

# Fasting and Zakat (Alms), according to the Five Schools of Islamic Law

Volume 3 of 8

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This work on the Shariah or Islamic Law offers a comparative study of the Divine Law that, according to authentic Islamic doctrines, embodies the Will of God in society. In the Islamic world view, God is the ultimate legislator. The five major schools that are used in the comparison are: Hanafi, Hanbali, Shafi'i, Maliki and Jaf'ari.

This book, volume 3 of 8, directs the important issues regarding fasting and the payment of zakat from the viewpoints of the five Schools of thoughts.

## Category:

Sunni & Shi'a [5]

Fasting [6]

General [7]

Zakat and Khums (Charity) [8]

## Topic Tags:

Fasting [9]

Fast [10]

Siyam [11]

Alms [12]

Zakat [13]

Charity [14]

### **Miscellaneous information:**

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### **Featured Category:**

Debates & discussions [15]

Resources for Further Research [16]

Responses to Misconceptions [17]

## **Preface**

The Islamic *fiqh* (jurisprudence) is divided into several sections: *'ibadat* (rituals) that include: ritual purity (*taharah*), prayers (*salat*), fasting (*sawm*), alms (*zakat*), one-fifth (*khums*) and pilgrimage (*hajj*). These six chapters are included in the first part of the Book *al-Fiqh 'ala al-madhahib al-khamsah* (*Fiqh* according to five schools of Islamic Law), which was published first by Dar al-'Ilm li al-Malayin, achieving unprecedented circulation, that prompted this foundation to republish it for the second, third and fourth time, all of which have run out of print.

The second section of Islamic *fiqh* contains the Individual conditions (*al-'Ahwal al-shakhsiyah*), that include: marriage, divorce, will and bequest, endowment (*waqf*) and legal disability (*hajr*), which constitute the second part of the book published by Dar al-'Ilm li al-Malayin, whose copies have run out of print.

Some honourable personages suggested to the Dar to republish the two parts in one volume, of which the first part to be *'ibadat* and the second *al-Ahwal al-Shakhsiyah*. The Dar has complied, as the subject of the two parts being one, by the same author. I hope that this work will be beneficial for the readers.

The Almighty Allah is the guarantor of success.

**Author**

# Fasting

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

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

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

2. Illness: The schools differ here.

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

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

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

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

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

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

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

- The Hanbalis and the Shafi'is say: *Fidyah* is *wajib* upon a pregnant and a nursing woman only if they

fear danger for the child; but if they fear harm for their own health as well as that of the child, they are bound to perform the *qada'* only without being required to give *fidyah*. The *fidyah* for each day is one *mudd*, which amounts to feeding one needy person (*miskin.*).<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

- The Imamis state: Hunger is not a cause permitting *iftar* except where it is expected to cause illness.
6. Old people, men and women, in late years of life for whom fasting is harmful and difficult, can break their fast, but are required to give *fidyah* by feeding a *miskin* for each fast day omitted: similarly a sick person who does not hope to recover during the whole year. The schools concur upon this rule excepting the Hanbalis, who say: *Fidyah is mustahabb* and not *wajib*.
7. The Imamis state: Fasting is not *wajib* upon one in a swoon, even if it occurs only for a part of the day, unless where he has formed the *niyyah* of fasting before it and recovers subsequently, whereat he will continue his fast.

## Disappearance of the Excuse

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

## Conditions (Shurot) of Fasting

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

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

As to a person in an intoxicated or unconscious state:

- The Shafi`is observe: His fast is not valid if he is not in his senses for the whole period of the fast. But if he is in his senses for a part of this period, his fast is valid, although the unconscious person is liable to its *qada'*, whatever the circumstances, irrespective of whether his unconsciousness is self-induced or forced upon him. But the *qada'* is not *wajib* upon an intoxicated person unless he is personally responsible for his state.
- The Malikis state: The fast is not valid if the state of unconsciousness or intoxication persists for the whole or most of the day from dawn to sunset. But if it covers a half of the day or less and he was in possession of his senses at the time of making *niyyah* and did make it, becoming unconscious or intoxicated later, *qada'* is not *wajib* upon him. The time of making *niyyah* for the fast in their opinion

extends from sunset to dawn.

- The Hanafis, an unconscious person is exactly like an insane one in this respect, and their opinion regarding the latter is that if the insanity lasts through the whole month of Ramadan, *qada'* is not *wajib* upon him, and if it covers half of the month, he will fast for the remaining half and perform the *qada'* of the fasts missed due to insanity.
- The Hanbalis observe: *Qada' is wajib* upon a person in a state of unconsciousness as well as one in a state of intoxication, irrespective of whether these states are self-induced or forced upon them.
- In the opinion of the Imamis, *qada' is* only *wajib* upon a person in an intoxicated state, irrespective of its being self-induced or otherwise; it is not *wajib* upon an unconscious person even if his loss of consciousness is brief.

## Muftirat

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

They are:

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

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

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

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

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

3. Seminal emission (*al-istimna'*): There is consensus that it invalidates the fast if caused deliberately.

The Hanbalis say: If *manhy is* discharged due to repeated sensual glances and the like the fast will become invalid:

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

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

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

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

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

**7. Inhaling a dense cloud of suspended dust** invalidates the fast only in the opinion of the Imamis. They say: If a dense suspended dust, such as flour or something of the kind, enters the body the fast is rendered invalid, because it is something more substantial than an injection or tobacco smoke.

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

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

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

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

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

A group of Imami legists go further by requiring of such a fabricator the *kaffarah* of freeing a slave,



fasting for two months, and feeding sixty poor persons. This shows the ignorance or malice of those who say that the Imamis consider it permissible to forge lies against God and His Messenger (s).

## The Various Kinds of Fasts

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

### Obligatory fasts

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

### Qada' of the Ramadan Fasts

1. The schools concur that a person liable to the *qada'* of Ramadan fasts is bound to perform it during the same year in which the fasts were missed by him, i.e. the period between the past and the forthcoming Ramadan. He is free to choose the days he intends to fast, excepting those days on which fasting is prohibited (their discussion will soon follow). However it is *wajib* upon him to immediately begin their *qada'* if the days remaining for the next Ramadan are equal to the number of fasts missed in the earlier Ramadan.
2. If one capable of performing the *qada'* during the year neglects it until the next Ramadan, he should fast during the current Ramadan and then perform the *qada'* of the past year and also give a *kaffarah* of one *mudd* for each day in the opinion of all the schools except the Hanafi which requires him to perform only the *qada'* without any *kaffarah*.

