

Fulfilment and Substitution as a Structure Instilling Flexibility and Dynamism to Sharia

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I. Introduction and Conceptual Framework

A general analysis on sharia (Islamic law) reveals the existence of a flexible and dynamic structure that shapes up pursuant to addressees, conditions and environment in almost every field from legislation to practice. The flexible structure is visible even in apparently the most dogmatic area of worshipping. The mentioned flexible and dynamic structure in sharia is mainly due to the existence of substitutions. The objective of hereby study is to analyse the substitute practices, which provide the law with dynamism and flexibility, with regard to worships.

It is worth noting that a research on substitution in worships and general principles of the law, which constitutes the basis for such substitutions, shall greatly contribute to establishment of substitution theory that already plays an important part within the legislation policy of sharia.

Several concepts are used to express the organisation of substitution; nevertheless, fulfilment and substitution stand out as two fundamental concepts that set the ground for similar concepts. The lexical meaning of fulfilment is to keep a promise, to accomplish something, to perform completely to meet the case; as an Islamic term, fulfilment means the performance of religious obligations.¹ Pursuant to the abovementioned definition, the fulfilment of worships can be described as carrying out worships through obedience in their essentials, conditions and elements as commanded by Shari (who makes sharia: Allah).

In the dictionary, substitution means to abolish, correct and continue; however, once it is used together with the word *مقام*, it means to replace something in order to function instead of it.² Even though the word “substitution” does not take place as a term in fiqh, it is commonly seen in books of fiqh. For example, tayammum is a substitute for wudu and ghusl. The *îma* is a substitute for ruku and sujud. The person who is unable to fast can donate fidyah. In terms of fulfilment of commandments, the substitutions exist both for the commandments and the obliged who are involved in the fulfilment of commands.

The substitutions in commandments exist in following forms;

- a) Replacement of a command, which is impossible to perform, by another commandment (substitution of tayammum instead of wudu)
- b) Practicability of current commandment in various forms and substitution of any of such alternatives for others (substitution of any of animal sacrifice, fasting or feeding those in need for one another among elective kaffara)
- c) Even though the main commandment endures, in case of difficulty, the obliged may opt for relatively easier commands (permitted commandments).

Substitution regarding the obliged occurs in form of regency if possible, where any person fulfils the worship on behalf of the obliged.

¹ Cevherî, Ebû Nasr İsmail b. Hammad (400), *Tâcu'l-luğa ve şihâhu'l-Arabiyye*, thk. Ahmed Abdülgaffur Attar, 4. ed, Beirut: Dâru'l-İlm li'l-Melâyin, 1990, IV, 2526; İbn Manzûr, Ebu'l-Fazl Muhammed b. Mükerrrem b. Ali (711), *Lisânü'l-Arab*, Beirut: Dâru Sâdır, t.y., XV, 398; Zebîdî, Ebu'l-Feyz Murtazâ Muhammed b. Muhammed (1205), *Tâcu'l-arûs min cevâhiri'l-Kâmûs*, Kuwait: Vizâretü'l-İrşâd ve'l-Enba', 1971-2004, XL, 217-219; Aybakan, Bilal, “İfâ”, *DİA*, XXI, 498.

² Cevherî, *Şihâh*, V, 2017; İbn Manzûr, *Lisânü'l-Arab*, XII, 398.

The word substitution (ikame) is used for substitutions of fulfilment; nevertheless, some other words are employed as well, such as equivalent (equivalent), successor (successor) and license (license).

The lexical meaning of equivalent is something that stands for another; and the same meaning is maintained in sharia terminology.³ Accordingly, in case the worship can not be performed as it is originally imposed, then it is fulfilled by means of a substitute equivalent practice.

