

The Ruling System in Islam

Hizb ut-Tahrir

Fifth edition

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Contents

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Translation of the Qur'an

It should be perfectly clear that the Qur'an is only authentic in its original language, Arabic. Since perfect translation of the Qur'an is impossible, we have used the translation of the meaning of the Qur'an' throughout the book, as the result is only a crude meaning of the Arabic text.

Qur'anic *Ayat* and transliterated words have been *italicised*.

Ahadith appear in **bold**.

سُبْحَانَكَ - subhanahu wa ta'ala
سَلَامٌ عَلَيْكَ - sallallahu 'alaihi wa sallam
رَضِيَ اللَّهُ عَنْهَا - radhi allaho anha/anho
AH - After Hijrah
CE - Christian Era

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Foreword

The first edition of the book *The Ruling System* was written in the early 1950's CE. Western culture had a great effect on the minds of the educated sons of the Muslims. One of its effects, which dominated their thinking, was that Islam is a spiritual religion that does not have a system that can solve the problems we face today, that there was no ruling system for the state, and the state that Islam had was merely religious and spiritual.

Those undertaking the work for Islam used to call for it with general thoughts that were not crystallised. They lacked the clarity in showing Islam as a complete system for life, state and society. They used to call for a return to Islam in an open and general manner without them having a clear vision in their minds as to what the systems of Islam were or the manner in which they were going to restore the ruling by Islam. The fact that ruling by what Allah ﷻ has revealed could not be restored without the Khilafah was absent from their *da'wah*. That is why establishing the Khilafah and reinstating the ruling by what Allah ﷻ has revealed did not find a place in their program of work.

At such a time a structure undertook the study of the situation of the Ummah at her present time and the condition she had reached. And it studied her history, power and the authority she had in the State that was the leading state in the world. It was a state that was established on the Islamic 'aqedah and *Abkam Shar'iah* that emanate from it and which the State apply, implement and convey it as a Message to the world. Then this structure undertook an aware study of Islam from its original sources in the Qur'an and Sunnah and came to the following conclusion that Islam is a complete and comprehensive system that solves all of life's problems. So it wrote books explaining all of this in a general manner without touching upon the details. Thus it wrote books on the systems of Islam, such as the ruling, economic and social system. And in writing these

books it observed the practical aspect so that the Muslims realise that Islam is a practical ideology and a complete system fit for implementation, so that they adopt its systems and work to bring it back in the realm of life via the establishment of the Khilafah State. The Khilafah State is the only method for applying these systems in the reality of life.

The understanding of these thoughts and systems expanded. This was owing to the structure conveying them to the Muslims, continuously discussing and talking about them, and by referring to their sources to crystallise them. All of this was in order to establish them in the realm of life. These thoughts and concepts were no longer confined to being only broad guidelines or just giving a general picture; especially after Islam had become the expectation of Muslims and their object of hope in rescuing themselves from the situation they were in. This was after realising that Islam was the complete and comprehensive system that solves all of life's problems. Likewise it became an incentive for them to learn more details of the Khilafah State that they work to establish and to know more details about the systems of Islam which the Khilafah State would implement upon them. This was the incentive for us to expand these books and enrich them with many details that hitherto were not present in the first edition.

Regarding the third edition of the book *The Ruling System*, we worked to expand it and demonstrate in a detailed manner the reality of the Khilafah State, its apparatus and tasks and whatever relates to it. We elucidated how the form of ruling in Islam is unique and distinct, differing with all other ruling systems existent in the world. In addition, we have set forth the principles of ruling in detail and the apparatus of the Khilafah State, the method and styles of appointing a Khaleefah. Also, we explained that the Khilafah State is a human state and not a divine state. We also mentioned the *Mu'awinoon* (Assistants) and their mandatory powers, and the ruling regarding *Shura* (consultation) and its mandatory powers. And we presented the clarification that it is obligatory to implement Islam completely and comprehensively and that it is forbidden to implement its rules gradually. Similarly we have shown how it is forbidden for the State to be a police state and when obedience to the ruler is obligatory and when it is forbidden, and when we are obliged to unsheathe the sword in his face and that we are obliged to account him

in every instance.

In the third edition we missed the chance of giving the reference for the *Abadith* and confining to the text mentioned in the books of *hadith*. In taking many of the *Abadith* we used to rely on the texts mentioned in the trustworthy and recognised books of *fiqh* (jurisprudence) but the books of *fiqh* would sometimes transmit a *hadith* by meaning only or just confine itself to a portion of the *hadith* that it used as an illustration or evidence. So when the third edition went out of print we undertook the task of finding the references of all the *Abadith* mentioned in the book and we mentioned from where each *hadith* had been taken and we confined to the text stated in the books of *hadith*. We excluded every *hadith* whose authenticity or suitability as a proof was not assured for us. Likewise we are convinced of all the reports cited in the books from their sources. Any report we were not sure of or if we found it to be weak, we omitted it from the book. Similarly we corrected certain concepts and rules as a result of the discussions and reviews. As a result, the book came out in this form, which we present to the Muslims.

We pray to Allah ﷻ that He ﷻ grants in this book much goodness and that He ﷻ quickly honours the Muslims by establishing the Khilafah State so that what has been mentioned in the book is put in application and implementation. Verily, for Allah ﷻ that is not a hard matter.

15th of the sacred month of Muharram 1417 AH

1/6/1996

‘Abdul Qadeem Zalloom

Introduction

Allah ﷻ has revealed the Message of Islam, and based it on the ‘aqedah of *Tamheed*, which is the belief in “there is no God but Allah, Muhammad is the Messenger of Allah.”

It is a general and comprehensive Message sent to all mankind. It determines all life’s affairs and all relationships, past, present and future. The Message offers the solutions to all the human problems, and determines man’s relationship with his Creator, with himself, and with his fellow human beings, at all times and places.

The Islamic Message has provided answers regarding the relationship of Allah ﷻ with the universe, with human beings and with life as a whole. It has dealt with issues of creation and its control, life and death, guidance and misguidance, provision and help, and all the other powers associated with Allah ﷻ, such as omnipotence, perfection, absolute control, free disposition, supreme knowledge over all creatures and free will over all possibilities.

The Islamic Message has also provided answers regarding the relationship of human beings and lives that they lead, with Allah ﷻ, the Creator, emphasising the obligation of worshipping Him ﷻ alone and associating none with Him ﷻ, abiding only by His ﷻ Decrees to the exclusion of all others, and executing His ﷻ commands and avoiding His ﷻ prohibitions. It also emphasised the obligation of following only the Messenger of Allah, Muhammad ﷺ, obeying him and adopting his teachings to the exclusion of all other people.

The Islamic Message has brought specific and determined concepts that in turn created a distinguished civilization (*badharah*) by which it outlined the whole concept about life and crystallised the perceptions of those who embraced it within the framework of that civilisation. This

Message has provided a viewpoint about life, which is the *Halal* and the *Haram*, and a specific way of living. It has established a society distinct in its concepts, emotions, rules and the personalities of its individuals.

The Islamic Message has brought a complete legislative system that determines the relationships of the state with society, whether regarding ruling, economics, social, educational, domestic and foreign policy, or whether those relationships relate to the public relationships between the state and its subjects or the state and other states and nations, in times of war or peace. It also determined the private relationships between individuals in society.

It is therefore a complete and comprehensive system, designed for mankind, which made it obligatory on Muslims to implement and execute it in a state that takes a specific shape, represented by the system of Khilafah.

1

Ruling in Islam

Ruling (*al-hukm*), reign (*al-mulk*) and authority (*al-sultan*) have the same meaning which is the authority that executes the rules, or it is the task of the leadership (*al-imarah*) which the *Shar'a* has made an obligation on Muslims to establish. The task of *al-imarah* is to avert injustice and to settle disputes that may arise. In other words the ruling means the guardianship, as revealed by Allah ﷻ. He ﷻ says:

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“Obey Allah and obey the Messenger and those of you in authority.” [TMQ An-Nisa: 59]

And He ﷻ also says:

﴿وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ﴾

“If they had only referred it to the Messenger and those among them with authority.” [TMQ An-Nisa': 83]

Therefore to rule is to actively look after the people's affairs.

Since Islam is an ideology that covers the state, society and life as a whole, the ruling becomes part of it, and the Muslims are commanded to implement this ruling by establishing the state i.e. to govern by the Islamic laws. A host of verses have been revealed in the Qur'an confirming the obligation of ruling by what Allah ﷻ has revealed.

Allah ﷻ says:

﴿فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا

تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ﴾

“So judge between them by that which Allah has revealed and follow not their desires away from the truth that has come to you.” [TMQ Al-Ma'idah: 48]

He ﷻ also says:

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

“Judge between them by that which Allah has revealed and follow not their desires and beware of them lest they seduce you from some part of that which Allah has revealed to you.” [TMQ Al-Ma'idah: 49]

Allah ﷻ says:

﴿وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ﴾

“Whosoever does not judge by that which Allah has revealed, such are disbelievers.” [TMQ Al-Ma'idah: 44]

﴿وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ﴾

“Whosoever does not judge by that which Allah has revealed, such are oppressors.” [TMQ Al-Ma'idah: 45]

﴿وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾

“Whosoever does not judge by that which Allah has revealed, such are transgressors.” [TMQ Al-Ma'idah: 47]

He ﷻ also says:

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا﴾

“But no, by your Lord, they can have no (real) faith until they make you judge in

all disputes between them and find in their souls no resistance against your decisions, but accept them with the fullest submission.” [TMQ 4:65]

He ﷺ also says:

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“Obey Allah and obey the Messenger and those of you in authority.” [TMQ An-Nisa: 59]

He ﷺ also says:

﴿وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ﴾

“And if you judge between people, judge with justice.” [TMQ An-Nisa: 58]

This is in addition to many other verses dealing with ruling as an authority and power. Other verses have also been revealed providing details with respect to the different areas of ruling; some regarding military legislation, political legislation, criminal legislation, social legislation and the legislation of transactions as well as others. Allah ﷻ says:

﴿قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلْيَجِدُوا فِيكُمْ غِلْظَةً﴾

“Fight those of the disbelievers who are near you and let them find harshness in you.” [TMQ At-Tauba: 123]

He ﷺ also says:

﴿فَإِذَا تَشَفَّفْتَهُمْ فِي الْحَرْبِ فَشَرِّدْ بِهِمْ مِّنْ خَلْفَهُمْ لَعَلَّهُمْ يَذَّكَّرُونَ وَإِنَّمَا تَخَافْنَ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ﴾

“If you come on them in the war, deal with them so as to strike fear in those who

are behind them, that they may remember. If you fear treachery from any group throw back (their covenant) to them (so as to be) on equal terms.” [TMQ Al-Anfal: 57-58]

He ﷺ also says:

﴿وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ﴾

“And if they incline to peace, incline you also to it, and trust in Allah.” [TMQ Al-Anfal: 61]

He ﷺ also says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ﴾

“O you who believe fulfil the contracts (undertakings).” [TMQ Al-Ma'idah: 1]

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِنَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ﴾

“And eat up not your property among yourselves in vanity, nor seek by it to gain the bearing of the judges that you may knowingly devour a portion of the property of the others wrongfully.” [TMQ Al-Baqarah: 188]

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ﴾

“And there is (a saving of life) life for you in (the law of) retaliation, O men of understanding.” [TMQ Al-Baqarah: 179]

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا

نَكَالًا مِّنَ اللَّهِ﴾

“As for the thief, both male and female, cut off their hands, as a retribution for their deed and an exemplary punishment from Allah.” [TMQ Al-Ma'idah: 38]

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ﴾

“Then, if they suckle for you, give them their due payment.” [TMQ 65:6]

﴿لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا
آتَاهُ اللَّهُ﴾

“Let him who has abundance spend of his abundance, and he whose provision is measured, let him spend according to what Allah has given him.” [TMQ At-Talaq: 7]

﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ﴾

“Take alms of their wealth, with which you may purify them.” [TMQ At-Tauba: 103]

Thus, we find the broad lines of the legislation in its various aspect, including the military, criminal, political and transactions evident in hundreds of verses in addition to the numerous sound *Abadith* of the Messenger of Allah ﷺ, which have all been revealed to be implemented and executed. They have effectively been implemented in the lifetime of the Messenger of Allah ﷺ, the period of the *Khulafaa' Ar-Rashidoon*, as well as during the ruling of the *Khulafaa'* who came after them. This could only prove that Islam is a system for ruling and state, for society and life, and for the Ummah and the individuals. It also proves that the state has no authority for ruling unless it adheres to the Islamic system. Islam would have no existence unless it was alive, represented by a state that implements its rules. Islam is a *deen* (religion) and an ideology, with the State and the ruling system being part of it. The State is the only legal body that Islam has laid down to implement its laws and execute them in public life. Islam would not exist without a state that implements it under all conditions. Furthermore, the State is a political and human entity, not a holy or spiritual one. It has no sainthood and its leader has no infallible characteristics.

The ruling system is the one that determines the shape of the State and its character, its foundation, pillars and bodies, and the basis upon which it is built, together with the basic thoughts, concepts and the criterion with which it looks after the affairs, as well as the constitution and the laws it implements.

It is a distinct and unique system for a distinct and unique state, being totally different from all other systems known to mankind whether in terms of the basis upon which it is built or the thoughts, concepts and criteria with which it deals with people's affairs, or the shape that it takes or the laws and constitution it implements.

2

The Islamic State

The Islamic State is a Khaleefah implementing the *Shari'ah*. It is a political and an executive body entrusted with the duty of implementing and executing the laws of Islam, and of conveying the Islamic Message to the world by means of *da'wah* and Jihad. It is the only method that Islam has laid down to implement its systems and general laws in life and society. It is the soul of the existence of Islam in temporal life, for without it, Islam would completely recede from being an ideology and a system of life and it would be confined to merely being a host of spiritual rites and moral values. Therefore the state is a permanent body and not a temporary one.

The Islamic State is only established on the Islamic 'aqeedah; so this 'aqeedah is its basis, and it is illegal to detach the State from it, by any means. When the Messenger of Allah ﷺ established the authority of Islam in Madinah and took power, he based the ruling on the Islamic 'aqeedah from the very first day. The verses of legislation had not been revealed yet, so he made the *shahada* "there is no God but Allah and Muhammad is the Messenger of Allah" as the basis of the Muslims life and of the relationships amongst people. He ﷺ made the *shahada* the basis of averting injustice, settling disputes, that is, and the basis of the whole life, ruling and authority. He ﷺ did not stop at that, but he decreed Jihad and made it an obligation on Muslims, so as to convey this 'aqeedah to mankind. Al-Bukhari and Muslim both narrated from 'Abdullah ibn 'Umar, who said that the Messenger of Allah ﷺ said:

((أمرت أن أقاتل الناس حتى يشهدوا أن لا إله إلا الله، وأن
محمداً رسول الله، ويقيموا الصلاة، ويؤتوا الزكاة، فإذا فعلوا
عصموا مني دماءهم وأموالهم إلا بحقها وحسابهم على الله))

"I have been ordered to fight people until they profess that there is no God but Allah and that Muhammad is the Messenger of Allah, to establish the prayer and give the zakah; if they did so, their blood and their wealth would be inviolable to me, except by its right, and their account will be with Allah."

He ﷺ made it obligatory on Muslims to have the Islamic 'aqeedah as the basis for the state. He commanded Muslims to fight if the open disbelief emerged i.e. if the Islamic 'aqeedah ceased to be the basis of ruling. The Messenger of Allah ﷺ was asked once about the tyrant rulers, "Do we fight them?" He ﷺ replied;

((لا، ما أقاموا الصلاة))

"No, as long as they established the *salah* amongst you." In his pledge, he stipulated that Muslims should not dispute with the people in authority, unless they witness (in their actions) an open disbelief. Muslim narrated from 'Awf ibn Malik regarding the wicked Imams,

((... قيل يا رسول الله: أفلا نناذبهم بالسيف؟ فقال: لا، ما

أقاموا فيكم الصلاة...))

it was said: "O Messenger of Allah! Do we fight them?" He ﷺ replied: "No as long as they established *salah* amongst you." Al-Bukhari narrated from 'Ubadah ibn al-Samit that in the *Bay'ah* he ﷺ said:

((وأن لا ننازع الأمر أهله إلا أن تروا كفراً بواحاً عندكم

من الله فيه برهان))

"And do not dispute with the people in authority, unless you see (in their actions) an open disbelief upon which you have a proof from Allah". Al-Tabarani extracted the same *hadith* but with the wording

((كفراً صراحاً))

“a clear (suraah) disbelief”. All this demonstrates that the basis of the state is the Islamic ‘aqeedah, for the Messenger of Allah ﷺ established his authority on that basis and ordered the Muslims to fight in order to preserve it as such, and to perform Jihad in order to spread it worldwide.

Therefore, it is forbidden for the Islamic State to have any thought, concept, rule or criterion not emanating from the Islamic ‘aqeedah. It would be futile to have the ‘aqeedah as a basis for the State only in name; rather it should be represented in every single area related to the existence of the State in all of its affairs. So, it is not allowed that the State has any concept about life and authority unless it emanates from the Islamic ‘aqeedah. Accordingly, the concept of democracy should not be adopted by the State for it is not derived from the ‘aqeedah, and besides that, it contravenes the concepts that are derived from it. Nationalism and patriotism should not hold any value whatsoever, for these are not derived from the Islamic ‘aqeedah, and concepts originating from the ‘aqeedah abhor, forbid and warn of the dangers of such concepts. The ruling system of Islam does not contain the ministerial departments, which operate in the democratic system of government, for this concept is not derived from the Islamic ‘aqeedah. It also does not have any imperial, royal or republican concepts, because they are not derived from the Islamic ‘aqeedah, and disagree with the concepts that emanate from it. It is also not allowed to account the State on other than the basis of the Islamic ‘aqeedah, whether by individuals, parties or groups. It is forbidden to establish any movements, groups or parties based on other than the basis of the Islamic ‘aqeedah. The fact that the Islamic ‘aqeedah is the basis of the State obliges all that, and makes it obligatory for the State to abide by such rulings, being obligatory on the head of State and on the subjects ruled by the State.

The obligation of having the Islamic ‘aqeedah as the basis of the Islamic State necessitates that the State’s constitution and rules are derived from the Qur’an and the Sunnah of the Messenger of Allah ﷺ. Allah ﷻ has ordered the Imam and the ruler to rule by that which Allah ﷻ has revealed to His Messenger. He ﷻ considered whoever ruled by other than that which Allah ﷻ had revealed to be a disbeliever if he believed in it or believed that which Allah ﷻ revealed is not suitable. He would be disobedient, a wrong doer, and a rebel if he ruled by other than that which Allah ﷻ had revealed, but without believing in it. The command

of Allah ﷻ to the Imam and the ruler to rule by that which He ﷻ revealed is proved in the Qur’an and in the Sunnah. Allah ﷻ says:

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا﴾

“But no, by Your Lord, they can have no (real) faith until they make you judge in all disputes between them and find in their souls no resistance against your decisions, but accept them with the fullest submission.” [TMQ An-Nisa: 65]

Allah ﷻ says:

﴿وَأَنِ احْكُم بِمَا أَنزَلَ اللَّهُ﴾

“And rule between them by that which Allah has revealed.” [TMQ Al-Ma’idah: 49]

The legislation of the State has been restricted to that which Allah ﷻ has revealed. He ﷻ warns against ruling by other than that which He ﷻ revealed i.e. ruling by *Kufr*. Allah ﷻ says:

﴿وَمَن لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾

“And those who do not rule by that which Allah has revealed are the disbelievers.” [TMQ Al-Ma’idah: 44]

The Messenger of Allah ﷺ said;

((كل عمل ليس عليه أمرنا فهو ردّ))

“Any action which is not according to our matter is rejected.”

All this indicates that the State’s legislations, whether the constitution or laws, are restricted to what emanates from the Islamic ‘aqeedah in the form of divine laws. In other terms, it is restricted to that which has been revealed by Allah ﷻ of rules in the Book and the Sunnah, and in whatever the Book and the Sunnah directed to of *Qiyas* (analogy) and *Ijmaa’ al-Sahabah* (general consensus of the companions).

This is because the speech of the Legislator came related to the actions of the humans, and obliged the people to restrict themselves to it in all their actions, thus the organisation of actions comes from Allah ﷻ. The Islamic *Shari'ah* came in relation to all the actions of people, and all their relationships, whether the relationship was with Allah ﷻ, with themselves or with others. So there is no place in Islam for the people to put forward canons to the State for organising their relationships, because they are restricted to the *Abkam Shari'ah*. And Allah ﷻ says:

﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

"Whatever the Messenger brings you take it, and whatever he forbids you leave it."
[TMQ Al-Hashr: 7]

He ﷻ also said:

﴿وَمَا كَانَ لِمُؤْمِنٍ وَلَا لِمُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ﴾

"It is not fitting for a Muslim, man or woman, when Allah and His Messenger have decreed a matter that they have a choice in their matter." [TMQ Al-Ahzab: 36]

The Prophet ﷺ said,

((إِنَّ اللَّهَ فَرَضَ فَرَائِضَ فَلَا تُضَيَعُوهَا، وَحَدَّ حُدُودًا فَلَا تَعْتَدُوهَا وَهَمَى عَنْ أَشْيَاءَ فَلَا تَنْتَهَكُوهَا، وَسَكَتَ عَنْ أَشْيَاءَ رَخِصَةً لَكُمْ لَيْسَ بِنَسْيَانٍ فَلَا تَبْحَثُوا عَنْهَا))

"Verily Allah puts down obligations so do not neglect them, and puts down limits so do not transgress them, and forbade some things so do not indulge in them, and remained silent about some things, as permitted to you not out of forgetfulness, so do not ask about them." Muslim narrated from 'Umar that the Messenger of Allah ﷺ said;

((وَمَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ))

"whoever introduced into our matter that which is not from it, it is rejected." So Allah ﷻ put down the rules, and not the Imam, and He ﷻ compelled the people and the rulers to follow them in their relationships and their actions, and He ﷻ restricted them to these rules, and prevented them from following other than them.

Thus, there is no place for humans, in the Islamic State, to put down the rules for organising their relationships, nor in legislating the constitution or canons. There is also no place for the Imam to compel the people or to permit them to follow rules or canons introduced by man to organise their relationships.

The Prophet ﷺ established the Islamic State in Madinah al-Munawwarah, together with the basis it was built on, its foundations, pillars, institutions, army and its domestic and foreign relationships. From the moment he arrived at Madinah he ruled over the Muslims, looked after their affairs, managed their matters and created the Islamic society. He also made a treaty with the Jews, Banu Dhamra and Banu Madlij, then with the Quraysh, with the people of Elat, Girba and Azrah. He gave the people a covenant that no one will be prevented from performing *Hajj*, and that no one is to be afraid in the month of *Haram*. He sent Hamza ibn 'Abdul-Muttalib, 'Ubaydah ibn Harith, and Sa'd ibn Abi Waqqas in expeditions to fight the Quraysh. He sent Zayd ibn Harithah, Ja'far ibn Abi Talib, 'Abdullah ibn Ruwahah to fight the Romans. He sent Khalid ibn al-Walid to fight the Domma of Jandal, and he ﷺ himself led the army in numerous battles, where he engaged in severe fighting. He appointed *wulah* (governors) for the provinces, and *'ummaal* (mayors) for the cities. He appointed 'Attab ibn Aseed over Makkah after its opening, and Bazan ibn Sasan as *wali* (governor) over Yemen, after he became Muslim. He appointed Mu'az ibn Jabal for the *kebazraj* over Jund, and he appointed Khalid ibn Sa'id ibn al-'Aas as *'amil* (mayor) over San'aa, and Zayd ibn Labeed ibn Tha'laba al-Ansari over Hadramut. He appointed Abu Musa al-Ash'ari over Zabeed and Aden. He appointed 'Amr ibn al-'Aas over Oman. Abu Dujana was *'amil* for the Messenger ﷺ over Madinah. When he ﷺ would appoint governors he would choose them from those who were suitable for the job they were responsible for, and they would infuse the hearts of their subjects with *Iman*, and he ﷺ used to ask them about the way they would act in their ruling. Al-Baihaqi, Ahmad and Abu Dawood narrated,

((أن رسول الله ﷺ لما بعث معاذاً إلى اليمن، قال له: كيف تقضي إذا عرض لك قضاء، قال: أقضي بكتاب الله، قال: فإن لم تجده في كتاب الله، قال: أقضي بسنة رسول الله، قال: فإن لم تجده في سنة رسول الله، قال: أجتهد برأيي، لا آلو، قال: فضرب بيده في صدره وقال: الحمد لله الذي وفق رسول رسول الله لما يرضي رسول الله))

“That when the Messenger of Allah ﷺ sent Mu’az to Yemen he ﷺ said to him, ‘How would you judge if a matter was raised to you?’ He said, ‘By the Book of Allah.’ He ﷺ said, ‘If you do not find it in the Book of Allah?’ He said, ‘I would judge by the *Sunnah* of the Messenger of Allah ﷺ.’ He ﷺ said, ‘If you did not find it in the *Sunnah* of the Messenger of Allah?’ He said, ‘I would perform my own *ijtihad*, sparing no effort in doing that.’ He said, ‘He (the Messenger of Allah ﷺ) hit his hand on my chest and said: Praise be to Allah who helped the messenger of the Messenger of Allah in that which pleases the Messenger of Allah’”. It was narrated from Sa’id from ‘Amr ibn Awf that the Messenger ﷺ appointed Iban ibn Sa’id ibn al-’Aas over Bahrain and he ﷺ said to him,

((استوص بعبد القيس خيراً، وأكرم سراقهم))

“Take care of Abdu Qais and respect their leaders.”

He ﷺ used to send governors from the best of those who embraced Islam. He used to order the governors to teach Islam to those who had accepted Islam, and to take *sadaqah* from the people. On many occasions, he ﷺ would delegate the governor the job of levying of taxes, and He ﷺ would command him to exhort the people with good, teach them the Qur’an, educate them in the *deen*, and he ﷺ advised him to be lenient with the people in the truth and be hard against them in situations of injustice. He ﷺ also ordered the governors to forbid the people from

calling to their tribes when there was agitation between the people, so that their call be to Allah ﷻ alone without partner. He ﷺ told the governors to take a fifth of the wealth and what was obliged upon the Muslims of *sadaqah*. And that whoever accepted Islam sincerely from the Jews or the Christians and submitted to the *deen* of Islam, he would be a believer whose rights are like their rights and his obligations are like their obligations; and whoever remained a Jew or a Christian, he should not be tempted from his *deen*.

Muslim and al-Bukhari narrated from Ibn ‘Abbas that when the Messenger of Allah ﷺ sent Mu’az to Yemen he ﷺ said;

((أن رسول الله ﷺ لما بعث معاذاً إلى اليمن قال إنك تقدم على قوم أهل كتاب فليكن أول ما تدعوهم إليه عبادة الله عز وجل، فإذا عرفوا الله فأخبرهم أن الله فرض عليهم خمس صلوات في يومهم وليلتهم فإذا فعلوا فأخبرهم أن الله قد فرض عليهم زكاة تؤخذ من أغنيائهم فترد على فقرائهم فإذا أطاعوا فخذ منهم وتوق كرائم أموالهم))

“You will be appointed over tribes from the People of the Book so let the first matter you call them to be the worship of Allah ﷻ. If they recognised Allah ﷻ then inform them that Allah ﷻ has obliged on them five prayers in the day and night. If they did that tell them that Allah ﷻ obliged on them *zakat* which is taken from their wealthy people and paid to their poor people. If they obeyed, take (*zakat*) from them and stay away from their best property.” In another narration, they added,

((واتق دعوة المظلوم فإنه ليس بينها وبين الله حجاب))

“And protect you of the prayer (*du’a*) of the wronged (person), for there is no barrier between it and Allah ﷻ.”

On some occasions he ﷺ appointed specific people to deal with financial matters. Every year, he ﷺ would send ‘Abdullah ibn Ruwahah to the Jews of Khayber to assess their fruits. Al-Muwatta mentioned,

((أنه عليه السلام كان يبعث عبد الله بن رواحة فيحرص بينه وبينهم، ثم يقول: إن شئتم فلکم، وإن شئتم فلي، فكانوا يأخذونه))

“The Messenger ﷺ used to send ‘Abdullah ibn Ruwahah to assess their fruits between him and them. Then he would say: if you would like, this is for you, or if you like it is for me. They used to take it”.

Salman ibn Yassar said, “They gathered some of their women’s jewellery. Then they said, ‘This is for you and reduce from us and tolerate in the division’. ‘Abdullah ibn Ruwahah said ‘O people of the Jews! By Allah, from amongst the creatures of Allah ﷻ I hate you most, but this will not drive me to oppress you. As for the bribe you offered me it is illegal property and we do not eat (take) it’. They said, ‘By this (justice) the heavens and the earth stand.’” He ﷺ used to inquire about the situation of the governors and mayors and he used to listen to what is reported to him of their news. He removed ‘Ala ibn al-Hadhrami who was his *‘amil* over Bahrain because a delegate from ‘Abdu Qais complained about him. Ibn Sa’id said that Muhammad ibn ‘Umar said, “I was told from ‘Amr ibn ‘Awf, the ally of Bani ‘Aamer ibn Luai that the Messenger of Allah ﷺ sent ‘Ala ibn al-Hadhrami to Bahrain, then he removed him from it, and sent Iban ibn Sa’id as an *‘amil* over it.” Muhammad ibn ‘Umar said, “The Messenger of Allah ﷺ had written to ‘Ala ibn al-Hadhrami to come to him together with twenty men of ‘Abdu Qais, so he came to him with them. Their leader was ‘Abdullah ibn ‘Awf al-Ashajj and ‘Ala appointed al-Munzir ibn Sawa over Bahrain after him. The delegation complained of ‘Ala ibn al-Hadhrami. So the Messenger of Allah ﷺ removed him and appointed Iban ibn Sa’id al-Aas and said to him;

((استوص بعبد القيس خيراً وأكرم سرائهم))

“Take care of ‘Abdu Qais and respect their leaders”. He ﷺ used to

receive the full (financial) accounts of the mayors and would enquire about their revenues and expenses.

Al-Bukhari and Muslim narrated from Abu Hammeed al-Saidi that,

((أن النبي ﷺ استعمل ابن اللثبيّة على صدقات بني سليم فلما جاء إلى رسول الله ﷺ وحاسبه قال هذا الذي لكم وهذه هدية أهديت لي، فقال رسول الله ﷺ: فهلاًّ جلست في بيت أبيك وبيت أمك حتى تأتيك هديتك إن كنت صادقاً، ثم قام رسول الله ﷺ فخطب الناس وحمد الله وأثنى عليه ثم قال: أما بعد فإني أستعمل رجالاً منكم على أمورٍ مما ولّاني الله فيأتي أحدكم فيقول هذا لكم وهذه هدية أهديت لي فهلاًّ جلست في بيت أبيه وبيت أمه حتى تأتيه هديته إن كان صادقاً، فو الله لا يأخذ أحدكم منها شيئاً بغير حق إلا جاء الله يحمله يوم القيامة، ألا فلا تعرفنّ ما جاء الله رجلٌ بغير له رُغاء أو بقرة لها خُوار أو شاةٍ تيعر، ثم رفع يده حتى رأيت بياض إبطيه: ألا هل بلغت))، وروى أبو داود عن بريدة عن النبي ﷺ قال: ((من استعملناه على عمل فرزقناه رزقاً فما أخذ بعد ذلك فهو غلول))

The Prophet ﷺ appointed Ibn al-Lutbiyyah over the *sadaqah* of Bani Saleem, “When he returned back to the Messenger of Allah ﷺ and he revised accounts with him, he said, ‘This is what is yours, and

this is a gift to me.' The Messenger of Allah ﷺ said, 'Won't you stay in your parents home and see if you get your present, if you say the truth?' Then the Messenger of Allah ﷺ stood preaching to the people. So he praised Allah and glorified Him and said, 'after all, I appoint some men of you over some affairs in which Allah gave me authority. Then someone amongst you comes and says: This is for you and this is a gift given to me. Had he not sat in his fathers's and mother's home so as his gift comes to him if he says the truth. By Allah, no one of you would take of them (the *sadaqah*) anything unduly but comes to Allah carrying it on the Day of Judgement. Beware, I will know any man who comes to Allah with a camel that brays and a cow that is mooing and a sheep that bleats.' Then he raised his hands till I could see the whiteness of his armpits. 'Didn't I convey'." Abu Dawood narrated from Bareeda that the Messenger of Allah ﷺ said, "Whomever we appointed in his job and we provided him (some funds), so whatever he took unduly would be *ghalool* (misappropriation)." The people of Yemen complained of the length of Mu'az's prayer, so the Messenger of Allah ﷺ restrained him. Al-Bukhari and Muslim narrated from Abu Mas'ud al-Ansari, who said,

((قال رجل يا رسول الله لا أكاد أدرك الصلاة مما يطول بنا فلان، فما رأيت النبي ﷺ في موعظة أشد غضباً من يومئذٍ فقال: يا أيها الناس إنكم منفرون، فمن صلى بالناس فليخفف فإن فيهم المريض والضعيف وذا الحاجة)) وفي رواية لمسلم من طريق جابر بلفظ ((...يا معاذ أفئان أنت...))

"A man said, 'O Messenger of Allah ﷺ I hardly attend the (*jama'a*) prayer, because so and so person makes it long.' As a response I have never seen the Prophet ﷺ in any preaching angrier than he was then. He said, 'O people! You drive the people away. So whoever becomes Imam to the people let him lighten (the prayer), for there are amongst them the sick, the weak and the one who has a pressing need.'" In another narration by Muslim from Jabir, he ﷺ

said, "... O Mu'az! Are you a seducer (*fattan*)."

He ﷺ used to appoint judges to judge between the people. He appointed 'Ali ibn Abu Talib as a judge over Yemen. He also dispatched Mu'az ibn Jabal and Abu Musa al-Ash'ari as judges to Yemen. He asked the two of them:

((بِمَ تحكمان فقالا: إن لم نجد الحكم في الكتاب ولا السنة قسنا الأمر بالأمر، فما كان أقرب إلى الحق عملنا به))

By what would they judge? They replied that if they did not find the rule in the Book or the Sunnah then they would measure the matter with another, and they would act with that which is closer to the truth. The Messenger of Allah ﷺ consented with that, which indicates that he ﷺ chose the judges and checked their method of judging.

He ﷺ used to look after the affairs of the people and he appointed secretaries as heads of the departments. 'Ali ibn Abu Talib was the secretary of agreements and peace treaties. Mu'ayqeb ibn Abu Fatimah was in charge of the Prophet's official seal and he was the secretary for booty. Huzayfah ibn al-Yaman used to assess the fruits of the Hijaz and Zubair ibn al-'Awaam used to record the funds of the *sadaqah*, and al-Mughira ibn Shu'abah used to record the debts and transactions, and Shurahbeel ibn Hasanah used to write the letters to the leaders of other states. He ﷺ appointed a secretary for each of the interests, however numerous these were. He ﷺ used to make many consultations with his companions and he ﷺ did not prevent himself from consulting the people of opinion and vision and those whom he ﷺ witnessed of their intellect and honour, and showed their strong *Iman* and sacrifice in calling for Islam. He ﷺ assigned fourteen men for *Shura* to whom he used to refer to for seeking an opinion. He ﷺ chose them because they were the chiefs of their people, i.e. their representatives. They were seven from the *muhajiroon* and seven from the *Ansar*. Amongst them were Abu Bakr, Hamza, 'Umar, 'Ali, Ja'far, Bilal, Ibn Mas'ud, Salman, 'Ammar and Abu Dharr. He ﷺ also used to seek advice from other than these people, but these people mentioned are the ones he sought opinion from extensively. In reality these people constituted the *Majlis al-Shura*. He ﷺ collected

funds that were due on the Muslims and non-Muslims, and on lands, fruits and livestock. These were: *zakat*, *'usbr*, *fai*, *kharaj* and *jizyah*. The funds of spoils and booties were due to *Bait al-Maal*. *Zakat* was distributed on the eight types of people mentioned in the Qur'an and it was not given to other than them nor was it used to manage the affairs of the State. Funds for looking after the affairs of the people used to be from the revenues of *fai*, *kharaj*, *jizyah* and booty, which were sufficient for running the State and preparing the army, thus the State did not feel that it had a shortage of funds.

In this way the Prophet ﷺ established the structure of the Islamic State and he completed it in his life. He ﷺ was the leader of the State and had assistants, governors, judges, army, directors of departments, and a *majlis* he used to refer to for *Shura*. This framework in its structure and functions has been mentioned in the *Shari'ah* texts. The Messenger of Allah ﷺ performed the actions of the leader of the State from the moment he ﷺ arrived in Madinah until his ﷺ death, and Abu Bakr and 'Umar were his assistants. The *Sahabah* consented after him on establishing a leader for the State who would succeed the Messenger of Allah ﷺ in the leadership of the State only, and not in Messengership or Prophethood because he ﷺ was the seal of the Prophets. Thus the Messenger ﷺ established the whole structure of the State in his life, and he left behind the shape of ruling, and structure of the State completely known and clear.

THE SHAPE OF THE RULING SYSTEM IN ISLAM

The Islamic ruling system is distinct from all other existing ruling systems in the world. It is unique in terms of the basis upon which it is built. As a result it is distinct in the thoughts, concepts, criteria and laws by which it looks after the affairs, the constitution and cannons which it implements and executes, and in the shape by which the state is represented and distinguished from all other shapes of ruling in the whole world.

THE SHAPE OF THE ISLAMIC RULING SYSTEM IS NOT MONARCHICAL

The shape of the Islamic ruling system is not monarchical. It neither approves of the monarchical shape of government nor does it resemble

it.

The ruling in the monarchical system of government is hereditary where sons inherit the authority from their fathers the same way they inherit their legacy. Whereas in the ruling system of Islam, there is no concept of hereditary ruling, rather the ruling is held by whomever the Ummah gives her pledge (of allegiance) to, willingly and selectively.

The monarchical system allows the monarch special privileges and rights exclusive to him, and places him above the law and makes him personally answerable to no one. He is made the symbol of the nation, where he owns but does not rule like the monarchs of Europe; or he owns and rules, and even becomes the source of the rules, thus running the country and the people as he wishes, like the kings of Saudi Arabia, Morocco and Jordan.

The Islamic system however does not assign to the Khaleefah or the *Imam* any special privileges or rights, so he is treated the same as any citizen of the *Ummah*. He is not the symbol of the *Ummah* where he owns and does not rule nor is he a symbol who rules and runs the affairs of the people and country as he pleases. He is a representative of the *Ummah* in ruling and power, where the *Ummah* selects him and gives him the pledge of allegiance willingly so as to implement on her the *shar'a* of Allah ﷻ. He is restricted in all his actions, judgements and looking after the affairs of the *Ummah* and her interests by the divine rules.

There is also no crown princship in the ruling system of Islam. Islam abhors hereditary ruling and forbids that the ruling be taken by legacy. The Khaleefah only assumes the ruling when the Ummah willingly gives him the pledge of allegiance.

THE SHAPE OF THE ISLAMIC RULING SYSTEM IS NOT REPUBLICAN

The shape of the Islamic ruling system is not republican. The republican system is based on democracy, where sovereignty is given to the people. Thus, the people have the right of ruling and legislation, and they reserve the right to appoint the ruler and remove him. They reserve the right to lay down a constitution and enact laws and to abolish, alter or modify both the constitution and the laws.

In contrast, the Islamic ruling system is based on the Islamic ‘aqeedah and on the *Shari’ah* laws. The sovereignty is to the *Shar’a* of Allah ﷻ and not to the Ummah. So the Ummah has no right to legislate nor does the Khaleefah. The sole legislator is Allah ﷻ, and the Khaleefah has the right only to adopt rulings for the constitution and cannons that are derived from the Book of Allah ﷻ and the *Sunnah* of His Messenger ﷺ. Also the Ummah has no right to remove the Khaleefah; what removes him is the *Shar’a*. However, the *Ummah* has the right to appoint him, for Islam gave the authority and power to her, so she has been given the authority and power to select and give the *Bay’ah* to whomever she wishes.

In the Presidential form of the Republican system, the president of the republic holds the mandatory powers of the head of state. He does not have in his cabinet a prime minister, but secretaries of state, as in the United States. In the parliamentary form, the president has a prime minister, and the mandatory ruling powers are in the hands of the ministerial cabinet not the president of the republic, as in Germany.

In the *Khilafah* system there are no ministers, nor a council of ministers working with the Khaleefah, as is the case in the democratic system, where ministers have special portfolios and mandatory powers of their own. Instead the Khaleefah has *Mu’awinoon* whom he appoints to assist him in assuming the functions of the *Khilafah* and discharging its duties. They are delegated and executive assistants. The Khaleefah heads them in his capacity as the head of state and not a prime minister, nor as a head of an executive body. The Khaleefah has no council of ministers working with him, since he has all the mandatory powers and the assistants merely help him in executing his mandatory powers.

Besides, in both types of the republican system, the presidential and parliamentary, the president is accountable to his people and their representatives. The people and their representatives have the right to remove him since the sovereignty in the republican system belongs to the people.

This is contrary to the *Imarah* of the believers. The *Ameer* of the believers is responsible before the *Ummah* and her representatives and is accountable to the *Ummah* and her representatives. Nonetheless the *Ummah* and her representatives have no right to remove him. He can

only be removed if he violates the *Shar’a* in a way that his removal becomes obligatory, the Court of Unjust Acts alone is the one that decides this.

In the republican system, whether it is presidential or parliamentary, the term of the presidency is fixed and cannot be exceeded.

Whereas, the *Khilafah* system does not determine the Khaleefah’s term of office. This is rather determined by his implementation of *Shar’a*. So long as the Khaleefah is implementing the rules of Islam, that are derived from the Book of Allah, and the *Sunnah* of His Messenger, he remains a Khaleefah, regardless of how long his *Khilafah* term lasts. If the Khaleefah violated the *Shar’a*, and deviated from implementing the rules of Islam, his term in office would be terminated even if it were one month or one day; and he must in this instance be removed immediately.

We conclude, therefore, that there is a great difference between the *Khilafah* system and the republican system and between the Khaleefah and the president of a republic.

It is, therefore, absolutely forbidden to claim that the Islamic system is a republican system, or to use the term ‘Islamic Republic’, for there exists a great contradiction between the foundations upon which the two systems are founded, in addition to the difference between them in their shape and details.

THE SHAPE OF THE ISLAMIC RULING SYSTEM IS NOT IMPERIAL

The Imperial system of government is completely inconsistent with the Islamic one. The regions ruled by Islam - although composed of various races and linked to one central place - are not ruled by an Imperial system but by a system contradictory to the Imperial system. The Imperial system does not treat races equally in the various regions of the empire, rather gives privileges, in the ruling, finance and economy to the centre of the empire.

The Islamic way of ruling is to establish equality between the subjects in all the regions of the State. Islam grants non-muslims who hold citizenship, the full rights and duties that Muslims have. They enjoy the

same fairness as Muslims and are subject to the same accountability as them. Furthermore, every single citizen, regardless of his or her creed, enjoys rights that even a Muslim living abroad who holds no citizenship does not enjoy. With this equality, the Islamic system differs completely from the Imperial one. It does not make the regions under its rule into colonies, areas of exploitation, nor a source of wealth funneled back into the central region for its own benefit, no matter how far apart they were, and no matter how different their races were. It considers every single region as an indivisible part of the State and its citizens enjoy the same rights as those in the central region. It also makes the ruling authority, its system and its legislation the same in all the regions.

THE RULING SYSTEM IN ISLAM IS NOT A FEDERAL ONE

The shape of the ruling system in Islam is not a federal one, where its regions separate by autonomy, but unite in the general ruling. It is rather a system of unity, where Marrakesh in the West is considered to be the same as Khurasan in the East; and the province of Al-Fayoom would be the same as Cairo if it were the Islamic capital. The finance of all the regions will be the same, as will their budget. Funds are spent equally on the affairs of the subjects, regardless of their *wilayah*. If for instance, the revenues of a single *wilayah* were double its needs, the funds spent will be in accordance with the needs of the *wilayah* but not in accordance with its revenues. If another *wilayah's* revenues fell short of its needs, this would not be taken into consideration, and funds will be spent to satisfy the *wilayah's* needs from the general budget whether it raised enough revenues or not.

Therefore the ruling system is unitary and not a federation. That is why the Islamic ruling system is distinguished from other known systems, in its origin and basis, even if some of its aspects were similar to some of the aspects of other ruling systems. Furthermore, the Islamic system is centralised in its ruling, where the high authority is at the centre, and where the authority and power engulfs every single part of the state, no matter how small or large it is. Independence of any part of it is not allowed thus preventing disintegration. The high authority is the body that appoints the army commanders, the *Wulab*, rulers and finance and economy officials. He appoints judges in all the regions and everyone whose duties is to rule. He is the one who deals with ruling throughout

the land.

In summary the ruling system in Islam is a *Khilafah* system. The general *ijmaa'* about the unity of the *Khilafah* and the state has been established, that it is not allowed to give the *Bay'ah* to more than one Khaleefah. Every *imam*, *faqih* (Jurist) and *mujtahid* (Scholar) has agreed on this. If another Khaleefah is given the pledge, while a Khaleefah is in office or a Khaleefah had already been given a pledge, the second one should be fought until he himself gives the pledge of allegiance to the first Khaleefah or he is killed, for the pledge has been confirmed lawfully to the one who was given *Bay'ah* first.

THE SYSTEM OF RULING IN ISLAM IS THE *KHILAFAH*

The *Khilafah* is the general leadership over all the Muslims, in the whole world, whose responsibility is to implement the laws of Islam, and to convey the Islamic Message to the whole world. It is also known as the *Imamah*, so *Imamah* and *Khilafah* are synonymous. It is the shape that the *Ahkam Shari'ah* (divine laws) determine as the Islamic state. Many *sahih Ahadith* have been narrated using these two words, with the same meaning. None of these two words differed in their meaning from the other in any *Shari'ah* text i.e. the Qur'an and Sunnah, for they are the only divine texts. However, it is not binding to adhere to either of them, rather it is the meaning that has to be adhered to.

Appointing a Khaleefah is obligatory upon all Muslims throughout the world. Executing such a duty, just like executing any other duty which Allah ﷻ has decreed on Muslims is compulsory, in which no choice or complacency is allowed. Failure in performing this duty is one of the gravest sins, which is deserving of Allah's ﷻ severe punishment.

The evidence concerning the obligation of appointing a Khaleefah over all the Muslims is understood from the *Sunnah* and the *Ijmaa'* of the *Sahabah*. As for the *Sunnah*, it has been narrated that Nafi' said: 'Umar told me: I heard the Messenger of Allah ﷺ say:

((من خلع يداً من طاعة لقي الله يوم القيامة لاحجة له، ومن

مات وليس في عنقه بيعة مات ميتة جاهلية))

“Whoever takes off his hand from an obedience to Allah, he will meet Him on the Resurrection Day without having any proof for himself; and whoever dies while there were no *Bay'ah* on his neck, his death would be that of the days of *Jahiliyyah* (ignorance).”

[Narrated by Muslim] So the Messenger ﷺ made it obligatory upon every Muslim to have a *Bay'ah* on his neck. He described the one who dies without having a *Bay'ah* on his neck as if he died the death of *Jahiliyyah*. The *Bay'ah* would not be valid except for the Khaleefah. The Messenger of Allah ﷺ made it an obligation that every Muslim should have a *Bay'ah* on his neck for a Khaleefah, but he did not oblige every Muslim to give a *Bay'ah* to the Khaleefah. The obligation therefore, is the existence of a *Bay'ah* on the neck of every Muslim. This necessitates the existence of a Khaleefah, who, through his existence, is entitled to a *Bay'ah* (on the neck of every Muslim.) Thus, the existence of the Khaleefah is the issue that necessitates a *Bay'ah* on the neck of every Muslim, whether he actually gave the *Bay'ah* or not. Therefore, the *Hadith* is evidence that the appointment of a Khaleefah is obligation and that every Muslim is obliged to have *Bay'ah* on his neck; it is not an evidence suggesting that giving the *Bay'ah* is an obligation. This is because the Messenger of Allah ﷺ rebuked the absence of the *Bay'ah* of allegiance on the neck of the Muslim till he dies, and not the abstention from giving the *Bay'ah* itself. Muslim narrated from Al-A'raj from Abu Hurayrah from the Prophet ﷺ that he said:

((إنما الإمام جنة يُقاتل من ورائه ويُتقى به))

“Indeed the *Imam* is a shield, from whose behind (one) would fight, and by whom one would protect oneself.” Muslim also reported on the authority of Abu Hazim that he said: I accompanied Abu Hurayrah for five years, and heard him informing about the Prophet ﷺ, he said;

((كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه

نبي، وإنه لا نبي بعدي، وستكون خلفاء فتكثر، قالوا فما

تأمرنا؟ قال: فؤا، ببيعة الأول فالأول، وأعطوهم حقهم، فإن الله

سائلهم عما استرعاهم))

“The prophets ruled over the children of Israel, whenever a prophet died another prophet succeeded him, but there will be no prophet after me. There will soon be *Khulafaa'* and they will number many.” They asked; “what then do you order us?” He said: “Fulfill the *Bay'ah* to them, one after the other and give them their dues for Allah will verily account them about what he entrusted them with.” Muslim narrated that Ibn 'Abbas reported that the Messenger of Allah ﷺ said:

((من كره من أميره شيئاً فليصبر عليه، فإنه ليس أحد من

الناس خرج من السلطان شبراً فمات عليه إلا مات ميتة

جاهلية))

“If anybody sees in his *Ameer* something which displeases him, he should remain patient, for he who separates himself from the authority of Islam (*Sultan*) by even so much as a hand span and dies thereupon, he would die the death of the days of ignorance.”

In these *Abadith*, there is a description of the Khaleefah as being a shield, i.e. a protection. The description of the *Imam* as a shield is an indication of the benefits of the existence of the *Imam*; therefore it is a command. This is because when Allah ﷻ or His Messenger ﷺ informs us about something that includes a rebuke this is taken as a command of prohibition i.e. to abstain from it. When the text contains praise it is taken as a command to perform an action; and if the commanded action is necessary to implement the divine rule, or if its neglect would cause the divine law to be abandoned, then this is decisive. These *Abadith* also inform us that those who run the affairs of the Muslims are the *Khulafaa'*, which means a command of appointing them. They also include the prohibition of Muslims separating themselves from authority. This means the obligation that the Muslim establishes power, i.e. authority to the Khaleefah. However, the Messenger of Allah ﷺ ordered the Muslims to obey the *Khulafaa'* and to fight those who dispute with them regarding their authority, which means that it is an obligation to appoint a Khaleefah and protect his *Khilafah* by fighting those who dispute his authority. Muslim reported that the Messenger of Allah ﷺ said:

((ومن بايع إماماً فأعطاه صفقة يده، وثمرة قلبه فليطعه إن

استطاع. فإن جاء آخر ينازعه فاضربوا عنق الآخر))

“Whosoever gave a *Bay'ah* to an *Imam*, giving him the clasp of his hand, and the fruit of his heart shall obey him as long as he can, and if another comes to dispute with him, you must strike the neck of that man.” Therefore the command to obey the *Imam* is an order to appoint him. And the command to fight those who dispute with him is collaborating evidence that the command of maintaining the presence of one Khaleefah, is decisive.

As for the *Ijmaa'* of the *Sahabah*, they (may Allah be pleased with them) agreed upon the necessity of establishing a successor (ie. Khaleefah), to the Messenger of Allah ﷺ, after his ﷺ death. They all agreed to appoint a successor to Abu Bakr, and upon his death, appointing 'Umar as successor and upon 'Uthman's death to appoint 'Ali as a successor to him. The *Ijmaa'* of the *Sahabah* on the appointment of a Khaleefah manifested itself emphatically upon the death of the Messenger of Allah ﷺ where they busied themselves in appointing a successor to him even though it is known that the burial of the dead person after his death is obligatory. It is also prohibited upon those in charge of preparing the burial to engage themselves in anything else until they completed the burial. Despite this, some of the *Sahabah* engaged themselves in appointing a Khaleefah, even though they were obliged to engage themselves in preparing the burial of the Messenger of Allah ﷺ. Other *Sahabah* kept silent about this and participated in the delaying of the burial for two nights, despite having the ability to deny the delay and to bury the Messenger of Allah ﷺ. This action of the *Sahabah* is therefore an evidence of *Ijmaa'* of busying themselves in the appointment of the Khaleefah instead of the burial of the dead person. This could not have been legitimate unless the appointment of a Khaleefah was more obligatory than the burial of the dead person. Furthermore, all of the *Sahabah* consented throughout their lives, upon the obligation of appointing the Khaleefah. Although at some times they differed about the person who should be selected as a Khaleefah, they never disagreed about the fact that a Khaleefah must be appointed, whether in the wake of the death of the Messenger of Allah ﷺ nor after the death of each of

the *Khulafaa' Ar-Rashidoon*. Accordingly, the *Ijmaa'* of the *Sahabah* is both strong and clear evidence that the appointment of a Khaleefah is obligatory.

Furthermore, establishing the *deen* and implementing the *Shar'a* in every single aspect of life is an obligation upon Muslims proven through evidences definite in report and in meaning, and this cannot be achieved unless there is a ruler who possesses the authority to do so. Therefore, in this context, the *Shari'ah* principle states: *'Whatever is necessary to accomplish a duty, becomes itself a duty.'* Thus appointing the Khaleefah is obligatory based on this principle.

Furthermore, Allah ﷻ commanded His Messenger ﷺ to rule the Muslims by that which He ﷻ revealed to him; the command of Allah ﷻ was conveyed in the most decisive manner. Allah ﷻ addressed His Messenger;

﴿فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ
مِنَ الْحَقِّ﴾

“And rule between them by that which Allah has revealed to you, and do not follow their vain desires away from the truth which came to you.” [Al-Ma'idah: 48]

He ﷻ also says;

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ
أَن يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنزَلَ اللَّهُ إِلَيْكَ﴾

“And rule by that which Allah has revealed to you and do not follow their whims, and beware that they may deviate you away from some part of that which Allah has revealed to you.” [Al-Ma'idah: 49]

The speech of Allah ﷻ to His Messenger is also a speech to the Messenger's followers, unless there exists evidence that indicates that the speech is limited to him. In this case there is no evidence limiting this speech to the Messenger of Allah ﷺ. Thus the verses call upon Muslims to establish the rule of Allah ﷻ. The appointment of a Khaleefah does

not mean other than the establishment of the rule of Allah ﷻ and the authority of Islam. Furthermore, Allah ﷻ obliges the Muslims to obey those in authority, i.e. the rulers, which is an indication that the existence of a man in authority upon Muslims is obligatory. Allah ﷻ says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي
الْأَمْرِ مِنْكُمْ﴾

“O you who believe! Obey Allah and obey the Messenger and those in authority from amongst you.” [An-Nisa: 59]

Allah ﷻ does not command obedience to those who do not exist, therefore the existence of a man in authority is *Fard*, because ruling with what Allah has revealed is an obligation. The order of Allah ﷻ to obey those in authority is also an order to establish them. The implementation of the divine law depends on the presence of the ruler i.e. the man in authority, while neglecting his appointment results in the non-application of the *Shar'a* rules. Therefore his presence is compulsory, because that which results due to his absence is the negligence of the *Shar'a* rules.

These evidences are explicit in that the establishment of the ruling and the authority amongst Muslims is obligatory, and that the appointment of a Khaleefah who takes charge of the ruling and authority in order to implement the divine laws, not merely for the sake of the ruling and authority alone, is also compulsory. Let us contemplate the following *hadith* of the Messenger of Allah ﷺ:

((خيار أئمتكم الذين تحبونهم ويحبونكم، ويصلون عليكم
وتصلون عليهم، وشرار أئمتكم الذين تبغضونهم
ويبغضونكم، وتلعنونهم ويلعنوكم. قيل يا رسول الله أفلا
ننابذهم بالسيف فقال: لا، ما أقاموا فيكم الصلاة))

“The best of your *Imams* are those whom you love and they love you, and you pray for them and they pray for you, and the worst of

your *Imams* are those whom you hate and they hate you, and you curse them and they curse you. We asked: O Messenger of Allah! Shall we not then declare war on them? He said: No, as long as they establish *Salah* amongst you.” [Narrated by Muslim from Auf ibn Malik] This *hadith* explicitly informs about the good and bad leaders, and the prohibition of revolting against them as long as they established the *salah*. For establishing *salah* indicates upholding the *deen* and implementing its rules. Therefore the obligation upon Muslims to appoint a Khaleefah to implement the rules of Islam and to convey its message is beyond any doubt, with regards to its proof in the sound *Shari'ah* texts. Furthermore, this duty is obligatory because Allah ﷻ made it compulsory upon Muslims to establish the authority of Islam and to protect the unity of the Muslims. However, this duty is a collective one; if some of the people accomplished it the duty would be fulfilled and the responsibility would be discharged from the rest of the *Ummah*. But if a section of the *Ummah* failed to accomplish this duty, though they undertook all the steps required to fulfil it, then it would remain as an obligation upon all the Muslims, and no one would be relieved of the duty as long as the Muslims remained without a Khaleefah.

To refrain from appointing a Khaleefah for Muslims is one of the gravest sins, for it is an abstention from fulfilling one of the most important duties of Islam. For upon this duty, rests the implementation of the rules of the *deen* and the very existence of Islam in life's affairs. The Muslims would be committing a grave sin if they refrained from establishing a Khaleefah for themselves. If they all agreed to abandon the duty, the sin would fall upon every single Muslim in the entire world. If however some of the Muslims embarked upon the work to establish a Khaleefah whilst others did not, the sin would fall from the shoulders of those who work to establish the Khaleefah and the duty would remain upon them until the Khaleefah is appointed. The involvement in the work to accomplish the duty would remove the sin of delaying the accomplishment of the duty in its due time and the failure to fulfill it. This is because of the involvement in performing it and the dislike of being prevented from its accomplishment. Those who do not participate in the work to accomplish the duty will be sinful after three days from the departure of the Khaleefah until the day the next Khaleefah is appointed. This is because Allah ﷻ has entrusted them with a duty they neither carried out nor participated in. Thus, they committed a sin and deserve

the punishment and disgrace from Allah ﷻ. The sin would duly fall upon them for abstaining from working to establish the *Khilafah*, or from performing the actions that would naturally accomplish it. This is because any Muslim who fails to perform any of his duties quite evidently deserves punishment, particularly the duty by which other duties are implemented, the rules of the *deen* are established and the word of Allah ﷻ is raised high in the lands of Islam and throughout the whole world.

Therefore, there is no excuse for any Muslim anywhere in the world from abstaining to perform that which Allah ﷻ obliged on him so as to establish the *deen*. That is to work to appoint a Khaleefah for the Muslims when there is no *Khilafah* in the world, when there is no Khaleefah who implements the rules of Allah ﷻ to protect the sanctities of Allah ﷻ, and establishes the rules of the *deen*, and unifies the Muslims under the banner of “La Ilaha Il Allah Muhammad Ar-Rasool Allah” (there is no God but Allah and Muhammad is His Messenger). There is no excuse in Islam that exempts anyone from working to perform this duty until it is accomplished.

The Principles of Ruling

The ruling system is built upon four principles which are:-

- 1) Sovereignty is for the *Shar'a*, not for the *Ummah*.
- 2) Authority is for the people.
- 3) The appointment of one Khaleefah is an obligation upon all the Muslims.
- 4) The adoption of the divine rules is the exclusive right of the Khaleefah, so he is the one who enacts the constitution and the various cannons

These are the principles of ruling in Islam without which ruling can't exist. If any of these principles was absent then the ruling will vanish, meaning the Islamic ruling, i.e. the authority of Islam and not any ruling. These principles have been derived and backed by evidences from the *Shari'ah*.

1. SOVEREIGNTY IS FOR *SHAR'A*

As for the first principle, that the sovereignty belongs to the *Shar'a*; it has a reality, which is the word sovereignty. It has evidence that indicates that it belongs to the *Shar'a* and not to the *Ummah*. Its reality is that this word is a Western term, which means the one who exercises and controls the will. So if an individual exercised and controlled his own will, he would be sovereign over himself, but if his will was controlled and exercised by other than himself he would be a slave. This applies to the *Ummah* as well, if her will i.e. the will of the majority of her individuals,

was controlled by herself via some of her individuals, to whom she willingly and freely granted the right of controlling that will, she would be considered sovereign over her own self. Whereas if others controlled her will, against her wishes, she would be considered enslaved. That is why the democratic system states: the sovereignty belongs to the people i.e. the people exercise their own affairs and elect the delegates they wish and give them the right to control their will. This is the reality of the sovereignty that we want to apply the verdict on. The verdict regarding this sovereignty is that it belongs to the *Shar'a* and not to the *Ummah*. The will of the individual is not controlled by himself as he pleases but by the commands and prohibitions of Allah ﷻ. Similarly, the *Ummah* is not controlled by her own free will where she acts as she pleases but is rather subjected to the commands and prohibitions of Allah ﷻ. The evidence about this is reflected in Allah's saying:

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

“And by thy Lord they will not believe until they make you judge between them.”
[An-Nisa: 65]

And His ﷺ speech:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ﴾

“O you who believe, Obey Allah, Obey His Messenger and those in authority from amongst you and if you differ then refer it to Allah and His Messenger if you believe in Allah and the Last Day.” [An-Nisa: 59]

Referring it to Allah and the Messenger means to the rules of *Shar'a*. Therefore, that which controls the *Ummah* and the individual, and conducts the will of the *Ummah* and the individual is, in fact, what the Messenger of Allah ﷺ has brought. So the *Ummah* and the individuals submit to the *Shar'a*. Thus, the sovereignty is for the *Shar'a*. Therefore, the *Ummah* does not give the *Bay'ah* to the Khaleefah as if hired by her to execute what she wishes, as is the case in the democratic system. He is

rather given the *Bay'ah* on the Book of Allah and the *Sunnah* of His Messenger ﷺ, so as to execute the Book of Allah ﷻ and the *Sunnah* of His Messenger ﷺ i.e. to implement the *Shar'a* and not what the people wish. Even if the people who gave him the *Bay'ah* deviated from the *Shar'a* he has to fight them until they revert back to the *Shar'a*.

2. THE AUTHORITY BELONGS TO THE UMMAH

The principle that the authority belongs to the *Ummah* is taken from the *Shari'ah* rule that states that the appointment of the Khaleefah is the right of the *Ummah* and that the Khaleefah can only take up his post and exercises his authority by taking a *Bay'ah*. The evidence for this has been clearly demonstrated in many *Ahadith*. Muslim narrated from 'Ubadah Ibn us-Samit, he said:

((بايعنا رسول الله ﷺ على السمع والطاعة في العسر واليسر
والنشط والمكره))

“We gave *Bay'ah* to the Messenger of Allah ﷺ to hear and to obey in ease and hardship.”

And from Jarir Ibn 'Abdullah, who said:

((بايعت رسول الله ﷺ على السمع والطاعة وأن أنصح لكل
مسلم))

“I gave *Bay'ah* to the Messenger of Allah ﷺ to listen and obey and give advice to every Muslim”. Abu Hurayrah reported that the Messenger of Allah ﷺ said:

((ثلاثة لا يكلمهم الله يوم القيامة ولا يزيكهم ولهم عذاب
أليم: رجل على فضل ماء بالطريق يمنع منه ابن السبيل، ورجل
بايع إماماً لا يبايعه إلا لدنياه، إن أعطاه ما يريد وفى له، وإلا

لَمْ يَفْ لَهُ، وَرَجُلٌ يَبَايعُ رَجُلًا بَسْلَعَةً بَعْدَ الْعَصْرِ فَحَلَفَ بِاللَّهِ
لَقَدْ أُعْطِيَ بِهَا كَذًا وَكَذَا فَصَدَقَهُ فَأَخَذَهَا وَلَمْ يُعْطِ بِهَا))

“Three types of people which Allah will not speak to (on the Day of Judgement), nor will He praise them and they have severe punishment are: A man with surplus water on the road but he bans the traveller from it; a man who gives a *Bay'ah* to an *Imam* only for his own *dunia*, if he gave what he wanted him, he fulfilled to him otherwise he would not; and a man offered a commodity for sale after *‘asr*, (i.e. from at the end of the day) so he swore that he was given so and so price for it, so he (the buyer) trusted him and took it, but he was not given (that price) for it.” [Narrated by Al-Bukhari and Muslim] Thus, the *Muslims* give the *Bay'ah* to the Khaleefah and not by the Khaleefah to the Muslims. They are the ones who give him the *Bay'ah*, i.e. they appoint him as a ruler over them. The *Khulafaa' Ar-Rashidoon* took their *Bay'ah* from the *Ummah*; they only became *Khulafaa'* once the *Ummah* gave the *Bay'ah* to them. As for the evidence that the Khaleefah only takes his authority by this *Bay'ah*, this is clear in the *Ahadith* concerning the obedience and the *Ahadith* regarding the unity of the *Khilafah*. Muslim narrated from ‘Abdullah Ibnu ‘Amru Ibn al-‘A‘as that the Messenger of Allah ﷺ said:

((...وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفْقَةً يَدُهُ وَثَمَرَةٌ قَلْبُهُ فَلْيَطْعُهُ إِنْ

اسْتَطَاعَ، فَإِنْ جَاءَ آخِرٌ يَنْزَعُهُ فَاضْرِبُوا عُنُقَ الْآخِرِ))

“Whoever gave *Bay'ah* to an *Imam* giving him the clasp of his hand and the fruit of his heart shall obey him as long as he can. If another comes to dispute with him, you must strike the neck of that man.” Naf'i said ‘Abdullah Ibn ‘Umar told me: I heard the Messenger of Allah ﷺ say:

((مَنْ خَلَعَ يَدًا مِنْ طَاعَةِ لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حِجَّةَ لَهُ، وَمَنْ

مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً))

“Whoever takes off his hand from an obedience, he will meet Allah on the Resurrection Day without having any proof to show for

himself; and whoever dies while having no *Bay'ah* on his neck he dies the death of the days of ignorance (*Jahiliyyah*).” [Narrated by Muslim] Ibn ‘Abbas reported that the Messenger of Allah ﷺ said:

((مَنْ كَرِهَ مِنْ أَمِيرِهِ شَيْئًا فَلْيَصْبِرْ عَلَيْهِ، فَإِنَّهُ لَيْسَ أَحَدٌ مِنْ

النَّاسِ خَرَجَ مِنَ السُّلْطَانِ شَبْرًا فَمَاتَ عَلَيْهِ إِلَّا مَاتَ مِيتَةً

جَاهِلِيَّةً))

“If anyone sees in his *Ameer* something that displeases him let him remain patient, for behold! He who separates himself from the *Sultan* (authority of Islam) by even so much as a hand span and dies thereupon, he has died the death of *Jahiliyyah*.” [Narrated by Muslim] Abu Hurayrah reported that the Messenger of Allah ﷺ said:

((كَانَتْ بَنُو إِسْرَائِيلَ تَسُوسُهُمُ الْأَنْبِيَاءُ، كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ

نَبِيٌّ وَإِنَّهُ لَا نَبِيَّ بَعْدِي، وَسَيَكُونُ خُلَفَاءُ فَيَكْثُرُونَ، قَالُوا: فَمَا

تَأْمُرُنَا؟ قَالَ: فُؤَا بَيْعَةِ الْأَوَّلِ فَالْأَوَّلِ وَأَعْطَوْهُمْ حَقَّهُمْ فَإِنَّ اللَّهَ

سَأَلَهُمْ عَمَّا اسْتَرْعَاهُمْ))

“The prophets ruled over the children of Israel. Whenever a prophet died, another prophet succeeded him, but there will be no prophet after me. There will soon be *Khulafaa'* and they will number many. They asked: What then do you order us? He ﷺ said: Fulfil *Bay'ah* to them one after the other, and give them their dues, for verily Allah will ask them about what He entrusted them with.” [Narrated by Muslim] These *Ahadith* demonstrate that the Khaleefah only takes the authority by this *Bay'ah*, for Allah ﷻ has commanded his obedience:

((مَنْ بَايَعَ إِمَامًا... فَلْيَطْعُهُ))

“Whoever pledged allegiance to an *Imam* ... shall obey him.” So, he

is appointed Khaleefah through the *Bay'ah*, and his obedience becomes compulsory because he is a pledged allegiance to as Khaleefah. Thus he took the authority from the *Ummah* which gave her *Bay'ah* and her obedience to the one whom she pledged to i.e. to the one who has a *Bay'ah* on her neck. This proves that the authority belongs to the *Ummah*. Despite the fact that the Messenger of Allah ﷺ was the final Messenger, he took the pledge (*Bay'ah*) from the people, which is a *Bay'ah* on authority and ruling and not on Prophet hood. He ﷺ took this *Bay'ah* from men as well as women, but not from children. The fact that it is the Muslims who appoint the Khaleefah by giving him the *Bay'ah* according to the Kitab (Book) of Allah and the *Sunnah* of His Messenger, and that the Khaleefah only assumes power by this *Bay'ah*, clearly indicates that the authority belongs to the *Ummah* who gives it to whoever she wishes.

