

AN ANALYSIS OF WAQAI'U AL-'AYAN'S PRINCIPLE AND ITS LEGAL EFFECTS ON JURISTS' DISSENTS

BY

Isa Abdur-Razaq Sarumi¹
&
Abdulraheem Taofeeq Abolaji²

ABSTRACT

Waqai'u al-'ayan is a legal ruling by the Prophet (pbuh) directed only to a specific person at a particular point of time which cannot be applied to another person or the Ummah at large even in the existence of the similar occurrence. The dissents of the Muslim jurist have been recorded in both classical and modern books of Fiqh and Jurisprudence, accompanied with rationales behind them to the extent that some legal researchers have specifically compiled these rationales in a book to indicate that the Muslim jurists do not hold different opinions fatuously. However, little attention has been devoted for the principle of waqai'u al-'ayan that is considered as one of the rationales behind the difference of the Muslim jurists. Therefore, this research focuses on conceptual analysis of this principle with practical examples from the hadith of the Prophet (pbuh). The research also discusses the effects of this principle on the difference of the Muslim jurists. . The study employs doctrinal method which involves analysis of both primary and secondary sources of Shari ah.

INTROODUCTION

The era of the prophet Muhammad (pbuh) experienced several incidents and occurrences upon which the Lawgiver provided authoritative rulings and optimal solutions to every problem. The comprehensive understanding of the companions of the Prophet (pbuh) of his hadiths enabled them to draw analogies between the Lawgiver's rulings with the subsequent issues in their life time based on the Prophet's approval of such analogies. However, there are some traditions of the Prophet (pbuh) that are considered specific which could not be analogized with any other subsequent situations even though they share essential similarities. This principle is known by the Muslim jurists as "waqai'u al-'ayaan ". Similarly, there are some other principles that bear considerable similarities with waqai'u al-'ayan but quite different in application. For example, waqi'atu al-hal and hikayat al-hal which shall be discussed at length in this article.

Waqai'u al-'ayaan is one of the cardinal principles of Usul al-fiqh that effects juristic controversy in marginal issues; some hadiths are understood by a set of Muslim scholars as specialties with no elements of analogy to their kinds, while other set of scholars might consider them to be general in nature and consequently be used as analogy when similar cases occur. Having meticulously observed the dissents of the Muslim scholars, it is found that there are numerous rationales behind these differences, one of which is waqai'u al-'ayan. Other rationales have been discussed in great detail in the classical books of Usul al-fiqh to the extent that some are

¹ PhD. Candidate, Ahmad Ibrahim Kuliyyah of Law, International Islamic University Malaysia. saroommool@gmail.com

² Lecturer Department of Islamic Law Faculty of Law, University of Ilorin Kwara State.

exhaustively treated as topics³. On the contrary, waqa'iu al-a'yan gained no such solicitousness by the Muslim jurists. It is rather sporadically mentioned in the classical books. Therefore, this article discusses the conception of this principle with its juristic effects and application in the classical books of Fiqh.

ACCEPTANCE AND REJECTION OF HADITH ON THE BASIS OF WAQI'AT 'AIN

It is inconceivable to believe that the Muslim scholars, with their high integrity and uprightness, could deliberately refuse to accept Hadith of the Prophet (pbuh) out of heretic tendencies after assiduous efforts made by them in protecting the Sunnah. If, admittedly, an authentic hadith is rejected by any of these scholars, the rejection might arise as a consequence of either lack of his awareness of the hadith or having awareness of the hadith but rejected purposely for a plausible excuse like that of waqa'iu al-'ayān. Ibn Taymiyyah said that it is not known that any of the famously acknowledged scholars by the Ummah had ever diverged from the Sunnah of the Prophet (pbuh). They all unanimously agreed upon unconditionally following the Sunnah. Every other person's words are questionable and open to acceptance and rejection except the words of the Prophet (pbuh).⁴ When an estimable scholar, however, found rejecting an authentic hadith or making a statement seemingly contradicts Sunnah, there must be one of the following plausible justifications for his approach; (i) doubting the authenticity of that hadith, (ii) intending what is different from the hadith, and (iii) he might have opined that such rulings should have been abrogated.⁵

Numerous narrations were recorded which prove that neither the companions of the Prophet nor their predecessors ever undervalued the words of the Prophet (pbuh), or gave precedence to any other person's opinion over the injunction of the Prophet (pbuh).⁶

At-Tirmidhi reported that Salim ibn 'Abdullah (ibn 'Umar) narrated that he heard a man from Ash-Sham (i.e. the Levant - Greater Syria) asking 'Abdullah ibn 'Umar about Hajj Tamattu', then 'Abdullah ibn 'Umar said: "It is lawful." The man said: "Your father had forbidden it." 'Abdullah ibn 'Umar said: "Well, if my father had forbidden it and the Messenger of Allah (pbuh) did it, whom do we follow, the command of my father or the command of the Messenger of Allah (pbuh)?" The man said: "We follow the command of the Messenger of Allah (pbuh)." Ibn 'Umar then said: "The Messenger of Allah (pbuh) did it".⁷

Another narration has also been reported that Ibn 'Umar was asked about Hajj Tamattu' and he commanded it, so he was told "you are opposing your father", so he (Ibn 'Umar) replied: "My father did not say what you are saying; rather, he said: "Perform 'Umrah separately from Hajj, meaning that the 'Umrah should not be done in the months of Hajj except by offering a sacrifice (Hadyu), and my father meant that the House of Allah should always be filled with visitors of and to avoid exclusively restricting it to the months of Hajj. When he (Ibn 'Umar) was asked too much about it, he said: "It is the Book of Allah that is worthier of following or 'Umar".⁸

³ Ali A, *Asbab ikhtilaf al-Fuqaha*, (Dar al-Fikri al-'Arabi, Beirut, ٢٠٠٦), p 21.

