

Al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah.

The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations

Foundation -4

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(d. 1376 A.H./1956 C.E.)**

Discussion based upon:

- 1-Sh. Ibn Sa'di's original explanation
- 2-Our Sh. Muhammad ibn Saalih Al-'Uthaimen's Commentary, and
- 3-Full explanation by our Sh. (Dr.) Sami ibn Muhammad As-Sghair (summer 1427 A.H./2006 C.E.)

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Basic Rulings and Foundations of Fiqh-4

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions and those who follow them until the Day of Resurrection. This is a continuation of the explanation of *The Basic Rulings and Principles of Fiqh – The Beneficial, Eloquent Classifications and Differentiations* by Imam ‘Abd ar-Rahman ibn Naasir as-Sa’di (*rahimahullaah*).

Foundation four is entitled:

Obligation is dependant upon ability. There is no obligation with inability, and nothing is forbidden with necessity.

Evidence for Foundation 4

The evidence for this foundation is in the saying of Allaah (ﷻ : *subhaanallaahu wa ta’aalaa*) (in the translation of the meaning):

**﴿So keep your duty to Allaah and fear Him as much as you can﴾
Surah at-Taghabun (64:16)**

Also, from the *Sunnah* is the saying of the Prophet (ﷺ: *sallallaahu ‘alayhi wa sallam*):

*"And if I order you to do something, then do of it as much as you can."*¹

This foundation comprises two parts. The first part is:

There is no obligation with inability.

This is based upon the evidences already mentioned as well as the *hadeeth*:

*"Pray standing, but if you cannot, then sitting, but if you cannot, then on your side."*²

Categories Concerning Those Who Can Only Complete Part of an Obligation

If a person is only able to perform part of an obligation but not all of it, then either this portion is:

1. purely a means; in such situations, doing that portion of the obligation is not mandatory. For example, the one upon whom the shaving of the head is obligated and he is bald. It is not obligated to pass the blade over the bald head, since there is no hair and moving the blade is just a means. Moreover,

¹Reported in *Saheeh al-Bukhaari* (English translation no. 392) and in *Saheeh Muslim*.

² Part of a *hadeeth* reported in *Sunan Abee Dawood*, *hadeeth* no. 922 and authenticated by Shaykh al-Albaani.

the dumb is unable to articulate properly so we do not command him to move his tongue because this is just a means. Also the walking to the Mosque to offer the congregational or Jumu'ah prayers. If someone is able to walk only part of the road but unable to walk the entire road. It is not obligated upon him to walk the distance he is able to since this is just a pure means.

2. obligated as being related to something else, either by way of precaution or perfection. For instance, in the case of precaution, many of the scholars are with the opinion that washing the elbow of the person whose arm was amputated at that point is precautionary in order to fulfill the condition that he washes his hand.³ Similarly, staying in Mina follows for the one who stayed in 'Arafah; it is not an obligation on its own but in relation to something else as part of perfection.
3. an act of worship but in itself is not a worship; in this case, it is not obligatory to do. An example of this is if a person is able to fast part of the day, then this is part of an act of worship, namely fasting; however, this is not a worship itself since the legal fasting is from dawn to sunset. As such, it is not obligated even if the person is able to do it.
4. part of a worship and itself is a worship; in this case, he does that which he is able to do, and that which he is unable to do is lifted. For instance, those who are unable to recite *al-Fatihah*, such as the dumb, must still stand during *salaah* since reciting and standing are independent obligations; therefore, it is required that he stands for a time equivalent to the recitation of *al-Fatihah*. Similarly, a person who is new to Islam and has only memorized two verses, recites these two verses for the amount of time required to complete the seven verses of *al-Fatihah* during *salaah*. Moreover, if someone finds sufficient water to clean some of his body, then he must use that water to wash these parts and make *tayammum* (dry ablution) for the rest.

These are the categories concerning those who are able to do only part of an obligation. These were classified according to partial and complete inability per the first part of this foundation.

Types of Forbiddances

This foundation's second part is:

Nothing is forbidden with necessity.

The *Muharram* (forbiddance) is of two types.

