

Persistent disputes Over the Classification of Defining Rule (*Hukm Taklifi*): Suggested Resolutions

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Abstract: Divine rule (*Hukm shar'i*) has classically been defined as: "The communication of God (*khitab Allah*) concerning the conduct of the competent persons (*af'al al-mukallafin*) by way of command (*iqtida'*), option (*takhyir*) and declaration (*wad'*)" (Badran, n.d.). Classically too, the three ways by which the communication of Allah is concerned with the conduct of the competent person have been classified into two kinds: *hukm taklifi* and *hukm wad'i*. *hukm taklifi* is concerned with the conduct of the competent person by way of command or option, and *hukm wad'i* is concerned by way of declaration (Abd al-Wahhab, 1995). These two ways by which *hukm taklifi* is concerned with the conduct of the competent person have been further classified into several categories the number of which has been a subject of dispute. Dispute has also arisen over several issues discussed under these categories disputed. These disputes have persisted for as long as *hukm taklifi* itself has persisted, and therefore they are deemed to be inevitable. Some of these persistent disputes do not seem to be as inevitable as they are thought to be, and therefore this paper will attempt to resolve them. These persistent disputes pertain to the major classification of *hukm taklifi* into several categories as well as minor issues involved by the categories concerned. As for the major classification, the paper will consider the contentions made as to the number of its categories and the arguments made in their favour. As for the minor issues, similarly, the paper will consider the contentions made as to their nature and the arguments made in their favour. As for both, the paper will, having examined the arguments considered, prefer one contention to the other or others or, if not, suggest an alternative to them all. Having considered the contentions made and the arguments made in their favour, it is submitted that *hukm taklifi* is divisible into five categories as contended by the Jumhur and not seven as contended by the Hanafis. As contended by the Jumhur, though in a slightly different mode of reasoning, an act may be characterized by prohibition as well as obligation. Obligation, like prohibition, may never be collective, however it, unlike prohibition, may be elective.

Key words: Hukum Shar'i, Hukumtaklifi, Iqtida, Takhyr, Wad, al-Ijab

INTRODUCTION

The classification of divine rule (*hukm shar'i*) is as well established as *hukm shar'i* classified, yet that has not freed it from any controversies. *Hukm taklifi*, being the concern of this paper, has itself been further classified into several categories. This further classification has not been a subject of consensus, for a dispute has arisen over it between the Jumhur and the Hanafis. The former have suggested a five-fold classification, while the latter have suggested a seven-fold one. The paper will look into the classifications suggested and recommend the classification preferred and provide the justification for its recommendation. That is in general. In detail, the categories of the classification recommended will be discussed in an attempt to sort out some of the persisting controversies involved by the categories discussed, particularly the controversy of the identification of the nature of *wajib kifa'i* (collective obligation, and that of the identification of the character of an act that seems to be obligatory if seen from one perspective, and seems to be prohibitory if seen from another. Moreover, the paper will investigate the rationality of elective prohibition where an unidentified prohibition is commanded out of a group of identified prohibitions assumed parallel to elective obligation where an unidentified obligation is commanded out of a group of identified ones.

Defining Rule (*Hukm Taklifi*):

The definition of *hukm taklifi* may be deduced from the general definition of *hukm shar'i* mentioned above so as to read: The communication of Allah concerning the conduct of the competent persons by way of command or option.

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The definition deduced, despite being accurate, still requires further elaboration. The elaboration required, in turn, is intended to serve two purposes: first, to clarify the two ways by which the communication of the *Hukmgiver* is concerned with the conduct of the competent person so as to be clearly distinguished from the third way by which *hukm wad'i* is concerned. Second, to identify the categories into which *hukm taklifi* has been classified and embodied by the two ways clarified so as to furnish the ground for their discussion in detail below.

Command being one of the two ways is itself divisible into two forms: a command to commit a particular act, and a command to omit it. The command to commit, on its part, is further divisible into a decisive command to commit and an indecisive command to commit. The decisive command to commit is termed *al-ijab* (obligation). The indecisive command to commit is termed *al-nadb* (recommendation). On the contrary, the command to omit a particular act is further divisible into a decisive command to omit and an indecisive command to omit. The decisive command to omit is referred to as *al-tahrim* (prohibition), and the indecisive command to omit is referred to as *al-karahah* (reprehension). If the communication of the *Hukmgiver* neither commands the competent person to commit nor commands him to omit it means that it, that is the communication of the *Hukmgiver*, has shifted from the first kind of *hukm taklifi* being command to the second one being option. Option, then, confers on the competent person the liberty to either commit or omit. This liberty is what is known as *al-ibahah* (permission) (Ahmad, 1997).

The five-fold classification of *hukm taklifi* outlined above is in fact that of Jumhur. That of Hanafis, however, is seven-fold. The Hanafi classification is not entirely different from that of Jumhur. In fact it shares with it five categories. The additional two categories themselves are not even totally independent of the initial five categories. In fact they are shades of two of them, namely obligation and prohibition. Obligation, as has been mentioned above, is the decisive command to commit a particular act. However, Hanafis distinguishes in terms of this decisive command between what is definitive in terms of its authenticity (*thubut*) and what is not. In case it is not, they term it, as Jumhur do, *al-ijab* (obligation). But in case it is, they term it *al-fard* (absolute obligation). Prohibition, correspondingly, is the decisive command to omit a particular act. However Hanafis, as in terms of obligation, distinguish between what is definitive in terms of its authenticity and what is not. In case it is, they term it, as Jumhur do, *al-tahrim* (prohibition). In case it is not, they term it, not as Jumhur do, *al-karahah al-tahrimiyyah* (reprehension by way of religious prohibition). *Al-Karahah al-tanzihyyah* (reprehension by way of religious scruple) is the term given by Hanafis to what is termed by Jumhur *al-karahah* (reprehension) (Ahmad, 1997).

The distinction made by the Hanafis is not meant to state their viewpoint on the terminology used. More importantly, it is meant to justify jurisprudential and theological corollaries. For example, if someone fails to read any part of the Qur'an in prayer, his prayer will be considered void. That is because reciting any part of the Qur'an in prayer is an absolute obligation that has been established by an authentic proof being the following Qur'an verse:

(So recite you of the Qur'an as much as may be easy for you) (Al-Qur'an).