⁴ Ibn Taymiyyah, *Majmu'u fatawah*, (Dar al-wafa', Cairo, 2005), vol.20, p 232.

⁵ Bilal B. 'Ilal al-Usuliyyeen, (Dar al-Muhaditheen, Cairo, 2009), p 21

⁶ Abdullah Y. (*Al-Ijtihad*, Dar al-Qalam, Damascus, 1987), p 55.

⁷ Attahawi A. (*Sharhu Ma'ani al-athar*, *Al-anwar al-Muhammadiyah*, Cairo, 1979), Vol. 2, p 142.

⁸ Al-Bayhaqi I. *Sunan al-Kubrah*, (*Majlis ad-Dairat al-Nisamiyyah*, Haider Abadi, 1926), vol. p 5, 21.

The earliest scholars inclusive of the pioneers of the four major Schools of Law, Maliki, Shafi, Abu Hanifah and Hambali, and other independent jurists that are capable of juristic reasoning (ijtihād) are known with numerous statements that indicate how the hadith of the Prophet (pbuh) was held in high esteem by them.⁹

A famous expression in this regard was reported from Imam Abu Hanifah and Shafi' which substantiates their topmost regard for the Sunnah of the Prophet. "If the hadith is authentic, that is my Madhhab".¹⁰ Imam An-Nawawi commented on the first statement that what Imam Ash-Shafi'i said does not mean that everyone who finds an authentic hadith should say this is the madhhab of Al-Shafi'i by applying the purely external or apparent meaning of his statement. What he said most certainly applies only to a scholar that has the rank of ijtihad in the madhhab. It is a condition for that kind of scholar that must be firmly convinced that either Al-Shafi'i was unaware of this hadith or he was unaware of its authenticity.¹¹ This is possible only after having researched all the books of al-Shafi'i and other similar books of the disciples of al-Shafi'i.

Basically, it is a difficult condition to fulfil for the fact the scholars that are sufficiently qualified for the stipulated standard in our time are very few. Abu 'Amr Ibn Al-Salah said that it is no trivial matter to act according to the literal meaning of what Imam Al-Shafi'i said. For it is impermissible for every jurist – let alone an ordinary person ('ammi) – to act independently with what he takes to be proofs from the hadith... Therefore, any Shafi'i that finds a hadith that contradicts his School must examine whether he is absolutely accomplished in all the disciplines of ijtihad, or in that particular topic, or specific question. If he is, then he has the right to apply it independently.¹²

Similarly, Abu Hanifa reported to have said that if any of his statements contravene the book of Allah, leave my word for the book of Allah. He was further asked that if his opinion contravenes the Sunnah of the Prophet? He replied that his opinion should be abandoned for that of hadith, he was also asked if it contravenes the companions' opinion. He replied: my opinion should be left for the companions'.¹³ Malik also reported to have said that, "any one's opinion could either be accepted or rejected exclusive of the Prophet' opinion".¹⁴

Generally speaking, it is beyond the realm of possibility to see any of the famously notable scholars deliberately rejecting hadith without a plausible proof or a sound reasoning.¹⁵

CONCEPTUAL ANALYSIS OF WAQAI'U AL-'AYAN

No classical Islamic book provides exhaustive definitions of waqai'u al-'ayan either in the books of Fiqh or Usul al-Fiqh, because the earlier jurists consider it reasonably comprehensive. However, basic concept of this principle is well-established in their books. The word waqi'a is derived from the word waqa'a which means to fall down, to drop, to tumble, to come to pass, to take place, to happen. Waqi'a means incident, occurrence, event; happening, development; fact; accident, mishap. The word 'aini

⁹ Ibn 'Abidin M.A. *Hashiyat Ibn 'Abidin*, (Daru al-Iyahi al-turāth al-Ilmi, Beirut 1987), vol.1, 24

¹⁰ Al-Nawawi Y.S. *Almajmu Sharh al-mudhab*, (Dar al-Fikr Beiru. Vol. 1998) p 63.

¹¹ Abdullah I.I. *Idahu al-Qawaid al-Fiqhiyyah*, (Al-Maktabah al-Samilah), p 123

¹² As-Subki Ali ibn Abdul-al-Kafi, *Qaulu Imam al-Mutalabi Idha saha minka Hadith*, Muas-sat al-Qurtabah) p 24.

¹³ Salih M.A. *Gadhu Uli al-Absar*, (Dar al-Ma'rifah, Beirut 1978, 139), p 50

¹⁴ Adhabi Muhammad ibn Ahmad, *Siryar a'lami al-nubalah*, muas-sat al-risalh, Beirut, 1984. Vol. 8 p 93.