Apart from its simple meaning as the substitution of a command, the equivalent signifies a more specific meaning within literature of Islamic law. The principle of equivalence in worships means that another person performs the worship instead of one who cannot. In this respect, the equivalence principle is mostly in use regarding hajj, and equivalent hajj signifies performing the pilgrimage on behalf of another person.⁴

The successor is a term that signifies something succeeding or replacing another; and it is also used as the counterpart of the original command.⁵ The license, which is another related concept, means to allow, or permission⁶ and it is described as a (temporary/exceptional) commandment that is contrary to sharia evidence due to any superior ground (such as difficulty, hardship or requirement).⁷

In the light of its definition, it is asserted that the license should ground on evidence, there should be a credible excuse in legal terms, it is a temporary commandment imposed in order to ease the situation of the obliged and that it is restricted with such excuses.⁸

The definition and characteristics of license signify therefore an easier, specific commandment that replaces the general commandment in case the obliged faces an unusual difficulty.

An analysis on these substitute practices shows that they have both common points and differing aspects in terms of their definition, features and functions within sharia literature.

The terms “equivalent” and “successor” are used for replacement of a commandment with another. The two possess the same meaning, and commandments in these groups become valid only when the fulfilment of original commandment is impossible. License, however, differs from equivalent and successor in this sense. The application of license does not stipulate the lack of determination; rather, some determination should be present for that any license exists.⁹ Unlike equivalent and successor practices, the license commandment offers an alternative that brings along certain ease for the obliged. Moreover, there is another difference between license and concepts of equivalent and successor: Equivalent and successor worships have well-defined legal limits and present no relativity; nonetheless, the license commandment calls for the preference of the obliged and includes the issues that are within his/her power. Equivalent and successor commandments are those that the obliged implements necessarily. On the other hand, the implementation of a license commandment often depends on the choice by the obliged. For example, tayammum is an equivalent (successor) commandment; that is, a person, who has no access to water, has to choose tayammum with soil. However, a person may prefer wiping his feet (mesh) over washing them. In such event, the person acts under license as he prefers the easier of two methods, even if he is capable of both.

An analysis on substitution regarding worship issues shows that the word is used for corresponding to concepts of equivalent (successor) and license, as well as to run the principle of caution. In this respect, substitution bears the quality of a supra-concept that includes equivalent (successor) and license concepts which are results of facility principle in Islam.

³ Cevherî, Sîhâh, IV, 1636; İbn Manzûr, Lisânü'l-arab, XI, 48; Cürçânî, et-Ta'rfülfulmentt, s. 43; Bardakoğlu, Ali, “Bedel”, DİA, V, 298.

⁴ Bardakoğlu, “Bedel”, DİA, V, 298.

⁵ Cevherî, Sîhâh, IV, 1353-1354; İbn Manzûr, Lisânü'l-arab, IX, 84-85. For an analysis between the original and the successor, see Cübürî, Hüseyin Halef, “el-Asl ve'l-halef inde'l-usûliyyîn”, Mecelletü'l-Bahsi'l-İlmî ve't-Türâsi'l-Islamî, V, Mecca, 1982, 93-99.

⁶ İbn Manzûr, Lisânü'l-arab, VII, 40; Cürçânî, et-Ta'rfülfulmentt, p. 110.

⁷ Abdülaziz el-Buhârî, Keşfü'l-esrâr, II, 544.

⁸ Nemle, Abdülkerim b. Ali b. Muhammed, er-Ruhasu's-şer'iyye ve isbâtuhâ bi'l-kıyas, Riyadh: Mektebetü'r-Rüşd, 1990, p. 42.

⁹ Çalış, Halit, İslam'da Kolaylaştırma İlkesi (Azimet-Ruhsat İlişkisi), Konya: Yediveren Yayıncılık, 2004, p. 76.

