

**The Draft Constitution  
or the Necessary Evidences for it**

**000 000**

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Dar Al-Ummah

بسم الله الرحمن الرحيم

All praise is due to Allah (swt) and peace and blessings upon our Master Muhammad ﷺ, the seal of the Prophets, and upon his family, and may the pleasure of Allah (swt) be upon all of his companions.

000 000 published a constitution which it produced at its inception, distributed it to the people and printed within its books in 1374 Hijri (1955 CE). Then, in light of the discussions taking place regarding the current events and in anticipation that the Islamic State will be practically established and that the party will assume ruling practically, some amendments were made to it built upon the strength of *Shari'ah* evidence. It was then released to the people separately in an independent booklet in 1378 Hijri (1959 CE). It then became necessary to lay down the premise for the constitution which would clarify the *Shari'ah* evidence for each article from its various articles in order to publish what is conventionally known as the incumbent reasons for the basic law, i.e. for the constitution. This is in accordance with what was mentioned in the book "The adopted concepts of 000 00". This book will serve to increase the confidence of the Muslims, in particular the pure and the righteous amongst them, that these articles are *Shari'ah* rules; that the constitution is a pure Islamic constitution; that the opinions, thoughts and rules within it are exclusively Islamic opinions, thoughts and rules; that there is nothing within it that is not Islamic, that it is not influenced by anything non-Islamic and that it does not rely upon anything other than the sources of Islam and its texts.

So, here we present to all the people the premise of the constitution, or the incumbent reasons for it, asking Allah (swt) to accept this action which we carried out seeking His (swt) pleasure, to bring about the day that this constitution will be enacted soon, to inspire the Muslims to work for the return of the authority of Islam, to raise the Islamic flag by the establishment of the *Khilafah* and the rule by what Allah revealed, and to convey the call to Islam (*Da'wah*) to the whole world and through *Jihad* in the Path of Allah (swt) in order that the Word of Allah (swt) will be Most High.

Dhul-Hijja 1382 Hijri

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## **The Draft Constitution or the Necessary Evidences for it**

### **General Rules**

#### **Article 1**

**The Islamic belief ('*Aqidah*') constitutes the foundation of the state. Hence, nothing is permitted to exist within its entity, its structure or its accountability or any other aspect connected to it, unless the Islamic '*Aqidah*' is its basis. At the same time, the Islamic '*Aqidah*' acts as the basis of the constitution and *Shari'ah* laws; thus, nothing related to the constitution or to the laws is permitted to exist unless it emanates from the Islamic '*Aqidah*'.**

#### **The explanation and the clarification of the evidences**

The state comes into being by the emergence of new ideas upon which it is established. The authority (the governing of people's affairs and the management of their issues) in the state changes when the new ideas change, since if these ideas turned into concepts (i.e. if their meaning was perceived and their credibility was established), they would influence man's behaviour. This behaviour would then proceed according to these concepts. Thus, man's viewpoint about life changes, and according to its change, his viewpoint towards the interests also changes. The authority is simply the guardianship of these interests and the supervision of their management; thus the viewpoint about life is the basis upon which the state is built and it is the basis upon which the authority is established. However, the viewpoint about life is generated by a specific thought about life. Hence, this thought about life becomes the basis of the state and the basis of the authority.

Since the specific thought about life is embodied in a host of concepts, criteria and convictions, this host of concepts, criteria and convictions is considered a basis. The authority looks after peoples' affairs and supervises the management of their interests according to this host of concepts, criteria and convictions. Therefore, the basis is a host of thoughts and not just one single idea. It is this host of thoughts in its entirety that generated the viewpoint about life, and consequently the viewpoint towards the interests was established and the authority set about managing them according to this viewpoint. Therefore, the state was defined as being an executive entity for a host of concepts, criteria and convictions that a group of people had adopted.

This is regarding the state from the fact that it is a state i.e. from the fact that this state is the authority that looks after the interests of people and supervises the management of these interests.

However, this host of thoughts upon which the state is founded i.e. the host of concepts, criteria and convictions could either be built upon a fundamental thought or not built upon a fundamental thought. If it were built upon a fundamental thought, it would be solidly built with strong pillars and a firm entity; since it would rest upon a fundamental foundation. This is so because the fundamental thought is the thought that has no other thought behind it, and that is the intellectual '*Aqidah*'. In such a case, the state would be built upon an intellectual '*Aqidah*'. On the other hand, if the state were not built upon a fundamental thought, this would ease its destruction and it would not be difficult to demolish its entity and then usurp its authority. This is because it has not been built upon one intellectual '*Aqidah*' upon which the state was established. Therefore, it is essential that in order for the state to be a strong entity, it must be established upon an intellectual '*Aqidah*' from which ideas that the state was founded upon emanate i.e. an intellectual '*Aqidah*' from which the host of concepts, criteria and convictions that represent the idea of the state regarding life emanate and consequently the viewpoint of this state towards life and this is what produces its viewpoint towards the interests.

The Islamic State is built solely upon the Islamic '*Aqidah*' because the host of concepts, criteria and convictions which the *Ummah* (collective of Muslims) has adopted emanate solely from an intellectual '*Aqidah*'. The *Ummah* has first of all adopted this '*Aqidah*' and embraced it as a conclusive '*Aqidah*' based on decisive evidence. Hence, this '*Aqidah*' was its comprehensive idea about life and accordingly its viewpoint about life was shaped and based upon it and its viewpoint towards the interests was derived from it. The *Ummah* also took the host of concepts, criteria and convictions from it and therefore the Islamic '*Aqidah*' is the basis of the Islamic State.

Additionally, the Messenger of Allah ﷺ established the Islamic State upon a specific basis; therefore this very basis must be the basis of the Islamic State in every era and in every location. When the Messenger of Allah ﷺ established the authority in Madinah and assumed the rule over it, he established it on the basis of the Islamic '*Aqidah*' from the very first day and the verses of legislation had not been revealed yet. Hence, the Messenger of Allah ﷺ made the *Shahadah* (testimony) of "***There is no god but Allah and Muhammad is the Messenger of Allah***" as the basis of the Muslims' life and of the relationships between people as well as the basis for removing grievances and settling disputes. In other words, it was the basis of all aspects of life and the basis of authority and government. He ﷺ did not stop at that; rather, He (swt) also legislated for *Jihad* and made it an obligation upon the Muslims in order to carry this '*Aqidah*' to all people. Abu Dawud reported on the authority of Abu Hurayrah that the Messenger of Allah ﷺ said: "***I have been ordered to fight people until they profess that there is no god but Allah. If they said it, their lives and their wealth would be inviolable to me, except that which is by right and their account is with Allah***" (Agreed upon, text used from Bukhari)

The Messenger of Allah ﷺ also made the protection of the continued presence of the '*Aqidah*' as a basis for the state an obligation upon the Muslims and he ﷺ ordered the Muslims to brandish the sword and to fight if the flagrant *Kufr* (disbelief) were to become apparent; in other words, if the '*Aqidah*' ceased to be the basis of authority and rule. The Messenger of Allah ﷺ was asked about the tyrant rulers "the most evil of the leaders": "***Do we challenge them with the sword?***" He ﷺ replied "***No, as long as they continue to establish prayer amongst you.***" (Muslim), and he ﷺ made the *Bay'a* (pledge of allegiance to the ruler) based on the Muslims' obedience to the people in authority unless the Muslims witness a flagrant *Kufr*. In the narration of Auf Bin Malik regarding the evil leaders "***It was said O Messenger of Allah – do we not challenge them with the sword? And he ﷺ replied: "No as long as they establish the prayer"***" (Muslim). And 'Ubadah B. Samit said in the agreed upon narration regarding the *Bay'a* "***and that we would not dispute the people in authority unless we witness a flagrant Kufr (disbelief)***" and in the narration of Al-Tabarani, the wording was: "***open Kufr***". And in a narration by Ibn Hibban in his Sahih collection, the wording was: "***unless the disobedience to Allah is flagrant***". All of this indicates that the basis of the state is the Islamic '*Aqidah*', since the Messenger of Allah ﷺ established the authority upon it, ordered the brandishing of the sword in order to maintain it as a basis for the authority and he also ordered *Jihad* for its sake.

The first article of the constitution was drafted based on the previously mentioned grounds. This article prohibits the state from having any concept, conviction or criterion that does not emanate from the Islamic '*Aqidah*'. To have the Islamic '*Aqidah*' as a nominal basis for the state would not be sufficient; rather, this basis should be reflected in every aspect related to the State's existence and in every minor or major issue. Hence, it is forbidden for the state to have any concept about life or about ruling unless it emanates from the Islamic '*Aqidah*'. The state would not tolerate any concept not emanating from this '*Aqidah*'. Therefore, it would not tolerate the concept of democracy to be adopted within the state because it does not emanate from the Islamic '*Aqidah*' and because the Islamic *Aqidah* contradicts with the concepts which emanate from it. Additionally, the concept of nationalism

would not be allowed to have any consideration whatsoever because it does not emanate from the Islamic '*Aqidah*' and because the concepts which emanate from the Islamic '*Aqidah*' abhor it, prohibit it and outline its danger. Likewise, the concept of patriotism should not have any existence, for it does not emanate from the Islamic '*Aqidah*' and because it contradicts with the concepts that emanate from the Islamic '*Aqidah*'. Furthermore, the apparatus of the State would not have any ministerial departments according to the democratic understanding and nor should there be in its government any imperial, monarchical or republican concepts for these do not emanate from the '*Aqidah*' of Islam and they contradict with the concepts emanating from it. Furthermore, it is categorically forbidden for individuals, movements or groups to account the Islamic State on other than the basis of the Islamic '*Aqidah*'. Hence, such type of accounting that is based upon other than the Islamic '*Aqidah*' would be prohibited and the establishment of movements and groups on other than the basis of the Islamic '*Aqidah*' would be prohibited. The fact that the Islamic '*Aqidah*' acts as the basis for the State makes all of this binding upon the State itself and makes it incumbent upon the citizens over which it rules. This is since its life, in its capacity as a state, as well as the life of every matter originating from it in its capacity as a state, and every action linked to it in its capacity as a state, and every relationship established with it in its quality as a state, must have as its basis the '*Aqidah*' of the State, that is the Islamic '*Aqidah*'.

As for the second issue in the article, its evidence is reflected in the fact that the constitution is the fundamental law (*qanun al-asaasi*) of the State; thus, it is a law, and the law itself is the order of the authority. Allah (swt) ordered the ruler to rule by what He (swt) revealed to the Messenger of Allah ﷺ and described the one who rules by other than what Allah (swt) has revealed as a disbeliever if he believed in what he ruled by and believed in the unsuitability of what Allah (swt) revealed to His Messenger ﷺ. He (swt) described the ruler who rules by other than what He (swt) revealed but did not believe in it as '*aassi*' (disobedient). This indicates that belief in Allah (swt) and His Messenger ﷺ must be the basis of the orders of the ruler; that is, the basis of the laws and the basis of the constitution. As for the command of Allah (swt) to the ruler to rule by what He (swt) revealed, in other words by the *Shari'ah* rules, this is established in the Book and the *Sunnah*. Allah (swt) says, "**By your God, they shall not believe until they make you judge of what is in dispute between them**" (TMQ 4:65) and "**So rule between them by what Allah has revealed**" (TMQ 5:49).

