

You may ask: Should there still be time to perform the prayer while the eclipse still receding, yet the worshipper did not do so, are they liable to say it *qadha'*?

A. The answer to this question shall be discussed in the section dealing with *qadha'*. However, in short, no *qadha'* is required, only in certain cases. You may refer to para (15) of the section entitled, "*Qadha'* Prayer".

2. Prayer for the Two *Eids*

199. Muslims celebrate two great *eids* (feasts) which are considered among the most important of celebrations. They are: *Eidul Fitr* (the day after the end of the fasting month of Ramadhan), and *Eidul Adhha* (the day pilgrims offer their sacrifices at Mina, i.e. 10th Thil Hijjah; also known as the Festival of Sacrifice).

Allah, the Exalted, has ordained that a special prayer be performed marking these two festivals; it is called the prayer of *eid*. This prayer is obligatory if it is convened by the followers of the just *Imam*. Conversely, it is *mustahab* to say it; in this case, it is permissible to say it individually or in congregation. If it is the later, there are no restrictions as to the number of worshippers performing it; similarly, there is no problem in holding it in as many places as can be, i.e. unlike Juma' prayer.

It is not obligatory on a travelling person, who is entitled to say *qasr* prayer, to say *eid* prayers at any circumstance whether or not it is held under the just *Imam*. However, it is *mustahab* for the person in question to perform it.

200. How is it performed?

Eid prayer consists of two *ruku's*, like *Subh* prayer. However, in addition to the usual two-*raka'* prayer there are other things that should be done. That said, a superior form of this prayer is thus that in the first *rak'a'* after *takbiratul ihram, al-Fatiha* and other *surah* are recited. Then five *takbirs (Allahu Akbar)* are pronounced followed by five *qunoots*. After the fifth *qunoot* another *takbir* should be performed, [i.e. with its requisite *sujood*], the worshipper should rise for the second *ruku';* after the recitation of *al-Fatiha* and a second *surah,* four *takbirs* followed by four *qunoots* should be performed; a fifth *takbir* should then follow prior to bowing down for the second *ruku';* thus by finishing the complementary parts of the second *rak'a'* the prayer comes to an end.

That said, in the last *qunoot* of each *rak'a'*, it should be present in the worshippers mind that they are performing it in the belief that it be a requirement of a *shari'a* injunction.

201. After the recitation of *al-Fatiha* and a second *surah*, the worshipper could confine the number of *takbirs*, and *qunoots*, to three in each of the two-*raka'* prayer.

202. It is more superior and meritorious *(mustahab)* for the worshipper to recite in the first *rak'a*, after *al-Fatiha*, *surah* ash-Shams (91), and in the second, again after al-Fatiha, *surah* al-Ghashiyah (88).

203. *It is also mustahab to recite this famous supplication, i.e. in qunoot, "Allahuma ahlal kiriya'I wal adhamah, wa ahalal joodi wal jabaroot, was ahlal afwi warrahmah, wa ahlal taqwa wal maghfirah, as'alika fi hathat yawmil lathi ja'altahu lil Islam eida, w'ali Mohammadin salal Lahu alaihi w'alihi wasalam, thukhran wa mazida, an tusaliya ala Mohammadin wa'ali Mohammad, ka'afdhala ma sallayta ala abdin min ibaadik, wa salliala mala'ikatika wa rusulik, waghfir lil mo'minina wal mo'minat al ahya' minhum wal amawat, Allahuma inni as'aluka khaira ma sa'alaka inbadukas salihoon, wa a'udhu bika min shari masta'atha bika minhu ibadukal mukhlasion".*

Should not be able to memrorize this *du'a*, you can recite it out from a book or the like.

204. By way of *mustahab* also, the *imam* should address the congregation by delivering two sermons separated by a short pause, as is the case in the ceremony of Juma' prayer.

205. Should the worshipper say *eid* prayer in congregation, they are not required to recite *al-Fatiha* and the second *surah* in both the *ruku's;* however, they have to deal with the rest of recitations and acts.

206. There is neither *adhan* nor *iqamah* in this prayer; it is *mustahab* though, that the caller repeats the word *"as-Salah"*- prayer - three times.

207. The time for this prayer is from sunrise till midday; once its time is over, there is no *qadha'* for it.

208. Among its *mustahab* acts are *ghusl,* ahead of it, reciting audibly and raising the hands in tandem with the *takbirs.*

3. The Remaining Obligatory and Voluntary Prayers

a. *Tawaf* Prayer

209. [This prayer is obligatory]. It is usually performed after the pilgrims finish their *tawaf* around the Holy Ka'ba. A detailed account of this prayer has been given in our *"Manual of Hajj Rituals"*. However, an outline of its rules shall be given in the Chapter on *hajj* and *Umrah* of this book.

b. *Wahshah* Prayer

210. Literally, *wahshah* means loneliness, desolation, or melancholy. It is also known as "a dedication for the deceased or their graves". It is called for in a number of credible reports. The time [for this *mustahab* prayer] is the night after the burial.

It consists of two *ruku's*, i.e. similar to *Subh* prayer. In the first, *Suratul Fatiha* and *Ayatul Kursi*, from *ayah* (255) to *ayah* (257) of *Suratul Baqarah* are recited and in the second *rak'a'*, *al-Fatiha* and *Suratul Qadir* the latter should be repeated ten times. On completion, the worshipper can say, *"Allahuma Sali Ala Mohammadin Wa'ali Mohammad* – Peace be with Mohammad and his Household - and may Allah benefit the deceased (x) with its reward, i.e. naming the dead person".

In another report it is related that after reciting - al -Fatiha in the first *rak'a'*, at-Tawhid/ al-Ikhlas (*surah* 112) is recited twice, and in the second *rak'a' at-Takathur (surah* 102) ten times. Then say *du'a* (supplication) for the soul of the dead person.

c. Special Prayer on the First Day of Every Month

211. According to handed down tradition, performing special prayer on the first day of every month is *mustahab*. It consists of two *ruku's*. In the first one, after reciting *al-Fatiha, at-Tawhid* (*surah* 112) is recited thirty times; in the second, after *al-Fatiha, al-Qadr (surah* 97) is recited thirty times. Then, you may give something away in charity.

After the prayer has been said, it is *mustahab* to recite the following *ayas;* (6/11), (10/107), (6/17), and these *ayahs* – in part - **"Allah brings about ease after difficulty"** 7/652, **"It is as Allah has pleased, there is no power save in Allah"** 18/139. **"Allah is sufficient for us and most excellent is the Protector"** 173/300, (and I entrust my affair to Allah,

Surely Allah sees the servants, 44/402, **"there is no god but Thou, glory be to Thee; surely I am of those who make themselves to suffer loss"** 87/212, **"My LordÀ Surely I stand in need of whatever good Thou mayest send down to me"** 24/282, **"O my Lord! Leave me not alone; and Thou art the best of inheritors"** 21£89.

The time for this prayer starts at dawn till the sunset of that day.

d. Prayer of *Ghufailah*

212. This is one of the *mustahab* prayers. It has been related in a *hadith* that it earns [the person] who performs it the domain of honour. Its time is during the first hours of the evening, i.e. between *maghrib* and *isha'* prayers. It may be considered as a daily prayer.

Ghufailah, prayer consists of two *ruku's*. As has been related, the way to perform it is such that in the first *raka'a'*, the worshipper should recite, after al-Fatiha, **"And when Yunus went away in wrath, so he thought We would not straiten him, so he called out among afflictions: There is no god but Thou, glory be to Thee; surely I am of those who make themselves to suffer loss"** (21/87).

In the second *rak'a'*, after al-Fatiha, **"With Him are the keys of the Unseen, none knows them but He. He knows what is on the earth and in the sea. Not a leaf falls, but He knows it; not grain in the darkness of the earth, nor anything fresh or withered, but it is in a Book Manifest"** (6/59).

The following *qunoot* is then recited, *(Allahumma inni as'aluka be mafatihi ghaibil lati la ya'lamuha illa anta, an tusalliya ala Mohammadin wa aali Mohammad)*, after wich you may ask your particular need, You can then say, *(Allahuma anta waliyu ne'mati wal qadiru ala talibatai ta'lamu hajati, f'asa'alika bihaqi Mohammadin wa aali Mohammad, alayhi wa alayhimus salam, illa qadhayth lee)*. You are then free to invoke Allah's glory and mercy with any form of supplication.

Any one performing this prayer, shortly after *maghrib* prayer, may confine it to two *ruku's* of *maghrib* supererogatory prayer, i.e. *maghrib's* sister. As has already been discussed, this prayer consists of two-*rak'a'* prayer. That is, you can reserve one of them for *ghufailah* prayer.

e. The Special Prayer as used to be Performed by Ja'far

213. This prayer is also known as 'the prayer of *Tasbih*'. It is one of the *mustahab* prayers. It consists of two prayers of two-*raka'* each; where it diverges from the usual two-*raka' prayer, [i.e.* that of *Subh*], is that you should say, (*Subhanal Lah wal Hamdu Lillah, wala Illaha Illallah, wal Lahu Akbar)*, fifty seven times; that is, fifteen times in each *ruku* after reciting *al-Fatiha* and a second *surah*, ten times during *ruku'* (bowing down posture), ten times after rising from *ruku'*, i.e. while standing, ten times while performing the first *sujood*, ten times after lifting your head from *sujood*, i.e. wile seated, before going to the second *sujood*, during which another ten times of the phrase should be recited, and ten times after performing the second *ruku'*.

The same routine should be applied in the second *rak'a'*, leading to *tashahhud* and *tasleem*.

The second prayer is a repeat of the procedure followed in the first prayer.

The believers have been enjoined to make a habit of saying this prayer every week or every month; it is said that Allah, the Most High, shall, for the sake of observing this prayer, forgive the worshippers their sins.

It is permissible that anyone performing another supererogatory or a *qadha'* prayer can introduce the special features of Ja'far prayer into them, thus repeating the reward of both the prayers.

f. Prayer for *Istikharah* (Seeking Allah's Guidance)

214. This prayer is among the *mustahab* prayers, through which the worshippers ask their Lord to provide them with guidance and resolve their affair for that which is good. It has been related from *Imam* as-Sadiq (a.s.) that he said, "When anyone of you feels the need to ask for something to be fulfilled, let them perform a two-*rak'a* prayer. After that, chant the praise of Allah and thank Him, ask Allah to bless Mohammad and his pure progeny and say, *'Allahumma In Kana Hathal Amr Khyran fi Dini wa Dunyay, fa Yasirhu Lee wa Qaddirh; wa In Kana Ghayra Thalik, fas Rifhu Anni*, meaning, *'O Lord!* Should this affair be of any good to me in my life and religion, then resolve it for me. If it is anything else, I pray to You to steer it away from me".

g. Prayer for a Need to be Satisfied

215. It is *mustahab* to say a tow-*rak'a* prayer when someone stands in need of something to be considered sympathetically. There are numerous versions of how it should be conducted. However, one of these is that the person concerned with the request should perform *wudhu,* then give something away in charity, and go to the mosque to say a two-*rak'a* prayer; after the prayer they should say a special invocation whereby they should recite the praise of Allah and glorify Him, call for peace to be with the Prophet (s.a.w.) and their pure progeny, and then ask Allah for their request to be fulfilled, pledging that they would perform a certain devotion as a way of thanksgiving when He answers their prayers, which could be one of these: fasting the Month of Rajab, giving alms to the poor, or contributing to a charitable cause.

h. Prayer for Rainfall

216. This prayer is *mustahab* when there is a dire need for water due to lack of rain. It consists of two *ruku's.* It is identical to *Eid* prayer both in form and procedure, including the sermon after the prayer.

However, in *qunoot,* it is more appropriate to ask of the Almighty to send the rain down and satisfy the need for water.

Istisqa', lit. Request for irrigation, prayer can be held in congregation only; all those taking part in it, including the *imam,* should implore Allah before, during and after prayer, to alleviate their situation.

Chapter Three

General Guidelines of Prayers

Foreword

We have already discussed the types of prayer, be it obligatory or voluntary, daily or otherwise, the format of each type, and the rules governing each type, We have also discussed that all prayers have certain features in common; this we have mentioned in broad terms.

Here we will dwell on all aspects of prayers. For example, we now know that *ruku'* is a general feature of prayer. But how precisely should it be done so that it can be deemed correct? How low should the worshipper bow down? What sorts of utterances can the worshipper safely embark on while in *ruku'*? What is the alternative if the worshipper cannot do *ruku'* due to illness or the like?

These are the areas we are going to deal with here; we will discuss the general requisites first, then the main or general parts of prayer.

As you may know, we have already discussed, in the Chapters dedicated to *Taharah,* that for prayer to be accepted certain conditions have to be fulfilled, in that the worshipper has to be in a state of *taharah* both in body and in attire; there has to be *wudhu* or *ghusl* in certain cases.

In this Chapter, we will discuss the remaining conditions in some detail:

1. *Qiblah*

1. Generally speaking, *qiblah* means direction. Technically, though, it is the direction where the Holy Ka'ba is situated. Allah, Glorified is He, has ordained that in prayer we should set our faces in that direction.

As a result of making it a *qiblah* for all Muslims, the Holy Ka'ba has become a symbol for their unity and one of the main features of the identity of the Muslim *Ummah.* All Muslims, irrespective of their persuasions, turn to that focal point as an expression of unity in essence and goal.

The Holy Ka'ba is not a *qiblah* as a building, rather a site which extends both upward and downward. That is, if you were aboard a place and wanted to say prayer, it would suffice to face the *qiblah.* If you were in a lower ground floor or in a basement and wanted to pray, you can still face the Ka'ba.

Since the earth is a globe, you can seldom have a straight line between the worshipper in prayer and the Holy Ka'ba, in that most of what you get is a curvature. The yardstick of setting one's face in the direction of the *qiblah* is for the worshipper to choose the shortest of the earth's curvatures nearest to where they are and the Holy Ka'ba.

Suppose your place is situated north of the *qiblah,* i.e. someone quarter of the distance away from the Equator. To determine the direction of Ka'ba, you have to be standing facing South; facing North will not yield the same result. That is because the curvature which sets you apart from Ka'ba in the first instance is equal to one quarter of the earth's diameter, whereas in the second instance, the curvature sets you apart by three quarters the distance. Thus, the first line is shorter and through it the true facing of the *qiblah* is materialized.

Setting one's face in the direction of *qiblah* is a prerequisite for the acceptance of the five obligatory daily prayers in all their parts, including the forgotten ones thereof, which are performed after the prayer has been completed *(sujood* and *tashahhud),* precautionary *ruku',* but not *sujood-as-sahu* (Prostration for omission or commission).

Facing the *qiblah* is also obligatory in all the other types of prayer, be they *wajib* or *mustahab,* such as *ayat* prayer and prayer for the dead.

2. There are some exceptions though, e.g. in a supererogatory prayer said while the person is in motion. The same applies to a passenger in a car, ship, or plane while in motion. If the supererogatory prayer is said while the worshipper is not in any of the previous situations, i.e. stationary, it is not known that their prayer is valid, unless they faced the *qiblah,* as is customary in any obligatory daily prayer.

How can the worshippers be sure that they are facing the *qiblah?*

3. It goes without saying that those living close to the Holy Ka'ba, such as the worshippers in the sanctuary of *al-Masjidil Haraam* (the Grand Mosque) where the Ka'ba takes a center stage, are in a position to ascertain with a degree of ease the direction of *qiblah* and as a result set

their face towards it. Those who live at a great distance from the Ka'ba may face some difficulty in ascertaining the right position of the *qiblah;* and as the distance between their place of domicile or work grows bigger the difficulty becomes more acute.

To overcome this difficulty, people, in Iraq for instance, depended for some time on the compass to determine the location of Makkah, where the Ka'ba is. By pinpointing South and North points, the direction of the Ka'ba can be identified. That is, roughly in the South. However, for the near-exact location, the degree of skewness of Makkah away from the South - because it does not geographically lie exactly in that direction - was taken into account. It was further noticed that there was a degree of imprecision between the magnetic South to which the hand in the compass points and the geographic South according to which the degree of skewness of any given country lie away from the South.

In the light of these discoveries a special compass, used by the worshippers for verifying the direction of the Ka'ba, has been introduced.

Acting according to this compass is permissible and therefore acceptable.

4. Should the worshipper who lives far away not be in a position to determine the direction of the Ka'ba, they can rely on any of the following ways:

a. The testimony, or information, of other Muslims of probity.

b. What Muslims used to know as the direction of the *qiblah,* especially the location of the *mihrab* (prayer niche), usually pointing to the *qiblah,* in their mosques.

c. What Muslims used to practice in burying their dead, where the dead body is usually laid to rest on its right side, facing the *qiblah;* the graves in a cemetery is another indicator to the direction of the *qiblah.*

However, it is permissible for worshippers to rely on these devices, provided that they do not have any information that the devices are erroneous.

5. d. Personal investigation:

Should none of the previous tools be available to the persons concerned, it is obligatory on them to do their best in endeavouring to find the direction of the *qiblah.* Acting on the basis of an informed guess

by observing the distinguishing marks and the evidence would be in order. In this particular case, if a knowledgeable trustworthy person informs them of the direction of the *qiblah,* they are free to rely on the information provided by that person. That is, if their own investigation did not lead them to an informed guess about the direction of the *qiblah,* or such an informed guess concurred with the person's information.

A situation may arise, in that the informed guess of the worshipper, could lead them to a different direction from that of the trustworthy person and that they remained wed to their own conviction. In such a situation, they have, in order to absolve themselves of the responsibility, to say their prayer twice, once in the direction they themselves believe to be the right one and another in the direction they were informed of by the trustworthy person. However, we are more inclined *(aladhhar)* to recommend that the worshipper rely on the information provided by the trustworthy person, and thus a prayer said in that direction would suffice.

Should the *mukallaf* exhaust all avenues only to come to nothing, not even guesswork, one prayer said in any direction they choose would do. That is, if all directions yield the same level of ambiguity; should this not be the case, in that there may be some directions which are less ambiguous, they have to act according to that which is less ambiguous.

Example: The *mukallaf* may be inclined to think that there may be a more than 50% chance that the *qiblah* may lie in one of two directions. In such a case, they have to say their prayer facing one of these two directions.

Veering from the *qiblah*

6. The prayer is deemed *batil*, should they realize that they had said it not facing the *qiblah*. That is, regardless of whether they knew that Allah had ordained that it be said in the direction of the *qiblah* or they were ignorant of the rule. However, should they be unaware of the rule and their realization was that they were standing either to the left or right of the correct direction, the ruling in considering their prayer *batil* is based on obligatory precaution.

7. Once they finished their prayer, which they mistakenly thought was performed in the right direction, what should they do?

A. If they found out after the prayer time for that particular prayer was already up, such a prayer should be in order; accordingly, they do not have to incur anything. Should they realize their mistake while there is still time for prayer, they have to repeat it. That is, if the degree of digression from the *qiblah* was great to the extent that it might have been to their right or their left or their hind. If the degree of deviation was less than that, no repeat prayer should be required.

8. What if the worshipper realized the mistake while the prayer was still in progress?

A. Should the digression be great, as explained in the previous answer, the prayer has to be cut short and a repeat prayer must ensue. Otherwise, the worshipper must correct the angle at the moment they knew of the problem; thus their prayer should be deemed valid, i.e. they do not have to repeat it.

2. What Should be Worn During Prayer

9. It is obligatory on a man embarking on prayer to wear what covers his private parts, irrespective of whether the prayer was performed in private or in public. This is the [minimum] of clothing required in prayer, i.e. a man is not allowed to pray naked.

For a woman, all her body must be covered apart from the face, the hands, and the feet. This covering is obligatory in all prayers, except when performing prayer for the dead; it is also obligatory in precautionary *ruku',* and the forgotten parts of prayer, but not *sujood-as-sahu.*

10. [In an emergency], for a man to say prayer, it is sufficient that he wears one garment covering the anterior and the posterior; it also suffices if he wears a wrapper around his waist or a pair of trousers.

11. Women should cover all their body including the hair, except the face and the hands up to the wrists, and the feet up to the ankles, from the front as well as the back. On this basis, a woman may wear a garment capable of covering her body and a scarf to cover her head and neck; indeed, she may wear one gown, if it was designed to cover all that which must be covered of her body.

12. Transparent clothes, which can barely cover the colour of the skin, would not do as a substitute for the proper clothing required in prayer.

13. If the worshippers do not have clothes, it is obligatory on them to cover themselves with anything that could provide a cover, such as tree leaves or mud. There and then they can say their prayer.

14. Should tree leaves or the like not be available, they have to choose a secluded place to say their prayer to avoid being looked at. If this was not feasible, they should say their prayer seated and nodding for both *ruku'* and *sujood,* doing their best not to expose [more of their body].

If the *mukallafs* happened to be in a place where no onlookers were present, they should perform their prayer in the usual manner. However, they may, out of choice, repeat the prayer from a sitting position, following the same procedure just mentioned.

15. Should any part of the worshipper's body, which should be covered in prayer, be exposed and they came to know about it while prayer was still in progress, yet they did not take remedial action to cover it, their prayer shall be deemed null and void. However, where the worshipper is not aware of the exposure, until they completed their prayer, it should be valid; and they do not have to repeat it. The same applies to him who is ignorant of the fact that covering one's body and private parts is obligatory in prayer. That is, even if nay of his body parts get uncovered without him paying attention to that.

16. Should the worshippers realize, while the prayer is still in progress, that a part of their body got uncovered, their prayer still counts, in that they do not have to repeat it. The same applies to the worshippers who, through ignorance of the rules, say prayer without due care to covering themselves.

Conditions Concerning Clothing

A person embarking on prayer may be wearing one garment, or a number of items, to cover their body. However, no matter what type of clothes you should be wearing, you must fulfill a number of conditions:

a. *Taharah,* the details of which have already been discussed in the Chapter concerning *Najasah,* paras (48 and 71).

17. b. Any clothing should not be made of the skin of hair of an animal whose meat is not *halal* to eat, such as that of any beast; that is, even such animals were killed according to the Islamic code of slaughtering. Prayer said by the worshipper wearing such clothes is not

valid. Nevertheless, any part of such animal coming into contact with the clothes or body of the worshipper will render the prayer *batil.* [For example], should the worshipper pray with cat's hair on their clothes, their prayer is *batil.*

18. However, this ban does not cover all parts of some other living beings, which have no body mass, although eating them is not permissible. Things like mosquitoes, flees, ants, honey and wax [produced by bees], and what is produced by silkworms; pearl shells are also outside the remit of this ban.

19. Things that are linked to the human body, such as hair, milk etc, are also not covered by such a ban, in that prayer is deemed in order even with the presence of any part of these on the body or clothes of the worshipper.

20. The exemption of certain categories of animals among those whose meat is not allowed for eating concerns those whose blood does not spurt out when their blood vessels are severed, be they land or marine animals . Wearing clothes or other clothing items made with [leather or fur] of such animals in prayer is allowed.

21. Doubt may arise as to the origin of an (x) item of clothing, i.e. whether it be traced to an animal whose meat is *haraam* or to that whose meat is *halal.* Such a doubt has no bearing on the validity or otherwise of prayer performed with that item being worn.

22 c. Insofar as men are concerned, they are not allowed to wear any garment made of natural silk, i.e. that which is produced by silkworm; however, synthetic silk and all other delicate soft fabrics are allowed.

23. Prayer would not be good enough, if it was performed by a person wearing pure natural silk; should the garment worn during prayer be made of blended material, it should be in order, barring that the quantity of the non-silk material was so minute that you can hardly trace it.

24. Is it permissible to wear a garment whose lining is made of pure silk? And is wearing such a garment in prayer sanctioned, if silk was used in its embroidery or other accessories?

A. No, for the lining. The rest can be tolerated.

25. Doubt may arise as to the material an (x) garment is made of, i.e. whether it is made of silk or cotton, pure silk or synthetic, pure silk or a

blend, etc. [Such doubt can be ruled out], in that it is permissible to wear it in prayer.

26. The ban on [men] wearing silk is not confined to prayer. It is banned throughout as will be discussed.

27. Women, however, are allowed to wear silk clothes, be it in prayer or outside it.

28. d. Men are not allowed to wear anything made of gold, be it gold ring, watch strap, or pocket watch chain. Prayer is not deemed good enough, if it was said with the man wearing a ring. As for the watch chain, the worshipper is urged, as a matter of *ihtiyat* and *wajib,* not to wear it during prayer.

29. However, men are allowed to carry gold watches in their pockets, use gold crowns on their teeth, gold buttons, and military gold emblems and medals. This does not amount to wearing gold. The criterion for wearing gold is that when the gold item is worn, it should form a ring around any part or limb of the man's body. This is true of the ring, the bracelet and strap; but it is not true of the carried watch or the button.

30. Just as it is not permissible to wear a pure gold ring, so is it not permissible to wear it, if it contained metals other than gold; that said, the percentage of any blend of metal should be minimal, in that such a ring would still be recognized as gold according to established practice *(urf)*. Should the percentage of other metals be such that it can no longer be called gold, it is permissible to wear it during prayer. If the ring was made of gold, but was plated with silver of any other metal, wearing it during prayer is not permissible.

31. Prayer is permissible with the worshipper is wearing a platinum ring. So is it permissible to wear during prayer a ring made of gold that is blended with a white metal such as platinum or silver; yet, the ring in question can no longer be called gold because it has lost its golden colour, in that it has become conspicuously white, so much so that it could be said it is not gold. But, if it still can be called gold, the change of colour to a non-golden one would not affect the ruling [of prohibition].

32. All gold items of jewelry that are forbidden during prayer are equally not permissible to wear outside prayer because wearing them is absolutely *haraam* for men.

33. Women are free to wear gold jewelry, be it during prayer or outside it.

34. It is not permissible for any *mukallafs* to usurp an item of clothing to wear during prayer. Should they wear it, they would be guilty, regardless of whether they said their prayer wearing it or not. If they went ahead and performed prayer in that usurped garment, such a prayer is deemed null and void; that is, if they were aware of the fact that their action, [i.e. usurpation] is *haraam*, and that the garment was big enough to cover the private parts, as a matter of obligatory precaution; if it is not the case, i.e. without it being big enough to cover the private parts, prayer would not be deemed *batil*.

Should we assume that the perpetrator was ignorant, their prayer should be valid, although *ihtiyat* must be followed where the ignorant person was both aware of the rule and negligent.

35. The worshippers may take to prayer wearing that which is not allowed, be it that taken from an animal whose meat is not *halal* to eat, silk garment, gold ring, yet they are not aware or are ignorant that they are not allowed to do so. In such a case, their prayer is valid; they are required to repeat it after they have finished it, should they come to know about the rule. Should they become aware of the rule during prayer, their prayer can still be judged valid, if they hastened to take off the forbidden item they were wearing.

36. In the event of the non-availability of an item of clothes, apart from one that is *najis*, prayer in such a garment would be deemed valid, provided that the worshipper was not in a position to render the garment *tahir*.

37. During prayer the worshipper may [become aware] that the garment they are wearing is made of material taken from an animal whose meat is not permissible to eat. They have to take it off, and where possible, cover themselves with anything available, such as tree leaves.

38. In case one garment, made of pure silk, was available, the worshipper should not contemplate wearing it. The alternative is that they should say their prayer naked, sparing no effort to cover their private parts by way of tree leaves or such like. Should the worshipper not be in a position to take off that garment for any good reason, such as illness, they are allowed to say their prayer in the said garment, provided that it was not feasible, during prayer time, to take if off.

39. The worshipper may have the choice to wear one of two garments, one is *haraam* to wear at all time, including in prayer, such as that made

of pure silk; the other is permissible to wear at all time. However, it was not feasible to distinguish the lawful from the unlawful. Should there be no third garment, the worshipper must say their prayer without either, endeavouring in the process to cover their private parts with tree leaves or the like.

40. Suppose both garments were lawful to wear outside prayer. However, one of them you cannot wear in prayer, such as that made of fur of the beast, and the other you can, such as that made of cotton. Should you be in a position whereby you cannot tell which is which, you have to say prayer twice, once in each of the two garments.

41. It is permissible for the worshippers who are unable to acquire the garment that is lawful to say prayer with, to hasten to say their prayer at its prime time, either naked or using any emergency covering as has already been discussed. That is, even if there was a possibility that the situation might not prevail until the end of prayer time.

However, the said worshipper might have said prayer during the early part of prayer time without the garment that is sanctioned by *shari'a.* After a short while, while there was still time for prayer, they came by a garment which can be worn during prayer. In such a case, the worshipper is not required to repeat their prayer, except In the case where the worshipper state is that they cannot say their prayer only by way of nodding to suggest that what they are doing is either *ruku' or sujood.*

3. The Place of Prayer

42. The worshipper must choose a place where they can perform their prayer with all its requirements while in a stable position. That is, praying in a place which is in constant motion, e.g. on a plane, car, boat, train, or mounted should be avoided, especially if it entails instability of the worshipper in prayers to the extent that it becomes difficult to maintain one's position in relation to the direction of *qiblah.* But supposing that they could, there is no objection to praying in such places.

43. The worshipper may board a train or a plane before prayer time. However, when the time sets in, they could not perform prayer fully in a stable condition; in this case, they either postpone the prayer until they disembark, time permitting, or, if this was not feasible, perform it, doing their best to keep steady and keep staying put in the direction of *qiblah,* at least when uttering *takbiratul ihram.*

44. Suppose a travelling person knew that they would reach their destination just before, say, sunrise, leaving just enough time for performing one *ruku'* of *subh* prayer within the time allowed. Is it preferable to say one's prayer on board the means of transport or to wait until one gets off?

A. If the prayer on board that particular means of transport lacked both steadiness and facing the *qiblah* or just the latter, it is obligatory to wait [until one arrives to one's destination]. If it lacked steadiness, it becomes obligatory to say one's prayer on board the means of transport they happen to be using.

45. It may be possible for a person travelling in a car to stop en-route to say their prayer. Yet, they are not allowed to perform their prayer, if they were not sure of maintaining a position in the direction of the *qiblah,* nor were they sure of achieving stability while in a standing position in that prayer.

The time for a given prayer may enter while the traveller's plane or train is not yet due. Furthermore, the journey may take all the time of prayer and more, In such a case, the *mukallaf* must hasten to say prayer before embarking on their journey. That is, if it is not possible to say it on board.

46. All what we have been discussing thus far applies to the obligatory daily prayers. Any supererogatory prayer can be performed aboard the means of transport the traveller happens to be using. That is, the traveller is not required to observe facing the *qublah,* nor are they required to maintain a steady posture while praying.

47. Praying in the immediate vicinity of the tomb of the infallible, can one occupy a place which could be seen that they are turning their back to the grave?

A. Apparently, it is permissible, unless it constitutes an act of sacrilege as espoused by the generality of men and women *(al urfil aam),* which varies from place to place and community to community.

48. A worshipper might perform his prayer in a place with the permission of the owner. Such a prayer is no doubt valid. However, in certain circumstances it might be deemed *batil.* This is going to be discussed later on under the Rules of *Sujood.*

49. There is no harm in a man praying in a place with a woman praying nearby. It does not matter whether the woman was related to

him or not, nor does it matter whether she was close to him or at some distance, to his right or left, in front or behind.

50. It is permissible for a person to say their prayer inside the Holy Ka'ba.

4. The *Niyyah*

The three elements which constitute the *niyyah:*

51. *Niyyah* is a prerequisite for each and every prayer. That is, it has to fulfill the following:

a. There has to be *niyyah of qurbah* because prayer is an act of worship and thus it would not be good enough without such a *niyyah,* as has already been discussed in the Chapter dealing with Acts of Worship.

b. Genuine intention. That is, it should not be tinged with any hypocrisy as it is *haraam* and thus nullifies prayers. This too has already been discussed in the Chapter on Acts of Worship.

c. Naming the particular prayer one intends to perform, such as *subh, dhuhr, asr, maghrib, isha'* and their twin supererogatory prayers, Juma', *ayat,* late night, *eid, istisqa'* prayers, etc. If the worshippers want to pray a two-*ruk'a* voluntary prayer, they must observe the *niyyah* of *qurbah* in a general sense.

The number of *ruku's* of any prayer is immaterial, be it similar to another one, like *dhuhr, asr* and *isha'* or a unique one, like *maghrib,* i.e. being a three-*ruk'a* prayer. That is, you have to call the prayer you are embarking on by its own name.

Thus, the intention [to perform any particular prayer] becomes an obligation in its own right, regardless of whether or not there be room for getting it wrong. However, we maintain that the intention had to be linked to the name of the prayer in hand, i.e. there might arise confusion *(ishtibah)* without it.

Accordingly, this condition has been considered as one of the prerequisites of *niyyah* – which should not be the case. That is, intending to perform prayer while in one's all senses, cannot be separated from naming the particular prayer in hand.

52. The first two conditions have to be observed in all parts of prayer, right from *takbiratul ihram* to the end. However, this does not mean that

niyyah should be made ahead of prayer; rather it should not be delayed beyond the first of its parts, i.e. *takbiratul ihram.*

Furthermore, in saying that "*niyyah* has to be present throughout prayer" should not mean that the worshipper must be fully aware of the *niyyah* at all time as though they were in the moment of its inception. That is, if the worshipper made *niyyah,* followed it by *takbiratul ihram,* and carried on with their prayer, then forgot about the *niyyah,* their prayer would be valid so long as the *niyyah* is still deep-seated in their mind so much so that if they were asked what they were doing, they would readily reply: We are praying to seek nearness to Allah.

53. As for the intention to say the particular prayer, as called for by the *shari'a,* it must be present throughout. That is, if, while the prayer is still in progress, the worshipper had in mind some other prayer and finished it as such, their originally intended prayer would be *batil,* except in two cases:

54. a. The apparent switch (from one *niyyah* to another) must have been triggered by forgetfulness or absent-mindedness. For example, if you embarked on *subh* prayer, thinking while prayer was still in progress that you were praying a supererogatory one, and completing it as such, a prayer thus performed is valid and will count as *subh.* The opposite is true as well. In short, what counts at the end of the day is the original motivation or intention, and that transient absent-mindedness does not have any bearing on the end result.

55. b. The switching of *niyyah* from one prayer to the other is confined to the cases where it is permissible.

For example, suppose you were praying *asr* only to remember that you did not say *dhuhr.* In such a case, you can switch *niyyah* from **asr** to *dhuhr* and complete your prayer as *dhuhr.*

Another example could be that of a person praying *isha',* who, before the last *ruku',* remebered that they did not perform maghrib prayer, the switch to *maghrib* here is also justified.

A third example could be of a person who, while in prayer, remembered that they should be performing another *qadha'* prayer whose time has preceded the one in hand and that both tally in the number of *ruku's.* They are permitted to make the switch.

56. The worshipper may switch *niyyah* to another prayer where such a switch is not permissible, such as from *dhuhr* to *asr.* Yet, having done

that, they reverted to the *niyyah* of *dhuhr*. Is it permissible for them to do that?

A. It depends on what stage of prayer they were in. However, if they have just started, there is no problem in that. If they have executed any major part of prayer, which cannot be rectified, such as *ruku'*, the prayer is deemed *batil,* in that it should not count, even if it was completed. If the part which has been executed is of the type which can be retaken, such as *tashahhud,* it could be repeated with the newly adopted *niyyah.* That is, if the switch was from *asr* to *dhuhr*, the prayer is valid as *dhuhr,* provided that *tashahhud* is repeated to suit the new *niyyah.*

More details of what can or cannot be repeated will be discussed later on.

57. Once the worshipper resolved which prayer they were going to say, it is not necessary that they state the name of the day it was intended for. So, if it was *dhuhr,* they do not need to allocate it for today or a previous day.

58. The worshipper may inadvertently make *niyyah* for an obligatory daily prayer for a day that has passed, only to realize after they had finished that it was for the current day not the one that had already passed. Such a prayer is valid, in that they do not have to repeat it. This applies too, if the situation was the reverse.

Questions on the Three Prerequisites

59. a. Some prayers are obligatory whereas others are voluntary. Should the worshipper always be alert, i.e. insofar as *niyyah* is concerned, as to the nature of a particular they are performing?

A. It is not a must so long as the worshipper is obedient to Allah's injunctions.

60. b. Hypocrisy could impinge on the major parts of one's prayer, thus rendering it *batil.* It could be confined to the general format of prayer and the voluntary acts that may go into it. Does such hypocrisy detract from the validity of prayer?

A. Voluntary acts connected to prayer may vary and be distinguished from its integral obligatory parts. *Qunoot* is one of these voluntary acts; in other instances, it could be a general state that characterises the way prayer is performed, such as performing it in the mosque or at its prime time.

As for the first case [i.e. *qunoot*], showing off should not invalidate, prayer; nevertheless, the worshipper will be deemed guilty for resorting to hypocrisy. There are two interpretations for the second case:

1. The *mukallaf* could be intent on deception at the outset, i.e. whether or not they prayed. For example, they may aim, from being in the mosque, to give the impression to others that they are among those who frequent the mosque; if it so happened that they said prayer for the sake of Allah, such prayer would be in order.

2. The *mukallaf* could be intent on pulling the wool over the eyes of others. For example,. The intent of the *mukallaf* for being in the mosque could merely be to show that they are keen on choosing what is best for the sake of saying their prayer. A prayer thus performed is *batil.*

61. c. A worshipper may embark on prayer, At some stage in their prayer, they decide to cut it short, or do that which invalidates it. What is the ruling in such a case?

A. Should they choose to revert to their original *niyyah* before executing any part of it or doing that which contravenes and renders it *batil,* their prayer is valid, if they complete it as it ought to be performed.

Should they finish the prayer while still in a state of limbo regarding the *niyyah* of either breaking the prayer or doing that which invalidate it, or remained undecided between breaking and finishing it, their prayer is deemed *batil,* even if they did not do anything that may detract from it in any way.

If the *mukallaf* executed any part thereof after they had decided on the *niyyah* of cutting the prayer short, only to revert to their original *niyyah,* there may be a number of issues to consider:

In the event of having executed *ruku'* or *sujood,* the prayer should be deemed *batil.* If it was other parts or acts of prayer, such as *tashahhud,* the recitation of *suratul-Fatiha* or *dhikr,* the prayer is deemed *batil,* had they made the *niyyah* that *(tashahhud)* was part of the prayer they intended to break. Had this not been their intention, in that they recited *tashahhud* as a unit independent of prayer, they may, if they had changed their mind regarding the *niyyah* of breaking the prayer, repeat same at the time of change and carry on with their prayer. They do not need to do anything else.

The Case for Doubt

62. The worshipper may embark on their prayer with a lingering doubt that they might not be in a position to finish it. For example, you could be saying your prayer in a place renowned for its overcrowding, such as *al Masjidul Haraam* during the pilgrimage season.

Right from the start, you were hoping that you would be able to finish your prayer without being forced to duck and weave, Should this materialize, i.e. saying your entire prayer while still maintaining a steady position, your prayer should be in order and therefore accepted.

63. Those who said their prayer in public but doubt crept into their mind as to whether or not they had intended the prayer for the sake of being seen by others, such prayer does not count.

64. Those who say their prayer in public, knowing full well that they are doing so for the sake of Allah, yet they start having second thoughts that they might be showing off. That is, they made people party to Allah in their motives. This should not detract from the validity of their prayer.

65. Someone embarked on an obligatory daily prayer. At some stage in the prayer, they could not determine whether it was *dhuhr* or *asr* prayer they were performing. What should they do?

A. If they have not said *dhuhr* before that, they should assume that the prayer in hand is that of *dhuhr* and finish it as such. They could then say *asr*. If they have already said *asr,* the prayer in hand is *batil*. They have to start afresh with the *niyyah of asr*. The same goes for the other prayers, *naghrib* and *isha',* unless they have already done the fourth *ruku'*.

66. Suppose someone prepared for *dhuhr* prayer on a given day. Once they embarked on it, having completed quite a portion of it, they started having second thoughts as to whether it was really the same prayer they set out to perform or it could be that they have made *niyyah* for a missed prayer which they did not intend to say. Such a prayer is *batil*. Accordingly, the person must start afresh with a definite *niyyah* for a definite prayer.

67. A person may embark on a particular prayer for the day, only to find themselves not able to decide whether the prayer in hand was really for that day or for a previous day. They may even have doubts as to the nature of prayer, i.e. whether it was an obligatory daily prayer or a supererogatory one. Such a prayer is not good enough. Thus, the worshipper must start anew, determining a proper *niyyah*.

Chapter Four

The Common Parts of Prayer

1. *Takbiratul Ihram*

68. *Takbiratul Ihram,* or the statement of "*Allahu Akbar*" is the inaugural part of prayer. A prophetic *hadith* concludes, *"The moment of takbiratul ihram is uttered, prayer enters a state of consecration, and the moment that state comes to an end is when the worshipper finishes reciting tasleem",* meaning that when the worshipper recites *takbir,* the prayer starts, and thus they should refrain from all that which may render prayer *batil* until all is done with the recitation of *tasleem* where and when the worshipper is considered having discharged their obligation.

For that reason *takbiratul ihram,* and not *niyyah,* has been treated as the first part of prayer. That is because *niyyah* alone does not set prayer rolling.

69. The Wording

"Allahu Akbar", as we have already mentioned is the precise wording of *takbiratul ihram.* That is, no other wording, such as *"Al-Khaliqu Akbar",* or *Allahul Adheem Akbar,* is not admissible. Similarly, any equivalent in any other language is not permissible. Whomever is ignorant of this takbir has to learn it. Should there be not enough time, the worshipper has to be trained into learning how to utter it. If this also fails, they should recite it to the best of their ability. If it is not feasible for non-Arabic speaking people to say it in its Arabic form, they should do their utmost to say it as close as possible to Arabic. Alternatively, they may utter what is equivalent to the Arabic phrase.

70. Insofar as its meaning is concerned, *takbiratul ihram* has to be recited independent of any other utterance, i.e. neither prior to it nor after it. Thus, it is not permissible for the worshipper to say it as part of, say, *"Qaala Mala'ikatu wa Ulul Ilm Allahu Akbar",* or *"Allahu akbar Min Kuli Shay".*

71. As an utterance, *takbiratul ihram* has to be initiated independently.

That is, if the worshipper was talking prior to uttering the phrase, *"Allahu Akbar"*, they have to stop at the last letter in such a way that it forms a complete halt of the last sound to avoid encroaching on the sound of *hamzah* of the word "Allah".

72. Those who could not utter *takbiratul ihram* could intend to do so in their heart and couple that with sign language where possible, as a matter of *al ahwatil awla* (a kind of optional precaution).

73. Conditions: *Takbiratul ihram* must be recited from a standing position. Indeed, the worshipper has to be standing prior uttering *takbir* to ensure that it be recited in that position. Just as it is obligatory to recite it standing, so is it obligatory to maintain a certain posture of the standing position. That is, the worshipper must be calm, collected, stable, and upright. This will be elaborated in para (115), Allah willing.

74. Number of Times: It is obligatory to utter *takbiratul ihram* once. However, it is recommended *(mustahab)* to recite *"Allahu Akbar"* six, four, or two times before the actual one which heralds the start of prayer. In all circumstances, it is preferable to make *niyyah* that the last of these *takbirs* is the obligatory one through which prayer is entered into.

75. During *takbiratul ihrm,* it is *mustahab* for the worshipper to raise their hands close to their ears or face with the palms pointing towards the *qiblah* and the fingers tucked together.

76. Irregularities: Whomsoever skips *takbiratul ihram,* their prayer would not count. That is, irrespective of whether it was done deliberately, including knowingly that it is obligatory, or inadvertently, including if they were ignorant of it being compulsory. He who abandons the standing position while reciting *takbiratul ihram,* preferring to do it from a sitting position should receive the same treatment.

The prayer of a person, uttered from a standing position that is neither a stable nor an upright one, can be sanctioned, provided they were ignorant of the fact that movement in the standing position cannot be tolerated. Conversely, the prayer be deemed *batil.*

Whomsoever, recites a second *takbir,* it is considered as an extra one which might invalidate prayer, if it was done intentionally; should this be the case, they have to recite *takbir* anew to ensure that the prayer is valid. If the action has emanated from ignorance of what is obligatory or it has been done inadvertently, the prayer should stand.

77. Doubt: If the doubt, as to the utterance of *takbiratul ihram* has been done or not, arises prior to the obligatory recitation of *suratul-Fatiha,* the worshipper must utter it. If the doubt arises after the recitation of *al-Fatiha* has actually begun, they must continue with what they are doing.

However, should the worshippers be aware that they recited the *takbir,* yet they doubted whether it was sound, they must rule out such a doubt. That is, regardless where the doubt took place, i.e. after or before embarking on *al-Fatiha.*

2. Recitation During the First and the Second *Ruku'*

By recitation, we mean the recitation from the Holy Qur'an in prayer. *Hadith* has it, *"No prayer [will count], unless the Fatiha [inaugural surah of the Qur'an] is recited in it".*

78. The obligatory part of recitation:

What is obligatory on the worshipper, after uttering *takbiratul ihram,* is to recite *al-Fatiha* and part of any other *surah,* albeit a whole one, after *al-Fatiha* is preferable as a matter of *ihtiyat mustahab.* All this goes for the first as well as the second *ruku'.*

The recitation of the *surah* would not be complete unless it is done with *Basmalah,* i.e. *Bismillahir Rahmanir Rahim,* wherever it is mentioned at the start of the *surah* in the Holy Qur'an. *Basmalah* is an integral part of all *surahs* in the Qur'an except *at-Tawbah.*

79. There can be no prayer without *surah al-Fatiha.* As for the *surahs* which are recited after it, they are obligatory, except in the following cases:

a. It is not obligatory to recite other *surahs* [besides *al-Fatiha*] in the daily supererogatory prayers and other voluntary ones, although it is preferable to recite those *surahs,* even in a supererogatory prayer turned, by way of *nadhr* or the like, to be an obligatory one.

b. The recitation of other *surahs* can be forgone in the event the worshipper find it difficult to do so because of, say, sickness, or being in a hurry to attend a business of his.

c. When time does not allow for reciting both *al-Fatiha* and another *surah,* abandoning the recitation of the second *surah* becomes paramount

for the sake of ensuring that the entire prayer in hand, or at least a greater part thereof, would be said within the given time.

There is though a fourth case which will be discussed in the rules governing congregational prayer, *Inshallah.*

Conditions Concerning the Recitation of the Second *Surah*

Although the Law-giver has left it to the worshippers to choose which *surah,* after *al-Fatiha,* they like to recite, the following conditions have to be observed.

80. a. The worshippers are free to recite a long or a short *surah* from the Holy Qur'an, providing that there is ample time to recite the longer *surahs.* Should they, despite the short time left, deliberately choose to recite a long *surah,* their prayer would be rendered *batil.* If this is done inadvertently, only to realize their mistake, they must switch to reciting a shorter *surah,* time permitting. Should they remain unaware of their mistake until they finished prayer, their prayer would be deemed *batil.* That is, if they were not able to do at least one *ruku'* inside the appointed time of that prayer. In such a case, they have to repeat it by way of *qadha'* as a matter of *ihtiyat.* Otherwise, the prayer is valid.

81. b. It is not permissible for the worshipper to recite any of the four *surahs* of *Azaa'im,* already mentioned in para (45) of the Chapter on *Ghusl.* The reason why it is forbidden to recite them is because they contain *ayahs* which, when recited, makes it incumbent on the worshipper to prostrate themselves; thus, they could be putting themselves in an untenable situation.

However, should this happen, they should perform the prostration as required by the *ayah* and repeat their prayer as a matter of *ihtiyat.* Should the worshipper not prostrate themselves, they would be considered guilty, yet their prayer would still be valid. That said, pointing to the place of *sujood* while reciting the *ayah,* i.e. notionally, cannot be ruled out, provided that prostration is performed after the prayer has finished as a matter of *ihtiyat.*

If the worshipper find themselves in that untenable situation, having inadvertently recited one of these *ayahs,* what should they do?

A. If they realize their mistake before reciting the *ayah* which requires them to prostrate themselves, they can switch to another *surah;* their

prayer should be good enough. It should be alright also, even if they remembered after reciting the *surah* and performing the prostration because such an inadvertent addition in the prayer would not invalidate it.

What would the worshipper do if they heard the *ayah* which calls for prostration recited while they are in prayer?

A. If they heard it just by chance, i.e. without being attentive, they must carry on with their prayer, in which case it shall be deemed valid; they do not need to worry about anything else. Should they listen to it attentively, they can nod in the direction of the place of *sujood,* and finish their prayer, which will be considered a valid one.

All what we have been discussing thus far, concerning the *surahs of Azaa'im,* is confined to the obligatory daily prayers. As for reciting them in any voluntary prayer, it is permissible and there is no problem in carrying out the required *sujood* and carrying on with one's prayer as normal.

82. It is not obligatory to decide on the name of the *surah* right at the start of *basmalah.* That is, you can recite the *basmalah* then recite any *surah* other than, say, the one you have intended, for this reason or the other, in that you do not need to repeat the *basmalah.*

83. Just as the worshipper is free to choose the *surah,* they like to recite besides *al-Fatiha,* so are they free to switch to any other one, except in the following cases:

a. Should they be half way through the *surah* they are reciting, they are not allowed to make the switch.

b. Should they choose to recite *al-Ikhlas* or *al-Kafiroun* right at the outset, they are not permitted to switch to another *surah,* as a matter of obligatory precaution, even if they did not get as far as the half way mark.

c. The worshippers, in Juma' prayer or *dhuhr* prayer on the day of *Juma',* may choose to recite *surah al-Juma'* in the first *ruku'* and *surah al-Munafiqoun* in the second. Should they proceed with the recitation, it is not permissible for them to switch to other *surahs.*

84. The instances where switching to another *surah* is prohibited do not cover the following:

a. The situation where the worshippers are forced to do the switch, such as having started reciting, they forgot part thereof or there was not enough time to finish it. That is, irrespective of what *surah* it was or how long it was.

b. A worshipper performing a supererogatory prayer is free to do the switch as they please.

c. A worshipper performing Juma' prayer or *dhuhr* that day inadvertently started reciting *surahs* other than the intended ones, i.e. *al-Juma'* in the first *ruku'* and *al-Munafiqoun* in the second. Such are free to make the switch to the intended *surahs*.

Suppose a worshipper intended to recite *surah* al-Qadr when he started the *basmalah;* however, they recited *al-Ikhlas* instead without actually intending to do so. There is no harm in their reverting to their first *niyyah* by reciting *al-Qadr*. They would not be treated as though they have made the switch from *al-Ikhlas*.

Conditions for Recitation

85. a. The recitation of the second *surah* has to follow the recitation of *al-Fatiha,* i.e. it is not permissible to recite it before *al-Fatiha*.

86. b. The recitation has to be correct. This could be achieved through the following:

87. a/1. In identifying the Qura'nic text, one can rely on what is contained in the Holy Book, i.e. the print form, or on a recognized way of recitation dating back to the early days of Islam and the Imams (a.s.). This may include the seven official recitations. Accordingly, the worshipper is free to recite any variation of such as that found in *surah al-Fatiha* for the phrases, *"Maaliki yawmiddin"* and *"Meliki yawmiddin", "Siratal lathena"* either with a *'Seen' or with a 'Sad'*, or that found in *surah al-Ikhlas* concerning the word, *"Kufuwan", "Kufwan", "Kufu'an"*, and *"Kuf'an"*. These variations are all acceptable because they have already been covered by the seven officially recognized recitations.

If the recitation is an odd one, i.e. not commonly known at the first era of Islam, it is not permissible to rely on in identifying the correct recitation of the *ayahs* of the Holy Qur'an. For example, some had recited, *"Malaka yawmiddin"* by making *'malaka"* as a past tense verb; this is very odd and therefore should not be recited in prayer.

There is no harm if the worshippers recited in the Holy Qur'an or were made to repeat the *ayahs* after they have been recited by someone who is proficient in the recitation. This is particularly true when the worshippers have just embraced Islam [and may not have any knowledge of Arabic].

If this is not feasible, yet the worshipper can recite *al-Fatiha* and a part of a second *surah*, this would be sufficient, even with their ability to learn the *surah* in its entirety. Should the case be that the worshipper only knows how to recite part of *al-Fatiha*, reciting this part would do. However, they should, as a matter of voluntary *ihtiyat*, make up the shortfall by whatever they know of other *ayahs*. In this case what counts is not the number of missing *ayahs of al-Fatiha;* rather, the quantity. That is, the compensatory *ayah* should not be shorter than the unrecited *ayah* of *al-Fatiha*.

In case the worshipper is not in a position to recite anything, be it *al-Fatiha* or other *ayahs*, they have to resort to *takbir*, *tasbih*, and exaltation (the utterance of *La illaha illal lah*). As a matter of *ihtiyat*, the latter should be on a par with *al-Fatiha*, i.e. quantity wise.

88. a/2. The worshipper should observe the *harakat* (symbols appearing above or below the Arabic characters that denote and aid the proper pronunciation of the words), the words. However, when stopping at the last letter of a word, there is a choice of either pronouncing that *harakah* or not, i.e. resorting to *sukoon*. This is also true when one decides to recite it as a run-on *ayah*.

89. a/3. The worshippers must [do their best] to achieve the proper pronunciation of each and every letter in the word as the Arabic speaking people do.

90. a/4. One has to be mindful of the proper pronunciation of the *'hamzah'* which is found, for example, above the *'alif* of the word 'Allah', or *'Iyyaka'*. That is, if you start with it, you have to pronounce it; if it was part of a sentence and preceded by a word ending with a letter with *harakah*, like *dhammah* or *kasrah*, you have to drop the *'hamzah'*, if it was *'hamzat wasl;* and keep it if it was *'hamzat qat'*.

For example, if you were to read, *"Bismillahir Rahmanir Rahim"* in one go, you have to drop the *'hamzah'* that appears above all the *'alifs'- of the word Allah, Arrahman*, and Arrahim, as the *'hamzah'* here is that of *'wasl'*.

As for the *'hamzat qat'*, if you were to read, *"Maaliki yawmiddin, Iyyaka na'budu wa Iyyaka nasta'een"*, you have to keep the *'hamzah'* above the first letter of the word *Iyyaka*.

91 a/5. *'al'* [which is equivalent to the definite article 'the' in English] may be added to certain words, such as *'al-hamd'*, *'ar-rahman'*, *'ar-rahim'*. At some instances you have to pronounce the 'l' of 'al' fully, at others you have to drop; it, the latter is called *idgham* (amalgamation, or assimilation).

Idgham takes place with thirteen letters of the Arabic alphabet, such as *'ta'*, *'tha' and dal*. So, you should not pronounce the "lam" in the words, *al-rahman, al-rahim, al-sirat,* and *al-dhaleen;* [instead the 'l' sound is replaced by the sound of the next letter thus: *ar-rahman, ar-rahim, as-sirat,* and *adhaleen*]. This is in contrast to pronouncing the 'l' sound in such words as *al-hamd, al-'alamin,* and *al-mustaqeem*.

92. For a variety of reasons, there may be worshippers who are not proficient enough in Arabic; some may stammer, others may be non-Arabs, etc. They must do their best to learn Arabic. Should this not yield results, they are excused. Accordingly, the prayer they recite in any way possible shall be valid. They may also resort to praying behind another worshipper [who is proficient in Arabic] to make do with their recitation; this though is not obligatory.

93. Saying prayer to one's best ability is applicable to the ignorant, who is willing to learn, although it is not obligatory on him to say his prayer behind an *imam*. The ignorant we are talking about is the one who cannot do both, i.e. learning and praying, at that point in time. That is, he could take to being coached in reciting at some other time.

94. As for the ignorant, who is capable of learning before the time of prayer and is aware of his responsibility to seek learning, yet he did not bother, he has to seek to say his prayer behind another person where possible. Failing to do so and ending in saying his prayer solo, his prayer would be deemed *batil*. If he kept procrastinating till it was late, and did not succeed in his bid to find an *imam*, it is obligatory on him to perform his prayer to the best of his ability; although such a prayer shall count, he would be considered guilty for being apathetic.

95. A worshipper in prayer became doubtful as to the correct pronunciation of a word. They have to seek guidance in this regard, even if it led them to cut short their prayer, i.e. time, permitting. If this was not

feasible, even on grounds of time, they have to resort to *ihtiyat* in pronouncing the word in both the possibilities; in so doing, they do not need to repeat their prayer. This is so because the [doubtful pronunciation] is not part of the ordinary man's speech.

96. c. The worshipper has to pronounce each and every word in the usual manner, i.e. as is commonly recognized. That is, breaking the word into syllables is not acceptable. Should anything of this sort inadvertently happen, the word cannot be admissible; the worshipper has to repeat it as it should be pronounced. If the worshipper resorts to this intentionally at the outset, it would invalidate the entire prayer. However, should they do it while pronouncing the word, they have to repeat pronouncing it in a proper way; their prayer would be valid.

This also applies to playing with other rules of Arabic syntax and grammar.

The worshipper has to maintain the order of the *ayahs*, be they those of *al-Fatiha* or the second *surah*, as they appear in the Holy Qur'an. They should also maintain an unbroken sequence between the *ayahs*, i.e. there should not be undue pauses between them a well as between any two sentences in one *ayah*. The criterion here should be judged against the established practice *(urf)*. However, halting the recitation for a cough or the like, albeit long, should not be a problem.

97. d. It is obligatory that the worshipper recites [the *surahs*] audibly *(jahr)* at times, and inaudibly *(ikhfat)* at others.

Where should each mode of speech be used?

It is obligatory on a man to recite *al-Fatiha* and the second *surah* in *subh* prayer, the first and second *ruku'* of *maghrib* and *isha'* audibly. He must inaudibly recite *al-Fatiha* and the second *surah* in the first and second *ruku'* of *dhuhr* and *asr*.

However, it is not obligatory to recite the *basmalah* inaudibly. It is *mustahab* that it be recited audibly in each and every prayer. *Dhuhr* prayer on a Friday can be said in either way. As for Juma' prayer, the *imam* has to recite the *surahs* audibly.

Women have to observe inaudible recitation in the same way men do. As for cases of audible recitation, they have the choice between audible and inaudible recitation.

98. At any rate, the worshippers, be they men or women, should overdo neither. That is, audible reciting should not border on screaming and inaudible reciting should not border on mumbling.

As for utterances, other than *Al-Fatiha* and the second *surah,* such as *takbir, dhikr, tashahhud,* etc. the worshipper is free to recite them either audibly or inaudible.

99. e. Just as the worshippers are required to recite *takbiratul ihram* from a standing position, so are they required to maintain a standing position while reciting *al-Fatiha* and the second *surah.* It s also obligatory on them to maintain a stable position while reciting. However, certain situations may arise where the worshippers are required to move sideways, forward or backward. Provided that they maintain facing the *qiblah,* they should abandon the recitation at the moment of making the move and resume it after that.

100. Lapse: If the worshippers deliberately do anything which may in any way detract from the recitation, [of that which has so far been discussed], their prayer shall be deemed *batil.*

However, if they have done so inadvertently or through ignorance, their prayer should be deemed valid. So, if they realized their oversight after they had finished their prayer, they need not worry. The same applies, if the realization occurs during prayer, but after the worshipper had performed *ruku'* where the lapse in recitation took place. They may become aware of the error prior to actually bowing for *ruku'.* In such a case, they must take remedial action, unless they no longer maintained stability of the standing position, or audible/inaudible recitation where required, in that they are not required to repeat the recitation so long as the mistake was made either unintentionally or due to forgetfulness or ignorance.

The *mukallafs* may be [vaguely] aware of the requirements of the two modes of recitation, i.e. audibly or inaudibly. However, on embarking on a particular prayer, they were not sure what mode is actually required of them. Suppose that audible reciting was required, yet they did the reverse, only to discover their mistake, having finished their prayer. A prayer thus performed would still count, provided that, at the outset, they intended that Allah, the Exalted, would accept it as it was recited.

101. Doubt: The worshipper may harbour doubt about the soundness of their recitation of *al-Fatiha* and the second *Surah* or part thereof.

Should this happen, after they have finished the recitation, they do not have to worry.

If the doubt arose about whether the worshipper recited, say, the first *ayah* of *al-Fatiha* while they were reciting the second *ayah,* they should not worry.

If the doubt aros as to whether or not *al-Fatiha* was recited while the recitation of, say, *al-Ikhlas* was in progress, they need not worry.

However, it is obligatory to recite *al-Fatiha* and the second *surah,* if the worshippers found themselves, immediately after *takbiratul ihram,* speechless not knowing whether they recited them.

Should the worshippers resolve the doubt that they really did recite *al-Fatiha,* yet they are at a loss whether they recited the second *surah,* they must hasten to recite it.

Any doubt about any of the preceding situations, which may arise after the worshipper had bowed for *ruku'* must be ruled out.

102. Decorum: It is *mustahab* to say, *"A'oudhu Billanhi Minash Shaitanir Rajim",* I seek refuge with Allah from the accursed Satan, before the inauguration of recitation in the first *ruku'.*

A short pause is also *mustahab* after the recitation of *al-Fatiha,* just before reciting the second *surah.*

It is *mustahab* to say, *"Alhamdu Lillahi Rabil A'lamin",* Praise be to Allah, Lord of the Worlds, upon finishing *al-Fatiha;* also saying, *"Kathalikal Lahu Rabi",* That is My Lord, upon finishing *al-Ikhlas.*

It is *mustahab* that the worshippers recite, in their prayer, once a day at least *al-Ikhlas.*

Although it is recommended for the worshippers not to recite, after *al-Fatiha,* two complete *surahs* of the Holy Qur'an, there is no harm if they chose to do so.