First, if the forbiddance is due to the thing itself, then it does not become permissible, except in cases of necessity. Allaah (ﷻ) said (in the translation of the meaning):

﴿Forbidden to you (for food) are: *al-Maytatah* (the dead animals - cattle-beast not slaughtered), blood, the flesh of swine, and the meat of that which has been slaughtered as a sacrifice for others than Allaah, or has been slaughtered for

³Though the correct opinion is that the washing of the elbow is an obligation.

idols, etc., or on which Allaah's Name has not been mentioned while slaughtering, and that which has been killed by strangling, or by a violent blow, or by a headlong fall, or by the goring of horns - and that which has been (partly) eaten by a wild animal - unless you are able to slaughter it (before its death) and that which is sacrificed (slaughtered) on *An-Nusub* (stone altars). (Forbidden) also is to use arrows seeking luck or decision, (all) that is *Fisqun* (disobedience of Allaah and sin). This day, those who disbelieved have given up all hope of your religion, so fear them not, but fear Me. This day, I have perfected your religion for you, completed My Favor upon you, and have chosen for you Islam as your religion. But as for him who is forced by severe hunger, with no inclination to sin (such can eat these above-mentioned meats), then surely, Allaah is Oft-Forgiving, Most Merciful.﴾ **Surah al-Ma'idah (5:3)**

The point of evidence in this verse is His (ﷻ) saying (in the translation of the meaning), “**But as for him who is forced by severe hunger, with no inclination to sin (such can eat these above-mentioned meats), then surely, Allaah is Oft-Forgiving, Most Merciful.**”

In addition, Allaah (ﷻ) states (in the translation of the meaning):

﴿**He has forbidden you only the *Maytatah* (dead animals), and blood, and the flesh of swine, and that which is slaughtered as a sacrifice for others than Allaah (or has been slaughtered for idols, etc., on which Allaah's Name has not been mentioned while slaughtering). But if one is forced by necessity without willful disobedience nor transgressing due limits, then there is no sin on him. Truly, Allaah is Oft-Forgiving, Most Merciful.**﴾ **Surah al-Baqarah (2:173)**

Furthermore, Allaah (ﷻ) affirmed (in the translation of the meaning):

﴿**And why should you not eat of that (meat) on which Allaah's Name has been pronounced (at the time of slaughtering the animal), while He has explained to you in detail what is forbidden to you, except under compulsion of necessity?**﴾ **Surah an-An'am (6:119)**

However, such things are not permissible, except with the fulfilling of two conditions.

1. There exists no other alternative to ward off the necessity, except this one. If there is something else, then this condition is not met, and it would remain unlawful.
2. The necessity must actually be warded off, and there must truly be a benefit. If we are doubtful of its benefit, then it remains forbidden.

Examples:

1. If someone is so hungry that he is about to be destroyed, and there is a dead body, but he is still able to hunt, then the first condition that there must be no alternative is not fulfilled; as such, it is not permissible to eat the dead body.

2. Someone was told that if he drank wine or alcohol, then he would be cured of his illness. However, he should not drink it because there is uncertainty regarding his cure. It is possible that he may take it but receive no benefit. In fact, it is common that people use beneficial medicines but are not benefited. Moreover the ill may recover without using a medicine due to his sincere invocation of Allaah and having trust in Him. On the other hand, the textual evidence for the forbiddance of this means is the saying of the Prophet (ﷺ):

*"Allaah did not make your healing in what is forbidden."*⁴

And thus it is forbidden to seek treatment in what is unlawful as stated by the people of knowledge. It cannot be said that this constitutes a necessity as common people think. Therefore, this case does not fulfill the second condition.

3. A person who is choking has nothing available to drink, except alcohol. In this situation, it is permissible for him to drink only enough alcohol to clear his throat and save himself. This is because there is no other alternative, and the benefit is certain.
4. A thirsty person with nothing to drink except alcohol should not drink it because the second condition is not met since alcohol will only increase his thirst, and there will be no benefit.
5. An ill person was told to drink blood as cure; he should not take it as the benefit is uncertain.

Second, the forbiddance is due to the means, not the objective, in which cases the need makes it permissible. For example, silk is forbidden for men; however, if someone needs it as a cure for a skin illness like irritation and so forth, then it is permissible. Moreover, it is forbidden for a man to look at an unrelated woman as it is a means that leads to unlawful relations, not because it is the objective. This is why it is permissible when needed, such as looking at a woman when seeking her hand in marriage. Similarly, a witness, who wants to verify a particular woman in a specific case, may look at her face in order to give his testimony. The *tahreem* (forbiddance) here is due to it being a means and not the objective itself; thus, it is permissible when there is a need.