3. THE APPOINTMENT OF ONE KHALEEFAH IS OBLIGATORY ON ALL MUSLIMS

As for the third principle, that the establishment of one Khaleefah is an obligation on all Muslims, the following Hadith has confirmed this. Muslim narrated from Naf'i that he said: 'Abdullah Ibnu 'Umar said to me: I heard the Messenger of Allah ﷺ say:

((من خلع يداً من طاعة لقي الله يوم القيامة لا حجة له، ومن

مات وليس في عنقه بيعة مات ميتة جاهلية))

“Whoever takes off his hand from obedience to Allah, he will meet Allah on the Resurrection Day without having any proof to show for himself; and who dies while there was no pledge of allegiance on his neck, he dies a death of the days of *Jahiliyyah* (ignorance).” In this *Hadith*, the Messenger of Allah ﷺ has made it compulsory on every Muslim to have a pledge of allegiance, i.e. *Bay'ah* to a Khaleefah on his neck, but he ﷺ did not make it compulsory for every Muslim to give the pledge (*Bay'ah*). For the obligation is the presence of a *Bay'ah* on every Muslim's neck, i.e. the existence of a Khaleefah who is entitled to a *Bay'ah* on the neck of every Muslim by his existence. The existence of the Khaleefah is the matter which initiates the *Bay'ah* on every Muslim's neck, regardless of whether the Muslim has effectively given the *Bay'ah* or not. As for the unity of the *Khilafah* and the prohibition of having more than one Khaleefah, this is due to what Muslim narrated from Abu

Sa'id Al-Khudri from the Messenger of Allah ﷺ that he said:

((إذا بويع خليفتين فاقتلوا الآخر منهما))

“When an oath of *Bay'ah* has been taken for two *Khulafaa'*, kill the latter of them”. This clearly proves that it is forbidden for the Muslims to have more than one Khaleefah.

4. THE ADOPTION OF LAWS IS THE EXCLUSIVE RIGHT OF THE KHALEEFAH

The fourth principle, states that the Khaleefah is the sole body with mandatory powers to adopt laws and legislation. This has been proved by the general consensus of the *Sahabah* (*Ijmaa'*). Following this consensus these *Shari'ah* principles have been derived: “The opinion of the *Imam* settles the difference”; “The opinion of the *Imam* is binding”; “The *Sultan* (*Imam*) reserves the right to adopt new laws for as many new matters that arise”.

This will be explained later on together with its proofs, in the chapter on the mandatory powers of the Khaleefah.

4

The Structure of the State

The state is founded on eight pillars:

- 1) The Khaleefah
- 2) Delegated Assistants
- 3) The Executing Assistants
- 4) The *Ameer* of *Jihad*
- 5) The Governors (*Wulah*)
- 6) The Judiciary
- 7) The Administrative Departments
- 8) The Council of the Ummah

Evidence of this structure is reflected in the actions of the Messenger of Allah ﷺ since this was the form in which he set up the structure of the State. He ﷺ was the head of State and he ordered the Muslims to establish a head of State when he ordered them to establish a Khaleefah or an *Imam*. As for the assistants, the Messenger of Allah ﷺ chose Abu Bakr and 'Umar as his two assistants. Al-Hakim and Al-Tirmithi narrated from Abu Sa'id Al Khudri that the Messenger of Allah ﷺ said:

((وزياري من السماء جبرائيل وميكائيل، ومن أهل الأرض

أبو بكر وعمر))

“My two ministers from the heavens are Jibra'eel and Mika'el and from the people of the earth are Abu Bakr and 'Umar.” The meaning of the term “my two ministers” here is my two assistants, because this is what the word *Wazir* (minister) linguistically means in *Arabic*. As for the word ‘minister’, which people currently refer to, this is a Western term that means the function of a particular type of ruling. This is alien to that which the Muslims know and it contradicts the Islamic ruling system. Indeed the assistant, who the Messenger of Allah ﷺ called minister (*Wazir*), is not assigned to a certain function. He is rather an assistant to whom the Khaleefah gives a general delegation to carry out tasks; and he should not be assigned to a specific task. As for the governors (*Wulah*), the Messenger of Allah ﷺ appointed them over the provinces (*Wilayaat*). He ﷺ appointed Attab Ibnu Usayd as *Wali* over Makkah after its conquest. After Bazan Ibnu Sasan had embraced Islam he ﷺ appointed him *Wali* (governor) of Yemen. The Messenger of Allah ﷺ also appointed many other *Wulah*. The Messenger of Allah ﷺ was in direct charge of the judiciary. He ﷺ appointed the judges in order to settle the disputes between the people. So he ﷺ appointed 'Ali Ibnu Abi Talib as judge over Yemen, and he ﷺ charged Mua'z Ibn Jabal and Abu Mousa with Judiciary and *Imarah* over Yemen. Al-Tabarani reported through trustworthy narrators from Masrooq, he said:

((كان أصحاب القضاء على عهد رسول الله ﷺ ستاً: عمر

وعلي وعبد الله بن مسعود، وأبي بن كعب، وزيد بن ثابت،

وأبا موسى الأشعري))

“The people of Judiciary at the time of the Messenger of Allah ﷺ were six: 'Umar, 'Ali, 'Abdullah Ibn Ma'sood, Ubay ibn, K'ab, Zayd ibn Thabit and Abu Mousa Al-Ash'ari.” As for the administrative system, the Messenger of Allah ﷺ appointed secretaries to run the various government departments, these were as directors of departments. He ﷺ appointed Mu'ayyib Ibnu Abi Fatima as director (under secretary) of booty and Huzayfah Ibnul Yaman was appointed as a director in charge of assessing the harvest of Hijaz. He ﷺ appointed others in charge of the other departments, where over each one of them, there was a secretary. As for the army, which administratively is under the *Ameer* of *Jihad*'s authority, it was effectively under the control of the Messenger of Allah

ﷺ and it was he who was the effective commander of the army where he used to deal with its administration and run its affairs. However, the Messenger of Allah ﷺ would appoint commanders to lead certain expeditions. On one occasion he ﷺ appointed ‘Abdullah Ibnu Jahsh at the head of an exploratory mission to Quraysh. On another occasion the Messenger of Allah ﷺ appointed Abu Salma Ibnu ‘Abdil Asad as the commander of a regiment of 150 men, and he ﷺ gave him its banner. This regiment contained some of the best Muslim warriors, among whom were ‘Abu Ubayda Ibnul Jarrah, Sa’d Ibnu Abi Waqqas and Usayd Ibnu Hudhayr. As for the Council of the Ummah whose function is one of consultation (*Shura*) and holding the ruler accountable, the Messenger of Allah ﷺ did not establish a permanent one in his lifetime, but he did consult the Muslims whenever he deemed it fit. Thus he ﷺ gathered the Muslims and consulted them on the day of ‘Uhud’ and on the day of ‘*Hadithul-ifk*’ (slander of Ayesha ؓ) and on several other occasions. Though he ﷺ gathered the Muslims for consultation, he ﷺ would summon some of his companions on a regular basis and consult them; they were regarded as the chiefs of the people. They were Hamza, Abu Bakr, Ja’afar, ‘Umar, ‘Ali, Ibnu Mas’ud, Salman, ‘Ammar, Huzayfah, Abu Dharr, Al-Muqdad and Bilal. They were considered as his ﷺ *Shura* Council, for he consulted them on a regular basis. This demonstrates that the Messenger of Allah ﷺ had set up a specific structure for the State, and that he ﷺ adhered to that structure until he joined his Lord ﷻ. Then after him ﷺ came his *Khulafaa*’ (successors) and they followed him in ruling according to the same structure that the Messenger ﷺ established himself. They did that in front of the *Sahabah*. The structure of the government of the Islamic State should, therefore, be in this form. Some may argue that the Messenger of Allah ﷺ appointed a separate official in charge of finance and that he placed him in charge of the department of finance. This might lead people to think that the department of finance is an independent body that is not part of the overall government structure. However, the reality is that the Messenger of Allah ﷺ did appoint a special official in charge of finance, which meant giving him an independent department to run, but he ﷺ did not make it an independent structure, rather a part of the structure (of the government). Some of the *Wulab* (governors) were appointed with general mandatory powers that included both ruling and finance, whilst some were appointed in ruling powers only, and he appointed a special *Wali* over finance. For example, the Messenger of Allah ﷺ sent ‘Amru

Ibnu Hazm as a *Wali* over Yemen with general powers including ruling and finance as prescribed in the letter he ﷺ handed to him. Furwa Ibnu Musai’k’ was appointed by the Messenger of Allah ﷺ as ‘Amil over the tribes of Murad, Zubayd, and Muzhaj, and Khalid Ibnu Said Ibnul A’as was appointed with him as collector of *Zakat*. The *Wali* in charge of ruling alone was known as the *Wali* of *Salab*; this is a *Shari’ah* term meaning the *Wali* in charge of all matters of administration, judiciary, politics, warfare and *Ibadaat*, amongst other duties, with the exception of finance. The *Wali* in charge of finance was alternatively known as the *Wali* of *Kharaj*, meaning the one who was responsible for collecting the *Zakat* and land *Kharaj* together with other financial duties. The *Wali* (governor) who held the position of general governorship was known as the *Wali* of *Salab* and *Kharaj*. This clearly demonstrates that the financial department was not a separate structure, but part of the duties of the *Imarah* i.e. the *Wilayah*. A governor may be appointed specifically to run the financial affairs of a district, or the job could be given instead to the general governor. In either case, the financial department ultimately did not follow a special department in the centre of the state (the capital), but it remained under the control of the Khaleefah. So it is part of the (state) structure, not a separate structure. In a similar fashion the *Imarah* of *Jihad*, which supervises war, foreign, domestic and industrial affairs, was always under the direct control of the Messenger of Allah ﷺ, as well as his *Khulafaa*’. The Messenger of Allah ﷺ used by himself to prepare the army and supervise its training and weaponry, and run all its affairs, the way he used to run the foreign and domestic affairs. He ﷺ sent people to Jurash in Yemen to learn how to manufacture weapons. The *Khulafaa*’ who came after him ﷺ followed the same policy. However, at the time of ‘Umar Ibnul Khattab he set up a war cabinet (*Diwan ul-Jund*) and he appointed a head to that cabinet which is the function of the *Ameer of Jihad*.

Thus, the State that the Messenger of Allah ﷺ had established was founded on this structure.

THE KHALEEFAH

The Khaleefah is the man who represents the *Ummah* in the ruling and authority and in the implementation of the *Abkam Shari’ah* (Divine Laws). Islam has decreed that the ruling and authority belong to the *Ummah*. It

is she who appoints someone who runs that on her behalf, and Allah ﷻ has made it obligatory upon the *Ummah* to execute all of the rules of *Shar'a*.

Since the Muslims appoint the Khaleefah, this makes him a representative of the *Ummah* in terms of ruling and authority and as well in the implementation of the rules of *Shar'a*. Therefore, he does not become a Khaleefah unless the *Ummah* gives him the pledge of allegiance (*Bay'ah*). By giving her *Bay'ah* to him over *Khilafah* she effectively appointed him as her representative. Through this *Bay'ah* the *Khilafah* is concluded to him, he therefore possesses the authority (*Sultan*) through the *Ummah* and they are obliged to obey him.

The man who rules the Muslims does not become Khaleefah unless the pledge of allegiance, i.e. the *Bay'ah* was given to him by the influential people (*Ahlul Hall Wal Aqd*) from amongst the *Ummah*, with choice and content. He should fulfil all the conditions required for concluding the *Khilafah* to him, and thereafter proceed to implement the *Ahkam Shari'ah*. With regards to his title, it could be the Khaleefah, or the *Imam* or the *Ameer* of the believers. These titles have been narrated in sound *Ahadith* and in the *Ijmaa'* of the *Sahaba*. The *Khulafaa' Ar-Rashidoon* (first four *Khulafaa'*) have held such titles. Abu Said Al-Khudri reported that the Messenger of Allah ﷺ said:

((إذا بُوعَ خَلِيفَتَيْنِ فَاقْتُلُوا الْآخَرَ مِنْهُمَا))

“If the *Bay'ah* has been taken for two *Khulafaa'* kill the latter of them.” [Narrated by Muslim] ‘Abdullah ibn al-A‘as reported that he heard the Messenger of Allah ﷺ say:

((...وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفْقَةً يَدِهِ، وَثَمَرَةً قَلْبِهِ فَلْيَطْعَهُ))

“Whoever pledged allegiance to an *Imam* giving him the clasp of his hand and the fruit of his heart shall obey him as long as he can...” [Narrated by Muslim] Auf Ibnu Malik reported: I heard the Messenger of Allah ﷺ say:

((خِيَارَ أُمَّتِكُمُ الَّذِينَ تَحِبُّوهُمْ وَيَحِبُّونَكُمْ، وَتَصْلُونَ عَلَيْهِمْ
وَيَصْلُونَ عَلَيْكُمْ))

“The best of your *Imams* are those whom you love and they love you and who pray for you and you pray for them...” [Narrated by Muslim] As for the title “*Ameer ul-Mu'mineen*”, the first to be called that was ‘Umar ibnul Khattab. Then it continued to be on the title given to those who followed him, at the time of the *Sahabah* and those who followed them. It is not obligatory to adhere to these three titles, rather it is allowed to give whoever takes charge of the Muslims’ affairs other titles. Any other title has, however, to indicate the same meaning such as ‘the ruler of the believers’ or ‘the head of the Muslims’ or ‘the *Sultan* of the Muslims’ or any other title that does not contradict with there meaning. As for titles which carry a specific meaning and which contradict the Islamic laws connected with ruling, such as the title of king or president of the republic or emperor, these are forbidden to be used by whoever takes charge of the affairs of the Muslims because they contradict the meaning of the laws of Islam.

CONDITIONS OF THE KHALEEFAH

The Khaleefah must satisfy seven contractual conditions in order to qualify for the *Khilafah* post and for the *Bay'ah* of *Khilafah* to him to take place legitimately. These seven conditions are necessary. If just one condition is not observed the *Khilafah* contract would not have taken place and it would be considered null and void.

The contracting conditions are:

Firstly. The Khaleefah must be Muslim; the post of *Khilafah* is never allowed for the unbeliever, nor is it allowed to obey him. Because Allah ﷻ says:

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And Allah will never (lan) give the unbelievers any way (of authority) against the believers.” [TMQ An-Nisa: 141]

Ruling is the strongest way for the ruler over the ruled, hence the term ‘lan’ (never) means the categorical prohibition of the unbeliever (*Kafir*) from taking a post of authority over the Muslims, be it the *Khilafah* or any other post of authority. This in turn forbids the Muslims from accepting

the *Kafir* to rule over them.

Besides, the Khaleefah is the person in authority and Allah ﷻ has decreed that the person in charge of the affairs of the Muslims should be Muslim. Allah ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“O you who believe, obey Allah and obey the Messenger and those in authority (*Ulii-Amr*) from amongst you.” [TMQ An-Nisa: 59]

He ﷻ also says:

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ﴾

“When there comes to them some matter touching public safety or fear they divulge it. If they had only referred it to the Messenger or to the people of authority (*Ulii-Amr*) from among them.” [TMQ; An-Nisa: 83]

The phrase “*Ulii-Amr*” has always been mentioned in connection with the Muslims, it has not been mentioned in any other context other than to indicate that the people concerned are Muslims. This proves that they must be Muslims. Since the Khaleefah is the person in authority and it is he who appoints people in positions of authority such as his *Mu’awinoon* (assistants), *Wulab* and *ummal*, he himself must, therefore, be Muslim.

Secondly. The Khaleefah must be male. It is forbidden for a female to be Khaleefah, i.e. the Khaleefah must be a man, not a woman. Al-Bukhari reported on the authority of Abi Bakra that he said: Allah has given me the privilege of a word which I heard from the Messenger of Allah during the days of *Al-Jamal* (the camel), when I was about to join the people of *Al-Jamal* and fight with them: When the Messenger of Allah heard that the people of Persia had appointed the daughter of Chosroes (Kisra), he said:

((لن يفلح قوم ولّوا أمرهم امرأة))

“People who appoint (*Wallaon*) a women as their leader will never succeed.” If the Messenger of Allah ﷺ foretold the failure to those who assign the running of their affairs to a woman this indicates a prohibition. This is because it came in the form of reproach to those who give authority over themselves to a woman by negating their success thus indicative of definite prohibition. So the prohibition of appointing a woman to a position of authority came linked with a connotation (*Qareenah*) that indicates that the prohibition is decisive. Therefore, appointing a woman as a ruler is forbidden (*Haram*). Appointing a woman to a position of authority in this case means appointing her as Khaleefah and any other post connected with ruling. This is because this *Hadith* is related to the issue of ruling not specific to the appointment of Chosroes’s daughter as queen. The *Hadith* is not also general to cover everything but related only to matters regarding ruling and authority, so it does not apply to other than ruling positions.

Thirdly. The Khaleefah must be mature; it is forbidden to appoint a youth (pre-pubescent). Abu Dawoud narrated from ‘Ali Ibnu Abi Talib that the Messenger of Allah ﷺ said:

((رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمَعْتُوهِ حَتَّى يَبْرَأَ))

“Accountability is lifted off three persons: The dormant until he awakes, the boy (adolescent) until he reaches maturity and the deranged until he regains his mind.” In another narration from ‘Ali

((رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ حَتَّى

يَفِيْقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ))

“The pen has been raised off three persons: The deranged in his mind till he restores his mind, the dormant till he wakes up and the adolescent till he reaches maturity.” Therefore, the person for whom the pen is raised is not able to be responsible for himself, and he is not under any liability by *Shar’a*, so it is unlawful for him to become Khaleefah or to hold any post of authority for he is not responsible for his own actions. Evidence is also derived from the fact that the Messenger

of Allah ﷺ rejected the *Bay'ah* of the child. Al-Bukhari narrated from 'Abi Aqeel, Zahra ibn Ma'abed from his grandfather 'Abdullah Ibnu Hisham who reached the time of the Prophet ﷺ and his mother Zainab bint Humair took him to the Messenger of Allah ﷺ and said: 'O Messenger of Allah! Take his *Bay'ah*'. The Prophet ﷺ:

((هو صغير فمسح رأسه ودعا له...))

"He is still a little boy", so he stroked his head and prayed for him. Therefore, if the *Bay'ah* of the little boy is not valid, and he cannot give a *Bay'ah* to a Khaleefah, he evidently cannot be Khaleefah himself.

Fourthly. The Khaleefah must be sane; it is unlawful for a Khaleefah to be insane because the Messenger of Allah ﷺ said:

((رفع القلم عن ثلاثة: عن المجنون المغلوب على عقله حتى

يفيق، وعن النائم حتى يستيقظ، وعن الصبي حتى يحتلم))

"The pen has been raised off three persons: The deranged in his mind till he restores his mind, the dormant till he wakes up and the adolescent till he reaches maturity." The person off whom the pen is raised is not under obligation. Also the mind is the condition for responsibility and for the validity of actions. The Khaleefah enacts the rules and executes all the legal duties, it is therefore unlawful to have an insane Khaleefah because the insane cannot look after himself, nor is he responsible for his own actions, thus he cannot look after the affairs of the people by greater reason (*Bab Awla*).

Fifthly. The Khaleefah must be just ('*Adl*'); it is not allowed for him to be a '*Fasiq*' (rebel). Justice is an obligatory foundation for contracting the *Khilafah* and for its continuity. This is because Allah ﷻ has stipulated that the witness must be just. He ﷻ says:

﴿وَأَشْهِدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

"And seek the witness of two just men from amongst you." [TMQ At-Talaq: 2]

So if the witness must be just, then the Khaleefah who holds a higher

post and rules over the witness himself should, by greater reason, be just. For if justice was stipulated in the witness, its presence in the Khaleefah must exist by greater reason (*Bab Awla*).

Sixthly. The Khaleefah must be a freeman; since the slave is under his master's sovereignty, so he cannot run his own affairs, therefore he has no power to run other people's affairs and be a ruler over them.

Seventhly. The Khaleefah must be able and skilled in carrying out the task of the *Khilafah*; this is an integral part of the *Bay'ah*. One who is unable to do so cannot perform the duty of running the people's affairs by the Book and the *Sunnah* upon which he took the pledge of allegiance (*Bay'ah*).

THE CONDITIONS OF PREFERENCE

The aforementioned are the contractual conditions necessary for the Khaleefah to be appointed. Any other condition, apart from the seven mentioned above, does not constitute a necessary prerequisite for contracting the *Khilafah*. Such conditions however, constitute conditions of preference if the texts relating to them are confirmed, or if they are listed under a rule that has been confirmed by a sound (*Sahih*) text. In order for the condition to be a contractual one it should have evidence that includes a decisive command (*Talab Jazim*) to indicate that it is obligatory. If the evidence does not include a decisive command then the condition becomes only one of preference. No evidence containing a decisive command has been found except for those seven conditions; therefore they alone constitute the contractual conditions. As for the other conditions, whereby a rule has been confirmed as sound, these would constitute conditions of preference only. Therefore, the stipulation that the Khaleefah must be a *Mujtahid* is not a contractual condition because this has not been confirmed by a text indicating a decisive command. Moreover, the duty of the Khaleefah is to rule, so he is not in need of his own *Ijtihad*, as he could ask about a verdict or follow the opinions of a *Mujtahid* and adopt opinions on the basis of his imitation (*Taqlid*), thus it is not necessary for him to be a *Mujtahid*. It is, however, preferable for him to be so, but if he is not his *Khilafah* would still be contracted. The Khaleefah does not have to be brave, nor a shrewd politician or an expert in managing the affairs of the people because

there are no evidences to back these conditions, nor do they come under a divine rule that makes them contractual conditions. It is, however, preferable for the Khaleefah to be brave with vision and opinion. The Khaleefah does not also necessarily have to be from Quraysh. As for what has been reported by Al-Bukhari from Mu'awiya that he said: I heard the Messenger of Allah ﷺ say:

((إن هذا الأمر في قريش لا يعاديهم أحد إلا كبة الله على

وجهه ما أقاموا الدين))

“Verily this matter is within Quraysh. As long as they implemented the *Deen*, if anyone were hostile to them, Allah would throw him on his face.” And what Al-Bukhari narrated on the authority of Ibnu ‘Umar that he said: The Messenger of Allah ﷺ said:

((لا يزال هذا الأمر في قريش ما بقي منهم اثنان))

“This matter would still be within Quraysh even if only two of them remained.” These and other *Abadith*, proved sound and related to the Messenger of Allah ﷺ that the authority is amongst the people of Quraysh, they have actually come in an informative form and not an imperative one. Not one *Hadith* actually carries a command even though they carry a request. Such a request, however, is not a conclusive command because there is no evidence to qualify them for this. No *Hadith* has been linked to any connotation (Qareena) that makes it a conclusive command, which indicates that it is *Mandub* (desirable) and not obligatory. It is, therefore a condition of preference and not a contractual condition. As for Allah’s Messenger ﷺ saying:

((لا يعاديهم أحد إلا كبة الله...))

“if anyone were hostile to them, Allah would throw him on his face.” This indicates prohibition of being hostile to them and not confirmation to his saying:

((إن هذا الأمر في قريش))

“this matter is within Quraysh.” The *Hadith* says that the matter

(ruling) is within them, and it then proceeds to forbid hostility to them. Besides, the word Quraysh is a name and not a description. In *Shari’ah* terminology it is known as a title. And the meaning derived from the title is never considered, because the title has no meaning (*Mafhoom*) at all. Therefore, the mention of Quraysh does not mean that the position of ruling cannot belong to other than Quraysh. So when Allah’s Messenger ﷺ said:

((لا يزال هذا الأمر في قريش))

“Verily this matter is within Quraysh...” and his saying:

((إن هذا الأمر في قريش))

“This matter would still be within Quraysh...” He ﷺ did not mean that it is wrong for it (the ruling) to be in other than Quraysh. He ﷺ meant that it is within Quraysh and, as well, it is valid to be in the hands of others who are not from Quraysh. Thus specifying the people of Quraysh as rulers does not necessarily mean that others are not valid to rule. Therefore, it is a condition of preference and not a contractual condition.

Indeed the Messenger of Allah ﷺ appointed ‘Abdullah Ibn Ruwahah, Zayd Ibnu Harith and Usama Ibnu Zayd to positions of authority and all three were not from Quraysh. Thus the Messenger of Allah ﷺ did appoint people from other than Quraysh to positions of ruling. In this phrase “this matter” (*Amr*), means the authority, i.e. the authority to rule, and this does not only apply to the post of *Khilafah*. The fact that the Messenger of Allah ﷺ did appoint people from outside Quraysh in posts of authority indicates that authority is not exclusively confined to the people of Quraysh, and prevented from others. Therefore, the *Abadith* have mentioned some of the people who are worthy of the *Khilafah* post, to indicate their preference and do not indicate that it is exclusively confined to them or prohibited for other than them.

The Khaleefah does not also have to be Hashemi or ‘Alawi because the Messenger of Allah ﷺ appointed people who were not from Banu Hashim nor from Banu ‘Ali to positions of authority. When he ﷺ went out to Tabuk, he appointed Muhammad Ibnu Maslama as *Wali* over

Madina and he was neither a Hashemi nor 'Alawi. He also appointed Mu'az Ibnu Jabal and 'Amru Ibn al-'A'as over Yemen, neither were of the Hashemi or 'Alawi. In any case, it has been definitely proven that the Muslims gave the *Bay'ah* to Abu Bakr, 'Umar and 'Uthman, and that 'Ali gave the *Bay'ah* to the three of them despite the fact that they were not from Banu Hashim. The *Sahabah* did not object giving the *Bay'ah* to them, and it was not reported that anyone had actually objected giving *Bay'ah* to them, because they were not Hashemites or 'Alawis. This is considered a consensus of the *Sahabah*, (*Ijmaa'*) including 'Ali and Ibnu Abbas and Banu Hashim's entire household, that the Khaleefah could be from other than a Hashemi or an 'Alawi. As for the *Ahadith* expressing a preference of 'Ali and the Messenger of Allah's household, these do not indicate that the *Khilafah* can't be contracted except to them, they rather indicate that they are more favourable to it.

The above clearly indicates that there is no evidence whatsoever stating that there are other contractual conditions apart from the seven previously outlined. Any other condition constitutes a condition of preference and not a contractual one if the text expressing such a condition has been proven genuine or such a condition has come under a rule (*Hukm*) derived from a sound text. Under *Shari'ah* law, what is required is the contractual condition for the *Khilafah* to be contracted to the Khaleefah. Apart from this, the Muslims will be told about it when the candidates are presented to them, so that they can elect the one whom they prefer. Any man whom the Muslims choose would be appointed Khaleefah if the contractual conditions were fulfilled regardless of the other conditions.

CONTRACTING OF THE KHALEEFAH

The *Khilafah* is a contract based on mutual consent and choice, it is a *Bay'ah* of obedience to whoever is entitled of obedience of people in authority. It is therefore imperative to have the consent of the one who is given the *Bay'ah* to take the post, and of those who give him the *Bay'ah*. Thus, it is forbidden to force anyone to become Khaleefah if he rejected the post of *Khilafah*. He should not be forced to accept it. Under such circumstances another person would then have to be considered to fill the post. It is also forbidden to take the *Bay'ah* from the people by force or by using coercion because in this case the contract would be

invalid. Mutual consent and choice have to be observed without any compulsion as in any other contract. However, if the *Bay'ah* has been contracted by those whose *Bay'ah* is reliable then the *Bay'ah* would be considered valid and concluded, and the person for whom the *Bay'ah* was given would become the person in authority, his obedience would subsequently become compulsory. If afterwards the rest of the people were to give him their *Bay'ah*, it would be a pledge (*Bay'ah*) of obedience and not of contracting the *Khilafah*. Only then could he force the people to give him the *Bay'ah*, because, at this stage, it would be imposing on them obedience to him, and this is compulsory under *Shari'ah* law. In this case it would not be a *Bay'ah* of contracting the *Khilafah*. Some people may claim that it is forbidden to coerce people to give their *Bay'ah*. Firstly, the *Bay'ah* is a contract that would only be valid if mutual consent and choice (within the Islamic *Shari'ah*) was observed. Once the *Bay'ah* has been concluded it would become a *Bay'ah* of obedience, i.e. submission to the order of the Khaleefah, where compulsion would then become lawful as an execution to the command of Allah. Since the *Khilafah* is a contract, it cannot take place without a contractor. It is like the judiciary, where a man cannot become a judge unless somebody had appointed him as such. The same applies to the Imara; a man cannot become *Ameer* unless somebody had appointed him as an *Ameer*. So a man cannot become a Khaleefah unless somebody had appointed him into the *Khilafah* post. This indicates that no man assumes the post of *Khilafah* unless the Muslims appointed him to the post, and he would not possess the mandatory powers of the *Khilafah* unless it was first contracted to him. This contract would not be concluded unless two parties existed, one party would be the one seeking the post of *Khilafah* (the potential Khaleefah) and the other party would be the Muslims who accepted him to be their Khaleefah. Therefore, for the *Khilafah* to be contracted the *Bay'ah* of the Muslims is necessary.

THE VERDICT ON THE USURPER

If a usurper were to seize power by force he would not become Khaleefah, even if he declared himself to be the Khaleefah of the Muslims. This is because the *Muslims* in this case would not have contracted the *Khilafah* to him. If he were to take the *Bay'ah* from the people by force and coercion he would not become Khaleefah even if the *Bay'ah* was given to him. This is because a *Bay'ah* that is taken by force and

coercion is not considered valid and the *Khilafah* cannot be concluded by it. For it is a contract based on mutual consent and choice and cannot be concluded forcefully or by coercion. The *Khilafah* cannot therefore be concluded except by a *Bay'ah* of consent and choice. However, if the usurper managed to convince the people that it would be in the interest of the Muslims to give him their *Bay'ah* and that the implementation of the *Shar'a* rules obliges them to give the *Bay'ah*, and they were convinced of that and accepted it and then gave him the *Bay'ah* by consent and free choice, he would become Khaleefah from the moment that the *Bay'ah* was given to him by consent and choice. This is the case, even though in the first place he seized the authority by coercion and force. The condition is giving the *Bay'ah* and that it must be by mutual consent and free choice, regardless of whether the one who was given the *Bay'ah* was the ruler or not.

BY WHICH PEOPLE IS THE *KHILAFAH* CONTRACTED?

From reviewing what took place in the *Bay'ah* of the *Khulafaa' Ar-Rashidoon* and the consensus of the *Sahabah (Ijmaa')*, one can conclude that the *Khilafah* is contracted by the *Bay'ah*. In the *Bay'ah* to Abu Bakr, the *Bay'ah* from the influential figures amongst the Muslims, (*Ahlul Hall Wal 'Aqd*) in Madina alone was enough to contract the *Khilafah*. The Muslims of Makkah were not consulted, nor were those living in other parts of the Arabian Peninsula, indeed they were not even asked about their opinion concerning the matter. This was also the case in the *Bay'ah* to 'Umar. With regards the *Bay'ah* to 'Uthman, 'Abdul Rahman Ibnu 'Awf asked the Muslims of Madina regarding their opinion and he did not merely content himself by asking the influential people. When the Oath was taken for 'Ali, most of the people of Madina and Kufa gave him their *Bay'ah*, and he was singled out in the *Bay'ah*. His *Bay'ah* was valid even for those who opposed him and fought against him because they never actually gave their *Bay'ah* to another man nor did they object to his *Bay'ah*. They rather demanded revenge for the blood of 'Uthman (for his killing). So the verdict regarding them was that they were rebels who withdrew from the Khaleefah over one particular issue. In this instance the Khaleefah had to explain the situation to them and fight against them. These rebels did not establish another *Khilafah*.

All of this occurred in the past - the *Bay'ah* for the Khaleefah by the

people of the capital to the exclusion of the other regions - in the presence of the *Sahabah*. Nobody objected to or condemned that such action be confined to the people of Madina. This is considered to be a general consensus of the *Sahabah (Ijmaa')* that states that those who represent the Muslims' opinion in matters relating to ruling can contract the *Khilafah*. This is simply because the influential people and the majority of the people of Madina, were the majority of those who represented the opinion of the *Ummah* regarding the ruling matters, all over the territories of the Islamic State at the time.

Therefore, the *Khilafah* is contracted if the *Bay'ah* was taken from those who represent the majority of the Islamic *Ummah* that lives under the authority of the (last) Khaleefah, in whose place another Khaleefah is sought to be appointed, as it was the case at the time of the *Khulafaa' Ar-Rashidoon*. Their *Bay'ah* would constitute a *Bay'ah* of contract, while for the others, once the *Khilafah* has been contracted; their *Bay'ah* would be classed as a *Bay'ah* of obedience, i.e. a *Bay'ah* of allegiance to the Khaleefah and not a *Bay'ah* of contract.

This would be the case if there was a Khaleefah who died or was removed and a new Khaleefah was sought to replace him. However, if there was no Khaleefah at all in office, and the Muslims were under obligation to appoint a Khaleefah for them to implement the rules of the *Shar'a* and to convey the Islamic call to the world. This has been the case since the destruction of the Islamic *Khilafah* in Istanbul in the year 1343 Hijri (1924). Every country in the Islamic world would be eligible to give *Bay'ah* to a Khaleefah and thus the *Khilafah* would be contracted to him. If any country throughout the Islamic world gave *Bay'ah* to a Khaleefah and the *Khilafah* was contracted to him, then it would become an obligation on all the Muslims living in all the other countries to give him the *Bay'ah* of obedience, i.e. the *Bay'ah* of allegiance after the *Khilafah* was contracted to him by the *Bay'ah* of the Muslims in his country. This is regardless of the size of that country, big like Egypt, Turkey and Indonesia or small like Jordan, Tunisia and Lebanon. However, this country must fulfill four conditions:

Firstly. The authority in that country must depend on the Muslims only and should not depend on a non-Islamic country or a non-Islamic influence.

Secondly. The security of the Muslims in that country must be guaranteed in the name of Islam, not in the name of *Kufr*. This means that the protection of the country against domestic or foreign threat should be a protection of Islam solely by a Muslim force, in its capacity as a purely Islamic force.

Thirdly. The implementation of Islam should take place with immediate effect in a comprehensive and radical manner, and that country must be involved in conveying the Islamic Call.

Fourthly. The Khaleefah must fulfil all the contractual conditions; although he needs not fulfil the conditions of preference, since what really matters are the conditions of the contract.

Should that country satisfy these four conditions then the *Bay'ah* of that country alone would have established the *Khilafah*, even if it did not represent the majority of the influential people within the Islamic *Ummah*. This is because establishing the *Khilafah* is an obligation of sufficiency (*Fard Kifayah*), and whoever performs that duty legitimately would then have accomplished the obligation. However, stipulating that the *Bay'ah* should be by most of the influential people would only apply if the *Khilafah* existed and a Khaleefah was sought to succeed the deceased Khaleefah or one who had been removed. But if there was no *Khilafah* at all and we sought to establish one, then the fact that it was established legitimately, the *Khilafah* would be contracted to any Khaleefah who fulfilled the contractual conditions, regardless of the number of Muslims who had given him the *Bay'ah*. For what matters at that point in time is the establishment of a duty that Muslims have neglected for a period that has exceeded three days. Their neglect of that duty would strip them of their right to choose whom they want. Therefore, under these circumstances, whoever performs the duty would be enough for the *Khilafah* to be contracted by them. Once the *Khilafah* was established in that country, and the *Khilafah* was effectively contracted to a Khaleefah, all the Muslims would be obliged to come under the banner of the *Khilafah* and give their *Bay'ah* to the Khaleefah, otherwise they would be sinful before Allah ﷻ. The Khaleefah should invite them to give the *Bay'ah* to him. If they were to refuse then the verdict regarding the rebels (*Bughat*) would apply on them, and the Khaleefah should fight against them until they entered under his loyalty. If the *Bay'ah* were to be given

to another Khaleefah in that country, or in any other country for that matter, once the *Bay'ah* had been given to the first Khaleefah, and the *Khilafah* had been legitimately contracted to him with the four conditions being fulfilled. The Muslims would then be obliged to fight against the second 'Khaleefah' until he had given his *Bay'ah* to the first Khaleefah. It has been narrated on the authority of 'Abdullah Ibnu 'Amru Ibn al-'A'as that he heard the Messenger of Allah ﷺ say:

((...ومن بايع إماماً فأعطاه صفقة يده وثمرة قلبه فليطعه إن

استطاع، فإن جاء آخر ينازعه فاضربوا عنق الآخر))

"Whoever pledged allegiance to an *Imam* giving him the clasp of his hand and the fruit of his heart shall obey him as long as he can, and if another comes to dispute with him you must strike the neck of that man." The Khaleefah is also the one who unites the Muslims under the banner of Islam. So once the *Khilafah* was established, the *Jama'ah* (community) of the Muslims would have existed, and it becomes an obligation upon the Muslims to join it, and it is a sin to alienate oneself from it. Al-Bukhari and Muslim narrated from Ibnu 'Abbas that the Messenger of Allah ﷺ said:

((مَنْ رَأَى مِنْ أَمِيرِهِ شَيْئاً يَكْرَهُهُ فَلْيَصْبِرْ عَلَيْهِ، فَإِنَّهُ مَنْ فَارَقَ

الْجَمَاعَةَ شَبْرًا فَمَاتَ إِلَّا مَاتَ مِيتَةً جَاهِلِيَّةً))

"If anyone sees in his *Ameer* something that displeases him, let him remain patient, for behold! He who separates himself from the *Jama'ah* (community) by even so much as a hand span and dies thereupon he has died the death of *Jahiliyyah*." Muslim also reported on the authority of Ibnu 'Abbas that the Messenger of Allah ﷺ said:

((مَنْ كَرِهَ مِنْ أَمِيرِهِ شَيْئاً فَلْيَصْبِرْ عَلَيْهِ، فَإِنَّهُ لَيْسَ أَحَدٌ مِنَ

النَّاسِ خَرَجَ مِنَ السُّلْطَانِ شَبْرًا فَمَاتَ عَلَيْهِ إِلَّا مَاتَ مِيتَةً

جَاهِلِيَّةً))

"If anyone sees in his *Ameer* something that displeases him let him

remain patient, for if anyone separates himself from the *Sultan* (authority) by even so much as a hand span and dies thereupon, he has died the death of *Jahiliyyah*.” We gather from these two *Ahadith* that adherence to the *Jama’ah* (the community) and to the *Sultan* (authority) is obligatory.

The non-Muslims have no right in the *Bay’ah*. This is because it is a *Bay’ah* on Islam, i.e. on the Book of Allah ﷻ and on the *Sunnah* of His Messenger ﷺ. It necessitates *Iman* (belief) in Islam, in the Book and the *Sunnah*. The non-Muslims can’t be in the ruling positions nor can they elect the ruler, because there is no way (power) for them over the Muslims, and they have no say in the *Bay’ah*.

WHO APPOINTS THE KHALEEFAH?

The Legislator (*Ash-Shari’*) has given the authority to the *Ummah*, and made the appointment of the Khaleefah by all Muslims. He ﷻ has not confined it to a particular group to the exclusion of another group, nor to a particular section to the exclusion of another section, thus the *Bay’ah* is an obligation on all Muslims:

((...مَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةُ مَاتَ مِيتَةً جَاهِلِيَّةً))

“Whoever dies while there was no allegiance (*Bay’ah*) on his neck he dies a death of the days of ignorance (*Jahiliyyah*).” [Narrated by Muslim from ‘Abdullah Ibn ‘Umar] This applies to every Muslim. It therefore, follows that the prominent figures are not the only people eligible to appoint the Khaleefah to the exclusion of other Muslims. Those eligible to appoint the Khaleefah are not a specific group of people; rather this right belongs to all Muslims without exception, even to the hypocrites (*Munafiqeen*) and the wrongdoers (*Fujjar*), so long as they are mature Muslims. This is because the relevant texts came in a general form, nothing else has been reported to specify them except the rejection of the *Bay’ah* of the child who is under the age of maturity, and therefore they remain general in their scope.

Although, it is not a condition for all the Muslims to exercise this right, even though it is their right. Although it is an obligation on them, since the *Bay’ah* is obligatory, the obligation is one of sufficiency (*Fard Kifayah*)

and not an individual obligation (*Fard ‘Ayn*). Accordingly, if some of the Muslims performed it the rest of the *Ummah* would be exempted. Nevertheless, the whole of the *Ummah* should be enabled to exercise their right of appointing the Khaleefah, regardless of whether they utilised this right or not. In other words, every Muslim should be able to participate in appointing the Khaleefah, by genuinely enabling him to do so. Therefore, the point at issue is in enabling the Muslims to perform that which Allah ﷻ has ordained upon them of appointing the Khaleefah in a way that would exempt them of this duty and not the actual exercise of that duty by all the Muslims. This is because the obligation that Allah ﷻ ordained on them is to appoint the Khaleefah by the Muslims and by their consent, and not obliged upon all Muslims to appoint him. Two issues could actually arise from this matter: One is that the consent of all the Muslims of his appointment was realised; the other is that the consent of all the Muslims of this appointment was not achieved, although, in both cases, the Muslims were genuinely enabled to exercise this right.

As far as the first issue is concerned, it is not stipulated to have a specific number of those who appoint the Khaleefah. In Actuality any number of Muslims who give their *Bay’ah* to the Khaleefah, whereby the consent of the Muslims is achieved by their remaining silent, or by pledging allegiance and obedience to him, or by any other similar sign which indicates their approval, can appoint the Khaleefah. Thereupon, the appointed Khaleefah becomes the Khaleefah of all the Muslims and he would be the lawful Khaleefah according to the *Shari’ah*, even if only five people appointed him. This is because they would be regarded as a valid group able to appoint a Khaleefah. Consent would be achieved through the Muslims remaining silent and pledging obedience or the like, on condition that this should be carried out with absolute flexibility of choice and with the necessary steps taken to enable everyone to voice his (or her) opinion should they wish to do so. If the consent of all the Muslims was not achieved then the appointment of the Khaleefah would not take place unless a group of Muslims undertook the task of appointing him and in so doing the consent of the populace is achieved, i.e. the majority, regardless of the number of that group. In this context, some learned scholars have concluded that: The appointment of the Khaleefah can be carried out if he is given the *Bay’ah* by the *Ahlul Hall Wal Aqd* because they - the scholars - regard them as being the group which represents the opinion of the Muslims at large, and those who

are able to give the *Bay'ah* to any man who satisfies the contractual conditions. However, the *Bay'ah* of the *Ahlul Hall Wal 'Aqd* does not actually make the appointment of the Khaleefah a forgone conclusion. Their *Bay'ah* is by no means a precondition which makes the appointment of the Khaleefah lawful. The *Bay'ah* is merely a sign indicating that the consent of the Muslims has to be achieved, since they are regarded as the representatives of the Muslims. Any indication that the consent of the Muslims has been realised by the *Bay'ah* of a Khaleefah makes the appointment legal and binding.

Therefore, the *Shar'ai* verdict is executed if a group of people appointed a Khaleefah and in so doing the consent of the Muslims was achieved by any indication. It could also be by the *Bay'ah* of the majority of the *Ahlul Hall Wal 'Aqd* or by themselves being the representatives of the Muslims, or by the silence of the Muslims about the *Bay'ah* of the Khaleefah whom they had given the *Bay'ah* to. It could also be by the Muslims rushing to pledge allegiance and obedience on the strength of such a *Bay'ah*, or by any other means or indications so long as they had been fully enabled to voice their opinion. The *Shari'ah* verdict does not contain any provisions maintaining that such an indication must be arrived at through the *Ahlul Hall Wal 'Aqd* or that they should constitute five or 500 people or more or less, nor that they need be the inhabitants of the capital or the provinces. The *Shari'ah* rule merely states that with their *Bay'ah* the consent of the majority of the Muslims is achieved according to any indication that reflects such consent. This means that the right to vote has been guaranteed, and their ability to voice an opinion has not been curtailed.

In this context, "all the of Muslims" means those Muslims living in that country under the rule of the Islamic State, i.e. those who were the subjects of the previous Khaleefah, if the *Khilafah* was (already) established, or those through whom the Islamic State would be re-established, and by whose *Bay'ah* the *Khilafah* would be contracted if the Islamic State was not established and they had worked towards establishing it so as to resume the Islamic way of life. The *Bay'ah* of the other Muslims would not be considered as a condition, nor would their consent be considered as such. This is because they would either be outside the authority of Islam, or living in *Dar-ul Kufr* and unable to join *Dar-ul Islam*. In either case, they would not have the right to give the

Bay'ah of contract but they should give the *Bay'ah* of obedience. Those who do not submit to the authority of Islam would be considered rebels (*Bughat*). Those living in *Dar-ul Kufr* were thus evidently unable to achieve the establishment of the Islamic authority and therefore they cannot now establish it practically or join it immediately. Thus, the Muslims who possess the right to exercise the *Bay'ah* of contract and those whose consent is conditional for the Khaleefah to be lawfully appointed are the ones through whom the authority of Islam effectively gains its establishment. It would be wrong to say that this is an intellectual matter that has no *Shari'ah* evidence to back it up with. One cannot say this because this is related to the subject of the verdict (*Manat-ul Hukm*) and not the verdict itself. Therefore, it is necessary to explain its reality, rather than bring a *Shari'ah* evidence for it. For instance, the eating of carrion meat is forbidden, now that is the verdict (*Hukm*). To investigate and determine what constitutes carrion meat would be the subject of the verdict, i.e. the *Manat* or the subject that the verdict is related to. Thus the Muslims have to establish a Khaleefah constitutes the *Shari'ah* verdict, and this appointment has to be carried out by consent and choice would be the verdict too, these are what require evidence. Whereas, if we were to ask who constitutes the Muslims by whom the appointment would be carried out and what constitutes the matter which makes consent and choice achievable these would constitute the subject of the verdict (*Manat-ul Hukm*), i.e. the subject for which the '*Hukm*' (verdict) had come to deal with. The conformity of the *Shari'ah* verdict with the subject makes the verdict achievable and accomplished. So the subject that the *Shari'ah* verdict came for should be investigated by explaining its reality.

It would be incorrect to say that the *Manat-ul Hukm* is the reason behind the *Hukm* (*'illat-ul Hukm*) therefore requiring evidence. This is incorrect because the subject (*Manat*) of the verdict is different from the reason (*'illah*) behind the verdict; in fact there is a big difference between the subject and the reason. The reason is what initiates the verdict to be initiated, i.e. it is the thing that indicates the intention of the Legislator behind the verdict. Without any doubt, this requires a *Shari'ah* evidence to indicate and understand the intention of the Legislator for initiating the verdict. As for the subject of the verdict, this is the subject upon which the verdict applies or to which the verdict is related. In other words, it is the issue that the verdict conforms and not its evidence nor its reason (*'illa*). It therefore, follows that the *Manat* is the thing that the verdict is

attached to, i.e. the verdict is brought to deal with it, or solve it. It is not true to say that the verdict is brought because of it, so as to say that it is the reason behind the verdict. Thus, the *ManaT* of the verdict is the non-textual aspect of the *Shari'ah* verdict. To realise it would be other than to realise the reason, for realising the reason would be to understand the text that had come to justify the reason, and this is to actually understand the text (*Naqliyyat*). This is not the *ManaT* either, because the *ManaT* is completely different from the *Naqliyyat*, as it (ie. the *ManaT*) is the reality to which the *Shari'ah* verdict conforms.

THE BAY'AH

The *Bay'ah* is an obligation upon all Muslims and it is also the right of every Muslim, male and female. The evidences concerning the *Bay'ah* being an obligation are numerous; of these is the speech of the Messenger of Allah ﷺ:

((...مَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةُ مَاتَ مِيتَةً جَاهِلِيَّةً))

“Whoever dies while there was no allegiance on his neck dies a death of the days of ignorance (*Jahiliyyah*).” [Narrated by Muslim] The fact that the *Bay'ah* itself indicates that it is the right of the Muslims, is understood from the *Bay'ah* itself, for it is from the Muslims to the Khaleefah, and not from the Khaleefah to the Muslims. The *Bay'ah* of the Muslims to the Messenger of Allah ﷺ has been confirmed in much sound *Ahadith* listed as *Sahih*. In Al-Bukhari, it has been reported that Ubadah Ibnus Samit said:

((بَايَعْنَا رَسُولَ اللَّهِ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ فِي الْمَنْشَطِ

وَالْمَكْرَهِ، وَأَنْ لَا نَنْزَاعَ الْأَمْرَ أَهْلَهُ، وَأَنْ نَقُومَ أَوْ نَقُولَ بِالْحَقِّ

حَيْثَمَا كُنَّا، لَا نَخَافُ فِي اللَّهِ لَوْمَةً لَائِمَةً))

“We pledged ourselves in complete obedience to the Messenger of Allah, in weal and woe, and that we would not dispute the matter (authority) with its people, that we would speak or stand the truth at all times wherever we were and that in Allah's service we would fear the censure of no one.” In Bukhari, it has been narrated on the

authority of Ayyub from Hafsa that Umm Attya said:

((بَايَعْنَا النَّبِيَّ ﷺ فَقَرَأَ عَلَيَّ أَنْ لَا يَشْرُكَنَ بِاللَّهِ شَيْئًا وَهَمَانَا عَنْ

النِّيَاحَةِ فَقَبَضَتْ امْرَأَةٌ مِنْ يَدِهَا فَقَالَتْ: فَلَانَةَ أَسْعَدْتَنِي، وَأَنَا

أُرِيدُ أَنْ أَجْزِيَهَا فَلَمْ يَقُلْ شَيْئًا فَذَهَبَتْ ثُمَّ رَجَعْتُ...))

“We gave our *Bay'ah* to the Messenger of Allah ﷺ, so He ﷺ recited to us ‘they should associate none with Allah’ and he forbade us from wailing. A woman among us withdrew her hand saying: ‘so and so woman has made me happy and I want to reward her’, he ﷺ said nothing, the woman went then came back.” ‘Abu Hurayra reported that the Messenger of Allah ﷺ said:

((ثَلَاثَةٌ لَا يَكَلِّمُهُمُ اللَّهُ يَوْمَ الْقِيَامَةِ، وَلَا يَزَكِّيهِمْ، وَلَهُمْ عَذَابٌ

أَلِيمٌ: رَجُلٌ عَلَى فَضْلٍ مَاءٍ بِالطَّرِيقِ يَمْنَعُ مِنْهُ ابْنُ السَّبِيلِ، وَرَجُلٌ

بَايَعَ إِمَامًا لَا يَبَايِعُهُ إِلَّا لِدُنْيَاهُ، إِنْ أَعْطَاهُ مَا يَرِيدُ وَفَى لَهُ وَإِلَّا لَمْ

يَفْ لَهُ، وَرَجُلٌ يَبَايِعُ رَجُلًا بِسَلْعَةٍ بَعْدَ الْعَصْرِ، فَحَلَفَ بِاللَّهِ لَقَدْ

أَعْطَانِي بِهَا كَذَا وَكَذَا فَصَدَّقَهُ فَأَخَذَهَا، وَلَمْ يُعْطِ بِهَا))

“There are three types of people whom Allah would not talk to nor would He praise or purify them on the Day of Judgement, and they will be subjected to severe punishment: A man who has water to spare and would not give it to the wayfarer, and a man who gives his *Bay'ah* to an *Imam* for his own good, if he gave him what he wanted he would be loyal to him, otherwise he would not, and a man who offers another man goods for sale after *Asr* prayer, swearing by Allah that he was given so much price for it, and so he believed him and took the goods, while he was not given that price for it.” [Narrated by Bukhari and Muslim] Al-Bukhari and Muslim narrated from ‘Abdullah Ibnu ‘Umar, he said:

((كُنَّا إِذَا بَايَعْنَا رَسُولَ اللَّهِ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ يَقُولُ لَنَا

فيما استطعت))

“when we gave our *Bay’ah* to the Messenger of Allah ﷺ, to hear and to obey, he ﷺ used to say to us: ‘As much as you can.’”

Al-Bukhari narrated from Jarir Ibnu ‘Abdullah, he said:

((بايعت النبي ﷺ على السمع والطاعة، فلقني فيما

استطعت، و النصح لكل مسلم))

“I gave my *Bay’ah* to the Messenger of Allah ﷺ to hear and to obey, so he dictated to me: ‘As much as you can, and to give advice to every Muslim.’” Junada Ibnu Aby Umayya said:

((دعانا النبي ﷺ فبايعناه، فقال: فيما أخذ علينا أن بايعنا على

السمع والطاعة في منشطنا ومكرهنا، وعسرنا ويسرنا، وأثرة

علينا، قال: وأن لا ننازع الأمر أهله، إلا أن تروا كفراً بواحاً

عندكم من الله فيه برهان))

“We entered Ubadah Ibnus Samit’s home while he was ill and said to him: ‘May Allah cure you, won’t you tell us a *Hadith* that Allah my reward you for, which you heard from the Messenger of Allah ﷺ?’ He said: ‘The Messenger of Allah ﷺ called us and we gave him our *Bay’ah*, and said: of what he took from us that we pledged to hear and obey, in weal and woe, in ease and hardship and in preference to ourselves and that we would not dispute the matter (authority) with its people’, he said: ‘unless we witness a flagrant act of disbelief which we have proof about from Allah ﷻ.’” [Narrated by al-Bukhari and Muslim]

Thus the *Bay’ah* for a Khaleefah is in the hands of the Muslims, it is their right and they are the ones who give the *Bay’ah* and their *Bay’ah* is the one that makes the *Khilafah* convened to the Khaleefah. The *Bay’ah* is given by a handshake, but it could also be given in writing. ‘Abdullah

Ibnu Dinar said: “I witnessed Ibnu ‘Umar when people agreed on (the *imarah* of) ‘Abdul Malik ibn Marwan, he said: ‘I write herewith that I agree to hear and obey the servant of Allah, ‘Abdul Malik, the *Ameer* of Believers, according to the Book of Allah and the *Sunnah* of His Messenger, and to the best of my ability.’ The *Bay’ah* can also be given by any other means.

However, the *Bay’ah* should only be taken from the adult, as the *Bay’ah* of the child is not valid. Abu Aqeel Zahrah Ibnu Ma’abad reported on the authority of his grand-father ‘Abdullah Ibnu Hisham who lived during the time of the Messenger of Allah ﷺ, that his mother Zainab Ibnatu Hamid took him to the Messenger of Allah ﷺ and said: “O Messenger of Allah ﷺ, take a *Bay’ah* from him”; upon this the Messenger of Allah ﷺ said:

((هو صغير فمسح رأسه ودعا له))

“He is young”, he ﷺ wiped over his head and prayed for him. [Narrated by Bukhari]

As for the wording of the *Bay’ah*, this may vary; it is not restricted to any specific wording. It should, however include the commitment that the Khaleefah acts according to the Book of Allah and the *Sunnah* of His Messenger; and that the person who gives the *Bay’ah* should pledge to obey in weal and woe and in ease and hardship. Once the *Bay’ah* is given to the Khaleefah or the *Bay’ah* of the *Muslims* to him contracted the *Khilafah* to the Khaleefah, then the *Bay’ah* becomes a trust on the neck of the one who gives the *Bay’ah*. Thereafter he is not allowed to withdraw it. It is the right of every Muslim to partake in contracting the Khaleefah. Once the Khaleefah has been contracted, it is not allowed for anyone to withdraw it. It is not allowed for him even if he wanted to do so.. Al Bukhari narrated from Jabir ibn ‘Abdullah ﷺ that a bedouin gave *Bay’ah* to the Messenger of Allah ﷺ on Islam, but he became ill, so he said:

((أقلني بيعتي))

‘Relieve me of my *Bay’ah*’, the Messenger of Allah ﷺ said:

((المدينة كالكير تنفي خبثها، وينصع طيها))

“The town (Madinah) is like the mason’s bellow (or furnace), it gets rid of (cleans) its impurity, and its goodness (scent) manifests (shines).” Muslim also narrated from Nafi’, he said: ‘Abdullah ibn ‘Omar said to me: I heard the Messenger of Allah ﷺ say:

((من خلع يدا من طاعة لقي الله يوم القيامة لا حجة له))

“Whoever withdraws a hand from obedience, he would meet Allah on the day of judgement without having proof for himself.” So breaking the *Bay’ah* to the Khaleefah is a withdrawal of the hand from the obedience to Allah. However, this is the case if his *Bay’ah* to the Khaleefah was a *Bay’ah* of contract, or a *Bay’ah* of obedience to a Khaleefah who had been contracted by the Muslims. But if he pledged himself to a Khaleefah initially, and the *Bay’ah* was not completed to him (the Khaleefah), then he has the right to relieve himself from that *Bay’ah*, in view of the fact that the Muslims, as a whole, did not accept him. So the prohibition expressed in the *Hadith* is focused on withdrawing a *Bay’ah* to a Khaleefah, not to a man for whom the *Khilafah* contract was not completed.

SEEKING THE *KHILAFAH*

To seek the *Khilafah* post and compete over it is lawful to all the Muslims and it is not *Makruh*; no text has ever been listed indicating its prohibition. It has been confirmed that the Muslims competed for it in the hall of Banu Sa’ida while the Messenger of Allah ﷺ was lying on his bed still unburied. It has also been confirmed that the six members of the *Shura* council who were all senior *Sahabah* competed over the post, in the presence of the *Sahabah* and no one had reproached them but rather consented to this competition. This demonstrates that a consensus (*Ijmaa*) of the *Sahabah* has been established about the permissibility of competing for the *Khilafah* post and the permissibility of applying for the post and campaigning for it by putting forward the arguments and opinions, proposals etc for the aim of achieving that goal. As for the prohibition of seeking the *Imarah* (authority) that came in the *Ahadith*, it is forbidding the weak persons, like Abu Dharr, who are not deemed suitable for it. But those who are suitable for the *Imarah* are permitted to seek it by the evidence of the courtyard of Bani Saa’idah and the incident of the six people of the *Shura*. Therefore, the *Ahadith* are specific to

those who are not qualified for the post, whether it was *Imarah* or *Khilafah*, the Messenger of Allah ﷺ did not reproach the one who was qualified for it, the, and he appointed the one who asked for it. Since the Messenger ﷺ appointed the *Imarah* to the one who asked for it. He ﷺ forbade the seeking of *Imarah* regarding the one who seeks it from those who are not suitable. Thus it was not an absolute prohibition.

THE METHOD OF APPOINTING THE KHALEEFAH

When *Sbar’a* made it incumbent upon the *Ummah* to appoint a Khaleefah upon her, it determined for her the method by which the Khaleefah is appointed. This method is proved in the *Kitab*, the *Sunnah* and the *Ijmaa* of the *Sahabah*. This method is the pledge of allegiance (*Bay’ah*). So the *Bay’ah* of the Muslims draws the appointing of the Khaleefah to him in accordance with the *Kitab* of Allah and the *Sunnah* of Rasul Allah ﷺ. The fact that this method is the *Bay’ah* is proved by the *Bay’ah* of the Muslims to the Prophet ﷺ, and from the order of the Messenger to us to pledge *Bay’ah* to the *Imam*. It is important to stress that the *Bay’ah* of Muslims to the Messenger ﷺ was not a *Bay’ah* on Prophethood, but a *Bay’ah* over ruling. This is because it was regarding action not belief. Therefore, Rasul Allah ﷺ was pledged an allegiance as a ruler, and not as a Prophet or a Messenger. This is due to the fact that acknowledgement of the Prophethood and Messengership is linked intrinsically to belief (*Iman*), and not the action of *Bay’ah*. The *Bay’ah* to him ﷺ was only in his capacity as the head of the state.

The *Bay’ah* was mentioned in the *Qur’an* and *Hadith*. Allah ﷻ says:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ وَلَا يَقْتُلْنَ أَوْلَادَهُنَّ وَلَا يَأْتِينَ بِبُهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلَا يَعْصِيَنَّ فِي مَعْرُوفٍ قَبَائِعَهُنَّ﴾

“O Prophet! If the (female) believers come to you to take the oath (*Bay’ah*) that they will not associate (in worship) anything whatever with Allah, that they will not steal,

that they will not commit adultery, that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and they will not disobey you in any just matter (Ma'roof), then receive their oath (Bay'ah).” [TMQ: Mumtahirah: 12]

In another verse, Allah ﷻ says:

﴿إِنَّ الَّذِينَ يُبَايِعُونَكَ إِنَّمَا يُبَايِعُونَ اللَّهَ يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ﴾

“Verily those who pledge their allegiance to you do no less than pledge their allegiance to Allah: The Hand of Allah is over their hands.” [TMQ Al-Fath: 10]

Al-Bukhari narrated: “Ismail told us, Malek told on the authority of Yahya bin Sa’eed who said: Ubadah bin Alwaleed told me, that my father told me on the authority of Ubadah bin-us-Samit who said:

((بايعنا رسول الله ﷺ على السمع والطاعة في المنشط

والمكره، وأن لا ننازع الأمر أهله، وأن نقوم أو نقول بالحق

حيثما كنا، لا نخاف في الله لومة لائم))

‘We have pledged allegiance to the Messenger of Allah to listen and obey in ease and in hardship and that we do not dispute the matter (authority) with its people and that we stand for or speak the truth wherever we were and that in the service of Allah we would fear the blame of no one.’” Al-Bukhari also narrated: “‘Ali bin ‘Abdullah told us, ‘Abdullah bin Yazid, Saeed bin Abi Ayyoub said: ‘Abu Aqeel Zahrah bin Ma’bad on the authority of his grandfather ‘Abdullah bin Hisham who has seen the Prophet, his mother Zainab daughter of Humaid took him to Rasul Allah and said: ‘O Messenger of Allah take his Bay’ah’, the Prophet ﷺ said:

((هو صغير فمسح رأسه ودعا له))

‘He is young’, and he stroked over his head and prayed for him.” Al-Bukhari also narrated: “Abdan told us on the authority of Abi Hamza, from Ala’mash, from Abi Saleh, that Abu Hurayra said:

The Prophet ﷺ said:

((ثلاثة لا يكلمهم الله يوم القيامة، ولا يزكهم، ولهم عذاب

أليم: رجل على فضل ماء بالطريق يمنع منه ابن السبيل، ورجل

بايع إماماً لا يبايعه إلا لدنياه، إن أعطاه ما يريد وفي له، وإلا لم

يف له، ورجل يبايع رجلاً بسعة بعد العصر فحلف بالله لقد

أعطي بها كذا وكذا فصدقه، فأخذها ولم يعط بها))

‘There are three types of people whom Allah would not talk to nor would He praise or purify them on the Day of Judgement, and they will be subjected to severe punishment: A man who has water to spare and would not give it to the wayfarer, and a man who gives his Bay’ah to an Imam for his own good, if he gave him what he wanted he would be loyal to him, otherwise he would not, and a man who offers another man goods for sale after *Asr* prayer, swearing by Allah that he was given so much price for it, and so he believed him and took the goods, while he was not given that price for it.’” [Narrated by Bukhari and Muslim] These three *Ahadith* are explicit that the Bay’ah is the method of appointing the Khaleefah. In the *Hadith* of Ubadah, the Messenger ﷺ took the Bay’ah to listen and obey; this is with respect to the ruler. In the *Hadith* of ‘Abdullah ibn Hisham he refused his Bay’ah because he was still a child, which confirms that it is a Bay’ah over ruling. The *Hadith* of Abu Hurayra is explicit that it was a pledge of allegiance to an Imam, and the word was mentioned without “The” to indicate any Imam. There are other *Ahadith* that refer to the Bay’ah of an Imam. In Muslim, the Messenger of Allah ﷺ said:

((...ومن بايع إماماً فأعطاه صفقة يده ، وثمرة قلبه فليطعه

إن استطاع، فإن جاء آخر ينازعه فاضربوا عنق الآخر))

‘Whosoever pledges allegiance to an Imam by giving him the clasp of his hand and the fruit of his heart, let him obey him if he is able to do so, but if another comes along to dispute with him, then

kill the other.”