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

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

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

- The Imamis observe: It *is wajib* upon his eldest child to perform the *qada'* on his behalf.
- The Hanafis, Shafi`is and Hanbalis state: A *sadaqah* of a *mudd* for each fast missed will be given on his behalf.
- According to the Malikis, his legal guardian (*wali*) *will* give *sadaqah* on his behalf if he has so provided in the will; in the absence of a *will* it is not *wajib*.

5. In the opinion of the four schools, a person performing the *qada'* of Ramadan can change his intention and break the fast both before and after midday without being liable to any *kaffarah* provided there is time for him to perform the *qada'* later.

The Imamis observe: It is permissible for him to break this fast before midday and not later, because continuation of the fast becomes compulsory after the passing of the major part of its duration and the time of altering the *niyyah* also expires. Hence if he acts contrarily and breaks the fast after midday, he is liable to *kaffarah* by giving food to ten poor persons; if he is incapable of doing that, he will fast for three days.

## **Fasts of Atonement (Kaffarah)**

The fasts of atonement are of various kinds. Among them are atonement fasts for involuntary homicide, fasts for atonement of a broken oath or vow, and atonement fasts for *zihar*. These atonement fasts have their own rules which are discussed in the related chapters. Here we shall discuss the rules applicable to a person fasting by way of *kaffarah* for not having observed the fast of Ramadan:

- The Shafi`is, Malikis and Hanafis say: It is not permissible for a person upon whom fasting for two consecutive months has become *wajib* consequent to deliberately breaking a Ramadan fast to miss even a single fast during these two months, because that would break their continuity. Hence, on his missing a fast, with or without an excuse, he should fast anew for two months.
- The Hanbalis observe: If he misses a fast due to a legitimate excuse, the continuity is not broken.
- The Imamis state: It is sufficient for the materialization of continuity that he fast for a full month and then a day of the next month. After that he can skip days and then continue from where he had left. But if he misses a fast during the first month without any excuse, he is bound to start anew; but if it is due to a lawful excuse, such as illness or menstruation, the continuity is not broken and he/she will wait till the excuse is removed and then resume the fasts.

Furthermore:

- The Imamis further observe: One who is unable to fast for two months, or release a slave or feed sixty poor persons, has the option either to fast for 18 days or give whatever he can as *sadaqah*. If even this is not possible, he may give alms or fast to any extent possible. If none of these are possible, he should seek forgiveness from God Almighty.

- The Shafi'is, Malikis and Hanafis state: If a person is unable to offer any form of *kaffarah*, he will remain liable for it until he comes to possess the capacity to offer it, and this is what the rules of the Shari'ah require.

- The Hanbalis are of the opinion that if he is unable to give *kaffarah*, his liability for the same disappears, and even in the event of his becoming capable of it later, he will not be liable to anything.

The schools concur that the number of *kaffarahs* will be equal to the number of causes entailing it. Hence a person who breaks two fasts will have to give two *kaffarahs*. But if he eats, drinks or has sexual intercourse several times in a single day:

- The Hanafis, Malikis and Shafi'is observe: The number of *kaffarahs* will not increase if *iftar* occurs several times, irrespective of its manner.

- The Hanbalis state: If in a single day there occur several violations entailing *kaffarah*, if the person gives *kaffarah* for the first violation of the fast before the perpetration of the second, he should offer *kaffarah* for the latter violation as well, but if he has not given *kaffarah* for the first violation before committing the second, a single *kaffarah* suffices.

- According to the Imamis, if sexual intercourse is repeated a number of times in a single day, the number of *kaffarahs* will also increase proportionately, but if a person eats or drinks a number of times, a single *kaffarah* suffices.

## Prohibited Fasts

All the schools except the Hanafi concur that fasting on the days of *'Id al-Fitr* and *'Id al-Adha* is prohibited (*haram*):

- The Hanafis observe: Fasting on these two *'Ids* is *makruh* to the extent of being *haram*.

- The Imamis say: Fasting on the days of *Tashriq* is prohibited only for those who are at Mina. The days of *Tashriq* are the eleventh, twelfth and thirteenth of Dhu al-Hijjah.

- The Shafi'is are of the opinion that fasting is not valid on the days of *Tashriq* both for those performing Hajj as well as others.

- According to the Hanbalis, it is *haram* to fast on these days for those not performing Hajj, not for those performing it.

- The Hanafis observe: Fasting on these days is *makruh* to the extent of being *haram*.
- The Malikis state: It is *haram* to fast on the eleventh and the twelfth of Dhu al-Hijjah for those not performing Hajj, not for those performing it.

All the schools excepting the Hanafi concur that it is not valid for a woman to observe a supererogatory fast without her husband's consent if her fast interferes with the fulfillment of any of his rights. The Hanafis observe: A woman's fasting without the permission of her husband is *makruh*, not *haram*.

## The Doubtful Days

There is consensus among the schools that *imsak* is obligatory upon one who does not fast on a "doubtful day" (*yawm al-shakk*) that later turns out to be a day of Ramadan, and he is liable to its *qada'* later.

Where one fasts on a doubtful day that is later known to have been a day of Ramadan, they differ as to whether it suffices without requiring *qada'*:

- The Shafi'i, Maliki and Hanbali schools observe: This fast will not suffice and its *qada'* is *wajib* upon him.
- In the opinion of the Hanafis, it suffices and does not require *qada'*.
- Most Imamis state: Its *qada'* is not *wajib* upon him, except when he had fasted with the *niyyah* of Ramadan.

## Supererogatory Fasts

Fasting is considered *mustahabb* on all the days of the year except those on which it has been prohibited. But there are days whose fast has been specifically stressed and they include three days of each month, preferably the 'moonlit' days (*al-'ayyam al-bid*), which are the thirteenth, fourteenth and fifteenth of each lunar month.

Among them is the day of 'Arafah (9th of Dhu al-Hijjah). Also emphasized is the fasting of the months of Rajab and Sha'ban. Fasting on Mondays and Thursdays has also been emphasized. There are other days as well which have been mentioned in elaborate works. There is consensus among all the schools that fasting on these days is *mustahabb*.

## Reprehensible (Makrah) Fasts

It is mentioned in *al-Fiqh 'ala al-madhahib al-'arba'ah* that it is *makruh* to single out Fridays and Saturdays for fasting. So is fasting on the day of Now Ruz (21st March) in the opinion of all the schools

except the Shafi'i, and fasting on the day or the two days just before the month of Ramadan.

It has been stated in Imami books on fiqh that it is *makruh* for a guest to fast without the permission of his host, for a child to fast without the permission of its father, and when there is doubt regarding the new moon of Dhu al-Hijjah and the consequent possibility of the day being that of 'Id.

