



HAJJ THE ISLAMIC PILGRIMAGE
ACCORDING TO FIVE SCHOOLS OF
ISLAMIC LAW

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Hajj The Islamic Pilgrimage According to 5 Schools of Islamic Law

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Part 1

The Hajj

The Acts of the Hajj

At the beginning, in order to make it easier for the reader to follow the opinions of the five schools of fiqh about various aspects of Hajj, we shall briefly outline their sequence as ordained by the Shari'ah.

The Hajj pilgrim coming from a place distant from Mecca assumes *ihram*[1] from the *miqat*[2] on his way, or from a point parallel to the closest *miqat*, and starts reciting the *talbiyah*.[3] In this there is no difference between one performing `Umrah *mufradah* or any of the three types of Hajj (i.e. *tamattu*, *ifrad*, *qiran*). However, those who live within the haram[4] of Mecca assume *ihram* from their houses.[5]

On sighting the Holy Ka'bah, he recites *takbir* اللهُ أَكْبَرُ (i.e. 'God is the greatest') and *tahlil* لا إله إلا اللهُ (i.e. 'There is no god except Allah') which is *mustahabb* [6] (desirable, though not obligatory). On entering Mecca, he takes a bath, which is again *mustahabb*. After entering al-Masjid al-Haram, first he greets the Black Stone (*al-Hajarat-'Aswad*) - if possible kisses it, otherwise makes a gesture with his hand - then makes the *tawaf* (seven fold circumambulation of the Ka'bah) of the first entry, which is *mustahabb* for one performing *Hajj al-'ifrad* or *Hajjal-qiran*. Then he offers the two *raka'at* of the *tawaf*, again greets the Black Stone if he can, and leaves al-Masjid al-Haram. After this, he remains in the state of *ihram* in Mecca. On the day of *tarwiyah*, i.e. the eighth day of the month of Dhu al-Hijjah, or if he wants a day earlier, he goes forth towards `Arafat.

If the pilgrim has come for `Umrah *mufradah* *Hajj al-tamattu*; he performs the *tawaf* of the entry, which is obligatory (*wajib*) for him, and prays the two *raka'at* of the *tawaf*. Then he performs the *sa'y* between Safa and Marwah, and, following it, the *halq* (complete head shave) or *taqsir* [7] (partial shortening of the hair of the head). Then he is relieved of the state of *ihram* and its related restrictions, and things prohibited in *ihram* become permissible for him, including sexual intercourse. [8] Then he proceeds from Mecca after assuming *ihram* for a second time, early enough to be present at the *wuquf* (halt) at `

Arafat (referred to as `mawqif, ; i.e. the place of halting) at noontime on the ninth of Dhu al-Hijjah. Assumption of *ihram* on the day of *tarwiyah*, i.e. eighth Dhu al-Hijjah, is preferable.

The Hajj pilgrim, irrespective of the type of Hajj he intends to perform, turns towards `Arafat, passing through Mina. The period of the *wuquf* at `Arafat is, for the Hanafi, Shafi'i, and Maliki schools, from the noon of the ninth until the day break of the tenth; for the Hanbali school, from the daybreak of the ninth until the daybreak of the tenth; and for the Imamiyyah, from noon until sunset on the ninth, and in exigency until the daybreak of the tenth. [9] The pilgrim offers invocations (*dua*) at `Arafat, preferably (*istihbaban*) in an imploring manner.

Then he turns towards Muzdalifah (also called al-Mash'ar al-Haram), where he offers the *Maghrib* and *Isha* prayers on the night of the `Id (i.e. the tenth of Dhu al-Hijjah). Offering the two prayers immediately after one another is considered *mustahabb* by all the five schools. According to the Hanafi, Shafi'i, and Hanbali schools, it is obligatory to spend this night (i.e. the night of the `Id) at Muzdalifah; for the Imamiyyah, it is not obligatory but preferable. After the daybreak, he makes

the *wuqf* at al-Mash'ar al-Haram, which is *wajib* for the Imamiyyah and *mustahabb* for other schools. And at Muzdalifah, preferably, he picks up seven pebbles to be thrown at Mina.

After this, he turns towards Mina before sunrise on the day of `Id. There he performs the ritual throwing of stones, called *ramy*, at Jamarat al-`Aqabah, no matter which of the three kinds of Hajj he is performing. The *ramy* is performed between sunrise and sunset, preferably (*istihbaban*) accompanied by *takbir* and *tasbi* **سُبْحَانَ اللَّهِ** (i.e. proclaiming God's glory by saying `How far God is from every imperfection!').

Then if a non-Meccan on *Hajj al-tamattu*; he should slaughter the sacrificial animal (a camel, cow or a sheep), by agreement of all the five schools. However, it is not obligatory for one on *Hajj al-'ifrad*; again by consensus of all the five schools. For one on *Hajj al-qiran*, the sacrifice is obligatory from the viewpoint of the four Sunni schools, and for the Imamiyyah it is not obligatory except when the pilgrim brings the sacrificial animal (*al-hady*) along with him at the time of assuming *ihram*.

For a Meccan performing *Hajj al-tamattu*; the sacrifice is obligatory from the viewpoint of the Imamiyyah school, but not according to the four Sunni schools.

After this, he performs the *halq* or *taqsir*, irrespective of the kind of Hajj he is performing. After *halq* or *taqsir*, everything except sexual intercourse becomes permissible for him according to the Hanbali, Shafi'i and Hanafi schools, and according to the Maliki and Imamiyyah schools, everything except intercourse and perfume.

Then he returns to Mecca on the same day, i.e. the day of the `Id, performs the *tawaf al-ziyarah*, prays its related two *raka'at*, regardless of which kind of Hajj he is performing. After this, according to the four Sunni schools, he is free from all restrictions including that of sexual intercourse. Then he performs the *sa'y* between Safa and Marwah if on *Hajj al-tamattu*; by agreement of all the five schools. For the Imamiyyah school, the *sa'y* after *tawaf al-ziyarah* is also obligatory for one performing *Hajj al-qiran* and *Hajj al-'ifrad*. But for other schools, it is not obligatory if the pilgrim had performed the *sa'y* after the *tawaf* of first entry, otherwise it is.

For the Imamiyyah, it is obligatory for all the types of Hajj to perform another *tawaf* after this *sa'y*. Without this *tawaf*, called *tawaf al-nisa*; one is not relieved of the interdiction of abstinence from intercourse.

Then the pilgrim returns to Mina on the same day, i.e. the tenth, where he sleeps on the night of the eleventh, performs the threefold throwing of stones (*ramy al-jamarat*) during the interval from the noon until the sunset of the eleventh- by consensus of all the five schools. For the Imamiyyah, the *ramy* is permissible after sunrise and before noon. After this, on the day of the twelfth, he does what he had done the day before. All the legal schools agree that he may now depart from Mina before sunset. And if he stays there until sunset, he is obliged to spend the night of the thirteenth there and to perform the threefold *ramy* on the day of thirteenth.

After the *ramy*, he returns to Mecca, before or after noon. On entering Mecca, he performs another *tawaf*, *tawaf al-wada`* (*the tawaf of farewell*), which is *mustahabb* for the Imamiyyah and Maliki schools and obligatory for the non-Meccans from the viewpoint of the remaining three. Here

the acts of the Hajj come to conclusion.

The Conditions (Shurut) that make the Hajj Obligatory (Wajib)

The Proviso of Bulugh

The Hajj is not obligatory for children, regardless of whether a child is of the age of discretion (*mumayyiz*) or not (*ghayr mumayyiz*). For a *mumayyiz* child, the Hajj is voluntary and valid. However, it does not relieve him/her of the obligation to perform the obligatory Hajj (called *hijjat ib*) for a Muslim are: maturity (*bulugh*), sanity (*`aql*), and `capability' (*istita'ah*).*al-Islam*) later as an adult possessing *istita'ah*; this, in case he/she does not attain adulthood before the wuqf. On this all the five schools of fiqh are in agreement.

It is permissible for the guardian (*wali*) of a *ghayr mumayyiz* child to take him along on the Hajj pilgrimage. In that case, he puts on the child the dress of *ihram*; instructs him to say the *talbiyah*, if the child can say it well, or otherwise says it himself on the child's behalf; and is cautious lest the child commits some act unlawful (*haram*) for the pilgrims (*hujjaj*). The accompanying guardian also tells him to perform every act that the child can perform himself, and what he cannot, the guardian performs it on the child's behalf.

The schools of fiqh differ on two questions relating to the Hajj of a *mumayyiz* child: firstly, whether his Hajj is valid, irrespective of the permission of the guardian; secondly, whether he is relieved of the obligation of Hajj if he attains adulthood before *mawqif*. According to the Imamiyyah, Hanbali, and Shafi'i schools, the guardian's permission is a provision for the *ihram* to be valid. According to Abu Hanifah, the idea of validity is inapplicable to the child's Hajj, even if *mumayyiz*, and regardless of whether he obtains the permission of the guardian or not; because, according to him, there is nothing to a child's Hajj except its significance as an exercise (*Fath al-Bari, al-Mughni, al-Tadhkirah*).

According to the Imamiyyah, Hanbali and Shafi'i schools, if the child attains adulthood before *mawqif*, his obligatory duty of Hajj (*hijjat al-Islam*) is thereby fulfilled. And according to Imamiyyah and Maliki schools, the duty is fulfilled if he renews *ihram* (as an adult), otherwise not; which means that he should start the Hajj all over again from the beginning. (*al-Tadhkirah*)

Insanity

Basically the condition of insanity relieves a person of all duties. Even if he was to perform the Hajj, and presumably in the way expected of a sane person, it would not fulfil his obligatory duty were he to return to sanity. If his insanity is periodic, when regained for a sufficiently long interval it is *wajib* for him to perform the Hajj with all its conditions and in all its details. However, if the interval of sanity is not sufficient to perform all the acts of the Hajj, he is quit of the obligation.

Istita'ah

All the five schools of fiqh agree that *istita'ah* is a requirement for the Hajj duty to become obligatory as mentioned by the Qu'ranic verse:

مَنْ اسْتَطَاعَ إِلَيْهِ سَبِيلًا

(“... whoever is able to make his way there”). *The Qur'an, 3:97*

However, there is disagreement about the meaning of *istita`ah*. In hadith it has been defined as consisting of "*al-zad wa al-rahilah*". *`Al-rahilah*' implies the expenses of to and fro journey to Mecca, and *`al-zad*' stands for the expenses required for transport, food, lodging, passport fees, and the like. Moreover, the funds needed to meet such expenses must come out of the surplus after paying one's debts, after arranging for one's family's livelihood, meeting the requirements of one's source of income (such as land for a farmer, tools for a craftsman, capital for a tradesman, and so on), and without compromising the security of his life, property and honour.

All schools agree about it except the Malikis, who say that the duty of Hajj is obligatory for anyone who can walk. The Malikis also do not consider the necessity of providing for the living expenses of the family. Rather, they consider it compulsory for one to sell off his essential means of life, such as land, livestock, tools, and even books and unessential clothes. (*al-Fiqh `ala al-madhahib al-'arba`ah*).

If a person upon whom the Hajj duty is not obligatory due to absence of *istita'ah*, takes upon himself the burden and performs the Hajj, in case he attains *istita'ah* afterwards, is his first Hajj sufficient or should he perform the Hajj once again? According to the Maliki and Hanafi schools, yes, repetition is not compulsory. According to the Hanbali school, yes, but a duty left unattended, such as an unpaid debt, must be discharged.

According to the Imamiyyah school, it does not suffice the obligation of Hajj if he attains *istita'ah* afterwards, because the provisional is inseparable from the provision both in its presence and its absence. The Hajj performed before the attainment of *istita'ah* is considered supererogatory (*nafl*). Later, with its realization, repetition of the Hajj becomes obligatory.

Immediacy (al-Fawr)

The Imamiyyah, the Maliki, and the Hanbali schools consider the obligation (*wujub*) of the Hajj duty to be immediately applicable (*fawri*); i.e. it is not permissible to delay it from the moment of its possibility. It is sinful to delay, though the Hajj performed with delay is correct and fulfils the obligation. The author of *al-Jawahir* says:

The immediacy of the obligation of Hajj means that it is necessary to take initiative to perform the Hajj in the first year of attaining *istita'ah*, and failing that at one's next earliest opportunity... Thereafter, there is no doubt about the sinfulness of the delay if one were to forgo the first opportunity in the case of absence of another.

According to the Shafi`i school, the obligation of Hajj is not immediate (upon attainment of *istita'ah*); rather one may delay it and perform it when he wishes.[10] According to Abu Yusuf, the Hajj is an immediate obligation. Muhammad ibn al-Hasan considers delay (*tarakhi*) permissible. Abu Hanifah has no explicit text on the matter, though some of his contemporaries state that he implicitly believes in the immediacy of the obligation.

Secondary Issues Related to *Istita`ah*

Women and the Hajj

Are there any additional conditions for women with regard to performance of the Hajj? All the five schools agree that it is not required that a woman should obtain the husband's permission for the obligatory Hajj duty, nor may he prevent her from undertaking it. However, there is a difference of opinion about whether the Hajj is obligatory upon her or not if she does not find a husband or a *mahram* [11] to accompany her on the journey.

According to the Imamiyyah, Maliki and Shafi`i schools, the *mahram's* company or that of the husband is not at all a condition, regardless of whether she is young or old, married or unmarried; since the *mahram's* company is a means of her safety, not an end in itself. Accordingly, we have two cases: either she feels confident of her security on the journey, or she doesn't. In the first case, the Hajj is obligatory upon her and the *mahram's* company is irrelevant. In the second case, she lacks the requirement of *istita'ah*, in spite of the *mahram's* company.

Accordingly, there is no essential difference between a man and a woman in this respect.

According to the Hanbali and Hanafi schools, the company of the husband or *mahram* is a provision for the woman's Hajj, even if she were old. It is not permissible for her to perform the Hajj without his company. The Hanafi school further stipulates the condition that her location should be at a distance of three days' journey from Mecca.

Bequest (al-Badhl)

Al-Mughni, a text of Hanbali fiqh, states: "If a person bequeaths money to another, it is not binding upon him to accept it, and it does not make the recipient *mustati`* (possessing *istita'ah*), irrespective of whether the bequeathed is a relative or a stranger, regardless of whether the bequest suffices for the expenses of the journey and food. According to al-Shafi`i, if the bequest is made by one's son, enough to enable him to undertake the Hajj journey, the Hajj becomes obligatory. This is because it enables him to perform the Hajj without having to bear a stranger's favour or without any accompanying encumbrance or harm.

According to the Imamiyyah school, if the bequest is an unconditional gift made without the provision of performing the Hajj by the recipient, the Hajj is not binding, irrespective of who makes the bequest. But if the bequest is made with the condition that one perform the Hajj, the acceptance of the bequest is binding and may not be rejected, even if the bequest is made by a stranger; since it makes him *mustati`* to undertake the pilgrimage.

Marriage

What if one has only enough money either to get married or to perform the Hajj? Which of them is prior? The Hanafi text *Fath al-qadir* (vol. II, "*Bab al-Hajj*") mentions this question being put to Abu Hanifah, who, in his reply, considered that priority lies with the Hajj. The generality (*itlaq*) of this answer in which he gives priority to the Hajj, taking into consideration that marriage is obligatory under certain conditions, allows us to conclude that for Abu Hanifah delay in Hajj is not permissible.

According to the Shafi'i, Hanbali and Imamiyyah scholars, marriage has priority if there is

likelihood of distress (*haraj*) or difficulty (*mashaqqah*) in refraining from marriage. In that case priority does not lie with the Hajj. (*Kifayat al-'akhbar, al-Mughni, al-'Urwat al-wuthqa*)

Khums and Zakat

Payment of the *khums* and *zakat* has priority over the Hajj. The condition of *istita'ah* is not realized until both are paid off, like other kinds of debts.

Istita'ah by Chance

If someone travels to a place in the vicinity of the holy city of Mecca, on business or for some other purpose, and his stay continues until the Hajj season, and if it is possible for him to reach the Holy Ka'bah, he thereby becomes *mustati'*. And if he were to return home without performing the Hajj, by consensus of all the schools, he is not relieved of the obligation.

Istinabah (Deputation)

The Islamic duties (*'ibadat*) are divisible into three categories, depending on a duty's nature whether it mainly involves bodily acts or financial expenditure.

1. The purely bodily *'ibadat* are those which, like fasting (*sawm*) and prayer (*salat*), do not involve any financial aspect. According to the four Sunni schools, such duties cannot in any circumstance be delegated to a proxy (*na'ib*), either on behalf of a living or a dead person. But according to the Imamiyyah school, taking a *na'ib* is permissible on behalf of a dead person, though not for a living person, to perform *sawm* and *salat* for him, and under all circumstances.

2. The purely financial *'ibadat* are those which do not involve bodily acts, such as *khums* and *zakat*. In such *'ibadat*, all legal schools agree, it is permissible to take a *na'ib*. It is permissible for one to depute another to take out *zakat* and pay other kind of alms (*sadaqat*) from his assets.

3. The duties which involve both bodily and financial aspects, such as the Hajj, which requires such bodily acts as *tawaf* (circumambulation of the Ka'bah), *say* (to and fro movement between Marwah and Safa), *ramy* (the symbolic throwing of stones), and financial expenditures such as for the journey and its accompanying requirements.

All the five legal schools agree that one who is capable of undertaking the Hajj in person and fulfils all the conditions thereof, should do so himself in person. It is not permissible for him to depute another to undertake it, and if he does so it would not relieve him of his obligation to perform it himself. If he does not do it in his life, according to the Shafi'i, Hanbali and Imamiyyah schools, he is not relieved of the duty because of the preponderance of the financial aspect, and it is obligatory to hire someone to perform the Hajj with a similar expenditure. In case he does not make a will for the Hajj, the amount should be taken out from his undivided heritage.[12]

According to the Hanafi and Maliki schools, he is relieved of the obligation due to the bodily aspect; but if he mentions it in his will, the expense is taken out from the one third of his inheritance--like all other bequests--and if he doesn't, *istinabah* is not obligatory.

The Physically Incapable (al-Qadir al-'Ajiz)

One who meets all the financial conditions for the Hajj pilgrimage but is incapable of undertaking

it personally due to old age or some incurable disease, all the legal schools agree, is relieved of the obligation of performing the Hajj in person, for God says:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

(... and He has laid no impediment in your religion ...).[13]

However, it is obligatory upon him to hire someone to perform the Hajj for him. But if he doesn't, is it a negligence of a duty whose fulfilment continues to remain upon him? All the legal schools, with the exception of the Maliki, agree that it is obligatory upon him to hire someone to perform the Hajj for him. The Maliki says that the Hajj is not obligatory upon one who is incapable of undertaking it in person. (*al-Mughni, al-Tadhkirah*)

Furthermore, if a sick person recovers after deputing someone to perform his Hajj, is it obligatory upon him on recovery to perform the Hajj in person? According to the Hanbali school, another Hajj is not obligatory. But according to the Imamiyyah, Shafi'i and Hanafi schools it is obligatory, because what was fulfilled was the financial obligation, and the bodily obligation has remained unfulfilled.

Istinabah in al-Hajj al-Mustahabb

According to the Imamiyyah and Hanafi legal schools; one who has performed the *Hijjat al-Islam*, if he wants to depute another for a voluntary, *mustahabb* Hajj, may do so, even if he is capable of undertaking it in person. But according to the Shafi'i school, it is not permissible. There are two narrations from Ahmad ibn Hanbal, one indicating prohibition and the other permission.

According to the Maliki school, it is permissible for an incurable sick person and for one who has performed the obligatory Hajj to hire another for the Hajj. The Hajj so performed is valid, though *makruh* (reprehensible). It is not considered as the Hajj of the hirer (*mustajir*) and is counted as the *mustahabb* Hajj of the hired (*ajir*).

The hirer gets the reward for providing assistance in the performance of the Hajj and shares the blessings of the prayers offered. When the Hajj is performed for the benefit of a dead person, irrespective of whether he has asked for it in his will or not, it is counted neither as fulfilment of the duty (*fard*) nor as a supererogatory (*nafl*) act, nor does it relieve him of the duty of the obligatory Hajj. (*al-Fiqh `ala al-madhahib al-'arba`ah*).

The Conditions for the Na'ib

The *na'ib* should fulfil the conditions of: *bulugh* (adulthood), *`aql* (sanity), belief in Islam, exemption from the duty of obligatory Hajj, and ability to perform the Hajj properly. A man may represent a woman and a woman may represent a man, even if both the *na'ib* and the one whom he represents have not performed the Hajj before.[14]

Should the *na'ib* commence the journey from his own place or that of the deceased whom he represents, or from one of the *mawaqit*? According to the Hanafi and Maliki schools, the *na'ib* should commence the pilgrimage journey from the place of the deceased, if he has not specified the starting point; otherwise according to his wish.

According to the Shafi'i school, the pilgrimage commences from one of the *mawaqit*; if the

deceased person has specified one, then the *na'ib* must act accordingly, otherwise he is free to choose one of the *mawaqit*.