Also in Muslim, Abu Saeed Al-Khudri said: The Messenger of Allah ﷺ said:

((إذا بويع لخليفتين فاقتلوا الآخر منهما))

“If two *Khulafaa*’ were pledged allegiance, then kill the latter of them.” Muslim narrated on the authority of Abu Hazim who said: “I accompanied Abu Hurayra five years and I heard him talk about the Prophet ﷺ saying:

((كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي، خلفه

نبي، وإنه لا نبي بعدي، وستكون خلفاء فتكثر، قالوا فما

تأمرنا؟ قال: فؤا ببيعة الأول فالأول وأعطوهم حقهم فإن الله

سائلهم عما استرعاهم))

‘Banu Israel used to be governed by Prophets, every time a Prophet died, another came after him, and there is not Prophet after me. There will be *Khulafaa*’ and they will number many.’ They said: ‘What would you order us to do?’ He ﷺ said: ‘Fulfill the *Bay’ah* to them one after the other, and give them their due right, surely Allah will account them for that which He entrusted them with.’” The texts are explicit in the Book and *Sunnah* that the method of appointing a Khaleefah is by the *Bay’ah*. This was understood and practiced by all of the *Sahabah*. Abu Bakr was pledged a special *Bay’ah* in the hall of Bani Sa’idah, and a public *Bay’ah* in the Masjid. Then others who were absent from the Masjid like ‘Ali ibn Abu Talib gave him the *Bay’ah* later on. ‘Umar was also pledged a *Bay’ah* from the Muslims, as were ‘Uthman and ‘Ali. So the *Bay’ah* is the only legitimate method of appointing a Khaleefah for the Muslims.

The practical forms of the procedure of this *Bay’ah* are clear from the appointment of the four *Khulafaa*’, who directly succeeded the Prophet ﷺ after his death. They were, Abu Bakr, ‘Umar, ‘Uthman, and ‘Ali, may

Allah ﷻ be pleased with them. All of the *Sahabah* remained silent to this and accepted it, it is inconceivable that they could have accepted it if it was against the *Shar’a*. This is because it is related to a vital matter, upon which rely the stature of the Muslims and the preservation of the rule by Islam. If we follow the development of the appointment of those *Khulafaa*’, we find that some Muslims had discussions in the hall of Banu Saidah, and those who were proposed to rule were Sa’d, Abu ‘Ubaydah, ‘Umar, Abu Bakr and none other. As a result of the debate, the *Bay’ah* was given to Abu Bakr. The next day the Muslims were called to the Masjid and in turn pledged their *Bay’ah*. So the *Bay’ah* of the *Saqeebah* was a *Bay’ah* of appointment (contract), by which he became Khaleefah for the Muslims. However, the second *Bay’ah* in the Masjid the following day was a *Bay’ah* of obedience. When Abu Bakr felt that his illness carried with it death, he invited the Muslims and consulted them with regards to who could be a Khaleefah for the Muslims after him. The opinion during these consultations was focused on ‘Ali and ‘Umar and no one else. He continued in making these consultations for three months. When they were complete and he knew the opinion of the majority of the Muslims, he announced to them that ‘Umar would be the Khaleefah to succeed him. Upon his death directly, the Muslims came to the Masjid and pledged their allegiance to ‘Umar for *Khilafah*. So with this *Bay’ah* ‘Umar became the Khaleefah for the Muslims, and not with the consultations, nor with the announcement of Abu Bakr. When ‘Umar was stabbed, the Muslims urged him to nominate a Khaleefah, but he refused. They were forceful in their insistence, so he relented and nominated six. After his death the nominees delegated one of them, namely ‘Abdul Rahman ibn ‘Awf and he in turn consulted the Muslims. They chose ‘Uthman and he became the new Khaleefah, not by the choice of ‘Umar or by the announcement of ‘Abdul Rahman. When ‘Uthman was murdered, the whole of the Muslims pledged allegiance to ‘Ali in Madina and Kufa, so he became Khaleefah with the *Bay’ah* of the Muslims.

So from this, it is clear that the only method, which Islam determined for the appointment of the Khaleefah, is the *Bay’ah* with the consent and selection of the Muslims.

In terms of the practical measures, by which the Khaleefah is contracted before he is pledged allegiance, they may take different styles, as was the case with the *Khulafaa*’ *Ar-Rashidoon*, where no particular style

was adhered to. Each Khaleefah was chosen in a style different from the other. This was witnessed by the *Sahabah*, may Allah be pleased with them, and was by their consent, which represents their consensus *Ijmaa'*. It indicates that it is not incumbent to adhere to a specific style for the appointment process; rather the appointment process may be completed by various styles, as outlined below:

1. A multitude from the people in the centre (capital) of the *Khilafah* state, or the influential people there, or those who represent the majority of the Muslims, or the best prominent people qualified for the post of the *Khilafah*. They may meet after the death of the Khaleefah or his resignation or dismissal, and nominate one or more persons exclusively for the position of Khaleefah, then they choose one of them, in any style they see fitting. Afterwards they give him a pledge of contract to listen and obey in accordance with the Book of Allah ﷻ and the *Sunnah* of the Messenger of Allah ﷺ. Upon completion of this *Bay'ah* of contract, the Khaleefah, or whoever represents him, sits down to receive the *Bay'ah* of obedience from the Muslims. This is like what happened with Abu Bakr after the death of the Prophet ﷺ. *Ansar* met at the *Saqeefah* of Banu Sa'idah to pledge allegiance to their leader Sa'd ibn Ubadah, then Abu Bakr, 'Umar, and Abu 'Ubaydah arrived before the *Bay'ah* to Sa'd was concluded. Serious discussion took place between them and *Shar'ua*, which reached the level of a heated debate. After fair exchanges, the matter turned towards Abu Bakr's favour so he was pledged unanimously by all those in attendance at the *Saqeefah*, except Sa'd ibn Ubadah who abstained. This *Bay'ah* to Abu Bakr in the *Saqeefah* appointed him to the position of Khaleefah. The following are the events that took place in the *Saqeefah*:

Ibn Hisham reported in his book of *Seerah* that Ibn Ishaq said that when the *Ansar* met in the *Saqeefah*, 'Abdullah ibn Abu Bakr narrated from the way of 'Abdullah ibn Abbas that he said that 'Umar said, "...from our news when Allah took His prophet ﷺ to death, the *Ansar* disagreed with us. They met with their leaders in the saqeefah of Banu Saa'idah. 'Ali bin Aby Talib, Zubair bin al-Awwam and others did not join us. The *Muhajiroon* gathered with Abu Bakr, so I said to Abu Bakr; 'Let us rush to these brothers from the *Ansar*.' So we rushed to them..." Then 'Umar continued; "...until we came to them in the Saqeefah of Banu Saa'idah. All of

a sudden there was amongst them a cloaked man. I asked, 'Who is this?' They replied, 'Sa'd bin 'Ubadah.' I then asked, 'What is the matter with him?' They said, 'He is not well.' When we sat down, their speaker said the *Shabadah*, then praised Allah and said, 'After all, we are the *Ansar* of Allah, and the battalion of Islam, and you, the people of the *Muhajiroon*, are part of us. A group of your people rushed in...' Then he said, 'Suddenly they wanted to depose us from our origin and usurp the matter (power) from us.' When he stopped speaking, I wanted to speak. I prepared in my mind a word that I liked, and wished to present it before Abu Bakr and I was hiding my anger from him. Abu Bakr said, 'Oh 'Umar, be patient', so I hated to make him angry. He spoke and he was more knowledgeable and more respected than me. By Allah, he did not leave any good word I had prepared, save he said it or the like of it, or better than it, by his nature until he finished. He said, 'As regards what you said of good (*khair*) in you, you are worthy of it. The Arabs would not acknowledge this matter (power) except to this tribe from Quraish. They are in the heart of the Arabs in terms of lineage and place. I accept from you one of these two men, so give *Bay'ah* to whom you like from them.' He took my hand and the hand of Abu 'Ubaydah bin al-Jarrah while he was sitting between us. I did not hate what he said except that, by Allah, I preferred that I be killed, without becoming sinful, rather than become an *Ameer* over a people whom Abu Bakr is part of."

'Umar continued, "Some speaker from the *Ansar* said, 'I am the one who is most fit and most experienced for it. One *Ameer* is from us and one *Ameer* is from you, Oh people of Quraish.'" He continued; "Noise increased and voices rose until I feared that disagreement would occur. So I said, 'Extend your hand O Abu Bakr.' He extended his hand so I gave him the *Bay'ah*, then the *Muhajiroon* gave him the *Bay'ah*, then the *Ansar* gave him the *Bay'ah*. We leapt over Sa'd bin 'Ubadah. One of them said, 'You killed Sa'd ibn 'Ubadah.' I said, 'May Allah kill Sa'd bin Ubadah.'" Ibn Katheer narrated in the prophetic *Seerah* similar to that.

At-Tabari narrated: "That Abu 'Ubaydah bin al-Jarrah had intervened in the matter (discussion) at the crucial moment. So he stood up and spoke to the *Ansar* and said: "O people of the *Ansar*, you were the first

of those who helped and supported, so do not be the first of those who have changed and reverted”.

When *Al-Ansar* heard these words from Abu ‘Ubaydah they were moved. So Bashir ibn Sa’d from the leaders of Al-Khazraj stood up and said: **“By Allah, even if we were of great advantage in the *Jihad* against the Mushrikeen, and the precedent in this *Deen*, all we only wanted from that was the pleasure of our Lord, the obedience of our Prophet, and to strive for ourselves. It is not fitting that we be insolent in this over the people, and we do not seek the pleasure of this world, for Allah is the Provider of this honour to us. Nonetheless, Muhammad ﷺ is from Quraysh, and his tribe are more appropriate and deserving, and by Allah, I do not want Allah to see me ever dispute with them in this matter. So fear Allah, and do not disagree or contest with them.”**

This word of Bashir was comforting, and the people of Al-Khazraj were convinced by it.

At this moment, Abu Bakr took by the hands of ‘Umar and Abu ‘Ubaydah, as he was sitting between them, and said to the *Ansar*: “This is ‘Umar, and this is Abu ‘Ubaydah, you can pledge allegiance to whoever one of them you wish,” and he called them to stick together, and warned them against dissent.

Umar here, witnessing the argument and fearing of the disagreement, raised his voice and shouted: **“Stretch out your hand Abu Bakr.”** Abu Bakr stretched out his hand, and ‘Umar pledged allegiance to him, saying: **“Did not the Prophet order that you lead, O Abu Bakr, the Muslims in prayer, so you are the *Khaleefah* of Rasoolullah. We are pledging allegiance to you so as to pledge allegiance to the best beloved person by Rasoolullah of us all.”** Then Abu ‘Ubaydah stretched out his hand and pledged allegiance to Abu Bakr, saying: **“You are the best of *Al-Muhajireen*, and the only and second companion in the cave, and the *Khaleefah* of Rasoolullah in prayer, the best of the Muslims in *Deen*. Who else is supposed to come before you, or take care of this matter over you?”**

Al-Bashir ibn Sa’d rushed and pledged his allegiance to Abu Bakr.

Usaid ibn Hudhayr, head of Al-Aws, looked up to his people who witnessed what Bashir ibn Sa’d had done, and said to them: **“By Allah if Al-Khazraj were to be appointed once, they will still have with this the advantage over you, and they would not make to you any share in it with them at all. So stand up and pledge allegiance to Abu Bakr.”** The Al-Aws stood up and did so. Then people rushed and pledged allegiance to Abu Bakr, until the place of the *Saqeefah* was overflowing with the crowds.

The *Bay’ah* of the *Saqeefah* (hall) was thus concluded, and the body of Allah’s Messenger ﷺ was still laid on his bed unburied. Once the *Bay’ah* was concluded, people dispersed from the hall. The next day, Abu Bakr sat in the Masjid, and ‘Umar stood up and addressed the people, apologising for what he uttered that the Messenger of Allah ﷺ had not died, then he went on to say “And verily Allah has left you His Book by which He guided His Messenger, so if you held on to it, Allah would guide you as He did with His Messenger, and verily Allah has united your affairs (authority) over the guardianship of the best man amongst you, the companion of Allah’s Messenger ﷺ and the second man in the cave, so get up and give your *Bay’ah*.” Then all the people did so, and the *Bay’ah* was concluded. Abu Bakr then stood up and addressed the people; it was his first *Khutba* as Khaleefah, He said: “O people, I have been appointed upon you as your leader even though I am not the best amongst you, so if I do right help me, and if do wrong correct me. Truth is a trust and lying is treason, the weak amongst you is strong before me till I return to him his right, Allah willing, and the strong amongst you is weak before me till I take the right from him Allah willing. Any people who abandon *Jihad* in the way of Allah, Allah will strike them with humiliation. If indecency spread amongst any people, Allah would subject them to great tribulations. Do obey me as long as I obey Allah and His Messenger. If I ever disobeyed Allah and His Messenger, I am not entitled to your obedience to me. Get up for prayer, may Allah send His mercy upon you”.

This is briefly how Abu Bakr was elected for the *Khilafah*, and how the *Bay’ah* was given to him. The difference that occurred between the *Ansar* and the *Muhajireen* over the *Khilafah* post was a type of nominating process regarding the post of *Khilafah* from both sides. After Abu ‘Ubaydah and Bashir Ibnu Sa’d gave their speeches, the scale of the

Muhajireen tipped over, then Abu Bakr emerged as favourite and was given the *Bay'ah* by those present in the *Saqeefah* except Sa'd ibn Ubadah. Thus the first *Bay'ah* of the *Saqeefah* was the *Bay'ah* of contract, while the *Bay'ah* of the Masjid, in the next day, was that of obedience.

In this style of appointing Abu Bakr, it is noticed that a multitude of the people of the Noble Madinah, which is the state capital, met and discussed and debated harshly. Some people were nominated for the *Khilafah* post, limited to Sa'd, Abu Bakr, 'Umar and Abu 'Ubaydah. Then the opinion turned to the advantage of Abu Bakr so he was given the *Bay'ah*.

2. That the Khaleefah by his own initiative or by the people's request, resolves to consult the people or the influential people or their leaders and chiefs, when he feels that his life will shortly end, as to whom they want to be a Khaleefah over them after him. Then, the Khaleefah, recommends to them a person to be Khaleefah over them after his death. After the death of the Khaleefah, the Muslims give their *Bay'ah* to the nominated person, so as to be Khaleefah over them. Their *Bay'ah* to him contracts the *Khilafah* to him. Thus he becomes Khaleefah over them with this *Bay'ah* and not through the nomination of him by the previous Khaleefah.

This is like what happened with Abu Bakr when he nominated 'Umar. When Abu Bakr was seriously ill and he thought he was going to die, he spoke to all the people and said: "Verily Allah has sent upon me what you yourselves can perceive (of death), and I do not see anything other than death approaching me because of my disease. So Allah has freed you from your oaths which you gave in the pledge to me, and dissolved my knot binded upon you. He ﷻ has returned the matter of your leadership to you, so appoint over yourselves whichever person you like. This is because if you appointed (somebody) while I am alive it would be more appropriate, so that you do not differ after me.

The people could not agree as to who should succeed Abu Bakr. They returned to him and said: "Our opinion, O Successor to the Messenger of Allah ﷺ, is your opinion." Abu Bakr said: "Perhaps you will disagree (with my decision)?" They said: "No (we will not)". So he said: "Then will you swear by Allah to accept my decision?" They replied: "Yes." Then he

said: "Give me time to see what is best for Allah, His *Deen*, and His servants."

This was a clear authorisation from the Muslims for Abu Bakr to select a Khaleefah for them. It was Abu Bakr who understood what was circulating in the minds of the most senior companions, and because he felt that it was the wish of every one of them to be Khaleefah, he took the oath from them.

With this authorisation, Abu Bakr made numerous consultations with the senior companions. He consulted in confidence with 'Abdul Rahman ibn Awf, 'Uthman ibn Affan, Saeed ibn Zayd, Usayd bin Hudhry. The choice that revolved in his mind was for either 'Umar or 'Ali. However, later on his opinion settled on 'Umar and he consulted the people in an open consultation. He looked over to the people from his house, while his wife and daughter held him and he addressed the people saying: "Do you accept whom I appoint for you? For by Allah, I have not spared any effort regarding my opinion, nor have I appointed a relation." They said: "Yes." He continued saying: "I appoint 'Umar ibn al-Khattab to succeed me, so listen to him and obey him." Then the people replied, "We heard and we will obey". Upon hearing that Abu Bakr raised his hands to the sky and said "O my Lord! I did not want by that choice except their interest, and I feared that they might fall in *Fitna*, so You know better about what I have done to them. I have exerted my opinion for them and appointed upon them the strongest and most concerned of them about what is best for them." The people heard his prayer, and were filled with confidence about his decision. After the death of Abu Bakr, 'Umar went to the Masjid and the people came to him in large numbers to give their *Bay'ah*, and no one stayed back except Talha. 'Umar remained in the Masjid from the morning until *Zuhr* time, and the number of people who came to give their *Bay'ah* increased, until at *Zuhr* time the Masjid was completely full. 'Umar stepped up onto the *Minbar*, one step below the one which Abu Bakr used to stand on, praised Allah, sent blessings to His Prophet, and mentioned Abu Bakr and his points of excellence. He then said: "O people, I am but a man from amongst you, and if it wasn't because I disliked disobeying the request of the successor of the Messenger of Allah (Abu Bakr), I would not have taken charge over you." He then turned his eyes to the sky and said: "O my Lord! I am harsh, so make me soft. O my Lord! I am weak so make me strong. O

Lord, I am miserly so make me generous.” Then he stopped for a while and said: “Verily Allah is testing you with me, and testing me with you, and he has left me with you after taking away my companions. By Allah ﷻ I will not authorise anybody (to dispose) of any of your affairs that reaches to me nor will spare any effort to authorise the efficient and the reliable in any affair that is far from me. If they (the authorised people) did well I would do well with them, and if they did bad I would punish them. Then he rose up, and led the people in prayer. This was the *Bay’ah* for ‘Umar ibn al-Khattab from the people in the Masjid, and it was this that contracted the *Khilafah* to him, and it was this *Bay’ah* that made it obligatory upon the people to obey him.

As for the choice of Abu Bakr it was only a nomination for him to the *Khilafah* post, and a limitation to the nomination of ‘Umar alone. *Khilafah* was not convened to ‘Umar by this nomination, nor was obedience obliged to him. He did not become Khaleefah except after the *Bay’ah* of the people was given to him in the Masjid.

Following up the proceedings of this style, by which ‘Umar ibn Al-Khattab became Khaleefah to the Muslims, we see that it is different from the style by which Abu Bakr was appointed as a successor to the Messenger of Allah ﷺ over the Muslims.

3. While he is dying, by his own initiative or by request from the Muslims, the Khaleefah recommends some people, who are qualified for the position of *Khilafah*, to select after his death, one from amongst themselves by consultation, to be Khaleefah over the Muslims after him, within an assigned period of time that does not exceed three days. After this, the group selects one man from amongst themselves to be Khaleefah, by the style they agree upon. The name of the Khaleefah then is declared to the Muslims, and the *Bay’ah* is taken for him from them, this person becomes Khaleefah of the Muslims by this *Bay’ah*, and not by the selection of that small group, which was recommended by the previous Khaleefah.

This is similar to what happened with ‘Umar ibn al-Khattab when he was stabbed, and later died from that wound. The Muslims came to him and requested him to assign a Khaleefah after him. He said: “Whom should I make Khaleefah? If Abu ‘Ubaydah ibn Al-Jarrah were alive I

would have recommended him to be Khaleefah. If my Lord asked me why, I would say: I heard your prophet say:

((إِنَّهُ أَمِينُ هَذِهِ الْأُمَّةِ))

‘He (Abu ‘Ubaydah) is the secretary of this *Ummah*.’ If Salim, servant of Abu Huzayfah was alive, I would have recommended him. If my Lord asked me why, I would say: I heard Your prophet say:

((إِنْ سَالماً شَدِيدَ الْحُبِّ لِلَّهِ))

“Salim’s love for Allah is great.” One of the Muslims said to him: “Recommend your son ‘Abdullah.” He said: “May Allah fight you, by Allah you did not seek Allah’s pleasure by this opinion. Woe to you! How can I recommend a man who was unable to divorce his wife? There is no desire for us (Aal Al-Khattab) in your affairs. I did not praise it (*Khilafah*) so as to like it to be for anyone from my family. If this matter (of *Khilafah*) was good then we have got our share. If it was bad then it is enough for Aal ‘Umar that one person from them be accounted and be asked about the affairs of the *Ummah* of Muhammad. Really, I exerted myself and I deprived my family. If I managed to save myself sufficiently without sin and without reward, then I am happy.” The Muslims went out from his room and left him to think. Then they referred to him again and asked him to recommend somebody, out of concern for the interest of the Muslims. He said to them: “You have this group whom, when the Messenger of Allah ﷺ died, he was pleased with them, and he said about them: They are the people of paradise: ‘Ali ibn Talib, ‘Uthman ibn Affan, Sa’d ibn Abi Waqqas, Abdur Rahman ibn Awf, Az- Zubayr ibn Al Awwam, and Talha ibn Ubaydullah. Let ‘Abdullah ibn ‘Umar be with them, but let him have only an opinion without having any consideration in the matter of *Khilafah*.” ‘Umar advised these six people to select a Khaleefah, and appointed to them a three-day time limit. After a long talk with them he said: “When I die, consult for three days, and let Suhaib (in these days) lead the Muslims in prayer. Do not let the fourth day come without having an *Ameer* upon you.” He also appointed Abu Talha *Al-Ansari* to protect the gathering and to encourage them in their task, and he said to him: “O Abu Talha, Allah ﷻ has helped Islam by you (i.e. the *Ansar*) so select fifty men from the *Ansar*, and urge these (six) people to select one from amongst them.” He asked Al-Muqdad ibn Al-Aswad to

select the place of the meeting and said to him: “After you put me in my grave, gather these (six) people in a house till they select one man from themselves.” Then he asked Suhaib to monitor the meeting and said to him: “Lead the people in prayer three days, and let ‘Ali, ‘Uthman, Az-Zubayr, Sa’d, ‘Abdul Rahman ibn Awf, and Talha, if he came back (from his travel) and bring in ‘Abdullah ibn ‘Umar, without allowing him any personal interest in the matter, and stand at their heads (i.e. supervise them). If five agreed and accepted one man, while one man rejected, then hit his head with the sword (kill him). If four consented and agreed on one man, and two disagreed, then kill the dissenters with the sword. If three agreed on one man and three disagreed then let ‘Abdullah bin ‘Umar arbitrate. The group that ‘Abdullah ibn ‘Umar judged for, let them select one from them. If they did not accept the judgement of ‘Abdullah ibn ‘Umar, then be (all of you) with the group in which is ‘Abdul Rahman ibn Awf, and kill the rest if they declined to accept what the people agreed upon.” Then he asked them to leave the discussion about the *Khilafah* until he died.

After ‘Umar’s death and his burial, the group that ‘Umar had nominated gathered except for Talha who was in travel. It is reported that their meeting took place in ‘Umar’s house, and ‘Abdullah ibn ‘Umar was with them. They asked Abu Talha *Al Ansari* to shield them. Once they settled, ‘Abdul-Rahman ibn Awf said: “Who would take himself out of it (the *Khilafah*) and preside over the meeting on condition that he gives it to the best among you?” That is, who would renounce his right to the *Khilafah*, on condition that everyone makes him judge (arbitrator), to choose by himself a Khaleefah from amongst them as he deemed fit.” Having said this, ‘Abdul-Rahman ibn Awf waited for an answer but no one answered him, so he went on saying: I myself renounce my right to the *Khilafah*. Upon this ‘Uthman said: “I am the first to accept, for I heard the Messenger of Allah ﷺ say:

((أَمِينٌ فِي الْأَرْضِ أَمِينٌ فِي السَّمَاءِ))

“A trustee on earth is a trustee in the heavens,” Al-Zubayr and Sa’d also said: “We agree”. ‘Ali kept silent; so ‘Abdul-Rahman asked him: “What do you say O Abul Hassan!” ‘Ali replied: “Give me an Oath that you would prefer the truth and not to follow the whims and not to favour any member of your family and not neglect the interest of the *Ummah*”.

‘Abdul-Rahman replied: “Give me (all of you) your Oaths that you would stand with me against whoever changes, and that you would accept whoever I choose for you (on your behalf) and I give you my Oath that By Allah, I shall not favour a relative nor shall I neglect the interest of the *Ummah*.” He took an Oath from them and gave them an Oath himself. Then he started to consult each one of them individually saying: “Apart from yourself, who do you think is worthy of this authority from among this group?” or words to that effect. ‘Ali said: “Uthman.” ‘Uthman said: “‘Ali.” Sa’d said: “Uthman,” so did Al-Zubayr. Then ‘Abdul-Rahman sought the opinion of the prominent figures in Madina, and asked all the Muslims in Madina one by one, men and women. He left no one without asking him about whom, he or she, would like to be the Khaleefah from amongst that group. A group of them chose ‘Uthman and another group chose ‘Ali. ‘Abdul-Rahman found that opinion was split between ‘Uthman and ‘Ali, and that the Qurayshis sided with ‘Uthman.

Once ‘Abdul-Rahman completed his fact finding mission and consulted all the people, men and women, he summoned the Muslims to the Masjid and stood upon the *Minbar* (podium) with his sword on donning the “*Amamah*” (head-dress) which the Messenger of Allah ﷺ gave to him: He stood for a long while then spoke: **“O people! I have asked you openly and secretly about your *Imam*, and I found that you cannot place anyone on the same level as these two men: ‘Ali and ‘Uthman.”** Then he turned to ‘Ali and said to him.

((قُمْ إِلَيَّ يَا عَلِيَّ))

“Come to me O ‘Ali!” ‘Ali stood and walked to the *Minbar* until he came underneath it. ‘Abdul-Rahman took his hand and said: **“Would you give me your *Bay’ah* according to the Book of Allah and the *Sunnah* of His Messenger and the (actions) of Abu Bakr and ‘Umar?”** ‘Ali replied: **“By Allah no, but on my own exertion of that and my knowledge”** - i.e. I would give you my *Bay’ah* according to the Book of Allah and the *Sunnah* of His Messenger according to my own exertion of that and my knowledge of them. As for the actions of Abu Bakr and ‘Umar, I do not adhere myself to them but exert my own opinion.” ‘Abdul-Rahman then released his hand and called: **“Come to me O ‘Uthman!”** He took his hand as he stood on the spot where ‘Ali stood earlier and said to him:

“Would you give me your *Bay’ah* according to the Book of Allah and the *Sunnah* of His Messenger as well as the actions of Abu Bakr and ‘Umar?” ‘Uthman replied, **“By Allah yes.”** Upon this ‘Abdul-Rahman looked up to the roof of the Masjid with his hand clutching that of ‘Uthman and said: **“O Allah! Hear and witness; O Allah, I have put what was in my neck of that (matter) in the neck of ‘Uthman.”** Then people rushed to give their *Bay’ah* to ‘Uthman until they overwhelmed him. Then ‘Ali came pushing his way through to reach ‘Uthman and gave him his *Bay’ah*. Thus *Bay’ah* was concluded to ‘Uthman.

If we examine closely this style by which ‘Uthman was appointed to the post of *Khilafah*, we can realise that it differs from the two previous styles by which Abu Bakr and ‘Umar were appointed.

4. Once the Khaleefah dies, a multitude of Muslims or the influential people (*Ahlul Hall Wal ‘Aqd*) amongst them, or a group from the people of power (e.g. armed forces) approach a person, who is qualified for the post of *Khilafah*. They ask him to take over the post so he agrees to them once he realised the consent of the majority of the Muslims, and takes the *Bay’ah* openly from them. He then becomes Khaleefah through this open *Bay’ah* from the Muslims and accordingly they become obliged to obey him.

Those who request him to become Khaleefah are merely putting him forward as a sole candidate for the *Khilafah* post. However, *Khilafah* is not contracted to him based on this request, but by the *Bay’ah* of the people, given to him.

This is exactly what happened with ‘Ali ibn Abi Talib, when *the rebels killed* Khaleefah *‘Uthman ibn Affan*. Madina remained without a Khaleefah for five days after him. Its *Ameer* during that time was Al-Ghafiqi ibn Harb, one of the rebel leaders. Those leaders requested ‘Ali ibn Abi Talib to take over the post of *Khilafah*. He used to avoid them, then the companions of the Messenger of Allah ﷺ came to him and said: “This man - meaning ‘Uthman - has been killed and people must have an *Imam* and in this time we do not see anybody more worthy of the post than yourself, no one is of more precedence than you and no one is nearer than you to the Messenger of Allah”. He said, “Do not put me forward

for this post, for I would be a better assistant than an *Ameer*”. So they said, “No, by Allah we should not do this until we give you our *Bay’ah*”. He said, “Then this has to take place in the Masjid, for I do not wish for my *Bay’ah* to be secret, nor to be taken except with the consent of the Muslims”. ‘Abdullah ibn Abbas later commented: “I was apprehensive about him coming to the Masjid for I feared that some people would stir up trouble, but he insisted to go to the Masjid. When he entered the Masjid, the *Muhajiroon* and the *Ansar* followed him in and gave him their *Bay’ah*. Then the people gave him also their *Bay’ah* as well as the majority of the Muslims despite the absence of Banu Umayyah and some of the *Sahabah*.”

Thus the *Khilafah* was contracted to ‘Ali ibn Abi Talib through this open *Bay’ah* of the *Sahabah* and the Muslims, and it became obligatory upon the Muslims to obey him by this *Bay’ah*.

If we examine closely the proceedings of this style by which the appointment of ‘Ali ibn Abi Talib was concluded to the post of *Khilafah*, we can clearly see that it differs from the previous three styles by which the three previous *Khulafaa* had been appointed.

5. When there is a *Khilafah* state and there is a council representing the *Ummah* in *Shura* (consultation) and in accounting the rulers, the Muslim members of the council can nominate exclusive candidates for the *Khilafah* from among the persons who are qualified for the post and who satisfy all the conditions necessary for contracting the *Khilafah*.

Once those candidates have been short listed by the council’s members, their names would be announced to the Muslims. A date would then be set to elect one of them to become the Khaleefah. The election would be either carried out by the *Ummah* or by the Muslim members of the *Ummah*’s council, according to what is adopted in the constitution of the *Khilafah* state. The candidate who gets the largest number of votes, whether from the *Ummah*, if voting was carried by the *Ummah*, or from the council, if the voting was carried by the council, his name would then be announced that he got the highest votes, and would then get the *Bay’ah* of contract from the *Ummah*’s council, followed by the general *Bay’ah* from the *Ummah*, as a *Bay’ah* of obedience.

The Muslims are permitted to use the five styles listed above for appointing the Khaleefah over them. This can only take place after the death of the Khaleefah, when the Muslims have a *Khilafah* state, and when Islam is the only system implemented upon them.

If however the Muslims do not have a *Khilafah* state, nor a Khaleefah, and Kufr systems and rules are implemented on them - as is the case with the Muslims today since the *Khilafah* state was destroyed in 1924. The Muslims, or a group from amongst them, or the people of power from amongst them, in one or more of the Muslims countries, can seize power in that country and remove the ruler who governs by the systems and rules of *kufr*, for the purpose of resuming the Islamic way of life and restoring the ruling by that which Allah brought down (ie. Islam). In this case, it is allowed for those who seized power to recommend one man from the Muslims who is qualified to hold authority and who meets all the conditions required for the *Khilafah* post. They would gather the influential people in that country or the majority of them, and request of them to give their pledge (*Bay'ah*) to that person whom they recommended to be a Khaleefah. The influential people would then give him the *Bay'ah* with consent and selection, on the Book of Allah and the *Sunnah* of His Messenger. Such a *Bay'ah* would convene this *Khilafah* to him. Then the Muslims in that country would give him a general *Bay'ah* of consent and obedience. After that he embarks immediately on the implementation of Islam completely and without any delay.

Thus, the *Khilafah* state would return back to life, and the implementation of the rules and systems would start again, and the household in that country would be transformed into an Islamic one (*Dar ul-Islam*).

DESIGNATION OR APPOINTING OF A CROWN PRINCE

The *Khilafah* post is not contracted to a person by a designation or by being named as a crown prince, for it is a contract between the Muslims and the Khaleefah. In order to be contracted it is stipulated that the Muslims should give the *Bay'ah*, and the person they gave their *Bay'ah* should accept it. Designation or appointing of a crown prince does not fulfill that so that cannot contract *Khilafah*. Accordingly, the contract of *Khilafah* is not contracted if a Khaleefah nominated another Khaleefah to

succeed him, for he does not have the right to contract it. *Khilafah* is also the right of the Muslims and not of the Khaleefah, thus the Muslims contract it to whomsoever they wish. Therefore it is wrong as well for the Khaleefah to designate someone else, i.e. to promise him the post. For it would be giving him something he does not own; which legally forbidden. So if the Khaleefah designated another Khaleefah, whether he was his son or his relative or any other, this would be forbidden and the *Khilafah* would never be contracted to him. This is because those who own the contract did not convene it; therefore it would be an uncommissioned contract and thus invalid.

As for the claims that Abu Bakr had designated 'Umar and that 'Umar had designated the "Six" and that the *Sahabah* did not object and kept silent, indicating general consensus. These claims do not in fact indicate the permissibility of designating or appointing of a crown prince. This is because Abu Bakr had not designated a Khaleefah but merely consulted the Muslims regarding whom they wanted to be their Khaleefah, and 'Ali and 'Umar were nominated as candidates. The Muslims then chose 'Umar by a majority during the last three months of Abu Bakr's *Khilafah*. After his death, the Muslims came and gave their *Bay'ah* to 'Umar; only then was the *Khilafah* post contracted to him. For up to that moment, i.e. before the *Bay'ah*, he was not a Khaleefah and the *Khilafah* had not yet been contracted to him, neither by Abu Bakr's nomination, nor by the Muslims choice. It was contracted only when they gave him their *Bay'ah* and when he accepted it. As for 'Umar's designation of the "six", this was merely a nomination for them in response to the Muslims request. Then 'Abdul-Rahman ibn Awf consulted the Muslims as to which of the six they wanted to become their Khaleefah. So most of them chose 'Ali if he adhered to Abu Bakr and 'Umar's actions, otherwise 'Uthman. When 'Ali declined to follow the actions of Abu Bakr and 'Umar', 'Abdul Rahman gave his *Bay'ah* to 'Uthman and then the Muslims gave him their *Bay'ah*.

Therefore, the *Khilafah* was contracted to 'Uthman by the people's *Bay'ah* and not by 'Umar's nomination, nor by the people's choice. For if people had not given him their *Bay'ah* and if he had not accepted the *Khilafah* post. This would not have been contracted. Therefore, the *Bay'ah* of the Muslims to the Khaleefah is fundamental, and it is forbidden to contract *Khilafah* by appointing a crown prince or by designation, for it is

a contract of authority (*Wilayah*) that should fulfill the rules of contracts.

SUCCESSION TO THE THRONE (“WILAYATUL ‘AHD”)

The system of appointing a crown prince for ruling is considered to be a “*Munkar*” (evil act) in the Islamic ruling system and it contradicts Islam completely. This is because the authority belongs to the *Ummah* and not to the Khaleefah. If the Khaleefah represents the *Ummah* in authority, which remains always hers, how could he give this authority to someone else? What Abu Bakr did for ‘Umar was not to appoint him as a crown prince, but merely a selection by the *Ummah* during the lifetime of the Khaleefah, and then the *Bay’ah* took place after his death.

Despite all this, Abu Bakr took a great deal of care in his speech to make it clear that it was not a succession; so he made it dependant on the people’s consent. He addressed the people once his mind was made up about who was going to nominate and he said: “Do you accept the one I designate for you? For by Allah ﷻ have not spared any effort and I have not chosen a relative.” On this same basis, ‘Umar nominated his son ‘Abdullah with the “Six” whom he considered to have the right of selecting a Khaleefah, and stipulated that his son would not have a say in the matter (of *Khilafah*) whatsoever, but would merely voice his opinion, thus making sure that there was not the slightest doubt that it was not an appointment of a crown prince. This was contrary to what Mu’awiya did by appointing his son Yazid that contradicts the Islamic system. The reasons that led Mu’awiya to innovate this “*Munkar*” were:

1. He used to understand the state leadership as monarchy and not *Khilafah*. This was clearly demonstrated in his speech to the people of Al-Kufa once peace was established. He said: **“O people of Al-Kufa! Do you think I fought you over the prayer, *Zakat* and *Hajj*, when I knew all along that you do pray, give the *Zakat* and perform the *Hajj*? No, I fought against you because I wanted to preside over you and over your necks; and Allah has given me that though you disliked it. Beware, any money and blood which has flowed in this *Fitna* will go unavenged, and every condition I accepted (before peace was reached) is under my two feet (i.e. have no value).”**

Ibn Aby Sheebah also narrated in his book (Musannaf) from the way

of Said bin Suwaid, he said: Mu’awiyah prayed the juma’ah for us in the nakheelah, and then he gave us *khutbah* (preach)...

Al-Bukhari also narrated this in the Great History.

Look at him when he admits that he contradicts Islam. He also admitted that he fought people to preside over them and over their necks. He goes beyond this to that which is more offensive and grievous by saying to the people that every condition he agreed to had come under his two feet. Whereas Allah ﷻ says:

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا﴾

“Fulfill your oaths, verily you are responsible for them.” [TMQ Al-Isra’: 34]

From this statement, you can see that he declares that he does not abide by Islam. The manner by which Yazid was elected even clearly demonstrates that he deliberately intended to contradict Islam, for the sake of making him the crown prince according to his own understanding. This is because he sought the opinion of all the people, but nobody agreed with him. He used money, and still nobody responded except those who had no place in society and carry no weight in the sight of the Muslims. Then he resorted to the sword. Historians like Ibn Kathir and Ibn al-Athir narrated that after his *Wulab* (governors) failed to take the *Bay’ah* to Yazid in Hijaz, Mu’awiya went there himself accompanied by the army and loaded with money. He summoned the prominent figures and said to them: “You have known my conduct towards you and my familial ties with you, Yazid is your brother and your cousin. I wanted you to propose Yazid for the *Khilafah*, so that you would be the ones who remove and appoint, who put people in authority and collect and distribute the funds. ‘Abdullah ibn Al-Zubayr replied to him that he should either choose what the Messenger of Allah ﷺ did, when he ﷺ did not designate anyone, or what Abu Bakr did, or what ‘Umar did? Mu’awiya became angry and he asked the rest of the people, and their reply was the same as Ibnul-Zubayr. Upon this Mu’awiya said: **“You have been warned! I am going to speak a word, and I swear by Allah that if any of you replied to me by uttering a word on that occasion, he would not utter another word before the sword had reached his neck. So every man has only to spare himself.”** Then he

ordered the chief of his guards to place two men behind every prominent person of Hijaz and every opponent, with the instructions that if any of them answered him back with agreement or disagreement, to strike his neck with their swords.

Thus, Mu'awiya executed his plan in appointing his son Yazeed.

The basis upon which Mu'awiya depended on in appointing his son Yazeed after him contradicts Islam. 'Umar described it by saying: **"If a man gave authority to someone because of a relationship or a friendship between them while there were among the Muslims men better qualified than him, he would betray Allah, His Messenger and the believers."**

2. Mu'awiya manipulated the *Shari'ah* texts and misinterpreted them. Islam has left the right of choosing the Khaleefah in the hands of the Muslims. The Messenger of Allah ﷺ did so, and he left the matter to the Muslims to choose who was best to run their affairs. However, Mu'awiya misapplied the implementation of the *Bay'ah* by making the ruling after him to his son Yazeed as the Byzantians and Sasans used to do, so he used tricks by taking the *Bay'ah* to Yazeed during his lifetime.

3. Mu'awiya's method of *Ijtihad* in political matters used to be based on benefit. Therefore, he made the *Shari'ah* laws conform to the reality at hand and not to treat it, so he interpreted the rules to conform to that issue. He should have followed the Islamic method of *Ijtihad* by making the Book of Allah ﷻ and the *Sunnah* of His Messenger ﷺ the basis for his *Ijtihad* and not taking the material benefit as a basis. He should have taken the Islamic laws to solve the problems of his time and not take the problems of his time to treat the Islamic laws, by twisting, changing and violating these laws.

It is worth mentioning that appointing the son, as a crown prince did not make the son Khaleefah after his father. He was rather appointed by a new *Bay'ah* that is taken from the people, as a contract and obedience, after the death of the previous Khaleefah. However, the implementation of the *Bay'ah* was sometimes done badly. So, instead of taking it by free will, it was taken by force. Anyhow, the *Bay'ah* was, at all times, the method of appointing the Khaleefah during the life of the Islamic State.

Thus, the Khilafah was convened to him by the *Bay'ah* and not by hereditary transmission or succession to power.

THE TIME TERM OF THE KHALEEFAH

The time term of the Khaleefah in office is not determined by a fixed period. As long as the Khaleefah is abiding by the *Shar'a*, executing its laws and able to perform the duties of the state and the responsibilities of the *Khilafah*, he remains in office. This is because the texts concerning the *Bay'ah* came as indefinite (*Mutlaq*) and they are not restricted to any specific period of time. Anas ibn Malik reported that the Messenger of Allah ﷺ said:

((اسمعوا وأطيعوا، وإن استعمل عليكم عبدٌ حبشيٌّ، كأن رأسه زبيبة))

"Do hear and obey, even if you were ruled by an Abyssinian slave, whose hair is like the raisin." In another narration He ﷺ said:

((يقودكم بكتاب الله))

"As long as he leads you by the Book of Allah." Besides, all the *Khulafaa' Ar-Rashidoon* were given an indefinite (*Mutlaq*) *Bay'ah* which is the one mentioned in the *Ahadith*. They were not of a limited period (in office). Each one of them assumed the post of *Khilafah* until he died; and this represents a general consensus from the *Sahabah* (r.a.), confirming that the *Khilafah* is not of a limited term of office but is unrestricted. Thus if a Khaleefah is given a *Bay'ah*, he remains in office until he dies.

However, if the Khaleefah underwent a change that made him unfit for the post, or necessitated his removal, his term would be terminated and he would be removed. Though this cannot be interpreted as a limitation to his *Khilafah* term, but merely to indicate that a breach of the *Khilafah*'s conditions has occurred. The wording of the *Bay'ah*, confirmed in the *Shari'ah* texts and the general consensus of the *Sahabah* makes the *Khilafah* of an unlimited term of office. It is rather restricted in terms of the Khaleefah's undertaking of what he was given the *Bay'ah* for, i.e. to rule by the Book and the *Sunnah* and to execute their laws. If he did not

uphold the *Shar'ah* or did not implement it, then he must be removed.

THE TIME LIMIT GIVEN TO THE MUSLIMS TO APPOINT A KHALEEFAH

The time limit allowed for the Muslims to appoint a Khaleefah is three days, including their nights. It is forbidden for a Muslim to spend more than three nights without having a *Bay'ah* on his neck. As for allowing a maximum of three nights, this is because appointing a Khaleefah becomes compulsory from the very moment the former Khaleefah dies or is removed. However, it is allowed to delay the appointment as long as the Muslims are involved with the task at hand for three days, including their nights. If the limit exceeds three nights and a Khaleefah is not appointed by that time the matter should be examined: If the Muslims were involved in the appointment of a Khaleefah and failed to do so within three nights for compelling reasons beyond their control and ability, then the sin would fall from their necks. This is because they were endeavouring in their task to perform this duty and were compelled against their will to delay the execution of that duty. Ibn Habbān and Ibn Majāh narrated from Ibn 'Abbas, he said: **“The Messenger of Allah ﷺ said,**

((إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ، وَمَا اسْتَكْرَهُوا عَلَيْهِ))

‘Allah had forgiven my Ummah for the mistake and forgetfulness and that which they were compelled to do.’” But if they were not involved in the task, they would all be sinful until such time that a Khaleefah was appointed. Only then would the sin fall from their necks. As for the sin they had committed by neglecting the duty of appointing a Khaleefah this would not fall from them. It rather remains, and Allah ﷻ would punish them as he would punish for any sin committed by a Muslim for not performing a duty.

As for the evidence of the obligation of the immediate involvement in the *Bay'ah* of the Khaleefah once the post of *Khilafah* becomes vacant is that the *Sahabah* had undertaken that in the Saqee'ah of Bani Saa'idah after the death of the Messenger ﷺ, in the same day and before his burial. The *Bay'ah* of cotract to Abu Bakr took place in the same day, and then

in the next day, they gathered the people in the Masjid to give Abu Bakr the *Bay'ah* of obedience.

With regards to the time limit of three days and two nights which Muslims are given to appoint the Khaleefah, this is because when 'Umar felt that his death was imminent he delegated the people of the *Shura* to appoint a Khaleefah giving them a time limit of three days and instructing them to kill anyone who disagreed with the group once the three days had lapsed. He assigned the execution of such instruction, i.e. killing the one who might disagree, to fifty people from the Muslims despite the fact that the group was of the *Shura* people and the senior *Sahabah*. This took place in the presence of the *Sahabah* and no one has objected or condemned such instruction. This became a general consensus of the *Sahabah* stating that it is forbidden for Muslims to remain without a Khaleefah for more than three days including their nights. The consensus of the *Sahabah* is *Shar'ai* evidence just like the Book and the *Sunnah*.

Al-Bukhari reported from Al-Miswar ibn Makhrama, he said; “Abdur Rahman ibn 'Awf knocked at my door after a slumber in the night, so he knocked on the door till I awoke. He said; ‘I see you sleeping. By Allah, I did not enjoy (was not able to have) enough sleep in these three (nights).’ When the people prayed the *Subh*, the *Bay'ah* was concluded.”

THE UNITY OF THE KHALIFAH

The Muslims are obliged to live in one state, and be ruled by one Khaleefah. It is forbidden for the Muslims in the world to have more than one state and more than one Khaleefah.

It is also necessary that the ruling system in the *Khilafah* State be a system of unity, and forbidden to be a system of union (federation of states).

This is due to what Muslim narrated that 'Abdullah ibn 'Amru ibn al-'Aas said that he heard the Messenger of Allah ﷺ say:

((...وَمَنْ بَايَعَ إِمَامًا ، فَأَعْطَاهُ صَفْقَةً يَدِهِ، وَثَمَرَةً قَلْبِهِ فَلْيَطْعَهُ
إِنْ اسْتَطَاعَ، فَإِنْ جَاءَ آخِرُ يَنْزَعِهِ، فَاضْرِبُوا عُنُقَ الْآخِرِ))

“Whoever pledged allegiance to an *Imam* giving him the clasp of his hand and the fruit of his heart, he should obey him as long as he can, and if another comes to dispute with him, you must strike the neck of the latter.” It has also been narrated by Muslim that Arfajah said: “I heard the Messenger of Allah ﷺ say:

((مَنْ أَتَاكُمْ وَأَمْرُكُمْ جَمِيعٌ عَلَى رَجُلٍ وَاحِدٍ يَرِيدُ أَنْ يَشُقَّ

عَصَاكُمْ، أَوْ يُفَرِّقَ جَمَاعَتَكُمْ فَاقْتُلُوهُ))

‘Whoever comes to you while your affair has been united over one man, intending to divide your power or dissolve your unity, kill him.’” Muslim has also reported it from Abu S’aid Al Khudri that the Messenger of Allah ﷺ said:

((إِذَا بُويعَ لَخَلِيفَتَيْنِ فَاقْتُلُوا الْآخَرَ مِنْهُمَا))

“If the Oath of Allegiance (*Bay’ah*) has been taken for two *Khulafaa*’, kill the latter of them.” Muslim reported that Abu Hazim said: “I accompanied Abu Hurayra for five years and heard him talking about the Messenger of Allah ﷺ.

((كَانَتْ بَنُو إِسْرَائِيلَ تَسُوسُهُمُ الْأَنْبِيَاءُ، كُلَّمَا هَلَكَ نَبِيٌّ خَافَهُ

نَبِيٌّ، وَإِنَّهُ لَا نَبِيَّ بَعْدِي، وَسَتَكُونُ خُلَفَاءُ فَتَكْثُرُ، قَالُوا: فَمَا

تَأْمُرُنَا؟ قَالَ: فُؤَا بَيْعَةِ الْأَوَّلِ فَالْأَوَّلِ، وَأَعْطَوْهُمْ حَقَّهُمْ، فَإِنْ

اللَّهُ سَأَلَهُمْ عَمَّا اسْتَرْعَاهُمْ))

He said: ‘The children of Israel have been governed by Prophets; whenever a Prophet died another Prophet succeeded him; but there will be no prophet after me. There will soon be *Khulafaa*’ and they will number many’, they asked, ‘what then do you order us?’ He ﷺ said, ‘Fulfil allegiance to them one after the other, and give them their dues; for verily Allah will ask them about what he entrusted them with.’” The first *Hadith* demonstrates that if the *Imamah* (*Khilafah*) has been given to someone he should be obeyed, and if another man

comes to dispute his authority, he should be fought and killed if he did not withdraw the claim.

The second *Hadith* demonstrates that when the Muslims are united under the leadership of one *Ameer*, and a person comes along with intent to divide their power and dissolve their unity, his killing becomes compulsory. The two *Abadith* clearly indicate prohibition of dismembering the state, and strong warning against its division, and preventing any breakaway attempt even by using the sword (force).

The third *Hadith* indicates that in the case of the absence of a Khaleefah, due to his death, removal or resignation, then if the *Bay’ah* has been taken for two *Khulafaa*’, the latter of them should be killed, and the more so if they were more than two. This clearly demonstrates that the dismembering of the state is forbidden, which means that turning it into many states is forbidden, rather it must remain one single state.

The fourth *Hadith* indicates that the *Khulafaa*’ would number many after the Messenger of Allah ﷺ. When the *Sahabah* asked him about what he ordered them to do when the *Khulafaa*’ numbered many, he replied that they should fulfil their allegiance to the *Khulafaa*’ one after the other. They start by the first one they gave their *Bay’ah* to, for he would be the legitimate one and he alone should be obeyed. As for the others, they are not to be obeyed for their *Bay’ah* is null and void as well as unlawful. This is because it is forbidden for another Khaleefah to be given a *Bay’ah* while there exists a Khaleefah already in office. This *Hadith* also indicates that obedience to a single Khaleefah is obligatory. Therefore it is forbidden for the Muslims to have more than one Khaleefah and more than one single state.

THE MANDATORY POWERS OF THE KHALEEFAH

The Khaleefah is the state. He possesses all of the mandatory powers of the state, and they are:

It is he who makes the divine rules (*Abkam Shari’ah*) once he adopted them as binding; they would then become laws that have to be obeyed and their violation would not be allowed.

He is responsible for the domestic and foreign policies of the state. He is the supreme commander in chief of all the armed forces and he has full powers to declare war, concludes peace treaties, truces and all other treaties.

He has the power to accept (foreign) ambassadors and to refuse them, as well as the powers to appoint Muslim ambassadors and to remove them.

It is the Khaleefah who appoints and removes the assistants and *Wulah*. They are all responsible before him and before the Council of the Ummah.

It is he who appoints and removes the supreme judge (*Qadhibil-Qudhat*), as well as district administrators, army commanders, chiefs of staff, and the commanders in chief. They are all answerable to him and not to the Council of the Ummah.

It is he who adopts the divine rules, in the light of which the State's budget is drafted, and he decides the details of the budget and the allotted funds required for each department, whether concerning revenues or expenses.

Evidence of these mandatory powers is the fact that the *Khilafah* as a general ruling over all the Muslims worldwide, with the objective of implementing the rules of the *Deen* and carrying the Message of Islam to the world, and this in itself is an evidence. However, the word state is a technical term, whose meaning differs according to the views of the nations. The West considers the state as the land, inhabitants and the rulers, for the state in their view is defined within borders that they call the country. Sovereignty, in their view, belongs to the people, while the ruling, i.e. the authority is collective and not individualistic. Thus the concept of the state became known as the total of the country, the inhabitants and the rulers. Therefore, they have a head of state, i.e. head of rulers, the people, the country (land) and a prime minister. However, in Islam, there are no permanent borders, for the Message of Islam has to be carried to the whole world. Therefore frontiers move with the movement of the authority of Islam to other countries. The term country means the place where a person resides permanently i.e. his home and

town, no more and no less. Sovereignty belongs to the *Shar'a*, not to the people. Thus the rulers are controlled by the will of the *Shar'a*. The *Ummah* is also controlled by the will of the *Shar'a*. The ruling i.e. authority is for individuals and it is not collective. The Messenger of Allah ﷺ said:

((إذا كانوا ثلاثة في سفر فليؤمروا أحدهم))

"If three of you were on a journey, let them appoint one of them as an *Ameer*." [Narrated by Al-Bazzar from ibn 'Umar] He ﷺ also said:

((إذا خرج ثلاثة في سفر فليؤمروا أحدهم))

"If three of you went out on a journey, let them appoint one of them as an *Ameer*." [Narrated by Abu Dawood from Abu S'aid al-Khudri] Muslim narrated from Abu S'aid al-Khudri from the Messenger of Allah ﷺ, that He ﷺ said:

((إذا بويع خليفتين فاقتلوا الآخر منهما))

"If a *Bay'ah* has been taken for two *Khulafaa*', kill the latter of them." Therefore, the meaning of the state in Islam differs from that in other systems. The state in Islam means the authority and ruling, and its mandatory powers are that of the *Sultan*. Since the Khaleefah is the one who holds the authority, he is then the state.

However, when the Messenger of Allah ﷺ established the Islamic State in Madina he was the head of state and he held the authority. Thus all of the authority was in his hands, and all of the powers related to the ruling were his. This was as much throughout his lifetime until he ﷺ died. Then after him came the *Khulafaa' Ar-Rashidoon*, and each one of them enjoyed the full authority and possessed all the mandatory powers related to the ruling. This also serves as evidence that the Khaleefah is the state. Besides, when the Messenger of Allah ﷺ warned against rebellion and disobedience to the *Ameer*, he expressed it as being a rebellion against the authority (*Sultan*). He ﷺ said:

((من كره من أميره شيئاً فليصبر عليه فإنه ليس أحد من

الناس خرج من السلطان شبراً فمات عليه إلا مات ميتة

جاهلية))

“If anyone sees in his *Ameer* something that displeases him, let him remain patient. For behold! He who separates himself from the *Sultan* (authority of Islam) by even so much as a hand span and dies thereupon he has died the death of *Jahiliyyah*.” The *Khilafah* is the leadership over the believers. The Khaleefah is therefore the authority, and he has all the mandatory powers, i.e. he is the state and possesses all the powers given to the state. This is the general evidence about these mandatory powers. As for the listing of these powers enjoyed by the Khaleefah, this is in fact the listing of the powers that exist in the state, so as to explain the detailed rules of these powers.

As for the detailed evidences of the six sections mentioned above, the evidence about section “A” is the general consensus of the *Sahabah*. *Qanoon* (law) is a technical term that means the order that the ruler (*Sultan*) issues so that people abide by it. People of *Qanoon* (law) define it as “the host of principles which the *Sultan* (ruler) compels people to follow in their relations”. So if the *Sultan* issues certain rules, then these rules become law and people have to abide by them. If the *Sultan* does not issue them, then they do not become law and people are not obliged to abide by them. The Muslims follow the rules of *Shar’u*, so they abide by Allah’s ﷻ commands and prohibitions. What they abide by are the commands and prohibitions of Allah, not those of the *Sultan*. Thus they follow the divine rules and not the orders of the *Sultan*. However, the *Sahabah* have differed regarding the *Sharia’ah* rules. Some of them understood from the divine texts matters different to what the others understood. Each one of them complied with what he understood and that represented the rule of Allah for him. However, there are some divine rules related to managing the affairs of the *Ummah* that all the Muslims should abide by according to one single opinion, individuals cannot proceed according to their own *Ijtihad*. This indeed took place in the past. Abu Bakr, for instance, considered it fit to distribute the funds equally among all Muslims for it was their equal right. ‘Umar deemed it wrong to give to those who had fought against the Messenger of Allah ﷺ the same as to those who fought alongside him, or to give to the needy equal to that is given to the wealthy. However when Abu Bakr was the Khaleefah, he forced people to follow his opinion and the judges and

Wulab executed his opinion and ‘Umar submitted to Abu Bakr’s opinion and executed it. When ‘Umar became Khaleefah he enforced his own opinion which differed from that of Abu Bakr. So he ordered the funds to be distributed preferentially and not equally. Thus the Muslims were accorded the funds based upon the length of time they had been Muslims and according to their needs. Muslims abided by this rule, and the judges and *Wulab* executed it. Therefore, a general consensus of the *Sahabah* was established stating that the *Imam* has the right to adopt specific rules and enforce their implementation. Muslims have to abide by such rules even if they disagreed with their own *Ijtihad*, and they must abandon their own opinions and *Ijtihad*. These adopted rules are in fact laws (Canons). Therefore the enactment of laws belongs to the Khaleefah alone and no one else has such a right.

As for section “B”, its evidence is derived from the actions of the Messenger of Allah ﷺ. He ﷺ used to appoint the *Wulab* and judges and hold them accountable to him. He ﷺ used to control trading and prohibit fraud and cheating. He ﷺ used to distribute the funds among the people, and help the unemployed find work. He ﷺ used to run all the state’s internal affairs. He ﷺ as well used to address the kings and meet with the envoys and receive the delegates. He ﷺ also carried out all the foreign affairs of the state. He ﷺ used to effectively take command of the armed forces during the raids and he ﷺ used to lead the battles. He ﷺ used to send out all the expeditions and appoint their leaders. In one instance he ﷺ appointed Usama ibn Zayd at the head of an expedition to Ash-Sham; the *Sahabah* were not pleased with this due to Usama’s young age, but the Messenger of Allah ﷺ forced them to accept his leadership. This proves that he effectively was the commander of the armed forces and not just its supreme Commander in Chief. It was he ﷺ who declared war on Quraysh, and on Banu Qurayzah, Banu Nazir, Banu Qaynuqa’, Khayber and the Romans. All the wars that took place were declared by him ﷺ. This proves that the Khaleefah only has the right to declare war. It was also the Messenger of Allah ﷺ who signed the treaties with Banu Madlij and their allies of Banu Dhumra. He ﷺ signed a treaty with Yuhanna (Jonathan) ibn Ru’ba, the leader of Ayla, and he ﷺ also signed the treaty of Al-Hudaybiyah. The Muslims on that occasion were outraged but he ﷺ ignored their opinion and dismissed their pleas, and went ahead and signed the treaty. This proves that the Khaleefah alone has the mandatory power to sign treaties, whether these were peace treaties or any other.

As for the section “C”, its evidence is that it was the Messenger of Allah ﷺ himself who received the two envoys of Musaylama, and it was he ﷺ who received Abu Rafi’, an envoy from Quraysh. It was also he ﷺ who sent envoys to Heraclius, Khosroes, Al Muqawqis, Al-Harith Al-Ghassani, King of Al-Heera, Al Harith Al-Himiariy, King of Yemen, the Negus of Abyssania (Al-Habashi), and he sent ‘Uthman Ibnu ‘Affan to Quraysh during the Hudaibiyah affair. This proves that the Khaleefah is the one who accepts the ambassadors (envoys) and refuses them and it is he who appoints the ambassadors.

As for section “D”, its evidence is that it was the Messenger of Allah ﷺ himself who used to appoint the *Wulab*. He ﷺ appointed Mu’az as *Wali* over Yemen. He ﷺ used also to remove them; he removed Al-A’la’ ibn Al-Hadhrami from his post as *Wali* of Bahrain after its people complained about him. This indicates that the *Wulab* are responsible before the people of the *Wilayaat* (districts), and before the Khaleefah, as well as the Council of the Ummah, for it represents all the *Wilayahs*. This is concerning the *Wulab*. As for the assistants, the Messenger of Allah ﷺ had two assistants; Abu Bakr and ‘Umar. He did not remove them and appoint others to replace them during his lifetime. However, the assistant derives his authority from the Khaleefah, and since he acts in the capacity of his deputy, the Khaleefah therefore has the right to remove him, by analogy with the representative (agent), for the person has the right to dismiss his representative (agent).

As for the section “E”, its evidence is derived from the fact that the Messenger of Allah ﷺ appointed ‘Ali as judge over Yemen. Ahmad also narrated from ‘Amru Ibn al-A’as, he said: **“Two men disputing with each other came to the Messenger of Allah ﷺ (seeking justice), so he ﷺ said to me**

((اقض بينهما يا عمرو))

‘Judge between them.’ I said ‘You are better and more worthy of that.’ He ﷺ said

((قال: وإن كان))

‘Even though!’ So I said: ‘What shall I have if I judged?’ He ﷺ said

((قال إن أنت قضيت بينهما فأصبت القضاء فلك عشر

حسنات. وإن أنت اجتهدت فأخطأت فلك حسنة))

‘If you judged and you were right, you would get ten rewards and if you get it wrong you would get one reward.’”

‘Umar (may Allah be pleased with him) used to appoint and remove judges. He appointed Sharih as a judge over Kufa and Abu Musa as a judge over Basra. He also removed Shurahbeel ibn Hasna from his post as *Wali* over Ash-Sham and appointed Mu’awiya instead. Shurahbeel said to him:

((أَمِنْ جُبْنٍ عزلتني أم خيانة؟ قال: من كل لا، ولكن أردت

رجلاً أقوى من رجل. وولى عليّ رضي الله عنه أبا الأسود، ثم

عزله، فقال: لم عزلتني، وما خنت، ولا جنيت؟ فقال: إني رأيتك

يعلو كلامك على الخصمين))

“Is it because of an act of disobedience or treason that you removed me?” ‘Umar replied, “Neither, but I wanted to appoint a man who is stronger.” ‘Ali, on one occasion appointed Abu al-Aswad and then he removed him. Abu al-Aswad asked him: “Why did you remove me. I never cheated or committed a crime?” ‘Ali said: “I noticed that your voice rose above the disputing men.” ‘Umar and ‘Ali enacted this in the presence of the *Sahabah* and none of them disapproved or censured their actions. This proves that the Khaleefah reserves the right to appoint the judges in principle. He can also delegate someone to appoint the judges on his behalf, in analogy with representation (*Wakalah*). This is because he reserves the right to assign a deputy for him in any of his mandatory powers as he is allowed to appoint someone to represent him in any of his dispositions.

As for the directors of the state’s departments, the Messenger of Allah ﷺ appointed secretaries for the various departments of the state. They were considered to be directors of those departments. He ﷺ appointed

Al-Mu'ayqeeb ibn Abi Fatimah Ad-Dooci in charge of his stamp and the booty. He ﷺ appointed Huzayfah ibn Al Yaman to assess the harvest of Al-Hijaz, and Zubayr ibn Al-'Awwam to record the funds of the *Sadaqah*. He ﷺ appointed Al-Mughira ibn Shu'ba in charge of registering the debts and various transactions, and so on.

As for the army commanders and chief commanders, the Messenger of Allah ﷺ appointed Hamza ibn 'Abdul Muttalib as commander of an army of thirty riders to confront Quraysh on the seashore. He appointed Muhummad ibn 'Ubaydah ibn Al-Harith at the head of sixty fighters and instructed him to confront Quraysh in the Wadi of Rabigh. He ﷺ also appointed Sa'd ibn Abi Waqqas at the head of an expedition numbering twenty riders and dispatched him towards Makkah. It can be seen therefore, that he ﷺ used to appoint the army commanders, which proves that the Khaleefah is the onewho appoints the commanders and the army chiefs of staff.

All these posts were answerable to the Messenger of Allah ﷺ and nobody else. This indicates that the judges, directors of departments, army commanders, chiefs of staff and various senior officials are answerable to none but the Khaleefah; they are not answerable to the Council of the Ummah. Only the delegated assistants, the *Wulab* and the *'Amils* are responsible before the Council of the Ummah for they are rulers. Nobody else is responsible before the council; rather everyone has to report back to the Khaleefah.

As for section "F", the state budget in terms of the revenues and the expenses is controlled by the *Shari'ah* rules. Not a single dinar is levied except according to a divine rule, nor any single dinar is spent except according to a divine rule. However, the details of the expenditure or what is known as the budget sections, it is left to the Khaleefah according to his *Ijtihad*, as are the details of revenues. It is the Khaleefah, for instance, who decides the amount of the *Kharaj* of land, and the *jizyah* as well as any other levies and revenues. It is the Khaleefah who decides the expenditures allotted for the road works, and hospitals and other sorts of expenditures. All such matters are left to the Khaleefah, and he decides that according to his own *Ijtihad* and opinion. This is because the Messenger of Allah ﷺ used to receive the revenues from the *'Amils*, and spend them. It was he ﷺ who authorised the *Wulab* on some occasions

to receive funds and spend them; this was the case when he ﷺ appointed Mu'az over Yemen. The *Khulafaa' Ar-Rashidoon* then did the same; each one of them collected the revenues and spent them according to his opinion and own *Ijtihad* in his capacity as Khaleefah. None of the *Sahabah* ever disapproved, and nobody ever spent a single dinar without the consent of the Khaleefah. When 'Umar appointed Mu'awiya as *Wali*, he gave him a general *Wilayah* whereby he had powers to collect and spend the funds. All this proves that the Khaleefah or anyone acting on his behalf decides the different sections of the budget.

These are the detailed evidences regarding the mandatory powers of the Khaleefah. These are confirmed by the *Hadith* narrated by Ahmad and Al-Bukhari from 'Abdullah b 'Umar that he heard the Messenger of Allah ﷺ say;

((الإمام راع وهو مسؤول عن رعيته))

"The Imam is a guardian, and he is responsible over his subjects."

This means that all the matters related to the management of the subjects' affairs is the responsibility of the Khaleefah. He, however reserves the right to delegate anyone with whatever task he deems fit, in analogy with *Wakala* (representation).

THE KHALEEFAH'S METHOD OF LOOKING AFTER THE SUBJECTS' AFFAIRS

The Khaleefah has the absolute authority to manage the citizens' affairs according to his own opinion and *Ijtihad*. However, he is forbidden from violating any *Shari'ah* rule under the pretext of benefit (*Maslaha*). For instance he cannot prevent the subjects from importing goods under the pretext of protecting the local industry unless it actually harms the economy of the country. He cannot also set prices for the people under the pretext of preventing exploitation. He also cannot force landlords to rent their properties under the pretext of easing housing, unless there was a pressing need for that, or any other policy that violates the *Shari'ah* rules. He is, therefore, forbidden from prohibiting a *Mubah* action, or allowing a *Haram* one.