Allah (swt) has confined the State's legislation to what He had revealed and He warned against ruling by other than it. He (swt) says, "**Whoever rules by other than what Allah has revealed, they are the disbelievers.**" (TMQ 5:44). Also, the Messenger of Allah ﷺ said in an agreed upon *Hadith*, "**Whoever introduces into our matter (Islam) something that is not in it, then it is rejected**" (Agreed upon, text from Bukhari), and in the narration in Muslim "**something that is not from it**", and in the narration from Ibn Hazm in *Al-Muhalla* and Ibn 'Abd Al-Barr in *Al-Tamhid* "**Every action which is not based upon our order, it is rejected**". This indicates that the legislation of the State must be confined to what emanates from the Islamic '*Aqidah*'; these are the *Shari'ah* rules which we certainly believe that Allah (swt) has revealed to the Messenger of Allah ﷺ, whether their revelation were explicit; by stating that it is the rule of Allah (swt) and it is reflected in the Book, the *Sunnah* or the *Sahabah* (companions of the Prophet) unanimously consented that it is the rule of Allah (swt), or whether their revelation was implicit; by saying this is an indication of the rule of Allah (swt) taken by way of analogy whose '*Illah*' (reason) is a *Shari'ah Illah*. This is why the second issue has been drafted in the article.

In addition, since the actions of the worshippers must be confined to the address of the Legislator (swt), their governing should therefore be from Allah (swt), and the Islamic *Shari'ah* came to address all the actions of people and all of their relationships, whether these relationships were with Allah (swt), with themselves or with other people. Hence, there is no place in Islam for people to enact laws from themselves in order to govern their relations for they are restricted to the laws of *Shari'ah*. Allah (swt) says "**Whatever the Messenger brought you take it; and whatever he forbade you abstain from it.**" (TMQ 59:7). He (swt)

also says: ***“It is not fitting for a believer, man or woman, when a matter has been decided by Allah and His Messenger, to have any option about their decision.”*** (TMQ 35:36). The Messenger of Allah ﷺ said: ***“Truly Allah has commanded the obligations, so do not neglect them; He also prohibited certain things, so do not violate them and He imposed certain limits, so do not transgress them.”*** (extracted by Al-Daraqutni from Abi Tha’labah, and confirmed as *Hasan* by Al-Nawawi in *Al-Riyadh Al-Salihin*). He ﷺ also said: ***“Whoever introduces into our matter (Islam) something that is not in it, then it is rejected”*** (Agreed upon, through Aaisha (ra) and the wording is from Muslim).

Therefore, it is Allah (swt) who legislated the rules, not the ruler, and it is He (swt) who obliged people and obliged the ruler to adhere to them in their relations and in their actions, restricted them to these rules and prohibited them from following anything else. Due to this, there is no scope for man to lay down laws to govern peoples’ relations and there is no place for the ruler to force people or to give them the choice to follow principles and rules laid down by man to govern their relations.

## **Article 2**

***Dar Al-Islam* (Islamic Abode) is the territory where the rules of Islam are implemented and its security is upheld by Islam. *Dar Al-Kufr* (abode of disbelief) is the territory where the rules of Kufr are implemented or its security is upheld by other than the security of Islam.**

*Dar* has several meanings:

Linguistically: “abode”, such as His (swt) words: ***“So We caused the earth to swallow him and his abode place”*** (TMQ 28:81) and “way-station”, and every place that a people settle is their *Dar*. Such as His words: ***“So the earthquake seized them and they lay (dead), prostrate in their homes”*** (TMQ 7:91), and it means: “city”. Sibawayh stated: “This *Dar* is a beautiful city and “abode and place” such as His words: ***“And excellent indeed will be the abode (i.e. Paradise) of the Muttaqun”*** (TMQ 16:30)”. In the same manner, it metaphorically means “tribe”, such as the narration of Abu Hamid Al-Sa’adi in Bukhari from the Messenger ﷺ who said: ***“Truly the best tribe (Dar) of the Ansar is the tribe of Bani Najjar...”***

And *Dar* can be adjoined to the names of things such as His (swt) words ***“I shall show you the home (Dar) of Al-Fasiqun”*** (TMQ 7:145), ***“And excellent indeed will be the abode (i.e. Paradise) of the Muttaqun”*** (TMQ 16:30), ***“But they killed her. So he said: “Enjoy yourselves in your homes for three days. This is a promise (i.e. a threat) that will not be belied.”*** (TMQ 11:65), and His (swt) words: ***“And He caused you to inherit their lands, and their houses, and their riches”***. (TMQ 33:27). And similarly in the narration of Buraydah in Muslim where the Messenger of Allah ﷺ said, ***“...Then invite them to move from their household to that of the Muhajirin (emigrants)”*** and the narration of Salima Bin Nufail from Ahmad that he ﷺ said: ***“the centre of the believers’ abode is as-Sham”***

And it could be adjoined to meanings such as His (swt) words: ***“and caused their people to dwell in the house of destruction?”*** (TMQ 14:28). And His words: ***“Who, out of His Grace, has lodged us in a home that will last forever”*** (TMQ 35:35). And in the narration of Ali (ra) from Ibn Asakir with a *Hasan Sahih* chain, and in Tirmidhi: The Messenger of Allah ﷺ said to me: ***“May Allah have mercy upon Abu Bakr, he married his daughter to me and carried me to the abode of migration (Dar-Al-Hijrah)”***. And the narration of Ibn Abbas in Daraqutni saying: The Messenger of Allah ﷺ said: ***“If the slave leaves the abode of Shirk (Dar-Al-Shirk) before his master, then he is free, and if he leaves after him, then he is returned to him, and if a woman leaves the abode of Shirk before her husband, she can marry whom she pleases, and if she leaves after him, then she is returned to him”***



And the *Shari'ah* adjoined the term *Dar* to two words from meanings – being: Islam and *Shirk*. Tabarani has a version of the previously mentioned narration of Salima Bin Nufail in the Musnad al-Shamiyyin with the words ***“the centre of the abode of Islam (Dar Al-Islam) is ash-Sham”***. So, the word *Dar* here is added to Islam. And likewise, Al-Mawardi narrated in al-Ahkam al-Sultaniyya and in al-Hawi al-Kabir that the Messenger of Allah ﷺ said ***“Whatever is in the abode of Islam is prohibited, and whatever is in the abode of Shirk is permitted”*** in respect to the sanctity of blood and wealth in the abode of Islam...except by its right in agreement with the rules of the *Shari'ah*, and with respect to the absence of sanctity of the abode of *Shirk* (the abode of war *“Dar Al-Harb”*) in the situation of actual war, as in the rules regarding fighting and booty....in agreement with the rules of the *Shari'ah*. This division encompasses the whole world, so there is not a part from it which falls outside of either the abode of Islam (*Dar Al-Islam*) or the abode of *Shirk*, or in other words the abode of Kufr or abode of war (*Dar Al-Shirk, Dar Al-Kufr, Dar Al-Harb*).

The abode is considered an abode of Islam if it fulfils two conditions:

Firstly: that the security is upheld by the Muslims, according to the evidence that he ﷺ said to his companions in Makkah ***“Truly, Allah made brothers for you and an abode for you to be safe in”***. This abode is the *Dar al-hijrah* mentioned in the narration of ‘Ali already mentioned from Ibn ‘Asakir, and in the narration of Aisha (ra) in al-Bukhari in which the Messenger of Allah ﷺ said: ***“I have been shown the abode of your emigration”***. And the evidence that he ﷺ and his companions did not emigrate to Madinah until he ﷺ was sure about the presence of protection and security; Al-Hafiz said in *Al-Fath*, Bayhaqi narrated through a strong chain from Al-Sha’bi and Al-Tabarani connected it from the narration of Abu Musa Al-Ansari who said: ***“The Messenger of Allah ﷺ set off with his uncle al-‘Abbas to meet 70 of the Ansar at al-‘Aqabah, and Abu Umama said to him – Asad Bin Zurara – O Muhammad ask for your Lord and yourself whatever you want, then he informed us of what reward we will have. He said: I ask you for my Lord, to worship Him and do not associate anything else with Him, and I ask you for myself and my companions to accommodate use, and support us, and protect us from what you protect yourselves. They said: What is for us? He ﷺ said: Paradise. They said: What you asked for is yours”***.

And the evidence related by Ahmad from Ka’ab Bin M’alik through a *Sahih* chain, that the Messenger of Allah ﷺ said: ***“I pledge to you that you protect me from that which you protect your women and children from. So al-Baraa Bin Ma’ror took him by his hand and said Yes, by the One who sent you with the Truth, we will most certainly protect you from that which we protect our people, and so give us the pledge oh Messenger of Allah ﷺ, we are people of wars and strong disposition, and we inherit this from our forefathers”***. And in a *Sahih* narration by Ahmad from Jaber that he ﷺ said in the pledge of ‘Aqabah ***“...and to give support to me and protect me from whatever you protect yourselves, your wives and your children from when I come to you, and you will have Paradise”***. And in the *Dala’il Al-Nabuwa* by Al-Bayhaqi, with a strong, good chain from ‘Ubadah Bin Samit who said ***“And to give support to the Messenger of Allah ﷺ from that which we protect ourselves, our wives and our children when he arrives to us at Yathrib, and we would have Paradise”***.

The Prophet ﷺ refused to emigrate to any place which did not have security, power and protection. Al-Bayhaqi narrated through a *Hasan* chain from ‘Ali that the Messenger of Allah ﷺ said to the Shayban b. Tha’labah tribe: ***“You have not replied badly since you expressed the truth, and the Deen of Allah is not given support except by those who can protect it from all sides”***. This was after they had offered to support him with respect to the Arabs while excluding the Persians.

Secondly: That the rules of Islam are implemented therein. This is from the evidence of al-Bukhari from Ubada Bin Samit who said: ***“The Messenger of Allah ﷺ called us and we took the oath of allegiance to him. Among the injunctions he made binding upon us was: Listening and obedience (to the Amir) in our pleasure and displeasure, in our adversity and prosperity, even when somebody is given preference over us, and without disputing the***

*delegation of powers to a man duly invested with them except when you see clear Kufr (disbelief) which you have proof from Allah*". And listening to and obeying the Messenger of Allah ﷺ is with regards to his orders and prohibitions, in other words in respect to the implementation of laws. Another evidence is what Ahmad narrated, Ibn Hibban in his *Sahih* collection and Abu 'Ubayd in *al-Amwal* by 'Abd Allah b. 'Amru from the Prophet ﷺ who said: *"The emigration is two – emigration of the one who is settled and the nomad, as for the nomad he obeys if ordered and responds if called, as for the one who is settled they have the greater test and reward"*. The angle of inference is clear from his words ﷺ *"he obeys if ordered and responds if called"*, since the desert was part of the abode of Islam (*Dar Al-Islam*) even if it was not the abode of emigration (*Dar al-hijrah*). And accordingly with the evidence of the narration of Wathilah b. al-Asqa' in al-Tabarani, al-Haythami said through a chain whose people are all trustworthy that the Messenger of Allah ﷺ said to him *"And the emigration of the nomad is to return to your nomadity, and to listen and obey in your displeasure and pleasure, and your adversity and prosperity, even if someone is given preference over you..."* and the evidence that Ahmad narrated with a *Sahih* chain from Anas: *"I followed some youths saying that Muhammad has come, so I followed and did not see anything. Then they say – Muhammad has come, so I followed and did not see anything. He said: Until Muhammad ﷺ and his companion Abu Bakr came, and we were part of the fervency of Madinah. Then they sent a man from the people of Madinah to make the Ansar aware of them, and so they were met by about five hundred from the Ansar reaching them. The Ansar said: Proceed in safety and with authority. And so the Messenger of Allah ﷺ and his companion came from between them. And so the people of Madinah came out, including the women overlooking from their households saying which of them is he, which of them is he?"*. This narration has the evidence for both of the two conditions of security and the implementation of the laws. With respect to the security – this is proven from the presence of five hundred from the Ansar saying proceed in safety and the Messenger ﷺ confirmed their words. In the same manner he confirmed their words that the two of them would be obeyed. Accordingly the security and obedience were fulfilled in the abode of emigration (*Dar al-Hijrah*) and if they had not been fulfilled the Prophet ﷺ would not have emigrated.