## Evidence of the New Moon

There is a general consensus among Muslims that a person who has seen the new moon is himself bound to act in accordance with his knowledge, whether it is the new moon of Ramadan or Shawwal.

Hence it *is wajib* upon one who has seen the former to fast even if all other people don't, 2 and to refrain from fasting on seeing the latter even if everyone else on the earth is fasting, irrespective of whether the observer *is 'adil* or not, man or woman. The schools differ regarding the following issues:

1. The Hanbalis, Malikis and Hanafis state: If the sighting (*ru'yah*) of the new moon has been confirmed in a particular region, the people of all other regions are bound by it regardless of the distance between them; the difference of the horizon of the new moon is of no consequence. The Imamis and the Shafi'i observe: If the people of a particular place see the new moon while those at another place don't, in the event of these two places being closeby with respect to the horizon, the latter's duty will be the same; but not if their horizons differ.
2. If the new moon is seen during day, either before or after midday, on 30th Sha'ban, will it be reckoned the last day of Sha'ban (in which case, fasting on it will not be *wajib*) or the first of Ramadan (in which case fasting is *wajib*)? Similarly, if the new moon is seen during the day on the 30th of Ramadan, will it be reckoned a day of Ramadan or that of Shawwal? In other words, will the day on which the new moon is observed be reckoned as belonging to the past or to the forthcoming month?

The Imamis, Shafi'i, Malikis and Hanafis observe: It belongs to the past month and not to the forthcoming one. Accordingly, it is *wajib* to fast on the next day if the new moon is seen at the end of Sha'ban, and to refrain from fasting the next day if it is seen at the end of Ramadan.

3. The schools concur that the new moon is confirmed if sighted, as observed in this tradition of the Prophet (s):

صوموا لرؤيته وأفطروا لرؤيته

('Fast on seeing the new moon and stop fasting on seeing it').

They differ regarding the other methods of confirming it.

- The Imamis observe: It is confirmed for both Ramadan and Shawwal by *tawatur* (i.e. the testimony of a sufficiently large number of people whose conspiring over a false claim is impossible), and by the testimony of two *`adil* men, irrespective of whether the sky is clear or cloudy and regardless of whether they belong to the same or two different nearby towns, provided their descriptions of the new moon are not contradictory. The evidence of women, children, *fasiq* men and those of unknown character is not acceptable.

- The Hanafis differentiate between the new moons of Ramadan and Shawwal; they state: The new moon of Ramadan is confirmed by the testimony of a single man and a single woman, provided they are Muslim, sane and *`adil*. The Shawwal new moon is not confirmed except by the testimony of two men or a man and two women. This is when the sky is not clear. But if the sky is clear--and there is no difference in this respect between the new moon of Ramadan and Shawwal--it is not confirmed except by the testimony of a considerable number of persons whose reports result in certainty.

- In the opinion of the Shafi`is, the new moon of Ramadan and Shawwal is confirmed by the testimony of a single witness provided he is Muslim, sane, and *`adil*. The sky's being clear or cloudy makes no difference in this regard.

- According to the Malikis, the new moon of Ramadan and Shawwal is not confirmed except by the testimony of two *`adil* men, irrespective of the sky's being cloudy or cloudless.

- The Hanbalis say: The new moon of Ramadan is confirmed by the testimony of an *`adil* man or woman, while that of Shawwal is only confirmed by the testimony of two *`adil* men.

4. There is consensus among the schools, excepting the Hanafi, that if no one claims to have seen the new moon of Ramadan, fasting will be *wajib* after the thirtieth day allowing thirty days for Sha'ban. According to the Hanafis, fasting becomes *wajib* after the twenty-ninth day of Sha'ban. This was with respect to the new moon of Ramadan. As to the new moon of Shawwal:

- The Hanafis and the Malikis observe: If the sky is cloudy, thirty days of Ramadan will be completed and *iftar* will be *wajib* on the following day. But if the sky is clear, it is *wajib* to fast on the day following the thirtieth day by rejecting the earlier testimony of witnesses confirming the first of Ramadan regardless of their number.

- The Shafi`is consider *iftar* as *wajib* after thirty days even if the setting in of Ramadan was confirmed by the evidence of a single witness, irrespective of the sky's having been cloudy or clear.

- According to the Hanbalis, if the setting in of Ramadan was confirmed by the testimony of two *`adil* men, *iftar* following the thirtieth day is *wajib*, and if it was confirmed by the evidence of a single *`adil*, it is *wajib* to fast on the thirty-first day as well.

- In the opinion of the Imamis, both Ramadan and Shawwal are confirmed after the completion of thirty

days regardless of the sky's being cloudy or clear, provided their beginning was confirmed in a manner approved by the Shari`ah.

## The New Moon and Astronomy

This year (1960) the governments of Pakistan and Tunisia have decided to rely upon the opinion of astronomers for the confirmation of the new moon with a view of putting an end to confusion and the general inconvenience resulting from not knowing in advance the day of `Id, which at times comes as a surprise, and at other times is delayed despite all the preparations.

This decision of the two governments has become an issue of heated controversy in religious circles. The protagonists of the move observe that there is nothing in the religion that disapproves of reliance on the opinion of astronomers; rather it is supported by this verse of Surat *al-Nahl*:

وَعَلَامَاتٍ وَبِالنَّجْمِ هُمْ يَهْتَدُونَ

**“...And way marks; and by the stars they are guided.” (16. 16)**

The antagonists state: The decision contradicts the above-mentioned prophetic tradition-

صوموا لرؤيته وأفطروا لرؤيته

That, because the word *ru'yah* (sighting) implies sighting the moon with the eyes, which was common among the people during the time of the Prophet (s). As to using a telescope or relying on astronomical calculations, they are inconsistent with the literal import of the tradition, they point out.

In fact, none of the sides has advanced sound reasons, because `guidance by the stars' implies determination of land and sea routes with the help of the stars, and not determination of days of months and new moons. As to the tradition, it does not contradict sound scientific knowledge, because `seeing' is a means for acquiring knowledge and not an end in itself, as is the case with any means that helps confirm facts.

However, in my opinion, the judgment of astronomers do not lead to certain knowledge, nor do they remove all doubts as removed by vision, because their judgments are based on probability not on certainty. This is evident from their divergent judgments about the night of the new moon as well as the time of its occurrence and the period that it remains (above the horizon).