This is because of what the Messenger of Allah ﷺ said:

((الإمام راعٍ وهو مسؤول عن رعيته))

“The *Imam* is a guardian and he is responsible over his subjects.” It is also because of the rules that the *Shar’a* gave to the Khaleefah, like his managing of the funds of *Baitul-Mal* according to his own opinion and *Ijtihad*, and like forcing of the people to abide by one specific opinion in one matter, and the like. This *Hadith* gives him the right of exercising his total authority without any restriction whatsoever. The management of the treasury, the adoption of laws, the organising and training of the armed forces and the appointing of *Wulab* and other powers given to the Khaleefah, all these powers are not subject to any restriction. This proves that the Khaleefah looks after the affairs of the subjects as he deems fit without any restrictions, and obedience to him in all such matters is compulsory and disobedience to him is a sin. However, running of the subjects’ affairs has to be performed according to the *Shar’a* rules, namely according to the *Shari’ah* texts. The powers, although they are absolute, but are restricted by *Shar’a* only, that is to be according to the *Shari’ah* rules. For instance, although the Khaleefah has the powers to appoint the *Wulab* as he deems, he cannot appoint a disbeliever or a child or a woman as *Wali* for *Shar’a* has forbidden this. He also, for instance, has the powers to allow the opening of embassies of disbelieving countries in territories under his authority and this power is unrestricted. It would however be wrong for him to allow the opening of an embassy of a disbelieving state which intends to use the embassy as a tool to dominate the Islamic lands, for *Shar’a* forbids this. He also for instance has a free hand in deciding the details of the budget and the amounts needed for each section. However, he cannot endorse a project of building a dam while the revenues of the treasury are not enough for it, under the pretext that he collects taxes to build the dam. This is because if the dam is not indispensable, then it is wrong according to *Shari’ah* to impose taxes to build it. The Khaleefah is thus given a free hand by the *Shar’a* in governing the *Ummah*’s affairs according to what *Shar’a* allows him. However, this freedom of management is conducted according to the *Shar’a* rules. Furthermore, having unrestricted powers in running the government does not mean that the Khaleefah can enact laws that he wants to manage the affairs of the state. Rather, it means that what is left for his disposition it is *Mubah* for him to dispose of it according to his opinion, in whatever way he deems fit. So he can adopt the rule in the matter in which he is allowed to act according to his own opinion, and

obedience to him in this rule becomes compulsory. This is because the *Shar’a* gives him the authority to act according to his own opinion, and commands us to obey him. Thus he has the right to enact such adopted opinion as a law by which people must abide. He, for instance is allowed to manage the treasury according to his own opinion and *Ijtihad*, and people are commanded to obey him in that. He, therefore, has the right to enact the laws of the treasury that, accordingly, must be obeyed. He also has the power to head the armed forces and to run the affairs of the army, and according to his own opinion and *Ijtihad*, and people must obey him in that. Thus he has the right to enact laws for the army leadership, and for administering the army accordingly, and obedience to such laws becomes binding. The Khaleefah has the right to run the affairs of the citizens according to his own opinion and *Ijtihad*, and to appoint those who run these affairs according to his own opinion and *Ijtihad*, and people have to obey him in that. So he has the right to enact laws to administer the departments and laws for the employees. Accordingly, these laws must be obeyed. Therefore, everything that is left to the Khaleefah to act upon according to his own opinion and *Ijtihad*, and is part of his mandatory powers, he has the right to adopt and enact laws for such matters; and compliance with such laws is compulsory. It is not correct to conclude that all styles are *mubah* in essence for everyone to choose. So the Khaleefah is forbidden from specifying a particular style and making it compulsory, for this would be considered as making the *Mubah* action compulsory, since forcing the execution of the *Mubah* is equivalent to making the *Mubah* compulsory, and making the *Mubah* *Haram* by preventing the other styles, a matter which is not allowed. It would be wrong to say this because although *Mubah* is a style in essence, the styles of managing the treasury are *Mubah* for the Khaleefah only and not to other people. Likewise, the styles of running the armed forces are *Mubah* for the Khaleefah only and not for the people. The same is true with running the affairs of the citizens’ affairs. These are exclusively *Mubah* for the Khaleefah and not for all the people. Therefore, the obligation of abiding by the *Mubah* does not make this *Mubah* as *Fard*. It is rather making obedience compulsory in the matters which the *Shar’a* has allowed the Khaleefah to enact according to his own opinion and *Ijtihad*, i.e. in what he chose of opinion and *Ijtihad* to manage the affairs. Though it is *Mubah* that the Khaleefah obliged its execution and prevented other than it, it is however a *Mubah* for the Khaleefah to manage the affairs according to it, because managing the affairs is his

duty, and it is not Mubah for management by all the people. Therefore, the obligation of abiding by the *Mubahaat* which the Khaleefah has adopted for managing the people's affairs in the matters which the *Shar'a* has given him powers to conduct according to his own opinion and *Ijtihad*, is not considered as if the Khaleefah had made the *Mubah* as *Fard* and the *Mubah* as *Haram*. It is rather making obedience compulsory in the matters which the *Shar'a* has allowed the Khaleefah to enact according to his own opinion and *Ijtihad*. So every Mubah the Khaleefah chose to manage the affairs becomes obligatory upon every citizen to abide by. Based on this 'Umar ibn al-Khattab laid down *dawawin*, and based on this the *Khulafaa* enacted certain regulations for their *'Amil* and for the subjects and they obliged them to act upon such regulations and execute them exclusively. Therefore, it is allowed for the Khaleefah to draw up the administrative laws and all the other laws of such nature. His obedience in such laws is compulsory, for it is an obedience to the Khaleefah in whatever he orders in matters which are within the mandate given to him by *Shar'a*.

However, this only concerns the *Mubah* relating to looking after the affairs, namely in whatever matter the Khaleefah is allowed to conduct according to his own opinion and *Ijtihad*. This is in matters such as organising the administration of the state's departments, the organising of the armed forces and other similar matters. It does not apply to all *Mubah* matters, but only in what has been made *Mubah* to the Khaleefah, in his capacity as a Khaleefah. As for the other rules like the *Fard*, *Mandub*, *Makruh*, *Haram* and *Mubah* which relate to all the people, the Khaleefah is restricted by the *Shar'a* rules regarding them, and he is absolutely forbidden from violating them. For Al-Bukhari and Muslim narrated from 'Aisha ؓ that the Messenger of Allah ﷺ said:

((مَنْ أَحَدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ))

“Whoever inserted anything in this our matter (*Deen*) that is not part of it, it is rejected.” This is a general text that includes the Khaleefah and others.

THE KHALEEFAH IS RESTRICTED IN ADOPTION BY THE DIVINE RULES

The Khaleefah is restricted in the adoption by the divine rules. He is

thus forbidden from adopting a rule that has not been correctly extracted from the divine evidences. He is also obliged to restrict himself to the rules he has adopted, and to the method of *Ijtihad* (extracting rules) he committed himself to. Therefore, he is forbidden from adopting a rule that has been extracted by a method contrary to the one he had adopted, nor to issue an order that contradicts the rules that he has adopted.

There are two issues here that need closer examination. The first is the restriction by the *Abkam Shari'ah* of the Khaleefah in his adoption of the *Abkam*. This restricts him in legislation and enacting laws, with the Islamic *Shari'ah*. He is forbidden from adopting any law contradicting *Shari'ah*, for any law that contradicts *Shari'ah* is regarded as *Kufr* law. If he adopted a rule not derived from *Shari'ah* knowingly, then it has to be examined. If he believed in the rule that he adopted, but he would become a disbeliever. If he did not believe in it but took it, understanding that it did not contradict Islam, as the *Khulafaa* of Banu 'Uthman did in their last days, then it would be *Haram* for him to do so, and he would not become a disbeliever. However, if he has a probable evidence (*Shuabhat Daleel*), as is the case for the one who puts a law that has no evidence, but only due to an interest (*Maslahah*) he conceives, referring to the principle of *Al-Masalih Al Mursala*, the undefined interests, or the principle of *Maalat Al-Afa'al*, the consequences of the actions, or the principle of *Sadd Ath-Thara'i*, averting the pretext, or the like. If he deems these as divine principles and evidences, then it would not be prohibited for him and he would not become a disbeliever, but simply mistaken. Accordingly, all the Muslims would regard what he extracted as a divine rule, and they should abide by it if the Khaleefah adopted it. This is because it is a divine rule that had probable evidence, though he was mistaken in the *Daleel* (evidence) for he is like the one who is mistaken in the extraction from the evidence (*Istinbat*). However, the Khaleefah must restrict himself in the adoption by the Islamic *Shari'ah*, and he should be restricted in the adoption from the *Shari'ah* by the divine rules which are correctly extracted from the *Shari'ah* evidences. The evidence on that is:

Firstly: Allah ﷻ has obliged every Muslim, including the Khaleefah to conduct his actions according to the divine rules. Allah ﷻ says:

((فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ))

“But no, by your lord, they will not believe (truly) until they make you judge of what is in dispute between them.” [TMQ An-Nisa: 65]

Conducting actions according to the divine rules obliges the Muslim to adopt a specific rule when the understanding of the Legislator’s speech varies i.e. when the divine rule varies. So adopting a specific rule from amongst various rules becomes obligatory upon the Muslim, when he wants to carry out an action, i.e. when he wants to implement the rule. This is obligatory upon the Khaleefah as well, when he performs his duty that is the ruling.

Secondly: The content of the text of the *Bay’ah* which the Khaleefah is given obliges him to abide by the Islamic *Shari’ah*, for it is a *Bay’ah* on the Book and the *Sunnah*. He is thus forbidden from violating it and would even commit an act of disbelief if he did so with conviction, while he would be disobedient, a wrongdoer and a rebel if he violated the *Shari’ah* without conviction.

Thirdly: The Khaleefah is appointed to implement the *Shar’a*, therefore he is forbidden to refer to anything other than *Shar’a* in ruling the Muslims. This is because *Shar’a* has made this decisively unlawful, to the point where belief is denied of anyone who rules by other than Islam, a matter which is a connotation of decisiveness. This means that the Khaleefah is restricted in his adoption of the rules, namely in his enacting of laws, solely by the divine rules. If he enacts any law from other than *Shar’a*, he would commit an act of disbelief if he did so with conviction, and an act of disobedience, wrongdoing and rebellion, if he did not believe in that.

These three evidences are evidences of the first matter. As for the second matter, the Khaleefah is restricted to the rules that he adopted, and to the method of deduction he committed himself to. The evidence for this is that the divine rule that the Khaleefah executes is the divine rule that is upon his neck, and not anybody. In other words it is the divine (*Shar’at*) rule that he adopted to conduct his affairs and not just any divine rule. This means that if the Khaleefah extracted a rule or imitated in a rule, this divine rule would become Allah’s rule on his neck. He would be restricted also in adopting this rule for all the Muslims, and forbidden from adopting any other rule. This is because any other rule would not

be Allah’s rule upon his neck, and it would not thus be a divine rule to him, and accordingly it would not be a divine rule to the Muslims. Therefore, he is restricted in the orders that he decrees to the subjects by the divine rule, which he adopted. He is forbidden from issuing an order that conflict with what he had adopted in terms of divine rules, because such an order would not be considered as Allah’s rule on his neck (does not apply to him). Therefore, it would not be a divine rule for him, and thus not a divine rule to the Muslims. In such a case it would be as if he issued an order contrary to the divine rule, hence, he is forbidden to issue an order conflicting with what he had adopted in terms of divine rules.

The understanding of the divine rule varies according to the method of extraction (*Istinbat*). If the Khaleefah considers that the reason (*Illah*) of the rule is considered a divine reason if taken from a divine text, and he does not consider that interest (*Maslaha*) is a divine reason, or that the *Masalih Mursala* (undefined interests) are a divine evidence, then he would have defined for himself the method of *Istinbat*. Accordingly, he must restrict himself to it, and it would be wrong for him to adopt a rule that had its evidence as *Masalih Mursala*, or to use an analogy (*Qiyas*) based on an *Illah* that was not extracted from a divine text. For such a rule would not be considered a divine *Shari’a* rule upon his neck, because he considers its evidence not divine evidence, therefore it would not in his view be a divine rule. Since such a rule is not considered a divine rule regarding the Khaleefah, it would not also be a divine rule regarding the Muslims. This would be as if the Khaleefah has adopted a rule alien to the *Shari’ah* rules and this is forbidden. If the Khaleefah is a *Muqallid* (imitator) or a *Mujtabid Mas’ala* (Jurist in a single matter), and has no specific method of *Istinbat*, in this case, he is allowed to adopt any divine rule whatever its evidence, as long as he has a probable evidence, and he has not been restricted by any method in adopting the rules. He is only restricted, when he issues orders, not to issue them except in accordance with the rules he has adopted.

THE REMOVAL OF THE KHALEEFAH

The Khaleefah is removed immediately if his status changed in a way that takes him out from the post of the *Khilafah*. The Khaleefah must be removed if his status changes in a way that does not take him out from

the post of the *Khilafah*, but he is not allowed by *Shar'a* to continue in his post.

The difference between the case that takes the Khaleefah out from the post of the *Khilafah*, and the case in which he must be removed is that in the first case, obedience is not compulsory as soon as his status changes. While in the second case, where he must be removed, his obedience remains compulsory until he is effectively removed.

There are three cases that take the Khaleefah out from the post of the *Khilafah*:

Firstly: If he becomes a *Murtad* (apostate). This is because one of the conditions of contracting the *Khilafah* is Islam. This is an initial condition and a condition of continuity. Whoever rejects Islam (commits apostasy) he becomes a disbeliever and he should be killed if he does not renounce his apostasy. It is forbidden for a *Kafir* to rule over the Muslims, or to have any authority over them, for Allah ﷻ says:

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And Allah will never allow for the Kafir to have a way (authority) over the believers.” [TMQ An-Nisa: 141]

Allah ﷻ also says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“O you who believe obey Allah and obey the Messenger and those in authority from amongst you.” [TMQ An-Nisa: 59]

“From amongst you” (*Minkum*) in the verse, clearly indicates that those in authority must be Muslims. If the person in authority becomes a disbeliever then he is not from amongst us. Thus the characteristic that the Qur'an laid down as a condition for the person in authority, namely Islam, would be absent. The Khaleefah will therefore be taken out of the post of the *Khilafah* if he commits apostasy. He will then no longer

become a Khaleefah of the Muslims, nor will they be obliged to obey him.

Secondly: If the Khaleefah becomes irreversibly insane. This is because sanity is one of the conditions of contracting the *Khilafah* and it is a condition of its continuity. For the Messenger of Allah ﷺ said:

((رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ ...))

“Accountability is lifted in three instances...” to the point where he ﷺ said:

((وَعَنِ الْمَعْتَوَةِ حَتَّى يَبْرَأَ))

“the insane until he regains his senses.” In another narration,

((عَنِ الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ حَتَّى يَفِيقَ))

“the mad until he is cured.” Whoever is not accountable cannot look after himself, therefore by greater reason he cannot remain a Khaleefah, looking after peoples' affairs.

Thirdly: If the Khaleefah is imprisoned by a formidable enemy, and can't free himself from them, and there is no hope of doing so. In this case he should be removed, for his imprisonment makes him completely unable to look after the Muslims affairs, and he would be as if he does not exist.

In these three cases the Khaleefah is taken out of his post of the *Khilafah* and he should immediately be removed, even if there was no verdict of his removal issued. He is not to be obeyed, and his orders should not be executed by whoever has a proof that the Khaleefah is under any of these three conditions. However, it is necessary to prove if any of these cases happened to him. The proof should be established by the complaints tribunal (*Mazalim*), which would issue its verdict stating that the Khaleefah had been taken out of the post of the *Khilafah* and that he should be removed, thus allowing the Muslims to contract the post of *Khilafah* to someone else.

As to the matters where the Khaleefah is no longer permitted to continue in office but which do not take him immediately out of his post of the *Khilafah*, these are five:

Firstly: If his justness is invalidated by showing manifest signs of *Fisq* (wrongdoing). For justness (*Adaala*) is one of the conditions for contracting the *Khilafah* and for its continuity. So if Allah ﷻ stipulated the justice (*Adaala*) in the witness then, for greater reason, it is stipulated in the Khaleefah.

Secondly: If the Khaleefah becomes a female or effeminate. This is because being a man is a contractual condition and a condition of continuity of the *Khalifah*. This is due to the saying of the Messenger of Allah ﷺ who said:

((لَنْ يَفْلَحَ قَوْمٌ وَلَّوْا أَمْرَهُمْ امْرَأَةً))

“Any people who appoint a woman over their affairs shall never succeed.” [Narrated by Al-Bukhari from Aby Bakrah]

Thirdly. If the Khaleefah suffers from a disorderly mental condition, by losing his mind at times and regain it at others. This is because the mind is one of the contracting and the continuity conditions of the *Khilafah*, due to what Allah’s Messenger ﷺ said:

((رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ... إِلَى أَنْ يَقُولَ وَعَنْ الْمَعْتَوَى حَتَّى

يُرَأَى))

“Three types of people are exempted from accountability...” to the point where he ﷺ said: **“...and the mad until he regains his sanity.”** The insane cannot conduct and manage his own affairs, and then by greater reason, he cannot manage the people’s affairs. In this case it is forbidden to appoint a caretaker (trustee) or a deputy for him, since the contract of *Khilafah* has been concluded upon his person, therefore no one else can act on his behalf.

Fourthly: If the Khaleefah is unable to carry out his duties of *Khilafah* for any reason, whether because of a disability or because of a chronic

(incurable) disease which prevents him from performing his functions. The point at issue in this case is his inability to carry out his duties.

This is because the contract of *Khilafah* is based on performing its tasks. If the Khaleefah was unable to fulfil the contract his removal becomes compulsory, as he would be as if he didn’t exist. If he also could not perform the duties for which he had been appointed as Khaleefah, the affairs of the *Deen* and the Muslims’ interests would become stalled resulting in an evil (*Munkar*) that has to be removed. This cannot be achieved except by dismissing the Khaleefah and then the Muslims can appoint another Khaleefah in his place. His removal in this case becomes compulsory.

Fifthly: If the Khaleefah becomes subjugated or coerced in a manner that leaves him unable to conduct the affairs of the Muslims with his own opinion according to the *Shar’a*. If this had happened to him he would then be considered virtually unable to fulfil the duties of *Khilafah*. This situation would necessitate his removal. The foregoing scenario has been considered to apply in two cases:

The first case is when a member or members of his entourage or family gain power over him so that they execute the matters arbitrarily and they become high-handed so that they overpower him such that he cannot disagree with them and he is forced to follow their opinion. In this case the matter should be examined. If their coercion could be eliminated within a short period of time he would be allowed to remain in office, so as to remove them and free himself of their influence. If he did this and his ability was restored he would be allowed to remain in office, otherwise he should be removed. He would be subject to immediate removal if there were no hope of freeing himself from such coercion.

The second case is when the Khaleefah falls prisoner to a formidable enemy, either physically or by being under his enemy’s dominance. In this case the matter should be examined. If there is any hope of freeing himself of the enemy he would be given time to do so and restore his authority, otherwise he would be removed. If no hope was in sight, he should be removed immediately.

In both cases he would be virtually unable to fulfil the tasks of the

Khilafah by himself according to the *Shar'a* rules. He would be as if he didn't exist and unable to carry out the functions over which the *Khilafah* contract was convened.

In both cases, however, if there was hope of freeing himself he should be given time until freeing himself becomes hopeless, after which he should be removed. If, however, there was no hope at all in the first instance, he should be removed at once.

The Khaleefah should thus be removed whenever any of the five cases listed above occurs. However, he cannot be removed except when a verdict (concerning the situation at hand) has been issued. In all five cases the Khaleefah should always be obeyed and his orders executed until a verdict of his removal has been issued. In each one of these cases the *Khilafah* contract is not automatically nullified. It rather needs a verdict issued by a judge.

THE UMMAH DOES NOT RESERVE THE RIGHT TO REMOVE THE KHALEEFAH

Although the *Ummah* is the one who appoints the Khaleefah and gives him the *Bay'ah*, yet once the *Bay'ah* has been convened according to *Shar'*, the *Ummah* does not have the right to remove him (from office).

This is because of the *Sahih Abadith* which order the Muslims to obey the Khaleefah even if he committed *Munkar* (mischievous), committed an act of oppression or even withheld people's rights, so long as he did not order them of an act of disobedience (*Ma'asiyah*), nor show flagrant disbelief. Al-Bukhari narrated from Ibnu 'Abbas who said that the Messenger of Allah ﷺ said:

((مَنْ رَأَى مِنْ أَمِيرِهِ شَيْئاً يَكْرَهُهُ فَلْيَصْبِرْ، فَإِنَّهُ لَيْسَ أَحَدٌ

يَفَارِقُ الْجَمَاعَةَ شَبْرًا فَيَمُوتُ إِلَّا مَاتَ مِيتَةً جَاهِلِيَّةً))

"If anyone sees in his *Ameer* (*Ameeribi*) something that displeases him let him remain patient: For behold! He who separates himself from the Sultan (authority) by even so much as a hand span and dies thereupon, he has died the death of *Jahiliyyah*." The phrase *Ameeribi* is general in this *Hadith*, so it includes the Khaleefah because he

is the *Ameer* of the believers. Muslim narrated from Abu Hurayra who said that the Messenger of Allah ﷺ said:

((كَانَتْ بَنُو إِسْرَائِيلَ تَسُوسُهُمُ الْأَنْبِيَاءُ، كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ

نَبِيٌّ، وَإِنَّهُ لَا نَبِيَّ بَعْدِي، وَسَيَكُونُ خُلَفَاءُ فَيَكْثُرُونَ، قَالُوا فَمَا

تَأْمُرُنَا؟ قَالَ: فَوَا بَيْعَةَ الْأَوَّلِ فَالْأَوَّلِ، وَأَعْطَوْهُمْ حَقَّهُمْ، فَإِنَّ اللَّهَ

سَأَلَهُمْ عَمَّا اسْتَرْعَاهُمْ))

"The Prophets ruled over the children of Israel. Whenever a Prophet died, another Prophet succeeded him, but there will be no Prophet after me. There will be *Khulafaa*, and they will number many.' They asked: 'What then do you order us?' He ﷺ said, 'Fulfill allegiance to them one after the other, and give them their dues. Verily Allah will ask them about what He entrusted them with.'" Muslim reported that Salama ibn Yazid Al-Ja'afi asked the Messenger of Allah ﷺ: "O Prophet of Allah, if we were to be ruled by *Ameers* who ask us for their dues and deny us our dues, what do you order us to do then?" The Messenger of Allah ﷺ turned his face away; he asked him again and Allah's Messenger ﷺ avoided him; then he asked for the second or the third time and he ﷺ was pulled by Al-Ash'aath ibn Qays, so the Messenger of Allah ﷺ said:

((اسْمَعُوا وَأَطِيعُوا فَإِنَّمَا عَلَيْهِمْ مَا حُمِّلُوا وَعَلَيْكُمْ مَا حُمِّلْتُمْ))

'Hear and obey, for they shall be accountable for their actions and you shall be accountable for yours.'" Muslim reported from 'Auf ibn Malik who reported; "I heard the Messenger of Allah ﷺ say,

((خِيَارُ أُمَّتِكُمُ الَّذِينَ تَحِبُّوهُمْ وَيَحِبُّونَكُمْ، وَتَصَلُّونَ عَلَيْهِمْ

وَيَصَلُّونَ عَلَيْكُمْ، وَشَرَارُ أُمَّتِكُمُ الَّذِينَ تُبْغِضُونَهُمْ

وَيُبْغِضُونَكُمْ، وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ، قَالُوا: قُلْنَا يَا رَسُولَ اللَّهِ

أَفَلَا تُنَابِذُهُمْ عِنْدَ ذَلِكَ؟ قَالَ: لَا، مَا أَقِيمُوا فِيكُمْ الصَّلَاةَ، أَلَا

مَنْ وَلِيَ عَلَيْهِ وَالٍ، فَرَأَاهُ يَأْتِي شَيْئًا مِنْ مَعْصِيَةِ اللَّهِ فليكره ما
يَأْتِي مِنْ مَعْصِيَةِ اللَّهِ، وَلَا يَنْزِعَنَّ يَدًا مِنْ طَاعَةٍ))

‘The best of your *Imams* are those whom you love and they love you and you pray for them and they pray for you; and the worst of your *Imams* are those whom you hate and they hate you and you curse them and they curse you.’ We asked, ‘O Messenger of Allah, shall we not then declare war on them?’ He ﷺ said: ‘No, as long as they establish prayer among you. Behold, if anyone was ruled by a *Wali* and saw him committing a sin, let him hate the sin committed against Allah, but let him not withdraw his hand from obedience.’” Muslim narrated from *Huzayfah* ibn al-Yamaan that the Messenger of Allah ﷺ said:

((يكون بعدي أئمة لا يهتدون بهديي، ولا يستنون
بسنتي، وسيقوم فيكم رجال قلوبهم قلوب الشياطين في
جثمان إنس، قال: قلت: كيف أصنع يا رسول الله إن أدركت
ذلك؟ قال: تسمع وتطيع للأمر وإن ضرب ظهرك، وأخذ
مالك، فاسمع وأطع))

“‘There will be *Imams* after me who will not be guided by my guidance, nor will they act according to my *Sunnah*; some men will rise amongst you with satans’ hearts in human bodies.’ *Huzayfah* asked, ‘What shall I do, if I were to reach that time?’ He ﷺ said, ‘You should hear and obey the *Ameer* even if he whipped your back and took your money; do hear and obey.’” Ahmad and Abu Dawood reported that the Messenger of Allah ﷺ said:

((يا أبا ذر كيف أنت عند ولادة يستأثرون عليك بهذا
الفئ؟ قال: والذي بعثك بالحق أضع سيفي على

عاتقي، فأضرب به حتى ألحقك، قال: أفلا أدلك على خير لك
من ذلك، تصبر حتى تلقاني))

“‘O Abu Dharr, what would you do if some *Wulab* possessed the booty and deprived you of it?’ He said, ‘By He Who sent you with the Truth, I would raise my sword and fight until I join you.’ Upon this he ﷺ said, ‘Let me tell you something that would be better for you than that. Remain patient and bear it until you join me.’”

All these *Abadith* demonstrate that the Khaleefah could act against the *Shar’a* rules. Yet despite this, the Messenger of Allah ﷺ ordered us to obey him (the Khaleefah), to be patient towards his injustice and to persevere. This clearly proves that the *Ummah* does not reserve the right to remove the Khaleefah. Besides, the Messenger of Allah ﷺ refused on one occasion, to relieve a Bedouin from his *Bay’ah*. Al-Bukhari narrated from Jabir ibn ‘Abdullah who reported that; “... a Bedouin gave his *Bay’ah* of Islam to the Messenger of Allah ﷺ. Soon after he felt a malaise, so he said to the Messenger of Allah ﷺ, ‘Would you relieve me of my *Bay’ah*!’ The Messenger of Allah ﷺ refused; he then came back and said, ‘Relieve me of my *Bay’ah*!’ He ﷺ refused, so the man left. Upon this the Messenger of Allah ﷺ said:

((المدينة كالكير تنفي خبثها وَ يَنْصَعُ طِبْهَا))

‘Al-Madina is like the bellows, she banishes her bad odours and manifests her sweet scent.’” This proves that once the *Bay’ah* has been taken, those who gave it must be committed to it. This means that they have no right to remove the Khaleefah, because they have no right to take back the *Bay’ah* they gave to him. It would be wrong to claim that the Bedouin wanted to leave Islam by seeking relief from his *Bay’ah* rather than the obedience to the Head of State. This is because if this had been the case, his act would have been considered as apostasy, and the Messenger of Allah ﷺ would most certainly have killed him, since the punishment for the apostate is killing. The *Bay’ah* itself is not a *Bay’ah* for embracing Islam but for obedience. Therefore, the Bedouin wanted to rid himself from his oath of obedience, not to apostasise. Muslims have thus no right to renounce their *Bay’ah* and they do not reserve the right

to remove the Khaleefah. *Shar'a* has defined and demonstrated when the Khaleefah must be removed automatically and when his removal becomes necessary. This does not however, imply that the *Ummah* reserves the right of removing him.

THE COURT OF UNJUST ACTS (*MAHKAMAT UL-MAZALIM*) IS THE ONLY BODY THAT COULD LEGITIMATELY REMOVE THE KHALEEFAH

'*Mahkamat ul-Mazalim*' alone decides whether the situation of the Khaleefah had changed in a way which had taken him out of the post of *Khilafah* or not. It is the only body with mandatory power to remove or caution him.

Any matter for which the Khaleefah has to be removed or his removal becomes necessary is known as a *Mazlama* (an act of injustice) and it should be removed. The matter, however, should be investigated and evidence provided as the *Mazlama* must be proved before a judge.

The court of unjust acts (*Mahkamat ul-Mazalim*) is the body that rules over any complaints (*Mazalim*) received. Its judge is the person entitled to prove its occurrence and to decide upon it. However, if such a situation did arise and as a result the Khaleefah stepped down, this would be the end of the matter. If, however, the Muslims thought that he should be removed and the Khaleefah disputed with them, the matter would be referred to the judiciary to be settled, for Allah ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

"If you dispute together about any matter, refer it to Allah and His Messenger." [TMQ An-Nisa: 59]

In other words, if the *Ummah* disputed with those in authority, this dispute would be between the ruler and the *Ummah*. Referring the dispute to Allah and the Messenger, means referring it to the judiciary, that is to the court of unjust acts.

The Khilafah State is a Human State and not a Theological State

The Islamic State is the *Khilafah*, for the one who holds its post would possess all the mandatory powers of ruling, authority and legislation without any exception. It is the supreme leadership over all the Muslims worldwide so as to implement the rules of the Islamic *Shar'a* using the concepts that Islam has brought and the rules which it has legislated; and to convey the Islamic Message to the world. The Message is conveyed by introducing Islam to people and calling on them to embrace it and perform *Jihad* in the way of Allah. *Khilafah* is also known as *Imama* or *Imaratul-Mu'mineen* (leadership of the believers). It is a temporal post and not a post relating to the Hereafter. The *Khilafah* exists to implement Islam on people and to spread it to mankind. It is different to the Prophethood, for the Prophethood and the Messengership are posts whereby a Prophet or a Messenger receives the *Shar'a* from Allah ﷻ, through revelation, to convey it to people regardless of its implementation. Allah ﷻ says:

﴿وَمَا عَلَى الرَّسُولِ إِلَّا الْبَلَاغُ الْمُبِينُ﴾

"The Messenger's duty is only to preach the clear Message." [TMQ An-Nur: 54]

He ﷻ also says:

﴿فَإِنَّمَا عَلَيْكَ الْبَلَاغُ﴾

"Your duty is to convey the Message." [TMQ Al-Imran: 20]

Allah ﷻ says:

﴿مَا عَلَى الرَّسُولِ إِلَّا الْبَلَاغُ﴾

“The Messenger’s duty is only to proclaim the Message.” [TMQ Al-Ma’idah: 99]

This is therefore, different from the *Khilafah*, which is the implementation of the *Shar’a* of Allah ﷻ on mankind. It is not conditional for a Prophet or a Messenger to implement on the people what was revealed to him from Allah ﷻ in order to become a Messenger. Rather, it is conditional for him to receive *Shar’a* from Allah ﷻ and to be ordered to proclaim it. It can be seen, therefore, that the posts of Prophethood and Divine Messengership are different from the post of *Khilafah*, because Prophethood is theological, which Allah ﷻ gives to whoever He wishes. The *Khilafah* on the other hand, is a human post whereby the Muslims give their *Bay’ah* to whoever they wish and appoint over them as *Khaleefah* whomever they like from among the Muslims. Our Messenger Muhammad ﷺ, was a ruler who implemented the *Shari’ah* which he had received from Allah. So he ﷺ held the Prophethood and the Messengership and at the same time also assumed the post of presiding over the Muslims in establishing the rules of Islam. Allah ﷻ thus, commanded him to rule as well as to convey the Message. He ﷻ ordered him:

﴿وَأَنۢ أَحْكُمۡ بَيْنَهُمۡ بِمَا أَنزَلَ ٱللَّهُ﴾

“And judge between them by that which Allah has revealed.” [TMQ Al-Ma’idah: 49]

He ﷺ also says:

﴿إِنَّا أَنزَلْنَا إِلَيْكَ ٱلْكِتَآبَ بِٱلْحَقِّ لِتَحْكُمَ بَيْنَ ٱلنَّاسِ بِمَا أَرَاكَ
ٱللَّهُ﴾

“We have sent down to you the Book in truth so that you judge between people by that which Allah has shown you.” [TMQ An-Nisa: 105]

Allah ﷻ also says:

﴿يَا أَيُّهَا ٱلرَّسُولُ بَلِّغۡ مَا أَنزَلَ إِلَيْكَ مِن رَّبِّكَ﴾

“O Messenger! Proclaim the (Message) which has been sent to you from your Lord.” [TMQ Al-Ma’idah: 67]

﴿وَأُوْحِيَ إِلَيَّ هَٰذَا ٱلْقُرْءَانُ لِأُنذِرَكُم بِهِۦ وَمَنۢ بَلَغَ﴾

“This Qur’an has been revealed to me by inspiration so that I may warn you and all whom it reaches.” [TMQ Al-An’am: 19]

﴿يَا أَيُّهَا ٱلْمُذَنَّبُونَ * قُمْ فَاذْهَبْ﴾

“O you wrapped up. Arise and deliver warning.” [TMQ Al-Muddassir: 1-2]

However, when he ﷺ conveyed the Message by words, such as proclaiming the saying of Allah ﷻ:

﴿وَٱحْلَلَّ ٱللَّهُ ٱلْبَيْعَ وَحَرَّمَ ٱلرِّبَا﴾

“And Allah has made trading lawful and has forbidden usury.” [TMQ Al-Baqarah: 275]

He might proclaim it through his actions, like the treaty of Hudaibiyah, where he did so without hesitation. He ﷺ would decisively order his followers to execute those orders without consulting anyone. He ﷺ would even reject an opinion outright if anyone suggested it to him, if it was contrary to the revelation. If he ﷺ were asked about a rule that had not yet been revealed to him, he would remain silent until such a rule was revealed. However, when he ﷺ undertook the actions, he ﷺ would consult the people; and when he judged between the people he did not confirm that what he decreed was according to the fact of the matter. He, rather said that he judged in accordance with what he heard of evidences. When the *Surah* of *Bara’ah* was revealed, he ﷺ ordered ‘Ali ibn Abi Talib to catch up with Abu Bakr in order to call on the people and to proclaim the *Surah* to them during the *Hajj* season. So ‘Ali ﷺ recited the *Surah* to them on ‘Arafat and went about them until he had proclaimed it. When the Messenger of Allah ﷻ signed the treaty of Hudaibiyah, he rejected all the opinions of the *Sahabah* and forced his own opinion upon them because it was revelation from Allah ﷻ. When Jabir asked him what to do with his wealth, he ﷺ did not answer him until the rule was revealed. Bukhari narrates a *Hadith* on the authority of Mohammed ibn al-Munkadir who

said:

((سمعت جابر بن عبد الله يقول: مرضت فعادني رسول الله ﷺ، وأبو بكر وهما ماشيان، فأتاني وقد أغمي عليّ، فتوضأ رسول الله ﷺ فصبّ عليّ وضوءه فأفقت، فقلت: يا رسول الله، كيف أصنع في مالي؟ كيف أقضي في مالي؟ قال: فلم يجبني بشيء حتى نزلت أية الميراث))

“I heard Jabir ibn ‘Abdullah say: ‘I had fallen ill so the Messenger of Allah ﷺ came walking to visit me with Abu Bakr. He got there while I was unconscious. So he ﷺ performed *Wudhu* then poured that water over me so I regained conscience, then I said, O Messenger of Allah, what should I do with my wealth? How shall I act with regard to my wealth? He did not answer me until the verse of *al-Meerath* (inheritance) was revealed.’” This was with regard to the task of Prophethood, Messengership and the conveying (*Tableegh*) of the Message to the people. As for executing the task of government and ruling, the Messenger of Allah ﷺ followed a different course. At the battle of Uhud the Messenger of Allah ﷺ gathered the Muslims inside the Masjid and consulted them about whether to fight inside al-Madinah or outside it. The majority opted to fight outside while he ﷺ preferred to fight inside Madinah, however, he ﷺ chose to go along with the majority and to fight outside al-Madinah. Furthermore, when he ﷺ judged between people he warned them that he might have judged in their favour at the expense of others. Al-Bukhari reports on the authority of Umm Salama that the Messenger of Allah ﷺ overheard a dispute outside his doorstep, so he came out to the disputing parties and said:

((إنما أنا بشر وإنه يأتيني الخصم، فلعل بعضكم أن يكون أبلى من بعض فأحسب أنه صادق فأقضي له بذلك، فمن قضيت له بحق مسلم فإنما هي قطعة من النار، فليأخذها أو ليركها))

“I am only human and sometimes disputing parties come to me, some of you may be more eloquent than others, so I believe him and I judge in his favour. Whoever I judged in his favour at the expense of another Muslim’s right it would be for him like a piece from the Hell-fire, it is up to him to take it or leave it.” Ahmad narrated from Anas that the Messenger of Allah ﷺ said:

((...وإني لأرجو أن ألقى الله ولا يطلبني أحد بمظلمة ظلمتها إياه، في دم ولا مال))

“...I verily would wish to meet Allah *Azga wa Jall* without anyone claiming from me for an act of injustice I had committed against him be it blood or money.”

This clearly indicates that he ﷺ held two posts: Prophethood, together with Messengership and the leadership over all the Muslims in the world in order to establish the *Shari’ah* of Allah which He ﷺ revealed to him ﷺ. He ﷺ performed each task in accordance with that which the task itself required, acting differently in each role. He ﷺ took the *Bay’ah* to rule upon the Muslims in ruling. He took it from men and women but not from children who had not yet reached puberty. This only confirms that it was a *Bay’ah* over ruling and not over Prophethood. We therefore find that Allah ﷻ has never rebuked him ﷺ concerning the conveyance of the Message and the execution of its tasks. Instead He ﷻ asked him not to be disheartened by the lack of response from the people during the conveyance of the Message. Allah ﷻ says:

﴿فَلَا تَذْهَبْ نَفْسُكَ عَلَيْهِمْ حَسْرَاتٍ﴾

“Let not your soul be vested in regret for them.” [TMQ Fatir: 8]

He ﷺ also says:

﴿وَلَا تَحْزَنْ عَلَيْهِمْ وَلَا تَكُ فِي ضَيْقٍ مِّمَّا يَمْكُرُونَ﴾

“Nor grieve over them and distress not yourself because of their plots.” [TMQ An-Nahl: 127]

He ﷺ also says:

﴿إِنْ عَلَيْكَ إِلَّا الْبَلَاغُ﴾

“Your duty is but to convey the Message.” [TMQ Ash-Shura: 48]

However, Allah ﷻ did mildly rebuke him when he ﷺ performed such duties as those that were associated with ruling. This was in conjunction with the actions that he performed whilst executing the rules that had already been revealed and conveyed. Allah ﷻ in those cases reproached him for acting contrary to the things that He ﷻ considered more appropriate. Allah ﷻ says:

﴿مَا كَانَ لِنَبِيٍّ أَنْ يَكُونَ لَهُ أَسْرَى حَتَّى يُثْخِنَ فِي الْأَرْضِ﴾

“It is not fitting for a Prophet that he should have prisoners of war until he had thoroughly subdued the land.” [TMQ Al-Anfal: 67]

He ﷺ also says:

﴿عَفَا اللَّهُ عَنْكَ لِمَ أَذِنْتَ لَهُمْ﴾

“God give you grace! Why did you grant them exemption.” [TMQ At-Tauba: 43]

All this clearly demonstrates that the post of leadership and ruling over the Muslims is different from the post of Prophethood. It is also clear that the post of *Khilafah* is a temporal post and not one related to the Hereafter. We therefore, conclude from the preceding evidences that the *Khilafah*, which is a post of supreme leadership over all the Muslims in the world, is a human post and not a theological one. It is the post of ruling, which the Messenger of Allah ﷺ held. He ﷺ left that post with orders that a Muslim should succeed him in that post of ruling and not that of Prophethood. It is thus a post of succession to the Messenger of Allah ﷺ with regards to the leadership of the Muslims, for the implementation of rules of Islam and conveying its *Da'wah*, and not with regards to receiving revelation and the taking of the *Shari'ah* from Allah ﷻ.

As for the infallibility (*Isma*) of the Messenger of Allah ﷺ, this results

from the fact that he is a Prophet and not from being a ruler. This is because infallibility is an attribute of all the Prophets and Messengers, regardless of whether they themselves ruled people with their *Shari'ah* and implemented it or whether they just conveyed their *Shari'ah* without holding the post of ruler or managing its implementation. Musa, 'Isa and Ibrahim (as) were all infallible, as was Muhammad ﷺ. Therefore, infallibility is for Prophethood and the Messengership, not for ruling. The fact that the Messenger of Allah ﷺ never committed a forbidden act (*Haram*) nor neglected a duty (*Wajib*) whilst executing the functions of ruling resulted from the fact that he was infallible with respect to Prophethood and Messengership and not because he was a ruler. Thus his execution of ruling does not require infallibility as such, but in reality he ﷺ was infallible because he was a Prophet and a Messenger. He ﷺ, therefore, assumed his duties as a ruler just as any other human being, who rules over other humans, does. The Qur'an has clearly stated this, Allah ﷻ says:

﴿قُلْ إِنَّمَا أَنَا بَشَرٌ مِّثْلُكُمْ﴾

“Say, verily I am but a man like yourselves.” [TMQ Al-Kahf: 110]

Allah ﷻ saying in the same verse outlines the difference between him ﷺ and other humans:

﴿يُوحَىٰ إِلَيَّ﴾

“(But) the inspiration has come to me.” [TMQ Al-Kahf: 110]

The distinction, therefore, lies in the fact that he ﷺ received revelation, namely the Prophethood. Other than that he ﷺ was a man like any other man. Therefore, in ruling he ﷺ was human, and undoubtedly his successors (*Khulafaa*) would also be humans just like any other human, because they would only be successors to him in ruling, not Prophethood and Messengership. Infallibility does not therefore apply to the *Khaleefah*, as this is not required in ruling but it is a requirement of Prophethood. The *Khaleefah* is only a ruler no more, so the condition of infallibility is irrelevant to those who take up this post. It is even forbidden to stipulate infallibility as a precondition incumbent upon whoever takes up the post of *Khilafah*. This is because infallibility is restricted to the Prophets and

it is forbidden to claim it on behalf of anyone other than a Prophet. The conveyance (*Tableegh*) of a *Shari'ah* requires the existence of infallibility in the Prophet and Messenger alone, so it is infallibility in the conveyance of the divine Message. Its realisation in the shape of not committing any sins follows the infallibility in conveyance (*Tableegh*). This is because the infallibility in him would not be complete without the infallibility from committing the forbidden things. Thus infallibility is necessary for conveying of the Message and not for the people to believe or not in him or for the occurrence or not of error in the actions. Rather what requires the infallibility is the conveyance of the Message and no more. If Allah had not made the Prophet or Messenger infallible it would then have been possible for him to hide the Message or to add to it, or take away from it, or fabricate things which Allah did not say, or make a mistake by proclaiming other than what he has been ordered to convey. All these matters contradict with the conveyance of a Message from Allah ﷻ, and for being a Messenger, who must be believed in. Therefore, it was necessary that the Messenger be characterised by infallibility (*'Isma*) in proclaiming the Message, and accordingly his infallibility from committing sins follows. Therefore the scholars differed over the infallibility (*'Isma*) of the Prophets in the issue of committing the forbidden things (*Al-muharramaat*). Some of them said he is infallible from committing the major sins (*Al-kabaa'ir*) only and it is possible that he commits minor sins (*As-saghaa'ir*). Some of them said that he is infallible with regards to both major and minor sins. They said that because the perfection of proclamation depends on the actions. If the perfection of the proclamation depends on the actions, then the infallibility in the proclamation will include the actions. Accordingly, the Prophet will be infallible from committing sins, since the proclamation will not be perfected unless he is infallible in the actions. But if the perfection of the proclamation does not depend on the actions, then the infallibility does not include them. Thus, he will not be infallible from them, because the proclamation would then be perfected without them. This is why there is no difference amongst the Muslims that the Prophet ﷺ was not infallible from doing actions other than those that Allah considered more appropriate, because the perfection of proclamation definitely does not depend upon these actions. Thereupon, the infallibility (*'Isma*) is only specific to the proclamation, and thus it does not exist except for the Messengers and the Prophets and it is not allowed to be for other than them absolutely.

However, the evidence of the infallibility is rational and not textual. Thus, it is the mind that necessitates that the Prophets and Messengers be infallible in the conveyance of the Message. For being a Messenger or a Prophet requires it, otherwise he would not be a Messenger or a Prophet. It is also through the use of the mind that the one who is not commanded to propagate a Message from Allah is not allowed to be infallible, because he is a human being. By the nature that Allah made innate in him he is subject to error and forgetfulness. Since he is not commanded with a Message from Allah there is no cause that requires him to be infallible. If a person claims he is infallible then this implies that he is commanded with a Message from Allah, something that is not allowed, because there is no Prophet after Muhammad ﷺ. Allah ﷻ says:

﴿وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ﴾

"He is the Messenger of Allah and the seal of the Prophets." [TMQ Al-Ahzab: 40]

Hence, a claim of infallibility is in fact a claim of a Messengership. This is because the Messenger is conveying a Message from Allah, and being a human has the capacity to make mistakes and err in the Message from Allah, infallibility is required to prevent the Message of Allah from change or alteration. Thus, the Messenger must be infallible to protect him from falling into error or making mistakes. It is for this reason alone that infallibility is one of the characteristics of the Messengers and Prophets and it is only they who require this infallibility. If infallibility is claimed by anybody other than a Messenger then it means that this person claims the purpose and the cause of infallibility, which is the conveyance of the Message i.e. he would claim that he is commanded with conveying a Message from Allah. Therefore, it is not allowed to stipulate infallibility to the Khaleefah, because making infallibility a condition upon him implies that he is commanded to proclaim a Message from Allah that makes it necessary for him to be infallible, a matter that is not allowed.

From this, we deduce that the Khaleefah is a human being and it is accepted that he might make mistakes, be absent minded, forgetful as well as lie, betray, commit sin and other things. This is because he is not a Prophet or a Messenger, but just a normal human being. The Messenger

of Allah ﷺ has informed us that the *Imam* may make a mistake and he informed that the *Imam* may do things which people hate and curse him for, like oppression, disobedience and other things. He informed us that open *Kufr* may appear from the *Imam*. Muslim reported on the authority of Abu Hurayra that the Messenger of Allah ﷺ said:

((إِنَّمَا الْإِمَامُ جُنَّةٌ يُقَاتِلُ مِنْ وَرَائِهِ وَيُتَّقَى بِهِ، فَإِنْ أَمَرَ بِتَقْوَى اللَّهِ عَزَّ وَجَلَّ وَعَدَلَ كَانَ لَهُ بِذَلِكَ أَجْرٌ وَإِنْ أَمَرَ بِغَيْرِهِ كَانَ عَلَيْهِ مِنْهُ))

“Verily the *Imam* is but a shield from behind which the people fight and by which they protect themselves. So if he ordered to observe the *Taqwa* of Allah and he was just he would have equal to these (actions) in reward, and if ordered other than that it would be against him equal to that.” This means that it is possible that the *Imam* may command with other than the fear of Allah. Muslim also narrated from ‘Abdullah who said: “The Messenger of Allah ﷺ said;

((إِنَّمَا سَتَكُونُ بَعْدِي أَثَرَةٌ وَأُمُورٌ تَنْكُرُونَهَا قَالُوا: يَا رَسُولَ اللَّهِ كَيْفَ تَأْمُرُ مَنْ أَدْرَكَ مِنْكَ ذَلِكَ؟ قَالَ: تَوَدُّونَ الْحَقَّ الَّذِي عَلَيْكُمْ، وَتَسْأَلُونَ اللَّهَ الَّذِي لَكُمْ))

‘There would be after me selfishness and matters which you hate.’ They said, ‘O Messenger of Allah, how do you order the one of us who would witness that?’ He ﷺ said, ‘You should offer the right due upon you, and you ask Allah the thing which is due to you.’”

Muslim narrated from ‘Auf ibn Maalik that the Messenger of Allah ﷺ said:

((خِيَارُ أئِمَّتِكُمُ الَّذِينَ تَحِبُّوهُمْ وَيُحِبُّونَكُمْ وَيُصَلُّونَ عَلَيْكُمْ وَتُصَلُّونَ عَلَيْهِمْ وَشَرَارُ أئِمَّتِكُمُ الَّذِينَ تَبْغِضُونَهُمْ))

وَيَبْغِضُونَكُمْ، وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ، قِيلَ: يَا رَسُولَ اللَّهِ أَفَلَا نُنَابِذُهُمُ بِالسَّيْفِ؟ فَقَالَ: لَا، مَا أَقَامُوا فِيكُمْ الصَّلَاةَ، وَإِذَا رَأَيْتُمْ مِنْ وَلَا تَكُمُ شَيْئاً تَكْرَهُونَهُ، فَاكْرَهُوا عَمَلَهُ، وَلَا تَتَرَعَوْا يَدًا مِنْ طَاعَةٍ))

“The best of your *Imams* are those whom you love and they love you and you pray for them and they pray for you, and the worst of your *Imams* are those whom you hate and they hate you and you curse them and they curse you.’ We asked; ‘O Messenger of Allah, shall we not then declare war on them?’ He said; ‘No, as long as they establish prayer among you. And if you see something which you hate in your rulers then hate the action and do not withdraw your allegiance of obedience.’” Al-Bukhari narrated on the authority of Junada ibn abi Umayyah who said: “We went to ‘Ubadah ibn as-Samit when he was sick and we said; ‘May Allah ﷻ guide you. Inform us of a *Hadith* from the Messenger of Allah ﷺ so Allah may benefit you from it.’ He said, ‘The Messenger of Allah ﷺ called upon us and we gave him the *Bay’ah*, and he said, of that which he had taken from us, that we should give him the pledge to listen and obey, in what we like and dislike, in our hardship and ease, and that we should not dispute the authority of its people unless we saw open *Kufr* upon which we had a proof from Allah.’” ‘Aiesha narrates that the Messenger of Allah ﷺ said;

((ادْرَأُوا الْخُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ. فَإِنَّ الْإِمَامَ أَنْ يَخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ))

“Avert the punishments from the Muslims as much as you can, so if the accused has any way out let him go free, because it is better for the *Imam* to make a mistake in forgiving than to make a mistake

in imposing the punishment.” [Narrated by at-Tirmithi]

These *Ahadith* clearly make the point that it is possible for the *Imam* to make a mistake, forget or disobey. Despite this, the Messenger of Allah ﷺ has ordered the obedience to him as long as he governed by Islam and no open *Kufr* occurred from him and he did not command with sin. So, is there anything to be said after the news of the Messenger of Allah ﷺ about the *Khulafaa'* that there would be from them things which Muslims deny despite the fact that he commanded Muslims to obey them? It is possible after this to say that the Khaleefah has to be infallible and he has not to be like other human beings? It is clear that the *Khilafah* State is a human state and not a theocratic state.

6

Leadership in Islam is Singular and not Collective

Leadership, presidency and *Imarah* (emirate) are all of the same meaning. The leader, president and *Ameer* have the same meaning as well. However, the *Khilafah*, though it is a general leadership of all the Muslims in the world, is more specific than emirate (*Imarah*) and the Khaleefah is more specific than the *Ameer*. This is because the emirate can be the *Khilafah* and other than the *Khilafah*, like the emirate of an army and the emirate of the *Wilayah* and the emirate of the group. Thus the emirate is more general than the *Khilafah*. The *Ameer* could be the Khaleefah, the *Ameer* of a *Wilayah*, an *Ameer* of an army, an *Ameer* of a group, or an *Ameer* of travel. Hence, the *Ameer* is more general than the Khaleefah. Thus the word *Khilafah* is specific to the well-known post, while the word emirate is general for every *Ameer*.

Islam obliges that the leader, the president and the *Ameer* be one person, over the same matter and it does not allow that there should be more than one person in the same post. Therefore, Islam does not recognise what is called the collective leadership and does not recognise the collective presidency, rather the leadership in Islam is solely singular. So the leader, the president and the *Ameer* must be singular, and it is not allowed to be more than one person. The evidence on this matter is the traditions and actions of the Prophet ﷺ. Ahmad narrated on the authority of 'Abdullah ibn 'Umru that the Messenger of Allah ﷺ said:

((...ولا يحل لثلاثة نفر يكونون بأرض فلاة إلا أمروا عليهم

أحدهم))

“It is not allowed for three persons in an open land without appointing one of them as an *Ameer* over them.”

Abu Dawood narrated from Abi Sa'id that the Messenger of Allah ﷺ

said:

((إِذَا خَرَجَ ثَلَاثَةٌ فِي سَفَرٍ فَلْيُؤَمِّرُوا أَحَدَهُمْ))

“If three people went out on a journey, let them appoint one of them as an *Ameer*.”

Al-Bazaar narrated from the tradition of ‘Umar ibn Al-Khattab that the Prophet ﷺ said:

((إِذَا كَانُوا ثَلَاثَةً فِي سَفَرٍ فَلْيُؤَمِّرُوا أَحَدَهُمْ))

“If there are three persons in a journey, let them appoint one (*Abad*) of them as an *Ameer*.”

All these traditions state that the *Ameer* should be one, as understood from the *Abadith*.

((إِلَّا أَمَرُوا عَلَيْهِمْ أَحَدَهُمْ))

“...Without appointing one (*Abad*) of them as an *Ameer*.”

((فَلْيُؤَمِّرُوا أَحَدَهُمْ))

“Let them appoint one of them as an *Ameer*.” The word one ‘*Abad*’ is equivalent to the word ‘*wahid*’ which indicates the number one and not more. This is understood from the opposite meaning (*Mafboom ul-Mukhalafah*). The *Mafboom ul-Mukhalafah* for numbers and description (*Wasf*) can be acted upon without the need of text. As Allah ﷻ says:

﴿قُلْ هُوَ اللَّهُ أَحَدٌ﴾

“Say: Allah is One.” [TMQ Al-Ikhlās: 1]

which means that there is not a second to him. *Mafboomul-Mukhalafah* (the opposite concept) is not annulled unless there is a text that does so. Like the saying of Allah ﷻ:

﴿وَلَا تُكْرَهُوا فَتَيِّكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا﴾

“Don’t force your (servant) girls on prostitution if they (wanted) marriage.” [TMQ An-Nur: 33]

The *Mafboom ul-Mukhalafah* of this verse (*Ayah*) means that if they did not want marriage then they are forced into prostitution. But the saying of Allah annuls this *Mafboom ul-Mukhalafah*:

﴿وَلَا تَقْرُبُوا الزَّانِيَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا﴾

“Don’t come close to adultery, it is an abomination and an evil way.” [TMQ Al-Isra: 32]

Hence, if there is no text to nullify the *Mafboom al-Mukhalafah* then it has to be acted upon. Similarly, the saying of Allah ﷻ:

﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ﴾

“The adulterer, male and female, strike every one of them with one hundred lashes” [TMQ An-Nur: 2]

The lashing in this verse is limited to a certain number, which is one hundred lashes. The fact that it has given this specific number means that it is not allowed to increase over the hundred lashes. Therefore, the saying of the Messenger ﷺ in these *Abadith*;

((فَلْيُؤَمِّرُوا أَحَدَهُمْ))

“Let them appoint one from them (*Abadahum*) as an *Ameer*”, indicates by use of *Mafboom ul-Mukhalafah*, that it is not allowed to appoint more than one *Ameer*. Thereupon the emirate (*Imarah*), leadership and presidency is for one person only, and it is not allowed absolutely, from the text and meaning of these *Abadith*, to be for more than one person. This is also supported by the action of the Prophet ﷺ, as he, in all the situations in which he appointed an *Ameer*, he appointed only one person and no more. And he absolutely did not appoint more than one person in the same place.

With regards to the *Hadith* narrated from the Messenger ﷺ that he sent Mu’az and Abu Musa to Yemen, and he said to them:

((يُسِّرَا وَلَا تُعَسِّرَا وَبَشِّرَا وَلَا تُنْفِرَا وَتَطَاوَعَا))

“Make it easy and not difficult, give good tidings and not bad news, and co-operate with each other.” In this incident the Prophet ﷺ sent each one of them to a different part of the Yemen and not to the same place. This *Hadith* was narrated by Al-Bukhari in two different texts. In one of them he states that they were sent to two places, where he said:

((حدثنا موسى، حدثنا أبو عوانة حدثنا عبد الملك عن أبي

بردة قال: بعث رسول الله ﷺ أبا موسى ومعاذ بن جبل إلى

اليمن قال: وبعث كل واحد منهما على خلاف، قال: واليمن

مخلافان، ثم قال: يسرا ولا تعسرا، وبشرا ولا تنفرا، فانطلق

كل واحد منهما إلى عمله))

“Musa narrated to us that Abu ‘Owanah narrated that ‘Abdul Malik narrated from Abi Burdah who said that the Messenger of Allah ﷺ sent Abu Musa and Mu’az ibn Jabal to Yemen and he sent each of them to a province and said: ‘Yemen is of two places.’ Then he said ‘Make it easy not difficult. Give good news and not bad.’ Each one of them set out for his job...” Therefore, there must not be two chiefs for the same matter, nor two presidents for the same place, rather the president, the leader and *Ameer* must be only one and it is forbidden for there to be more than one.

In regards to what has spread in Muslims’ countries with regard to the establishment of a collective leadership in the form of a council, or a committee, or an administrative association and the like, that have the functions of leadership, all this disagrees with the divine rule, if leadership is given to the association, council or committee. This is because leadership would be given to a group, which is *Haram* according to the texts of the *Ahadith*. However, if the committee, the council or the association were to carry out tasks, or discuss matters and make consultation, then all this is allowed and is from Islam, because the Muslims are praised for having consultation amongst themselves. The

opinion of these committees would be considered according to the *Hukm* of *Shura* explained in this book.

7

Al-Mu'awinoon (Assistants of the Khaleefah)

The assistants are the *Wazirs* whom the Khaleefah appoints to assist him in discharging the burdens and responsibilities of the *Khilafah*. There are numerous burdens in the *Khilafah*, especially when the state is growing and expanding, and these would be a heavy burden for the Khaleefah alone. Hence, he needs people to help him in carrying this burden and discharging these responsibilities. The appointment of such assistants is one of the *Mubah* matters.

The assistants whom the Khaleefah appoints to help him in carrying the burden of the *Khilafah* are of two types: the delegated assistants and the executive assistants.

THE DELEGATED ASSISTANT (MU'AWIN UT-TAFWEED)

The delegated assistant is the *Wazir* whom the Khaleefah appoints to bear with him the responsibilities of ruling and authority. The Khaleefah delegates to him the running of the state's affairs according to his opinion and executing them according to his *Ijtihad* in compliance with the *Shar'a* rules.

The appointment of the *Mu'awin* is one of the *Mubah* matters that means the Khaleefah is allowed to appoint a delegated assistant to him who helps him in his responsibilities and tasks. Al-Haakim and at-Tirmithi reported from Abi Sa'id al-Khudri, he said that the Messenger of Allah ﷺ said:

((وزيراى من السماء جبرئيل وميكائيل ومن الأرض أبو بكر

وعمر))

“My two ministers (*Wazirs*) from the heavens are Jibreel and Mika'il

and on the earth are Abu Bakr and 'Umar.” The word *Wazir* in the *Hadith* means the helper and the assistant, which is the linguistic meaning. It has been used in the Qur'an with such a meaning; Allah ﷻ says:

﴿وَجْعَلْ لِّيْ وَزِيْرًا مِّنْ اَهْلِىْ﴾

“Give me a minister (*Wazir*) from my family.” [TMQ Ta-Ha: 29]

The word *Wazir* in the *Hadith* is unrestricted (*Mutlaq*) which includes any help or assistance in any matter; therefore he can assist the Khaleefah in the functions and the tasks of the *Khilafah*. The *Hadith* of Abi Sa'id al-Khudri is not specific to the assistance in the matter of ruling, because Jibra'il and Mika'il, the two *Wazirs* of the Messenger of Allah ﷺ from the heaven, have no relationship in helping him in the responsibilities and functions of ruling. Therefore, the word *Waziray* (my two *Wazirs*) in the *Hadith* does not indicate other than the linguistic meaning, which is my two assistants. Taking anyone as an assistant or as a helper is of the *Mubah* matters, likewise appointing the *Wazir* is of the *Mubah* matters. The Messenger's appointment of Abu Bakr and 'Umar as *Wazirs* does not go out of the bounds of the linguistic meaning, since it does not appear that they carried along with the Messenger of Allah ﷺ the tasks of ruling. However appointing them as two *Wazirs* to him gives them the mandatory powers of assisting him in every matter without restricting that in the matters and tasks of ruling and the government. Appointing them as *Wazirs* indicates that it is allowed for the Khaleefah to take as a *Wazir* a person who assists him and helps him in the matters and tasks of ruling. After Abu Bakr became the Khaleefah, he appointed 'Umar ibn al-Khattab as an assistant to him. His assistance was so evident to the point that some of the *Sahabah* said to Abu Bakr; “we cannot tell whether the Khaleefah is yourself or 'Umar.” Once 'Umar held the post of the *Khilafah*, 'Uthman and 'Ali were 'Umar's assistants, but they did not appear to carry out any assistant role to 'Umar in the matters of ruling. Their situation was similar to that of Abu Bakr and 'Umar with the Messenger of Allah ﷺ. At the time of 'Uthman, 'Ali and Marwan ibn al-Hakam were his two assistants. However 'Ali was unhappy about some affairs, so he remained distant. However, Marwan's *Wizara* was quite evident in assisting 'Uthman in the tasks of ruling.

If the Khaleefah appointed someone to be his assistant in the matters

of ruling, he delegates to him the administration of the affairs, in general terms, as a deputy to him. By such delegation, the delegated person becomes a *Wazir* and a delegated assistant to the Khaleefah and, he has responsibilities like those of the Khaleefah. However, he does not possess his powers by himself like the Khaleefah, rather through the assignment of the *wizara* to him by the Khaleefah as a deputy to him. Therefore, if the Khaleefah declares I have appointed so and so person as my delegated *Wazir*, or as my delegated assistant, or if he said to someone: 'Be my deputy in what is assigned to me' or any other wording to that effect, then the designated person would thereafter enjoy all the mandatory powers of the Khaleefah as deputy to him. Al-Mawardi, in his book *Al-Ahkam Al-Sultaniyya* called this post '*Wizarat-ut-Tafweed*, and he described it as follows; "As for the delegated *Wizarah*, it means that the *Imam* appoints a *Wazir*, for whom he delegates the running of the affairs according to his own opinion and executing them according to his own *Ijtihad*."

This is the reality of the delegated assistant. He is an assistant to the Khaleefah in all the *Khilafah* functions. He has a mandate to perform any task related to the *Khilafah*, whether the Khaleefah delegated that particular task to him or not, for he has been given a general delegation. However, he should report back to the Khaleefah for every task he performs, for he is an assistant and not a Khaleefah. Thus he cannot be independent of the Khaleefah but must report to him about every action he undertakes no matter how big or small. This is because the running of the ruling affairs is commissioned to the Khaleefah.

This reality of the assistant or the *Wazir* in *Shari'ah* terms is totally different to the reality of the ministry in the democratic system. This is because the ministry in the democratic system is the government; which is a group of individuals who, in their capacity as a particular group, carry out the ruling. This is because ruling, in their view, belongs to the group not to the individual. In other words, the *Imarah* is collective and not singular. Thus, the actual ruler who enjoys all the mandatory powers to rule is the government i.e. a group of ministers as a minister and none of them enjoys the absolute mandate to rule, but the mandate to rule is shared amongst the whole cabinet. As for the single minister, he is assigned to one area of ruling in which he would possess mandatory powers, which the government as a whole assigns to him. As for the areas not been assigned to him, they remain in the hands of the

government as a cabinet and not to him in person. For instance, the minister of justice enjoys some mandatory powers within his ministry and there are other matters over which he has no mandate, rather they are decided and run by the government as a whole. This is the reality of the government in the democratic system. From it we notice a marked difference between it and the *Wizara* of the Islamic system and we can also see a wide difference in meaning between the word *Wazir* i.e. assistant in Islam and the word *Wazir* i.e., minister in the democratic system. Therefore, the *Wazir* and the *Wizara* (minister and ministry) in the Islamic system means the Khaleefah's assistant in all his duties without exception, wherein he performs such duties and reports back to the Khaleefah. The *wizara* is a singular position run by one person, and if it were given to more than one person each one of them would enjoy the same mandatory powers that the Khaleefah possesses. The *Wizara* (ministry) in the democratic system, on the other hand, is in fact a group, and not an individual, where each minister has powers only over a specific area of ruling. He does not enjoy full powers rather limited ones. The above clearly illustrates the difference between the concepts of the *Wazir* and the *Wizara* in Islam and their concepts in the democratic system. Nevertheless, the meanings of the *Wazir* and the *Wizara* as portrayed by the democratic system are the meanings that are predominant and widespread; and once mentioned, they are the meanings that immediately spring to people's minds. Therefore, to remove any confusion and to determine the exact *Shari'ah* meaning to the exclusion of all other meanings, it would be invalid to call the Khaleefah's assistants *Wazirs* and use the term *Wizara* without restriction. Rather, he should be called assistant (*Mu'awin*) and that would be the true meaning. On the other hand, some form of restriction should be laid down when using the words *Wazir* and *Wizara* to dismiss the democratic meaning and indicate the Islamic meaning alone. We gather from all this that the *Mu'awin* is the person whose delegation includes the whole of the state's functions in the whole of the state's territories. Therefore, it is said; "the Khaleefah delegates to the assistant a general delegation as a deputy to himself." Thus, the reality of the *Mu'awin*'s job is that it is a deputyship for the Khaleefah; this deputyship should be general, including all the affairs of the state, i.e. he is an assistant ruler.

THE CONDITIONS OF THE DELEGATED ASSISTANT

The delegated assistant should meet the conditions required in the Khaleefah i.e. to be male, free, Muslim, mature, sane, just and competent in what is assigned to him in terms of duties delegated to him.