These two conditions, the fulfillment of security and obedience in the implementation of the laws, were pledged upon by the Ansar in al-'Aqabah. Al-Bayhaqi narrated with a strong chain from 'Ubadah b. Samit who said *"...We pledged allegiance to the Messenger of Allah ﷺ to listen and obey when we were busy and inactive, and to spend in times of difficulty and ease, and upon enjoining the good and forbidding the evil, and upon saying the truth regarding Allah and not fearing the blame of the blamers, and upon us supporting the Messenger of Allah ﷺ whenever he came to Yathrib against whatever we protected ourselves, our wives and our sons from, and we would have Paradise. This was the pledge that we gave to the Messenger of Allah ﷺ"*. And the security is that of the Muslims, as made clear by his words *"and upon us supporting the Messenger of Allah ﷺ whenever he came to Yathrib against whatever we protected ourselves, our wives and our sons from, and we would have Paradise."*

This meaning was clear from the letter which he wrote between the Emigrants and the Ansar, and made peace with the Jews therein and made a covenant with them. This occurred in the first year of the emigration. This is from the account of Ibn Ishaq and it has been called the *sahifa*. It says: *"In the name of Allah the Compassionate, the Merciful. This is a document from Muhammad the Prophet ﷺ between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and struggled alongside them that they are one community (Ummah) to the exclusion of all men...Believers are protectors one to the other to the exclusion of outsiders...The Jews must bear their expenses and the Muslims their expenses. Each must help the other against anyone who attacks the people of this document...If any dispute or controversy likely to cause trouble should arise it must be referred to Allah and to Muhammad the Messenger of Allah ﷺ"*.

Based upon this, the abode cannot be an abode of Islam unless it fulfilled the conditions that the security was in the hands of the Muslims and that the laws of Islam were implemented, and if one of these two conditions ceased, or was not fulfilled, such as the security falling into the hands of the disbelievers or that the rule of *Al-Taghut* was implemented amongst the people, the abode would become an abode of polytheism (*Dar Al-Shirk*) or disbelief (*Dar Al-Kufr*). It is not a condition that both of these conditions are absent for the abode to transform to an abode of polytheism, rather it is sufficient that one of them is absent for that to occur. The abode being one of disbelief does not mean that all of its inhabitants are disbelievers and if the abode was one of Islam it does not follow that all of its inhabitants are Muslims. Rather the meaning of the term abode (*Dar*) here is the *Shari'ah* terminology (*Shar'ireal* meaning) in other words that the *Shari'ah* is what gives it this meaning, like the terms prayer (*Salah*) and fasting (*Sawm*) and similar from the *Shar'i* realities .

Based upon this, the term could be applied upon a land where most of the inhabitants are Christians for example, but if it was part of the Islamic State it would be referred to as an abode of Islam (*Dar Al-Islam*). This is because the rules applied therein are the Islamic laws and the security of the land would be by the security of Islam as long as it remained part of the Islamic State.

And in the same manner, any land where the majority of its inhabitants are Muslims but it was part of a State which did not rule by Islam, nor was it secured by a Muslim army but rather by that of the disbelievers, then the term abode of disbelief (*Dar Al-Kufr*) would be applied to it despite most of its inhabitants being Muslims.

So, the meaning of abode (*Dar*) here is the *Shar'i* reality (legislative meaning) without regard to where the Muslims were a majority or minority where the term is applied; rather, it is with regard to the implemented laws and the established security for its inhabitants. In other words, the meaning of abode is taken from the legislative (*Shar'i*) texts which explained this meaning, in the same way that the meaning of the word *Salah* is taken from the legislative texts which explained its meaning. And in the same manner all the *Shar'i* real meanings have their meaning derived from the legislative texts and not from the linguistic meaning of the words.

### **Article 3**

**The *Khalifah* adopts specific *Shari'ah* rules which he will enact as a constitution and laws. If he adopts a *Shari'ah* rule, this rule alone becomes the *Shari'ah* rule that must be acted upon and it becomes a binding law that every citizen must obey openly and privately.**

The evidence of this article is derived from the *Ijma'* (General Consensus) of the Companions that the *Khalifah* reserves the right to adopt specific *Shari'ah* rules. It has also been established in the same manner that it is obligatory to act upon the rules adopted by the *Khalifah*. The Muslim is not permitted to act upon any rule other than what the *Khalifah* has adopted in terms of rules even if these rules were *Shari'ah* rules adopted by one of the *Mujtahideen* (scholars of Islam). This is so because the rule of Allah that becomes duly binding upon all the Muslims is what the *Khalifah* adopts. The rightly guided *Khulafaa'* proceeded in this manner; they adopted a host of specific rules and ordered their implementation. Thus the Muslims, with all of the Companions amongst them, used to act upon these rules and to abandon their own *Ijtihad* (Islamic opinion derived from the Islamic evidences). For instance, Abu Bakr (ra) adopted in the matter of divorce a rule stipulating that the triple divorce would be considered as one divorce if it were pronounced in one sitting. He also adopted in the matter of distributing the wealth upon the Muslims a rule stipulating that wealth should be distributed equally amongst the Muslims, regardless of seniority in Islam or anything else. The Muslims followed him in this as well as the judges and the

*Walis*(governors) implemented the rules that he had adopted. When Umar (ra) took office, he adopted other opinions different to those of Abu Bakr (ra) in the same two matters; he imposed the rule stipulating that the triple divorce is considered as three and he also distributed the wealth among the Muslims according to their seniority in Islam and according to their needs rather than distributing equally. The Muslims duly followed him in this and the judges and the governors implemented the rules he had adopted. Then, Umar (ra) adopted a rule stipulating that the land conquered in war is a spoil for *Bayt al-Mal* (the State's treasury), not for the fighters, and that the land should remain with its owners and should not be divided among the fighters or among the Muslims. The governors and the judges duly complied and implemented the rule that he had adopted.

It was in this manner that all of the rightly guided *Khulafaa'* proceeded with respect to adoption of opinions, ordering people to abandon their *Ijtihad* and the rules which they had acted upon, and instead adhere to that which the *Khalifah* had adopted. So the *Ijma'* of the Companions was established on two matters; the first is the right of adoption and the second is the obligation of acting upon what the *Khalifah* adopts. Famous *Shari'ah* principles were derived based on this *Ijmaa'* of the Companions. These are: "*The Sultan reserves the right to effect as many judgements as the problems which arise*"; "*The order of the Imam resolves the disagreement*" and "*The order of the Imam is binding*".

The evidence for adopting one Islamic opinion is the fact that there are different Islamic opinions regarding one single matter; hence, in order to act upon the *Shari'ah* rule in any matter it is imperative to adopt a specific Islamic opinion for it. This is so because the *Shari'ah* rules, which represent the address of the Legislator related to the actions of the worshippers, have come in the Quran and in the narrations, and many of these can have a number of possible meanings according to the Arabic language and according to *Shari'ah*. For that reason, it is natural and inevitable that people differ in their understanding of the address of the Legislator and that this difference in understanding reaches the level of disparity and contradiction in the intended meaning. Thus, it is inevitable to have different and contradictory understandings of the same matter. Because of this, there could be a host of different and contradictory opinions in a single matter. So when the Messenger of Allah ﷺ said at the battle of Ahzab: "***None of you should pray 'Asr except in Bani Quraythah***" (recorded by Al-Bukhari through Ibn Umar), some understood that he was urging haste and so they prayed on their way to Bani Quraythah, while others understood that he ﷺ had literally ordered them to pray 'Asr in Bani Quraythah; therefore, they delayed praying 'Asr until they reached their destination. When the Messenger of Allah ﷺ heard of this, he approved both understandings, and there are many verses and narrations similar to this.

The difference of opinion in single matters makes it incumbent upon the Muslims to adopt one opinion from these various opinions since all of them are *Shari'ah* rules and the rule of Allah (swt) in one single matter regarding one person is not multiple. Therefore, it is imperative to choose one single rule from the *Shari'ah* in order to act upon. Hence, the Muslim's adoption of a specific *Shari'ah* rule is necessary and inevitable when he or she undertakes the action since undertaking the action obliges the Muslim to accomplish it according to the *Shari'ah* rule. The obligation of acting according to the *Shari'ah* rule, whether this was a *Fard* (obligatory), *Mandub* (recommended), *Haram* (forbidden), *Makruh* (despised) or *Mubah* (permitted) makes it incumbent upon the Muslim to adopt a specific *Shari'ah* rule. Therefore, it is obligatory upon every Muslim to adopt a specific *Shari'ah* rule when taking rules for actions, irrespective of whether he or she was a *Mujtahid* or a *Muqallid* (someone who follows the opinion of a scholar in an issue rather than deriving it themselves) or whether they were the *Khalifah* or other than the *Khalifah*.

With respect to the *Khalifah*, it is imperative for him to adopt a host of specific rules according to which he assumes the management of peoples' affairs. Hence, it is necessary for him to adopt certain rules pertaining to what is of a general nature to all the Muslims in terms of matters of government and authority such as *Zakat*, levies, *Kharaj* (land tax), foreign relations and everything that is related to the unity of the State and ruling.

However, his adoption of the rules is subject to scrutiny. If the *Khalifah's* managing of the people's affairs were subject to adopting specific Islamic rules, then in this case the adoption would be obligatory upon the *Khalifah*. This would be in concordance with the *Shari'ah* principle stipulating that: "*Whatever is necessary to accomplish a duty is in itself a duty*", such as the signing of treaties. However, if the *Khalifah* could manage peoples' affairs in a specific matter according to the Islamic *Shari'ah* rules without having to resort to the adoption of a specific rule in this matter, then in this case the adoption would be permitted for him rather than an obligation, such as *Nisab Al-Shahadah* (the minimum number of witnesses in a testimony). In this case, it is permitted for him to adopt or not to adopt, for in essence the adoption is permitted and not obligatory; this is so because the *Ijma'* of the Companions is that the *Imam* can adopt and there is no *Ijma'* that the *Imam* must adopt. Therefore, the adoption itself is permissible and it does not become obligatory unless the obligatory management of peoples' affairs cannot be accomplished except through adoption. In such a case it then becomes obligatory so that the duty could be accomplished.