According to the Hanbali school, the *na'ib* must start from the place that the deceased was obliged to begin from if he had performed the Hajj himself, and not from the place of his death. If the deceased person had attained *istita'ah* at a place to which he had migrated, later returning to his own place, the *na'ib* should start from the place of migration, not from the deceased person's home, except when the distance (between his home-town and the place of migration) is less than what is required for *qasr* in prayers performed by a traveller.^[15]

According to the Imamiyyah school, the Hajj is classified into *miqati* (i.e. one which starts from one of the *mawaqit*) and *baladi* (i.e. one which starts from the town of the deceased). If the deceased has specified one of these two kinds, then the one specified.

If he has not specified, any one of the two may be performed. Otherwise the Hajj is *miqati* and, if possible, starts from the *miqat* nearest to Mecca, or else the *miqat* nearest to the town of the deceased. The cost of *al-Hijjat al-miqatiyyah* is taken out from the undivided legacy in the case of obligatory Hajj, and the expense exceeding the cost of *al-Hijjat al-miqatiyyah* is taken from the one third. (*al-Jawahir*)

Delay by the Na'ib

Once the *na'ib* is hired, it is obligatory for him to act with immediacy. He may not postpone the Hajj beyond the first year. Also, it is not permissible for him to depute another, since the duty is his own. If we do not know that he actually went on the pilgrimage and performed all its essential acts, or if we doubt whether he performed them correctly and properly or not, or whether he failed to fulfil any of its obligatory essentials, then we assume that he acted correctly and properly, unless there is proof to the contrary.

Change of Purpose by the Na'ib (al-`Udal)

According to the Hanafi and Imamiyyah schools, if one specifies to the *na'ib* a particular kind of Hajj; such as *Jajj al-'ifrad*, or *Hajj al-qiran*; then it is not permissible for him to make any change. However, if a particular town was specified as the starting point and the *na'ib* starts from another town, the purpose of the one who hires him is considered as fulfilled if the said specification was not really intended by the hirer; i.e. if by mentioning the route he meant the Hajj itself, and not the route specifically. (*al-Tadhkirah, al-Fiqh `ala al-madhahib al-'arba`ah*).

[1] [2] [3] [4] [5] [6] [7] [8] [9] [10] [11] [12] [13] [14] [15]

Part 2

Al-‘Umrah

The Meaning of `Umrah

The word *`umrah* in common speech "visit", but in the Shari`ah it means paying a visit to the *Bayt Allah al-Haram* (the Sacred House of God, i.e. the Holy Ka'bah) in a specific form.

The Kinds of `Umrah

The `Umrah is of two kinds: the first which is performed independently of the Hajj (called *al-`Umrat al-mufradah al-mustaqillah `an al-Hajj*), and the second kind which is performed in conjunction with the Hajj (*al-`Umrat al-mundammah ila al-Hajj*). The *al-`Umrat al-mufradah*, the independent `Umrah, all the five legal schools agree, can be performed at all times of the year, though it is meritorious to perform it during the month of Rajab according to the Imamiyyah, and in Ramadan according to the four Sunni schools.

The time of the conjugate `Umrah, which is performed before the Hajj and in the course of the same journey by the Hujjaj coming to the Holy Makkah from distant countries, by consensus of all five schools, extends from Shawwal to Dhul Hijjah. However, there is disagreement among legists about the month of Dhul Hijjah, whether the entire month or only the first ten days belong to the Hajj season. Anyone who performs the conjugate `Umrah is considered relieved of the obligation to perform the *al-`Umrat al-mufradah* by those who believe in its being obligatory.

Difference Between the Two Kinds of `Umrah

The Imamiyyah scholars make a distinction between *al-`Umrat al-mufradah* and *`Umrat al-tamattu`*, citing the following reasons:

1. The *Tawaf al-nisa'* (to be explained later) is obligatory in *al-`Umrat al-mufradah*, not in the *`Umrat al-tamattu`*; and according to some jurists is forbidden.
2. The time of *`Umrat al-tamattu`* extends from the first of the month of Shawwal to the ninth of Dhu al-Hijjah, whereas *al-`Umrat al-mufradah* can be performed at all times of the year.
3. The pilgrim (*mu'tamir*) performing the *`Umrat al-tamattu`* is required to shorten his hair (*al-taqsir*), whereas the *mu'tamir* of *al-`Umrat al-mufradah* can choose between shortening his hair or completely shaving his head (*al-halq*), as shall be explained later.
4. The *`Umrat al-tamattu`* and the Hajj occur in the same year, which is not the case with *al-`Umrat al-mufradah*.

Karrarah, in his book *al-Din wa al-Hajj `ala al-madhahib al-'arba'ah*, says that, according to the Maliki and Shafi`i schools, for the *mu'tamir* of *al-`Umrat al-mufradah* all things are permissible, even sexual intercourse, after the shortening of hair (*al-taqsir*) or the head shave (*al-halq*), irrespective of whether he brings along with him the sacrificial offering (*al-hady*) or not. But according to the Hanbali and Hanafi schools, the *mu'tamir* gets away with *al-taqsir* or *al-halq*, if he does not bring the sacrificial offering; otherwise he remains in the state of *ihram* until he gets through the Hajj and the `Umrah on the day of sacrifice (*yawm al-nahr*).

The Conditions of the 'Umrah

The conditions for the `Umrah are essentially the same as mentioned in the case of the Hajj.

The Status of `Umrah

According to the Hanafi and Maliki schools, the `Umrah is not obligatory but a highly recommended *sunnah*(*sunnah mu'akkadah*). But according to the Shafi'i and Hanbali schools and the majority of Imamiyyah legists, it is obligatory (*wajib*) for one who is *mustati`*, and desirable (*mustahabb*) for one who is not *mustati`*: In support, they cite the Qur'anic verse:

وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ

(Perform the Hajj and the `Umrah for Allah.)[1]

(*Fiqh al-Sunnah*, vol. V; *al-Fiqh `ala al-madhahib al-'arba`ah*; *al-Jawahir*; *al-Mughni*)[2]

The Acts of the `Umrah

According to *al-Fiqh `ala al-madhahib al-'arba`ah*, whatever is *wajib* or *sunnah* for the Hajj is also *wajib* and *sunnah* for the `Umrah. But the `Umrah does differ from the Hajj in certain respects: there is no specific time for performing the `Umrah; it does not involve the halt (*wuquf*) in the plain of `Arafat; neither the departure thenceforth to al-Muzdalifah; nor the *ramy al-jamarat*. [3]

The Imamiyyah book *al-Jawahir* mentions that: "The obligatory acts (*af'al* or *a'mal*) of the Hajj are twelve: *ihram*; the *wuquf* at `Arafat; the *wuquf* at al-Mash'ar al-Haram; the entry into Mina; the *ramy*; the *dhibh* (sacrifice); its related *taqsir* or *halq*; the *tawaf* (the sevenfold circumambulation of the Ka'bah), and its related *raka'at* (units of the length of prayers); the *sa'y*; the *tawaf al-nisa'*, and its related *raka'at*. The obligatory acts of *al-`Umrat al-mufradah* are eight: *niyyah* (intention); *ihram*[4]; *tawaf* its related *raka'at*; the *sa'y*; the *taqsi*; the *tawaf al-nisa'*; and its related *raka'at*."

This indicates that all the legal schools agree that the acts of the Hajj exceed those of the `Umrah by the acts associated with the *wuquf*. Moreover, the Imamiyyah school considers it obligatory for the performer of the *al-`Umrat al-mufradah* to perform a second *tawaf*, the *tawaf al-nisa'*. Similarly the Maliki school differs from others in considering *halq* or *taqsir* as non-obligatory for *al-`Umrat al-mufradah*.

Two Subsidiary Issues

1. The obligation (*wujub*) of *al-`Umrat al-mufradah* is not connected with the *istita`ah* for the Hajj. If, supposedly, it is possible for a person to go to Mecca at a time other than that of the Hajj and not possible at the time of the Hajj, then the `Umrah instead of the Hajj becomes obligatory for him. If he dies without performing it, its expense is taken out from his heritage." [5]

Similarly, if one has *istita`ah* for *Hajj al-'ifrad* instead of the `Umrah, it becomes obligatory upon him; because each of them is independent of the other. This applies to *al-`Umrat al-mufradah*. As to *Umrat al-tamattu`*, which shall be explained later, its *wujub* depends upon that of the Hajj, since it is a part of it.

2. According to the Imamiyyah, it is not permissible for one intending to enter the Holy Mecca to cross the *miqat* enter its *haram* (sacred precincts) without getting into the state of *ihram*, even if he has performed the Hajj and the `Umrah many times before. Only when the exit and entry recur several times during month, or when after entering the city as a *muhrim* he goes out any re-enters for a second time in less than thirty days, it is no obligatory. Therefore, *ihram* with respect to entry into Mecca is comparable to the *wudu'* before touching the Holy Qur'an. This clearly demonstrates the baselessness of the lie that the Shi`ah do not consider al-Bayt al-Haram as sacred, and that they pretend to perform the Hajj for the sake of polluting the holy sanctuaries. (!)

According to Abu Hanifah, it is not permissible to go beyond the *miqat* and enter the *haram* without *ihram*, but entry into the remaining area is permissible without *ihram*. Malik does not agree with this, and two opinions are ascribed to al-Shafi'i on the matter.

This much of discussion about the `Umrah is sufficient for throwing light upon it, so that the reader may grasp its difference with the Hajj, though only in some aspects. What we shall say later will offer further clarification.

[16] [17] [18] [19] [20]

Part 3

The Forms of Hajj

All the five legal schools agree that there are three kinds of Hajj: *tamattu`*, *qiran*, and *ifrad*. They also agree that by *Hajj al-tamattu`* is meant performance of the acts of the `Umrah during the months of the Hajj. The acts of the Hajj itself are performed after getting through the `Umrah. They also agree that by *Hajj al-ifrad* is meant performing the Hajj first and then, after getting through the acts of the Hajj, getting into the state of *ihram* for performing the `Umrah and its related acts. The four Sunni legal schools agree that the meaning of the *Hajj al-qiran* is to get into *ihram* for the Hajj and the `Umrah together. Then the *talbiyyah* uttered by the pilgrim is **لبيك اللهم بحج و عمرة**.

According to the Imamiyyah school, the *Hajj al-qiran* and *Hajj al-ifrad* are one and the same. There is no difference between them except when the pilgrim performing the *Hajj al-qiran* brings the *hady* at the time of assuming the *ihram*. Then it is obligatory upon him to offer what he has brought. But one who performs the *Hajj al-ifrad* has essentially no obligation to offer the *hady*.

In brief, the Imamiyyah do not consider it permissible to interchange two different *ihram*'s,[1] or to perform the Hajj and the `Umrah with a single *niyyah* (intention) under any condition; but the other legal schools permit it in *Hajj al-qiran*. They say that it has been named `al-qiran' because it involves union between the Hajj and the `Umrah. But the Imamiyyah say that it is because of the additional feature of the *hady* accompanying the pilgrim at the time of *ihram*.[2]

According to the four Sunni legal schools, it is permissible for the pilgrim, Meccan or non-Meccan, to choose from any of the three forms of the Hajj: *al-tamattu`*; *al-qiran*, or *al-ifrad*, without involving any *karahah*(reprehensibility). Only Abu Hanifah considers *Hajj al-tamattu`* and *Hajj al-qiran* as *makruh* for the Meccan.

The four Sunni legal schools also differ as to which of the three kinds of Hajj is superior to the others. The best according to the Shafi'i school is *al-ifrad*, and *al-tamattu`* is superior to *al-qiran*. According to the Hanafi school, *al-qiran* has greater merit than the other two. The best according to the Maliki school is *al-ifrad*, and according to the Hanbali and Imamiyyah schools is *al-tamattu`*.

According to the Imamiyyah school, *Hajj al-tamattu`* is obligatory upon one living at a distance of over forty-eight miles from Mecca, and he may not choose any other kind except in emergency. The *Hajj al-qiran* and *Hajj al-ifrad* are performable by the people of Mecca and those living around it within a distance of forty-eight miles, and it is not permissible for them to perform except one of these two kinds. The Imamiyyah base their argument on this verse of the Qur'an:

فَمَنْ تَمَنَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامُ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ تِلْكَ عَشْرَةٌ كَامِلَةٌ ذَلِكَ لِمَنْ لَمْ يَكُنْ أَهْلَهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ

...if any one wishes to continue the 'umra on to the hajj, He must make an offering, such as he can afford, but if he cannot afford it, He should fast three days during the hajj and seven days on his return, Making ten days in all. This is for those whose household is not in (the precincts of) the Sacred Mosque.....(2:196)

Moreover, according to the Imamiyyah school, it is not permissible for one obliged to perform the *Hajj al-tamattu`* to change over to something else, except for the problem of shortage of time

available, or, in the case of women, due to impending menses. In those cases it is permissible to change either to *al-qiran* or *al-'ifrad* on condition that the `Umrah is performed after the Hajj. The limit of the shortage of time is failure to be present at the *wuquf* in `Arafat until noon.

For one whose duty is *al-qiran* or *al-'ifrad*, such as the natives of Mecca or those from its surrounding region, it is not permissible to change to *al-tamattu`*, except in exigency (such as the fear of impending menses). After explaining this position of the Imamiyyah school, the author of *al-Jawahir* says, "I have not come across any different opinion on this matter."

And all the five legal schools agree that the *hady* is not compulsory for one performing Hajj *al-'ifrad*, though better if performed voluntarily.

[21] [22]

The 'Ihram

Mawaqit al-'Ihram

The *ihram* is compulsory for all the various kinds of Hajj as well as 'Umrah, and is regarded as their basic element (*rukhn*) by the Imamiyyah, and as obligatory by other schools. All the five schools agree that the *miqat* of the people of al-Madinah from where they assume *ihram* is Masjid al-Shajarah, also known as Dhu al-Hulayfah; [1] for the pilgrims of al-Sham (which includes the Syrians, the Lebanese, the Palestinians and the Jordanians, noting further that the routes have changed from what they used to be in the past), Morocco and Egypt the *miqat* is al-Juhfah; [2] for the pilgrims of Iraq, it is al-'Aqiq; [3] for those from Yemen and others who take the same route, it is Yalamlam. [4]

According to the Imamiyyah, *Qarn al-Manazil* [5] is the *miqat* for the people of al-Ta'if and those who take their route towards Makkah. But according to the four Sunni schools, it is the *miqat* of the people of Najd. The *miqat* for those from Najd and Iraq according to the Imamiyyah is al-'Aqiq. All the legal schools agree that these *mawaqit* also apply to those who in their journey take similar routes, even though they may not be natives of those regions.

For instance, if a Syrian starts on Hajj from al-Madinah, it is permissible for him to assume *ihram* from Dhu al-Hulayfah; if he starts on Hajj from Yemen, his *miqat* is Yalamlam; if from Iraq, then al-'Aqiq, and so on. If one does not pass the mentioned *mawaqit* on his route, the *miqat* for him is the place parallel to any one of them.

If someone lives at a place nearer to Makkah than any of the prescribed *mawaqit*, then he assumes *ihram* from the place of his residence. For, someone who resides in Makkah itself, his *miqat* is Makkah. For one performing the *al-'Umrat al-mufradah*, the *mawaqit*, according to the Imamiyyah, are the same as for the Hajj.

Ihram Before Miqat

The four Sunni legal schools agree on the permissibility of assuming *ihram* before the point of *miqat*, but disagree as to which has greater merit. According to Malik and Ibn Hanbal, *ihram* before *miqat* is more meritorious (*afdal*). According to Abu Hanifah, the merit lies in assuming *ihram* while starting the Hajj journey from one's town: Two opinions are ascribed to al-Shafi'i in this regard.

However, according to the Imamiyyah school, *ihram* before *miqat* is not permissible except for one who intends to perform the 'Umrah in the month of Rajab and is afraid of missing it if *ihram* is delayed until *miqat* is reached, and for one who makes a vow (*nadhr*) to assume *ihram* before the *miqat*. (*al-Tadhkirah, Fiqh al-Sunnah*)

Ihram after Miqat

There is consensus among all the legal schools that it is not permissible to cross the *miqat* without *ihram*, and one who does so must return to the *miqat* for assuming *ihram*. If he does not return, according to the four Sunni schools, his Hajj is correct though he should offer a *hady* in atonement. But if there be any impediment, such as fear of insecurity on the way or shortage of time, there is no sin. This, regardless of whether there are other *mawaqit* before him on his path or not.

According to the Imamiyyah, if he has deliberately neglected to assume *ihram* at the *miqat* while intending to perform the Hajj or the `Umrah, if he does not turn back to the *miqat*, there being no other *miqat* before him from which he can assume *ihram*, his *ihram* and Hajj are invalid, whether he had a valid pretext for not returning or not.

But if his failure to assume *ihram* at *miqat* was on account of forgetfulness or ignorance, if it is possible to return, he must do so; but if it is not possible, then from the next *miqat* before him. Otherwise he ought to assume *ihram* as far as possible outside the *haram* of Makkah, or within it; though the former is preferable. (*al-Tadhkirah, al-Fiqh `ala al-madhahib al-'arba`ah*)

Ihram before the Hajj Months

According to the Imamiyyah and Shafi'i schools, the *ihram* before the months of the Hajj is invalid if assumed with the purpose of Hajj, though it is valid when assumed for the purpose of the `Umrah. They cite in this regard the Qur'anic verse:

الْحَجُّ أَشْهُرٌ مَّعْلُومَاتٌ

The pilgrimage is (performed in) the well-known months...(2:197):

But according to the Hanafi, Maliki and Hanbali schools, it is permissible with *karahah*. (*al-Tadhkirah, Fiqh al-Sunnah*)

The Mustahabbat of Ihram

There is no disagreement among the legal schools with respect to the *ihram* being an essential *rukn* of the `Umrah and all the three forms of the Hajj, namely, *tamattu*; *qiran* and *ifrad*. Also, there is no difference of opinion that *ihram* is the first act of the pilgrim, irrespective of whether his purpose is `Umrah *mufradah*, or any of the three forms of Hajj. There are certain *wajibat* and *mustahabbat* related to the *ihram*.

The legal schools agree that it is *mustahabb* for anyone intending *ihram* to cleanse his body, clip his fingernails, shorten his moustaches, and to take a bath (even for women undergoing *hayd* or *nifas*, for the aim is cleanliness). It is also *mustahabb* for one intending Hajj to abstain from cutting the hair of his head from the beginning of the month of Dhu al-Qi'dah, to remove the hair from his body and armpits, and to enter *ihram* after the *zuhr* (noon) or any other obligatory prayers. It is also *mustahabb* to pray six, four or at least two *raka`at*. However, freedom from the state of ritual impurity (*hadath*) is not a condition for the *ihram* to be valid.

According to the Hanafi and Maliki schools, if water is not available, one is relieved of the duty to take the bath (*ghusl*), and *tayammum* as an alternative is not permissible. According to the Hanbali and Shafi'i schools, *tayammum* substitutes *ghusl*. The Imamiyyah jurists differ on this matter, some consider it permissible, others not.

According to the Imamiyyah school, it is *mustahabb* to leave the hair of the head uncut, but according to the Shafi'i, Hanafi and Hanbali schools, it is *mustahabb* to shave the head. (*al-Fiqh `ala al-madhahib al-'arba`ah*)

According to the Hanafi school, it is *sunnah* for one who wants to assume *ihram* to scent his body and clothes with a perfume whose trace does not remain after *ihram* except the smell. According to the Shafi'i school, it is *sunnah*, except when one is fasting, to apply perfume to the body after the bath. Also, perfuming the clothes does not matter. According to the Hanbali school, one may perfume the body; and the clothes with *karahah*. (*al-Fiqh `ala al-madhahib al-'arba`ah*)

According to the Hanafi, Maliki and Shafi'i schools, it is *mustahabb* for the *muhrim* to pray two *raka`at* before assuming *ihram* after the noon prayer or any other obligatory prayer. If he has no obligatory prayer to make at the time of *ihram*, he should offer six, or four or at least two *raka`at* for the *ihram*. (*al-Jawahir*)

Al- 'Ishtirat

Al-Muhaqqiq al-Hilli, the Imamiyyah scholar, in his work *Tadhkirat al-fuqaha'*, says that for one intending *ihram* it is *mustahabb* to make a condition with God at the time of assuming *ihram*, by saying:

اللهم اني أريد ما أمرتني به، فإن منعتني مانع عن تمامه وحبسني عنه حابس فجعلي في حل.

O God, indeed I wish to fulfill Thy command, but if any impediment keeps me from completing it or a barrier obstructs me from it, exonerate me.

Abu Hanifah, al-Shafi'i, and Ahmad ibn Hanbal also consider it *mustahabb*. However, this *ishtirat* does not help in relieving one of the obligations of the Hajj if he were to encounter an impediment which keeps him from getting through it.

The Wajibat of Ihram

The *wajibat* of *ihram*, with some difference between the legal schools on some points, are three: *niyyah*(intention); *talbiyah*; and putting on of the clothes of *ihram*.

Al-Niyyah

Obviously *niyyah* or intention is essential to every voluntary act; for every such act is motivated by conscious intent. Therefore, some scholars have pointed out that had we been assigned a duty to be performed without intention it would have been impossible to be carried out. However, when the question of intention is raised in relation to the pilgrim (of the Hajj or the `Umrah), what is meant is whether he becomes *muhrim* solely on account of the *niyyah* or if something else is required in addition, acknowledging that *ihram* is void if assumed frivolously or absent-mindedly.