However if someone fails to recite surah *al-Fatihah* in prayer, his prayer would not be considered void. That is because the obligation to recite the surah concerned has been established by an unauthentic proof being the Prophetic tradition, which reads:

"Whoever does not recite surah *al-fatihah* in prayer will not be credited with having observed the prayer" (Muhammad, 2002). However, the prayer is deemed to be deficient (Ahmad Hasan, 1993).

That is for the jurisprudential corollaries. As for the theological ones, they form, despite being more serious than the jurisprudential ones, a subject matter of consensus between Hanafis and the Jumhur. To both, having denied *fard* causes the person to be considered an infidel (*kafir*), while having denied *wajib* causes him to be considered impious (*fasiq*) (Mohammad, 2000).

The distinction made by the Hanafis has been deemed to be strange for the unacceptable results deemed to have been entailed by it. If the degree of authenticity is to determine the status of a particular *hukm*, then we ought to be prepared to accept that what is perceived by us to be *wajib*, was perceived to be *fard* by the companion who narrated the tradition that has established it, for the authenticity of the tradition narrated by him is of course undoubtful. Not only this, the same obligation perceived to be *wajib* by some companions was perceived to be *fard* by others, for the latter might have been more confident than the former about the authenticity of the tradition that has established it. In addition, the distinction made by the Hanafis lacks any support from the Qur'an or Sunnah of the Prophet (s.a.w.) except for the distinction made between the requirements of haj termed as *arkan* (constituents) and those termed *wajibat* (obligations). Failure to observe *arkan* renders haj void, whereas failure to observe *wajibat* does not (Muhammad, 2001).

The distinction made by the Hanafis' critics between what is perceived by us and that perceived by a companion is a natural phenomenon rather than a source of criticism. The authenticity of a particular tradition might be doubtful according to our standard of knowledge, and therefore we are absolutely justifiable in not relying on it in the same degree in which we rely on a tradition whose authenticity is free from doubt according to the same standard of knowledge. This standard of knowledge, quite reasonably, cannot be acted upon by the

companion whose standard of knowledge is higher than that of us whereby it is absolutely justifiable for him to act on the tradition whose authenticity is deemed to be doubtful in the same degree in which we act on that tradition whose authenticity is deemed to be beyond doubt. Quite reasonably too, the standard of knowledge of some of the companions cannot be acted upon by some others whose standard of knowledge is higher than that of the former whereby it is absolutely justifiable for the latter to rely on the tradition whose authenticity is deemed to be doubtful in the same degree in which the former rely on the tradition whose authenticity is deemed to be well established. In addition, this natural phenomenon seems to be ordinary rather than unique. The weak tradition, according to our standard of knowledge, is binding on us, yet the Prophet (s.a.w.) might have said it and therefore the companion who narrated it was bound by it although we are not.

Just as the distinction made by the Hanafis' critics has turned out to be a natural phenomenon, the lack of support for the Hanafi distinction from the Qur'an or Sunnah seems to be so. The supposition is that all the communications of the *Hukmgiver* have been addressed to the competent persons on the presumption that they are all authentic. In case some of them are not, that could not have been intended by the *hukmgiver* rather than an undesirable effect of historical factors. For such undesirable effects to be eliminated or at least mitigated, Muslim scholars have to exercise *ijtihad*.

Our criticism of the criticisms leveled at the Hanafi distinction is not accompanied by our disapproval of the distinction criticized. The aim of the process of examining the authenticity of the evidence is to determine whether it will be acted upon as authentic evidence or not. So the doubtful nature of the evidence should be considered at a stage that precedes its acceptance or rejection. But once it is accepted, it should be acted upon just as the authentic evidence is. But to make the evidence's content depend upon its degree of authenticity is mistaken. Apart from that, even if the distinction were intelligible, it should be applied to all of the categories of *hukm shar'i*, just as the evidence of an obligation or prohibition might be doubtful, so the evidence of a recommendation or permission might be. Thus we would end up having ten categories of *hukm taklifi* and not just seven. That is because each one of them would be subdivided into that which is based upon authentic evidence and that one which is based upon unauthentic one.

At this point, we would like to benefit from the Hanafis' scheme in a way that is contrary to the view held by them.

According to the Hanafis' view, *hukm shar'i* is the effect of the communication of Allah concerning the conduct of the competent persons rather than the communication itself. Meaning to say, the evidence by virtue of which *hukm* is established is not the *hukm* itself. Instead, it is the character established by the evidence such as obligation or permission.

Now, if we look for the distinguishing line between *Fard* and *Wajib*, for instance, we would find it lying in the degree of authenticity possessed by each one whereby *Fard* is more authentic than *Wajib*. What follows from this is that the degree of authenticity, which has everything to do with the text in terms of its nature and has nothing to do with its meaning, bestows the character of *hukm* upon the text by virtue of being the communication of the *Hukmgiver* and, subsequently, allows its meaning to determine fully, according to the *Jumhur*, and partially, according to the Hanafis, its kind. Consequently, *hukm* is the communication of the *Hukmgiver* and not its effect as it has been held by the Hanafis.

Disregarding where the character of *hukm* lies, we will handle the five-fold classification of *hukm taklifi* advanced by the *Jumhur* over the next pages.

Obligation (al-Ijab):

Obligation (*al-Ijab*) is the communication of the *Hukmgiver* that commands the *mukallaf* decisively to commit a certain act (Ahmad Hasan, 1993). Abiding by such a standard of behavior or neglecting it can never said to be of no consequences. In case it is abided by, the *mukallaf* will be rewarded, and in case it is neglected, the *mukallaf* will be punished (Badran, n.d.). This category of *hukm taklifi* can be illustrated by the standard of fulfilling contracts that has been set by the following Qur'anic verse:

(O you who believe, fulfill the obligation) (Surat al-Maidah, 5:1).

The above definition has been based upon the mode of expression obligation occupies. However, some other definitions have been advanced on the basis of the results yielded by its omission. On this basis, obligation has been defined as whose non-observance entails punishment (Muhammad, 2000). This definition has been criticized for it excludes those obligations whose non-observance might be forgiven. That is to say, the non-observance of an obligation does not result necessarily in the infliction of punishment (Muhammad, 2000).