#### **Article 4**

**The *Khalifah* does not adopt any specific *Shari'ah* rule in matters related to rituals('ibadaat) except in *Zakat* and *Jihad*, and whatever is necessary to protect the unity of the Muslims, and nor does he adopt any thought from among the thoughts related to the Islamic '*Aqidah*.**

There is a consensus of the companions that the *Khalifah* alone has the right to adopt and from this consensus the famous rules "the decision of the *Imam* resolves the disagreement" and "the decision of the *Imam* is binding" have been derived. However, it emerged from the events of Al-Ma'mun (pertaining the *Fitna* (strife) of the creation of the Quran), that adoption in the thoughts related to *Aqa'id* (beliefs, plural of '*Aqidah*) caused *Fitna* for the *Khalifah* and *Fitnah* amongst the Muslims. Therefore, the *Khalifah* deems it fit to abstain from adopting in matters related to '*Aqidah* and in rules related to rituals in order to avoid problems and to gain the consent and tranquillity of the Muslims. However, abstaining from adopting in matters of '*Aqa'id* and in rituals does not mean that it is forbidden for the *Khalifah* to adopt in them, it rather means that the *Khalifah* chooses not to adopt in them for he can either adopt or abstain from adopting. Thus, he may choose not to adopt. That is why the article stated that the *Khalifah* "does not adopt" rather than stating that the *Khalifah* is "forbidden from adopting", which indicates that he may choose not to adopt.

As for why he chooses to abstain from adopting in *Aqa'id* and in rituals, this is based upon two issues: Firstly, the hardship caused by coercing people to follow a specific opinion related to '*Aqidah* matters. Secondly, the fact that what prompts the *Khalifah* to adopt is in reality the management of the Muslims' affairs by one single opinion and preserving the unity of the State and the unity of the ruling. Hence, he adopts in matters related to the relationships between individuals and related to public matters, and he does not adopt in matters related to relationship of man with his God.

With respect to the first issue, Allah prohibited the compulsion of the disbelievers to leave their beliefs and to embrace the Islamic '*Aqidah*, forbade forcing them to leave their rituals and ordered compelling them to be restricted by other *Shari'ah* rules so, by greater reasoning, the Muslims should not be forced to leave the rules related to the beliefs as long as they remained Islamic beliefs and should not be forced to leave the rules related to rituals as long as they were *Shari'ah* rules. Also, the compulsion to leave ideas connected to beliefs is a definite cause of hardship and will inflame loyalty (to those ideas) without doubt as proven by what happened with Imams such as Imam Ahmed Ibn Hanbal in the *Fitna* of creation of the Quran. When they were subjected to beating and humiliation, they did not submit neither did

they leave what they believed in. Allah (swt) has said “(Allah) has not laid upon you in Deen any hardship” (TMQ 22:78).

The rituals are like the beliefs since compulsion upon specific rules while the person holds another opinion as the *Shari'ah* rule is a cause of distress upon the soul for it is the relationship of people with Allah and because it is bound to the '*Aqidah*'; so the *Khalifah* should not adopt in whatever causes distress upon the Muslims. However, it is not forbidden for him to do so.

As for the second issue, the beliefs and the rituals are the relationship between man and the Creator and they do not bring about relationships upon which problems spring from, as opposed to the transactions and punishments since they are the relationship between the individuals within the society and cause the occurrence of relationships from which problems result. The origin in transactions is the resolution of disputes and the essence of the *Khalifah's* adoption is to manage the peoples' affairs. Their affairs are openly managed on the part of the *Khalifah* with respect to what is between them in terms of relationships and there is no scope for this in regards to their relationship with Allah, in other words in their beliefs and rituals.

For that reason the tangible reality of adoption by the *Khalifah* is that it can only be in respect to the relationships between people in order to manage their affairs and not in the relationships between them and Allah. Consequently, the reality of adoption is that it is only in the relationships between the people and the public relationships. So, adoption in the relationship between man and the Creator, in other words, in the beliefs and rituals, contradicts the reality of adoption. Based upon this, the *Khalifah* will not adopt in what contradicts the reality of adoption. However, it is not forbidden for him to do so.

Built upon these two matters – the distress or the hardship and the contradiction of the tangible reality of adoption, the *Khalifah* does not adopt in the thoughts of the beliefs or in the rules of the rituals. However, if a clear prohibition is mentioned in the Quran and in the *Sunnah* regarding a certain belief ('*Aqidah*'), then, at that time it is adopted (prohibiting that belief) even if there is hardship and even if it contradicts the reality of adoption so as to give preference to the definite text. For example, beliefs cannot be adopted except by conviction. In a similar fashion, it can be done if managing the affairs of the Muslims necessitates collecting them upon one rule. This is based upon the texts that enjoin the protection of the congregation of Muslims and the protection of the unity of the state. As example for this are the specification for the times of Hajj and fasting Ramadan, the Eid celebrations, *Zakat* and *Jihad*.

In these issues the *Khalifah* adopts a specific *Shari'ah* rule since, with respect to the '*Aqidah*', there cannot be compulsion to leave conviction, rather adhering to what is held as conviction is enforced. This is from text which is conclusive in its narration and indication (*qati' thabut qati' dalalah*). With regards to the ritualistic issues, there is no hardship in them since they are not from that which pertains to the relationship solely between man and His Lord such as prayer, rather they are those that are connected to the relationships between people, such as the celebrations. Due to this adoption is permitted in these two circumstance regarding beliefs and rituals.

What determines whether an idea is from the '*Aqidah*' or from the *Shari'ah* rules is its *Shari'ah* evidence. So, if the evidence is an address related to the action of the servants of Allah, then, it is a *Shari'ah* rule since the *Shari'ah* law is the address of the Legislator related to the actions of the servant, and if it is not related to the actions of the servant, then, it is from the '*Aqidah*'. Additionally, the difference between the '*Aqidah*' and the *Shari'ah* rule is that what is requested to have *Iman* in and has no action requested in it, is from the '*Aqidah*', such as the stories and the information regarding the unseen. Those issues that request action are the *Shari'ah* rules. So, the following words of Allah are all from '*Aqidah*': “**Believe in Allah and His Messenger and the Book which He revealed to His Messenger**” (TMQ 4:136), “**Allah is the Creator of all things**” (TMQ 39:62), “**And mention in the book Maryam...**” (TMQ 19:16), and the words “**It is a Day whereon mankind will be like moths scattered**

*about; and the mountains will be like carded wool*" (TMQ 101:4-5). All of these are from 'Aqidah because they are not related to the actions of the servants; they are from what *Iman* is requested in, and there is no request for action in them. Also, the words of Allah: **"And Allah has permitted trade"** (TMQ 2:275), **"If they suckle the children for you, give them their due payment"** (TMQ 65:6), and His words **"and when you judge between men, judge with justice"** (TMQ 4:58) are all from the *Shari'ah* rules since they are related to the actions of the servants and they are from the issues that actions are requested in.

Based upon this, the fact that the Messenger of Allah ﷺ is the seal of the Prophets is considered from the 'Aqidah since it comes under what is requested to have *Iman* in. Conversely, the Imamate, in other words the *Khalifah* is not from the 'Aqidah since it is amongst the issues which action is requested in. The fact that the Prophet ﷺ is free from sin is considered from the 'Aqidah. However, the issue of the *Khalifah* being from Quraysh, *Ahl Al-Bayt* (family of the Prophet) or any Muslim from amongst the Muslims is from the rules of the *Shari'ah* and it isn't from the 'Aqidah since it is related to the actions of the servants and is related to the conditions of the *Khalifah*. In this manner, everything that is not connected to the actions or is requested to have *Iman* in is from the 'Aqidah, but what is from the actions of the servants or what is requested to be acted upon is considered to be from the *Shari'ah* rules.

The reality of 'Aqidah is that it is a fundamental thought; the meaning of it being an 'Aqidah is that it is taken as the fundamental criteria to measure anything else; therefore if the idea was not a fundamental one, then it would not be considered 'Aqidah. Also, 'Aqidah is the comprehensive thought regarding the universe, man and life, what came before the life of this world and what will come after it and the relationship between life and what came before it and what will be after it. This definition is for every 'Aqidah and is applied upon the Islamic 'Aqidah. The definition also includes the unseen within it. Accordingly, every thought from the ideas of this comprehensive thought is from the 'Aqidah. So, everything which is related to Allah, the Day of Judgement, the creation of the universe and the like is part of the 'Aqidah, but everything which has no relation with that is not considered from the 'Aqidah.

## **Article 5**

**All citizens of the Islamic State enjoy the *Shari'ah* rights and duties.**

## **Article 6**

**The State is forbidden to discriminate at all between the individuals in terms of ruling, judiciary and management of affairs or their like. Rather, every individual should be treated equally regardless of race, *Deen*, colour or anything else.**

These two articles have been drafted in order to explain the rules pertaining to those who carry the Islamic citizenship irrespective of whether they were Muslims or the people of *Dhimmah* (non-Muslim citizen of the Islamic State). As for the Muslims, this is due to the fact that the Messenger ﷺ has denied the Muslims who live outside the Islamic State and who do not hold the Islamic citizenship from the rights enjoyed by the State's subjects. On the authority of Sulayman Ibn Buraydah on that of his father who said: **"Whenever the Messenger of Allah (saw) appointed anyone as Amir of an army or an expedition, he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He (saw) would say: "Conquer in the Name of Allah and in the Way of Allah. Fight against those who disbelieve in Allah. Conquer and do not embezzle the spoils; do not break your pledge and do not mutilate the dead bodies. Do not kill the children and if you encountered your enemies who are polytheists, invite them to three courses of action. If they respond to any of these, then accept it from them and withhold yourself from doing them any harm. Invite them to Islam; if they respond to you accept it from them and desist from fighting**

***them. Then invite them to migrate from their abode to the abode of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims, but they will not get any share from the spoils of war or Fai' except when they actually perform Jihad with the Muslims***" (Recorded by Muslim). This narration indicates clearly that the one who does not migrate to *Dar Al-Islam* will not enjoy any of the rights of citizenship even if he were a Muslim. The Messenger of Allah ﷺ invited them to come under the authority of Islam so that they may enjoy what the Muslims enjoyed and undertake the obligations which the Muslims undertook; he ﷺ said: ***"Then invite them to migrate from their household to the household of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin"***. This text stipulates that migration is required for them to have what we have and for our obligations to be upon them, in other words for them to fall under the laws. The understanding of the narration is that if they did not move they would not have what the emigrants had, in other words what they had in the abode of Islam (*Dar Al-Islam*), so this narrations explain the difference in the laws between the one who moves to the abode of the emigrants and the one who doesn't, and the abode of the emigrants was the abode of Islam with anything else being the abode of disbelief (*Dar Al-Kufr*). The individual's residence in *Dar Al-Islam* or in *Dar Al-Kufr* is referred to as citizenship. Hence, a person's citizenship means the abode which he chooses as his residence; is it *Dar Al-Islam* or *Dar Al-Kufr*? If it were *Dar Al-Islam*, then the rules of *Dar Al-Islam* would apply to it, and in this case a person would be a holder of an Islamic citizenship. If it were *Dar Al-Kufr*, the rules of *Dar Al-Kufr* would apply to it, and the person living there would not be considered as a holder of an Islamic citizenship.

The laws encompass the *Dhimmi* who lives in *Dar Al-Islam*, so they are given the rights of residency and carry the citizenship. The *Dhimmi* is the one who embraces any *Deen* other than Islam and becomes a citizen of the Islamic State while remaining upon his faith which is other than Islam. The word *Dhimmi* is derived from the word *Dhimmah*, meaning the oath. Hence, the *Dhimmi* are those to whom we give an oath to treat according to the terms of peace we made with them and to proceed in interaction with them and in managing their affairs according to the rules of Islam.