¹⁵ Al-Kattani A.A. *Wasfu al-Mahalla*, (Al-Maktabat al-Shamilah 1997), p 22.

literally means eye, spring, source, fountainhead (of water); hole; mesh; flower; choice; (pl- أعيان a'yan) an eminent man, used especially in plural, people of distinction, important people, leading personality. Literal meaning of hal is condition, state; position, status; circumstance; case; present, actuality (as opposed to future).¹⁶

Technically, waqai'u al-'ayān is a legal ruling by the Lawgiver directed only to a specific person at a particular point of time which cannot be applied to another person or the Ummah at large even in the existence of similar occurrence.¹⁷ Waqi'atu al-hāl could be technically defined as a legal ruling by the Lawgiver related and directed to the act of a particular person or a group of people to a specific situation or occurrence with the permission for its applicability to another similar situation.

Waqi'u al-a'yan from the above definition indicates total negation of generalization of hukm and its applicability in a similar case. In essence, its ruling is on a specific in a particular person.

It can be deduced from the previous explanations that

- (a) Waqā'i'u al-'ayan is more general than hal and the basic principle in hal is generality for every similar situation except there is an exception with dalil and,
- (b) Occurrence of waqā'i'u al-'ayan is very rare while the cases of hal is relatively common.

General Examples of Waqai'u from hadiths

- i- Al-Bara' bn 'Azib said: An uncle of mine called Abu Burda, slaughtered his sacrifice before the 'Id prayer. So Allah's Apostle said to him, "Your (slaughtered) sheep was just mutton (not a sacrifice)." Abu Burda said, "O Allah's Apostle! I have got a domestic kid." The Prophet said, "Slaughter it (as a sacrifice) but it will not be permissible for anybody other than you" The Prophet added, "Whoever slaughtered his sacrifice before the (Id) prayer, he only slaughtered for himself, and whoever slaughtered it after the prayer, he offered his sacrifice properly and followed the tradition of the Muslims."¹⁸

The statement "'Slaughter it as a sacrifice but it will not be permissible for anybody other than you" makes it evident that it is specifically meant for Abu Burda and no iota signal of generality could be inferred from the hadith. It is an explicit text that indicates wāqi'atu 'aini with no general ruling.¹⁹

- ii- Narated by Uncle of Umarah ibn Khuzaymah: The Prophet (pbuh) bought a horse from a Bedouin. The Prophet (pbuh) took him with him to pay him the price of his horse. The Apostle of Allah (pbuh) walked quickly and the Bedouin walked slowly. The people stopped the Bedouin and began to bargain with him for the horse as and they were not aware that it had been brought by the prophet (pbuh). The Bedouin called the Apostle of Allah (pbuh) saying: If you want this horse, (then buy it), otherwise I shall sell it. The Prophet (pbuh) stopped when he heard the call of the Bedouin, and said: Have I not bought it from you? The Bedouin said: I swear by Allah, I

¹⁶ Wehr, Hans, and J. Milton Cowan. A dictionary of modern written Arabic :(Arab.-Engl.). (Otto Harrassowitz Verlag, 1979), 12277.

¹⁷ Bilal B. 'Ilal al-Ushliyyeen, (Dar al-Muhaditheen, Cairo, 2009), p 21.

¹⁸ Al-Bukhari M. Ismai'l, Sahih al-Bukhar, (Dar ibn Kathir, Beirut 1987). P 6673.

¹⁹ Al-Zarqani M.A. *Sharhu al-Zarqani 'ala al-Muwattah*, (Dar- al-Kutub al-Ilmiyyah, 1990), vol. 1 p 29.

have not sold it to you. The Prophet (pbuh) said: Yes, I have bought it from you. The Bedouin began to say: Bring a witness. Khuzaymah ibn Thabit then said: I bear witness that you have bought it. The Prophet (pbuh) turned to Khuzaymah and said: on what basis your witness was borne? He said: By considering you trustworthy, Apostle of Allah (pbuh)! The Prophet (pbuh) made the witness of Khuzaymah equivalent to the witness of two people.

- iii- Hind bint 'Utba said to the Prophet "Abu Sufyan is a miserly man and I need to take some money of his wealth." The Prophet said, "Take reasonably what is sufficient for you and your children".²⁰

The hadith is not waqi'atu 'ain, it is rather waqi'atu hāl or hikatu hal, it is neither absolutely general nor specific to a certain person, it is rather al-khass al-nao'i, i.e., its ruling is generally applicable to any situation akin to that of Hind.

- iv- Jabir ibn Abdullah said that Allah's Messenger saw a man who was being shaded (by other people while traveling). The Prophet asked about him and he was told that man was fasting. The Prophet said: (It is not a part of Birr (piety) to fast while traveling).²¹

The hadith is also neither specific to a particular person nor general to everyone that observes fasting during travel, it is applicable to every traveller whose situation is comparable with the event on which the hadith occurred.

This lies on the basic principle of "al'am al-warid 'ala al-sabab, hal yukhtassu bi sababihi am la? (Would general rules that are articulated as a consequence of cause or reason be confined to that cause or not?). Ibn Taymiyyah reported to have said that none of the Muslim scholars ever said that the general text from of the Quran and Sunnah is exclusively peculiar to a particular person. The utmost degree of the scholars' opinion is that it is peculiar to the situation of the person which is applicable to any similar situation.²²

GENERAL CONDITIONS FOR WAQAI'U AL-'AYAN AND WAQI'ATU AL-HAL.

The general rules of either waqai'u al-'ayan are: (i) explicit quotation on peculiarity, as previously cited in the hadith of Bara' bin Azib. (ii) Declarative statement of a person to whom the rule is peculiar; like the hadith reported by Khuzaymah. And, (iii) Declarative text of negation of the rule from another person.