3. *Ruku'*

Upon finishing the recitation, it is obligatory on the worshippers to perform *ruku'. Ruku'* is an obligatory part of each and every prayer, be it obligatory or supererogatory, for no *rak'a'* (unit) shall count without the actual bowing act *(ruku'),* showing humility to the Almighty. So, if the bowing was intended to pick up something from the floor, for example, it would not count as *ruku';* consequently, the worshipper has to go back to a standing position to execute *ruku'* afresh.

Ruku' has certain requirements:

103. a. It should be performed from a standing position because bending down could be executed from a standing position or from a kneeling one. The obligatory *ruku,'* which is a prerequisite in prayer, is the one performed from a standing position.

104. b. The *ruku'* should follow the recitation from an upright standing position, in that any other *ruku'* executed from other positions, including a standing one, which is not upright, would not do.

105. c. The level of bowing in *ruku'* must be such that the finger tips of the worshipper should reach their knees. If the worshipper's hand was either extraordinarily big or small, their bowing should be on a par with the average worshipper.

106. d. *Ruku'* must be done once in each *rak'a';* thus, if two *ruku's* were performed in any one *ruku',* the prayer would be rendered *batil. Ayat* prayer, which has already been discussed in the Cchapter on Types of Prayer, para (194), is an exception because each *rak'a* of it consists of five *ruku's* (bowings).

107. e. While maintaining stability in their bowing position for *ruku',* the worshipper must utter any of these phrases, *"Subhana Rabbiyal Adheemi wa Bihamdih",* at least once, *"Subhanal Lah", "Alhamdu Lillah", "La Illaha Illal Lah", "Allahu Akbar"* at least three times; a sick person can recite it once.

The obligatory stability, or steadiness, in *ruku'* should be in Arabic, giving due attention to things like proper pronunciation and the rules of Arabic syntax. The worshippers are free to recite *dhikr* audibly or inaudibly.

108. f. On finishing *ruku'* the worshipper should go back to an upright standing position, maintaining a repose state.

109. Inability to perform *ruku'* as it should be done: *Ruku'* is obligatory, even if the worshippers were not in a position to maintain stability while performing it. The same goes for a person who cannot bend fully for *ruku'.* If it is not at all possible to bend, a nod would do. *Ruku'* from a sitting position would not do.

110. Lapses: If the worshippers skipped any *ruku'* of a prayer, such a prayer should be deemed *batil,* irrespective whether they did it intentionally or inadvertently.

The same goes for abandoning (a) the first of the six obligations, already discussed, such as performing *ruku'* while sitting, (b) the second: performing *ruku'* from a sitting position not an upright standing one, (c) the third: not reaching the required level of bending in *ruku'*, and (d) the fourth: by executing two *ruku's* in any one *rak'a'*.

111. Omitting *dhikr* while in *ruku'* could have one of two outcomes. If the worshipper did it deliberately while they are aware it is obligatory, their prayer should be deemed *batil.*

If there was no malice, i.e. either due to forgetfulness or sheer ignorance that it is obligatory, the prayer should be valid. In such a case, they are not required to repeat *dhikr*, if they realized the oversight after lifting their head from *ruku'*.

112. The worshipper may deliberately recite *dhikr* while not maintaining a calm and collected posture. Their prayer is *batil,* if they have intended to treat such a *dhikr* as part and parcel of the prayer. Conversely, this would not detract from their prayer; however, they have to repeat *dhikr*.

Should this happen due to an oversight or ignorance of the rules, the prayer is valid and the worshipper is not required to repeat *dhikr*, even if they discovered the omission just before lifting their head from *ruku'*.

The same rule applies to a worshipper not performing *dhikr* in the proper manner for reasons beyond his control, such as being forced to move or sway in his *ruku'* because of overcrowding for example.

113. What shall be the position of a worshipper who inadvertently forgot to perform *ruku'*?

A. If the worshipper realized the omission after they had performed the second of the two *sujood,* [no remedy can be applied], in that the prayer is *batil*. They have to start again.

If the realization takes place performing the second *sujood,* they should go back to the upright standing position, perform *ruku'* and finish their prayer. They are not required to repeat anything, no matter whether or not they entered in the first *sujood;* had they done so, they should have considered it cancelled.

114. Doubts: If the worshipper found themselves in a standing position not knowing whether or not they had performed *ruku'*, they

must hasten to do it. The same applies in the case of *dhikr,* in that the worshipper did not know whether or not they were still in a bowing position.

115. Doubt about performing *ruku'* arising while performing *sujood,* or on the way to performing it after *ruku',* must be ruled out.

116. After performing *ruku'* and lifting one's head, one may entertain a doubt whether he has executed *ruku'* properly, or recited *dhikr* as it should be recited. Such doubts should be ruled out.

117. Decorum: It is *mustahab* for the worshipper to recite *takbir* by lifting both their hands as close as possible to their ears or to both the sides of their face before actually going into a bowing position for *ruku'.*

Once assuming a bowing position, it is *mustahab* for the worshipper to place their hands of their knees - although it is recommended for women to place their hands on their thighs - push the knees backward [as though to straighten the legs], straighten the back, stretch the neck to form a straight line with the back, look at the spot between the feet, repeat *tasbih* [*dhikr*] three, five, seven times or more, and utter the phrase, *"Sami'al Lahu Limen Hamidah"* upon lifting the head from *ruku'.*

4. *Sujood*

118. After performing *ruku'* and going back to an upright standing position, the worshippers have to perform two *sujoods;* prostrating twice in each and every *rak'a* of obligatory as well as supererogatory prayer is obligatory. That is, any *ruku'* would not count if there was no *sujood.*

By *sujood,* we mean placing one's forehead on the earth or what is grown in it as a mark of submission to Allah, the exalted. This, however, will be elaborated later. Not any placing of the forehead thus is considered *sujood;* rather the positioning which is conductive to support, concentration, and learning not mere touching.

Sujood has certain requirements:

119. a. The placing of the forehead on the earth should be done in such a way that an area of one [square] inch or slightly less than that of the forehead should come into contact. Thus, it is not sufficient to prostrate on an area equivalent to a pin head of the position of *sujood,* for example. Placing the entire forehead or quite a big chunk of it on the earth is not good enough either.

Should the worshipper be nursing an injury in the forehead, he must do his best to place the sound part, if any, on the earth. If this is not feasible, priority should be given to one of the two temples for performing *sujood.* As a matter of optional *ihtiyat,* preference should be given to the right temple. If this was feasible, using one's chin in performing *sujood* should come next. If all the alternatives are exhausted, a nod would do.

120. b. The worshipper performing *sujood* should place the palms of their hands in the place where they are praying. If this was not feasible, the back of the hands would do. For an amputee, the stump would suffice. Placing the finger tips would not do, nor would a clutched hand. It is sufficient to place the hands on the earth not exactly fully.

121. c. Ensuring that at least part of the knees are secured firmly on the ground.

122. d. Placing the feet toes on the ground.

The forehead, the hands, the knees, and the toes are called the seven body parts of *sujood.*

123. e. While repose, the worshipper can recite any of the following phrases in their *sujood:*

"Subhana Rabbiyal A'ala Wabihamdih" at least once, *"Subhanal Lah"* at least three times. They could choose from the other phrases of *dhikr* mentioned in *Ruku',* para (107); they are free to recite *dhikr* audibly or inaudibly.

While in *sujood,* the worshipper must remain in a calm and collected state throughout with the forehead, the hands, the knees, and toes securely placed in the manner we have just described.

124. A worshipper, in the process of performing *sujood,* had a rebound of the head which caused his forehead to be raised slightly from the place of *sujood;* this could have happened inadvertently either before or after *dhikr.* How should they go about it?

A. If this happened in the first *sujood,* the *sujood* should be considered done with. If the worshipper was able to keep steady and prevent his forehead from falling again on the place of *sujood,* they must go back to a calm and collected sitting position in order to perform the second *sujood.* If their forehead fell again on the place of *sujood* through no fault of

theirs, they have to lift their head, repeat *sujood* and carry on with their prayer till the end.

Should this happen in the second *sujood,* the same should apply.

125. f. Upon lifting their head from *sujood,* the worshipper must go back to a siting position and maintain a state of steadiness and calmness. That is, the sitting position should serve as a springboard to performing the second *sujood* just as the case in performing *ruku'* from a standing position, in which, again, the worshipper has to be upright and repose.

As a matter of *ihtiyat,* it is *mustahab* that the worshipper sits still for a very short time after performing the second *sujood.* This is so, even if he is not required to attend to any other part of the prayer, such as *tashahhud or tasleem;* this is true in the case of the first and the third *ruku'* of a four-*rak'a* prayer.

126. g. The spot where the worshipper should place their forehead has to be level with their standing position. However, slight unevenness, i.e. not more than a fist (circa 8cm), can be tolerated. What is not required is achieving a level pegging position between the rest of the parts of *sujood* not between any one of them, or between the latter and the place of *sujood.* That is, it is permissible that the place of the hands or knees be below, or above, the level of the place of *sujood* by a maximum height of a fist. The same goes for disparity of positions of the hands and knees.

127. h. The place where the worshipper should position the seven parts, while performing *sujood* in prayer, has to be either owned by them, free for all, or owned by someone else who has given them permission to use it. If the place belongs to the others and permission was not granted, the worshipper is not allowed to usurp it to perform *sujood* in it. Should this happen, the prayer is rendered *batil.*

Suppose someone usurped a plot of land from another and annexed it to his own house. The usurper stood for prayer on that land. Having shouted *takbir,* recited *al-Fatiha,* and performed *ruku',* he moved few steps to enter into his own territory to ensure that all seven parts of *sujood* are securely positioned there, i.e. outside the usurped area. His prayer should be in order because judging prayer not in order, and therefore *batil,* revolves around the place where the worshipper is at the time of *sujood.*

What we mean by "the place" is the area which the worshipper's body occupies, i.e. not the surroundings, be they walls, roofs, etc. Should these

be *maghsoub* (usurped, the prayer should not be rendered *batil,* so long as the seven body parts of the worshipper come into contact with the area which is not *maghsoub.*

If the usurped land was paved with any kind of material or tarmac, that are lawful *(mubah),* prayer on such a land should be valid. Using any type of furnishing, such as a prayer mat, in order to perform prayer in a usurped placed is not sufficient to render the prayer valid.

A prayer of a prisoner, performing it in a usurped place, is valid.

The place where the worshipper intends to perform prayer may not be *maghsoub.* Yet, it is strongly advisable that they leave it. It may even become *haraam* for them to stay there, if it will lead to endangering their physical or spiritual wellbeing, in that they may commit that which is *haraam* whether intentionally or inadvertently. If the worshipper went against this advice, stayed in that forbidden place, and said prayer, such a prayer will not be considered good enough.

Mere suspicion that the place is *maghsoub* should render any prayer performed there *batil,* if it was done at will. It is irrelevant if it was discovered later on that the place is not really usurped, that it is *mubah* (lawful), and that it is not out of bounds.

If the ownership of the land is not known it is difficult to trace the owner, the *Marji'* should be approached for permission to say prayer there.

"The permission of the owner" means that they are neither averse to, nor hard pressed in letting you pray. If you have any doubt about that, it is not permissible to say prayer there. If you have peace of mind that the owner does not hate to see you pray, there is no harm in performing prayer there. However, reaching "peace of mind" could materialize either by the owner's declaration, established practice, or the worshipper's own hunch that the owner will not be annoyed to see them pray.

That said, the worshipper could conclude that the owner would not mind that he can have a free hand in his land. Accordingly, the worshipper said his prayer there, only to discover that he was in the wrong. His prayer is not good enough.

128. i. The worshipper must not perform more than two *sujoods* in one *ruku'.* The *sujood* should only be performed in its place, i.e. not before and not after it is due. That is, if the worshipper deliberately performed,

say, three *sujoods* or the *sujood* was performed prior to *ruku'*, it is not permissible and consequently the prayer is deemed *batil.*

129. j. The place of *sujood* has to fulfill the following requirements:

j/1. It must be *tahir.* However, this condition does not include all the area where the worshipper is performing their prayer. If all was *najis* save the place of *sujood,* this will be sufficient for the validity of prayer, provided that the *najis* area or the clothes of worshipper were not wet where it may be conducive to permeating *najasha.*

j/2. The place of *sujood* must be solid enough as not to allow the forehead of the worshipper to sink, i.e. not muddy or soft. If it is not solid enough, *sujood* can be performed, but not with sufficient weight. The worshipper is strongly urged, as a matter of obligatory precaution, to observe this point with regard to all seven parts, i.e. they need to be secured while *sujood* is being performed.

If the place was soft, yet it would enable the worshippers to secure their forehead in it after exerting some pressure, this would be sufficient Example: You could place a piece of paper on a furnishing consisting of fluffy cotton. When you place your forehead for *sujood* on it, it will certainly sink until it reaches a point where it settles. Only there and then you could say *dhikr;* such a *sujood* is sound enough.

j/3. The thing used for prostration *(sujood)* should be part of the earth or that which is grown in it, but generally not of that which is eaten or worn. Of no importance too is that which could, seldom or due to an emergency, be eaten or worn. By "eaten or worn", we mean that which is conducive to eating and wearing, albeit it may need processing (cooking) to be eaten, or weaving to be worn.

Among the things that are permissible to perform *sujood* on are those mentioned in para (14) of the Chapter on *Tayammum.*

Suppose a worshipper brought with him something to perform *sujood* on. Embarking on prayer, he lost it. What should he do?

A. Should there be time for prayer, albeit for one *ruku',* he has to cut the prayer short and resume it [after making available that which can be used for *sujood].* Should there be no time, he can use his clothes to perform *sujood,* irrespective of what fabric they are made of. If this was not feasible, *sujood* can be performed on anything available [at the time].

Is it permissible to perform *sujood* on a piece of paper?

A. It is permissible. However, it is preferable, as a matter of voluntary precaution, to avoid using paper made from cotton, flax, or linen, i.e. which are originally forbidden to use for *sujood.*

A worshipper may mistakenly use a piece of synthetic material in their *sujood* believing that it is some sort of paper. After performing the first or second *sujood* they realize that it is not of what is permitted to use for *sujood.* They are free to either cut short their prayer and start again, or carry on till the end, observing in the latter case that the *sujoods* that will follow should be performed properly; having opted for this, repeating the whole prayer is recommended on the grounds that it is better as a matter of voluntary precaution.

130. **Cases of Disability:**

He who cannot bend for *sujood* should do his best to perform it, even if it calls for raising the place of *sujood* to the level where he can perform it. That said, the worshipper should ensure that the rest of the body parts be positioned in their respective places on the same level on the floor.

Should the [temporary or permanent] disability be such that the worshipper cannot bend, they or someone else, as the case may be, should raise that which was permitted to perform *sujood* on to their forehead and nod. If nodding was not possible, an eye blink would suffice.

131. **Lapses:**

Should the worshipper either omit, or add to, the two *sujoods,* at any *ruku',* their prayer shall be deemed *batil* (void). This is so irrespective of whether or not it was done knowingly and deliberately, due to forgetfulness, or through ignorance.

It could happen that a worshipper omits one of the two *sujoods.* Should this be deliberate, the prayer is deemed unsound. However, if it arose from forgetfulness or unawareness of the rules, the prayer is in order. Yet, the worshipper must hasten to do good the *sujood* they omitted and perform the compensatory *sujood-as-sahu.* This will be elaborated when we discuss "the lapses' in the Chapter on "General Guidelines".

If one extra *sujood* was performed, the prayer shall be considered lacking when it has been done with intent. It will be accepted though, if it was done inadvertently or due to unawareness of the requirements of the procedure.

What would the worshipper do if they omit performing one or two *sujoods* after they have already stood up for another *ruku'?*

A. If the omission was made in both the *sujoods* and the realization did not occur until the worshipper had already gone into *ruku'*, the prayer should be deemed *batil.* If the omission was made in one of the two *sujoods* and the realization of one's mistake occurred after *ruku'*, they should proceed with the prayer which will then be deemed sound. However, at the end of the prayer, they must perform the one *sujood* by way of compensation together with *sajdatay-as-sahu.*

Should the omission of one or the two *sujoods* be discovered before bowing for *ruku'*, the worshipper must hasten to go back to a prostration position to perform the *sujoods* they missed. They should then continue their prayer as normal till completion, in which case they are not required to do any thing else.

If after *tashahhud* and *tasleem,* the worshipper discovered that they forgot to perform one or both the *sujoods* of the last *ruku'*, what should they do?

A. Among the items listed under the "Nullifiers of Prayer" in the Chapter on "General Guidelines of Prayers" is deliberate action which could render it invalid, such as talking; other nullifiers could be the commissioning of any action, albeit inadvertent, such as that which may require [new] *wudhu,* [such as breaking wind].

Accordingly, if the worshipper discovered their mistake after *tasleem* and before embarking on anything which might be considered a nullifier of prayer, they should perform what they had omitted from *sujood,* say *tashahhud* and *tasleem,* provided that not a considerable time has passed which may impinge on the continuity; they do not need to do anything else.

The same applies if the action commissioned was of the first degree, i.e. that which is not done with intent, such as talking. For the second type of nullifiers, there are two possibilities (a) If two *sujoods* were omitted, the prayer is *batil.* (b) If one *sujood* was omitted, the prayer is in order, provided that the omitted *sujood* has to be performed, while the worshipper is in a state of *taharah* alongside *sajdatay-as-sahu.*

The following lapses do not call for any remedial action: (a) performing *sujood* after forgetting to say *dhikr.* (b) saying *dhikr* without maintaining a repose state while standing. (c) making inadvertent

movement while reciting *dhikr* as is the case in *ruku'* which has already been discussed.

132. **Managing Doubt:**

While standing, a worshipper could not decide whether such a standing was after performing the two *sujoods* of a previous *ruku'* or they have just lifted their head from a *ruku'* on their way to perform the two *sujoods* for the *rak'a* in hand. They should resolve such a doubt by assuming that their standing is the one before *sujood*, in which case they must perform the two *sujoods*. On completion, they should rise to a new *ruku'*.

While in a sitting position, a worshipper could not decide whether they performed one or two *sujoods*. They must resolve such wavering by performing a second *sujood*.

Should the same uncertainty arise while the worshipper is on their way from a sitting position to a new *ruku'*, they should not pay attention to such a doubt.

If the doubt arises after standing for a new *ruku'* or embarking on *tashahhud* in the second and fourth *ruku'*, they should not pay attention to such a doubt.

If after lifting their head from *sujood*, a person became doubtful as to the validity of their *sujood*, they should not worry. Similarly, if the doubt was more to do with the correctness or otherwise of *dhikr* during *sujood*.

133. **Decorum:**

After lifting their head from *ruku'*, while still maintaining an upright position, and during the utterance of *takbir*, it is *mustahab* for the worshipper to raise their hands to the level of their ears or the sides of their face, before going for *sujood*.

While performing *sujood*, it is *mustahab* to place their nose on something in the same way the seven parts of the body are positioned. *Dhikr [tasbih]* can be repeated three, five or seven times, which is the best.

Upon lifting the head from the first *ruku'* and having settled in their sitting position, it is *mustahab* that the worshippers recite *takbir*. The same is recommended on the way to performing the second *sujood* and upon raising the head from the second *sujood*.

Sujood alone is considered among the greatest acts of worship, provided that it is done exclusively out of submission to Allah Almighty. *Hadith* has it, *"The closest man can be to their Creator is when they are prostrating"*. *Sujood* and showing humility before Allah is His exclusive domain, i.e. it is *haraam* to perform *sujood* to anyone save Him.

It is obligatory to perform *sujood* upon reciting or hearing the recitation of any of the four *ayahs* of *sujood* which have already been mentioned in para (42) of the section on *Ghusl/* Chapter of *taharah*. By "recitation", we mean proper pronunciation of the words, in that silent reading has no consequence. Repeating the recitation requires repeated *sujoods*. Hearing the *ayahs* recited should imply listening attentively. Listening to the *ayahs* recited included live recitation, broadcasting, and playing a tape recorder. In all these cases *sujood* is obligatory.

listening to the *ayahs* recited while in the street or in a car where *sujood* is not feasible requires the worshipper to nod as a matter of voluntary *ihtiyat*. Performing *sujood* should be postponed to the nearest possible opportunity.

That said, one does not have to observe any of the obligations required for the *sujood* in a usual prayer. Also, it is not obligatory to recite either *dhikr,* or *takbir*. Similarly, neither *taharah* nor facing the direction of *qiblah* has to be adhered to. The only thing that should be observed is the proper implementation of the *sujood* itself, i.e. by positioning the forehead, the hands, knees, and feet toes on the floor.

Among the strongly recommended *(mustahab)* acts of worship is the *sujood* of thanksgiving *(sajdatay-ash-shukr)*. This could be performed upon the renewal of every bounty and the banishment of every wrath, and upon the bestowal of every success to perform every obligation or carrying out an honourable deed. While in prostration, you should say, *"Shakran Lillah"* - Praise be Allah once or more. It is most preferable that it is repeated hundred times.

5. *Tashahhud* and *Tasleem*

Tashahhud

134. Upon finishing the second *sujood* of the first *rak'a* going back to a sitting position, the worshipper should stand up for the second *ruku'*. Upon finishing the second *sujood* of the second *rak'a,* it is obligatory on them to sit and recite *tashahhud. Tashahhud* means bearing witness that

Allah is one and that Mohammad (s.a.w) is His messenger; also invoking blessing and benediction for the Prophet and his pure progeny. As a matter of obligatory precaution, the wording of *tashahhud* is as follows, *"Ashhadu Alla Illaha Illal Lah, Wahdahu La Sharika Lah, Wa Ashhadu Anna Mohammadan Abduhu Wa Rasuluh, Allahumma Sali Ala Mohammadin Wa Aali Mohammad"* – I bear witness that there is no god but Allah and that Mohammad is his servant and messenger. O Lord! bless Mohammad and the Progeny of Mohammad.

If the prayer is a two-*rak'a* one, the worshipper should recite *tasleem* after *tashahhud,* thus bringing it to a close. If it is a three-*rak'a* prayer, the third *ruku'* must be performed after *tashahhud.* On completing it, a second *tashahhud* must be recited followed by *tasleem.* In a four-*rak'a* prayer, the fourth *ruku',* must immediately be performed after the third one leading to a second *tashahhud* and *tasleem.*

To sum up, *tashahhud* is required once in a two-*rak'a* prayer and twice in a three-*rak'a* and four-*rak'a* ones.

135. **What is required?**

It is obligatory to maintain one's peace and composure while sitting and reciting *tashahhud.* There is no harm though in moving the hand, provided that it does not impinge on the steadiness of the worshipper while they are seated. Thus, it is not permissible to recite it while in the process of raising one's head from *sujood,* nor on the way up to assume a standing position.

It has to be recited in Arabic and without a break or pause. The worshipper is free to recite *tashahhud* either audibly or inaudibly.

Should the worshipper not be in a position to learn how to recite *tashahhud* so much so that they become hard pressed for time, they must seek help from someone who could coach them to do so; they can even read it out from a paper where possible. If this is not feasible, anything which may serve as testament of faith would do. Non-Arabic speakers, who cannot say *tashahhud* in Arabic, can recite the equivalent in their mother tongue until they learn how to say it in Arabic.

136. **Lapses**

If one is aware that it is not permissible for them to skip *tashahhud* in their prayer, yet they do so deliberately, such a prayer shall be deemed *batil.* Should this be done inadvertently or due to ignorance of the rules, the prayer should be in order. That said, to make good such a prayer, the

worshipper should recite compensatory *tashahhud* alongside *sajdatay-as-sahu* as will be discussed later.

Should the mistake of not saying *tashahhud* be discovered after rising for the third *ruku'*, what should one do?

A. If the discovery is made before actually bowing down for *ruku'*, the worshipper should take remedial action by going back to a sitting position to say *tashahhud* and carry on with the rest of the prayer. If the discovery is made after *ruku'*, the worshipper should continue with their prayer till the end. Upon finishing it, they should say compensatory *tashahhud* and *sajdatay-as-sahu*.

137. **Managing Doubt**

If the worshipper found themselves sitting after the second *ruku'* not knowing whether they said *tashahhud*, they must do so. If the doubt creeps in upon rising for the third *ruku'*, they should go back to a sitting position and say *tashahhud*. If the same occurs after the worshipper has stood upright for the third *ruku'*, they should continue with their prayer.

The latter ruling applies in such cases as the remembering of the ostensibly omitted *tashahhud* occurs (a) after embarking on *tasleem* of the last *ruku'*, and (b) after finishing the entirety of *tashahhud* or part thereof, doubting the propriety of reciting it. No repeat is required.

138. **Decorum**

It is *mustahab* for the worshipper to inaugurate *tashahhud* by saying, *"Alhamdu Lillah"*, or *"Bismillahi wa Billah, wal Hamdu Lilah, wa Khairil Asma'ie Lillah"*, or *"Al Asma'ul Husna Kullaha Lillah"*.

It is also *mustahab* to say, *"Wataqabbal Shafa'atahu Warfa' Darajatah'*, after saying, *"Allahuma Salli Ala Mohammadin Wa'ali Mohammad"*. It is strongly recommended that the worshipper rests both his hands, with the fingers tucked, on his thighs.

Tasleem

139. *Tasleem* is the last part of prayer; it follows from *tashahhud* of the last *ruku'* of each and every prayer. Its completion heralds the end of prayer, and thus the worshipper is free from the restrictions which they are bound by while the prayer is in progress. Accordingly, they can go about their business as usual. This will be elaborated in the section

discussing the "Nullifiers of Prayer" in the Chapter on the "General Guidelines of Prayers".

In a two-*rak'a* prayer *tashahhud* and *tasleem* are recited in the end of the second *ruku'*. In a three-*rak'a* one, both are recited in the end of the third *ruku'*. In a four-*rak'a* prayer both are recited in the end of the fourth *ruku'*.

There are two texts for *tasleem*. The first is, *"Assalamu Alaina Wa Ala Ibadillahis Saliheen"* and the second is, *"Assalamu Alaikum, Wa Rahmatullahi Wa Barakatuh"*. The worshipper is free to choose either. However, it is preferable, as a matter of choice, that both are recited, starting with the first one first, immediately followed by the second.

Should both be recited, the first text should be deemed as the obligatory one and second is the voluntary *(mustahab)*.

Should the worshipper choose to say, *"Assalamu Alaikum"* of the second text alone, their prayer should be alright.

All the other conditions, such as sitting calm and collected etc., which should be fulfilled during *tashahhud* have to be met in *tasleem*. All matters applicable to a person with disability or someone who is not aware of the rules in *tashahhud* are applicable in *tasleem*. The worshipper has the choice of reciting *tasleem* either audibly or inaudibly.

140. **Lapses**

Two situations might arise as a result of forgetting to recite *tasleem*.

a. Provided that the worshipper did not do anything that constitutes a breach of the sanctity of prayer, they can recite *tasleem* which they might have thought they had omitted. Such a prayer is deemed in order with the proviso that not a long period had elapsed since they finished their prayer. Conversely, they are not required to recite *tasleem*, and thus render their prayer valid.

b. If before they discovered their mistake, they had already commissioned that which detract from the validity of prayer, their prayer is apparently in order; that said, repeating it is desirable, as a matter of voluntary *ihtiyat*. However, if that was not as a result of forgetting to recite *tasleem*, and the worshipper commissioned that which invalidates prayer, they should repeat it, as a matter of obligatory *ihtiyat*. This is so, unless the action which invalidated prayer had occurred inadvertently, especially if it was among those actions which do not

render prayer void due to the nature of the omission; the prayer is deemed sound.

141. **Managing Doubt**

If the worshipper was not sure as to whether or not they said *tasleem,* it is not obligatory on them to do so. That is, if the doubt comes about after a long period had elapsed on prayer; also, if they had commissioned any action which render prayer invalid, i.e. those "nullifiers of prayer" already discussed in para (131). Apart from those two situations, *tasleem* has to be recited; in doing so, the prayer will then be deemed valid. This includes the doubt as to whether or not *tasleem* was recited that might have arisen after finishing prayer and embarking on supplication.

If, after finishing *tasleem*, the doubt has more to do with the propriety or otherwise of *tasleem* itself, they should disregard such doubt.

142. **Decorum**

We have already mentioned that it is preferable to combine both the statements in *tasleem.* Better still if they are preceded by, *"Assalamu Alaika Ayyuhan Nabiyu Wa Rahmatul Lahi Wa Barakatuh".*

It is also *mustahab* that the worshippers place their hands on their thighs while reciting *tasleem* as in the case of *tashahhud.*

6. What should be recited in the last two *ruku's*?

143. In a three-*rak'a* and a four-*rak'a* prayer the worshipper should, after the *tashahhud* of the second *ruku,* rise for the third *ruku'* of a three-*rak'a* prayer and for the third and fourth *ruku'* respectively of a four-*rak'a* one.

Here, we are going to discuss what the worshipper should recite in those *ruku's,* after assuming a standing position with full composure.

The worshipper has the choice of reciting *suratul-Fatiha* or *tasbih* [*dhikr*] *(Subhanal Lah, wal Hamdu Lillah, wala Illaha Illal Lah, wal Lahu Akbar);* reciting this once would suffice. The *imam* (leader) of prayer and those praying behind him are treated in the same way insofar as *tasbih* is concerned. However, it is most desirable that one goes for *tasbih.*

144. It is obligatory to recite inaudibly in both the third and fourth *ruku'.* This goes for both the choices, i.e. *tasbih* or *suratul-Fatiha.* In the latter, the worshipper can recite *basmalah* audibly. The rules of Arabic phonetics, grammar, and syntax have to be observed. One should

maintain his composure and stillness while standing upright and reciting *tasbih* or *al-Fatuha* in exact compliance with the procedure in the first two *ruku's.*

145. If the worshipper intended to recite *al-Fatiha,* yet they found themselves inadvertently reciting *tasbih* or vice versa, whatever they uttered shall be deemed in order. In the event of doing such a thing with intent, only to switch to the choice, they are free to do so. The worshipper may think that they are still in the first or second *ruku'* of their prayer, and thus they recite *al-Fatiha.* However, having finished reciting it, they realize that they are in the third or the fourth *ruku'.* Whatever they had recited would do.

146. **Lapses**

In case the worshipper knowingly and deliberately flout the rules by performing *ruku'* without reciting either *tasbih* or *al-Fatiha,* their prayer shall be deemed null an void *(batil).* Conversely, if this was done inadvertently or due to unawareness of the rules, the prayer is sound. However, if the worshippers discovered the mistake before actually embarking on *ruku',* they have to recite that which they are required to recite, even if they were on the way to performing *ruku',* i.e. they should go back to a standing position to carry out the recitation [of either *tasbih* or *al-Fatiha*].

Insofar as the mode of recitation is concerned, nothing is required of the worshipper who either inadvertently or due to ignorance of the rules, recites *tasbih* or *al-Fatiha* audibly. This is so, even if discovering the mistake happens before performing *ruku',* i.e. no repeat is required.

147. **Managing Doubt**

If the worshipper, who is in a standing position in the third or fourth *ruku'* of their prayer, harbour any doubt as to whether they recited *al-Fatiha* or *tasbih,* it is obligatory on thim to do so. Should this happen on the way to bowing for *ruku',* they should go back to a standing position to do the recitation. However, if the worshipper has already assumed a bowing position, they should carry on and need not pay attention to the doubt. As for the situation of the worshipper doubting the propriety or otherwise of their recitation after they had finished it, again they must carry on, overruling such a doubt.

148. **Decorum**

It is *mustahab* for the worshipper to complement *tasbih* with *istighfar,*

i.e. by saying, *"Astaghfirul Lahi wa Atoubu Ilaih"* – I ask Allah's forgiveness and repent to Him, or *"Allahuma Ighfir Lee"* – O Lord! Forgive me.

7. *Qunoot*

149. Of the *mustahab* (voluntary) parts of prayer, any prayer, is *qunoot*. The worshipper will be rewarded for doing it; that said, no harm would befall them if they abandon it. Literally, *qunoot* means submission; technically, it is a kind of supplication and praising the Almighty at a specific stage of the prayer. It is *mustahab* in both obligatory and optional prayers.

As to its order in prayer, it follows from the recitation of the second *ruku'*, i.e. before actually bowing for *ruku'* itself.

There are though few exceptions; because *Watr* Prayer consists of one *ruku'*, the *qunoot* should be performed before its *ruku'*; Juma' Prayer; because it consists of two *qunoots;* please refer to para (44) of the Chapter on Types of Prayer; the third exception is *Eid* prayer as has been detailed in para (202) of the above-mentioned Chapter.

There is no particular utterance in *qunoot*. Any supplication, *dhikr*, praising of, and thanksgiving to Allah would do. The worshipper's mistakes in Arabic, both phonetically and grammar-wise, should be tolerated.

If the worshipper forgets to recite *qunoot*, only to discover that after rising from *ruku'*, they can say it there and then. If remembering the omission occurred on the way to bowing for *ruku'*, but just before assuming the actual *ruku'* position, one should straighten one's back by going to a standing position to recite it.

It is *mustahab* to shout *takbir* before *qunoot*, and raise one's hands to the level of the face while performing it.

8. Praying from a Standing or Sitting Position

150. In the light of what we have discussed, there seems to be five instances of obligatory *qiyam* (standing upright during prayer) in prayer.

a. Upon reciting *takbiratul ihram*.

b. During the recitation or *tasbih*.

c. The one that precedes the *ruku'*.

d. The one assumed before the *ruku'*, i.e. from a standing position, not a sitting one.

e. The one assumed after rising from *ruku'*.

Omitting any of these *qiyams* deliberately and knowingly renders prayer *batil.*

However, doing it due to an oversight or if the worshipper is unaware of the rules would render prayer *batil,* if the mistake happens in any of the *qiyams* listed under (a), e.g. by reciting *takbiratul ihram* while seated (c), e.g. performing *ruku'* after rising from a sitting position and (d), e.g. performing *ruku'* while seated.

The prayer will not be deemed *batil,* if the mistake occurs in any of the *qiyams* listed under (b), e.g. reciting or uttering *tasbih* while seated and (e), e.g. by going straight for *sujood* from a *ruku'* posture without standing upright.

Prayer can be performed from a standing or a sitting position. In the prayer performed from a standing position, the worshipper is required to maintain the five *qiyams.* The prayer performed from a sitting position is the one conducted while the worshipper is seated from the start, i.e. *takbiratul ihram,* to the finish.

In the five obligatory daily prayers, it is not permissible to switch from a standing posture to a sitting one, unless in an emergency, as will be discussed.

151. Wherever possible there are certain requirements that should be fulfilled by the worshipper conducting prayer from a standing position:

a. Standing straight and upright, in that slouching and leaning right or left is not permissible, nor is spreading one's legs, which would detract from standing upright.

There is an exception though, i.e. the *qiyam* discussed in para (150/d), in that the *qiyam* of the worshipper just about to embark on *ruku'*, [by its very nature], should not require standing straight and upright. What is required is that the worshipper should perform such *ruku'* from a standing not a sitting position.

b. Standing, i.e. it is not permissible for the worshipper to shout or recite *al-Fatiha* for example while walking.

c. Maintaining a repose state while standing; the exception here is the third type of *qiyam* described in para (150/c), i.e. the *qiyam* that precedes the *ruku'*.

It is not a condition that the worshipper stands on both their feet. Provided that they fulfil the aforesaid requirements, standing on one feet would suffice.

Nor is it conditional that the worshipper stands independently. Leaning on a wall or suchlike for support would be alright.

152. Instances where the worshipper is unable to pray from a standing position.

In such a case the worshipper should do their level best to maintain a standing position in the light of the following:

a. Should it be within their ability to maintain *qiyam*, but unable to bow for *ruku'*, they are advised, as a matter of *ihtiyat*, to say prayer twice, i.e. praying once from a standing position and substituting *ruku'* with a nod, and a second time again from a standing position and performing *ruku'* from a sitting position.

However, nodding can be tolerated as a matter of voluntary option *(al aqwa)*.

b. The worshipper may start their prayer from a standing position and be able to maintain *qiyam*, yet they are neither able to bow for *ruku'* nor conduct a *ruku'* from a sitting position. Such people have the choice of either praying from a standing position and nodding for *ruku'* or praying from a sitting position. In such a case, they should chose the first alternative.

c. Should the worshippers be in a position to maintain *qiyam*, without fulfilling the aforesaid requirements, it is obligatory on them to do so to the best of their ability, in that it is not permissible for them to pray from a sitting position.

d. If the worshipper cannot sustain *qiyam* throughout prayer, it is obligatory on them to maintain it during the early *ruku's* until such a time comes that they can no longer be able to do so, in which case they must revert to a sitting position. Should they be able to regain strength, they must resume the standing position, and so on.

e. Should the worshipper be entirely unable to maintain *qiyam*, they should resort to praying from a sitting position.

However, having said prayer from a sitting position only to be in a position some time later to say it from a standing position, the worshipper must, time permitting, hasten to repeat the prayer in the

case of (e), so as the case in (a) and (b). As for case (c), a repeat is obligatory in the event of the worshipper's having the confidence, at the outset, to maintain obligatory *qiyam*. Conversely, no repeat shall be due.

Case (d) again hinges on the confidence of the worshipper when they first set out for prayer. Should they be in a position to predict that they would be able to pray from a standing position later in the time allotted, their remedial action should be to repeat the prayer. Otherwise, they must take into consideration what they have missed of *qiyam;* if it was the first, the third, or the fourth type [discussed in para 150], a repeat prayer shall be obligatory. Otherwise, it shall not.

153. The worshipper opting for saying prayer from a sitting position must observe all the requirements called for during *qiyam* in a prayer performed from a standing position, i.e. sitting repose, upright, and straight.

In case prayer from a sitting position is not feasible, the worshipper should resort to lying on their right side, facing the *qiblah* with their upper body in the same way a dead person is laid to rest. If this is not conceivable, lying on the left side should be taken up. Should this not be possible, the worshipper should perform prayer lying on their back, with the soles of their feet pointing to the *qiblah,* in the same way a dying person is made to lie.

Worshippers praying while on their side or back can nod for *ruku'* and *sujood.* However, nodding for *sujood* must be conducted in such a way that it should be lower than that done for *ruku'*. If nodding is not feasible, an eye blink would do.

9. How Should the Parts of Prayer be Carried out?

The Order of Parts

154. The lawful order of all the parts in prayer must be observed, for each of which has its own slot in the chain. Thus, it is not permissible to embark on any part prematurely. Whosoever, deliberately and knowingly, contravene this rule, by, for example, performing *sujood* before *ruku'* or *tashahhud* before *sujood,* their prayer would be deemed *batil.*

There is a case for the worshipper who, either inadvertently or through ignorance of the rules, does not adhere to the order of the parts of prayer. The following lapses may occur: (a) performing two *sujoods*

before actually performing *ruku'*, (b) performing a new *ruku'* before performing *sujood* for a previous *ruku'*, (c) performing *ruku'* before reciting *takbiratul ihram,* or (d) any other action that detracts from the order. Contravening the order in the first three instances would render prayer *batil.* Otherwise, It would not.

Succession of the Parts

155. It is to be noted that some parts of the prayer are performed successively and others are interrupted by short pauses, such as in the case of rising from *ruku'* and waiting for a minute or so until finding something to perform *sujood* on. In a third instance, the interruption could take such a considerable time that prayer, as a whole unit, can no longer be considered viable. The latter is not permissible, and would render prayer *batil,* regardless of whether the mistake was made intentionally or inadvertently. It is desirable that prayer is performed according to the first two modes, although it is most desirable that it is performed according to the first form.

Epilogue

a. Commissioning Extra Things in Prayer

156. It is not permissible for the worshipper to add anything extra to the prayer's legally required parts. Such extras could take the following forms:

1. Performing two *rak'as* or three *sujoods* in any one *ruku',* irrespective of the motive for the extra *rak'a* or *sujood,* i.e. by considering it part of the prayer or in the case of the extra *sujood* being intended for thanksgiving, for example.

2. Repeating any parts of prayer, other than *ruku'* or *sujood,* by way of meaning the repeat to be part thereof, such as reciting *suratul-Fatiha* twice or performing *tashahhud* twice, would be deemed an increase. However, if the second recitation is intended as a mere Qur'anic recitation, or the second *tashahhud* as sort of remembrance of Allah and His Messenger and a supplication, it would not be considered an extra part.

3. Deliberately commissioning that which is not of prayer, both in utterance and movement, intending it to be part thereof is considered an

extra action. For example, cracking one's fingers or closing the eyes. However, doing any of these or others for any other reason, should not be an addition, in which case it would not detract from the sanctity and validity of prayer, unless the action impinges on the overall image of prayer.

Whosoever intentionally and knowingly sets out to introducing anything, of that which has just been discussed, to their prayer, would risk rendering it *batil*. Doing so inadvertently or for being unaware of the rules would not render prayer null and void, apart from performing an extra *ruku'* or extra *sujoods* in one *rak'a*.

b. The Best Manner of Conducting Prayer

157. Allah, the Exalted, says: **"Successful indeed are the believers, who are humble in their prayer"** (23/1-2). It has been reported from the Prophet (p.) and the Imams (a.s.), in a number of *hadiths*, that the most important of the worshipper's prayer will be those parts of it which will be accepted, that one should not embark on prayer with an occupied mind; they should set their heart on their Lord, abandoning every worldly affair. Prayer is a means to having audience with Allah and thus the worshipper should be humble before Him, showing fearfulness, submissiveness, and tranquillity, aspiring to all that which would make them cherish His bounty and mercy.

It has also been related that when Imam Ali bin al-Hussain (a.s.) used to embark on prayer he resembled a tree trunk in its stillness, i.e. nothing moved except that which the wind fluttered. When Imams al-Baqir and as-Sadiq (a.s.) embarked on prayer, their colour kept changing from red to yellow and vice versa as though they were whispering to that whom they could see.

When the worshipper inaugurates prayer with the shout of *(Allahu Akbar)*, he should live the full meaning of this phrase, in that this world and all what it resembles should become trivial in his eyes. And when the worshipper recites *(Iyyaka Na'budu wa Iyyaka Nasta'in)*, he should be truthful with his Creator, in that he should not be slave to his whims and not seek support from any other save from Him.

Chapter Five

General Guidelines

Foreword

There are rules which are designed to regulate the daily prayers, in that they do not cover other prayers, such as *qasr* (shortened) prayer required by the travelling person. There are other rules, however, which are not confined to daily prayers; they extend to cover other prayers, such as judging any prayer *batil*, if the worshipper commissioned any action *(hadath)* that impinges on the requirements of prayer.

Another rule which straddles daily prayers and other types of prayer is that of *qadha'*, as in the prayer of *ayat* sometimes. A third example is that of congregational prayer, in that in so much as it is lawful in the daily prayer, so is it in *Eid* prayers, *Ayat* prayer, and *Istisqa'* prayer.

The first category of rules has been covered in the Chapter dedicated to Daily Prayers. Here we will concentrate on the second category as follows:

a. Nullifiers of prayer.

b. *Qadaha.*

c. Lapses.

d. Doubt.

e. Congregational prayer.

f. The differences between obligatory and supererogatory prayers.

1. Things that Nullify Prayer

In all its forms, save that said for the dead, prayer would be rendered null and void *(batil)* if certain things take place while it is being said. Some of these would unequivocally render prayer *batil,* whereas others would make it incumbent on the worshipper to repeat their prayer, as a matter of obligatory precaution:

1. a. The worshipper may, during prayer, do or get subjected to that which detracts from its sanctity, thus requiring them to perform *wudhu* or *ghusl*. Whether the encroachment happens deliberately or inadvertently, in the beginning or in the end of prayer is immaterial. The worshipper has to repeat his prayer as a matter of *ihtiyat*.

2. b. Deliberately turning ones face or body away from the *qiblah* should render prayer *batil*, regardless of whatever remedial action the worshipper takes. However, in the event of oversight, the prayer should not be considered *batil*, except in two situations, (a) if he discovers the omission/commission before the end of time of prayer; should he remember after that, he is not required to repeat the prayer, and (b) the turning away from *qiblah* is so acute that he turns his back, his right or left side to it. Any veering from *qiblah* which is less than 90 degrees (right angle) can be tolerated.

3. c. Should the worshipper do that which would encroach upon the form and content of prayer, this would render if *batil*. Whether the action committed came about deliberately, involuntarily, or inadvertently is irrelevant. For example, dancing, or going about ones business in the usual manner, a mother suckling her baby, a doctor attending to his patient, etc.

There is no harm in making slight movements during prayer, provided that it maintains its general look. Movements such as pointing to something with a wave of a hand, putting something on the head or removing it, bending to pick something up, slight walking sideways, provided that the worshipper maintains facing the *qiblah*, can be tolerated. It is permissible to kill harmful animals, such as scorpion and snake [should they pose danger to you].

4. d. Laughter renders prayer null, whether done voluntarily or involuntarily. Should laughter come about inadvertently, it shall not detract from prayer.

Smiling, albeit deliberate, would not render prayer *batil*. Nor would controlable laughter, i.e. the worshipper's controlling themselves short of bursting with giggling.

5. e. As a matter of *ihtiyat*, weeping would render prayer null, if any of the following was present, even if it comes about unwillingly:

a. Tearfulness, even though without sobbing.

b. The motivation for weeping is personal, such as bereavement.

Should the motive be spiritual, it would not detract from prayer. For example, crying out of submission to Allah, yearning to obtain His pleasure, or pleading with Him to facilitate a pressing matter.

c. Weeping while the worshipper is aware that prayer is in progress. Crying without due awareness to the fact that they are praying should not detract from the validity of prayer.

6. f. Eating and drinking, irrespective of whether it would affect the form and content of prayer.

However, in *Watr* Prayer the worshipper, who is thirsty and intending to fast, can walk two or three steps to drink water and return to his place of prayer to finish it. That is, if the water was close to him, and only if time was pressing.

There is no harm in the worshipper's swallowing remnants of food left in his mouth.

7. Talking in prayer is forbidden, albeit uttering one letter or sound that may or may not make sense and regardless of whether or not the worshipper was addressing someone. However, unintentional talk can be tolerated.

There is no harm in coughing, cleaning ones throat, yawning, puffing etc.

The exception to talking in prayer can be of the following:

8. a. If speech is of the sort that is addressed to Allah, the Most High, by way of whispered prayer *(munajat)*.

9. b. If it is a kind of *dhikr* or supplication, provided that it is not addressed to Allah, the Exalted, in that if the worshipper were to say, *"Ghafaral Lahu Lak!"* – May Allah forgive you, the prayer will be rendered *batil*. That is, although the expression is a kind of *dua* (supplication), yet it is meant for someone other than Him Saying, *"Ighfir Lee"* – O Allah! Forgive me, or *"Ghafaral Lahu Liabi"* - May Allah forgive my father, should not render prayer *batil*.

10. c. If speech is confined to reciting verses from the Holy Qur'an, it will not detract from the validity of prayer.

11. d. Returning a Muslim's salutation in kind is allowed, i.e. by repeating such expressions as, *"As-Salamu Alaik, Salamun Alaik,* or *As-Salamu Alaikum"*. If the greetings took such expressions as, *"Alaikas Salam,* or *Alaikumus Salam",* the worshipper is free to return the

salutation in the manner they prefer, i.e. starting or ending with the word, *"Alaika"* or *"Alaikum"*.

If the worshipper cannot make out the exact expression, they are free to use, *"Salamun Alaikum"* or *"Alaikumus Salam"*. However, as a matter of *ihtiyat,* returning the salutation, using the Qura'nic expression, *"Salamun Alaikum"* is desirable, even if the words of the salutation were different.

Should the worshipper choose not to return the greeting, their prayer can still be valid, although they are deemed negligent.

12. Ignorance of the rules shall not render to prayer of the worshipper *batil,* apart from those things that invalidate prayer discussed in paras (1/a) and (2/b) and that which may derogate the form and content of prayer.

13. Crossing the hands while reciting in prayer is not called for. If the worshippers resort to it as though it is required and liked by the Law-giver, they would commit that which is *haraam.* However, he who does it without intending it to be part of prayer, his prayer is valid. If he meant it to be part thereof, his prayer is invalid, as a matter of *ihtiyat,* unless he mistakenly thought that it was part of prayer.

The same goes for saying, *"Aamin"* – Amen, after the recitation of *suratul-Fatiha.*

If the worshipper harbours any doubt whether they have committed anything that could have invalidated prayer, they should ignore such doubt.

14. Interrupting optional prayer can be tolerated. Obligatory prayer should not be interrupted as a matter of obligatory precaution. That is, only in an emergency or for a justifiable need. For example, a worshipper, who is alone in the house, and while praying, they hear knocking on the door or the telephone ringing; since it is important for them to know who the caller is, and that continuing prayer would deny them the opportunity to do so, they are justified in interrupting the prayer.

2. Saying Prayer by Way of *Qadha*

Although the words *"ada* and *qadha"* could have different meanings, from a juridical perspective we mainly use *"ada"* in the sense that performing the required thing in its prescribed time without delay.

"qadha" is performing the required thing after its time has passed by way of compensation. For example, we describe a worshipper who performed *Asr* prayer before the sunset as "having performed it *ada*"; should they postpone its performance until after sunset, they are described as "having performed it *qadha*".

What can be performed *qadha*?

15. It is obligatory to perform, by way of *qadha,* the five obligatory daily prayers in the event of missing any one of them. If is obligatory also to perform *Ayat* Prayer *qadha* in all the cases except one, i.e. where the eclipse, of the moon or sun, is a full one. However, should the *mukallaf* be unaware of the eclipse, no *qadha* is required. It is obligatory though in all the other instances.

16. It is *mustahab* to say, by way of *qadha,* the supererogatory daily prayers that the worshipper did not say on time.

17. Again it is *mustahab* to say, by way of *qadha,* other missed seasonal, i.e. timely supererogatory prayers, such as the prayer of the first of the mouth. The exception is *Eid* prayers, in that they cannot be said *qadha* as will be discussed.

18. If a *nadhr* gave rise to any supererogatory prayer becoming *wajib* which was not said on time, it has to be said *qadha* as a matter of obligatory precaution.

19. No *qadha* is required in these cases, (a) *Juma;* prayer; *Dhuhr* must be performed in lieu, (b) *Eid* prayers, (c) Non-timely supererogatory prayers, unless it is desirable that the *mukallaf* who had made a vow *(nadhr)* to perform one of them in a particular time to do so. Failing that they have to resort to saying it *qadha;* Should they choose not to do the latter they would not be deemed sinful.

Why should one say *qadha* prayer?

20. The reason why the worshippers should resort to saying prayer by way of *qadha* is their missing out on performing the prayer properly on its prescribed time. This could come about as a result of either an outright omission on the part of the worshipper, or they may have performed it, yet without due care to fulfilling the legal requirements, and thus rendering it void.

21. Not everyone who misses prayer has to perform it *qadha*. This depends on one of two factors:

a. The person's duty might be that he should say the particular prayer in a given time, yet he did not discharge his obligation either out of rebellion, forgetfulness, or ignorance of the rules. He, then, has to compensate for it. The exception is the unbeliever who has been brought up thus; he is not required to compensate for any prayer he had abandoned because he was not required to perform prayer to start with. As for the Muslim who had turned apostate and thus turned his back to prayer, he has to perform prayer by way of *qadha*.

b. The obligation of the person to say the particular prayer may have been waived at the time due to the absence of the third condition of the general precepts, i.e. the ability to carry it out. Such people should say prayer by way of *qadha* irrespective of the nature of their inability, i.e. whether or not they have control over it; for example a sleeping person who could not get up for prayer and another whose reason for not praying on time could have been non-availability of water for *wudhu* or dust for *tayammum*. That said, resorting to *qadha* in this instance is recommended on the basis of *ihtiyat* which should not be forsaken.

In all these cases, *qadha* is obligatory. However, the patient who became unconscious due to no fault of his is a special case.

22. In the light of the above, it is apparent that those who miss out on prayer because they were young - i.e. before attaining adulthood - insane, in *haydh* or *nifas* are not required to say compensatory prayers. That is, they are not required to do so at the outset because of their respective situations at the time of prayer.

23. The moment the circumstances change, i.e. the person attains adulthood, the insane becomes sane, the unconscious comes around, and the unbeliever embraces Islam, it is incumbent on each one of them to say prayer. That is, even though there is only sufficient time for just one *ruku'* and with *tayammum* instead of *wudhu*. Failure to comply with that could give rise to saying prayer *qadha*. Should there not be enough time for even one *ruku'* when the circumstances changed, no prayer is called for, neither *ada* nor *qadha*.

24. The time for prayer may set in while the woman is in *haydh*. However, she may find herself *tahir* before the end of time. She could take one of the following courses of action.

a. Should her period come to an end while there is still time for *ghusl* and prayer, she must hasten to do so. Failing to comply will give rise to saying prayer *qadha*.

b. Should there not be ample time for *ghusl*, rather for *tayammum*, she should opt for *tayammum* and say her prayer. If she does not, she has to resort to praying *qadha*.

25. The time for prayer may set in while the worshipper is still in sound health. Should the worshipper experience about of insanity or unconsciousness within the time allotted for prayer before he could say prayer, it is obligatory on him to say it by way of *qadha* after he restored his health. That is, if the period prior to the bout was sufficient for a full prayer and it was within the worshipper's ability to make himself *tahir* for it before the onset of time. Conversely, no *qadha* is required.

The same goes for a woman in *haydh* in the same circumstances just discussed.

How should *qadha* prayer be conducted?

26. Prayer performed by way of *qadha* must be carried out in exactly the same way as though it is being performed *ada*. So, if the worshipper missed a prayer while on a journey *(musafir)*, he should compensate for it by way of *qasr*, even if he reached his home town and vice versa, i.e. insofar as *tamam* prayer goes.

The time for prayer may set in while the worshipper is away on a trip. He returns home before the end of time and still could not pray. It is obligatory on him to perform it *qadha* and *tamam* in the light of his circumstances at the end of time. If the situation was the opposite, he should perform it *qasr*.

27. There is no set time for performing *qadha* prayer. The worshipper who is required to perform *qadha* prayer can do so at any time he chooses. It is not obligatory on him to hasten to perform it. Postponing it can be tolerated, unless he becomes negligent.

Accordingly, if, for example, there was a backlog of prayers for one year or one month, the worshippers can say *qadha* prayer, starting with this order: *Subh, dhuhr, asr, maghrib,* and *isah'*. They may opt for another way, in that they could start with any outstanding prayer, say *subh,* till it is done with, i.e. for the whole period, then with *dhuhr* and son on.

29. Managing Doubt

In the event of uncertainty whether worshippers performed a previous prayer, they are not required to perform it. The worshippers could be aware that they had missed out on prayer at an early stage of their life, yet they are not sure whether they had attained adulthood then. It is not obligatory on them to perform any prayer by way of *qadha.*

The worshippers could be aware that they missed a prayer, yet they are not sure whether it was *subh, dhuhr,* or *maghrib.* In this case, they should perform three different prayers, i.e. a two-*rak'a,* a three-*rak'a,* and a four-*rak'a,* respectively. Should the worshipper not be in a position to tell whether the missed prayer was *dhuhr, asr,* or *isha',* they should say a four-*rak'a* prayer and feel free to recite audibly or inaudibly.

If the worshippers are uncertain about the number of prayers they missed, they should resort to the lesser number. For example, if the number was five or more praying five times would do.

Rules Concerning *Qadha* Prayer

30. A situation may arise whereby a worshipper has two prayers to deal with, one whose time has passed and another whose time is still not up. He may have the choice of starting with either, unless the time for the existing prayer was so short that he fears it might run out, if they started with the compensatory prayer *(qadha)* first. For example, if the missed prayer was that of *subh,* which was not performed until it was time for *dhuhr,* it is permissible for the worshipper to say *dhuhr* then *subh,* by way of *qadha,* unless the time for *dhuhr* was critical.

31. Q. Suppose a person is required to say a prayer or prayers by way of *qadha.* This may be due to the fact that (a) he cannot perform them properly; (b) he may not be in a position to perform *wudhu,* resorting to *tayammum* instead; (c) it could be that he can only perform those prayers from a sitting position. Can he be justified in saying them while he is in a bad shape?

A. Should he be confident that he would regain good health, he is better advised to delay saying the outstanding prayers till then. Conversely, he can say those outstanding prayers in the manner commensurate to his condition.

Q. Following on from this answer, suppose the worshipper opted for saying the outstanding prayer from a sitting position because of his

prevalent state of health, only to recover and regain good health. Should he repeat the prayers he performed by way of *qadha?*

A. Yes, he should, since the way he conducted his prayer was lacking due to his own doing. Such a drawback is not excusable even for an ignorant person. However, rules governing lapses in prayer will deal with, [among other things], this point in particular, i.e. when a person who is not aware of the laws can be excused for mistakes they make in prayer.

Saying Prayer on Behalf of One's Father

32. Just as it is obligatory on the *mukallafs* to say, by way of *qadha*, the prayer they missed, so are they obligated to say the prayer which their fathers, and not their mothers, had missed. Apparently, the obligation covers those prayers the fathers had missed either for a good reason or deliberately due to an emergency. That is, it does not extend to cover lifetime willful abandonment of prayer, as is the case of some fathers who never contemplate clearing the backlog of unperformed prayers. The obligation, however, takes into consideration whether or not it was in the father's ability and power to say, by way of *qadha*, the outstanding prayer, in that the sons are not obligated to perform those prayers their fathers had missed because of illness.

It is obligatory that the *mukallaf* be male and that the father has no other living son older than him at the time of the fathers death. The daughter and the youngest boy are exempt of such an obligation. However, if the eldest son was below the age of adulthood, he is not responsible for carrying out *qadha* prayer on behalf of the dead father. That said, once the son attains adulthood, it is advisable, on the basis of obligatory precaution, to perform *qadha* prayers.

Should there be two sons of the same age born to the same father, e.g. from two different mothers, they are jointly responsible for *qadha* prayer on behalf of their father. If one of them shoulders the responsibility, this will absolve the other of it; otherwise both of them will be deemed guilty. Sharing out *qadha* prayer between them would do.

In the event of twins, the *qadha* prayer on behalf of the father should be the sole responsibility of the one who was born first.

The father may stipulate in his will that someone be hired to perform *qadha* prayer on his behalf paid by money from his own estate. If the will is executed, the son should be absolved of the responsibility.

It is permissible for the son who is obligated with performing *qadha* prayer of his father to hire someone for this purpose with his own money, if the father had not instructed in his will that it be met from his bequeathable one-third share. Otherwise, it is possible that payment for the person hired can be taken from the father's share.

If the son is uncertain whether or not there were any outstanding prayers that were due on the father, he should not pay attention to that. However, if the son is certain that his father was indebted with prayers, yet he is not sure whether the father had performed them before his death, he should perform such prayers.

3. Lapses

The worshipper may detract from his prayer by commissioning unlawful actions; this could be deliberate and with full knowledge; it could also be due to an oversight, or ignorance of the laws. We have already discussed many of these lapses and the remedial action to put them right in their respective places. However, we turn now to a number of lapses, mentioning their rules, and explaining the general precepts these rules are based on.

33. If the worshipper deliberately and knowingly fails to fulfil their duty by abandoning any part of prayer or any requirement thereof, his prayer shall be deemed *batil* because it will be incomplete.

34. Should the worshipper deliberately and knowingly add anything to prayer that is not originally called for, his prayer shall be considered void *(batil)* as has already been discussed in para (156) of the Chapter on General Guidelines.

Beyond the deliberate and flagrant action, there are cases of omission of commission where the prayer will not be rendered *batil,* whereas there are others where the prayer will be rendered *batil.*

Situations Where Prayer is Deemed *Batil* at any Rate

35. Any of the following should render prayer *batil:*

a. Skipping *takbiratul ihram* either inadvertently or through ignorance and realizing such an oversight during or after prayer.

b. Omitting *ruku.* leading to the performance of the second *sujood* and realizing such a mistake during or after prayer.

c. Leaving the two *sujoods* aside, and rising for the next *ruku*, then remembering the oversight.

d. Not standing upright at the moment of shouting *takbiratul ihram*, doing it from a sitting position without being duly excused to do so.

e. Performing *ruku* from a sitting position with no apparent reason to do so.

f. Performing *ruku* after rising from a sitting position not from a standing one.

g. Saying prayer without the required *wudhu*, *ghusl*, or *tayammum;* also breach of ones state of *taharah* while praying.

h. Commissioning that which could encroach upon the form and content of prayer.

i. Unintentionally, praying while still in a state of *najasah* which is not allowed.

j. Performing a double *ruku* in any one *raka*.

k. Performing four *sujood* in any one *raka*.

l. Setting one's face to any direction other than *qiblah*, being unaware of the rules requiring such an action.

m. Should the worshipper be aware that facing the direction of the *qiblah* is obligatory in prayer, yet they momentarily forgot, leading him not to face the *qiblah*, his prayer is *batil*.

n. Setting one's face to the right, left, or opposite direction of the *qiblah* in the mistaken belief that he was facing the right direction. Realizing one's mistake before the time of prayer is up would render prayer *batil*.

o. Performing prayer before the onset of its time for any reason, i.e. could be due to an oversight, ignorance, or mistakenly believing the time had come. The same goes for starting praying slightly ahead of its time, except for one case which has already been discussed in para (78) of the Chapter on the Five Daily Prayers.

Cases Where Prayer shall not be Deemed Void

Any omission or shortcoming on the part of the worshippers giving rise to what could be a breach of prayer could be tolerated, if they were either ignorant or unaware of the law or the omission was made inadvertently.

Such incidences are of two types: (a) Those omissions which could be rectified as soon as they come to the attention of the worshipper. Once remedial action is taken the worshippers can then continue with their prayer. (b) Those slips which do not require the worshippers to take remedial action, making do with their incomplete prayer.