Evidences of these conditions are the same as those of the conditions of the Khaleefah post. Therefore, the assistant should be male, for the Messenger of Allah ﷺ said:

((لن يفلح قوماً ولّوا أمرهم امرأة))

“People who appoint a woman to run their affairs shall never succeed.” [Narrated by al-Bukhari on the authority of Abi Bakra] He must also be free, for the slave does not have authority over his own affairs, thus he cannot run other people's affairs. He should also be mature, for the Messenger of Allah ﷺ said:

((رفع القلم عن ثلاثة عن النائم حتى يستقيظ، وعن الصبي

حتى يبلغ، وعن المعتوه حتى يبرأ))

“Three types of people are exempted from accountability, the one who sleeps until he wakes up, a child until he reaches the age of puberty and the insane until he is cured.” [Narrated by Abu Dawood] He also should be sane, for in the same *Hadith*, the Messenger of Allah ﷺ said:

((وعن المعتوه حتى يبرأ))

“...and the insane until he is cured.” In another narration the *Hadith* states

((وعن المجنون المغلوب على عقله حتى يفيق))

“...about the one whose mind is overpowered until he regains his mind.” *Mu'awin* should also be just for Allah ﷻ has made it a condition in testimony. He ﷺ says:

﴿وَأَشْهَدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

“Let two just people from amongst you bear witness.” [TMQ Al-Baqarah: 282]

Therefore, there is more reason to require justice in the assistant of the Khaleefah. The *Mu'awin* should also be from the competent people in the duties of ruling, in order to be able to assist the Khaleefah in shouldering the tasks of the *Khilafah* and the responsibility of ruling and authority.

THE CONDITIONS REQUIRED IN THE APPOINTING OF THE DELEGATED ASSISTANT

The appointing of the delegated assistant requires two conditions: The first is that he is given general supervision and the second is that he is a deputy. Therefore, the Khaleefah should say to him: ‘I assign to you what is to me so as to perform on my behalf’ or any other words to that effect which include general supervision and deputation. If the assignment is not on these grounds, he would not become a *Mu'awin* and he would not enjoy the mandatory powers of *Mu'awin* until his appointment were to be made on these grounds.

The evidence for this is the reality of the assistant's function, which is deputyship of the Khaleefah. Deputisation, in this context, is a contract (*Aqd*), and contracts will not be valid except through explicit words. Therefore, it is conditional in appointing the assistant that this appointment is carried out in terms that make of him a deputy to the Khaleefah. Furthermore, the reality of the assistant is that he possesses all the mandatory powers, which the Khaleefah enjoys in ruling. Hence, the appointment must be general in everything, i.e. it must include a term that indicates the general consideration of matters. In other words, appointment should include a term that indicates that the assistant enjoys all the mandatory powers of ruling. This is done by saying to him for example; “I assigned to you what is to me so as to act on my behalf”, or to say “I took you as a *Wazir* depending on your action on behalf of me”, or the like. However, giving him the general consideration without stating ‘on behalf of me’ means to become an heir apparent (*Wilayat ul-'Abd*) not a contract of *Wizara*, and the heir apparent (*Wilayat ul-'Abd*) post is invalid, so such a contract would be invalid as well. If the

assignment was limited to deputisation, without explicitly mentioning its general consideration, then it would become an ambiguous deputisation in terms of generality or specification, execution or delegation and accordingly the *Wizara* would not be convened. If the Khaleefah also said to him, “represent me in judicial matters, or in the matters of policing, education or the like”, the *Wizara* would not be convened and he would not be a delegated assistant. This is because it is necessary in appointing the delegated assistant to use words or terms that indicate the reality of the assistant, which is the deputyship of the Khaleefah and the possession of his mandatory powers. In other words, in order that the contract of the *Wizara* be convened for the delegated assistant, it should include a term that indicates two conditions; the general delegation and the deputisation. If the term did not clearly cover these two conditions, the *Wizara* would not be convened to the delegated assistant. Since the assignment of the assistants is one of the *Mubab* matters, then the Khaleefah is allowed to appoint one or more assistants. If the Khaleefah appointed more than one *Mu'awin*, then each of them would be given the same general consideration that the Khaleefah has. It would not be allowed for the Khaleefah to appoint two *Mu'awins* who would share collectively the same general supervision, since the *Wilayah* of ruling is singular. Therefore, if he did so, then the assignment of both would not be allowed and void, for it is an appointment of an *Ameer* and this could only be to one individual. This is because the Messenger of Allah ﷺ said,

((فليؤمروا أحدهم))

“Let them appoint one from among themselves.” He ﷺ also said:

((إلا أمروا عليهم أحدهم))

“Without appointing one of them as an *Ameer* on them.” This singular appointment is therefore a condition in the validity of the *Imaru*.

THE TASK OF THE DELEGATED ASSISTANT

The task of the delegated assistant is to submit to the Khaleefah all the work he intends to perform. He then reports to the Khaleefah what he has executed in terms of decisions and what he has discharged in terms of management and appointment, so that the assistant would not become

like the Khaleefah in his powers. Therefore, his job is to submit his review and then execute it, unless the Khaleefah stops him from doing so.

Evidence for this is the reality of the *Mu'awin* as a deputy of the Khaleefah. A deputy acts on behalf of the person who appointed him as his deputy. Thus he does not become independent from the Khaleefah, but rather reviews with him every action exactly as 'Umar used to do when he was *Wazir* to Abu Bakr, where he used to review with Abu Bakr what he intended to perform, then executed it accordingly. Reviewing with the Khaleefah does not necessarily mean that he needs to ask for his permission in every single detail, for this contradicts the reality of the *Mu'awin*. Rather, reviewing with the Khaleefah means to discuss the matter with him, like for example to appoint a capable *Wali* to one of the provinces, or remove the complaints of people in terms of food shortages in the market, or any other state affairs. He may also submit a matter to him, in the form of a presentation, which would be sufficient for the *Mu'awin* in the future to carry out the matter with all its details, without the need for permission to act. However, if the Khaleefah issues orders to stop the carrying out of any issue, then it should not be executed. Hence, the presentation is simply putting forward of a proposal and the consultation with the Khaleefah about it, and it does not mean seeking permission to carry out the task. The *Mu'awin* can execute the task in question as long as the Khaleefah does not stop him from doing so.

The Khaleefah should review the actions of the *Mu'awin* and his management of affairs, in order to approve what is right and redress what is wrong. This is because the management of the *Ummah's* affairs is commissioned to the Khaleefah and discharged according to his own *Ijtihad*.

The evidence for this is the *Hadith* of responsibility over the subjects where the Messenger of Allah ﷺ said

((الإمام راع وهو مسؤول عن رعيته))

“The *Imam* is a guardian and he is responsible over his subjects.” Therefore, the Khaleefah is entitled to the task of government and he is responsible over his subjects, whereas the delegated *Mu'awin* is not

responsible over subjects, but he is merely responsible for his own actions. Thus, responsibility about the subjects is for the Khaleefah alone. Therefore, the Khaleefah is obliged to review the actions of the *Mu'awin* and his performance in order to fulfil his duty towards his subjects. Besides, the delegated assistant can sometimes make errors, and the Khaleefah has to redress such errors, so he has to review all the assistant's actions. Therefore, it is for these two reasons: fulfilling responsibility towards his subjects and redressing potential errors made by the delegated assistant, that the Khaleefah is obliged to review all of the *Mu'awin's* actions.

If the delegated assistant decided a matter and the Khaleefah approved of it, the *Mu'awin* could then execute it without any alterations. If the Khaleefah objected to what the *Mu'awin* had executed, then in this case the matter would be examined. If the *Mu'awin* had correctly carried out a verdict or if he had spent some funds in the right areas or in certain projects, then the *Mu'awin's* opinion comes into force, for, in principle, it is the Khaleefah's opinion, and the Khaleefah has no right to redress what the *Mu'awin* had executed in terms of rules or funds he had spent. However, if the *Mu'awin* had performed other types of actions, such as the appointing of a *Wali* or the preparation of an army, the Khaleefah has the right to reverse the *Mu'awin's* decision and enforce his own and nullify the *Mu'awin's* actions. This is because the Khaleefah has the right to redress his own actions so he has the right to redress the actions of his assistant.

This is a description of the way that the *Mu'awin* follows in performing his actions and of the way that the Khaleefah follows in reviewing the *Mu'awin's* actions. It is derived from what sort of actions the Khaleefah is allowed to redress and what actions he is not allowed to redress. This is because the actions of the delegated *Mu'awin* are considered as actions of the Khaleefah. As an explanation for this, it is allowed for the delegated assistant to rule by himself and to appoint rulers as it is allowed for the Khaleefah. This is because the conditions of ruling have been conferred to him. He is also entitled to investigate complaints or to deputise someone to do so, because the conditions of complaints have been verified for him. He is also entitled to take charge of *Jihad* by himself, or appoint someone to do so, for the conditions of war have been verified for him. He is entitled to execute orders he has decided

upon or to deputise someone to execute them on his behalf, for the conditions of voicing an opinion and management are conferred to him. However, this does not mean that the Khaleefah can't reverse whatever the *Mu'awin* performed as long as he had been briefed about it. It means rather that he possesses the same powers as the Khaleefah, but he acts on his behalf and not independent of him. Therefore, the Khaleefah is entitled to disagree with the *Mu'awin* and redress what has been executed or reverse any of his actions, bearing in mind that this applies only to the sort of actions that the Khaleefah could redress of his own actions. If the *Mu'awin* had executed a rule correctly or spent funds in the right areas, then the Khaleefah's objections would carry no weight and the *Mu'awin's* decision would be executed. This is because in principle, it is the Khaleefah's own decision and in such cases he himself could not reverse his decision or nullify what he himself had executed, hence, he could not reverse his *Mu'awin's* action. However, if the *Mu'awin* had appointed a *Wali*, an administrator, an army commander or any other appointee or if he had laid down an economic strategy, a military plan or an industrial programme or any similar undertaking, then the Khaleefah is allowed to nullify it. This is because, although they are considered as being the Khaleefah's opinions, they fall under the category of decisions that the Khaleefah is entitled to redress even when done by him. Accordingly, he could do likewise with his *Mu'awin's* decisions. So in this category, it is allowed for the Khaleefah to nullify the actions of the *Mu'awin*. The basic rule concerning this would be as follows: Any action that the Khaleefah is allowed to redress of his own actions, he is entitled to redress in a like manner if performed by his *Mu'awin*; and every action the Khaleefah cannot redress of his own actions, he is not allowed to redress if performed by his *Mu'awin*.

The delegated *Mu'awin* is not designated to a particular department, like the education department for example; nor a particular action, like the preparation of an army and its weaponry systems, because his appointment is general. He also does not carry out administrative matters, but he has like the Khaleefah, a general supervision over them. If he had been appointed as such then the *Wizara* (the assistantship) would not be conferred to him by this appointment nor will he be assistant to the Khaleefah in the matter in which he was appointed. This is because such a contract is specific and thus does not include general supervision, which is a condition in appointing the delegated assistant. As for the

appointment of the Supreme Judge, this is not considered an appointment of an assistant to the Khaleefah in the Judiciary, but an appointment of a *Wali* with a specific *Wilayah* in other than the ruling; like the *Imarah* of the army, or the *Imarah* of the *Sadaqat* and the like. Such posts would be convened like those of the *Wilayahs*, not like the appointment of the *Mu'avin-ut-Tafweedh*. Hence the supreme judge is an *Ameer*, with a mandate to appoint Judges and to examine the judicial matters, and to judge between people, but he is not an assistant. Therefore, it would be wrong to confine the delegated assistant to a particular department. If he were confined to a particular department, his contract would be null and void. In order for the appointment of the delegated assistant to be valid, it must be a contract i.e. it should be expressed in clear wording that contains two conditions: one would be its generality and the second is the deputyship. By limiting him to a certain department would make him miss one of the two conditions of his contract, and accordingly the contract of his employment would be nullified. In addition to this, he is not allowed to practice the administrative matters; this is because those who practice administrative matters are civil servants not rulers. Since the delegated assistant is a ruler, not a civil servant, and his (assistants') functions are to look after the affairs, he is not to perform the functions that the civil servants are employed to perform.

This is the reason why he does not run the administrative matters. It does not mean, however, that he is prevented from carrying out any administrative action; rather he is not confined to administrative functions, but is given a general responsibility.

THE EXECUTIVE ASSISTANT

Mu'avin-un-Tanfeedh is the *Wazir* whom the Khaleefah appoints to be his assistant in the execution and follow up and performance of his orders. He is the intermediary between the Khaleefah and the state's various departments, the subjects and the foreign office on the other side. He conveys messages, on the one hand, from the Khaleefah and on the other hand to him. As a result, he is an assistant in executing orders and not a ruler over people, nor is he entrusted with them. His work is therefore administrative and not ruling, and his department is a tool used to execute what the Khaleefah issues to the domestic and foreign offices, and to

submit to him all that comes to him from these offices. His department acts as an intermediary between the Khaleefah and others, where it conveys to them on his behalf and conveys to him from them.

The Khaleefah is a ruler, whose duties include ruling, execution, and looking after people's affairs. Carrying out of ruling, execution and guardianship require administrative actions. This necessitates the setting up of a special department that works closely with the Khaleefah to manage tasks that help him carry out the *Khilafah's* duties. Thus, an executive assistant is required to be appointed by the Khaleefah to run administrative affairs not the affairs of ruling. He does not perform any ruling duties like the delegated assistant. He is not allowed, for example, to appoint a *Wali* or an '*Aamil*', nor he manages people's affairs. His duties are merely administrative, i.e. to execute the ruling orders and the administrative tasks issued by the Khaleefah or the delegated assistant. This is why he is known as the executive assistant. Jurists used to call him '*Wazir Tanfeedh*' which simply means *Mu'avin ut-Tanfeedh*, on the basis that the word *Wazir* is linguistically used to mean 'the assistant.' They said that this *Wazir* is an intermediary between the Khaleefah, the subjects and the *Wulab*, conveying the orders issued by him, and executing his orders and rules. He therefore informs all parties concerned about the appointment of *Wulab*, and about the preparation of task forces and armies stationed at the frontiers. He also submits to the Khaleefah whatever comes from such offices and informs him of all new matters that may arise so that he can implement whatever the Khaleefah may order him to. This makes him an assistant in executing commands, and not a ruler over them neither is he entrusted with them. The executive assistant is linked directly to the Khaleefah just like the delegated assistant. Since he is part of the Khaleefah's entourage and connected to ruling, although his job is only administrative, the executive assistant cannot be a woman, for women are not allowed to partake in ruling and anything linked to ruling. This is because of the *Hadith* of Allah's Messenger ﷺ:

((لَنْ يَفْلَحَ قَوْمٌ وَلَّوْا أَمْرَهُمْ امْرَأَةً))

“People who appoint a woman to run their affairs will never succeed.” [Narrated by Bukhari on the authority of Abi Bakrah] The executive assistant also cannot be a disbeliever; and must be a Muslim, for he is part of the Khaleefah's entourage. This is because Allah ﷻ says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا بَطَانَةً مِّن دُونِكُمْ لَا يَأْلُونَكُمْ
خَبَالًا وَدُّوا مَا عَنِتُّمْ قَدْ بَدَتِ الْبَغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفِي
صُدُورُهُمْ أَكْبَرُ﴾

“O ye who believe! Do not take for entourage or court other than your own folk, who would spare no pains to ruin you; they love to hamper you. Hatred is revealed by (the utterance of) their mouths, but that which their breasts hide is greater.” [TMQ Al-Imran: 118]

The prohibition of taking a non-Muslim as part of the Khaleefah's entourage is very clear in the verse. Therefore the executive assistant cannot be a *Kafir* but must be Muslim for he is directly connected to the Khaleefah and not separate from him, just like the delegated assistant. The executive assistants can also number more than one according to the needs of the ruling.

As for the areas in which the *Mu'awinut-Tanfeedh* acts as an intermediary between the Khaleefah and others, these are four:

- 1) The state's departments
- 2) The armed forces
- 3) The *Ummah*
- 4) International affairs

These are the types of duties that the executive assistant carries out. Since he is an intermediary between the Khaleefah and others, he would be considered as a liaison department for the Khaleefah. By acting as such, he follows up what is required of the state departments' actions.

The Khaleefah is the actual ruler. He is the one who deals with ruling, execution and the management of people's affairs by himself. Therefore, he is in constant contact with the ruling apparatus, international affairs and the *Ummah*. He enacts the laws, takes decisions, carries out actions of

caring and looks at the performance of the ruling apparatus and whatever obstacles it may face and whatever needs it requires. He is also informed of any demands, complaints and matters that come from the *Ummah*, and he follows international activities as well. Therefore, based on the reality of these actions, the *Mu'awinut-Tanfeedh* acts as an intermediary relating to these matters, i.e. he conveys messages to the Khaleefah and conveys orders from him. Since what is issued by the Khaleefah to the different departments and what comes to him from them needs following up in order to be implemented, the executive assistant needs to carry out this follow up in order that the execution is satisfactorily completed. He would carry out a follow up with the Khaleefah and with the state departments and would not stop from carrying out this follow up, unless the Khaleefah specifically demanded so. In this case he has to obey his orders and stop the follow up, because the Khaleefah is the ruler and his order has to be implemented.

As regarding the matters related to the army and the international relations, these are generally confidential and they are specific to the Khaleefah. Therefore, the executive assistant does not follow up the execution of these matters nor pursue their execution, unless the Khaleefah requests him to do so; in which case he will follow up only the matters which the Khaleefah demanded and not any others.

With regards to the *Ummah*; in matters of looking after her affairs, fulfilling her demands and removing unjust actions from her, these matters are for the Khaleefah to deal with the one who is appointed as a deputy to him. They are not a mandate for the executive assistant, so he does not follow up them except those that the Khaleefah may ask him to do so. His action in their regard is simply execution and not following up. All this depends on the nature of the actions that the Khaleefah carries out and accordingly the nature of the *Mu'awinut-Tanfeedh* actions.

8

Ameer of Jihad

The *Ameer* of Jihad is the person whom the Khaleefah appoints as an *Ameer* over matters of foreign affairs, military affairs, internal security and industry in order to supervise and administer.

He is named the *Ameer* of Jihad, although he supervises these four departments, because all these departments are linked to Jihad. Hence foreign affairs, whether at time of peace or war, are run according to the requirements of Jihad. The military department is linked to the armies that fight Jihad, in its formation, preparation and armament. Internal security is linked to the preservation and protection of the state as well as the preservation of security inside the state, e.g. in dealing with rebels, highway robbery through the use of the police force that is part of the army that is prepared for Jihad. The industrial department involves itself in supplying arms and equipment to the army for the purpose of Jihad. Thus since all these issues are linked to Jihad, accordingly he was called *Ameer* of Jihad.

He is called the *Ameer* of Jihad, though he is not a ruler. This is due to the frequent orders he issues, because of his wide area of responsibility. For the term *Ameer* is in the form of 'Fa'eel' which is a superlative adjective of the noun participle *Aamir* (the commander). This is due to the numerous orders, which he issues at day and night. This is similar to the word '*Raheem*' –merciful, the superlative adjective of noun participle '*Raahim*', due to the infinite mercy that He ﷻ grants.

The directorate of the *Ameer* of Jihad consists of four departments, which are:

- 1) Foreign Affairs Department
- 2) War Department

3) Internal Security Department

4) Industrial Affairs Department

These departments are supervised and administered by the *Ameer* of Jihad.

Jihad is the method defined by Islam to convey the Message of Islam to the world. Conveying the Islamic *Da'wa* is considered the main function of the Islamic state after implementing the rules of Islam internally. Therefore, the rules of Jihad include the rules of war, peace, cease-fire and treaties. They also include foreign relations with other states and entities, as well as the rules of the army, its preparation, and training and choosing its commanders, banners and flags. They also include the weaponry systems of the army and the necessity to be supplied by military-orientated industry through which the preparation would be completed in such a way that it achieves the intimidation of the apparent and hidden enemy. They also include the rules of forcing the law inside the state, as well as the prevention of any rebellion against the state, dealing with revolts, highway robbery, fiddling with the internal security and crimes against her citizens.

The Messenger ﷺ used to run all the affairs of Jihad by himself, and after him his *Khulafaa'* followed suit. The Messenger ﷺ and the *Khulafaa'* used to appoint certain people to carry out some or all the actions of Jihad, whether the preparation of the army, carrying out the actual fighting, concluding peace and cease-fires, the foreign communications, or fighting the rebels and apostates.

It has already been established that actions, which the Khaleefah can perform by himself, he is allowed to delegate someone else to perform on his behalf. Therefore the appointment of the *Ameer* of Jihad and the establishment of his directorate is illegitimate.

Since his directorate is related to Jihad and its rules, this means that foreign affairs must be included because all foreign affairs are based on carrying the Islamic call. It also includes military affairs because Jihad is the fight to raise the word of Allah the highest. The formation of an army is required for fighting as well as the preparation and appointment

of commanders, staff and soldiers, in addition to training, provisions and supplies.

The army needs weapons that, in turn, are dependent on the existence of industry. Hence possessing an industry is a requirement for the army of Jihad. Thus all factories within the state should be based upon war industry, and accordingly industry should follow Jihad and the *Ameer* of Jihad.

As the army performs Jihad to carry the *Da'wa* to the world, it also guards the state and protects it. Therefore, fighting against rebels, outlaws and highway robbers is one of the duties of the army. Thus, internal security depends on Jihad, the *Ameer* of Jihad and his directorate. This is the proof that the directorate of Jihad should have four departments, which are the foreign affairs, military affairs, internal security and industry.

FOREIGN AFFAIRS DEPARTMENT

The foreign affairs department undertakes the responsibility of all foreign affairs, pertaining to the relations of the *Khilafah* state with the foreign states, whatever these affairs and relations may be. Whether they are related to the political aspect and what it entails like the formation of pacts, peace treaties, cease-fires, negotiations, appointing ambassadors, sending messengers and delegates, and establishing embassies and consulates. It also includes relations, which are related to economical, agricultural, and trading matters as well as postal communications or wire and wireless communications etc. The foreign affairs department runs all these matters, because they are concerned with the relations of the *Khilafah* state with other states.

The Messenger ﷺ established foreign relations with other states and entities. He sent 'Uthman bin 'Affan to negotiate with Qur'aysh just as he negotiated with the delegates of Qur'aysh. He sent delegates to Kings and he received the delegates of Kings and leaders. He also concluded pacts and peace treaties. Similarly after him, his *Khulafaa'* used to establish political relations with other states and entities. They used to appoint people to carry out these actions on their behalf, on the basis that whatever an action a person can perform by himself, he can delegate it to some other person to carry out it on his behalf.

WAR DEPARTMENT

The War Department undertakes all issues related to the armed forces, whether they are the army, police, weapons equipment, war material, ammunitions or similar issues. They also include the military academies, military missions and whatever is needed of Islamic culture and general culture necessary for the army as well as anything else related to the war and preparation for it.

All this is undertaken and supervised by the War Department. Its name is connected with warfare and fighting. Warfare requires an army and the army requires preparation and formation including its staff commanders, officers and soldiers.

The army has its flags and banners. Its formation requires training, both physical and technical, which includes training in the fighting techniques using various weapons, according to contemporary advancement in technology. Therefore, it is imperative for the army to undertake military and technical study and to acquire training in fighting tactics, and the use of all the latest variety all manner of weaponry.

Since the army is an Islamic army and since it is the army of the *Khilafah* state which carries the Islamic *Da'wa* to the world, it is therefore imperative for the armed forces to acquire Islamic culture in general, and the specific Islamic culture related to the rules of fighting, peace, truces, treaties, agreements including all the detail required. Therefore, all military academies at various levels and military missions all fall under the mandate of the Department of War.

The armed forces must include also a division that is in charge of internal security i.e. the police. Both the armed forces and the police should have all the weapons, equipment, supplies and the necessary provisions they need to carry out their duty. This is why all these tasks fall under the Department of War.

INTERNAL SECURITY DEPARTMENT

The Department of Internal security is responsible for anything pertaining to security. It undertakes to maintain security within the

country by the use of the armed forces. The police are, in fact, the main body responsible for maintaining security. The Internal Security Department can use the police whenever they see it fit and their order is immediately binding. If the police require the help of the armed forces, submit a request to the Khaleefah. He can order the army to help the internal security department or to provide it with a military force to help it in maintaining the security, or he can issue any order he sees fit. He is also entitled to refuse such requests and demand that the police carry out the task themselves. The Internal Security Department is the body responsible for maintaining the security of the state. The actions that could lead to a breach of internal security are apostasy from Islam, rebellion against the state manifested in destructive activities and actions of sabotage like strikes or the occupation of vital centres of the state, as well as aggression against private, public, or state property.

Rebellion against the state can also take the form of using arms to fight against it. Other actions that undermine the internal security are the *Hirabah* that is the highway robbery as well as the interference with the people by manner of robbing their property and endangering their lives.

Other actions which undermine internal security include the attack on the property of people by theft, looting, robbery, misappropriations, as well as attacks on people through assault, injuring and killing in addition to attacks on their honour through lying, slandering and raping. These are some of the actions that can lead to a threat to internal security.

The department of internal security protects the state and the people from all these actions. Therefore, whoever is declared an apostate and sentenced to death if he did not repent is dealt with by this department and executed. If those who declare apostasy are a group, then they have to be asked to return to Islam, and the state should not punish them. If however, they insist on apostasy then they are fought against. If they are small in number and the police force alone is able to fight against them then it has to do so. But if they are large in number and the police force is unable to fight against them then they have to request the Khaleefah to provide them with a military force to help them. If this military force is insufficient, then they have to request the Khaleefah to order the army to provide assistance. This is concerning apostates.

With regards to people who rebelled against the state; if they do not use arms and limit themselves to destruction and sabotage by strikes, demonstrations, occupation of vital centres of the state or aggression against private, public and state properties through demolition, then the internal security department restricts itself to using the police force in order to prevent such destructive actions. If it is not able to prevent the aggression it request the Khaleefah to provide it with a military force in order to stop the destruction and sabotage.

However, if the people who rebelled against the state used weapons and were able to establish themselves in an area and became a force which the department of internal security was unable to subdue through the use of the police force alone. In that case they must request the Khaleefah to provide it with a military force or an army force according to the need, to face the rebels. Before it initiates fighting against them, the department must determine whether they have complaints they may have. It should ask them to return to obedience and the *Jama'ah* and to surrender their arms. If they responded favourably and returned back, then the state should restrain itself from fighting them. If they rejected and insisted on rebelling, then it should fight against them in order to discipline them and not to annihilate and destroy them. It fights against them so that they return back to obedience and give up rebellion and surrender their arms. An example of this is the way *Imam* 'Ali bin Abi Talib fought against the Khawarij. He called them to surrender first and if they left the rebellion he would not fight against them, but if they insisted on rebelling he fought against them to discipline them so that they might return to obedience, stop the rebellion and surrender their arms.

Regarding the fighters, such as the highway robbers, who attack people, forcibly obstruct the highways, steal property and kill, the department of internal security will despatch a police force to chase them and impose the punishment on them, which is either killing and crucifying, killing, amputating their opposite limbs, or deporting them to another place, according to the *Ayah*:

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ

﴿إِنَّمَا جَزَاُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي

“The punishment of those who fight against Allah’s Messenger and who walk in the land with corruption is that they should be killed or crucified, or their opposite hands and legs should be amputated, or they should be deported from the land.” [TMQ Al-Ma’idah: 33]

The fighting against these people is not like fighting against rebels who fight against the state. Fighting against the rebels is to discipline them, while fighting against the highway robbers is to kill and crucify, so they are fought against when they fight and when they turn back. They are treated as outlined in the *Ayah*. Whoever killed and took property, he is killed and crucified; and whoever killed and did not take property, he is killed but not crucified; and whoever took property without killing, his hand and leg must be amputated from opposite sides without killing; and whoever raised arms and scared the people and did not kill or take property he is only exiled from his area to another place.

The department of internal security restricts itself to using the police force in maintaining security. It does not use other than the police force except when the police force is unable to maintain internal security. In that case it requests the Khaleefah to provide it with a military force or an army, according to what the need requires.

With regards to aggression against property by stealing, misappropriation, robbing or looting; or aggression against lives by assault, injury or killing; or aggression against honour by lying, slandering, or raping; the department of internal security prevents these things by its vigilance, guards and patrols, also by implementing the verdicts of the judges against those who perform aggression against the property, lives and honour. All of this requires the use of the police force alone.

THE DEPARTMENT OF INDUSTRY

The department of industry controls all the affairs related to industry, whether they pertain to heavy industry like manufacturing of motors, engines, vehicles, materials, electrical equipment, or light industry. Whether those factories are public property, or individual property that has a relationship with military industries, all of them have to be based

on the war policy.

Jihad and fighting require an army. In order that the army can fight it requires weapons. In order that these weapons be of the highest level and fully available, it is necessary to have industry within the state. Therefore, the military industry has a strong relation with Jihad and is closely linked to it.

In order that the state is independent of other countries and not influenced by anyone of them, it should carry out the manufacture and development of its own weapons by itself. This makes it independent and in continuous possession of the most advanced and strongest weaponry, regardless of the level of development and advancement of weapons. It would also have at its disposal, all that it needs of weapons to intimidate every apparent and potential enemy as Allah ﷻ says;

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ
بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ
يَعْلَمُهُمْ﴾

“Make ready for them all you can of (armed) force and of horses tethered, that thereby you may dismay the enemy of Allah and your enemy, and others beside them whom you know not. Allah knows them.” [TMQ 8:60] As such, the state would have its own will, produce the weapons that it needs and develop them continuously so that it owns the strongest and most developed weapons in order to terrify all the apparent and potential enemies. Therefore, it is a duty upon the state to manufacture weapons by itself and it is not allowed for her to depend upon other states, because this allows other states to control it, its will, its weapons and its fighting.

The states that sell weapons to other states do not readily sell every weapon, particularly the most developed weapons. They do not sell weapons except with certain conditions that include their utilisation. They will not sell them except in certain quantities that they, rather than the purchasing countries, decide. This gives the state that sells arms, authority and influence over the state that buys the arms enabling it to

enforce its own will on the purchasing state, particularly if it was involved in a war. In that case it would need more arms, spare parts, and ammunition, which would increase its dependence on the state that exports its arms and ensure submission to its demands. This allows the state which exports arms to control it and its will, especially in times of war and in times of great need for arms and spare parts. Hence, such a state would make itself, its will and its entity hostage to the state that exports arms to it.

Therefore, for all these reasons, the state has to carry out by itself the manufacture of its own arms and everything it requires for its war machine and spare parts. This can't be achieved unless the state possessed heavy industry and started to build factories that produce heavy industry, both the military and the non-military alike. Thus it is necessary that the state has factories for producing all types of atomic bombs, rockets, satellites, aeroplanes, tanks, spacecraft, mortars, naval ships, armoured vehicles, and all types of heavy and light weapons. It is necessary that it has factories which produce machines, motors, materials, and electronics and factories which have relation with public property and light factories which have relation with the military or war industries. All this is required by the duty of preparation that is obliged upon the Muslims by the saying of Allah ﷻ:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

“Make ready for them all that you can of (armed) force.” [TMQ Al-Anfal: 60]

Since the Islamic state conveys the message of Islam by *Da'wa* and Jihad, it should be a state that should be continually ready to carry out Jihad. This requires the existence of heavy and light industry built upon the basis of war policy. This is because, at any time it requires to transform these factories for military purposes, it is easily done. Therefore, all the industry in the *Khilafah* state should be based on war policy, and all the factories, which produce the light and heavy industries, should be based on this policy, so that it becomes easy to transform their production to military production at any time the state requires.

The Army

Allah ﷻ has honoured the Muslims by making them the conveyors of the Message of Islam to the whole world and He ﷻ has determined for them the method of carrying its Message by means of *D'awa* and Jihad. He ﷻ made Jihad compulsory upon them and thus military training is an obligation.

Therefore, every male Muslim, who reaches the age of fifteen, should begin military training in readiness for Jihad. As for the military conscription, this is in fact a collective duty.

Evidence of this is reflected in Allah's ﷻ saying;

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةً وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾

“And fight them on until there is no persecution and Deen (submission in its entirety) becomes to Allah” [TMQ 8:39] and the *Hadith* of the Prophet of Allah ﷺ;

((جاهدوا المشركين بأموالكم وأنفسكم وألسنتكم))

“Do perform Jihad against the Mushrikeen with your wealth, hands and tongues.” [Narrated by Abu Dawood on the authority of Anas] In order to be carried out according to the way determined by Shari'ah, fighting with the aim of beating the enemy and conquering the land, necessitates military training. Therefore military training is compulsory like Jihad, in accordance with the *Shar'ai* principle that states; “That which is necessary to accomplish a duty is itself a duty”. The soliciting of fighting falls within the order “and fight them” which came in general form. When Allah ﷻ says;

﴿وَقَاتِلُوهُمْ﴾

“And fight them”. This is an order to fight and an order to perform any task that makes the fighting possible. Besides this, Allah ﷻ says,

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

“Make ready for them all that (of armed force) you can.” [TMQ 8:60] Training and high military expertise form part of the preparation of fighting power, for they have to be readily available in order to make the fighting possible. Thus training forms part of the force that must be obtained such as military hardware and military missions etc. As for the military conscription, this necessitates the assignment of people to permanently be part of the armed forces, i.e. to have *Mujabideen* performing effective Jihad and whatever the duty of Jihad entails; this is compulsory. This is because the performance of Jihad is a continuous duty whether the enemy attacked us or not, which is why military conscription is a duty that is included in the *Hukm* of Jihad.

THE DIVISIONS OF THE ARMY

The army is divided into two parts:

- 1) The Reserves: They consist of all the Muslims who are able to perform the military tasks.
- 2) The Regulars: They are permanent conscripts in the armed forces who receive salaries from the State's funds just like any other employees.

This is derived from the obligation of Jihad, for verily every Muslim is commanded to perform his duty of Jihad, and obliged to train for it. Therefore all the Muslims represent the (army) reserves. As for making part of them into the army, this is based on the *Shar'ai* principle that states: “That which is necessary to accomplish a duty is itself a duty”. This is because the duty of Jihad cannot be constantly carried out and Islam and Muslims cannot be protected from the Kuffar, except with the presence of a permanent army. The Imam is, therefore, obliged to have a regular army at his disposal.

As for the allocation of salaries for the armed forces, it is just like other employees, which is evident. A non-Muslim is not required to perform

Jihad, but if he did it would be acceptable from him, then it would be permitted to pay him for it and to allocate funds for him. This is due to what At-Tirmithi narrated from Az-Zuhri that the Messenger of Allah ﷺ allocated shares to some of the Jews who fought with him. Also Ibn Hisham narrated that

((أَنَّ صَفْوَانَ بْنِ أُمَيَّةٍ خَرَجَ مَعَ النَّبِيِّ ﷺ إِلَى حَنِينٍ وَهُوَ عَلَى

شِرْكِهِ، فَأَعْطَاهُ مَعَ الْمُؤَلَّفَةِ قُلُوبُهُمْ مِنْ غَنَائِمِ حَنِينٍ))

Safwan bin Umayya went on an expedition with the Messenger of Allah ﷺ to Hunain whilst he was still a *mushrik*, so the Prophet ﷺ gave to him like he gave to the Mu'allafati Qulubuhum (new Muslims) from the spoils of Hunain. It was also narrated in the *Seerah* of Ibn Hisham; “There was amongst us a strange man, nobody knew who he was, it is said that he was Kuzman. The Messenger of Allah ﷺ said when his name was mentioned to him,

((إِنَّهُ لَمِنْ أَهْلِ النَّارِ))

‘Indeed he is of the people of fire.’ He said,

((فَلَمَّا كَانَ يَوْمُ أَحَدٍ قَاتَلَ قِتَالًا شَدِيدًا فَفَتَلَ وَحْدَهُ ثَمَانِيَةَ أَوْ

سَبْعَةَ مِنَ الْمُشْرِكِينَ...))

‘At the day of Uhud, Kuzman fought so strongly that he alone killed seven to eight of the mushrikeen...’ This is in addition to what was reported about Safwan. These evidences indicate that a *Kafir* can be with the Islamic army and be given property or money for his service. The definition of ‘*Ijara*’ or hiring as being a contract over a benefit means that hiring is allowed for every benefit that the hiring person can receive from the hired person. So the hiring of a person for the army and fighting is allowed because it is a benefit. Thus, the general evidence of hiring over any benefit or benefits is valid for allowing hiring of a *Kafir* for the Army, or for fighting. This is with regards to non-Muslims. As for the Muslims, even though Jihad is an act of worship, it is allowed to hire Muslims for the army and to fight because of the general evidence of hiring where hiring is allowed for carrying out the *Ibadah* if its benefit extends to more

than the one who carries it out. This is due to the saying of the prophet ﷺ;

((إن أحق ما أخذتم عليه أجرًا كتاب الله))

“The most worthy thing to take a wage on is teaching the Book of Allah.” [Narrated by Bukhari on the authority of Ibn Abbaas] Teaching the book of Allah is a worship and since it is allowed to hire a Muslim to teach the Qur’an, lead the prayer, or give *Azaan*, which are all acts of worship, it is also allowed to hire a Muslim to do Jihad and be in the army. Moreover, there is evidence for the hiring of Muslims for Jihad even though it is a duty upon them. Abu Dawood narrated that ‘Abdullah bin ‘Umar said that the Prophet ﷺ said;

((للغازي أجره وللجاعل أجره وأجر الغازي))

“*Al-Ghazi* has his own *Ajr* and *Al-Ja’il* has his own *Ajr* and the *Ajr* of the *Al-Ghazi*.”

Al-Ghazi is a person who fights for him. *Al-Ja’il* is the one who has someone else to fight on his behalf in return for a wage he pays to him. It is indicated in the dictionary of *Al-Muheet*, that *Al-Ja’ala* is the amount given to someone doing an action and what is assigned to a *Mujahid* (*Ghazi*) if he made Jihad on your behalf with a wage. *Ajr* is both the wage (*Ujrah*) and reward (*Thawab*). As for what is well known among people that ‘*Ajr*’ always means the reward which comes from Allah ﷻ to His servant for doing a good deed and that ‘*Ijara*’ is the reward for an action from one person to another which includes ‘*Ajeer*’ or labour. In fact, there is no support for this differentiation. Rather what the language indicated is that the *Ajr* is the reward for an action. It came in the dictionary *Al-Muheet* that *Al-’ajr* is the reward on the action, like the *Ijara*. The meaning of the *Hadith* is that *Al-Ghazi* (fighter) has his own reward while the *Ja’il* has his own reward and the reward of the one whom he hired to fight on his behalf. Here the word *Ghazi*, (the fighter) indicates that what is meant by *Ajr* is reward (*Thawab*), and the word *Al-Ja’il* indicates that *Ajr* means reward (*Thawab*) as well, because these two words (*Ghazi* and *Ja’il*) are both the indication (*Qareena*) that decides the intended meaning. Al-Bayhaqi narrated on the authority of Jubayr bin Nufayr who said; “The Messenger ﷺ said,

((مثل الذين يغزون من أمتي ويأخذون الجُعل، يتقوون على

عدوهم مثل أم موسى ترضع ولدها، وتأخذ أجرها))

“Those of my *Ummah* who fight and take wages, and strengthen themselves against their enemy are like the mother of Musa who breastfed her son and got her reward (*Ajr*).” *Ajr* here means the wage. Furthermore, performing Jihad is not limited to those who seek nearness to Allah ﷻ (*Ahl-ul-Qurba*), so it is proper to employ people to do Jihad, and pay them salaries like other employees.

The armed forces are one entity that is the army. Special divisions that are specially organised and given a particular culture are selected from amongst the army, and they are called the police force.

It is confirmed that the Messenger of Allah ﷺ used the army as his armed forces, and he ﷺ selected a section or a division to perform the duties of the police. So he ﷺ prepared the army, led it and also appointed *Ameer* to be in the command of the army. Al-Bukhari narrated from Anas that he said;

((أن قيس بن سعد كان يكون بين يدي النبي ﷺ بمحلة

صاحب الشرط من الأمير))

“Qays Ibnu Sa’d used to be to the Messenger of Allah ﷺ like the man of *Shurta* (police) to the *Ameer*.” This refers to Sa’d Ibnu Ubadah Al-Ansari Al-Khazraji. Al-Tirmithi narrated the *Hadith* as;

((كان قيس بن سعد من النبي ﷺ بمحلة صاحب الشرطة من

الأمير))

“Qays Ibnu Sa’d was to the Messenger of Allah ﷺ like the man of *Shurta* (police) to the *Ameer*.” Al-Ansari said; “It means that he takes charge of the affairs of the *Ameer*.” Ibnu Hayyan interpreted this *Hadith* by saying;

“This was a precaution from the Messenger ﷺ against the *Mushrikeen* in case they entered his court.” The *Shurta* (police) is also that which comes ahead of the army. Al-Azhari said; **“The *Shurta* of something would be the best part of it, and the *Shurta* are the elite of the army. It is also said that they are the group who come ahead of the army, and they were called the *Shurta* because of the distinctive signs they had and the uniforms they wore.”** This meaning is chosen by Al-Asm’i. All this serves as evidence that the *Shurta* (Police) are part of the armed forces, and that it is the Khaleefah who appoints the chief of police as he appoints the *Ameer* of the army, and that the *Shurta* (police) is part of the army. Whether the police are to be a part of the army, or to be left independent from it is a matter left to the Khaleefah to decide. It is, however, understood from the *Hadith* that the chief of police is appointed to deal with that which comes to the *Imam*, similar to that of the ruler. He would be in charge of forming an armed force, ready to execute the orders of the *Imam* or the ruler in whatever matter they need to be executed and to prevent any danger that may affect or undermine the safety of the *Imam*. It is understood linguistically as well, that the *Shurta* (police) is an army division with its own emblem that comes ahead of the army. As for the *Shurta* that comes ahead of the army, it is known as the military police, this is undoubtedly part of the army. As for the police, which is at the disposal of the ruler, there is no indication they must form part of the army as their function is to be at the disposal of the ruler. However, there are other indications that they are part of the armed forces of the State. Therefore, the Khaleefah is allowed to make it part of the army or a force separate from it. Nevertheless, since the armed forces were considered as a single entity in terms of their appointment by the Khaleefah, their link with him and in the receiving of their orders, then dividing them into an army and a police force would weaken their access to the same weaponry and military equipment by keeping the police constantly preoccupied with the ordinary issues facing the ruler. Therefore, it would be better for the armed forces to be a single entity so that access to the same weaponry remains strong for all the armed forces, by following the same regulations regarding the preparation for Jihad. Therefore, the armed forces are the army from which some units would be selected to perform the task of policing, whilst remaining part of the army. Other units would then replace these units after a while. This would ensure that the ability of all the armed forces to perform Jihad remains the same and ready at all

times.

The *Shurta* are charged to keep order, supervise internal security and carry out all executive matters. This is due to the *Hadith* of Anas mentioned before saying that the Messenger ﷺ had taken Qays bin Sa’d before him in his capacity as the leader of the police. This indicates that the *Shurta* or the Police usually work before the ruler i.e., they carry out or implement what the ruler requires, e.g., implementing *Shari’ah*, maintaining order, providing security, carrying out patrols at night to chase away thieves, arrest corrupt people and those with evil intentions in society. ‘Abdullah bin Mas’ood used to be the *Ameer* of the patrols by night at the time of Abu Bakr. ‘Umar bin al-Khattab used to carry night patrols by himself, and he used to have in his company his servant and sometimes ‘Abdul Rahman bin ‘Awf. Therefore, what is done in some Islamic countries where people have to appoint guards for their homes and shops to guard them at night, or when the State appoints guards at the cost of the people is wrong. This is because it is basically night patrol that is the duty of the State and the function of the police, so the people should not take charge of that nor bear its expenses.

The Islamic army is one army, consisting of many contingents which can be given numbers such as the first, second etc, or they can be named after the name of provinces or the districts, for example the army of Ash-Sham, the army of Egypt or the army of Sana’a.

The Islamic army is stationed in special camps, and in every camp there is placed a group of soldiers in one complete unit or part of a unit, or many units. These camps have to be put in all provinces and some of them have to be put in military bases. Some of them would be mobile camps that would be in constant movement and would be massive forces. A name is given to each of these camps like the camp of Habbaniyah and for each camp there is a special banner.

These arrangements may be of the *Mubab* such as naming the armies after the names of the *Wilayaat* or giving them special numbers, so it is left to the opinion of the Khaleefah and his *Ijtihad*. There may also be matters that are necessary to protect the country and to strengthen the army such as placing the armies in camps, putting some of these camps in all the *Wilayaat* and placing them in strategic places to protect the

country.

Umar bin Al-Khattab distributed the camps of the army over all the *Wilayaat* so he made Palestine as one unit and Al-Mosul as one unit. He used to keep one army unit in the centre of the State and he used to keep one army unit ready to fight at a moment's notice.

THE FLAGS AND BANNERS OF THE ARMY

Flags (*Alhijab*) and banners (*Rayaat*) are assigned to the army. The Khaleefah gives the flag (*Limaa*) to the one whom he appoints over the army; but the banners (*Rayaat*) are presented by the chiefs of the *Alhijab* (Flags).

The evidence for this is the action of the Prophet ﷺ because he assigned flags (*Alhijab*) and banners (*Rayaat*) to the army. Ibnu Maja narrated on the authority of Ibnu Abbas that the banner of the Prophet ﷺ was black and that his flag was white. Tirmithi narrated from Bara bin 'Azib, that when he was asked about the *Rayah* of the Messenger of Allah ﷺ, he said that the banner of the Prophet ﷺ was black, square and made of *Namerah*, (a woollen cloth which has white and black stripes or a woollen piece of cloth like the one that bedouins wear), which is explained in the dictionary of Al-Muheet. For the Prophet ﷺ there was a banner called *Al-'Uqab* that was made of black wool. Ahmad and Ibnu Majah narrated from Al-Harith bin Hassaan bin Al-Bakri who said; "We came to Madinah and we saw the Prophet ﷺ on the Minbar, with Bilal standing in front of him wearing his sword, and there were black banners in front of the Messenger ﷺ;

"I said 'What are these banners?' They said; 'It is 'Amr bin 'Al-'Aas who has just arrived from an expedition.'" Al-Tirmidhi narrated it with the following wording;

"I came to Madinah, entered the Masjid and found it crowded with people and there were black banners swaying and Bilal was wearing a sword in front of the Prophet ﷺ, I said 'what is the matter?' They said; 'He ﷺ wants to send 'Amr bin 'Al-'Aas to a certain area.'" Ibn Majah narrated from Jabir that the Prophet ﷺ entered Makkah on the day of its conquest and his flag was white. It was also

narrated from Anas in An-Nasai that Ibnu Umm Maktoum had with him a black banner in some of the battles of the Prophet ﷺ. It was also narrated from Anas that when the Prophet ﷺ appointed Usamah bin Zayd as an *Ameer* of the army to attack the Romans he tied to him his flag by his hand. The banner is different from the flag. Abu Bakr Al-'Arabi said;

"the flag is tied at the end of the spear and is wrapped around it whilst the banner is tied to the spear but is left for the winds to blow." Al-Tirmithi also inclined to differentiate between them and when he wrote about the flags he brought the *Hadith* of Jabir mentioned previously as well as commented on the banner, and brought the *Hadith* of Al-Bara'a that was also mentioned previously. The banner (*Rayah*) was used during the war and by the leader of the battle as narrated in the *Hadith* of the battle of Mu'ta, when Zayd was killed and Ja'afar took the banner. With regards to the flag, (*Limaa*) it used to be placed over the camp of the army as a sign for it, and it used to be held for the *Ameer* of that army as it came in the *Hadith* of sending Usamah to Ash-Sham

"...and that the Messenger ﷺ tied his (Usamah's) flag with his hand", i.e. when he appointed him an *Ameer* over the army. The difference between the banner and flag is that the flag is tied to the end of the spear and it was called "*Alam*" which is bigger than the banner and it is assigned to the place of the leader of the army. It goes wherever he goes, whereas the banner is tied to the spear and left for the winds to blow. The leader of the war looks after it. The banner is called the 'mother of the war', so for each army there is usually one banner, but for its divisions, brigades and battalions there are special banners.

It is written on the black banner (*rayah*) "La ilaha illa Allah, Mohammad Ar-Rasool ul-Allah" in white, and written on the white banner (*limaa*) "La ilaha illa Allah, Mohammad Ar-Rasool ul-Allah" in black.

The first flag that was tied in Islam was the flag of 'Abdullah bin Jahsh. A black banner that had a white crescent was tied to Sa'd ibn Malik Al-Azdi. This indicates that there must be flags and banners for the army and the Khaleefah ties the flag or the banner to whomsoever he appoints over the army. With regards to the *Rayah* it is allowed for the Khaleefah to allocate it or it can be left to the commanders of brigades. Regarding

the fact that it is allowed for the Khaleefah to distribute the flags, it is due to what Muslim and Al-Bukhari narrated from Salamah bin Akwa'a that the Prophet ﷺ said;

((لأعطين الراية أو ليأخذن بالراية غداً رجلٌ يحبّه الله ورسوله
أو قال يحبّ الله ورسوله يفتح الله عليه فإذا نحن بعليٍّ وما
نرجوه فقالوا: هذا عليٌّ. فأعطاه رسول الله ﷺ الراية ففتح
الله عليه))

“I will give the *Rayah* to a man, or the one who will take the *Rayah* tomorrow is a man whom Allah and His Messenger love.’ Or he said, ‘He loves Allah and His Messenger... Allah will open up to him.’ All of a sudden, Ali ؑ was there, where we did not expect him. So they said, ‘This is Ali, so the Messenger of Allah ﷺ gave him the *Rayah* and thus Allah opened up to him.’” As regards to the leader of the brigade distributing the flags, it is understood from the *Hadith* of Al-Harith bin Al-Haassan Al-Bakri which came before in both narrations, which stated that there were black banners;

“...suddenly there were black banners”, which means that there were many *Rayaat* with the army, though its *Ameer* was one person, who was ‘Amr ibnu Al-’Ass, whether he was coming back from a *Ghazwa* or going out to a *Ghazwa*. This indicates that these *Rayaat* were with the leaders of the battalions and there was no evidence that the Messenger ﷺ was the one who gave them these *Rayaat*. However, it is allowed for the Khaleefah to allow the *Ameer* of the brigades to give the banners to the battalion commanders, and this is much more proper for organisation, although it is *Mubah* (allowed).

THE KHALEEFAH IS THE LEADER OF THE ARMY

The Khaleefah is the leader of the army and he is the one who appoints the Chief of Staff and an *Ameer* to every brigade, and a commander to every division. With regards to the other posts in the army the commanders of the brigades appoint them. Appointing a person to the

staff has to be according to his military culture and the Chief of Staff appoints him.

This is because the *Khilafah* is the general leadership for all the Muslims in the world. It is responsible for establishing the *Shar'a* rules and for conveying the Message to the world. The way of conveying the Message to the world is Jihad. Therefore the Khaleefah should take charge of the Jihad because the *Khilafah* contract has been convened upon him alone, so it is not allowed for any other person to carry it out other than him. Thus the Khaleefah takes responsibility for Jihad himself. It is not allowed for anyone other than him to undertake it, although every Muslim carries out Jihad. Hence carrying out Jihad is one matter and holding of its responsibility is another. Jihad is a duty upon every Muslim, but holding of its responsibility is only for the Khaleefah. Regarding the fact that the Khaleefah may appoint another person on his behalf to carry out his duty, this is allowed under his own observation and supervision and it is not allowed for this person to be independent, rather under the Khaleefah's observation and supervision. This type of delegation is not the same as the work of an assistant to the Khaleefah. Reporting to the Khaleefah in this context means that the one who carries out Jihad on his behalf should be under his supervision. Leadership of the army with this restriction i.e. under the Khaleefah's observation and supervision, is allowed to be given to whomever he wishes. However, to take charge of the army without his observation and supervision, leaving the Khaleefah only as a figurehead, is not allowed. This is because the *Khilafah* contract has been convened upon him, so he has to take the responsibility for the matters of Jihad. Therefore, what is usually said in the non-Islamic systems that the Head of State is the supreme leader of the army, meaning he is a formal leader only, while another leader runs the army independently, this is considered invalid in the view of Islam. It is a matter which does not agree with the *Shar'a*. However, for other types of leadership issues like the administrative and technical matters, the Khaleefah is allowed to appoint someone on his behalf to carry them out independently as he appoints the Governors who do not necessarily have to be under his supervision or observation. The Messenger ﷺ also used to undertake the leadership of the army himself, undertake the leadership of the battles and he also appointed leaders of the divisions of the army which went out for fighting without him, namely the expeditions. For every expedition he used to appoint a commander and in some cases he

used to take the precaution of naming who should succeed the commander in case he was killed as happened in the expedition of Mu'ta. Al-Bukhari narrated on the authority of 'Abdullah bin 'Umar who said;

((أَمَّرَ رَسُولُ اللَّهِ ﷺ فِي غَزْوَةِ مَوْتَةِ زَيْدِ بْنِ حَارِثَةَ فَقَالَ
رَسُولُ اللَّهِ ﷺ: إِنْ قُتِلَ زَيْدٌ فَجَعْفَرٌ، فَإِنْ قُتِلَ جَعْفَرٌ فَعَبْدُ اللَّهِ
بْنُ رَوَاحَةَ))

“The Messenger of Allah ﷺ appointed Zaid bin Harith as an *Ameer* in the battle of Mu'ta. The Messenger of Allah ﷺ said; ‘If Zaid is killed, then it will be Ja’afar (as the *Ameer*) and if Ja’afar is killed then it will be ‘Abdullah bin Rawaha (as the *Ameer*).’” So the Khaleefah is the one who appoints the leaders of the armies, its commanders, and ties for them the flags and appoints the leaders of the divisions. The army that was sent to Syria like the Army of Mu'ta and the army of Usama was one brigade because the evidence for this is that the Prophet ﷺ had tied the flag to Usama. The expeditions that fought in the Arabian Peninsula and returned back to Madinah, such as the expedition of Sa'd bin Waqqas that he ﷺ sent towards Makkah, were all in the form of divisions. This indicates that the Ameer of the brigades and the commanders of the divisions are appointed by the Khaleefah. This was indicated by the fact that the Prophet ﷺ used to remain in close contact with the sergeants and commanders in his expeditions and he used to know the conditions of the army i.e. the soldiers through their sergeants and captains. The Prophet ﷺ was not proved to have appointed other than leaders of the armies and the commanders of the expeditions. This indicates that their appointment in the *Ghazawat* was left to their leaders. As regards the Chief of Staff who is responsible for the technical matters, he is like the army leader in terms of being appointed by the Khaleefah and he can be made independent and carry out his duties without being directly supervised by the Khaleefah, although he has to be under his command.

CULTURING THE ARMY IN MILITARY AND ISLAM

The highest level of military education has to be available to the army.

The intellectual level in the army has to be raised as much as possible. In addition to that every individual in the army has to attain Islamic culture that enables him to be aware about Islam even if in a general form.

However, military education becomes very necessary for every army and it is not possible for an army to carry out the war without it, nor can it engage in a battle unless it has been educated. Therefore, it becomes *Wajib* according to the principle: ‘That without which a duty can not be performed is itself a duty.’ As regards the Islamic culture, learning of what is necessary to perform the functions of Islam is a duty for every Muslim, while attaining further Islamic knowledge is *Fard Kifaya*. This is due to what Al-Bukhari and Muslim narrated on the authority of Muawiyah when he said; “I heard the Prophet ﷺ say;

((مَنْ يُرِدِ اللَّهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ...))

“The one for whom Allah wants good, he gives him knowledge in the Deen...” This applies to the army that conquers countries to convey the Da'wah, as it does for every Muslim, though for the army it is of more importance. Regarding raising its intellectual level, this is a kind of awareness which is necessary to understand the Deen and life's affairs. Perhaps the saying of the Prophet ﷺ

((رُبَّ مُبَلَّغٍ أَوْعَى مِنْ سَامِعٍ))

“The one to whom the knowledge is conveyed may be of more awareness than the one who heard the message in the beginning”, is an indication of encouragement. Also the Qur'an says;

﴿لِقَوْمٍ يَتَفَكَّرُونَ﴾

“For people who contemplate” [TMQ Yunus: 24] and He ﷻ says

﴿فَتَكُونُ لَهُمْ قُلُوبٌ يَعْقِلُونَ بِهَا﴾

“They have hearts (minds) by which they understand.” [TMQ Al-A'raf: 179] All these indicate the status of thought.

In every army camp there should be an ample number of staff that

have high military knowledge and experience in drawing plans and in running the battles. It is generally necessary that these staff be provided for the army in the highest possible number.

This is due to the principle ‘That without which a duty can not be performed is itself a duty.’ So where military education is not digested theoretically by learning, and practically by continuous training and practical application, then it will not produce experience which enables one to engage in battles and to draw up plans. Therefore providing high military education is a duty. Continuous study and training is also a duty so that the army continues to prepare for Jihad and also for engaging in battles at every moment. Since the army exists in many camps and every one of its camps has to be able to engage in battle immediately, there should be an ample number of staff in each camp according to the principle, ‘What is necessary to perform a duty is itself a duty.’

There must also be available to the army, weapons, equipment, facilities and other requirements, which enable it to carry out its duty in its capacity as an Islamic army.

This is due to the saying of Allah ﷻ:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ
بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ
يَعْلَمُهُمْ﴾

“Make ready, against them, your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies of Allah and your enemies, and others besides, whom you may not know, but whom Allah does know.”
[TMQ Al-Anfal: 60]

So the preparation for fighting is a duty and this preparation should be open so as to intimidate the enemies and the hypocrites from within the citizens. His ﷻ saying,

﴿تُرْهِبُونَ﴾

“to strike terror” is the ‘Illah (reason) for preparation. The preparation will not be complete unless the reason for which this legislation came has been achieved, which is intimidating the enemies and the hypocrites. Hence came the duty of making available all the arms and equipment for the army in order that intimidation is produced. It is also all the more reason for the army, so that it is able to carry out its duty that is Jihad to convey the message of Islam. Allah ﷻ addressed us about preparation. He stated that the reason (‘Illah) for preparation is intimidating the open enemies and enemies who are not apparent. Allah ﷻ says;

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ
بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ
يَعْلَمُهُمْ﴾

“Make ready, against them, your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies of Allah and your enemies, and others besides, whom you may not know, but whom Allah does know.”
[TMQ Al-Anfal: 60]

The utmost accuracy in the Ayah has to be noticed, where Allah ﷻ did not order Muslims to make preparation for the purpose of fighting but for the purpose of intimidation, which is more profound. This is because knowledge of the enemy about the force of the Muslims deters it from attacking them or confronting them. This is one of the greatest styles that can be used to win a war and attain victory.

THE ISLAMIC STATE IS IN A CONTINUOUS STATE OF JIHAD

The Islamic State is in a continuous state of Jihad. The Islamic Ummah understands that war between her and other peoples and nations is possible at any time. Therefore, her war installations, whether industrial or the military must be at a level higher than the installations of the other nations. The changes in its industrial and military capabilities should be realised continuously. Beside that, it should be in progressing financial position and in a constant state of readiness.

The Islamic State is the State that is based on the Islamic ‘aqedah and implements the rules of Islam. The rules of Islam oblige the Islamic State to carry the Islamic Message to the whole world as her fundamental duty after implementing Islam internally. It has responsibility over the whole world, and it is its responsibility to carry the message and to convey it all over the world. This is because the Message of Islam is universal, and it is addressed to all humankind. Allah ﷻ says;

﴿وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ بَشِيرًا وَنَذِيرًا﴾

“And We have not sent you but as a carrier to good tidings and a warner to all mankind.” [TMQ Saba: 28] And He ﷻ also says:

﴿وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ﴾

“We have not sent you but as a mercy for all creatures.” [TMQ Al-Anbiya: 107]

And Allah ﷻ also says:

﴿قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ﴾

“Say: O men I am sent to you all as the Messenger of Allah.” [TMQ Al-Araf: 158]

The Messenger of Allah ﷺ said:

((...وكان النبي يُبعثُ إلى قومه خاصة، وبعثت إلى الناس

عامه))

“Every Messenger was sent to his own people, and I have been sent to all mankind”, Al-Bukhari and Muslim narrate this on the authority of Jabir bin ‘Abdullah. Therefore the Islamic State must carry the Message and convey it to all mankind. Islam has made Jihad the method of carrying the Message, and made disbelief as being the reason for which the disbelievers and the Mushriks are fought. Allah ﷻ says;

﴿قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ

مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا
الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾

“Fight those who believe not in Allah and the Last Day, nor hold that forbidden which has been forbidden by Allah and His Messenger, nor acknowledge the Deen of truth, from among the people of the Book, until they pay the jizyah with willing submission, and feel themselves subdued.” [TMQ At-Tauba: 29]

And He ﷻ also says:

﴿يَا أَيُّهَا النَّبِيُّ جَاهِدِ الْكُفَّارَ وَالْمُنَافِقِينَ وَاغْلُظْ عَلَيْهِمْ﴾

“O Prophet! Strive hard against the disbelievers and the hypocrites and be firm against them.” [TMQ At-Tauba: 73]

He ﷻ also says;

﴿فَقَاتِلُوا أَوْلِيَاءَ الشَّيْطَانِ﴾

“So fight against the friends of Satan.” [TMQ An-Nisa: 76]

He ﷻ says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ﴾

“O you who believe! Fight the unbelievers who are near to you.” [TMQ At-Tauba: 123]

And He ﷻ says;

﴿قَاتِلُوا الْمُشْرِكِينَ﴾

“And fight the Mushrikeen.” [TMQ At-Tauba: 36]

Islam has decreed Jihad as being compulsory by the texts of the Holy Qur’an and the *Abadiith*. Allah ﷻ says;

﴿كُتِبَ عَلَيْكُمُ الْقِتَالُ﴾

“Fighting has been prescribed upon you.” [TMQ Al-Baqarah: 216] He ﷺ also says;

﴿انْفِرُوا خِفَافًا وَثِقَالًا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ﴾

“Go you forth, (whether equipped) lightly or heavily, and strive and struggle, with your goods and your persons.” [TMQ At-Tauba: 41] He ﷺ also says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ﴾

“O you who believe! Fight the disbelievers who are near to you.” [TMQ At-Tauba: 123]

He ﷺ also says;

﴿إِلَّا تَنْفِرُوا يُعَذِّبَكُمُ عَذَابًا أَلِيمًا﴾

“Unless you go forth, He will punish you with a grievous penalty.” [TMQ At-Tauba: 39]

Anas reported that the Messenger of Allah ﷺ said;

((جاهدوا المشركين بأموالكم وأنفسكم وألسنتكم))

“Perform Jihad against the Mushrikeen with your wealth, hands and tongues.” [Narrated by Abu Dawood]

Therefore, the Islamic State will always remain in a state of constant Jihad, for its duty, on earth, is to constantly carry the Message to the world; this necessitates Jihad until Islam prevails over the whole world. Al-Bukhari and Muslim narrated on the authority of ‘Abdullah bin ‘Umar that the Messenger of Allah ﷺ said;

((أمرت أن أقاتل الناس حتى يشهدوا أن لا إله إلا الله وأن

محمدًا رسول الله ويسيروا الصلاة ويؤتوا الزكاة فإذا فعلوا

ذلك عصموا مني دماءهم وأموالهم إلا بحق الإسلام وحسابهم

على الله))

“I have been ordered to fight people until they utter ‘there is no God but Allah, and Muhammad is the Messenger of Allah’, establish the prayer and offer the Zakat. If they do so they would protect from me their blood and wealth, except for the right of Islam. And their account is with Allah.”

Abu Dawood narrated on the authority of Anas bin Malik he said; The Messenger of Allah ﷺ said;

((...والجهد ماض منذ بعثني الله إلى أن يقاتل آخر أمتي

الذجال لا يبطله جور جائر ولا عدل عادل...))

“And the Jihad is continuous from the moment Allah has sent me till the last person of my Ummah fights against the Dajjal;” and he ﷺ said ‘neither the oppression of the oppressor, nor the justice of the just (ruler) will abolish it.’” It also came in the saying of Allah ﷻ

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾

“And fight against them until there remains no Fitna.” [TMQ Al-Baqarah: 193] He ﷺ also said;

﴿قَاتِلُوا الْمُشْرِكِينَ كَافَّةً كَمَا يُقَاتِلُونَكُمْ كَافَّةً﴾

“And fight the Pagans altogether as they fight you altogether.” [TMQ At-Tauba: 36]

The Messenger of Allah ﷺ spent his life, once he had established the State in Madinah, in a constant state of Jihad. Even when he ﷺ was ill and nearing his death he urged his companions not to delay the army of Usama which he had prepared and equipped before he fell ill to raid the Romans. It must be made clear, however, that Jihad and fighting would

not take place until the disbelievers are informed about the Islamic Message, and until they are invited to embrace Islam. If they refused, they would be asked to submit to the authority of the Islamic State and to pay the *jizyah* to the State. If they refused to embrace Islam and refused to pay the *jizyah* and refused to submit to the authority of the Islamic State, then they would be fought. It was reported in the Hadith of Sulayman ibn Burayda on the authority of his father who said;

كَانَ رَسُولُ اللَّهِ ﷺ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ، أَوْ سَرِيَّةٍ أَوْ صَاهٍ فِي خَاصَّتِهِ بِتَقْوَى اللَّهِ، وَمَنْ مَعَهُ مِنَ الْمُسْلِمِينَ خَيْرًا ثُمَّ قَالَ:
اغْزُوا بِاسْمِ اللَّهِ، فِي سَبِيلِ اللَّهِ قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ، اغْزُوا وَلَا تَغْلُوا، وَلَا تَعْدُوا وَلَا تُمَثِّلُوا، وَلَا تَقْتُلُوا وَلِيدًا، وَإِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمَشْرِكِينَ فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ، أَوْ خِلَالٍ، فَأَيُّتَهُنَّ مَا أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ مَا أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ... إِلَى أَنْ قَالَ: فَإِنْ هُمْ أَبَوْا فَاسْلُهِمُ الْجُزْيَةَ، فَإِنْ هُمْ أَجَابُوكَ فَاقْبَلْ مِنْهُمْ، وَكُفَّ عَنْهُمْ، فَإِنْ هُمْ أَبَوْا فَاسْتَعْنِ بِاللَّهِ وَقَاتِلْهُمْ...))