Islam has come with several rules pertaining to the people of *Dhimmah*, in which it guaranteed the rights of citizenship for them and imposed upon them its duties. Islam also outlined that the *Dhimmi* enjoy the same justice we enjoy and that they should abide by the same rules that we abide by. As for that which they enjoy in terms of justice and fairness, this is derived from the general command reflected in Allah (swt) saying: ***"And if you judge between people that you judge with justice."*** (TMQ 4:58) and in His (swt) saying: ***"And let not the hatred of others to you to make you swerve to wrong and depart from justice. Be just, that is nearer to piety"*** (TMQ 5:8) and it is also reflected in Allah (swt) saying regarding the judgement between the people of the book ***"If you judge, judge with equity between them; for Allah loves those who judge in equity"*** (TMQ 5:42).

As for abiding by that which we abide by in terms of justice, this is derived from the actions and sayings of the Messenger of Allah ﷺ. He ﷺ used to exact the same punishment upon the disbelievers and the Muslims. The Messenger of Allah ﷺ punished a Jew by killing him for killing a woman, as has been recorded in al-Bukhari from Anas Bin Malik who said: ***"A woman who went out in Madinah wearing ornaments was attacked by a Jew who threw a stone at her, so she was brought to the Prophet ﷺ barely alive, so the Messenger of Allah said to her so and so killed you, upon which she raised her head, and so he returned and said so and so killed you, upon which she raised her head, so he returned and said so and so killed you upon which she lowered her head. The Messenger of Allah called for that person and he was killed between two stones"***. He ﷺ was brought a Jewish man and woman who had committed adultery and so he stoned the pair of them as related by al-Bukhari from Ibn Umar who said ***"A Jewish man and woman who had committed adultery were brought to the Messenger of Allah ﷺ, and so he asked the Jews what you find in your book?"***



***They said our rabbis appeared red faced. ‘Abd Allah Bin Salam said Call them to the Torah O Messenger of Allah, and so they brought it and one of them placed his hand upon the verse of stoning and began to recite what came before and after it, and so Ibn Salam said to him Raise you hand, and the verse of stoning was there beneath his hand and so the Prophet ordered for the two accused to be stoned”***

It is a duty upon us to give the people of the *Dhimmah* the protection given to the Muslims, due to words of the Messenger of Allah ﷺ, ***“He who kills a covenanted person unjustly shall not find the scent of heaven; its scent is found the distance of a hundred year march”***, transmitted by Al-Tirmidhi who said it is *Hasan Sahih*. And al-Bukhari transmitted it with the words ***“whoever killed a covenanted person will not smell the scent of heaven; and its scent covers the distance of 40 years”***.

The people of *Dhimmah* enjoy the same rights as those enjoyed by Muslims in terms of managing their affairs and securing their living. It is narrated on the authority of Abu Musa Al-Ash’ari that the Messenger of Allah ﷺ said: ***“Feed the hungry, visit the poorly and free the prisoner”*** transmitted by al-Bukhari through Abu Musa. Abu ‘Ubaydah said: ***“Therefore, the people of Dhimmah are excluded from Jihad, their prisoners are freed and if they are salvaged, they return to their Dhimmah and their oath as free, and there are narrations regarding that”***. And on the authority of Ibn Abbas who said: ***“The Messenger of Allah ﷺ made peace with the people of Najran”*** and from the narration as transmitted by Abu Dawud in his *Sunan* ***“their churches would not be destroyed, and no priest of theirs would be banished and they would not be coerced away from their faith provided they did not innovate any matter and they did not deal in usury”***.

The Prophet ﷺ used to visit their sick, as recorded by al-Bukhari from Anas who said ***“There was a young Jewish boy who used to help the Prophet ﷺ who became ill and so the Prophet ﷺ used to visit him. He sat by his head and said to him – Embrace Islam, and so he looked at his father who said to him Obey Abul Qasim, and so he embraced Islam. The Prophet ﷺ left him and he said All Praises to Allah who saved him from the fire”*** which indicates that it is permitted to visit them, be courteous and sociable with them. Al-Bukhari transmitted from Amru Bin Maymun from Umar Bin al-Khattab (ra) who counselled at the time of his death ***“And I direct the Khalifah after me with this and this, and direct him that by the oath of Allah and the oath of His Messenger ﷺ, he should fulfil their oath towards them, to fight on their behalf and not to burden them with more than they could bear”***.

The *Dhimmi* should not be interfered with in terms of their faith and their rituals, for the Messenger of Allah (saw) said according to what Abu Ubaid reported in *al-amwal* through ‘Urwa who said: The Messenger of Allah ﷺ wrote to the people of Yemen: ***“He who is upon his Judaism and his Christianity, should not be coerced away from their faith”***. Custom duties are not extracted from the *Dhimmi* in the same way they are not taken from the Muslims. Abu ‘Ubayd reported in *al-Amwal* on the authority of Abdul Rahman b. Ma’qal ***“I asked Ziyad Bin Hadir – who did you used to tax? He said – we did not use to tax Muslims nor the one who had a covenant. So I said – so who did you tax? He said traders of war (people from states with no agreement) in the same way they would tax us if we went to them”***. The tax collector is the one who extracts the custom duties.

Therefore, the *Dhimmi* are subjects of the State, like any other subjects, enjoying the rights of citizenship, protection, guaranteed living and fair treatment. They also enjoy the right of being treated with kindness, leniency and clemency. They can join the Islamic armed forces and fight alongside the Muslims if they choose to do so, but they are not obliged to fight and no wealth is obliged from them except the *Jizya*, so the taxes that are obliged upon the Muslims do not apply to them. They are viewed by the ruler and the judge in the same light as the Muslims are viewed without any discrimination in terms of the management of their affairs and the implementation of the rules of transactions and the penal code upon them. Therefore, the *Dhimmi* enjoys all the rights, equally and exactly as those enjoyed by the

Muslim; he is also expected to perform all the duties incumbent upon him, such as the fulfilment of the oath and the obedience of the State's orders.

In this way it can be seen that the issue with respect to being taken care of is the citizenship of the State, irrespective of whether they were Muslim or not. It is forbidden to discriminate in any way between those who hold the Islamic citizenship, due to the generality of the evidences pertaining the ruling and judicial matters and management of affairs. Allah (swt) says: ***“And if you judge between people that you judge with justice”*** (TMQ 4:48). This is a general address that applies to all people, Muslims and non-Muslims alike. Furthermore, the Messenger of Allah ﷺ said: ***“The evidence must be submitted by the plaintiff and the oath must be delivered by the defendant who denies the charge”*** as transmitted by al-Bayhaqi with a *Sahih* chain. This is also general and it applies to Muslims and non-Muslims alike. It is narrated from ‘Abd Allah Bin Zubayr who said: ***“The Messenger of Allah ﷺ has decreed that the two disputing parties should both sit before the judge”*** reported by Ahmad and Abu Dawud and authenticated by al-Hakim. This is also general and it includes any two disputing parties, Muslims and non-Muslims alike. The Messenger of Allah ﷺ said ***“The Imam is a guardian and he is responsible for his subjects.”*** (Agreed upon by Muslim and al-Bukhari). The term *“subjects”* is general and it includes all the subjects, Muslims and non-Muslims alike. Likewise, all the general evidences related to citizenship indicate that it is forbidden to discriminate between the Muslim and the non-Muslim, between the Arab and the non-Arab or between the white and the black. Rather, all the people who hold the Islamic citizenship should rather be treated equally, without any discrimination between them either by the ruler, in terms of looking after their affairs and in terms of protecting their lives, their honour and their wealth, or by the judge in terms of equality and justice.

#### **Article 7**

The State implements the Islamic *Shari’ah* upon all those who hold the Islamic citizenship, with no difference between Muslims and non-Muslims as follows:

- (a) All the rules of Islam will be implemented upon the Muslims without any exception.
- (b) The non-Muslims will be allowed to follow their beliefs and worships within the scope of the general system.
- (c) The rule of apostasy will be implemented upon the apostates from Islam if they themselves were the apostates. As for their children, they will be treated as non-Muslims if they are born as such. Thus,, they will be treated in accordance with their current status as being either polytheists or people of the book.
- (d) The non-Muslims will be treated in matters related to foodstuffs and clothing according to their faith and within the scope of what the *Shari’ah* rules permit.
- (e) Matters of marriage and divorce will be settled among the non-Muslims according to their faith, and will be settled between them and the Muslims according to the rules of Islam.
- (f) The State will implement the rest of the *Shari’ah* rules and all the Islamic *Shari’ah* matters, such as transactions, penal codes, testimonies, ruling systems and economics among others equally upon the Muslims and non-Muslims. The State will also implement the same upon those with a covenant, the asylum seekers and all those under the authority of Islam in the same way. It implements them upon all members of society except for the ambassadors, consuls, and similar for they have diplomatic immunity.

Truly Islam has come for all people. Allah (swt) says ***“And We have sent you as a conveyor of glad tidings and as a Warner unto all mankind”*** (TMQ 34:28). Just like the disbeliever is

obligated to abide by the “*Usul*” (foundations), in other words by the Islamic ‘*Aqidah*, he is also obligated to abide by the branches i.e. the *Shari’ah* rules. As for the fact that he is obligated to abide by the rules, this is clearly mentioned in the verses of the Holy Quran, and as for the fact that he is obligated to abide by the branches, this is because Allah (swt) has clearly obligated him with some of the branches, among which are those verses commanding the disbeliever to worship Allah (swt). He (swt) says, **“O people, worship your God”** (TMQ 2:21), Allah (swt) also says **“Hajj thereto is a duty people owe to Allah”** (TMQ 3:97), and similar. Moreover, were the disbelievers not obligated to abide by the branches, Allah (swt) would not warn them against their violation, and the verses warning them against the forsaking of these branches are numerous, some of which are:

Allah (swt) says, **“And woe to the polytheists; those who do not pay Zakat”** (TMQ 41:6-7).

Allah (swt) also says, **“Those who invoke not with Allah any other god, nor slay such life as Allah made sacred, except for a just cause, nor do they commit fornication; and any that does this meets punishment”** (TMQ 25:68).

Allah (swt) also says, **“What led you into Hell-Fire? They will say we were not of those who prayed”** (TMQ 74:42-3).

The fact that the disbelievers have been obligated to abide by some of the commands and prohibitions indicates that they have been obligated to abide by all the commands and prohibitions. Furthermore, the verses which stipulate the obligation to abide by the branches are mentioned in a general term and the general term remains upon its generality unless the evidence of specification is mentioned; in this context, no evidence has been mentioned which restricts these verses to the Muslims, and so they remain general. For instance, Allah (swt) says, **“Allah has permitted trade and forbidden usury”** (TMQ 2:275), and He (swt) says **“And if they suckle your children then given them their due payment”** (TMQ 65:6), Allah (swt) also says **“Then pledge with possession...”** (TMQ 2:283), and the words of the Messenger of Allah ﷺ **“He who revives a barren land, it becomes his”** reported by Ahmad and Al-Tirmidhi with a *Sahih* chain through Jabir. The Messenger of Allah ﷺ also said **“The hand is liable for what it has taken until it is given back”** transmitted by Ahmad with a *Sahih* chain through Samurah Bin Jandub. There are many other rules to this effect. This serves as clear evidence that they are obligated to abide by the branches.