Situations Where Remedial Action is Called for

36. These are:

a. Dropping part of *suratul-Fatiha* or the *surah* that follows it. Should the omission be noticed before the *ruku* (bowing down) of the *raka* in hand, reciting the part/s that were inadvertently missed, and the parts that follow, is called for; thus, one can continue the prayer.

b. Missing any part of that which should be recited [of the Holy Qur'an] or *tasbih* [*dhikr*] in the third and fourth *raka*. If realizing the omission comes about before actually going for the *ruku* in hand, the worshippers should recite the parts they omitted and those that follow them; that done they should continue their prayer.

c. Leaving *ruku* out. Should the worshipper remember what they have done before performing the second *sujood* of the *ruku* in hand, they should hasten to rise to a standing position to perform the missed *ruku*, then continue the prayer.

e. Forgetting to recite *tashahhud*. Should the worshippers become aware of such an oversight before actually performing *ruku*, they should go back to a sitting position to recite *tashahhud*, then continue the prayer.

f. Omitting either the two *sujoods*, *tashahhud*, or *tasleem* of the last *ruku*. If the worshippers become aware of their mistake before either doing that which could encroach on their state of *taharah* or impinge on the form and content of prayer, they can perform what they have missed till the end of prayer.

Situations Where Remedial Action in not Called for

37. These are:

a. Dropping recitation, i.e. *al-Fatiha* or the second *surah* or part thereof, or that which should be recited in the third and fourth *ruku*, i.e. *al-Fatiha* or *tasbih* or part thereof. Becoming aware of such an oversight after one has actually performed *ruku*, does not warrant any remedial action. Thus, prayer should be proceeded with.

b. Rising from *ruku* or *sujood* only to realize that you did not recite *dhikr*. No remedial action is called for; the worshipper should move on.

c. Omitting the second *sujood* of any *raka*, the middle *tashahhud* or part thereof, leading to a new *ruku*. No immediate remedial action is called for; the worshipper should move on. However, finished his prayer, the worshipper should repeat, by way of *qadha*, what he has omitted as will be discussed.

d. Skipping the second *sujood*, *tashahhud*, or *tasleem* of the last *ruku*. Should realizing one's mistake occur after some considerable time has elapsed on the prayer so much so that the grain of prayer could no longer be maintained, the prayer would stand, provided that the part which has been missed is repeated by way of *qadha* in the manner that will be discussed.

e. Abandoning standing upright for recitation, only to do so from a sitting position. Should the worshippers realize such an omission after they have done with recitation, it is not obligatory on them to take any remedial action. They should therefore, move on.

Explaining Terminology

38. Any obligation of prayer, the omission of which would render it *batil*, is called *rukn* (fundamental part of prayer). How the omission comes about, i.e. as a result of an oversight or ignorance, is immaterial.

The same goes for any *rukn* that could be committed to the elements of prayer, apart from *takbiratul ihram*, in that adding more of it should not render prayer *batil*, if it is not done with intent.

Any obligation of prayer, the omission of which would not render it *batil*, unless it is done deliberately and knowingly, is described as non-*rukn*.

Any obligation of prayer that is a sub-part of a particular part of it, is part of the latter and not directly considered among the parts of prayer. This is because it derives its being obligatory by virtue of being part thereof.

For example, *dhikr* of a *sujood* is a part of *sujood*, whereas *tasahhud* is an independent part of prayer.

Other examples of the obligation of the sub-part of a part is *dhikr* while performing *ruku* and standing upright while reciting; the latter

being part of recitation. Maintaining a calm and collected posture during recitation of *dhikr* is part of *dhikr*. The same goes for maintaining such a posture during recitation, *tashahhud,* or *tasleem*. Reciting audibly or inaudibly, as may the case be, is another example.

39. Accordingly, we can deduce the formula for situations where remedy must be applied because it has to be taken where possible, which is the case in the majority of cases, apart from the following:

40. a. The worshipper has, before realizing his mistake, already moved on to another *rukn,* in which case he is in no position to take remedial action because this action, as we have already mentioned, involves making good what he omitted and repeat the part that followed from it. That is, should he choose to embark on the remedial action regardless, he would be repeating that *rukn* which is deemed an infringement. Hence the expression of the jurist, "The time for remedial action is up".

41. b. The omitted obligation is a sub-part of a part and the worshipper is done with that part. For example, the worshipper may have forgotten to recite *dhikr* [*tasbih*] for the second *sujood* after he lifted his head from the spot of *sujood,* in which case it is too late to take remedial action. That is, if they were to recite *dhikr* without the actual *sujood,* it is worthless, because *dhikr* is part and parcel of *sujood* not alien to it.

42. c. No remedial action can be taken after the worshipper is done with his prayer so much so that the flow of prayer had been disrupted. This could be said of the prayer which has been finished for some time, or the worshipper may have committed that which constituted a breach of *wudhu* or *ghusl.*

43. In each case where remedial action is impossible, prayer is rendered *batil,* should the skipped part be *rukn.* If the omitted part is an obligation but not *rukn,* the prayer stands, provided it is completed.

In the same vein, in each case where remedial action is possible, it has to be embarked on, rendering prayer valid; should the worshipper opt for non-compliance, his prayer would be deemed *batil.*

What if the worshipper is uncertain about taking remedial action?

44. Some parts of the prayer fall in a grey area, in that there is no clear-cut description whether they are obligations in part or integral parts thereof. Example of this is placing of the hands, knees, and feet toes on the prayer mat while performing *sujood.*

The remedial action here follows where one stands. One may take the view that such action is part of *sujood.* In this case, the worshipper who did, due to an oversight, not place his hand on the mat, and realized what he had done after lifting their head from the spot of *sujood,* should not take remedial action. Conversely, if you took the view that it is part of prayer, and not *sujood,* taking remedial action becomes obligatory; thus performing *sujood* again properly should be opted for.

However, since one cannot draw the distinction, the *mukallaf* is advised to continue with his prayer, in the event of such a doubt, without resorting to taking remedial action, provided that he repeats the prayer, albeit it is not obligatory, because the disputed oligation is apparently part of *sujood* not prayer.

Compensating *(Qadha)* for Missed Parts

45. In the event of inadvertently skipping one *sujood* or *tashahhud* or part thereof, one has to move on, should there be no scope for remedial action. The worshipper has to compensate for the missed part/s by performing same. That said, the worshipper has to be in a state of *taharah* when performing the missed parts as well as observing the requirements of facing the *qiblah* and dressing up properly as though he is performing actual prayer. Holding *niyyah* of performing the missed parts, by way of compensation, is another requirement.

As a matter of voluntary obligation, performing compensatory *sujood* and *tashahhud* on the one hand, and the prayer, on the other, should not be interrupted by anything which may deem prayer *batil;* also we must reiterate that there should be no other skipped parts where *qadha* is called for.

Sujood-as-sahu

Sujood-as-sahu (The prostration in lieu of any omission or commission of a secondary act in prayer).

46. Any omission or commission of a part of prayer that would necessarily give rise to rendering prayer *batil,* the worshipper will have no alternative but to repeat same. If the omission or commission is of the type that would not infringe prayer, the worshipper should, upon realizing his slip, take remedial action. Should it be too late for that, he can carry on with his prayer which should be valid.

However, there are certain situations which warrant the performance of *sajdatay-as-sahu*

47. a. When is it obligatory to perform *sajdatay-as-sahu?*

Sajdatay-as-sahu become obligatory on the worshipper in the following situation:

a. The worshipper's unintentional talking during prayer or in the belief that he has finished it.

b. Inadvertently reciting *tasleem* not in its proper slot, such as reciting it after the first [middle] *tashahhud* in a four-*raka* prayer.

c. Faced with uncertainty as to the number of *ruku,* i.e. between four and five and six, as will be discussed in paras (70) and (74) of the Rules Governing Doubt.

d. Forgetting one *sajdah,* or *tashahhud* as whole or in part, would, as a matter of obligatory precaution, warrant performing what has been missed alongside *sajdatay-as-sahu.*

e. Omission of *qiyam* or performing an extra one. An example of this is performing *qiyam* in a sitting position and vice versa. [Our ruling on] this is based on obligatory precaution.

48. How should one perform *sujood-as-sahu?*

Two consecutive *sujoods* should be performed in the same way any two *sujoods* of any prayer are performed. However, facing the *qiblah, taharah,* clothing, and *takbir* are not obligatory. Yet *niyyah* of *qurbah* and securing the hands, knees, and feet toes on the floor are obligatory. The spot where *sujood* is performed should comply with that which can be used for prostration.

Dhikr [*tasbeeh*] should be recited in every *sajdah.* This should contain the remembrance of Allah, the Most High, and the Prophet (s.a.w), as a matter of *ihtiyat.* The worshipper is free to recite either, *"Bismillahi wa Billah, Assalamu Alaika Ayyuhan Nabiyu, wa Rahmatullahi wa Barakatuh".* or *"Bismillahi wa Billahi, wa Sallal Lahu Ala Mohammadin wa Aali Mohmmad".*

It is permissible insofar as the first expression is concerned to say, *"Bismillahi wa Billah, wassalamu etc.".* Having performed them, the worshipper should recite *tashahhud* and *tasleem.*

49. When is it obligatory?

Sujood-as-sahu becomes obligatory in the situations just discussed. However, it is an independent obligation, in the sense that it is not part of

prayer, nor is it complementary. Thus, prayer will not be deemed *batil* by deliberately leaving it out, let alone skipping it by way of an oversight.

Once it becomes obligatory, it has to be performed immediately, i.e. once prayer is over and done with, alongside any complementary precautionary *ruku* and *qadha* of any missed parts. That is, before commissioning that which would render prayer *batil.*

Remembering one's slip after prayer has been done with would warrant performing *sujood-as-sahu.* Similarly, should the realization of the omission occur during another prayer, the worshipper can perform it after finishing the prayer.

50. Rules Governing *Sujood-as-sahu*

Sujood-as-sahu must be repeated whenever it is necessary to do so, although the repetition may be for the same kind of omission or commission. For example, should the worshipper recite *tasleem* twice where it is not called for, *sujood-as-sahu* must be performed twice; talking on two different occasions warrants performing *sujood-as-sahu* twice, irrespective of the nature of the cause for the second time round talking.

If it becomes obligatory on the worshippers to perform *sujood-as-sahu* more than once, should they observe the order of omissions and/or commission?

A. Observing an order is not necessary. The *mukallafs* are free to start wherever they like. Indeed, it is not even obligatory to precisely designate the reason for the *sujood.* That is, it suffices that they perform *sajdatay-as-sahu* twice without the need for remembering the reason for performing them.

51. The worshippers may not be in a position to decide whether or not they commissioned that which warrants performing *sujood-as-sahu.* In this case, they should not pay attention to such a doubt. However, if the worshipper knew for sure that they are charged with the responsibility of *sujood-as-sahu,* but are not sure whether they discharged their responsibility, they must perform such a *sujood.*

The worshippers may be aware of their obligation vis-ä-vis *sujood-as-sahu,* yet they are not quite sure whether it is for more than one occasion; they should ignore any excess. Knowledge of performing one *sujood,* leading to uncertainty about the second one, must warrant performing the second one, unless the worshipper has moved on to *tashahhud,* in which case they need not worry.

In the event of doubting the validity of performing *sujood-as-sahu,* the worshipper need not worry about such uncertainty.

4. Precepts Concerning Doubt during Prayer

Doubt or uncertainty in prayer can be classified into three categories:

a. Doubts regarding the performance of prayer or lack of it.

b. Doubts regarding the fulfillment of the prerequisites of prayer.

c. Doubts regarding the number of *rukus.*

Doubt Regarding Performance, or otherwise, of Prayer

52. When faced with such a situation, the worshipper should hasten to perform it while there is still time for doing so, thus resolving the uncertainty a though he did not perform prayer. If the uncertainty arises outside the time allotted for the disputed prayer, he should ignore such a doubt.

If the doubt centers around the performance of prayer or lack of it and whether its time is up, the worshipper must hasten to perform it. Doubt and certainty, here and in the previous assumption, are alike.

Should the day approach its end so much so that what is left of it is not sufficient for even one *ruku,* it should be treated as though it has come to a close. But if there was enough time for performing one to four *ruku's,* the worshipper, who is not certain that they have said both *dhuhr* and *asr* prayers, should hasten to say *asr.* In case what is left of time is sufficient for five *rukus,* both he prayers must be said.

If, during *asr* prayer, the worshipper harbours a doubt about whether or not he performed *dhuhr,* he should conclude that he did not; in such a case, he should interrupt the prayer in hand and revert to saying *dhuhr.* That is, if there is ample time for both *dhuhr* and *asr,* albeit for one *ruku* of the latter. Should there not be enough time for both the prayers, he must carry on with *asr,* thus absolving himself of the responsibility of saying *dhuhr* by virtue of expiration of its time.

53. An average doubter should comply with the rules of managing doubt of uncertainty. An excessive one should not bother.

Doubts Regarding the Fulfillment of Prayer Requirements

54. Wherever and whenever the worshippers entertain a doubt about any of prayer's obligations, they should resolve it by assuming that they did not perform it. The exception to this principle being the following.

55. a. Any part of prayer the performance/non-performance of which becomes the subject of doubt, after it has been overtaken by subsequent parts, even though they are *mustahab* such as *qunoot,* the doubt or uncertainty should be over-ruled.

Examples of this are uncertainty about whether the worshipper has recited *takbiratul ihram* while reciting *al-Fatiha,* or while in *qunoot* and doubting whether he has done the recitation, or while in *ruku* and doubting whether he has done the recitation, even if he doubt arises while on the way to actually bowing for *ruku.* In all these cases the doubt should be ignored.

Jurists call the general principle of overrunning doubt where it is too late to take remedial action as "the principle of skipping the doubt". We have already discussed many instances where this principle has been applied.

Jurists also call the other general principle of making it obligatory to take remedial action to dispel the doubt, where such action is possible because it is timely, as the "principle of doubt addressed on time and place". According to this principle the worshipper who has doubt about the propriety of any part of his prayer should take remedial action to dispel such doubt as long as he did not move on to another part of the prayer in hand.

56. b. Doubting the proper execution of any part that has already been performed, i.e. not whether or not it has actually been performed, should be ignored. This, of course, is irrespective of whether or not the doubt was discovered on the spot or after the worshipper had already moved to another part of his prayer. For example, doubting whether the worshipper recited *takbiratul ihram* properly, be it before or after embarking on recitation and so on.

This principle, the jurists term as the "principle of expiration". We have already discussed many instances where it has been called into play.

57. c. Overrunning any doubt about a breach of any of the requirements of prayer, after the worshipper has already embarked on

it, especially if he knows very well that all such requirements have been fulfilled. For example, having started prayer facing the *qiblah,* the worshipper became doubtful whether they have moved away from it while the prayer is still in progress. Another example is that of a woman who has started her prayer with her hair fully covered, doubting that she might have uncovered her hair at a certain stage of prayer. The ruling in both these examples is ignoring the doubt.

58. d. A given person might be of the type that is given to excessive doubting. The level of doubt of such a person could be reached at by what ordinary people consider as out of the ordinary. For example, should the person harbour doubt once in every three consecutive prayers or twice in every six consecutive ones, such a person should not take his doubt seriously. They should, therefore, have no alternative but to overrun any doubt about the proper execution, or lack of it, of any part of prayer they might have entertained.

However, a given worshipper may be a habitual doubter in a particular part of prayer, such as *takbiratul ihram.* Such a worshipper should not pay attention to the doubt insofar as that limited area is concerned. Should he become doubtful about whether or not he performed this, or the other, part of prayer, i.e. other than the particular area talked about, he shall be treated as any other average worshipper.

Occasionally, some worshippers may experience extraordinary instances of doubt as a result of certain circumstances which may give rise to great anxiety, such as bereavement, or a sense of insecurity. These worshippers must deal with their doubts in prayer in the usual manner, i.e. they cannot be treated as habitual doubters.

The worshipper may, after an increased level of instances of doubt, think that they have become habitual doubters. Such people must conclude that they have not until they are absolutely sure that they have reached that stage.

Similarly, if a person is a known habitual doubter, thinking that he may have recovered, he must maintain his original state until such a time comes that he is absolutely certain he has regained control over his level of doubt.

59. e. [In a congregational prayer], a doubt about a given part of prayer may arise, i.e. either on the part of the *imam* or on the part of the

worshipper who is praying behind him. Such doubt could be of the type over which dispute between the two may not arise. If this occurs, the one who has reached the conclusion that he had a doubt must ignore it.

However, [in matters such as] the followers in a congregational prayer may entertain a doubt about whether or not they followed the *immam* in performing two *sujoods*. Here the knowledge of the *imam* that they performed the two *sujoods* will not be of any use to the follower, so long as they remained doubtful; indeed, they have to perform the second *sujood* while there is still time to do so, i.e. not having moved on to the following part.

60. If the worshipper applies the rule of ignoring the doubt, only to realize later on that his doubt was in place, what should he do?

A. Should there be time for making good the doubt, in the light of paras (40) to (42), he should hasten to take remedial action; if it was too late, no action is required, and the prayer should count as valid. That is, unless the disputed part was *rukn* (fundamental part of prayer), in which case the prayer is deemed *batil.*

61.The same applies whenever the "principle of doubt has been addressed on time and place". That is, the worshipper could realize that they had already performed the doubted part. In such a case, the worshipper should carry on with their prayer, unless the disputed part was *ruku,* which they had performed twice or *sujood* which they had performed four times, in which case the prayer is deemed *batil.*

Doubt in the Number of *Rukus*

62. Any doubt that creeps in after the worshipper has finished their prayer should be ignored. However, if such a doubt arises during prayers, it could be treated in more than one way. Some doubts render prayer *batil* outright. Some of them will not render prayer *batil,* yet they call for remedial action. Some do not render prayer *batil* and do not require remedial action. The later may take any of the following forms:

63. a. On performing *tashahhud,* or having just finished it, the worshippers may not be sure whether they have finished the second *ruku,* in which case this should be what is required of them at that stage of prayer, or maybe they have finished the first *ruku,* in which case the *tashahhud* they have just finished is an inadvertent one.

In such a case, the worshippers must conclude that they have performed two *rukus*. Thus, they must move on to perform the third *ruku*, should the prayer in hand consist of three *rukus* or four *rukus*. Should the prayer in hand be that of two *rukus*, they should finish *tashahhud* and perform *tasleem*. The prayer should, therefore, be valid.

64. b. In a four-*ruku* prayer, the worshippers may find themselves in a position where, while sure that they got passed the second *ruku*, they are not sure whether *ruku* in hand is the fourth one. Such a doubt must be resolved by assuming that the *ruku* in hand is actually the fourth one, thus, finishing one's prayer with no need to worry about any remedial action.

65. c. In a three-*ruku* prayer, the worshippers may find themselves engaged in *tasleem*. Yet, they are not sure whether the third *ruku* is over and done with. In such a case, the assumption should be that the *ruku* in hand is actually the third one. Consequently, the worshippers must finish *tasleem* and thereby prayer.

As for the doubt which does not render prayer *batil*, yet requires remedial action, it is confined to four-*raka* prayers; it could take any of the following nine forms:

66. a. After rising from the second *sujood*, only to become doubtful as to whether the *ruku* in hand was the second or third. However, they may be sure as to the second one, but not quite sure whether it was the third. The situation must be resolved in assuming that the *ruku* in hand is the third one. Thus, they must move on to finishing the fourth *ruku* including *tashahhud* and *tasleem*.

However, before embarking on anything which may detract from the validity of prayer, they must make *niyyah* of *qurbah* to perform *ihtiyat* prayer. After, reciting *takbiratul ihram*, they are required to perform one *ruku* from a standing position, as a matter of obligatory precaution, if their physical ability allow it. Should the physical state of the worshipper not allow for performing prayer from a standing position, they may perform one *ruku* from a sitting position, also as a matter of *ihtiyat*.

Thus, if the prayer where the doubt took place actually consists of four *rukus*, the precautionary prayer would then be counted as supererogatory one. And if it was a three-*raka* one, the precautionary prayer would count as a complementary *ruku*.

67. Doubting whether the *ruku* in hand was the third or fourth, irrespective of whether the doubt arises while standing, performing *ruku*, performing *sujood*, or rising from *sujood*. This situation must be resolved by assuming that it was the fourth *ruku*; thus, the worshipper can recite *tashahhud* and *tasleem* to bring the prayer to an end. Should the worshipper be among those who are required to say prayer from a standing position, they can choose to perform one *ruku* from a standing position or two *rukus* from a sitting one. If, for a good reason, the worshipper is not required to say prayer from a standing position, they can perform one *ruku* from a sitting position.

This should be the case, unless doubt occurs while the worshipper is reciting *tashahhud*, in which case the doubt be of the type that has been discussed in the second part of preceding para, i.e. where the prayer can be completed without the need for a remedial action.

68. c. Doubting whether the *ruku* in hand was that of the second or fourth *raka*, after having completed the two *sujoods*, requires worshipper to assume that it is the fourth. Upon completing prayer, they must perform two *rukus* from a standing position. Should the worshipper be of those with a valid reason to say prayer from a sitting position, they should perform two *rukus* in that position.

69. d. Upon performing the two *sujoods*, doubt may creep in as to whether the *ruku* in hand was the second, third, or fourth. The doubt must be resolved by assuming that the disputed *ruku* is the fourth one. Accordingly, the prayer must be completed thus. Remedial action should take the form of performing two *rukus* from a standing position followed by two *rukus* from a son to say prayer from a sitting position, they should perform two *rukus* in that position.

70. e. After finishing the two *sujoods*, doubt may arise as to whether the *ruku* in hand was the fourth or fifth. This should be resolved by assuming that it is the fourth; the worshippers should, therefore, complete their prayer and perform *sajdatay-as-sahu*.

71. f. While standing, the worshipper may doubt that the *ruku* in hand is the fourth or fifth. They should go back to a sitting position, in which case they revert to a state of doubt between the third and fourth *ruku*. That is, because in so doing they interrupted the fourth *ruku* they were in. This should mean that if it really was the fourth, the resolution of such a doubt should be by assuming that the disputed *ruku* is the fourth one;

thus, this should lead to completing one's prayer and performing one *ruku* from a standing position or two *ruku* from a sitting one as has already been discussed in (67/b).

72. g. While standing, the worshipper may doubt that the *ruku* in hand is either the third or fifth. The remedial action here should be by resorting to a siting position. In so doing the worshipper would revert the state of doubt to that between the second and fourth, he should complete prayer and perform two *ruku* from a standing position as has already been discussed in (68/c).

73. h. While still standing, the worshippers may doubt that the *ruku* in hand is either the third, fourth, or fifth. Thus, they should go back to a sitting position. In so doing they would render the doubt as that between the second, third, and fourth *ruku*. Resolving the doubt is by assuming that the *ruku* is the fourth. Accordingly, they should complete his prayer and perform two from a sitting one in line with what has already been discussed in (69/d).

74. i. While still standing, the worshippers may harbour a doubt that the *ruku* in hand is either the fifth or sixth. They shloud treat such doubt as that between the fourth and fifth *ruku*. Thus, they should complete the prayer and perform *sajdatay-as-sahu* in the light of what has already been discussed in (70/e).

In all these forms, the remedial action should render prayer valid. However, there are some exceptions:

75. a. Should the worshippers be inclined to give more preponderance to a particular *raka* of the disputed third, fourth, or second, they should act accordingly, in that this is no longer considered as a situation of doubt. Thus, no remedial action is called for.

If the worshipper swings between doubt and supposition *(dhann)*, he should consider it as though it was a case of doubt and act accordingly.

76. b. The doubt of a person who is given to excessive doubting is in itself invalid and must, therefore, be ignored. Such a person must always resolve the doubt by taking to the greater number of *rukus*. For example, if his doubt was between the second and third *ruku*, he is not required to take any remedial action, unless the greater number would detract from the validity of prayer, such as doubting whether the *ruku* in hand was the fourth or fifth. In this case, he must assume that it is the fourth and

complete the prayer; and there again he does not need to take any remedial action.

77. c. Doubt in the number of *rukus* in congregational prayer û the *imam* or congregation û can be dismissed by relying on one another. That is, should either of them be aware of the right number, be it on a level of certainty or supposition.

78. d. Should the worshippers be praying a supererogatory prayer and doubt the number of its *rukus*, they should suppose that they have prayed the least of the possibilities in the doubt; they may suppose that they prayed the most of the possibilities in the doubt, provided that it is not of what should render prayer *batil;* in both the cases, they can complete their prayer without the need to take any remedial action.

79. As for the third type of doubt, i.e. that which is likely to constitute a breach of prayer, it does not involve the number of *rukus* being performed already dealt with. Any other doubt should render prayer *batil.* For example, the worshipper may not be in a position to tell what number of *rukus* they have performed in any given prayer.

Among this type of doubt is that which involves the two-*raka subh* prayer and the three-*raka maghrib* prayer. That is, finding oneself in either *tashahhud* or *tasleem* without being able to pinpoint the number of *rukus* that they could possibly have performed, as has already been discussed in paras (63-65).

Among this too is the inability of the worshippers to determine, in a four-*raka* prayer, the number of *rukus* they may have possibly performed coupled with a lack of direction whether or not they have performed the second *ruku* which is completed with the lifting of the head from the second *sujood* or just before that. That is, doubt between the first and second and third *ruku* cannot be sanctioned as it renders prayer invalid.

However, the worshippers could ascertain the successful completion of the second *ruku* if their doubt arises in any of the following possibilities:

a. Having reached certitude that they have finished and done with the second *ruku* after due reflection.

b. While reciting *tashahhud* the worshipper may entertain doubt about whether the *tashahhud* is taking place after the first *ruku* by mistake or it is actually taking place after the second. They must resolve the situation by considering *tashahhud* itself an evidence that they have performed two

rukus. This would be in compliance with the "principle of expiration", in that reaching a stage where they were reciting *tashahhud* is indicative of finishing one part of prayer and embarking on the other. Thus, the second *ruku* could be said to have been completed as has already been discussed in para (63).

80. Doubts, which we have ruled that they constitute a breach of prayer, do not cover the four cases discussed in paras (75-78). The ruling applicable is that we have already outlined there and then.

81. Whenever the worshippers are faced with a situation of doubt, yet they ponder it without undue haste till they reach certitude or belief about the number [of *rukus*], they should act accordingly; their prayer should be valid and they do not need to take any remedial action.

But having concluded that their doubt centers around a certain number, only to be thrown into a state of confusion affairs without being able to determine the number, they must act according to the second state of affairs. Consequently, should the doubt be of the kind which constitutes a breach of prayer, it should be deemed *batil*. If, however, the doubt is manageable, they should take appropriate remedial action in the light of each of the nine cases we have already discussed.

Precautionary (*Ihtiyat*) Prayer

82. As we have already seen that seven out of the nine cases of doubt where prayer can still be considered valid can be rectified by performing precautionary prayer.

When is it obligatory?

Precautionary prayer in those seven cases is obligatory. That is, it is not permissible for the *mukallafs,* who are faced with a situation of doubt, to interrupt the prayer and start again, as a matter of obligatory precaution. They should, therefore, make good the doubt by performing precautionary prayer.

83. Precautionary prayer can no longer be obligatory, if upon completing their prayer, the worshippers reached a conclusion that they were right in assuming the most possible number of *rukus* and that their prayer is in order. Should they reach that conclusion, while still performing precautionary prayer, they can interrupt it or complete it as a supererogatory two-*raka* prayer.

After the prayer is over and done with, there may arise a situation, where the worshippers may reach a conclusion that their prayer was incomplete. For instance, after having doubted whether they had performed three or four *rukus* and having settled for four and completed the prayer thus. Now, having reconsidered that matter, they became sure that they had performed three *rukus* only. In such a case, can precautionary prayer be waived?

In answering this question, one should discuss the following cases:

a. Should the shortfall be discovered just before embarking on the precautionary prayer, they should ignore the *tashahhud* and *tasleem* they have recited and go back to a standing position to complete the prayer by performing the fourth *ruku*. However, although they should recite, in that *ruku*, what a worshipper usually recites.

b. The shortfall may be discovered during the performance of the precautionary prayer from a standing position. If the worshipper is still reciting, i.e. before actually bowing down for *ruku*, he should continue it with the intention of making up for the shortfall. If discovering the mistake occurs after *ruku* has been performed, prayer has to be resumed afresh, as a mater of obligatory precaution.

c. Should the mistake be discovered after the worshipper has embarked on precautionary prayer from a sitting position, they should interrupt it and stand up to perform the fourth *ruku* of their prayer. Again this should be done without *takbiratul ihram*, but with the usual recitation during the last *ruku*.

d. Should the mistake be discovered after the worshipper has bowed for *ruku* in the precautionary prayer from a sitting position, it is desirable, as a matter of obligatory precaution, to start the prayer again.

If the mistake is discovered after the completion of precautionary prayer, the worshipper is not required to do any thing else.

84. Suppose that the worshipper recited *tasleem*, thus bringing his prayer to a close. Before doing anything that could invalidate prayer, he became doubtful whether he settled for the fourth *ruku* believing it was the last one, or his doubt was swinging between the third and fourth, thus settling for the fourth so that he could perform precautionary prayer as a remedy. Does precautionary prayer become obligatory in such a case?

A. Apparently, it is not obligatory and nothing shall be required of him.

85. Suppose a worshipper became liable to perform precautionary prayer. He entertained doubt as to whether or not he performed it. Is it obligatory on him to perform it?

A. If the doubt occurred after the prayer time has elapsed, or on completing it, they did that which invalidates prayer, they are not required to perform precautionary prayer, Otherwise, they should discharge their responsibility by performing it.

86. **How should it be performed?**

We have already mentioned that precautionary prayer could take different forms. It could consist of either one *ruku* from a standing position or one *ruku* from a sitting position. It could consist of two *ruku* from a standing position or two from a sitting one. Its general form is that of any prayer consisting of one or two *ruku.*

All those parts and conditions which are obligatory in an obligatory daily prayer should also be fulfilled in a precautionary one. That is, except for the *surah* and the recitation of *al-Fatiha* audibly; the worshipper is required to observe inaudible recitation throughout.

Should the worshipper do that which invalidates prayer, before embarking on precautionary prayer, their prayer is rendered *batil* as though the action they commissioned would have occurred in their original prayer. In such a case they must repeat the prayer.

87. **Lapses and Doubts**

Any omission or commission in precautionary prayer whether inadvertently, out of ignorance, or deliberately, is treated in the same way as though it took place in any obligatory daily prayer.

Whenever the rules call for the invalidation of precautionary prayer, the worshipper should say the original prayer again.

The same rules that deal with doubt in the obligatory daily prayer apply in any obligatory utterance or action of precautionary prayer. For example, if the doubt occurs after the worshipper had moved on to a new part of the prayer, no remedial action is required; should it take place before, a repeat is called for.

Should the worshippers become uncertain as to the number of *rukus,* in a two-*raka* precautionary prayer, they should settle for the higher number, unless the latter constitutes a breach of the prayer. For example,

if the doubt was between two and three *rukus*, The worshippers should aim for the lesser number possible so that their prayer be in order.

5. Congregational Prayer

88. Congregational prayer is among the most important devotional practices of Islam. Tradition has it that it is highly *mustahab*, being a self-evident truth in Islam. Allah, the Exalted, promised those who take to it a great reward; such reward could outweigh the reward of many obligatory devotions and most of the *mustahab* ones. The bigger the congregation, which serves as an indicator of Muslim solidarity, the loftier its place and the bigger the reward for the worshippers.

Congregational prayer is best manifested in the obligatory daily prayers, performed on time, especially *subh, maghrib* and *isah*, and those prayers whose time has elapsed, i.e. *qadha*.

89. Congregational prayer may become *wajib* in given situations:

a. When time is pressing and some worshippers are afflicted with a speech impediment, such as stammer. Such people are obligated to pray behind an *imam*, in which case they would be relieved of reciting the *surah*. This is particularly so when time is so short that there may be time left for only one *ruku*.

b. Some *mukallafs* may be a complete novice who are in need of learning how to recite. Having delayed the learning process till late, it is rather impossible for them to say their prayer independently. Thus, it is obligatory on them to perform their prayer as a part of a congregation; the *imam* of prayer will take the burden of recitation away from them.

c. The *mukallaf* may be *nadhr* bound, or may have made a vow or an oath, to say congregational prayer; it is obligatory on them to do so to honour such a commitment.

Praying Independently or Behind an Imam

90. Prayer may take two forms: The worshipper could say his prayer alone, i.e. without any lawful relationship with another worshipper. This is called individual prayer. We have already discussed both the form and the content of this prayer.

The worshipper may choose to say his prayer behind another worshipper as an *imam* (leader). Having chosen to do so, the one who

follows in prayer has to mimic the manner and expression of the *imam*. This prayer is called congregational prayer. The act of mimicing is an expression of the lawful *(Shari'i)* relationship between the two, i.e. the *imam* and the worshipper.

Both prayers, i.e. that of the *imam* and the one following him in prayer, are more superior than an individual prayer because both parties are involved in performing congregational prayer which is strongly recommended.

The following points are precursors to the rules concerning congregational prayer.

1. When is it permissible to take part in a congregational prayer?
2. The manner it is conducted in.
3. Rules governing it.
4. Differences of the manner of both congregational and individual prayers is conducted in.
5. Rules regulating congregational prayer.

When is it permissible to take part in a congregational prayer?

91. It is permissible to take part in congregational prayer for obligatory daily prayers, *Juma* prayer, *Ayat* prayer and others. However, *Tawaf* obligatory prayer is an exception, because we do not have any evidence that conducting it in a congregation is permissible.

It is not permissible to hold congregational prayer of the *mustahab* type, even if it becomes thus by way of *nadhr*. This covers daily supererogatory prayers and other prayers. However, *Istisqa* (rainfall) and the two *eid* prayers can be held in a congregation, although they are *mustahab* (voluntary).

92. Holding congregational prayer is not obligatory in all the obligatory prayers, save *Juma* and *Eid* prayers, in that the latter shall not be in order unless they are held in congregation.

93. Should the worshipper say the obligatory daily prayer by themselves, it would do. However, it is *mustahab* for the worshipper to repeat it as part of a congregation, whether as *imam* or following in prayer. That is, provided there are at least two participants, one of whom should be performing it afresh.

In case the worshipper performed the obligatory prayer once individually and a second time congregationally, only to find out that the one he performed individually was *batil,* the second one should save as a substitute.

94. Suppose the two prayers being performed by both the *imam* and the one following him in prayer were among the obligatory prayers where congregational prayer is sanctioned. Is it necessary that both prayers be the same; e.g. *subh* or *ayat,* or would it still be permissible to take part in such a congregation and the prayer still stands, although that of the *imam* is different from that of the one following him in prayer?

A. It is permissible to join in such a congregation, although the two prayers (those of the *imam* and the one following him in prayer) are asymmetrical. For example, you can join in a congregation with the intention of praying *maghrib* whereas the *imam* is praying *isha;* an *imam* who is performing a current prayer and a follower who is performing *qadha* prayer for yesterday and vice versa, *tamam* and *qasr* and so on, i.e. this is applicable to any obligatory prayer being performed either by the *imam* or the follower.

95. The exception of the permissibility of joining in an asymmetrical prayer is when the *imam* is leading either *eid* and *ayat* prayers, or that which is performed for a dead person. In such a case the worshipper cannot join in except with the intention of performing the kind of prayer the *imam* is leading.

The same applies for *istisqa* prayer for both the *imam* and the one following him in prayer.

96. Suppose a worshipper wants to perform any pbligatory daily prayers that he suspects he has missed. Thus, he is resolved to say them by way of *ihtiyat.* Can he say them behind an *imam* who is leading an obligatory daily prayer? Is it permissible for other worshippers performing obligatory prayers to follow him? And is it permissible for other worshippers in the same situation of his to follow them in prayer?

A. This worshipper can join in a congregation being held for any obligatory daily prayer. However, it is not permissible for other worshippers to follow him in prayer, if it was an obligatory daily one.

It is permissible for other worshippers wanting to perform *ihtiyat* prayers to follow in prayer an *imam* who is praying a symmetrical prayer, irrespective of the nature of *ihtiyat* being adopted by either worshipper.

An example of this could be that the *imam's* reason for *ihtiyat* is uncertainty about the *taharah* of his clothes, whereas the followers *ihtiyat* is combining *qasr* and *tamam* prayers.

97. Suppose a worshipper was praying a one-*ruku* precautionary prayer as a remedy for a suspected lapse in their prayer. Is it permissible for them to follow in prayer an *imam* who is leading an obligatory daily prayer, or another one who is in the same situation of his? And is it permissible for a worshipper, who is performing an obligatory daily prayer, to follow him in prayer?

A. It is not permissible [on the three counts].

However, you may pose another hypothesis, i.e. that of two worshippers who are engaged in a congregational prayer for the obligatory daily ones.

Both reached the same conclusion as to the number of *rukus* they suspect have performed. Suppose it was between three and four *rukus*; accordingly, they settled for the greater number; having completed their prayer thus, they turned to praying a one-*ruku* prayer. Should the one following in prayer carry on praying behind the *imam*?

A. The permissibility of following in prayer in such a case is possible. However, it, as a matter of obligatory precaution, is desirable for the worshipper not to pray behind the *imam*. This is because the precautionary *ruku* is considered a *mustahab* kind of devotion, if the original prayer was to be complete. Thus, following in a prayer of the *mustahab* type is not allowed.

98. You may be about to say one of your obligatory daily prayers. You may find a worshipper, who can fulfill the requirements of *imam,* engaged in prayer. You should not join in prayer behind him, unless you are sure that the prayer he is performing is an obligatory one and that it is permissible to do so. This is because he could be engaged in a supererogatory prayer, or performing an obligatory one of the type which cannot be held congregationally, such as *tawaf* prayer, by way of *qadha.*

How should one go about joining in congregation prayer?

99. Following in prayer means that, upon reciting *takbiratul ihram,* you hold *niyyah* that you are performing prayer by way of following

another worshipper, who becomes an *imam* by virtue of your following him. This is irrespective of whether or not the *imam* has the intention of assuming such a role. That is, the congregation is established as a result of the *niyyah* of the follower, not the *imam*.

That said, in prayers that have to be said in congregation, the *imam* has to be aware that he is conducting it as such, i.e. *imam*. An example of this is *juma* prayer and any other obligatory daily prayer voluntarily performed as a repeat while leading the prayer.

The ones who are following in prayer have to identify the person whom they are following. Thus, it is not permissible for them to pray behind two persons at the same time, nor is it permissible to pray behind someone at random.

However, it is not necessary that you name the *imam*. A reference in one's mind would do. That is, after making sure that the *imam* fulfills the requirements. Such requirements will be elaborated later.

Having joined in prayer behind someone believing him to be Mr. (x), only to find out that he was Mr. (y), the prayer stands, if the latter is qualified to be *imam*.

It is not permissible for any two persons to hold , at any one time, *niyyah* to pray behind the other. Nor is it permissible fro a person to hold *niyyah* to pray behind someone who is in turn holding *niyyah* to pray behind someone who is in turn holding *niyyah* to pray behind a third party.

It is not permissible for a worshipper, who inaugurated his prayer independently, to switch *niyyah* to that of one following in prayer. It is permissible though to do that at the start of prayer.

100. It is not necessary that the worshipper starts his prayer at the same time as that of the *imam*. It is important though that the one who is following in prayer should not precede the *imam* in reciting *takbiratul ihram*.

The worshipper is free to join in congregational prayer at any stage of the first *ruku*, including while the *imam* is actually in *ruku*. All what they need to do is to stand upright, hold *niyyah* for praying in congregation, recite *takbiratul ihram*, then bow down for *ruku*, provided that the *imam* is still in a state of *ruku*.

The worshipper is also allowed to join in while congregational prayer

is still in progress at any stage, be it in the second *ruku* or any other *ruku* as will be discussed in some detail.

Q. Is it permissible for the worshippers to make *niyyah* with the intention of praying behind the *imam* in part of their prayer, e.g. one or two *rukus* only?

A. When the total number of *rukus* of the prayer of the worshipper draws to a close, they are free to break off from the congregation. An example of this is someone performing *maghrib* prayer behind another who is praying *dhuhr qadha*. The one who is following in prayer should be able to finish the number of *rukus* they are required to perform, i.e. three. There and then they are free to depart, leaving the *imam* to perform the fourth *ruku* of the prayer he is saying.

Should the *imam* finish his prayer before that of the person following him in prayer, the latter is allowed to carry on with their prayer and finish it independently. An example of this is a worshipper joining in the congregation during the second *ruku* of *dhuhr* prayer. The *imam* would naturally finish before the one following him in prayer, leaving the latter to finish his independently.

If both the *imam* and the person following him in prayer have something in hand to be over and done with, it is advisable for the follower, on the basis of voluntary precaution, to stick by the congregation to preserve its image and reap the reward *(thawab)*.

The exception is that of the person following in prayer who go their own way both sit for *tashahhud* and *tasleem*. They are free to step the pace up to finish the prayer before the *imam*.

101. Should the person who is following another in prayer go solo contrary to what we have just discussed, there may arise two possibilities:

a. The notion of going solo must have crossed their mind under the spur of the moment, i.e. they did not think of it at the start of prayer. Their prayer is in order. The recitation should be valid too, if the idea of going solo occurred before performing the first or the second *ruku*, i.e. the recitation of the *imam* would be taken into consideration as though he did it on their behalf. Consequently, they are not required to repeat anything. If before going solo, the worshipper has to introduce an extra *rukn* in prayer, for the sake of keeping pace with the *imam*, it would not detract from prayer, although it should, as a matter of optional *ihtiyat*, be considered *batil*, in which case it has to be repeated.

in all cases of the worshipper deciding to go solo after joining the congregation, it is not permissible for them to rescind their decision.

b. Suppose the person following in prayer was intent at the outset to switch from following the *imam* to going solo, say, at the stage of *qunoot*. Is such a prayer valid?

A. Yes, it is permissible to do so, although it is advisable not to countenance it.

It is not permissible for the worshipper in a congregational prayer to jockey from one congregation to another in any one prayer.

102. *Niyyah* of *qurbah* in one of the prerequisites for the validity of prayer. However, it is not thus insofar as the validity of congregational prayer is concerned. That is, if the worshipper joins in a congregational prayer with the intention of improving their recitation, or guarding against falling prey to Satan's suggestions, or showing solidarity with the *imam,* who is of an impeccable character, or glorifying the faith, such prayer is valid. The worshippers reward for that shall be commensurate with their intention, i.e. reward for the congregational prayer shall be reaped.

He who joins in a congregational prayer just to show off shall be deemed guilty and his prayer *batil,* because hypocrisy invalidates any act of worship. The same goes for the *imam*. In his case, he should be doubly alert not to fall into such pitfalls; he should preserve his *niyyah* from devilish insinuation.

103. Someone may find himself amidst a congregation. He is not quite sure whether he is praying by himself or being part of the congregation. He should resolve the matter by settling for a solo prayer. The mere suggestion that he may be part of a congregation is immaterial.

Once behind an *imam,* the worshipper swung between abandoning the idea of praying as part of the congregation or sticking by it. He must abide by his original intention.

Stipulations of Praying in Congregation

Neither following in prayer nor congregational prayer itself can be sanctioned unless the following conditions are fulfilled:

The First Condition Concerning Praying in Congregation

104. a. The worshipper can join in congregational prayer either while

the *imam* is reciting *takbiratul ihram,* standing upright and reciting, after the recitation but before bowing down for *ruku*, or during *ruku* but before rising to a standing position. All this can be done in the first *ruku* and in the other *rukus* for that matter. However, it is not permissible to join in the prayer at the point when the *imam* is actually rising from *ruku*, or on his way to perform *sujood.* The worshipper wishing to join in should wait until the *imam* has actually risen to a new *ruku.*

105. The exception to this is when the worshipper arrives late for congregational prayer, i.e. while the *imam* is reciting the last *tashahuud.* Here, should the worshipper be eager to reap the reward of congregational prayer, they can recite *takbiratul ihram* with the intention of praying in congregation; he should immediately proceed to a sitting position to join in reciting *tashahhud.* Once the *imam* finished *tashahhud* and started *tasleem* the worshipper can rise to resume his prayer solo without the need for a new *takbiratul ihram.*

This procedure can be embarked on, if the *imam* was performing the first or the second *sujood* of the last *ruku*, by simply reciting *takbiratul ihram,* performing both or either *sujood,* as the case maybe until the end of *tashahhud.*

In so doing, the worshipper would be entitled to the reward of congregational prayer, yet what he has done is an extra devotion that would not count towards the prayer in hand. What would though, is joining in [at any stage] before the *imam* has risen from *ruku.*

106. Should worshipper achieve the bare minimum of *ruku* which coincided with the *imam* actually rising from *ruku*, we cannot unequivocally say that the following [in prayer] is valid. However, if the worshipper did so in the belief that he would be able to attain the *ruku* while the *imam* was still in *ruku*, only to find out that it was not the case, his prayer is valid as a solo one.

If the same situation occurs, but this time the worshipper is uncertain whether the *imam* was actually still in *ruku* or on his way up, having completed it, his prayer is valid as a congregational one.

107. Having arrived at the scene while the *imam* is in *ruku*, the worshipper was reluctant to make any course of action. He can make *niyyah,* recite *takbiratul ihram* and perform *ruku.* If he managed to keep up with the *imam* while in *ruku*, his prayer would count as a congregational one; conversely, it would count as a solo one.

108. Should the worshipper fear they may join in good time for *ruku*, if they were to get to the ranks of worshippers, they can recite *takbiratul ihram*, perform *ruku*, and walk, while in *ruku*, to get to the nearest line, provided that they maintain their position in relation to the direction of *qiblah* and that they do not do that which could detract from any part of congregational prayer.

109. In all the cases where the worshippers arrive late to join a congregational prayer with the intention of catching up with the *imam* before the latter rises from any *ruku*, and fail to do that, it will be too late to make good that *raka*. The alternative is either going solo or switching to a supererogatory prayer; if the latter be their choice, the worshipper is free to complete or interrupt it to join in the congregation when the *imam* resumes a new *ruku*.

The Second Condition

b. Keeping up with the *imam* in all what he is doing or reciting, be it *ruku, sujood, qiyam,* sitting, recitation, *dhikr, tashahhud* etc. That is, you should not perform any of the obligations of prayer, be it *ruku* (fundamental part) or otherwise, before the *imam* has done so. Your following the *imam* should be such that you should not leave al long pause between you and him; you can also carry out all that he does simultaneously.

However, carrying out utterance – apart from *takbiratul ihram* – simultaneously is not obligatory, in that reciting *tabiratul ihram* by the person who is doing the following should be done only after the *imam* has done so. It is permissible for members of the congregation to precede the *imam* in the recitation of *basmalah, tashahhud, dhikr* etc. Members of the congregation can also increase the number of *tasbihs* during *ruku*, to say, seven times, in case the *imam* confined them to three times.

111. Should the one following in prayer deliberately abandon the following, his action is deemed *batil* and consequently he can no longer be deemed part of the congregation, irrespective of whether or not he was aware that such an obligation was a condition to congregational prayer.

However, doing so due to an oversight can be tolerated. The remedial action that can be taken by such a person is that he should wait to see if they can avail themselves of the opportunity of joining in the congregational prayer; this though can be espoused in certain instances

that will be discussed later. Failure to do so would not subject the worshipper to any penalty. This can be illustrated by the following hypotheses:

112. The follower in prayer inadvertently rising from *ruku* before the *imam*. If, on realizing one's mistake, one immediately goes back to *ruku* while the *imam* is still in *ruku*, he should take no further action.

However, if upon realizing one's mistake one does not hasten to resume *ruku* with the *imam*, one should switch to a solo prayer because he can no longer be party to the congregational prayer.

113. Inadvertently lifting one's head from the *sujood* spot prematurely, i.e. before the *imam*, is treated in the same way discussed in the preceding para. That is to say, the extra *ruku* or *sujood* thus performed can be tolerated for the purpose of keeping pace with the *imam*.

114. Should the follower in prayer rise prematurely and inadvertently from either *ruku* or *sujood*, only to find out that the *imam* has already done so, he should continue his prayer with the *imam* and not worry about anything else.

115. There is the case of the follower, in prayer, who does actually perform either *ruku* or *sujood* prematurely as a result of an oversight while the *imam* is still in *ruku* or *sujood*. The worshipper should recite *dhikr* in both cases and resume the following of the *imam* by performing the *ruku* or *sujood*, as the case maybe, for a second time, but this time round with the *imam*. However, in the repeated *ruku* or *sujood*, he does not have to recite *dhikr*.

Should this happen at the point of the *imam's* bowing down for either *ruku* or *sujood*, he should stay and continue his prayer with the *imam*.

116. If the follower becomes out of step with the *imam* in performing simultaneous *ruku* or *sujood* due to absent-mindedness until the *imam* has risen from either *ruku* or *sujood*, he should perform the part he missed and continue following the *imam*. He need not worry about anything else.

117. Both the *imam* and the one following him in prayer may rise from either *ruku* or *sujood* at the same time; the followers could find themselves unintentionally resuming an upright standing or a sitting one before the *imam*. They should stay put until the *imam* assumes the same position and continue their prayer thereafter.

118. Should the *imam* inadvertently perform an extra *sujood*, it is not

obligatory on the person following him to do likewise. Non-adherence to the principle of following the *imam* should, in this situation, not detract from the following itself and the congregation.

119. The followers may lift their head from *sujood,* only to find out that the *imam* is still in *sujood.* Believing that this was the first of the two *sujoods,* they resumed *sujood* in compliance with the principle of following the *imam* as discussed in para (113); however, it transpired that the *sujood* was the second; the worshipper's *sujood* would count as a second one.

120. Should the worshippers presume that it was the second *sujood,* and perform a second one in that belief, only to find out that it was the first, it would count as such, i.e. the first pursuant to that of the *imam.*

The Third Condition

121. c. The presence of both the *imam* and the congregation, right from the inception of the assembly to the end, in one place, so much so that, according to the established practice, they cannot but be called as a gathering for prayer as a unit, i.e. not dispersed. Large numbers of lines of worshippers praying behind the *imam* is immaterial so long as the definition of a "gathering" fits.

Thus, it is not permissible for a worshipper to pray, from a place inside their house, behind an *imam* in a mosque, for this is not a gathering as such. Accordingly, the prayer cannot be sanctioned as a congregational one.

On this premise, congregational prayer cannot be deemed valid with the existence of a wall, or any other barrier, between the *imam* and those following him in prayer, or between the lines of worshippers which may render the gathering not a fully fledged one. Similarly, the congregation ceases to be called as such, if there were gaps between the *imam* and members of the congregation or between their ranks.

It is desirable, as a matter of obligatory precaution, for each and every member of congregation to have a gap, not wider than an ordinary step of a man, between themselves and the *imam* or the worshipper standing in front of them. When it comes to what can constitute a barrier, it is also desirable to avoid anything that may prevent seeing or watching, such as wall or the like.

122. The exception to the rule are women standing in prayer behind an *imam* among men and/or formations of men in congregation. They are allowed to screen themselves from men. A wider gap between the place the woman is standing in and the *imam,* or the rest of congregation, is also allowed.

123. It is permissible to hold congregational prayer despite the existence of transparent barriers, such as glass or mesh screens. Such obstacles should not detract from the validity of the assembly. Congregational prayer is also permissible with the presence of a movable object, such as a human being passing by.

124. It is sufficient for the validity of the congregation that at least one worshipper in the line of worshippers maintains the right gap between themselves and the worshipper standing in front of them. Thus, their prayer as well as that of the one standing to their right and left shall be valid, even with the presence of a wall or any other barrier; in such a case the gathering should be deemed proper.

According to this premise, if the mosque overflows with worshippers, one of them could stand at the threshold of its open gate, occupying such a vantage point that they could see the *imam* directly through him who could see the *imam* [third party]. The prayer of this worshipper is valid, so is the prayer of all those who are standing to their right and left, or behind them.

125. As those worshippers who are standing in the front lines in the congregation can constitute neither a gap nor an barrier between the *imam* and those standing behind them, they cannot constitute any screen when they are about to embark on *takbiratul ihram.* Thus, it is permissible for those occupying the back lines to make *niyyah* for congregational prayer followed by *takbiratul ihram,* should they notice that their fellow worshippers are ready to do so, such as having raised their hands, in precaution to reciting *takbiratul ihram.* Should a situation arise where any of the worshippers occupying the font rows is engaged in performing a *qasr* prayer, this would not detract from the prayer of the worshipper standing behind them. If the first one decides to leave the congregation after they finish their prayer, the one who is standing behind them can hasten to move forward to close the gap, should it grow wider than is necessary. That is, provided that the worshippers maintained their position in relation to the direction of *qiblah.*

The same applies to the fellow worshipper standing to the side of the worshipper who was performing *qasr* prayer.

126. Q. Suppose a worshipper taking part in a congregation prayer is aware that the prayer of some of those occupying the rows in front of him is *batil.* Would their presence constitute any barrier or gap?

A. No, neither a barrier nor a gap is thus constituted so long as the form and content of prayer are preserved. Accordingly, the person who is praying in the ranks behind them can rest assured that their prayer is valid.

127. A congregational prayer convened without the presence of a barrier which may detract from its being called as such. Shortly afterwards, it transpired to one member of the congregation that there appeared to be a gap or a barrier. What is the ruling?

A. The ruling is that one should assume that the congregation is intact and therefore valid. However, if, at the outset, one is doubtful about the presence of a gap or a barrier, which would, according to established practice, be seen as belittling its stature, it is not permissible for the doubting person to rely on such congregation, let alone take part in it.

Ignorance of the existence of a gap or an obstacle, which would detract from the congregation being dubbed thus, is not an admissible excuse for the validity of prayer. Whoever faces such a situation, his following in prayer of such a congregation is *batil* outright. His prayer should be judged in the light of the ruling which will be discussed in para (140).

The Fourth Condition

d. The *imam* should meet certain requirements, some of which concern his character in general, and others relate to his particular position in the prayer he is leading.

128. a. The *imam* of the congregation should be sound in mind, adult, as a matter of *ihtiyat,* legitimate by birth, a believer, and even-handed; the *imam* should also be male, if the one following him was male; women cannot lead men in prayer. They can, however, lead other women in prayer. The *imam* should not be *A'arabi,* i.e. a person who take for domicile a place that may invite sneering - which could in turn inspire suspicious about their adherence to *sahr'a* laws.

b. As for the requirements of the *imam's* position as the leader of prayer, the following must be met:

129. a. The *imam* must be well versed in recitation, for the one following in prayer would rely on him in this regard, as will be elaborated.

130. b. The *imam* must perform his prayer from a standing position, if the person following him do likewise. A follower, who is praying from a sitting position, can pray behind an *imam* who is in the same situation.

131. c. The prayer of the *imam* should be valid in the view of the one following him in prayer, so that the following [in prayer] can be sanctioned. For example, the follower may know, although not for a fact, that the water the *imam* used for *wudhu* was *najis;* so, should the *imam* start praying, it is not permissible for the person with the knowledge about the *najasah* of water to pray behind him.

However, if the follower is not quite sure whether the *imam* performed *wudhu* using that *najis* water of another source of water, he must resolve such doubt by assuming that the *imam's* prayer is valid. He can, therefore, take him for an *imam* in prayer.

Both the *imam* and the follower might diverge about certain details of parts of prayer, as a matter of personal opinion *(ijtihad)* or as a result of their following, by way of *taqleed,* two different jurists. How can the person following in prayer resolve the situation?

A. Should the difference be of the type that if the ignorants *(al jahil)* were to commission, they would not be made to bear the consequences, and thus their prayer valid, there is no harm in praying behind the *imam.*

For example, the *imam* may be of the opinion that reciting *tasbih [dhikr]* once in the third and fourth *ruku;* the persons who are praying behind him see it differently, i.e. according to them it is obligatory to recite it three times. Here, the *imam* is excused for reciting it once and the follower therefor allowed to pray behind him.

Should the point of difference be of the type that the ignorants are not excused if they were to commission it and find out about their mistake later, the ones intending to pray behind the *imam* are not allowed to go ahead with their plan, should they be certain, and even if they have the slightest doubt, that the *imam* would naturally adopt the opposite opinion regarding the disputed point.

For example, the person intending to pray behind a given *imam* knows very well that the *imam* can tolerate performing *wudhu* with rose water; they would not. Therefor, since *wudhu* is a point for which the ignorant would not be forgiven if he made a lapse, it is not permissible for the follower to take for *imam* a person, unless they are absolutely sure that he did not perform his *wudhu* in the manner they view *batil.*

132. d. Should the surface of the area taken for prayer be conspicuously uneven, the *imam's* position should not be higher than that of the person following them in prayer by a measure of *shibr* (circa 32cm) or more.

For example, the place of prayer could extend to cover a room, whose surface is elevated, and the worshipper/s following him in prayer were to stand in the courtyard. If the level of the raised section was more than 23cm., it is not permissible for the *imam* to take his position there, and the congregation in the courtyard. However, it is permissible if the two positions were reversed.

If the unevenness of the surface is not that noticeable, such as in the case of a graded one, the *imam* can take stand in any position of that stretch of land.

133. Generally speaking, the jurists maintain that male *imams* take an advanced position over the worshipper following them in prayer. However, it is more likely *(al aqwa)* that it is permissible to juxtapose their two positions. That is, it is not obligatory that the followers' position be slightly or completely behind that of the *imam.*

That said, it is advisable not to ignore the opinion that espouses standing behind the *imam* on *ihtiyat* basis. Furthermore, in case the congregation consists of two men, the one who is following in prayer should stand on the right hand side slightly behind the *imam* in a measure that would result in making the *sujood* spot of the follower on a par with spot where the *imam* places his knees.

Accirdingly, the position of the one following in prayer must not be ahead of that of the *imam.*

Since this is the case, the one doing the following must not be ahead of the *imam* in all such instances as *ruku,* sitting, and *sujood.*

How is congregational prayer conducted?

134. We have already discussed the manner in which solo, or independent, prayer is conducted. The prayer of the *imam* of a congregation is exactly the same as that prayed independently by any worshipper, except for *niyyah,* i.e. the *imam* should make *niyyah* that he is praying as *imam.*

That said, both end up with some different rules to cope with, not pertaining to the content of prayer, rather to the consequential actions to take remedial action to right a lapse.

For example, if the worshipper, who is praying alone, harbours a doubt about the real number of *rukus* of any prayer, such as that between three and four, they should settle for the greater number. The *imam* of a congregational prayer should rely on any member of the congregation who are known for their reliability.

The prayer of a member of a congregation is slightly different from that of an individual praying alone, both in manner and rules regulating it.

As you may know, we have already mentioned that the worshipper can pray behind an *imam* by joining in the congregation at any *raka* of the prayer, provided that they be able to catch up with the *imam* as he is standing before actually bowing for *ruku* or while he is performing it, but before rising.

Now, we are going to discuss the manner in which the worshipper should conduct their prayer if they have joined in during the first *ruku.* We will then discuss the manner of prayer, if joining in the congregation took place during the second *ruku* and thereafter.

135. When the worshippers join in the congregation by making *niyyah* and reciting *takbiratul ihram* either simultaneously with or after the *imam*, they do not have to recite, because they are absolved of such responsibility. As a matter of obligatory precaution, *dhikr- should be left to the imam* too.

However, you may ask whether it is permissible for the member of congregation to recite if they so wish; the answer is:

A great deal depends on whether or not the *imam's* recitation can be heard by the member of congregation in any prayer where reciting audibly is the norm, such as *maghrib, isha* and *subh.* Should the

worshipper be in a position to hear the *imam*, be it clearly or otherwise, they are advised not to recite. Conversely, it is permissible for them to do so. This is regardless of the worshippers' objective behind the recitation, i.e. whether they mean it as part of the prayer or simply a usual recitation in the Holy Qur'an. However, the worshipper is better advised to recite inaudibly, yet listening is even more superior.

In a prayer where reciting inaudibly is the norm, it is obligatory on the worshippers to refrain from reciting; they may, though, resort to reciting *tasbih* or chanting the praise of Allah *(tahmid)* instead.

When the *imam* bows down for *ruku,* the follower should do the same. When the *imam* rises for the second *ruku,* the worshipper should follow suit; insofar as recitation and other matters are concerned, the remarks of the preceding paragraph should be noted.

Thus, the followers should take it upon themselves to perform all parts of prayer, and not rely on the *imam* except in the recitation of *suratul-Fatiha* and the second *surah* in both the first and second *ruku.* Upon getting as far as the third *ruku,* the follower could choose between reciting *tasbih* or *suratul-Fatiha* as in thee case in holding a solo prayer.

The followers may join in prayer, while the *imam* is reciting, and inadvertently stay silent until after the *imam* has performed *ruku* and risen from it. No harm is done; the follower can still perform *ruku* and follow through.

The followers could recite *takbiratul ihram,* only to see the *imam* immediately bowing for *ruku.* They should immediately follow suit. The same should be done when they join while the *imam* is still in *ruku,* because recitation is the *imam's* responsibility.

136. Should the followers join in prayer while the *imam* is either standing or actually in the second *ruku,* they can recite *takbiratul ihram* and follow suit. They are therefor absolved of the responsibility of recitation. The remaining points discussed in the preceding paragraph apply. However, this *ruku* of the worshipper counts as the first one as opposed to its being the second one performed by the *imam.*

If joining in the congregation takes place just before the *imam* embarks on *qunoot,* it is *mustahab* for the worshippers to join him. After the *imam* rises from *sujood* to recite *tashahhud,* the worshippers are not required to do so, as if this is their first *ruku;* however, it is *mustahab* for

them to assume a sitting position as though they are about to stand up and follow it through.

When the *imam* stands up to perform the third *ruku,* the followers should stand up for their second *ruku.* At his stage, it is obligatory on them to recite *suratul-Fatiha* and the second *surah,* for the *imam's* recitation in the first two *rukus* can compensate for the follower's recitation.