If a time comes when the astronomers attain accurate and sufficient knowledge, so that there is

consensus among them and they repeatedly prove to be right to the extent that their forecasts become a certainty like the days of the week, then it will be possible to rely upon them. Rather, then it will be obligatory to follow their judgments and to reject everything that goes against them. 4

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1. Approximately 800 grams of wheat or something similar to it.
  2. But the Hanafis observe: If he testifies before a qadi who rejects his testimony, it is *wajib* upon him to perform its qada' without liability to kaffarah (*al-Fiqh 'ala al-madhahib al-'arba'ah*).
  3. In 1939 the 'Id al- Adha was observed on Monday in Egypt, on Tuesday in Saudi Arabia, and on Wednesday in Bombay.
  4. Refer to the discussion on this issue in the first volume of our book *Fiqh al-'Imam Jafar al-Sadiq (a)*, the section on the proof of the new moon at the end of section on fasting *bab al-sawm*.

## Zakat

*Zakat* is of two kinds: on property and on individuals. The schools concur that payment of *zakat* is not valid without *niyyah*. Its obligation depends on the following conditions:

### Conditions for Zakat on Property

1. The Hanafis and the Imamis observe: Sanity and adulthood are necessary for liability to *zakat*; hence the property of a child or an insane person is not liable to it.<sup>1</sup>

The Malikis, Hanbalis and Shafi'is state: Neither sanity nor adulthood is required: it is *wajib* on the property of a minor as well as an insane person and the guardian is responsible for its payment from his ward's property.

2. The Hanafis, Shafi'is and Hanbalis say: *Zakat* is not *wajib* upon a non-Muslim (*al-Fiqh 'ala al-madhahib at-'arba'ah*). According to the Imamis and the Malikis, a non-Muslim is as liable to it as a Muslim, without there being any difference.

3. Complete ownership is necessary for the incidence of *zakat*. Every school has elaborate discussions concerning the definition of 'complete ownership.' What is common in their observations is that the owner should have complete control over the property and must be able to dispense of it at his will. Hence lost property or property usurped from its owner – though he will retain its ownership – will not be liable to *zakat*. As to debt, it will be liable to *zakat* only after the creditor has recovered it (for example, the wife's dower owed by the husband), for a debt is not possessed unless collected. The rule applicable to the debtor will be discussed later.



4. A lunar year of uninterrupted possession for property other than grain, fruits and minerals. Details are given below.
5. The possession of a certain minimum (*nisab*) which differs with the kind of property liable to *zakat*, will be explained later.
6. Is a debtor who possesses property to the extent of the *nisab* liable to *zakat*? In other words, does debt prevent liability to *zakat*?

The Imamis and the Shafi'is state: The property's freedom from debt is not a condition; hence a debtor will be liable to *zakat* even if the debt covers his entire property equaling the *nisab*. Rather, the Imamis say: If one borrows something on which *zakat* is payable, in a quantity equaling its *nisab* and it remains in his possession for a year, the borrower shall be liable to *zakat*.

According to the Hanbalis, debt prevents liability to *zakat*. Hence a debtor who possesses property should first meet his debt; he will pay *zakat* if the remainder reaches the *nisab* limit, not otherwise.

The Malikis are of the opinion that debt prevents the incidence of *zakat* on gold and silver, not on grain, livestock and minerals. Therefore a debtor possessing gold and silver in the quantity of *nisab* is supposed to meet the debt, and *zakat* is not *wajib* upon him. But if the debtor possesses something other than gold and silver in the quantity of the *nisab*, he is liable to *zakat*.

The Hanafis observe: if the debt is a duty owed to God (*haqq Allah*), such as the obligation of *hajj* and *kaffarah*, and persons have no claims against him, such a debt does not prevent liability to *zakat*. But if the debt is owed to persons or to God when there is such a claim against him as outstanding *zakat* whose payment is demanded by the ruler (*imam*), such a debt prevents liability to *zakat* on all kinds of property except crops of the field and fruits.

All the schools concur that ornaments, jewelry, one's dwelling, clothes, household articles, mount, weapons and other things of personal use such as instruments, books and tools are not liable to *zakat*. The Imamis also exclude gold and silver ingots. Related details are given below.

## Kinds of Property Liable to Zakat

The Noble Qur'an considers the needy as real sharers in the wealth of the rich. Verse 19 of *Surah al-Dhariyat* states:

وَفِي أَمْوَالِهِمْ حَقٌّ لِّلسَّائِلِ وَالْمَحْرُومِ

***And in their possessions is a share for the beggar and the deprived (51: 19)***

The verse does not differentiate between wealth acquired through agriculture, industry or trade in respect of this right, and hence the legists of all the schools acknowledge it as *wajib* in livestock, grain, fruits, currency and minerals.

However, they differ in delimiting some of these categories, in specifying the *nisab* applicable to some of them, and the size of the share of the needy in some others. Thus the Imamis consider it *wajib* to pay one-fifth (*khums*) from the profits of trade, while the four schools prescribe one-fortieth (2 1/2%) on merchandise. The same applies to minerals, from which the Hanafis, Imamis and Hanbalis prescribe payment of *khums* while the remaining two schools that of 2 1/2%. The following description gives the details of the points of agreement and difference of the schools.

## Zakat on Livestock

There is a consensus that *zakat* is *wajib* upon three kinds of livestock: camels, cattle, sheep and goats. They concur that *zakat* is not *wajib* upon horses, mules and donkeys, except when they form a part of merchandise. The Hanafis consider horses to be liable to *zakat* only when these include mares.

### Conditions for Zakat on Livestock:

There are four conditions for the incidence of *zakat* on livestock:

#### 1. The *Nisab*:

The *nisab* of camels is as follows:

If the number of camels is 5, one sheep: if it reaches 10, two sheep: for 15, three sheep; and for 20, four. All the schools agree on this prescription. But if the number of camels reaches 25, the *zakat* according to the Imamis is 5 sheep, and a camel in its second year according to the other four schools. However, the Imamis consider that as *zakat* of 26 camels; thus if the number of camel reaches this limit they form a single *nisab*.

The schools concur that the *zakat* of 36 camels, is a camel in its third year; of 46 camels, a camel in its fourth year; of 61 camels, a camel in its fifth year; of 76 camels, two camels in their third year; of 91 camels, two camels in their fourth year.

The schools also concur that there is no additional *zakat* for camels over 91 and below 121. For this number the different opinions of the schools and their details can be found in elaborate works.

There is consensus that there is no *zakat* on less than 5 camels, as well as on the number above a particular *nisab* and below the next *nisab*.

*Nisab* of Cattle:

The *zakat* for every 30 cattle is a *tabi'* or *tabi'ah* (an ox or cow in its second year); for every 40, a *musinnah* (cow in its third year). Thus for 60, the *zakat* is two *tabi'*; for 70, one *tabi'* and one *musinnah*; for 80, two *musinnah*; for 90, three *tabi'*; for 100, two *tabi'* and one *musinnah*; for 110, two *musinnah* and one *tabi'*; for 120, three *musinnah*, or four *tabi'*, and so on. No *zakat* is levied on a number which exceeds a certain limit but falls short of the next higher limit. All the schools concur regarding the above-mentioned *nisab*.<sup>2</sup>

'*Tabi'* is a cow which has completed a year and entered the second, and *musinnah* is one which has entered the third year. The Malikis define *tabi'* as one which has completed two years and entered the third, and *musinnah* as one which has completed three years and entered the fourth.