According to the Hanafi school, *ihram* is not considered to commence solely with intention unless it is accompanied by the utterance of the *talbiyah* (*Fath al-qadir*). According to the Shafi'i, Imamiyyah and Hanbali schools, the *ihram* is assumed merely by *niyyah* (*al-Jawahir, Fiqh al-Sunnah*). The Imamiyyah add that it is obligatory for the *niyyah* to coincide with the commencement of *ihram*, and it is not sufficient for the act of *niyyah* to occur in the course of assuming *ihram*.

Also while making the *niyyah* it is essential to specify the purpose of *ihram*, whether it is Hajj or `Umrah, whether it is *Hajj al-tamattu*; *Hajj al-qiran* or *Hajj al-'ifrad*, whether he is performing the Hajj for himself or as a na'ib of someone else, whether for the obligatory Hajj (*Hijjat al-Islam*) or for something else. If one assumes *ihram* without specifying these particulars, postponing their determination to future, the *ihram* is invalid. (*al-Urwatal-wuthqa*).

According to the Hanafi text *al-Mughni*, "It is *mustahabb* to specify the purpose of *ihram*. Malik is of the same opinion. Two opinions are ascribed to al-Shafi'i. According to one of them, it is adequate if one assumes *ihram* with a general, non-specific purpose of pilgrimage... without determining the exact purpose, whether Hajj or `Umrah. The *ihram* thus assumed is valid and makes one a *muhrim* Afterwards, he may select any of the kinds of pilgrimage." All the five schools agree that if one assumes *ihram* with the intention to follow another person's intention, his *ihram* is valid if the other person's purpose is specific. (*al-Jawahir; al-Mughni*)

The Talbiyah

That the *talbiyah* is legitimate in *ihram* is acknowledged by all the five schools, but they disagree as to its being *wajib* or *mustahabb*, and also about its timing. According to the Shafi'i and Hanbali schools, it is *sunnah*, preferably performed concurrently with *ihram*. However, if the intention to assume *ihram* is not accompanied by *talbiyah*, the *ihram* is correct.

According to the Imamiyyah, Hanafi, [6][28] and Maliki schools, the *talbiyah* is obligatory, though they differ about its details. According to the Hanafi school, pronouncement of *talbiyah* or its substitute--such as *tasbih*, or bringing along of the sacrificial animal (*al-hady*)--is a provision for *ihram* to be valid. According to the Maliki school, the *ihram* neither becomes invalid if *talbiyah* is recited after a long gap of time, nor if it is not pronounced altogether. However, one who fails to

pronounce it must offer a blood sacrifice.

According to the Imamiyyah, neither the *ihram* for *Hajj al-tamattu*; nor *Hajj al-'ifrad*, nor their conjugate *'umrahs*, nor for *al-'Umrat al-mufradah*, is valid without *talbiyah*. However, one who intends to perform *Hajj al-qiran* may choose between *talbiyah*, *ish'ar*[7] or *taqlid*; *ish'ar* for this school being exclusively restricted to a camel, though *taqlid* may apply to a camel or the other forms of *hady*.

The Formula of Talbiyah

لبيك اللهم لبيك، لا شريك لك لبيك، إن الحمد والنعمة لك والملك لا شريك لك

All the legal schools agree that *taharah* is not a proviso for pronouncing *talbiyah*. (al-Tadhkirah).

As to its occasion, the *muhrim* starts reciting it from the moment of *ihram*, being *mustahabb* for him to continue it--all the five schools agree--until the *ramy* of *Jamarat al-'aqabah*. To utter it loudly is *mustahabb* for men (not for women), except in mosques where prayers are offered in congregation, particularly in the Mosque of 'Arafat. According to the Imamiyyah school, it is *mustahabb* to discontinue reciting the *talbiyah* on sighting the houses of Makkah. A woman may recite the *talbiyah* just aloud enough to be heard by herself or someone near her. It is also *mustahabb* to proclaim blessings on the Prophet and his Family (s). (al-Tadhkirah; *Fiqhal-Sunnah*).

The Muhrim's Dress

All the five schools agree that it is not permissible for a *muhrim* man to wear stitched clothing, shirts or trousers, nor may he cover his face. Also, it is not permissible for him to wear shoes (*khuffan*) except when he cannot find a pair of sandals (*na'lan*), [8] and that after removing the covering on the back of the heels from the base. A woman, however, should cover her head, keep her face exposed, except when she fears that men may ogle at her.

It is not permissible for her to wear gloves, but she may put on silk and wear shoes (*khuffan*). According to Abu Hanifah, it is permissible for a woman to wear gloves. (al-Tadhkirah; Ibn Rushd's *al-Bidayah wa al-nihayah*).

The book *al-Fiqh 'ala al-madhahib al-'arba'ah*, under the heading 'That which is required of one intending *ihram* before he starts to assume it', states, "According to the Hanafi school, among other things he wears *izar* (loincloth) and *rida'* (cloak). The *izar* covers the lower part of the body from the navel to the knees. The *rida'* covers the back, the chest and the shoulders, and its wearing is *mustahabb*.

According to the Maliki school, it is *mustahabb* to wear *izar*, *rida'* and *na'lan*; but there is no restriction on wearing something else that is not stitched and does not encircle any of the parts of the body.

According to the Hanbali school, it is *sunnah* to put on a new, white and clean *rida'* and *izar* together with a pair of *na'lan* before assuming *ihram*. According to the Shafi'i school, the *rida'* and *izar* should be white, new or washed ones.

According to the Imamiyyah school, the *rida'* and the *izar* are obligatory, preferably (*istihbaban*) of white cotton. The *muhrim* may put on more than these two pieces of clothing on condition that they are not stitched. Also it is permissible to change the clothes in which one commenced *ihram*, though it is better to perform the *tawaf* in the same *rida'* and *izar* as worn at the beginning.

All the requirements of the dress for *salat* apply to the dress of *ihram*, such as *taharah*, its being non-silken for men, not made of the skin of an animal eating whose flesh is not permissible. According to some Imamiyyah legists, clothing made of skin is not permissible (in *salat* and *ihram*).

In any case, the disagreement between the legal schools about the *muhrim's* dress is very limited. This is well indicated by the fact that whatever is regarded as permissible by the Imamiyyah is also considered permissible by the remaining schools.

Restrictions of Ihram

There are certain restrictions for the *muhrim*, most of which are discussed below.

Marriage

According to the Imamiyyah, Shafi'i, Maliki and Hanbali schools, it is not permissible for the *muhrim* to contract marriage for himself or on behalf of another. Also he may not act as another's agent for concluding a marriage contract, and if he does, the contract is invalid.

Furthermore, according to the Imamiyyah school, he may not act as a witness to such a contract.

According to Abu Hanifah, marriage contract is permissible and the contract concluded is valid.

According to the Hanafi, Maliki, Shafi'i and Imamiyyah schools, it is permissible for the *muhrim* to revoke divorce of his former wife during the period of her *'iddah*. According to the Hanbali school, it is not permissible. From the viewpoint of the Imamiyyah, if one enters a marriage contract with the knowledge of its prohibition, the woman becomes *haram* for him for life merely by the act of concluding the contract, even if the marriage is not consummated. But if done in ignorance of the interdiction, she is not prohibited to him, even if consummation has been affected. (*al-Jawahir Fiqh al-Sunnah*; *al-Fiqh 'ala al-madhahib al-'arba`ah*).

Intercourse

All the five legal schools agree that it is not permissible for the *muhrim* to have sexual intercourse with his wife, or to derive any kind of sexual pleasure from her. If he performs intercourse before *tahlil*[9] (i.e. relief from the state of *ihram*) his Hajj becomes void, although he must perform all its acts to the conclusion. Thereafter, he must repeat the Hajj the next year, performing it 'separately' from his spouse. [10] The seclusion is obligatory according to the Imamiyyah, Maliki and Hanbali schools, and voluntary from the viewpoint of the Shafi'i and Hanafi schools. (*al-Hada'iq; Fiqh al-Sunnah*).

Moreover, according to the Imamiyyah, Shafi'i, and Maliki schools, besides the fact that his Hajj becomes invalid, he must sacrifice a camel in atonement, and according to the Hanafi school, a sheep.

All the five legal schools agree that if he commits intercourse after the first *tahlil* (i.e. after the *halq* or *taqsir* in Mina, after which everything except intercourse--and also perfume according to the Imamiyyah school--become permissible for the pilgrim), his Hajj is not void, nor is he called upon to repeat it. Nevertheless, he must offer a camel, according to the Imamiyyah and Hanafi schools and according to one of the two opinions ascribed to al-Shafi'i. But according to the Maliki school, he is obliged to offer a sheep only. (*al-Hada'iq; Fiqh al-Sunnah*).

If the wife yields willingly to intercourse, her Hajj is also void, and she must sacrifice a camel in expiation and repeat the Hajj the year after. But if she was forced, then nothing is required of her, but the husband is obliged to offer two camels: one on his own behalf, and the second on hers. If the wife was not in the state of *ihram*, but the husband was, nothing is required of her, nor is she obliged to offer anything in atonement, nor is anything required of the husband on her account. (*al-Tadhkirah*).

If the husband kisses his wife, his Hajj is not void if it does not result in ejaculation. On this all schools are in agreement. But according to the four Sunni schools, he is obliged to make a sacrificial offering in atonement even if it be a sheep. The Imamiyyah author of *al-Tadhkirah* says, the sacrifice of a camel is obligatory only if the kiss is taken with sexual desire, otherwise he should sacrifice only a sheep. If he ejaculates, the Hajj is void according to the Maliki school, but remains valid according to the other schools, although he should make an offering in atonement, which is a camel according to the Hanbali school and a group of Imamiyyah legists, and a sheep according to the Shafi'i' and Hanafi schools. (*al-Hada'iq; al-Mughni*).

Use of Perfume

All the legal schools agree that the *muhrim*, man or woman, may not make use of any perfume, either for smelling, or for applying on himself, or for scenting edibles. Indeed it is not permissible to wash the dead body of a *muhrim*, or to perform *hunut* upon it by applying camphor or any other kind of perfumery. If the *muhrim* uses perfume forgetfully or on account of ignorance, he needs not make any offering in atonement according to the Imamiyyah and Shafi'i schools. But according to the Hanafi and Maliki schools, he must make a sacrificial offering (*fidyah*). In this relation two different opinions are ascribed to Ahmad ibn Hanbal.

However, when one is forced to use perfume on account of disease, it is permissible and no *fidyah* is required. According to the Imamiyyah school, if one uses perfume intentionally, he must offer a sheep, irrespective of the use, whether applied to the body or eaten. However, there is nothing wrong in the *Khaluq* of Ka'bah even if it contains saffron, and the same applies to fruits and aromatic plants. (*al-Jawahir*).

Use of Kohl

Al-Tadhkirah states: "There is consensus among the Imamiyyah legists on the point that darkening the eyelids with kohl or applying a kohl containing perfume is not permissible for the *muhrim*, man or woman. Apart from that (i.e. *ihram*) it is permissible." According to the author of *al-Mughni*, "Kohl containing antimony is *makruh*, and does not require any *fidyah*. I haven't come across any different opinion on this topic. However, there is *nokarahah* in use of kohl without antimony, as long as it does not contain any perfume."

Shortening of Nails and Hair; Cutting of Trees

All the five legal schools agree about impermissibility of shortening the nails and shaving or shortening of the hair of the head or the body in the state of *ihram*, *fidyah* being required of the offender. 11 As to cutting of trees and plants within the *haram*, all the legal schools agree that it is impermissible to cut or uproot anything grown naturally without human mediation.

Al-Shafi'i' states that there is no difference between the two with regard to the prohibition, and *fidyah* is required for both: cutting of a big tree requires *fidyah* of a cow, and of other plants of a sheep. According to Malik, cutting of a tree is a sin, though nothing is required of the offender, regardless of whether it has grown with or without human mediation.

According to the Imamiyyah, Hanafi, and Hanbali schools, cutting of something planted by human hands is permissible and does not require a *fidyah*; but anything grown by nature requires *fidyah*, which is a cow according to the Imamiyyah for cutting a big tree and a sheep for

cutting smaller plants. According to the Hanafi school, the owner of the tree is entitled to a payment equivalent to the cost of the *hady*. (*Fiqh al-Sunnah, al-Lum`ah*)

All the five schools agree that there is no restriction for cutting a dry tree or for pulling out withered grass.

Looking into a Mirror

It is not permissible for a *muhrim* to look into a mirror, and all the five schools agree that there is no *fidyah* for doing so. However, there is no restriction on looking into water.

Use of Henna

According to the Hanafi school, it is permissible for the *muhrim*, man or woman, to dye with henna any part of his body, except the head. According to the Shafi'i school, it is permissible, with the exception of hands and feet. According to the Hanafi school, dyeing is not permissible for the *muhrim*, man or woman. (*Fiqh al-Sunnah*) The predominant view among the Imamiyyah legists is that dyeing is *makruh* not *haram*. (*al-Lum`ah*)

Use of Shade; Covering the Head

All the five schools agree that it is not permissible for the *muhrim* man to cover his head voluntarily. According to the Maliki and Imamiyyah schools, it is not permissible for him to immerse himself under water until the head is completely submerged, although it is permissible for him, all the five schools except the Shafi'i agree, to wash his head or pour water over it. The Malikis say that with the exception of the hands it is not permissible to remove dirt by washing. If he covers the head forgetfully, nothing is required of him according to the Imamiyyah and Shafi'i schools, but a *fidyah* is required according to the Hanafi school.

All the schools, with the exception of the Shafi'i, agree that it is impermissible for the *muhrim* to shade himself while moving. Neither it is permissible for him to ride an automobile, an aeroplane or the like, which are covered by a roof. But it is permissible while walking to pass under a shadow.[12]

Stitched Clothing and Ring

All the five schools agree that it is forbidden for the *muhrim* man to wear stitched clothes and clothes which encircle body members, e.g. turban, hat and the like. These are permissible for women, with the exception of gloves and clothes which have come into contact with perfume. According to the Imamiyyah school, if the *muhrim* wears stitched clothes forgetfully, or in ignorance of the restriction, nothing is required of him. But if one wears them intentionally to protect himself from heat or cold, he should offer a sheep. Also according to them it is not permissible to wear a ring for adornment, but it is permissible for other purposes. Also, it is not permissible for woman to wear jewellery for the sake of adornment.

'Fusuq' and Jidal'

God, the most Exalted, says in the Quran:

... فَلَا رَفَثَ وَلَا فُسُوقَ وَلَا جِدَالَ فِي الْحَجِّ ...

.... ***There should be no obscenity, neither impiety, nor disputing in Hajj'*** (2:197).

In the above verse, the meaning of `rafath' is taken to be sexual intercourse, to which reference has been made earlier. `Fusuq' is taken to mean lying, cursing, or commission of sins. In any case, all of them are forbidden for the pilgrims of Hajj and the non-pilgrims as well. The stress here is meant to emphasize abstention from them in the state of *ihram*. The meaning of *jidal'* is quarrelling. According to an Imamiyyah tradition from al-'Imam al-Sadiq (`a), he is reported to have said, "It (i.e. *jidal'* in the above-mentioned verse) means using such expressions as `Yes, by God!' or `No, by God!' in conversation. This is the lowest degree of *jidal'*"

According to the Imamiyyah school, if the *muhrim* tells a lie for once, he must offer a sheep; if twice, a cow; if thrice, a camel. And if he swears once taking a veritable oath, there is nothing upon him; but if he repeats it three times, he is obliged to sacrifice a sheep.

Cupping (Hijamah)

All the five schools agree on permissibility of cupping in case of necessity, and the four Sunni schools permit it even when not necessary as long as it does not require removal of hair. The Imamiyyah legists disagree on this issue; some of them permit it and others not. (*al-Tadhkirah; al-Fiqh `ala al-madhahib al-'arba`ah*)

Hunting (al-Sayd)

All the five schools are in agreement about the prohibition on hunting of land animals, either through killing or through *dhabh*, and also on guiding the hunter or pointing out the game to him in the state of *ihram*. Also prohibited is meddling with their eggs and their young ones. However, hunting of the animals of water is permitted and requires no *fidyah*. This, in accordance with the Qur'anic verse:

أَجَلٌ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَكُمْ وَلِلسَّيَّارَةِ وَحُرْمٌ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرْمًا وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ

Permitted to you is the game of the sea and the food of it, as a provision for you and for the journeyers; but forbidden to you is the game of the land, so long as you remain in the state of ihram: and fear God, unto whom you shall be mustered. (5:96)

The prohibition on hunting within the precincts of the *haram* apply to the *muhrim* and the *non-muhrim* (*muhill*) equally. However, outside the *haram*, the prohibition applies only to the *muhrim*. If the *muhrim* slaughters a game, it is considered *maytah* (a dead animal not slaughtered in accordance with ritual requirements), and its flesh is unlawful for all human beings. The five legal schools agree that the *muhrim* may kill a predatory bird called *hada'ah*, crows, mice and scorpions. Others include wild dogs and anything harmful.

According to the Imamiyyah and Shafi'i schools, if the game hunted on land resembles some domestic beast in shape and form (like the Oryx, which resembles the cow), he has the choice between:

(1) giving the meat of one of similar beasts of his livestock in charity after slaughtering it;

(2) estimating its price and buying food of the amount to be given in expiation and charity to the needy, distributing it by giving two *mudds* (the *muddis* a dry measure equal to 800 grams) to every

individual;

(3) fasting, a day for every two *mudds*.

The Malikis hold the same viewpoint, except that, they add, the price of the hunted animal itself should be estimated, not that of its domestic equivalent. The Hanafis say that one who hunts in the state of *ihram* should arrange for the estimated price of the hunted animal, whether there is a domestic animal similar to it or not. When the price has been estimated, he is free to choose between:

(1) purchasing livestock of the money and giving its meat away in charity;

(2) giving it from his own livestock;

(3) purchasing food of the amount to be given away in charity;

(4) fasting, a day for every *mudd* of food to be given away. (*al-Tadhkirah; Fiqh al-Sunnah*) In this connection all the legal schools base their position on this Qur'anic verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرْمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمِّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدِيًّا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلٌ ذَلِكَ صِيَامًا لِيَذُوقَ وَبَالَ أَمْرِهِ عَفَا اللَّهُ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمِ اللَّهُ مِنْهُ وَاللَّهُ عَزِيزٌ ذُو انْتِقَامٍ

O believers, slay not the game while you are in the state of ihram. Whosoever of you slays it wilfully, there shall be reparation--the like of what he has slain, in livestock, as shall be judged by two men of equity among you, as offering on reaching the Ka`bah; or expiation--food for poor persons or the equivalent of that in fasting, so that he may taste the mischief of his action. God has pardoned what is past; but whoever offends again, God will take vengeance on him; God is All-mighty, Vengeful. (5:95)

The meaning of the phrase: *يَحْكُمُ بِهِ ذَوَا عَدْلٍ* in the above verse is that two equitable (*`adil*) witnesses should judge whether a certain domestic animal is similar to the hunted wild beast. The meaning of the phrase: *هدياً بالغ الكعبة* is that he should slaughter the equivalent livestock and give its meat in charity on arrival in Makkah.

According to the Imamiyyah work *al-Shara'i`*, "Every *muhrim* who wears or eats anything forbidden for him should slaughter a sheep, regardless of whether his action was intentional, forgetful, or on account of ignorance."

The Imamiyyah and Shafi'i schools agree that no expiation (*kafarah*) is required of someone who commits *aharam* act forgetfully or in ignorance, except in the case of hunting, in which case even killing by mistake requires *kaffarah*.

The Limits of the Harams of Makkah and of Al-Madinah

The prohibition of hunting and cutting of trees applies both to the *haram* of Makkah and that of al-Madinah. According to *Fiqh al-Sunnah*, the limits of the *haram* of Makkah are indicated by signs in five directions, which are one-meter-high stones fixed on both sides of the roads. The limits of the *haram* of Makkah are as follows: (1) the northern limit is marked by al-Tan'im, which is a place at

a distance of 6 kms. from Makkah; (2) the southern limit is marked by Idah, 12 kms. from Makkah; (3) the eastern limit is al-Ja'ranah, 16 kms. from Makkah; (4) the western limit is al-Shumaysi, 15 kms. from Makkah.

The limits of the *haram* of the Prophet's shrine extend from `Ir to Thawr, a distance of 12 kms. `Ir is a hill near the *miqat*, and Thawr is a hill at Uhud.

Al-`Allamah al-Hilli, an Imamiyyah legist, states in his work *al-Tadhkirah* that "the *haram* of Makkah extends over an area of one *band* by one *band* (1 *band* =12miles), and the *haram* of al-Madinah extends from `Ayir to `Ir. [13]

[23] [24] [25] [26] [27] [28] [29] [30] [31] [32] [33] [34] [35]

Part 4

Tawaf

Tawaf is an essential part (*rukn*) of `Umrah, and the *tawaf al-ziyarah* (also called *tawaf al-'ifadah*) is a *rukn* of the *Hajj al-tamattu*; *Hajj al-'ifrad* and *Hajj al-qiran*. As said earlier, the assumption of *ihram* is the first act of the pilgrim regardless of whether he comes for *Umrah mufradah* or for any of the three types of Hajj.