“Whenever the Messenger of Allah ﷺ appointed an Ameer to head an army or an expedition, he would command him to fear Allah and be good to those who are with him; then he ﷺ would say; ‘Raid in the Name of Allah! Fight whoever disbelieved in Allah! Raid but do not abuse, do not betray, do not maim or mutilate and do not kill any newborn. If you encounter your enemies, the mushriks, call them to observe three qualities or dispositions, and whichever of these they accept then accept it from them, and do not fight them. Call them to Islam, and if they accepted it, do accept this from them and refrain from fighting them...’ He ﷺ went on; ‘If they refused, ask them to pay the *jizyah*, and if they accepted this, then

take it from them and refrain from fighting them, and if they refused, seek the help of Allah and fight them.” [Narrated by Muslim] Therefore, the call to Islam should precede the fight, and the call to the submitting to the Islamic State and the paying of the *jizyah* should also precede the fight, thus the fight would come as the third and final option.

Therefore, the Islamic State should be in a constant state of Jihad. The Islamic Ummah realises only too well that Allah ﷻ has entrusted her with conveying the Message to the world, and with fighting against the disbelievers for their disbelief, and for continuing that fight until they declare that there is no god but Allah and that Muhammad ﷺ is the Messenger of Allah, or until they pay the *jizyah* with submission. The Ummah also realises that disbelief and the disbelievers are enemies of Islam and of the Islamic Ummah, and that they carry hatred and animosity towards Islam and the Islamic Ummah, and that they would fight the Muslims if given the opportunity. This would make the Ummah realise that war between her and the disbelieving nations is possible at any moment.

This is because the carrying of the Da’wah, and the enmity of the kuffar to Islam and the Islamic Ummah makes the outbreak of war inevitable. This is because the Islamic state would be in a state of continuous Jihad, and the Islamic Ummah understands the war between her and other peoples and nations is possible at any moment. Thus, the State and the Ummah must be on alert at all times, and make the state of war their way of life. This is what the Messenger of Allah ﷺ, his companions and the *Khulafaa*’ who came after him did. This makes it necessary that all of the State’s installations and industries, be they military or otherwise, should at all times be in a better state than those of other nations and superpowers. The number of academic colleges should multiply in order to educate thousands of engineers, inventors, technicians and industrialists. Advancement and progress must be constant, so that the preparation of its task force becomes formidable, to intimidate the enemy of Allah and its known and potential enemies, as commanded by Allah ﷻ:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ﴾

بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ
يَعْلَمُهُمْ ﴿٦٠﴾

“Make ready, against them, your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies of Allah and your enemies, and others besides, whom you may not know, but whom Allah does know.”
[TMQ Al-Anfal: 60]

This requires from the Ummah to live with an economy of war, and to have an ever improving financial situation in order to provide the funds for the war effort which requires the latest technology in warfare for a State that aims at being the leading State in the world.

The Wulat (Wulah) Governors

The *Wuali* (governor) is the person whom the Khaleefah appoints as ruler and Ameer over a *Wilayah* (province) of the Khilafah State.

The territories that the Islamic State rules over would be divided into provinces and each province would be known as *Wilayah*. The *Wilayah* would in turn be divided into districts and each district would be known as *I'mala*. The person appointed over the *Wilayah* would be known as the *Wuali*, or an Ameer, and the person appointed over the *I'mala* would be known as the *'Amil* or the Hakim (ruler).

The *Wuali* is therefore a ruler, for the *Wilayah* means the ruling. In the dictionary *A-I'Ubit*, it has been defined as being the *Imarah* (leadership) and the authority. It requires an appointment by the Khaleefah or by whoever is delegated to do so on his behalf. Therefore, the Khaleefah can only appoint the *Wuali*. The origin of the post of *Wilayah* or the *Imarah* i.e. the *Wulah* or the Ameers goes back to the actions of the Messenger of Allah ﷺ. It has been confirmed that he ﷺ appointed *Wulah* over the countries and that he gave them the right to rule over their provinces. He ﷺ appointed Mu'az Ibnu Jabal over Al-Janad, Ziyad Ibnu Labeed over Hadhramawt and Abu Moussa Al-Ash'ari over Zabeed and Aden.

The *Wuali* is the deputy of the Khaleefah; he performs what the Khaleefah authorises him to do on his behalf. According to *Shar'a*, the *Wilayah* has no specific limit, thus any body appointed by the Khaleefah to act on his behalf over any matter of ruling would be a *Wuali* in that matter in accordance with the terms the Khaleefah used in his appointment. However, the *Wilayah* over countries is geographically specified, because the Messenger of Allah ﷺ used to specify the area over which he appointed the *Wuali*, i.e. where he invests the Ameer with the *Imarah*.

There are two types of *Wilayah*: general and specific. The general one includes all the ruling matters within the *Wilayah*. Appointing someone to that *Wilayah* would mean that the Khaleefah delegates to the *Wali* the *Imarah* of a country or a province, as a *Wilayah* over all its people for supervising all the normal functions. Thus he would have a general responsibility of supervision. As for the specific *Imarah*, this means that the Ameer would be restricted to running the armed forces, governing the citizens, protecting the territories, or defending the women and children in that country or province. He does not have a say in the judiciary or the collecting of Kharaj and *Sadaqah*. The Messenger of Allah ﷺ appointed *Wulab* with general responsibilities (*Wilayah 'Ammah*), such as when he appointed 'Amru ibn Hazm over Yemen. He also appointed *Wulab* with specific functions (*Wilayah Khassa*), such as when he appointed Ali bin Abi Talib over the judiciary in Yemen. The *Khulafaa'* followed in the Messenger of Allah's ﷺ footsteps. 'Umar Ibnul-Khattab appointed Mu'aiwya bin Abi Sufyan as general *Wali* over Ash-Sham, while Ali bin Abi Talib appointed 'Abdullah bin Abbas over Basra with restrictive powers (*Wilayah Khassa*) to run all the affairs except for the funds, which was assigned to Ziad

There used to be two types of *Wilayah* in the early times; the *Wilayah* of *Salah* and the *Wilayah* of Kharaj. Therefore we find that history books use two terms in their reference to the *Wilayah* of Ameer: The first is the *Imarah* over the *Salah* and the other the *Imarah* over the *Salah* and the *Kharaj*. In other words the Ameer could either be appointed over both the *Salah* and the Kharaj, or over the *Salah* only or over the *Kharaj* only. The word *Salah*, in the context of the *Wilayah* or the *Imarah*, does not mean only leading the people in their prayer, but it means governing all their affairs except the funds. This is because the word *Salah* is used to mean ruling except for the levy of funds. Therefore, if the *Wali* had combined both the *Salah* and the Kharaj, his *Wilayah* would then be general (*Wilayah 'Ammah*). If his *Wilayah* had been restricted to the *Salah* or the Kharaj, his *Wilayah* would then be specific (*Wilayah Khaassah*). Either way, this would be left to the Khaleefah's own arrangements, as he reserves the right to restrict the *Wilayah* to the Kharaj, or to the judiciary, or he could confine the *Wilayah* to other than the Kharaj, the judiciary and the army. He could do what he deems best for the running of the province or the *Wilayah*. This is because *Shar'a* has not determined for the *Wali* certain duties, and it is not obliged that he should perform all the duties of

ruling. It has, however, determined that the *Wali*'s or the Ameer's duties be ruling and authority, and that he is the deputy of the Khaleefah, and he should be an Ameer over a specific area. All this is derived from the actions of the Messenger of Allah ﷺ. However *Shar'a* entitles the Khaleefah to appoint a *Wali* as either a general *Wilayah* (*'Ammah*) or a specific one (*Khaassah*) according to his own discretion, and all this is reflected in the actions of the Messenger of Allah ﷺ.

It was mentioned in the Seerah of ibn Hisham that the Messenger of Allah ﷺ appointed Farwa bin Musayk over the tribes of Murad, Zubair and Mizhaj. He sent Khalid bin Sa'eed bin Al-'Ass with him as *Wali* over the *Sadaqah*. It also mentioned that the Messenger of Allah ﷺ sent Ziad bin Labeed Al-Ansari as a *Wali* over Hadhramawt and its *Sadaqah*. He also sent 'Ali bin Abi Talib to Najran to collect their *Sadaqah* and their *jizyah*. He also sent him, as a judge over Yemen, as reported by Al-Haakim. In the book of Isti'ab it is mentioned that the Messenger of Allah ﷺ sent Mu'az bin Jabal to Al-Janad to teach the people about the Qur'an, the laws of Islam and to judge between them. He authorised him as well to collect the *Sadaqah* from the *'Aamileen* in Yemen. The Seerah of ibn Hisham also reports that the Messenger of Allah ﷺ appointed ibn Umm Maktum over the *Salah* in Al-Madinah when he went out for Uhud.

THE APPOINTMENT AND DISMISSAL OF THE GOVERNORS

The *Wulab* are appointed by the Khaleefah, whereas the *'Aamileen* are appointed by the Khaleefah and by the *Wulab* if they are delegated to do so. The conditions required for the *Wulab* and *'Aamileen* are the same as those of the Assistants. They should be Muslim, male, free, mature, sane and just, as well as competent in their task, and they should be chosen from among the pious and the influential Muslims.

It was the Messenger of Allah ﷺ who used to appoint the *Wulab* and the Ameer of the countries. He ﷺ used to appoint them over a whole *Wilayah* as in the case of Amr Ibnu Hazm when he appointed him over the whole of Yemen. In some cases, he ﷺ used to appoint a *Wali* over a part of the *Wilayah* as was the case with Mu'az bin Jabal and Abu Moussa. He ﷺ sent each one of them to a different part of Yemen, each part independent of the other, and he said to them:

((يسرّ ولا تعسّر وبشّر ولا تُنفّر))

“Be gentle and do not be harsh, bring glad tidings and do not drive people away and do help each other.” [Narrated by Al-Bukhari] In other narration, he ﷺ added;

((وتطّاعا))

“and co-operate with each other.” As for the evidence regarding the fact that the *Waaali* is permitted to appoint the *Aamileen* within his *Wilayah*, this is taken from the fact that the Khaleefah reserves the right to delegate the appointment of *Aamileen* to the *Waaali*.

Regarding the evidence about the conditions required for the *Waaali*'s post being the same as those for the delegated Assistant, this is extracted from the fact that the *Waaali* is like the Mu'awin (the Assistant) he is a deputy to the Khaleefah in ruling matters. Therefore, he is a ruler and he should fulfil the same requirement of the Khaleefah. He should be male, for the Messenger of Allah ﷺ said;

((لن يفلح قوم ولّوا أمرهم امرأة))

“People who appoint a woman to have a *Wilayah* over their Amr (affairs) shall never succeed.” [Narrated by Al-Bukhari on the authority of Abi Bakra] Here the word *Wilayah* means ruling; and the word *Amr*, when used in the context of *Wilayah*, means ruling and authority. He should also be a free man, for the slave does not own himself, thus he cannot be a ruler over others. He should also be Muslim, for Allah ﷻ says;

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“Allah will never allow authority to the disbelievers over the believers.” [TMQ An-Nisa': 141]

He should also be mature and sane, for the Messenger of Allah ﷺ said;

((رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ...))

“Three types of people are exempt from punishment...” and they include

((وعن الصبي حتى يبلغ، وعن المبتلى حتى يبرأ))

“...the child until he is mature and the insane until he is cured.” [Narrated by Abu Dawood] Whoever is not punishable cannot be accountable, and if punishment is lifted so is his accountability, therefore he cannot take the responsibility of executing rules i.e. take the authority. Another condition is that the *Waaali* must be just, for Allah ﷻ has made it a condition for the witness, and there is more reason for it to be a condition required for the ruler, because Allah ﷻ says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا﴾

“O you who believe, if a Fasiq (sinner) came to you with some news then do verify it.” [TMQ Al-Hujurat: 6] So verification has been ordered when a Fasiq comes with the news, and the ruler should of those whose verdict is taken without verification. Therefore, it would be forbidden that the ruler be from among those whose word is not accepted except after verification when he judges. It is also a condition for the *Waaali* to be competent and able to perform the ruling tasks that have been assigned to him. This is because the Messenger of Allah ﷺ said to Abu Dharr when he requested appointment over a *Wilayah*:

((إني أراك ضعيفاً...))

“I think you are weak.” Another narration says;

((يا أبا ذر إنك ضعيف وإنها أمانة))

“O Abu Dharr! You are weak and this post is a trust.” [Both are narrated on the authority of Muslim on the authority of Abu Dharr] This serves as evidence that he who is weak, i.e. incompetent is not fit to be a *Waaali*.

The Messenger of Allah ﷺ used to select his *Wulab* from among the good people, and those who had knowledge and were known for their piety. He used to select them from among those who were experts in

their field, and who would fill people's hearts with Iman and respect for the State. Sulayman Ibnu Barida reported on the authority of his father that he said;

((كان رسول الله ﷺ إذا أَمَرَ أميراً على جيشٍ أو سرية أوصاه في خاصته بتقوى الله. ومن معه من المسلمين خيراً))

“Whenever the Messenger of Allah ﷺ appointed an Ameer over an army or an expedition, he used to advise him to fear Allah and to be good to the Muslims who accompany him.” [Narrated by Muslim] Since the *Wali* is, in fact, an Ameer over his *Wilayah*, the Hadith would then apply to him as well.

As for the dismissal of the *Wali*, this would be up to the Khaleefah, and the majority of people in his *Wilayah* or their representatives if they showed discontent towards him. It is the Khaleefah who removes him. This is because the Messenger of Allah ﷺ dismissed Mu'az bin Jabal from Yemen without any reason, and he ﷺ removed Al-Ala' Ibnul-Hadhrami, his *'Amil* over Bahrain, because the delegation of Abdu Qays complained about him. 'Umar ibn Al-Khattab used to dismiss the *Wulat* with or without reason. He dismissed Ziad Ibnu Abi Sufyan without giving a reason, and he dismissed Sa'd Ibnu Abi Waqqas because the people complained about him, and then said; **“I did not remove him because of incompetence or betrayal.”** This proves that the Khaleefah reserves the right to remove the *Wali* whenever he wished if the people living in his *Wilayah* filed a complaint against him.

THE MANDATORY POWERS OF THE OF THE GOVERNOR

The *Wali* has a mandate to rule and to supervise the activities of the various departments within his *Wilayah*, and this is done on behalf of the Khaleefah. So the *Wali* enjoys all the powers within his *Wilayah* except the funds, the judiciary, and the armed forces. He has the *Imarah* over the people in his *Wilayah* and is responsible for supervising all matters relating to the *Wilayah*. However the police would be under his command in terms of the execution only and not in terms of the administration.

This is because the *Wali* is a deputy of the Khaleefah in the place

where he appoints him. He has the same mandatory powers that the Khaleefah has, and he is like the Mu'awin in terms of general supervision (*Wilayah 'Aammah*) if his *Wilayah* were general, i.e. if he was given general supervision in that place. He would have a specific supervisory role, and in matters related to those for which he was appointed, if his *Wilayah* was specific (*Wilayah Khaassah*); then in such a case he would have no mandate to examine other matters. The Messenger of Allah ﷺ used to appoint some people in an unrestricted *Wilayah* over ruling, others in a general *Wilayah* (*Wilayah 'Aammah*) covering everything, and others to a specific area and with a specific *Wilayah*. He (saw) sent Mu'az to Yemen and taught him how to proceed. Al-Bayhaqqi, Ahmad and Abu Dawood narrated on the authority of Mu'az that

((أن رسول الله ﷺ لما بعث معاذاً إلى اليمن قال له: كيف تقضي إذا عرض لك قضاء، قال: أقضي بكتاب الله، قال: فإن لم تجده في كتاب الله، قال: أقضي بسنة رسول الله، قال: فإن لم تجده في سنة رسول الله قال: أجتهد برأي لا آلو، قال: فضرِب بيده في صدري وقال: الحمد لله الذي وفق رسول رسول الله لما يرضي رسول الله))

“The Messenger of Allah ﷺ said to him, when he ﷺ sent him to Yemen; ‘How would you rule if a case was presented to you?’ He said; ‘By the Book of Allah.’ He ﷺ said; ‘What if you do not find it (the verdict) there?’ He replied; ‘I would judge by the *Sunnah* of Allah’s Messenger.’ And he ﷺ said; ‘What if you do not find it there?’ He said; ‘I would exert an opinion (perform *Ijtihad*), saving no effort.’ Upon this the Messenger of Allah ﷺ put his hand on my chest and said; ‘Praise be to Allah Who has guided the messenger of the Messenger of Allah ﷺ to what Allah and His Messenger love.’” He ﷺ also sent Ali bin Abi Talib to Yemen without instructing him, because he was confident about his knowledge and competence. When he ﷺ appointed Mu'az he assigned the *Salah* and the *Sadaqah* to him. He ﷺ appointed Farwa bin Musayk as an *'Amil* over

Murad, Muzhij and Zabeed and he sent with him Khalid bin Sa'eed in charge of the *Sadaqah*. All this demonstrates that the *Wali* has all the mandatory powers of ruling, as is evident by the instructions given to Mu'az and not given to 'Ali. It also demonstrates that the Messenger of Allah ﷺ gave some *Wulab* general *Wilayah* over the *Salah* and the *Sadaqah*, while he gave others a specific *Wilayah* covering the *Salah* only, or the *Sadaqah* only.

However, although the Khaleefah is permitted to appoint a *Wali* in a general *Wilayah*, or in a specific one, it has also been confirmed from the general *Wilayah* given to Mu'awiya that he managed to become independent of the Khaleefah during the days of 'Uthman, and 'Uthman's authority over him was not apparent. In the wake of 'Uthman's death he caused the Fitna (civil strife) due to the mandatory ruling powers given to him over everything in Ash-Sham. This was also the case during the decline of the Abbassid *Khulafaa'* where the *Wilayaat* became independent and the Khaleefah's authority over them was reduced to having *Dua'a* (supplications) performed for him and the currency engraved with his name. Therefore, giving a general *Wilayah* causes harm to the Islamic State. Thus, the *Wali* should be given a restricted *Wilayah* in a way that would prevent him from becoming independent of the Khaleefah. Since the main factors contributing to a breakaway would be the armed forces, funds and the judiciary, because the armed forces represent the power, the funds represent the "life blood" and the judiciary demonstrates the safeguarding of the rights and the execution of the penal codes. Therefore the *Wulab* should be given a specific (*Khassah*) *Wilayah* that excludes the judiciary, the armed forces and the funds. Delegating these to the *Wali* would encourage a potential breakaway and this would undermine the State's authority. However, because the *Wali* is a ruler, and because he ought to have the executive power, the police would be under his command, and his *Imarah* would cover the police force as well as all other domains within the *Wilayah*, except for the three departments mentioned above. Since the police force is part of the armed forces, its administration should remain under the army command. Nevertheless it would be at the *Wali's* disposal in terms of execution.

The *Wali* is not obliged to report back to the Khaleefah on the tasks he performs according to his *Imarah* unless if he chooses to do so. If an unusual matter were to arise, he should inform the Khaleefah and wait for

his instructions, and then execute what the Khaleefah ordered. If he felt that the matter could not wait and needed immediate action, he should deal with the matter immediately, and then inform the Khaleefah stating his reasons for not consulting him before taking action.

Regarding the difference between the delegated assistant and the *Wali* in terms of the necessity that the assistant reports to the Khaleefah on every action he performs, while the *Wali* needs not to do so, this is because the delegated assistant is a deputy of the Khaleefah himself and a *Wakeel* (representative) for him, and he performs the Khaleefah's actions. Hence if the Khaleefah were to pass away the assistant would be removed. This does not apply to the *Wali*, because the *Wali* is neither his *Wakeel* nor deputy for him personally or does he perform his actions. Therefore, he is not removed once the Khaleefah passes away.

The Messenger of Allah ﷺ appointed his *Wulab* without asking them to report back to him about the duties they performed, and they did not report back to him. They performed their duties on their own initiatives, each one of them ruling over his *Imarah* as they deemed fit. That was the case with Mu'az, 'Attab Ibnu Usayd, Al-Ala' Ibnul-Hadhrami and all his other *Wulab*. This demonstrates that the *Wali* does not have to report back to the Khaleefah about any of his duties. In this aspect, he differs from the *Mu'awin*, as the *Mu'awin* must report back and consult the Khaleefah in every task he performs, whereas the *Wali* is not obliged to do so. The Khaleefah in turn must examine every action undertaken by the *Mu'awin*, but he is not obliged to do the same with the *Wali*, although he enquires about the situation of the *Wulab* and review information about them. Therefore, the *Wali* has an unrestricted course of action within his *Wilayah*. This is why Mu'az said to the Messenger of Allah ﷺ when he was sent to Yemen:

((أجتهد رأيي))

"I will exert my own opinion." This serves as a proof that the *Wali* does not need to report back nor consult the Khaleefah, but exerts his own opinion. He can consult the Khaleefah and ask for his opinion on important matters, but when it comes to matters that are not important, he would not consult him lest people's affairs were delayed. If an unusual matter were to arise, he should refer it to the Khaleefah, because the

appointment of the *Wilayah* is that the Khaleefah delegates to the *Waaali* the *Imarah* of a country or province over its entire people to carry out the ordinary duties. If an inordinary matter were to arise, he should report to the Khaleefah, unless he feared that some mischief might occur due to the delay in dealing with the matter, in which case he should act at once and then notify the Khaleefah of that matter.

The time period of *Wilayah* for the person should not be a lengthy period. It would be best to relieve him if he became established or if people became attracted to his personality.

The Messenger of Allah ﷺ used to appoint *Wulab* for a period of time and relieve them, and no *Waaali* remained at his *Wilayah* during the whole era of the Messenger of Allah ﷺ. This indicates that the *Waaali* should never be appointed permanently, but only for a short spell after which he is removed. However, evidence about the length of this period i.e. whether it should be long or short, has not been determined by the actions of the Messenger of Allah ﷺ. All that is related to this matter is that the Messenger of Allah ﷺ did not keep a *Waaali* at his post during the whole of his life. It has been established as a fact that he ﷺ used to appoint the *Wulab* and then relieve them. However, the *Fitna* that shook the *Ummah* was caused by the lengthy period of Mu'awiya's *Wilayah* over Ash-Sham during the times of 'Umar and 'Uthman. This leads us to the conclusion that a lengthy period of *Wilayah* could harm the *Muslims* and the State. This is why the period of *Wilayah* should not be long.

The *Waaali* should not be transferred from one *Wilayah* to another, because although his appointment is of a general nature, it is over a specific area. Thus, he should be relieved first and then reappointed.

This was clear from the actions of the Messenger of Allah ﷺ, where he used to remove the *Wulab*. It has not been reported that he used to transfer a *Waaali* from one place to another. Besides, the *Wilayah* is one of the types of contracts that are convened with explicit words. So within the contract of *Wilayah* over a province or a country, the area over which the *Waaali* is to govern must be determined, and he would have the mandate of ruling as long as the Khaleefah does not remove him. If he were not removed from that area he would remain a *Waaali* over it. However if he were transferred to another place this would not remove

him from his first position nor would it make him a *Waaali* over the new place. This is because his removal from the first place requires a clear word stating that he was removed from the *Wilayah* there. Appointing him over the place where he had been transferred requires a new contract of appointment as a *Waaali* specific to that place. This is why the *Waaali* is not transferred from one place to another, but is relieved of his duties from one place and then given a new *Wilayah* over the new place.

THE KHALEEFAH SHOULD MAKE ENQUIRIES ABOUT THE WORKS OF THE GOVERNORS.

The Khaleefah should inquire about the actions of the *Waaali* and he should monitor them closely. He should appoint someone, who can check their state of affairs and carry out inspections. The Khaleefah should also meet with all of them or some of them from time to time and listen to the complaints of the subjects against them.

It has been confirmed that the Messenger of Allah ﷺ would examine the *Wulab* when appointing them, as he did with Mu'az and Abu Moussa. He used to explain to them how they should conduct their duties, as he did with 'Amr bin Hazm. He also drew their attention to some important matters as he did with Aban bin Sa'id when he appointed him *Waaali* over Bahrain and said to him:

((استوص بعبد قيس خيراً وأكرم سرائهم))

“Look after Abd Qays and honour their leaders.” Likewise it has also been confirmed that he ﷺ used to hold the *Wulab* accountable, inspect their situation and listen to news brought to him about them. He ﷺ used to ask the *Wulab* to account for the revenues and expenses spent. Al-Bukhari and Muslim narrated on the authority of Abu Humaid Al-Sa'idi who said;

((أن النبي ﷺ استعمل ابن اللثبية على صدقات بني سليم
فلما جاء إلى رسول الله ﷺ وحاسبه قال: هذا الذي لكم
وهذه هدية أهديت لي. فقال رسول الله ﷺ: فهلاً جلست في

بيت أبيك وبيت أمك حتى تأتيك هديتك إن كنت صادقاً، ثم
 قام رسول الله ﷺ فخطب الناس وحمد الله وأثنى عليه ثم
 قال: أما بعد فإني استعمل رجالاً منكم على أمور مما ولّاني الله
 فيأتي أحدكم فيقول هذا لكم وهذه هدية أهديت لي. فهلاً
 جلس في بيت أبيه وبيت أمه حتى تأتيه هديته إن كان
 صادقاً، فوالله لا يأخذ أحدكم منها شيئاً بغير حقه إلا جاء الله
 يحمله يوم القيامة، ألا فلا تعرفنّ ما جاء الله رجلٌ بغير له رُغاء
 أو بقرة لها خوار أو شاة تيعر، ثم رفع يده حتى رأيت بياض
 إبطيه ألا هل بلغت))

“The Messenger of Allah ﷺ appointed Ibnul-Utbiyya as ‘Amil in charge of Sadaqat of Banu Saleem. When he returned back to the Prophet ﷺ and he accounted him, he said; ‘This is for you and (this is a gift) that was presented to me.’ So the Messenger of Allah ﷺ said ‘Why did you not remain in your father’s and mother’s home so that your gift comes to you if you spoke the truth.’ Then the Messenger of Allah ﷺ stood on the pulpit, addressed the people praised, Allah ﷻ and said; ‘What about a State official whom I give an assignment and who comes and says; ‘This is for you and this has been presented to me as a gift?’ Why didn’t he remain in the house of his father or the house of his mother so that his gift be presented to him if he is truthful? By Allah, any one of you will not take anything from it (*Sadaqah*) unlawfully but will bring it on the Day of Judgment, carrying on his neck a camel that will be growling, or a cow that will be bellowing or a sheep that will be bleating.’ Then he raised his hands so that I could see the whiteness of his armpits. Then he said twice; ‘O Allah, I have conveyed your command.’”

‘Umar used to closely monitor the *Wulab*, and he appointed Muhammad Ibnu Maslama to examine their state of affairs and inspect them. ‘Umar used to gather the *Wulab* during the Hajj season to review their performance and to listen to the complaints of the subjects about them, and he also used to discuss with them the affairs of the Wilayaat and ask about their own conditions. It has been reported that ‘Umar once said to people around him; “‘Would you say that my duty would be fulfilled if I appointed over you the best from amongst you, and ordered him to be just?’ They said; ‘Yes.’ He said; ‘No. Not until I had checked his performance, and seen whether or not he did what I had ordered him to do.’ ‘Umar was known to be strict when accounting the *Wulab* and the ‘*Aamileen*. He would even remove some of them on just a suspicion without conclusive evidence. He even used to remove a *Waaali* on the slightest doubt that did not even reach the level of suspicion. He was asked about this one day and he said; ‘It is easy to swap an *Ameer* for another so as to amend the people’s affairs.” However, despite his strictness with them he used to give them a free hand and safeguarded their reputation in ruling. He used to listen to them and consider their argument. If he liked an argument he would show his approval and conviction of it and would shower the ‘*Amil* with praise afterwards. One-day news reached him about his ‘*Amil* Umayr Ibnu Sa’d who had said while over the pulpit of Homs; “Islam will remain formidable as long as the authority is strong. And the strength of the authority does not come about with the killing by the sword or the lashing by the whip, but with the judging by the truth and the upholding of justice.” Upon hearing this ‘Umar said; “I wish I had a man like Umayr Ibnu Sa’d to help me with the *Muslims*’ affairs.”

Judiciary

The Judiciary is responsible for delivering the verdict for the purpose of enforcing it. It settles disputes between people, prevents whatever may harm the rights of the community and also settles the disputes between people and any person who is part of the ruling structure, whether they are rulers or civil servants, the Khaleefah or any other person.

The origin of the judicial system and its validity is the Book and the *Sunnah*. As for the Book, Allah ﷻ says;

﴿وَأَن احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ﴾

“And judge between them by that which Allah has revealed.” [TMQ Al-Mai’dah: 49]

And He ﷻ also says;

﴿وَإِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ إِذَا﴾

“And if they were invited to Allah and His Messenger to judge between them...” [TMQ An-Nur: 48] As for the *Sunnah*, the Messenger of Allah ﷺ was himself in charge of the Judiciary and he judged between people. Al-Bukhari narrated about A’isha, wife of the Messenger of Allah ﷺ, that she said;

((عن عائشة زوج النبي ﷺ أنها قالت كان عتبة بن أبي

وقاص عهد إلى أخيه سعد بن أبي وقاص أن ابن وليدة زمعة

مني فاقبضه إليك، فلما كان عام الفتح أخذه سعد، فقال: ابنُ

أخي قد كان عهد إلي فيه، فقام إليه عبد بن زمعة فقال: أخي وابن وليدة أبي، وُلِدَ على فراشه، فتسابقا إلى رسول الله ﷺ فقال سعد: يا رسول الله ابن أخي كان عهد إلي فيه. وقال عبد بن زمعة: أخي وابن وليدة أبي وُلِدَ على فراشه. فقال رسول الله ﷺ: هو لك يا عبد بن زمعة، ثم قال رسول الله ﷺ: الولد للفراش وللعاهر الحجر))

“Utba Ibnu Abi Waqqas told his brother Sa’d bin Abi Waqqas that the child of Zuma’a belongs to him, so keep him with you. In the year of the conquest, Sa’d took him and said, ‘The child is my nephew, and he (his brother) has entrusted him to me.’ Abd ibn Zuma’a stopped and said, ‘He is my brother, the son born to my father, and he was born on his bed.’ So they both rushed to the Messenger of Allah ﷺ and Sa’d said ‘O Messenger of Allah! He is my nephew and my brother has entrusted him to me’ and ‘Abd bin Zuma’a said, ‘He is my brother and a son born to my father on his bed.’ The Messenger of Allah ﷺ said, ‘The child is for the bed and for the fornicator is stoning.’”

The Messenger of Allah ﷺ used to appoint the judges. He appointed ‘Ali as judge over Yemen and he gave him instructions about how to judge by saying;

((إذا تقاضى إليك رجلان فلا تقض للأول حتى تسمع كلام

الآخر فسوف تدري كيف تقضي))

“If two disputing men come to you do not give a judgement for one of them until you have heard what the other has had to say.” He ﷺ also appointed Mu’az as a judge over Al-Janad. This indicates the legacy of the judiciary. As for the method of judicature carried out by the Messenger ﷺ, it can be deduced from the Hadith of A’isha that Sa’d and

Abd Ibnu Zuma'a disputed over the son of Zuma'a. Each one claimed that he was his. The Messenger of Allah ﷺ informed them of the divine rule that the son of Zuma'a was the brother of Abd Ibnu Zuma'a, and that the child belongs to the one on whose bed it is born. Therefore, his judgement was information about the divine rule and then he enforced it upon them, and thus 'Abd Ibnu Zuma'a took the child. This is the evidence that gives the definition of the Judiciary and this definition serves as a description of the reality. However, since it is a divine reality, and since the divine definition is in fact a divine rule, it therefore requires evidence from which it is to be deduced, and this Hadith serves as an evidence for the definition of the judiciary.

Some people defined the functions of the judiciary as being the 'settling of the disputes between people'. However this definition is deficient on the one hand, and on the other hand it is not a description of the reality of the judiciary as reflected in the Messenger of Allah's actions and sayings. This definition is merely a manifestation of what may or may not arise from the judiciary. For the judge may render a judgement on the case without necessarily settling the dispute between the parties. Therefore, the comprehensive and exclusive definition would be the one mentioned at the beginning of this chapter i.e. the one deduced from the *Abadith*.

Moreover, this definition includes the judgement between people, and this is mentioned in the Hadith of 'A'isha. It also includes the *Hisba* (public order) which means: 'Conveying the divine rule for the purpose of enforcing it regarding that which causes harm to the rights of the community.' This is highlighted in the Hadith of the heap of food. It has been reported in Sahih Muslim on the authority of Abu Hurayra that the Messenger of Allah ﷺ passed by a heap of food. As he put his hand inside it his fingers got wet, so he said to the vendor:

((أَنْ رَسُولَ اللَّهِ ﷺ مَرَّ عَلَى صُبْرَةِ طَعَامٍ فَأَدْخَلَ يَدَهُ فِيهَا
فَنَالَتْ أَصَابِعُهُ بِلَالًا، فَقَالَ: مَا هَذَا يَا صَاحِبَ الطَّعَامِ؟
فَقَالَ: أَصَابَتْهُ السَّمَاءُ يَا رَسُولَ اللَّهِ، فَقَالَ: أَفَلَا جَعَلْتَهُ فَوْقَ
الطَّعَامِ كَيْ يَرَاهُ النَّاسُ، مِنْ غَشٍّ فَلَيْسَ مِنِّي))

“What is this?” He said; ‘It was dampened by the rain O Messenger of Allah.’ He ﷺ said; ‘Why don’t you put it on the top so that people can see it? He who cheats does not belong to me.’”

It also includes the *Mazaaalim* (unjust acts), because they are part of the judiciary and not part of the ruling, since they are complaints against the ruler. The *Mazaaalim* would be defined as: 'Delivering of the divine rule by way of compulsion with regards to the dispute that may arise between the citizens and the Khaleefah or any of his *Wulab* or employees, or any conflict between the Muslims about the interpretation of any of the *Shar'a* texts used in order to judge by them and to rule according to them.' The *Mazaaalim* (unjust acts) were mentioned in the Hadith of the Messenger of Allah ﷺ regarding the fixing of prices where he said;

((... وَإِنِّي لَأَرْجُو أَنْ أَلْقَى اللَّهَ، وَلَا يَطْلُبْنِي أَحَدٌ بِمَظْلَمَةٍ
ظَلَمْتُهَا إِيَّاهُ فِي دَمٍ وَلَا مَالٍ))

“And verily I hope that I will meet Allah Azza wa Jall without having anyone claiming against me a Mazlama (complaint) I inflicted on him, be it of blood or funds.” [Narrated by Ahmad on the authority of Anas] This indicates that complaints against the ruler, or the *Wali* or the civil servants should be submitted to the judge of *Mazaaalim*, and the Judge of *Mazaaalim* would deliver the divine rule by way of enforcement. Therefore the definition would include the three areas of judiciary reflected in the *Abadith* and actions of the Messenger of Allah ﷺ. These are: settling disputes between people, preventing whatever may harm the rights of the community and the settling of disputes between the citizens and the rulers, or between the citizens and the civil servants within their duties.

TYPES OF JUDGES

There are three types of judges: One is the *Qadhi*, and he is in charge of settling the disputes between people over transactions and penal codes. The second is the *Muhtasib*, who is in charge of settling any breach of law that may harm the right of the community. The third is the judge of *Mazaaalim*, who is in charge of settling disputes between the people and the State.

These are the three types of judges. The evidence about the judge, who settles disputes between people, is derived from the actions of the Messenger of Allah ﷺ, and from his appointment of Mu'az Ibnu Jabal over an area of Yemen. The evidence of the judiciary regarding the settling of disputes which endanger the rights of the community, where the judge is known as the *Muhtasib*, this is confirmed by the action and saying of the Messenger of Allah ﷺ, for he said;

((من غشَّ فليس مني))

“He who cheats us is not one of me”, part of a Hadith narrated by Ahmad on the authority of Abu Huraira. He ﷺ used to challenge the cheaters and punish them. Qays Ibnu Abi Gharza Al Kanani reported: **“We used to buy cargo in Madinah and we would call ourselves brokers, so the Messenger of Allah ﷺ came out to us and called us with a better name, he ﷺ said;**

((يا معشر التجار إن هذا البيع يحضره اللغو والحلف فشوبوه

بالصدقة))

‘O traders, verily the selling entails foolish talk and the taking of oaths, so do mix it with Sadaqah.’”

Ahmad narrated from Abi Minhal

((أن زيد بن أرقم والبراء بن عازب كانا شريكين فاشترى

فضة بنقد ونسيئة فبلغ ذلك النبي ﷺ فأمرهما أن ما كان

بنقد فأجيزوه وما كان بنسيئة فردوه))

“Zayd Ibnu Arqam and Al-Bara’ Ibnu Azib were partners, so they both bought some silver with cash on the spot and by credit. This news reached the Messenger of Allah ﷺ, so he ordered that the deal settled in cash there is no harm in it, and where it is sold in credit it must be rejected.” All this is within the judicial remit of the *Hisba*. Calling the judiciary that settles the disputes that may harm the right of the community as *Hisba* is in fact a technical term referring to a specific task

carried out in the Islamic State, ie. Controlling the traders and skilled workers lest they cheat in their trade, or their work or their products, or forcing them to use the rights weights and measures, or any other type of action that may harm the community. These are the very types of actions that the Messenger of Allah ﷺ demonstrated, ordered to be observed, and personally applied judgement upon, as mentioned in the Hadith of Al-Bara’ Ibnu Azib, where he ordered both parties to abstain from selling silver by credit. Therefore, the evidence about the *Hisba* is from the *Sunnah*. Moreover, Rasool ul-Allah ﷺ appointed Said bin Al-’Aas on the market of Makkah after the conquest, as it came in the book of ‘At-Tabaqat’ of Ibn Sa’d and in the book of ‘Al-Istee’aab’ of Ibn Katheer. ‘Umar bin Al-Khattab also appointed Al-Shifa, a woman from his clan, who was called Umm Sulaiman bin abi Hatmah, as a market judge (inspector) i.e. a judge of *Hisba*. He appointed, as well, ‘Abdullah bin ‘Utbah over the market of Al-Madinah, as it was reported by Malik in his ‘Muwatta’ and by Ash-Shafi’i in his ‘Musnad’. He would personally deal with the judiciary of the *Hisba*, and go around the markets just like the Messenger ﷺ used to do. The Khaleefah continued to undertake the *Hisbah* till the time of Al-Mahdi who made a special department for the *Hisbah*, thus becoming one of the branches of the judiciary structure. At the time of Ar-Rasheed, the *Muhtasib* used to go around the markets, checking the weights and measures, and look into the traders’ transactions.

The evidence for the judge of *Maz’aalim* (unjust acts), is derived from Allah’s ﷻ saying;

﴿فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

“If you dispute about something refer it to Allah and the Messenger.” [TMQ An-Nisa’: 59]

This came immediately after Allah’s ﷻ saying;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“O you who believe obey Allah and obey the Messenger and those in authority from

amongst you.” [TMQ An-Nisa’a: 59] Therefore, any dispute between the citizens and the people in authority should be referred to Allah and His Messenger i.e. to the rule of Allah. This necessitates the presence of a judge to give judgement on this dispute, and this is the judge of *Mazaaalim*. This is because part of what is included in the definition of the *Mazaaalim* (unjust acts) court is the dispute between the people and the Khaleefah. So the evidence on the judicial court of the *Mazaaalim* is the action and words of the Messenger ﷺ. However, the Messenger of Allah ﷺ did not appoint a specific judge for the *Mazaaalim* over the whole State, nor did the *Khulafaa’ Ar-Rashidoon* after him, for they used to undertake the *Mazaaalim* themselves, as was the case with Ali Ibnu Abi Talib. He did not however have a specific time or a special method for the *Mazaaalim*, he simply dealt with a Mazlama (an unjust act case) as it happened, so it was just part of his general duties. This approach remained the same until the days of ‘Abdul Malik Ibnu Marwan; he was the first Khaleefah to introduce a specific time for the *Mazaaalim*. When he could not deal with a matter himself, he used to refer it to his judge to deal with it. Then the Khaleefah began to appoint deputies to look into people’s complaints, and a special system was then introduced for the *Mazaaalim*, which was known as the “House of Justice” (Dar ul-’Adl). It is permissible to have a special judge for *Mazaaalim*, because anything that falls under the mandatory powers of the Khaleefah, he is allowed to appoint deputies to perform that duty on his behalf. It is also permissible to have a specific time and a specific style, because all of this falls under the *Mubah* (allowed).

THE CONDITIONS REQUIRED FOR THE POST OF JUDGES

Anyone taking up the post of a judge must be a Muslim, free, mature, sane, just a Faqih (learned scholar), and aware of how to apply the rules to the events. The person who takes up the judiciary of *Mazaaalim*, in addition to the conditions mentioned must also be male and a *Mujtahid* (jurist), just like the *Qadhi al-Qudhab* (Supreme judge). This is because this post is in fact a combination of judicial and ruling responsibilities, for he judges over the ruler and executes the *Shari’ah* upon him. Therefore he must be male in addition to the other conditions for the judge post, one of which is to be a Faqih. Furthermore, he has to be a *Mujtahid*, because as part of the *Mazaaalim* he may be required to look into whether the ruler has ruled by other than that which Allah has revealed, i.e. ruled by a law that has no *Shar’a* evidence to back it, or in case the evidence he

used does not relate to the event. It is only the *Mujtahid* who can deal with such Mazlama. Therefore if he were not a *Mujtahid*, he would be judging on something he knows little about or has no knowledge at all, and that is forbidden. Therefore, in addition to the conditions of the ruler and those of the judge, he should also be a *Mujtahid*.

THE APPOINTMENT OF JUDGES

It is permitted to appoint the judge, the *Muhtasib* (judge of public rights) and the *Mazalim* in a general capacity, to judge in all matters all over the State. It is also permitted to appoint them in a specific capacity, whether geographic or according to a certain type of judiciary. This would be in accordance with the action of the Messenger of Allah ﷺ. He ﷺ appointed Ali Ibnu Abi Talib as judge over Yemen, and Mu’az Ibnu Jabal as judge over an area of Yemen, and he also appointed ‘Amru Ibn al-‘A’as as judge in one specific matter.

THE FORMING OF TRIBUNAL COURTS

It is forbidden to have more than one judge presiding over a tribunal and having power to render judgement. It is permitted for one or more judges to be present with him but they would not have the right to judge. They attend so as to be consulted or to voice an opinion, and their opinion would not be binding.

This is because the Messenger of Allah ﷺ never appointed two judges to deal with one matter, rather he ﷺ appointed one judge for one matter. Besides, the judiciary is the pronouncing of the *Shari’ah* rule by way of compulsion, and the *Shari’ah* rule concerning the same Muslim person cannot vary, for it is the rule of Allah, and the rule of Allah is one. It is true that its interpretation may vary, but concerning the Muslim from the practical side it remains one and it never varies. His interpretation would be the rule of Allah as far as he is concerned, and any other interpretation is not the rule of Allah ﷻ that would apply to him, although in his opinion it is considered a *Shari’ah* rule. Whatever *Tagleed* (imitation) he adopts and acts upon is considered to be the rule of Allah ﷻ as far as he is concerned, while any other *Tagleed* would not apply to him. When the judge pronounces the rule of Allah in the matter at hand by way of compulsion, this pronouncement must be one, for it is the

pronouncement of the rule of Allah ﷻ by way of compulsion. Thus it would be acting upon the rule of Allah ﷻ, and the rule of Allah ﷻ from a practical point of view does not vary, even if the understanding does vary. Therefore, it is forbidden to have more than one judge, for it is impossible for the rule of Allah ﷻ to vary. This is as far as the individual case is concerned, i.e. the tribunal or court. As for the country, it is permitted to have two separate courts dealing in all types of cases in one area, because the judiciary is delegated by the Khaleefah, so it is like the deputyship where plurality is permitted, thus it would be permitted to have several judges in one area. If the disputing parties could not agree on which tribunal they should take their case to or which judge should look into their case, the choice of the plaintiff would outweigh that of the defendant and the case would be given to the judge of his choice, as he would be seeking his right and this outweighs the defendant.

The judge can only rule in a judicial court, and the evidence and the oath can only be considered in the judicial court.

This is because it has been reported on the authority of ‘Abdullah Ibnuz-Zubayr who said;

((قضى رسول الله ﷺ أن الخصمين يقعدان بين يدي

الحاكم))

“The Messenger of Allah has ordered that the two disputing parties should sit before the judge.” [Narrated by Abu Dawood and Ahmed] This Hadith demonstrates the form, in which the judicial process should be conducted, and it is a lawful form in itself, i.e. there must be a specific form in which the judicial process is to be conducted, which is for the two disputing parties to sit before the judge, and this would be the judicial court. Therefore, this is a condition for the validity of the judicial procedure, i.e. that there ought to be a special place where the judgement is to be conducted for it to qualify as a legitimate judgement, and this would be for the two disputing parties to sit before a judge. This is backed by the Hadith of Ali ؓ when the Messenger of Allah ﷺ said to him:

((إذا جلس إليك الخصمان فلا تكلم حتى تسمع من الآخر

كما سمعت من الأول))

“O Ali, if two disputing parties sat before you, do not judge for in favour of either of them until you hear what the other party has to say as you have heard the first one.” It also indicates a special form where he ﷺ said;

((إذا جلس إليك الخصمان))

“If two disputing parties sat before you.” Therefore, the judicial court is a must if the judgement is to be valid, and is also a must for the oath to be considered. This is because the Messenger of Allah ﷺ said;

((اليمين على المدعى عليه))

“The oath must be given by the defendant.” [Narrated by Al-Bukhari on the authority of Ibnu Abbas] He would not be considered as defendant except in a judicial court. The same applies for the evidence. It cannot be considered except before a judicial court, for the Messenger of Allah ﷺ said;

((...ولكن البينة على من المدعى، واليمين على من أنكر))

“It is the plaintiff who should provide the evidence, and the oath is due on the one who disapproves.” [Narrated by Al-Baihaqqi]

He also cannot be considered a plaintiff except before a judicial court.

It is permitted to have various levels of courts according to the type of cases. Thus it would be permitted to have some judges confined to dealing with specific cases to a certain extent, and to refer other cases to other courts.

This is because the Khaleefah delegates the judiciary and it is just like the deputyship, with no difference at all. In fact, the judiciary is one form of deputyship, which can be general and can also be specific. Therefore, it would be permitted to have a judge appointed to deal in specific cases only, in which case he would not be allowed to deal with cases other than those cases specified. It is also permitted to appoint another judge to

look into all sorts of cases including those mentioned, even in the same location, or to look into cases other than those mentioned. Therefore, it is permitted to have various levels of tribunal, and Muslims had this in the past. Al-Mawardi wrote in his book entitled *Al-Ahkam As-Sultaniyya*;

“Abu ‘Abdullah Az-Zubayri said; ‘For sometime, the ‘Umara here in Basra used to appoint a judge at the central Masjid (*Al-Masjid Al-Jami*’), and they called him the judge of the Masjid. He used to judge in disputes involving sums not exceeding twenty Dinars and two hundred Dirhams, and he used to impose Nafaqah (maintenances). He would not exceed his boundaries nor the duties entrusted to him.” The Messenger of Allah ﷺ delegated others on his behalf in the judiciary; he ﷺ appointed ‘Amru Ibn al-‘A‘as to look into one case, and he appointed Ali Ibnu- Abi Talib over the judiciary in Yemen with powers to look into any case. This indicates that it is permitted to have a specific and general judiciary.

There are no courts of appeal and there are no courts of cessation, so the judiciary, as far as the method by which the cases are treated, is one and the same. If the judge pronounced a sentence, it would become binding, and the sentence of another judge would not under any circumstances reverse it. This is the case unless the sentence disagreed with a definite text from the book of Allah, or the *Sunnah* of His messenger or the *Ijma’a* of as-Sahabah.

Thus, the sentence of the judge cannot be reversed by himself or by any other judge, if it (the original judgement) is based on *Zanni* (probable) evidence from the Book or the *Sunnah*. Evidence about the fact that the sentence of the judge derived from a *Zanni* evidence cannot be reversed is the general consensus of the Sahabah. This is because Abu Bakr judged in some cases according to his own *Ijtihad* while ‘Umar did not agree with him, and he did not reverse his sentences. Ali disagreed with ‘Umar’s *Ijtihad* but never reversed his sentences; Ali differed with Abu Bakr and ‘Umar but their sentences were never reversed. The people of Najran came to Ali and said to him:

“O Ameer of the believers, your book is in your own hands and your pardon is with your own tongue.” He said;

“Woe to you, ‘Umar was rightly guided and I will not reverse a judgement pronounced by ‘Umar.” It has been reported that ‘Umar judged in the *Musharraka* (shared inheritance) to abrogate the rights of brothers from the father’s side. He then ordered that they have a share, and then said;

“That sentence applies to that case and this sentence applies to this one”, and he executed both sentences despite the contradiction. He also judged differently in relation to the grandfather and he never reversed any of the earlier sentences. As for what has been reported about Sharih having judged in the case of two paternal cousins, one of them was one of the mother’s brother, that the estate should go to the brother, this was referred to Ali so he said; Bring me the man. When he came he said to him: **“Where in the Book of Allah did you find this?”** He said; Allah ﷻ says;

﴿وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ﴾

“But kindred by blood have prior rights against each other.” [TMQ Al-Anfal: 75]

Allah ﷻ also says;

﴿وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ﴾

“If the man or woman whose inheritance is in question has left neither ascendants or dependants, but has left a brother or sister, each one of the two gets a sixth” [TMQ An-Nisa: 12], he then reversed his sentence. Ibn Qudamah replied with regards to this in his book *Al-Mughni* in the subject of *al-Qadaa* (The Judiciary), page 56, chapter nine by saying;

“It has not been proved, in our view, that Ali reversed his sentence. Even if it was proved that he did so, then Ali ﷺ possibly thought that Sharih disagreed with the text of the Book in the Ayah which he mentioned, so he reversed it.” What has been confirmed is that the Sahabah had on some occasions judged in some matters according to their own *Ijtihad*, and the Khaleefah used to disagree with them. This happened in the times of Abu Bakr, ‘Umar and Ali, and never did any of

them reverse the others' judgement. What has also been confirmed is that 'Umar passed contradictory and different sentences in relation to one single issue, and he executed all the sentences and never reversed the first judgement by the second one despite the difference between the two. It has been confirmed that 'Umar said about this:

“That judgement was for that case and this judgement is for this one.” This serves as evidence that the sentence of the judges should not be reversed. Ibnu Qudama wrote in *Al-Mughni*:

“And if his *Ijtihad* has changed without contradicting a text or a general consensus, or if his *Ijtihad* differed from the *Ijtihad* of those before him, he should not reverse it just because it is different, for the Sahabah have in fact consented on this course of action.” However, if he changed his *Ijtihad* before pronouncing the verdict, then he can judge with the new *Ijtihad*.

Furthermore, the evidence about the prohibition of the plurality of judges, also serves as evidence about the prohibition of reversing the judge's sentence. This is because the rule of Allah is one and does not vary, and the rule of Allah regarding one matter, once enacted means that it has been executed, so it would be wrong to reverse it. When the judge passes a verdict on a case, he would be putting the rule of Allah into application, and then its execution becomes compulsory. Therefore, it should never be reversed, as this would mean the reversal of Allah's rule and that is forbidden. Thus the judge cannot reverse his own judgement, nor can anyone else reverse his judgement, for the rule of Allah does not vary, and its reversal would be, in addition to being the reversal of the rule of Allah, a variation of the rule of Allah ﷻ and that is forbidden.

As for the report concerning the letter of 'Umar bin Al-Khattab which he sent to Abu Moussa in which he wrote;

“Do not allow a sentence you passed yesterday, which you reviewed and gained the right guidance, prevent you from returning to the truth, for the truth is old, and to return to the truth is better than to continue with the falsehood.” Supposing that the letter were genuine, it would represent the word of 'Umar, and it is not a *Shari'ah* evidence. It would be wrong to say that the Sahabah kept silent about this and that this indicates that

a general consensus took place, for the silence can only be considered to be a general consensus if the event was well known, related to a rule that concerns all the people, and which the Sahabah would have knowledge of, and also the like of which is usually rejected by *Shari'ah* for they do not remain silent over a *Munkar*. However, this type of letter was addressed to a specific judge and it was not a general address. Although it became famous afterwards, it was not a famous event known to the Sahabah at that time. Besides, it did not contain anything that is usually rejected, because it contained nothing that *Shar'a* condemns. Furthermore, what 'Umar meant in his letter was; 'If you passed a judgement yesterday and then realised that it was wrong, do not let this stop you from changing it and passing a different judgement in another case'. It does not mean that you should reverse yesterday's judgement. That is why 'Umar wrote 'to return to the truth' and he did not write to reverse your judgement. To return to the truth means to abandon the wrong opinion and adopt the right one. Therefore, the letter does not serve as evidence that the judgement can lawfully be reversed. This is why in Islam there is nothing called judicial precedent, i.e. in such and such case the sentence was so and so. If a certain verdict was passed on a particular case, that verdict does not oblige anyone else to judge accordingly. It is rather permitted to pass a different judgement on a similar case by a different judge and even by the same judge. As for the case itself, the rule of Allah would have been applied to it, therefore the judge would be forbidden from reversing that rule or changing it. This is why there are no courts of appeal in Islam, and nor are there any courts of cassation. The judiciary, from the adjudication point of view, should be of the same level. The *Shari'ah* principle states; “The *Ijtihad* does not reverse another *Ijtihad*.” So no *Mujtahid* could serve as an authoritative source for another *Mujtahid*, thus it would be forbidden to have Tribunals that reverse the sentences of other Tribunals.

However, if the judge abandons ruling by the *Shari'ah* and judged according to a rule of disbelief, or if he judged by a rule that contradicts a qat'i (definite) text from the kitab and *Sunnah* or the *Ijmaa'* of the *Sahabah*, or he issued a verdict that contradicts with the reality, such as if he judged on somebody as a deliberate killer, then the real killer appeared. In such cases, the verdict of the judge is reversed. This is because the Messenger of Allah ﷺ said;

((من أحدث في أمرنا هذا ما ليس منه فهو ردّ))

“Anyone who invented something in our matter (Deen) that which is not from it, it would be rejected.” [Narrated by Al-Bukhari and Muslim on the authority of ‘Aiesha]

It was also narrated by Jabir bin ‘Abdullah:

((أن رجلاً زنى بامرأة فأمر به النبي ﷺ فجُلد. ثم أُخبر أنه محصن فأمر به فرُجم))

“...a man committed adultery with a woman, so the Prophet ﷺ ordered, that he be lashed. Later on he was informed that he was married, so he ordered that he be stoned.” Malik bin Anas also narrated, that he said;

“I got knowledge that a woman was brought to ‘Uthman ؓ, where she gave delivery after six months so he ordered her to be stoned, Ali ؓ said to him: ‘It is not valid to be stoned, because Allah ﷻ says;

﴿وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا﴾

“The carrying of the (child) and his weaning (Fisal) is a period of thirty months” [TMQ Al-Ahqaf: 15] and He ﷻ says;

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ﴾

“The mother shall give suckle to their children for two whole years, for them who desire to complete the term.” [TMQ Al-Baqarah: 233] Thus the pregnancy period is six months, so she should not be stoned.’ Accordingly ‘Uthman ؓ ordered that she be brought back, but he found that she had already been stoned.” Abdur Raziq narated from Al-Imam Ath-Thawri that he said;

“If a judge gave a verdict opposite to the Book of Allah or the

Sunnah of the Messenger of Allah ﷺ or anything where there is an *Ijma’a* over it, then another judge after him may reverse it.”

And the one with the mandatory powers to reverse these sentences is the *qadi Mazaalim*.

AL-MUHTASIB

The *Muhtasib* is the judge that deals in all the cases that concern the public rights and which do not have a plaintiff, as long as these cases do not fall under the Hudood (penal code) and the *Jinayat* (criminal law).

This is the definition of the judge of *Hisba*, a definition that is deduced from the Hadith relating to the heap of food when the Messenger of Allah ﷺ discovered dampness in the heap of food, so he ordered that the damp food be displayed on the top so that people could see it. This was a public right on which the Messenger of Allah ﷺ looked into, and judged that the wet food should be displayed at the top to prevent cheating. This applies to all the public rights or interests that are of this nature. It does not include the penal code or the criminal law, for they are not of the same sort, and they are disputes between people in the first place.

THE MANDATORY POWERS OF THE MUHTASIB

The *Muhtasib* has the power to judge on the offence as soon as he learns about it, and this could take place on the spot and at any location. He does not need to be in a judicial court. He will have at his disposal a number of police staff to execute his orders and to apply the sentence on the spot.

A judicial court would not be required for the *Muhtasib* to look into the case at hand, He passes the judgement the moment he is sure that the offence took place, and he has the power to judge at any place and at anytime, whether in the market, in the house, while riding or in the car during the day or night. The evidence that confirms the need to have a judicial court in order to deal with a case does not apply to the *Muhtasib*, because the Hadith that confirmed this condition states;

((إذا جلس إليك الخصمان))

“If the two disputing parties sat before you.”

This is not applicable to the judge of *Hisba*, as there is no plaintiff and no defendant, rather, there is a public right that has been violated, or a violation of the *Shar'a*. Besides, when the Messenger of Allah ﷺ looked into the case of the heap of food, he was walking in the market at the time and the food was displayed for sale. He ﷺ did not summon the vendor to him, but as soon as he detected the offence he dealt with it on the spot. This indicates that the cases of *Hisba* do not require a judicial court.

The *Muhtasib* has the right to select deputies for him. They should fulfil the requirements of the *Muhtasib*, and he is allowed to assign them to different places. Those deputies would have the power to carry out the duties of the *Hisba* in the areas to which they have been assigned, and in the cases for which they have been delegated.

This depends on whether the appointment of the *Muhtasib* includes a clause that gives him power to appoint deputies, i.e. to delegate deputies who would act on his behalf, in case the Khaleefah made his appointment. If the appointment was however made by the *Qadhi al-Qudhab* (*Supreme judge*), then beside the previous condition the appointment of the *Qadhi al-Qudhab* must include a clause that gives him power to allow the judges that he appoints to delegate others to act on their behalf, i.e. to give them the right to have deputies. If the *Qadhi al-Qudhab* did not have such power, then he would not be in a position to approve such a delegation, thus the *Muhtasib* would not be allowed to have deputies, i.e. he would not have the right to delegate. The power of the judge to delegate on his behalf, whether it be the *Muhtasib*, the *Qadhi* (judge) or the *Qadhi al-Maz'alim*, is not in the hands of the judge unless the Khaleefah allows him to do so; or if the permission to recruit judges and to allow those appointed to delegate were given to the *Wali* of the judiciary, i.e. the *Qadhi al-Qudhab*. This is because the judge is appointed to the judiciary, i.e. a specific type of judiciary, which is the *Hisba*. Therefore, if he were not given the right to delegate, i.e. the right to appoint a deputy for himself, he would not then possess the mandatory power to appoint anyone. This applies to both the *Qadhi* and the *Qadhi al-Maz'alim*, for each of them would be appointed to the judiciary according to the appointment clause. Thus they do not possess any extra

power, i.e. they would have no right to appoint judges, unless this formed part of the appointment contract. He would not also have the right to appoint deputies to perform the duties of *Hisba* on his behalf, unless this was part of his contract. The same applies to the *Qadhi al-Qudhab*. As for the permissibility of appointing deputies, this is derived from the Messenger of Allah's action, for he ﷺ was called upon to look into a case, and he appointed someone to act on his behalf. This was what happened in the incident of the desert Arab who came to the Messenger of Allah ﷺ and informed him that his son was working for a man and he committed adultery with the man's wife, so he asked him for the verdict. The Messenger of Allah ﷺ said at that incident:

((وَاعْذُ يَا أُنَيْسُ إِلَى امْرَأَةِ هَذَا فَإِنْ اعْتَرَفَتْ فَارْجُمُهَا..))

“Go O Unays (a man from Aslam) to this man's wife, if she admitted guilt then stone her.” [Narrated by Bukhari and Muslim by way of Abi Hurayrah, Zayd bin Khalid al Juhani]

This indicates that the judge could send a deputy to judge on his behalf in a case he assigns to him. The same applies to the *Muhtasib*, as he is also a judge. However, the judge must allow his deputy to deal with the case as a whole, i.e. he must be allowed to look into the complaint and pronounce judgement himself if the appointment to deputise were valid. This is because the judiciary is the conveying of the rule by way of compulsion, so in this context it cannot be partitioned, and therefore he cannot appoint him to merely investigate without judging. The appointment must be complete so that he becomes a judge and his judgement becomes valid. However, even if he sometimes did not actually pronounce a judgement, his work would still be valid, for it is not a condition for him to act as a judge. A judge could look into a case, and before completing his work and pronouncing his judgement, he could be relieved of his duties, and then the case would be referred to another judge who would pass judgement. The same applies to the judge's deputy. It is not a condition for him to pass judgement, but he must be given the right to investigate and pass judgement when appointed, i.e. he must be appointed as a full judge, holding all the mandatory powers given to a judge. The same applies to the *Muhtasib*. He appoints deputies with powers to investigate and judge in the cases he assigns for them, or in the areas in which he places them, that is if he has been given the power to

appoint deputies. The legal requirements for those whom the judge appoints as his deputies are: They must be Muslim, free men, just, mature and Fuqaha (learned scholars) in the matters they are assigned to deal with, i.e. they must have the same requirements as the *Muhtasib*, because they are also judges like him.

QADHI OF MAZAALIM

The *Qadhi Al-Mazaalim* is a judge appointed to remove every *Mazlema* (unjust act) perpetrated by the State against any person, whether this person was a citizen of the State or a person living under its authority, and whether the Khaleefah or those working under him perpetrated this *Mazlema*, be they rulers or civil servants.

This is the definition of the judge of *Mazaalim*. The origin of the judiciary of *Mazaalim* is derived from reports referred to the Messenger of Allah ﷺ, where he described the unjust acts perpetrated by the ruler while ruling over the subjects as being a *Mazlema*. Anas reported:

“Prices soared during the time of the Messenger of Allah ﷺ so they said to him; ‘O Messenger of Allah why don’t you introduce pricing?’ He said;

((إن الله هو الخالق القابض الباسط الرزاق المسعر، وإني لأرجو أن ألقى الله ولا يطلبني أحد بمظلمة ظلمتها إياه في دم ولا مال))

‘Verily Allah is the Recipient, the Extender of wealth, the Provider, and the Pricer, and I hope that I will meet Allah ﷻ without having anyone accusing me of having perpetrated a *Mazlema* against him be it in blood or in money.’” [Narrated by Ahmad]

He ﷺ, therefore judged pricing as being a *Mazlema*, for if he had done it, i.e. introduced pricing, he would have acted without a due right given to him. He ﷺ also made the issues that affect the public rights that the State organises for the people as part of the *Mazaalim*, such as the

irrigation of farming lands by common water in turn. The Messenger of Allah ﷺ looked into the dispute over irrigation that took place between Az-Zubayr Ibnul-’Awwam and a man of the *Ansar*. He ﷺ witnessed it personally and said to Az-Zubayr;

“You irrigate first O Zubayr and then let the water go to you neighbour.” Therefore, any *Mazlema* that occurs against any person, whether perpetrated by the ruler, or as a result of the State’s organisations or orders, would be considered as a *Mazlema*, as gathered from the two *Abadith*. The matter would be referred to the Khaleefah to deal with or to whomever the Khaleefah appoints as *Qadhi al-Mazaalim* to deal with such matters on his behalf.

THE APPOINTMENT AND THE REMOVAL OF THE JUDGES

The *Qadhi al-Mazaalim* is appointed by the Khaleefah, or by the *Qadhi al-Qudhab*. His removal, accounting, reprimanding or transfer, is carried out by the Khaleefah, or by the court of *Mazaalim* - if the Khaleefah gave it such mandatory power. This is because the *Mazaalim* is *wilayah* that is exclusive to the Khaleefah. Thus the appointment of the *Wali* of *Mazaalim* must be by the Khaleefah. Besides, the *Mazaalim* are part of the judiciary, for they are the pronouncement of the *Shari’ah* rule by way of compulsion. The judge must be appointed by the Khaleefah; a matter that is confirmed by the Messenger of Allah’s actions, for he ﷺ used to appoint the judges. All this serves as evidence that it is the Khaleefah who appoints the judge of *Mazaalim*, yet the *Qadhi al-Qudhab* could appoint the *Qadhi al-Mazaalim* if the Khaleefah made provisions for this in his appointment clause.

The removal of the *Qadhi al-Mazaalim* should, in principle, be the right of the Khaleefah, as it is he who has the right to appoint him. However, he has no right to remove him if he was investigating a case submitted against the Khaleefah, the *Muawin Tafweedh* or the *Qadhi al-Qudhab*. This is based on the principle of; *The Means to Haram is Haram*”. The Messenger of Allah ﷺ used to personally take charge of the judiciary of *Mazaalim* and it has not been reported that he ever appointed a judge of *Mazaalim* on a general capacity i.e. giving him a general *Wilayah* over the *Mazaalim*. The four of *Khulafaa’ Ar-Rashidoon* never appointed anyone over the *Mazaalim*. Ali used to personally be in charge of the *Mazaalim*; and he

looked into several cases of *Mazāalim*. When ‘Abdul-Malik Ibnu Marwan became Khaleefah he fixed a particular day for the *Mazāalim*, where he would hold hearings without going into the investigations. If a problem arose and he needed a binding judgement to settle the *Mazleme*, he would refer it to his judge Abu Idriss Al-Azadi. Abu Idriss would then be the one who looked into the *Mazāalim*, for he was a judge and he dealt with the *Mazāalim* that the Khaleefah ‘Abdul-Malik would refer to him. When the Ameer of the believers ‘Umar Ibnu Abdel-Aziz (Rahim Allah) came, he himself dealt with the cases of *Mazāalim*, and put a halt to the *Mazāalim* of Banu Umayyah. Midway through the Abbasi (Abbasid) era, the *Khulafaa*’ used to delegate the cases of *Mazāalim* to a special judge. Since that date the judiciary of *Mazāalim* became separate from the Khaleefah, while before that the Khaleefah himself always carried it out. Therefore, the Khaleefah reserves the right to look into the *Mazāalim* himself, and he is allowed to appoint a judge of *Mazāalim*, and to remove him and replace him with another judge, thus it is permitted for the Khaleefah to do so i.e. it is a *Mubah* action.