As an alternative, it has been defined as what is feared that it would entail punishment in case it is neglected (Muhammad, 2000). This alternative definition has also been criticized for not only excluding what is falling within its purview, but also for including in it what is falling outside its purview. What is thought to be an obligation while it is not is not an obligation although it is feared that it would entail punishment. On the contrary, what is not thought to be an obligation while it is actually an obligation although it is not feared that it would entail punishment (Muhammad, 2000).

Al-Khudari has recommended al- Ghazali's definition, which reads: obligation is what is indicative that a punishment would ensue in case it is neglected (Al- Ghazali, 1993). To say that it is indicative means that the belief that its non-observance would entail punishment is based on the existence of certain indications such as a clear and direct communication, a sign or an inference. However, such an indication does not preclude the possibility that the non-observance might be forgiven, for the non-observance is a cause for the infliction of punishment and the forgiveness prevents the cause from giving rise to its effect (Muhammad, 2000).

There seems to be no real difference between the alternative definition and al- Ghazali's definition recommended by al-Khudari. Both intended not to preclude the possibility that the omission of obligation might not result in the infliction of punishment because such omission might be forgiven. But while the definition recommended by al-Khudari did that through relying on the interpretation of the communication, the alternative definition did it through relying on the psychological effects such a communication causes in its interpreter. An obligation might be feared that it would entail punishment in case it is neglected because its interpretation indicates so. Therefore, what is feared to be an obligation whose omission entails punishment while it is not is in fact what whose interpretation is indicative of such a result while it is not.

The act of the *mukallaf* with which obligation is concerned, that is, characterized by it, is termed *al-Wajib* (The Obligatory) (Ahmad, 1997). *Al-Wajib* has been subdivided into various subdivisions on various bases. One of these subdivisions is its subdivision into personal (*wajib 'ayni*) and collective (*wajib kifa'i*). *Wajib 'ayni* is that obligation whose fulfillment is to be carried out by the *Mukallaf* personally whereby nobody other than him can carry it out on his behalf. This subdivision of *wajib* can be illustrated by the duty to perform prayer and the duty to pay alms (*zakah*). *Wajib kifa'i*, however, is that obligation whose fulfillment is to be carried out by the Muslim community in general whereby if some of its members carry it out, the rest of the community would be absolved. But if nobody has carried it out, the whole community would be blamed for it. Promotion of good and prevention of evil constitute good illustrations (Nabd).

The rather strange nature of collective obligation which makes its discharge by some of the *mukallafin* absolve the rest of the community of their responsibility has caused Muslim *Usuliyyin* to dispute over the subject of such an obligation to whom the communication is addressed. The majority of *Usuliyyin* theologians have held that the communication of this type of obligation is addressed to each member of the community personally. They have based their opinion upon two proofs: the first proof is the generality of the statement of the communication, which indicates that it is addressed to all of the *mukallafin*. An example is the Qur'anic verse, which reads:

(And fight in the way of Allah) Surat Baqarah, 2:190)

Another example is the other verse, which reads:

(Holy fighting in Allah's cause is ordained for you).

The second one is that all the *mukallafin* are blamed in case the collective obligation is neglected by them all. If the communication had not been addressed to them, they would not have been blamed for failing to discharge the duty (Badran, n.d.).

Some other scholars have held that the communication is addressed to the members of the community in general. That is because the absolution of the rest of the community upon the discharge of the duty by some of the *mukallafin*, although the communication is addressed to them all, means that the obligation has been lifted after it has been established. That can only happen through abrogation (*naskh*), and no one has said that the discharge of the collective obligation, which entails the absolution of the rest of the community, is a type of abrogation (Muhammad, 1993).

This argument has been rejected for the obligation may cease to exist because its purpose has been achieved by the discharge carried out by some of the *mukallafin* and therefore it has become insignificant to be discharged by the others. More generally, the lifting of obligation may be dependent upon a particular sign without abrogation (Muhammad, 1993).

Some others have contended that the communication is addressed to certain members of the community who think that they have not discharged the duty concerned. To support their opinion, they have argued that some Qur'anic verses address certain people and not all of the *mukallafin* such as:

(And it is not for the believers to go out to fight all together. Of every troop of them, a party only should go forth, that they may get instructions in religion, and that they may warn their people when they return to them, so that they may beware) (Surat al-Tawbah, 9:122).

They have also argued that it is not acceptable that the duty of somebody is discharged by someone else (Muhammad, 2001).

The second logical argument has been rejected because *Shari'ah* does not rule out the possibility that an obligation might be discharged by someone who is not its subject. An example of that possibility is the debtor's absolution of his obligation upon the guarantor's discharge of the former's obligation. The existence of the obligation, then, is independent of the way it is waived (Muhammad, 2001).

Another group of *Usuliyyin* are of the view that the communication is addressed to certain members of the community, however those members are known only to Allah (s.w.t) (Muhammad 2001).

This opinion is not based on proof. In addition, it is unreasonable to oblige someone by a duty without telling him that he is the subject of that duty. The unreasonableness is not only moral, but also logical, for he would not discharge the duty, not because he does not want to, but because he does not know that he is the subject of such a duty (Muhammad, 2001).

Al-Khudari thinks that the parties disputing over the subject of the collective duty have looked at one aspect or another of the matter of dispute. According to him, such a duty is addressed to all of the community members. However, it should be born in mind that the nature of the duty lying upon each one of them differs from one *mukallaf* to another according to his awareness and potentialities. For example, specializing in medicine is a collective duty. Nevertheless the farmer who is entirely concerned with his farm and crops does not have the capability to specialize in such a field. Likewise, defending the borders of the Islamic state is a collective duty, however it is not within the capacity of a person who is physically weak. Therefore, those who are capable have the duty to carry it out and the others have the duty to assist them in doing so, and urge them to carry it out if they fail to do so. If those who are capable are not available, the government has also the duty to create the circumstances, which are conducive to the preparation of such people (Muhammad, 2001).