Now, after the assuming of *ihram*, what is the next step for the pilgrim? Is it *tawaf*, or *wuqf*, or something else? The answer is: it depends on the purpose (*niyyah*) with which the pilgrim assumes *ihram*. If it is `Umrah, then the next step is *tawaf*, regardless of whether it is *Umrah mufradah* or *Umrat al-tamattu`*. Thus *tawaf* is the second step for the *mu'tamir* (pilgrim intending `Umrah), by agreement of all the legal schools.

However, if the purpose of *ihram* is Hajj only--such as in the case of pilgrim on *Hajj al-'ifrad*, or one intending to perform the *Hajj al-tamattu`* after getting through the acts of `Umrah--the second step is (as shall be explained later) *wuqf* in `Arafat.

In other words, one who enters Makkah with the sole purpose of `Umrah or *Hajj al-tamattu`* performs *tawaf* before everything else, then *sa'y* and then *taqsir*. After this, if on *Hajj al-tamattu`*, he assumes *ihram* for a second time; but he is not required to perform another *tawaf* after this *ihram*. The *tawaf* (pertaining to the Hajj acts), as we shall explain, comes after getting through the *wuqf* at `Arafat and passage through Mina.

Kinds of `Umrah in View of the Ahl al-Sunnah

The imams of the four Sunni schools distinguish between three kinds of *tawaf*:

1. Tawaf al-Qudum

It is the *tawaf* performed by the `outsiders', (i.e. those coming from outside Makkah and from beyond its outskirts within a radius of 88 kms.) on entry into Makkah. It is similar to the two *raka'at* of *salat* performed *astahiyyat al-masjid* (lit. `greeting of the mosque'), and so is also called `*tawaf al-tahiyyah*' The four Sunni schools agree on its being *mustahabb*, and no penalty is required for default according to all except the Malikis who require a blood sacrifice.

2. Tawaf al-Ziyarah

This *tawaf* (also called `*tawaf al-'ifadah*') is performed by Hajj pilgrims after getting through the acts of Mina, the rami of *jamarat al-'aqabah*, the sacrifice (*dhibh*), and the *halq* or the *taqsir*. The pilgrim performs this *tawaf* on returning to Makkah. It is called `*tawaf al-ziyarah*' because it is performed on the visit (*ziyarah*) to the Ka'bah after leaving Mina. It is called `*tawaf al-'ifadah*' because the pilgrims pour forth (*'ifadah*' means `pouring forth') into Makkah from Mina. It is also called `*tawaf al-hajj*' because by consensus of all the schools it is *rukn* of the Hajj.

After performing this *tawaf* all things become permissible for the (Sunni) Hajj pilgrim, even sexual intimacy with women. The Imamiyyah, who disagree, say that sex is not permitted before performing the *sa'y* between Safa and Marwah followed by a second *tawaf*, which they call `*tawaf al-nisa*.' This shall be further clarified presently.

3. Tawaf al-Wada`

It is the last *tawaf* performed by the *Hujjaj* before departing from Makkah. The Hanafi and Hanbali schools consider it obligatory, though all that is required of the defaulter is a sacrifice. The Malikis consider it *mustahabb* and do not require any penalty for the default. Al-Shafi'i has two opinions on this matter. (*al-Mughni, al-Fiqh `ala al-madhahib al-'arba`ah, Fiqh al-Sunnah*)

Kinds of Tawaf from the Imamiyyah Viewpoint

The Shi`ah agree with the Sunni schools about the legitimacy of the above three kinds of *tawaf*, and regard the second *tawaf* i.e. *tawaf al-ziyarah* as a *rukn* of the Hajj whose omission makes the Hajj invalid. [1] However, the first kind, i.e. *tawaf al-qudum* is considered *mustahabb*, and may be omitted. Regarding the third, i.e. *tawaf al-wada*; they agree with the Maliki school in its being *mustahabb*, there being nothing on the defaulter.

However, the Shi`ah add another kind of *tawaf* to the above three, the *tawaf al-nisa'*, which they consider obligatory, its omission being impermissible in *`Umrah mufradah* as well as in all the three kinds of Hajj (i.e. *tamattu*; *qiran*, and *ifrad*). They do not permit its omission except in case of *`Umrat al-tamattu*; considering the *tawaf al-nisa'* performed during the course of *Hajj al-tamattu`* as sufficient.

The schools of the Ahl al-Sunnah state that there is no obligatory *tawaf* after the *tawaf al-ziyarah*, after which sexual intimacy is permissible. The Shi'ah say that it is obligatory upon the pilgrim, after performing *tawaf al-ziyarah* and the *sa'y*, to perform another *tawaf*, the *tawaf al-nisa'*; which derives its name precisely because of the sanction of permissibility of relations with women (*nisa'*) following it.

They say that if the pilgrim defaults in regard to this *tawaf*, sexual relations are forbidden for man and woman (for men even the conclusion of marriage contract), unless he/she performs it in person or deposes another to perform it on his/her behalf; and if he/she dies without performing it or without deposing someone to do it for him/her, it is incumbent upon the heir (*wali*) to have it performed on the behalf of the dead person.

According to them, even in case of a *mumayyiz* child who fails to perform the *tawaf al-nisa'* while performing the Hajj, even if he omits it by mistake or on account of ignorance, women are forbidden to him after adulthood nor he may conclude a marriage contract (*`aqd*) unless he performs it himself or deposes another for the job.

To summarize, the Shi`ah consider three *tawaf's* to be obligatory for the pilgrim on the *Hajj al-tamattu`*: (1) the *tawaf* of the conjugate *`Umrah*, of which it is *rukn*; (2) the *tawaf al-ziyarah* (or *tawaf al-hajj*), which is a *rukn* of the Hajj; and (3) the *tawaf al-nisa'*, which is also an obligatory part of it, though not a *rukn* similar to the *Surat al-Fatihah* in relation to the *salat*. The Ahl al-Sunnah agree with the Shi`ah in all except *tawaf al-nisa'*; which they do not recognize. However, of a pilgrim on the *Hajj al-'ifrad* or *Hajj al-qiran*, only two *tawaf's* are required by the Shi`ah. [2]

Entry into Makkah

All the schools agree that it is *mustahabb* for one entering Makkah to take a bath, pass through its heights during the approach towards the city, enter through Bab Bani Shaybah, raise his hands on sighting al-Bayt al-Haram, pronounce *takbir* and *tahlil*, and to recite whatever he can of certain prayers prescribed by tradition. The Malikis, however, disagree about the *istihbab* of raising the hands for the *du'a'*.

Thereafter, he approaches the Black Stone; if possible kisses it or caresses it with his hand or else just makes a gesture with his hand, and prays.

According to the Imamiyyah, it is *mustahabb* while entering the *haram* of Makkah to be barefooted, to chew the leaves of a plant called *`adhkhir'* used for refreshing the mouth, or to clean the mouth to purge its odour.

The Conditions (Shurut) of Tawaf

According to the Shafi'i, Maliki, and Hanbali schools ritual purity (*taharah*, i.e. freedom from *hadath* and *khabath*) is required; thus the *tawaf* of one who is *Junub* or a woman undergoing *hayd* or *nifas*, is not valid. Also, it is necessary to cover one's private parts completely as in *salat*.

The author of the *Fiqh al-Sunnah* (p. 154, 1955) says: "In the opinion of the Hanafis, freedom from *hadath* is not an essential requirement. However, it is an obligation whose omission may be compensated through a blood sacrifice. So, if one performs *tawaf* in the state of minor impurity (*hadath asghar*) his/her *tawaf* is valid, though one is required to sacrifice a sheep. If *tawaf* is performed in the state of *janabah* or *hayd*, [3] the *tawaf* is valid, though the sacrifice of a camel is required during the pilgrim's stay in Makkah."

According to *al-Fiqh `ala al-madhdhib al-'arba `ah* (vol.I, p. 535, 1939): "The *taharah* of the clothes, the body, and the location of prayer (in *salat*) is (only) a highly recommended sunnah (*sunnah mu'akkadah*) from the Hanafi viewpoint; (this is true) even of *tawaf*, there being no penalty even if all the clothes are completely ritually unclean (*najis*)."

According to the Imamiyyah, *taharah* from *hadath* and *khabath* is a proviso for validity of an obligatory *tawaf*. In the same way, covering the private parts (*satr al-`awrah*) with a ritually clean cloth legitimately owned (*ghayr maghsb*) is also a requirement. Moreover, it should not be made of silk or the skin of an animal whose flesh may not be eaten, nor made of golden fabric --requirements which are the same as for *salat*.

It may be said that the Imamiyyah are even more stringent with regard to *tawaf* than *salat*. They consider a blood spot of the size of a *dirham* as pardonable for one performing *salat*, but not for one performing *tawaf*. Further, they consider wearing of silk and gold as impermissible even for women during *tawaf* (which is permissible for women in *salat*). According to the Imamiyyah, circumcision is a requirement for *tawaf* without which it is invalid, both for an adult man and a child (*al-Jawahir*, *al-Hada'iq*).

The manner of Performing Tawaf

According to the Imamiyyah and Hanbali schools, the purpose or *niyyah* must be specified in every *tawaf*; but according to the Maliki, Shafi'i and Hanbali schools, a general *niyyah* for the Hajj is sufficient and no separate *niyyah* for *tawaf* is required. (*al-Jawahir*, *Fiqh al-Sunnah*) As pointed out earlier, *niyyah* as a motive behind all voluntary actions is an inevitable and necessary matter; as such, debate and controversy regarding it is futile.

Ibn Rushd, in his *Bidayat al-mujahid*, writes: "The Sunni legists are in consensus on the opinion that every *tawaf* whether obligatory or not, begins from the Black Stone (and according to the *Fiqh*

al-Sunnah endsthereat). The pilgrim, if he can, kisses it, otherwise touches it with his hand. Then, with the Ka'bah on his left, starts moving towards the right to make the seven circumambulations, walking with a moderately fast pace (*ramal*) during the first three rounds and with an ordinary pace during the last four rounds. (The *ramal* [4] applies to the *tawaf al-qudum* performed on entry into Makkah by the `Umrah and Hajj pilgrim, not one on *Hajjal-tamattu*; also no *ramal* is required of women pilgrims). Then he kisses al-Rukn al-Yamani" (the south-western corner or *rukni* of the Ka'bah which falls before the one with the Black Stone mounted on it during the anti-clockwise rounds made during *tawaf*.--Tr.).

According to the Imamiyyah, there are certain things obligatory (*wajib*) in *tawaf* they are as follows:

1. The *niyyah*, to which reference has already been made.

2. The *tawaf* should be made on foot, and in case of inability on a mount. Many Imamiyyah fuqaha' do not recognize this requirement and a group of them explicitly permit *tawaf* on a mount. They cite the precedent of the Prophet (s) who performed *tawaf* on camelback, according to traditions in *al-Kafi* and *Man la yahduruhu al faqih*.

3. The condition that the *tawaf* should begin and end at the Black Stone is stated in this manner in many books of fiqh: "The *tawaf* should be begun at the Black Stone, so that the first part of one's body is in front of the first part of the Black Stone. Then the pilgrim begins moving with the Black Stone on his left, ending the last circumambulation exactly in line with the point where he commenced his first, thus ensuring that the seven rounds are completed without advancing or falling behind a single step or more.

The danger of advancing or falling behind necessitates that the first circumambulation should commence at the beginning of the Black Stone; because if begun in front of its middle, one cannot be sure of having advanced or fallen behind some steps; and if one began from its end, then the beginning may not be said to have commenced from the Black Stone" and so on and so forth.

The author of the *Jawahir al-kalam* makes elaborate critical remarks about this kind of meticulousness, which show his balanced and moderate taste and temperament. This is the substance of what he has to say: "The difficulty and the exasperating *haraj* (impediment) inherent in realizing such a requirement is not concealed To give it consideration is to fall into silly scruples. The debate is similar to the depraved and unseemly musings of madmen. [5] And it has been narrated of the Prophet (s) that he performed *tawaf* on camelback, and attaining this kind of precision is infeasible when on a mount."

That which can be understood from the remarks of the author of *al-Jawahir* is that he agrees with the author of *al-Shara'i`*, who confines himself to this statement, without adding another word: "It is obligatory to begin and end the *tawaf* at the Stone." It means—as is also apparent from his above-mentioned remarks--that in the opinion of the author of *al-Jawahir* it is sufficient to fulfil this condition in the commonly understood sense. Al-Sayyid al-Hakim, in *al-Munsik*, holds a similar position when he says, "The pilgrim performing *tawaf* should begin a little before the Stone with the intent of performing what is really obligatory. When he performs in this fashion he knows that he began at the Stone and finished thereat."

4. The Ka'bah must be on the left during *tawaf*. According to al-Sayyid al-Khu'i, it is sufficient to realize this requirement in the commonly understood sense (i.e. without giving scrupulous attention to precision); slight shifts of direction do not matter as long as the movement meets the requirement in the ordinary sense. According to him the only crucial factor is satisfaction of the requirement in its ordinary sense.

5. The Hajar Isma'il must be included in *tawaf*. That is the circumambulation should be made around it and without entering it, [6] and it should be kept to the left while making the *tawaf*. Thus if one passes between it and the Ka'bah during *tawaf* making it fall to his right, the *tawaf* becomes invalid.

6. The body should be completely out of the Ka'bah (because God says **وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ** which means that *tawaf* should be made around and -outside the Ka'bah, not inside it). Also if one were to walk on its walls or on the protruding part of its walls' foundations, the *tawaf* would be invalid.

7. The *tawaf* should be performed between the Ka'bah and the rock called *Maqam Ibrahim*, which is a stone on which Abraham (a) stood during the building of the Ka'bah.

8. The *tawaf* should consist of seven rounds, no more and no less. Obviously, recognition of these points requires an informed guide to indicate them to the pilgrims.

After finishing *tawaf* it is obligatory to offer two *rak'ah's* of *salat* behind the *Maqam Ibrahim* regardless of the crowd; but if it is not possible, one may offer the prayer in front of it, and if that, too, is not possible, anywhere in al-Masjid al-Haram. It is not permissible to begin a second *tawaf* without performing the two-*rak'ah* prayer. If one forgets performing them, it is obligatory on him to return and perform them. But if returning were not feasible, he can offer them wherever he can. This is true of the obligatory *tawaf*. But if the *tawaf* were *amustahabb* one, he can offer the two *rak'ah's* wherever he can. (*al-Tadhkirah*, *al-Jawahir*, *al-Hada'iq*)

This shows that the jurists of all the legal schools are in agreement over certain points: the *tawaf* starts and ends at the Black Stone; the Ka'bah should be on the left during *tawaf*; the *tawaf* should be made outside the Ka'bah; seven rounds should be made; kissing the Black Stone and the Rukn is *mustahabb*. However, they disagree with respect to the permissibility of break between successive rounds of the *tawaf*.

According to the Maliki, Imamiyyah, and Hanbali schools, continuity without break (*muwalat*) is obligatory. According to the Shafi'i and Hanafi schools, it is *sunnah* (i.e. *mustahabb*) to observe *muwalat*, so if there is a substantial break between the rounds without any excuse, the *tawaf* is not invalidated. (*Fiqh al-Sunnah*). Similarly according to Abu Hanifah, if one leaves off after the fourth round, he must complete his *tawaf* if he is in Makkah; but if he leaves Makkah, he must compensate it with a blood sacrifice. (*al-Tadhkirah*)

The schools disagree with respect to the necessity of the *tawaf* being undertaken on foot. The Hanafi, Hanbali, and Maliki schools consider it obligatory. According to the Shafi'i school and a group of Imamiyyah scholars it is not obligatory and one may perform *tawaf* on a mount. Also, they disagree with respect to the two-*rak'ah* prayer (*rak'atan*) after *tawaf*. According to the Maliki, Hanafi, and Imamiyyah schools, the *rak'atan*--which is exactly like the daybreak prayer--are obligatory. The

Shafi'i and Hanbali schools regard it as *mustahabb*.

The Mustahabbat of Tawaf

The book *Fiqh al-Sunnah*, discussing the topic under the heading "*Sunan al-tawaf*"; states, "Of things which are sunnah in *tawaf* are: kissing the Black Stone while starting the *tawaf*, accompanied with *tahlil* and *takbir*, to raise the two hands as in *salat*, to greet the Stone by drawing one's hands upon it (*istilam*), to kiss it soundlessly, to lay one's cheek on it if possible, otherwise to touch it only." Other *mustahabbat* are: *idtiba* [7] for men, *ramal*, and *istilam* of *al-Rukn al-Yamani*.

According to *al-Lum`at al-Dimashqiyyah*, an Imamiyyah work, of things *mustahabb* in *tawaf* are: to halt in front of the Black Stone, to make the prayer later offered with the hands raised, to recite the Surat al-Qadr, remember Allah--subhanahu wa ta'ala, to walk peacefully, to draw one's hand on the Black Stone, to kiss it if possible otherwise to make a gesture, to draw one's hand on every corner of the Ka'bah every time one passes by or to kiss it, to draw one's hand on *al-Mustajar*--which is in front of the door and before *al-Rukn al-Yamani*--during the seventh round, and to keep oneself as near as possible to the Ka'bah. To speak during *tawaf* apart from *dhikr* and recitation of the Qur'an, is *makruh*.

The Ahkam of Tawaf

According to the Imamiyyah, if a woman undergoes *hayd* during *tawaf* she discontinues *tawaf* and performs *sa'y*, if it happens after the fourth round. Then she completes the *tawaf* after attaining *taharah*, and she is not required to repeat the *sa'y*. But if the *hadath* occurs before completing the fourth round, she waits until the day of `Arafah. If by that time she regains *taharah* and is in a position to complete the remaining acts, she does so. Otherwise her Hajj is converted to *Hajj al-'ifrad*.

As mentioned earlier, the Hanafis permit *tawaf* for a woman in the state of *hayd*, and do not require *taharah*. According to the Hanafi work *Fath al-Qadir*, one who leaves three or fewer rounds of the *tawaf al-ziyarah* should sacrifice a sheep; if four, he remains in the state of *ihram* as long as he does not complete the rounds of *tawaf*. But if he leaves off more than four rounds, it is as if he had not started the *tawaf* at all.

According to the Imamiyyah, if after completing the rounds of *tawaf* one doubts whether he performed them correctly as required by the Shari`ah or whether he performed the exact number of rounds, his doubt is of no consequence. His *tawaf* is considered valid and complete and there is nothing upon him. But if the doubt occurs before finishing the *tawaf*, he should consider whether he has performed at least seven rounds, such as when he doubts whether he made seven or eight rounds. If he is certain of having performed seven rounds, then his *tawaf* is considered valid.

However, if he is not certain of having performed seven rounds--as in the case when he doubts whether he is in his sixth or seventh round, or in his fifth or sixth--in that case his *tawaf* is invalid and he should start afresh. It is preferable in such a case to complete the present *tawaf* before starting afresh. [8] This is true of a *wajib tawaf*. In case of a *mustahabb tawaf*, the basis is the least number of rounds under seven one is certain of having performed, regardless of whether the doubt occurs during or after the last round.

For the non-Imamiyyah schools, the rule is the least number of rounds one is certain of having performed--a rule which is similar to the one they apply to the doubt in the number

of rak`ah's of *salat*.

These are the *ahkam*, the *mustahabbat*, and the *wajibat* of *tawaf*, which, like the *ruku`* and *sujud* in *salat*, is always the same in all cases, whether as a part of the *`Umrah mufradah*, *`Umrat al-tamattu*; *Hajj al-qiran*, or *Hajj al-'ifrad*, and regardless of whether it is *tawaf al-ziyarah*, *tawaf al-nisa*; *tawaf al-qudum*, or *tawaf al-wada`*.

As mentioned above, the *tawaf* is the next act after *ihram* in *`Umrat al-tamattu*; but in the Hajj its turn comes after the pilgrim has gone through the rituals of *Mind* (on the *`Id* day) as shall be explained later.

[36] [37] [38] [39] [40] [41] [42] [43]

Part 5

Sa'y

All the schools agree that *sa'y* follows the *tawaf*, or its *rak'atayn* for those who consider them *wajib*. So also they agree that one who performs *sa'y* before *tawaf* should revert and perform his *tawaf* first and then the *sa'y*. I haven't come across any opinion holding that the *sa'y* must immediately follow the *tawaf* (*muwalat*).[1]

The Mustahabbat of Sa`y

According to the book *Fiqh al-Sunnah*, it is *mustahabb* to ascend the hills of Safa and Marwah, and, facing the Holy Ka'bah, to pray to God for some religious or secular matter. It is well known that the Prophet (s), going out from Bab al-Safa until he could see the Ka'bah. Facing it, he thrice declared the Unity of God and magnified Him; then praising God he said:

لا إله إلا الله وحده لا شريك له، له الملك، والله الحمد، يحيي ويميت، وهو على كل شيء قدير، لا إله إلا الله وحده، أنجز وعده، ونصر عبده، وهزم الأحزاب وحده

There is no god except Allah. He is One, and has no partner. To Him belongs the Kingdom and the Praise. He gives life and makes to die and He is powerful over every thing. There is no god except Allah. He is One. He has fulfilled His promise and granted victory to His slave, vanquishing all the parties (of the infidels). He is One.