It is also the Khaleefah who holds the judge of *Mazāalim* accountable, where he reprimands him and removes him. This is because he is responsible for the *Mazāalim* and for the judge whom he appoints on his behalf to look into the *Mazāalim*. The Khaleefah is allowed to give the (head) *Qadhi al-Mazāalim* or to the *Qadhi al-Qudhah* the power to remove the *Qadhi al-Mazāalim*, reprimand, remove or transfer him. If he did so, they would have the mandatory power to remove, account and reprimand the *Qadhi al-Mazāalim*.

The position of *Qadhi al-Mazāalim* is not restricted to one person. The Khaleefah is allowed to appoint a number of judges for the *Mazāalim* according to the need, no matter how many they were. However, when it comes to the judgement, only one judge can pass the judgement. Yet it is permitted for other judges to sit with him during the court proceedings, but they would only have a consultative role, and he would not be obliged to consider their opinion.

This is because the Khaleefah is permitted to appoint one or more deputies to act on his behalf. However, if there were several judges of *Mazāalim*, their mandatory power to look into the *Mazāalim* cannot be apportioned, for each one of them would have the right to look into the

cases of *Mazāalim*. The Khaleefah is, however, allowed to confine a judge of *Mazāalim* to one province, or to confine him to a certain type of cases, for he has the right to give a general *Wilayah* over the *Mazāalim*, or a specific *Wilayah* if he wished. He can also give a *Wilayah* over the whole of the State or confine it to a specific area or province. As for the fact that, when the judge of *Mazāalim* looks into a case, he should look into it on his own, this is because of what was mentioned earlier, that it is forbidden to have more than one judge looking into a particular case, while it is permitted to have more than one judge in the same area. However, it is permitted for other judges of *Mazāalim* to sit with him in court in a consultative capacity only. He would not be obliged to consider their opinion, and it would be up to him whether he wished them to sit with him or not, for nobody should sit with the judge and distract him while he looks into what has been confined to him. However, he could consult them once he retires from court.

THE MANDATORY POWERS OF THE MAZAAALIM JUDGE

The *Qadhi al-Mazāalim* has the mandatory power to remove any ruler or civil servant, and he also has the right to remove the Khaleefah.

The *Qadhi al-Mazāalim* has the right to remove the rulers, for the ruler is appointed by a contract, known as the contract of assignment which is also called the contract of appointment (*Taqleed*). The Khaleefah has the right of the *Wilayah* that is the ruling, and he has the right of appointment, which is the assignment, and the appointment can only be done with clear wording. Thus the removal of the ruler appointed by the Khaleefah would be a termination of that contract, and the Khaleefah undoubtedly reserves that right. This is because the Messenger of Allah ﷺ appointed the *Wulab* and removed them. The *Khulafaa*’ *Ar-Rashidoon* also appointed the *Wulab* and removed them; the Khaleefah could also delegate to those whom he appointed the right to appoint and remove. However, the court of *Mazāalim* does not have the right to remove the rulers on behalf of the Khaleefah, for it does not act on his behalf in appointing and removal. It rather acts on his behalf in looking into the *Mazāalim*. So if the presence of that ruler in his *Wilayah* was a *Mazleme*, the court has the right to remove that *Mazleme* i.e. it has the right to remove that ruler from office. Therefore, its power to remove the ruler is not done on behalf of the Khaleefah, but merely to remove the

Mazlema. So the one whom it judges to be removed should be removed, even if the Khaleefah does not agree with the judgement. This is because the removal of that ruler would be the removal of a *Mazlema*, and this applies to everyone, including the Khaleefah, for the judgement of the judge applies to everyone. As for its power to remove the Khaleefah, this would also be by a judgement aimed at removing a *Mazlema*. This is because if the Khaleefah were in a situation that necessitates his removal, or in a situation as a result of which he should be removed, then his stay in office would be a *Mazlema*. It is the court of *Mazqalim* that judges the removal of *Mazqalim*, so it would order his removal. Therefore, the judgement of the court of *Mazqalim* to remove the Khaleefah would be a judgement aimed at removing a *Mazlema*.

The court of *Mazqalim* has the power to look into any *Mazlema*, whether the *Mazlema* were perpetrated by government employees, or related to a contradiction of the *Shar'a* by the Khaleefah, or related to the meaning of a legislative text in the constitution, the canons or the various *Shari'ah* rules adopted by the Khaleefah, or related to the imposing of a tax, or any other matter.

This is because the Messenger of Allah ﷺ refused to fix the prices when the Sahabah requested him to do so after the prices had soared, and he ﷺ considered price fixing as a *Mazlema*. He ﷺ also considered the illegal arrangements of the peoples' access to irrigation as a *Mazlema*. This proves that if the action of the ruler contradicted the truth (Haqq), or violated the *Shari'ah* rules, it would be considered a *Mazlema*. The Messenger of Allah ﷺ was a ruler over the Muslims and their Head of State.

Furthermore, if any action that is part of government business, performed by any member of the government, was in contradiction with the truth (Haqq), or if it violated the *Shari'ah* rules, it would be considered a *Mazlema*. This is because that person would be representative to the Khaleefah, acting on his behalf in the task assigned to him in the government structure.

Therefore, the Hadith about pricing indicates that the offence committed by the Khaleefah is a *Mazlema*, and it is the court of justice that has the power to look into the *Mazqalim*.

With regards to examining a text in the constitution or the canon, the constitution is the basic law and the canon is the decree of the Sultan. So examining that is examining the decree of the Sultan, which is also included in the Hadith about pricing, for it would be like examining the Khaleefah's actions. Furthermore, Allah ﷻ says;

﴿فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

"If you dispute about something refer it to Allah and the Messenger" [TMQ An-Nisa'a: 59], i.e. if you disputed with the people in authority about a matter. If this dispute were about an article in the constitution or an article in the canon of the law, then it would be a dispute between the subjects and those in authority on a rule of *Shari'ah*, which must be referred to Allah and His Messenger. This would mean referring it to the court of *Mazqalim*, i.e. to the judgement of Allah and His Messenger ﷻ.

As for the mandatory power given to the judge of *Mazqalim* to look into the imposing of a tax, this is derived from the Hadith of the Messenger of Allah ﷺ where he said;

((...وإني لأرجو أن ألقى الله، ولا يطلبني أحد بمظلمة ظلمتها

إياه في دم ولا مال))

"And I hope to meet Allah Azza wa-Jall without having anyone claiming a *Mazlema* against me, whether in blood or money." If the Khaleefah took money from the subjects unlawfully, it would be a *Mazlema*; and taking money from the subjects that is not approved by the *Shar'a* is a *Mazlema*. Therefore, the court of *Mazqalim* has the right to investigate taxes for it is money taken from the subjects. Its investigation of tax affairs would be with the aim of ruling whether that tax is lawfully obliged by *Shar'a* on the Muslims, such as the money taken to feed the needy, which would not be a *Mazlema*; or whether that tax is not obliged by the *Shar'a*, such as the monies taken to build a dam that is not considered essential, which would therefore be a *Mazlema* that has to be removed. This is why the court of *Mazqalim* has the power to examine the taxes.

In the judiciary of *Mazqalim*, the court sitting is optional, and the

summons of the defendant is not necessary, nor is the presence of a plaintiff. The court of *Mazāalim* has the right to look into a *Mazleme* even if nobody filed a claim. This is with regards to any *Mazleme* related to the people in the government structure, the Khaleefah's violation of the *Shari'ah* rules, the meaning of any legislative text, the constitution or the canons adopted by the Khaleefah, the imposing of any tax, or related to the State's oppression of its citizens and seizure (properties) from them by force, its transgression in terms of the collected properties (from them) or reducing the salaries of the employees and the army or delaying their payment.

This is because the evidence that confirms the need for a judicial court to look into a case does not apply to the court of *Mazāalim* for it is not always necessary to have a plaintiff. The court of *Mazāalim* looks into the *Mazleme* even if nobody filed a claim. It is also not necessary to summon the defendant, because it examines the *Mazleme*, without the need of his attendance. Therefore, the evidence regarding the necessity of a judicial court does not apply. This is due to what Abu Dawood and Ahmed narrated from 'Abdullah bin Az-Zubair, he said;

((قضى رسول الله ﷺ أن الخصمين يقعدان بين يدي

الحاكم))

“The Messenger of Allah ﷺ ordered that ‘the two disputing parties sit before the judge”, and his ﷺ saying to Ali ؓ;

((إذا جلس إليك الخصمان))

“If the two disputing parties sat before you.” Therefore, the court of *Mazāalim* reserves the right to look into the *Mazleme* as it occurs without any restrictions such as time, place or court sitting. However, due to the standing of this court, as far as its mandatory power are concerned, it has always been surrounded by the elements of prestige and grandeur. In the times of the Sultans in Egypt and Ash-Sham, the Council of the Sultan, where the *Mazāalim* used to be dealt with, used to be known as the *Dar al-'Adl* (House of Justice), where the Sultan used to appoint deputies to act on his behalf, and the Qudhah (Judges) and the Fuqahah (Jurists) also used to attend. Al-Maqreezi mentioned in his book entitled, *Al-*

Sulook Ila Ma'arifati Dunwal Al-Mulook (The way to know the States of the kings), that the Sultan Al-Malik Al-Salih Ayyub appointed deputies to act on his behalf in the Dar al-Adal. They used to sit there to remove the *Mazāalim*, and to gather the witnesses, Qudhah and the Fuqahah. Therefore, there is no harm if the court of *Mazāalim* had a splendid house, for this would be *Mubah*, especially if this reflected the might of justice.

12

The Administration System

Running the government's business and the people's offices, departments and administrations, requires the carrying out of affairs whose task is to ensure the management of the State's business and the discharge of the people's interests. Each *Maslahah* (office) would be headed by a general manager, and each *Da'irah* (department) and *Idarah* (administration) would be headed by a director, who would run its affairs and be directly responsible for it. Those directors would be answerable to the general director in charge of their offices, departments or administrations from a professional side, and answerable to the *Wali* and the *'Amil* with regards to abiding by the rules and general regulations.

THE ADMINISTRATIVE SYSTEM IS A STYLE OF ADMINISTRATION, NOT RULING

The administrative system is a style used to perform a task, and is also one of its means, so it does not require specific evidence. It is sufficient for it to have general evidence that indicates its origin. It would be wrong to say that these styles are human actions, which should therefore be conducted according to the divine rules. This is because the evidence for these actions has come with regards to their origin in a general form. Thus it includes all actions that branch out from that origin, unless there is divine evidence that relates to a subsidiary action, in which case the action must follow that evidence. For instance Allah ﷻ says;

﴿وَأَتُوا الزَّكَاةَ﴾

"And pay out the Zakat" [TMQ At-Tauba: 11], which is a general evidence. Then the evidences came regarding the subsidiary actions which branched out from it, such as the amount of *Nisab*, the Zakat collectors and the categories of things from which Zakat is to be taken. All these are actions derived from, "And pay out the Zakat." There are no evidences

regarding the manner by which the Zakat collectors have to collect the Zakat. For example, do they go riding or walking? Do they hire other employees to help them or not? Do they have to establish headquarters where they would all meet? Would they have warehouses where they would store everything they had collected? Would these houses be underground or built like grain houses? Would the cash Zakat be collected in bags or coffers? All these actions and the like are, in fact, subsidiary actions originating from "And pay out the Zakat." The general evidence covers them all, as there are no specific evidences for them; and this is the case with all the styles. Thus, the style is an action subsidiary to an action i.e. to the origin that has general evidence. Therefore, the style does not require evidence, because the evidence of its origin serves as evidence for it as well.

As for the establishment of the administration, i.e. the establishment of those who would manage the citizens' interests in every utility that needs an administrative work, this would be categorised as an original action and not a subsidiary one; hence it requires evidence. Its evidence is deduced from the actions of the Messenger of Allah ﷺ as he ﷺ used to perform the ruling and the administration. He ﷺ conveyed the message, executed it and discharged the Muslims' affairs. With regards to the *Tableegh* (conveying) this is well known. With regards to the execution, the revelation came and ordered him to collect the *Sadaqah*, to cut the hand of the thief, to stone the adulterer, to lash the slanderer and to kill the enemy; all of which are executive actions. He ﷺ used to destroy the idols by his own hand, which is execution, and he would also send people to remove them. He ﷺ would kill in the battlefield and take prisoners of war, order people to observe justice and established it. He would punish all the various wrongdoers and rebels and order people to adhere to all that he brought to them. All of this is execution.

As for his role in managing the affairs, he ﷺ established a system of administration for the various departments and appointed secretaries to run those departments. He ﷺ used to run people's affairs in Madinah and he appointed secretaries to assist him with the running of the various departments. Ali Ibnu Abi Talib used to be the notary of the oaths and treaties, which was an administrative duty and not a ruling post. Al Mu'ayqib ibnu Abi Fatima was in charge of his official stamp, an administrative duty and not a ruling post. Al-Bukhari reported in the

history from Muhammad bin Bashaar from his grandfather Mu'ayqib, who said; **“The stamp of the Messenger of Allah ﷺ was made of iron covered with silver and it was with me (in my hand). Mu'ayqib was responsible for the stamp of the Messenger of Allah ﷺ.”** Mu'ayqib Ibnu Abi Fatima was also the secretary in charge of the spoils and booty. Huzayfah Ibnul-Yaman was the collector of fruit levies of Hijaz, and 'Abdullah Ibnu Arqam was the registrar of tribes and their waters and so on. All this serves as evidence that the Messenger of Allah ﷺ ran the administration in addition to carrying out his role as a ruler. However, he ﷺ had determined for each one of those directors the type of task he had appointed them to do, such as recording the spoils and booty, or the assessment and collection of fruit levies or the like. He ﷺ however, did not specify the subsidiary actions, which the directors would follow to accomplish their tasks. This non-specification meant that those actions are subsidiaries of the origin. Therefore, those people ordered to carry out those tasks would have been free to choose any styles they wished in order to accomplish the tasks assigned to them and discharge the interests in the most effective way.

DISCHARGING OF INTERESTS IS PART OF RULING AFFAIRS

Discharging the interests is part of running the affairs. This is the duty of the Khaleefah, who therefore reserves the right to adopt any administrative style he wishes and make it binding. The Khaleefah has the right to enact the administrative laws and systems and oblige people to implement them. These are subsidiary actions and the Khaleefah is allowed to oblige the people to act in accordance with them. The people must obey his orders, as this is an enforcement of the subsidiaries of a rule that he has adopted. Enforcement of one of them means abandoning others. This is exactly the same as the adoption of divine rules and should be treated in the same manner. It is an error to say that these styles are permitted (*Mubah*) and any person is entitled to adopt any style he wishes, so if the Khaleefah imposed a *Mubah* and prohibited another, he would be forbidding the *Mubah*. This is an error because, by adopting a certain style, the Khaleefah would not be making a *Mubah* compulsory and forbidding another *Mubah*, he would merely be acting within the rights given to him by *Shar'a*. One of these rights is the adoption of divine rules and styles that help to perform them. The mandatory powers that allow him to adopt the rules also allow him to

adopt the styles that would help him to perform such rules. He is therefore entitled to adopt them, and his subjects must abide by what he has adopted and not use other styles if he prevented them from doing so. This type of *Mubah* action is that used to look after people's affairs. It is therefore *Mubah* (permissible) for the Khaleefah to adopt it for running people's affairs because the guardianship is his duty. Adopting such styles would not be *Mubah* for the people at large for they do not have the mandate of guardianship. Thus the obligation of abiding by what the Khaleefah has adopted is because of the obligation of obedience to him and not because of making the *Mubah* compulsory.

THE ADMINISTRATION DETAILS

This is as far as the administration as a whole is concerned. As for the details of the administration, they are taken from the nature of the administration itself. By examining its nature we find that some actions are performed by the Khaleefah himself or by his assistants, whether these were ruling, such as execution of the *Shar'a*, or the matters of administration or discharging the people's subsidiary interests which require styles and means. This is why a special structure is needed by the Khaleefah to manage the affairs that help him carry out the duties of Khilafah. The people also have interests that need to be addressed and which are related to the subjects. These interests also require styles and means in order to perform them. Therefore a special structure has to be set up in order to discharge the people's interests.

This structure consists of administrations, departments and directorates. The administration is the overall management of any government office, such as education, health, agriculture, industry and others. This administration would undertake the management of its own affairs and all the departments and directorates under its control. The department would run its own affairs and those of the directorates under its control. The directorate would also run its own affairs and the affairs of all the sections and divisions under its control.

The purpose of establishing these administrations, departments and directorates is to manage the State's affairs and to discharge the people's interests.

In order to guarantee the smooth running of these administrations, departments and directorates, directors must be appointed to take charge of them. For each administration, a general director would be appointed to take direct charge of it and to supervise all the departments and directorates that come under it. For each department and for each directorate a manager is appointed to be directly in charge of his department or directorate and to be responsible for the sections and divisions affiliated to it.

This describes the nature of the management of the administration, or what is called the State's administrations. It represents a general structure for all the subjects and for those who live under the authority of the State, and it has been called the *divan*. The management of the administrations or *divan* was not organised in a specific way at the time of the Messenger of Allah ﷺ. He ﷺ rather used to appoint for each administration a secretary who would act as the director, the secretary and undertakes all the related actions.

‘Umar Ibnu Al-Khattab was the first in the history of Islam to introduce the *divan*. The cause for this was that he once dispatched an army expedition and Al-Harmazan, who was present at the time, said to ‘Umar; “This is an expedition in which you ordered funds to be distributed amongst its people, but if anyone of them stayed behind, how would your companions know about him? Why don’t you keep a record (register - *divan*) for this?” So ‘Umar asked Al-Harmazan about the *divan* and he explained it to him. Abid Ibnu Yahya reported on the authority of Al-Harith Ibnu Nufayl that ‘Umar consulted the Muslims about the recording of the *Dawawin*, and Ali Ibnu Abi Talib suggested; “Divide all the funds you collect each year and do not keep any of them.” ‘Uthman Ibnu ‘Affan said; “I see that there are a lot of funds enough for all the people, and if they are not counted in order to know who has taken and who has not, I fear that the matter could get out of hand.” Upon this Al-Waleed Ibnu Hisham Ibnul-Mughira said; “I was in Ash-Sham and I noticed that its kings had introduced a *divan* and recruited soldiers, so why don’t you do the same?” “‘Umar took his advice and summoned ‘Aqeel Ibnu Abi Talib and Makhrama Ibnu Nufayl and Jubayr Ibnu Mat’am who were the genealogists of Qur’aysh and said; “Prepare a house to house census.”

When Islam reached Iraq, the *divan* of payments and funds collection continued as before. The *divan* of Ash-Sham was in Latin for it had been part of the Roman Empire, and the *divan* of Iraq was in Persian for it had been part of the Persian Empire. In the time of ‘Abdul Malik Ibnu Marwan the *divan* of Ash-Sham was transferred to Arabic, ie. in the year 81 AH. Several *dawawin* were then set up according to necessity and depending on the need for them in running the people's interests. *dawawin* for the armed forces were introduced for registration and grant purposes, and others were introduced to record the fees and claims of all transactions. Another *divan* was introduced for the *Aamileen* and *Wulah* to record each appointment and each removal and other *dawawin* were used in the treasury (Bait ul-Mal) to record revenues and expenses and so on. The introduction of a *divan* was according to the need for it, and its style varied over the years due to the difference in styles and means.

A chief was appointed for each *divan* along with other employees, and in some cases the chief was allowed to appoint the employees himself. In some other cases employees were appointed to him not by him.

A *divan* would thus be set up according to need, along with the styles and means that would help discharging that need. It is permitted to have different styles and means according to the era, or *Wilayah* or country.

With regards to the responsibility of such civil servants, they are hired employees and at the same time citizens. At a professional level they are answerable to their own directorate manager, and as citizens they are answerable to the rulers whether these are *Wulah*, the assistants or Khaleefah. They have to abide by the *Shari'ah* rules and the administrative systems.

THE POLICY OF THE ADMINISTRATION OF INTERESTS

The policy of the administration of interests is based on the simplicity of the system, speed in processing the tasks and the competence of the administrators. This is taken from the nature of processing the interest, for the person who requires a service needs to have it quickly and efficiently processed. The Messenger of Allah ﷺ said;

((إِنَّ اللَّهَ كَتَبَ الْإِحْسَانَ فِي كُلِّ شَيْءٍ، فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا

الْقَتْلَةَ، وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا الذَّبْحَ ...))

“Verily Allah has enjoined the perfection to everything; so when you kill, do so in a good way and when you slaughter, slaughter in a good way.” [Narrated by Muslim from Shaddad bin Aws] Therefore, the perfection in executing the actions is ordered by the *Shar’a*. To achieve this, the administration should observe three qualities. Firstly: The simplicity of the system that would lead to the ease of processing, whereas complication would lead to hardship. Secondly: The speed in processing the transactions would spare people of unnecessary delay. Thirdly: The ability and competence of the employees. This is required to perfect the task and is even required for the performance of the task itself.

THOSE WHO ARE ELIGIBLE TO BE CIVIL SERVANTS

Anyone who holds citizenship and is competent, man or woman, Muslim or non-Muslim is eligible to be appointed as a director of any administrative department or to be an employee in it. This is taken from the rules of hiring (*Ijara*) where it is permitted to hire any person whether Muslim or non-Muslim. This is because the evidences for hiring are in general form. Allah ﷻ says;

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ﴾

“And if they suckled for you, do give them their wage.” [TMQ At-Talaq: 6]

This is general evidence. Al-Bukhari narrated from Abu Hurairah from the Messenger of Allah ﷺ, who said;

((قال الله تعالى: ثلاثة أنا خصمهم يوم القيامة... ورجل

استأجر أجيراً فاستوفى منه ولم يعطه أجره))

“Allah ﷻ said; I will challenge three people on the day of Judgement... and a man who employed a labourer, he received from him (the work) but did not give him his wage.” This evidence is also general. The Messenger of Allah ﷺ himself once hired a man from Banu Ad-Deel who was a non-Muslim, which indicates that it is permitted to

hire a non-Muslim just as it is to hire a Muslim. It is also permitted to hire a woman just as it is to hire a man, following the generality of the evidences. Therefore, it is permitted for a woman to be a director of a government department or to be one of its employees, and it is permitted for a non-Muslim to be a director of a government department or an employee in that department, for they are all hired staff, and the evidences about hiring are general. As for the requirement of citizenship in employment, this is because the citizen is subject to the implementation of the rules, and the rules are not implemented on those who do not hold the citizenship, i.e. those who do not settle in the Islamic land even if they were Muslims. This is because the Messenger of Allah ﷺ said while instructing the Ameer of the armed forces:

((ثم ادعهم إلى التحول من دارهم إلى دار المهاجرين،

وأخبرهم أنهم إن فعلوا ذلك فلهم ما للمهاجرين وعليهم ما

على المهاجرين))

“Then ask them to move from their land to the land of the *Muhajireen*, and inform them that if they did so they would enjoy the same rights as the *Muhajireen* and would be subject to the same duties.” [Narrated by Muslim, by way of Buraydah]

This means that if they did not move they would not have the same rights and they would not necessarily have the same duties, even if they were Muslims. The persons referred to here are those upon whom the rules are implemented; otherwise it would have been permitted to hire those who do not hold citizenship due to the generality of the evidence about hiring.

THE CIVIL SERVANTS ARE STATE HIRED STAFF

The State’s directors and employees are hired staffs who are contracted in accordance with the rules of hiring. Their appointment, removal, transfer and censure would be carried out by those who head their administrations, directorates or departments and in accordance to the administrative regulations.

This is deduced from the rules concerning hired personnel. The employer and the employee should abide by the contract of hiring, because the contract is binding on both sides according to what has been contracted. For example, it would be, for instance, unlawful to remove an employee before the term of contract had expired.

Abiding by the general administrative rules, forms part of the conditions laid out in the contract and these must be honoured. The Messenger of Allah ﷺ said;

((المسلمون على شروطهم))

“The Muslims are bound by their conditions.” [Narrated by Abu Dawoud from Abu Hurairah] As for the transfer of personnel from one place to another, this should also be subject to the contract of employment.

The one responsible to hire, transfer, censure and dismiss staff would be the director of the respective department, directorate or administration. This is because he is in charge of the department of their work, and he is the one who has the power according to the responsibility entrusted to him.

The Council of the Ummah

This is a Council formed of individuals representing the opinion of the Muslims at large, to whom the Khaleefah can refer to consult them on various issues. They in turn are the representatives of the Ummah in holding the rulers accountable. This is deduced from the Messenger of Allah's ﷺ nomination of fourteen chiefs (Nuqaba) from the *Ansar* and the *Muhajireen* in order to consult with them about matters. It is also deduced from the fact that Abu Bakr ؓ designated some men from the *Muhajireen* and the *Ansar* to refer to them seeking their opinion when something happened. The people of the *Shura* at the time of Abu Bakr ؓ were the Ulama and the people of Fatwa. Ibnu Sa'd reported from Al-Qasim that when something happened and Abu Bakr wanted to consult the people of opinion and the people of Fiqh, he called from the *Muhajireen* and the *Ansar*; 'Umar, 'Uthman, Ali, Abdur Rahman bin Awf, Mu'az bin Jabal, Ubai bin Ka'ab and Zaid bin Thabit. They all used to give their opinion during the Khilafah of Abu Bakr. People would also take their Fatwa. When 'Umar became Khaleefah he would also call these people, while the Fatwa in his time was to 'Uthman, 'Ubai and Zaid. This indicates that it is permitted to set up a special Council that represents the Ummah in holding the rulers accountable, and to participate in the *Shura*. This is confirmed by texts from the Qur'an and the *Sunnah*. It is called the Council of the Ummah because it represents the Ummah in accounting and consultation.

It is permitted for non-Muslim citizens to be members of the Council, in order to file complaints against any injustice perpetrated against them by the rulers or against any mis-implementation of Islam upon them.

THE RIGHT OF THE *SHURA*

Shura is a right of all the Muslims that the Khaleefah should fulfil.

They are entitled to be consulted and the Khaleefah should refer to them and consult them. Allah ﷻ says;

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ﴾

“And do consult them in the matter, and if you decide (on an action/ on an opinion) put your trust in Allah.” [TMQ Al-Imran: 159] The Messenger of Allah ﷺ used to refer to people and consult with them. He ﷺ consulted them on the day of Badr about the location of the battlefield and he consulted them on the day of Uhud about whether to fight inside or outside Madinah. On the day of Badr he took the advice of Habab bin Al-Munthir regarding a technical opinion voiced by an expert that he accepted. On the day of Uhud he accepted the opinion of the majority, despite the fact that his personal opinion was different.

‘Umar bin Al-Khattab consulted the Muslims regarding the land of Iraq, whether to divide it among the Muslims because it was booty or to leave it in the hands of its people with the condition that they paid its Kharaj while the land remains the property of the Treasury. He then acted according to his own *Ijtihad* and most of the Sahabah approved of it, so he left the land in the hands of its people and ordered them to pay the *Kharaj*. He also removed Sa’d Ibnu Abi Waqqas from his *Wilayah* because of complaints against him and he said; “I did not remove him because of a betrayal or a weakness.”

As well as having the right to be consulted by the Khaleefah, the Muslims should also hold the rulers accountable for their actions and conduct. Allah ﷻ has commanded the Muslims to hold the rulers accountable and He ﷻ strongly directed them to be firm with them if they violated the rights of the citizens, if they neglected their duties towards them, if they ignored any of their affairs, disagreed with the *Ahkam* (laws) of Islam or governed with other than what Allah brought down. Muslim narrated from Umm Salamah that RasoolAllah ﷺ said;

((ستكون أمراء فتعرفون وتنكرون، فمن عرف برىء، ومن

أنكر سلم، ولكن من رضي وتابع، قالوا أفلا

نقاتلهم؟ قال: لا، ما صلوا))

“There will be ameers, you recognise (something of what they do) and you reject (some). Whosoever recognised, he would be absolved (of sin) and whosoever rejected, he would be safe. But whosoever accepted and followed (what they do, he would not be safe).’ They (the Sahabah) asked ‘Shouldn’t we fight them?’ He said; ‘No, as long as they pray.’”

The Sahabah on some occasions did disapprove of some of the Messenger of Allah’s ﷺ actions. ‘Umar strongly protested against what came in the treaty of Hudaibiyah, namely the part which states;

((إنه من أتى محمداً من قريش بغير إذن وليه ردّه عليهم، ومن

جاء قريشاً ممن مع محمد لم يردوه عليه))

“Any one who comes to Muhammad from Qur’aysh without the permission of his guardian would be returned to them, and whoever comes to Qur’aysh from among those who were with Mohammad they would not return him back.” Ibnu Hisham in the Seerah reported this from Az-Zuhri. The Muslims, especially ‘Umar, at first disapproved the action of Abu Bakr when he decided to fight the apostates. Talha and Az-Zubayr also disapproved of his action when they learned that he was to nominate ‘Umar after him.

Bilal Ibnu-Rabah, Az-Zubayr and others disapproved the action of ‘Umar when he decided not to divide the land of Iraq among the fighters. A woman also challenged ‘Umar when he decided to fix the dowries at 400 Dirhams, when she said to him: “O ‘Umar, it is not up to you. Did you not hear Allah’s ﷻ saying

﴿وَأَتَيْتُمْ إِحْدَاهُنَّ قِنطَاراً فَلَا تَأْخُذُوا مِنْهُ شَيْئاً﴾

“Even if you gave them (your wives) a whole treasure for dowry, do not take any of it” [TMQ An-Nisa’: 20]’ Upon this, ‘Umar said; ‘The woman is right and ‘Umar was wrong.’”

Therefore, the Council of the Ummah has the right to be consulted, and is obliged to hold the rulers accountable.

THE RULE OF *SHURA*

Shura is the verbal noun of the verb '*Shawara*', or consulted. It means seeking the opinion from the one who is consulted. When it is said '*Istashara*', it would mean that one asked another for advice.

Shura and *Mashura* have the same meaning, likewise is the *Mashawarah*. It was mentioned in *Lisaan ul-Arab* (name of a dictionary) that it is valid to say; a person is good in *Mashura* and *Mashwara*. Al-Farraa' also said; the origin of *Mashura* was *Mashwara* then it was transformed to *Mashura* for it is easier (to pronounce). Al-Laith said; *al-Mashwara* is in the form of *Maf'ala* and it is derived from *al-Ishara*. It is also said; *Mashura* is the same as *Shura* and *al-Mashwara*. Based on this saying *shawartubu* (regarding a matter) or *istashartubu*, have the same meaning. It came in Mukhtar us-Sihah; *al-Mashwara* is *Ash-Shura*, as well as *al-Mashura*. Thus we say *shawarahu* in the matter and *istasharahu*, with the same meaning.

The validity of *Shura* is established from the command of Allah ﷻ to His Prophet ﷺ to consult the believers. Where He ﷻ said to him:

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

"And do consult them in the matter..." [TMQ Al-'Imran: 159]

This order of consulting (*Mashawarah*) is only just a request. The request could be *Wajib*, *Mandub* (recommended) or *Mubah* (permissible), according to the *Qaraa'in* (indications).

This order of consulting (*Mushawarah*) is not linked with a *Qareenah* (indication) that indicates decisiveness and obligation. It is rather linked with *Qarua'in* that dismiss decisivity and remove obligation from it, as follows:

1. The saying of Allah ﷻ in the previous verse

﴿فِي الْأَمْرِ﴾

"*Fil-Amr*" (in the matter) means consultation in every matter whatever its kind. However since duties (*Wajibaat*), and prohibitions (*Mubarramaat*)

and the divine rules explained by the *Shar'a* and specifically stated by it, have no place for human opinions about them, there is no scope for consulting about them, Allah ﷻ is the only Legislator (*Musharri*) and He is the only Ruler, and ruling (i.e. judgement) belongs to Him. He ﷻ said;

﴿إِن الْحُكْمُ إِلَّا لِلَّهِ﴾

"Verily, Ruling is only for Allah." [TMQ Yusuf: 40]

He ﷻ also said;

﴿اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ﴾

"Follow that which was revealed to you from your Lord." [TMQ Al-A'raf: 3]

And He ﷻ said;

﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

"And whatever the Messenger brought to you take it, and whatever he forbade you of leave it." [TMQ Al-Hashr: 7. There are other verses in addition to the above. All this makes the consultation of the people over these matters of no real value and with no scope. This indicates that these rules restrict the *'Aamm* (general) meaning of the word

﴿الْأَمْرِ﴾

"*Al-Amr*" (the matter) in this verse. This also indicates that the consultation is over *Mubah*. Matters alone. This represents evidence that dismisses the decisiveness and obligation away from *Shura*.

2. Allah ﷻ said in the same verse

﴿فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ﴾

"And if you decided (on an action/on opinion) then put your trust in Allah", meaning that the decision is referred to the Messenger ﷺ, not to the advisers. This is second evidence confirming that the order for consultation is not obligatory.

3. The Messenger of Allah ﷺ carried out many actions and decided upon many matters such as appointing governors (*Wulab*), secretaries, generals of expeditions and armies, concluding ceasefire, sending messengers and delegates. All of that occurred without consulting the Sahabah. This is a third Qareenah that the command of consultation (*Shura*) does not indicate decisiveness and obligation. Had it meant decisiveness, then the Messenger of Allah ﷺ would have consulted his Sahabah in these actions that he executed.

As *Shura*, *Mashura* and *Istisharah* are not obligatory, they are considered as either *Mandub* (recommended) or *Mubah* (permissible). By reviewing the evidences, we find the opinion regarding them to be *Mandub*. The following are some of the evidences, which indicate that *Shura*, *Mashura*, and *Istisharah* are *Mandub* (recommended).

1. Allah ﷻ praised the believers for consultation (*Shura*) and commanded them that their affair is *Shura* (consultation) between them. When Allah ﷻ says;

﴿وَأَمْرُهُمْ شُورَى بَيْنَهُمْ﴾

“And their affair is consultation (*Shura*) between them.” [TMQ Ash-Shura: 38]

2. The frequent consultation by the Messenger of Allah ﷺ with his Sahabah in matters indicates his concern for it, his interest in it, its importance and also to teach the Muslims after him to take care in practising *Shura*. At-Tirmithi narrated from Abu Hurairah, who said;

((مَا رَأَيْتُ أَحَدًا أَكْثَرَ مَشُورَةً لِأَصْحَابِهِ مِنْ رَسُولِ اللَّهِ ﷺ))

“I never saw a person who consulted his companions more than the Messenger of Allah ﷺ did.”

3. The command of Allah ﷻ to His Messenger ﷺ to consult the believers came on the occasion of commanding him to be gentle with them, to forgive them and to pray for them, by saying;

﴿فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ

لَا نَفَضُوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ

“It is by the mercy of Allah that you deal gently with them. Were you severe or harsh-hearted with them they would have broken away from you. So pass over (their faults) and ask for Allah’s forgiveness for them and consult them.” [TMQ Al-Imran: 159]

These are *Qaraa’in* (indications) that indicate that *Istisharah* (consultation) is *Mandub* (recommended) .

The *Mandub* recommended (consultation) *Shura* is undertaken with regards to the *Mubah* actions and matters. However, the divine rules regarding the matters over which there is no explicit text from the Book of Allah and the *Sunnah* of His Messenger and which need research and investigation so as to conclude them, as well as the definitions and the technical and intellectual matters which require research and scrutiny together with those matters related to opinion, warfare and planning, all of the above matters are referred to the scholars, the specialists and the people of experience. The opinion of the majority or the minority regarding them is of no value. In addition, the opinion of those who are consulted is not binding. This opinion is deduced from the Messenger ﷺ when he referred to the *Sahabah*, consulting them regarding the prisoners of war at Badr in terms of which option he adopted from amongst the choices of the *Hukm* (rule) of the prisoners of war which was already revealed. It is also deduced from Abu-Bakr and ‘Umar ؓ, during the term of their *Khilafah*, turning to the senior *Sahabah* and their scholars whenever an event happened or a case for judgement was brought to them, and they did not find a verdict about it in the Book of Allah and the *Sunnah* of His Messenger ﷺ. It is also taken from the acceptance of the Messenger ﷺ of Al-Hubab bin Al-Munthir’s opinion in choosing the place of the battle of Badr.

While *Shura* over the *Mubah* matters is *Mandub*, it is allowed for a *Khaleefah* to bind himself to some or all of these allowed matters. Once he has obliged himself to certain matters, he has to abide by it and is under obligation to carry out the consulted matter. This is derived from the fact that when the post of *Khaleefah* was offered to ‘Uthman bin

Affan ؓ, he accepted to proceed according to the way of Abu Bakr and 'Umar ؓ in ruling, as it was proposed to him. This happened in the presence of the Sahabah ؓ without any objection from them.

When the Khaleefah consults the Council of the Ummah he has to abide by the majority opinion in practical matters and in those matters that do not require study or scrutiny. This applies to the State domestic matters in ruling, education, health, trading, industry, farming and the like. The same view applies when he is brought to task for actions he actually carried out in these matters. This view is derived from the Messenger's ﷺ adherence to the majority opinion to leave Madinah to confront the Mushrikeen army at the Battle of Uhud, although his opinion and those of senior Sahabah was to stay in Medinah and not to go out. It is also derived from his saying ﷺ to Abu Bakr and 'Umar ؓ;

((لو اجتمعتم في مشورة ما خالفتمكم))

“Had you agreed together on a consulted matter I would have not disagreed with you.” [Narrated by Ahmed from Ibnu Ghanam bin Al-Ash'ari]

If however, the Khaleefah consulted the Council in other matters such as the technical and intellectual issues, which require study and scrutiny, or in matters of warfare and planning, then the majority opinion over such matters is not binding for the Khaleefah and the decision is his to take. This is taken from the acceptance of the Messenger ﷺ of the opinion of Habab bin Al-Munthir in choosing the place of the Battle of Badr without even considering consultation over the matter. It is also derived from the rejection by Abu Bakr ؓ of the opinion of most of the Sahabah not to fight against the Murtadeen (apostates) and those who rejected to pay the Zakat when he took the post of Khaleefah. This view applies when the Council takes the Khaleefah to task over what he actually executed of such matters. The majority opinion in this case is also not binding.

With regards to what the Khaleefah wants to adopt of divine rules and canons, he is allowed to present these to the Council to take its opinion regarding them. However, the opinion of the Council regarding this adoption is not binding for the Khaleefah, regardless of being the

opinion of the majority or the minority. The decision over this issue remains his, because the adoption of the divine rules and canons is his responsibility, as derived from the consensus (*Ijmaa'*) of the Sahabah. It is also taken from the agreement of the Muslims of what 'Umar ؓ made when he consulted them over the issue of the land of Iraq after it was conquered.

ELECTING THE MEMBERS OF THE COUNCIL OF THE UMMAH

The members of the Council of the Ummah are elected and not appointed. They are representatives of the people in the voicing of opinions, and should be chosen by the people they represent, and should never be imposed upon them. This is because the members of the Council of the Ummah are representatives of the people's opinions, whether they are individuals or groups. To gauge the opinions of people in a large area and the uncounted folk does not come about unless they choose representatives. The Messenger of Allah ﷺ did not choose those whom he consulted based on their ability, competence and personalities. He rather chose them on two points: Firstly: This is because they were chiefs among their folks, regardless of their ability and competence. Secondly: It is because they represented the *Muhajireen* and the *Ansar*. The reason for the presence of the people of the *Shura* is to represent the people. The tenet therefore upon which the Council of the Ummah members are chosen should be the representation of people, as was the case in the deliberate selection of representatives for the *Muhajireen* and the *Ansar*. This representation of the groups and individuals who are uncounted cannot be achieved except by election. The members of the Council of the Ummah have to therefore be elected. As for the fact that it was the Messenger of Allah ﷺ, himself, who chose whom he consulted, this was because the area in which lived the *Muhajireen* and the *Ansar* i.e. the Madinah, was small and because he knew the Muslims. In contrast, in the second *Bay'ah* of Al-Aqaba, the Muslims who gave him the *Bay'ah* were not known to him and this is why he left the matter of choosing the chiefs to them, by saying;

((أخرجوا إليّ منكم اثني عشر نقيباً ليكونوا على قومهم بما

فيهم))

“Choose from among you twelve leaders who will be responsible for themselves and their people.” This is reported in the Seerah of Ibnu Hisham from Ka’ab bin Malik.

We can thus conclude that the members of the Council of the Ummah represent the opinion of the Muslims at large. This is because the *Illah* (reason) for which the Council is founded is to represent the individuals and groups in voicing their opinions and in holding the rulers accountable and since this *Illah* cannot be realised if the persons were not known unless there was a general election. This proves that the members of the Council of the Ummah should be elected and not appointed.

THE MEMBERSHIP TERM OF THE COUNCIL OF THE UMMAH

The term of membership to the Council of the Ummah is limited. This is because Abu Bakr was not restricted to consult those to whom the Messenger of Allah ﷺ used to refer. ‘Umar bin Al-Khattab also was not under obligation to consult those whom Abu Bakr used to consult. In the latter years of his rule, ‘Umar sought the opinions of persons other than those he had consulted in the first years of his ruling. This indicates that the membership to the Council of the Ummah has to be for a specific period.

MEMBERSHIP OF THE COUNCIL OF THE UMMAH

Any person who holds the citizenship of the State, if he was mature and sane, has the right to be a member of the Council of the Ummah and the right to elect the members of the Council, whether the person was a man or a woman, a Muslim or non-Muslim. This is because the Council of the Ummah is the people’s representative in opinion only, and has no mandate to rule and legislate. Since the Council is the representative in voicing opinions, people in the Islamic State have the right to delegate whomever they wish from among those who lawfully qualify as representatives. This is just like the Muslim and the non-Muslim has the right to voice his opinion regarding the misapplication of the rules of Islam on him, and regarding any possible unjust act perpetrated against him by the ruler. He therefore has the right to have any representative he wishes and to represent anyone he wishes. Accordingly, the representative and the represented do not have to be Muslims; they can be either

Muslims or non-Muslims. This is why it is permitted for non-Muslims, just as it is for Muslims, to elect their representatives to the Council of the Ummah, whether Muslim or non-Muslim, as long as they hold the citizenship of the State.

Beside this, Islam looks upon the subjects under its authority from a purely human viewpoint, regardless of their sect, race, or sex. The ruling policies designed for them would be founded on this basis, so that the ruling is for the benefit of humanity, thereby taking it out of the darkness into the light. The citizens are thus equal in terms of rights and duties related to the human in his capacity as a human, as far as the implementation of the divine rules on everyone is concerned. When the judge settles the disputes and when the rulers rule, they cannot differentiate between people, they must treat them as equals in their quality as citizens and nothing else. Each citizen therefore has the right to voice his opinion and to choose his representative to express his opinion and those who elected him. This is because Allah ﷻ has addressed all people with Islam in their quality as humans and nothing else. He ﷻ says;

﴿يَا أَيُّهَا النَّاسُ قَدْ جَاءَكُمْ بُرْهَانٌ مِّن رَّبِّكُمْ وَأَنزَلْنَا إِلَيْكُمْ نُورًا مُّبِينًا﴾

“O you people, a proof has come to you from your Lord, and we have revealed to you a shining light.” [TMQ An-Nisa’: 174]

And He ﷻ also says;

﴿يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا﴾

“O you people, I am the Messenger of Allah sent to all of you.” [TMQ Al-A’raf: 158]

The scholars have agreed, especially the scholars of *Usul* (foundations), that the divine rules are addressed to every sane person able to understand the speech, whether he is Muslim or not, male or female. This is as far as the non-Muslims are concerned.

As regards the membership of Women to the Council of the Ummah, this is because the Council of the Ummah is not part of ruling and is not subject to the Hadith of the Messenger of Allah ﷺ which relates to the woman's guardianship. It has also been confirmed that when 'Umar had a problem brought to his attention and he wanted to consult the Muslims about it, whether the problem was related to the divine rules (legislation) or related to ruling or any other matter that concerned the State, he would summon the Muslims to the Masjid, and he would summon both men and women and ask them all for their opinion. He, on one occasion, reversed his opinion when a woman pointed out to him that it was wrong to fix the Doweries. In the thirteenth year of the Messenger of Allah's ﷺ Prophethood, the year he emigrated, there came to the him ﷺ seventy-five Muslims, among whom were two women, and they all gave him the second *Bay'ah* of Al-'Aqaba, which was a *Bay'ah* of war and fighting and a political *Bay'ah*. Once they had all given their *Bay'ah*, he said to them;

((أخرجوا إليّ اثني عشر نقيباً، ليكونوا على قومهم بما فيهم))

“Bring me twelve Chiefs (Nuqaba'a) from among you who would be responsible for themselves and their folk.” This order was addressed to everyone, to select from among everyone present. He ﷺ did not specify whether they should be men or women and he did not exclude the women, neither in regard to who was to select, nor to who should be selected. The *Mutlaq* (unrestricted) rule should be taken as such, unless there is evidence that restricts it, and the *A'aam* (general) rule should also be taken as such, unless there is evidence that specifies it. In this case the speech was unrestricted and general. No evidence of specification or restriction has been reported, which indicates that the Messenger of Allah ﷺ ordered the two women to elect the *Nuqabah* (Chiefs), and gave them the right to be chosen as *Nuqabah* from amongst the Muslims.

The Messenger of Allah ﷺ sat once to take the *Bay'ah* from the people, with Abu Bakr and 'Umar sitting with him, and both men and women gave him the *Bay'ah*. This *Bay'ah* was one on ruling and not on Islam, for the women were already Muslims. After the *Bay'ah* of the Ridhwan in Hudaibiyah the women gave him their *Bay'ah* too. Allah ﷻ says;

﴿يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لَا

يُشْرِكْنَ بِاللَّهِ شَيْئاً وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ﴾

“O Prophet! When believing women come to you to take the oath that they will not associate in worshipping any other thing whatsoever with Allah, that they will not steal, that they will not commit adultery.” [TMQ Al-Mumtahinah: 60] This *Bay'ah* was also over ruling, because the Qur'an pre-determined that they were believers, and the *Bay'ah* was over not disobeying him in any *ma'roof*.

Moreover, the woman has the right to delegate somebody in voicing her opinion, and for somebody to delegate her, because she has the right to voice her opinion, so she can choose her representative over it. It is also because the *Wakala* (representation) does not necessitate manhood, thus she has the right to represent others.

Despite all this, non-Muslims would not be allowed to voice their opinion in matters related to legislation, because the Islamic legislation emanates from the Islamic 'aqedah. It is a host of practical divine rules deduced from their elaborate evidences, which treat the human's problems according to a specific viewpoint outlined by the Islamic 'aqedah. The non-Muslim embraces a doctrine that is alien and contradictory to the Islamic 'aqedah, and his viewpoint about life contradicts the Islamic viewpoint, so his opinion is not sought in matters of legislation.

The non-Muslim does not have the right to elect the Khaleefah, nor to participate in the short listing of the candidates from whom the Khaleefah is to be elected, for he has no right in the ruling. As for other matters that form part of the Council of the Ummah's mandatory powers, he is just like the Muslim in these matters and in voicing an opinion regarding them.

THE MANDATORY POWERS OF THE COUNCIL OF THE UMMAH

The Council of the Ummah has mandatory powers and they are:

The Khaleefah has to consult the Council and the Council has the right to advise him in the practical matters and actions that do not require investigation and scrutiny such as the matters of ruling, education, health, economy, trading, industry, farming and the like. The opinion of the

Council in these matters is binding.

In the intellectual matters that require investigation and scrutiny, the technical and the financial matters together with the affairs of the armed forces and foreign policy, the Khaleefah has the right to refer to the Council for consultation and acquainting of its opinion. However the opinion of the Council is not binding.

The Khaleefah has the right to refer to the Council the laws and rules which he wants to adopt. The Muslim members of the Council have the right to debate them and voice their opinions regarding those rules. However, their opinion is not binding.

The Council of the Ummah reserves the right to hold the rulers accountable on all matters that take place effectively within the State, whether these are related to domestic affairs, foreign affairs, financial affairs or military matters. The opinion of the Council is binding if the majority's opinion in such matters is binding, and it is not binding if the majority's opinion in such matters is not binding.

If the Council and the Khaleefah differed about the legitimacy of an action that had been already executed, the matter should be referred to the court of *Mazāalim* to settle the question. Its verdict on the matter is binding.

The Council of the Ummah reserves the right to express discontent towards the *Wulab* or the *'Aamileen*. Its opinion in such case would be binding and the Khaleefah should dismiss them at once.

The Muslim members of the Council have the right to restrict the nomination of candidates for the Khilafah. Their opinion in such a matter is binding, and candidates other than those put forward by the Council should accordingly not be considered.

These are the mandatory powers of the Council of the Ummah.

The first article is divided into two sections. The evidence for section (a) is derived from Allah's ﷻ saying;

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“And do consult them in the matter;” [TMQ Al-Imran: 159]

And His ﷻ saying;

﴿وَأَمْرُهُمْ شُورَى بَيْنَهُمْ﴾

“And their matter is in consultation between them.” [TMQ Ash-Shura: 38]

So He ﷻ made the *Shura* general in every matter, for He ﷻ says;

﴿فِي الْأَمْرِ﴾

“In the matter;” [TMQ Al-Imran: 159]

Where the term *Al-Amr* (the matter) it is a generic noun and defined by ‘*Al*’ (the). He ﷻ says;

﴿وَأَمْرُهُمْ﴾

“And their matter” [TMQ Ash-Shura: 38]

Where the term *Amrhum* (their matter) is generic noun and defined by genitive and both terms are ‘*Aam*’ (general) so they include everything. However, this ‘*Aamm*’ term has been specified in matters other than the *Abkam Shar’iah*. This is because the divine rules are revelation from Allah ﷻ and there is no scope for the people’s opinion regarding matters brought down by revelation. For Allah ﷻ alone is the Commander and the Legislator.

As for the evidence that the opinion of the council of the Ummah in the practical actions and matters, which do not require scrutiny and investigation is binding, this is derived from the acceptance of Rasool Allah ﷺ of the opinion of the majority to go outside *Madinah* to confront the army of the Mushrikeen in the battle of Uhud. This is despite that his ﷺ opinion and that of the senior *Sahabah* was to remain in *Madinah* and not to go out. It is also taken from his ﷺ saying to Abu Bakr and ‘Umar رضي الله عنهما:

“You (both) agreed on a Mashura, I would not disagree with you.”

As for the evidence for section (b), this is the choice made by the Messenger of Allah ﷺ for the location of the Battle of Badr, based on the proposal of Al-Habab bin Al-Munthir, without consulting his companions over the matter to seek their opinion, let alone committing himself with that proposal. Thus the intellectual and the technical matters together with the finance, army and foreign affairs are referred to the opinions of the experts and the professionals without giving any weight to the opinion of the people whether they were minority or majority.

The fact that the *Shura* is over the *Mubah* things is a *Qareenah* (indication) that it is *Mandoob* (recommended). Indeed the Messenger of Allah ﷺ used to refer to the honourable Sahabah over many matters and on many occasions to consult them and seek their opinion. Ahmad has reported from Anas that;

((أن رسول الله ﷺ شاور حين بلغه إقبال أبي سفيان))

“The Messenger of Allah ﷺ consulted (people) when he heard the news of the advent of Abu Sufyan.” Ahmad narrated from Anas, who said;

((استشار النبي ﷺ مخرجه إلى بدر فأشار عليه أبو بكر ثم استشار عمر فأشار عليه عمر ثم استشارهم فقال بعض الأنصار: إياكم يريد نبي الله ﷺ يا معشر الأنصار، فقال قاتل الأنصار: تستشيرنا يا نبي الله؟ إنا لا نقول كما قالت بنو إسرائيل لموسى عليه السلام: اذهب أنت وربك فقاتلا إنا هاهنا قاعدون ولكن والذي بعثك بالحق لو ضربت أكبادها إلى برك الغماد لاتبعناك))

“The Messenger of Allah ﷺ consulted when he went to Badr. Abu Bakr expressed his opinion to him. Then he consulted ‘Umar who expressed to him his opinion. Then he consulted them, so some of the *Ansar* said; ‘The Prophet of Allah ﷺ wants you to speak O folk of *Al-Ansar*.’ Some of the *Ansar* said; ‘Do you consult us O Prophet of Allah? We do not say as the children of Israel said to Musa (as); ‘You and your Lord go and fight, but we will stay at home’, but, by He who sent you with the Truth, if you were to take us to Bark al-Ghimaad, we would follow you.” Regarding the captives of Badr, Ahmad reported on the authority of ‘Umar

((...فاستشار رسول الله ﷺ أبا بكر وعلياً وعمر...))

“...the Messenger of Allah ﷺ consulted Abu Bakr, ‘Umar, and Ali...” Ibnu Ishaq reported from Az-Zuhri, who said;

((فلما اشتد على الناس البلاء بعث رسول الله ﷺ إلى عُيَيْنَةَ

بن حصن والحارث بن عوف المرّي وهما قائدًا

غطفان، فأعطاهما ثلث ثمار المدينة على أن يرجعا بمن معهما

عنه وعن أصحابه، فجرى بينه وبينهما الصلح حتى كتبوا

الكتاب ولم تقع الشهادة ولا عزيمة الصلح إلا المروضة في

ذلك، فلما أراد رسول الله ﷺ أن يفعل بعث إلى سعد بن

معاذ وسعد بن عباد، فذكر ذلك لهما واستشارهما...))

“When hardship increased on the people, the Messenger of Allah ﷺ sent to Uyayna bin Husn and Al-Harith bin Awf Al-Murri, the two leaders of Ghatafan, and he (proposed to) give them the third of the Madinah produce on condition that they return together with their folk, leaving (the fight against) him and his companions. Agreement was reached between them to the point that they wrote that in a letter, without calling the witnesses and without the

decision of concluding the peace except the negotiation over that. When the Messenger of Allah ﷺ wanted to conclude that he sent to Sa'd bin Mu'az and Sa'd bin Ubadah. He mentioned the matter to them and consulted them..." Also, the Messenger of Allah ﷺ consulted his companions in the Battle of Uhud, whether to leave Madinah or stay in it. This is in addition to other consultations. Likewise Abu Bakr used to refer to the leaders of *Al-Muhajireen* and *Al-Ansar* and to their scholars to consult them. He consulted them over the issue of fighting against the apostates, those who refused to pay the Zakat and in the matter of invading the Romans besides other matters. 'Umar and the *Khulafaa'* after him, also used to refer to the people for their consultation and opinion.

People sometimes used opinions based on their own initiative, to advise the Khaleefah over some matters. This happened with Abu Bakr after he became Khaleefah and wanted to dispatch Usama with his army, when most of the Arabs apostasised from Islam. 'Umar, 'Uthman, Abu 'Ubaydah, Sa'd bin Abi Waqqas and Sa'd bin Zaid called on him to advise him not to send Usama, but he rejected their request. These incidents practiced by the Messenger of Allah ﷺ and the guided *Khulafaa'* after him occurred in front of the Sahabah. They indicate that *Shura* and referring to the people to consult them and seeking their opinion is *Mandoobin* Thereupon, it is *Mandoob* for the Khaleefah to return to the Council of the Ummah to consult it and seek its opinion over the various matters and actions.

When the Khaleefah refers to the Council of the Ummah to seek its opinion over the practical matters and the actions, he must commit himself to the opinion of the majority. This is based on the compliance of the Messenger of Allah ﷺ with the opinion of the majority in the Battle of Uhud, though his opinion and that of the Sahabah was different to that of the majority. He ﷺ gave up his opinion and that of the Sahabah and complied with the opinion of the majority. This indicates that in such an incident, which is the type of action that does not need study and scrutiny, the opinion of the majority of Muslims is adopted. It is also taken from the saying of the Messenger of Allah ﷺ to Abu Bakr and 'Umar as narrated by Ahmad from Ibnu Ghanam al-Asha'ri

((لو اجتمعتما في مشورة ما خالفتكما))

"Had you agreed together in a *Mashura* I would not disagree with you." The *Mashura* in this Hadith is itself *Shura*, which covers consultation in any practical matter or an action.

This is with regard to the part (a) from the first section. As for part (b) if the Khaleefah refers to the Council to seek its opinion in the matters of this part, the opinion of the council is not binding. Originally, the Khaleefah takes the opinion of the scholars, experts and professionals in the matters of this part as it occurred with the Messenger of Allah ﷺ when he adopted the opinion of Al-Habab bin Al-Munthir regarding the selection of the place of the Battle of Badr. It was narrated in the Seerah of Ibnu Hisham that,

((إنه عليه السلام حين نزل عند أدنى ماء من بدر لم يرض الحباب بن المنذر بهذا المتزل، وقال للرسول ﷺ: يا رسول الله أرايت هذا المتزل أمتزلاً أنزلكه الله ليس لنا أن نتقدمه ولا نتأخر عنه. أم هو الرأي والحرب والمكيدة؟ قال: بل هو الرأي والحرب والمكيدة، فقال: يا رسول الله فإن هذا ليس بمتزل فأنهض بالناس حتى نأتي أدنى ماء من القوم فننزله ثم نغور ما وراءه من القلب ثم نبي عليه حوضاً فنملؤه ماء ثم نقاتل القوم فنشرب ولا يشربون، فقال رسول الله ﷺ: لقد أشرت بالرأي، فنهض رسول الله ﷺ ومن معه من مقدمة الناس، فسار حتى أتى أدنى ماء من القوم نزل عليه، ثم أمر بالقلب فغُورَت، وبني حوضاً على القلب الذي نزل عليه فملئ ماء ثم قذفوا فيه الآنية))

“When he ﷺ camped at the near side of the water of Badr, Al-Habab bin Al-Munthir was not happy with this place. He said to the Messenger ﷺ; ‘O Messenger of Allah! Did Allah make you camp in this place where we can’t depart from it, or is it the opinion, war and strategy?’ He ﷺ said; ‘It is rather the opinion, war and strategy.’ Al-Habab bin Al-Munthir said; ‘O Messenger of Allah, this is not the (right) place. Move the people till we come to the side of the water near to the people (enemy), we camp there, then we seep away the water from the other part, we build a basin on top of it, we fill it with water. Then we fight against the people where we drink and they do not.’ The Messenger of Allah ﷺ said; ‘You gave the (right) opinion.’ So the Messenger of Allah ﷺ and the Muslims stood up and walked till they reached the near side of the water from the enemy and camped there. Then he ﷺ ordered that the water be seeped away which was done. He ﷺ built a basin on top of the seeped wells, where it was filled with water and they threw in their (water) pots.” So the Messenger of Allah ﷺ agreed with the opinion of al-Habab and followed it.

In this incident, which has to do with the opinion, war and strategy, the views of the people have no weight in taking the decision. Rather the view of the expert is what is considered. Similar to this are the technical matters and the thoughts that require study and scrutiny, together with the definitions. In all of such matters, reference is made to the experts and professionals and not to the ordinary peoples’ opinion. There is no weight to the majority for such matters, but rather to those with knowledge, experience and specialisation.

This also applies to the financial matters, because the *Shar’a* has determined the types of funds which must be collected, and the areas over which they need to be spent. The *Shar’a* has also determined the cases in which taxes are imposed, therefore there is no point in seeking the opinion of the people in the collection and allocation of the funds. Similar to this is the army, the *Shari’ah* has left to the Khaleefah the right of managing the army’s affairs, and it determined the rules of Jihad. There is no validity in the opinion of the people over matters decided by the *Shar’a*. This also applies to the relationship of the State with other States, because this is of the thought that requires study and deep insight and is related to Jihad. Furthermore, it is a part of the opinion, war and

strategy. Therefore, there is no point in the opinion of the people in this matter whether it is the majority or minority. However, the Khaleefah is allowed to present these matters to the Council of the Ummah for its consultation and opinion, because such presentation is of the *Mubah*, and the opinion of the Council in these matters is not binding as in the incident of Badr.

With regard to the second section, although what the Khaleefah wants to adopt of rules and Canons is of his duties, and the opinion of the council regarding these matters is not binding, the Khaleefah has the right to refer to the Council of the Ummah to ascertain their opinion over the divine rules and canons which he wants to adopt. This is similar to what ‘Umar bin Al-Khattab ؓ did when he referred to the Muslims over the divine rules, which the Sahabah did not object to, as in the incident of the conquered lands of Iraq, when the Muslims asked him to divide the lands amongst the fighters who opened them. Hence ‘Umar asked the people, but his opinion settled on keeping the land with its landlords on condition that they pay a known Kharaj over it in addition to paying the *jizyah* over their persons. The reference of ‘Umar and Abu Bakr before him to the Sahabah for their opinion over the divine rules without an objection from the Sahabah to this, indicates their *Ijmaa’* (consensus). This is evidence that the Khaleefah has the right to refer to the Muslims to seek their opinion over the divine rules when he does not find texts about them in the Kitab of Allah and the *Sunnah* of His Messenger, or he finds them difficult to understand or when he wants to adopt them. Their opinion in all of these matters is not binding to the Khaleefah.

The non-Muslim members of the Council do not have the right to look into what the Khaleefah wants to adopt of rules and canons because of their disbelief in Islam. Their right is in voicing their opinion of the injustice of the rulers towards them, and not in expressing of their opinion over the divine rules and canons.

With regard to the third section, its evidence is the general meaning of the texts related to bringing the rulers to task. Ahmad narrated from Ibnu ‘Umar, who said the Messenger of Allah ﷺ said;

((سيكون عليكم أمراء يأمرونكم بما لا يفعلون فمن صدقهم

بكذبهم وأعانهم على ظلمهم فليس مني ولست منه ولن يرد

عليّ الخوض))

“There will be ‘Umara over you who order you of things they do not do. Whoever believed them in their lies and helped them in their injustice he would not belong to me nor I belong to him, and he will not join me on the Hawdh (basin).” Ahmad narrated from Abu Said al-Khudri, who said; “The Messenger of Allah ﷺ said;

((...أفضل الجهاد كلمة حق عند سلطان جائر))

“...the best of Jihad is (to say) a word of truth before an oppressor ruler.” Al-Haakim narrated from Jaber from the Prophet ﷺ who said;

((سيد الشهداء حمزة بن عبد المطلب ورجل قام إلى إمام

جائر فأمره ونهاه فقتله))

“The master of martyrs is Hamza bin ‘Abdul-Muttalib and a man who stood to an oppressor ruler where he ordered him and forbade him so he (the ruler) killed him.” Muslim narrated on the authority of Awf bin Malik al-Ashja’i that the Messenger of Allah ﷺ said;

((...ألا من ولي عليه وال فرآه يأتي شيئاً من معصية الله

فليكره ما يأتي من معصية ولا يترعنّ يداً من طاعة))

“Beware! Whoever gets a *Waali* over him and he saw him (the *Waali*) commit some sin (disobedience to Allah), he has to hate that sin but must not withdraw his hand from obedience.” Muslim narrated from Umm Salamah that the Messenger of Allah ﷺ said;

((ستكون أمراء فتعرفون وتنكرون فمن عرف برئ ومن

أنكر سلم ولكن من رضي وتابع...))

“There will be Ameers Appointed over you, you recognise some of what they do and deny some. Whoever recognised he is absolved

from blame. Whoever disapproved (of their bad deeds) he is safe. But whoever consented and followed them (he is doomed).” These texts are general in their wording and indicate that accounting is over any action. When the Sahabah opposed the Messenger ﷺ over the Hudaibiyah treaty contract, and they strongly contested with him, he ﷺ did not rebuke them for their disagreement. He ﷺ rather rejected their opinion and concluded the peace contract, because what he did was revelation from Allah ﷻ and there is no weight for the people’s opinion in such matters. He ﷺ rebuked them because they did not obey his order when he asked them to slaughter the sacrificed animals (Al-Hadi) and shave their heads and break their *Ihram*. The Messenger ﷺ did not also rebuke al-Habab bin Al-Munthir in Badr when he objected to the place of camping chosen by the Messenger ﷺ, rather he ﷺ followed his opinion. This accounting by the Council to the Khaleefah and other assistants, governors and ‘Amils would be over an action which has been actually executed whether this action disagreed with the divine rule, was wrong or harmful to Muslims, or was unjust or complacent toward the citizens in looking after their affairs. The Khaleefah must respond to this accounting and the objections by showing his view and evidence regarding the words, actions and tasks he undertook so that the Council can be assured of the good performance, the sincerity and honesty of the Khaleefah. If however the Council does not accept the view of the Khaleefah and rejects his argument, this must be examined. If this matter was of the issues over which the majority opinion is binding then the opinion of the Council is binding, otherwise it would not be.

It is not correct to ask; “What is the value of accounting the Khaleefah when he is not obliged to act according to this accounting?” This is because accounting is a divine rule that has to be performed, and it is a duty of sufficiency. Furthermore the nature of accounting is that it reveals information about the opinion, and clarifies it. It also warns the public opinion and arouses it, for the public opinion is more powerful than the armies, and the rulers everywhere fear it. Therefore, accounting is of great value.

If those who account differed with the rulers over any matter from the legal point of view, the matter is referred to the court of unjust acts (Al-*Mazqalim*) by a request from the Council, due to what Allah ﷻ says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

“O you who believe obey Allah and obey the Messenger and those in authority from amongst you. If you disputed over a matter refer it to Allah and the Messenger.” [TMQ An-Nisa’a: 59] This means that if the Muslims dispute with the people of authority over a matter, they should refer it to Allah and to the Messenger, that is to arbitrate with the *Shar’a*. This means to refer to Judiciary, that is to the court of unjust acts and its opinion is binding.

With regards to the fourth section, its evidence is that the Messenger of Allah ﷺ removed al-’Ala’a bin Al-Hadhrami, his ‘Aamil over Bahrain, because the delegate of ‘Abd Qais complained about him to the Messenger ﷺ. Ibnu Sa’d narrated on the authority of Muhammad bin ‘Umar:

((أَنَّ رَسُولَ اللَّهِ ﷺ قَدْ كَتَبَ إِلَى الْعَلَاءِ بْنِ الْحَضْرَمِيِّ أَنْ يَقْدِمَ عَلَيْهِ بَعَثِينَ رَجُلًا مِنْ عَبْدِ الْقَيْسِ، فَقَدِمَ عَلَيْهِ بَعَثِينَ رَجُلًا رَأْسَهُمْ عَبْدُ اللَّهِ بْنُ عَوْفٍ الْأَشَجُّ وَاسْتَخْلَفَ الْعَلَاءُ عَلَى الْبَحْرِيِّينَ الْمَنْذَرِ بْنِ سَاوَى فَشَكَا الْوَفْدَ الْعَلَاءُ بْنُ الْحَضْرَمِيِّ فَعَزَلَهُ رَسُولُ اللَّهِ ﷺ وَوَلَّى أَبَانَ بْنَ سَعِيدٍ بْنُ الْعَاصِ وَقَالَ لَهُ اسْتَوْصِ بَعْدَ الْقَيْسِ خَيْرًا وَأَكْرَمِ سَرَاهِمًا))

“That the Messenger of Allah wrote to al-’Ala’a bin Al-Hadhrami to come to him with twenty men from ‘Abd Qais. He reached him with twenty men headed by ‘Abdullah bin Awf al-Ashajj, and appointed after him Al-Munthir bin Sawa. The delegate complained of al-’Ala’a Al-Hadhrami so the Messenger of Allah ﷺ removed him and appointed Iban bin Said bin Al-’Aass and said to him: ‘Take care of ‘Abd Qais and respect their chiefs.’” Also ‘Umar bin Al-Khattab removed Sa’d bin Abi Waqqas from the *Wilayah* just because of the complaint of the people against him, and he said; “I did

not remove him because of deficiency or treason”, This indicates that the people of the *Wilayah* have the right to express their anger and discontent of their *Wulab* and Ameer, and the Khaleefah thus has to remove them. Likewise, the Council of the Ummah is allowed, as a representative of all Muslims in the State, to express its anger and discontent of the *Wulab* and ‘Aamils and the Khaleefah has to remove them immediately.