The general rules of waqi'at al-hal are: (i) when the text (nass) comes as a result of a specific question peculiar to a particular person the case is considered waqiat al-hal. (ii) Specifying the text with a time and place, as such it shall not be general except to those specific times and places, like fasting of days of bid and 'Ashurah.

JURISTIC EFFECTS ON WAQAIU AL-AHYAN FROM SELECTED HADITHS

Having given general examples of hadiths that illustrated the difference between waqi'at al-'ain and hal, the effect of the principle on the divergence of the Muslim jurists would be will be discussed one after the other.

1- Nudity of thigh

²⁰ Al-Hakim, Muhammad Abdullah, *Almustadrak 'alā Sahihayn*, (Dārul al-M'arifah, Beirut, 1989), vol. 2, 18. This hadith is declared authentic by Iman al-Dhahbi.

²¹ Al-Bukhari, no: 1946 and Muslim, no: 1115

²² Ibn Taymiyyah, *Muqaddimah fi Usul At-Tafsīr* (Maktabat al-Turath al-Islami, Cairo), p 59-60

Anas said, 'When Allah's Apostle invaded Khaibar, we offered the Fajr prayer there yearly in the morning when it was still dark. The Prophet (pbuh) rode and Abu Talha rode too and I was riding behind Abu Talha. The Prophet passed through the lane of Khaibar quickly and my knee was touching the thigh of the Prophet. He uncovered his thigh and I saw the whiteness of the thigh of the Prophet. When he entered the town, he said, 'Allahu Akbar! Khaibar is ruined...' ²³

On this hadith some scholars have held the opinion that the thigh is not awrah; the man's of awrah is both the front and back of this region (besides the penis, testicles, and anal opening).²⁴ This is the opinion of Malik in one of the two narrations from him, and a narration from Ahmad. Abu sa'id also reported the similar opinion from 'Ata, Sufyan Thawri, Ibn Hazmi and the Scholars of Zahiriyah.²⁵ This view is also substantiated with another narration from 'Aisha that the Prophet (pbuh) was sitting in his house, when Abu Bakr (may Allah be pleased with him) came in, then 'Umar then 'Uthman—and before 'Uthman came in, then the Prophet (pbuh) covered his thigh area. When 'Aisha (may Allah be pleased with her) asked why for 'Uthman, and not the others, he said "shall I not be shy of the one whom the angels are shy of?"²⁶

However, the majority scholars are of the opinion that the thigh is part of nudity that which its cover is compulsory. Their ways of dealing with the seemingly contradictory views are as follows:

- First approach: The two hadiths are believed to be among waqai'u al-'ayan that have no generality. Thus there is no clear-cut proof therein to claim that the thigh is not awrah.

Ibn Hajar reported that Qurtubī said: the hadith and other similar hadiths are circumstantial; they happened during particular situations which were not from certain eventualities that Jarhad's narration-and other hadiths that consider thigh as awrah-do not have because they comprise giving intrinsic legal ruling and manifestation of general Shari'ah rulings.²⁷

An-Nawawi responded to the narration of Aisha that there is an obvious doubt from the narrator on whether what the Prophet (pbuh) opened was thigh or knee. He said: (the scholars of Madhab said: if the hadith is admittedly authentic, it should be interpreted that, what is intended is opening some part of his clothes not all. Therefore, it is waqai'u al-'ayan that has no generality and consequently cannot be a proof.²⁸ Considering the Anas' narration as wāqi'atu al-ain or speciality of the Prophet is highly questionable, for the fact that any exclusive speciality for him (pbuh) must be derived from divine texts not from eventualities. The original state of deeds is for the Ummah to partake in enjoying legal rulings with the Prophet (pbuh) except with a clear proof for speciality, no one could, therefore, claim speciality for the prophet in the hadith. Therefore, whosever situation is similar to that of the Prophet would enjoy the injunction, because it was his situation on the horse that affected him to uncover his thigh. Besides, harmonizing between seemingly conflicting opinions is infinitely preferable than giving preponderance to one over others.

²³ Al-Bukhari M.I. Sahih al-Bukhari, (Dar ibn Kathir, Beirut, 1987), p 371

²⁴ Al-Sarkhasi A.M. *Al-Mabsut*, (Dar al-Fikr, Beirut, 2000), vol. 10 p 253.

²⁵ Al-Nawawi Y.S. *Almajmu Sharh al-Mudhab*, (Dar al-Fikr Beirut 2008), vol. 3, p 168-169.

²⁶ Al-nawawi Yahya bn Sharafuddin, *Sharh Sahih al-Muslim*, (Dar ihya turath al-Arabi, Beirut 1989), p 35 vol. 5. 2401

²⁷ Ibn Hajar A. Fathu al-Bari, (Darul al-M'arifah Beirut), 1379. Vol. 1 p 480-481.

²⁸ An-nawawi, *al-Majmu' Shar al-Muhadhab*, (Dar al-Fikr Beirut). Vol. 3, p170

- Second approach: there are some Hadiths with categorical stipulations that the area between the navel and the knee (and the navel and knee are not part of the 'awrah).