The *mustahabbat* of *sa`y* according to the Imamiyyah book *al-Jawahir* are the following: to draw one's hand on the Black Stone; to drink from the water of Zamzam and to sprinkle it on oneself; to leave [al-Masjid al-Haram] through the door facing the Black Stone; to ascend the Safa; to face al-*Rukn* al-`Iraqi; to praise God (*hamd*) and magnify Him (*takbir*); to prolong one's stay al-Safa; and, after seven *takbirs*, to say three times:

لا إله إلا الله وحده، لا شريك له، له الملك، والله الحمد، يحيي ويميت، وهو حي لا يموت، بيده الخير، وهو على كل شيء قدير

After this he recites the prayer recommended by tradition (*al-du`a' al-ma'thur*).

As can be seen from the above, there is no divergence in this matter between the Shi`ah and the Sunni schools, except for some difference of expressions used. Also, I have not come across any jurist who regard *taharah* (from *hadath* and *khath*) as obligatory for *sa`y*; most of the schools have expressly stated its being only *mustahabb* and the same is true (except for the Shafi'i) of the drawing of the hand (*istilam*) on the Black Stone before leaving for *sa`y*.

Also, all the schools are explicit about the *istihbab* of covering the distance between `the Milayn' (an expression used by the Hanafis and Malikis) or `the intervening distance' (*wasat al-masafah*, an expression used by Shafi'is) or `between the Minaret and the Alley of the Pharmacists' (as Imamiyyah say) with a fast pace (*harwalah*).[2] Without doubt, an informed guide is necessary to enable the pilgrims to recognize the points designated as `Milayn' or `the Alley of the Pharmacists' (*Zuqaq al-`Attarin*), or `the Minaret'.

The Way of Performing Sa'y

Although there is agreement between the schools about the necessity of *sa'y*, they disagree about its being an essential part (*rukn*) of the rites of Hajj. According to the Imami, Shafi'i, and Maliki schools, it is a *rukn*; according to Abu Hanifah, it is not a *rukn*, though a *wajib*. Two different traditions are narrated from Ahmad ibn Hanbal. (*al-Tadhkirah, Fiqh al-Sunnah*)

All are agreed on the number of *ashwat* (sing. *shawt*) being seven, and that the performer of *sa'y* (i.e. *sa'i*) should begin at Safa going towards Marwah, and return again to Safa,^[3] covering this distance seven times. Thus the pilgrim makes four *ashwat* going from Safa to Marwah and three *ashwat* while returning from Marwah to Safa, beginning his first *shawt* from Safa and finishing the seventh at Marwah.

The schools disagree as to the permissibility of making the *sa'y* on a mount in spite of the ability to walk, and all of them, with the exception of the Hanbalis, permit it regardless of whether one can walk or not. The Hanbalis say that it is permissible only for one who cannot walk.

I have not come across any opinion regarding continuity (*muwalat*) between the *ashwat* as *wajib*^[4], with the exception of the Hanbalis, who, as also mentioned by the author of *al-Fiqh `ala al-madhahib al-'arba`ah*, consider it *wajib*. Also, it is said of Maliki that according to them if the gap between the *ashwat* were to become inordinate, one should begin *sa'y* afresh; but if the gap were not prolonged, such as when one discontinues for selling or purchasing something, it is forgivable.

Note

Al-Sayyid Muhsin al-Hakim, in his book on the rites of Hajj, says, "It is obligatory, while going and returning, to keep one's face turned towards one's destination Therefore, if someone were to turn his face away from it or were to walk backwards, or in a lateral way, it is not correct. However, there is nothing wrong in turning the face this way and that way while continuing to face the destination in the course of movement."

He means that it is obligatory that the body should face Marwah while going and should be toward Safa while returning, and it is not permissible to make the approach with only a shoulder facing the direction of the destination--as may happen due to overcrowding of the pilgrims; also, while moving, the face in particular should remain in the right direction.

Al-Sayyid al-Khu'i makes a similar statement in his work on the rites of Hajj; his words are: "It is *wajib* to face Marwah while going and to be towards Safa while returning. Thus if one turns his back towards Marwah while going and towards Safa while returning, it does not satisfy (*lam yujzi'*, i.e. the conditions for a correct *sa'y*). Also, one should not turn towards his right or left, neither should he turn back either during the going (*dhahab*) or during the return (*iyab*).

The Ahkam of Sa'y

One who cannot perform the *sa'y*, either on foot or on a mount, may depute another to perform it on his/her behalf, and the Hajj would be correct. There is nothing wrong in looking to the right or the

left or turning back to look during the coming and the going.

If someone makes more than seven *ashwat* intentionally, his *sa'y* is invalid, but not if the lapse was unintentional. If one were to have doubts about the number of the *ashwat* performed after finishing his *sa'y*, it is assumed to have been correct and nothing is required of him. The author of *al-Jawahir* bases this *hukm* about the doubt after finishing on the principle of negation of *haraj*, as well as on tradition.

However, if the doubt were to occur before finishing the *sa'y*, the author of *al-Jawahir* says that there is no difference of opinion about, nor any objection against, the invalidity of the *sa'y* in case of any doubt about the number of the *ashwat* performed, whether of having exceeded or fallen short of the required number. In both cases the *sa'y* at hand is invalid. If one suspects one's having begun from Safa, his *sa'y* is correct. But if he thinks that he might have started from some other place, it is invalid. Also if one suspects the number of *ashwat* already performed, and does not know how many one has completed, one's *sa'y* is invalid.

If one has recorded the number of *ashwat* performed, but doubts whether one started the first one from Safa or Marwah, he should consider the number of his present *shawt* and the direction he is facing. If, for instance, the number is an even one (2, 4, or 6) and he is at Safa or facing it, his *sa'y* is correct; because this shows that he had begun at Safa. Similarly, if the number is odd (3, 5, or 7) and he is at Marwah or facing it. But if the case is reverse, that is in an even *shawt* he is facing Marwah or in an odd one facing towards Safa, his *sa'y* is invalid and should be begun anew. (*al-Jawahir*)

According to the other schools, the rule is to take the minimum one is certain of having performed, as in the case of *salat*. (*Kifayat al-'akhyar*)

According to Abu Hanifah the Hajj is not invalid even if the *sa'y* is omitted altogether, because it is not a *ruk'n* and can be made good by a sacrifice. (al-Shi'rani's *al-Mizan*)

Part 6

Taqsir

According to Ahmad ibn Hanbal and Malik, it is necessary to shave (*halq*) or shorten the hair (*taqsir*) of the entire head. According to Abu Hanifah the same of a one-fourth portion of the head is sufficient; according to al-Shafi'i cutting of three hairs suffices. (Karrarah's *al-Din wa al-Hajj*)

According to the Imamiyyah, in *taqsir* one has the free choice of performing it by shortening either the hair of the head, the beard, or the moustaches or the fingernails.

All the five schools agree that *taqsir* is an obligatory rite, though not a *ruk'n*. According to al-Sayyid al-Hakim, its relationship to Hajj is the same as that of the *salam* with respect to the *salat*, because the *muhrim* is relieved after it of his state of *ihram* in the same way as one performing the *salat* is after the *salam*.

The *taqsir* or the *halq*, whatever be the divergence of opinion about them, is to be performed once during 'Umrah *mufradah* and twice during *Hajj al-tamattu'*. The details follow.

Taqsir in `Umrah

According to the Imamiyyah, one performing '*Umrat al-tamattu'* has to perform *taqsir* after the *sa'y*; it is not permissible for him to perform *halq*. After it everything forbidden to him in the state of *ihram* becomes permissible. But if he performs *halq*, he should sacrifice a sheep. However, if he is on '*Umrah mufradah*, he may choose between *halq* and *taqsir*, regardless of whether he brings along with him the *hady* or not.

If the *taqsir* is omitted intentionally, in case one had planned to perform '*Hajj al-tamattu'* and had assumed *ihram* before performing the *taqsir*, his '*Umrah* is invalid and it is then obligatory upon him to perform '*Hajj al-`ifrad*: that is, the rites of Hajj followed by '*Umrah mufradah*, and it is better for him to do Hajj again the next year.'^[1][48]

According to non-Imamiyyah schools, one has a choice between *taqsir* and *halq* after finishing his *sa'y*. As to relief from the state of *ihram*, if one were performing a non-tamattu' '*Umrah*, he obtains relief from *ihram* after *halq* or *taqsir*, regardless of whether the *hady* accompanies him or not. But if one is performing '*Umratal-tamattu*; he is relieved of *ihram* if not accompanied by the *hady*; but if accompanied he remains in the state of *ihram*. (*al-Mughni*)

Taqsir in Hajj

The second type of *taqsir* is a part of the rites of all the various kinds of Hajj-tamattu', *qiran*, or *ifrad*--to be performed by Hajj pilgrim after the *dhabh* or *nahr* (animal sacrifice) in Mina. All the schools agree that here one has a choice between *taqsir* and *halq*, *halq* being more meritorious. They disagree, however, in regard to one with matted hair, whether he must shave his head or if, like others, he also has a choice between *halq* and *taqsir*. The Hanbali, the Shafi' i, and the Maliki schools prescribe only *halq* for him, but the Imamiyyah and the Hanafi give him the same choice as others.

All the legal schools agree that women don't have to perform *halq*, rather, they may perform only *taqsir*.

Abu Hanifah and a group of Imamiyyah legists say that one who is bald, completely or partially, as when only the frontal portion of the head is hairless, must nevertheless draw the razor over the [hairless portion of the] head. The rest only consider it *mustahabb* (*al-Hada'iq, Fiqh al-Sunnah*).

According to the Imamiyyah, the *halq* or the *taqsir* is obligatory in Mina. Therefore, one who departs without *halq* or *taqsir* should return to perform either of the two, regardless of whether his lapse was intentional or not, and despite the knowledge or out of ignorance. However, if it is difficult or infeasible for him to return, he may perform it wherever he can.

As to the rest, they say that it should be performed within the haram. (*Fiqh al-Sunnah*)

All agree that sex is not permitted after the *halq* or the *taqsir*. The Malikis include perfume as also being impermissible. The Imamiyyah include with the above two hunting (*sayd*), which is forbidden because of the respect for the sanctity of the haram. Apart from these three things, the rest are permissible by the consensus of all the five schools. For the four Sunni schools, everything, including sex, becomes permissible after the *tawaf al-ziyarah*. As for the Imamiyyah, sex and perfume are not allowed until after the *tawaf al-nisa'*.

We conclude this section with the words of al-'Allamah al-Hilli in his *Tadhkirah*:

If [the pilgrim] departs from Mina without *halq* or *taqsir*, he returns to perform it there--an obligation if within the reach of possibility. But if his returning is not possible, he performs *halq* wherever he is, sending his hair to be carried to Mina to be buried there, which if he cannot there is nothing upon him The time for *halq* is on the day of `Id, by consensus, for the Almighty has said [in Qur'an]:

... وَلَا تَحْلِقُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَحَلَّهُ..

"And do not shave your head until the sacrifice reaches its [specified] destination." (2:196);

and the place of the sacrifice (*hady*) is Mina on the day of `Id. It has been recorded that the Prophet (s) performed first *ramy*, then *nahr*, and then *halq*, at Mina on the `Id day.

We shall have occasion to refer to the *hukm* about the *halq* performed prior to the *dhabh* while discussing later the rites of Mina.[2]

[48] [49]

Part 7
The Wuq'uf

The Wuq'uf in 'Arafat

The pilgrim performing *'Umrah mufradah* or *Hajj al-tamattu'* first assumes *ihram*, then performs *tawaf* offers *therak`atayn*, then performs *sa'y*, then *taqsir*. This order is obligatory, and in it while the *ihram* precedes all the other steps, the *tawaf* precedes the *salat*, the *salat* is prior to the *sa'y*, and at the end is *taqsir*. [1]

The Second Rite of Hajj

The rites of Hajj, as in the case of *'Umrah*, start with *ihram*. However, the rite which is next to *ihram* in the case of Hajj, and is considered one of the *arkan* of Hajj by consensus, in the *wuquf* (halt) in *'Arafat*, there being no difference whether one is on *Hajj al-'ifrad* or *Hajj al-tamattu'*; although it is permissible for those on *Hajj al-'ifrad* or *Hajj al-qiran* to enter Makkah to perform a *tawaf* after assuming *ihram* and before proceeding to *'Arafat*. This *tawaf* (called *tawaf al-qudam*) resembles the *rak`atayn* called *tahiyyat al-masjid*, recommended as a mark of respect to a mosque.

Al-Sayyid al-Hakim, in his book on the rites of Hajj, says, "It is permissible for one intending *Hajj al-qiran* or *al-'ifrad* to perform the *mustahabb tawaf* on entering Makkah and before proceeding to *wuquf* [in *'Arafat*]." Ibn Hajar, in *Fath al-Bart bi Sharh al-Bukhari*, writes: "All of them [the four legal schools] agree that there is no harm if one who has assumed *ihram* for *Hajj al-'ifrad* performs a *tawaf* of the (Holy) House," that is, before proceeding to *'Arafat*. One on *Hajj al-tamattu'*, as said, should perform the *tawaf* of *'Umrat al-tamattu'* instead of the *tawaf al-qudam*.

Before the Halt in 'Arafat

There is consensus among the legal schools that it is *mustahabb* for the Hajj pilgrim to go out from Makkah in the state of *ihram* on the day of Tarwiyah (the 8th of Dhu al-Hijjah), passing towards Mina on his way to *'Arafat*.

According to the Imamiyyah books *al-Tadhkirah* and *al-Jawahir*, it is *mustahabb* for one intending to proceed towards *'Arafat* not to leave Makkah before offering the *zuhr* and *'asr* prayers. The four Sunni schools say that it is *mustahabb* to offer them at Mina. (*al-Mughni*)

In any case, it is permissible to proceed to *'Arafat* a day or two before that of Tarwiyah, in particular for the ill, the aged, women, and those who are claustrophobic. Also it is permissible to delay until the morning of the 9th so as to arrive at *'Arafat* by the time when the sun crosses the meridian (*zawal*).

I have not come across any jurist who considers it *wajib* to spend at Mina the night before the day of *wuquf* at *'Arafat*, or to perform some rite there. Al-'Allamah al-Hilli, in his *Tadhkirah*, writes: "To spend the night of *'Arafah* at Mina for resting is *mustahabb*; but it is not a rite, nor is there anything against one who doesn't do it." *Fath al-Bari* and *Fath al-Qadir* have something similar to say.

The word 'rest' (for *istirahah*) used by al-'Allamah al-Hilli does not need to be explained, for travel in the past used to be exhausting; so he considered it *mustahabb* for the pilgrims to stay for the night at Mina so as to arrive looking fresh and in good spirits at *'Arafat*. But travel today is quite a

pleasure. Therefore, if one spends the night of `Arafah in Makkah, going to `Arafat the following morning, or after the *zuhr* prayer, passing through Mina on his way--as the pilgrims' practice is nowadays--that is sufficient and there is nothing wrong in that. The pilgrim will return to Mina later after the halt in `Arafat, for the *ramy al-Jamrah*--but to that we shall come later.

The Period of the Halt in Arafat

There is consensus among the legal schools that the day of the halt in 'Arafat is the 9th of Dhu al-Hijjah, but they disagree as to the hour of its beginning and end on that day. According to the Hanafi, the Shafi'i, and the Maliki schools, it begins at midday on the 9th and lasts until the daybreak (*fajr*) on the tenth. According to the Hanbali school, it begins from the daybreak on the 9th until daybreak on the tenth. According to the Imamiyyah, from midday on the 9th until sunset on the same day, for one who is free to plan; and in case of one in an exigency, until the following daybreak.

It is *mustahabb* to take a bath for the *wuquf* in 'Arafat, to be performed like the Friday bath. There is no rite to be performed in 'Arafat except one's presence there: one may sleep or keep awake, sit, stand, walk around or ride a mount.

The Limits of 'Arafat

The limits of 'Arafat are `Arnah, Thawbah, and from Nimrah to Dhu al-Majaz, which are names of places around 'Arafat. One may not make the halt in any of those places, neither in Taht al-'Arak, because they are outside 'Arafat. If one were to make the halt in any of those places, his Hajj is invalid by consensus of all the schools, with the exception of the Maliki, according to which one may halt at `Arnah though he will have to make a sacrifice.

The entire area of 'Arafat is *mawqif* (permissible for the *wuqaf*) and one may make the halt at any spot within it by consensus of all schools. Al-'Imam al-Sadiq (a) relates that when the Prophet (s) made the halt at 'Arafat, the people crowded around him, rushing along on the hoof-prints of his camel. Whenever the camel moved, they moved along with it. (When he saw this), the Prophet said, "O people, the *mawqif* is not confined to where my camel stands, rather this entire 'Arafat is *mawqif*," and pointed to the plains of 'Arafat. "If the *mawqif* were limited to where my camel stands, the place would be too little for the people." (*al-Tadhkirah*)

The Conditions Applicable to the Halt

Taharah (ritual purity) is not a condition for the halt at 'Arafat, by consensus of all the schools.

According to the Imamiyyah and the Maliki schools, the halt at `Arafat must be made with prior intention (*niyyah*) and with the implied knowledge that the place where he is halting is indeed 'Arafat. Thus if he were to pass on without knowing, or know without intending the *wuquf* it is not considered *wuquf* as su

According to the Shafi'i and the Maliki schools, neither intent nor knowledge is a condition. All that is required is freedom from insanity, intoxication, and loss of consciousness. According to the Hanafis, neither intent, nor knowledge, nor sanity is a condition; whosoever is present in 'Arafat during the specific period, his Hajj is correct, intent or no intent, whether he knows the place or not, whether sane or insane. (*Fiqh al-Sunnah, al-Tadhkirah*)

Is it necessary to make the halt in 'Arafat for the full specified period, or is it sufficient to be present there for some time, even if it is for a single moment?

According to the Imamiyyah, there are two kinds of periods for the halt, depending on whether one arrives at a time of his own choice (*ikhtiyari*) or the time is forced upon him by circumstances beyond his control (*idtirari*). In the case of the former, the period of halt for him is from midday on the ninth until sunset on the same day; in the case of the latter, the period lasts until the daybreak of the tenth.

So one who can make the halt from noon until sunset for the entire period, it is *wajib* upon him; although halt not for the entire period but halt for a part of it is *rukn* [that is without it the Hajj would not be valid], the rest being merely a *wajib*. This means that if someone omits the halt his Hajj is invalid for not performing a *rukn* of it. But if one makes a short halt, he has omitted only a *wajib* which is not *rukn*, and so his Hajj does not lose its validity [on this account]. Moreover, if someone cannot make the halt for the entire *ikhtiyari* period, due to some legitimate excuse, it is sufficient for him to make the halt for a part of the night of `Id.

According to the Shafi'i, the Maliki, and the Hanbali schools, mere presence even if for a single moment, is sufficient. (*al-Fiqh `ala al-madhdhib al-'arba `ah, Manar al-sabil*)

According to the Imamiyyah, if one leaves `Arafat intentionally before the midday, he must return and there is nothing upon him if he does. But if he doesn't, he must sacrifice a camel, and if that is beyond his means fast for 18 days in succession. But if the lapse were by oversight and he does not discover it until the time is past, there is nothing upon him, on condition that he is present at the halt in al-Mash'ar al-Haram in time. But if he remembers before the period expires, he must return as far as possible, and if he doesn't he must sacrifice a camel.

The Malikis say that one who makes the halt in `Arafat after the midday and leaves `Arafat before the sunset, he must repeat the Hajj the following year if he does not return to `Arafat before the daybreak (on the 9th). But all other legists say that his Hajj is complete. (Ibn Rushd's *Bidayah*)

According to *al-Fiqh al-musawwar `ala madhhab al-Shafi'i*, "if one forgets and omits the halt, it is obligatory upon him to change his Hajj into `Umrah, and then complete the remaining rites of Hajj after performing its rites; also he must repeat the Hajj in the immediate following year."

It is *mustahabb* for one performing the halt in 'Arafat to: observe *taharah*; face the Holy Ka'bah; and do a lot of *dua*' and *istighfar*, with due surrender, humility, and with a heart-felt presence before God.

The Wu'quf in Muzdalifah

The halt in Muzdalifah is the next rite after the halt in `Arafat, by consensus of all the schools. They also agree that when the Hajj pilgrim turns to Muzdalifah (where al-Mash'ar al-Haram is situated) after the halt in `Arafat, he is acting in accordance with the following Divine verse of the Qur'an:

فَإِذَا أَفْضَيْتُمْ مِنْ عَرَفَاتٍ فَادْكُرُوا اللَّهَ عِنْدَ الْمَشْعَرِ الْحَرَامِ وَاذْكُرُوهُ كَمَا هَدَاكُمْ

When you pour forth from 'Arafat, then remember Allah in al-Mash'ar al-Haram, remembering Him in the way you have been shown. (2:198)

Also, there is agreement that it is *mustahabb* to delay the *maghrib* (sunset) prayer on the night preceding the `Id day until Muzdalifah is reached. The author of *al-Tadhkirah* writes that when sun sets in `Arafat, then one should go forth before the (*maghrib*) prayer towards al-Mash'ar al-Haram and recite there the supplication prescribed by tradition. The author of *al-Mughni* says, "It is *sunnah* (i.e. *mustahabb*) for one leaving `Arafat not to offer the *maghrib* prayer until Muzdalifah is reached, whereat the *maghrib* and the `isha' prayers should be offered together.