It is necessary for the follower to refrain from reciting audibly, even if reciting audibly is allowed for the prayer being performed. Where the followers are worried about the possibility of not keeping pace with the *imam,* before they finish reciting the second *surah,* they are free to leave it out and follow the *imam* in his *ruku.*

Should the followers be faced with the possibility of not being able to follow the *imam* out in his *ruku,* while they are still reciting *al-Fatiha,* they are not allowed to interrupt their recitation. They have to finish reciting it in the hope that they would be able to catch up with the *imam.* Failing that, they have to go solo in their prayer. Thus, they have to finish reciting *al-Fatiha* and the second *surah.*

137. The followers may arrive late for the congregational prayer, making their debut in the third *ruku.* There may be two possibilities:

a. They may be in a position to join in the congregation while the *imam* is still standing. They should, therefore, recite *suratul-Fatiha* inaudibly, and the second *surah* where possible; if not, reciting *al-Fatiha* alone would do, should they be mindful of becoming out of kilter with the *imam.*

b. Joining in while the *imam* is still in *ruku* would necessitate that the worshipper immediately assumes a *ruku* position following in the footsteps of the *imam.* Thus, they are relieved of the obligation of recitation.

In both cases, the worshippers must maintain inaudible recitation and can perform *qunoot,* if there is room for that. When the *imam* reaches the point where they embark on reciting *tashahhud* and *tasleem* in the last *ruku,* the followers should do likewise insofar as *tashahhud* is concerned, which will be their first, i.e. after their second *ruku,* and then go it alone to finish their prayer.

138. On arriving at a congregation, while the *imam* is still standing, the worshippers did not know what stage of prayer the congregation has

reached, i.e. it could by any of the four *rukus*. Thus, it is permissible for them to inaudibly recite *al-Fatiha* and the second *surah*. Should they discover that the *imam* was in their third or fourth *ruku*, the action they had taken would be deemed sound and with their prayer. If it was the first or second *ruku*, no harm should have been done, i.e. the prayer still stands.

Rules Concerning Matters Arising from Congregational Prayer

139. We shall discuss below the rules that distinguish congregational prayer from a solo one.

Both the *imam* and the one following him in prayer are jointly responsible for any lapse concerning the exact number of *rukus* being performed. Any one of them who is confident that they are aware of the right number must be followed. This of course is contrary to the worshipper who is praying solo, where if faced with the same situation, they have to settle for the greater number of the disputed number of *rukus*.

As we already know (para 113), the extra *sujood* or *ruku* performed by the number of congregation can be tolerated, when it is done for the sake of following the *imam* through. This, though, is not allowed when you are holding prayer by yourself.

When the worshipper, who is praying solo, is intent on performing an extra *sujood*, although he knows that this goes against the grain and the spirit of the laws, such action is bound to lead to invalidating his prayer.

In case the worshipper, either inadvertently or through ignorance, performed an extra *ruku* or extra two *sujoods*, his prayer would be deemed null and void. Both the *imam* and the one following him in prayer are treated in the same way in this regard.

140. If after taking part in congregational prayer, the worshipper discovers that such partaking was, for any reason, not valid, his prayer should still count. He is, therefore, not required to take further action, unless he was involved, for the sake of keeping pace with the *imam*, in performing an extra *raka* or extra *sujoods* in one *ruku;* this would require him to repeat his prayer. The same applies in the case of the worshippers doubt about the number of *rukus*. Should the worshipper rely on the *imam's* decision in that regard, only to find out that they were in the right and the *imam* in the wrong, they have to repeat their prayer.

[An example of] "deeming the prayer valid" could be that of a person praying behind another trusting in his rectitude and devoutness, only to find out that the *imam* was not worthy of the trust, for either being a wayward person, an unbeliever, not versed in proper recitation, or simply his prayer was found to be lacking. Another example is that of a person discovering that the congregation he took part in fell short of any of the requirements which make following in prayer a valid one.

6. Differences Between an Obligatory Daily Prayer and a Supererogatory One

141. As you may be aware, we have already discussed some differences between obligatory daily prayers and supererogatory ones. Here is a summary of the differences in rulings pertaining to those prayers.

a. It is obligatory on the worshipper to maintain a steady and repose state while performing the obligatory daily prayers; this is in contrast to supererogatory ones, where the *mukallaf* can perform them while walking or being aboard a moving vehicle, etc.

b. The worshipper, who is performing an obligatory daily prayer, is required to physically perform *ruku* and *sujood;* it will not suffice, if they were to point to *ruku* or *sujood* by any movement of their body, accentuating the nodding, for examples, for *sujood* more than that made for *ruku*. That is, if they are performing it while in motion.

But, should they choose to perform it while standing still, it will not be accepted as proper, unless both *ruku* and *sujood* are performed in the usual manner where possible.

c. Where possible, it is obligatory on the worshippers to perform the obligatory prayer from a standing position. They can perform supererogatory prayers from a sitting position, although it may be within their grasp to perform it from a standing position. However, performing it from a standing position is more meritorious.

d. In an obligatory prayer, the worshippers are required to recite *al-Fatiha* and another *surah* in the first two *rukus*. This is not a prerequisite in a supererogatory one. It is permissible for the worshippers engaged in such a prayer to confine the recitation to *al-Fatiha,* yet reciting a second *surah* after it is more superior.

e. Should they chose, the worshippers embarking on a supererogatory prayer can recite, after *al-Fatiha,* any other *surah,* including those that

contain the verses of *sajdah;* should they opt for that, they must perform *sujood* and follow the prayer through. This is not allowed in an obligatory prayer though.

The worshippers engaged in a supererogatory prayer cannot be penalized if they were to start reciting a particular *surah,* then switch to another, with their prayer remaining intact.

f. While it is not permissible to interrupt an obligatory prayer without a valid reason, this can be done to a supererogatory prayer at will.

g. Where doubt or uncertainty about the number of *rukus* performed arises in a supererogatory prayer, the prayer will not be rendered *batil;* accordingly, no precautionary steps are called for. The worshipper can settle for the lesser or greater number of *rukus,* provided that espousing the latter would not cause the prayer to be null and void. This is contrary to the situation in an obligatory prayer where doubt about the number of *rukus* could annul prayer in certain situations and necessitate *ihtiyat* and remedial action in others.

h. It is obligatory to resort to *sajdatay-as-sahu* for inadvertently doing certain things in prayer; this is not the case in a supererogatory prayer at all.

i. Any extra *rukn* that the worshipper may perform by way of an oversight renders prayer *batil.* Supererogatory prayer is immune to this measure.

j. Accordingly, if the worshipper forgets a secondary part, [i.e. not *rukn*], of prayer and realize that after he had got beyond it to fundamental part *(rukn),* it is permissible for him to carry on i.e. without repeating the missed part.

This is not the case in a supererogatory prayer, in that the worshippers are required to go back to the point where they think they made the error to rectify it and carry on from there, regardless of whether or not they have already engaged in a *rukn* or non-*rukn* part of prayer.

For example, forgetting to perform the second *sujood* of the first *ruku,* the worshippers carried on with their supererogatory prayer, only to realize their mistake after rising from the second *ruku.* They should have no alternative but to cancel the activity in hand, go back to performing the second *sujood* of the first *ruku* and carry on with their prayer from that point.

k. There are parts of the obligatory prayer that have to be repeated by way of *qadha* at the end of prayer. This usually happens with parts such as *sujood* and *tashahhud,* when the worshippers realize their lapse after entering into a *rukn* activity.

In a supererogatory prayer, such a lapse warrants a different treatment. Discovering the mistake may occur while prayer is still in progress of after it has finished. If the worshipper has not done anything that would detract from its form and validity, he is required to repeat that missed part and all the subsequent parts. Should the discovery of the lapse take place after a while, his prayer can still count as valid; he is, therefore, not required to say *qadha* prayer.

Differences covering some other areas

It is neither permissible to hold the majority of supererogatory prayers congregationally, nor follow other people in performing them. Most of the obligatory prayers can be held thus.

It is permissible to hold congregational prayer for *Istsiqa* and *Eid* prayers; some obligatory prayers, such as *tawaf,* cannot be held congregationally as there is no evidence to support that.

No *adhan* is called for in supererogatory prayers in general. It is a part of every obligatory prayer, and very much so in the obligatory daily ones. That is, it is not necessary in *Ayat* prayer, although it is an obligatory one.

Section Three

Fasting *(sawm)*

Chapter One:

Fasting the Month of Ramadhan

Chapter Two:

Fasting, other than the Month of Ramadhan

Chapter One

Fasting the Month of Ramadhan

Foreword

1. Literally, *Sawm* (fasting) means abstaining or refraining from doing anything including refraining from speech. Allah, the Exalted said, **"..Then if you see any mortal, say: Surely I have vowed a fast to the Beneficent God, so I shall not speak to any man today"** (19/26).

Technically, however, it means abstaining from certain things such as food and drink and others during a given time, as will be discussed, *Inshallah*.

Fasting on certain occasions, on top of which is the month of Ramadhan, is considered among the most important obligations, as stipulated by *Shari'a*. It is one of the five pillars of Islam.

Such an obligation is one of the Religion's fundamental truths, Whomsoever rebels against it would be deemed *kafir* (irreligious or unbeliever). However, whoever recognizes it to be an obligatory devotion, yet shows disobedience by not fasting without an admissible excuse would be blameworthy in this life and in the Hereafter, unless they repented.

In brief, fasting the month of Ramadhan requires the *mukallaf* to be in a state of *taharah* from *najasah*, to abstain from food and drink, and to be mindful of other things called "invalidators of fast" which we will be discussing later. The fast period is from dawn till sunset, i.e. from the start of *subh* prayer to the start of *maghrib*.

In making *niyyah* for fasting, the *mukallaf* should be seeking closeness *(qurbah)* to Allah. Fasting the days of Ramadhan, as we have described, starts from the first day till the last one, at the end of which the moon of Shawwal will have been born. The first day of Shawwal marks the festive season, i.e. *Eidul Fitr*.

Being a lunar month, Ramadhan may consist of thirty or twenty mine days. It is widely the view in scholastic and juridical circles that it cannot be less than twenty nine days.

Just as prayer may be performed *ada'* or *qadha'*, fasting follows the same rules. Should the worshipper miss the opportunity of fasting the month of Ramadhan, they can do so after it has ended. Fasting may become obligatory on the worshipper not in the context of the month of Ramadhan, rather as a *kaffarah*, hence the name *"kaffarah fasting"*, or fasting in fulfillment of a vow *(nadhr)* or oath *(yameen)*, and so on.

Above all, it is a *mustahab* kind of worship in all days, although certain days and months of the calendar are stressed more to fast than others. Therefore, voluntary fasting during Rajab and Sha'ban is more superior to fasting in the other months.

Sometimes it is *haraam* to fast on certain days, such as the first day of *Eidul Fitr*. We shall be discussing, in some detail, the rules regulating all types of fasting.

1. When is it obligatory to fast the month of Ramadhan?

It is obligatory on every soul, capable of meeting the requirements, stated below, to observe fasting during the month of Ramadhan.

2. a. Adulthood; this is one of the general conditions for making the *mukallaf* duty-bound to observe fast; thus it is not obligatory on the person who has not attained adulthood to fast; but if they did they will be rewarded; if such a person attain adulthood not before dawn but after it, they are not required to abstain from food and drink that day, nor are they required to compensate for it by way of *qadha'*. Should the person who we have just described voluntarily fast that day, i.e. when they attained adulthood, they can continue their fast, in which case it will be accepted; they are therefore not required to compensate for it by way of *qadha'*. Moreover, they are free not to fast that day.

3. b. Reason *(aql)*; this is also one of the general requirements for making the *mukallaf* duty-bound to observe fast; thus it is not obligatory on an insane person to observe fast. In order for the obligation to continue, the sanity of the *mukallaf* must endure till the end of the day. Even if they lose their sanity temporarily that day, they should be absolved of the responsibility of fasting it. Should the illness of such a person persist until after dawn, only to recover during the day, the sick person should not abstain from food and drink, nor are they required to compensate for it by way of *qadha'*.

4. c. The *mukallaf* should not sustain loss of consciousness before they

make *niyyah* for fasting. If unconsciousness befell them ahead of a new day without letup until after dawn broke, it is not obligatory on them to fast that day, even if they regain consciousness at any stage of it.

Should such a person make *niyyah* to fast the next day, only to fall victim to unconsciousness and come around after a while during the day, they are required to maintain their fast, fasting that day shall count as part of obligatory fasting.

The same applies to the person who started their day fasting, then became unconscious for an hour or so.

5. d. Women have to be in a state of *taharah* from the blood of *haydh* or *nifas* throughout the day. Even if bleeding ceases at the first second after dawn, they are not required to fast that day. Should bleeding start a second before sunset of the day, fasting on that day is not obligatory. Therefor, what makes fasting obligatory depends to a large extent on the woman being free from the bleeding of *haydh* or *nifas* throughout the day of fast. Should the woman fast the day while still not in a state of *taharah,* albeit for part of the day, such fast is not called for at the outset; this, though, will not absolve her from the responsibility of compensatory fast *(qadha').*

6. e. Safeguarding against harming oneself; should the *mukallaf* not be immune of harm which may be triggered by fasting, they are not required to fast. All people, who fear that fasting might make them end up being sick, or worsen or complicate a current illness they are suffering from, or they may be reeling from a sickness that had its toll on them so much so that they have become frail, are allowed not to fast. Thus, fasting is not obligatory on them.

However, not every adverse effect on health or sickness that may be precipitated by fast would necessarily allow non-fasting or absolve the *mukallaf* from the responsibility of fasting. Therefore, common ailments, such as headache, slight fever, mild tonsillitis, mild eye or ear infections should not warrant breaking one's fast. But, if such ailments take a turn to the worse which normally cause sensible people to take precautions against them, the obligation to fast is waived.

Nevertheless, the degree of a particular health problem is a relative matter, i.e. it varies from one individual to the other; for example a slight rise in the temperature of a person who is already weakened by illness may prove problematic.

7. Should a person who is not feeling well be aware that fasting will not do him any harm, nor would it delay his recovery, he is required to fast.

8. Fear of harming oneself because of fasting may vary. You may be either sure that harm will come your way, or you may think so, or there may be a chance that fasting will affect your health, or there may be a less than 50% chance of damage to one's health; yet it is sufficient to cause alarm, such as fearing for one's eye sight, albeit there may only 30% chance of harm; or in a fifth case, there may be very slight chance which does not pose any cause for alarm.

In the first four examples, there is a case for not fasting. In the fifth, not fasting is not permissible; it becomes obligatory.

9. Should the worshippers, in the cases where non-fasting is permissible, go ahead and fast causing harm to themselves, what would become of their fast? In other words, would it be accepted and, therefore, absolve them from compensatory fast, or would it be deemed *batil* and, therefore, require them to fast in lieu?

A. Such fasting will not be accepted; the worshipper cannot be absolved of the responsibility of fasting *qadha'*.

10. Should the worshippers fast in the belief that they are not going to put their health in harm's way, only to find out that the damage has been done. Would fasting in this case be accepted from them and thus absolve them from the responsibility of compensating for it?

A. Yes, the fast is valid; they are, therefore, not required to fast in lieu.

11. If the worshippers fast although they had thought that going ahead with fast would adversely affect their health, only to find out that it did not, would their fast be accepted and, therefore, absolve them of the responsibility of fasting *qadha'*?

A. This fast should be accepted and no *qadha'* is required from the worshipper, provided that:

a. The sort of harm should not be of the category which the *mukallafs* are debarred from embarking on to start with, and are liable for punishment if they flouted the law.

b. The type of fast they observed is one that they embarked on with *niyyah* of *qurbah,* such as they may be ignorant of the law that makes it unlawful for the sick to fast; conversely, they cannot put this aside and make *niyyah* of *qurbah,* although they are certain of their ill health.

12. The worshippers may wake up after dawn has broken while they are nursing a sickness of the sort that allows them not to fast. They did not do anything that might have invalidated fast, only to get better during the day. Such, worshippers are not required to make neither a fresh *niyyah,* nor abstain [from food and drink]; furthermore their fast is null and void and are therefore required to compensate for it by way of *qadha'*.

13. Despite their certainty that they are well and fit to fast, worshippers were advised by competent physicians that fasting would cause them harm. They are required to comply with the doctor's advice, although they are sure that there is no cause for alarm. However, if they discover for certainty that the doctor was in the wrong, they should ignore his advice and go ahead with the fast.

14. The worshippers may be in a better position than that of the doctor to judge that their ill heath could further be undermined, if they were to fast, yet the doctor's advice to them was assuring, in that fasting will not cause them any harm. What should they do, i.e. according to their own urge or follow the doctor's advice?

A. They should act according to what they think best for themselves, unless their feeling of fear is largely misguided as is generally the case of those who are apprehensive of the doctor's advice.

15. f. Fasting should not lead to putting the worshipper in an untenable situation, so much so that it may prove a major problem of life. For example, fasting may prevent them from going about their business or performing their duties which is the source of their income, in that it may prove detrimental to one's physical health which in turn adversely affects their capacity to work or think straight, or it might cause them severe thirst of the sort they cannot bear, etc.

In such a case, it is obligatory on the worshipper to seek an alternative arrangement with a view to fasting, but without undue difficulty. It could be by either changing one's job, postponing it [taking leave], or depending in sustaining oneself on one's savings, etc. Failure to achieve that should absolve them from fasting. However, it is desirable for such worshippers, as a matter of voluntary obligation, not to behave as though they are fasting. They should make do with the bare minimum which makes them carry out their work without great difficulty or

embarrassment; they are, though, required to compensate for any missed periods of fast by way of fasting *qadha'* where possible.

16. f. The worshippers should not be on a journey *(musafir)*, or, in a more precise expression, they should not have become liable for praying *qasr* because of taking to the road, i.e. a traveller, or *musafir*. That is, a traveller is, [by law], not required to fast. Should he insist on fasting it will be in vain; consequently, he is not absolved from the responsibility of fasting by way of *qadha'*, except for one case.

That is, if he was ignorant of the law which debars travellers from fasting. Such fast should be in order, unless he became aware of the legal requirement during the day. But, even if by coming to know about the law, he insists on maintaining fast, such fast is *batil*.

Fasting is, therefore, obligatory on (a) those who stay put in their domicile, (b) the travellers who are not required to pray *qasr*, such as (b/1) those who intend to observe a ten-day stay in one place, (b/2) those whose work involves travel, (b/3) those who embark on unlawful travel *(safaril ma'siyah)*, and (b/4) those who spend at least thirty days [in travel] in a particular place without being able to reach a decision whether to stay [the ten-day period] or more on.

17. It is permissible for the worshipper, prior to the advent of Ramadhan or after its arrival, to embark on travel, even without the need for it or in a bid not to fast; and although this is permissible, it is bound to spoil the chance for the worshipper to reap a great reward.

18. Should a person travel during the day of their fast, do they have to carry on fasting that day?

A. Should travel take place, from the periphery of the home town of the worshipper, before noon, no fasting is required, yet it should be preformed by way of *qadha'*. This is regardless of whether the decision to travel was taken overnight or after the breaking of dawn. Nor would it matter, if the worshipper travelled quite a distance from his town or are still close to it, so much so that its buildings are still within his eyesight.

Should he travel at the afternoon, his fasting that day is obligatory; he has to make sure, though, that it is over and done with.

19. Assume that the dawn broke while the worshipper was still travelling. On arriving at his destination, he decided to stay the ten-day period. What should he do?

A. Had this traveller broken his fast before getting to his hometown

[destination], he would have not been required to fast; he has though to compensate for that day by way of *qadha'* at some other time. Had he not broken his fast before he got to his destination, he should take one of two courses of action, depending on the time of day. If his arrival was before noon, it is obligatory on him to make *niyyah* for fast and carry on thus; this fast would count as obligatory one. Conversely, i.e. arriving sometime in the afternoon, he is not required to fast and has to compensate for the day he missed.

What would happen to a worshipper who starts his day at his hometown, then make a return journey at the same day before noon?

A. It is most desirable, as a matter of obligatory precaution, that he should make *niyyah* for fasting and do fast, then resort to a measure of voluntary precaution in fasting that day by way of *qadha'*.

20. There are situations where the *mukallafs* know that a sort of eventuality will arise that may prevent them from fasting the day, such as *haydh, nifas,* sickness, travel, etc. Let us suppose that the *mukallafs* knew before hand that such a thing will happen to them, can they not fast that day ahead of the occurrence?

A. No, it is not permissible. The *mukallaf* should embark on fast at the outset until the development, which would usually absolve the *mukallaf* of maintaining fast, actually takes place. So, if a woman knew that her period would start after an hour, she is not permitted to break her fast before bleeding starts. The travellers too are not allowed to break their fast before they have embarked on their journey and travelled some distance where they cannot see anybody from their place of domicile, nor can anybody else see them.

21. h. Both men and women, who have reached old age, say of seventy, that may have caused them to be frail and consequently find it hard to fast. They have the choice of either fasting or not observing fast. In case they choose not to fast, they are required to give *fidya,* which is three quarters of a kilo of wheat, bread or any other type of food for every day of the month of Ramadhan they decided not to fast. This *fidya* should be given to the poor. However, such old people are not required to fast *qadha'*. Should they reach such a stage of frailty that it becomes very difficult for them to fast, or that fast would put them in harm's way, they are free not to fast and without the need to give *fidya,* nor fast in lieu.

22. i. Persons afflicted with perpetual urge for drinking water *(utash)*, making it rather difficult for them to fast, are free to fast or not to fast; should they choose not to fast, they have to give the sort of *fidya* that has already been mentioned in the preceding paragraph. Should fast exasperate their condition, they can be exempt from fast without the need of give *fidya*.

23. j. An expecting mother, who is very close to the date of giving birth, fearing for the safety of her unborn baby, is permitted not to fast; she can give *fidya* instead and fast *qadha'* for every day she had missed. However, if potential harm, of the type which might adversely affect the mother's health, was envisaged, she is not required to fast, nor is she required give *fidya,* since the fifth of the general requirements of fast is missing.

24. Just as the pregnant mother is not required to fast, should doing so put her unborn child in harm's way, a nursing mother is worthy of receiving the same treatment; she can compensate by way of giving *fidya* and fasting *qadha'*. The same rule, of the pregnant mother, applies if fast would lead to endangering the nursing mother's health. However, this is not the case with women who do not breast-feed their babies, or the baby is bottle-fed. That is, if this was not harmful to their babies' well-being.

2. Obligations During Fasting

The person fasting the month of Ramadhan is required to fulfill the following:

a. *Niyyah;* since fast is an act of worship, there must exist an urge to embark on such a devotion with the exclusive objective of seeking closeness to Allah, the Exalted, Adhering to the requirements of fast, be they upholding what is required of abstaining from what is forbidden. As is the case in other devotions, things that are *haraam* (forbidden) or *batil* are liable to invalidate fast.

26. You may want to ask: Assuming that *niyyah* is the catalyst for embarking on any work; and the *niyyah* of *qurbah* means that the command of Allah is the motivation for taking to such a devotion. Yet, it is rather difficult to assume it in all the cases of fast. For example, there may be people who, although observant of fast, sleep most of the day, forget about food or drink, or simply shun it altogether. Thus, it could be

said that the rationale behind such a person's abstaining from food and drink is not Allah's injunctions. Would this invalidate fast?

A. No, it would not. It is sufficient for *niyyah* of *qurbah* to be countenanced that the worshipper is simply taking to this act of worship in compliance with Allah's command that requires him to abstain from food and drink, when he is either asleep, unaware, or averse to food and drink. That is, so long as the worshipper is sure that he is not going to eat and drink, even if he was not asleep, unaware, or averse to food and drink, this is good enough a *niyyah.*

27. For *niyyah* to be valid it suffices that the fasting person embarks on fasting the day from dawn till sunset, provided that he does not have in mind any type of fast – e.g. *kaffarah* – other than that of the month of Ramadhan. Failure to uphold that would result in annulment of both the fasts.

28. During the month of Ramadhan, the *niyyah* of the fasting person should not be delayed beyond dawn. There is, however, a number of issues when the worshipper fails to make *niyyah* until dawn has broken due to being asleep, or because of an oversight, and so on. (a) If such worshippers have maintained their abstention from food and drink and found about the problem before *zawaal,* they should make the *niyyah* and carry on fasting, in which case it will be accepted from them. (b) Should this happen after *zawaal,* abstaining from food and drink and observing fast should also be the norm, in which case they have, as a matter of obligatory precaution, to compensate for the day by way of *qadha'.*

Should the worshippers either inadvertenly or out of ignorance break the state of maintaining restraint from food and drink, they should act as though they were fasting; they are therefore required to fast in lieu *(qadha').*

Suppose that a worshipper started his day without the intention to fast. This was a deliberate act of rebellion against Allah" injunctions. Later that day, he went back to his senses and repented; what he is required to do is to masquerade as a fasting person; accordingly, he should compensate for that day by fasting at some other time.

29. You may ask: If it is not permissible to delay making the *niyyah* until after dawn has broken, is it permissible to bring it [*niyyah*] forward, say, making it overnight?

A. If it is at all within the capacity of the worshippers and that such a *niyyah* is sufficient for them, unless they change their mind, they are permitted to do so; fasting with such a *niyyah* is sound. Moreover, even if at the inception of the month, making one *niyyah* for fasting the entire month of Ramadhan would also do, provided they do not change their mind. If this has been the case and the worshippers remained, for a reason or the other, asleep for, say, two days or more, they would still be considered fasting all the period they remained asleep.

30. *Niyyah* is obligatory for fast right from the beginning; continuity is another prerequisite. Thus, he who intended to break his fast at any day of Ramadhan, or wavered in continuing with fast, such fast would be deemed *batil*. That is, irrespective of this taking place before or after *zawaal*. However, he must put a show as though he was fasting, and fast *qadha'* at some other time. That said, should this person reconsider his position by going ahead with his fast, provided he did not take to food and drink, his fast would still be in order; however, espousing *ihtiyat*, in carrying on with fast and compensating for it later, should not be abandoned.

31. The worshipper may apply some sort of medication, say eye drops, only to grow suspicious that it could detract from his fast. Having equivocated, he sought advice; he came to know that using eye drops would not do any harm to one's fast. Would the period of equivocation because of doubt render his fast *batil?*

A. Such equivocation should not render fast null and void, so long as the worshipper made his *niyyah* of fast with the belief that the eye drops would not invalidate it.

32. It is not necessary for the *niyyah* of fast that the worshipper is conversant with all that which may invalidate fast, which he is required to avoid. It suffices, at the time of holding *niyyah*, that he finds himself capable of avoiding those things that would make him break his fast; that is, coming to know about them gradually, or by avoiding any thing he suspects might detract from his fast.

Being in a State of *Taharah* at the Time (Dawn) of Embarking on Fast

33. b. Should the worshippers be in a state of *janabah*, they must perform *ghusl* before the onset of dawn *(fajr)*. Should they deliberately

and knowingly avoid *ghusl* until dawn has broken, they have, as a matter of *ihtiyat,* to continue their fast, make up for that day, and pay *kaffarah.*

34. The same ruling applies to a worshipper who due to an oversight forgot to perform *ghusl,* also on the basis of *ihtiyat.* However, in their case, they are not required to pay *kaffarah.*

35. While still awake at night, should the worshippers do that which requires then to perform *ghusl,* they cannot, as a matter of *ihtiyat,* go to bed before having performed *ghusl.* That is, unless they are used to waking up before dawn, either as a matter of course or by way of an alarm clock, to perform *ghusl.*

36. If, overnight, the worshipper was involved in a sexual activity, of the sort that usually leads to a state of *janabah,* and slept without the intention of performing *ghusl,* until it was dawn, they are treated as though they deliberately avoided *ghusl* while still awake.

Should this happen to persons who are not bent on taking *ghusl* lightly, yet they are not of the type known to waking up, their way out is to fast as a precautionary measure in the hope that it will be accepted by the Almighty; they should also resort to *ihtiyat wujubi* (obligatory precaution) by fasting *qadha'* and paying *kaffarah.*

Should this happen to a person, who is used to waking up in time to have *ghusl* by way of an alarm clock yet he could not wake up, his fast remains valid, i.e. nothing extra is required of him.

However, if waking up happens in between, [i.e. before the start of fast], the worshipper should not go back to sleep, unless he is absolutely sure that he is not going to be denied the opportunity of having *ghusl* in time. If by going back to sleep second time round he takes a chance of waking up again to perform *ghusl,* yet this did not materialize, he has to hold his fast and compensate for the missed day by way of fasting *qadha',* as a matter of obligatory precaution; he is not required to pay *kaffarah* though. The same applies, if the waking up and going back to sleep recurred more than twice.

37. Should the state of *janabah* come about as a result of having a dream and extend till dawn, the fast in such a case is valid. However, should the worshippers wake up from their sleep and find out about the occurrence, it is desirable for them, as a matter of *ihtiyat,* not to go back to sleep before they performed *ghusl.* That is, unless they are confident

that they are not going to let the opportunity of performing *ghusl* slip away.

However, should the worse happen, in that they could not wake up second time round, they are better advised to hold on to their fast and fast in lieu; they are, though, not required to pay *kaffarah.*

Should this happen to a worshipper who is not used waking up in time to do what is required of him, his cue is to [do all three], i.e. stick to his fast, compensate for the missed day, and pay *kaffarah;* that is based on *ihiyat.*

38. Married couples are not allowed to engage in sexual union closer to the small hours of the night, i.e. closest to dawn, in which case they could be left with no time to have *ghusl.* Should this happen, by either deliberately flouting the law or inadvertently, they are required to perform *tayammum* instead of *ghusl.* In so doing their fast would be valid; they are however not required to stay awake until the onset of dawn. Should they neglect performing *tayammum* until it was dawn, they should resort to *ihtiyat* by holding their fast, fasting in lieu of the missed day, and paying *kaffarah.*

39. Women experiencing *haydh* or *nifas* should hasten to perform *ghusl* once they know that they became clean again. If they ignore this until after dawn, it is obligatory on them to fast *qadha'.* This is so, when there is still time to perform *ghusl.* Otherwise, *tayammum* could substitute *ghusl.* However, their fast would still be valid, if they were not aware of the cessation of their *haydh* or *nifas* until after dawn.

Although touching a dead body before dawn warrants *ghusl,* yet the worshipper is allowed to postpone it until after dawn.

40. In all the cases where it becomes obligatory on the worshippers to have *ghusl* before dawn, they are allowed to perform *tayammum* instead of *ghusl* where the later can endanger their health or there is not ample time to perform *ghusl.* This would do for holding fast.

41. Should a woman be experiencing a major or medium *istihadha,* is she required to uphold all *ghusls* she is required to perform in order that her fast be valid?

A. Apparently, the validity of fast does not depend on such a woman's performing the *ghusls* that are required of her in a prayer context. Although it is required of the validity of prayer, it is desirable that *ihtiyat* be applied, i.e. by performing the daily *ghusls* to make fasting good. As for nightly *ghusls,* they have nothing to do with fast.

Avoiding Things that Invalidate Fast

d. Avoiding things that render fast invalid should be practised by the worshipper observing fast during the fasting period as a matter of course. These have been discussed by jurists; here I will discuss them alongside any remarks I may deem necessary:

42. a. and b. Food and drink, be they in big or small quantities. Whether such food was of the usual stuff or unusual one, as swallowing stones or dust or drinking oil, is of irrelevance; this is based on *ihtiyat wujubi.*

This ban covers even the minute pieces that may be lodged between the worshipper's teeth. Swallowing [Inhaling] dust, be it light or heavy, is not capable of invalidating one's fast. That said, there is not harm in espousing *ihtiyat* regarding the heavy type of dust. The same applies to vapour and smoke; on that basis the ruling on smoking, which although considered objectionable *(haraam)*, in that it is not among the things that invalidate fast.

The following pose no threat to one's fast. (a) Swallowing anything that has been regurgitated. (b) Swallowing one's saliva whether deliberately or inadvertently. (c) Wearing antimony or using eye/nasal drops, although the drops might find their way to one's stomach. (d) Pouring medical solution onto an open cut, having an injection on medical grounds; if the solution is injected with the aim of feeding, it is considered as food and drink, in which case it is not sanctioned, hence the ban on the use of nutritive substances *(mughathi)*. (e) Consuming any food or drink by other means, such as through one's nostrils, should have the same adverse result on one's fast. (f) Feeding an ill person through an incision in their body is also not allowed; in short what is forbidden is supplying food and drink to the body by way of mouth, nose, or through an incision, including intravenous feeding.

43. c. Sexual Intercourse.

44. d. Masturbation, irrespective of the way used to bring it about. Should semen be passed without any activity, there is no harm in that, in which case fast is valid. If, upon embarking on that which could lead to ejaculation, the person was intent on not letting it happen to them, yet it did eventually happen, they can continue with their fast and are not expected to take further action. If the doers were not so confident that

they would not come, yet they did come, they have to fast *qadha'* and pay *kaffarah.*

45. e. Concocting falsehood *(kathib)* against Allah, His Messenger, and the [Infallible] Imams (a.s.) has been considered among the actions that invalidate fast. However, based on *ihtiyat (alaqwa),* this cannot be said to invalidate fast, although it is among the cardinal sins. That said, should the worshipper commission such an act, it is desirable for him to perform fast by way of *qadha'.*

46. f. Of things that could invalidate fast is dipping one's whole head in water, be it just the head or as part of the entire body. However, strictly speaking, it should not be considered thus. Still, one should, as a matter of obligatory precaution, avoid doing it.

47. g. The use of anal syringe for injecting fluid, barring solids, should, on the basis of obligatory precaution, detract from the validity of fast. However, using same for both man and woman reproduction organs can be tolerated.

48. h. Vomiting can upset one's fast and eventually render it *batil,* as a matter of obligatory precaution, even if it takes place on health grounds; however, if it was pivotal to the patient's recovery, it can be tolerated, although the fast would still be *batil.*

If vomiting occurs naturally, it will not adversely affect one's fast. Even if something is regurgitated without actually reaching the vicinity of the mouth, it too can do no harm to one's fast. But once this food reaches the mouth, it must be thrown out. If it deliberately gets swallowed, fast should, therefore, be deemed *batil,* and the worshipper has to compensate for the missed day of fast and pay *kaffarah.*

49. These are the things that invalidate fast. There is nothing more to them. So, whosoever is in doubt about anything that may invalidate fast, should consult this list carefully; if it is listed, the worshipper should comply with the ruling so passed. Otherwise, fast remains intact.

Nevertheless, we would like to reiterate that the following are not among the things that invalidate fast: cupping, use of injection in the urethra, dallying with one's wife – without sexual intercourse and ejaculation, smelling perfume, and sitting in [a tub filled with] water, even if it covers one's whole body.

Rules Concerning Things that Invalidate Fast

Fast should deemed *batil,* if any of the said things takes place, except the following:

50. a. Anything commissioned by the worshippers unintentionally would not detract the fast.

51. b. Should the worshipper do anything which is included in the eight-item list, in the belief that it is not, only to find out later that it is, this should not affect the validity of fast.

52. If the worshipper is involuntarily made to flout the ban, this would not detract from the fast.

53. Exceptions to the principle of things happening to the worshippers without their consent are the following:

a. Suppose someone fills his mouth with water without contemplating to drink it. However, while turning the water inside it, some of the water seeped into his stomach by accident. Such person is are required, as a matter of voluntary precaution, to compensate for the fast of the day. That is, barring this happening as a result of the worshipper's using the water as mouthwash as part of *wudhu* for an obligatory prayer, as rinsing the mouth in this context is *mustahab,* in that it can be tolerated.

b. Having embarked on playing with his woman, the worshipper unintentionally ejaculated. He can still hold his fast, provided that he was, at the outset, confident not to cause any ejaculation.

54. d. The worshippers could suspect whether dawn has already arrived, then checked to find out the truth of the matter. Having reached a conclusion that it had not, they ate and drank. Afterwards, they discovered that it was already dawn time. Their fast should still be valid.

At the other end of the spectrum is another worshipper who, although faced with the same problem, did not bother to check for themselves. Thus, they took to food and drink in the belief that it was not time for dawn yet. Although, they are not deemed guilty, they could be penalized by compensating for that day by way of *qadha',* should they find out to the contrary.

The same applies to those who break their fast prematurely in the dying moments of daylight, believing that the day has drawn to a close after having noticed what seemed to be darkness, despite clear skies. Their fast is *batil;* they are, therefore, required to make up the day they

squandered and pay *kaffarah*. If the cause of the darkness was something else other than clouds, the same rule applies as a matter of obligatory precaution. Should there be clouded skies, the fast stands, without the need for further action.

If there was no darkness, and the worshippers suspected that it may be time for breaking the fast, they are not allowed to do so. Should they go ahead and break their fast, they would be deemed sinful, their fast *batil*, and it becomes obligatory on them to repeat the fast by way of *qadha'* and pay *kaffarah*. That is, unless it transpired to them that it really was time for the end of fast, in which case they should not worry about taking further action.

The same applies to the persons who broke their fast despite the existence of plausible evidence that it was not dark enough for anyone to break his fast. Such people should compensate for that day by way of fasting *qadha'* and pay *kaffarah*.

For those who break their fast after attaining certainty that it is time to break their fast through either personal experience or reliance on sound proof in support of such conclusion, they cannot be deemed sinful, nor can they be made to pay *kaffarah*. However, if they find out that they were in the wrong, they have to hold their fast. And although they are not required to repeat fasting the day by way of *qadha'*, espousing *ihtiyat* in performing *qadha'* fast should pose no harm.

General Rules

55. The worshippers, who have to observe fasting during the month of Ramadhan yet for a reason or the other they have to abrogate it, should be allowed to eat and drink that day. However, it is desirable that they should behave as though they were fasting. That is, except in certain cases where we have already ruled that abstinence *(imsak)* should be upheld.

Whenever fast is declared void and null, *qadha'* becomes obligatory. This is so irrespective of whether the lapse was brought about as a result of flouting the first condition, i.e. *niyyah*, or the second, i.e. *ghusl*, or the third, i.e. not keeping one's distance from the things *(muftiraat)* which render fast *batil*.

56. *Kaffarah* will not become obligatory for merely leaving out *niyyah* of fast or invalidating it, although making up for any lost days of fast is

obligatory. That is, unless the worshipper commission that which would render fast null and void *(batil)*, or deliberately stayed asleep while in a state of *janabah* until dawn breaks. Obligatory *kaffarah* should be introduced in the light of the following guidelines:

57. a. The worshipper should have, at will, done that which was bound to invalidate their fast.

58. b. The worshippers should not have been coerced to break their fast; in such a case, although their fast would be *batil*, no *kaffarah* is due.

59. c. The worshippers should not be aware that what they did was lawful; conversely, no *kaffarah* should be due. That is, irrespective of whether or not they were aware that fast is not obligatory on them right from the start, or they mistakenly believed the Lawgiver did not rule that the thing they commissioned is among the things that reach fast.

60. *Kaffarah* is obligatory on him who intentionally invalidates his fast by staying in a state of *janabah* overnight, i.e. by not having *ghusl* until its already dawn time; this is based on *ihtiyat*. This covers the case of the worshipper who missed the chance of having *ghusl* because of oversleeping. That is, irrespective of the fact that he had the intention of waking up to perform *ghusl*, yet he was not used to waking up before dawn.

In the Chapter of *Kaffarahs* (penalties), we will discuss in some detail, the kinds of *kaffarahs* stipulated for invalidating one's fast during the month of Ramadhan.

61. Should the worshippers be in a state of uncertainty as to the coming of dawn, they may continue eating and drinking, until they are absolutely sure that dawn has already broken, at which point they should abstain from food and drink. They may as well depend, in determining the arrival of dawn, on the testimony of a person of impeccable character.

That said, in trying to ascertain the time of dawn, the worshipper is not required to personally investigate the matter. However, if they carry on eating and drinking, only to discover that dawn has already come, they are required to perform compensatory fast. The exception to this rule is the case of a person reaching the conclusion that the time for dawn did not arrive, after having checked the matter for themselves, i.e. as discussed in para (54).

62. Should the worshippers be uncertain about whether or not it was

time for ending their fast at the end of the fasting day, it is not permissible for them to do so, unless they directly, or indirectly – through the testimony of a knowledgeable person or *adhan*, made sure that it was. If they unduly hastened to break their fast, they would be liable to perform fast by way of *qadha'* as well as pay *kaffarah*. That is, barring the fact that it transpired to them that they were in the right.

63. The worshippers may experience unwarranted ejaculation, i.e. not of their own making, such as having a dream while asleep during the day of their fast. In such a case, they are not required to hasten to have *ghusl;* they can go back to sleep, thus postponing having *ghusl* so long as there is still time for prayer.

3. Ascertaining the Birth of the Moon

The New Moon's Birth

64. Ramadhan and Sha'ban are lunar months. They may consist of twenty nine or thirty days according to the cycle of the moon around the earth from west to east.

Like the earth, half of the moon faces the sun and the other half does not. The half that faces the sun reflects its light; the one that does not is dark. When the moon completes its revolution around the sun, the situation of darkness and light on both its sides reverses.

In its revolution around the earth, the moon occupies such a position between the earth and the sun that its dark side faces the earth, turning its bright side away from it, where it completely cannot be seen. A second position is that of the earth coming between the sun and the moon. A third position is the one in between.

When the moon reaches a stage where it is completely hidden to the naked eye, this is called "waning of the moon", or moonlessness *(muhaq)*. Once the moon starts moving away from this position, the edge (crescent), of its side which is facing the sun begins to emerge, i.e. a new moon is born. This sets forth the cycle of the moon around the earth. This is called "conjunctional movement" *(harakah iqtiraniyyah)*, because its start is determined at the point where the moon is lined up with both the earth and the sun, taking a center stage. The moment the new moon is seen heralds the moving away of the moon from the pivotal position.

In no way can the lunar calendar month be less than twenty nine days

or more than thirty days. As for the *shari'i* lunar calendar month, it too can consist of thirty or twenty nine days, but not more, and not less.

65. The possibility of sighting the moon, not the sighting itself, is the basis to be reckoned with [to determine the start of the month]. This is so because sighting may not be forthcoming for either the process of sighting is not practised, or there may be obstacles capable of hindering sighting, such as clouded skies. Thus, the *shari'i* month may start.

There is no difference in doing the sighting, i.e. whether it was done with the naked eye or aided by scientific devices, because both lead to the same result, i.e. sighting the moon.

66. Different countries go their different ways in sighting or non-sighting the moon, i.e. it could be sighted in a country but not the other. What is the ruling in this regard?

There are two issues here:

a. The difference in the sighting, or otherwise, of the moon could be attributed to a simple detail, such as the presence of clouds in one of the two countries. In such a case, the sighting of the moon in country (a) can make up for the sighting in country (b) for the same reasons we have just discussed in para (65).

b. The two countries may vary to a great measure in relation to their respective positions on either the longitudes or the latitudes, so much so that sighting the moon in one is more feasible than the other, let alone the presence, or lack of it, of any obstacle, such as clouds or fog.

This could be expounded in two cases:

a. Suppose that country (a) falls on a certain longitude in such a way that sunset occurs a very long time ahead of its occurring in country (b) because of the variance in their respective position in relation to the longitudes.

As we have already illustrated, the moment the moon is born, it starts breaking away, only to become more sightable; each night wares off gradually following the shape and rotation of the earth from east to west. Thus, sunset in one country may take place minutes, or even hours, after it has done so in another one commensurate to their respective position on the globe. Sunset in each longitude falling to the east comes before that falling to the west and vice versa.

For example, sunset may take place in a country like Iraq at the same time the moon emerges from its pivotal position between the earth and sun, i.e. a new birth. It is impossible to sight the new moon in such a situation because of its minuscule size. After few hours it can be possible to sight it because the bright stretch of the moon becomes easily visible by virtue of its breaking away from its pivotal point *(muhaq)*. Thus, when sunset takes place, few hours later, in a country falling to the west of Iraq, the sighting of the moon will have become readily possible.

b. The other assumption is that two countries occupying positions on the same longitude, i.e. sunset takes place at the same time in both the countries. Yet, they are apart from the equator, as they fall on two different latitudes. As you may know, the length and shortness of the day is also determined by the latitudes. Another factor, which has an impact on this matter is the period during which the crescent stays visible in the horizon of this country or the other. Assume that its presence in one country was so short that it could not be sighted, and that it dwelled for a rather long spell in the other country to give ample time to the beholder to sight it; this is how the difference in the possibility, or otherwise, of sighting the moon could come about.

What distinguishes one country from another in relation to the possibility of sighting the moon could be determined by their respective positions on the longitudes. Those occupying a westerly position to the other country, as well as a different latitude, allow a longer spell of dwelling for the crescent to be sighted.

This discussion is bound to lead to posing the following questions:

a. Different countries experience the birth of the new moon at varying times for a number of reasons. Should one deduce that each country should have its own horizon for sighting the moon and therefore the start of their lunar month? This is so because it is born in a westerly horizon earlier than an easterly one, or should the start of the lunar month be one for all countries, having sighted it at any point in the horizon?

b. In other words, is the advent of the *shari'i* lunar month a relative one, following the different horizons, in the same way sunrise behaves – such as the sun rises in the sky of Detroit but not in the sky of Damascus, making it a fact in Detroit and not so in Damascus? So, does it follow the same logic, or is the arrival of the *shari'i* lunar month an absolute matter and an independent astronomical phenomenon that is constant, in that it

has nothing to do with the way different countries are scattered around the globe?

A. In response to this question, juridical research has come up with a theory; it lends support to the second assumption. It propounds that the inception to the month cannot be relative following where any particular country or area is located. It further suggests that it is wrong to judge the relativity of the start of the month by the variant sighting of the moon in different countries.

The theory that sunrise happens as a result of this or that part of the earth facing the sun at this or that moment in time; and since different parts of the earth face the sun in turn by virtue of the earth's round shape and its rotation around its axis, it is natural that sunrise is relative.

As for the inception of the lunar month, it comes about as a result of the moon breaking away from its pivotal point of its alignment with both the earth and sun. This is a specific astronomical phenomenon concerning the position the moon takes in relation to both the sun and the earth. It should, therefore, follow that such a phenomenon is not bound to be affected by this part of the earth or that; thus, neither assuming relativity makes sense, nor suggesting that the month starts in this part of the world on, say, a Saturday evening, and in another part on a Sunday evening.

The latter does not hold water too from of the methodology of research perspective. That is, because it does not make allowance for the difference between the natural lunar month and the *sahri'i* one; the natural lunar month starts with the breaking away of the moon from its pivotal position of alignment and is not prone to be affected by any other factor. Since this occurrence could be viewed as specific astronomical phenomenon, i.e. not yielding to this position or that, the theory of relativity does not make sense.

The start of the *shari'i* lunar month is determined by two factors:

a. Astronomical, i.e. the point at which the moon breaks away from aligning position in relation to both the sun and the earth *(muhaq)*, and

b. The bright part of moon facing the earth should be visible. However, the possibility, or otherwise, of sighting the moon could be viewed as a relative matter, pursuant to the different areas in the glob; it could also be construed as an absolute one, not relenting to any influence.

So, if we mean by "the possibility of sighting" that sighting by man in this part or that of the glob is relative, making the start of the *shari'i* lunar month a fact in every part of the globe, following the sighting in that particular point on earth, it may start in one part and not the other. But, if we take the "possibility of sighting" to mean the possibility of sighting the moon even in any part of the world, this should herald its arrival to all the parts, and hence its absoluteness, i.e. the start remains one, despite the variance of the areas of the world.

It is evident, therefore, that since the birth of the *shari'i* lunar month is contingent on the crescent month, in addition to the possibility, or otherwise, of sighting it, and that such sighting can be feasible in certain parts of the world and not the others, it is plausible that the start of the month is relative.

The right methodology to ascertain whether or not the start of the *shari'i* month is a relative one is by consulting the *sharia* itself. It has made the start of the month dependent on the sighting of the crescent moon. Here, we should attempt to find out whether the *sharia* made the birth of the month in every area exclusive to that particular area, or the sighting thereof can be taken as a benchmark for all regions of the world.

What we can deduce, though, from juridical evidence gives credence to the second assumption, i.e. if the crescent is sighted in any spot of the world, this should be taken to mean that the start of the month is one everywhere.

How does the sighting of the crescent moon come about?

We have already seen that the start of the *shari'i* lunar month depends on two factors: (a) the breaking away of the moon *(muhaq)* from the point which aligns it with both the earth and the sun, and (b) sighting it is feasible. Now, we should try to explain how best these can be achieved in a true *shari'i* way.

The following tools can be used:

67. a. Direct sighting with the naked eye as such sighting would enable the person carrying it out to see the crescent moon emerging and that it is possible to see for oneself. That or modern technology gives credence to the emerging of the moon and of the possibility of seeing it.

68. b. The testimony of other people who have made the sighting.

However, there must exist one of two things for such testimony to be viable.

As for the first tool: The availability of numerous and varied types of witnesses for the news of sighting to become both commonplace and credible. However, should there be a large number of witnesses and neither knowledge of the sighting nor having peace of mind about it for a good reason, the sighting of the moon shall be deemed non-existent. That is, although the great number of witnesses may aid certainty, it is not everything in the equation.

Any sensible person must be able to take into account all that which may cast doubt on the reliability of the witnesses. The following examples should further explain what we are aiming at:

1. Suppose there were forty persons, in one town, who gave evidence that they had sighted the crescent moon. The strength of evidence of those people are greater than that of the same number of witnesses scattered over forty towns all over the world. This is because the chances of error that could emanate from the forty witnesses of one town is remote, contrary to those of the forty different towns.

2. Following on from the previous example, the opposite may happen, in that the witnesses of the one town may be given to emotions that are non-existent in the case of the witnesses of the other towns.

3. Just as it is necessary to ascertain the credibility of those who came forward and testified that they had sighted the moon, so is it necessary to take into consideration the number of people who, despite taking part in the lookout for the new moon, did not manage to affirm such sighting. The greater their numbers and clearer the weather in their respective areas, especially if such areas were close to the [forty-witness] town, the greater the propensity to cast doubt over the final result.

4. The quality of witnesses has a great impact in reaching a conclusion [on the sighting of the crescent moon]. That is, there is a great difference between forty witnesses who are readily given to lying, and another forty witnesses who are not known, and a third group who is known for their probity in some measure.

5. A number of testimonies, in one place, may achieve unanimity, in that a group of people, who took it upon themselves to be on the lookout for the new moon, all took a vantage point in relation to the horizon. Suppose one of them managed to sight the new moon. Pointing to the

direction where he sighted it, another one managed to confirm the sighting, and so on. Thus, the testimony of the first witness is corroborated by the testimonies of other people in the group. Such testimonies should be credible because the possibility of their falling prey to error is rather remote.

6. Random agreement of certain details of different testimonies of a number of witnesses in one town, such as concurrence of both the time they sighted the moon and the time they said it disappeared, would inspire confidence that the sighting really happened.

7. Just as scientific tools have a positive role to play in confirming the sighting of the new moon, so have they a negative role on the process. That is, should there be no sighting done using such methods, this is bound to shake the confidence of man in the testimonies of ordinary folk no matter how great their numbers were.

8. What comes into play as well is scientifically [astronomically] predicting the birth of the new moon, in that it is bound to detract from any testimony of sighting the moon prior to the predicted date\time of the birth. This is irrespective of the fact that, although there is a margin of error in the prediction process, it may not be farther than the error that could tinge the testimonies. To say the least, the scientific evidence can still delay giving credence to the veracity of the human testimony.

69. b. The second tool: The Evidence.

Such an evidence could be recognized when two factors become readily available:

1. Two male witnesses, known for their probity, should testify that they have sighted the new moon. Neither the testimony of one such man should be relied on, nor should the testimonies of women, although they may be of impeccable character.

2. The testimony of both men must be coherent.

3. There must be strong proof pointing to the flawed evidence of the witnesses or that they have made a mistake. For example, two witnesses, out of a great number of people who were keeping a vigil to sight the new moon, could be the only two who claim to have sighted the moon. This is bound to detract from their evidence, especially when it is known that they were among a large number of people in the same spot, that they all have average eyesight, and that the weather was favourable.

70. c. The lapse of thirty days of the moon of the previous month. This is because the lunar month cannot be more than thirty days. So, even if the new moon could not be sighted, a new lunar month should start.

71. d. The Ruling of the *Marji'*. Such a ruling is enforceable and should be complied with, even by those who had no access to the validity of the evidence they used in reaching such an edict; this takes the following into account though:

1. The *mukallafs* have not the slightest idea about the validity, or lack of it, of the edict of the *Marji';* in such a case, they should have no alternative but to follow the edict.

2. The *mukallafs* may have an inkling that the *Marji'* may have got it wrong, despite their knowledge and probity; in this case too, they should follow the edict of the *Marji'*.

3. The *mukallafs* may have reached the conclusion that the evidence the *Marji'* used was not sufficient to have made him arrive at his judgement. This could be on the side of the witnesses who the *mukallafs* know are not up to scratch, regardless of whether they may have lied. In this case, the ruling of the *Marji'* will have no enforceable power and the *mukallafs* are not bound to follow it.

4. The *mukallafs* may know for sure that the month has not yet started and that the *Marji'* has made an error of judgement in declaring its inception prematurely. In this case, the *mukallafs* do not have to follow the ruling of the *Marji';* they are free to act upon their own conviction.

What we mean by the "*Marji*'s confirming the start of the month" is the fact that he issues a statement to this effect and urges the Muslims to adhere to his ruling. Should the *Marji'* reach such a conclusion, yet he did not make it public, this is not sufficient for anyone to act upon it, except for those who attain personal satisfaction.

Once the *Marji'* issued a statement confirming the start of the month, all believers, including those who do not follow him in *taqleed,* yet believe that he fulfills the requirements of *Marji',* must comply with his ruling.

72. e. It's not sufficient for the scientific efforts to confirm that the crescent moon has moved from the point of alignment with the sun and earth *(muhaq);* they also have to confirm that it could be seen by the naked eye.

73. There are circumstances where the nature of the new moon can suggest that it was born the night before in spite of the fact that it was not sighted then. Things like its forming a semblance of a ring, the density of its bright side, and the length of its dwelling, so much so that it does not set until after dusk.

However, realistically speaking, such phenomena of the moon cannot be espoused as an exclusive evidence that it was born the night before. What all this can prove is that the new moon may have emerged of *muhaq* at an earlier time to appear in such a look. It should then follow that it may not be possible that it could have been sighted at the sunset of the previous day. The length or shortness of the period the new moon emerging from its aligned point with the sun and the earth should not be taken as a yardstick for determining that the moon is one night older.

Generally speaking, it is not permissible to rely on guesswork in ascertaining the birth of the new moon of the months Ramadhan and Shawwal, nor is it permissible to rely on the computations of speculative astronomers.

Miscellany

74. Once the crescent moon of the month of Ramadhan has been officially sighted, fast becomes obligatory. Likewise, once the crescent moon of Shawwal has been sighted the fasting season comes to an end.

Should nothing point to that which confirms that the month of Ramadhan has started, in one of the following ways, starting fast from the following days is not obligatory. It is not permissible to fast that day with the intention that it is part of the month, so long as its start has not been officially declared.

However, one can fast that day as part of the month of Sha'ban by way of voluntary fast or a compensatory one, the worshipper may also fast the day with a double-edged *niyyah,* i.e. by simply leaving it open-ended û to work for both the possibilities: Should it later on transpire that the hanging day was really part of the month of Ramadhan, the fast would be accepted as such.

75. Come the thirtieth night of the month of Ramadhan and with it the inconclusion that the month of Shawwal had not officially arrived yet, fasting the following day becomes obligatory. If, however, it was found out that the month of Shawwal has already been with us, and that

it should have been the first day of the *Eid,* which is *haraam* to fast, there will be no harm as long as the worshipper fasts that day fully aware that the next month has not begun.

The *mukallafs* may reach some sort of conclusion that the following day will be the first of Shawwal. Yet, they neither entertain the idea of breaking their fast because of lack of conclusive lawful evidence, nor do they want to fast, for fear it might be the start of *Eid.* To overcome the impasse, they may resort to *ihtiyat* by way of embarking on lawful travel; this should, however, be undertaken overnight; should they delay it until day time, it is obligatory on them to make *niyyah* for fast and abstain from food and drink until they are far away from their place of domicile, getting passed *heddet-tarakhus* (The point at the periphery of a town were, for example, *adhan* could be heard. This concerns distances to determine whether prayer should be said *tamam* or *qasr*), as has already been discussed in para (20). One may suggest that this worshipper may have already committed that which is *haraam* by fasting that day believing it to be a *Eid* day?

A. What is *haraam* is fasting the whole *Eid* day; fasting part of it is not.

Chapter Two

Fasting, other than the Month of Ramadhan

1. Compensatory Fast

Who must compensate for the fast of the Month of Ramadhan?

1. Whoever, did not discharge their responsibility of fast should compensate for it by way of *qadha';* they must do so by fasting an equivalent number of days they have missed. This is regardless of the reason for not fasting, i.e. be it voluntary; the exception being the following:

2. a. Those who have not yet attained adulthood.

3. b. An unbeliever turned Muslim. An apostate and re-embracing Islam must compensate for any periods of fast they did not observe.

4. c. Those who enter a state of unconsciousness prior to making *niyyah* for fast.

5. d. Those who abandon fast because of old age or persons afflicted with perpetual urge for drinking water *(utash),* i.e. the subject of paras (21-22) of the previous chapter.

6. e. Those who could not fast due to illness that continued to the next month of Ramadahn. Such should pay the *fidya* stipulated in para (21) just mentioned.

Rules Concerning *Qadha'*

7. Whoever has a fast liability, should not be in any rush to discharge it; it could be postponed for months, provided that this does not lead to apathy. However, should the delay continue until the following month of Ramadhan, *qadha'* and *fidya* would become due, as has been discussed in para (21) of the previous chapter.

This should cover both types of people who fail to discharge their fast liability in good time. Among them is he who takes longer time until the

arrival of the following month of Ramadhan and he who is not bent on leaving it to drag on had it not been for a spell of illness they suffered close to the time which made them miss their target of fasting in good time.

The amount of *fidya,* however, is not going to increase in the light of the extended delay of dispensing with the *qadha'* fast.

8. Just as it is not imperative that one must hasten to relieve oneself from the responsibility of fasting *qadha'* for missed days during the month Ramadhan, so is not imperative to fast for days on end; that is, if you are indebted by, say, two days, you can fast one of them and postpone the other to some other time.

9. In case a worshipper has a fast liability of two Ramadhani months, they have the choice to start fasting any one of them. Should they start with the previous one, but not the latter until the year comes to a close, they should be liable for paying *fidya* for it in addition to fasting *qadha'.*

If fasting *qadha'* was done without specifying for which of the two months it was, this is allowed; however, in such a case, the worshippers should practically consider themselves discharging the responsibility towards the earlier month. It should therefore, follow that if they confined their compensatory fast to one month, they would attract *fidya* for the second month.

10. Should the worshippers end up doing compensatory fast and another one of an obligatory nature, such as that of *kaffarah,* they are free to start with whichever.

How should one go about performing compensatory fast?

11. Fasting *qadha'* is more or less like fasting the days of Ramadhan; the differences are:

12. a. The *niyyah* for fasting *qadha'* can be postponed until before midday. If it is already midday, there will be no chance to make *niyyah,* as a matter of *ihtiyat.* According to this premise, if the worshipper has made *niyyah* to perform compensatory fast for Ramadhan at dawn, only to waiver in between, and go back to his original *niyyah,* his fast would stand so long as that the indecision took place during the period from dawn till before midday. This, of course, is contrary to fasting the month of Ramadhan where waivering in making the *niyyah* would render fast *batil,* let alone when the worshipper is resolved to break their fast.

13. b. Some jurists have stipulated that *niyyah* of fasting any day's *qadha'* should not be made earlier than its night. For example, if you want to fast on a Saturday, you are not allowed to make *niyyah* on the day of Friday alone; that is, it must be renewed when night falls on Friday till midday on Saturday.

However, this is not obligatory, provided that the worshippers' fast should be based on the *niyyah* they made on the day of Friday.

14. c. The *niyyah* should be exclusive to performing compensatory fast of Ramadhan, i.e. fasting in vacuum, or just for the *niyyah of qurbah per se,* will not do. Failure to do so will not absolve one from the responsibility of fasting *qadha'*.

15. d. Experiencing ejaculation while asleep and remaining in a state of *janabah* until after dawn does not allow the worshippers to carry on with their *qadha'* fast that day, contrary to the same situation in the month of Ramadhan where fast will both be in order and obligatory.

16. e. It is permissible for the persons who are observing *qadha'* fast to break their fast at any stage before midday. However, if they deliberately do so after midday, they are liable to pay *kaffarah,* as will be discussed in the chapter dedicated to that. Breaking one's fast in the belief that it is *halal* to do so should not attract any penalty.

Those who fast on behalf of others can break their fast at any stage of the day, i.e. even after midday without attracting any *kaffarah*. However, if they are hired to fast a particular day, they cannot break their fast on that day, even before midday for they have to honour their obligation. Yet, if they break their fast, they are not liable to pay *kaffarah*.

17. It is permissible to fast by way of *qadha'* after the lapse of the month of Ramadhan on any day of the year, apart from certain days when fast cannot be sanctioned; this will be discussed in paras (26-36) Fasting *qadha'* cannot be tolerated from a travelling person whose duty it is to perform *qasr* prayer, from a person who is relieved from fasting on medical grounds, and from a woman who is in a state of either *haydh* or *nifas*.