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Furthermore, the commandment to abide by the foundation is in itself a commandment to abide by the branch, and the commandment to abide by the whole is a commandment to abide by the part; so, the obligation to pray entails the obligation of the prostration, the recitation, the standing and so on. The disbeliever is commissioned to abide by the foundation; thus, he is obligated to abide by the branch. As for the non-acceptance of some branches from the disbelievers, such as prayer and fasting, this is because the embracing of Islam is one of the conditions of acceptance; thus, they would not be accepted until the condition is fulfilled. However, this does not mean that it is not obligatory upon them. As for the fact that they are not commanded to perform certain branches that embracing Islam is not a condition for such as *Jihad* this is because *Jihad* is fighting the disbeliever for their disbelief, and the *Dhimmi* is a disbeliever. Thus, it is inconceivable for him to fight the disbelievers due to their disbelief; otherwise, it would be permitted for him to fight himself. Therefore, he is not obligated to perform *Jihad*. However, if he accepts to fight a disbeliever, it will be accepted of him. However, he will not be forced to perform *Jihad* and this does not mean that he is not commanded by Allah (swt) to perform it.

This is from the fact that they are obligated to abide by the rules of Islam. As for the fact that the ruler should implement all the rules of Islam upon them, this is reflected in Allah's (swt) saying with respect to the People of the Book **“So judge between them by what Allah has revealed and do not follow their desires”** (TMQ 5:48).

Allah (swt) also says with respect to them **“And judge between them by what Allah has revealed and do not follow their desires”** (TMQ 5:49).

Allah (swt) also says ***“We have revealed the Book to you with the Truth, so that you judge between people by what Allah has shown you”*** (TMQ 4:105).

This is a general address that includes Muslims and non-Muslims alike, because the word ***“people”*** in ***“so that you may judge between people...”*** is general. As for His (swt) saying ***“They are fond of listening to falsehood and devouring anything forbidden. If they do come to you, either judge between them or decline to interfere”*** (TMQ 5:42), this means that if one were to come to the Islamic State from abroad seeking the arbitration of the Muslims in a dispute with another disbeliever or other disbelievers, the Muslims in this case are given the choice of either judging between the disputing parties or declining to do so. This is since the verse was revealed concerning those whom the Messenger of Allah ﷺ had made peace with and signed treaties with from among the Jews of Madinah who were living as tribes and they were considered as other states. They were not under the authority of Islam; rather, they were other states. Thus, he ﷺ had signed treaties with them. However, if they were under the authority of Islam, such as the *Dhimmi*, or if they came as asylum seekers, it would be forbidden to judge between them by other than Islam. The one who refused to refer to the rule of Islam, would be forced to by the ruler and the ruler would punish him for it.

It is forbidden to conclude an indefinite *Dhimma* oath with the disbeliever unless two conditions are fulfilled. Firstly, that *Dhimmi*s adhere to paying the *Jizya* each year, and secondly that they abide by the rules of Islam i.e. the acceptance of what is enforced upon them in terms of executing orders and abstaining from prohibitions. This is due to the words of Allah (swt): ***“Until they pay the Jizya with willing submission and feel themselves subdued.”*** (TMQ 9:29), meaning until they submit to the rules of Islam. In addition, the Messenger of Allah ﷺ used to implement the rules of Islam upon them. Al-Bukhari transmitted through Ibn Umar: ***“The Jews came to the Prophet ﷺ with a man and woman from amongst them who had committed adultery and so he stoned them”***, and Al-Bukhari reported through Anas: ***“The Prophet killed a Jew for the sake of a woman who was killed for her ornaments”***. Those Jews were subjects of the Islamic State. Also, the Messenger of Allah ﷺ wrote to the people of Najran who were Christians saying: ***“He who deals in usury from amongst you, shall be denied the Dhimma”*** reported by Ibn Abu Shaybah through al-Shu’bah (*Mursal* narration). All this serves as evidence about the obligation to implement all the rules of Islam upon all of the subjects without any difference between Muslims and non-Muslims. It is on this basis that clause A of this article has been drafted.

As for clause B, the general order regarding the implementation of all the rules of Islam is mentioned in Allah’s (swt) saying ***“And Judge between them by what Allah has revealed”*** (TMQ 5:48). This general rule has been specified by *Shari’ah*; excluding the *Aqidah* they embrace, the rules which are to them a matter of faith and the rules pertaining the actions which the Messenger of Allah ﷺ has allowed them to perform. The *Aqidah* and all of these rules have been made an exception by Islam through a host of clear texts. Allah (swt) says: ***“There is no compulsion in the Deen”*** (TMQ 2:256), and the Messenger of Allah ﷺ said: ***“He who has embraced Judaism and he who has embraced Christianity should not be coerced away from their faith, and he must pay Jizya”*** transmitted by Abu Ubaid in *Al-Amwal* through ‘Urwah. Hence, any action which is considered as a matter of faith to them should not be interfered with by us and we should allow them to practise what they believe, even if this were not part of *Aqidah* matters in our *Deen*. Additionally, we should also not interfere with them in regard to any actions that the Messenger of Allah ﷺ allowed them to perform, such as drinking alcohol and getting married, within the scope of the general system. In other words, it is permitted for them to drink alcohol in their private lives but not in the general affairs where they mix with the Muslims such as the general markets and the like.

As for Clause 'C' of this article, Islam has decreed a host of rules regarding the apostate, amongst them that the apostate should be killed he or she does not repent since the Messenger of Allah ﷺ said: ***“Kill the one who changes his Deen”*** (transmitted by Al-Bukhari through Ibn Abbas). Anas reported: ***“I came to Umar who said: O Anas, what happened to the six from Bakr Ibnu Wa’il? So I said: O Amir of the believers, they were killed in the battle.”***

*Upon this Umar recited Allah's (swt) saying: "To Allah we belong and to Him we will return". So I said: "Could they have been dealt with by other than death? He said: "Yes, I would have invited them to Islam and had they refused, I would have thrown them in jail"* as reported by Al-Bayhaqi. In other words, until they repent and if they did not, they would be killed. This is because the apostate would be invited to Islam and all the means of repentance would be exhausted, and if he still refused he would then be killed. An apostate should not be killed just for apostatising due to what is narrated from Jaber: ***"A woman, Umm Marwan, apostatized so Allah ordered that she should be presented Islam, and if she repented (it is accepted) and otherwise she is to be killed"*** reported by Al-Bayhaqi and Al-Daraqutni. This narration is used by masses of *Fuqaha*; - Ibn Qudamah uses it as evidence in *Al-Mugni*, Al-Mawardi in *Al-Hawi Al-Kabir* and *Al-Ahkam Al-Sultaniyyah*, Abu Ishaq Al-Shirazi uses it in *Al-Muhadhdhab*, Al-Rafi'i in *al-Sharh al-Kabir*, al-Baghawi in *al-Tadhhib* and Ibn al-Jawzi in *al-Tahqiq*; so it is considered from the *Hasan* (acceptable authority) narrations and is acted upon – in other words he is asked to report before execution.

Rulings of Clause 'C' are all about the apostate himself; they are not about his children. However, if a Muslim apostatised from Islam and remained upon the faith to which he apostatised, for example he continued to be a Christian, a Jew or a polytheist, and he were then to have children who had the same faith, would his children be considered as apostates? And would they be treated as apostates? Or would they be considered as being of the faith they had at birth?

The answer is that the children of the apostate who are born before their father's apostasy are considered as Muslims without any doubt. However, if they were to follow their father and apostatise as well, they would be treated as apostates. If they were born after he had apostatised from a disbelieving or an apostate wife, these children would be considered as disbelievers and not as apostates; thus, they would be treated just like the people of the faith they inherited at birth. Hence, every child born after his father's apostasy from a disbelieving wife or an apostate wife, would be judged as a disbeliever since he or she would have been born from two disbelieving parents. Therefore, if the two parents became Jews or Christians i.e. from the People of the Book, he or she would be treated as the People of the Book would be treated, and if the two parents became polytheists, he or she would be treated as a polytheist. This is so because Ibn Mas'ud reported: ***"when the Messenger of Allah ﷺ wanted to execute your father (Uqbah Ibn Abi Mu'it), the latter said: "What about the children?" He ﷺ said: "Hell fire"*** (reported by Abu Dawud, Al-Hakim authenticated it, and Al-Dhahabi agreed with him). In the narration of Al-Daraqutni: ***"Hell fire for them and for their father"***. It is also the case since in *Sahih* of Al-Bukhari in the section of the people of the abode, in the book of *Jihad*, ***"The Messenger of Allah ﷺ passed al-abwa – or biwaddan – and was asked about the people of the household, the women and family of the polytheists who were killed with their fathers; he said: They are of them"***. Therefore, every child born to two disbelieving parents is considered a disbeliever and the rule pertaining to the disbelievers applies to him.

Hence, those who apostatised from Islam and became non-Islamic sects, such as the Druze, the Bahai', the Qadiani and the like, are not treated as apostates since they didn't apostatise but their ancestors were the apostates and they were therefore born with two disbelieving parents. Thus, they are judged as disbelievers and they will be treated as such. Moreover, since they have not apostatised to a faith from among the People of the Book i.e. they have not apostatised to Christianity or to Judaism, they will be therefore treated as polytheists. Hence, their slaughtered meat will not be eaten and their women will not be wedded since the non-Muslims are either considered to be People of the Book or polytheists and there is no third category. This is why the Messenger of Allah ﷺ said about the Magi of Hajar as narrated by Al-Hasan Bin Muhammad Bin Al-Hanafiyya: ***"Whoever embraces Islam then accept them, and whoever does not then impose Jizya upon them, but do not wed their women or eat their slaughtered food"*** (Al-Hafiz said in *Al-Dirayah*: "narrated by 'Abd Al-Razzaq and Ibn Abi Shaybah, it is a *Mursal* narration with a good chain"). As for

those who apostatised from Islam and became Christians - as in the case in Lebanon with the family of Shihab; this family's forefathers were Muslims and they apostatised to Christianity and their children were born as Christians - these people and their like will be treated as People of the Book.

As for Clauses 'D' and 'E', their evidence is derived from the fact that the Messenger of Allah ﷺ allowed the Jews and the Christians to drink alcohol and accepted their marriage and divorce proceedings; thus, his acceptance serves as a specification of the general rule. However, the approval of the Messenger of Allah ﷺ with regard to the disbelievers' marriage is given only when the two spouses are disbelievers, but if the husband were Muslim and if the wife were either Christian or Jew, the rules of the *Shari'ah* would then be applied upon both of them. It is not feasible for the wife to be Muslim and the husband to be disbeliever for this is unlawful. Allah (swt) says: ***"Then do not send them back to the disbelievers, they are not lawful wives for them nor are the disbelievers lawful husbands for them."*** (TMQ 60:10). Therefore, it is forbidden for a Muslim woman to marry a non-Muslim, and if she did her marriage would be unlawful.

