

Notes of Lectures on Fiqh

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Lecture # 9 (Friday 10 August 2001)

LOAN (QARZ) REPAYMENT AND HAJJ

✳️ If you have got sufficient funds to perform Hajj, but you are also in debt and the funds are enough to either repay the loan or go for Hajj, then should you go for Hajj or repay the loan first? In such a case, there are two situations:

- (a) The agreed time of repayment of loan has come
- (b) The agreed time of repayment of loan has not come

✳️ If the agreed time of loan repayment has come and if the lender is not agreeable that you can go to Hajj first (ie he wants his money back), then you have to repay the loan to him, and then Hajj is not wajib on you. And if you still went ahead and performed the Hajj with that fund, it will not be counted as your wajib Hajj, but according to Ayatullah Khui, it can be counted as your wajib Hajj.

✳️ If the time of loan repayment has come, but the lender has agreed not to take the repayment at that time, then according to Seestani and Khumaini, Hajj is not wajib, but according to Khui, you can go to Hajj and it will be counted as your wajib Hajj.

✳️ If the agreed time of loan repayment has not come at the time of going for Hajj, then Ayatullah Seestani and Ayatullah Khumaini say that Hajj is not wajib on you, and if you still went for Hajj, it will not be counted as your wajib Hajj. But Ayatullah Khui says that Hajj becomes wajib, and you have to go for Hajj with those funds.

✳️ The mortgage type of loan taken from non-Muslim banks is a different thing and can not be considered for repayment at the time of Hajj in all above cases. Thus, if you have got sufficient funds for Hajj, then Hajj may become wajib whether or not you have got a mortgage loan. Any loan, which you take with the intention of paying interest (riba) to the lender, is haram in Islam. (More details of mortgage and interest will be covered in future fiqh lectures)

TAKING LOAN FOR HAJJ OR FOR OTHER PURPOSE

✳️ It is not wajib to take loan in order to perform Hajj.

✳️ But if you take a loan, which is sufficient to perform Hajj, then Ayatullah Khui says that Hajj will become wajib, but Ayatullah Seestani and Khumaini say that Hajj will not become wajib.

✳️ If you take a loan for any specific purpose (eg car, house, marriage, education, travel, medical treatment etc), and if the money is not yet utilised and is sufficient for Hajj and the time for Hajj has come, then according to Ayatullah Khui, Hajj will become wajib if you are

satisfied that you can pay back this loan easily, but according to Ayatullah Seestani and Khumaini, Hajj will not become wajib.

✳️ If you have been saving money for some specific purpose (eg car, house, medical treatment, marriage of daughter etc), and the amount becomes sufficient for Hajj and the time for Hajj has come, then Hajj will become wajib on you, according to all marja. The only exception is that if the person does not use the money for intended purpose, he will face exceptionally extreme hardship (haraj as defined by sharia), and then he can use the money for that purpose and delay the Hajj for future.

KHUMS & ZAKAT AND HAJJ

✳️ If any amount of khums or zakat is wajib on a person, and if the time of Hajj has come, then it is wajib on him to first pay the khums and zakat, and if sufficient money is left over for Hajj then go for Hajj. If the amount left after paying khums and zakat is not sufficient for Hajj, then Hajj is not wajib on him.

✳️ If your marja or his authorised representative (wakil) gives you permission to delay the full or partial payment of khums at a later date, then you can perform your wajib Hajj.

UNDOING CAPABILITY FOR HAJJ (KHUROOJE ISTETA'AT)

✳️ If a person has attained all capabilities (isteta'at) for Hajj, then it is haram for him to undo that capability. For example, if a person has got sufficient money to perform his wajib hajj at any time, then it is haram for him to spend it for any other purpose or to give it to someone for any purpose.

✳️ If, during a year, you have got money, which is sufficient for your Hajj and other capabilities also exist, and instead of going to Hajj, you spent the money on overseas trip to visit your home country, then such a visit is haram, and the Hajj will then become wajib on you for ever, which you have to perform at the first opportunity even with hardships.

✳️ If you have got sufficient money just to perform your own wajib hajj, then it is haram to give it to any one else (including your parents) to perform their Hajj. It is a great sawab (but not wajib) to send parents or any momin for hajj with your money, but it is allowed only if you have performed your own wajib Hajj or if the Hajj is not wajib on you.

✳️ If a son has sent his father to Hajj by paying him sufficient money but without performing his own wajib Hajj, then Hajj of his father is OK, but the Hajj has become wajib on the son for ever and he has to perform it at the first opportunity even with all hardships.

✳️ If you want to donate your money to your parent (or anyone) to send him to Hajj, without you first going for Hajj, then one possibility is to give away money in instalments to him at different times such that sufficient fund for your own Hajj does not remain with you at any time. Hajj will become wajib when you attain sufficient fund necessary for your own Hajj, but if you avoid attaining that sufficient fund by permissible means, then Hajj will not become wajib on you.

RULES FOR HAJJE NIYABAT (HAJJ BY A REPRESENTATIVE)

✳ Hajje Niyabat (or Hajje Badal) is a Hajj performed by a person on behalf of another person (such as a dead person or a physically unfit living person). It is permissible to send a person for Hajje Niyabat from the country of the person for which Hajj is to be done. According to Seestani, Khui and Khumaini, it is also permissible to take a less expensive option of hiring a person from Medina or elsewhere in Saudi Arabia to perform the Hajje Niyabat.

✳ In Sunni fiqh, a woman is not allowed to do Hajje Badal on behalf of any one. In shia fiqh, a woman is allowed to do Hajje Badal on behalf of a man or a woman. Similarly a man can do Hajje Badal on behalf of a man or a woman.

✳ In Sunni fiqh, a man doing Hajje Badal for anyone must first have completed his own wajib Hajj. In shia fiqh, this is not so. A person can do Hajje Badal only if Hajj was not wajib on him/her in that year.

✳ Following conditions are wajib for a person going for Hajje Badal:

- (a) He/she must be able to perform wudu and ghusl correctly.
- (b) He/she must be able to offer salat correctly with proper pronunciation (qirat) of Arabic words.
- (c) He/she must know the Hajj masail (rules) of at least 2 or 3 marjas (his own marja, marja of the person for whom Hajj is being performed, and marja of the person who is sending him for Hajj) in order to perform the Hajj correctly.