The *Nisab* of Sheep:

The schools concur that the *zakat* for 40 sheep is one sheep; for 121, two; for 201, three.

The Imamis state: If their number reaches 301, the *zakat* is four sheep up to 400; from then on for each extra 100 the *zakat* is one sheep.

The four Sunni schools observe: the *zakat* for 301, like that for 201, is three sheep up to 400, on which four sheep become due: thereafter for each extra 100 the *zakat* is one sheep.

There is consensus among the schools that a number between any two limit is exempt from *zakat*.

2. Grazing: 'Grazing livestock' is that which grazes freely on public pastures for most of the year and whose owner does not bear the cost of providing it with grass except rarely. This is a condition on which all the schools excepting the Maliki concur. The Maliki levy *zakat* on both 'grazing' and 'non-grazing' livestock.

3. One Year of Ownership: All the livestock in the *nisab* should be owned by its owner for a complete lunar year. Thus if its number falls short of the *nisab* even by one during the year, it will not be liable to *zakat* even if the *nisab* materializes at the end of the year (e.g. if a person owns 40 sheep at the beginning of the year and after a few months their number is reduced by one for some reason, such as sale, gift or death, and later becomes 40 again, *zakat* will not be levied at the end of the year). The Imamis, Shafi'is and Hanbalis concur regarding this condition, while the Hanafis observe: If the number falls below the *nisab* during the year but is resumed at the end of it, *zakat* will be levied as if the *nisab* had existed throughout the year.

4. The animals should not be those intended for work, such as an ox used for tilling or a camel for transport. Hence there is consensus among the schools, excepting the Maliki, that *zakat* is not levied on animals used for work, irrespective of their number. According to the Malikis, *zakat* is levied on both working as well as other animals without any difference.

The schools concur that if a person possesses many kinds of livestock of which no single kind reaches the number required for *nisab*, it is not *wajib* upon him to consider them jointly (thus if he has less than 30 cattle and less than 40 sheep, it is not *wajib* to make up the *nisab* of the cattle with the sheep or vice

versa).

The schools differ where two persons jointly own a single *nisab*. The Imamis, Hanafis and Malikis state: They are not liable to *zakat*, together or singly, unless the share of each one of them separately reaches the *nisab* limit. The Shafi'is and the Hanbalis observe: Wealth owned jointly is liable to *zakat* if it reaches the *nisab* limit, even if each share falls short of it.

## Zakat on Gold and Silver

The legists prescribe *zakat* on gold and silver if their respective *nisabs* are reached. According to them the *nisab* of gold is 20 *mithqal* (4.8 grams) and that of silver 200 dirhams (2.52 grams). They further require that the *nisab* be owned for one complete year. The rate of *zakat* on these two is 2 1/2%.

The Imamis observe: *Zakat* is *wajib* on gold and silver coins used as money, not on ingots or jewellery.

The four Sunni schools concur that *zakat* is *wajib* on gold and silver ingots in the same manner as on money coined from them. They differ regarding *zakat* on jewelery made of them; some consider it *wajib*, others don't.

The above remarks concerning *zakat* on gold and silver coins will suffice, for they have practically no role in our times. As to bank-notes, the Imamis prescribe the payment of one-fifth (*khums*) of the surplus left after a year's expenses. Details are given below.

The Shafi'is, Malikis and Hanafis state: *Zakat* is not *wajib* on bank-notes unless all the conditions including *nisab* and the completion of a year are fulfilled.

The Hanbalis say: *Zakat* is not *wajib* on bank-notes except when converted into gold or silver.

## Zakat on Crops and Fruits

The schools concur that the rate of *zakat* on crops of the field and fruits is 10% if irrigated by rain or river water, and 5% if irrigated by Artesian wells and the like.

There is also consensus among the schools, excepting the Hanafi, that the *nisab* for crops and fruits is 5 *wasq* (60 *sa'*, approx. 910 kg). There is no *zakat* under this limit. The Hanafis prescribe *zakat* irrespective of the quantity of the produce.

The schools differ regarding the kinds of crops and fruits on which *zakat* is *wajib*. The Hanafis prescribe *zakat* on all fruits and crops and all agricultural produce except wood, hay and Persian cane.

The Malikis and the Shafi'is prescribe *zakat* on everything that is stored as a provision, such as wheat, barley, rice, dates and raisins.

The Hanbalis require *zakat* on everything that is weighed and stored from among fruits and grains.

The Imamis do not levy *zakat* on anything except wheat and barley among grains, and dates and raisins from among fruits. Apart from these, it is *mustahab*, not *wajib*.

## Zakat on Merchandise

'Merchandise' (*mal al-tijarah*) consists of property whose ownership is acquired through commercial transactions made for profit. It is necessary here that the ownership be acquired through the owner's own activity; hence, if acquired through inheritance, there is consensus that it will not be considered merchandise.

According to the four Sunni schools, *zakat* is *wajib* on merchandise. The Imamis consider it *mustahab*.

The *zakat* is paid from the price of the commodities of trade at the rate of 2 1/2%.

The schools concur that a year's passage is necessary for the incidence of *zakat*. It is considered to begin from the time commercial transactions commence. When a year passes and profit is made, *zakat* becomes payable.

The Imamis observe: The capital should remain undiminished throughout the year. Thus if it is reduced during the year, *zakat* will not be levied. When restored, the new year will be reckoned from the date of recovery.

According to the Shafi'is and the Hanbalis, the criterion for liability to *zakat* is only the position at the end of year. Thus if the *nisab* is not reached at the beginning of the year or during it but only at its end, *zakat* becomes *wajib*.

The Hanafis state: The criterion is the position at the beginning and the end of the year not what happens in its middle. Thus if at the beginning of the year a person owns merchandise fulfilling the *nisab* and its value falls below this limit during the year recovering to reach the limit at the end of the year, he will be liable to *zakat*. But if the *nisab* is not reached either at the year's beginning or end, *zakat* will not be levied.

Also, the value of merchandise should reach the *nisab*. On evaluation its total value will be compared with the *nisab* of gold and silver; *zakat* will be levied if it equals or exceeds any of them, not if it is less than the *nisab* of silver. The authors of *al-Fiqh 'ala al-madhahib al-'arba'ah* (1922) calculate this *nisab* as 529.2/3 Egyptian piasters.