There is no difference regarding this, as Ibn al-Mundhir also points out when he says: "There is consensus among the `ulama', and no divergence of opinion, that it is *sunnah* for the Hajj pilgrim to offer the *maghrib* and the `isha' prayers together; the basis for it is that the Prophet (s) offered them together." [2]

All the legal schools, with the exception of the Hanafi, agree that if one were to offer the *maghrib* prayer before reaching Muzdalifah and not offer the two prayers together, his *salat* is nevertheless valid despite its being contrary to what is *mustahabb*. Abu Hanifah does not consider it valid.

The Limits of Muzdalifah

According to *al-Tadhkirah* and *al-Mughni*, Muzdalifah has three names: Muzdalifah, Jam`, and al-Mash'ar al-Haram, its limits are from al-Ma'zamayn to al-Hiyad, towards the valley of Muhassir. The entire Muzdalifah is *ismawqif*, like `Arafat, and it is legitimate to make the halt at any spot inside it. According to *al-Madarik*, it is a settled and definite matter among the Imamiyyah legists that it is permissible, in case of overcrowding, to ascend the heights towards the hill, which is one of the limits of Muzdalifah.

The Night at Muzdalifah

Is it obligatory to spend the entire night of `Id at Muzdalifah, or is it sufficient to halt in al-Mash'ar al-Haram even for a moment after the daybreak? (It is assumed, of course, that the meaning of *wuquf* is mere presence: one may be walking around, sitting or riding a mount, as in the case of the halt at 'Arafat).

According to the Hanafi, the Shafi`i, and the Hanbali schools, it is obligatory to spend the entire night at Muzdalifah and the defaulter is required to make a sacrifice. (*al-Mughni*) According to the Imamiyyah and the Maliki, it is not *wajib*, though meritorious. This is what Shihab al-Din al-Baghdadi

the Maliki, in his *Irshad al-salik*, and al-Hakim and al-Khu'i have confirmed. However, no one has considered it a *rukn*.

As to halting in al-Mash'ar al-Haram after the daybreak, Ibn Rushd, in *al-Bidayah wa al-nihayah*, cites the consensus of the Sunni fuqaha' to the effect that it is one of the *sunan* (sing. *sunnah*) of the Hajj, not one of its *furud* (duties; sing. *fard*).

According to *al-Tadhkirah*, "It is obligatory to halt in al-Mash'ar al-Haram after the daybreak, and if someone were to leave intentionally before the daybreak after halting there for the night, he must sacrifice a sheep. Abu Hanifah also says that it is obligatory to halt after the daybreak. The rest of the schools permit departure after midnight." Therefore, with the exception of the Imamiyyah and the Hanafi schools, others permit departure from Muzdalifah before the daybreak.

The Imamiyyah say that the time of halt in al-Mash'ar al-Haram is of two kinds: the first (*ikhtiyari*) is for one who has no reason for delaying, and that is the entire period between the daybreak and the sunrise on the day of `Id; whoever leaves advertently and knowingly from the Mash'ar before the daybreak and after being there for the whole or part of the night, his Hajj is not invalidated if he had halted at 'Arafat, although he must sacrifice a sheep. If he had left the Mash'ar on account of ignorance, there is nothing upon him, as made explicit in the above quotation.

The second (*idtirari*) is for women and those who have an excuse for not halting between the daybreak and the sunrise; their time extends to midday on the day of `Id. The author of *al-Jawahir* says that there is both textual evidence (from hadith) as well as consensus to support the above prescription, and the fatawa of al-Sayyid al-Hakim and al-Sayyid al-Khu'i are also in accordance with it. The latter has not stated midday as the *idtirari* time limit, but says that it is sufficient to make the halt after sunrise.

The Imamiyyah also say that the *wuqf* in the two specified periods of time is a *rukn* of the Hajj. Therefore, if someone does not perform it altogether either in the *ikhtiyari* period for the night or in the *idtirari* period, his Hajj is invalid if he hadn't spent the night there; but not if the default -was on account of a legitimate excuse, on condition that he had performed the halt at 'Arafat. So one who fails to make the halts at 'Arafat and the Mash'ar, neither in the *ikhtiyari* nor in the *idtirari* period, his Hajj is invalid even if the failure was on account of a legitimate reason. It is obligatory upon him to perform Hajj the year after if the Hajj intended was a *wajib* one; and if it was a *mustahabb* Hajj, it is *mustahabb* for him to perform it the next year. (*al-Jawahir*)

The halt in al-Mash'ar al-Haram is held in greater importance by the Imamiyyah than the one in 'Arafat; that is why they say that one who loses the chance to be present at the halt in 'Arafat but participates in the halt at the Mash'ar before the sunrise, his Hajj is complete. (*al-Tadhkirah*)

Mustahabbat of the Mash`ar

According to the Imamiyyah it is *mustahabb* for one performing Hajj for the first time to put his feet on the ground of the Mash'ar. (*al-Jawahir*)

According to the Imamiyyah, the Shafi`i and the Maliki schools, it is *mustahabb* while leaving for Mina to gather seventy pebbles, for the *ramy al-jamarat*, at Muzdalifah. The reason for this, according to the author of *al-Tadhkirah*, is that when the Hajj pilgrim arrives in Mina he should not be

detained by anything from the rite of the *ramy*. Ibn Hanbal is narrated to have said that the pebbles may be gathered from any place; and there is no disagreement that it suffices to gather them from whatever place one wishes.

The maintenance of *taharah*, the pronouncing of *tahlil*, *takbir*, and *du`a'* (the prescribed one or something else) is also *mustahabb*.

[50] [51]

Part 8

At Mina

All the schools are in agreement that the rites after the halt at al-Mash'ar al-Haram are those of Mina, and that departure from Muzdalifah is after the sunrise, and one who leaves before sunrise, passing beyond its limits, according to al-Khu'i, must sacrifice a sheep as *kaffarah*.

At Mina one performs several rites which continue from the Day of Sacrifice (*yawm al-nahr*), or the day of `Id, until the morning of the thirteenth or the night of the twelfth. The *wajibat* of Hajj are completed in Mina. The three days following the day of `Id (the 11th, 12th, and the 13th) are called "*ayyam al-tashriq*."^[1]

Three rites are obligatory at Mina on the day of `Id: (1) *ramy* of the Jamrat al-`Aqabah; (2) *al-dhabh* (slaughtering of the sacrificial animal); (3) *halq* or *taqsir*. Agreeing that the Prophet (s) performed first the *ramy*, then the *nahr* (or *dhabh*) and then the *taqsir*, the schools disagree whether this order is obligatory and if it is impermissible to change that order, or if the order is only *mustahabb* and may be altered.

According to al-Shafi`i and Ahmad ibn Hanbal, there is nothing upon one who changes the order. Malik says that if someone performs *halq* before the *nahr* or the *ramy*, he must make a sacrifice; and if he was performing *Hajj al-qiran* then two sacrifices. (Ibn Rushd's *al-Bidayah*). According to the Imamiyyah, it is a sin to change the order knowingly and intentionally, although repetition is not required. The author of *al-Jawahir* says, "I have not found any difference of opinion on this point", and *al-Madarik* states that the jurists are definite on this point.

Now we shall deal with each one of these rites under a separate heading.

Part 9

Jamrat al `Aqabah

The Number of Jimar

Ramy al jimar, or the symbolic throwing of pebbles performed in Mina, is obligatory upon all pilgrims of the Hajj, whether *tamattu*; *qiran* or *ifrad*. This rite is performed ten times during the four days. The first *ramy*, in which only one point called Jamrat al-`Aqabah is stoned, is performed on the day of `Id. On the second day, i.e. 11th of Dhu al-Hijjah, the three *jimar* are stoned, and again every three on the third and the fourth day. This applies to the Hajj pilgrim who spends the night of the twelfth in Mina; otherwise there is no *ramy* for him on that day.

Jamrah of the Tenth of Dhu al-Hijjah

The legal schools agree that it suffices to perform the *ramy* of the Jamrat al-`Aqabah any time from sunrise until sunset on the tenth of Dhu al-Hijjah, but disagree as to its performance before or after that period. According to the Maliki, the Hanafi, the Hanbali and the Imami schools, it is not permissible to perform the *ramy* of the Jamrat al-`Aqabah before the daybreak, and if performed without an excuse, must be repeated. They permit it for an excuse like sickness, weakness, or insecurity (fear).

According to the Shafi'i school, performing the rite earlier is unobjectionable, for the specified period *ismustahabb* not *wajib* (*al-Tadhkirah*, Ibn Rushd's *Bidayah*). However, if delayed until after sunset on the day of `Id, according to Malik, the defaulter must make a sacrifice if he performs the rite during the night or the next day. According to the Shafi`is, there is nothing upon him if he performs the rite of *ramy* in the night or the next day. (Ibn Rushd's *Bidayah*)

According to the Imamiyyah, the time of this *ramy* extends from sunrise until sunset on that day. If forgotten, the rite must be performed the next day. If again forgotten, on the 12th, and if one fails again, it can be performed on the 13th. But if one forgets until one has left Makkah, he may carry it out the following year, either himself or through a deputy who carries it out on his behalf.[1]

The Conditions of Ramy

There are certain conditions for the validity of *ramy al jamarat*:

1. *Niyah*: stated by the Imamiyyah explicitly.

2. That each *ramy* must be carried out with seven pebbles; there is agreement on this point.

3. The pebbles must be thrown one at a time, not more; again there is consensus on this point.

4. The pebbles must strike the known target; there is also consensus on this point.

5. The pebbles must reach their target through being thrown (*ramy*); thus if they are tossed in some other manner, it does not suffice according to the Imami and the Shafi'i schools, and is not permissible according to the Hanbali and the Hanafi schools. (*al-Mughni*)

6. The pebbles must be of stone, not of other material, like salt, iron, copper, wood or porcelain, etc.; this is accepted unanimously by all the schools except that of Abu Hanifah, who says that it is all right if pebbles are made of some earthen material, such as porcelain, clay or stone. (*al-Mughni*)

7. The pebbles must be `new', that is, not used for *rainy* before; the Hanbalis state this condition expressly.

Taharah is not a condition in *ramy*, though desirable.

The Imamiyyah say that it is *mustahabb* that the pebbles be about the size of a finger tip and rough, neither black, nor white, nor red. The other schools say that their size must be about that of the seed of a broad bean(*baqila'*).

The Imamiyyah also say that it is *mustahabb* for the Hajj pilgrim to perform all the rites facing the *Qiblah*, with the exception of the *ramy* of the Jamrat al-`Aqabah on the day of `Id, which is *mustahabb* to perform with one's back towards the *Qiblah*, since the Prophet (s) had performed this rite in that way. The other schools say that facing the *Qiblah* is *mustahabb* even in this rite.

Also, it is *mustahabb* to perform the *ramy* on foot (though riding a mount is permissible), not to be farther from the Jamrah than 10 cubits, to perform it with the right hand, to recite the prayers

prescribed by tradition and other prayers. Following is one of the prayers prescribed by tradition:

اللهم اجعله حجاً مبروراً، وذنباً مغفوراً. اللهم إن هذه حصيائي، فأحصهن لي

وارفعهن في عملي ... الله أكبر. اللهم أدر الشيطان عني

O God, make my Hajj a blessing, a forgiving of my sins O God, these pebbles of mine, reckon them and place them high in my actions God is Great. O God, repel Satan from me.

Doubt

What if one doubts whether the pebble thrown has struck its target or not? It is assumed not to have hit. If one doubts the number thrown, he may count from the least number of which he is sure he has thrown.

Jamrat al-`Aqabah is the first rite performed by the Hajj pilgrim in Mina on the day of `Id, which is followed by the *dhabh*, then *halq* or *taqsir*. After that he proceeds to Makkah for *tawaf* the same day.

On this day, there is no other rite of *ramy* for him. Now we shall proceed to discuss the sacrifice (*hady*).

Hady

The second obligatory rite in Mina is the *hady* or animal sacrifice. The issues related to it are: (1) its kinds, *wajib* and *mustahabb*, and the various kinds of *wajib* sacrifice; (2) regarding those for whom the *hady* is *wajib*; (3) the requirements of the *hady*; (4) its time and place; (5) the legal rules about its flesh; (6) the substitute duty of one who can neither find the *hady* nor possess the means to purchase one. The details are as follow:

The Kinds of Hady

The *hady* is of two kinds; *wajib* and *mustahabb*. The *mustahabb* sacrifice is the one mentioned in the following verse of the Qur'an:

فَصَلِّ لِرَبِّكَ وَأَنْحِرْ

'So pray unto the Lord and sacrifice' (108:2), which is interpreted as a commandment to the Prophet (s) to sacrifice after the `Id day prayer. A tradition relates that the Prophet (s) sacrificed two rams, one white and the other black.

According to the Malikis and the Hanafis, the sacrifice is obligatory for every family once every year; it is, they say, similar to the *zakat al fitr*: The Imamiyyah and the Shafi`i schools say that the *mustahabb* sacrifice can be carried out in Mina on any of the four days, the day of `Id and the three days following it (called *ayyam al-tashriq*).

But at places other than Mina the sacrifice may be carried out only during three days: the day of `Id, and the 11th and the 12th. According to the Hanbalis, the Malikis, and the Hanafis, its time is three days whether in Mina or elsewhere. In any case, the best time for the sacrifice is after sunrise on the day of `Id during a period sufficient for holding the `Id prayer and delivering its two *khutbahs* (sermons).

The obligatory sacrifices, in accordance with the Qur'anic text, are four:

(1) The sacrifice related to *Hajj al-tamattu`* in accordance with the verse:

فَإِذَا أَمِنْتُمْ فَمَنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ

... If in peacetime anyone of you combines the `Umrah with the Hajj, he must offer such sacrifice as he can... (2:196)

(2) The sacrifice related to *halq*, which is a *wajib* open to choice, in accordance with the verse:

فَمَنْ كَانَ مِنْكُمْ مَرِيضًا أَوْ بِهِ أَذًى مِنْ رَأْسِهِ فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ

But if any of you is ill or suffers from an ailment of the head, he must offer a *fidyah* either by fasting or by alms-giving or by offering a sacrifice. (2:196)

(3) The sacrifice related to the penalty (*jaza'*) for hunting, in accordance with the verse:

وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمَّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ

He that kills game by design, shall present, as an offering near the Ka`bah, a domestic beast equivalent to that which he has killed, to be determined by two honest men among you; (5:95)

(4) The sacrifice related to "*ihsar*" [some hindrance which keeps one from completing the rites of Hajj, such as illness or interruption due to an enemy], in accordance with the following verse (*al-Tadhkirah*):

إِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ

If you cannot; offer such sacrifice as you can afford... (2:196)

Besides the above four, there are also the obligatory sacrifices related to any of the following: *`ahd* (pledge), *nadhr* (vow), *yamin* (oath). In what follows we shall discuss *hady* as one of the rites of Hajj.

For Whom is Hady Wajib?

The *hady* is not obligatory, by consensus of all the schools, upon one performing *`Umrah mufradah*, nor on one performing *Hajj al-'ifrad*. Similarly, there is consensus regarding its being obligatory upon the non-Makkan pilgrim on *Hajj al-tamattu`*. The four Sunni schools add that it is also obligatory upon the pilgrim on *Hajjal-qiran*.

According to the Imamiyyah, it is not obligatory on one on *Hajj al-qiran* except with *nadhr* (vow), or when he brings along with him the sacrificial animal at the time of assuming *ihram*.

There is disagreement regarding whether the Makkan performing *Hajj al-tamattu`* must offer a sacrifice or not. According to the four Sunni schools, the *hady* is not *wajib* upon him. *Al-Mughni* states that "there is no disagreement among scholars that the sacrifice of *tamattu`* is not *wajib* on those living in the neighbourhood of al-Masjid al-Haram." The Imamiyyah say that if the Makkan performs *Hajj al-tamattu`* the *hady* is obligatory upon him." This is stated by *al-Jawahir* where it says, "If the Makkan were to perform *Hajj al-tamattu*; the *hady* is *wajib* upon him according to the widely held (*mashhur*) opinion [of the Imami fuqaha'].

The legal schools, however, agree that the obligatory *hady* is not one of the *arkan* of Hajj.

The Requirements of the Hady

The *hady* must meet the following requirements:

1. It must belong to cattle, such as camel, cow, sheep, or goat, by consensus of all the five schools. As stated by *al-Mughni*, according to the Hanafi, the Maliki, the Shafi'i and the Hanbali schools: if a sheep, it must be at least six months; if a goat, of one year; if a cow, of two years; and if a camel of five years. This agrees with the Imamiyyah view as stated by *al-Jawahir*, with the difference that the camel must have entered its sixth and the goat its second year.

Al-Sayyid al-Hakim and al-Sayyid al-Khu'i have said that it suffices if the camel has entered its sixth and the cow or the goat its third. As to the sheep, they add, to be cautious, the sheep must have entered its second.

2. The sacrificial animal must be free of any defect, and, by consensus, must not be one-eyed, lame, sick or old and decrepit. There is disagreement, however, regarding its acceptability in case of castration, being without horns or with broken ones, missing or mutilated ears or tail. Such are not acceptable according to al-Sayyid al-Hakim and al-Sayyid al-Khu'i, but acceptable according to the author of *al-Mughni*.

Al-`Allamah al-Hilli, in *al-Tadhkirah*, says that female camel and cow and male sheep and goats are to be preferred, although the permissibility of the converse in the two cases is not disputed by any school. The author of *al-Mughni'* says that the sex of the sacrificial animal is irrelevant.

The Time and the Place of the Sacrifice

As to the occasion of the sacrifice, it is, according to the Maliki, the Hanafi, and the Hanbali schools, the day of `Id and the two days following it. Abu Hanifah adds that this time is specific for the sacrificial rite of *Hajj al-qiran* and *tamattu* ; but for the others he sets no such time limit. The Malikis do not recognize any difference between various kinds of *hady*, as mentioned by *al-Fiqh `ala al-madhahib al-'arba`ah*.

The Hanbalis say that if the sacrifice is made before its time, it must be made again. If after its time, in case of *mustahabb* the lapse of time cancels it; and in case of *wajib* it must be fulfilled. According to the Hanafis, slaughtering the sacrificial animal before the three days of `Id is not sufficient, but is if done later though *akaffarah* is required for the delay. According to the Shafi'is, the time of the obligatory sacrifice for *Hajj al-tamattu`* starts with *ihram*; therefore, performing it earlier [than the day of `Id] is permissible, and there is no time limit for delaying, although it is best performed on the `Id day. (*al-Fiqh `ala al-madhahib al-'arba`ah*)

The Imamiyyah regard *niyyah* as being obligatory in slaughtering (*dhabh* or *nahr*), and say that its time is on the day of `Id; although it is acceptable until the third day following it, or even until the end of Dhu al-Hijjah, although the delay is a sin. The author of *al-Jawahir* reports that there is no divergence [among Imami legists] on this point, even if the delay is without a [legitimate] excuse. It is not permissible, according to the Imamiyyah, to make the sacrifice before the 10th of Dhu al-Hijjah.

As to the place, it is the *Haram*, according to the Hanbali, the Shafi'i, and the Hanafi schools, which includes Mina [2] and other places, as mentioned above while discussing *ihram* and the limits of the *harams* of Makkah and al-Madinah.

According to the Imamiyyah, there are three conditions for slaughtering the *hady* in Mina: (1) that the *hady* must have been brought in the *ihram* assumed for Hajj, not in the *ihram* for `Umrah; (2) the pilgrim should have halted for some time of the night with the *hady* in `Arafat; (3) he should have made the resolve to make the sacrifice on the day of `Id or the following day. Also the Imamiyyah say that the pilgrim of *Hajj al-tamattu`* may make the sacrifice nowhere but in Mina, even if his Hajj is supererogatory. But the *hady* brought along in the *ihram* of `Umrah is to be slaughtered in Makkah. (*al-Tadhkirah*)

In any case, for all the schools offering of the sacrifice is legitimate and preferable at Mina. Ibn Rushd says that the consensus of the `ulama' is in favour of slaughtering the *hady* at Mina. Secondly, the difference between the Imamiyyah and the other schools is that the Imamiyyah specify Mina, while others allow an open choice between Mina and other places inside the *haram* of Makkah.

The Flesh of the Hady

The Hanbalis and the Shafi'is say that the flesh of the *hady* whose slaughtering inside the *haram* is *wajib* is to be distributed among the poor inside it. The Hanafis and the Malikis say: it is permissible to distribute it inside or outside the *haram*. The Shafi'is say: one may not (oneself) eat the flesh of a *wajib hady*, but that of a voluntary or *mustahabb hady* is permissible. The Malikis say: with the exception of the sacrifice made as *fidyah* for hurting someone (*adha*), hunting, or sacrifice vowed (*nadhr*) specifically for the poor, and the voluntary *hady* which dies before reaching its destination; the flesh of the *hady* may be eaten in all cases. (*al-Mughni, al-Fiqh ala al-madhahib al-'arba`ah, Fiqh al-Sunnah*)

The Imamiyyah say: a third of the flesh should be given to the poor believers; another third to other believers, even the well off; and the remaining third may be consumed by the pilgrim. (*al-Jawahir, al-Sayyid al-Hakim and al-Sayyid al-Khu'i* in their books on the *manasik* of Hajj).