Another concept to consider for determining the limits of substitution concept is naskh (abrogation). Naskh and substitutions bear resemblances in terms of replacing something; nevertheless, in terminology, naskh is more specifically used as abolition of a sharia commandment by means of later legal evidence.¹⁰

Naskh is used as cancellation of a commandment by another commandment during the legislation period in Muhammad's lifetime; it is applied pursuant to the principle of gradualism in commandments. As for substitutions, they remain in force during upcoming times, as in legislation period, since they do not serve as cancellation of a commandment in structural terms. Hence, the discretion about time for salat in polar zones and the updating of zakat rate are proofs of substitution regarding regulations of worships after the era of Muhammad.

With regard to naskh, the commandment expires upon emergence of new legal evidence. As for substitution, however, the cancellation or abolition of a current commandment is out of question. Substitutions under equivalence principle mean that the capability to fulfil the original commandment prevents the author from choosing the equivalent; therefore, the existence of equivalent does not abolish the original act. Similarly, licenses are facilitated commandments that replace commandments of determination, but they do not abolish such commandments.

As a result, substitution is a concept that differs from naskh in terms of both function and content. Substitution bears the quality of a supra-concept that comprises certain principles which are taken into consideration during imposition of sharia, such as facilitation, caution, compensation, and alternative methods.

II. Universality of Islamic Law and Substitute Institutions

Islam is the last religion sent to humanity; accordingly, it will remain valid for all men until doomsday. This means that Islamic law (sharia) belongs to all ages of history and entire humanity as a universal system. As the sharia claims universality, it should necessarily incorporate certain elements. As an inevitable result of universality, Islam allows for invariable elements, as well as for several general principles that enable change. That the facility serves as a basis for the obliged, inclusion of license as well as determined commands in cases of necessity, grounding on disposition regarding legislation and incorporation of general principles that may be valid anytime and anywhere without too much details are proofs of variable aspects of Islamic law.¹¹ On the other hand, the invariable commands imposed by Islam regarding faith, worship and morals constitute the other part of universality. These commandments and general principles hint that Islam builds a brand new order of life; besides, as Muhammad Iqbal sates, they ensure we keep both feet on the ground on an ever-changing world.¹²

Islamic law stipulates universality and particularly the consideration of current environment and conditions within its commandments. Accordingly, Allah grounds on the knowledge level of illiterate Arab people during the determination of obligations, and has formed the addressing in this sense.¹³

The substitutions with respect to worships are closely related with social conditions in the environment where the commandments are imposed. Namely, Islam emerged in a region with mild climate; therefore, the condition of first addressees and the region were taken into account in the adjustments regulating the fulfilment of worships. The most obvious example is the times of salat. On Arabian Peninsula, the sunrise and sunset can be observed completely; the times of salat were regulated pursuant to this fact. Upon the spread of Islam, however, the presence of regions where the sunrise and sunset are not entirely observed, in other words, where the night and day do not completely form, came into question. The faqihs (jurists) studied this emerging problem and concluded that the fulfilment of salat five times a day is the main objective and that the prayer time should be determined in regions where the prescribed times cannot be observed. This substitution about assessment and assignment of prayer times means that since any change in regional conditions cannot abolish the main objective of salat worship, a new rule may be imposed pursuant to current circumstances.

¹⁰ Serahsi, *Usûl*, II, 53; Abdülazîz el-Buhârî, *Keşfü'l-esrâr*, III, 298; Koca, Ferhat, "Nesih", *DİA*, XXXII, 583.

¹¹ Erdoğan, *İslam Hukukunda Ahkâmın Değişmesi*, pp. 62-63; Erdoğan, Mehmet, "Sosyal Değişme Karşısında İslam Hukuku", *Sosyal Değişme ve Dînî Hayat*, Editors: Sami Şener, İsmail Kurt, 1991, p. 33; Köse, Saffet, "İslam Hukukunun Statik Olduğu İddiasının Tahlili", *SÜİFD*, p. 6, 1996, p. 266.

¹² Serdar, Ziyâüddin, *İslam Medeniyetinin Geleceği*, tra. Deniz Aydın, İstanbul: İnsan Yayınları, 1986, s. 46.