As for Clause 'F', the evidence with respect to the implementation of all the rules of Islam is derived from all what has just been mentioned that the disbeliever is obligated to abide by the foundations and the branches, thus, he is commanded to submit to all the rules of Islam. This is general, and it includes the *Dhimmi* and the non-*Dhimmi* from among those who live under the authority of Islam. Hence, all the disbelievers who enter *DarAl-Islam* must be subjected to the rules of Islam except the *'Aqidah* matters, the rules related to *'Aqidah* matters and any action which the Messenger of Allah ﷺ allowed them to do whether these disbelievers were *Dhimmi*, under covenant or asylum seekers. However, the ambassadors and their likes are excluded from this and the rules of Islam would not be implemented upon them for they would be given what is known as diplomatic immunity. This is so because Ahmed reported on the authority of Abu Wa'il who said: ***"Ibn Nawwaha and Ibn Uthal came to the Messenger of Allah ﷺ as envoys of Musaylima - the liar - and the Messenger of Allah ﷺ said to them "Do you bear witness that I am the Messenger of Allah?" They said "We bear witness that Musaylima is the Messenger of Allah." Upon this the Messenger of Allah ﷺ "I give you security by Allah and His Messenger. If I were to kill an envoy I would have killed the two of you"*** (reported by Ahmad and declared *Hasan* by Al-Haythami). So, this narration indicates that it is not permitted to kill the envoys of the disbelievers and nor to apply the punishments (*uqubat*) upon them. However, this is exclusively applicable upon those who have the capacity of an envoy such as the ambassador and the *"Chargé d'affaires"* and the like. As for those upon whom the capacity of an envoy does not apply such as the Consul and the Commercial Attaché and the like, they would not have any immunity for they do not have the capacity of an envoy. This matter should be referred to the international convention because it is a terminological expression whose reality should be understood by way of looking into the convention and it is part of establishing the *Manat* (reality); in other words establishing whether they are considered envoys or not.

## **Article 8**

**The Arabic language is exclusively the language of Islam and it is the only language used by the State.**

The evidence of this article is derived from the fact that although all people are addressed by the Quran as Allah (swt) says ***"And We have explained to man in this Quran every kind of similitude"*** (TMQ 17:89), ***"And We have propounded for people in this Quran every kind of parable"*** (TMQ 30:58), Allah (swt) has however revealed it in Arabic and made it an Arabic Quran. Allah (swt) says: ***"an Arabic Quran"*** (TMQ 12:2) and Allah (swt) also says: ***"in the Arabic language"*** (TMQ 26:195).

Therefore, the Arabic language is the sole language of Islam because it is the sole language of the Quran and because the Quran is the miracle (*Al-Mu'jizah*) of the Messenger of Allah ﷺ. The miracle of the Quran lies in the Quran's expression with this Arabic wording; in other words with the Arabic wording and style. Although the miracle is found in both the wording and the meaning inseparably, what is meant by its miracle in meaning is not the miracle of what the Quran has brought in terms of meanings and topics for the *Sunnah* has expressed these meanings and topics and yet it is not considered a miracle. The miracle in meaning is established through the fact that the meaning is itself expressed by this wording and this style. Hence, expressing such a meaning in such a wording and in such a style is miraculous. Therefore, the miracle lies in the Arabic wording that expresses the meaning with the Arabic style. In other words, Allah's (swt) saying: ***"If you fear treachery from any group, throw back their covenant to them so as to be on equal terms"*** (TMQ 8:58) is in itself incapacitating to all people to produce something similar. Its miracle comes from the splendour in expressing these meanings with this formulation and with such a style. Thus, the miracle was the Arabic wording and the Arabic style that expressed this meaning. Therefore, the miracle in the Quran is confined in its Arabic for it is the origin of the miracle and the subject of the challenge to produce something equal to it. Hence, the Arabic language is an integral part of the Quran that cannot be separated from it. The Quran itself could not be considered Quran without it. It is therefore forbidden to translate the Quran for if it were altered it would lose its order and it would no longer be the Quran or be like the Quran; it would rather be a commentary of it, and if its commentary were anything like it then people would not have failed to produce something equal to it when they were challenged to do so. Besides, Allah's (swt) saying ***"An Arabic Quran"*** means that if it were not Arabic it could not be called Quran. Furthermore, we worship Allah (swt) with its wording; therefore, the prayer would not be correct without it since Allah (swt) says: ***"So read of the Quran as much as may be easy for you."*** (TMQ 73:20) and the Messenger of Allah ﷺ said: ***"A prayer is not accepted from he who does not recite the Fatiha of the Book in every Raka'ah"*** (agreed upon through 'Ubadah). Therefore, the Arabic language is an integral part of Islam.

As for Allah's (swt) saying: ***"This Quran has been revealed to me that I may warn you and all whom it reaches."*** (TMQ 6:19), this means: so that I warn you with what is in the Quran, and this applies to warning people with its wording and with its commentary for all of this is considered as warning. By contrast, Allah's (swt) saying: ***"Read"*** does not refer to the reading of its commentary and nor does it refer to the reading of its translation, because reading a book means reading its text, and not its translation or commentary. This is therefore not akin to warning with the Book, which means warning with its text and its contents. Besides, Allah (swt) had decreed that the warning of the Messenger of Allah ﷺ is made in Arabic as Allah (swt) says: ***"With it came down the Faithful Spirit; to your heart so that you admonish; in a clear Arabic language."*** (TMQ 26:193-5). This serves as a conclusive evidence that it is forbidden to read the *Fatiha* in prayer in other than the Arabic language, and this nullifies and refutes the argument of those who claimed that the verse in which Allah (swt) says: ***"And this Quran has been revealed to me"*** (TMQ 6:19) refers to the permissibility of reading the *Fatiha* in other than the Arabic language for those who do not master Arabic.

This is from the fact that the Arabic language being a fundamental part of Islam. As for the evidence pertaining to the fact that the Arabic language should be exclusively the official language of the State, the evidence for it is that when the Messenger of Allah ﷺ sent letters to Caesar, Kisra and Muqawqas in which he invited them to Islam, those letters were written in Arabic though they could have been translated into their own languages. Although Caesar, Kisra and Muqawqas were not Arabs and although the Messenger of Allah ﷺ wrote the letters to convey Islam to them, the Messenger of Allah ﷺ didn't write his letters in their languages. Hence, this serves as evidence that the Arabic language is exclusively the official language of the State because the Messenger of Allah ﷺ did this. Besides, the fact that the need to translate in order to convey Islam was pressing but the Messenger of Allah ﷺ did not translate serves as an indication for the obligation of restricting the State's address of people

to the Arabic language whether the addressees were Arabs or non-Arabs. Therefore all non-Arab people should learn the Arabic language and it is forbidden for the State's official language to be other than the Arabic language.

Imam Al-Shafi'i outlined in his celebrated book of *Usul* (foundations of jurisprudence) entitled *Al-Risalah* the following: "*Allah (swt) has made it an obligation upon all nations to learn the Arabic tongue following their address with the Quran and their worshipping by it*".

Therefore, all this makes it obligatory for the State to adopt the Arabic language as the exclusive official language.

However, it must be made clear that adopting the Arabic language exclusively as the State's language does not necessarily mean that the State could not use other than the Arabic language since it is permitted for the State to use other than the Arabic language in an official correspondence either for fear of distortion, to acquire vital information, to convey the call to Islam abroad or for any similar reason. This is the case because the Messenger of Allah ﷺ used Hebrew and Syriac. Hence, the ruling stipulates the sole use of the Arabic language when adopting the State's official language rather than preventing the State from using other than the Arabic language.

The question that comes to mind now is: Would it be permitted to have a written and spoken language other than Arabic in the lands ruled by the Islamic State?

The answer to this is that the speaking and the writing of other languages could either be related to the State itself, to the subjects' relationship with the State, to the subjects themselves or to individuals with one another.

If it were related to the State itself or to the State's relations, then in this case it would not be permitted for the language to be other than the language of the state (the Arabic language). This is because the Messenger of Allah ﷺ did not translate his letters to the non-Arabs despite the pressing need to translate in order to convey Islam and this serves as evidence stipulating the obligation of the sole use of the Arabic language in the State's administration and relations or in anything related to it. Based upon this, the State would not have any place in its educational curricula to teach any other language apart from Arabic whether these were the languages of the non-Arab peoples living under the authority of the Islamic State or the peoples living outside the authority of the Islamic State. In the same manner, public schools are prevented from adopting anything other than the Arabic language as an academic language and from introducing other than the Arabic language as a subject because they are obliged to adhere to the State's curricula. Accordingly, every matter related to the State, to its relations, the relations of its subjects with it or any other matter related to it must be conducted solely in the Arabic language, spoken and written.

However, if speaking and writing in other than the Arabic language were related exclusively to the subjects or related to people's relationships amongst themselves, this would be permitted because the Messenger of Allah ﷺ permitted the translation of other languages into Arabic and permitted the learning of other languages. This indicates that it is permitted to speak and to write in other than Arabic. In a narration from Zayd Ibn Thabit: "***The Messenger of Allah ﷺ ordered me to learn the Book of the Jews, until I became able to write the letters of the Messenger of Allah ﷺ and to read to him their letters if they wrote to him***" transmitted by Al-Bukhari. So, this is an evidence for the permissibility of speaking and writing in other than the Arabic language. In the times of the Companions, there were people who used to speak and to write in other than Arabic and they were not forced to learn it, and someone used to interpret for the ruler.

Al-Bukhari reported in the section "History of the Rulers": "Kharija Bin Zaid Bin Thabit from Zaid Ibn Thabit said: "***The Messenger of Allah ﷺ ordered me to learn the Book of the Jews, until I became able to write the letters of the Messenger of Allah ﷺ and to read to him their letters if they wrote to him***". Umar (ra) said in the presence of 'Ali, 'Abd al-Rahman and Uthman: "What is this woman saying?" Abdul-Rahman Ibnu Hatib said: "She is



informing you about the man who did so and so to her.” Abu Hamzah also said: “*I used to translate between Ibn Abbas and other people*”.

Two evidences that indicate the permission of translation are: the narration in which the Messenger ﷺ ordered Zaid Bin Thabit to learn the Book of the Jews and when Umar (ra) asked what that woman was saying - he meant the woman who was found pregnant - ‘Abd al-Rahman was translating for him. The fact that Abu Hamza used to translate what people would say for Ibn ‘Abbas means that there were people who spoke other than Arabic. Therefore, speaking and writing in other than Arabic is permitted according to the *Sunnah* and to the actions of the Companions. Accordingly, the State would allow the publication of books, newspapers and magazines in other than Arabic, and their publication would not require a permit because it is part of the *Mubah* (permitted) actions. It is also allowed to televise programmes in other than Arabic if these stations belonged to an individual or to a group of people. However, this will be prohibited in the State’s own radio and television stations because everything related to the State must be exclusively in Arabic. As for what is related to people among themselves, it will be permitted for them to use other than Arabic in everything except for any specific issue which was in origin permitted that may lead to harm; in such case, that matter will be prohibited.