For instance, a hadith "From Jarhad who said that the Prophet (pbuh) passed by Jarhad in the masjid and his thigh was exposed and the Prophet told him, "Verily the thigh is 'awrah."²⁹ There is also from Abi Kathir mawla of Muhammad ibn Abdullah ibn Jahsh from Muhammad ibn Abdullah ibn Jahsh who said, "We were with the prophet (s.a.w) and we passed by Ma'mar who was sitting near his place in the market and his two thighs were uncovered. The Prophet said to him, "Oh Ma'ma, cover your thighs, for verily thighs of from 'awrah".³⁰ In another tradition, 'Ali (may Allah be pleased with him) said: The Messenger of Allah (pbuh) said: "Do not show your thigh, and do not look at the thigh of anyone, living or dead."³¹

Although, the narrations of many of these hadiths are not free from criticism, Nevertheless, the upshot is that all of these chains support one another in solidifying the words of the Prophet Muhammad that the thigh of a man is 'awrah.

Ibn al-Qayyim in harmonizing these seemingly contradictory texts said that the best method of striking a balance between the hadith could be fathomed from the opinion of disciples of Imam Ahmad and other scholars that man's 'awrah is divided into two kinds; al-mughallaza (major) and mukhafaffah. The man's private parts are reckoned as major awrah. On the contrary, the thigh is minor. Thus, there is no contradiction between the commands of lowering one's gaze from thighs because they are 'awrah.³²

2- Carrying Children during Salat

Abu Qatada al-Ansari reported: I saw the Apostle (May peace be upon him) leading the people in prayer with Umamah, (daughter of Abu'l-'As and Zainab), daughter of the Apostle of Allah (pbuh), on his shoulder. When he bowed, he put her down, and when he got up after prostration, he lifted her again...³³

Al-Nawawi commented that this is hadith is an evidence for the Shafi's and some other scholars that carrying children and permissible animals is allowed during both obligatory and supererogatory prayer.³⁴ This opinion is also attributed to the Hambalis. On the contrary, there is a differing opinion narrated from the Malikis with plausible justifications for abandoning the efficacy of the hadith. These justifications are as follow:

- i- It is special for the Prophet (pbuh) because his infallibility protected him from being wet by her urine while carrying her as mentioned by Qadhi 'iyad. Ibn hajar also mentioned it is circumstantial occurrence that has no generality (hikayat al-hal la 'umuma laha). Thus, Umamah might have probably been bathed when he carried her. However, Qadhi 'iyad's claim is unacceptable for the fact that specification comes only by divine text not by analogy.³⁵

Surmising that it is a part of the Prophet's specialities is unsatisfactory, it would rather be reckoned as situational which could be applicable to who is certainly

²⁹ Abu Daud, Sunan Abi Daud, no: 4014.

³⁰ Al-Bukhari, *Tarikhul al-aosat*, (Dar as-Sami'I Saudi Arabia 1998), vol. 2, p 249.

³¹ Ibn Maajah, no: 1460.

³² Ibn al-Qayyim al-Jaoziyyah, *Tahdhib al-Sunan*, (al-Maktabat al-Salafiyyah, Madinah 1968), vol.11, p 52

³³ Al-Bukhari 516, Muslim 543.

³⁴ Al-Nawawi Y. S. *Sharh Sahih al-Muslim*, (Dar Ihya Turath al-Arabi, Beirut 1989), p 35 vol. 5.

³⁵ Ibid, 592.

assure of neatness of the baby before carrying him. Therefore, confining the rule only to the Prophet is specification by no divine text (takhsis bila mukhasis) which is unacceptable.

- ii- The hadith is interpreted to have occurred during supererogatory prayer not obligatory. Although, al-Qurtubi repudiated this claim with the proof that the apparent meaning of the hadith as it obviously apparent that the event occurred during obligatory prayer.³⁶
- iii- The hadith is said to have been abrogated as there was no report of persistence of that kind of occurrence. This was reported by Al-isma'li from Malik.³⁷ Ibn Hajar also refuted this claim of abrogation as the abrogation cannot be based on eventuality. Besides, this hadith occurred long time before hijra, meanwhile the prohibition of excessive movement during was before hijra to Madinah.³⁸ Therefore, construing it as waqi'atu hal is more apposite than considering it khususiyah, thus, whoever finds himself in such a narrow and critical situation, the principle shall be adopted. For instance, it is permissible in both supererogatory and obligatory prayer when there is no one to take care of a child, but it is only permissible in nawafil if the child could be taken care of by another person.³⁹

3- Janazah Prayer in Absentia

Narrated Abu Huraira (may Allah be pleased with him): Allah's Messenger (pbuh) informed (the people) about the death of Al-Najashi on the very day he died. He went towards the Musalla (praying place) and the people stood behind him in rows. He said four takbir (i.e. offered the funeral prayer).⁴⁰

The above hadith indicates that it is permitted to offer the funeral prayer in absentia as opined by Al-shafi', Ahmad. Ibn Hazm reported the companions' consensus on permissibility of janazah prayer in absentia.⁴¹ However, Hanafi and Maliki schools of law (Ibn Abi Musa did relate from Ahmad another opinion which resembles theirs) are of the opinion that janazah prayer in absentia is not allowed in spite of the authenticity of the abovementioned Hadith.⁴²

Those scholars who are of the opinion that the prayer is not permitted said that it is waqai'u al-'ayan. Thus it specifically applies to Al-Najasi only that is why no such janazah prayer has been recorded from the Prophet (pbuh) after al-Najashi.⁴³ Malhab said that the reason for the opinion is that the Prophet (pbuh) did not offer janazah prayer in absentia on any of the Muslims of his time, neither the earlier Muhajirin nor Ansar who died in different cities during the time of the Prophet, because janazah prayer is fard kifayah (general obligation). So, the people in the city of the deceased would be responsible for it. In the case of al-Najashi, it is said that there was no single Muslim who could have offered the prayer over him. The ruling is-therefore-specifically confined to him. This view is also substantiated with the fact that Negus body was brought to the Prophet during the prayer just as the Jerusalem was brought to him when the pagans of Quraysh asked him about its veritable

³⁶ Al-Qurtubi A.A. *Al-Mufhim Sharh Sahih al-Muslim* (Dar Ibn Kathir, Beirut, 1996) vol.2 p 957.