¹³ Erdoğan, Mehmet, *Akıl-Vahiy Dengesi Açısından Sünnet*, 2. ed, İstanbul: Marmara Üniversitesi İlahiyat Fakültesi Vakfı (İFAV) Yayınları, 2001, p. 179.

Another element which bestows sharia with flexibility is the principle of facility. An attentive analysis on Islamic principles reveals that facility is widely provided in both the holy book and practice. The knowledge of the obliged is taken into account during imposition and regulation of commandments. Adjustments about salat times are a good example. Prayer times are regulated pursuant to movement of sun which can be easily observed by the obliged and people were not demanded to know anything else for learning the prayer times. Likewise, the observation of crescent is considered sufficient for that the fard of fasting begins upon new moon.

The flexible attitude remains concerning the practice of worships, which occurs sometimes as easing the commandments or as imposition of alternative commandments, in order to provide the obliged with due facility. In case of menstruation and confinement, the obligation of salat becomes void, while it is not necessary to face kiblah in cases of fear or inability. Similarly, during travels, the four-rakat salat is performed as two rakats (qasr al-salat), and tayammum is considered valid instead of wudu and ghusl where it is impossible to find or use water; in salat, sitting may replace standing, lying may replace sitting and glance (îma) may replace the former as equivalent practice. All these are among the measures intending to provide the obliged with convenience.¹⁴

In states of necessity, licensed commandments become applicable as another reflection of facility in worship fulfilment. Sharia imposed commandments and related conditions in consideration of standard conditions and regular men; nevertheless, provisional secondary commandments are also available regarding how the obliged should act in extraordinary situations. As a most evident example, in case of necessity, license commandments serve as substitutes for original ones, in order to ensure facility of application.

Licenses are legalised due to certain excuses prescribed by sharia and in order to provide the obliged with due convenience. Therefore, they serve only for meeting the requirement. For example, if a person cannot fulfil qiyam (standing up), he performs prayer sitting. However, one who can fulfil salat sitting is not granted the license to perform his prayer lying, since necessities are decided according to the level of excuse.¹⁵ Another feature of licenses is that they are restricted with certain temporal conditions. For example, the license regarding wiping the mes (a type of leather bootie) in wudu is valid only for a three-day travel. Once three days are over, the wiping period ends and the license becomes void.

The regulation of licenses pursuant to requirement level and temporal conditions not only minimises the relativity, but also emphasises that these are provisional commandments.

III. Distinction of Objectives and Causes in Commandments and its Influence on Substitution Concept Regarding Worships

Almost no part of sharia grounds on monotony. It is possible to observe this fact in the intention of law-making God (intentions classified as dharuriyyah, hajiyyah and tahsiniyyah), acts of the obliged and the values subject to commandments.¹⁶ As a result, the commandments in sharia are analysed under two titles, namely, objectives and causes, as they are direct intentions.

The distinction in commandments as objectives and causes may show us which commandments can be subject to substitution. The commandments, which ground on objectives, have to be performed as they are; whereas those in quality of cause are subject to sharia-linked requests in order that the objective, to which they are linked, is fulfilled. In terms of substitutions, the following table appears: The commandments, which bear the quality of objective, can be subject to amendments and regulations only as indicated by lawmaker God. As for conducive commandments, they can be changed or replaced if need be in order to realise the true objective.