## The Character of Liability

The schools differ as to whether *zakat* pertains to the property itself that is liable to *zakat*, so that one entitled to receive it has a share in it together with the owner (like all property owned jointly by partners), or if it is a personal liability like other debts, though it pertains to a specific property, like the debt pertaining to the legacy of a deceased person.

The Shafi'is, Imamis and Malikis state: *Zakat* is *wajib* upon the zakatable property itself and its recipient is a real co-sharer in it with the owner in accordance with the statement of God, the Most High:

## وَفِي أَمْوَالِهِمْ حَقٌّ لِّلسَّائِلِ وَالْمَحْرُومِ

***And in their wealth is a share for the beggar and the deprived. (51: 19)***

They point out that there is also a *tawatur* of traditions stating that God has made the rich and the poor partners in wealth. However, the Shari'ah has out of lenience permitted the owner to pay *zakat* out of his other assets not subject to *zakat*.

The Hanafis observe: The incidence of *zakat* pertains to the property subject to *zakat* itself. It is like the claim of a mortgagor over mortgaged property and is not met except by being handed over to the recipient.

Two views have been narrated from Imam Ahmad, one of which agrees with the Hanafi position.

### **Classes Entitled to Receive Zakat**

The schools concur that there are eight different classes of those who deserve to receive *zakat* as mentioned in the following verse of *Surat al-Tawbah*:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ

***The sadaqat are for the poor (fuqara') and the needy (masakin), their collectors ('amilin), those whose hearts are to be conciliated (mu'allafatu qulubuhum), the ransoming of slaves (riqab), debtors (gharimin), in God's way (sabil Allah), and the traveler (ibn al-sabil) ... ( 9:60)***

The views of the schools in determining these classes are as follows:

#### **1. The Needy (Faqir)**

According to the Hanafis, '*faqir*' is someone who owns less than the *nisab* even if he is physically fit and earning. As to one who owns any property equal to the *nisab* of its category after providing for his basic needs – such as house, articles, clothes, and etc. – it is not valid to spend *zakat* on him. The proof they offer is that *zakat* becomes *wajib* upon one who owns assets equal to the *nisab* of anything and one who is himself liable to *zakat* cannot receive it. According to the other schools, the criterion is need, not ownership: *zakat* is *haram* for a needy person although he may own one or several *nisabs*, because the word '*faqir*' means need. God, the Exalted, says:

يَا أَيُّهَا النَّاسُ أَنْتُمُ الْفُقَرَاءُ إِلَى اللَّهِ

## ***O men, you are the ones that have need of God. (35: 15)***

The Shafi'is and the Hanbalis say: One who possesses half of what suffices him will not be considered *faqir*; consequently it is not permissible for him to receive *zakat*.

According to the Imamis and the Malikis, '*faqir*' in the context of the Shari'ah is one who does not possess a year's provision for himself and his family. Thus one who owns property or livestock not sufficient to provide his family for a whole year can be given *zakat*.

The Imamis, Shafi'is and Hanbalis further observe: It is not permissible for one capable of earning to receive *zakat*.

The Imamis and the Malikis permit him to receive *zakat* and it may be given to him.

The Imamis state: One's claim to be *faqir* will be accepted without requiring a witness or an oath, provided he has no visible wealth and the falsehood of his claim is not known. This is because once two men came to the Prophet (S) while he was distributing *sadaqah* and asked him to give them something from it. The Prophet (S) lifted his eyes and fixing his glance on them said: "If you like I will give it to you, for there is no share in it for one who is well-provided or one who makes an earning." Thus he left it to them to benefit from *zakat* without requiring witness or oath.

## **2. Al-Miskin**

The Imamis, Hanafis and Malikis consider '*miskin*' to be one who is worse off than a *faqir* person.

The Hanbalis and the Shafi'is, however, define *faqir* as someone worse off than a *miskin* because, they say, '*faqir*' is one who has nothing or lacks even half of what he needs, while '*miskin*' is one who possesses more than half of what he needs, and he is provided the other half from *zakat*.

Whatever be the case, there is no essential difference between the schools in their interpretation of the terms '*faqir*' and '*miskin*', for the objective is that *zakat* be used to fulfil the urgent need for housing, food, clothing, medical care, education, and such other needs.

The schools, excepting the Maliki, also concur that it is not permissible for one liable to *zakat* to give it to his parents, grandparents, children, grandchildren or wife. The Malikis allow its payment to grandparents and grandchildren because their maintenance is not one's obligation in their opinion.

There is also consensus that it is valid to give *zakat* to brothers, uncles and aunts. However, the prohibition on giving of *zakat* to one's father and children pertains only to the share meant for the two classes of the needy (*fuqara'* and *masakin*). Hence if they belong to a class other than these two, they are permitted to receive it, e.g. if the father or the son is a warrior fighting in the way of God, or one of 'those whose hearts are to be conciliated,' or a debtor whose debt arises out of a legitimate act, or one involved in a case of peacemaking, or a collector of *zakat*, because these classes of recipients are entitled to receive it even if they are well off (Al-'Allamah al-Hilli, *al-Tadhkirah*, vol. 1, "Bab al-Zakat").

However, it is preferable to give *zakat* to a relative whose maintenance is not *wajib* upon the giver.

The schools differ regarding the transfer of *zakat* from one town to another. The Hanafis and the Imamis observe: It is preferable and more meritorious to spend the *zakat* on the residents of the town except where some urgent need necessitates its transfer to another place.

The Shafi'is and the Malikis do not permit the transfer of *zakat* from one town to another.

The Hanbalis allow its transfer to a place at a distance where *salat* does not become *qasr* on one making the journey, and forbid its transfer beyond that distance.

### **3. Al-'Amilin**

A per consensus, by '*amilun 'alayha*' in the verse is meant the collectors of *zakat*.

### **4. Al-Mu'allafatu qulubuhum**

They are those who are won over by paying a part of *zakat* in the interest of Islam. The schools differ as to whether this category still holds or if it has been abrogated, and if not abrogated whether this winning over is restricted to non-Muslims or includes Muslims of weak conviction as well.

The Hanafis observe: This principle was introduced in the Shari'ah at the advent of Islam when the Muslims were weak. But now, when Islam has become firmly established, this provision has no applicability due to the absence of its cause.

The other schools have elaborately discussed the different kinds of 'those whose hearts are to be conciliated,' and their observations may be summarized as follows:

The regulation holds and has not been abrogated; the share of *zakat* pertaining to *al-mu'allafatu qulubuhum* can be given to a Muslim as well as a non-Muslim, on condition that this bestowal secures the advantage of Islam and Muslims. The Prophet (S) gave *zakat* to Safwan ibn Umayyah who was an idolater, and to Abu Sufyan and his like, after they embraced Islam, as a measure of precaution to safeguard Islam and Muslims from their malice.