The Criteria of Importance for Expiations is the Time of Execution

This foundation also includes the ordered expiations. Expiations are of different ranks; if someone is unable complete the highest in rank, then he goes to the next in rank, and if he is unable to do that, then he goes to the next in rank and so on. For instance, concerning the expiation for having sexual intercourse with one's wife while fasting during the day in Ramadan, it is ordered to free a slave first; if the person is

⁴Reported by Ahmad (159), *Musnad Abu Ya'laa* (no.6966), *Saheeh ibn Hibbaan* (no.1391), *Majma' az-Zawaa'id* (5/86: he said: the transmitters of Aby Ya'laa are the men of As-Saheeh except Hassaan bin Mukhaariq whom Ibn Hibbaan considered reliable). It has supporting narrations *in al-Kuna* by Ad-Doolaabi (2/38) and *Saheeh Muslim* (English translation no.4892).

unable to do that, then he should fast for 60 consecutive days; if he is unable to complete that, he should instead feed 60 poor people.

Example: At the time of the obligation of expiation, a man was rich. Then, he was negligent and became poor. In order to expiate, the man started fasting. Later, the man became rich again. There are two opinions on whether he returns to the first obligation of freeing the slave. The first opinion is that he must free him. However, the correct opinion is that the expiation is based on the time of the execution.

This issue centers upon what is the criterion of interest, either the time of the expiation's obligation or the time of its execution. The criterion is the time of execution; this is what matters.

Additional Branches of this Foundation

1. Anyone who is unable to fulfill any of the conditions, pillars, or obligations of *salaah* has the requirements lifted, and he prays in accordance with his ability.
2. One who is physically unable to perform *Hajj* waits if he hopes to get better; otherwise, he delegates someone. In contrast, if he is financially unable, then there is nothing upon him. Allaah (ﷻ) said (in the translation of the meaning):

«There is no restriction on the blind, nor any restriction on the lame, nor any restriction on the sick» Surah an-Nur (24:61)

Similarly, concerning every act of worship that depends on sight or the sound and healthy functioning of the body such as *jihad*, ability is a condition. If one is unable then Allaah does not burden him to do that which he is incapable of doing. That is why the Prophet (ﷺ) said regarding those who see some *munkar* (evil):

*“Whoever among you sees an evil action, let him change it with his hand; if he cannot, then with his tongue; and if he cannot, then with his heart – and that is the weakest of faith.”*⁵

On the other hand, with respect to spending and related matters including spending on one's wife, Allaah (ﷻ) said (in the translation of the meaning):

«Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allaah has given him. Allaah puts no burden on any person beyond what He has given him. Allaah will grant after hardship, ease.» Surah at-Talaq (65:7)

Therefore, spending is according to ability, and the husband spends in accordance with his situation, either restricted or unrestricted. Moreover, the Prophet (ﷺ) said concerning the financial obligations:

*“Start with yourself and then those who are your dependents.”*⁶

⁵ Reported in *Saheeh Muslim*, (English translation no. 79, book 1)

3. With respect to fasting, those who are continuously unable, like the elderly or those whose cure is unlikely, can break the fast and does expiation. In the case of an ill person whose cure is likely or for the traveler, then he can break the fast and makes up the days later.
4. This foundation includes the legal excuses for missing the congregational and Friday prayers.
5. Necessity makes it permissible in the state of *ihram* to perform the forbidden acts, but expiating is a must in this case as a compensation for missing them.
6. It is permissible to pray alone in your own line in the congregational prayer if the person does not find a place in the row in front of him. We know that the Prophet (ﷺ) said:

“There is no salaah for the person who prays alone behind the row.”⁷

There are four ways presented on how to deal with coming to the congregational prayer and finding no place in the line. **First**, some recommend that you pray next to the *imam*; this is a weak opinion because the *imam* stands alone in his particular place as established by the *Sunnah*. Likewise, if another person comes, then he will stand next to the *imam* as well. Eventually, there may be an entire row with the *imam*.