¹⁴ İbn Abdisselam, Ebû Muhammed İzzüddîn Abdülaziz (660), Kavâidü'l-ahkâm fî mesâlihi'l-enâm, Beirut: Dâru'l-Ma'rife, t.y, II, 6; Hamevî, Ahmed b. Muhammed (1098), Ğamzu uyûni'l-besâir şerhu kitâbi'l-Eşbâh ve'n-Nezâir, Beirut: Dâru'l-Kütübi'l-İlmiyye, 1985, I, 270; Rahmûnî, Muhammed Şerif, er-Ruhasu'l-fikhiyye mine'l-Kur'an ve's-sünneti'n-nebeviyye, 2. ed., Tunis: el-Matbaatü'l-Arabiyye, 1992, pp. 422-428; Suyûtî, Ebu'l-Fazl Celâleddin Abdurrahman b. Ebî Bekr (911), el-Eşbâh ve'n-nezâir fî kavâidi ve furûi fikhi's-Şâfiyye, thk. Muhammed el-Mu'tasım Billah el-Bağdâdî, Beirut: Dâru'l-Kitâbi'l-Arabî, 1987, p. 170; Emâme, Adnan Muhammed, el-lhkâm ve't-takrîr li kâideti'l-meşşakka teclibü't-teysîr, Beyrut: Müessesetü'r-Risâle, 2004, p. 171.

¹⁵ Şâtîbî, el-Muvâfakât, I, 304; Mecelle art. 22.

¹⁶ Erdoğan, Mehmet, "İslam Hukukunun Dinamizmi, Esneklik ve İkâme Kurumları", İslam Fıkhnın Dinamizmi (Sempozyum Tebliğ ve Müzâkereleri), Bursa: KURAV Yayınları, 2006, p. 24.

For example, payment of fidyah instead of fasting cannot be conceived by human mind, and it can only be comprehended through notice of lawmaker God. In this respect, fidyah is included among the objectives. Nevertheless, the prayer times (waqt) are considered as secondary commandments compared to salat. For the realisation of salat, which is a primary objective, time assignment comes into question in polar zones. This is a clear example of substitution of new means pursuant to requirements.

An accurate determination of the relation between objectives and causes is vital in order to accomplish the fundamental objectives of Islamic legislation. Likewise, there is a need for substitute practices so that some flexibility is ensured in order to provide the obliged with facility in application and to eliminate the strictness of commandments. The rules concerning objectives and causes indirectly play an important part in determination of substitution.

The first rule states that the cause is subject to objective. Thereupon, once the objective becomes void, so does the cause.¹⁷ According to the Hanafi, for a person who is unable to perform ruku and sajdah, qiyam also becomes void; since for the Hanafi, qiyam is a means for ruku and sajdah that represent the utmost level of honouring Allah. Once the primary ruku and sajdah are void, it becomes meaningless to perform the means.

Moreover, another point to remember is that there may be more than one means to realise the same objective. When such a situation arises, first of all, it must be determined whether the causes/means are at the same level, or there is a hierarchical distinction such as original-equivalent between them. For example, cleanliness, which is a prerequisite for prayer, can be realised via water or soil. However, since there is a relationship of original and equivalent between water and soil, respectively, one can opt for tayammum only if water is not available.¹⁸ As for the commandments of cause quality that are subject to the discretion of the obliged, the fidyah, which is paid against any violation of ihram restrictions, can set an example. Whoever violates the ihram restrictions can, at his sole discretion, choose one of the bans among sacrificing, fasting or feeding the poor.

The values are taken into account to the extent that the means serve for the objective. Therefore, in case the consideration of a cause prevents the true objective, such means is not respected;¹⁹ because the cause/means is imposed only to realise the true goal. Therefore, the means is overlooked unless it realises the purpose of imposition, in order to secure the true objective. For example, one should normally cover the private parts for the sake of salat. However, if one cannot find any garment to wear, this prerequisite is overlooked so that the true purpose, namely, the prayer, remains applicable.²⁰

Among all causes/means, the strongest one is preferred for that the objective is realised in the most proper manner. For example, one with dirty clothes and one without clothes may perform salat sitting and through glance. In the former, both cleanliness and covering of private parts are prerequisites for prayer. One with dirty clothes is to fulfil one of these conditions but to violate the other. In such case, the obliged person chooses the stronger means and acts in this respect. Indeed, the sharia public has proposed that it is a stronger commandment to cover the private parts than cleanliness, and concluded that performing prayers with dirty clothes is more proper than praying naked. In the latter example, one has to make a choice between covering the private parts and the main elements of salat such as qiyam, ruku and sajdah. On this matter, the Hanafi have agreed it is more suitable to perform prayer via glances in default of clothes, since there is no alternative for covering private parts but salat by glance constitutes an equivalent to original practice.