### **5. Al-Riqab**

It implies the buying of slaves with *zakat* fund to set them free. This provision clearly shows that Islam devised numerous ways to end slavery. In any case, this provision has no practical application in our times.

### **6. Al-Gharimin**

They are the debtors who have fallen in debt for some non-sinful cause. The schools concur that they may be given *zakat* to help them repay their debts.



## 7. Sabil Allah

The four Sunni schools consider it to imply those warriors who have volunteered to fight for the defence of Islam.

The Imamis observe: Apart from warriors, this category includes building of mosques, hospitals, schools and other public works.

## 8. Ibn al-Sabil

It means a traveler cut off from his hometown and means. Hence it is valid to give him *zakat* to an extent that will enable him to reach his hometown.

## Subsidiary Issues

1. The schools concur that it is *haram* for one belonging to the Bani Hashim to receive *zakat* from someone who is not a Hashimite himself. But he may receive *zakat* from a Hashimite.

2. Is it permissible to give one's entire *zakat* to a single *miskin*?

The Imamis permit it even if it makes the recipient well off by being given all at once.

The Hanafis and the Hanbalis state: It may be given to a single person if this does not make him sufficiently provided.

The Malikis permit giving of one's entire *zakat* to a single recipient provided he is not a collector of *zakat*, because he may not take more than the remuneration of his work.

The Shafi'is are of the opinion that it is obligatory to so spread out the *zakat* as to include all the eight categories, if they exist; in the absence of some of them it should be distributed among the categories present. A minimum of three persons from each category should receive it.

3. The property liable to *zakat* is of two types. First, that which is possessed for a year, such as livestock and merchandise. In this case, *zakat* does not become obligatory before the completion of a year. A 'year' in the opinion of the Imamis means eleven months of possession of the property liable to *zakat* and the setting in of the twelfth month.

The second type does not require the passage of a year, such as fruits and grains, and *zakat* becomes *wajib* upon them at the time of harvest. As to the time of payment, there is consensus that it is when the fruits are gathered and dried in the sun, and when the crop is harvested and the straw and husk removed. One who delays taking out the *zakat* after its time has arrived and its payment has become possible is a sinner (though he remains liable to it), because he has delayed the carrying out of a time-bound obligation and been negligent.

## Zakat al-Fitr

*Zakat al-fitr* is also called '*zakat al-abadan*' (the *zakat* of the bodies). Its pertinent issues include the following questions: by whom it is to be paid? for whom? what is its quantity, its time of payment, and who are its eligible recipients?

### Those on Whom it is Wajib

The four Sunni schools state: *Zakat al-fitr* is *wajib* upon every financially capable (*qadir*) Muslim, major or minor. Thus it is *wajib* for a guardian to pay it out from the property of his ward to the needy.

A financially capable person in the opinion of the Hanafis is one who owns property equal to a *nisab* of *zakat* or something equal in value after meeting all his needs. According to the Shafi'i's, Malikis and Hanbalis, it is one who possesses anything in excess of his and his family's food on the day and night of the 'Id, apart from such essential needs as house, clothes and other necessities. The Malikis add: One who is capable of borrowing will be considered capable if he hopes to repay it.

According to the Imamis, *zakat al-fitr* is *wajib* only upon a capable sane adult. Therefore it is not *wajib* on a child's property or that of an insane person in accordance with the tradition:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَفِيْقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ

The (lawgiver's) pen has absolved these three of obligations: a child, till he reaches the age of puberty; an insane person, until he regains sanity, and a person in sleep, until he wakes up.

A financially capable person in their opinion is one who possesses, either actually or potentially, a year's provision for himself and his family – such as when he possesses an asset that he can utilize or a skill by which he can earn.

The Hanafis observe: It is *wajib* for a capable person to pay the *zakat al-fitr* for himself, his minor children, his servant, and his major child if he happens to be insane. But if the major child is sane, his *zakat* is not *wajib* upon the father. Also the wife's *zakat* is not *wajib* upon the husband.

The Hanbalis and the Shafi'i's consider it *wajib* to pay the *zakat al-fitr* for oneself as well as those whose maintenance is *wajib* upon one, such as wife, father and son.

The Malikis say: It is *wajib* for oneself and for those one is maintaining; they include: one's indigent parents; sons, who have no means of their own, provided they are still young and incapable of earning themselves; indigent daughters who have not yet been married; and wife.

The Imamis state: It is *wajib* to pay *zakat al-fitr* for oneself and for all those whom one feeds on the night of 'Id *al-fitr*, irrespective of whether their maintenance is *wajib* upon one or not, and regardless of their being children or adults, Muslims or non-Muslims, relatives or strangers. Hence if a guest comes to his

house moments before the new moon for the month of Shawwal is sighted and joins the family, it becomes *wajib* to pay *zakat al-fitr* for him as well. Similarly, if a child is born to him or he marries before or at the time of sunset preceding the night of *'Id al-fitr*. But if the child is born, or he marries, or a guest arrives, after sunset, it will not be *wajib* to pay the *fitrah* for them. Anyone whose *fitrah* is *wajib* upon another is not required to pay his own *fitrah* even if he is wealthy.

## Its Quantity

The schools, excepting the Hanafi, concur that the *wajib* quantity of *fitrah* per head is one *sa'* (approx. 3 kg) of wheat, barley, dates, raisins, rice, maize or any other staple crop. The Hanafis consider half a *sa'* of wheat per head as sufficient.

## Time of Wujub

The Hanafis observe: Its *wujub* commences from the dawn of the day of *'Id* and continues till the end of life, because *zakat al-fitr* is among those obligations which do not have a time limit and it is valid to pay it early or late.

The Hanbalis say: It is *haram* to delay its payment beyond the day of *'Id* and it may be paid two days before the *'Id*, though not earlier.

The Shafi'is state: The time of its *wujub* extends from the last part of Ramadan (i.e. from a little before sunset on the last day of Ramadan) up to the first part of Shawwal. It is *sunnah* to set it aside during the early part of the day of *'Id* and *haram* to delay it beyond the sunset of the day without an excuse.

There are two narrations from Imam Malik, and in accordance with one of them its *wujub* commences from sunset on the last day of Ramadan.