18. Managing Doubt

Harbouring doubt as to whether or not one has to perform compensatory fast for the whole of the month of Ramadhan or part thereof should be dismissed, i.e. it is not obligatory to go for *qadha'* fast.

Doubt about whether one's fast was in order should be treated in the same way.

Suppose certain worshippers had to break their fast for one day. They do not know whether they had a valid reason to do so, such as being on a journey or having fallen sick, and subsequently have to compensate for it. Maybe, they were in breach of the fast, in which case they should be liable to perform compensatory fast and pay *kaffarah* at the same time. How should they go about this matter?

A. They are required to fast *qadha'*; no *kaffarah* shall be due.

Worshippers who know that they have missed a number of days during which they did not fast for a reason or another, however, they do not know the exact number of days. What should they do?

A. They must fast the minimum period of any two periods. For example, if they knew that the missed period was between one week and two weeks, fasting one week would do.

Should one become doubtful about whether they have absolved themselves of the responsibility of fasting any outstanding days, they have to have another go.

The Son Standing in for His Father

19. If the father had a liability to perform compensatory fast, and passed away without discharging it, it is obligatory on his son to shoulder such a responsibility. Should there be more than one son, the eldest should be the one to carry the burden. If there were two sons of the same age, they should jointly be responsible, in exactly the same way of performing prayer by way of *qadha'*, i.e. para (32) of the General Guidelines of the Chapter on Prayer.

If at the outset, a person is not required to fast either on health grounds or for setting out on a journey and subsequently die, no *qadha'* on the son shall be due.

2. Fasting by Way of *Kaffarah* or to Compensate for a Missed Opportunity

Fasting becomes obligatory on certain occasions, such as a self-imposed penalty *(kaffarah)* to seek pardon for commissioning a sin, or compensating for an obligation:

20. a. Fasting by way of *kaffarah* for not observing fast during the month of Ramadhan. Whoever rebels against the injunctions by not fasting the month of Ramadhan, they are liable to pay *kaffarah*, as has already been discussed in para (56) of the Chapter on Fasting. This *kaffarah* involves either the emancipation of a slave, or feeding sixty poor people, or fasting two months one of which must follow on from a previous one, albeit for one day.

21. b. Fasting by way of *kaffarah* for leaving Arafat prematurely. As part of *hajj* rituals, *wuquf* at Arafat is required for the period from midday of the ninth of Thil Hijjah to the sunset of the same day. Should the pilgrims choose to exit Arafat prematurely, i.e. before sunset, they are required to compensate for this haste by slaughtering an animal. Should this type of *kaffarah* not be feasible, the pilgrims have the alternative of fasting for eighteen days, although not in one go.

22. c. Fasting as a compensation for *hady*. As part of *Hajj-ut-Tamatu'*, it is obligatory to sacrifice an animal *(hady)* at the day of *Eid*. Should this not be feasible, the pilgrim can compensate for it by way of fasting for ten days.

23. The form of obligatory fast by way of *kaffarah* or compensation is the same as that of fasting in the month of Ramadhan. However, there are few differences. In *kaffarah* type of fast, there is no harm in a fasting person waking up in the morning only to find out that they have had a sexual experience that led to ejaculation. This, though, is contrary to observing compensatory fast for the month of Ramadhan. The latter too cannot be sanctioned in a context of travel, whereas some types of *kaffarah*/compensatory fast can be sanctioned in that context.

a. Fasting by way of *kaffarah* for leaving Arafat prematurely.

b. Fasting for ten days in compensation of *hady* is usually divided into two stages; fasting for three days while the *mukallafs* are still in travel, i.e. before returning ot their homeland.

Observing fast by way of *kaffarah* for not fasting the month of Ramadhan cannot be tolerated while the worshipper is on the move *(musafir)*.

3. Voluntary Fast

24. Voluntary fast on all days, save those of Ramadhan and particular forbidden days – the subject of paras (35) onward, is *mustahab*.

Tradition has it that fast is a shield against hellfire and that it is a purification of body and soul. Through fast the worshippers are admitted to paradise; their sleep is viewed as a kind of worship, their silence a sort of *tasbih,* and their *du'a* is answered. The fasting persons have two happy moments: the first when they break their fast, and the second when they meet their Creator.

Who qualifies for voluntary fast?

25. Fasting is *mustahab* for the worshippers, provided that:

a. They are not suffering from an ailment or fasting could adversely affect their health.

b. They are not travelling, except for fasting for three days while in the Holy Madinah to attend some business, especially on Wednesday, Thursday, and Friday consecutively, as a matter of *ihtiyat.*

c. Women are not experiencing either *haydh* or *nifas.*

d. The worshippers have no liability for the month of Ramadhan compensatory fast. Should they be observing an obligatory fast by way of *nadhr* and the like, they can embark on a *mustahab* type of fast. The same applies for those who hire themselves to fast for other people.

Just as it is not permissible for the person, dealing with compensatory fast for the month of Ramadhan, to personally observe *mustahab* type of fast, so it is not permissible for him to volunteer his services for fasting on behalf of others. However, he is allowed to hire himself for fasting for others, in which case the fast shall be in order, even though he might have a liability for fasting by way of *qadha'.*

It is also permissible to observe *mustahab* type of fast while on a journey, so long as you cannot perform the obligatory fast.

Q. As you have already explained, the worshippers cannot embark on a *mustahab* type of fast while still having to contend with an outstanding period of fast. Can they, though, take up a *nadhr* to perform a voluntary fast, and thus turning it into an obligatory one and eventually giving it precedence over any outstanding period?

A. Such a *nadhr* is *batil* to start with; it should, therefore, follow that fasting by way of *nadhr* is invalid, if it was observed before discharging one's responsibility towards compensatory fast. Should the worshipper promise a vow *(nadhr)* to observe a *mustahab* type of fast without

specifying that it comes first, such a *nadhr* becomes enforceable. To absolve one of the responsibility towards both the liabilities, he has to start with the *qadha'* fast first, then the *mustahab* one.

Women do not require their husbands' permission to engage in voluntary fast. That is, unless the husband objects to that on the grounds that he wants to enjoy his wife's company.

26. The *niyyah*. It is sufficient to make *niyyah* of *qurbah* for voluntary fast the night before. However, the time for making *niyyah* spans the whole day, in that if the worshippers did not do anything which may detract from the validity of fast, they can still make *niyyah* for fast, even if it comes within hours or minutes before the time of ending the fast. Not making *niyyah* or not contemplating fast for all that time is immaterial, so long as the worshippers remained in a state of abstention.

27. **Its Form.** Voluntary fast is performed in the same way as that observed during the month of Ramadhan, and its *qadha'* for that matter. Where it diverges is in the fact that it is permissible for the *mukallafs* to remain in a state of *janabah* until after dawn. Fast thus observed is in order, contrary to the fast of the month of Ramadhan, be it *Ada'* or *qadha'*. Where voluntary fast is also different from fasting the month of Ramadhan, by way of *qadha'* is in the case of waking up in the morning with an experience of a sexual encounter, in that it is permissible to carry on with voluntary fast that day, as opposed to fasting the month of Ramadhan by way of *qadha'*.

28. **Rules Regulating Voluntary Fast.** The worshippers have the choice of breaking their fast whenever they wish, be it before midday or some time in the afternoon, regardless of the way they choose to do so. However, inadvertently breaking one's fast would not detract from fast.

29. **Voluntary Fast May Become Obligatory.** This may come about due to an emergency, i.e. by way of a pledge to, an oath by, or a covenant with Allah, the Most High. Once turned obligatory, this *mustahab* fast assumes a different set of rules.

30. a. Should the worshippers pledge to fast on a particular day, they have to make *niyyah* for doing so at the outset, i.e. they are not permitted to delay making the *niyyah* until after dawn, let alone dragging it until before midday, which is the case in the voluntary fast. That said, one can maintain that it is permissible to delay it until before *zawaal*, notwithstanding the practice of *ihtiyat* by way of *qadha'*.

31. b. Should the worshippers pledge to fast a particular day, they are not allowed to break their fast that day, neither before midday nor after it. Should any day be picked at random for observing their fast, they are free to break such a fast whenever they wish, provided that they fast another day.

32. c. In fasting for a *nadhr*, it is obligatory on the person to do that with the intention of absolving one's responsibility of the pledge he made. Failure to do so would result in leaving the *nadhr* as though it was not met.

33. d. The worshippers can still travel, if need be, on a day that has already been earmarked for fast by way of *nadhr*. However, they should compensate for the said day by way of *qadha'*.

34. e. Should the worshippers pledge a fast by way of *nadhr*, making it obligatory to implement, it is permissible for them to observe it, even while on a journey. That is, with the proviso that they, while making *nadhr*, stipulated that their fast would be during travel time or that they undertook to discharge their responsibility of fasting irrespective of whether they were present or away on a journey.

4. Forbidden Fast

Types of such fast are the following:

35. a. Fasting the first day of Shawwal, i.e. the day of *Eidul Fitr*.

36. b. Fasting the tenth of Thil Hijjah, i.e. the day of *Eidul Adhha*.

37. c. Fasting the eleventh, the twelfth, and the thirteenth of Thil Hijjah, by those who are present at Mina and engaged in *Hajj* devotions or for any other reason.

The exception being: The obligatory fast of any two of the sanctuary months (Thil Qi'dah, Thil Hijjah, Muharram, and Rajab) as a *kaffarah* for killing [man slaughter] in certain cases. It is permissible to fast and include the *Eid* and other days.

38. d. Every unlawful fast, such as that observed by a sick person, a woman in a state of *haydh* or *nifas,* fasting for a *nadhr* by way of thanksgiving for commissioning a sin (say, for killing a believer), and the fasting of a travelling person, except the cases discussed in paras (24, 26 and 35).

Among unlawful fast is that which is extended until after sunset; it is not valid. However, should the *mukallafs*, who are intent on ending their fast on time, delay so doing unintentionally, their fast is in order, even if they did not break their fast that night.

Also among unlawful fast is that which is observed on the day which could be among the days of the month of Sha'ban and Ramadhan. Should the worshippers fast that day, although it was not proved conclusive as part of Ramadhan, it will not be accepted from them, as already been discussed in para (74) of the previous Chapter.

Refraining from speech, as part of fast, cannot be sanctioned.

39. The fourth type of unlawful fast is different from the first three ones in one aspect. In the first three, fast is forbidden, even if it is not observed with the *niyyah* of *qurbah;* conversely, the fourth type is forbidden when it is observed with the *niyyah* of *qurbah;* it shall not be *haraam*, if it is not observed with the *niyyah* of *qurbah;* it would not be deemed lawful. It would be considered as a personal judgement.

Corollary

40. Appended below is a comparative summary of the types of fast and rules regulating them.

Invalidators of Fast *(Mufatiraat)*. All types of fast share things that render fast invalid.

Things commissioned inadvertently *(sahu)*. All types of fast are immune to being breached, if the worshipper did not anything unintentionally.

Niyyah. During the month of Ramadhan, *niyyah* should not be delayed until after dawn. However, should the worshippers be caught unawares, with the arrival of the month of Ramadhan, yet no *niyyah* was contemplated, their fast should be in order, if becoming aware of the problem takes place some time before midday and with it the making of the *niyyah* afresh.

The same applies to fasting by way of *nadhr* on a particular day.

Delaying the *niyyah* until after midday in all obligatory types of fast cannot be sanctioned.

In voluntary types of fast, it is permissible to delay making *niyyah* until after midday.

Deliberately Remaining in a State of *Janabah* until Dawn Time. This is not permissible during the fast of the month of Ramadhan, as a matter of *ihtiyat*. The same applies to *kaffarah* and compensatory types of fast. There is no harm in doing it in voluntary types of fast, even if it turns obligatory by way of *nadhr*, oath, or pledge.

Waking up after Experiencing a Sexual Encounter that Led to Ejaculation. This should not detract from any type of fast, except fasting of the month of Ramadhan by way of *qadha'*, as a matter of *ihtiyat*.

Forgetting about One's State of *Janabah* until after Dawn. This would render fasting of the month of Ramadhan, both *Ada'* and *qadha'*, null and void, as a matter of *ihtiyat*. It will not affect other types of obligatory or voluntary fast though.

Calling the fast off and Annulling it. This is not permissible in every fast that has been undertaken that day, such as any day of the month Ramadhan or the day the *mukallaf* specified to fast on by way of *nadhr*. This however is permissible in the other cases, be it before midday or after it, except for fasting of the month of Ramadhan by way of *qadha'*; where it cannot be tolerated is when it takes place after midday; it can though, be done at any time before it.

Kaffarah. No *kaffarah* is due on leaving out the *niyyah* in an obligatory fast, especially without calling fast off. Nor should there be *kaffarah* for unlawfully taking to food and drink, except for two cases: not fasting during the month of Ramadhan and calling fast off some time in the afternoon in compensatory fast for the month of Ramadhan.

As for the worshipper who does not fulfill his vow to fast a particular day without valid and lawful reason, he should pay *kaffarah* of *nadhr* as soon as he abandoned the idea of fasting. This is regardless of whether he broke his fast by actually eating or drinking. This will be discussed in some detail in the Chapter dedicated to *kaffarah* of *nadhr*, oath, and pledge.

Fasting While in Travel. Neither fasting the month of Ramadhan, nor compensating for it in travel, which normally requires the traveller to perform his prayer *qasr*, can be sanctioned. Observing voluntary fast during travel cannot be tolerated, unless it has turned obligatory by way of *nadhr*, provided that the person making the *nadhr* stipulates that he carries it out during travel as has already been discussed in para (34).

There is, however, one case where fasting during travel can be tolerated, i.e. the one mentioned in para (25).

Certain types of *kaffarah* and compensatory fast can be sanctioned during travel. However, that which cannot be tolerated is fasting by way of *kaffarah* for not fasting during Ramadhan.

Fasting of a Sick Person. Fasting, any type of fast, by a sick person, whose health can adversely be affected by fasting, cannot be deemed valid. Also, those with good reasons not to fast, as has already been discussed in para (6) of the previous chapter.

Section Four

I'tikaf (Retiring for Worship)

Foreword

1. Literally, *I'tikaf* means dwelling on something in a place. Technically, it means retiring to the mosque with the aim of busy engagement in worship.

Such type of worship has been sanctioned by the Holy Qur'an, the *Sunnah,* and consensus.

It seems that, after rejecting the idea of monasticism and shunning life, deeming it both wrong and negative, Islam has put forward the enterprise of *i'tikaf* as a temporary and limited experience. It is a unique way to transporting the worshippers to the realm of spirituality with the aim of strengthening the bond between them and their Creator. Such worship would enable man to increase his provision in this world for the hereafter.

Having had a spiritual nourishment, the worshippers could now go back to their daily routine with an unwavering heart and a firm faith.

Basically, *i'tikaf* consists of three days of seclusion in a mosque adopting a specific regime, on top of which fast and sexual abstinence.

Requirements of I'tikaf.

The Requirements that should be fulfilled are:

2. a. Reason *(aql).*

3. b. Faith *(iman).*

4. c. *Niyyah* of *qurbah* at the outset, and throughout the period, of *i'tikaf.*

As we may know that *niyyah* of fast can be made overnight. Can this be the case in *i'tikaf,* i.e. by retiring to the mosque the night before with the intention of starting it at the start of the day?

A. Yes, it, apparently, is in order.

Most important, the worshipper should aim at making the *niyyah* of *qurbah*, not to covet more of supplication and prayer, although this is more superior.

5. d. Fasting the entire period of *i'tikaf*, i.e. three days, in that whomsoever is not fit for fast should not be fit for *i'tikaf*; for example, just as the fast by a sick or a travelling person cannot be sanctioned, *i'tikaf* by them cannot. However, there is a case for sanctioning the *i'tikaf* of the traveller who makes a *nadhr* to fast in their travel, as has already been discussed within the context of voluntary fast in the Chapter dedicated to Fasting the month of Ramadhan.

A worshipper observing *i'tikaf* can make *niyyah* for fasting any type of lawful fast during the period of *i'tikaf*. That is, he can embark on compensatory fast, of the month of Ramadhan, *kaffarah* fast, and voluntary fast, provided that they fulfill the requirements of the latter; among these is that he must not have any liability of any obligatory type of fast, as has already been discussed. Therefore, whoever intends to take to *i'tikaf* outside the month of Ramadhan should first address such a liability, if any.

Just as it is obligatory that the fast of the person taking to *i'tikaf* be valid, so is it obligatory that the days meant for *i'tikaf* be valid, in that *i'tikaf* cannot be sanctioned on either *Eidul Fitr* or *Eidul Adhha*, for example.

6. e. The period. The minimum is three days, i.e. with two nights in between. It could be more, e.g. three days and four nights, or even more than that; for example, the worshipper could make *niyyah* to start *i'tikaf* from Friday night till the sunset of Monday.

7. f. *I'tikaf* should be in a main mosque, for it is not known that *i'tikaf* in a small one can be accepted.

Such main mosque must be identifiable, in that it is not permissible to hold *i'tikaf* in two mosques, albeit they may be adjacent to one another, i.e. by spreading the period of *i'tikaf* on both mosques. Accordingly, if it becomes untenable to stay in one mosque to complete one's *i'tikaf*, such *i'tikaf* will be *batil*.

The entire building of the mosque is treated as the place for practising *i'tikaf*. Even if the worshipper makes a *niyyah* to observe *i'tikaf* in a particular place within the building, this should not have any importance, in that he is free to move around the mosque's building.

8. g. The wofshipper should not venture out, unless for either lawful pursuit or any other business that the generality deem acceptable. An example of the first type, i.e. lawful pursuit, is going out to perform *ghusl* of *janabah,* for they are not allowed to stay in the mosque and perform *ghusl* there, even though this may be feasible. An example of the second type of business is going out to seek medical treatment in the event of falling sick.

Among the instances of going out for performing *ghusl,* other than that for *janabah,* is any of the other obligatory *ghusls,* e.g. that of touching the body of a dead person, regardless of whether or not it may be possible to perform such *ghusls* within the setting of the mosque itself.

Should the worshipper venture out without good/ lawful reason, their *i'tikaf* cannot be taken seriously, and thus be rendered *batil;* the exception being the following:

a. Going out to visit/treat a patient.

b. Going out to take part in a funeral.

c. Going out not of one's own volition.

Venturing out without valid reason either through ignorance of the rules or inadvertently, the worshipper must, as a matter of *ihtiyat,* deem their *i'tikaf* null and void.

Whenever the worshipper is allowed to leave the mosque to attend a lawful business outside it, he should confine his travel to the shortest distance possible within the vicinity of the mosque. While en route, he should do his best to avoid sitting; should he find it necessary to sit, he must avoid sitting in a shaded place.

9. h. One should refrain from doing all the forbidden things mentioned in the forthcoming paras (10 to 15). Should he be in breach of any, his *i'tikaf* should be rendered *batil.*

It is recommended for the worshipper, as a matter of *ihtiyat* and obligation, to treat his *i'tikaf batil,* even if he commissioned any of these points either inadvertently or through ignorance of the rules.

Should such a breach occur on the third day of *i'tikaf,* it is desirable for the worshipper, as a matter of *ihtiyat* and obligation, to finish his *i'tikaf* in the hope that it might be accepted, although he should not take it for granted that it would.

What is required from the worshipper taking to *i'tikaf?*

Throughout the period of *i'tikaf*, the worshipper should avoid engaging in any of the following:

10. a. The company of women, be it through sexual intercourse or any other way that may lead to sexual enjoyment, such as petting.

11. b. Causing sexual ejaculation through masturbation of any kind.

12 c. Smelling perfume, such as rose oil.

13. d. Enjoying the smell of flowers, such as jasmine and rose.

14. e. Engaging in trade, barring things like tailoring, cooking, and weaving etc.

Should the worshippers engage in buying and selling, their *i'tikaf* should be deemed null and void. Yet, any deal struck is sound and therefore enforceable.

15. f. Hypocritical indulgence in vain talk aimed at scoring a victory over others, irrespective of whether or not the subject being debated was a valid one, and no matter whether or not it was religious. If the argument was an objective one aiming at proving a truth or putting right an erroneous conclusion others have reached, there is no harm in engaging in such a showdown.

Rules of *I'tikaf*

16. In itself, *i'tikaf* is both a recommended and *mustahab* act of worship. It may become *wajib* as an eventuality, e.g. becoming *wajib* in fulfillment of a *nadhr*, pledge, or oath.

17. Once embarked upon, *i'tikaf* can be called off at any time, except in the following cases:

a. When *i'tikaf* is embarked on as part of *nadhr* to be taken up on particular days. Should *i'tikaf* be embarked on without specifying the days, the worshipper can call it off.

b. The lapse of two days on the worshipper's *i'tikaf* should warrant the completion of the period of *i'tikaf*, unless the worshipper has, at the outset, made a covenant with his Creator that he could call *i'tikaf* off whenever he wished on certain circumstances. If he even does so in the third day of *i'tikaf*, he could take it up at another time.

18. Should the *i'tikaf* of a worshipper be annulled for any reason, how should he go about making amends?

A. There is a number of issues here:

a. Should the *i'tikaf* be a *mustahab* one and is brought to a halt through a breach before the lapse of two days, no repeat shall be required.

b. Should the *i'tikaf* be a *mustahab* one and have been breached after the lapse of two days, a repeat, although not immediate, shall be required.

Should *i'tikaf* be undertaken in neither the right place nor the right time, such as not in a mosque or starting *i'tikaf* on *Eid* day or one or two days before that, it should be halted and no repeat is required.

c. If *i'tikaf* be embarked on specific days in fulfillment of a *nadhr,* a repeat shall be required. This is irrespective of whether the *nadhr* was confined to those days where *i'tikaf* became null, such as specifying Thursday, Friday, and Saturday within a ten-day period, or any other days within those ten days.

However, the repeat of *i'tikaf* by way of a specified *nadhr* has to be *qadha'* because it would fall after the lapse of that specified period of time without the need to do it immediately. As for the second case, the repeat has to be undertaken before the end of the ten-day period, because it is in compliance with, and fulfillment of, the *nadhr* within its specified time, in that it obligatory to discharge one's responsibility in accordance with the period stipulated in the *nadhr.*

19. Should the worshippers flout the ban on sexual contact, they shall be liable to pay *kaffarah,* regardless of whether the breach took place during the day or night. However, no *kaffarah* shall be due if other banned things are commissioned, yet the worshippers must ask forgiveness.

Should the worshipper practising *i'tikaf* have sexual contact with his wife during the day while either fasting Ramadhan, whether *ada''* or *qadha',* he shall be liable to pay two *kaffarahs,* one for falling foul of the rules of *i'tikaf* and the other for breaching the sanctity of fast.

The nature of *kaffarah* for breaking *i'tikaf* through sexual activity will be discussed in the Chapter on *kaffarah.*

Should the worshipper concerned, who has fallen foul of the rules regulating *i'tikaf* – by indulging in sexual activity, be carrying out *i'tikaf* on particular days by way of *nadhr*, he shall be incurring a third *kaffarah* for violating the terms of *nadhr*.

Section Five

Hajj and *Umrah*

Foreword

1. *Hajj* is among the social acts of worship. It has great significance both spiritually and socially. In a way, it is akin to *i'tikaf*, in that it is a step into the realm of the Almighty. The difference is that in *i'tikaf* the experience is individual, whereas in *Hajj* it is collective where all Muslims charged with the obligation or embarking on the devotion voluntarily seek to be at the same place and time to practice the same set of rituals.

In certain parts and obligations, *umrah* is like *hajj*. After assuming *ihram, umrah's* scope is confined to attending at *al Masjidil Haraam, Safa* and *Marwah* and carrying out the required rituals there. *Hajj*, on the other hand, has a wider scope where some of its rituals have to be practiced outside Makkah, thus requiring travel to Arafat, Muzdelifah, and Mina.

Geneally speaking, *hajj* is *mustahab*, except one's first *hajj* where it is obligatory on the worshipper who can afford the journey. *Umrah Mufradah* is also *mustahab*, except for the first one which is obligatory on the person who can afford it.

2. Those living more than sixteen *farsakh* (i.e. between 86,4 to 88 km) have to embark on *umrah* then. *Hajj* thus performed is called *Hajj-ut-Tamatu'*. *Umrah* is the first part of *Hajj-ut-Tamatu'*.

Should such people not have the means to perform *hajj*, yet they can afford to perform *umrah*, the latter is not obligatory, although it is *mustahab* to embark on it.

3. Those living closer to the *Masjidil Haraam* have to perform *hajj*, starting with *hajj* and ending with *umrah*. This type of *hajj* is called *Hajjul Ifraad. Umrah* here is regarded as an independent act of worship, i.e. not predicated on *hajj*, hence the name *"Umrah Mufradah"*.

Should the worshippers, who live within the vicinity of Makkah, not be able to perform *hajj*, yet they can perform *umarah mufradah*, it is

obligatory on them to perform it, contrary to the worshipper who lives far away. This is because the *umrah* of the distant worshipper is part of their *hajj*; and should they not be able to perform *hajj*, *umrah* would not become obligatory on them.

The worshipper's first obligatory *hajj* is called *Hajjatul Islam*.

4. Every *mukallaf*, whether coming from a far-flung place or living in the vicinity to Makkah, who wants to perform a voluntary *hajj*, can choose either *Hajj-ut-Tamatu'* or *Hajjul Ifraad*. Should they wish to perform *umrah* outside the season of *hajj*, they have to opt for *umrah mufradah*. That is, such a worshipper is not allowed to embark on *umrat-ut-Tamatu'* because it is part and parcel of *Hajj-ut-Tamatu'*, i.e. it cannot be performed outside the prescribed time for *hajj*.

5. *Umrah mufradah* has no specific time. Should the worshipper choose to perform it in a particular month, they can do so and repeat same, if they so wish in the same month, let alone in the same week.

Being an integral part of *hajj*, *Umrah-ut-Tamatu'* cannot be performed outside the months of *hajj*, i.e. the start of Shawwal to the ninth of Thil Hijjah, provided that it is feasible to perform *umrah*, wear *ihram*, and be able to observe *wuquf* at *Arafat* at midday of the ninth of Thil Hijjah.

Since *Hajj-ut-Tamatu'* is the most common type of obligatory *hajj* required from the majority of the faithful, we shall discuss it briefly.

1. The Obligations of *Hajj-ut-Tamatu'*

The obligations of *Hajj-ut-Tamatu'* consists of those obligations the pilgrim is required to fulfill in *Umrah-ut-Tamatu'* to start with and those required from him in *Hajj-ut-Tamatu'* in the second place.

The Obligations of *Umrat-ut-Tamatu'*

6. The duties of *Umrat-ut-Tamatu'* are five: *Ihram*, *tawaf*, *tawaf* prayer, *sa'y* between Safa and Marwah, and *taqseer*, i.e. clipping one's hair or nails.

Ihram comes on top of the list of duties. It has to be worn from one of the five *meqats* (certain sites where the pilgrim is required to wear *ihram* before entering Makkah) should the route take them through any one of them. Should this not be feasible, wearing *ihram* can be undertaken from a point parallel to any of the said *meqats*, or from a place far away from

Makkah by way of *nadhr*, provided that it be harder than wearing *ihram* from the *meqat;* should *nadhr* be a sort of refuge from the troubles of *ihram*, it would not be valid and therefore such *ihram* be deemed null and void.

The Five *meqats* are:

a. **Masjidush Shajarah,** which is close to Madinah.

b. **Qarnil Manazil,** on the way fron at-Ta'if to Makkah.

c. **Juhfa.** It used to be an inhabited village in yesteryears. It is situated some two hundred and twenty km away from Makkah. It is way away from the usual reoutes leading to Makkah from both Jeddah and Madinah. However, pilgrims can go there, if they so wish.

d. **Wadil Aqiq.**

e. **Yalamlam.**

Makkah is considered a *meqat* for *Hajj-ut-Tamatu', Hajjul Qiraan* and *Hajjul Ifraad* as will be dicussed. The place of accommodation of the *mukallaf* is considered a *meqat*, should it be closer to Makkah from any official *meqat*. This also applies to those arriving for *Hajj* by air at Jeddah; although it is sufficient to wear *ihram* from Jeddah, *ihram* from Juhfah, and going back to Jeddah, is desirable on the basis of voluntary *ihtiyat*.

7. How should one go about *ihram*?

Wearing the two garments of *ihram*, one like a sarong and the other as a cover for the shoulder and the upper body, the pilgrim should make *niyyah* to perform *Umrat-ut-Tamatu'*, as part of *Hajjatul Islam.* The pilgrim should then chant *talbiyah*, i.e. *(Labayka Allahumma labayk, Labayka La Sharika Laka Labayk)*. Once *talbiyah* is over and done with, the pilgrim enters into the state of *ihram*, in which case certain things become out of bounds for them, such as sexual activity, wearing perfume, and wearing stitched clothes, as will be discussed.

Before *ihram*, it is *mustahab* to perform *ghusl*, although this has nothing to do with the validity of *ihram*, in that *ihram* shall be in order even if the pilgrim is in either a state of *janabah* or *haydh*.

Wearing the two-piece of *ihram* is obligatory on male pilgrims; it is not so for women, in which case they can wear their ordinary clothes.

Once *ihram* is assumed, the pilgrim should head towards Makkah to perform the second of devotions, i.e. *tawaf* around the Holy Ka'ba for seven rounds.

8. The way to conduct *tawaf* is by standing beside the location of *Hajaril Aswad,* either close to or away from it, taking into account that the Ka'ba is on the worshipper's left. The worshipper should, then, make the *niyyah* for *tawaf* of *umrat-ut-Tamatu',* and circumambulate (go round) the Ka'ba seven times, starting each round from *Hajaril Aswad* and ending it there.

For the pilgrim to embark on *tawaf,* they have to observe certain things:

a. *Taharah* form *hadath.*

b. *Taharah* from *najasah.*

c. Covering one's private parts; this has already been discussed in paras (9 and 10) of the General Guidelines for Prayer.

d. A male pilgrim should be circumcised. However, it has to be so in the case of the discerning *(mumayyiz)* boy, who assumes his own *ihram.* As for the undiscerning boy, or the discerning one who was made to assume *ihram* by his guardian, it is not clear whether they should be circumcised, although circumcision is required as a matter of *ihtiyat.*

Harbouring any doubt as to the number of rounds of one's *tawaf* is bound to render it *batil.*

Making an eighth round with the intention of making it part of one's *tawaf* should render the *tawaf* null and void.

9. Once the pilgrim completes *tawaf,* performing *tawaf* prayer, which is the third duty of *Umrat-ut-Tamatu',* becomes obligatory. This prayer consists of two *ruku's,* i.e. similar to *subh.* The pilgrims have the choice of reciting audibly or inaudibly. They should endeavour to choose a place that is behind, but close to, *Maqam Ibrahim* (a.s.). Should this not be feasible, performing prayer in any place in the Mosque could be sanctioned, provided that it is behind the *Maqam,* not ahead of it, not losing sight of the proximity of the prayer place to the *Maqam.* This ruling is based on voluntary precaution *(al ahwatil awla).*

10. After that, the pilgrim has to head towards Safa and Marwah, close to *al Masjidil Haraam.* This is the fourth duty of *Umrat-ut-Tamatu'*

The way the pilgrim should go about it is thus: Making *niyyah* of *qurba* for *sa'y* between Safa and Marwah for *Umrat-ut-Tamatu'* of *Hajjatul Islam,* the worshipper must set out walking briskly from Safa to Marwah and back seven times, four times from Safa ot Marwah and three times from Marwah to Safa; thus the end of *sa'y* should be at Marwah.

In *sa'y,* it is not obligatory that the worshipper be in a state of *taharah* neither from *hadath* nor from *khabath;* they do not have to walk, in that they may be borne, even though they can walk.

Doubling the number of rounds while engaging in *sa'y* would render it *batil.* Making an extra, eighth, round with the intention of considering it part of *sa'y* should render it *batil.*

11. Once *sa'y* is completed, *taqseer,* which is the fifth and last of the obligations of *Umrat-ut-Tamatu',* becomes due. Clipping some of one's hair or nails would do; this does not have to be in a particular place though.

12. Having done *taqseer,* the pilgrim can undo their *ihram,* heralding the lifting of ban on certain things, apparently including shaving, although one should, as a matter of *ihtiyat,* not embark on it after the lapse of thirty days from *Eidul Adhha.* Should one knowingly and deliberately do it, *kaffarah,* by way of sacrificing an animal, should be paid, as a matter of voluntary precaution. The pilgrims can then resume all the things/activities which were denied to them during the period of *ihram.*

13. The pilgrim can also venture out of Makkah to nearby places, such as Arafat, Jeddah, and Ta'if, if they are confident that they would be back in Makkah in good time for *ihram* or *hajj.*

The Obligations of *Hajj-ut-Tamatu'*

These are thirteen: *ihram, wuquf* at *Arafat, wuquf* at *Muzdelifah, rami* of Jamratil Aqabah, sacrificing an animal, shaving or clipping, *tawaf, tawaf's* prayer, *sa'y, tawafun nisa',* the prayer of *tawafun nisa',* staying overnight in Mina, and *rami* of three *jamarat* on the eleventh and twelfth of Thil Hijjah.

14. *Ihram.* This should be undertaken in exactly the same way it was done in *Umrat-ut-Tamatu'.* The only difference is the *niyyah; niyyah* of

qurbah here should be made for *Hajj-ut-Tamatu'*. The place for this *ihram* is Makkah, its time is before midday of the ninth of Thil Hijjah, in such a way that the pilgrim should be able to make the obligatory *wuquf* at *Arafat*.

15. *Wuquf* at *Arafat*. Having assumed *ihram*, the pilgrim has to be present at Arafat at midday on the ninth of Thil Hijjah till sunset. A delay, however, of one hour after midday can be tolerated. That said, in no way can the pilgrim leave Arafat prematurely, i.e. before sunset.

16. *Wuquf* at *Muzdelifah*. Once it is sunset, the pilgrim should leave Arafat and head for Muzdelifah (Mash'ar). What is required of them there is to be present during the period from dawn till sunrise. This is the most important part of *hajj* obligations. Clearly, leaving Muzdelifah to Wadi Muhassar slightly before sunrise can be tolerated. However, it is forbidden for the pilgrim to get passed Wadi Muhassar to Mina before sunrise. Spending the night in Mash'ar is not among the duties; it is *mustahab* though.

17. Once sun shines on the pilgrim in Mash'ar on the tenth of Thil Hijjah, they should make their way to Mina. They have to attend to three types of duties there. *Rami* of *Jamratil Aqabah*, sacrificing an animal *(hady)*, and shaving or doing *taqseer*.

18. *Rami* of *Jamratil Aqabah*. Between sunset and sunrise is the time span this duty can be carried out; it has to be done with seven stones thrown consecutively, i.e. not at one go.

19. *Hady*. It is the sacrificial animal offered by the pilgrim after completing *rami* discussed in the preceding para.

20. Shaving/*Taqseer*. It is obligatory on male pilgrims, not female ones, to perform *taqseer* or shave their head, even if it was their first pilgrimage; however, shaving is more superior, as a matter of *ihtiyat*. Women should always perform *taqseer*.

By "shaving", we mean shaving the entire head; shaving not necessarily by uprooting the hair, i.e. by using a machine, can be sanctioned; by *"taqseer"*, we mean clipping some hair or cutting the nails.

21. Once these obligations have been fulfilled, the pilgrims are relieved of their *ihram* and can resume the things they were denied during the period of *ihram*, except for wearing perfume, the company of women, and hunting. After that, they should head for Makkah to do the following:

22. a. *Tawaf* of *hajj,* which is similar to that of *umrat-ut-Tamatu',* except for *niyyah.*

23. b. Prayer of *tawaf,* which is again similar to that of *umrat-ut-Tamatu',* except for *niyyah.*

24 c. *Sa'y* between Safa and Marwah, which is similar to that of *umrat-ut-Tamatu',* except for *niyyah.*

25. d. *Tawafun Nisa'* and its prayer, which are similar to that of *umrat-ut-Tamatu',* except for *niyyah.* This applies to both the sexes.

26. Once *hajj,* its prayer, and *sa'y* are over and done with wearing perfume becomes lawful. With *tawafun nisa'* completed, sexual union between man and wife can resume.

27. These obligations, i.e. starting with *tawaf* of *Hajj* and ending with *tawafun nisa'* and its prayer, can be embarked on on the tenth or the eleventh of Thil Hijjah. The worshippers are free, though, to delay it beyond these dates, provided that they are performed during the month of Thil Hijjah.

28. The pilgrim is required to stay overnight in Mina on the nights of the eleventh and twelfth of Thil Hijjah. "Staying overnight" means presence in Mina from the evening till midnight and from midnight till dawn. On the day of the eleventh, the pilgrim must perform *rami* of the three *jamarat* one after the other, i.e. the first, the middle, and *Jamratil Aqabah* – which was stoned on the day of *Eid.* The way *rami* has to be undertaken is the same as that done on the day of *Eid.* A repeat of *rami* should be undertaken on the day of the twelfth. Come the afternoon of the twelfth, the pilgrim is free to leave Mina, having thus fulfilled all the obligations required of him.

This is a brief resume of *Hajj-ut-Tamatu'.* For more details, you may consult our Manual of *Hajj* Rituals *(Manasikul Hajj).*

Addenda

1. The Differences Between the Two *Umrahs*

The differences between *Umrat-ut-Tamatu'* and *Umrah Mufradah* can be summarized as follows:

29. a. *Umrah Mufradah* comprises an extra *tawaf* around the House called *tawafun nisa',* which is the last of the obligations of this type of *umrah,* contrary to *Umrat-ut-Tamatu'* which requires one *tawaf* only.

30. b. In *Umrat-ut-Tamatu', ihram* cannot be undone unless *taqseer* is performed. In *Umrah Mufradah, ihram* can be undone after either *taqseer* or shaving has been done.

31. c. As has already been mentioned, *ihram* for *Umrat-ut-Tamatu'* is not permissible, unless it is assumed from the *meqats*. In *Umrah Mufradah,* it is permissible to wear *ihram* from Adnal Hil, in the event of not going through those *meqats*. *"Adnal Hil"* means before entering the area of *Haram* around makkah, which the pilgrim is not allowed to enter without *ihram*. However, it is correct to say that there is no difference with regard to this point, in that it is permissible to wear *ihram* from Adnal Hil for those converging on Makkah via routes not going through *meqats,* or having overshot the *meqats* while not in a state of *ihram;* that is, even if it was not for *Umrah Mufradah.*

32. d. Because *Umrat-ut-Tamatu'* is part of *Hajj-ut-Tamatu'* it cannot be performed independent of *hajj,* contrary to *Umrah Mufradah,* which is independent of *hajj*. Thus, those wanting to perform a voluntary *umrah* without *hajj,* are required to perform *Umrah Mufradah* not *Umrat-ut-Tamatu'*.

33. e. *Umrat-ut-Tamatu'* can only be embarked on during the months of *hajj,* i.e. Shawwal, Thil Qi'dah, and Thil Hijjah, whereas *Umrah Mufradah* is valid throughout the year; however, Rajab is the best month for performing it.

2. Differences Between the Two *Hajjs*

The differences between *Hajj-ut-Tamatu'* and *Hajjul Ifraad* are the following:

34. a. The validity of *Hajj-ut-Tamatu'* is predicated on the proper performance of *Umrat-ut-Tamatu'* which precedes it. On the other hand, the validity of *Hajjul Ifraad* is not dependent on anything else.

35. b. Assuming *ihram* for *Hajj-ut-Tamatu'* takes place in Makkah; *ihram* for *Hajjul Ifraad* is undertaken from any of the *meqats* as for *Umrat-ut-Tamatu'*; The *meqats* have already been mentioned in para (6).

36. *Hady* is obligatory as part of *Hajj-ut-Tamatu'; Hajjul Ifraad* does not require this. However, should the pilgrim in this type of pilgrimage accompany with them a sacrificial animal, it becomes obligatory on them to slaughter it on the day of *Eid;* such a *hajj* would then be dubbed *"Hajjul Qiraan"*, in that the pilgrim offers *hady* alongside *hajj.*

3. What should the pilgrim in a state of *ihram* avoid?

38. As we have already mentioned, once the pilgrim assumed *ihram-for umrah* or *hajj*, they are barred from doing certain things; these are:

a. Hunting wild animals.

b. Sexual enjoyment, be it through intercourse, caressing, or looking at the opposite sex; this includes engaging in marriage contract; *haraam* too is seeking enjoyment by way of causing ejaculation.

c. Smelling perfume and flowers' scent.

d. Beautification.

e. Looking into a mirror.

f. Wearing antimony.

g. Bleeding one's body.

h. Lying and Swearing.

i. Wrangling.

j. Killing insects found on humans, such as lice and fleas.

k. Applying oil to the body.

l. Removing hair from the body.

m. Cutting nails.

n. Dipping the head into water, or liquids, as matter of *ihtiyat*.

o. Carrying weapons.

p. Uprooting trees and shrubs in the vicinity of the *Haram*.

q. Wearing ordinary clothes; this is particularly not allowed for men.

r. Wearing shoes that cover the top of feet, and socks; this is particularly not allowed for men.

s. Covering the head; this is particularly forbidden for men.

t. *Tadhleel* (seeking shelter in the shade), i.e. of the kind which accompanies the movement of the pilgrim, in day time and while it is raining during night time – as a matter of *ihtiyat*. Other types of *tadhleel* during night time are not disallowed. Examples of *tadhleel* is the pilgrim's embarkation on a ship, plane, or a car. Another example could be of a pilgrim using an umbrella while walking; this is particularly forbidden for men; however, they are allowed to sit inside a tent or inside a stationary car.

u. Covering the face; this is confined to women.

v. Wearing gloves; this is confined to women.

For details, please consult our Manual on *Hajj* rituals *(Manaskul Hajj)*.

When should *hajj* become obligatory?

39. *Hajj* is obligatory on the adult who is sane, free ,and can afford the journey; affordability comprises the following elements:

a. Financial capability to pay for one's return journey to *hajj,* for those wishing to return home; the cost of the outward journey for those who do not want to return home.

b. Peace and security, i.e. personal safety as well as one's property en route and while practicing *hajj* rituals.

c. Having borne the expenses for the journey to *hajj,* the person should still be able to resume their normal life [style] without undue trouble.

d. The person intending to perform *hajj* should not be, right from the moment they have the funds for *hajj,* duty bound to spend it in fulfilling another obligation, such as settling a debt which has become due, provided that the creditor is demanding payment.

40. The provision of financial ability could be waived, if there is a donor who can pledge to bear the cost of *hajj* for the *mukallaf;* in this case *hajj* becomes obligatory, regardless of whether or not they were in debt and so long as their acceptance of the donation had no impact on settling the debt.

2. Hajj by Proxy

Hajj by proxy becomes obligatory in two cases:

41. a. The *mukallafs* may have the means, yet they could not perform *hajj* either because of illness or any other reason. In another case, the *mukallafs* may as well have the means, yet they kept hedging so much so they became so weak that they could no longer be able to perform *hajj* personally. Once such *mukallafs* reach the conclusion that they would not be able to make the journey, they should make arrangements that someone else perform *hajj* for them; it is desirable though, as a matter of *ihtiyat,* that such proxy not be among those who have been to *hajj.*

42. b. If *hajj* has become obligatory on someone due financial capability, yet they failed to perform it until they passed away, it is

imperative that arrangements be made to send someone to perform *hajj* on their behalf. The expenses should be met from their own estate according to the following principles:

43. 1. If the deceased did not make any provisions in their will to this effect, expenses should be met from their estate. In such a case, the deceased will be eligible for the type of *hajj* that is undertaken from one of the *meqats,* which normally costs not as much as the type of *hajj* which is undertaken from the deceased's hometown.

Where possible, a local person, i.e. among those who live in the neighbourhood of the *meqat,* should be hired to perform *hajj* for the deceased, which if undertaken would do.

Wherever we say, "the expenses have to be met from the estate of the deceased", we mean that such expenses should be taken out from the entire estate first; what is left should then, be divided into three portions, one of which should go to the deceased. That is, irrespective of the fact that the testator may have stipulated that, for example, their own share be spent in charitable avenues.

44. 2. If the deceased has made provisions in their will that *hajj* be performed for them with the expenses met from their own estate, spending from the estate for the type of *hajj* that is undertaken from their own hometown must be arranged. However, if the executor of the will goes against the letter of the will by paying for the type of *hajj* that is undertaken from the *meqat,* because it is cheaper, the deceased is absolved of the responsibility and therefore there will be no need for repeating the *hajj.*

45. 3. If the deceased had stipulated that *hajj* has to be performed on their behalf and that one third of their estate be designated for other purposes, their will should be complied with. Expenditure arising from *hajj* to be embarked on from their hometown should be met from the estate, then the one third should be set aside from the remainder.

46. 4. The deceased may have made provisions in their will that expenditure of a varied nature, including *hajj,* must be met from their bequeathable one-third. If their own share was sufficient enough to meet all the expenditure, then be it. If not, in that it may be sufficient for a half of all those liabilities, half of the expenses of *hajj* should be met from the share of the deceased and the other half from the remainder of estate.

47. The inheritors may know that the testator was financially capable

of making the journey to *hajj*, yet they do not know if they performed *hajj*. In such a case, they must forgo an amount of the estate sufficient to hire someone to perform *hajj*, from the *meqat*, on behalf of the deceased.

48. Whoever passes away with a liability for *Hajjatul Islam*, arrangements have, as a matter of *ihtiyat*, to be made, in the same year they die, to hire someone to perform *hajj* for them. It is not permissible to postpone this to another year. Delay in making the arrangements for sending someone to perform *hajj* should not be justified on the account that no one could accept the wages offered for performing *hajj*, from the *meqat*. Failure to do so should result in meeting the expenses, for the type of *hajj* that is undertaken from the deceased's hometown, from their estate.

Should the person to be hired to perform the proxy *hajj* ask for a higher than usual wages, provided that no one else can be found to undertake the mission for less, it is obligatory to accede to his request, as a delay to another year cannot be sustained.

49. Someone may pass away leaving an estate which has liabilities for both *khums* and money for performing *hajj* by proxy. In this case, priority must be given to paying the *khums* money; spending for *hajj* should be met from the remainder. If the estate is not sufficient for both and either *khums* or *zakat* is available in kind, it is obligatory to set it aside before *hajj* money. Should it be a debt, *hajj* takes precedence.

The person may have stipulated in their will that *hajjatul Islam* be performed on their behalf from their estate, despite the fact that it carries a liability for *khums*. The executor of the will must settle any *khums* liability first, then meet *hajj* expenses from the remainder. It is not permissible for him to pay for *hajj* from the estate which still has a *khums* liability.

50. Should the entire estate not be sufficient even for the minimum amount of expenses for *hajj*, *hajj* should be waived. The estate should therefore be divided among the heirs, provided that there is neither debt nor [any other provision in the] will. The inheritors should not stand to supplement the expenses for *hajj* from their own property. They are not responsible too for contributing any money for *hajj*, should the deceased have no estate. This is irrespective of whether or not the deceased did stipulate in their will that *hajj* by proxy had to be undertaken on his behalf.

51. *Hajjatul Islam* may become obligatory on a person. Death has come sooner than performing *hajj*. He did not make any provision for performing *hajj* by proxy. Someone has come forward and pledged to perform *hajj* on their behalf gratuitously. The estate should all go to the inheritors. That is, they are not required to contribute anything from it towards the expenses of *hajj* for the deceased.

Assuming that the same person made a provision in his will that expenses for *Hajjatul Islam* be met from his own share, i.e. of one third. Yet, a person volunteered to perform it on his behalf for free. The inheritors should not hasten to consider this as a forgone conclusion; they should take the initiative to use the same amount, that could have been spent on *hajj*, in those charitable causes closer to the deceased's heart.

52. Q. Are the inheritors justified in having the right of disposal in the estate before hiring someone to perform *hajj* on behalf of the testator, should the latter carry a liability for *Hajjatul Islam* but did not perform it in his lifetime?.

A. Should the estate be vast enough and the inheritors make the necessary arrangements for *hajj* by proxy, they should have the right of disposal in the estate.

53. Should the inheritors disagree among themselves, or rebel, as to the liability, or lack of it, of the deceased vis-ä-vis *Hajjatul Islam,* what should the God-fearing among them do?

A. They are not required to bear all the expenses arising from hiring someone to perform *hajj* by proxy from their own share. However, should the expenses amount to, say, one quarter of the estate, they can raise one quarter of the total expenditure. Should there be a person who volunteered to bear all the expenditure, they may bear a quarter of the share; otherwise, they are free to dispose of their own share the way they like.

54. Should hiring someone to perform *Hajjatul Islam* on behalf of the deceased become obligatory, according to para (42), and the executors of the will did not comply in good time until the property was done with, they stand to pay for someone to undertake *hajj* for the deceased from their own pocket.

Should the property be spent through no fault of the executors of the will, they must not be made responsible; the expenses arising from hiring

someone to perform *hajj* should be defrayed from the remainder of the estate.

55. The testator may have made provisions for *Hajjatul Islam*. Yet, after a while the executor of the will passed away; the heirs might not know whether the executor implemented this provision of the will. In this case, it is obligatory to defray an amount from the estate sufficient to carry out *Hajjatul Islam*, in that it is not permissible to rely on the possibility that the will has been implemented.

56. Should the testator direct that another *hajj*, i.e. not *Hajjatul Islam*, be carried out for him, the payment for such *hajj* should be met from his bequeathable one-third.

Should be stipulate that someone perform *hajj* for him, without stipulating what kind of *hajj* it is, the expenses for such a *hajj* should be defrayed from his share in the estate, i.e. the one-third.

57. The testator may have directed that someone perform *Hajjatul Islam* for him; he designated a certain amount for this purpose. Should the amount be more than what is normally needed for the task, the cost of the journey should be defrayed from the estate; the excess should be added to the deceased share. Should the amount earmarked for this purpose be sufficient, it should be defrayed from the estate too.

58. Should the cost of hiring someone vary according to the quality of the hired person, it is imperative that someone, of a quality commensurate with the [social] status of the deceased, be hired. This, of course, should be the case, even if (a) higher fee is going to be paid (b) the cost is not going to be met from the share of the deceased, i.e. the one-third, and (c) there may be among the heirs a minor or another one who might not agree to this.

However, there is *ishkal* (a grey area) in hiring for *hajj*, if it constitutes a burden on discharging other financial liabilities of the deceased, such as debt and *zakat*, etc. for which the testator have made provisions in his will.

59. Someone may owe the deceased a sum of money. The deceased has a liability towards *Hajjatul Islam*. The debtor has his suspicions that if he were to pay back the debt to the heirs, they would not use it for *Hajjatul Islam*. In this case, the debtor has the right to spend of what he owes for *hajj* on behalf of the deceased. Should there be any money left over, he should return it to the heirs. As for the way he intends to pay for the *hajj*

journey, he may either hire someone to do it or embark on it himself as agent for the deceased.

The Mandator and Agent

As you may already know that you cannot hire an agent to perform *Hajjatul Islam* for the deceased, unless it had become obligatory on them and they did not undertake it in their lifetime, or they were well to do, but could not perform *hajj* personally for a good reason.

60. As for voluntary *hajj*, deputizing someone to perform it can be embarked on behalf of the dead and the living alike, provided that the mandator is Muslim.

hajj by proxy can be effective, irrespective of the state of the mandator, i.e. be they a discerning boy, adult, sane, insane, Shia or Sunni.

61. There are, though, certain requirements which the agent has to fulfill so that the *hajj* they undertake be good enough. This, of course, is irrespective of whether the agents were hired or they volunteered to do it gratuitously.

a. Adulthood. *Hajj* would not be good enough if it was undertaken by a boy, even though he may be capable of rational action, as a matter of *ihtiyat*. That is, insofar as *Hajjatul Islam* and other types of obligatory *hajj* are concerned. However, a voluntary *hajj* performed by a boy with the blessing of his guardian should be valid.

b. Reason. Appointing an insane person as agent [to perform *hajj*] is not permissible. That is, regardless of the state of insanity of the person, whether perpetual or transient; if transient, he should not be employed during the periods of attack.

There is no harm in using an incompetent person *(safih)* for agent.

c. Faith.

d. Physical Fitness. It is not permissible to hire someone to perform *hajj* by proxy who, it is known for fact, is not in a position to carry out voluntary devotions; this ruling is based on *ihtiyat*. Even if such person volunteers to do the job, deeming their work valid is problematic.

However, there is no harm in hiring someone who is known for taking to that which is *haraam* for a pilgrim in a state of *ihram*, such as *tadhleeel*, be it for, or without, a good reason.

The same applies to him who, even deliberately, drops certain obligations of *hajj*, i.e. of the kind that would not detract from it, such as *tawafun nisa'* and staying over in Mina the nights of the eleventh and twelfth of Thil Hijjah.

62. Should a person become duty-bound to perform *hajj* for himself in a particular year, he is not allowed to neglect such a duty for the sake of undertaking to perform *hajj* for others. However, should he go ahead and do it through carelessness, not ignorance of his responsibility towards *hajj* for himself, *hajj* by proxy should be deemed valid.

63. Q. Is it possible to hire such a person to perform *hajj* by proxy in a year when they know they have a responsibility to perform *hajj* for themselves?

A. Such hiring cannot be sanctioned, if the prospective agent is aware of their responsibility vis-ä-vis *hajj*.

Q. Should such hiring take place, is the person who entered as a party in the hiring be liable for any payment of money?

A. The agent is legible for the going rate of fees, in that should the fee, stipulated in the hire agreement, be more than the going-rate, the agent should not demand the excess amount because the hire is *batil*.

64. *Hajj* by proxy does not have to be carried out on behalf of the mandator of the same sex. That is, men standing in for women and vice versa can be sanctioned. Nor does it make any difference whether or not the agent has already been to *hajj*.

65. There is no harm in deputizing one person to perform voluntary for a group of people. This, however, is not allowed in obligatory *hajj*.

66. It is permissible for a group of people to act as agent, in a given year, for performing *hajj* for one person, regardless of its individual intentions. That is, they may all mean to perform *Hajjatul Islam* by way of *ihtiyat* on the basis that each one of them may think that the others work may not be up to scratch; or it may be that some may have intended to perform a *mustahab* type of *hajj* and others an obligatory one.

67. The deceased, for whom a person was hired to perform *hajj*, is not going to be absolved of the responsibility just for the mere arranging of such a hire. *Hajj* by proxy can only stand the deceased in good stead, if it is proved that it was carried out in a proper manner. This applies to a living person who enters into a contract for *hajj* by proxy.

On this premise, in discharging their part of agreement, the agents have to be trustworthy; better still if they were known for their probity and reliability.

Voluntary *Tawaf*

68. Although *tawaf* around the Holy Ka'ba is part of both *umrah* and *hajj*, it is also an independent act of worship in its own right. Thus, it can be embarked on, even without the need for the worshipper to perform *wudhu* for *tawaf* itself. However, *wudhu* has to be performed for the prayer that normally follows that *mustahab tawaf*, for no prayer can be accepted, if there has been no *wudhu*.

A voluntary *tawaf* performed by a traveller *(musafir)* is more superior to a voluntary prayer, contrary to those living in Makkah for *mustahab* prayer performed by them is more superior than voluntary *tawaf*.

Section Six

Kaffarahs

Foreword

1. Literally, *"kaf-fa-ra"* may have a number of meanings, including "denial, obliteration, and cover". Technically, *"kaffarah"* means "what is paid to redress an imbalance or to compensate for commissioning a sinful act, i.e. a kind of punishment or penalty".

This penalty or expiation is defined by the *shari'a* in accordance with the type of shortfall or sin; it may take the form of financial penalty, such as feeding a specific number of poor people, or clothing them; it could be personal, such as fasting and abstaining from some of life's necessities and luxuries.

Every *kaffarah* is an act of worship; it should, therefore, be embarked on with the *niyyah of qurbah*. It can only be accepted from Muslims.

2. In paying *kaffarah*, the worshipper's objective should be seeking forgiveness for his trespasses. Should there be more than one *kaffarah*, each of which must be identified when paid. This, of course, is irrespective of whether the *kaffarah* was that for commissioning a particular sin a number of times or for a number of different sins.

3. a. Should the worshippers deliberately break their fast, for one day, during the month of Ramadhan, they become liable to pay *kaffarah*, as has already been mentioned in the Chapter on Fasting the month of Ramadhan. The *kaffarah* for flouting the rules and breaking one's fast could take one of three forms: (a) emancipating a believer, (b) fasting for two months, or (c) feeding sixty poor people.

If the worshipper decided on choosing one of these three, it will be accepted as an expiation for one's sin.

4. The *kaffarah* is repeated commensurate with the number of days that fasting has been breached. However, should the worshipper halt their fast by, say, eating at one occasion and drinking on the other on the same day, this should not attract more than one *kaffarah*.

5. Having sexual union, or masturbation, twice on the same day should attract two *kaffarahs*. Having sex, or masturbation, and committing other things that invalidate fast would result in becoming liable to two *kaffarahs* for all the breaches; this is based on voluntary precaution.

6. b. Should the worshipper hold a lawful covenant with Allah, the Most High, only to break it, he should stand to pay the same *kaffarah* mentioned in the preceding para.

7. c. Whoever makes a lawful vow *(nadhr)*, then violates it, must pay a *kaffarah* which could be any of the following: (a) emancipating a person or (b) feeding or clothing ten poor people. Inability to do either should lead to fasting for three successive days.

8. d. Whoever, takes a lawful oath, i.e. by saying, "By Allah", then does not keep their word should choose one of the following: either: (a) emancipating a person, or (b) feeding or clothing ten poor people. If this is not feasible, fasting for three successive days should be observed.

9. e. If a man swears by the Almighty that he would refrain from sexual union with his wife for at least four months, it is obligatory on him to abrogate such an oath and resume his normal life/relation with his wife. This is called *iela'*.

But when the husband annuls his oath and returns to having sex with his wife, a *kaffarah*, the same as that mentioned in the previous para., becomes due.

10. f. Should the husband resort to *dhihar* (consisting in the words of repudiation: you are to me like my mother's back – *anti alyya kadhahri ummi*, and this was amenable to lawful conditions, the wife becomes out of bounds to the husband, until he pays a *kaffarah*, which could be emancipating a person; should this not be feasible, fasting for two months, or feeding sixty poor people is the alternative. This is called a "fixed penalty".

11. g. Should a person kill another by mistake, they should pay *kaffarah*, which is the same as the one mentioned in the previous para,. i.e. freeing a person. Should there be more than one taking part in the killing, each one of them must bear a *kaffarah*.

12. h. If someone breaks his *i'tikaf* by having sexual intercourse, the *i'tikaf* shall be rendered *batil*, as has already been mentioned in para (9) of the Chapter on *i'tikaf*. *Kaffara* should, therefore, become due. As a

matter of *ihtiyat* and obligation, he should be liable to the same *kaffarah* as that of the husband who resorted to *dhihar*.

13. i. If someone kills a believer wrongfully, he should pay *kaffarah* as well as receive the appropriate punishment. Should punishment not be coming soon, he has to settle the *kaffarah*, which can be all three, i.e. freeing a believing slave, fasting for two months, and feeding sixty poor people.

Should there be a number of people who took part in the killing, the same punishment and *kaffarah* should be meted out to every one of them.

14. Some jurists are of the opinion that whoever flouts the fasting on any day of the month of Ramadhan, by committing a sinful act, such as drinking alcohol or committing adultery, they should end up facing the same *kaffarah* mentioned in the previous para. However, we do not think this should be obligatory on such a sinner.

15. j. Should the worshipper, who is engaged in compensatory fast for any days missed during the month of Ramadhan, break their fast sometime in the afternoon, they become liable to *kaffarah*, which takes the form of feeding ten poor people. If this is not feasible, fasting for three days would do.

16. k. It is forbidden for man to swear by way of disavowing either Allah, the Exalted, the Prophet, or the Imams. Should this be dome, the person would be deemed sinner; he should therefore incur a *kaffarah*; which is feeding ten poor people.

1. A *kaffarah* by way of gift of bread, rice, flour, or any other type of foodstuff, equivalent to three quarters of a kg. should be paid in the following cases:

17. a. The worshippers may have outstanding days to fast from the previous month of Ramadhan. Shoud they be careless as not to fast until the following month of Ramadhan has come, they are liable to a *kaffarah* equivalent to the number of days, i.e. one *kaffarah* for each day, as has already been discussed in the Chapter on Fasting the month of Ramadhan.

18. b. A sick person did not fast the month of Ramadhan. Their sickness lasted till the following month of Ramadhan. Such is not required to observe compensatory fast. Instead, they have to compensate for each missed day of fast with giving away three quarters of a kg. of food.

19. c. Old men and women, who are licensed not to fast and pay *fidya* instead (see paras 21-24), can do with *kaffarah*. However, *kaffarah* here does not precisely mean some sort of penalty for committing a sin, rather a compensation.

There are, though, other *kaffarahs* which become due on the pilgrim, in a state of *ihram*, for *umrah* or *hajj*, for commissioning certain things which they are not allowed to do because of their *ihram*. These are discussed in some detail in our "Manual of Hajj Rituals – *Manasikul Hajj*".

20. At times of mishaps or bereavement, some women shear their hair or beat their face. This type of reaction does not warrant a *kaffarah*. However, such women have to repent, go back to their senses, arm themselves with patience, and submit to Allah's decree.

21. No *kaffarah* shall be due on sexual union while a woman is in a state of *haydh*, although she is deemed guilty; she must, therefore, ask Allah's forgiveness.

22. No *kaffarah* shall be due on the person who slept without saying *isha'* prayer until the morning after. However, it is desirable, as a matter of voluntary act of worship, for them to fast that day.