In case the objective is not attained, a second possible method is to bring up new means to enable the realisation of purpose. The substitutions based on jurisprudence mostly ground on commandments of cause quality. The efforts to determine new grounds in consideration of current conditions can be based upon the approach for bringing up new means.

Regarding the importance of the matter, it is worth noting that in Islam, all commandments are imposed in interaction and pursuant to order of importance.

¹⁷ Kârâfi, *el-Furûk*, II, 33; Şâtübî, *el-Muvâfakât*, II, 18.

¹⁸ İbn Abdisselam, *Kavâidü'l-ahkâm*, I, 56.

¹⁹ Şâtübî, *el-Muvâfakât*, II, 13-15. "Salat times are not the original intention and are only a condition of and subject to prayer. Therefore, any default of secondary act does not necessitate default of salat worship itself." Abdülaziz el-Buhârî, *Keşfü'l-esrâr*, I, 316.

²⁰ İbn Abdisselam, *Kavâidü'l-ahkâm*, I, 87.

The distinction of daruriyyah, hajiyyah and tahsiniyyah within commandments is the most apparent example. Each commandment constitutes a step for the realisation of a superior purpose, while setting the basis the commandment of relatively lower importance. The accurate determination of the relationship between objectives and causes is vital for rightful accomplishment of the purposes within Islamic legislation.

IV. Conclusion

Worships are special practices that regulate the relationship between Allah and the object. Thereupon, servitude is the fundamental element for imposition of worshipping in Islam. Indeed, Allah orders “*I created the jinn and humankind only that they might worship Me*”, emphasising that mankind is created to worship. Worshipping is a specific expression of servitude to Allah; therefore it bears a universal and invariable character in this respect and is among the ordered religious service. On the other hand, an analysis on the process since the initial legislation of Islam shows adjustment through substitutions even on ordered worshipping practices.

Hereby study reveals that the term “substitution” is used even beyond its simple lexical meaning of replacing. Accordingly, substitution sometimes signifies a commandment or a person that replaces the original as is seen in concepts of equivalence and successor, or an easier alternative commandment to provide the obliged with convenience, as is seen in license method.

The conclusions from the examples of substitution in worshipping can be summarised as follows:

1. During the initial Islamic legislation era, worshipping was subject to a gradual method and if necessary, alternative solutions were introduced in order to eliminate any flaw in their performance. The legitimacy of tayammum in the absence of water is one of the most apparent examples.
2. Facility is adopted as a main principle in introduction of commandments; and due licenses are granted in order to provide the obliged with certain flexibility depending on personal conditions. In this respect, for example, in case a patient can not perform the elements of salat such as qiyam, ruku and sajdah, he may fulfil the prayer as he can, prefer wiping the booties and bandages.
3. Commandments are subject to a classification in terms of the purposes in initial legislation. Some of them bear the quality of objective as directly prescribed by lawmaker God, while some others are causal commandments that are, in a sense, a preliminary to such objectives. Pursuant to this order of importance in legislation, the means underwent certain amendments and corrections for realisation of true purposes. Such amendments and adjustments have sometimes occurred as overlooking the means (such as overlooking the conditions of cleanliness, kiblah and covering private parts in states of necessity), and they sometimes have occasionally appeared as the substitute means for the old ones (such as assignment of salat times in polar zones).

Upon an analysis on the substitutions regarding worships, one can say that they have double function. Substitutions, which ground on the principles of facility and caution, provide the obliged with ease of practice. Then again, in terms of objectives, the substitutions enable the formation of new means in order to render the commandments functional. In consideration of this function, the substitutions may be considered among the elements of jurisprudence that ensure the continuity and permanence of Islamic law.