The Substitute Duty (al-Badal)

All the legal schools agree that when the Hajj pilgrim cannot find the *hady* nor possesses means to acquire one, its substitute is to keep fasts for ten days, three of which for successive days, are to be kept during the Hajj days and the remaining seven on returning home. This is in accordance with the Divine verse: [3]

فَمَنْ لَمْ يَجِدْ فَصِيَامٌ ثَلَاثَةَ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةً إِذَا رَجَعْتُمْ تِلْكَ عَشْرَةٌ كَامِلَةٌ

... But if he lacks the means let him fast three days during the pilgrimage and seven when he has returned; that is ten days in all. (2:196)

The criterion of capacity to offer the *hady* is ability to arrange one in the place, and when it can't be done the duty of *hady* is changed into that of the fasts. This holds even if the pilgrim should be a man of means in his own homeland. This is because the obligation is specific to the occasion and so is the capacity to fulfil it. A similar case is that of availability of water for *taharah*.

Dhabh by a Wakil

It is preferable that the Hajj pilgrim should slaughter the *hady* himself, though it is permissible to ask someone else to do it, because it is one of the rites in which delegation is possible. The one deputed (*wakil*) makes the *theniyyah* of slaughtering on behalf of the one who deposes, and it is better that both of them should make the *theniyyah* together. According to the Imamiyyah it is *mustahabb* for the pilgrim to put his hand on that of him who slaughters or at least be present at the time of slaughtering.

Shaykh `Abd Allah al-Mamqani, in *Manahij al-yaqin*, writes: "If the *wakil* makes an error in mentioning the name of the one who appoints him, or forgets his name altogether, there is no harm in it." There is a good point here, for it is related from one of the Imams (`a) that in a marriage ceremony the *wakil* made a mistake while mentioning the bride's name or mentioned some other name. The Imam (`a) said, "It doesn't matter."

Qani`and Mu`tarr

In regard to the verse 36 of the *Surat al-Hajj*:

افْكُلُوا مِنْهَا وَأَطْعَمُوا الْقَانِعَ وَالْمُعْتَرَّ

... and eat of their flesh and feed with it the qani`and the mu`tarr... (22:36)

al-Imam al-Sadiq (`a) said, "The *qani`* is the (poor) man who is content with what you give him and does not show his displeasure and does not frown or twitch his mouth in irritation. The *mu`tarr* is one who comes to you for charity and presents himself."

The Substitute for Camel Sacrifice

If the sacrifice of a camel is obligatory upon someone, through *kaffarah* or *nadhr*, and he cannot arrange it, he must sacrifice seven sheep one after another, and if that is not possible fast for 18 days. (*al-Tadhkirah*)

Taqlid and Ish`ar

Taqlid; in this context, means putting a shoe or the like in the neck of the sacrificial animal. *Ish`ar* means making an incision in the right side of the hump of a camel or cow and letting it be stained by blood. The Sunni jurists regard *ish`ar* and *taqlid* as *mustahabb* except Abu Hanifah, who says that the *taqlid* of the sheep and the camel is *sunnah*, but *ish`aris* by no means permissible due to the pain it causes to the animal. (*al-Mughni*) We all favour kind treatment of the animals, and at the same time we are all Muslims. Islam has permitted the slaughtering of animals and even made it obligatory in case of *hady*, as Abu Hanifah also concedes by his act and verdict. In this light, *ish`aris* more entitled to permissibility.

Charity to Non-Muslims

Al-Sayyid al-Khu'i, in his book on the rites of Hajj, says, "The Hajj pilgrim giving something in charity (*sadaqah*) or gifting the meat of the slaughtered animal, may give the latter to anybody he wishes, even a non-mu'min or a non-Muslim.

In general the Imamiyyah permit the giving of *non-wajib sadaqat* or making of endowment (*waqf*) in favour of a Muslim or a non-Muslim. Sayyid Abu al-Hasan al-'Isfahani, in his *Wasilat al-najat*, says: "In giving of *mustahabb sadaqah*, poverty or possession of iman or islam is not a condition for the recipient. He may be a well-to-do man, a non-'Imami, a Dhimmi, and a total stranger (not a blood relation of the giver of charity)." Al-Sayyid al-Kazim, in the appendices of *al-'Urwat al-wuthqa*, permits giving of *sadaqah* even to a warring infidel (*kafirharbi*).

The Burning or Burying of Slaughtered Animals

It is a custom among Hajj pilgrims nowadays that they offer money to whoever would accept the *hady*[4], which he on receiving either buries or throws away because the number of the slaughtered animals is great and nobody around to make use of their meat.

Throughout whatever I have read I did not come across anyone who should raise a question about the permissibility or otherwise of this practice. In 1949 a group of Egyptian pilgrims asked the al-'Azhar for a fatwa, asking the permission for giving the price of the *hady* as help to the needy.

In reply, al-Shaykh Mahmud Shaltut, in Vol. 1, No.4 of the journal *Risalat al-Islam* which was issued by the Dar al-Taqrīb at Cairo, considered it obligatory to make the slaughter even if it should require burning or burial of the bodies of the slaughtered beasts.

I contested his opinion in a long article which appeared in two successive numbers of the above-mentioned journal in the year 1950. When the Dar al-`Ilm li al-Malayin, Beirut, wanted to bring out a new edition of my book *al-Islam ma`a al-hayat*, I included it also with a title "*Hal ta`abbadana al-Shar` bi al-hadyfi hl yutrak fihi li-al fasad?*" ("Does the Shari'ah command us to make the sacrifice in order to rot?").

There, I have drawn the conclusion that the *hady* is obligatory only when one can find someone to eat it or where it is possible to preserve the meat through drying or canning. But when the sacrifice is solely carried out for destruction through burning or burying, its permissibility in the present conditions seems doubtful and questionable. Anyone who wishes to see the details of my argument may refer to the second edition of *al-Islam ma`a al-hayat*.

Later I came across a tradition in *al- Wasa'il* which confirmed my position, and which the author had placed in the Book of *udhiyyah* (sacrifice) in a section entitled "*Bdb ta'akkud istihibab al-'udhiyyah*". The tradition reads:

"عن الصادق عن آبائه عن رسول الله (ص) أنه قال: "إنما يُجعل هذا الأضحي لتشبع مساكينكم من اللحم فأطعموهم"

From al-Sadiq (a), from his ancestors, from the Prophet (s), that he said: "This sacrifice has been instituted to feed the poor among you with meat. So feed them."

Although this tradition is related particularly to voluntary sacrifice, it also throws light on the purpose behind *al-hady al-wajib*.

Part 10

Between Makkah and Medina

As mentioned, the first rite in Mina on the 10th is *ramy* of Jamrat al-`Aqabah, after that the offering of *hady*, and then thirdly, *halq* or *taqsir*. We have already discussed the third under the head "*Halq* or *Taqsir*." We have referred to the rule about doing the *halq* or *taqsir* before the *dhabh* when discussing the order of the rites under the head "In Mina", where the reader will find its details.

When the pilgrim completes his rites in Mina on the day of `Id (such as *ramy* and *dhabh*), he returns to Makkah to perform the *tawaf al-ziyarah*; then he offers its related *rak'atayn* and performs the *sa'y* between Safa and Marwah. According to the four Sunni schools, he returns to Mina after that *tawaf* and everything becomes permissible to him thereupon, even sex. According to the Imamiyyah, he has to perform another *tawaf* the *tawaf al-nisa'*, and offer its related *rak'atayn*. Sex does not become permissible to the pilgrim, from the Imamiyyah viewpoint, without this *tawaf* which we have already discussed in detail above.

Part 11
The Night at Mina

After completing the *tawaf*, the pilgrim must return to Mina during what are called Layali al-Tashriq, which are the nights of the 11th, 12th, and 13th--with the exception of him who being in a hurry departs after midday and before sunset on the 12th; there being nothing against him who leaves under these circumstances on the third day, in accordance with the verse:

فَمَنْ تَعَجَّلَ فِي يَوْمَيْنِ فَلَا إِثْمَ عَلَيْهِ

... *He that departs on the second day incurs no sin ...* . (2:203)

According to Abu Hanifah, to stay overnight in Mina is *Sunnah* not *wajib*. Those who consider it *wajib* agree that it is a rite and not a *ruk'n*. They disagree, however, regarding the necessity of *kaffarah* upon the defaulter. According to Ahmad ibn Hanbal, there is none; according to al-Shafi'i, a *mudd* (*al-Tadhkirah, al-Mughni, Fiqh al-Sunnah*); and according to Malikis, a sacrifice (al-Zarqani's *sharh* of Malik's *Muwatta'*).

According to the Irnamiyyah, "If one spends the night at a place other than Mina, there is nothing upon him if he spends it at Makkah praying all the night until morning; but if the night is spent there without prayer, or somewhere else, in prayer or otherwise, he must sacrifice a sheep, even if the default was on account of oversight or ignorance". (al-Sayyid al-Hakim's *Manahij al-nasikin*).

There is no obligatory rite for the nights in Mina, though spending them in prayer and worship in *mustahabb*.

Ramy during the Ayyam al-Tashriq

The schools agree that there is no rite except *ramy* of the three *jimar* every day during the three days called *ayyam al-tashriq*, regardless of whether the pilgrim is performing *Hajj al-tamattu*; *al-'ifrad* or *al-qiran*. As to the number of pebbles and other things they have been mentioned under "Jamrat al-`Aqabah."

According to the Imamiyyah, the time of *ramy* on each of the three days extends from sunrise until sunset, midday being the preferable hour. The other schools say that it extends from midday until sunset, and if done earlier should be repeated. Abu Hanifah permits *ramy* before midday only on the third day. *Ramy* after sunset is permissible only for those with a [valid] excuse.

All the five schools are in consensus about the number of *jimar* and the way of performing the *ramy* on the three days. Below is the way of its performance as described by *al-Tadhkirah* and *al-Mughni*.

The pilgrim performs *ramy* on each of the three days by throwing 21 pebbles, seven in each of the three times. He begins at the first *jamrah*, al-Jamrat al-'Ula, which is the farthest of them from Makkah and nearer to Masjid al-Khayf. It is *mustahabb* to toss the pebble in a fashion called *hadhf*^[1], from the left side standing at Batn al-Masil, and to say *takbir* with every pebble that is thrown and to pray.

After that, he proceeds to the second *jamrah*, called al-Jamrat al-Wusta, halts at the left side of the way, and, facing the *Qiblah*, praises Allah and prays for blessings upon the Prophet (s), then moving ahead a little prays, and then throws the pebbles in the same way as above, then pauses and prays after the last pebble.

Then he moves on to the third point called *Jamrat al-`Aqabah*, and performs the rite of *ramy* as before, without any pause after finishing. With this the rites of *ramy* for the day are complete. ^[2]

The total number of pebbles thrown on the three days is 63 (that is, if one spends the night of the 13th in Mina), 21 each day.

With the seven thrown on the day of `Id the total number is 70.

The author of *al-Tadhkirah*, after the above description, says that there is no difference of opinion about it. The author of *al-Mughni* makes a similar remark, adding that Malik has opposed the raising of hands.

The description of the rites of *ramy* given by the author of *al-Mughni* is similar if not exactly the same as the one given above by the author of *al-Tadhkirah*.

All schools, except Abu Hanifah, agree about the order of the *ramy* of the *jimar*, and that if one of them is stoned out of turn, then it is obligatory to repeat the rite in the correct order. Abu Hanifah says that the order is not binding. (*al-Tadhkirah*, *al-Mughni*)

The *ramy* may be performed on foot or from a mount, though the former is better. It is permissible for one who has an excuse that someone else may perform it for him, and there is nothing upon one if

he omits the *takbir*, the prayer or the pause after the second *jamrah*.

If the *ramy* is delayed by a day intentionally, or on account of ignorance or oversight, or is put over completely until the last day of *Tashriq* and is performed on a single day, the pilgrim does not incur a *kaffarah* according to the Shafi'is and the Malikis. Abu Hanifah says that if one, two, or three pebbles are delayed by a day, for every pebble delayed a poor man must be fed; if four are delayed by a day, a sacrifice becomes essential.

All the four schools are in consensus that if one does not perform the *ramy* at all until the days of *Tashriq* are past, he is not obliged to perform the rite later any time. But they disagree as to the related *kaffarah*, which, according to the Malikis is sacrifice regardless of some--even one--or all of the pebbles being omitted; according to the Hanafis the sacrifice is required for omitting all, and for fewer one must feed a poor man for every pebble omitted.

The *kaffarah* according to Shafi'is is a *mudd* of food for every pebble if two are omitted; for three a sacrifice becomes obligatory. (Ibn Rushd's *Bidayah, al-Mughni*)

The Imamiyyah say, if the *ramy* of one or more *jimar* is forgotten, the rite must be performed during the days of *Tashriq*; but if forgotten altogether until one reaches Makkah, the pilgrim is obliged to return to Mina to perform them if the days of *Tashriq* are not past; otherwise he must perform the rite himself the following year, or depute another to perform it; in any case there is no *kaffarah* upon him. (*al-Tadhkirah*) This agrees with the *fatawa* of al-Sayyid al-Hakim and al-Sayyid al-Khu'i, with the difference that the former regards the legal grounds in favour of the obligation of completion of the rite as stronger (*aqwa*), whereas the latter considers it as dictated by caution (*ahwat*), and both agree that intentional omission of *ramy* does not invalidate the Hajj.

We referred earlier to the consensus of all the schools that it is sufficient for the Hajj pilgrim to remain for only two days of *Tashriq* in Mina and that he may depart before the sunset on 12th; if he remains until sunset, it is obligatory upon him to stay overnight and perform the rite of *ramy* on the 13th. The Imdmiyyah, however, say that the permissibility of leaving on the 12th is only for one who has not violated the prohibition on hunting and sex in the state of *ihram*; otherwise he is obliged to remain in Mina on the night of the 13th.

Offering *salat* in the Masjid al-Khayf at Mina is *mustahabb*, so also on the hill called Khayf. (*al-Tadhkirah*)

On returning to Makkah after the rites of Mina, it is, according to Imamis and Malikis, *mustahabb* to perform the *tawaf al-wada*; which, according to Hanafis and Hanbal is, is *wajib* for non-Makkans and those who do not wish to stay on in Makkah after returning from Mina. There is no *tawaf al-wada*; nor any *fidyah*, for women who enter their periods before the departure, even from the viewpoint of those who consider the *tawaf* as obligatory; however, it is *mustahabb* for her to bid farewell to the House from the door nearest to it and without entering al-Masjid al-Haram.

Here we conclude the discussion about the rites of Hajj.

Part 12
The Dhu al-Hijjah Moon

It happens often that the Dhu al-Hijjah new moon is established for a non-Imami scholar, and he declares its sighting, and the authorities of al-Haramayn al-Sharifayn make it compulsory for all pilgrims to follow his ruling, regardless of whether the new moon has been established for an Imami *mujtahid* or not. In such a case, what is an Imami pilgrim to do about the *wuquf* in `Arafat and other rites related to specific dates and times if he cannot act according to his own school of fiqh? Is his Hajj invalid if he makes the halt with others, performing all the rites simultaneously with them?

Al-Sayyid al- Hakim, in his *Manahij al-hajj* (1381 H.), p. 91, says: "When the non-Imami authority (*hakim*) rules that the new moon has been sighted, so that the halt in `Arafat takes place on the 8th of Dhu al-Hijjah and the halt in the Mash'ar on the 9th, then on the principle of *taqiyyah*, or the fear of being harmed, the halt with others is valid and relieves one of the duty. The same holds in case of a *na'ib* undertaking Hajj on another's behalf or one on a *mustahabb* Hajj of oneself or that of another. Also, there is no difference with respect to fulfilment of the duty whether he knows or not that the ruling (of the non-Imami *hakim*) is contrary to the reality."

Al-Sayyid al-Khu'i in *Manasik al-hajj* (1380 H.), p. 80, says: "When the new moon is established for a non-Imami *qadi* and he rules that it has been sighted, but the sighting of the new moon is not established for the Shi`ah `ulama', to follow others in making the halt is obligatory and satisfactory of the Hajj duty if there is a probability of the ruling being correct. One who acts contrary to the dictates of *taqiyyah* and the possibility of being harmed, thinking that legal caution lies in acting contrary to them, has committed something forbidden and his Hajj is invalid."^[1]

There is no doubt that God desires ease not hardship for His servants, and there is hardship in repeating the Hajj another time, even for one who has the means to undertake it more than once. But what should a poor man do who returns the next year to find the same thing to have occurred again? Should he keep on repeating the pilgrimage, two, three, or four times... until it coincides with the ruling of his school? May God's peace and benedictions be upon Amir al-Mu'minin, the Sayyid al-Wasiyyin, who said:

إن الله كلف يسيراً ، ولم يكلف عسيراً ، وأعطى على القليل كثيراً .

God has assigned duties which are easy to fulfil not difficult to cope with; and He rewards much for little.

Besides, we know that such kind of things happened during the era of the Infallible Imams (`a) and not one of them is known to have commanded the Shi`ah to repeat the Hajj. It is on this basis that al-Sayyid al-Hakim, in *Dalil al-nasikin*, says, "To fall in with the ruling of the non-Imami *qadi* is permissible; this is in accordance with definitive practice from the times of the Imams (`a), which has been to follow them (i.e. the non-Imamis) in the halt (at `Arafat), and no other alternative has ever been suggested."

However, al-Sayyid al-Shahrudi, in his *Manasik al-hajj*, says, "It is permissible to follow, in regard to this question, the *fatwa* of the absolute *mujtahid* (*al-mujtahid al-mutlaq*) who considers it permissible." To tell the truth, to me this kind of thing is not digestible when coming from a *mujtahid mutlaq*, although I have read and heard such things from more than one *mujtahid* whom the common people follow.

Because, a *mujtahid mutlaq* in his *fatwas* should either take an affirmative or a negative stand, and if he doesn't, has no right to be a legal authority (for *taqlid*). Someone may say that it is not a condition for being *mujtahid mutlaq* that he should never abstain from giving a definitive *fatwa* or give up caution (*ihtiyat*) in some matter, for 'caution is the path of salvation' (*al-'ihtiyat sabil al-najat*). In answer I would say, this is an obvious fallacy.

Because, *ihtiyat* in a matter is something, and giving a *fatwa* to consult someone else is another matter. In fact when the *mujtahid* sees the necessity of *ihtiyat* in a matter, he does not give a *fatwa* upon it--as is the practice of legal authorities regarding several issues?

Here we affirm al-Hakim's position, because we understand from the necessary grounds for *taqiyyah* that the 9th is a requirement for *wuquf* in 'Arafat when that requirement can be satisfied in presence of security and absence of any fear of harm. But in case of insecurity and fear this condition does not stand, exactly like the requirement for *sajdah* (prostration) in *salat* that it should be made on something which is not edible or wearable (*ghayr al-ma'kul wa al-malbus*)--a requirement which applies to conditions when security is present and which falls in case of insecurity and fear.

Part 13
Ziyarah of the Greatest Prophet (S)

The *ziyarah* of the Greatest Prophet--may Allah's peace and benedictions be upon him and his Family--is a highly *mustahabb* duty. He is reported to have said, "Whoever visits my grave after my death is like one who has migrated with me in my life." He also said, "A *salat* in my mosque is like a thousand ones offered elsewhere with the exception of al-Masjid al-Haram, as to which a *salat* there is equal to a thousand in my mosque." It is emphasized that the *mustahabb salat* in the Prophet's Mosque should be offered between his tomb and the *minbar*, where, a tradition says, is a 'garden of the gardens of Paradise.'

To visit all other mosques of al-Madinah, like Masjid Quba, Mashrabat Umm Ibrahim, Masjid al-'Ahzab, etc. and also the graves of the martyrs, in particular that of Hamzah (*`a*) at Uhud, is also *mustahabb*. Also *mustahabb* is paying visit to the tombs of the Imams (*`a*) buried in al-Baqi', viz., al-'Imam al-Hasan, al-'Imam Zayn al-'Abidin, al-'Imam al-Baqir, and al-'Imam al-Sadiq, who upon whom all be peace and best of blessings.

As to the *ziyarah* of Fatimah (*`a*), the mother of al-Hasan and al-Husayn, it is as important as that of her father, of whom she is a part (*bid'ah*). There are several reports about the location of her honoured tomb, of which the most probable seems to be the one according to which she was buried in her house adjacent to her father's mosque. When the mosque was extended by the Umayyads, the grave also came to be included inside it. This is what Ibn Babawayh (al-Shaykh al-Saduq) believed. We think this is highly probable, because it agrees closely with the tradition that her grave is in a garden between the grave (of the Prophet) and the *minbar*. Allah alone has knowledge of everything.

Part 14
History of al-Haramayn al-Sharifayn

When the Prophet came to al-Madinah after the migration, the first thing that he built there was the mosque. Afterwards he built the houses by its side. At first its area was 30 by 35 metres, which the Prophet (S) extended, making it 57 by 50 metres.