³⁷ Al-Qadhi 'Iyadh, *Ikmal al-mualim bi fawa'id Muslim* (Dar al-Wafah Alexandria, 1998).vol. 2 p 474.

³⁸ Ibn Abdul-Abarr, *al-Istiskar*, 314, vol. 6

³⁹ Al-Baji, S.K. *Al-Muntaqah*, (Matba'at al-Sa'adah Egypt, 2007), vol.1, p 304.

⁴⁰ Al-Bukhari, 1334-1333 and Muslim, 951-952.

⁴¹ Ibn Hazm 'Ali ibn Ahmad, *Al-muhallah*, (Idarat at-tiba'at al-Amiriyya, Cairo, 1933). Vol. 5 at 197.

⁴² Al-Qarafi Ahmad ibn Idris, *Al-dhakhirah*. (Dar al-Gharb, Beirut, 1994). Vol. 2 p 471.

⁴³ Ibn Battal, *Sharh sahih al-Bukhari*. (Maktabat al-Rushd, Riyadh 2003). Vol 3 p 243.

description. He came out after his awareness of the Negus demise and called his companions purposely to lead them for janazah prayer before he would be buried by his people. This event is a proof of peculiarity of the Prophet.⁴⁴ This view is refuted on the basis of having no proof for the claim of specification.⁴⁵ É

Furthermore, some scholars are of the opinion that the funeral prayer should not be offered in absentia except if a person dies in a land where there is no one to offer the prayer over him. Al-Khattaabi said: The funeral prayer should not be offered in absentia except if a person dies in a land where there is no one to offer the prayer for him. Al-Ruyyani, a Shafa'i scholar, favoured this view, and Abu Daud used a heading in al-Sunan that referred to this meaning when he said: "Chapter on offering the funeral prayer for a Muslim living among the non-believers in another land." Al-Hafiz said: This is perhaps appropriate.⁴⁶

It is clear that offering the funeral prayer in absentia is prescribed, because it is proven that the Prophet (pbuh) and his companions prayed for the Negus, and there is no evidence to prove that it is act that applied only to the Prophet (pbuh). However, the seemingly contradictory opinions could be summarily harmonized as follow:

- i- The funeral prayer should be offered if it is known that a Muslim dies in a place where it is believed that no one would offer janazah prayer on him, it would therefore become general obligation on the Muslim community. Similarly, if it is known that janazah has been offered, praying in absentia would become permissible not obligatory in order to harmonize the controversy. It is established in Islamic legal maxim that there is no denunciation in valid areas of legal differences.
- ii- That the funeral prayer may be offered in absentia on someone who benefited the Muslims, such as a scholar who benefited people with his knowledge or a wealthy one who benefited people with his wealth.

4- Adult Breastfeeding

'A'isha (Allah be pleased with her) reported that Salim, the freed slave of Abu Hudhaifah lived with him and his family in their house. She (i.e. the daughter of Suhail came to Allah's Apostle (pbuh) and said that Salim has attained (puberty) as men attain, and he understands what they understand, and he enters our house freely, I, however, perceive that something (rankles) in the heart of Abu Hudhaifa, whereupon Allah's Apostle (may peace be upon him) said to her: "Suckle him and you would become unlawful for him, and (the rankling) which Abu Hudhaifa feels in his heart will disappear". She returned and said that so I suckled him, and what (was there) in the heart of Abu Hudhaifa disappeared...⁴⁷

Some minority Muslim scholars are of the opinion that breastfeeding adults creates the relationship of Mahram (unmarriageable relatives) from their understanding of this Hadith. The opinion is held by Aisha herself, and Abu Musa al-Ash'ari also used to give the same verdict, though his reversal from this opinion was reported when Ibn Mas'ud criticized him. The view has also been attributed to Ibn Hazm and Al-laythu. However, majority of the Muslim scholars have rejected the validity of this hadith, though they unanimously agreed on its authenticity⁴⁸ with the following rationales:

⁴⁴ Ibid, 244.

⁴⁵ Ibn Daqiq al'id Taqiyuudin, *Ihkam al-Ahkam sharh 'Umdat al-Ahkam*, (Matba'at al-Sunnat al-Muhammadiyah, Cairo, 1953). Vol 1 p 366

⁴⁶ Al-Shaokani M.A. *Naylu al-Autar*, (Dar al-Hadith, Cairo, 1993). Vol. 5 p 2053.

⁴⁷ Muslim, sahih muslim, no.1453.

⁴⁸ Ibn Qudamah, A. *al-Mughni*, (Darul al-Fikr, Beirut, 1405H), 201, vol.9.

