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The Center for Muslim Contribution to Civilization

THE  
*Distinguished  
Jurist's Primer*

VOLUME I

*Bidāyat al-Mujtahid  
wa Nihāyat al-Muqtaṣid*

Ibn Rushd

Translated by Professor Imran Ahsan Khan Nyazee

Reviewed by Professor Mohammad Abdul Rauf

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# I

## THE BOOK OF (RITUAL) PURIFICATION (TAHĀRA)

The Muslim jurists agreed that *sharʿī* (legal) purity (*tahāra*) is of two types: purity from *ḥadath* (ritual impurity) and purity from *khathath* (physical impurity).<sup>23</sup> They also agreed that purity from *ḥadath* is of three kinds: ablution (*wuḍūʿ*), bathing (*ghusl*), and their substitute, ablution with clean earth (*tayammum*).<sup>24</sup> This is because of their inclusion in the verse of ablution,<sup>25</sup> which dealt with these issues. We shall begin, out of these, with a discussion of ablution. We say:

### 1.1. THE BOOK OF ABLUTION (*WUḌŪʿ*)

A comprehensive discussion of the principles of this (type of) worship (*ʿibāda*) is covered in five chapters. Chapter 1 relates to the evidence of its obligation—on whom it is obligatory and when; Chapter 2 is about the identification of its acts; Chapter 3 is about the identification of that with which it is performed, that is, water; Chapter 4 is about the identification of factors nullifying it; and Chapter 5 is about the identification of things with which it can be performed.

<sup>23</sup> Impurity (*najāsa*) is divided by the jurists into two kinds: actual (*ḥaqīqīya*) and technical or legal (*ḥukmiya*). The term *ḥadath* is applied to legal or technical impurity, while *khathath* to actual impurity. *Ḥadath* may be minor, which is removed through ablution, or it may be major (sexual defilement and menstruation) and is removed through bathing (*ghusl*). Similarly, actual *najāsa* may be heavy (*mughallaza*) or light (*mukhaffafa*).

<sup>24</sup> The term *wuḍūʿ* is also referred to as the minor (*sughrā*) ablution, while the term *ghusl* is referred to as the major (*kubrā*) ablution.

<sup>25</sup> Qurʾān 5 : 6.

### 1.1.1. Chapter 1 The Evidence (*Dalīl*) of its Obligation

The evidence of its obligation is in the Qurʾān, *sunna*,<sup>26</sup> and *ijmāʿ*.<sup>27</sup> In the Qurʾān it is in the words of the Exalted: “O ye who believe, when ye rise up for prayer, wash your faces and your hands up to the elbows, and lightly rub your heads and (wash) your feet up to the ankles”.<sup>28</sup> The Muslim jurists agreed that obedience to this communication is obligatory for each person on whom prayer is obligatory, when it is time for it(s) (performance). In the *sunna*, it is in the words of the Prophet (God’s peace and blessings be upon him) “Allāh neither accepts prayers without purity nor charity out of purloined wealth [of spoils]”, and in his saying, “Allāh does not accept prayers from one who has acquired *ḥadath* till he performs ablution”. These two traditions are authentic according to the leading traditionists. Its evidence in *ijmāʿ* is based on the absence of a transmission from any of the Muslims disputing its obligation. Had there been a dispute, it would necessarily have been transmitted because of the demands of practice.

Those on whom it is obligatory are the sane and pubescent.<sup>29</sup> This too is established through *sunna* and *ijmāʿ*. In the *sunna*, it is found in the words of the Prophet (God’s peace and blessings be upon him), “The pen [liability] has been lifted from [in the case of] three persons”. He then mentioned the minor, till he attains puberty, and the insane person, till he recovers. There is no transmitted controversy about its proof in *ijmāʿ*. The jurists (*fuqahāʾ*) disagreed whether Islam is a requisite condition for its obligation. It is an issue that is of little benefit in *fiqh*, as it relates to the *ḥukm* of the hereafter.

Ablution becomes obligatory when it is time for prayer (*ṣalāh*) or when a person has intended an act for which ablution is a requisite condition, even if the act is not associated with a fixed time. About its obligation upon a person in a state of *ḥadath*, when it is time for prayer, there is no controversy because of the words of the Exalted, “O ye who believe, when ye rise up for prayer, wash your faces and your hands up to the elbows, and lightly rub your heads and (wash) your feet up to the ankles”.<sup>30</sup> Thus, ablution is made obligatory at

<sup>26</sup> The term *sunna* applies to the practice of the Prophet (God’s peace and blessings be upon him) as established through his words, acts, and tacit approval. The *sunna* is the source of Islamic law along with the Qurʾān. It is to be distinguished from the term *ḥadīth*, which is the bearer of the *sunna*. A *ḥadīth* may contain more than one *sunna*.

<sup>27</sup> The term “*ijmāʿ*” refers to the consensus of Muslim jurists, in a determined period of time, on the scope and meaning of a principle or rule of Islamic law.

<sup>28</sup> Qurʾān 5 : 6.

<sup>29</sup> The term “pubescent” is being used here, for want of a better term, to mean a person who has attained puberty.

<sup>30</sup> Qurʾān 5 : 6.