Emancipating a Slave

As you may already know that "emancipation" is among *kaffarahs* where the *mukallaf* is given the choice of one of three types of *kaffarah*; in others it is a "fixed one", i.e. it is obligatory to stick to it alone, unless it proves not feasible to pay. In a third category, emancipation is part of the *kaffarah*, i.e. in addition to other *kaffarahs*.

23. In all these cases it is imperative that the person embarking on emancipating a slave be Muslim, that his aim is desiring nearness to Allah, the Most High, and that he aspires that his sin be forgiven.

At any rate, freeing a slave is called for in itself as it is ranked among the best of devotions; Allah has said, **"But they would not attempt the uphill road, and what will make you comprehend what the uphill road is? (It is) the setting free of a slave, or the giving of food in a day of hunger"** (11-14/90). Above all, it is an act of worship because *niyyah* of *qurbah* is a prerequisite for its validity.

24. If freeing a slave is not feasible, the worshipper can choose one of

the other two alternatives when the *kaffarah* is of that ilk. Should the *kaffarah* be ordinal, fasting should be chosen. But, if it is one among others, freeing a slave shall be dropped and substituted for asking for forgiveness; the rest of the *kaffarahs* have to be discharged.

25. Freeing a slave should prove inconceivable, when there are no slaves to free or when the worshipper cannot afford buying one in order to set him free.

Fasting

Fasting is one of the three alternatives of *kaffarahs*; it also occupies the second place in the ordinal type of *kaffarahs*, and thus it becomes obligatory in the absence of freeing a slave. In the third category of *kaffarahs*, fasting is added to the other *kaffarahs*.

26. In all the cases of fasting by way of *kaffarah*, fasting should be observed for two consecutive lunar months. For example, one could start from the first of Muharram till the end of Safar, or from the fifth of Shawwal till the fifth of Thil Hijjah, and so on.

However, should the worshipper fast the whole of the first month, and one day of the second month, they are allowed to fast the remainder of the second month not necessarily in one go. In the example just cited, having fast Muharram and one day of Safar, the worshipper can clear the outstanding days of Safar by installments. In the second example, fasting six days of Thil Hijjah should mean that the worshippers have already fast one month and one day; accordingly, they are allowed to clear the backlog intermittently.

27. On this assumption, should the worshipper, observing fast by way of *kaffarah*, break their fast at any stage before completing one month and one day of the second month, they should start again. In breaking the cycle of one month and one day, they would have cancelled out all the days they have fast.

The exceptions are halting one's fast for a valid reason, such as sickness, unexpected travel, or realizing that *Eid,* during which fast is forbidden, falls within the fasting period, forgetting about *niyyah* of fast on some days, or in the case of women *haydh* of fast on some days, or in the case of women *haydh* may set in. In all these cases, the worshippers should resume their fast as soon as the cause of calling the fast off has been lifted.

28. Where the worshippers are given three alternatives to choose from to absolve themselves of the responsibility of the *kaffarah*, they may resort to that which is easier for them to deal with. That is, when fasting becomes unfeasible. If *kaffarah* was of the second category, i.e. ordinal, and both freeing a slave and fasting cannot be embarked on for justifiable reasons, feeding poor people should be the alternative. Should the *kaffarah* be of the third category, i.e. a number of *kaffarahs* at the same time, the unfeasible one should be dropped and replaced by asking for forgiveness; the remainder of *kaffarahs* have to be discharged.

29. Fasting becomes unfeasible when the worshippers are unable to fast two successive months, or doing so could prove very hard and put them in an untenable situation, or fast could endanger their health.

Feeding, Clothing, and Gift-giving

Kaffarah of feeding could entail feeding either sixty or ten poor people. Feeding sixty poor people could become obligatory as one of three alternatives; it could also become obligatory as a last resort in the ordinal type of *kaffarah*, when both freeing a slave and fasting become unfeasible. On a third count, it becomes obligatory as part of other *kaffarahs*.

Feeding ten poor people could become obligatory by virtue of being of three alternatives in the *kaffarah* of taking an oath *(yamin)*. In another instance, it becomes obligatory by virtue of being the first on the list of ordinal *kaffarah*, such as the case in breaking one's compensatory fast.

30. Feeding should be made available to a definite number of people, i.e. sixty, in *kaffarahs*, other than those of taking an oath and breaking one's compensatory fast *(qadha')*, as those require feeding ten poor people.

Feeding May Take Two Ways

a. Preparing food for the required number of poor people either collectively or separately in one's home, in a restaurant, or in any other venue. The quantity of food should be sufficient enough for everybody to take their fill. As a matter of *ihtiyat* and obligation, the food should be of the average quality the worshipper and members of their family usually

eat; this should be particularly so when it comes to the *kaffarah* for taking an oath.

b. Offering each one to them three quarters of a kg. of bread, wheat, or flour. Indeed, it goes without saying that it is permissible, in *kaffarahs* other than that for taking an oath, to give away the same weight in rice, dates, moong beans, or any other staple food.

It is desirable, though, that he who is landed with a *kaffarah* for *dhihar* and decided to discharge it by way of distributing bread, or the like, to increase the weight to a kilo and a half, instead of three quarters of a kg.

31. Anything short of these two forms of going about feeding is not acceptable. For example, resorting to paying the poor the equivalent of those weights in money would not do; nor would giving all the sixty or ten shares to one person or a lesser number than that specified by *shari'a* law.

However, it is permissible to pick and mix according to the two forms already discussed in (a and b).

32. The Requirements that have to be fulfilled by those to be fed.

a. Poverty.

b. They should not be dependent, for their livelihood, on the person paying the *kaffarah*, such as their offspring and parents.

33. Just as it is permissible to feed grown ups, so is it permissible to feed the young. Whoever chooses the first way of feeding can feed children without the need to obtain the permission of their guardians. The number of children fed count as that of adults, i.e. feeding sixty children to their fill should count as feeding sixty adults. However, should the second form of *kaffarah*, i.e. by giving away certain quantities of food to children, be chosen, this has to be handed to their guardians.

34. Clothing ten people is one of the three alternatives of discharging the *kaffarah* for taking an oath. It entails giving each of them one or, preferably, two garments.

35. As has already been discussed in paras (19-21), giving away three quarters of a kg. of either bread, or a similar type to food stuff, by way of gift is a kind of *kaffarah* or compensation called *fidya*.

The person discharging it must aim at coming closer to Allah, the Most High, in that it is a kind of expiation, as has been ordained by Law-giver.

36. The recipient should be among the poor. In case there is more than one *fidya,* the worshipper can dispose of all of them by giving them to one person. Giving away its equivalent in money cannot be sanctioned. Nor is feeding allowed.

37. Once the month of Ramadhan has come to a close, those who are licensed not to fast because of old age, and the like, *fidya* becomes payable.

Those who have a fast liability because of illness that continued till the following month of Ramadhan, *fidya* becomes payable on the arrival of the following Ramadhan and not before that, even if they may be aware that their illness drags on.

This also applies to him who keeps postponing compensatory fast until the arrival of a second Ramadhan, i.e. *fidya* is payable on the advent of a second Ramadhan.

General Guidelines of *Kaffarah*

38. Should a person, liable to a *kaffarah* of any type, become unable to discharge it, asking Allah's forgiveness is obligatory on them as an alternative.

39. Should a person be landed with a *kaffarah*, it is desirable, as a matter of voluntary precaution, for him to hasten to discharge it, although this is not obligatory. Postponing its payment, or paying it gradually is valid; the person should not be deemed sinful.

40. Should the worshipper be in any doubt as to whether or not he has done anything which may entail paying a *kaffarah*, he should dismiss it outright.

However, knowing that a *kaffarah* of a sort has become due, yet the worshipper is not quite sure whether or not he has discharged it, settling it should be the way out.

May that a number of *kaffarahs* have become due. Yet, the worshipper is not sure of the number. If, for example, he thinks that the number was between three and four, they should make do with two figures, i.e. three in this case.

Becoming aware of a breach of one's fast of the sort that entails a *kaffarah*, yet the worshipper was not quite sure whether he was engaged in fasting of the month of Ramadhan or a compensatory fast, they

should resolve the matter by feeding sixty poor people; they may do with feeding ten poor people only.

Should the worshipper be landed with *kaffarah* of the type that gives him a choice of three alternatives, yet he is not sure whether it was for breaching his fast during the month of Ramadhan or not keeping his pledge *(ahd)*, he could embark on it with the intention of seeking expiation for what he has commissioned, although without specifying what it was.

Section Seven

Zakat (Alms) tax

Foreword

Zakat, (lit. purification; technically, a portion of property bestowed in alms, as a sanctification of the remainder to the proprietor) and *khums*, are among acts of worship whose validity are predicated on *niyyah* of *qurbah*. Despite the fact that it is a fiscal matter, we do not see any objection to discussing it among matters of *ibadaat* (acts of worship). Indeed, this is so because *zakat* is not a "transaction" according to legal terminology; rather it is an obligation imposed on the *mukallaf* which he should discharge to absolve himself of the religious responsibility.

It goes without saying that *zakat*, as well as *khums*, are among the pillars of Islam. Its being obligatory is a matter of course. In may *ayas* of the Holy Qur'an, Allah, the Most High, has drawn a parallel between *zakat* and prayer; He also promised severe punishment to the those who withheld it. Traditions have it that prayer shall not be accepted from him who withholds payment of *zakat* and that those who withhold it, are free to choose between a death of a Jew or a Christian.

However, since the two obligations [*zakat* and *khums*] are different in insofar as the rules governing each one of them are concerned, we have decided to discuss them separately, starting with *zakat*.

Chapter One

What things are liable for payment of *zakat*?

General Guidelines

Zakat is obligatory in three kinds of assets, (a) livestock, namely camel, cattle, and sheep, (b) crops, namely wheat, barley, dates, and raisins; however it should, as a matter of obligatory precaution, be obligatory in all kinds of grains, such as lentils, beans, and sesame, and (c) gold and silver; modern bank notes are treated likewise, as a matter of obligatory precaution.

However, for payment of *zakat* to become obligatory, few matters have to be considered.

a. & b. Adulthood and sound mental capacity, in that neither an under age boy nor an insane person is required to pay any *zakat* on their possessions, even though insanity may be transient. However, where gold and silver and livestock are involved, the requirement of the passing of one full year has to be fulfilled. So, if insanity strikes a person, or the boy becomes adult during the year, i.e. before the anniversary, no tax should be paid that year.

If the property is of the third type, i.e. crops, both adulthood and sanity have to be present, at a certain stage prior to the produce becoming ready for harvest. That is, if the produce did become ready for harvest where payment of *zakat* becomes due, yet neither did the boy attain adulthood nor did the insane recover, no *zakat* should be payable in that season.

However, it is *mustahab* for the guardian of the boy or the insane person to pay *zakat* on the funds which he used in trading. Temporary loss of sanity as a result of drunkenness or unconsciousness should not constitute a barrier to *zakat* becoming obligatory.

c. Ownership, which basically means that you have to assume absolute ownership of the property all year round in non-crops, and before the maturity date of crops. That is, should you own gold or silver without actually getting hold of it, or you were promised some livestock at the

beginning of the year, but did not receive same only after two months, you are not liable for *zakat*. So, ownership does not materialize, unless you actually get possession of the property. The same applies to borrowed money, but not yet received, and inheritance money before the death of the testator, and so on.

1. The *mukallaf* may borrow a quantity of gold/silver, or crops and actually get possession of it. Retaining it for a year, and provided all other conditions have been fulfilled, the borrower – not the lender – should become liable to pay *zakat*. That is, unless the lender pays *zakat* for the borrowed amount on behalf of the borrower, or there should be a clause in the agreement stipulating that the lender be responsible for the payment of *zakat*.

2. *Waqf* (religious endowment) could take one of two forms, general or specific. If it is of the first band, where the beneficiaries are, say, the poor or the *ulema* in general, no *zakat* shall be payable. That is, even if the *waqf* was possessed by way of ownership.

If it is of the second type, where the beneficiaries are specified, such as the testator making provisions that the *waqf* be for his own offspring, or some of them, or the students of a named seminary and so on, there are two issues to consider:

a. The *waqf* could take the form of benefiting the beneficiaries of the proceeds of the *waqf*, but without them actually owning it. The beneficiaries of the revenue of such a *waqf* do not have to worry about paying *zakat*.

b. The covenant of *waqf* could have been made by way of ownership to the beneficiaries. *Zakat* should become payable to the recipient, if his share in the property reaches the minimum liable to payment of *zakat* tax (*nisab*).

3. Where the capital assets (*ain*), for which payment of *zakat* tax becomes due, is jointly owned, each partner's share must reach the minimum amount to become liable for *zakat*. Should this not be the case and all the partners' shares could meet the minimum required amount liable to payment of *zakat*, none shall incur any *zakat*, neither collectively nor individually.

d. The right of disposal of the property. The owner should have unrestricted right of disposal in any way he deems fit. Thus, no *zakat* shall be due on such property. Included in this is pawned, endowed,

stolen, forgotten property, and debt due to the owner, even if it is within his ability to retrieve it.

4. Should *zakat* become due on the property, yet it either got damaged or stolen, the obligation to pay *zakat* shall not be waived, in which case he should pay it after having restored his stolen or missing property. If he does not succeed in retrieving same, he should stand to pay *zakat* on it, should he be at fault of causing the loss. The same applies to damage befalling the property resulting from transgression or carelessness. Otherwise, no *zakat* tax shall be payable.

e. The minimum number or amount (*nisab*) liable to payment of *zakat* tax. This is the threshold that should be reached to pay tax. We will elaborate this later.

f. *Niyyah*. Since *zakat* is an act of worship there must exist the *niyyah* to pay to seek proximity to Allah, the Most High, so that it will be deemed valid. If *zakat* was paid without the *niyyah* and perchance it was still undamaged with the owner of the property, he should hasten to make *niyyah* of *qurbah*.

Should the recipient take possession of a damaged *zakat* property, with no fault of his, the payer should bear the responsibility of making amends, i.e. by making a second payment of an undamaged property. If the recipient was to stand guarantor, it will become debt on him for the owner. The latter will be justified in taking into account what he owes as *zakat* without loosing sight of the *niyyah* of *qurbah*.

1. *Zakat* on Livestock

We have already mentioned that zakat becomes payable on livestock which include camel, cattle (including buffalo), and sheep (including goat). Male and female of these animals are treated the same. However, such animals have to be among the domesticated ones, in that *zakat* shall not be due on wild cattle and goat, even if it becomes possible to possess same, and they may fulfil the requirements before they become domesticated.

Zakat is not payable on other domestic animals. However, it is *mustahab* in she-horses. Furthermore, *zakat* will not become due unless certain requirements, beside the general ones, are met. These are:

First: *Nisab* (the minimum number taxable)

This is a juridical term meaning that property has to reach a certain threshold to be liable for payment of *zakat* tax. Beside other conditions, it varies in rate between livestock, crops, and gold and silver. Insofar as livestock is concerned, it consists of nineteen bands among the three categories as follows:

i. Camel. There are twelve bands (a) for every five camels, the *zakat* is one sheep, (b) two sheep for ten camels, (c) three sheep for fifteen, (d) four sheep for twenty, (e) five sheep for twenty five, (f) one one-year-old she camel for twenty six camels, (g) one tow-year-old she camel for thirty six, (h) one three-year-old camel for forty six, (i) one four-year-old for sixty one, (j) two two-year-old camels for seventy six camels, (k) two three-year-old camels for ninety one, (l) When the number of camels reaches one hundred and twenty and over without a ceiling, *zakat* is charged at one three-year-old camel for every fifty camels, one two-year-old for every forty.

Examples: Should the number be hundred and sixty such that it accepts division by forty the result of the division is three; if it was a hundred and fifty, i.e. accepting the division by fifty, the result is three. Should the number be two hundred, which accepts the division by both, i.e. forty and fifty, the *mukallaf* is free to choose either of the two numbers. Should the the number be two hundred and sixty, which accepts division by the total of both the figures, the calculation of the amount of *zakat* should be reached at by dividing by two fifties and four forties. Thus, only numbers below ten are exempt.

4. In case no one one-year-old she camel was not available for band (f), i.e. twenty six camels, a one-year-old he camel will do. If this was not feasible from within his property, he is free to buy either sex to pay it for *zakat*. The taxpayer in any other category should stick to age limit of she camels, to be paid in *zakat*, described therein. That is, irrespective of the sex of camels, be they all male or all female, or mixed.

ii. Cattle. There are two bands of *zakat* for cattle. (a) One-year-old heifer for thirty heads of cattle; a she heifer of the same age would not do, as a matter of *ihtiyat*, (b) a two-year-old heifer for forty. Any number over and above these two should be treated as the double of these two numbers, i.e. sixty, forty, and so on. Likewise, if it be the total of both the bands, i.e. seventy. If the total be one hundred and twenty which accepts

division by both the bands of thirty and forty, the *zakat* taxpayer has the choice of either. The remainder in excess of forty to seventy is exempt, and so is any number below thirty. Any odd number up to nine in excess of any band is also exempt.

iii. Sheep. There are five bands of *zakat* for sheep. (a) one ewe for forty sheep, (b) two ewes for one hundred and twenty one, (c) three ewes for two hundred and one, (d) four ewes for three hundred and one, and (e) four hundred sheep or more are charged at one ewe for every hundred without a ceiling. No *zakat* is levied if the number of sheep owned falls short of the first threshold, neither is it levied on the excess between any two bands.

5. When calculating the amount of *zakat* the figure should include male and female; sheep and goat should be treated as one species; the same goes for cattle and buffalo; camels with one hump or two humps are the same.

6. Although we talked about "ewe", it is permissible to pay male or female sheep in *zakat* for some of the bands of camel and all the bands of sheep. Whether the band included all male or all female or mixed sheep is immaterial. Immaterial too is whether all herds were those of sheep alone, goat alone, or mixed. However, as for the age of the animals paid in *zakat* for sheep bands, they have to be one year old, entering into its second year for sheep, and two-year-old, entering into its third year for goat.

7. What is paid in *zakat* for livestock has to be young not old, perfect not injured, and healthy not sick. That is, if the entire herd was thus. However, as a matter of *ihtiyat*, it could be tolerated, if the herd contained good and bad ones. Should the entire herd be bad, old, unsound, or sick, it is permissible to pay in *zakat* from what is available. That is, the *zakat* taxpayer should not be made to buy good quality animals to pay them in *zakat*.

8. What is paid in *zakat* can be of the same livestock, being taxed, or from an outside source in the same town or brought from another. Permissible also is the payment of the equivalent cost of *zakat* in gold, silver, banknotes, and metal coins. The same applies, if the price of the animal is bartered for, say, grain or fabric. However, in all circumstances, payment in kind is both superior and as a matter of *ihtiyat*.

9. Should the *mukallaf* opt for paying the price for the animal paid in *zakat*, the deciding factor in determining the price is the date of payment, not the date when the *zakat* became due. As for the variation of price from one place to the other, the price of the animal in the place where the *zakat* is going to be paid must be taken into account, not the price prevalent in the place where the animals, being taxed, or any other place.

That said, on the basis of voluntary precaution, it is recommended that the higher of the two prices be paid, regardless of the source.

10. Should the livestock owned by one person be dispersed over a number of places (towns), it should be treated as one for the purpose of determining the bands and eventually calculating the *zakat*.

11. The *mukallaf* could have the minimum number required for the first band. Should he opt for paying *zakat* from outside sources, it is obligatory on him to pay *zakat* every year, unless the number drops below the minimum. If he decided to pay *zakat* from his own herd, or he was not paying *zakat* for a number of years of the bare minimum, he is required to pay *zakat* for one year only.

Should the number be in excess of forty, which is the minimum taxable for *zakat* of sheep, payment of *zakat* should be the norm in each and every year until the total number drops below forty. If the *mukallaf* defaulted for a number of years, he must clear the backlog, until the total number decreases to below forty.

Second: Livestock should not be stall-fed

For *zakat* to become operative in livestock, the latter should, all year round, be grazing freely, regardless whether on free or owned land; being stall-fed for between one and three days is immaterial.

Should such livestock be fed either by buying animal feed, growing it in special land, or by bringing naturally grown grass for the animals to feed own, no *zakat* becomes due. That is, irrespective of whether the *mukallaf* opted for the artificial way of feeding the animals by choice or coercion. Immaterial too is whether the *mukallaf* spent from his own money or from other people's pockets, with his permission or without. In short, any eventuality that might render all the animals, or part thereof, stall-fed is bound to make the obligation of *zakat* tax redundant.

Third: The animals should not be working ones

It is widely the view [between jurists] that the animals, being taxed, should not be used for tilling the land, transport, etc. all year round. Should they be used for work in any way for any period, albeit short, during the year, no *zakat* tax shall become due. However, it may be said that this condition is not of consequence on its own merits, but due to the fact that most of working livestock are stall-fed. Should they be freely grazing, it is obligatory to pay *zakat* on them, as a matter of *ihtiyat*.

Fourth: The lapse of one year

Without losing sight of all the conditions, special and general, livestock have to be in the possession of the owner for one full year.

12. It is enough to witness the first day of the twelfth month for the year to be recognized as complete. There and then *zakat* becomes due, provided all parameters remain unchanged. Even if any of the conditions is breached after the advent of the twelfth month, this is not going to alter in any way the ôbligation to pay *azakat*.

However, the new year does not begin until the last day of the twelfth month of the previous year has come to a close and the first day of the following month has dawned.

13. Q. It is a known fact that livestock may increase in number throughout the tax year. This could be the result of a variety of reasons, such as the birth of new offspring or by buying more heads. How should the owner go about dealing with the increase insofar as determining the start of tax year?

A. There may be four possible assumptions/answers:

i. The increase could be equivalent to the extra amount between two bands. For example, the *mukallaf* could originally own forty sheep and has come to possess an extra forty; in this case, he is not required to pay any extra *zakat* for the new forty sheep, i.e. *zakat* tax shall remain due on the original forty sheep.

ii. The increase could form a new independent band. For example, the *mukallaf* could originally have five camels, only to increase by another five ones; in this case, the new increase has to be treated separately, i.e. a new tax year has to be computed from the moment he took ownership of the new stock.

iii. The new arrivals may form a new band in their own right as well as complementing an already existing band to take it to new plateau. For example, the *mukallaf* may originally have twenty camels, only to increase to twenty six as a result of new offspring. The twenty six is an independent new band on the one hand, and it complements the band which follows the twenty five, i.e. by virtue of the extra one. Thus, there has to be a separate computation of this new band, i.e. apart from that for the twenty old stock.

iv. The new stock could be complementary to another band. For example, the *mukallaf* may have thirty heads of cattle, only to increase by eleven new stock to take the total to forty one. Thus, the new stock has completed the second band, i.e. forty with an extra one in hand. In this case, one has to wait until the anniversary of the first band whereby a new tax year for both old and new stock should be taken on board.

However, there should be no problem in considering those four assumptions and their ascribed rules to whether the increase was as a result of new births. There should also be no problem in applying the rules to the new stock, although it be in infancy stage, which normally makes the rule of it being "freely fed" redundant so long as it is not able to feed on its own. That is so because as soon the new stock is born it is treated the same as the mother insofar as the computation of *zakat* is concerned. Accordingly, the tax year for the new arrivals starts with their birth, irrespective of whether the mother was freely fed or stall-fed.

14. The original owner remains liable for any outstanding payment of *zakat* on the livestock he sold. The new owner does not have the right of disposal of the amount of *zakat*, before he sets it aside. Should the original owner cater for the payment from the livestock being taxed or from any other source and pay same to the new owner, then be it. Conversely, the new owner should set the amount of *zakat* tax aside and claim reimbursement from the seller. Should both fail to pay, the *Marji' (al-hakimush shari'i)* can ask the new owner to pay who in turn can claim what he paid from the seller.

15. Since the obligation to pay *zakat* is tied up to the fulfilment of requirements, it is not difficult to circumvent them in order to avoid paying any *zakat* due. This though is lawful, although not nice from the believer who aspires for Allah's grace and pleasure. That said, obeying the injunctions and sticking by them is far superior to avoiding them,

albeit without committing that which is *haraam*, especially when one aspires to covet the great reward (*thawab*) in store.

2. *Zakat* of Crops

Payment of *zakat* tax is obligatory in four kinds of crops: wheat, barley, dates, and raisins; however, as a matter of obligatory *ihtiyat*, it is obligatory in all kinds of crops, such as rice, lentils, sesame, etc. It is not obligatory in vegetables, such as potatoes, cucumbers, carrots, etc.

Payment of *zakat* requires two things:

First. The seasonal produce should reach a minimum threshold (*nisab*). This is estimated at 847 kg. Anything over and above this limit should attract *zakat*. Should the produce be less than the set limit, no *zakat* should be payable.

The criterion for reaching this threshold is when the produce is ready for harvest; for example, grapes could reach that threshold once they are reaped, yet it may fall short of the threshold when they turn into raisins, in which case *zakat* does not become payable.

However, each type of produce should be counted separately for the sake of calculating the *zakat* tax; for example, you cannot treat barely and wheat as one produce for this purpose, in that each of which should reach the threshold in its own right.

16. Numerous fields count as one insofar as the season of their produce is concerned, although such produce may vary in the time span, say a month, of its harvest from one area to the other. Thus, one threshold should be considered for all, provided that the time gap between one produce becoming ready for harvest and the other is so wide that you can no longer treat it as that of one season.

Second: Crops should have become ready for harvest. That is, *zakat* tax does not become payable unless it is ready. It is widely the view of jurists, that in the case of barley and wheat it becomes thus when the grains become fully grown and solid, although they might still be green. As for dates, it is the time they turn either yellowish or reddish; in grapes, it is the time they are still unripe and sour.

However, apparently, established practice (*urf*) should be applied as to what people consider as ripe insofar as wheat and barley are concerned, which concurs with the view held by the jurists. As for grapes and dates,

they cannot be considered as ready for harvest in the stage of ripening, just before they turn yellow or red – in dates, and fully-blown, not unripe and sour, in grapes.

17. *Zakat* tax rate varies commensurate with the method of irrigation. Should the trees or crops be watered naturally, such as rainwater and the like, i.e. without cost to the owner, the rate is one tenth. But, if it was watered with an extra effort [and cost], such as well water, water brought up by modern water pumps and the like, the rate of *zakat* is half of one tenth.

However, it has to be noted that the different rates of *zakat* have something to do with the fruit being cultivated, rather than the tree, in that if, when first planted, the tree used to be mechanically watered, only to be left to be naturally watered when it bore fruit, the rate of *zakat* shall be one tenth.

18. In any one season, there may be more than one method used in watering the crop, i.e. either through the use of manpower or naturally (rainwater). Should any method be the predominant one, the *zakat* rate must be charged on that particular method. Should both the methods be on a par, the crop should be divided into two halves; one tenth should then be charged on one half and half of one percentage point of the one tenth on the other half, i.e. three quarters of one tenth.

If the proprietor was not sure which way to split the crop for not being not sure which of the two methods of irrigation was the predominant one, paying half a percentage point would suffice, although paying more than that is more meritorious as a matter of voluntary precaution.

19. One should hasten to set aside the amount of *zakat* of crops once the crop is reaped/harvested. The proprietor shall be deemed sinner, if he does not do so, unless for a good reason.

20. The quality of the produce may vary between good and bad. There may be other variations within these two qualities. Should all the produce be good, but with varying degrees of goodness, the proprietor may choose to pay the rate on the least good. If the produce was all bad, the owner can pay the rate on the most inferior quality of the produce, if he so wishes. Should the quality of the produce range from bad to good, it is not permissible to pay from the bad for the good.

21. The non-exemption of all the expenditure incurred by the proprietor in cultivating the produce, before the *zakat* becomes due,

cannot be ruled out. However, all the expenditure incurred after fruition, such as expenses for harvesting, storing, transporting the produce, should be exempt, i.e. by deducting same from the [total] amount of *zakat*, after the permission of the *Marji'* has been obtained.

22. It is permissible to pay the amount of *zakat* of crops in its equivalent of gold and silver, or banknotes and coins. Bartering can also be used, such as paying it in fabric, livestock or any other capital assets (*a'ayaan*); however, it is preferable not to resort to the latter way of payment on the basis of voluntary precaution.

23. There may arise two cases when the ownership of the crops is transferred to another person by way of inheritance, sale or gift:

i. Upon the death of the *mukallaf* the ownership of crop may devolve to the inheritors. Should the inheritors assume ownership of the produce after the *zakat* had become due, they must cater for its payment from the estate, in that it is a settlement of debt on the deceased. Should death occur before *zakat* has become due on the crops, the inheritors are deemed new owners; it therefore follows that they should cater for the payment of *zakat* once all conditions, among which are the produce exceeding the threshold (*nisab*) and the inheritor be an adult, are met. As for *nisab*, should there be more than one inheritor, exceeding the threshold has to be fulfilled in each one's share of the inheritance for *zakat* to be paid. Otherwise, it would not become due.

ii. The ownership may have been transferred by way of sale/gift. Should the produce have become liable for *zakat* tax before the transfer, and the previous owner did not pay it, either through transgression or due to an oversight, the tax has to be settled; moreover, it is not permissible to have right of disposal over the amount of *zakat*. Here there are two courses of action. The purchaser can approach the vendor with a view to reaching a settlement over the payment of *zakat*; the purchaser may take the initiative to pay the *zakat* and go back to the vendor for reimbursement.

Should *zakat* become due after the date of transfer of ownership to the new owner, he should cater for the payment, if all requirements have been met.

24. *Zakat* of crops is a one off obligation, even if the stock is still above the threshold for years.

25. We have already ruled that the time the payment of *zakat* becomes obligatory is when the produce is reaped and therefore be weighed or measured to assess the right amount of *zakat* tax. That said, it is not acceptable to have an estimate instead; the *Marji' (al hakimush shari'i)* have no right to demand payment before the actual weighing or measuring of the produce.

However, it is permissible for the *mukallaf* to set aside the amount of *zakat* before the weighing or measuring process, and after *zakat* becomes obligatory on the produce before it is garnered. In this case, estimation has to be adopted. Here, either the *Marji'* or the owner, by virtue of his own expertise or through experts in the field, may do the estimation; either of the two methods would be accepted as a substitute to weighing or measuring.

3. *Zakat* on Gold and Silver

The basis of charging *zakat* on gold and silver the golden dinar and the silver dirham which were in circulation for a long time in Islamic societies. However, *zakat* is not confined to what could carry the label of dinar and dirham. It covers any money minted with great proportions of gold and silver. It is though problematic to rule that it is obligatory to pay *zakat* on money in whose minting the blend is predominantly not gold and silver, so much so that you can readily tell that it is neither gold nor silver. The other requirement for the obligation of paying *zakat* to become operative is reaching the threshold of either gold or silver.

So, the weights of the then *shari'i* dinar and dirham remain the yardstick for determining the threshold of gold and silver money of this day and age. Once all the requirements, as shown hereunder, are fulfilled payment of *zakat* becomes due:

i. It should be minted for the sole use of monetary transactions, in that it can no longer be considered bullion, pieces of jewellery, or any other uncrafted items. It is immaterial whether the minted money was Islamic or non-Islamic. The type of insignia the money carries is also immaterial, in that coins bereft of any signs can also be liable for *zakat* tax so long as they are still in circulation.

That said, the prime objective of minting the money should be its ultimate use as a monetary method of exchange in commercial as well as other transactions. Should the money be taken out of circulation or

become outdated, as is the case of dirham and dinar, apparently, no *zakat* should be payable on it. However, should the money no longer be a national vehicle of monetary exchange, yet it is still circulated among some quarters and coveted by some people, albeit at a very limited level, such as in the case of golden lira, it remains liable for *zakat* tax.

The state of gold and silver coins would not affect the obligation of paying *zakat* on them. Goodness or badness of the quality of gold and silver is a technical term used to determining the ratio of other metals blended with them. That is, the more of metals other than gold and silver are used in the minting process, the inferior the quality. The opposite is true.

26. It is widely recognized among the jurists that *zakat* is not obligatory on banknotes and coins used as currency nowadays. This is based on the understanding that the issue of obligation [of payment of *zakat*] is predicated on gold and silver being the predominant metals.

However, there is another view which calls for the payment of *zakat* on the currencies being circulated nowadays. This opposing view bases its rationale on the fact that bygone currency of gold and silver was a means of exchange among people, recognized for the value they represent as such. There was no other medium of monetary exchange. By the same token, it can be said that the currencies of this day and age serve the same purpose of gold and silver money which was circulated in the olden days, i.e. comparing like with like, not commodities or other goods exchanged for money.

It is noteworthy that traditions talking about *zakat* conclude that it was designed to meet the needs of people. Thus, it flies in face of opinion espousing the non-obligatoriness of payment of *zakat* on banknotes and other forms of currency which are the norm in world today. This form of monetary system has become so widespread that gold and silver currency has become a rare commodity, so much so that the value of dirhams and dinars which are still in circulation is determined by some currencies, such as the US dollar.

This opinion is more akin to the spirit of both the *hadiths* on *zakat* and why it was legislated. It should therefore follow that adopting it is an embodiment of siding with that which is practical. Accordingly, paying *zakat* on banknotes should be adhered to as a matter of obligatory precaution.

ii. Reaching the Threshold

When gold weighs twenty gold dinars or more *zakat* becomes due. One gold dinar is equivalent to approximately half of the weight of an Ottoman Rashidi Lira. In laymen's language, it is one part or unit in every forty parts/units. In juridical terminology it is equivalent to one quarter of one percentage point.

So, no *zakat* shall become obligatory when gold is below the threshold of twenty dinars; anything over and above that is not taxable unless it totals four, in which case it should be charged at the rate of one quarter and so on for every extra four dinars.

The threshold of silver is the weight of two hundred dirhams. According to the experts, each dirham is equivalent to two and a half grams. The amount of *zakat* due shall be five dirhams, i.e. at the rate of one quarter of one percentage point.

Anything below the two hundred dirhams in weight is not liable for tax. However, anything above the minimum is exempt unless it forms a new threshold of forty which yields one dirham of *zakat* for every extra forty dirhams in weight, without a ceiling.

To sum up, the rate which should be paid when both gold and silver reach their respective threshold is one quarter of one percentage point; in other words, one in forty or two and a half percentage points.

3. The Lapse of One Year

This means that the property, i.e. in kind, should remain in the ownership of the person for one full year. This full year elapses at the start of its twelfth month, when *zakat* should become payable. However, the new year should not begin unless the twelfth month draws to a close, i.e. when the following month starts.

27. The yardstick for determining the threshold is the total weight of either the dinar or dirham, not the net weight of gold and silver used in their minting.

28. Gold currency should be treated a class of its own for the sake of determining the threshold. The same goes for silver currency. However, should there be different types of such currency as that of the Ottoman Lira or English Pound they should be treated as one threshold, regardless

of the fact that they may vary in weight. The same should apply to silver dirhams.

29. So long as gold and silver remain above the threshold, and without any alteration, i.e. in kind, *zakat* tax has to be paid on them every year. Should they be exchanged for others or fall below the threshold no *zakat* tax should be payable that year, and so on.

Chapter Two

Recipients of *Zakat* Money

1. Categories of Recipients

For its different types, including *zakatul fitr*, *zakat* is spent in eight different avenues, as determined by *shari'a* law. The avenues of expenditure are designed to tackling a number of essential matters and acute problems facing man. On top of these, is poverty; among which also was the emancipation of slaves, even if they were non-Muslims, hence the importance of the role of this blessed obligation in social bonding and economic progress.

These avenues are:

i. & ii. The Needy and the Poor

A needy person is one who is unable to meet his family's annual expenditure either due to lack of funds as a lump sum or by way of a regular daily or monthly income, depending on status.

A poor person is one who lives below this level.

"Annual expenditure" cover all those needs necessary for his living, which may include wedding expenses, a house, a means of transport, clothes for the different seasons, scientific books (for those engaged in that field), medical expenses and hospitality expenses, commensurate with his status.

30. He who can earn a living, yet does not do so out of laziness and apathy is not entitled to receive *zakat* money. It is obligatory on him to seek employment and earn a living. Should he embark on a training course with a view to getting work that is in line with his status, he can receive *zakat* money during the training period.

Theology students, who cannot work because of their dedication to full time study, are exempt. This is dictated by the need for the services of such people for preaching, upholding the principle of enjoining good and forbidding evil, as well as propagating Islam.

31. Should the would-be recipient of *zakat* have capital assets of any kind, yet they are hardly sufficient to maintain him, it is not obligatory on him to sell such assets to subsidise his annual provisions in order to be eligible for *zakat*. He may retain his status quo and replenish the shortfall from *zakat* money.

32. The person who is capable of earning a living, yet the work he may be engaged in is out of kilter with his social standing, is treated as though he is unable to get work. The same should apply to a tradesman who does not possess the tools of his trade. These people can receive *zakat*.

33. Some theology students may be able to earn a decent living without this constituting any strain neither on their study nor their religious activities. Yet, they choose not to tread this path. Thus, it is not permissible for them to receive *zakat* from the share of the "needy". However, they can be paid from the share dedicated to the work "in the cause of Allah", provided that they are active in promoting Islam and not seeking the limelight. This could extend to those in their class, i.e. activist in the social arena and that of jihad and other similar avenues, whose work can benefit the faith and strengthen it which comes under the definition of "the cause of Allah".

34. It has to be made absolutely certain that the recipient is really needy. This could be achieved by either firsthand information or by the testimony of a trustworthy person. If at the outset the claimant is among those who can be trusted, his word has to be accepted for it. The same applies to a person whose background is unknown and it is not possible to investigate it, and nothing is known as to whether or not he was well to do. Such a person can be given of *zakat* money. However, should we be in a position to know that he used to be wealthy, we have to bar him from receiving *zakat* money unless we be confident of his truthfulness and take his word that he is now in need of financial help.

The same ruling applies to other categories of people, apart from the needy and the poor, such as those in debt *(gharimeen)*, the wayfarer, the slave, and those working in collecting the *zakat*; That is, it is not permissible to give them of *zakat* money only after exhausting all avenues to check their backgrounds with a view to concluding whether or not they are eligible to receiving it.

III. The Officials Appointed to Administer it *(al amiloon alayha)*

Administering the *zakat* involves its collection, distribution, book-

keeping etc. Appointing such officials is the prerogative of the just government. However, it could be assumed by either the *Marji'* who is capable of shouldering such a responsibility. It could also be done through the initiative of the faithful. In all these cases, the appointed person has a right in receiving a share from *zakat* money as a remuneration.

IV. Those Whose Hearts Are Made to Incline to Truth *(al mu'alafati quloobuhum)*

Those are Muslims whose belief in Islamic tenets has been shaken. So they are given a share of *zakat* to solidify their faith, lest they should go astray.

Under this banner too comes non-Muslims who may be inclined to embrace Islam, and their help is enlisted to safeguard the interests of the *ummah*, such as defending the homeland, spread of peace and tranquillity, materialization of peaceful co-existence, etc.

V. The Ransoming of Captives (*ar riqaab*)

This duty can be discharged by the state as well as individuals. The aim being that making funds available to those slaves who bought themselves out from their masters, to escape their clutches and maltreatment, but could not pay for it.

Indeed, *zakat* money should be made available to all slaves wanting to be set free. Since, bondage is very rare these days, this share may be spent in any of the other avenues of *zakat*. We have mentioned it just to show how Islam has catered for the emancipation of slaves and ridding humanity of slavery once and for all.

VI. Those in Debt *(algharimoon)*

Those are insolvent persons who, although can spend on their annual provisions, find it difficult to pay their debts. That is, provided that such debts have not been incurred in going against what Allah has ordained lawful.

VII. The Way of Allah *(Sbilil Lah)*

"The way of Allah" is a wide banner under which comes any work directed to the general good, such as building of mosques, schools, hospitals, strengthening the defence forces, settling of conflicts, fighting corruption and forbidding evil, etc.

VIII. The Wayfarer *(ibinis sabil)*

This is the traveller who is left stranded. He can be given of *zakat* money to ensure his return to his homeland. The payment should include the fare and personal expenses as is customary. That is, on condition that his travel was not of the sort which is unlawful, that he is unable to borrow money, and that he is not in a position to sell of his own property back home, as a matter of obligatory precaution.

2. The Criteria the Recipients Should Meet

It is not sufficient for the payment of *zakat* money to be made to any would-be recipient in any of the preceding categories because they may satisfy the general headline of that particular category. There are however other requirements that must be fulfilled:

i. Faith. Those entitled for receiving *zakat* money, especially among the needy and the poor, have to be devout Muslims, in that *zakat* should not be paid to either the poor among non-Muslims or non-devout Muslims. As for those in the remaining categories, i.e. *al gharimoon, ibinish sabil*, etc., being Muslims and devout is not a must.

ii. The recipient should not be a sworn sinner. This is particularly so in "the needy and the poor". However, it is not meant that the recipient should be free from all kinds of sin. What is important is that one should be sure he is not going to spend *zakat* money in gambling or drinking alcohol, for example. As a matter of obligatory precaution, the recipient should not be one who took to drinking alcohol, or is an avowed morally depraved person, or is among those who turned their back to prayer.

We have already ruled that "the one in debt – *al gharim*" should not have incurred such debt in that which is bound to displease Allah, the Exalted, and that the "wayfarer – *inbinis sabil*" should not have embarked on an lawful travel. Yet, it is permissible to give them of *zakat* money, even if they were of the people who took to sinning. Likewise, it is permissible to give it to the recipients in the other categories.

iii. The recipient should not be among the dependents of the giver of *zakat*.

This is a general requirement for all the categories. It is not permissible for the *mukallaf* to pay the *zakat* on his property to his paternal/maternal parents, grandparents; neither is it permissible to pay

it to one's sons and daughters and their offspring; wife/wives through *permanent marriage* cannot receive of *zakat* money.

The ban on giving those of *zakat* money is confined to their personal needs only, because it falls within the responsibility of the *mukallaf*. Any need which falls outside this remit, i.e. the personal level, it is permissible to cater for it with *zakat* money. For example, the *mukallaf's* father may have a debt that may be paid off with *zakat* money; his son may have a wife whose needs may be met from *zakat* money and so on.

This should be the case if the *mukallaf* was financially solvent and could meet the expenses of members of his family. If not, he is entitled to pay them his *zakat*. That said, it is preferable not to resort to this on the basis of voluntary precaution.

35. In fixed-term marriage, the husband is not obligated to spend his wife. Thus, she is entitled to receive *zakat* money from him. The wife, be she permanent or temporary, is allowed to pay her husband her *zakat*, even if the husband may use it on maintaining her.

36. Those entitled to maintenance money should not be confined to that source of support so long as they do not have enough to live of for a whole year. Accordingly, they should not be deprived of *zakat* money from other sources, particularly when the person responsible for making available the funds for maintenance is hard pressed, or they may be paying but not willingly, or they may not be paying at all. Should this be the case, the person responsible for paying for maintenance should be absolved of the responsibility of paying, but partially, i.e. for that portion which is being met with *zakat* money.

This ruling applies to cases other than that of a wife, who should not be paid of *zakat* money, especially when her husband is well to do; moreover, it should be the case, even by forcing him to pay for her maintenance, should he withhold payment.

37. The *Marji'* should not feel reluctant to paying *zakat* to the father if his son's property was mixed with other people's property, save when it's known, in which case it should not be paid; the opposite is true.

iv. The recipient must not be Hashimite, when the payer of *zakat* is a non-Hashimite. This too is a general requirement in all the categories. A Hashimite is he whose paternal lineage is traced to Hashim, one of the forefathers of the Prophet (s.a.w.). This covers all Hashim's sons and their sons till the Day of Judgement. Accordingly, an eligible Hashimite

can receive *zakat* paid by another Hashimite, but not from a non-Hashimite.

This ruling applies only to *zakat* on property and *zakatul fitr*. Thus, it is *not haraam* for a Hashimite to receive *sadaqah* from a non-Hashimite. Likewise, he can receive money of *kaffarah*, find, expiation, property anonymous *(majhoolil malik)*, *sadaqah* that became obligatory to pay as a result of *nadhr*, and property left in a will for the poor. The Hashimite can also make use of all public amenities and charitable institutions, such as bridges, schools, and hospitals which were built with *zakat* money.

38. In an emergency it is permissible for the Hshimite to take *zakat* money. However, as a matter of obligatory precaution, it is essential to define such an emergency by way of non-availability of sufficient funds from other sources, such as *Zakat* and other alms he is allowed to receive. Where possible, this has to be assessed on a day to day basis. That is, he should not be paid more that unless where daily payment is not forthcoming because of absence on travel or the sort.

39. Any one's claim that he is a Hashimite should not be taken at face value. That is he should be vetted. The payer of *zakat* should not to be absolved of the responsibility without proper background check into the claim.

3. Rules of Paying *Zakat*

40. The proprietor is not allowed to pay the *zakat* prematurely, i.e. before its due time of becoming obligatory. However, it is permissible to pay the poor any money by way of loan; when the time comes for paying *zakat* such a loan can be set off by *zakat* money. That said, the *mukallaf* is not bound by such an arrangement for he can pay another poor person the due amount and leaving the one who took the loan indebted.

41. It is not permissible to delay payment of *zakat* money beyond its due date, only in a force majeure. Delay without a valid reason would render the *mukallaf* sinful and he would be branded as going against the injunctions of religion *(asi)*.

The *mukallaf* can approach the issue of payment in two ways:

i. The amount of *zakat* can stay as part of the *mukallaf's* main property until it becomes feasible to pay it. This would entail:

a. Should the property sustain any damage or loss it will be confined

to the *mukallaf's* own property and not *zakat* money.

b. Should *zakat* money yield any return, it will be for the *mukallaf* not to the potential recipient of *zakat*.

ii. The *zakat* money could be set aside until it becomes feasible to pay it. This would entail:

a. Should *zakat* amount sustain any damage or loss, through no fault of the *mukallaf*, nor a delay in paying, the damage should be borne by the recipient.

b. Should *zakat* money yield any return, be it sustained or intermittent, it will be for the recipient not the *mukallaf*.

c. Once the amount has been set aside, it should not be tampered with or replaced.

42. It is not obligatory to spread the amount of *zakat* over the eight categories of recipients. That is, it is permissible to pay it to any one cagtegory; so is it permissible to give it to one person in any chosen category.

43. Although there is no minimum amount to the payment of *zakat*, it is recommended, on a voluntary precaution basis, not to pay the poor less than the equivalent of one quarter of gold Ottoman Lira. As for the upper ceiling, it is permissible to make one payment which is equivalent to one year's provisions. Nothing more than this should be paid lest it should turn the recipient "rich".

44. Apparently *(al aqwa)*, it is not obligatory to pay *zakat* to the fully-fledged jurist, at the time of the occultation [of the Imam], although it is preferable as a matter of *ihtiyat*. However, if the jurist explicitly made his wish to pay it to him known for he could identify the avenues where it can be spent, his followers have to obey such a wish. Indeed, such action should be forthcoming from others outside his circle of following, even if his ruling fell short of a *fatwa*.

45. Should the *Marji'* (jurist) receive *zakat* in his capacity as a vicegererent, the payer is absolved of the responsibility, even if the amount gets lost through or without fault of the jurist.

46. If *zakat* money becomes due in any land other than that where the *mukallaf* normally resides, he is entitled to pay it in his own place of domicile, even if there are people there who are eligible for payment in the land where *zakat* arose.

The same applies if the *mukallaf* owes any money in places other than his own place of domicile; he should be entitled to set off any loan against *zakat* money, provided that the debtor is poor.

47. It is permissible to deduct the amount of debt from *zakat* money without informing the recipient. Likewise, not informing the recipient that what he is getting is *zakat* money is a legitimate business. What counts at the end of the day is the *niyyah* that the money is being paid as *zakat*.

48. It is permissible for the *zakat* payer to appoint an agent to pay it on his behalf including the delivery point, i.e. to the recipient. All what he has to do is to make *niyyah* of *qurbah* at time of giving the amount of *zakat* to the agent, although the *niyyah* should be held until the recipient get hold of the money, as a matter of *ihtiyat*.

49. It is not obligatory that the recipient himself get hold of the money. He could receive it through an agent, not necessarily from one source. Once the agent takes ownership of *zakat*, the payer is absolved of the responsibility. That is, he will not stand to pay again in the event of damage sustained while the *zakat* is still with the agent.

50. After payment of *zakat* is made it may transpire that the recipient is not among those eligible for receiving *zakat* money at the time of payment. Should the *zakat* have been set aside prior to paying it, it is obligatory on him to retrieve it from the person it was given to, should it still be there intact.

If the recipient has already disposed of the *zakat* money or it has not originally been set aside, and provided that he had made inquiries as to the background of the recipient and concluded that he was entitled to receive it, he should not stand to compensate same. If the payment was made without proper investigation, he should stand to compensate same.

Where the payer stands to compensate the amount of *zakat*, he can go back to the recipient and demand the return of the money in kind or the equivalent thereof, provided that the recipient knew that what he had received is *zakat* money. That is, regardless of whether or not he knew that he is not entitled to receive such money. As for the recipient's ignorance that the money he received was *zakat* money, the payer does not have the right of retrieving the money.

The same applies when the mistake happens as to the right description and entitlement of any of the other categories, such as "*ibinis sabil*" or "*al amileena alayha*".

51. Should the *mukallaf* pay *zakat* in the mistaken belief that it has become obligatory to do so, and it transpires that it has not, he is justified in retrieving it from the recipient. If *zakat* has been disposed of, and that the recipient knew that the *mukallaf* was not obligated to pay it, the payer is entitled to demand repayment of the equivalent amount. Otherwise, he is not entitled to do so.

52. The *mukallaf* decided, by way of *nadhr*, to pay the *zakat* to a particular eligible person. Should he inadvertently give it to another eligible person, this is bound to absolve him from the responsibility of *nadhr*, in that he is not required to retrieve it, even *zakat* was still with him in kind.

Should the payment of *zakat* to other than the person originally intended be made deliberately, it is valid. Yet, the *mukallaf* would be held responsible vis-ä-vis *nadhr*; he should therefore pay a *kaffarah* for flouting the *nadhr*.

53. The proprietor is allowed to transfer *zakat* from the place of origin to another place for the purpose of paying it to eligible persons there, even if there are people who are eligible to receive it in the place of origin. However, because of the availability of people in the country of origin, and if the transfer was not sanctioned by the *Marji'*, the expenses incurred as a result of the transfer must be borne by the proprietor, i.e. from his own money.

Non-availability of eligible people in the country of origin, or the transfer of *zakat* money has been agreed by the *Marji'* after the proprietor took receipt of *zakat* on behalf of the *Marji'*, should make any expenses incurred as a result of the transfer deductible from *zakat* money.

54. Should the amount of *zakat* set aside sustain a damage or loss, wholly or in part, or the damage occurred to the entire property before the amount was set aside, there may be a number of issues to discuss:

i. Should the loss be sustained through negligence or wrong doing, the person who caused the loss should be made to pay for the loss, be he the proprietor or someone else. If the proprietor was the culprit, the ruling stands, regardless of any reason that may be put forward, such as whether he was justified in delaying the payment of *zakat*.

ii. The proprietor could have delayed paying the *zakat* without a valid reason while the eligible person was available in the country of origin. Should the property be lost due to natural causes, i.e. not man made,

such as fire or flood, or it may have lost due to human error, the proprietor should stand to guarantee payment of *zakat*. The reason being that delaying payment, while it was within his capacity to make the payment, is deemed negligence on his part vis-ä-vis the *shari'i* right.

Should the property be lost through wantonness by a second party through no fault of the proprietor, the responsibility of paying the amount of *zakat* falls squarely on the shoulders of the aggressor. If the guilty party admits liability and takes the initiative to pay the *zakat*, then be it. If not, the *Marji'* may make him pay damages. Should the guilty party evade payment, or the *Marji'* had gone back to the proprietor to pay, the latter should settle the payment from his own pocket. That said, the proprietor is free to seek redress, in any way he deems fit, for the damage.

iii. The property may get lost without negligence, be it on the part of the proprietor or any other party. It could be that the proprietor was not at fault for delaying payment of *zakat*. Should the loss be sustained by the entire property, or part thereof, prior to setting aside the amount of *zakat* on it, the proprietor should be held responsible to pay. If the loss is sustained by the amount of *zakat*, after it has been set aside, he should not be held responsible to pay damages.

55. *Zakat* money may sustain damage en-route. If there were eligible people among the recipients of *zakat* in the country of origin, and the transfer of *zakat* was undertaken without having recourse to the *Marji'* (jurist), the proprietor should stand to pay damages. That is, irrespective of whether or not he was at fault.

Should there not be people among the recipients of *zakat* available in the country of origin, or the proprietor took possession of *zakat* money by way of proxy on behalf of the *Marji'* and transferred it with his permission, he should not be held responsible to indemnify it, except if he was negligent.

56. It is *mustahab* on the part of the recipient of, be he the jurist, his agent, or the eligible person themselves, to pray for the proprietor. However, as a matter of voluntary precaution, the jurist who acquires *zakat* money, by virtue of being the vicegererent *(wilayah)*, should do likewise.

57. Preferential treatment with regard to the recipient of *zakat* is recommended as an optional act of worship *(mustahab)*. That is, the

virtuous could be given more of a share, the close relatives over others, those who do not ask for it over those who do. Payment of *zakat* on livestock in particular is preferably paid to those recipients who show forbearance *(ahlil tajamul)*.

These preferentials are only guides; there may, however, be other ones which are more important.

58. It is abominable *(makrouh)* for the proprietor to seek to acquire that which he set aside in obligatory and voluntary *sadaqah*. However, if the recipient was willing to sell back what he received in *zakat*, after it has been assessed, the proprietor has preference, without compulsion, over others in buying it.

There should be no problem too if the proprietor wanted to hold on to his property, especially if he has come to acquire it by way of inheritance, for example.

Zakatul Fitr

It is an amount that is payable for every soul on the first day of Shawwal, i.e. *Eidul Fitr*. It may be called *zakatun nufus* (purification of souls) as opposed to *zakatul amwaal* (purification of property). [This type of poll tax] has a number of rules as follows:

Who should pay it?

59. It is obligatory on every *mukallaf* who can fulfill the following requirements:

i. and ii. Adulthood and Reason, in that it is neither obligatory on minors nor those who are insane, unless the latter's illness is intermittent and the due time for payment of this *zakat* coincides with the *mukallaf's* improved state of health.

iii. The *mukallaf* should be well-to-do, in that it is not obligatory on the poor and the needy, who cannot afford to provide for themselves for a whole year, or a part thereof. However, it is *mustahab* to pay it, even if there was enough money for only one person. In such a case, what can one do is for all members of the family to take turns in taking receipt of it; once the last one gets hold of it, he should pay it to others, as a matter of obligatory precaution.

If there are mionrs or insane persons in the family, the guardian should have the amount of *zakat* for himself, then pay it as *zakatul fitr* on

behalf of such persons. This is done to prevent any payment from their property to others by way of *sadaqah*, while they are still in need of it.

60. These conditions have to be fulfilled prior to the time designated for setting *zakatul fitr* aside, which is between the sunset of the eve of Shawwal and its midday *(zawaal)*. However, as a matter of obligatory precaution, *zakat* for oneself and their family be set aside, even if the requirements are met by sunset or after it, i.e. until before midday of the first of Shawwal.

The provider for people such as the unbeliever who turns Muslim, the newly born, and the newlywed is not required to pay *zakatul fitr* for them, should they be part of his household after sunset. Likewise, they are not required to pay for themselves, even if they can afford it. The exception being that the wife, who used to pay for her provisions from her own money before her marriage and can afford to pay *zakatul fitr*, should do so.

To whom should *zakatul* fitr be paid?

61. Once the requirements be fulfilled, the *mukallaf* should pay it for himself to start with. He is also responsible for paying it for his dependents, be they his immediate family or the others. These are:

i. His dependents, i.e. wife, children, and parents.

ii. Other members of his extended family, who are usually maintained by him, such as brothers and sisters. Only paying for their provisions is not a sufficient reason for including them; they have to be counted as members of his family. Should this be the case, whether they were present or absent on the eve of the *Eid* is immaterial.

iii. The servants among his household, i.e. living in the midst of the family. That is, paid servants who live outside are not included, unless they spend the night of on the eve of *Eid* as guests.

iv. Guests of any hue, who stay overnight, provided they arrive at his place before sighting of the moon of Shawwal. However, it should, as a matter of obligatory precaution, suffice for the qualification of "guest" that the person arrives after sunset.

The most important criterion of "guest" is that they should stay overnight, even if they do not eat or drink at his expense. So, those guests who are invited for, say, a dinner without staying at his place overnight

should not be included for the purpose of paying *zakatul fitr* by the *mukallaf*.

62. For "dependency" to be recognized as complete, it is not necessary that the person be entirely dependent on his provider. Accordingly, even if the expenditure of the dependent is partially met by the provider, the latter should pay any due *zakatul fitr* tax.

63. Should the provider *(al mu'eel)* be poor and perchance one or more among his family or guests can afford paying the *zakatul fitr*, they should pay it for themselves, provided that they fulfill the criteria of obligation.

64. If the provider deliberately withholds the payment of *zakatul fitr*, due on his dependents, or forgets to pay it, it is not obligatory on those dependents to pay it themselves. However, as a matter of voluntary precaution, it should not be waived the non-payment by the provider was due to an oversight or this sort of reasons.

65. There may be more than one person jointly providing for the rest members of the family, such as sons supporting their parents. It is obligatory therefore that amount of *zakatul fitr* is shared among them. Should anyone be unable to pay, the share of the other member, who can afford the payment, is not waived. The well-to-do cannot be made to bear the share of the non-solvent. Should all be unable to pay, all should be excused.

How much should be paid?

Zakatul fitr should be of that which can be eaten, such as wheat and its derivatives, i.e. flour and bulgur, barley, dates, raisins, milk and other dairy products, rice, and maze.

The amount of *zakatul fitr* can be paid in money. Due care should be given to the amount of *Zakatul fitr* when it is set aside and actually paid, so too should be the case in the country of origin, not the country of the *mukallaf*.

The measure that should be paid for every soul is approximately three kilos. However, when paid it has to be of the same produce, i.e. you cannot pay for any soul a kilo and half of, say, wheat and its equivalent of dates. It should therefore follow that the provider can pay in different kinds of the prescribed produce, so long as it is of the same kind for that

particular soul. For example, rice for his father, wheat for his wife, dates for his son and so on.

When should it be paid?

It is permissible to take the initiative to pay it during the days of Ramadhan or on *Eid* eve. However, in such a case it should, as a matter of voluntary precaution, be paid with the intention of being debt to be offset by way of *zakatul fitr* on the morning of *Eid.*

If it is not paid during the month of Ramadhan, the alternative is to pay it or set it aside from dawn break of *Eid* day till shortly before *Eid* prayer, as a matter of obligatory precaution, for those who perform the prayer. Those who could not perform it, the deadline for paying it is extended till before midday. It is not obligatory to make the actual payment to the recipient; it suffices to set it aside for days if need be in order to deliver it to the recipient, so long as the delay can be justified.

Failing that, i.e. the deadline expired before the payment/setting the amount aside was made, it should be paid by way of *al qurbal mutlaqah*; that is, without taking into account that it has become obligatory on him.

66. Where the *mukallaf* is inclined to set aside the amount of *zakatul fitr*, such should physically take place, in that it is not sufficient to make *niyyah* to set it aside as a common share within the property.

Likewise, the *mukallaf* cannot earmark it as a share in other people's property, as a matter of obligatory precaution; it should be set aside in kind; once it is set aside, it should not be tampered with.

67. As a matter of obligatory precaution, it is not permissible to transfer *zakatul fitr* outside the *mukallaf's* country of domicile, although this is allowed in *zakat* on property as we have already explained.

However, it is permissible to transfer it to another country, should there be no eligible people in the country of origin; it is also permissible to pay it in the country the *mukallaf* has moved to after it has become due on him in his first country of abode.

Since paying *zakat* to the just jurist is more preferable, as a matter of *ihtiyat*, it is permissible to send it to him, although there may be eligible people in the country of the *mukallaf.*

Section Eight

Khums

Foreword

As we have already mentioned in the chapter dedicated to *zakat* that *Khums* (20% tax on earnings) is among the sublime obligations decreed by the Law-giver. This is so because of the important role this tax play in the circulation of money, the enrichment of state coffers, and the materialization of social welfare. Thus, in common with *zakat*, *khums* shares the same objectives and reaps the same rewards.

This 20% tax is levied on all kinds of property, be it real estate or money. *Zakat*, as we have illustrated, is confined to certain kinds of property. It will transpire that *Khums* covers all kinds of property where *zakat* is not levied. However, payment of *Khums* on some kinds of property, where *zakat* has already been paid, might become obligatory. That is, when the requirements of *Zakat* could be fulfilled, especially at the point of circulation of property.

In common with other fiscal obligations, such as *zakat* and *kaffarahs*, *Khums* is an act of worship whose validity and acceptance is predicated on the *niyyah* of *qurbah* at the point of payment.

Requirements of *Khums*

Khums should not become due unless a number of conditions are met:

i. and ii. Adulthood and Reason, in that *Khums* should not become due on the property of a minor until he attains adulthood, nor should it become due on the property of an insane person, until he regains his senses, should his insanity be perpetual. If it is occasional, *Khums* is obligatory on him; the same applies to the person who has frequent bouts of unconsciousness.

iii. Islam, in that no *Khums* is due on the property of an unbeliever, regardless of the period he remains unbeliever and the extent of his wealth.

68. These requirements should be upheld in the obligation of paying *Khums* on all kinds of property, except for adulthood, where the property is mixed with illicit money, in which case it is obligatory on the guardian to pay *Khums* on the property of the minor, should it become tainted with illicit gains, even before he attains adulthood. The other exception being that, when a covenanted *(thimmi)* non-Muslim person buying a plot of land from a Muslim, *Khums* has to be paid by the purchaser.