- i- It is claimed that the hadith has been abrogated by another hadith in which the Prophet (peace be upon him) said: “The only breastfeeding that creates the relationship of Mahram (unmarriageable relatives) is that which fully satisfies the stomach and takes place before weaning (i.e. during the two-year-suckling period)”. He (peace be upon him) also said: “The only breastfeeding that counts is that which constitutes the only food for the child”. Ibn Hajar refuted this abrogation with reasoning that the context of Salim’s event contradicts the claim.
- ii- It is an exclusive case that is specifically applied to Salim (waqai’u al-‘ayan). Ibn Hajar said that basis of this opinion is the statement of Umm Salamah and other wives of the Prophet (pbuh) when they said:⁴⁹ “By Allah, this was only a concession given by the Messenger of Allah for Salim alone, and we do not allow those with this type of fosterage to enter our homes and we do not subscribe to that view.⁵⁰ Therefore, this was a special concession for Salim and Abu Hudhaifa in this specific case to avoid hardship and the companions of the Prophet understood that this is not a general rule. Besides, it occurred as a consequence of child adoption that resulted in intermingling of Salim and Sahla after the revelation of the hijab verse and the abrogation of child adoption which was predominant before and earlier time of Islam.
- iii- Wāqi’atu al-hāl is fathomed from the argument of some scholars who rejected the abrogation of the Hadith. Ibn Hajar said that whose situation is akin to that of Salim could have the same ruling, thus there would be no room for speciality. This opinion is also held by ibn Taymiyyah, Ibn Qayyim and Al-Shaokani. It should be noted here that these scholars are of the viewed that breastfeeding adult is permitted only in a dire necessity.⁵¹

The external meaning of the hadith has caused very few among contemporary clerics to give the opinion on breastfeeding the adult to avoid strict religious ban on intermingling between unrelated men and women.

Dr. Izzat ‘Atiya, head of al-Azhar University’s Department of Hadith, issued a fatwa, or Islamic legal decree, saying that female workers should “breastfeed” their male co-workers in order to work in each other’s company. And a high-ranking Saudi, Sheikh Abdul Mohsin al-Ubaican issued a verdict confirming that “women could give their milk to men to establish a degree of maternal relations and get around a strict religious ban on mixing between unrelated men and women.”⁵²

With close observation of the dissent of the Muslim scholars, it is evident that considering Salim’s hadith as abrogated is in conformity with maqasid al-Shari’ah. If it is admittedly believed that the hadith is not abrogated, breastfeeding the adult should not be allowed, because it would open the floodgate to immorality and viciousness in the society. Therefore, the principle of saddu adhari’a (blocking the means) should be applied to avoid opening the floodgate to the potential dangers that would occur. Besides, the opinion of breastfeeding the adult to creating consanguinity (mahramiyyah) appears eccentric in this modern time where chastity has disappeared

⁴⁹ Muslim, no.1454 sahih muslim

⁵⁰ Ibn Hajar, Fathul al-Bari Sharhu al-Sahih Al-Bukhari,) Dar al-M’arifah, Beirut, 1379) 201, vol.9

⁵¹ Ibn Qayyim al-Jaoziyyah, *Zad al-mi’ad fi hadyi khairi al-‘Hibad* (Maktabat al-Manar al-Islamiyyah Kuwait, 1987), vol.5 p 584.

⁵² <http://www.freerepublic.com/focus/chat/2871905/posts> accessed 10th March 2016.

off the face of the earth compared with the era of the Prophet (pbuh) and his companions (may Allah be pleased with them) that was of faith and absolute submissiveness to Allah.

CONCLUSION

It is clear that there is no single authentically narrated hadith that Muslim scholars unanimously rejected. However, if any authentically narrated hadith is rejected by them, it might be as a result of considering it as abrogated, waqi'atu 'ain and so on. For this reason, profound understanding of waqā'i'u al-'ayān philosophy helps to understand the rationales behind the difference of the Muslims jurists, and they do not disagree except with plausible reasons, one of which is waqai'u al-ayan. It is crystal clear from the exposition that the numbers of hadiths said to be waqai'u al-ayan are very few, whereas the numbers of hadiths interpreted to be waqai'u al-ahwal and hikayat al-ahwal are quite numerous, though the scholars. Understanding waqā'i'u al-ahwal is of utmost important for modern jurists, for it could be applied to many contemporary issues of our time. Therefore, the article recommends that the principle of waqai'u al-'ayan should be extensively explored by the Islamic legal researchers and Muslim jurists from the classical books of Islamic jurisprudence because of its relevance in every aspect of Fiqh.