Al-Khudari's designation of collective obligation renders it a group of individual obligations combined. To those who are capable, specializing in medicine is an individual obligation because it cannot be discharged by the others who are not capable. Similarly, those who are capable of helping the first group to carry out their obligation and urge them in case they fail to do so are obliged by an individual obligation because it cannot be discharged by the others who are not capable of discharging such an obligation. The duty of the government to create the circumstances, which are conducive to the preparation of doctors cannot be discharged by someone other than it. So far, it can be alleged that what is regarded as a collective obligation is in fact a group of individual obligations that concern the same subject matter. This assertion would seem plausible if we bear in mind that these different obligations cannot be assumed to be addressed to the different categories of the *mukallafin* at the same time. That is because the conditions of the *taklif* of at least one of these obligations depend upon the non-observation of at least one of the other obligations. For example, the obligation to urge those who failed to perform their obligation of specializing in medicine depends logically upon the non-observance of the obligation of specializing in medicine. So, these two obligations cannot be addressed at the same time. They, then, are two independent duties and not two aspects of one duty as understood by al-Khudari.

Stepping further, the duty of specializing in medicine is addressed to those who are capable of carrying out this task. Among those, it is addressed to those who think that the duty concerned has not been discharged by the others. However, the Muslim community's need for enough doctors might be satisfied by having half of those addressed specialized in this field of knowledge. Are the rest still obliged to specialize in medicine although the need for their doing so has ceased to exist? Of course is not. Here lies the true essence of collective obligation. Collective obligation is that one, which is addressed not to the community members in general but to those who are capable of performing it; and at the same time, think that such an obligation will not be discharged by the others. If they continue not to observe the obligation despite their awareness that they have to do for the benefit of the community until harm is inflicted upon the community because of that, all of them would be violating that collective duty. But if some of them discharge the duty to the extent that the community's need is satisfied, the rest would be absolved despite being neglectful of their duties. More accurately, the rest would be absolved because the address would cease to exist upon the achievement of the purpose. In other word, they would not be the subject of the communication any more. Accordingly, the duty to specialize in medicine is a collective obligation just as the duty to urge those who have failed to do so is. Hence they are both collective obligations and not two aspects of one obligation. However, although the addressees of the former are different from those of the latter, they both relate to the same subject matter. Collective obligation, at a final analysis, is an individual obligation, yet what distinguishes it from the ordinary one is its social character. This social character makes the non-fulfillment of the obligation by the others one of the conditions whose fulfillment is necessary for the *mukallaf* to be obliged by it.

Here one has to respond to the criticism leveled at the opinion recommended by us which drew an analogy between the absolution of the *mukallafin* of their duty upon the performance of some of them and the absolution of the debtor's duty upon the guarantor's performance towards the creditor. There is a big difference between the two. When the guarantor pays the debtor's debt to the creditor, the debtor's debt would not be totally waived rather than the creditor's right would be transferred from the creditor to the guarantor. In other words, the subject of the duty remains obliged, but his duty, for practical reasons, is allowed to be shifted from one creditor to another.

Wajib is also divided into what is tied to a time limit (*wajib mu'qqat*) and that one which is free from any time limit (*wajib mutlaq*). The performance of obligatory prayers, for instance, is *wajibmuwaqqat* for it must be observed within a specific time limit, whereas the expiation for breaking an oath is *wajibmutlaq*, for it can be observed whenever the *mukallaf* wishes (Abd al-Wahhab, 1995).

Wajibmu'qqat has further been subdivided into flexible (*muwassa'*), rigid (*mudayyaq*) and that one which resembles both (*dhu al-shabahayn*). Flexible obligation is that one whose time limit encompasses it and any

other obligation of its genus such as the performance of the noon prayer (Ahmad, 1997). With respect to this type of obligation, Muslim scholars have agreed that it cannot be performed before the arrival of the time designated for its performance. Within that designated time, it can be performed whenever the *mukallaf* wishes whether at the beginning, in the middle, or at the end. They have also agreed that the *mukallaf's* intention must be directed at the obligation concerned specifically. But with respect to which point of the time limit is considered the cause of the obligation, they have become divided into Jumhur and Hanafis.

The Jumhur are of the view that the beginning of the time limit is the cause whereby the *mukallaf* would be considered obliged whenever the time arrives provided no impediment to the *hukm* exists. If an impediment exists, the cause would shift from the beginning of the time to the point at which the impediment ceases to exist. But if the time limit expires while the impediment is still in existence, the *mukallaf* would not be obliged at all during the time limit and therefore he would be required to perform *qada'* whenever the impediment ceases to exist. They have advanced as a proof the Qur'anic verse:

(establish prayers at the sun's decline) Surat al-Isra, 17:78).

According to this verse, the beginning of the time has been designated as the cause of *hukm* or its sign. The prophetic traditions, on their part, have shown the beginning and end of the time limits of the different obligations to the effect that the *mukallaf* is entitled to discharge his duty at any time within the specified limit. If the *mukallaf* does not perform it at the beginning, the cause will shift to the next points one by one (Muhammad, 2001).

On the other hand, the Hanafis are of the view that the cause of the obligation is that point of time at which the performance of the obligation gets started. In other words, at that point with which the performance gets connected. If the *mukallaf* does not perform the obligation at the beginning of the time limit, the cause would shift to the next points one by one. If the *mukallaf* still does not perform the obligation, the cause will be that amount of time that can barely accommodate the performance of the obligation concerned. If the time limit expires without the *mukallaf's* performance, the cause would shift to the totality of the time that follows the time limit. Accordingly, if the time arrives while a person is not satisfying all the conditions of legal responsibility, he would still be obliged by that a *wajib* if he satisfies those conditions later on before the time limit ends. Correspondingly, if the time arrives while a person is satisfying those conditions, he would not be obliged if he fails to do so later on before the time limit ends. For example, if the time arrives while a woman is in a state of purity, she would not be obliged if she loses that state later on before the time limit ends. Correspondingly, if the time arrives while a person is not in a state of majority, he would be obliged if he gains that state later on before the time limit ends (Muhammad, 2001).