The Imamis observe: *Zakat al-fitr* becomes *wajib* with the falling of the night of the *'Id*, and its payment is *wajib* from sunset up to noon on the day of *'Id*; it is meritorious to pay it before *salat al-'Id*. But if no deserving person (*mustahiqq*) is found at that time, it should be set aside with the intent of giving it at the first opportunity. If the payment is delayed beyond this time despite the presence of a deserving recipient, it remains *wajib* to pay it later because this obligation is not annulled in any situation.

## Mustahiqq

The schools concur that those entitled to receive ordinary *zakat*, as per the Qur'anic verse:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ

are also entitled to receive *zakat al-fitr*.

In the place of paying in kind, it suffices to pay the price of the cereals, and it is *mustahabb* to give it to one's needy relative, and then to the neighbours, as there is a tradition which says:

جيران الصدقة أحقّ بها

The neighbour of (someone paying) *sadaqah* is more entitled to receive it.

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1. Except that sanity and adulthood are not considered essential for liability to zakat on crops of the field and fruits in the opinion of the Hanafis.

2. The Hanafis observe: The number of cows between the two limits is exempt from zakat except when their number is between 40 and 60. After 40, zakat will be levied on each extra cow at the rate of 2 ½% of a musinnah (al-Fiqh 'ala al-madhahib al-arba'ah, bab al-zakat).

## Khums

The Imamis assign a separate chapter to *khums* in their books on *fiqh*, after the chapter on *zakat*, and its basis is verse 41 of *Surat al-Anfal*:

وَأَعْلَمُوا أَنَّمَا غَنِمْتُمْ مِنْ شَيْءٍ فَإِنَّ لِلَّهِ خُمُسَهُ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ

***Know that, whatever booty you take, the fifth of it is God's and the Messenger's, and the near kinsman's and the orphans', and for the needy and the traveler (8:41)***

They do not confine the scope of the term '*ghanimah*' to the spoils of war acquired by Muslims, but consider it to include seven categories, mentioned below along with what information we could gather about the view of other schools regarding each category:

1. Booty acquired in war: All the schools concur that it is liable to *khums*.

2. Minerals: It includes everything that is of value extracted from the earth – apart from soil – e.g. gold, silver, lead, copper, mercury, petroleum, sulfur, etc.

The Imamis observe: It is *wajib* to pay *khums* (20%) on minerals if their value reaches the *nisab* of gold, which is 20 dinars, or the *nisab* of silver, which is 200 dirhams. There is no *khums* below this limit.

The Hanafis state: There is no *nisab* for minerals, and their *khums* is *wajib* irrespective of value.

The Malikis, Shafi'is and Hanbalis are of the opinion that there is no levy if the mineral extracted is lesser

in value than the *nisab*, but if it reaches that limit it is liable to *zakat* at the rate of 2 1/2%.

3. *Rikaz*: It consists of articles of value buried at a place whose inhabitants have perished and there is no sign left of them, such as sites which the archaeologists excavate for this purpose.

The four schools state: *Khums* is *wajib* on *rikaz*, and it has no *nisab* and therefore entails *khums* irrespective of its worth.

The Imamis observe: *Rikaz* is like minerals with respect to *nisab* and liability to *khums*.

4. The Imamis say: That which is retrieved from the sea through diving, e.g. pearls and corals, is liable to *khums* if its value is one dinar or more after deducting the cost of retrieval.

In the opinion of the four schools, there is no levy on such things, whatever their value.

5. The Imamis observe: *Khums* is *wajib* upon the surplus remaining after a person has made provision for himself and his family for a period of one year, irrespective of his profession and the mode of income – trade or industry, agriculture or office work, or work on daily wages, or real estate, gift or something else. Hence if there remains a single piaster or anything of that value after a year's expenditure, it is liable to *khums*.

6. The Imamis state: If a person comes to acquire some illegitimate wealth which gets mixed with his legitimate wealth and neither the quantity of the *haram* wealth nor its owner is known, he is obliged to pay *khums* from his whole wealth in the way of God. If he does so, his remaining wealth will become *halal* irrespective of whether the illegitimate portion was lesser or greater than a fifth.

But if the illegitimate wealth is identifiable, it is obligatory to return it itself; and if it is not identifiable but its quantity is known, he will return that quantity fully even if it equals all his wealth. If he knows the people from whom he has embezzled it without knowing the quantity of the portion due to them, he is bound to seek their satisfaction by reaching a settlement or seeking their pardon. In short, the payment of *khums* from adulterated wealth is correct only when both the quantity and the owner of its illegitimate portion are not known.

7. According to the Imamis, if a *dhimmi* purchases land from a Muslim, the *dhimmi* is personally liable to pay its *khums*.

## Uses of Khums

The Shaf'is and the Hanbalis observe: *Khums* will be divided into five parts, of which one part will be the share of the Prophet (S) and used for the benefit of Muslims. Another part will be the share of *dhawi al-qurba*, and they are those who have descended from Hashim through their fathers, irrespective of any distinction between the rich or the poor among them. The three other parts will be spent on orphans, the poor and the travelers, whether they belong to the Bani Hashim or not.

The Hanafis consider the share of the Prophet as annulled after his demise. As to the *dhawi al-qurba* (i.e. those belonging to Bani Hashim), they are like other poor in receiving *khums*, they say; they will be entitled to it on account of their need, not by virtue of their kinship with the Prophet (S).

The Malikis state: The ruler (*imam*) has complete authority over *khums* funds and he may use it for any purpose that he deems fit.

According to the Imamis, the shares of God, the Prophet (S) and the *dhawi al-qurba* will be paid to the Imam (A) or his representative, to be spent for the benefit of the Muslim community. The other three parts are to be given to the orphans, destitutes and travelers belonging exclusively to Banii Hashim.

We conclude this chapter with al-Shi'rani's words in his *Kitab al-mizan* (the chapter on *zakat al-ma'din*). He says:

The ruler (*imam*) is authorized to tax the mine owners in accordance with the interest of the public exchequer to avoid the concentration of wealth in the hands of mine owners who may thereby seek political power and spend money on the troops. This would lead to evil (political) consequences (*fasad*).

This is another way of expressing the "modern" view that capital enables the capitalists to gain control of the government. 406 years have passed since the death of the author of this opinion.

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- [8] <https://www.al-islam.org/library/zakat-and-khums-charity>
- [9] <https://www.al-islam.org/tags/fasting>
- [10] <https://www.al-islam.org/tags/fast>
- [11] <https://www.al-islam.org/tags/siyam>
- [12] <https://www.al-islam.org/tags/alms>
- [13] <https://www.al-islam.org/tags/zakat>
- [14] <https://www.al-islam.org/tags/charity>

[15] <https://www.al-islam.org/feature/debates-discussions>

[16] <https://www.al-islam.org/feature/resources-further-research>

[17] <https://www.al-islam.org/feature/responses-misconceptions>