Should these three conditions be met besides all other requirements, immediate payment of *Khums* becomes due. For example, if one year has already elapsed on the property of a minor before he attains adulthood, only to attain it. In this case, he should hasten to pay *Khums*, i.e without the need to wait for the anniversary of attaining adulthood so long as the property is still intact.

iv. Attaining the threshold in some kinds of property, such as in treasure trove and metal, not others, like gains; this will be elaborated later on.

v. The property should be privately owned, in that no *Khums* should be levied on, for example, property owned by the state or a charitable trust, regardless of length of time and the return it might yield.

However, "private ownership" should not mean individual ownership; it covers partnership, companies, and co-operative societies where the property is shared.

69. The return on *waqf*, which has been covenanted for a particular family, for example, should be subject to *Khums* on each one's share, after receipt by the beneficiary. The same applies on returns of general endowment of a particular title, such as that dedicated theology students, or to the general public – that fits the banner of *Sabilil Lah*. That is, any individual gets a portion of the gains on such *waqf* (endowment), it becomes part of his own property, in which case he is liable to pay *Khums* on it so long as the requirements are fulfilled.

70. It is not a condition that the property to be taxed should be in hand. Debt due to the proprietor, the usurped property whose return might be forthcoming, money stashed away, which is although difficult to get hold of now, yet might be retrieved in the future, and so on *Khums* become due on it. However, it is not obligatory to pay *Khums* on it so long as it is unavailable to you; the choice is left to the proprietor who may wish to pay the *Khums* on it now or later, i.e. after he can lay his

hands on it. That said, when all hope is lost in retrieving the property, such as bad debt, no *Khums* should be payable on it. But, if per chance the proprietor gets hold of his property, he should then pay *Khums* on it, should the requirements be met.

71. When all the requirements are met, the obligation to pay *Khums* should be applied to both man and woman, irrespective of whether or not they have independent means of income. A youth who is still living of his father's, or his brother's, means of support, should pay *Khums* on the surplus of his yearly provisions or normal expenditure of the money he earns, be it that which is given to him or that which he himself earns. The same applies to a woman, be she young or married, even if the property was hers.

Chapter One

On What Should *Khums* be Paid?

Foreword

Khums is payable on all kinds of private property, except few that are earned through the individual's effort and toil, or those that came his way without any effort. Of the first type is what man earns by hiring himself, or working in agriculture, trade, war, mining, etc. Of the second type what man's acquires by way of gift, will, and inheritance. *Khums* should be payable by the covenanted non-Muslim on land bought from a Muslim as an exceptional case in such transactions. It should also be levied on the property tainted with illicit gains for the purpose of purifying it and rendering it permissible to dispose of.

Since much of the details are dedicated to the *Khums* that is levied on gains, we are going to discuss these under two titles; the first will cover matters which are not related to what becomes left over and above man's yearly expenses, such as spoils, metal, treasure troves, what is acquired through diving, money tainted with illicit gains, and land bought by a covenanted non-Muslim from a Muslim. These kinds of property are unique, in that you do not need to wait for one year, as in the case of ordinary gains, to pay *Khums* on it. It is obligatory that one should hasten to do so as soon as it has been acquired, even if it is not surplus to one's provisions.

In the second, we will discuss ordinary gains, which come about by way of earning a living, and which may yield surplus to one's yearly provisions. The aim is to distinguish this type of *Khums* which is levied on a particular date after the lapse of one year and the other kind of gains whose *Khums* should be paid promptly.

1. *Khums* Levied on Spoils

i. Spoils of War

These consist of war booty acquired in Muslim's wars against the

infidels, that which had been snatched by force. However, such war should have been waged with the permission of the Imam (a.s.) when present, or the legitimate authority *(as sulta ash shari'iyah)* at the time of the occultation. Muslims are agreed on the obligation of paying *Khums* on such gains. This has been substantiated by irrefutable evidence from both the Holy Book and the *sunnah*.

This situation though no longer exists in this day and age. The reason being that the Islamic leadership of bygone days did not bear the expenditure of the army; the fighters themselves did. That is why distribution of war booty used to be among them in recognition of their effort. Nowadays, the Islamic leadership – the state – caters for the cost of war and pays the soldiers their wages. Hence the opinion about the state having right of disposal over war booty. That is, the state falls outside the remit of the evidence of confining the distribution of war spoils among the fighters, after modern soldiers have become hired persons.

72. Apparently, the definition of "booty", on which *shari'i* consequences are predicated, is the property acquired during acts of war. That which falls in the hands of Muslims of the property of a belligerent unbeliever – if he is allowed to acquire it – should be counted among gains. It can also be argued that Muslims have no right in the property of the belligerent unbeliever, for the mere reason that such a matter could be referred to the *Marji' (al hakimush shari'i)* in his capacity as the overall guardian of Muslims. It could therefore be concluded, as a matter of obligatory precaution, that it is not permissible to take away the property of a belligerent unbeliever.

ii. Minerals

Anything that is excavated from the earth, provided that it is of value.

The obligation to pay *Khums* on minerals is general, in the sense that it should be paid whether the minerals were excavated through mining [or drilling] or were found at the surface of the earth. For example, *Khums* should be levied on gold, silver, copper, lead, iron ore, gems, mercury, sulphur, oil, salt etc.

Apparently, minerals are among booty. Thus, the permission of the guardian of Muslims *(Marji')* has to be obtained to develop them. This applies to all kinds of land, including conquered ones.

73. Should anyone develop any land that does not belong to them without the permission of the owner, it is widely the view [among jurists] that the minerals it contains are the property of the owner. However, this may be the case with regard to minerals found on the surface, or at short depth of it; should the minerals be at a greater depth inside the earth, they are not considered as part of it. Accordingly, and as a matter of *ihtiyat*, the developer and the owner should reach an agreement. Failing that both the parties must have recourse to the *Marji'* who is the guardian of the minerals.

74. The threshold for paying *Khums* on minerals is twenty dinars, i.e. approximately ten Ottoman gold Lira. Apparently, determining the threshold is done by excluding the yearly provisions of the proprietor. For example, should the total amount of the minerals excavated be twenty five dinars and the yearly provisions ten, no *Khums* should be levied because the remainder is below the threshold.

75. The minerals may be extracted at intervals. Should the established practice *(urf)* consider the work as semi continuous, it suffices that the entire production be considered one for the sake of calculating the threshold. Conversely, should the work involve long periods of recess, for this reason or the other – including the fact that the pace of work is dictated by its nature, no *Khums* is payable on every independent batch, unless it rises above the threshold.

76. Should there be partners developing the site, the share of each one of them has to reach the threshold for *Khums* to be levied. In other words, even if the total of all their shares reached the benchmark, no *Khums* should be paid.

77. When in doubt about whether or not the threshold has been reached, one has, as a matter of voluntary precaution, and where possible, to make sure by way of checking. If it is not possible to ascertain the fact, or if one is still in doubt even after checking, no *Khums* should be payable.

iii. Treasure Trove

Treasure trove is money, gold, jewels, or other valuable objects, such as old relics, found hidden in the ground, cave, under a wall, a tree, etc. and claimed by no one.

78. If no one comes forward to lay claim to the treasure trove, and its ownership cannot be traced to a Muslim, or an unbeliever who considers property sacrosanct, the person who found it can own it. That is, without regard to the land it is found in, i.e. be it war territory or Muslim land, whether it bore the marks of Islam or the age of *Jahiliyah* (ignorance), whether the land the treasure trove was found in was built or derelict, and whether the time span was close to the founder's time or much older.

Should the founder, after checking, know the owner of the treasure, in person or through his inheritors, he should give it back to them. Otherwise, the one who found it will be deemed as owner anonymous *(majhoulil malik)*, in which case he should hand it over to the *Marji'*. If the owner belongs to very old generation with no known heir, it should be treated in the light of the rules governing treasure trove.

79. Irrespective of the nature of the land which contained the treasure trove, once it is established that the owner is anonymous, the person who found it is not required to investigate, especially if the treasure is very old and untouched.

[Generally speaking] how the present owner of the land came to own it is immaterial to him being the owner of the treasure trove. That said, if it was owned by other people before him, and he came to know that the treasure might belong to someone who considers property sacrosanct, among the previous owner or their heirs, it is obligatory on him to ask them whether the treasure belongs to them. The same applies if the present owner of the land thinks that there is a possibility that the treasure may belong to the penultimate owner or his heirs. Should he conclude that it is theirs, he must hand it over to them; otherwise, the same ruling in the previous issue should apply.

80. There is no difference in the ruling in the case of the land being tenanted or that which the person who found the treasure trove in it is being exploited without the owners permission, although the culprit is deemed sinful on that count.

At any rate, it is recommended, on the basis of voluntary precaution, that the person who found the treasure trove should agree with the landlord, even in the case of tenancy; failure to reach such agreement should open the way to arbitration by the *Marji'*.

81. *Khums* becomes due on the treasure trove when it, or its value if it

is not gold or silver, reaches the threshold of *zakat* on gold and silver, which is twenty dinars for gold and two hundred dirhams for silver.

The criterion of the threshold of minerals when brought out in batches/intervals should be observed here. That is, if the process of retrieving the treasure trove is done in phases, but with short intervals, *Khums* is payable; if not, i.e. with long intervals, no *Khums* on the total should be due, unless each batch reaches the threshold.

Also, any expenditure on excavating the treasure trove must be deducted from the total value. Should the remainder amount to the threshold or more, *Khums* should be paid.

82. As in the case of minerals, should there be a group of people taking part in the uncovering and extracting of the treasure trove, their respective shares, not the total, should reach the threshold for it to be taxed. Similarly, when in doubt about whether or not the share has reached the threshold, checking, where possible, is recommended as a matter of *ihtiyat*.

83. Muslims living abroad should respect the law of land they are in, including those legislations designed to preserve national heritage. However, should they come across a treasure trove, they may keep it.

iv. What is Acquired Through Diving?

It is all that which is brought up by going under the surface of the water, be it through manpower or machine power, such as pearls and corals, and the like of sea plants and animals, barring fish and marine mammals. What is gathered from the surface of water is not included in this definition; it is considered part of gains *(makaasib)*.

Apparently, great rivers are treated in the same way as seas insofar as what is extracted from their depths is concerned.

84. Apparently, the threshold of what is acquired through diving is one dinar, or about one half of an Ottoman gold Lira, Should there be a group of people carrying out the work by way of partnership, the threshold must be reached by each and every one of them separately for the *Khums* to become due. Whether the acquisition was of the same kind or different kinds is immaterial.

85. Property retrieved from sunken vessels belongs to the one who brought it up; that is, if the original owner did not bother to salvage it in the first place or salvaging it proved very difficult. However, the ruling

regarding diving does not cover this matter, on the basis of *ihtiyat*; rather it is covered by the rules of gains. The same applies to what is thrown by the sea on the coast; its ownership belongs to the one who finds/retrieves it.

86. Should amber be extracted from the bottom of the sea, the rules of diving should apply, i.e. *Khums* has to be deducted accordingly. Should it be gathered from the surface of water or the coastline, no *Khums*, under the banner of diving, must be due. However, the rules governing gains should apply.

v. Property Tainted with Illicit Gains

It is the money earned by licit means getting mixed up with illicit gains so much so that it becomes very difficult to quantify the latter neither in kind nor by an evaluation.

Since the *mukallaf* becomes perplexed as how best to get rid of the illicit money and whereby extricate himself from the responsibility, the *Shari'a* made it compulsory that the proprietor pays *Khums* on all the property in a way to purify the rest and render it *halal*. This should be done as soon as the culprit repents and shows remorse, i.e. without the need to wait one full year.

"Illicit property" is every gain acquired through means which Islam has outlawed, or it was acquired through usurpation or theft. Of the first type is money taken by way of unlawful singing, adultery, sodomy, and their likes of sexual licentiousness, sculpture, etc. Or it was a price for something which is *haraam*, such as money received for selling a dead carcass, pig, and alcohol. Or it could be gains of usury, gambling, and their likes.

Of the second type is any property taken by force from its owner, be it without his agreement, theft, or by deceit. We will discuss the sources of illicit gains and the rules governing them under the theme of "transactions" later, *Inshallah*.

Should the proprietor of such tainted property repent, it is obligatory on him to hasten to get rid of it by either returning it to its owner or reach an agreement with him as to the best way out.

Once returned, this illicit money could be available in kind, it could also have been lost or turned into something else, that remains a debt. In

both the cases, the original owner might be known or unknown; if he is known, he could be known in person or among a group of people.

The same goes for the property; it could be identified in terms of its value and kind; it could also be difficult to quantify it or determine its kind. Thus, each of these matters call for scrutiny to reach the right ruling, which we will tackle as follows:

1. The Property whose Owner is Known

It is of two kinds:

i. When the property is in hand.

a. When the owner is known in person, and so is the property, it is obligatory to return it to him intact.

b. When the owner is known, but the property cannot be positively identified, the two parties should agree a way to retrieve the property through an offer/acceptance. Resorting to choosing by lot could be another vehicle of resolving the impasse, regardless whether the items of property were of the same or different values.

c. The owner might be known, so might be the quantity, yet the type of the property is not. The ruling is the same as that of the preceding case.

d. The owner might be known, so might be the kind of property, yet the quantity is not. Both the parties must resort to some sort of agreement. Should there be an idea about any quantity, without the one in doubt, it should be returned. If the owner does not accept this, they may resort to the *Marji'* to settle the issue.

e. The owner may be known as, say, one of three people. The person in whose possession is the property should inform them, provided that both the quantity and kind are known. Should anyone of them come forward as the rightful owner, and the others agree with the claimant, the property should be handed back to him. Should more than one lay claim to the property, they should agree among themselves as to how to repossess it. If not, they can refer the matter to the *Marji'* to resolve it.

All three may fail to recognize the property; they did not lay claim to it, and disagreed among themselves. It is apparent that resolving the matter should be by way of lot-casting. As a matter of *ihtiyat*, the *Marji'* or his agent must oversee the process of lot-casting.

Should the quantity of property not be known, the ruling in (d) above

should be applied. If the kind of property is not known, the rulings in (b and c) above should be applied.

ii. The Real Asset Has Been Lost or Damaged

The culprit here should stand to pay damages. There are few issues to discuss:

a. If all was known – the owner, the quantity, and type of property – same should be returned to the rightful owner. If it is an identifiable object, an identical item should be returned. The value thereof should be reimbursed, as in the case of grains, oil, etc.

b. Should the original owner be, say, one of three people, yet he does not know who among them is the rightful owner, he should, as a matter of obligatory precaution reach an agreement with all of them. Otherwise, he must pick one of them by way of lot-casting.

Being/not being able to determine the quantity and the kind of property should be resolved by referring to the preceding cases, i.e. in (a and b).

2. Property whose Owner is Anonymous

Should the usurper not be able to know the proprietor of the capital asset, i.e neither in person nor among a small number of people, the matter could have different turns.

i. Knowing the quantity and the type of property, and so long as it is still in his possession, he should give it away in charity. If it is not known its equivalent should be given away in charity. The same ruling applies in the case of loss of the property. As a matter of obligatory precaution, giving it away in charity must be done with the permission of the *Marji'*.

ii. The capital asset could still exist, yet it got mixed up with another licit property. Neither its owner nor its quantity is know. This should be treated by paying *Khums* on the entire property it was mixed up with.

87. Some may get the impression that if illicit money was among people's property, such as *Zakat*, *khums*, and *waqf*, it falls within the definition of "property tainted with ill-gotten gain" and therefore can be made good by way of paying *Khums* on it. This, [I am afraid], is a false perception; the reason being that such property is entrusted to the *Marji'* and thus its owner is known. It should therefore follow that it cannot be rendered *halal* by paying *Khums* on it.

Accordingly, it has to be referred to the *Marji'*, in the ways already

discussed, insofar as its quantity and kind are known/not known, or both quantity and kind are varying.

88. If before paying *Khums*, the usurper knew that the ill-gotten gains that are mixed up with licit ones more than the *Khums*, it is not sufficient to set aside *Khums* alone. He should give away in charity the surplus amount. However, he is not required to pay anything on any suspected amount.

Should he know that the illicit money falls short of the amount of *Khums*, it is sufficient that he gives away by way of *sadaqah* the amount he knows is *haraam* to offset the surplus suspected amount. As a matter of obligatory precaution, giving in *sadaqah* should be with the consent of the *Marji'* in both the cases.

If after payment of *Khums*, the proprietor finds out about the exact amount of illicit money, he should give away in charity the excess amount or hand it over to the *Marji'*, should it be over and above the amount of *Khums*. Should it be below that amount, it is not permissible for him to claim back the overpayment. This is so, even if his knowledge about the situation is not absolute.

89. The *mukallaf* could have been selling in his shop *haraam* products, such as alcoholic drinks, pig's meat, and dead carcasses, as well as *halal* ones. He may have sold the *haraam* products without valid/*shari'i* justification. Once he repented, the cost price of such *haraam* products, even if it is paid for with good money, is considered illicit. The same applies for the profits made on selling them.

The way to go about treating this property is according to what has already been discussed. Any way of the following would do: (a) returning it to its owner, if it is known. (b) giving it away in charity, if the owner is unknown. (c) paying *Khums* on it, if it – the *haraam* property – is mixed with a *halal* one, should neither the quantity nor the proprietor be known.

However, in case he returned the property to the person who sold it to him and in the process got what he had paid for with good money back from him, he does not need to worry. That said, he should still be deemed sinner in selling alcoholic drinks, pork, and dead carcasses to those customers who do not consider them *halal*. The reason being that he must have destroyed the alcoholic drinks, returned the pig's meat and dead carcasses to the non-Muslim source where he bought them, or sold them to non-Muslims who do not have any qualms about consuming them.

90. The *mukallaf* may be aware that a certain amount of ill-gotten money is mixed up with the licit property on whose total *Khums* has become due, owing to the fact that one year has elapsed on the property while in his possession. The way to set about treating this illicit gain is by paying tax on it twice. For example, suppose the total mixed property is seventy five, the *halal* portion of it is fifty, and the remainder is *haraam* money which is between less than one fifth of the grand total or slightly above it. Here *Khums* should be paid on the fifty to start with, i.e. 20% of the fifty would yield ten; then one fifth of the sixty five, i.e. thirteen. Thus, fifty two would remain in his hand, and so on.

91. Should the *mukallaf* have disposed of the *halal* property tainted with illicit gains, he must be liable for paying *Khums* on it. As a matter of *ihtiyat* the amount of *Khums* be paid to the eligible people by way *qadha* in such a manner that it could be *Khums* or *sadaqah*.

92. Should the original proprietor [of the illicit money] be known after the *Khums* had been paid, the taxpayer must not stand to compensate him. However, there is no harm in practising *ihtiyat* by returning his property.

Some other Issues of Value

i. What has so far been discussed deals with the particular issue of the property being illicit *(haraam)*. Should the property in his possession now, which may still belong to others, end up with him through lawful means and sustained damage or loss, the ruling is different, in some aspects, from that which has been discussed so far. It goes without saying that when the original proprietor is known, the property has to be returned to him in kind; if not, a similar one or price thereof should be reimbursed. Should the property not be known in some detail, the ruling which should apply is that of property anonymous which has been acquired through *haraam* means.

ii. What has been termed as "*raddil madhaalim*" – making amends – falls within the topics already discussed. "Making amends" is generic title for something done to repair or pay for some harm, unkindness, damage, etc. Although it may entail financial reparations or damages to others, yet it has become a vehicle, in some cases, to compensating other parties without latter being harmed; Thus, ruling may be passed that makes it incumbent on the *mukallaf* to pay damages or return the property to its "owners" or their heir in their absence.

However, the *mukallaf* should take the following as regards "*raddil madhaalim*" into account:

Any property, which belongs to other parities and having passed into the hands of the *mukkalaf*, has to be returned to its rightful owners, who are not known, by way of charity on their behalf. This though concerns the property that passes into the hands of the *mukallaf* through lawful as well as unlawful means, without the latter being mixed up with his *halal* property. The return of property should be done in kind, or the value thereof, if it was disposed of. This procedure however has to be sanctioned by the *Marji'*, regardless of whether the quantity of property was known or not known.

That said, it must be stressed that taking action as to this matter is not confined to those who passed away or on the brink of death, as is commonly held by those leaving a will at the time of throws of death. Rather, it is an obligation that has to be attended to by the *mukallaf* as soon as he became aware of it, repent for committing the misdeed in the first instance, and being able to make reparations. Furthermore, it is *mustahab* as a matter of *ihtiyat* to absolve oneself of the responsibility, in the event of doubt, whenever he wished.

iii. The term "*majhulil malik*" – property whose owner is unknown – also falls under the banner of this section. This concerns any case where the original proprietor cannot be identified or reached in any way.

It is noteworthy that whether the owner is an individual, a group of people, a quarter, such as the *Marji'* or a trust administrating a *waqf*, and the state, even if it is tyrannical or non-Muslim. The state's property is dubbed as "owner anonymous"; this view is at variance with some jurists.

2. That which is left over and above one's annual expenditure

This is the most important topic of *Khums*, for the mere reason that many people are tested with it and for the huge ramifications of the subjects. The 20% *Khums* tax should be levied on the surplus of one's gains during the fiscal year. That is, after deducting all expenses on one's living, what is spent on production [and overheads], paying back debt, that which is spent by way of any act of worship, such as *hajj*, *Zakat*, and *kaffarah*, and any other form of lawful spending.

Rules Pertaining to *Khums* and its Avenues

1. Gains

Gains are any lawful source of income to the *mukallaf*. However, *Khums* is not due on each and every sort of gain. The Law-giver has made some distinctions as to which of these gains should be subjected to *Khums* tax and which is not.

What is obligatory on the *mukallaf* to pay *Khums* on is the net surplus of income from trade, industry, agriculture and business, and acquisitioning anything lawful. Whatever is passed into his hands, such as presents, inheritance, returns from *waqf*, what the poor receives of the share of *sadaat* (descendants of the Prophet "s.a.w."), *khums*, *sadaqah*, and *raddil madhaalim*. As for the "share of the Imam", once it is received by the eligible person by virtue of being poor, turning into a self-sufficient one, he is not required to pay *Khums* on it, should there be a leftover of the *Khums* amount.

Should the said share be received under any other title, other than poverty, such as the share given to theology students, those involved in the propagation of Islam, the *mujahideen*, etc, it will be considered part of his property, in which case *Khums* has to be paid on it.

Things which do not attract *Khums*:

i. Inheritance money passed into the hand of the inheritor after the testator's death. This does not cover that which is wrongly held by the generality as inheritance, i.e. what the father gives away, in his lifetime, to his offspring as gift, and what provisions he makes in his will for them of his own share, of one third.

However, inherited property is that which passes into the hands of the inheritor, after the death of the testator, of what the deceased left behind, of his property in his lifetime, to be distributed in accordance with the ordinances of *shari'a* law. That is of course, barring any liability, in the bequeathed property, of *Khums*, in which case the inheritors are responsible for getting the estate *Khums* taxed before any distribution is made, just to absolve the deceased of the responsibility for *Khums* liability.

If the inheritors get any property as a result of the death of the testator, without the deceased being the owner of it in his lifetime, such as the compensation paid by his employer or what indemnity he is entitled

to for getting martyred, insurance money, blood money, etc. it will not be treated as inheritance exempt from *Khums*, even if such property is distributed on the same lines of inheritance money.

ii. The dowry, given in marriage, to a woman. So does the compensation paid to the husband by his wife as a price for divorcing her irrevocably.

iii. That which should be *Khums* taxed immediately, i.e. of minerals and treasure trove. Should the *mukallaf* pay *Khums* on such property and amass it to his capital assets, yielding returns and without spending it on his provisions, he is not required to pay *Khums* on it again, despite the fact that it has become surplus to one's needs.

93. So long as capital assets are considered among gains, any returns they yield are treated likewise with regard to the payment of *Khums*. Any profits that may attract *Khums* must be treated in the same way, i.e. without difference between that which is earned seasonally, such as livestock offspring, its milk and wool, the fruit of a tree, etc. and that which is uninterrupted, such as the growing of a tree from a shrub, an under nourished sheep that gets fat, etc.

This rule is one for all types of property, i.e. that which has already been *Khums* taxed or it may have become due – but not yet collected – the property which has no *Khums* liability, such as that of inheritance source, and whether it was possessed with the intention of keeping or trading in it. The reason being that any new increase is deemed new profit that is independent of its origin. Thus, *Khums* has to be paid on it in the same way as other profits, provided that all requirements are fulfilled. You may also consult para. (119) in this regard.

Should the increase come about as a result of the fluctuation in price which in turn emanates from the economic activity, the ruling may take three different facets:

a. The capital asset, whose value has risen, should have been acquired in the first instance to trade in, which is of two kinds:

a/1. The capital asset, which has been intended as an investment, may remain constant over the years, such as dairy cows, egg chickens, and transport cars, etc. In such a case any appreciation in the market value of the capital asset should not be subject to *Khums*, as long as it remains in his possession. Should he sell it, any extra amount over and above its price would be deemed as gains in the year it was sold. If the excess

amount is spent during that year, he should be exempt from paying *Khums* on it; and if it remains till the end of the fiscal year, *Khums* must be paid on it.

a/2. The same applies to the capital expenditure [in any business], such as showrooms, equipment and machinery of production, premium paid for the property, etc.

a/3. In some other instances the capital asset in itself is intended to be traded in and make a living as a result, such as buying and selling real property, livestock, vehicles, etc. In this case, any profit made in the process, i.e. over and above the market price, is deemed profit; thus, it should be *Khums* taxed, even if it is not sold.

b. The item could have been acquired for the purpose of personal benefit. No tax should be levied on any extra amount of appreciation, over and above what the *mukallaf* has paid for the item, unless he sells it. For example, a person bought a property to live in. Having sold it and made a profit of, say, thirty thousand dollars on the buying price, he must pay *Khums* on the profit he made in the process. That is, when his tax year comes to an end, and provided that the profit is still surplus to his requirements.

c. The property should not be liable for *Khums to* start with, such as that which passes into the hands of the *mukallaf* by way of inheritance. Should it appreciate in price since the owner first acquired it, and he sells it, or decides to trade in it for that matter, no *Khums* is due on the profit he could have made.

The same ruling applies to any property passing into the hands of the *mukallaf* by way of gift or without paying for it, provided it does not carry a *Khums* liability at the outset. For example, the item could have been used the moment it has passed into the *mukallaf's* hands, or *Khums* has become due on it and was paid. Since payment of money has been made which render the item as though it was bought, no *Khums* should be paid on the excess amount on the original value, even if the owner decides to trade in it.

There may be another scenario. Suppose that *Khums* has become due on a derelict land, which the *mukallaf* developed, yet he did not utilize it in any way, until one year has passed. When he paid *Khums* on it, he paid it in money; in such a case, he is not required to pay *Khums* on any extra money made as a result of the property appreciating, in a measure

equivalent to four fifths of the value. As for the remaining one fifth of the property, he should pay *Khums* on the extra amount of appreciation.

94. There is no difference in whether the item getting appreciated being any kind of property, i.e. currency or otherwise. For example, should you exchange your lira or dinar for a US dollar or German mark, only to appreciate within the fiscal year, this increase is deemed profit, in which case it is liable for payment of *Khums*. It will be governed by the rules so far discussed and those that will be. That is, irrespective of whether it was intended for acquisition or trading and making up for any loss.

For example, a person exchanged one thousand units of an (x) currency, which is net of *Khums*, into one thousand US dollars. Having, acquired the new money, they set about their expenditure and trading in this money. The value of (x) depreciated, so much so that the rate of exchange, at the end of the fiscal year, has reached 2 (x) for every dollar. The *mukallaf* in this example must pay *Khums* on the second one thousand (x), regardless of the fact that they are not dealing with it now.

It will be considered part of the one thousand dollars, if they were speculating with currency. Should the exchange of money be intended to retain the value, no *Khums* should be paid. That is, irrespective of whether it was spent on one's living expenses or on assets bought with a view to making profit, or using in the means of production, such as equipment, vehicles, etc.

2. Expenses that are Exempt from *Khums*

Since *Khums* is levied on the surplus of gains, profits made on these gains are not subject to *Khums* immediately; the lapse of one year should therefore be taken into account. The objective being that enough time is allowed for the *mukallaf* to spend, of these profits, on his requirements, as well as his business. Should there be any money left over at the end of the financial year, *Khums* has to be paid on them. That said, we should list down that which is considered of "living expenses" so that it be exempt from those profits.

Expenditure that is exempt from profits are of two types:

a. What is spent in the process of making a profit, such as expenses on the tools, equipment, and machinery of trade/business. So is that which is spent in repairing, maintaining, or replacing such items, or buying fuel and the sort for them. Such expenses as employees' wages, transportation, storage, outlets, taxes, etc. are also deducted from the profits,

whether same were spent, at intervals, during the year or paid as a lump sum at the end of the year, such as taxes.

The exemption of such expenditure is not confined to the year it is incurred. Should profit be not forthcoming until the second or third year, for example, all expenditure in the first year of business should be taken on board. Debt incurred as a result of setting up in business is covered by such expenditure in a general sense. We will discuss this aspect in some detail in the chapter dedicated to business.

b. Annual living expenses, i.e. all that which is spent during the year on oneself and members of one's family, including that which is spent in charity, presents, prizes, hospitality, settling one's obligations, such as *nadhr*, *kaffarah*, payment of debt, expiation or compensation, what is lost or damaged, be it inadvertently or intentionally.

Included in such expenses are cars, servants, furniture, items of ornamentation, what is spent for marrying one's offspring, of which is providing them with accommodation, and setting them up in business or securing jobs for them.

What is exempt also is expenses paid for carrying out acts of worship, such as *hajj* and paying homage to the holy shrines, be it obligatory or voluntary.

There are though many other avenues of expenditure which vary from time to time, generation to generation, and society to society. Yet, the yardstick in determining the exemption is that the expenditure must be commonly recognized as such. Whether spending in that sphere is obligatory, voluntary, *makrouh*, or lawful is immaterial.

However, exempting such expenditure is conditional on it being actually spent and that it was met from the profits made. Suppose that someone donated to another all that what is needed for their annual maintenance, or part thereof, or they economized to save some money, they should not be exempt from paying *Khums* on the amount saved. Moreover, so long as the money is still surplus to one's needs, it remains liable for payment of *Khums*. For example, a person set aside an amount to spend it for their *hajj*; should they change their mind and not embark on the journey, for this reason or the other, that amount is deemed surplus, in which case it should be *Khums* taxed, should it remain thus at the end of the year, i.e. without spending it in any other avenue.

95. Payment by cheque is quite common these days. Suppose that a

person wrote a cheque for a certain amount, such as that for his living expenses; he made arrangements with the bank that the amount be debited to his account before the end of the year. Perchance, the transaction took sometime, missing the specified date. The owner should pay *Khums* on this amount. The reason being that issuing a cheque *per se* does not render the amount outside the pale of the owner's property. It should be so, after the amount is debited to the person's account and transferred to the party in whose favour the cheque was written.

96. Should the *mukallaf* go over the top and spend more than his peers in social standing, what he spent should be considered as extravagance. Included in this is what is spent by way of *haraam*, such as drinking alcohol, gambling, etc. In such a case, it would not count as part of one's normal expenses; neither would it be exempt from profits. The *mukallaf* should take the initiative to assess the amount unlawfully disposed of, assume it is still in his possession, and pay *Khums* on it.

Exceptionally high donations for charitable causes, throwing lavish parties, etc., of the type that is not commensurate with the person's social status, are not counted as normal expenses, neither are they exempt from profits. Conversely, exempting such donations and hospitality expenses is valid.

97. It has already been stressed that nothing is described as living expenses, unless it serves a purpose of living in the process. Such a need would be satisfied when that expense used. "Use" is a diction which is going to be used a lot; what it means is how the person goes about using his money for his annual living expense.

Accordingly, any property, in the hands of the *mukallaf*, be it a capital asset, such as a house not taken for residence, a suit he has not used during the year, or money lying around, such would be described as surplus to one's yearly provisions, and would therefore attract *Khums*, by virtue of not using same. For the "use" to materialize, it is not necessary that the *mukallaf* uses it himself; it suffices that any of his dependents uses it.

The exemption of this rule is non-ability of the *mukallaf* to meet his requirements at one go, rather gradually, such as building a house, providing for one's wedding, etc. The reason being that what the *mukallaf* finishes in part counts as part of his living expenses, although he is not in a position to use it. This is on condition that the money is actually spent in that avenue, as will be elaborated later.

Of the exempt things also is what the *mukallaf* uses occasionally, such as furniture, utensils, and appliances intended for the use of guests. Should a year passes on their purchase without their being used by any guests, there is no harm in considering them as part of general living expenses, whereby no *Khums* should be paid on them. Of the same class are books, although the students require, yet are not used in that year. Winter clothes bought after the season has expired and not used until the end of the year, and so on and so forth.

The principle is that the wider the time span for using the item, so much so that it overtakes the turn of the year, or the need is above the capability of the *mukallaf* that he cannot meet it from the profits of the year, the "use" should not count as a condition in the expenses exempt that year.

There may be more about this subject to contend with in the forthcoming treatises.

98. Expenses exempt from *Khums* are not confined to the money gained and spent on one's needs; rather it covers debt incurred as a result of, say, medical expenses, buying a car, etc., or payment emanating from religious commitments, such as *kaffarah*, *raddil madhaalim*, etc., which are considered part of the provisions of his current year. Should the debt be paid out of the profits he made during the year, they are exempt. Indeed, all debt incurred in the previous years should be exempt if it is settled from the profits made in the year in hand, barring the debt of *Khums* which has a different set of rules. This is going to be the subject of the coming paragraph. Should the *mukallaf* be intent on not paying his debt from the profits of this year until it draws to an end, he may do so. However, if the debt was incurred during the year in hand, he should overlook at the end of the year, whereby he is exempt from paying *Khums* on the amount of debt. Whether the debt was incurred prior to his making profit or after it is immaterial. Previous years debt is not exempt, unless same is paid back to the creditors. It is noteworthy that any debt incurred in this year and carried forward to the next, cannot be exempt for a second year running, and so on.

99. As promised, we now turn to discussing the outstanding *Khums* from previous years.

Khums may become due on the *mukallaf* on the gains of the year in hand, but he decides not to pay it. This could be with the permission of the *Marji'* who grants him a reprieve, provided he pays later, or it could

be due to disobedience and apathy. This could lead to years on end without the *mukallaf's* paying. Once the *mukallaf* repents, *Khums* remain a debt on his shoulders. However, he may clear this debt when he becomes financially able to do so, regardless of the cause of delay.

Should he decide to pay his debt of *Khums* from the profits of the current year, he should not expect to be exempt of the profits and forgo the payment of *Khums*. There are though two possibilities:

i. The items on which the *Khums* has become due are still in his possession intact. Among such items of assets are real estate, land, cars, books, currency etc. The *mukallaf* is required to pay *Khums* on the amount of *Khuŋs* [for these assets], i.e. equivalent to one quarter.

For example, someone bought a property either for business or residence. The price they paid for it was, say, US $50,000. They did not pay the *Khums* of 10,000 on it in the year they bought it, neither from the property itself nor from any other source of profit that year.

Now, suppose that person made some profit in the following year and decided to pay the outstanding *Khums*. He should be paying the $10,000 plus 20% of it, i.e. a total of $12,000, which amounts to approximately 25% of the original price of the property, i.e. $50,000.

The reason being that since the property remained in the hands of the *mukallaf* alongside its *Khums* until its second anniversary, without paying the *Khums* for it, this should mean that he did not dispose of the amount of *Khums*, which may be considered as part of his living expenses. Should he decide to pay it from the gains of the year in hand, *Khums* must not be waived, i.e. it is treated in the same way as his other debts. He must pay *Khums* on it to start with then settle it as a debt alongside the *Khums* of the property.

ii. The capital asset, which carries a *Khums* liability, could have been lost or damaged after the year in which the profit was made. The outstanding *Khums* should take the form of debt on the *mukallaf*. If he decides to settle this debt from the gains of future years, he is required to pay 20% not circ. 25%, i.e. payment of the *Khums* without the need to add up the *Khums* on the amount of *Khums*. This is because that the outstanding *Khums* is no longer representative of the actual capital asset which is no longer there physically. Accordingly, the outstanding *Khums* is treated as part of one's expenses, which is exempt from taxing it and overlooked for not being part of the gains of that year.

For example, a person purchased books for business or just to keep them. After *Khums* has become due on them, they were damaged; that is, after the lapse of one year in their hands. *Khums* was not paid on time. Should the person decide to pay the outstanding *Khums* from the gains of future years, he should pay the amount of *Khums*, i.e. without the extra amount of *Khums* on *Khums*.

The same applies, if the person has sold the books making some profit in the process which he spent during the year. No additional amount of *Khums* on *Khums* should be warranted. Just the *Khums* on the books before the money was disposed of.

The ruling in the above two cases is one for the *Khums* on commercial activity which ends up as debt and the other which was earmarked for one's expenses but remained unused, i.e. surplus.

100. The items which constitute the provisions (expenses) of the year are treated the same, i.e. whether they are consumable, such as food and drink, and fuel, or fixed, such as property, furniture, machinery, etc.

So long as the first kind is exempt so is the second kind, provided that it is put to use during the year the item has been purchased, and when the need for it has arisen, i.e. even if it is kept for future years.

101. Just as it is obligatory to pay *Khums* on monetary, as well as capital asset, gains, which are not spent on one's yearly provisions, so is it that what is left of items of provisions that are consumed be *Khums* taxed such as grains, oil, fuel, etc. This is because what is exempt is that portion which was consumed. So, anything that remains intact should be liable for *Khums*.

However, items such as clothing and furniture which are not worn out as a result of use, are exempt from *Khums*, so long as the need for using them remains unchanged over the years.

Apparently, *Khums* is chargeable on any item that becomes surplus to one's requirements, such as a property, jewellery, etc.

102. The *mukallaf* may have assets that do not attract *Khums* and others whose *Khums* was paid alongside other money from the gains of the current year. It is not obligatory on him to confine his spending on the property which has already been *Khums* taxed. It is permissible for him to pay for his expenses from the gains of the current year, so that it may attract exemption.

For example, the *mukallaf* may have money in the bank, some of it is net of *Khums* and some is liable for *Khums*. The *mukallaf* did not identify whether his withdrawals were from this money or that. It is utterly legitimate, if he considers all the money he withdrew was all from the money which is yet to be *Khums* taxed, let alone it is within his prerogative if he were to be bent on that even before he made the withdrawals.

103. Certain needs for the *mukallaf* may arise, yet they cannot all be met from the gains of one year, such as building a house. So, if he has saved some money over the years, he is required to pay *Khums* on these savings; what is exempt is the saving made in the current year, should he buy that particular item in that year and put it to use. The same applies, if he purchased the item in parts.

Should he decide to buy the components of a given item bit by bit, i.e. before the end of each year, such as building a house through buying the plot of land first, then erecting the structure in a second, furnishing it in a third and so on, he is not required to pay *Khums* on those components, provided that he cannot afford to build the house in its entirety in one go. Thus, such expenditure is considered part of one's provisions, in which case it is exempt from *Khums*, although the partly completed house is not going to be put to use until the building is completed which could be years ahead.

The same ruling applies if the house was thus built for one's offspring, so long as they cannot afford to carry out such a a project by themselves.

104. Poultry, livestock, and plantation which one acquires to provide for one's needs do not attract *Khums*, so long as the objective remains thus, i.e. satisfaction of one's needs, albeit indirectly. That is, so long as the stock has been paid for with gains made in the current year on which *Khums* is not yet due. Should its produce be used up by the proprietor, there is no problem in that. If any of it is left over till the turn of the year, there may be two possibilities:

i. The increase in production may still satisfy the need of the proprietor, such as the chicks turn egg laying hens, whose eggs are consumed by him; no *Khums* shall be due.

ii. The increase would not count as part of the proprietor's consumption in that sense, such as in the case of chicks not intended to be left to grow up into egg laying chickens, but are needed for their

meat. The increase in produce is of the kind like fruits, vegetables, and dairy. In this case, if anything is left over till the turn of the year, *Khums* has to paid on the surplus.

The same applies for love birds; if they beget chicks that may grow into fully-fledged birds which the proprietor add to his collection, then no *Khums* is due. Otherwise, *Khums* should be paid on them.

The ruling here remains unchanged, even if the *mukallaf* may not be in need of this source of provisions due to the fact that he may have other sources of income, which make him capable of paying for his provisions thereof.

105. Allotments planted with vegetables, fruit trees, etc. for one's consumption are not considered part of one's provisions. The land, and anything grown in it, is treated as capital investment, regardless of whether the *mukallaf* was dependent on it in his living wholly or partially.

Accordingly, it is different from milk cows, egg chickens, or trees and shrubs planted in one's garden for one's use. More will be discussed in the Chapter on the Rules of Commercial Activity.

106. What is disposed of, be it money or capital assets, on one's provisions from one's annual profits. Also what is used up on one's needs of capital assets should not be made up or compensated from what is left of the profit at the end of the year.

For example, the *mukallaf* may incur extra expenses, paid for from one's gains in the year in hand. Things like replacing furniture damaged by fire, or repairing a car, and other types of emergency expenditure. Such is considered part of one's provisions and is therefore exempt of *Khums*. If no actual replacement is bought, the *mukallaf* is not justified in setting aside money, by way of compensation for the loss of the item/s.

However, should there be any saving from the gains of previous years on which *Khums* was paid, it can be used for the provisions of the year in hand. If the *mukallf* make any profit of which a surplus is made, it is permissible for him to exempt the amount taken from his savings, compensate it with money from the surplus, in which case it is not liable for *Khums*.

107. Payment of any *Khums* due can be made in kind from the asset itself or an equivalent amount from other sources. This entails a detailed discussion which we will embark on under the appropriate subject matter.

3. The Benefit of Determining One's Financial Year and How to go about it

Throughout this discussion, we kept talking about the phrase "the end/turn of the year", or "the lapse of the year". It is important to dwell on this issue, especially with regard to its implications on the process of *Khums*.

i. What is meant by this term is the lapse of a full year from the date gains, from the *mukallaf* work or business, are made. It is very important from a practical angle, so that income and expenditure are accounted for, be they those for one's provisions or means of production and commercial activity. All this is vital for the actualization of ingredients and requirements of *Khums* process, especially when it comes to the surplus to one's requirements, which we will concentrate on now. The discussion on the tax year of matters commercial will be carried out in its appropriate slot.

Despite the fact that, to start with, *Khums* becomes due as soon as profit is made, it remains to be computed on the amount left over and above one's expenditure during the year.

For example, if someone knew for a fact that they are not going to use up any amount of the profit once it is made on their provisions, there shall be no need to wait until the end of the year. Accordingly, they should, as a matter of voluntary precaution, hasten to pay *Khums* on that gain.

Another example could be of a person who, at the start of the year, made a lot of money; he can set aside an amount for his annual provisions, even if it is an estimate. He should therefore pay *Khums* on the remainder.

ii. The start of the year is a natural occurrence which is beyond the *mukallaf's* intention or control. It comes about the moment an earning is made; what he should therefore do is to wait for the anniversary of that date. However, the *mukallaf* may choose a particular date for his financial year; yet having done that, he must pay *Khums* on the gains he first made at the chosen date. The same applies in case he decides on yet another date.

However, the *mukallaf* is free to adopt any calendar he likes, i.e. the lunar Hijri, the solar Christian Era one, or any other calendar.

108. Those with regular monthly income, such as salaried employees, do not have to worry about waiting for the next year to cater for every

portion of gain. For example, the employee may receive his wages for the twelfth month before the end of the year. Such will count for the earnings of that year, although not a full year would have elapsed on those wages.

The same goes for gifts received before the end of the year and remain untouched till then. He is required to pay *Khums* on such gifts.

That said, should the *mukallaf* have several sources of income, he is free to choose a date for a financial year either for each one of these sources or one date for all of them.

109. The *mukallaf* may be paid for his work, other than trade, such as a tradesman, a contractor, etc. for a number of years, of a contract, in advance. Such is not required to pay *Khums* on the whole amount he received that year. He should distribute it equally on the number of years, deduct his yearly expenses from it, and pay *Khums* on the surplus, i.e. year by year.

110. The gains of the *mukallaf* may not be available for him at the end of his financial year. All of them or part thereof is owed to him by others. He has the choice of either paying *Khums* on such gains now or waiting until it is paid to him in the following year/s. Once received, he should hasten to pay *Khums* on it, counting it as part of the gains of past year/ years, not the year he got his hands on. That is, if the debt is not of the type which has a time span within which it should be paid. If so, i.e. it is paid on the due date or before it, it is obligatory to pay *Khums* on it when it is retrieved because it is treated as though it is available.

4. *Khums* Paid on Economic Activity

Property, be it monetary or capital assets, could serve two purposes. That which is saved to be spent on one's needs, which is technically known as "provisions", or that which is saved to be invested with a view to making profit, which is known as "trade" or "economic activity".

What we mean by the latter is that which needs capital, be it money or assets, to get started. Included in that are [economic activities such as] trading [speculating] in currency or merchandize, investment in industrial, commercial, agricultural ventures, and other avenues of investment. This section requires a lot of attention because it has so many ramifications, not least how to determine a date for one's financial year, profit and loss matters, debt, etc.

Capital

Capital comprises all that which has a bearing on the economic activity, as follows:

i. Capital assets used in the production process; such things as machinery, vehicles, row materials, the plant, showroom, store, buildings, and furniture. This title may include things which are not capital assets, such as the premium paid to acquire the property. In the same league of "premium" is money deposited by the proprietor as surety for setting the production facility up. However, what is paid for procuring the permission for the project is not considered among capital; it is part of the proprietor's provisions, similar to workers/employees wages and the rent of the place.

Included in capital assets is a farmer's tools and equipment, an owner-driver's vehicle, cultivated land, livestock for dairy farming, etc.

ii. Merchandise bought and sold; covered by this title are bank/financial services, real estate, etc.

However, we have to dwell on certain matters:

111. Capital, of any sort, has to be *Khums* taxed, including the premium paid for the place, even though the owner has nothing else apart from that premium money and the office furniture, for example.

Things that are exempt from *Khums* include:

i. Any capital derived from property whose *Khums* has been paid, or that which is originally not liable for *Khums*, such as inheritance, a wife's dowry, and compensation for an irrevocable divorce.

For example, a man inherited a property from his father. Having sold it, he bought foodstuffs with the money with the intention of making profit on them. Such is not required to pay *Khums* on this capital which he started his business with; he is liable though to pay *Khums* on any profit he makes over and above the sale price of the property. The same ruling applies, should the person in this example decide to do some other business after selling the foodstuffs.

The same goes for any goods that get damaged or sustained a loss, which is made up from the profits the businessman made during his financial year. That is, the capital retains its qualification for exemption from *Khums*. In case there was a great loss which cannot be offset from

the profits of the year, or total loss for that matter, the capital is considered lost, in which case it cannot be compensated for from the profits of the following year, as will be elaborated.

ii. Any property, which is equivalent to the amount of one's annual provisions, can be used for setting up in business of any sort, provided that the person does not have any other productive work and that the said property is the only one they possess, is exempt from *Khums*. However, this is the case if the property is not originally liable for *Khums* in that it could have been sitting idle for over a year before it was put to use.

Should such a person have another source of income, such as a paid job, which covers all their annual expenses, they should no longer be eligible for this exemption. However, if this second source of income falls short of covering all their annual expenses, they stand to be exempt from the amount which constitutes the shortfall only.

The same treatment is accorded to a person who receives a gift of say, ten thousand (x) currency; should they not have any other property and decide to trade in this grant, they are not required to pay *Khums* on it.

If the same person has a job which earns them some five thousand per annum, they are not required to pay *Khums* on half of the grant. The same treatment should apply to the person, who does not have a job, yet they have in their hands five thousand worth of property, in excess of the granted amount.

112. Several years may elapse since the businessman first set up in business without specifying a date for his financial year. Having decided to do so, any amount of annual provisions to be exempt from tax for previous years has to be in line with what he is actually spending in the current year, i.e. not the year he started his business. However, resorting to *ihtiyat* in taking the interest of the eligible person is better.

113. One may delay paying *Khums* on trading capital from the date the business started to the end of the year. That is, unless the start up capital was originally liable for *Khums* for any reason, such as it may have been lying idle in his hands for over a year, without payment of *Khums* tax. It maybe the case that it was of profits made by the *mukallaf* on which *Khums* was not paid. It also could be that the capital money was tainted with *illicit* money, and so forth.

When *Khums* is calculated at the end of the year, capital equipment

and other similar means of production have to reflect the amount of depreciation. That is, if the due date of the tax year the machine is worth less than its purchase price, the current value has to be adopted for the sake of calculations.

What profits should carry *Khums* liability?

114. No *Khums* shall be paid forthwith on profit generated by capital on which *Khums* was paid. The *mukallaf* may wait until the date of his financial year, or until one year has elapsed since the profit was first made, if he does not have a specific date for his financial year. The reason being that during the waiting period, i.e. until the first anniversary, the *mukallaf* has the right of disposal over what profits he has made during the year. He may, if he so wishes, pay for the expenses for his provisions and pay back debt, even if it was for previous years. He is allowed to deduct any expenses he incurred in the production process, such as rent, wages, fuel, and so on.

For example, the turnover of (x) business is twenty thousand (x – currency). Allowing for, say, eight thousand which he spent on his expenses [personal allowance] and four thousand operating cost, what should be *Khums* taxed is the remainder, i.e. eight thousand.

115. It is not obligatory on the *mukallaf,* who has different sources of income, to itemize his profit, i.e. by choosing a [tax] date for each and every type of profit he makes. That is, regardless of the type of business and the sub-divisions of any one type of business.

116. Allowing for capital expenditure is not confined to the profit made during the year the expenditure was made. That is, if profit was not forthcoming only in, say, any number of years, it should be taken into account when made.

117. Just as capital expenditure is deducted from the profits, so is any amount set aside to make up for any loss that may come up by the end of the year. Included in this any loss sustained by man, machine, materials, manufactured goods, depreciation of equipment, etc. [fixed/floating capital]. The ruling in this regard is one, i.e. whether the loss was sustained in one go, in the year in hand, or was gradual, i.e. over the years.

118. The loss can be catered for from the profits of the year, whether it was sustained before any profits are made or after profits were made.

For example, a merchant invested fifty thousand [x – currency] in buying certain merchandise. He either sold some of it and made profit, or did not make any profit. The market price of the merchandise fell to forty thousand of the purchase price. He may as well have used some of this merchandise for his personal needs by an amount, say, equivalent to ten thousand. Or ten thousand worth of goods were stolen. However, suppose that the merchant sold the rest of goods and made a profit of, say, twenty thousand. In all these examples, the merchant is allowed to indemnify the loss of ten thousand which his initial capital has suffered, i.e. by topping up the shortfall in the capital. So, this leaves the merchant with *Khums* liability on the remaining ten thousand.

However, should the loss be carried forward to the following year, the new capital would be forty thousand. If any profit is made in the new year, it cannot be used to indemnify the loss.

This also applies in the case of total loss of capital; it could be indemnified from the profits made in the year and not from the profits of future years.

119. We have already discussed the issue of *Khums* levied on any profit [return], be it sustained or intermittent, without difference between what has been acquired for keeping or for trading in. The reason being that this return is over and above the capital invested, hence its covering by the rules governing profits. We also mentioned the increase in value (appreciation) as a result of market forces. We have made distinctions between that which has been passed into the hands of the proprietor by buying, possessing, or through inheritance on the one hand, and that which has been intended for profit, personal keeping, or commercial purposes. For more details, especially, for business matters, please refer to para (93).

120. Any notional profit on capital investment, such as property, should not attract *Khums*, unless the property is sold during the year and real profit made.

The same rule applies on the assumption that the expected profit could have been realized, if the property were sold before the turn of the year. Should the [market] value of the property drop to its purchase level, the proprietor is not required to pay *Khums* on the notional profit, had he sold the property before long. However, should the value drop only partially, i.e. some profit would be made if the property were sold, *Khums* should be paid on that notional partial profit.

121. Capital invested in business should not be treated differently from any other property with regard to payment of *Khums* either in kind or the equivalent thereof. We have discussed this in some detail in the chapter dedicated to "how to assess the amount of *Khums*". We have also mentioned that the fluctuation in goods prices during the year is immaterial. What is of consequence in this regard though is the prices at which the goods are sold at the date of the tax year. However, retail and wholesale prices have to be taken into account.

For example, a merchant buys garments at one thousand [x – currency] each, and sells them for three thousand. Yet, the market sale price is two thousand. The criterion for assessing the price of the unsold garments should be the going price. That said, since it is difficult to determine the sale price, especially in free market economies, the *mukallaf* is left with no alternative but to reach an agreement with the *Marji'* [on what price should be adopted] or practice *ihtiyat*.

Agricultural Produce and Livestock

122. The ruling is one with regard to the capital invested in agricultural produce and livestock and other types of capital, be it that concerning one's annual provisions, already discussed, or trade which we are about to discuss:

i. Livestock

The *mukallaf* may acquire cattle, goats, sheep, or the like with a view to making business in their dairy products, hyde, wool, etc.

The capital thus invested, including that paid for equipment, machinery, sheds for the animals, vehicles, etc., should be *Khums* taxable. However, should the market value of the business go up, no extra *Khums* should be paid for increase in value, so long as the objective of setting up the business is the return on the investment not the capital assets themselves. That said, profit must be liable to *Khums* after the deduction of one's provisions and production expenses.

If however the *mukallaf* decides to trade in livestock itself, the capital invested as well as any profit made should be *Khums* taxed, including the increase in the market value of the livestock that remained unsold at the turn of the year.

Agriculture

What applies to livestock applies to agricultural land. Should one make a business out of tilling the land, the cultivated land, what is grown in it, and what is on it, i.e. of buildings, machinery, vehicles, etc., is considered capital which should be treated in the same way as has already been discussed. However, should it appreciate during the year, the increase should not attract *Khums*.

For example, the proprietor could lease the land and its facilities for, say, five years. Having done so and received the money for the entire lease duration, how is he going to calculate the amount of *Khums* and pay it?

A. The rent he received, although for five years, counts as profit made in the current year. After deducting his total expenses for the whole year, and the depreciation which is likely to befall the farm land/grove, due to non-profitability during the tenancy period, *Khums* tax must be paid on the remainder.

This should be the case, if the proprietor wanted to make do with the produce of the grove *per se*. Should his intention be making profit from the grove itself, i.e. by, say, selling it, the entire investment is considered capital. If this was the intention, any appreciation in the grove price during the year, the amount of increase should attract *Khums*, even if the property is not sold. For further details, you may refer to para. (93).

The same ruling applies in the case of anyone renting/leasing a property, vehicle, etc. for a number of years.

123. The farmer may cultivate his land with more than one crop, be it for his provisions or trade. Going about counting the profit of these crops is by considering that matures during the year; crops that may take longer to get ready for harvest, so much so that they miss the date of one's fiscal year, their profit, if any, must be computed when it is made, i.e. in the following year. That said, this does not cover any produce which has a value in itself, i.e. without its bearing fruit/crop, such as grass used as animal feed, in which case it must be taken on board with the profits of the current year.

Business Debt

Perhaps no commercial transaction is bereft of debt/credit for the businessman. Since the rules governing business debt are different, in

some aspects, from those designed to regulate debt incurred by providing for oneself, discussed hereunder are the dissimilarities:

i. Debt incurred by the *mukallaf*:

a. That which is in the hand of the businessman used in his commercial activity, be it in the form of stock or its cash equivalent, i.e. the initial capital to set up the business. This could be a loan or the cost of capital equipment or tools of the trade.

The rules concerning this type of debt are as follows:

Any capital which is, wholly or partly, a debt on the business is considered non-existent. For example, if the capital was fifty thousand [x – currency], half of it raised by the businessman from his own money and the other half borrowed, the capital which counts at the end of the day is only the portion which belongs to the businessman. Accordingly, his portion should attract *Khums*, whereas the borrowed portion should not as long as he remains in debt.

However, when it comes to treating profits, the amount of debt should not play any part in the computation. For example, if the said businessman made a profit of twenty thousand, 20% of it in *Khums* money has to be levied, regardless of whether he chose to add it up to his capital or pay his debt. That is, after allowing for one's yearly provisions and those expenses incurred in the process of running the business.

In other words, the businessman who has to pay back, say ten thousand in his financial year, of his debts by way of monthly instalments, he should at the turn of the year consider this sum as profit, in which case he must pay *Khums* tax on it, and so on and so forth in the following year/s.

It is noteworthy though that he who borrowed money to start a business, but did not bother to pay *Khums* on the profits years on end, either through ignorance or disobedience [of the dictates of the faith], he is not required to pay *Khums* on the existing [market] price, no matter how high it may be. His duty is to pay *Khums* on it at its original price with an incremental portion levied on the amount of *Khums* itself. The legal right in his property would therefore be one quarter of one eighth of the original price.

124. "Borrowed money" is treated the same, be it from a bank in any

form or from other sources, with or without interest; whether or not the borrower had a valid reason to pay interest is also immaterial.

b. The debt could have been incurred as a result of repairing a damage or indemnifying a loss sustained by the capital, such as borrowing money to make up the shortfall in capital money/material, or any other reason pertaining to the means of production; however, what is peculiar to this type of borrowing is that it does not have an equivalent in the existing capital assets or money to pay for it, if need be.

The rules governing this type of borrowing are as follows:

Should the business pay back the debt from the profits it makes, the amount paid is exempt from *Khums*, such profit is deemed compensation to the loss sustained. Should the payment of debt be made from the profits of the following year, it is permissible; however, *Khums* has to be levied.

If no profits were made in the year the loan was taken, and the payment of debt was made in the second year, no *Khums* is due.

125. This ruling concerning the preceding issue is confined to the debt connected with the capital. The debt may arise as a result of non-payment of *Khums* in the previous year, which may be with or without good reason. Having decided to pay it from the profits of the second, or future years, the matter has been discussed in some detail in para. (99) on the rules of "provisions exempt from *Khums*".

ii. The *mukallaf* as creditor

126. The businessman being a debtor or creditor makes no difference to the ruling. The money owed to him by the others is treated as part of his property, albeit not in his hands. Should the debt become payable to him, or it would be settled whenever he demands payment, he has to pay *Khums* on it.

If the date for paying the debt to him is some way away, or it would not be paid if he demanded payment, he is free either to pay *Khums* on it now or wait for the due date to pay *Khums*. In this case, it would be defrayed against the profits of the year it was lent, not the year it was paid.

127. Employees end of service indemnity is of two kinds:

i. It may take the form of monthly contributions deducted from the employee's wages, which is saved for him to be paid at the end of service,

either through retirement or resignation. This is his own money. *Khums* could be put off until the actual receipt of the money.

ii. The indemnity is earned not by way of the employee's contributions. Thus, the money passing into his hands would be considered new money, in which case it should count towards the gains of the year in hand. Whatever the *mukallaf* spends in the way of satisfying his needs, i.e. his yearly provisions, should be deducted from the total, and *Khums* paid on the remainder, should he have a definite date for his financial year. If not, one year should elapse from the date he received the money.

The ruling makes no distinction between an employee working for the state or a private company.

128. Should *Khums* be due on the money before it was lent, and there was no way to retrieve it [i.e. bad debt], the *mukallaf* is responsible to pay *Khums* on this bad debt.

5. How should one go about assessing Khums?

Once the requirements for the payment of *Khums* are fulfilled, one should hasten to calculate the amount and pay it.

However, the tools adopted to assess the property and pay *Khums* on it vary according to the nature of the property, how it was acquired, and what it is used for. The following is a guide for the different aspects of the subject:

i. Should the property, to be *Khums* taxed, be currency or capital asset, there is no problem in assessing the property and paying *Khums* on it, regardless whether it was used for one's personal expenses or trade.

129. If the capital assets are all of the same type, there is no problem in levying *Khums* on the total. For example, the *Khums* on one thousand pair of shoes is two hundred pairs.

But, if the capital asset was of different values, such as a plot of land with differential price dictated, say, by the location. In this case, it is not sufficient to pay tax at the rate of the less valuable segment of the land to cover the price of the entire land. Indeed, if the *mukallaf* so wished, he may pay *Khums* for the value of the whole land at the top value rate. Should he choose to pay precisely the actual price, he must take into account the difference in the prices, paying the *Khums* on the total value fetched either in kind or the equivalent thereof.

ii. In paying *Khums* on capital assets, the *mukallaf* may resort to

settling for the equivalent of their value for this reason or the other which may be characteristic of the nature of the asset. The asset may have been bought, for one's provisions, in the financial year with money from profits made in that year, yet it remained untouched till the end of the year, it must be taxed at the going rate, i.e. not the purchase price, even though its price may have gone down. That said, taxing it at the purchase price is recommended as a matter of voluntary precaution.

The same applies to capital assets, i.e. those used for the economic activity, bought with money from the profits of the year. Whether they are used as means of production or traded in themselves, *Khums* has to be paid on them at the going rate, at the turn of the year or after a number of years, although they may cost less then. Having done so, the *mukallaf* need not worry about giving *Khums* on them next time round. However, as for the assets acquired for trade, on which *Khums* has already been paid at source, any profit made over and above their original price, *Khums* has to be levied on it, for it is viewed as though it is a new gain.

130. This is the case when the assets are acquired and paid for with one's money. Should they be bought on credit, to be paid back in instalments from the profits of future years, the assets may become liable for *Khums*, as the case may be, once the whole amount of debt is paid. The rate at which the *Khums* is levied must be the original price, even though the going price might be higher.