Bibliography

- Abdullah ibn Sa'id al-Hijji. (2011). Idahu al-Qawaid al-Fiqiyyah. Al-Matb'at al-Madani.
- Abdullah ibn al-Abbadi, Idahu al-Qawaid al-Fiqhiyyah, al-Maktabah al-Samilah, Makkah.
- Abdullah bn Yusuf (1987). Al-Ijtihad, Dar al-Qalam, Damascus.
- Abdul al-Azeez Abdul al-Lateef. (1996). Al-Ta'arudu wa al-Tarjih baina al-adilat al-Shar'iyyah, Dar al-Kutub al-ilmiyyah, Beirut.
- Abu J'afar Attahawi, (1979). Sharhu Ma'ani al-athar. Al-anwar al-Muhammadiyyah, Cairo.
- Abukar Ahmad Al-Bayhaqi, (1926). Sunan al-Kubrah, Majlis ad-Dairat al-Nisamiyyah, haider Abadi.
- Abu Daud Sulayman ibn al-Ash'ab. (1988). Sunan Abi Daud. Dar al-Kitab al-Arabi, Beirut.
- Al-Baji, Sulayman ibn Khalaf, Al-muntaqah (1999). Dar al-Kutub al-ilmiyyah Beirut.
- Adhabi Muhammad ibn Ahmad. (1984). Siryar a'lami al-nubalah, (muas-sat al-risalh, Beirut.
- Al-Bukhari Muhammad ibn Ismai'l. (1987). Sahih al-Bukhari. Dar ibn Kathir, Beirut.
- Al-Bukhari Muhammad ibn Isma'il (2005) Tarikhul al-Aosat .Dar Rshd, Riyadh.
- Al-fallani Salih Muhammad. (1978). Iqaz imam uli al-absar, 'Dar al-Ma'rifat'. Beirut.
- Al-Hakim, Muhammad Abdullah. (2011). Almustadrak 'alā Sahihayn, (Dārul al-M'arifah, Beirut.
- Al-kattani Ali al-Athari (1997). Wasfu al-Mahalla, al-maktabat al-Shamilah 199.
- 'Ali al-Khafif (2006). Asbab ikhtilaf al-Fuqaha, Dar al-Fikri al-'Arabi, Beirut.
- Al-nawawi Yahya bn Sharaf. (2008). Almajmu Sharh al-mudhab, Dar al-Fikr Beirut.
- Al-Qadhi 'Iyadh (1998). Ikmal al-mualim bi fawaid Muslim Dar al-Wafah Alexandra.
- Al-Shaokani Muhammad ibn 'Ali. (1993). Naylu al-Autar, (Dar al-Hadith, Cairo.

- Al-nawawi Yahya bn Sharafudddin. (1989). Sharh Sahih al-Muslim, Dar ihya turath al-Arabi, Beirut.
- Al-Sarkhasi Abubakar ibn Muhammad (2000). Al-Mabsut. Dar al-Fikr, Beirut.
- Al-Subki Ali ibn Abdul-al-Kafi, Qaulu Imam al-Mutalabi Idha saha minka Hadith, muas-sat al-Qurtabah.
- Al-Qarafi Ahmad ibn Idris. (1994). Adhakhirah. Dar al-Gharb, Beirut.
- Al-Qurtubi Abu al-‘Abbas. (1996). Al-mufhim Sharh Sahih al-Muslim (Dar Ibn Kathir, Beirut.
- Al-Zarkashi Muhammad ibn Bahadir. (2000). Al-Bahrul al-Muhit fi Usul al-Fiqh, (Dar al-Kutub al-ilmiyyah, Beirut.
- Al-Zarqani Muhammad ibn Abdul al-Baqi. (1990) Sharhu al-Zarqani ‘ala al-Muwattah, Dar- al-Kutub al-Ilmiyyah.
- Bilal Bahr, (2009). ‘Ilal al-Usuliyyin, Cairo. Dar al-Muhadithin.
- Ibn Abdul-Abarr. (1993) alstiskar, Dar Qutaibah, Damascus.
- Ibn Taymiyyah, Taqiyyuddin Ahmad. (2005). Majmu’u fatawah, (Dar al-wafa’, Cairo.
- Ibn al-Qayyim al-Jaoziyyah. (1968). Tahdhib al-Sunan. Al-Maktabat al-Salafiyyah, Madinah.
- Ibn ‘Abidin Muhammad Ameen. (1987). Hashiyat Ibn ‘Abidīn, (Dāru al-Iyāhi al-turāth al-ilmi, Beirut.
- Ibn Battal (2003). Sharh sahih al-Bukhari. Maktabat al-Rushd, Riyadh.
- Ibn Daqīq al’id Taqiyyuddin, Ihkam al-Ahkam sharh ‘Umdat al-Ahkam, (Matba’at al-Sunnat al-Muhammadiyyah, Cairo, 1953). Vol 1 at 366
- Ibn Hajar Ahmad bin Ali al-Asqalani (1958). Fathu al-Bahri. Dar al-Ma’rifat, Beirut.
- Ibn Hazm ‘Ali ibn Ahmad (1933). Al-muhallah, (Idarat at-tiba’at al-Amiriyya, Cairo.
- Ibn Maajah Muhammad ibn Yazid. (1985). Sunan ibn Majah. Dar al-Fikr, Beirut.
- Ibn Qayyim al-Jaoziyyah (2010).Zad al-mi’ad fi hadyi khairi al-‘Hibad,) Maktabat al-Manar al-Islamiyyah Kuwait.
- Ibn Qudamah, Abdullah (1985). Al-Mughni, (Darul al-Fikr, Beirut.
- Ibn Taymiyyah, Muqaddimah fi Usul At-Tafsīr (Maktabat al-Turath al-Islami, Cairo.
- Mahmud Abdul al-Rahman, waqai’u al-ahyan wal ahwal, Dar al-ulum magazine.
- Muslim ibn Hajjaj. Sahih Muslim (1998). Baitul al-Afkar al-Adauliyyah, Riyadh.
- Salih Muhammad al-Fallani. (1978). Iqadhu ulil al-absar, (Dar al-Ma’rifah, Beirut.
- Sulayman ‘Abd al-Qawiyy al-Tufi (1993). Al-Ta’arud wal a-Tarjih bayna al-adillat al-Shar’iyyah, Dar al-Kutub al-Ilmiyyah Beirut.
- Wehr, Hans, and J. Milton Cowan. (1979). A dictionary of modern written Arabic, Arabic.-English. Otto Harrassowitz Verlag.