Rigid obligation is that one whose time limit does not encompass another obligation of its genus beside the specified one such as fasting of Ramadan (Badran, n.d.). The time limit's incapability of encompassing another obligation of its genus has made the Hanafis hold that the intention should not be directed specifically at the obligation concerned. Therefore even if the *mukallaf* intends to fast a voluntary fasting in Ramadan, for instance, he would be fasting in the month of Ramadan and his intention would not be considered. Contrary to that, the Jumhur have stipulated the intention for the discharge of the obligation to be accepted. They have argued that the time limit's incapability of encompassing another obligation of the genus of the obligation concerned does not entail the direction of the intention at the obligation concerned for which the time limit has been designated (Muhammad, 2001).

The obligation which resembles both is that one whose time limit encompasses another obligation of its genus in one respect and does not encompass it in another (Badran, n.d.).

Pilgrimage is the sole example given by the Hanafis of this subdivision. Pilgrimage resembles the rigid obligation with respect to the fact that the year cannot encompass more than one pilgrimage. On the other hand, it resembles the flexible obligation with respect to the fact that the performance of pilgrimage does not exhaust the whole time limit. On the basis of the first resemblance, the Hanafis have held that the general intention of performing pilgrimage is acceptable and would be considered directed at the obligatory pilgrimage even if the *mukallaf* has not specified. That is because it is assumed that obligatory pilgrimage is always intended to precede the voluntary one. On the other hand, on the basis of the second resemblance the Hanafis have held that the intention can be directed at performing the voluntary pilgrimage and not the obligatory one even if the *mukallaf* has not discharged the obligatory obligation yet (Muhammad, 2001).

Wajib is also subdivided into quantified obligation (*wajib muhaddad*) and non-quantified obligation (*wajib ghayr muhaddad*). Quantified obligation is that one whose quantity or amount has been identified by the *Hukmgiver* (*al-shar'i*) whereby the *mukallaf* is not absolved of it unless he has discharged it according to the way specified by the *hukm* giver such as prayers and *zakah*. On the contrary, non-quantified obligation is that one whose quantity or amount has not been identified by the *hukm* giver such as spending in charity and feeding the hungry. The identification of such an obligation differs from one case to another depending on its own circumstances, the person entitled and his need ('Abd al-Wahhab, 1995).

Because of having been identified, quantified obligation is considered a liability on the *mukallaf*. Therefore, he would remain obliged by it even if its present time passes. Whereas non-quantified obligation is not

considered so whereby if its present time passes the *mukallaf* would not be obliged by it. Instead, another one would oblige him; or, if the needs cease to exist, he would be absolved (Muhammad, 2001).

It cannot be objected to non-quantified obligation that *zakah* is considered a quantified obligation although its purpose is to gratify the need of those entitled as the purpose of the non-quantified obligation is. That is because the money in *zakah* is wanted for itself and the need of those entitled is not identified in general. Therefore, it continues to burden those obliged even if the need does not arise as if it is a debt that a debtor has to pay. Conversely, the money in non-quantified obligation is not wanted for itself and because of that the need of those entitled is identified. Therefore, if the need of those entitled is gratified in any other way, the *mukallaf* would be absolved (Muhammad, 2001).

It cannot also be objected to non-quantified obligation that how can it be imposed although its quantity is unknown. The objection would have been reasonable if the quantity had been identified by Allah (s.w.t.) but it had not been made clear to us whereby we would have been obliged to discharge an impossible obligation. But since the quantity has not been identified by Him and was left to be identified on an individual basis, it would be possible for the *mukallaf* to know what is required from him and act accordingly (Muhammad, 2001).

Some obligations resemble quantified obligation in one sense and resemble non-quantified obligation in another. Because of this dual nature, Muslim jurists have disagreed upon their identification. The best illustration of such a type is the right of maintenance. The Hanafis classify the right to maintenance as a non-quantified obligation. If its time passes the person entitled such as the wife or the relative would not be able to claim it until it has been identified by way of an agreement or a judicial decision. Correspondingly, the Jumhur classify it as a quantified obligation whereby the person entitled would be able to claim it even if its time passes whether it has been identified by way of an agreement or a judicial decision or not (Muhammad, 2001).

Obligation has also been subdivided into compulsory obligation (*wajib mu'ayyan*) and elective obligation (*wajib mukhayyar*). Compulsory obligation is that which has been specified by the *Hukmgiver* so that the *mukallaf* has no choice but to fulfill it. Whereas elective obligation is that one, which constitutes a group of multiple options that have been offered to the *mukallaf* by the *hukm* giver among which the *mukallaf* has to select one. While prayer is an example of the first type, an example of the second one is the different forms of expiation (*kaffarah*) ('Abd al-Wahhab, 1995).

The aforementioned understanding of elective obligation is that of the Asharites and the jurists, whereas the Mu'tazilites have held that elective obligation is in fact a compulsory one, but what distinguishes it is that it has been specified by Allah (s.w.t) but has not been manifested to us. So if the *mukallaf* fulfills the specified one, it would be appropriate. But if he fulfills another one instead, it would be fine, and upon that fulfillment he would be absolved of the obligation (Badran, n.d.). The Mu'tazilites' opinion is not sound because it implies that elective obligation is an impossible obligation that cannot be fulfilled. Since the *mukallaf* cannot know the option that has been specified by Allah (s.w.t.), he would not be able to act upon it. In addition, this opinion implies a contradiction. To say that the obligation is specified to Allah (s.w.t.) and elective to us is to say that the *mukallaf* has no choice but to fulfill the obligation at the same time at which he has the freedom to select another obligation as an option offered among others including the specified one. That is because compulsion entails that no other obligation can be fulfilled instead of the specified one, whereas election entails that such another alternative obligation exists. This contradiction cannot be justified on the basis that the elective obligation is in fact a compulsory one, which can be fulfilled by carrying out the act specified or another one. That is because in case the obligation is fulfilled by carrying out an act other than the act specified, the *mukallaf* would not be fulfilling the obligation rather than an alternative to it (Mohammad, 2001).

Elective obligation cannot also be denied on the basis that it is a compulsory obligation, but what distinguishes it is that it is specified by way of selection. This opinion is not sound too, for it would make the obligation differ from one *mukallaf* to another because it would depend upon his selection whereby what is selected by a *mukallaf* is not selected by another, whereas the communication indicates that the freedom of choice exists on the part of all the *mukallafin* with respect to all the obligations. Moreover, to say that the obligation gets specified by selection contradicts that it had existed before it was selected. That is because its existence is necessary for it to be selected (Mohammad, 2001).