There was no *minbar* in the mosque at the time of its making. The Prophet (s) used to deliver his sermons leaning against one of the pillars, which were made of trunks of date-palms. Later, the Companions built a wooden *minbar* with two steps. `Umar ibn al-Khattab, during his reign, extended the mosque by five metres on southern and western sides and fifteen on the northern. He left untouched the eastern side where the dwellings of the Prophet's wives were situated.

`Uthman ibn `Affan demolished the mosque and rebuilt it, extending it in area by an amount almost equal to the one before by `Umar and left the houses of the Prophet's wives untouched. The building remained as `Uthman had made it until al-Walid ibn `Abd al-Malik demolished it again and extended it on all sides, and including even the houses of the Prophet's wives, together with that of `A'ishah, thus making the Prophet's tomb a part of the mosque.

The building constructed by al-Walid stood until 266/879 when al-Mahdi, the `Abbasid caliph, greatly extended its northern side. The building endured until the year 654/1256 when a fire broke out bringing down the roof and burning doors and the Prophet's *minbar*. The Mamluk sultan al-Zahir *ruk*n al-Din Baybars I (658--676/1260-1277) ordered its reconstruction and the mosque was restored to its original form before the fire.

In 886/1481, lightning struck the mosque destroying all the building except the chamber of the Prophet's tomb and a dome in the mosque's courtyard. It was rebuilt by the Mamluk king al-'Ashraf Sayf al-Din Qait Bay (872--901/1467--95) in a fashion better than before. In the 10th/16th century the Ottoman sultan Salim had it renovated, building the *mihrab* (niche) on the western side of the *minbar* and which is still there.

In the 13th/19th century the Ottoman sultan Mahmud II (1223--1255/1808--1839) had the green dome constructed. During the same century the mosque again needed repairs, which were carried out by the orders of the Ottoman sultan. This time, the engineers dismantled the old building little by little gradually building in its place the new structure which was completed in 1277/1861.

The Ka'bah

`It is the first temple ever to be built for men, a blessed place a beacon for the nations' (3:96) and the most ancient of them in the Middle East. It was first built by Ibrahim, the ancestor of the prophets, and Isma'il, his son, and the Qur'an quotes them praying as they raised its walls:

وَإِذْ يَرْفَعُ إِبْرَاهِيمُ الْقَوَاعِدَ مِنَ الْبَيْتِ وَإِسْمَاعِيلُ رَبَّنَا تَقَبَّلْ مِنَّا إِنَّكَ أَنْتَ السَّمِيعُ الْعَلِيمُ

And when Ibrahim and Isma'il raised up the foundations of the House (and dedicated it, saying): `Our Lord, accept this from us; Thou hear all and know all'. (2:127)

Isma'il gathered the stones and Ibrahim put them on one another until the walls were raised to the height of a man. Then the Black Stone was put in its place. According to tradition, the Ka'bah (*al-Bayt al-Atiq*) was nine cubits high and had an area of twenty by thirty cubits when Ibrahim (`a) built it. It

had two doors, but was without a roof.

As to the Black Stone, it is said to have been brought by Gabriel from heaven. It is also said that Adam brought it along with him on his descent from Paradise, that at first it was snow-white and was blackened by the deeds of men, and so on. There is no harm in not believing any of these stories and the like, nor are we obliged to establish their verity, nor to know the origin of the Stone. All we are obliged to do is to revere it because the Prophet (s) considered it sacred and revered it. If someone asks the secret behind the Prophet's regarding this stone as sacred, all we can say is that only God and His Apostle know best.

According to some traditions the Ka'bah stood as Ibrahim and Isma`il had built it until it was rebuilt by Qusayy ibn Kilab, the fifth ancestor of the Prophet (s). The structure built by Qusayy stood until the time when the Prophet was 35 years old, when a great flood demolished its walls. The Quraysh rebuilt it. When the walls were raised to a man's height the clans disputed as to who should receive the honour of lifting the Black Stone into its place. They almost came to war with one another, if it was not for their making Muhammad the arbiter amongst themselves.

The Prophet's solution was to spread a cloak on the ground. Then taking up the Black Stone he laid it on the middle of the garment. "Let the eldest of each clan take hold of the border of the cloak," he said. "Then lift it up, all of you together." When they had raised it to the right height, he took the Stone and placed it in the corner with his own hands.

May God's blessings and His mercy be upon you, O Apostle of God! You raised the Stone first with your noble hands from the ground and then put it into its place again with your hands. Thus you made God and man well pleased with you. This event was a definite evidence of your superiority over all, and of your being a 'mercy for all the worlds', before your declaration of the apostlehood as after it. Your act was a clear sign that you were the bearer of a Divine mission, and that those who rejected you were enemies and opponents of the truth and of humanity.

The Ka'bah remained in its condition until Yazid ibn Mu'awiyah became caliph and till `Abd Allah ibn al-Zubayr challenged his sovereignty over the Hijaz. Yazid's forces installed catapults on the hills around Makkah and bombarded the Ka'bah with tens of thousands of stones. The Ka'bah caught fire which finally demolished its structure. Ibn al-Zubayr repaired it as it was before without making any changes, and he put a wooden fence around it. When `Abd al-Malik ibn Marwan came to power, Ibn al-Zubayr was besieged by his forces under al-Hajjaj ibn Yusuf, who ultimately killed Ibn al-Zubayr after causing damage to a part of the Ka'bah. Al-Hajjaj rebuilt the demolished portions and made some changes in the walls as they used to be, and also had one of its doors (the 'western door') blocked.

The Ka'bah remained in the altered condition after al-Hajjaj's repairs until the year 1040/1630 when its walls collapsed due to heavy rains. Thereafter the Muslims from every corner gathered together to restore it and collected contributions from various regions of the Muslim world to rebuild it in the form as it stands to this day.

[1] 1. `Ihram' is the state of pilgrim sanctity, which a pilgrim of Hajj or `Umrah assumes on reaching miqat (see note No. 2). A pilgrim in the state of ihram is called muhrim. (Tr.)

[2] 2. Miqat (pl. mawaqit) refers to a number of stations outside Mecca from where the pilgrims intending Hajj or `Umrah assume ihram. They are: (1) Dhu al-Hulayfah (specifically, Masjid al-Shajarah); (2) Yalamlam; (3) Qarn al-Manazil; (4) al-Juhfah; (5) three points situated in the valley of al-`Aqiq: al-Maslakh, al-Ghamrah, and Dhat al-`Irq. Those pilgrims whose houses are nearer to Mecca than to any of the above mawaqit, assume ihram from their houses. (Tr.)

[3] 3. The talbiyah is wajib according to the Imamiyyah, Hanafi, and Maliki schools, and mustahabb according to the Hanbalis. Its time is the moment of beginning of ihram.

[4] 4. The area roughly within a radius of six miles, with the Holy Ka'bah at the centre, is called 'haram', the sacred and inviolable territory of the sanctuary of the Holy Ka'bah. See the brief discussion under the subheading; "The Limits of the Harams of Mecca and al-Madinah" in the present article. (Tr.)

[5] 5. According to the Imamiyyah school, Hajj al-tamattu` is obligatory for non-Meccans, and Meccans may choose between Hajj al-qiran and Hajj al-'ifrad. According to the four Sunni schools, there is no difference between a Meccan and a non-Meccan with regard to choice of any particular kind of Hajj, except that according to the Hanafi school Hajj al-tamattu` and Hajj al-qiran are makruh for the Meccan.

[6] 6. The tawaf of the first entry or the arrival (called tawaf al-qudum) is mustahabb from the viewpoint of all except the Maliki school, which regards it as obligatory.

[7] 7. According to the Imamiyyah school, one is free to choose between halq and taqsir if on `Umrah mufradah'. But a pilgrim on Hajj al-tamattu` is required to perform taqsir. Also according to the Imamiyyah, it is obligatory for one on `Umrah mufradah to perform, after the halq or taqsir, a second tawaf, the tawaf al-nisa', before which sexual intimacy is not permissible to the pilgrim. According to the four Sunni schools, one is free to choose between halq and taqsir in both. They do not require the pilgrim of Hajj or `Umrah to perform tawaf al-nisa; and according to the Maliki school halq or taqsir is not obligatory on one performing `Umrah mufradah.

[8] 8. According to the Imamiyyah school, the mutamatti` (pilgrim on Hajj al-tamattu' and its conjugate `Umrah) acquires tahlil (i.e. relief from ihram) after taqsir, even when he brings along with him the sacrificial animal (hady). But according to the other schools, the mutamatti` who assumes ihram for `Umrah from the miqat obtains tahlil on halq or taqsir when not accompanied by hady, but if he has brought along with him the hady, he remains in the state of ihram. However, according to them, the pilgrim of `Umrah mufradah obtains tahlil regardless of whether the hady accompanies him or not. The author of al-Mughni, after making the above statement, says, "I have not come across a contrary opinion on this matter."

[9] 9. According to the Imamiyyah school, the halt in Arafat is obligatory for the entire period of time. But according to the other schools, a moment of halt is sufficient. All the legal schools are in agreement that offering the zuhr (noon) and `asr (afternoon) prayers immediately after one another is mustahabb, because the Prophet (s) had done so.

[10] 10. Although the times have tended to support this opinion, and even though the traditions in favour of immediacy (al-fawr) of the duty of Hajj are open to criticism and controversy, but it leads towards negligence, and gradually towards abandonment of this sacred rite. Accordingly, the stress on immediacy is preferable, being more conducive from the viewpoint of the necessity to preserve

the vitality of the Islamic faith.

[11] 11. Mahram is a male relation with whom marriage is not permissible; viz; father, grandfathers, sons, grandsons, brothers, sons and grandsons of one's sister or brother, etc.

[12] 12. The Imamiyyah, Shafi'i, and Maliki schools permit hiring another person to perform the Hajj for a fee. The Hanafi and Hanbali schools do not consider it permissible. Nothing more than the expenses of journey, food and lodging may be given to the hired, they say.

[13] 13. The Qur'an, 22:78.

[14] 14. One who has not performed the Hajj before is called sarurah. According to the Shafi'i and Hanbali schools, if one who has not performed the Hajj before, undertakes it on behalf of another, the Hajj performed is considered his own. But according to the Maliki, Hanafi, and Imamiyyah schools, the Hajj performed depends on his intention (niyyah).

[15] 15. The minimum distance required for qasr in zuhr, 'asr and 'isha' prayers is 8 parasangs (approximately 44 kms. or 27.5 miles). (Tr.)

[16] 1. The Qur'an, 2:196.

[17] 2. According to al-Mughni, Ahmad ibn Hanbal did not consider the 'Umrah as being obligatory for Meccans, for the reason that the most important act of the 'Umrah is tawaf (circumambulation of the Ka'bah) which they do and it suffices them.

[18] 3. In the book al-Fiqh 'ala al-madhahib al-'arba'ah, it is the author's wont to give the text followed by a commentary and notes. In the text, he states the points of consensus of all the four Sunni schools, the different position of each is given in the commentary. What we have quoted here is taken from the text, not from the commentary.

[19] 4. According to al-Din wa al-Hajj 'ala al-madhahib al-'arba'ah, by Karrarah, one of the things which distinguishes the 'Umrah from the Hajj is that its ihram is not assumed from any of the mawaqit specified for the Hajj. From the Imamiyyah viewpoint, there is no difference between the miqat for one performing 'Umrah and the miqat for one on Hajj with regard to ihram.

[20] 5. The Imamiyyah author of al-Madarik says: "The better known and sounder of opinions is that the obligation of 'Umrah is independent of the obligation of Hajj." The author of al-Jawahir states, "The statements of fuqaha' are not free of confusion... the one which appears sounder is that those who live far away from Mecca are relieved of the obligation of 'Umrah mufradah, and that which is obligatory upon them is 'Umrat al-tamattu; whose wujub is related to that of Hajj.

[21] 1. According to al-Jawahir, al-Madarik, al-Hada'iq and other Imamiyyah works on fiqh, it is not permissible for one already in the state of ihram to assume ihram for another purpose, until he completes all the acts of the rite (Hajj or 'Umrah) for which he had assumed ihram.

[22] 2. Ibn 'Aqil is alone among Imamiyyah legists in agreeing with the Sunni legists in that the acts of both the Hajj and the 'Umrah may be performed with a single ihram in Hajj al-qiran.

[23] 1. Dhu al-Hulayfah, nowadays known as Bi'r `Ali or Abyar `Ali, is at a distance of about 486 kms. from Makkah to the north and 12 kms. from al-Madinah. (Tr.)

[24] 2. Al-Juhfah, lies a distance of about 156 kms. from Makkah to the north-west. (Tr.)

[25] 3. There are three points in the valley of al-`Aqiq, 94 kms. From Makkah in the north-east, from where ihram is assumed: al-Maslakh, al-Ghamrah, and Dhat al-`Ireq. According to the Imamiyyah

fuqaha', it is permissible to assume ihram from any of these points, though al-Maslakh is considered best, then al-Ghamrah, and then Dhat al-Irq. (Tr.)

[26] 4. Yalamlam is a mountain of the Tahamah range, lying at a distance of 84 kms. from Makkah (Tr.)

[27] 5. Qarn al-Manazil, the miqat for those coming from al-Ta'if, lies at a distance of 94 kms. east of Makkah.

[28] 6.8 According to the Hanafi school, bringing along of hady substitutes the talbiyah, as mentioned by Ibn `Abidin and the author of Fath al-Qadir.

[29] 7. "Ish'ar" here means slitting the right side of the camel's hump. By "taqlid" is meant the hanging of an old horseshoe in the neck of the hady, which is meant to identify the sacrificial animal as such.

[30] 8. The nal has a sole, but is devoid of the covering on the sides and the back of the foot at the heels. The khuff is the common shoe, which covers the foot on the sides and the heels.

[31] 9. After performing ramy al-jamarat and halq, everything except intercourse and perfume becomes permissible to the pilgrim--such as wearing of stitched clothes and other things. This is called al-hill al-'awwal (or "the first relief" from the restrictions of ihram). After the last tawaf all things including intercourse become permissible to him. This "second relief"--to be explained later--is called al-hill al-thani.

[32] 10. According to al-Tadhkirah, It is necessary during the next Hajj that the `separation' should take place from the point where the misdemeanour was committed during the first Hajj. The meaning of `separation' (tafriq) is that the two should not be alone together without there being present a third muhrim, whose presence acts as a deterrent.

[33] 11. According to the Imamiyyah, the kaffarah for cutting a single nail is giving one mudd (800 grams) of food in charity. If all the nails of fingers and toes are cut in one sitting, the kaffarah is one sheep, but if done in several sittings, it is sacrifice of two sheep.

[34] 12. The author of al-Tadhkirah ascribes impermissibility of shadowing oneself while moving to Abu Hanifah, and the author of Rahmat al-'ummah ascribes to him permissibility.

[35] 13. Al-Mughni states, "Those knowledgeable about al-Madinah do not know of any Thawr or `Ir," but it is possible that names have changed with time.

[36] 1. According to the author of al-Hada'iq, Hajj is invalid if tawaf is omitted intentionally, but not if omitted by mistake; although it is obligatory to perform it after omission.

[37] 2. According to Ibn Rushd, in his Bidayah, the four Sunni schools agree that the pilgrim of Hajj al-ramattu 'and it's related `Umrah is required to perform tawaf twice; the one on Hajj al-afrad is required to perform tawaf once. They disagree regarding Hajj al-qiran, in which case according to al-Shafi`i, Malik, and Ahmad ibn Hanbal, one tawaf is required, but two according to Abd Hanifah.

[38] 3. According to al-Jawahir, al-Masalik al-`Urwat al-wuthqa and other works of Imamiyyah fiqh, it is not permissible for one in the state of janabah or hayd to enter or pass through al-Masjid al-Haram or Masjid al-Rasul (al-Madinah), to say nothing of tarrying (makth) therein. However, it is permissible for one in the state of janabah or hayd to pass, without stopping or halting, through other mosques.

[39] 4. `Ramal' means walking fast, without running or making a rush. According to the Imamiyyah

work al-Lum`ah, ramal is mustahabb in the first three rounds of tawaf--a position which is exactly the same as that of the four Sunni schools.

[40] 5.The author of al-Jawahir makes this remark when comparing those who stipulate such kind of conditions for tawaf to others with a similar attitude with regard to the niyyah of salat.

[41] 6.Hajar Isma`il ibn Ibrahim (`a) is the place where his house was built, and there he buried his mother.

[42] 7.By `idtiba is meant the style of wearing the rida' whose hanging sides are drawn under the right armpit and then thrown over the left shoulder. In the book al-Fiqh `ala al-madhahib al-'arba`ah, the istihbab of idtibta'is ascribed to the Hanafi, Shafi`i, and the Hanbali, not to the Maliki, schools.

[43] 8.This is in agreement with the fatawa of al-Sayyid al-Hakim and al-Sayyid al-Khu'i.

[44] 1.Al-Sayyid al-Hakim says: "It is not obligatory to hasten to perform the sa'y after finishing the tawaf and its salat, but it is also not permissible to delay voluntarily until the next day." Al-Sayyid al-Khu'i says, "It is binding on one not to make a considerable delay without need in performing the sa'y after the tawaf and its salat, and it is not permissible to delay it intentionally until the next day." I say, these verdicts of the two scholars are supported by sahih ahadith.

[45] 2.Harwalah is a kind of walk which resembles that of a camel when it wants to pick up speed. According to the Imamiyyah, if the one performing the sa'y is riding, he should spur it to make the beast walk faster.

[46] 3.The author of al-Mizan quotes Abu Hanifah to the effect that he does not see any objection in the converse, i.e. performing of the sa'y by starting at Marwah and finishing at Saf'a.

[47] 4.Al-Sayyid al-Hakim in his book on the manasik of Hajj says that muwalat (continuity of succession) is not required in the ashwal of the sa'y, and it is permissible to separate or interrupt them--even after a single shawt--and to pick up the count again after the break.

[48] 1.This agrees with the fatwas of al-Hakim and al-Khu'i. Al-Hakim, however, distinguishes between one who forgets (nasi) and one who is ignorant (jahil); he excuses the first not the latter, who is included with the willful defaulter (`amid).

[49] 2.This agrees with the fatwas of al-Hakim and al-Khu'i. Al-Hakim, however, distinguishes between one who forgets (nasi) and one who is ignorant (jahil); he excuses the first not the latter, who is included with the willful defaulter (`amid).

[50] 1.Al-Shaykh `Abd al-Muta'al al-Sa`idi says: This order is obligatory in the rites of `Umrah, but in the rites of Hajj there is no order of sequence between the tawaf and the halq, or between the sa'y and the wuquf at 'Arafat. See al-Fiqh al-musawwar ala Madhhabal-Shafi'i.

[51] 2.This act of the Prophet (s) makes the grounds for the Imamiyyah for the permissibility of offering the two prayers together, because the Prophet (s) had said, "Pray in the same way as you see me praying." The fact that something is permitted at one time or a place suggests its permissibility in all places and at all times, unless there is some textual proof (nass) to show that it is particular and not general. But there is no nass in favour of its being particular (takhsis). Therefore offering the two prayers together is permissible in general and at all times and in all places.

[52] 1.There is disagreement about the Ayyam al-Tashriq as to whether they comprise two or three days. As to their naming, it is because during those days the pilgrims used to dry strips of the meat of the sacrificed animals in the sun.

[53] 1.This is in agreement with the fatwas of al-Hakim and al-Khu'i.

[54] 2.The distance of Mina from Makkah is one parasang (approx. 4 miles).

[55] 3.It may be noted that whenever there is an explicit text of the Qur'an there is also agreement and consensus between the Islamic schools of fiqh and no difference between the Sunni s and the Shi`ah. The divergence of opinion between them arises either on account of the absence of nass (text), or its being synoptic (mujmal), or its weakness, or its contrariety with another text, or in its interpretation and application. This is a definite proof of the fact that all of them are derived from a single source.

[56] 4.Al-Sayyid al-Hakim says, "The duty to offer the hady in sadaqah does not remain if one cannot do it... and when the poor man would not accept it without money, it is not obligatory."

[57] 1.Hadhf means a certain way of tossing in which the pebble is held under the thumb and tossed by the back of the index finger.

[58] 2.Al-Sayyid al-Hakim says that it is desirable that the third ramy should be done with one's back toward the Qiblah. According to al-Mughni it should be done facing the Ka'bah.

[59] 1.Our teacher al-Sayyid al-Khu'i makes the absence of knowledge (that the fatwa of the non-Imami authority about the sighting of the new moon is contrary to fact) a condition for the Hajj being satisfactory of the duty. But al-Sayyid al-Hakim considers the knowledge of its contradiction with reality or absence of such knowledge indifferent to the Hajj (performed on the basis of the non-Imami faqih's declaration) being satisfactory of the duty. Here we affirm al-Hakim's position, because we understand from the necessary grounds for taqiyyah that the 9th is a requirement for wuqf in 'Arafat when that requirement can be satisfied in presence of security and absence of any fear of harm. But in case of insecurity and fear this condition does not stand, exactly like the requirement for sajdah (prostration) in salat that it should be made on something which is not edible or wearable (ghayr al-ma'kul wa al-malbus)--a requirement which applies to conditions when security is present and which falls in case of insecurity and fear.

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