Second, he may pull back someone from the row in front of him to pray with him; this has many negative consequences. For instance, he will be moving a person from a preferred position with more merit to a lesser one. Moreover, this would create a gap, necessitating movement in the row from where he took the person. In addition, this may cause bad feelings in the heart of the person pulled since he was taken from his row.

Third, the person could wait until someone else comes to join him. This waiting may take a significant amount of time, and the *salaah* may finish before anyone comes, resulting in him missing the congregational prayer.

Fourth, being in a row is an obligation; however, this obligation drops in cases of inability. As such, he stands there and prays alone. If the obligation drops for matters greater than standing in the row alone, then by all means it is dropped in this case, and he can pray alone in the line. This is the strongest opinion.

7. If two people come to the congregational prayer and find a gap only large enough for one person, they can either fill the gap and complete the row, or pray together in a new row. *Shaykhul Islam* ibn Taymiyyah (*rahimahullah*) preferred the opinion that the two pray together because standing in a row is an obligation. while completing the row is a *Sunnah*, according to the majority of the scholars.

⁶ Part of a *hadeeth* reported in *Saheeh Muslim* (English translation no. 2183, book 5)

⁷ Reported in *Musnad Ahmad*, *hadeeth* no. 15862 and *Sunan ibn Maajah*, *hadeeth* no. 1003. Shaykh al-Albaani authenticated it in *Saheeh ibn Maajah*.

8. If a man comes to the congregational prayer and finds the people in the row in front of him not close to each other as it should be in accordance with the *Sunnah*, then he may go over to the side of the row where this is occurring and lightly tap them on their back in order to make them cling closer to each other and then enter the row. Any disturbance caused in this situation is due to their negligence in forming the row loose.

Abuse of This Foundation

Many people abuse the verse (in the translation of the meaning):

**﴿So keep your duty to Allaah and fear Him as much as you can﴾
Surah at-Taghabun (64:16)**

They use it for abandonment of the obligation or doing only the minimum. In fact, this verse is an evidence for the obligation to act, but to the best of your ability. It is proof to do, not to abandon, as it is understood by many people.

The *Makrooh* (i.e. Detested or Disliked) is Permissible If Needed

The degree of the disliked is less than that of the *muharram* (forbidden). We are bound to abandon the *muharram*; if the person does it, he is accountable for punishment. However, the *makrooh* is forbidden by way of the preference of importance. The person that does the *makrooh* is not held accountable for punishment, and that is why it is permissible when needed.

The difference between a need and a necessity is similar to the difference between what is necessary and what is supplemental. Going without a necessity will lead to a person's destruction or harm his physical, financial, or religious state or his family and children; a need indicates a lack of something but does not reach the level of harm if it is missed. As such, the need is of a lesser degree than the necessity. For instance, a person requires two garments to ward off cold. If he uses one and is not harmed, then the second garment is considered a need. However, if we assume that without the second garment he would be destroyed, then it would become a necessity.

The status of things change; something may start off as a luxury, then become a need and later a necessity. Electricity when it was first introduced was a luxury; later it became a need, and now, it has become a necessity.

Examples of that which is disliked becoming permissible are:

1. Looking left or right during *salaah* is disliked. However, if it is needed as in the case of a child who you fear may fall or pick up something hot, then it is permissible.
2. Slight movements that are unrelated to the *salaah* are permissible, if needed. For instance, the Prophet (ﷺ) lifted Umaamah, the daughter of Zainab, while praying and put her down upon prostrating.

3. Someone performing a *naafil salaah* is called upon, and he is uncertain who called him. If the caller is his father or his mother, then he must answer them (assuming that the *salaah* is *naafil*), except if he knows that they will be content if he does not answer.
4. If a person performing *salaah* hears someone shouting, then his reaction is based on the situation. If it is a loud, intense yell, then it is a necessity, and he may turn to see what is happening; however, if it is less than that, then it is a need.
5. Eating onions is disliked for the one who is going to *salaah*. However, if he needs to do so, then it is permissible to eat and pray home instead.

Conclusion

The fourth foundation in Imam ‘Abd ar-Rahman ibn Naasir as-Sa’di’s book, *al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat -Taqaaseem al-Badee'ah an-Naafi'ah* (The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations), is entitled:

Obligation is dependant upon ability. There is no obligation with inability, and nothing is forbidden with necessity.

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions and those who follow them until the Day of Resurrection.

Saleh As-Saleh
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