This applies if the assets were acquired for one's provisions or as part of production means. If the assets are acquired to be traded in as items of merchandise, *Khums* should be levied on them at the going price, once the whole debt is paid, albeit at a higher rate, as has already been discussed in "Business Debt – i. Debt incurred by the *mukallaf*".

Suppose that the *mukallaf* paid his debt part from the profits of the year and part in instalments from the profits of future years. He must take these two methods of payment into account. The portion paid in cash should be taxed at its real value, whereas the portion paid for with profits made in future years at the purchase price.

iii. The capital assets which are in the hands of the *mukallaf* could have been paid for with money saved over the years on which *Khums* was due but not paid.

The subject of *Khums* here is the sum of money he paid for the asset, not the asset itself, regardless of whether he bought, say, the property to

live in and any fixed assets bought as part of means of production. However, should his aim behind acquiring the asset to trade in it and make a profit, as in the case of the property for example, the *Khums* should collected on the value of the house plus the appreciation, if any, in its price since he bought it till the date of sale. Thus, the investment here is treated as any other capital.

131. In the chapter on "Rules governing economic activity", we have discussed that which has bearing on assessing *Khums*, i.e. matters relating as to how to go about assessing *Khums* at different levels of pricing, wholesale/retail prices, purchase/sale prices, fluctuations of price due to market forces, making up for loss, etc; the *mukallaf* has to observe these factors when paying *Khums*.

132. Doubt may arise as to whether the particular asset was bought with money saved, with more than one year in hand, or with money from the profits one has made during the year. Such doubt must be resolved by assuming that it was paid for by the latter, in which case its current value, not its purchase price, must be taken as a yardstick for the calculation of *Khums*.

133. The *mukallaf,* be he an ordinary person or a businessman, may not be in a position to determine precisely how much *Khums* he is owed. This could be for a raft of reasons, not least not knowning which of his property is liable for *Khums* and which is not. Nevertheless, he is aware, albeit vaguely, that he must pay *Khums*.

Assessment of the amount of *Khums* in such a case has to be referred to the *Marji'* to reach a settlement. Once such 'settlement' is reached, and *Khums* paid, the *mukallaf* should be absolved of the responsibility. 'Settlement' is a juridical term which entails an agreement between the *mukallaf* and the *Marji'* resorted to in problem situations whereby a specific amount of *Khums* is paid by the *mukallaf* in settlement of his *Khums* liability.

Contrary to what is held by some people, 'settlement' is not an easy way out for the *mukallaf* with a hefty *Khums* liability. The *Marji'* is not in position to let the *mukallaf* go lightly, especially if the latter was affluent or not compliant with legal requirements in paying his dues. Furthermore, *Khums* is the right of the poor; the *Marji'* is a guardian on that right. Should he be in a position to know the amount of *Khums* that should be payable by the *mukallaf,* he must collect same; if he is not,

a settlement, for the payment of estimated amount, should be reached so that the *mukallaf* is absolved of the responsibility. Indeed, the latter amount could be more than he is owed. The prime objective of the financial settlement is not making life easy for the *mukallaf* at the expense of salvaging an unknown right in the most efficient way.

134. Should it transpire to the *mukallaf* that the amount of *Khums* he paid fell short of the correct amount, it is obligatory on him to make up the shortfall.

Chapter Two

Rules Concerning Payment of *Khums*

1. Who is qualified to receive *Khums*?

You may know by now that *Khums* is a huge source of income, should every *mukallaf* comply with the requirements of the law and pay their share. These undepletable funds are not only capable of fulfilling the requirements of the poor and needy, but constitute an important income for the state coffers that could be used in funding vital projects and satisfying pressing needs.

Accordingly, in distributing *Khums* on the eligible recipients, the needs of both the state as well as the individuals have been taken into consideration. In juridical terminology, each portion of *Khums* has been called "share", the total of which is six allotted as follows:

i. The State Share

Three shares go to the state. These are Allah's share, The Prophet's, and his kinsmen *(Thil Qurba)*, especially, the Infallible Imam. Had the Prophet *(s.a.w.)* been alive, he would have been in-charge of all three shares. In his absence, the Imam, is second in line to assume the responsibility of these shares; and in his absence, the general representative of the Imam, i.e. the just jurist, known as the "*Marji*", is the custodian of the shares. In jurists' circles, these three share are also known as "The share of the Imam".

Evidently, this part of *Khums* is not made available to the Prophet or the Imam in their personal capacity, but for their position and responsibility at the helm of the state. This should call for making funds available for them to help them discharge such responsibility, in the way the Infallible [ruler] sees fit.

However, since the Infallible [ruler] is absent, the custodianship of these shares has been passed to the *Marji'*, who must take into account, when disposing of the share of the Imam, what pleases the Imam (a.s.), which can generally be construed from the nature of Islamic legislation

and the way the Imam conducted himself among Muslims at his lifetime; the requirements and the office of the Imam should also have bearing on the matter. All this has to be present in the mind of the *Marji'* when distributing the share, i.e. according to a list of priorities, which may vary pursuant to the day and age, and in a way which is commensurate with the remit of the authority of the just jurist.

It can be said that these priorities can be confined to two aspects pursuant to their order of importance:

a. The share of the Imam has to be spent in the avenues which propagate the teachings of Islam and consolidating them; included in this aim should be the defence of Islam and its territories from the aggression of the enemy.

Ingredients of this avenue are the funding of centres of propagation and preaching, preparing the *ulema* and preachers, establishing universities and theological institutes, and printing/distributing books. Another avenue should be defending Muslim lands and their achievements at peace as well as war times, as men of expertise in this field see fit. Making funds available for the cause of consolidating the Islamic entity [state], safeguarding its independence and sovereignty, establishing the order of justice, and warding off transgression *(dhulm)* is yet another aim.

b. Making money from the Share of the Imam available to finance vital projects for Muslims, such as schools, hospitals, scientific institutions and economic projects, in the spheres of irrigation, land reclamation, and so on, of general good. Providing for the needs of the poor and the needy with grants and institutions overseeing their affairs is another avenue of expenditure. There are, of course, others.

It goes without saying that should the just jurist rule, i.e. being at the top echelon of government, the avenues of spending from the Share of the Imam (May Allah hasten his reappearance) would be far and wide.

ii. The Share of Individuals

This Share comprises three portions also. They are given to (a) the poor and needy, especially the poor, (b) the orphans, and (c) the wayfarer.

Unlike the distribution of *khums*, where the description of "the poor/needy and the wayfarer" can cover all the Muslim poor, be they Hashimite or non-Hashimite, the consensus among jurists that this *Khums* share is exclusive to the poor/needy, the orphans, and the

wayfarer among the Hashimites, hence the name, "The share of *Sadat* – the descendants of the Prophet", as opposed to the Share of the State which is known as "The Share of the Imam". That said, at certain occasions a Hashimite might be given of the Share of the Imam.

To sum up, the classification of the recipient of *Khums* is the subject of the Qur'anic verse, **"And know that whatever thing you gain, a fifth of it is for Allah, for the Apostle, the near of kin, the orphans, the needy, and the wayfarer, if you believe in Allah and in that which We revealed to Our servant, on the day of distinction, the day on which the two parties met; and Allah has power over all things"**. (8/41).

135. In discussing *Zakat*, we have already mentioned categories of people entitled for payment of *khums* so as other conditions that should be fulfilled. *Khums* is not different in this regard. However, the following requirements have to be satisfied in order that those entitled for the share of Hashimites be granted *Khums* money:

i. Belief in the true tenets of the faith. Justice and full adherence to the dictates of *sharia* law are not among the conditions, although those who turned their back to prayers, flagrant in committing sins, and drink alcohol should, as a matter of obligatory precaution, be denied any share of *Khums* money.

ii. The orphan is he who lost his father and still below the age of adulthood. Once he reached adulthood he can no longer be considered orphan, according to *shari'a* law, even though he is still not mature enough and not capable of leading an independent life.

Being orphan *per se* is not a vehicle to receiving *Khums* money; an orphan must be poor, i.e. not capable of subsisting himself for a year, to qualify for receiving any money of the share of Hashimites.

136. A Hashimite woman married to non-Hashimite man does not automatically qualify for *Khums* money by virtue of being Hashimite, especially if her husband can support her all year round, even though by way of borrowing. Should the husband not be in a position to do that, or she needed the money to, say, pay back her debt, which the husband is not normally responsible for, she could be granted money of the share of Hashimites in *Khums*. Once she receives the money she will have right of disposal over it.

137. Unlike the ruling in *Zakat*, a Hashimite is entitled to receive *Khums* money, regardless of the payer being one or not.

138. It is permissible to pay *Khums* money to one category among those entitled to receive it to sustain them for one year. It is also permissible to distribute the sum among the three catoegories in the way the payer likes.

2. Rules of Payment to Eligible Recipients

The payer of *Khums* is not free to pay his dues directly to those Hashimites who are entitled to receive a share, nor is he free to dispose of the share of the Imam prior to having contacted the *Marji'*, who is the *mujtahid* just jurist, or his agent, as a matter obligatory precaution. Furthermore, such a jurist must also be very well aware of his public as well as private spending, which should be concordant with the dictates of the *shari'a*.

139. It is not obligatory to pay *Khums* to the entitled recipients where the *Khums* is generated, although it is advisable to do so, as a matter of voluntary *ihtiyat (awla)*. However, should transferring the money to some other place entail any apathy to paying one's dues, such as delaying payment for a long time, it is not permissible to do so. Likewise, if the *Khums* has been generated in place, other than that of the *Khums* payer, he should do his best in choosing an early date of settling his *Khums* liability.

140. Should the payer of *Khums* owe any money from the person entitled for *Khums*, who he wishes to pay *Khums* to, he is entitled to offset such debt against any *Khums* payments, if he has agreed before hand on such an arrangement with the *Marji'*.

141. Should erroneous payment of *Khums* be made, after the year has drawn to a close, e.g. for miscalculation, the payer is entitled to claim back from the poor person what he paid them in *Khums*. But, if the payment is made earlier in the [tax] year, in the belief that the payer was not in need then for money he paid for his annual expenditure, only to find out that he needed the money, it is not permissible for him to claim back what he gave, even though the actual *Khums* money was still available, let alone if it was already dispensed with.

142. While we were discussing "*Khums* Assessment", we have already mentioned that the *Khums* payer, who is not in a position to know how much *khums* he should pay, has to reach a settlement with the *Marji'*. The issue here is that: is the payer obliged to pay the sum of *Khums* to the

same *Marji'* he made the settlement with or his agent, or can he pay it to any other *mujtahid*?

The answer is that the follower of a *mujtahid* should abide by the *fatwa* of the *mujtahid*, i.e. should he rule that payment must be made to the *Marji'*, he must comply, on the assumption that he had reached such a settlement with him or his agent. If, perchance, the agent was that of the *Marji'* himself too, there is no objection to making payment to him, unless he had reached such a settlement with a Hashimite cleric, eligible for the Share of Hashimites, and that the Hashimite agent had already received the money from him *[mukallaf]* and took it for himself, then lending it to him, in which case, he is not allowed to pay to others, even if that other [agent] is an agent of his *Marji'* too.

But, if the *mukallaf* was following a *Marji'* who does not make it obligatory to pay *Khums* to him or his agent alone, the payer can settle his *Khums* liability by paying it to whomsoever of the *mujtahids* he wishes. It is within his right too to apportion the *Khums* by giving it to more than one *mujtahid*. The exception of the Hashimite cleric discussed in the previous para. applies here too.

143. For a host of valid reasons, the *mukallaf* may not be in a position to settle his *Khums* liability in full and in single payment. The *Marji'* may consider granting the *mukallaf* a delay in paying his dues as he sees fit.

This could be done either by receiving the amount of *Khums* from the *mukallaf*, then return same to him by way of debt, or grant an outright extension to settle it on some future date in full or in part, or any other method of payment, not losing sight of both the interests of the *mukallaf* and the recipient of *Khums*.

Should such an arrangement be agreed by the *Marji'*, the *Khums* be treated as though it has been paid. If the market value of the provisions increases, during the grace period, no extra *Khums* should be levied.

144. Many years may elapse before the *mukallaf* realizes that he should have been paying *Khums*. Such must take necessary action to rectify his position vis-ä-vis *Khums* tax.

The following scenarios may come into play:

i. His income could have been sufficient for him and members of his family, i.e. without being able to save any money. Provided that the income was not misused, i.e. for illicit spending or got mixed with ill-gotten gains, he is required to take into account only those items of

provisions which were surplus, albeit an ounce of tea or sugar; he must estimate an amount for each year he missed out on payment of tax and get it settled with the *Marji'*.

ii. The *mukallaf's* income could have been fluctuating; he may have spent irresponsibly in some avenues; he may as well have spent some of his income in illicit ways. He may have traded in his property, making a profit or loss. He may have disposed of his income in this way or the other.

Computing *Khums* on such a diverse situation should follow the rules, already set out, that deal with each and every case according to its merits, whether he knew what he earned/spent in detail, vaguely, or not at all. Since, people in such cases do not pay attention to choosing a date in the year to mark the beginning of their tax year, they can rely on the date they generated the income and how they spent it, as the date of the tax year. After allowing for one's yearly provisions, any excess/shortfall should be counted for the payment or otherwise of *Khums*.

Should the *mukallaf* not be in a position to any detail of his income and outgoings, he has no alternative but to reach a settlement with the *Marji'*.

145. It is permissible to take away the amount of *Khums* due from the property of the person who withholds payment, provided that it is done with the knowledge and approval of the *Marji'*.

3. Rules of Loss of *Khums* Money

146. The *Khums* taxable property could be lost through fire or the sort without the fault of the proprietor. Should this happen before the amount of *Khums* is paid, no liability shall befall the proprietor.

The taxpayer could be responsible for not setting aside, in good time, the amount of *Khums* before the loss was sustained; he may as well have not a good reason for delaying payment; he may be held responsible for not giving due care to preserving the property before it was accidentally lost; he may be at fault in causing the property to be lost by way of sabotage. In all these cases, the proprietor should stand to indemnify the amount of *Khums* in the property. The *Marji'* has, in this case, the right to demand the payment of *Khums* either in kind or the value thereof.

Even if the property is lost by others, but through the negligence of the proprietor, he should stand to indemnify the amount of *Khums*. The

Marji' should have recourse to the proprietor in the same way just explained, according to the principles of compensation, because the settlement of this issue is confined to the responsibility of the proprietor in safeguarding the amount of *Khums* due on his property before the *Marji'*, who is the guardian of *Khums*.

Should there be no case for negligence on the part of the proprietor, and the property was lost through others' wanton aggression, the latter should be made to pay the amount of *Khums*; the *Marji'* should have the right to demand payment from the culprit directly.

147. The *mukallaf* may be following the *fatwa* of a certain jurist, who is of the opinion that no *Khums* should be levied on items acquired by way of gift; on the death of this jurist, the follower switched his allegiance to another jurist, who thinks differently. The *mukallaf* must pay *Khums* on those gifts, even though they may have been disposed of or lost.

148. The amount of *Khums* may be set aside by the *mukallaf* prior to handing it over to the recipient. Should it be lost, the *mukallaf* must compensate same; this is because mere setting aside of the *Khums* does not actually take it out of his ownership and place it under that of the recipient. Thus, in the event of loss, the *mukallaf* is responsible for such a loss.

149. The *mukallaf* may lawfully dispose of the asset which is still liable for *Khums*. Should his action be unintentional or through ignorance, he must not be deemed sinful. If it was deliberate, he be deemed sinner. However, in both the cases, the disposal of the asset shall be deemed as though it was lost. Here, there is a number of rules that should be discussed:

i. The proprietor must stand to indemnify the *Khums* due on the property that was disposed of; the *Marji'* can demand payment from him. He should pay in kind or the value thereof.

ii. The transaction of disposing of the asset is valid. Thus, the new owner, should he be believer, can have right of disposal over the acquired item, without being held responsible for the unpaid amount of *Khums* due on it. Furthermore, the proprietor does not have an automatic right to cancelling the transaction, even if it was struck inadvertently, unless the terms of sale provide for such an option.

iii. The proprietor may have disposed of certain items, such as grain and eggs, whose *Khums* is not yet paid, by way of using the grains as

seeds and the eggs to produce chicks and suchlike. The proprietor should guarantee the payment of the original items not what they have turned out. That is, any return that may result of the *Khums* of the new items should be deemed as the property of the owner and not the recipient of *Khums*.

Should the return from the disposed items be of the continual type *(muttasil)*, such as a malnourished sheep is fattened or the shrubs grow into fruitful trees, they become liable for *Khums*. That is, the amount of return must be taken into account for *Khums* purposes and the recipient have a share in that return.

iv. The *mukallaf* may decide to trade in the item, be it money or asset, after it has become liable for *Khums*, and before its payment, even for a good reason, making a profit in the process. If the transaction was struck by way of the owner's selling the item, the would-be *Khums* recipient must be paid his share, i.e. 20%, of the profit. But, if the *mukallaf* bought the item with his own money and sold it, making some profit in the process, the would-be recipient is not entitled to a share in the profit. That is, if the *mukallaf* has already paid the recipient his share before the end of the year the transaction was struck. Otherwise, the recipient would stand to gain a share of the profit.

v. The believer has the right of disposal over what the person withholding the payment of *Khums* make available of his property for him. Thus, it is permissible for him to eat, drink, or say prayer in his house, wearing his clothes and so on; this is because the sin resulting from having the right of use [disposal] over the property which is still liable for *Khums* falls squarely on the shoulders of the person withholding payment of Khums; thus, no offence is done by the believer who may have had a free hand in the property, be it knowingly or unknowingly.

150. Should the value of the lost/disposed of property be different, i.e. at the time of loss and that of payment, the deciding value should be that of the date of payment.

Section Nine

Enjoining Good and Forbidding Evil

Foreword

Directing people towards good *(al amr bil ma'rouf)* and directing others away from evil *(an nahy anil munkar)* is among the most important religious and social duties of every Muslim vis-ä-vis his brethren. It is the duty of every Muslim to direct people to act according to the precepts of Islam and to abstain from improper behaviour.

Tradition related from the Infallibles (a.s.) has it, ***"By enjoining good, the obligations are upheld, gains are made lawful, wrong-doings prevented, the earth prospers, and the oppressed get their right from the oppressor. People remain enjoying good times so long as they practice enjoining good and forbidding evil and co-operate with one another to do good. Failure to do so will result in depriving them of the bliss; they may turn against one another and there will be no help coming their way either from the earth or from Heavens".***

This traditions illustrates clearly how pivotal this obligation is and how important the inroads it makes into other aspects of life. Although this worship is asymmetrical with the other obligations, i.e. which are predicated on the *niyyah* of *qurbah*, yet we discuss it alongside such acts of worship as is commonly practised by jurists. That said, this act of worship is not bereft of the essence and the spirit of worship which is an embodiment of obeying Allah's commands and directing people to abide by them.

It will transpire from the discussion of this topic that enjoining good is not a mere limited relationship between two Muslims giving counsel to one another that remains lacklustre; rather it could grow into a torrent capable of igniting a revolution by the believers against wayward leadership, when giving counsel, opposition, and peaceful protest prove fruitless.

What is meant by "enjoining good and forbidding evil" is the enterprise of opposing the person who turns their back to good deeds by

counselling them to take to doing good deeds and abandoning wrongdoing that they do as a matter of course, by any of the methods laid down by the *shari'a*. This however does not apply to the person who is not in a position to draw a line between what is obligatory and what is *haraam*.

What we mean by "good" is every good deed enjoined by the *shari'a* by way of making it obligatory to uphold or to embark on voluntarily.

What we mean by "evil" is every evil deed the *shari'a* forbade by making it *haraam* to embark on, or at least to keep one's distance from. Should "evil" be of the *haraam* type, forbidding it becomes obligatory *(wajib)*; and if it be *makrouh* (abominable), forbidding it becomes *mustahib*.

Anything which is either lawful or unlawful cannot be described as such, unless the good aspect or the evil one becomes predominant in it, which in turn determines how it should be treated, i.e. good or evil. For example, warding off harm from a person and saving them from imminent danger, becomes obligatory to embark on, when they are adamant not to drink from the water that is sanctioned for drinking which is necessary for their survival.

However, it has to be borne in mind that enjoining good and forbidding evil should not be carried out in a manner that may hurt the feelings of people and drive them further away from Islam. Neither should it be insulting and offensive to others; if so, it will be *haraam*. In a counsel to Imam Ali (a.s.), the Prophet (s.a.w.) had these words for him, ***"O Ali ! This religion is solid, so to penetrate it deeply, you have to be gentle [in your approach]"***. This illustrates vividly that it is very important to put forward the truth in a wise and tactful enough manner that is commensurate to the capability of the intended person.

151. Enjoining good and forbidding evil are two obligatory duties of the *wajibun kifa'ie* type. However, its being obligatory never ceases in cases where evil is prevalent. It remains so in certain cases where the particular culprit is unrelenting in his flagrant defiance of the dictates of religion. The obligation is not waived as soon as the obligation is practised, even if it does not prove effective.

152. The obligation of enjoining good and forbidding evil is not the exclusive preserve of a certain category of people. When the need to practice it arises, it becomes obligatory on all, the *ulema* and the laymen,

the just and the wayward, the ruler and the ruled, the wealthy and the poor, and men and women.

1. Who should carry out the obligation?

Enjoining good and forbidding evil is every *mukallaf's* business; however, such a *mukallaf* should fulfill the general conditions of *takleef*, e.g. adulthood and reason coupled with the following:

i. Knowledge of what is good and what is evil. Thus, it is not correct for anyone, who is not conversant with the laws of Islam, albeit at a level necessary to conduct himself properly, to embark on this duty. This measure of knowledge should adequate, unless the situation arises where there is not another person more knowledgeable than him; in this case, he has to widen his knowledge to equip himself with the tools necessary to carry out the responsibility of standing against corruption. What is applicable to an individual is applicable to group of people who are more qualified, as a matter of *wajibun kifa'ie*, than others to carry out the job of enjoining good and forbidding evil. That is, if one member of the group took it upon himself to increase their knowledge in the realm of the laws of Islam, the remaining members of the group are absolved of the responsibility.

ii. The person upholding this principle should ensure their personal safety, honour, and property from injury. Assessing the level of harm which may befall them hinges upon each individual's life style. However, this condition extends to cover the safety of other Muslims' life, honour, and property; such may be members of his immediate family, neighbours, or fellow countrymen.

It is also conditional that the *mukallaf* should not subject himself to untenable situations, such as his staying outside his normal residence for security reasons, leaving a cosy job for another more demanding one, and so on and so forth which could put his relations under undue strain.

153. The definition of "harm" entails:

i. Personal physical/psychological injury, such as one getting killed or maimed or mentally scarred, etc.

ii. Spiritual (as opposed to material) injury, such as the person becoming the object of ridicule, mockery, and calling them names, etc.

The minimum level of injury is that determined by sensible men, which they normally ward off themselves. So, any perceived threat to one's well-being or that of his family or Muslims at large is a sufficient reason not to embark on enjoining good and forbidding evil.

As for injury to one's honour, it covers sexual attack of any kind, whether the victim of it is male or female; there is no bottom or ceiling to this type of potential injury. The injury here is universal, i.e. it is not confined to the person practising this duty; it extends to cover the person in question, his family and other Muslims who may be victimized as a result.

Injury falling on property covers total or partial loss or damage, at a level normally recognized as injurious by sensible men; property covers all possessions, be they money, assets, real estate, livestock, etc.

154. According to *shari'a* terminology, *haraj* (difficulty or putting one in an untenable situation) is different from harm or injury. It is all that which causes one's normal personal lifestyle, on all levels, to turn sour so much so that it becomes unbearable. The final arbiter to decide such a case is the *mukallaf* himself as he knows best what is good or bad for him.

Just as potential injury is a sufficient reason for not embarking on enjoining good and forbidding evil, difficulty is too. This too does not stop at the individual's level, rather it goes beyond to protecting family members and Muslims at large.

155. It is not necessary that one reaches a conclusion that injury would necessarily ensue if the person carried out the obligation of enjoining good and forbidding evil. Any perceived danger, of the sort which is regarded thus by sensible people, is an acceptable reason for not carrying out the duty.

As for "difficulty", it is a real thing, i.e. it does not come about unless it is experienced. Thus, it is not sufficient for one to feel it is necessary for them not to embark on enjoining good and forbidding evil because of a perceived danger of being put in an untenable situation.

156. In certain situations, it may become obligatory to bear the injury to oneself or others, should one conclude that embarking on enjoining good and forbidding evil is so great in the view of Allah and the criteria of *shari'a* that sustaining the injury can be tolerated.

This is especially true in situations of great showdowns to annihilate oppression and corruption and establish a just system. However, since

reaching such a prognosis is difficult, in the main, for the *mukallaf*, it is necessary to consult the *Marji'* who is in a position to identify the need and the amount of injury that is permissible to be sustained.

2. Who must be admonished?

Several issues have to be discussed, before the person who turn their back to doing good and take to sinning be censured:

i. They must be fully aware that what they are doing runs counter to the dictates of religion, for should they be ignorant of the rules and the whole subject, the obligation of counselling them should no longer be called for, barring that what they intend to do falls within that which Allah has ordained to be *haraam*, such as spreading corruption in the earth and killing the respected soul. In such a case, such a person must be prevented from doing so, even if they were excused [through ignorance].

157. Should the *mukallaf* be negligent for not acquiring knowledge, he should be treated as though he has turned his back to doing what is good; he must therefore be directed in that avenue.

158. It is necessary to teach the ignorant those Islamic laws with which he is frequently tested, such as the rules governing acts of worship and transactions, especially when it is difficult for him to learn them through personal effort, i.e. by way of reading, listening and so on.

ii. The person who is doing that which is evil should not be justified in so doing. For example, he could be thinking that what he is doing is not *haraam*, or that which shuns is not obligatory on him; this conclusion could have stemmed from a personal opinion, or it could have been based on the *fatwa* of the jurist he is following. If it transpires that the doer is justified in what he has done, no further action should be taken. That is, unless what he intend to do falls within that which Allah has ordained to be *haraam*, such as spreading corruption in the earth and killing the respected soul. In such a case, such a person must be prevented from doing so, even if they were justified in what they wanted to do [as a matter of opinion], and not deemed sinners.

159. The party intending to give counsel should be guided by what is actually happening before his eyes of the perceived commissioning of sin. That is, unless he is sure, he must not jump into conclusions that the would-be sinner could be justified in what he is doing; if need be, he may be asked to clarify the situation, as a matter of *ihtiyat*.

iii. Some jurists are of the opinion that the obligation of enjoining good and forbidding evil becomes obligatory only when the culprit is caught red-handed, or that they are known for their habitual breaking of the laws. However, it is evident that upholding the duty becomes operative once knowledge is gained that the would-be sinner is bent on turning away from what is good or insisting on commissioning a ghastly act for the first time, or his intention to repeat same, or he may have manifested readiness to do it again. Where giving counsel is sanctioned by sensible people, it becomes *wajib*.

If the culprit has committed the act and showed remorse and willingness not to do it again, it is not obligatory to give him counsel. However, should he take repenting for his sins lightly, he must be enjoined to hasten to penance.

iv. There is the possibility of reaping results of giving counsel to would-be sinners, i.e. by desisting from commissioning the bad act not necessarily immediately. Even the slim chance that he might be deterred or at least think twice before commissioning the act, etc. is a sufficient reason to admonish him.

The person intending to carry out the duty of enjoining good and forbidding evil must not resort to a mere suspicion that the doer of the bad deed would not be deterred from that which he is intent on doing to absolve themselves of the responsibility. They must reach a clear-cut conclusion that no benefit would be reaped from counselling the would-be sinner, in that he is not interested in anybody's advice; only then the obligation could be waived.

However, for counselling to be effective every effort has to be put into studying the circumstances of the sinful and choosing the right person and time to make inroads into rehabilitating them, as will be discussed.

160. Wherever we have ruled that enjoining good and forbidding evil could be dropped we do not mean that they no longer be permissible; rather the obligation can be embarked on by way of reminding the sinning of their duty towards Allah in a nice manner and good counsel. That is, of course, barring being derogatory or insulting to the intended person.

3. Levels of Enjoining Good and Forbidding Evil

There are three ways at the disposal of the *mukallaf* to carry out this duty:

i. Expressing one's disapproval of the wrong action by attitude, such as turning away from the sinner, not shaking hands with them, etc.

161. Boycott is one of the means which could be employed to deter people from committing that which is *haraam*. It should be maintained, even if it leads to abandoning what is obligatory. Some examples:

a. It is permissible not to return the salutation to the sinner, if in so doing they indulge further in their transgression, or detract from the opportunity of reforming them. Otherwise, it is not permissible.

b. Rupture of relations with one's relatives, by maintaining a semblance of relations which does not detract from the effectiveness of the boycott.

c. It is permissible for a wife to refrain from having sex with her sinning husband, should the sin he is indulging in have far reaching consequences on the personal or the social levels. That is, if in so doing the wife could persuade him to mend his ways. There are also other examples.

ii. Showing aversion by speech, i.e. in an appropriate and effective manner. It is not necessary that it should take the form of a dressing down, unless it is the only effective way in yielding results. The tone of the speech must be friendly, quiet, and persuasive. "The carrot and the stick" approach could prove fruitful in certain cases, i.e. by stressing the resultant reward and punishment *(ath thawab wal iqaab)*.

No doubt achieving results could hinge upon the style used in giving counsel, be it harsh or mild; it also vary from one person to the other, male/female, young/old, father/son, etc., from time to another, from one venue to another, one to one or in a group, during Ramadhan or the commemoration of the martyrdom of Imam Hussain (a.s.), by way of a play, a film, a picnic, music, and so forth. So, one has to be tactful in using the best way possible that may yield results in rehabilitating the sinner. Under no circumstances is it permissible to use any violent means in speech, where the gentle approach could do the job.

iii. In the last resort, where possible, one should try to stop the sinner from commissioning the vile act. Stopping them could be by making them suffer physically, i.e. beating them up. However, in applying this method, one has to bear the following in mind:

a. Beating up should be the last resort, i.e. after exhausting all the other alternatives, as will be discussed.

b. The maximum level of beating should not include causing a fracture or opening a wound. Should the deterrence only be achieved by resorting to either or even killing the sinner, this has to be sanctioned by the Infallible Imam (a.s.), or his personal representative; however the Imam's general agent, i.e. the just jurist could rule in this matter, after having considered it in a way that serves Islam's interest which stipulates that one should revolt against the oppressive ruler which in turn may lead to his killing or getting him wounded, or to that of his lackeys, with a view to toppling the regime.

iii. The order of hitting must be gradual, i.e. from the very mild to the hardest. This means that each case should be treated on its own merits, taking into account the accused, the time, and the circumstances. Thus, it can be said that this regime of deterrence should be part of the whole system that the Islamic state, if it existed, adopt in its scheme of things for the *ummah*.

In the absence of an Islamic government, i.e. where Islamic society is under the rule of non-Islamic government, the faithful may take the responsibility, or indeed it is obligatory on them to do so to the order of banishing evil and establishing good. This however should be decided upon after consulting the experts in the field, in order to avoid bringing the name of Islam and all what it stands for into disrepute.

4. Rules Governing Enjoining Good and Forbidding Evil

162. There is no need to act according to the order of expressing disapproval by way of attitude or speech; the use of either way, which may serve the purpose as the case maybe would do. As for hitting, it should, as we have already mentioned, be the last resort. The objective behind all these means should be to urge the sinner to repent and obey the dictates of the faith with the absolute minimum of injury to their dignity, hence the admonishment with wisdom and good counsel.

163. There are no special powers which those in power can enjoy over the ruled, nor are there any privileges in the hierarchy of a family, i.e. the father over the offspring, or the husband over his wife. All should be bound by the same general rules designed to regulate the enjoining of good and forbidding of evil. There are however special cases, which although do not fall under the banner of this duty, yet serve its end purpose. For example:

a. What is passed by the *Marji' (al hakimish shari'i)* under the title of "chastisement" (*ta'zir*) does not come under the area of enjoining good and forbidding evil; rather, it comes under the penal code which is intended to a wider audience, i.e. setting an example for the society at large as a deterrent to its members not to follow suit and to instil the reverence in the minds of members of society for the authorities.

b. The right of the father to discipline his offspring, who have not yet attained adulthood, is another subject which is outside the remit of enjoining good and forbidding evil. Where the father is forced to hit his son, he should observe what is stipulated in this regard which is not within the bounds of enjoining good and forbidding evil.

However, once the children attain the age of obligation *(takleef)*, the father should abide by the rules governing enjoining good and forbidding evil, if need be. That is, he should treat them in the same way other adults are treated.

c. It is the duty of the man to give counsel to his wife with a view to encouraging her to do what is good and deterring her from what is evil, in the same way he is required to deal with others who indulge in sinful activity. However, he has more room to use subtle pressure on her than the case with other people. What the Holy Qur'an has revealed with regard to resorting to hitting the wife when she violates her marital duties *(nushooz)* is within the spirit of the rules dealing with enjoining good and forbidding evil.

Accordingly, the husband must not resort to hitting as a means of disciplining his wife, until all other avenues have been exhausted including good counsel and abandonment. The husband has other means, outside the remit of enjoining good and forbidding evil, at his disposal with regard to dealing with his wife. Apart from that their relationship must be governed by the general framework of relations as designed by the laws of Islam.

d. Brothers have no jurisdiction over their sisters. Thus, they are not allowed to overstep the boundaries set for the relationships of people at large. What has been commonplace, in our societies, of repressive practices against girls by their brothers has nothing to do with Islam. Islam has neither sanctioned nor condoned such practices, which are carried out under the pretext of good bringing up, discipline and censure, preserving the honour and so forth.

e. In their relations with one another, close relatives, such as father and son, husband and wife, etc. may take lightly to swearing as a means of discipline. This is neither allowed with one's kith and kin, nor with strangers. However, if using harsh words serves as an effective deterrence, it may be allowed, provided that the would-be sin is far worse than the harsh words.

f. The son could use whatever means at his disposal with a view to enjoining his parents to do that which is good, because this action falls within the bounds of filial piety. Such means could include the use of harsh words, hitting, or confinement. However, he should spare no effort in using them as a last resort and after a thorough consideration as to their need or effectiveness in doing the job of making them mend their ways. Thus, no corrective action should be taken before one is completely sure, especially from a *shari'a* perspective so that filial piety *(birul walidain)* is not replaced by filial disobedience *(uqooq)*.

164. In the process of going about enjoining good and forbidding evil, the person may feel the need to commit some *haraam* deeds, such as entering a house without permission, be in the company of other people who are drinking alcohol, and so on. In such a case, the principle of competing priorities *(qai'datut tazaahum)* must be brought into play, where the most important should take precedence over the less important.

Basically, one has to weigh the harm which may befall the individual or society, as a result of committing that which is evil, with the *haraam* action of the person wanting to prevent it happening. Should the detriment be greater, it is permissible to commit the *haraam* deed in the process; otherwise, it is not.

165. For the duty of enjoining good and forbidding evil to be carried out effectively, there may be a need for organized framework, such as forming a group, a society, a party, and so on. Where possible, setting up such an enterprise becomes obligatory. Indeed, in certain circumstances, forming such groupings is obligatory with a view to promoting the way of Allah, working towards ushering people to obey His commands, adhering to the precepts of Islam as a doctrine, feeling, and a way of life, standing up against evil, and establishing truth and dismantling falsehood.

The overriding checks and balances in all what should be done in this regard should be that one must never lose sight of the *shari'i* principles.

Be it in the movement, the means, the planning, the confrontation, be it political, security, social, or military. Bigotry, cocoonary, tearing apart Islamic realities, branding others, outside the party or the organization, as heretics should be done with.

This path should be a practical means to strengthening Islam; in going down this road, the *alim* (scholar) as well as the layman must be treated likewise.

166. Should the process of enjoining good and forbidding evil hinge upon money spending, the person embarking on it is not obligated to dig into their own pocket. That is unless, the evil deed poses a greater threat, such as civil strife which may culminate in loss of life and property, and that there are not enough funds from the public purse, i.e. *zakat* and *Khums*, the public at large are obligated, by way of *wajibun kifa'ie*, to spend their money in that cause. As for public funds, such as *zakat* and the share of the Imam (a.s.) in *Zakat*, spending of them for removing evil and establishing good is among the best of investments.

167. Muslims are not allowed to send their children to non-Islamic schools, especially if it is feared that they may go astray, even if this happens sometime in the future. If this is not the case, they are allowed to do so. However, we do not encourage this practice, particularly if there are decent Islamic schools.

Should there be no Islamic schools around, and there was a real danger of losing Muslim children to non-Muslim norms of education, which is often the case, it becomes obligatory, by way of *wajibun kifa'ie*, on Muslims to establish Islamic schools on a scale that is capable of satisfying the need for such schools.

168. In certain situations there may arise the need to enlist the help of the wrongdoer *(dhalim)* to forestall a potential sin. This could be sanctioned, even with the knowledge that the wrongdoer may overstep the legal bounds of *shari'a* in the process of deterring the the would-be sinner. That said, if the harm, which may befall the culprit, is far greater than the sin which would have been committed, the principle of competing priorities should be applied, i.e. one has to strike the right balance.

169. Innovation *(bid'ah)* is ascribing to Islam a certain belief or law without being substantiated with any evidence from the body of *shari'a*, tradition, or reason. It is one of the sins which could pose a great risk to

Islamic society. This being so that it may leave an indelible mark on the doctrine or the practical aspect of spiritual life, i.e. it may lead Muslims astray.

Thus, it must be fought in all means at one's disposal to remove it, or at least undermine it. It could be said that it is obligatory that no effort should spared in trying to stem innovation, even though there might not be hope in succeeding in one's bid, because at the end of the day, the objective is that Muslims have to be made aware that it does not form part of Islam's *shari'i* heritage.

Epilogue

It is a fact that flagrantly committing evil deeds and turning away from what is good has become institutionalized. It is being espoused by states, bodies, institutions, etc., let alone individuals, across the board, i.e. from commoners to the rich and famous. This makes the bid of standing up to such a phenomenon effectively a gigantic task. Therefore, every effort should be put into a detailed study and a comprehensive plan that takes into account all social, political, and economic aspects.

As for those activists working in the field of religious guidance, they should spare no effort in elevating themselves to the magnitude of the challenge and work with clarity, wisdom, depth, reflection, and total commitment, especially alongside those charged with putting the plan to fight waywardness together.

One of our ulema (May he rest in peace) said, "Among the best tools of facing up to bad deeds and encouraging good ones is for the activist, especially the ulema, to set a good example in every aspect of their life, be it on a personal level or in dealing with other people. Their example is bound to be emulated by those whom they aim to win back to the right path".

In the end, there are several niceties which commend the involvement in this sacred duty and could pave the way to achieving good results:

i. Some commendations from the Holy Book and Tradition

a. Holding fast to Allah, the Exalted, **"..and whoever holds fast to Allah, he indeed is guided to the right path"**. (3/101).

Imam Ja'far as-Sadiq was quoted as saying, ***"Whoever among my servants held fast to Me, and not to any of My creation, I could tell from his niyyah. I guarantee to extricate him from any plot which may be hatched to harm him, be it in the heavens or in the earth".***

b. Trust in Allah, the Most High, **"..and whoever trusts in Allah, He is sufficient for him.."**. (65/3).

c. Having good opinion of Allah. Imam Ali (a.s.) was quoted as saying, ***"By Him who rules supreme, no believing servant thinks good of Allah, Allah would surely reciprocate. That is because Allah is generous and has all that is good; He would therefore feel shy if He did not respond to his servant in kind; He would never dash his hopes. So think good of Allah and covet of that which He owns".***

d. Patience in adversity and refraining from what Allah has ordained unlawful. Allah, the Most High has said, **".. Only the patient will be paid back their reward in full without measure"**. (39/10)

The Prophet (s.a.w.) was quoted as saying, ***"Be patient because with patience comes great good; be informed that with patience comes victory, and with patience comes freedom from sorrow*** **'Surely with difficulty there is ease, with difficulty there surely is ease'**. (94/5-6)".

e. Virtuousness; Imam Ja'far as-Sadiq was quoted as saying, ***"There is no other worship better, in the view of Allah, than chastity and probity". It has also been narrated from him, "A partisan (Shi'ite) of Ja'far is he who guards against breaking his chastity, proves strong in jihad, works to please his Creator, coveting His reward and fearing His wrath. Should you come across such folk, these are the Shi'a of Ja'far".***

f. Mild temperament; It has been narrated from the Prophet (s.a.w.), ***"Allah never confers power on a person who are ignorant, and never causes the gentle to be lowly". Imam Ali (a.s.) was quoted as saying, "The first reward of the mild-tempered is that people at large come to his support over the ignorant".***

g. Humility; The Messenger of Allah (s.a.w.) said, ***"Whoever demonstrates his inferiority before Allah, He would elevate his station, and whoever shows haughtiness, Allah would drag him down. Whoever spends responsibly, Allah would give him of His sustenance; and whoever squanders money, Allah would deny him His sustenance. Whoever makes a habit of remembering death, Allah would love him".***

h. Treating people justly, albeit of oneself; It has been related that the Prophet said, ***"The best of works is seeing that justice is done to someone, even if the person himself stands to be seen the losing party. Showing consolation to your brethren at all time and circumstance, in those areas Allah has ordained halal is yet another commendable work".***

i. Paying attention to one's own shortcomings, rather than those of other people; The Prophet (s.a.w.) said, *"Blessed is he who is engaged in fearing Allah, rather than fearing the people. Blessed is he who is more concerned with attending to his own frailties rather than those of the others".*

j. Directing oneself away from evil deeds; Imam Ali (a.s.) said, *"Whoever strives to make good his intentions, Allah is capable of making his attitude good; whoever works for the good of his faith, Allah would make him less concerned about worldly matters; and whoever thinks highly of his relation with his Creator, He is capable of making good his relations with his fellow men".*

k. Asceticism; it has been related that the following encounter took place between Imam Ja'far as-Sadiq (a.s.) and one of his followers, *"The man said: I can hardly meet with you, so could you give me counsel so that I may make use of it. The Imam replied: I enjoin you to be mindful of your duty towards Allah, pious, and keen on widening your religious knowledge; do not seek to be covetous of that which others are enjoying; [in this regard] it suffices to remind oneself of what Allah has revealed to his Prophet:* **And do not cast your eyes towards that with which We have provided different classes of them, (of) the splendour of this world's life, that We may thereby try them; and the sustenance (given) by your Lord is better and more abiding. (20/131). Allah also revealed: Let not then their property and their children excite your admiration..(9/55).** *So, should you be aware of that, you must remember how the Messenger of Allah (s.a.w.) used to live his life; his staple food was barley, his sweet dates, his fire made with palm leaves – if he could afford them. And should a calamity befall you, your offspring, or property, always recall the calamities that had befallen the Prophet and his household, for no other people had experienced anything on that scale".*

ii. Vile Practices that Should be Avoided

a. Anger; the Prophet (s.a.w.) said, *"Anger detracts from faith in the same way vinegar spoils honey". Imam Ja'far as-Sadiq (a.s.) said, "Anger is the key to every evil deed". Imam Mohammad al-Baqir (a.s.) said, "A human being could get irate; should they not cool down, and regret it, he would enter hellfire. However, whoever gets angry with his kinfolk, and happen to be standing, he should sit down immediately; this is bound to*

ward off the machinations of Satan from getting hold over him. Whoever gets angry with one's immediate family, he should approach them and touch them; this is capable of calming anger down".

b. Envy; Imam Ja'far as-Sadiq said, *"Envy eats away belief as fire eats away fodder".*

c. Injustice; Imam Ja'far as-Sadiq said, *"Whoever does injustice to others, it would rebound on him, his property, or offspring".* He also said, *"Whoever achieves success by way of doing injustice to others, there is no value of the success he achieved; this being so that the wronged party takes away more of the faith of the oppressor than the latter takes away from the property of the injured party".*

d. A rogue person whom people try always to obviate their evil actions. The Prophet (s.a.w.) said, *"The worst of people before Allah, at the Day of Judgement, is he who had been shown respect for fear of his actions".* Imam Ja'far as-Sadiq said, *"The most hated among Allah's creation is he who people try to avoid because of his rude manner of speech".*

Section ten

Rules of Self-defence

Foreword

Self-defence and all that which is aimed at preserving one's life are intrinsic urges. Thus, the *shari'a* has made it lawful and obligatory on the *mukallaf* to comply with. Furthermore, with reward for practising self-defence and punishment for abandoning it, the *shari'a* has stressed its importance for it aims at man's property, progress of nations, and peace and security of the human race.

The importance of this sacred duty is not less than that of enjoining good and forbidding evil, if it does not outstrip it. By taking to the former, we aim at defending the faith and moral values; by practising the latter, which is a defensive jihad, we mean to protect the very existence of the human race, society, and the homeland, hence the plethora of Qur'anic verses and traditions *(hadith)* which talk favourably about this topic; parallels have often been drawn between jihad and striking a deal with the Creator, in that embarking on it would open up a special gate to Heaven, which Allah has reserved for the elite among His creation.

We will confine the discussion to the defensive type of jihad *(al jihad ad difa'ie)*, because the jihad in the way of Allah *(al jihad al ibtida'ie)* is not feasible before the re-appearance of the twelfth Imam (May Allah hasten his re-appearance).

Defensive jihad does not stop at defending oneself, property, honour, etc., rather it goes far beyond this circle to cover the defence of others, be they Muslim or non-Muslim. Furthermore, it goes beyond driving away direct threat to one's own being to that which is indirect, e.g. that which may result in undermining society, the land as a sovereign entity, and all that which relates to its security, economic welfare, political interests, and so on of the type which makes the individual and society function according to what Allah has ordained.

On certain occasions, self-defence against the dangers on a personal level could fall on the individual himself *(wjibun aini)*, if he can do that.

However, should the individual not be in a position to protect himself, others should, by way of *wajibun kifa'ie*, take it upon themselves to do it for him.

Yet, defending the homeland and other public interests falls within the remit of *wajibun kifa'ie* to start with. That said, it may take the description of *wajibun aini* sometimes.

Defending Oneself and Similar Issues

i. Self-defence

170. It is obligatory on every *mukallaf,* man and woman, to ward off danger from themselves, regardless of its source, be it from another human being or animal, or anything else (natural). Indeed, it is *haraam* for the *mukallaf* to cause injury to themselves.

The level of personal injury precipitating action from the individual to protect himself against is that which reasonable people perceive as practicable. However, its uppermost ceiling is death. Next on the list of dangers is coma, paralysis, insanity, and blindness, i.e. in that order of gravity; thereafter ghastly wounds and cuts, fractures and diseases, especially acute ones and those resulting in excruciating pain, and so forth.

That said, cuts, bruises, concussions, mild pain, or common diseases, such as colds and cough are not of that order.

Other dangers which one should guard against are sexual attack, attacks aimed at denigrating the human integrity and honour by way of adverse attitude and perhaps rude language, which could lead to ridiculing, upsetting, or harassing the victim, and any other moral injury.

Among the dangers too is breaching other people's privacy, by way of breaking into their homes, snooping on them, for any purpose and by any means, such as by using binoculars, peeping, filming, taking snapshots, etc. The victim has every right to avert/fight of such crimes perpetrated against him, so much so that they should not be held responsible to indemnify any material damage sustained by the culprit, should it occur in the process of defending oneself.

171. No exceptions are such self-inflected injuries as endangering one's health by smoking. Among these too are those sustained for "religious reasons", such as cutting one's head with a sword or a

machete, or causing bleeding in other parts of the body or burning them [self mutilation] in commemorating the anniversary of the martyrdom of Imam Hussain (a.s.).

However, if any of these actions fit the definition of injury, which one should protect oneself from, it is *haraam*, i.e. one should not put themselves in harm's way. This is so, even if the practice has become established and widespread or tinged with some "religious" tradition, which the *shari'a* neither called for nor condoned.

172. It may be obligatory to sustain a lesser injury to avert a greater one. Indeed it may be obligatory, or permissible, to getting martyred in the process of waging jihad against the enemy.

173. Protecting oneself is done in two stages:

i. By taking necessary measures to avoiding danger and shielding oneself against it. This is a fundamental means to forestalling natural dangers from taking their toll on the human being, such as those accidents caused by the elements, contagious diseases, predatory animals, etc.

Should the aggressor be a human being and it is possible to avoid their aggression, by any means at one's disposal, even by fleeing, it is permissible to do it, unless it leads to breach of the sanctity and dignity of the intended victim; however, it may be obligatory, even with the possibility of humiliating oneself, if both the safety of the aggressor and the victim could be achieved, especially in situations of the flare-up of tempers between family members, or the aggressor being a lunatic, and so on.

It is worth noting, though, that cases covered in this type of self-defence are numerous and varied; indeed, some of them are complex. Thus, the *mukallaf* should spare no effort in being very careful in identifying what is best for them, but never losing sight of getting to grips with the dictates of the practical laws of Islam, being cautious, and godly.

Precaution is called for in every sphere of self-defence and the means used to achieve it, even when using force and violence, lest one should be excessive, so much so that they could be overstepping the boundaries of the legitimate right.

ii. The use of pre-emptive strike, as a means of averting imminent danger, but stopping short of causing death. However, it is within one right to use any means at their disposal to protect themselves, even if it leads to hurting the aggressor and killing them in the process.

That said, every care has to be taken to using force, starting with the less harmful to the most devastating one as the case may be, provided that the party doing the defending should be capable of handling the confrontation on all levels. This is in stark contrast with the situation where the would-be victim is not capable in every department to handle the fight, i.e. even with the step-by-step approach.

174. Every case of defence has its own means of progressive approach, as follows:

i. Resorting to any way falling short of hitting; this could be achieved by insulating oneself from the aggressor by, say, a shield, locking the door, shouting, firing in the air, brandishing a gun, and showing signs of aggressive behaviour.

ii. Using force against the aggressor by way of hand and stick. Such force should first be directed to the parts of body that produce the least pain and gradually to the force which inflict most pain. Progression in the level of force used is also called for, i.e. from that which may not leave marks on the body to that which is capable of leaving such marks.

The type of defensive weapon used should also be taken into account. That is, the use of blunt implements for a start to the sharper and then the sharpest, in the last resort. The type of intended injury should start with the most superficial to the severest.

However, should the would-be victim know before hand that the aggressor cannot be repelled only with the maximum force, they have the right to do so. The same goes for not being able to identify the least injurious method of defence to the aggressor because of the nature of the stand-off and its complications.

The yardstick of deciding the level of force which may result in inflicting the least painful injury or the most painful one is what has become common practice *(urf)*.

175. The person resorting to protect themselves against aggression should not be made to compensate the aggressor, be it for a personal injury or loss of property, if they abided by what is within their own right. Should they use unwarranted excessive force and turn aggressors themselves, they must stand to indemnify the other party.

176. The person might erroneously think that someone intended to attack them. In the process of warding the perceived danger off, they inflicted injury on the other party. They should be held responsible for

compensating the injured party any loss, be it personal or in property. However, the culprit should not be deemed sinful.

177. The person carrying out self-defence must fulfil certain requirements to qualify for engaging in such an activity:

i. Making absolutely sure that the other party is intent on inflicting harm on you. This should be the case because mere suspicion of the perceived danger does not give you the right to engage the other party, while you have the means of fighting off the danger.

Should you think that they may wage a surprise attack on you, while you are not prepared, and that such a suspicion is accepted as an established practice *(urf)*, it is permissible for you to engage them. Should there only be a remote chance of the other party really meaning to attack you, to say it is permissible to engage them, is problematic *(ishkal)*; it is more likely *(al aqrab)* that it should not be the case.

ii. If there be a possibility that you are not going to overcome the aggressor, you are not required to engage them, unless in not doing so a greater harm could ensue. In such a case, it is incumbent on you to stand for your right, even if you may be defeated.

iii. In defending yourself against injury or death, you are not required to fight of the aggressor, even if it leads to their death. That is, although you are allowed to do so, it is not obligatory.

As for the cases where defence is sanctioned, such as protecting your property, engaging the aggressor is *haraam*, if it leads to their death. Anything short of causing their death is permissible, even though what may result from the action of defending your property is far worse than what you have set out to preserve.

178. For self-defence to become permissible or obligatory there is no difference whether it came from a stranger or a relative, be they close or far, including family members. That is, you are justified in defending yourself against any attack, albeit from a father or a son, even if the engagement results in death.

179. Once the aggressor is checked and backs off, it is not permissible to chase them up; should you carry on engaging them after they have backed off or fled and caused them any injury in the process, the victim turned aggressor should stand to compensate them any loss they may have sustained, let alone deeming them guilty.

180. Should repelling aggression require enlisting the help of the wrongdoer or the unbeliever, it is either permissible or obligatory, as dictated by the circumstances. This should be the case, even if the victim resorted to using undue excessive force in the process.

However, if the victim was able to prevent the helping party from using excessive force, it is obligatory on them to do so. The party who have sought help should not indemnify any injury or loss caused by the helping party; the latter are responsible for their own actions.

181. Should a scuffle erupt between two people, resulting in mutual injury, both the parties involved should indemnify one another's injury or loss of property. However, should any party back off, and the other party continue with the fight, forcing them to take action to stop the aggression, and causing injury to the attacker in the process, they should not be held accountable to compensate the attacker.

Defending Other People

Should another person not be capable of warding off danger to themselves or their property, or even being capable, yet not aware of the danger, it is obligatory on the *mukallaf* to come to their rescue. This should be the case, even if, in the process, one could lose their life or sustain any other injury.

If the other person is capable of defending themselves, yet they chose to ignore their responsibility instead, it is not obligatory to come to their rescue, as individuals. That said, it is permissible, but not obligatory, to protect them against aggression, in the event of real danger which may lead to death or less than that, such as blindness, paralysis, and insanity.

Generally speaking, all the rules governing self-defence are applicable to defending the others; one should, however, take note of the following:

i. All that which is applicable to the person is applicable to their *mahaarim*, i.e. father, offspring, wife, brothers and sisters and their offspring, and paternal/maternal uncles and aunts.

Aggression is one whether it results in a personal injury or a breach of one's honour and integrity, such as rape, or what is less than it.

ii. It is also obligatory to defend all other categories of people, other than those *mahaarim* mentioned in the preceding point, including the individual's relatives and Muslims at large.

However, in getting involved in such activity, the person should ensure that no serious harm would befall them of the type which is greater than that of the danger they aspire to repel, especially where there is a possibility that they might lose their life or sustain a less serious injury.

In case the potential injury falls short of death, or that of its league, it is permissible rather than obligatory to engage in the defence. Should it entail death or the like, it is not permissible, let alone not becoming obligatory.

Protecting One's Property

It is permissible to protect one's property from theft or damage, even if it leads to killing the aggressor or the defender; it is permissible, though, not to engage in such activity and let the aggressor off the hook.

The rules governing the indemnity, or lack of it, of any loss sustained by the aggressor, discussed previously are applicable here. Likewise, one should not lose sight of exhausting all means, i.e. from the less harmful to the most injurious, in repelling aggression.

Just as the person is allowed to defend themselves and property, so are they allowed to defend their family and property. As for engaging in protecting the property of other people, they are permitted to do so, should they be certain that they are not going to put themselves in harm's way.

National Defence

According to the prevailing international codes of conduct, every Muslim state is considered a homeland to those living in it. This also applies to lands where Muslims form the majority. Thus, any aggression directed against such lands, be it through occupation or any other form, must be regarded as aggression against the population.

Should Muslim lands be invaded by a foreign power among the infidels, it is the duty of their own population, by way of *wajibun kifa'ie*, to use [all means at their disposal] to liberate their land and push back the aggressor. If they fail, it becomes obligatory on those closest, then the closer to them and son on, to come to their rescue.

However, two points have to be borne in mind, i.e. such obligation is of the *wajibun kifa'ie* type and the help should be commensurate with one's ability and means.

If the invader and aggressor is the ruler of another Muslim country, this falls within the definition of injustice *(baghy)* where reconciliation between the two parties should be sought.

Should one party do injustice to the other, they should be fought under a different definition, i.e. not defence, because what we are discussing now is the mechanics of reversing the aggression that has befallen a Muslim country, within the framework of the term of "homeland" of a group of Muslims taking it for their residence. And since the aggression constituted a threat to their own being and living in stability and peace, defending them is sanctioned.

182. Defence is not the exclusive preserve of men and youth, rather it covers all people according to their ability and the level of defence; men and women, old and young, the healthy and the sick are all included. However, if sufficient numbers of defenders take it upon themselves to do the job, the rest are absolved of the responsibility

183. The obligation could be of the *wajibun aini* type, i.e. for those with specialized expertise who are vital for the effort. Such must take the initiative in volunteering their services; it is not permissible for them to be apathetic or to dodge their responsibility. Indeed, it becomes obligatory on those of them who live outside their homeland to return to do what is required of them.

184. In case it is not feasible to obey the just jurist-ruler *(alwaliyyul faqih)*, and it is felt that it is necessary to immediately start the defence operation, probity of the person, among Muslims, leading the operation should not become an issue, especially, where his expertise is a forgone conclusion. Indeed, it may become obligatory to obey the commands of the person, who has a proven track record and whose fidelity has been tested, even if they were non-Muslim. This should be the case, if there were no other commanders available among Muslims.

However, should it be feasible to obey the commands of the just jurist-ruler, sanctioned defence is within his prerogative. It should, therefore, follow that no one else should engage in any defence outside his jurisdiction and what he sees fit.

185. It is obligatory on the population of the occupied land to provide every possible support and protection to the fighters who are carrying out the duty of defending the land, whatever it takes to bring the struggle to a successful end, be it material or moral support, taking care of the families of the martyrs, etc.

186. It is permissible for the offspring not to obtain their parents' permission to embark on the job of defending the land, should the obligation be of the *wajibun kifa'ie* type. Indeed, it is absolutely within the offspring right to do so, even if they were prevented by their parents.

187. The Zionist entity occupying Palestinian lands and territories in south Lebanon and Syria is an aggressor and a usurping one. It is, therefore, obligatory to wage war against it till the liberation of all the occupied lands. Also, it is not permissible to have a truce, make peace with that entity, or condone its occupation of Muslim lands. Furthermore, it is not permissible to have any sort of dealing with the Zionist entity.

188. Should the nature of the confrontation with the enemy necessitate that the mujahidin engage in operations where they might get martyred, it is wholly justifiable. Indeed, it might become obligatory, if victory depended, in a greater measure, on such operations. It shall, therefore, not be treated as though one risks danger *(tahlukah)*, [i.e. for no good reason].

This is so as the evidence in favour of jihad is absolute *(mutlaq)*. To start with, jihad is predicated on sacrificing oneself. Even if, for the sake of the argument, it means risking danger, making the embarkation on such an enterprise *haraam* where there is no more important Islamic interest that can be served, i.e. its being objectionable *(haraam)*, can no longer be sustained. This is particularly true, where a more important interest is served.

189. In this day and age sovereign countries may not be subjugated by a land invasion. Subjugation could take the form of imposing a repressive, or a client, regime; it may be subjected to economic aggression, such as unfavourable trade agreements, and so forth. In such a case, the obligation, of the *wajibun kifa'ie* type, is to fight off these schemings with the appropriate means, as the leadership of the just jurist sees fit.

Reprisal

This principle is based on the Qur'anic *ayahs*, **"..whoever then acts aggressively against you, inflict injury on them equivalent to the injury they have inflicted on you „"** (2/194). **".. the punishment of an evil is the like of it..".** (10/27).

These two verses state clearly the extent of using retaliatory measures in repelling aggression, i.e. like for like.

However, the topic we have so far been dealing with is that of defending oneself, honour, and property, which may entail sacrificing oneself, or sustaining any other injury, in the process. This may seem contradictory.

In truth, defence is the action taken to nip aggression in the bud. Just as the *shari'a* has ruled that one should not give in to the aggressor, so has it ruled that one should be prevented from initiating aggression and; it has made standing up to aggression obligatory, hence the rules regulating that.

As for "reprisal", it deals with the issues resulting from the aggression after it has taken place, regardless of whether or not any steps to avert it were taken. It deals with the retaliatory options open to the victim to eliminate the consequences of aggression, should they have the means of embarking on them.

Perhaps, this matter is more appropriately discussed under "retribution" *(qasaas)* rather than defence; therefore, it is discussed in detail in the place where it belongs. However, we will confine the discussion here to those aspects which are related to the subject we are addressing:

190. Retaliation should be taken up in line with the original aggression, should it be quantified. For example, one could trade insults, blows, wounds, fractures, etc.

If the crime is of that which cannot be quantified, such as concussion and rupture, the principle of reciprocity should not be applied. Instead, compensation could be accepted. However, in all cases, forgiving is more of a pious thing to do and is an example of standing on a higher moral ground.

191. Certain insults could amount to defamation *(qathf)*, which should entail punishment. Such cannot be traded, because slander is

absolutely *haraam*, even by way of retaliation. Furthermore, it may entail involving one's family who should be spared the slinging match of insults.

Apart from that, other types of insults can be returned to the aggressor, provided they do not lead to committing that which is *haraam*, such as the use of obscene language *(fuhsh)*. The one at the receiving end could, though, return the insult using rude language, that is neither *haraam* nor actually descriptive of the aggressor, i.e. false accusation.

However, it goes without saying that elevating oneself above any mud slinging is much better for restoring one's dignity and is indicative of good manners.

192. In waging a war of aggression, the enemy may resort to using internationally banned weapons, attacking civilian targets, and so forth. It is permissible to retaliate in kind. Indeed, it is permissible for the mujahidin to engage, at the start, in such warfare, if in so doing they can nip the aggression in the bud, to avert a greater potential damage. However, identifying its purposes and means is a very important and highly sensitive job, which should be left to the *Marji'* and his aides among the experts.

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