The Pre-requisites to Obligation:

The pre-requisites to obligation are the causes that have to be pursued and the conditions that have to be satisfied for the obligation to be fulfilled. Causes are either normal or *Shari'ah*. Whereas the sound contemplation is a normal cause that leads to knowledge, the utterance of the words of emancipation is a *Shari'ah* cause of setting a slave free. On the other hand, conditions are either rational, normal or *Shari'ah*. The absence of the opposite is a rational condition for the fulfillment of an obligation. An example of normal conditions is the washing of part of the head for the face to be washed. Lastly, an example of *Shari'ah* conditions is taking ablution for the validity of prayer (Mohammad, 2001).

The question that arises with respect to the pre-requisites to obligation is whether the *mukallaf* is obliged to fulfill those pre-requisites in order to fulfill the obligation imposed upon him. The answer is indisputable. As for

the causes, the command to perform a certain obligation is in fact a command to pursue the causes that would give rise to that obligation by the force of the *Shari'ah*. The command to free slaves, for instance, is actually a command to utter the words of emancipation that would result in the effect wanted. As for the conditions on the other hand, since the fulfillment of the obligation cannot be carried out without the satisfaction of its conditions whether rational, normal or *Shari'ah*, the satisfaction of such conditions is an obligation itself. However, one must bear in mind that the *Shari'ah* conditions are not in need for this rational justification, for the obligation to fulfill them is established by virtue of being the content of an independent communication addressed to the *mukallaf*, and that is why they are described as the *Shari'ah*. In short, what is necessary for an obligation to be carried out is an obligation itself (Mohammad, 2001).

Recommendation (Al-Nadb):

Recommendation (*al-nadb*) is the communication of the *Hukmgiver* that commands the *mukallaf* indecisively to commit a certain Act. The consequences that ensue from abiding by this standard of behaviour are similar to those ensuing from abiding by obligation, whereas those that ensue from neglecting it are different from those ensuing from neglecting obligation. Meaning to say, observance of recommendation entails reward, whereas non-observance, unlike obligation, does not entail punishment (Mohammad, 2001).

Of the recommendations whose non-observance does not entail punishment is what has been set by the following Qur'anic verse:

(O you who believe, when you contract a debt for a fixed period, write it down) Surat al-baqarah, 2:190.

The act characterized by *al-nadb* is called *al-mandub* (*the recommended*) (Ahmad, 1997). Recommended acts are referred to as *sunan*. *Sunan* have been classified into three categories, viz. *sunan* which are complimentary to obligations (*sunan hadyy* or *sunan mu'akkadah*), additional *sunan* (*sunan za'idah*) and supererogatory *sunan* (*nawafil*). *Sunan hadyy* are those, which are complimentary to religious obligations such as making the *azan* and establishing congregational prayers. They are also those, which have been often practiced by the Prophet (s.a.w.) and have not been abandoned except once or twice just to show their non-obligatory character such as gargling as a part of ablution and the recitation of a chapter or a verse after the recitation of *Surat al-fatihah* (Badran, n.d.). The observance of these *sunan* earns the *mukallaf* spiritual reward while their neglect does not make him liable for punishment. However, their neglect renders the *mukallaf* liable for blame. Not only this, it has been said that if the people of a certain locality agree on their neglect, they should be fought for contempt of Sunnah (Mohammad, 2001).

Additional *sunan* are those, which are additional to the obligations and were practiced by the prophet (s.a.w.) in his everyday life concerning his way of walking, sitting, sleeping, etc. The neglect of these *sunan* as a group does not, unlike *sunan hadyy*, render the *mukallaf* liable for blame. However, the *mukallaf* is recommended to observe them because their observance shows his following of the prophet (s.a.w.), clinging to him, and love for him (Badran, n.d.).

Supererogatory *sunan* are those, which are observed voluntarily in pursuit of Allah's satisfaction and pleasure. They were observed by the prophet (s.a.w.) at certain times and omitted at others such as the non-obligatory charity and the fasting of Monday and Thursday. Their observance, like the previous ones, causes the *mukallaf* to be rewarded. But their neglect, like the second one, does not render him liable for blame (Badran, n.d.).

In regard to the last category, a dispute has arisen between the Shafi'is and the Hanafis over the *mukallaf's* right to discontinue the observance of the voluntary *sunnah* he has started. The Shafi'is have held that the *mukallaf* has the full right to discontinue his observance, for it is a voluntary one which lies entirely at his disposal. On the contrary, the Hanafis have held that he does not have such a right. That is because of the Qur'anic verse which reads:

(And do not void your deeds) (Surat Muhammad, 47:33).

They have also argued that the voluntary character of the act relates only to its beginning whereby the *mukallaf* has the right to decide whether to start doing it or not. But after starting doing it, it is no longer voluntary and therefore he has to continue observing it (Ahmad, 1997).

It is worth mentioning that the aforementioned three-fold classification of *sunan* is a Hanafi classification that has no equivalent in the other three Sunni schools of jurisprudence (Wahbah, 2005).

Prohibition (al-Tahrim):

Prohibition (*al-tahrim*) is the communication of the *Hukmgiver* that commands decisively the *mukallaf* to omit a specific act (Ahmad, 1997). The consequences ensuing from abiding by this standard of behavior or neglecting it are totally opposite to those ensuing from abiding by or neglecting obligation. That is to say, entitlement to reward ensues from refraining from committing the act, while subjection to punishment ensues from committing it (Mohammad, 2001). Of the prohibitions whose commission gives rise to punishment is what had been imposed by the following Qur'anic verse:

(O you who believe, eat not usury doubled and multiplied) (Surat Al Imran, 3:130).

The *Usuliyyin* have assumed a situation in which the *mukallaf* is commanded to refrain from doing an unidentified act among a group of identified ones. This situation has been assumed in parallel to the well-known situation of the elective obligation in which the *mukallaf* is commanded to perform an unidentified act that has to be selected out of a group of identified ones. As an illustration of this assumed situation, they have given the example of the prohibition of marrying two sisters. That is to say, the *mukallaf* is commanded to refrain from marrying either of the two sisters out of whom he has to choose one (Muhammad, 2000).