With regards to the fifth section, the proof is that the Muslims asked ‘Umar, when he was stabbed and was close to death, to appoint somebody after him, but he rejected their request. They repeated the request, so he nominated six persons. This was an *Ijma’a Sakooti* (consent by silence), which is evidence that Muslim members of the Council of the Ummah have the right to shortlist the nominees for the post of Khilafah, and their opinion in this matter is binding. It was proved that ‘Umar assigned fifty men to watch the six men he nominated, and he ordered them to kill anyone of them who opposed the chosen successor. He also assigned to the six, three days, a matter which indicates obligation. As for non-Muslim members, they have no right in shortlisting the nominees, because the *Bay’ah* is specific to Muslims.

THE RIGHT OF SPEECH AND EXPRESSION OF OPINION

Every member of the Council of the Ummah has the right to speak and voice an opinion as he wishes without any pressure and within the limits allowed by *Shari’ah*. The member would be a representative of the Muslims with responsibility for voicing opinions and in holding the rulers accountable. His job would be to study closely the activities of the Khaleefah or any ruler in the State or any civil servant in any of the State’s departments and offices. He holds all of them accountable, giving them advice, voicing opinions and presenting suggestions, and entering into debates with them, together with objecting to all the wrong actions performed by the State. He would do all this on behalf of the Muslims who are obliged to enjoin what is good and forbid what is evil, and to hold the rulers accountable, giving them advice and suggestions, because this is the duty upon the Muslims. Allah ﷻ says;

﴿كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ

عَنِ الْمُنْكَرِ

“You are the best of peoples, raised up for mankind, enjoining what is right and forbidding what is wrong.” [TMQ Al-Imran: 110]

And He ﷺ says;

﴿الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ
وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ﴾

“They are those who, if we establish them in the land, establish regular prayers and give Zakat, enjoin the right and forbid the wrong.” [TMQ Al-Hajj: 41]

Allah ﷻ also says;

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ
وَيَنْهَوْنَ عَنِ الْمُنْكَرِ﴾

“And let there arise from amongst you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong.” [TMQ Al-Imran: 104]

Many *Abadith* have been reported that indicate the obligation of enjoining the *Ma'ruf* and forbidding the *Munkar*, such as Prophet Muhammad's ﷺ saying;

((والذي نفسي بيده لتأمرن بالمعروف، ولتنهون عن
المنكر، أو ليوشكن الله أن يبعث عليكم عقاباً من عنده، ثم
لتدعنه فلا يستجب لكم))

“By He Who owns my soul, you must enjoin the *Ma'ruf* and forbid the *Munkar*, or Allah may inflict upon you a punishment from Him, you would then supplicate to Him and your supplication would go unanswered.” [Narrated by Ahmad on the authority of Huzayfah] He ﷺ also said;

((من رأى منكم منكراً فليغيره بيده، فإن لم يستطع

فلسانه، فإن لم يستطع فبقلبه وذلك أضعف الإيمان))

“If anyone among you sees a *Munkar*, let him change it with his hand; if he could not, let him then change it with his tongue; and if he could not, then with his heart, and that is the least of *Iman*.”
[Narrated by Muslim on the authority of Abu Sa'id]

These *Ayaat* (verses) and *Abadith* command the Muslims to enjoin the *Ma'ruf* and forbid the *Munkar*. Holding the rulers accountable is part of enjoining of the *Ma'ruf* and forbidding of the *Munkar*. Some *Abadith* in fact specifically order the holding of the rulers accountable, this highlights the importance of such a duty. Umm 'Atyya reported on the authority of Abu Sa'id that the Messenger of Allah ﷺ said;

((أفضل الجهاد كلمة حق عند سلطان جائر))

“The best of *Jihad* is a word of truth before a tyrant ruler.” This is a text regarding the censure of the ruler and the obligation of uttering the word of truth in his face, considering it as the best form of *Jihad*. Allah's Messenger ﷺ exhorted this type of *Jihad* and made it very desirable even if it led to the loss of life, as mentioned in the sound (*Sahih*) *Hadith*, where he ﷺ said;

((سيد الشهداء حمزة بن عبد المطلب ورجل قام إلى إمام
جائر فأمره ونهاه فقتله))

“The master of martyrs is Hamza, and a man who stood up to a tyrant ruler to advise him, and was killed.”

The *Sahabah*, may Allah be pleased with them, did hold the Messenger of Allah ﷺ accountable, and they held the *Khulafaa' Ar-Rashidoon* accountable too. The Messenger of Allah ﷺ did not censure them for holding him accountable nor did the *Khulafaa' Ar-Rashidoon*. The Messenger of Allah ﷺ took the advice of Al-Habab bin Al-Munthir in the battle of Badr. At Uhud, he ﷺ went along with the opinion of the majority who suggested that they should confront Qur'aysh outside

Madinah, despite the fact that he ﷺ saw otherwise. On the day of Hudaibiyah, the Muslims objected strongly, especially ‘Umar, and at Hunayn, where the *Ansar* were angered by the fact that the Messenger of Allah ﷺ handed out the booties to the new Muslims whom he wanted to win over their hearts to Islam, without allocating a share for them.

The Sahabah held ‘Umar accountable while he was standing on the pulpit because of the way he divided the Yemeni cloaks. A woman challenged him when he tried to fix the doweries and the Sahabah also objected to his refusal to divide the lands of ‘Iraq, Ash-Sham and Egypt after they had been conquered. Bilal and Az-Zubayr were among the main objectors and ‘Umar debated with them and consulted other Sahabah until they were convinced.

Any member of the Council of the Ummah, as a representative of the Muslims at large, has the right to speak in the Council as he pleases, and to voice his opinion as he wishes, without any hindrance or pressure. He has the right to hold the Khaleefah accountable, as well as the *Mu’awin*, the *Wali* and any civil servant. They are obliged to answer him as long as he is abiding by the rules of *Shar’u* in his role of holding the rulers accountable and of voicing his opinion.

Islam Must be Implemented as a Whole. Gradual Implementation is Haram

The Holy Qur’an was revealed to the Messenger of Allah ﷺ in parts according to the events and incidents, and each time a verse was revealed, he ﷺ would convey it at once. If the verse contained a command, he ﷺ and the Muslims would execute it at once and if the verse contained a prohibition, he ﷺ and the Muslims would at once refrain and abstain from doing it. The implementation of the rules used to take immediate effect after their revelation, without any delay. The rule that was revealed would become due for implementation and execution the moment it is revealed, whatever the rule was, until Allah ﷻ completed this Deen and revealed His ﷻ saying;

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا﴾

“Today I have completed your Deen for you completed My favour upon you and have chosen for you Islam as your Deen.” [TMQ Al-Ma’idah: 3]

After the revelation of this verse, the Muslims became under the total obligation to implement and execute all the rules of Islam. Whether these were related to the *Aqa'id* (doctrines), the *Ibadat* (worships), the *Akblaq* (morals), or the *Mu’amalat* (transactions). Whether these transactions were between the Muslims themselves, or between the Muslims and the ruler who rules over them, or between the Muslims and other peoples, nations and States. Whether these rules were related to the ruling, the economy, the social matters, or the foreign policy in peace and at war.

Allah ﷻ says;

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ

﴿أَنْ يَفْتَنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

“Whatever the Messenger brought you take it; and whatever he forbids you abstain from it. And fear Allah, for Allah’s punishment is very severe.” [TMQ Al-Hashr: 7]

This means to take and act by whatever the Messenger of Allah has brought to you, and abstain and keep away from whatever the Messenger of Allah has forbidden you. This is because the relative pronoun “Ma” (whatever) in the verse is of a general form. It therefore, contains the obligation to perform all the duties, and to abstain from and avoid all the prohibitions. The command mentioned in the verse is a decisive request, thus it is obligatory. This is deduced from the following command to observe piety and the threat of severe punishment for he who does not take whatever the Messenger of Allah brought and does not abstain from whatever he forbade. Allah also says;

﴿وَأَنْ أَحْكَمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ﴾

﴿أَنْ يَفْتَنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

“And judge between them according to what Allah has revealed, and do not follow their whims, and beware of them lest they tempt you away from some of that which Allah has revealed to you.” [TMQ Al-’Imran: 49]

This is a decisive command from Allah to His Messenger, and to the Muslim rulers after him, confirming the obligation of ruling by all the rules that Allah has revealed, whether they were orders or prohibitions. This is because the word “Ma” (whatever) is of a general form, meaning that it includes all the revealed rules.

Allah had prohibited His Messenger and the Muslim rulers after him from following people’s whims and from yielding to their desires, for He said;

﴿وَلَا تَتَّبِعْ أَهْوَاءَهُمْ﴾

“And do not follow their whims.” [TMQ Al-’Imran: 49]

Allah also warned His Messenger and the Muslim rulers after him against falling prey to people’s temptations and from being lured away from the implementation of some of the rules that Allah has revealed. He was commanded to implement all the rules which Allah has revealed to him, whether they were orders or prohibitions, without paying attention to what the people want, for He says;

﴿وَاحْذَرَهُمْ أَنْ يَفْتَنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

“And beware lest they tempt you away from some of that which Allah has revealed to you.” [TMQ Al-Ma’idah: 49]

Allah also says;

﴿وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ﴾

“And those who rule by other than that which Allah has revealed, they are the disbelievers.” [TMQ Al-Ma’idah: 44]

In another verse He says;

﴿فَأُولَئِكَ هُمُ الظَّالِمُونَ﴾

“...they are the wrongdoers.” [TMQ Al-Ma’idah: 45]

And in a third verse He says;

﴿فَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾

“...they are the rebels.” [TMQ Al-Ma’idah: 47]

Allah has labelled in these three verses those who do not rule by all the rules He has revealed as being disbelievers, wrongdoers and rebels. This is because “Ma” in the verses is of a general form, so it includes all the *Shari’ah* rules that Allah has revealed, whether they were commands or prohibitions.

Everything mentioned so far indicates clearly and conclusively, without a shadow of a doubt, that all the Muslims, whether they were individuals,

groups or a State, are obliged to implement the rules of Islam as a whole as Allah ﷻ ordered, without any delay, postponement or graduation. It also indicates that no individual, group, or a State has any excuse for not implementing the rules of Islam.

The implementation must be complete, comprehensive and simultaneous, and not gradual. The gradual implementation contradicts the rules of Islam totally, and it renders those who implement some of the rules and abandon some of the rules, sinful before Allah, whether they were individuals, groups or a State.

The duty is always and remains a duty and it must be executed, and the prohibition is always and remains a prohibition and it must be avoided. The Messenger of Allah ﷺ rejected the proposal of Thaqeef when they sent a delegation and offered to embrace Islam on condition that they could keep their idol Al-Lat for three years, and would be exempted from *Salah*. He ﷺ completely rejected this, and insisted that the idol should be destroyed at once and that they should observe *Salah* without any delay.

Allah ﷻ has made the ruler who does not implement all the rules of Islam, or the one who implements some of them and ignores others, a disbeliever if he did not believe in the validity of Islam, or if he did not believe in the validity of some of the rules of Islam. He ﷻ also made him a *Dhaalim* (wrongdoer) and a *Fasiq* (rebel) if he did not implement all the rules of Islam, or if he did not implement some of them without denying the validity of Islam for implementation.

The Messenger of Allah ﷺ ordered the fighting and confronting of the ruler with force if he committed an act of flagrant disbelief. In other words, if he were to rule by the laws of disbelief of which there was no doubt, no matter how numerous or little these rules were. This treatment would be as mentioned in the Hadith of ‘Ubadah Ibnus-Samit;

((...وَأَنْ لَا تُنَازِعَ الْأَمْرَ أَهْلَهُ، قَالَ: إِلَّا أَنْ تَرَوْا كُفْرًا

بَوَاحًا، عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بَرَهَانٌ))

“...and not to dispute with the people in authority, he said; unless

you witness a flagrant act of disbelief about which you have proof from Allah.”

There should be no complacency in the implementation of the *Shari’ah* rules, nor should there be any gradual implementation of the rules of Islam, for there is no difference between a *Wajib* and another *Wajib*, or between a *Haram* and another *Haram*, or between a *Hukm* (rule) and another *Hukm*. All the rules of Allah are equal, they must be implemented and executed without any delay, postponement or graduation, and otherwise the saying of Allah ﷻ would apply to us when He ﷻ says;

﴿أَفْتَوْمُنُونِ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاءُ مَنْ يَفْعَلُ ذَلِكَ مِنْكُمْ إِلَّا خِزْيٌ فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ الْقِيَامَةِ يُرَدُّونَ إِلَى أَشَدِّ الْعَذَابِ﴾

“Then it is only a part of the Book that you believe in and do you reject the rest? But what is the reward for those among you who believe like this but disgrace in this life and on the day of judgement they shall be consigned to the most grievous chastisement.” [TMQ Al-Baqarah: 85]

There is no excuse whatsoever therefore for any State in the Islamic world today to not implement Islam under the pretext that it could not implement it, or claiming that the situation is not favourable for its implementation, or that the world opinion would not accept its implementation, or that the superpowers would not allow it, or any other excuses and weak arguments that carry no weight at all. Whoever hides behind such excuses should know that Allah would not accept these from him.

15

Islam Forbids Ruling by a Police State

Ruling and authority in Islam mean running the affairs of the people by applying the *Shari'ah* rules. This is not the same as doing this by force, for force within the State is not designed to look after people, or to manage their affairs. Force is not the authority, although its existence, formation, administration and preparation do not come about without authority. Force is a physical entity that manifests itself in the shape of the armed forces-including the police force-with which the authority executes the rules, defeats the criminals and the rebels, oppresses the outlaws, curbs the aggressors and uses it as a tool to protect the authority and the concepts and thoughts on which it is founded and to convey them to the world.

This clearly demonstrates that the authority is not the same as force, although the authority could not survive without it. It also demonstrates that the force is other than the authority, although it cannot exist without it.

It is therefore unlawful for the authority to become a force, for if authority turned into force, its management of people's affairs would be badly affected. This is because its concepts and criteria would become the concepts and criteria of coercion, oppression and dominance, and not the concepts and criteria of looking after the people's affairs. Ruling would then turn into an oppressive rule that knows nothing but terror, dominance, oppression, coercion and blood shedding.

Similarly force should not turn into authority, because it would rule people by the concept of force, and it would run people's affairs by the concepts of military rule and the criteria of suppression and coercion. In both cases, this would bring disaster and ruin and cause fear, terror and horror. It would lead the Ummah to the abyss, causing it great harm.

The military rule in the Arab and Islamic countries offer a clear example of this.

ISLAM FORBIDS HARMING THE MUSLIMS AND SPYING ON THEM

Islam has forbidden the torturing and harming of people. Muslim narrated from Hisham bin Hakeem, who said; **"I bear witness that I heard the Messenger of Allah ﷺ say; 'Allah will punish those who punish the people in the Dunya.'"** He ﷺ also said;

((صنفان من أهل النار لم أرهما، قوم معهم سياط كأذناب

البقر يضربون بها الناس...))

"There are two types of the people of Hellfire I have not seen yet; some people who have whips like the tails of oxes by which they flog the people." [Narrated by Muslim from Abu Hurairah]

Islam has also forbidden the violation of people's sanctities, dignity, funds and honour, and the dishonouring of the sanctity of their homes. The Messenger of Allah ﷺ said;

((كل المسلم على المسلم حرام، دمه وماله وعرضه))

"All things of a Muslim are inviolable for his brother in belief: his blood, his wealth and his honour", from a Hadith narrated by Muslim on the authority of Abu Hurairah. He ﷺ also said while making *Tawaf* around the Ka'aba:

((ما أطيبك، وأطيب ريحك، ما أعظمك وأعظم

حرمتك، والذي نفس محمد بيده لحرمة المؤمن أعظم عند الله

حرمة منك، ماله دمه، وأن لا نطنَّ به إلا خيراً))

"How splendid you look, and how sweet is your scent. How grand you are and how grand is your sanctity. By Whom in Whose Hand is the soul of Muhammed, the sanctity of the believer is greater to

Allah than yours, (that is) his wealth and his blood, and not to think of him except good.” [Narrated by Ibnu Majah on the authority of Ubaid Allah bin Amru]

He ﷺ also said;

((سباب المسلم فسوق، وقتاله كفر))

“Abusing the Muslim is an aggression and fighting him is disbelief.” [Narrated by Al-Bukhari and Muslim on the authority of ‘Abdullah bin Mas’ood]

He ﷺ said regarding the sanctity of the houses;

((لو أن رجلاً اطلع عليك بغير إذن، فحذفته بحصاة، ففقات عينية ما كان عليك من جناح))

((عينية ما كان عليك من جناح))

“If a person were to cast a glance in your house without permission and you hit him with a stone and thus gouged out his eyes, there would be no blame on you.” [Narrated by Muslim from Abu Hurairah] It has been reported on the authority of Sahl Ibnu Sa’d Al-Sa’idi that a man once peeped through the hole of the door of the Messenger of Allah ﷺ, the Messenger of Allah ﷺ was at the time scratching his head with a fork. He ﷺ said;

((لو أعلم أنك تنظر لطعنت به في عينيك، إنما جعل الاستئذان من أجل البصر))

((الاستئذان من أجل البصر))

“If I were to know that you had been peeping through the door, I would have thrust this into your eyes. Indeed, seeking permission was made to protect against the glance.” [Narrated by Al-Bukhari and Muslim]

He ﷺ also said;

((من اطلع على قوم في بيتهم بغير إذنه فقد حل لهم أن

يفقأوا عينه))

“He who peeps into some people’s house without their permission, it is allowed for them to gouge out his eye.” [Narrated by Ahmed from Abu Hurairah]

Islam has also forbidden spying on the Muslims, watching them, chasing them and looking into their confidential and personal news. It has also forbidden the Muslim from being a spy on other Muslims. Allah ﷻ says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا﴾

“O you who believe, avoid suspicion as much as possible, for suspicion in some cases is a sin, and do not spy on each other.” [TMQ Al-Hujurat: 12]

The Messenger of Allah ﷺ said;

((يَا كُمْ وَالظَّنِّ، فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ، وَلَا تَحْسَسُوا، وَلَا

تَجَسَّسُوا، وَلَا تَحَاسَدُوا، وَلَا تَدَابَرُوا، وَلَا تَبَاغَضُوا، وَكُونُوا عِبَادَ

اللَّهِ إِخْوَانًا))

“Avoid suspicion, for suspicion is the gravest lie in talk, and do not be inquisitive about one another and do not spy on one another, and do not turn one’s back to each other, do not hate each other, and be servants to Allah and be brothers.” [Narrated by Al-Bukhari and Muslim from Abu Hurairah] And he ﷺ also said;

((يَا مَعْشَرَ مَنْ آمَنَ بَلْسَانَهُ، وَلَمْ يَدْخُلِ الْإِيمَانُ قَلْبَهُ، لَا تَغْتَابُوا

الْمُسْلِمِينَ، وَلَا تَتَّبِعُوا عَوْرَاتِهِمْ، فَإِنَّهُ مَنْ يَتَّبِعْ عَوْرَاتِهِمْ يَتَّبِعْ اللَّهَ

عَوْرَتَهُ، وَمَنْ يَتَّبِعْ اللَّهَ عَوْرَتَهُ يَفْضَحْهُ اللَّهُ فِي بَيْتِهِ))

“O you people who believed with your tongue, and Iman has not yet entered your hearts, do not backbite the Muslims, and do not search for their weaknesses. For he who sought the *Awraat* (the defects) of the Muslims Allah would follow him, and he whom Allah follows his *Awra* (defect), He would also expose him even in his own home.” [Narrated by Ahmad from Abu Barza Al-Aslami]

The Ayah and the *Ahadith* forbid the Muslims from spying against the Muslims and from following their ‘*Awraat*’ (defects). They warn that he who follows the ‘*Awraat*’ (defects) of the Muslims, Allah will follow his *Awraat* (defects) and will expose him. Other *Ahadith* have been reported forbidding the Muslims from working for the intelligence agencies to spy on the Muslims. Al-Miswar reported that the Messenger of Allah ﷺ said;

((من أكل برجل مسلم أكلة، فإن الله يطعمه مثلها من جهنم، ومن كسا ثوباً برجل مسلم فإن الله يكسوه مثله في جهنم...))

“Whoever ate something by harming a Muslim, Allah will indeed feed him the like of it from Jahannam. And whoever clothed himself with a dress by harming a Muslim, indeed Allah will clothe him a dress similar to it in Jahannam.” [Narrated by Abu Dawood and Ahmad]

It is similarly forbidden to spy on the citizens from the people of the Dhimmah, for they are equal to the Muslims in terms of dealing and being dealt with fairly. The Messenger of Allah ﷺ ordered that the Dhimmah should be treated nicely and he forbade harming them, he ﷺ said;

((من ظلم معاهداً، أو كلفه فوق طاقته فأنا حجيجه إلى يوم القيامة))

“He who harms a person under covenant, or charged him more

than he can, I will argue against him on the Day of Judgement.” [Narrated by Yahya bin Adam in the book of Al-Kharaaj] ‘Umar said;

((أوصي الخليفة من بعدي بذمة رسول الله ﷺ خيراً أن يوفيهم بعهدهم، وأن يقاتل من ورائهم، وأن لا يكلفوا فوق طاقتهم))

“I recommend to the Khaleefah after me to be good to those who are under the protection of the Messenger of Allah ﷺ, he has to fulfil to them their covenant (oath), to fight for protecting them and to not be charged more than they can afford.” [Narrated by Yahya bin Adam] The Ayah and the *Ahadith* - although they are general about the unlawfulness of spying-exclude the spying against the belligerent disbelievers, whether they were actually or potentially belligerent. There are other *Ahadith* that specify the prohibition of spying to other than the belligerent disbelievers. Spying against the belligerent disbelievers is not forbidden, rather it is an obligation, and so the Islamic State must do that. This is because the Messenger of Allah ﷺ sent ‘Abdullah bin Jahsh with eight bands of people from the *Muhajireen*, to Nakhla between Al-Taif and Makkah to monitor the movements of Qur’aysh and gather news about them. Spying against the disbelieving enemy is a matter that the Islamic armed forces and the Islamic State cannot do without.

Spying against the disbelieving enemies is a duty that the Islamic State must perform. It is also its duty to have a counter intelligence service to combat any spying it is subjected to by the disbelievers. This is because Al- Bukhari reported on the authority of Salama Ibnu Akwa’, who said;

((أتى النبي ﷺ عَيْنٌ من المشركين وهو في سفر، فجلس عند أصحابه يتحدث، ثم انفتل، فقال النبي ﷺ اطلبوه واقتلوه. فقتله، فنقله، سلبه))
" أَمَرَ بِقَتْلِهِ "

((أتى النبي ﷺ عَيْنٌ من المشركين وهو في سفر، فجلس عند

“The Messenger of Allah ﷺ encountered a spy while on a journey; the spy sat among some of the Prophet’s companions talking and then he snuck away. Upon this the Messenger of Allah ﷺ said; ‘Go after him and kill him.’ So I beat everyone to him and I killed him, so the Messenger of Allah ﷺ gave me the booty of that spy.” Ahmed narrated an incident from Furat Ibnu Hayyan, who said, “The Messenger of Allah ﷺ ordered his killing. He was a spy, and an ally of Abu Sufyan and he passed by a circle of the *Ansar* and said; ‘I am a Muslim.’ A man from the *Ansar* said; ‘O Messenger of Allah he says that he is a Muslim.’ The Messenger of Allah ﷺ replied; ‘There are men among you whom we entrust to their belief, and Furat Ibnu Hayyan is one of them.’”

Al- Bukhari reported on the authority of ‘Ali bin Abi Talib ؓ, who said;

((بعثني رسول الله ﷺ أنا والزبير والمقداد بن الأسود

قال: انطلقوا حتى تأتوا روضة خاخ، فإن بها ظعينة ومعها كتاب، فخذوه منها فانطلقنا تتعادي بنا خيلنا حتى انتهينا إلى الروضة، فإذا نحن بالظعينة، فقلنا: أخرجي الكتاب، فقالت: ما معي من كتاب، فقلنا: نُخرجنَّ الكتاب أو لنلقينَّ الثياب، فأخرجته من عقاصها، فأتينا به رسول الله ﷺ ...))

“The Messenger of Allah ﷺ sent me together with Az-Zubair and Al-Miqdad bin Al-Aswad, and said; ‘Go forth until you reach the garden of Khakh, you will find a tha’ina (a woman riding a camel) who is carrying a letter, so take it from her.’ We set off riding at high speed until we reached the garden, and we found the tha’ina. We said to her; ‘Get out the letter.’ She said; ‘I have no letter.’ We said; ‘Get it out or else we take off the dress. So she got it out of her braid and we brought it back to the Messenger of Allah ﷺ.’”

These incidents’ indicate that ruling in Islam is not an oppressive rule, and it is forbidden for it to be such, for oppressive ruling brings grave harm to the Muslims, contradicts the *Shari’ah* rules, and also disagrees with the *Shari’ah* principle that states

((لا ضرر ولا ضرار))

“no harming and no self-inflicted harm”, “*La Dharara Wala Dhirar*”.

It also indicates that it is forbidden for the Islamic State to set up an intelligence organisation to spy against the citizens, Muslims and non-Muslims alike, and that it is forbidden to harm them.

It is the duty of the State to set up an intelligence service in order to spy against the Kuffar and gather information about them and to combat the espionage they carry out against the State.

OBEDIENCE TO THE MUSLIM RULER WHO GOVERNS WITH ISLAM IS COMPULSORY

Obedience is compulsory upon Muslims for the Muslim ruler who implements the laws of Islam in his ruling, even if he did wrong or withheld the rights, as long as he does not order an act of disobedience (to Allah) and as long as he does not show an act of flagrant disbelief (Kufr Bawah)

Evidence about the obligation of obedience to the ruler is manifested in the Holy verses and the related *Ahadith*. Allah ﷻ says;

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾

“O you who believe obey Allah and obey the Messenger and those in authority from amongst you.” [TMQ An-Nisa’: 59]

Al- Bukhari reported on the authority of Abu Salama Ibnu ‘Abdul Rahman that he heard Abu Hurayra say;

أطاع أميري فقد أطاعني، ومن عصى أميري فقد عصاني))

“The Messenger of Allah ﷺ said; ‘whoever obeyed me is as if he had obeyed Allah, and whoever disobeyed me is as if he had disobeyed Allah. And whoever obeyed my Ameer is as if he had obeyed me and whoever disobeyed my Ameer is as if he had disobeyed me.’” In another narration he was reported to have said;

((...ومن يطع الأمير فقد أطاعني...))

“Whoever obeyed the Ameer is as if he had obeyed me.” Al-Bukhari narrated from Anas Ibnu Malik, who said;

((إسمعوا وأطيعوا وإن استعمل عبد حبشي كأن رأسه

زبيبة))

“The Messenger of Allah ﷺ said; ‘You must hear and obey, even if it were appointed upon you an Abyssinian slave whose hair is like a raisin.’” Muslim narrated from ‘Amru bin Al’Ass, that the Messenger of Allah ﷺ said;

((ومن بايع إماماً فأعطاه صفقة يده، وثمرة قلبه فليطعه إن

استطاع، فإن جاء آخر ينازعه، فاضربوا عنق الآخر))

“Whosoever gave his *Bay’ah* to an Imam giving him the clasp of his hand and the fruit of his heart let him obey him as long as he can, and if another comes to dispute with him you must strike the neck of the latter.”

These are clear evidences that obedience is obligatory, for Allah ﷻ has ordered the obedience to the people in authority, to the Ameer and to the Imam. This order has been associated with a *Qareenah* (indication), that it is decisive by the fact that the Messenger of Allah ﷺ considered the disobedience of the Ameer as disobedience to the Messenger ﷺ and to

Allah ﷻ. He ﷺ emphasised obedience even if the ruler was an Abyssinian slave. All these serve as *Qaraa’in* (indications) that the order is decisive, thus the obedience of the ruler is obligatory.

The obedience has come unrestricted, not confined to a certain ruler nor to certain issues. It is therefore obligatory to obey any Muslim ruler, even if he were a wrongdoer, a rebel, or unjustly squandering people’s wealth. His obedience is obligatory, for the evidences have come unrestricted, and should remain so.

Some *Abadith* have however been reported indicating that obedience to the ruler is obligatory even if the ruler did wrong, and even if he were a tyrant. Al-Bukhari narrated from ‘Abdullah, who said; “The Messenger of Allah ﷺ said to us:

((إنكم سترون بعدي أثرة وأموراً تُنكرونها. قالوا: فما تأمرنا يا

رسول الله؟ قال: أدوا إليهم حقهم، وسلوا الله حقكم))

‘You shall witness after me selfishness and matters which you will disown.’ They said; ‘What do you order us, O Messenger of Allah?’ He said; ‘Give them their due right and ask Allah for your due right.’” Al-Bukhari also reported on the authority of Abu Raja’a from Ibnu ‘Abbas that the Messenger of Allah ﷺ said;

((من رأى من أميره شيئاً يكرهه فليصبر عليه، فإنه من فارق

الجماعة شبراً فمات إلا مات ميتة جاهلية))

“If anyone sees in his Ameer something that displeases him let him remain patient, for behold! He who separates himself from the Jama’a (community) by even so much as a hand span and dies thereupon, he would have died the death of Jahiliyyah.”

These *Abadith* are explicit regarding the obligation of obeying the ruler whatever he does. The Messenger of Allah stressed this very strongly, for Muslim narrated from Nafi’ on the authority of ‘Abdullah Ibnu ‘Umar, who said; “I heard the Messenger of Allah ﷺ say:

((من خلع يداً من طاعة، لقي الله يوم القيامة لا حجة له، ومن

مات وليس في عنقه بيعة مات ميتة جاهلية))

‘Whoever withdraws his hand from obedience to the Ameer will find no proof for himself when he meets Allah on the Day of Judgement, and whoever dies without having an oath of allegiance (*Bay’ah*) on his neck he would die the death of Jahiliyyah.’”

The Hadith of Ibnu ‘Umar as reported by Al-Hakim states that the Messenger of Allah ﷺ said;

((من خرج من الجماعة قيد شبر فقد خلع ربقة الإسلام من

عنقه حتى يراجعه، قال: ومن مات وليس عليه إمام جماعة فإن

موته موتة جاهلية))

“He who abandons the Jama’a by even so much as a hand span is as if he has taken the knot of Islam off his neck, until he returns. And whoever dies while there was no Imam of Jama’a ruling over him, his death would be that of the days of Jahiliyyah.”

It is thus forbidden to disobey the ruler whatever he does.

It is not allowed to disobey the ruler whatever he did, nor to rebel against him or fight him, whatever happened from him. Al-Bukhari narrated from ‘Abdullah bin ‘Umar that the Messenger of Allah ﷺ said; “He who takes up arms against us is not one of us.”

The ruler should not be disputed with over the authority whatever is the reason, except for what has been stated by a text, which is the appearance of the flagrant disbelief.

The prohibition of fighting against the rulers is also explicit, even if they committed *Munkar*. For Muslim reported on the authority of Umm Salama that the Messenger of Allah ﷺ said;

((ستكون أمراء فتعرفون وتنكرون، فمن عرف برئ، ومن

أنكر سلم، ولكن من رضي وتابع. قالوا: أفلا

نقاتلهم؟ قال: لا، ما صلّوا))

“Ameers will be appointed over you, you will recognise some of what they do and you will disown some. Whoever recognised he is absolved from blame. Whoever disapproved (of their bad deeds) he is safe, but whoever consented and followed them (he is doomed.)’ They said; ‘Should we not fight against them?’ He ﷺ replied: ‘No, as long as they prayed.’” In a Hadith reported by Muslim from ‘Awf bin Malik “... It was said;

((... قيل يا رسول الله: أفلا نناذبهم بالسيف؟ فقال: لا، ما

أقاموا فيكم الصلاة...))

“O Messenger of Allah? Should we not fight against them?’ He said; ‘No, as long as they established prayer amongst you.” Additionally in the narration of ‘Ubadah Ibnus-Samit regarding the *Bay’ah* as reported by Muslim:

((... وأن لا ننازع الأمر أهله، قال: إلا أن تروا كفراً بواحاً

عندكم فيه من الله برهان))

“And you should not dispute with the people in authority unless you witness a flagrant act of disbelief upon which you have a proof from Allah.”

All these are explicit texts that prohibit the rebellion against the ruler, fighting against him and disputing with him over the authority. In addition, there are *Abadith* that indicate the obligation of obeying the ruler no matter how much of a tyrant he is, and no matter how many evils he commits. All these *Abadith* exhort and demand total obedience to the ruler. The unrestricted *Ayaat* and *Abadith* that command the enjoining of *Ma’ruf* and the forbidding of *Munkar* even by hand do not apply to the

ruler, because the *Abadith* has specified this and excluded the ruler as mentioned earlier. The obedience of the ruler therefore, is general and unrestricted except where it is mentioned.

NO OBEDIENCE IN SIN

One matter that has been excluded from the obligation of obeying the ruler is when he orders a sin. This exclusion has been confirmed by text. Nafi' reported on the authority of Ibnu 'Umar that the Messenger of Allah ﷺ said;

((على المرء المسلم السمع والطاعة فيما أحبَّ وكره، إلا أن يؤمر بمعصية، فإن أُمرَ بمعصية فلا سمع ولا طاعة))

"It is obligatory upon a Muslim that he should listen and obey whether he likes it or not, except when he is ordered to commit a sinful act. If he is ordered to do a sinful act, a Muslim should neither listen nor obey." [Narrated by Muslim] The subject being addressed here is the case of a ruler ordering a Muslim to commit sin. It does not address the issue of a ruler being sinful. If the ruler committed the sin before you, without ordering you to commit it, you still have to obey him. Muslim reported on the authority of 'Awf Ibnu Malik Al-Ashjai', he said; "I heard the Messenger of Allah ﷺ say:

((خيار أئمتكم الذين تحبونهم ويحبونكم، وتصلون عليهم ويصلون عليكم، وشرار أئمتكم الذين تبغضونهم ويبغضونكم وتلعنونهم ويلعنونكم، قال: قلنا يا رسول الله: أفلا نباذهم عند ذلك؟ قال: لا، ما أقاموا فيكم الصلاة، ألا من وليَّ عليه وال، فرآه يأتي شيئاً من معصية الله، فليكره ما يأتي من معصية الله، ولا يترعن يداً من طاعة))

'The best of your Imams are those whom you love and they love

you, and whom you pray for and they pray for you, and the worst of your Imams are those whom you hate and they hate you and you curse them and they curse you.' We asked; 'O Messenger of Allah, shall we not then declare war on them?' He ﷺ said; 'No, as long as they establish prayer among you. Beware! Whoever has a *Waaali* (ruler) appointed over him and he saw him commit an act of disobedience to Allah, he should hate the *Waaali's* act of disobedience to Allah, but should not withdraw his hand from obedience.'"

This serves as an evidence that what is intended by ordering a sinful act is ordering of the act itself by the ruler rather than the ruler himself committing it. If the ruler is seen committing a sin, it would not be lawful to disobey him, but if he ordered somebody to disobey Allah, then he should not be obeyed for there is no obedience to any created person in an act of disobedience to the Creator.

This is the only case when disobedience to the ruler is lawful and obligatory, namely when he orders a sinful act. It must be known without doubt that what has been ordered is truly a sin, such as if he orders one to take usury. If however, his order is to perform something that in his opinion is lawful but may be considered unlawful by others, he should be obeyed and it is not allowed to disobey him. This would not be considered an order to commit a sin, but an order to commit a lawful act. For instance, if one is ordered, against one's own opinion, to have a photograph taken for an official transaction by the ruler, he should be obeyed. For the ruler deems that the Hadith of Ibnu 'Abbas that prohibits photographing refers to the manual drawing and sketching, but does not apply to the photographic picture. Accordingly, this is evidence or probable evidence in his view. Therefore, his order to use a photographic picture in the official transactions or documents is not an order to commit a sin. He should therefore be obeyed and it would be unlawful to disobey him.

ACCOUNTING THE RULERS IS *FARD* UPON THE MUSLIMS

Holding the rulers accountable is a duty upon the Muslims. The obligation of obeying them even if they did wrong and withheld people's rights does not mean that the Muslims should keep silent, but it means

that obeying them is obligatory and holding them accountable for their actions is obligatory as well.

Allah ﷻ ordered the Muslims to hold their rulers accountable and strongly commanded them to challenge them if they withheld the citizens' rights, neglected their duties towards them, ignored any of the citizens' affairs, violated the rules of Islam or ruled by other than that which Allah ﷻ has revealed. Muslim reported on the authority of Umm Salama that the Messenger of Allah ﷺ said;

((ستكون أمراء فتعرفون وتنكرون، فمن عرف برئ، ومن أنكر سلم، ولكن من رضي وتابع، قالوا: أفلا نقاتلهم؟ قال: لا، ما صلوا))

“Ameers will be appointed over you, you recognise some of what they do and you disown some. Whoever recognised he is absolved from blame. Whoever disapproved (of their bad deeds) he is safe, but whoever consented and followed them (he is doomed.)’ They said; ‘Should we not fight against them?’ He ﷺ replied; ‘No, as long as they prayed.’” In another narration by Muslim,

((فمن كره فقد برئ، ومن أنكر فقد سلم، ولكن من رضي وتابع))

“Whoever hated he would be absolved (of sin) and whoever disapproved he would be safe, but whoever consented and followed (he would be not).” This narration explains the first narration. The Messenger of Allah ﷺ has ordered showing the disapproval toward the ruler and has made this obligatory by any possible means on condition that it is without fighting, i.e. without the use of the sword unless he showed open kufr by the tongue by saying something, or by the heart if one were not able to use the hand or tongue. He ﷺ considered the one who does not disown the wrong deed as being an accomplice to the ruler in the sin, for he said if anyone approved of their bad deeds and imitated

them he would be doomed and would not escape the blame and the sin.

The evidences concerning the enjoining of *Ma'ruf* and the forbidding of *Munkar* are also evidences for holding the ruler accountable, for they are general evidences that include the ruler as well as others. Allah ﷻ has commanded decisively the enjoining of *Ma'ruf* and the forbidding of *Munkar*. He ﷻ says;

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ﴾

“And let there arise from amongst you a band of people inviting to all that is good (*Khayr*), enjoying what is right (*Ma'ruf*) and forbidding what is wrong (*Munkar*).” [TMQ Al-Imran: 104]

He ﷻ also says;

﴿كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ﴾

“You are the best of peoples, brought out for mankind enjoining what is right and forbidding what is wrong.” [TMQ Al-Imran: 110]

Allah ﷻ says;

﴿الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ﴾

“Those who follow the Messenger, the unlettered Prophet who they find mentioned in their own scriptures, in the Taurat and Gospel, where he commands them with the right and forbid them of the wrong.” [TMQ Al-Araf: 157]

And He ﷻ says;

﴿التَّائِبُونَ الْعَابِدُونَ الْحَامِدُونَ السَّائِحُونَ الرَّاكِعُونَ
السَّاجِدُونَ الْآمِرُونَ بِالْمَعْرُوفِ وَالنَّاهُونَ عَنِ الْمُنْكَرِ
وَالْحَافِظُونَ لِحُدُودِ اللَّهِ وَبَشِّرِ الْمُؤْمِنِينَ﴾

“Those who turn themselves to Allah in repentance, worship Him, praise Him, wander in devotion to the cause of Allah, they bow and prostrate, they enjoin the right and forbid the wrong and observe the limits put by Allah, so proclaim the glad tidings to the believers.” [TMQ At-Tauba: 112]

And He ﷺ says;

﴿الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ
وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ﴾

“There are those who if we establish them in the land, establish regular prayers (the Salah) and give the Zakat, enjoin the right and forbid the wrong.” [TMQ Al-Hajj: 41]

In all these verses, Allah ﷻ commands the enjoining of *Ma'ruf* (the right) and the forbidding of *Munkar* (the wrong). The command is combined with further indicators that confirm that the command is decisive, namely the praise, for He ﷻ says;

﴿وَأُولَئِكَ هُمُ الْمُفْلِحُونَ﴾

“And those are the successful ones.” [TMQ Al-Imran: 104]

He ﷻ says;

﴿كُنْتُمْ خَيْرَ أُمَّةٍ﴾

“You were the best nation.” [TMQ Al-Imran: 110]

In another verse He ﷻ says;

﴿وَبَشِّرِ الْمُؤْمِنِينَ﴾

“And give glad tidings to the believers.” [TMQ At-Tauba: 112]

These all serve, as evidences that the command is decisive, which means that it are an obligation. Holding the ruler accountable is in fact enjoining *Ma'ruf* and forbidding *Munkar*, thus it is an obligation.

In addition, there are many *Ahadith* that indicate the obligation of enjoining *Ma'ruf* and forbidding *Munkar*. Huzayfah Ibnul Yaman reported that the Messenger of Allah ﷺ said;

((والذي نفسي بيده لتأمرن بالمعروف، ولتنهون عن المنكر، أو
ليوشكن الله أن يبعث عليكم عقاباً من عنده، ثم لتدعنه فلا
يستجيب لكم))

“By Whom in Whose hand is my soul, you shall enjoin *Ma'ruf* and you shall forbid *Munkar*, or Allah may send His punishment upon you, then you will supplicate to Him and He will not answer your prayers.” [Narrated by Ahmed and al-Tirmithi] Abu Sa'id Al-Khudri reported: The Messenger of Allah ﷺ said;

((من رأى منكم منكراً فليغيره بيده، فإن لم يستطع فبلسانه،
فإن لم يستطع فبقلبه وذلك أضعف الإيمان))

“Whoever of you sees a *Munkar* should change it with his hand, and if he was unable then with his tongue, and if he was unable then he should abhor it by his heart and that is the weakest of Iman (belief).” [Narrated by Muslim] Ahmed narrated from Uday ibn Uday ibn Umairah Al-Kindi, who said; “I heard the Messenger of Allah ﷺ say:

((إن الله عز وجل لا يُعذب العامة بعمل الخاصة، حتى يروا
المنكر بين ظهرانيهم وهم قادرون على أن ينكروه فلا

ينكرونه، فإذا فعلوا ذلك عذب الله الخاصة والعامة))

‘Verily Allah would not punish the common people because of the deeds of some specific people unless they witness the *Munkar* among them while they are able to deny it but do not do so. If they did this Allah would then punish both the common people and the specific people.’”

All of these *Ahadith* indicate the obligation of enjoining *Ma'ruf* and forbidding *Munkar*. They indicate the obligation of enjoining *Ma'ruf* towards the ruler and forbidding his *Munkar*. Without doubt, this means holding him accountable for his actions. Furthermore, there are *Ahadith* which specifically relate to the ruler, confirming the obligation of holding him accountable, thus stressing the importance of enjoining *Ma'ruf* towards the ruler and forbidding his *Munkar*. Ahmed narrated from Abi Sa'id, who said;

((أفضل الجهاد كلمة حق عند سلطان جائر))

“The Messenger of Allah ﷺ said; ‘The best of Jihad is a word of truth before the tyrant ruler.’” Abu ‘Amama reported:

((عرض لرسول الله ﷺ رجل عند الجمرة الأولى فقال: يا

رسول الله أي الجهاد أفضل؟ فسكت عنه، فلما رمى الجمرة

الثانية سأله، فسكت عنه، فلما رمى جمرة العقبة، ووضع

رجله في الغر ليركب قال: "أين السائل؟" قال: أنا يا رسول

الله، قال: "كلمة حق عند ذي سلطان جائر")

“A man came to the Messenger of Allah ﷺ when he was about to throw the first Jamra (pebble), so he said; ‘O Messenger of Allah, which is the best Jihad?’ He ﷺ kept silent. When he ﷺ threw the second Jamra, the man asked him again. And again he ﷺ did not answer. When he ﷺ threw the Jamrat-ul-Aqaba - known also as Al Jamra Al Kubra - (the great Jamra), and put his foot in the stirrup

to ride he said; ‘Where is the person who asked?’ The man said; ‘It is me O Messenger of Allah.’ He ﷺ said; ‘A word of truth said before a tyrant ruler.’” [Narrated by Ibnu Majah and Ahmed]

This is an explicit text about the ruler and about the obligation of saying the truth to his face. This includes holding the rulers accountable, struggling against those who withhold the citizens’ rights, neglect their duties towards their subjects, or ignore some of their affairs. It is a duty, for it is Allah’s command and is considered to be like the best of Jihad. It is as if he ﷺ says; The best Jihad in the sight of Allah is to struggle against the tyrant rulers. This evidence alone is sufficient to prove the obligation of holding the rulers accountable.

The Messenger of Allah ﷺ has exhorted the struggle against the tyrant rulers, no matter how great the trials, even if it leads to the loss of life. It has been reported by Al-Hakim from Jabir from the Prophet ﷺ:

((سيد الشهداء حمزة بن عبد المطلب ورجل قام إلى إمام

جائر فأمره ونهاه فقتله))

“The master of martyrs is Hamza, and a man who stood up to a tyrant ruler to advice him and got killed.” This is of the most eloquent phrases in voicing the truth and exhorting the endurance of trials and harm which could even mean death, in the bid to hold the tyrant rulers accountable and struggle against them.

THE RULER WHO DISPLAYS FLAGRANT KUFR MUST BE FOUGHT AGAINST

There is one situation excluded from the general rule concerning the obligation of obedience to the ruler. This is the case of commanding people to perform a sin. Similarly there is one situation excluded from the general rule concerning the prohibition of rebellion against the ruler and taking up arms against him, which is when he commits an act of flagrant disbelief. In this case he should be fought against, for there are texts related to this situation. ‘Awf Ibnu Malik Al-Ashja'i said; “I heard the Messenger of Allah ﷺ say;

((خيار أئمتكم الذين تُحبوهم ويُحبونكم، وتُصلون عليهم

وَيُصَلُّونَ عَلَيْكُمْ، وَشَرَّارُ أَئِمَّتِكُمُ الَّذِينَ تُبْغِضُونَهُمْ
وَيُبْغِضُونَكُمْ، وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ، قَالَ: قُلْنَا يَا رَسُولَ

اللَّهِ: أَفَلَا نُنَازِلُهُمْ عِنْدَ ذَلِكَ؟ قَالَ: لَا، مَا أَقَامُوا فِيكُمْ الصَّلَاةَ))

‘The best of your Imams are those whom you love and they love you and whom you pray for and they pray for you, and the worst of your Imams are those whom you hate and they hate you and you curse them and they curse you.’ We asked: ‘O Messenger of Allah, shall we not then declare war on them?’ He said; ‘No, as long as they establish the prayer among you.’” [Narrated by Muslim] Establishing the prayer means to rule by Islam, that is to implement the rules of *Shari’ah*. This is because naming part of it denotes the whole of Islam here. This is common in Arabic, for instance Allah ﷻ says;

﴿فَتَحْرِيرُ رَقَبَةٍ﴾

“To free a neck” [TMQ An-Nisa’: 92] which means to free the slave i.e. all of him and not just his neck. In this Hadith he ﷺ said;

((مَا أَقَامُوا فِيكُمْ الصَّلَاةَ))

“As long as they establish the prayer among you.” This means the establishment of all the rules not just the prayer and is a figurative form where basically the part is mentioned to refer to the whole. Muslim reported on the authority of Umm Salama that the Messenger of Allah ﷺ said;

((سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتَنْكُرُونَ، فَمَنْ عَرَفَ بَرِيءٌ، وَمَنْ

أَنْكَرَ سَلَمٌ، وَلَكِنْ مَنْ رَضِيَ وَتَابَعَ. قَالُوا: أَفَلَا نَقَاتِلُهُمْ؟

قَالَ: لَا، مَا صَلَّوْا))

“Ameers will be appointed over you, you recognise some of what they do and you disown some. Whoever recognised he is absolved

from blame. Whoever disapproved (of their bad deeds) he is safe, but whoever consented and followed them (he is doomed.)’ They said; ‘Should we not fight against them?’ He ﷺ replied: ‘No, as long as they prayed.’”

This means the establishment of all the rules not just the prayer and is a figurative form where basically the part is mentioned to refer to the whole. ‘Ubadah Ibnus-Samit reported:

((دَعَانَا رَسُولُ اللَّهِ ﷺ فَبَايَعَنَا، فَكَانَ فِيْمَا أَخَذَ عَلَيْنَا أَنْ بَايَعَنَا

عَلَى السَّمْعِ وَالطَّاعَةِ فِي

مَنْشَطِنَا، وَمَكْرَهِنَا، وَعُسْرِنَا، وَيُسْرِنَا، وَأَثَرَةَ عَلَيْنَا، وَأَنْ لَا نَنْزَاعَ

الْأَمْرَ أَهْلَهُ. قَالَ: إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا، عِنْدَكُمْ مِنَ اللَّهِ فِيهِ

بِرْهَانٌ))

“The Messenger of Allah ﷺ called us and we gave him the *Bay’ah* (oath of allegiance). Among the injunctions he made binding upon us was to listen and obey to the Ameer in our pleasure and displeasure, in our adversity and prosperity, and giving (others) preference over ourselves, and not to dispute the authority with its people, he said; ‘Unless you see a flagrant disbelief on which you have clear proof from Allah.’” [Narrated by Muslim]

The subject of these three *Abadith*, the Hadith of ‘Awf Ibnu Malik, that of Umm Salama, and that of ‘Ubadah Ibnus-Samit is the rebellion against the ruler. They categorically forbid the rebellion against him:

((أَفَلَا نُنَازِلُهُمْ بِالسَّيْفِ؟ قَالَ: لَا))

“Should we not then declare war on them?’ He ﷺ said; ‘No.’

((أَفَلَا نَقَاتِلُهُمْ؟ قَالَ: لَا))

‘Should not we fight against them?’ He ﷺ said; ‘No.’

((وَأَنْ لَا نَنَازِعَ الْأَمْرَ أَهْلَهُ))

‘And we should not dispute with the people of authority.’” They all forbid the rebellion against the ruler categorically, thus indicating a prohibition. This is combined with the disgrace attributed to the rebellion and is indicated in the Hadith where Allah’s Messenger ﷺ said;

((مَنْ خَرَجَ مِنَ الطَّاعَةِ، وَفَارَقَ الْجَمَاعَةَ فَمَاتَ، مَاتَ مَيِّتَةً

جَاهِلِيَّةً...))

“He who rebels against the ruler and deserts the Jama’ah, his death would be that of the days of Jahiliyyah.” [Narrated by An-Nasa’i from Abu Hurairah] It is therefore, a decisive prohibition, for it considers the death of he who disobeys and rebels against the Imam as a death of Jahiliyyah, indicating that it is a decisive prohibition. The *Abadith* thus serve as evidence for the prohibition of rebellion.

However, one case is excluded which is expressed in the first and second Hadith, not establishing the prayer, and not praying. It is also expressed in the third Hadith by the flagrant disbelief. The non-establishment of prayer and the non-performing of prayer, that is, ruling by other than what Allah ﷻ has revealed, in other words to rule by the rules of Kufr, a matter which would undoubtedly mean the appearance of flagrant disbelief. The

((كُفْرًا بَوَاحًا))

“flagrant disbelief”, that came in the Hadith is a description that applies on everything that is considered as flagrant Kufr. So, if flagrant Kufr of which we have proof from Allah ﷻ has appeared, we should rebel against it. Whether this was ruling by the laws of disbelief, that is by other than what Allah has revealed, or he was not ruling by the laws of disbelief, but remained silent about apostasy against Islam and allowed the apostates to display openly their disbelief or anything similar. All this would be flagrant disbelief. This is general and includes any type of flagrant disbelief. This is the exception (mentioned in the *Abadith*): appearance of the clear disbelief, so if this occurs then rebellion becomes obligatory.

The indication in these *Abadith* regarding the obligation of rebellion against the rulers in this case is reflected in the fact that the Messenger of Allah ﷺ has forbidden us from declaring war on them, fighting against them and disputing with them over their authority, and he excluded this case, which means it is excluded from the rule of prohibition. This means that it becomes an order that we need to fulfil. The indicative meaning (Mafhoom) of the *Abadith* means the order to declare war on the ruler, fighting against him and disputing with him over his authority, if such case occurred. The indicative meaning (Mafhoom) is equal to the literal meaning in terms of its proof on the rule. It therefore serves as evidence indicating that the legislator has ordered the Muslims to declare war on the rulers, to fight against them and dispute with them over their authority if the open Kufr emerged in their ruling. As for the *Qareenah* (indication) that this order is decisive, this is because the subject matter of this order was emphasised by *Shari’ah*. The Legislator has made ruling by Islam *Wajib* (obligatory) and not *Mandub* (recommended). The emergence of flagrant disbelief has been forbidden by *Shar’a*, and is not merely Makruh (undesirable). The subject matter of the order thus serves as a *Qareenah* that the order is decisive. The rebellion against the ruler in this exceptional case is thus not only permitted but actually an obligation upon the Muslims.

However, it has to be stressed that what is intended by the emergence of the flagrant disbelief, is the disbelief on which we have decisive evidence proving that it is an act of disbelief. The Messenger of Allah ﷺ did not stop at saying

((كُفْرًا بَوَاحًا))

“flagrant disbelief”, but he went on to say

((عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بُرْهَانٌ))

“on which you have a Burhan (proof) from Allah.” The word Burhan is only referred to the decisive evidence. The presence of clear-cut evidence proving flagrant disbelief is one of the conditions of rebellion. If there were doubts about it not being an act of disbelief, or if there was a *Zanni* (probable) evidence about it being an act of disbelief even if the evidence was correct, then the rebellion would be unlawful, as the

rebellion is only allowed if there were a clear cut evidence that it is an act of disbelief.

What is thus meant by flagrant disbelief is the type of disbelief over which there is no doubt and over which conclusive evidence has proved that it is disbelief. If the rulers ordered an action or conduct that carried a doubt, this is not an act of disbelief and it would be unlawful to rebel against him under the pretext that there was flagrant disbelief. This is due to the presence of doubt. For instance, if the ruler ordered the teaching of the theory of dialectical materialism at universities, or the teaching of other doctrines of disbelief, and one thought that the teaching of doctrines of disbelief would lead to disbelief he must in this case obey the ruler and study such doctrines. It would be forbidden to rebel against the ruler under the pretext that flagrant disbelief has been perpetrated. The ruler would have evidence that it is permitted to acquire information about the doctrines of disbelief, for the Qur'an has mentioned them, where Allah ﷻ has addressed them and refuted them.

It can be seen that everything that has evidence or a probable evidence that it is not disbelief and there is an evidence or a probable evidence that it is from Islam and the ruler ordered it or performed it, then it would not be considered as the rules of disbelief, nor emergence of flagrant disbelief. It would not be included in the exception and it would be unlawful to rebel against the ruler in such a case, rather to obey him would be obligatory.

Establishing Political Parties is Fard Kifayah

Individuals carry the duty of holding the rulers accountable, which has been ordered by Allah ﷻ, in their capacity as individuals and by groups and parties in their capacity as groups and parties.

In addition to ordering the Muslims to invite to the Good (Al-Khair), enjoin the *Ma'ruf* and forbid the *Munkar* and to hold the rulers accountable, Allah ﷻ has also ordered them to establish political parties from among themselves. These political parties would carry out, as groups, the call to the Good, that is, to Islam, to enjoining *Ma'ruf*, to forbid the *Munkar* and to hold the rulers accountable. Allah ﷻ says;

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ﴾

“Let there arise from amongst you a group which calls to the good, enjoins *Ma'ruf* and forbids *Munkar*.” [TMQ Al-'Imran: 104]

This means that the Muslims should establish a group from among themselves, which would have the quality of a group and would perform two actions. These are the call to Islam and to enjoin *Ma'ruf* and forbid *Munkar*.

This command of establishing a group is decisive because the task that the verse commands the group to perform is an obligation that Muslims must perform as confirmed by the numerous *Ayaat* and *Abadiith*. This serves as a *Qareenah* that the command of establishing a group is decisive. The command mentioned in the verse is thus also decisive. It is a duty of sufficiency upon Muslims. If it is performed by some of them, others would be exempted, as it is not an individual duty. Allah ﷻ has ordered the Muslims to establish from among themselves a group to carry out the duty of calling to the Good, to enjoin *Ma'ruf* and forbid *Munkar*. He ﷻ did not command all the Muslims, in the verse, to carry out such a duty.

He only ordered them to establish a group that carries out that duty. The order is thus focussed on the establishing of a group and not on the performing of the two tasks.

The two tasks just determine the duty of the group that has to be established and it is thus a description of the nature of the group.

The group, in order for it to carry out its duty as a group and to continue as a group while carrying out its duty, should fulfil certain requirements.

What makes it a group is the presence of a bond that links all its members. They thus form a single body, like a bloc. Without this bond the group that Allah ﷻ has ordered to be established would not be working as a group. What maintains it, as a group that functions properly is the presence of an Ameer whose obedience is obligatory. The *Shar'a* ordered every group of three people or over to appoint an Ameer over it. The Messenger of Allah ﷺ said;

((وَلَا يَحِلُّ لثَلَاثَةِ نَفَرٍ يَكُونُونَ بِأَرْضٍ فَلَاةٍ إِلَّا أَمَرُوا عَلَيْهِمْ أَحَدَهُمْ ...))

“It would be forbidden for three people who are in an open country, not to appoint one from among them as Ameer.” [Narrated by Ahmed from ‘Abdullah bin ‘Amru]

These two qualities, the presence of a bond among the group and the presence of an Ameer who must be obeyed, indicate that a group that has a bond and an Ameer who must be obeyed must be established when Allah ﷻ says;

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ﴾

“Let there arise from amongst you a group.” [TMQ Al-’Imran: 104] The group, or the bloc, or the party, or the association or any other name used to refer to a group, would fulfil the requirements of a group and maintain it as a group at work. This indicates that the verse orders the founding of groups, or parties, or blocs, or organisations or the like.

The order to establish a group is an order to establish political parties. This is deduced from the fact that the verse has determined the duty of this group that is the call to Islam, enjoining the *Ma'ruf*, and forbidding the *Munkar*. The duty of enjoining *Ma'ruf* and forbidding *Munkar* is general and not restricted. It therefore includes the rulers and this implies holding them accountable. The holding of the rulers accountable is a political task performed by the political parties and it is the most important task of the political parties.

Thus the verse indicates the duty of establishing political parties which would call to Islam, enjoin *Ma'ruf* and forbid *Munkar*, and would hold the rulers accountable for their actions and conduct.

The verse also indicates that the parties should be Islamic, be based on the Islamic ‘aqedah and adopt the divine rules. It is forbidden for these parties to be communist, socialist, capitalist, nationalist, or parties calling for democracy, secularism, masonism, or to be founded on anything other than the Islamic ‘aqedah, or adopting other than the divine rules. This is because the verse has determined the quality of these parties by way of determining their tasks. These tasks are the call to Islam, enjoining *Ma'ruf* and forbidding *Munkar*, and any party that performs such tasks must carry Islam and be founded on the basis of Islam. Any group founded on a communist, socialist, capitalist, democratic, secular, masonic, nationalist, patriotic, or regional basis would not be founded on an Islamic basis, nor carrying Islam, nor adopting the rules of Islam. Such a party would rather be founded on a basis of disbelief and structured around concepts of disbelief.

It is thus forbidden for the Muslims to gather on the basis of communism, socialism, capitalism, democracy, secularism, masonism, patriotism, nationalism or any basis other than Islam.

These parties must be overt and not secret. The call for the Good and enjoining *Ma'ruf* and forbidding *Munkar*, as well as holding the rulers accountable and the work towards the seizing of power via the Ummah should be carried out openly and explicitly and not confidentially and secretly, in order to achieve the purpose demanded of it.

These parties should not carry out physical activities. They should call

to Islam verbally and enjoin *Ma'ruf* and forbid *Munkar* verbally. Their styles must be peaceful; they should not take up arms, nor use violence. This is because the use of force towards the ruler is forbidden, and the *Ahādith* have stressed this. Enjoining *Ma'ruf* and forbidding *Munkar* as well as holding the rulers accountable can thus be carried out without the use of force. The styles and means must be peaceful. It is forbidden to use force and confront the ruler with weapons except in case he showed the flagrant disbelief of which we have proof from Allah ﷻ, as mentioned in the Hadith of 'Ubadah Ibnus-Samit;

((وَأَنْ لَا نَنَازِعَ الْأَمْرَ أَهْلَهُ قَالَ: إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا

عندكم من الله فيه برهان))

“And not to dispute with the people their authority unless you witness an act of flagrant disbelief about which you have proof from Allah.”

The Guarantee of the Implementation of Islam

The natural guarantee for implementing Islam, carrying of its Da'wah, continuity of its implementation and the perfection of this implementation is the *Taqwa* of the ruler and the concentration of this *Taqwa* within himself. This is because the *Taqwa* of Allah by the ruler makes him more concerned about Islam than his concern for his own life and his own needs. It also generates in him the sensitive feeling that makes him remember Allah within himself every time he undertakes an action, and fear Allah regarding every one of his conducts.

If the ruler lost the *Taqwa*, then he would have lost the natural guarantee for the implementation of Islam, improving its application and the continuity of this application, and he would have lost the guarantee to carry the Islamic *Da'wah*. Since it is possible for the *Taqwa* to elude the ruler, then there must be a physical means that compels him to implement (Islam) upon the land and has the authority to establish in his place the ruler who implement Islam and carries its *Da'wah*. This practical means is the Ummah. Therefore it is obligatory upon the Islamic Ummah, if she saw an unjust ruler, violating the sanctity of Allah, breaking the covenant of Allah, opposing the *Sunnah* of Rasool Allah, treating the servants of Allah with sin and transgression, she must challenge him by word and by action, or change him. In order that the Ummah undertakes this duty, she must be characterised with the *Taqwa* of Allah, because the fear of the Ummah from Allah generates the concern about Islam and its implementation. This obliges her to account the ruler about his actions, so she argues/discusses with him and accounts him whenever she sees from him any shortcomings in the implementation or an attempt to deviate from the *Abkam* (rules) of Islam, or misapplies the systems of Islam. By such means, the application of Islam continues as well as the improvement of its application can follow.

However the Ummah—which is the practical means in the *Dunya* to implement Islam through her watching over and accounting the ruler—needs a correct structure to be established within her. This correct structure should be based on Islam, distinct in its deep understanding and its great fear of Allah. This is because it is established on one basis, which is the Islamic ‘aqedah, and works to culture the people with the concentrated Islamic culture (*Thaqaafah*). It is a culture that broadens the scope of mind, and strengthens the comprehension, and purified the soul; for it links the emotions with the thought, and it generates harmony between the thoughts and the emotions. This makes of the Muslim the required Islamic personality. Once this structure was established in accordance with this personality, it would be the means to mould the Ummah. This is because Islam purifies her thoughts, and moulds her in one thought and thus drives her to one objective, where she lives for its sake and carries the *Da’wah* to it. Then she would be continually vigilant about the ideology that she carries and would be well aware of it. What awakens her is this structure that lives for the sake of the ideology, for the sake of the *Da’wah* to it and for the sake of the implementation of this ideology and the continuity of its implementation.

This structure is the ideological party that emerges from the Ummah. In other words, it is the party that is established on the basis of Islam, and makes Islam its intellectual leadership, which the party carries in the Ummah so that she understands Islam, and it carries the *da’wah* to Islam everywhere so that people embrace it. Therefore it is a *hizb* of *da’wah* that undertakes no action other than the *da’wah*. This is because action in the other areas is the function of the state, and not the function of the *hizb*.

Once the *hizb* was established and led the Ummah it becomes the watchful eye over the state, because it is the Ummah or the representative of the Ummah. It leads the Ummah and makes her carry out her duty, which is to argue/discuss with the state and account it, challenging the state with words, or actions, or even to change it if a danger to Islam is feared from it.

It would be difficult for the Ummah to debate with or account the state without having a *hizb* that holds the post of her leadership before the state. This is because there are many difficulties before her that she

can’t overcome except by the presence of a unified leadership represented in a structure and not in an individual or individuals. Therefore, it is necessary for an ideological and political *hizb* to be established in the Ummah. Its only work is to carry the Islamic *Da’wah* and its only method for carrying the *Da’wah* is the political way. Thus the emergence of this *hizb* is inevitable, for it is the practical means which leads the Ummah and guarantees—through its leadership for the Ummah—the performance by the state of its duty in the best manner, which is the carrying of the Islamic *Da’wah*, the application of Islam and the continuity of this application. It is also the practical means to prevent its misapplication.

The structuring of the Rasool ﷺ of the Muslims around Islam was evident in the house of Al-Arqam, and then the structure included all the Sahabah. Thus they were the block that emerged among the Muslims and took the responsibility of carrying Islam practically, although all the Muslims used to carry the responsibilities of Islam in general manner. It was reported that Rasool Allah ﷺ passed away leaving behind sixty thousand of the Sahabah. These were the Islamic bloc, or the Islamic *Hizb* that carried the responsibility of Islam practically. Otherwise the Rasool ﷺ passed away while the Muslims were many times more than that number (of the *Sahabah*). Then the time of the *Sahabah*, the *Tab’een* and the *Tab’ee at-Tab’een* ended, the *Hizb* disappeared. So weakness started to creep into the souls of the rulers, for there was no *hizb* that leads the Ummah to watch over them, and argue/discuss with them and account them (the rulers). This continued until misapplication of Islam took place. Therefore the true guarantee for the application of Islam, the carrying of its *Da’wah* and the betterment of its application is the Islamic and political *Hizb*.