Al-Khudari has accepted the assumption and rejected the example. The prohibition of marrying two sisters, according to al-Khudari, is not an elective prohibition, for holding so means that marrying one of them entails the prohibition of marrying the other even if he divorces her. This prohibition, in fact, is a prohibition of marrying two sisters at the same time whereby if he marries one of them and then later divorces her and marries the other it would be valid. In other words, the prohibition is a prohibition of having two sisters as wives at the same time and not a prohibition of marrying one of them. As an alternative, he has suggested the example of the situation in which a husband says to his two wives one of you is divorced irrecoverably. In such a situation if the husband later on approaches one of them it means he has selected the prohibition of approaching the other (Muhammad, 2000).

The example suggested by al-Khudari is as implausible as the example rejected by him. When a husband says to his two wives that one of you is divorced it means either he has specified the one to be divorced but he does not want to tell them or he has not. If he has specified the wife to be divorced, it means that the divorce has occurred with respect to the specified wife and in such a case the issue of elective prohibition does not arise. But if he has not specified the wife to be divorced yet, it means that the divorce has not taken place in the first place. Divorce has to apply to a particular person who is supposed to be its object. Therefore, if it is uttered indiscriminately, it is considered to be having no object and therefore it ceases to exist. In such a case, the husband's utterance is deemed to be a declaration of his intention of divorce and not a divorce as such.

Since the content of prohibition is exactly the opposite of obligation, it seems quite logical to hold that the same act of the same *mukallaf* cannot be the concern of the two types of commands at the same time. However, the *Usuliyyin* have not been unanimous on this conclusion. The main example discussed by the disputants was praying in a usurped land. It can be said to be obligatory in the sense that it is a performance of an obligation, which is prayer. On the other hand, it can be said to be a prohibition in the sense that it constitutes staying in a usurped land. Ahmad Bin Hanbal and the Mu'tazilites have held that the same act cannot be good and bad at the same time whereby the pleasure of Allah is sought through a sin. Therefore, they have considered the act concerned a sin and, consequently, the prayer is void and the *mukallaf's* obligation to pray that prayer has not been fulfilled yet. In other words, he has to repeat his prayer (Muhammad, 2000).

Their opponents have criticized their opinion on the basis that it is contrary to the consensus (*ijma'*) related to this issue. They have argued that scholars have been unanimous on considering the prayers of the different oppressors in the usurped lands valid and therefore they have not asked them not to pray in a usurped land or asked them to repeat those prayers performed by them in such lands. On his part, Ibn Hanbal has denied the existence of such a consensus. On their part, Ibn Hanbal's followers have said that if there had been such a consensus it would have been known by Ibn Hanbal. Nevertheless, even if it existed, it is deemed to be a silent consensus, which is not decisive evidence against which it is prohibitory for a scholar to go (Muhammad, 2000).

Al-Qadi Abu Bakr has held that the act is considered a sin, yet the *mukallaf* is considered to have fulfilled the obligation of offering that prayer because of the consensus related to this issue (Muhammad, 2000). Al-Qadi Abu Bakr's opinion has been rejected because it allows the *mukallaf* to fulfill an obligation through the commission of a sin (Muhammad, 2000).

On the contrary, the Jumhur have contended that the prayer in a usurped land is valid and the *mukallaf* is not required to repeat it. They have advanced four arguments in support of their opinion:

First, they have drawn an analogy between this case and the case in which a master asks his servant to write a document outside the mosque. However, the servant writes the document as requested by the master but inside the mosque contrary to the same authority's request. While the servant is considered an obedient servant for writing the document, he is still considered a disobedient one for writing it inside the mosque. So, both of the aspects of the act are considered and none of them exhausts the other.

Second, they have argued that a single act cannot be obligatory at the same time at which it is prohibitory when the cause of obligation is itself the cause of prohibition. But in the case concerned, the cause of obligation is the command to pray while the cause of prohibition is the command not to usurp the others' lands.

Third, if the prayer in a usurped land is not valid, the obligation to offer that prayer would not be fulfilled. However, the consensus on the contrary has been held.

Fourth, to say that the prayer in a usurped land is not valid is to say that the prayers at the times at which prayers have been prohibited are invalid as well. However, many have considered such prayers to be valid (Muhammad, 2000).

All of the above-mentioned arguments have been dismissed as implausible. With respect to the first argument, the servant's writing the document inside the mosque is not an act that is partially obedient and partially disobedient. In fact, it is totally disobedient. That is because the command was to write the document with the condition that is to be written outside the mosque. So if it was written inside the mosque it means that the servant did not comply with the command and therefore is considered totally disobedient.

With respect to the second one, the separation of the two causes in the abstract sense whereby praying is separable from usurpation is not denied. However, with respect to the case concerned they are inseparable. Therefore, praying in a usurped land constitutes an act carried out in a domain in which such an act is forbidden and therefore it entirely constitutes a prohibitory act.

As for the third argument, the consensus relied upon, as it has been mentioned above, is denied. Yet, even if it exists, it is of the kind that is not forbidden to the scholar to go against because it is a silent consensus.

As for the fourth one, just as many have validated the prayers performed at the forbidden times, many have invalidated them (Muhammad, 2000).

The Jumhur's opponents have argued that praying is an act of worship, one of whose conditions of validity is the intention to please Allah (s.w.t.), and Allah's pleasure cannot be sought by the commission of a sin. Hence praying in a usurped land lacks one of its conditions of validity (Muhammad, 2000). In response to this argument, al-Ghazali has contended that the consensus upon the validity of such a prayer indicates that the intention to please Allah is not a condition of validity. Thus the *mukallaf* seeks Allah's pleasure by praying and commits sin by usurping (Al-Ghazali, 1993). However, his opponents have rejected his defense insisting the inseparability of the two acts (Al-Ghazali, 1993).

The invalidity of praying in a usurped land is the opinion recommended by al-Khudari. To support his recommendation, he has drawn an analogy between this and the case of the prohibition of fasting on the first day of Eid. It is an act that aims at pleasing Allah in the sense that it is fasting. On the other hand, it is a sin in the sense that it is performed at a time that has been forbidden by Allah. The Jumhur have considered such an act to be an invalid instance of the separation between the causes relied on by them in considering praying in a usurped land to be valid. The first day of Eid cannot be imagined without fasting on it; then fasting on the first day of Eid is prohibitory (Muhammad, 2000).

The separation of the causes relied upon by all whether positively by claiming its existence or negatively by claiming its non-existence has been wrongly applied or exemplified by all. It is true, as held by the Jumhur's opponents, that the servant's writing the document outside the mosque is totally disobedient and not partially so. That is because the document's being written inside the mosque is an integral part of the command to be written the non-observance of which causes the whole act of fulfillment to be deficient. However, this case is not comparable to the subject matter of dispute. No command has been issued to the effect that no prayer will be performed in a usurped land. There is a general command to pray, and there is a general command not to usurp a land. So when the usurper committed his sin, he had in mind the violation of the prohibition, and when he prayed, he had in mind the observance of the obligation. But the coincidence of violation and observance takes place by way of logical conclusion and not a volitional action. Therefore, it could not be said that he sought the pleasure of Allah through a sin. So, once again, the intention to please Allah is present. The usurper could have done anything else instead of praying in the usurped land. He could have slept, eaten, played or even committed another sin. But his insistence upon fulfilling the obligation of prayer shows his commitment to it despite his commission of the sin of usurpation. This commitment cannot be ignored as if he has done nothing. Just as he would be blamed for having committed another sin in addition to the sin of usurpation, he should be rewarded for having fulfilled an obligation despite the sin concerned.

Instead, this case, that is the master-servant case, is comparable to the case of the prohibition of fasting on the first day of Eid. Being on the first day of Eid is an integral part of the command not to fast. The two cases' being comparable to each other makes the latter, which is the one referred to by al-Khudari, incomparable to the subject matter of dispute. In turn, it makes praying in a usurped land valid contrary to what has been held by al-Khudari.

Reprehension (al-Karahah):

Reprehension (*al-karahah*) is the communication of the *Hukmgiver* that commands the *mukallaf* indecisively to omit a certain act (Ahmad, 1997). In terms of consequences, just as prohibition is exactly opposite to obligation, reprehension is exactly opposite to recommendation. Accordingly, abiding by this standard of behaviour causes the *mukallaf* to be rewarded, while neglecting it does not cause him to be punished (Mohammad, 2000). Qur'anic reprehensions can be exemplified by the following verse:

O you who believe, when the call is proclaimed for Friday prayer on Friday, hasten to the remembrance of Allah and leave off trading (Surat al-Jumu'ah, 62:10).

Permission (Ibahah):

Permission (*al-Ibahah*) is the communication of the *Hukmgiver* that neither commands the *mukallaf* to commit a certain act nor commands him to omit it (Badran, n.d.). Unlike the previous four, neither abiding by this standard of behaviour nor neglecting it causes the *mukallaf* either to be rewarded or punished (Badran, n.d.). Of the neutral standards of behavior set by the Qur'an is the following verse:

(Then when the prayer is finished, you may disperse through the land and seek the bounty of Allah)(Surat al-Jumu'ah, 62:10).

Permission gets established through a communication that indicates in one mode of expression or another that the *mukallaf* has the option to commit an act or to forbear from committing it. It also gets established through the absence of the communication related to the act concerned. In such a case, the act would have the original status, which is permissibility (Abd).

This original status, however, is what had caused some of the Mu'tazilites to hold that permission is not one of the defining rules. That is because it is the initial character that an act possesses and which the communication of the *Hukmgiver* confirms it is being possessed by the act and does not bestow it upon the act as such. On the other hand, the Jumhur are of the view that no initial character is possessed by an act before the advent of *shari'ah*, and the absence of the communication with respect to the act is a strong indication of permissibility just as its existence is (Muhammad, 2000).

Conclusion:

The seven-fold classification of *hukmtaklifi* has been suggested by the Hanafis. The Hanafis' suggestion has been turned down for the criterion of authenticity suggested by them should not play any role in determining the status of the evidence after having been accepted. Even if it were to be accepted, it should make the categories of *hukmtaklifi* rise up to ten. The Hanafis' suggestion, however, has been utilized to prove that the appropriate definition of *hukm* is that of the *Usuliyyin* which identified *hukm* with the communication of the *Hukmgiver* and not that of the Hanafis themselves who identified *hukm* with the effect of the communication.

The appropriate definition of obligation, on its part, has turned out to be that definition based on the mode of expression the command of the *Hukmgiver* occupies, and not those definitions based on the consequences ensuing from its omission. Those based on such consequences are not exclusive, for they do not preclude the possibility that the omission of a certain obligation might be forgiven and therefore might not entail punishment. This lack of exclusiveness is not only possessed by the definitions criticized by al-Khudari, but even by the definition of al-Ghazali recommended by him.

The punishment entailed by the omission of a collective obligation will not be inflicted on the community in general, for the obligation omitted is in fact an individual obligation and not a collective one as often asserted. The obligation omitted is not addressed to the community in general rather than those individuals of the community who are capable of fulfilling it and whose every one of them thinks that the others will not fulfill it. In case the collective neglect persists until harm is inflicted on the community in general, those capable individuals will be blamed. But in case one or some of them fulfill it the rest will be absolved.

Elective obligation, contrary to collective obligation, exists, but what does not exist is elective prohibition assumed in parallel to elective obligation. The divorce examples given by way of illustration are not appropriate. The example rejected by al-Khudari confuses elective prohibition with the compulsory obligation not to have two sisters at the same time as two wives, while the example recommended by him confuses elective prohibition with the declaration of the intention to divorce one of the two wives.

The example given as an illustration of an act characterized at the same time by both obligation and prohibition is praying in a usurped land. Praying in a usurped land is valid because of the separable of the causes wrongly applied and exemplified by the disputing parties. Praying in a usurped land is valid because the cause of the obligation of prayer is different from the cause of the prohibition of usurpation, and having merged into one act has taken place by way of logical conclusion and not a volitional action.

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