#### **Article 9**

***Ijtihad* is a duty of sufficiency and every Muslim reserves the right to perform *Ijtihad* provided he meets all its prerequisites.**

The Islamic *Shari’ah* has made *Ijtihad* to deduce the *Shari’ah* rules from the address of the Legislator – i.e. from the *Shari’ah* texts which are revealed by Allah (swt) to the Messenger of Allah ﷺ – an obligation upon the Muslims. The fact that *Ijtihad* is an obligation has been confirmed through several narrations. The Messenger of Allah ﷺ said: “***If a ruler were to give a ruling, so he made Ijtihad and reached the sound rule, he would get double the reward. However, if he were to give a ruling and he made Ijtihad but reached the wrong rule, he would still get a reward***” (agreed upon through Amru Bin Al-Aas). He ﷺ also said: “***and a man judged people without knowledge, he is in Hell fire***” (transmitted by the compilers of the *Sunan* and Al-Hakim and Al-Tabarani with a *Sahih* chain). This confirms that the judge must be acquainted with what he judges on. It is also reported that he ﷺ said to Ibn Mas’ud: “***Judge by the Book and the Sunnah wherever you found (the ruling) in them, and if you don’t find the ruling in them then do Ijtihad***” as mentioned by al-Amidi in *al-Ahkam* and al-Razi in *al-Mahsul*. He ﷺ said to Mu’ath and Abu Moussa Al-Ash’ari when he was about to dispatch them to Yemen: “***What will you judge by?***” They said: “***If we did not find the rule in the Book or in the Sunnah, we would make analogy between the two matters and whichever were closest to what is right, we would act upon***” (mentioned by Al-Amidi in *al-Ahkam* and Abu Al-Husain in *Al-Mu’tamad*). This analogy is in itself an *Ijtihad* to deduce the rule, and the Messenger of Allah ﷺ approved it. It is also reported that the Messenger of Allah ﷺ said to Mu’ath when he appointed him as governor to Yemen: “***What will you rule by?***” He said: “***By the Book of Allah.***” He ﷺ said: “***What if you do not find the rule?***” He said: “***By the Sunnah of the Messenger of Allah.***” He said: “***What if you do not find the rule?***” He said: “***I will exert my own opinion.***” Upon this the Messenger of Allah ﷺ said: “***Praise be to Allah Who guided the envoy of the Messenger of Allah to what satisfies His Messenger***” (transmitted by Ahmad and Al-Tirmidhi and Al-Darimi and Abu Dawud and was authenticated by Al-Hafiz Ibn Kathir Al-Basrawi who said that the narration is *Hasan Mashur* and relied upon by the scholars of Islam).

This clearly indicates the approval of the Messenger of Allah ﷺ with regard to Mu’ath’s performance of *Ijtihad*. Furthermore, the knowledge of the rules is linked and is related to *Ijtihad* since the realisation and the comprehension of the rules could not be established

without it. Hence, *Ijtihad* becomes obligatory because the *Shari'ah* principle stipulates: “*Whatever is necessary to establish a duty is in itself a duty*”.

In origin, the deduction of the rules is performed by *Mujtahideen* (those capable of *Ijtihad*) because the knowledge of Allah's rule in a given matter cannot be reached except through *Ijtihad*, and *Ijtihad* therefore becomes indispensable. The scholars of *UsulAlFiqh* (the principles of jurisprudence) have indicated that *Ijtihad* is a duty of sufficiency upon the Muslims and that it is forbidden for Muslims to be without a single *Mujtahid* at any given time, and that if they all agreed upon forsaking *Ijtihad*, they would be sinful because the only way to know the *Shari'ah* rules is through *Ijtihad*. Therefore, if an era were devoid of at least one *Mujtahid* upon whom it could be relied in perceiving the rules, it would lead to the paralysis of the *Shari'ah* and this is forbidden. Besides, the *Shari'ah* texts make it incumbent upon Muslims to perform *Ijtihad* because these *Shari'ah* texts (i.e. the Book and the *Sunnah* and nothing else) have not come in a detailed manner but rather in a general manner that can be applied to every reality faced by humanity. Their understanding and the deduction of the rule of Allah require the exhausting of efforts in order to obtain the *Shari'ah* rule from them for every matter. This *Ijtihad* is not an impossible task nor is it extremely difficult; rather, it is the process of exhausting one's effort in order to acquire the *Shari'ah* rules with the least amount of doubt. In other words, it is the understanding of the *Shari'ah* texts with the exhausting of one's utmost effort in order to attain this understanding and to perceive the *Shari'ah* rule. This is in fact within everyone's reach. *Ijtihad* was natural and evident to the Muslims in the early times and it had no prerequisites. However, since the understanding of the classical Arabic language started to weaken and since people started to devote less attention to discerning the *Deen*, it has become incumbent upon the *Mujtahid* to know the narrated evidences (*adillah sam'iyah*) from which the principles and the rules are deduced. It has also become incumbent upon him to discern the meaning of expressions which are commonly used in the classical Arabic language and in the usage of rhetoric. There are no other conditions apart from these two to performing *Ijtihad*. Therefore, in addition to being a duty of sufficiency upon the Muslims, *Ijtihad* is within the reach of all the Muslims. These are all the evidences for this article.

#### **Article 10**

**All the Muslims should bear the responsibility of Islam. There are no clergymen in Islam and the State should prohibit any sign of their presence among the Muslims.**

Although *Mujtahids* are scholars, however not every scholar is necessarily a *Mujtahid* since a scholar could either be a *Mujtahid* or a *Muqallid* (imitator). If the Muslim were to take the *Shari'ah* rule in order to act upon, then, it requires some consideration: if he took the rule from a *Mujtahid*, he in this case would be emulating the *Mujtahid*. If he took it from a non-*Mujtahid*, he would be learning that rule from the person he had taken it from, and he would not be emulating him. However, if the Muslim was to take the rule in order to learn it, he would be learning the rule irrespective of whether he took it from a *Mujtahid* or a non-*Mujtahid*. Therefore, these scholars - whether *Mujtahids* or otherwise - are not clergymen since none of them has any right to legitimise or prohibit anything and they are just like any other Muslim regarding every single *Shari'ah* rule. None of them should distinguish himself from the rest of the Muslims in anything with regards to the *Shari'ah* rules regardless of how high his rank is in terms of knowledge, *Ijtihad* and respect. Hence, what is *haram* for others does not become allowed for the scholar and nor does the *wajib* upon others become *mandub* (recommended) for him. He is rather like any other individual Muslim. Therefore, the idea of clergymen held by Christians has no existence in Islam. The concept of clergymen is specific to Christians because a clergyman does legitimise and prohibit rules to them. Thus, attributing such a term to the Muslim scholar might give the impression of attributing the Christian concept to the Muslim scholars despite the fact that Muslim scholars do not allow and nor do

they prohibit anything. Therefore, it is not fitting to attribute the term of clergyman to a Muslim scholar.

There are explicit narrations prohibiting the emulation of Christians and Jews. Abu Sa'id Al-Khudri narrated that the Messenger of Allah ﷺ said: ***"You shall follow the ways of those before you inch by inch and yard by yard; even if they were to enter a lizard's hole you would follow them. We said: O Messenger of Allah, the Jews and the Christians? He (saw) said: Who else?"*** (Agreed upon with the words from Muslim) This narration has been said within the context of prohibition. Hence, the emulation of the Jews and the Christians is - as it stands - prohibited, let alone if this emulation were to lead to the generating of a *Kufr* concept among the Muslims. Considering the Muslim scholar as a clergyman is an emulation of the Christians who regard their scholars as clergymen and it also transfers the Christian concept of clergyman to the Muslim scholar; therefore, it is strictly prohibited in terms of emulation and it is classified as even more strictly prohibited in terms of introducing the concept. Therefore, it would be wrong to refer to the Muslim scholar as a clergyman and it is forbidden for the scholars to consider themselves as clergymen according to the Christians' concept of clergyman. If someone was found claiming this according to the understanding mentioned, he will be prohibited and punished since he will have committed a prohibited act. In addition, the Prophet ﷺ did not differentiate from the companions in terms of a specific dress or appearance. Al-Bukhari reported in his *Sahih* from Anas Bin Malik who said: ***"While we were sitting with the Prophet ﷺ in the mosque, a man entered upon a camel into the mosque, then he tied it and said to them: 'Which one of you is Muhammad?' The Prophet ﷺ was leaning between us so we said: 'this white man who is leaning'. And so the man said to him: 'O Ibn 'Abd Al-Muttalib' Then, the Prophet ﷺ said to him: 'I have answered you...'"*** For these reasons, this article has been drafted.

#### **Article 11**

**Conveying the Islamic *Da'wa* (call to Islam) is the fundamental task of the State.**

This article has been drafted because as well as being an obligation upon the Muslims, conveying the Islamic *Da'wa* is also an obligation upon the State. Although conveying the call to Islam forms a part of the implementation of *Shari'ah* in the relationships and although it is a *Shari'ah* rule that the State must implement as the individual Muslim does, it is considered as the basis upon which its relationships with other states is built. In other words, it is the basis upon which the whole of the State's foreign policy is built. Therefore, conveying the Islamic *Da'wa* is the State's main task.

The evidence that conveying the call to Islam is an obligation is reflected in the words of Allah (swt) ***"And this Quran has been revealed to me so that I warn you with it and those whom it reaches"*** (TMQ 6:19); meaning to warn whoever this Quran reaches. Hence, the warning is to you Muslims and it is also a warning to those whom you convey it to; thus, it is an invitation to them to convey it on behalf of the Messenger of Allah ﷺ. In other words, it is not only a warning to you but rather a warning to you and to all those whom the Quran reaches. The Messenger of Allah ﷺ said: ***"May Allah brighten a person who had heard my saying, perceived it, memorised it and conveyed it; for one may be conveying Fiqh (knowledge) to someone who is more of a Faqih than him"*** (in *Musnad Al-Shafi'i* through 'Abd Allah Bin Mas'ud). Allah (swt) also said ***"Let there arise from among you a group calling to the goodness"*** (TMQ 3:104), and the goodness is Islam. He (swt) also says ***"Who is better in speech than one who calls to Allah"*** (TMQ 41:33), in other words to the *Deen* of Allah. All of these texts indicate that conveying the call to Islam is obligatory and this obligation is general and encompasses the State as well as the Muslims as a whole.

As for the fact that conveying the *Da'wa* must be the State's main activity, its evidence is derived from the words and actions of the Prophet ﷺ. He ﷺ said ***"I have been ordered to***

*fight people until they profess that there is no god but Allah. If they said it, their lives and their wealth would be inviolable to me, except that which is by right, and their account is with Allah”* (agreed upon, with the wording from Muslim). Al-Bukhari reported from ‘Urwah B. Al-Ja’d from the Prophet ﷺ: **“The horse which is tied to its forelock is good until the day of Judgement”** and the horse is an allusion to the continuation of the obligation of *Jihad*. Additionally, *Jihad* is not restricted to whether the leader is righteous or immoral since it also indicates the continuation of the *Jihad* with the righteous and immoral as long as they are Muslim. Al-Bukhari used this narration as evidence for *Jihad* continuing with the righteous and the immoral leader when he separated a section with the title “Chapter Jihad Continues with the Righteous and the Immoral due to the words of the Prophet ﷺ **“The horse which is tied to its forelock is good until the day of Judgement”**”. Ahmad also used it as an evidence in the same manner as Al-Bukhari. And in the same manner, it is reported by Said Bin Mansur through Anas who said that the Messenger of Allah ﷺ said **“and Jihad has been on-going since Allah sent me and will continue until the last generation of my Ummah fight the Dajjal; it shall not be discontinued by the tyranny of a tyrant nor by the justice of a just”**. This Hadeeth was also narrated by Abu Dawud and Al-Tirmidhi didn’t comment on it). So the order to fight until those who resist say that there is no god but Allah and that Muhammad is the Messenger of Allah, serves as evidence about the obligation of conveying the call to Islam upon the State. The fact that this conveying, which is *Jihad*, is ongoing until the last of the *Ummah* fights the *Dajjal* is evidence that the State’s constant activity is *Jihad* that is not permitted to be disrupted. The two narrations together indicate that the call to Islam is a constant action that is not to be interrupted; therefore, it is the main duty because the main duty is the action that is constantly performed under all circumstances and without any disruption.

Besides, the Messenger of Allah ﷺ was in a constant state of *Jihad* ever since he settled in Madinah until he ﷺ departed this world and *Jihad* was the main activity. The rightly guided *Khulafaa’* came after him and followed in his footsteps assuming *Jihad* as their main duty. So the State that the Messenger of Allah ﷺ founded and headed undertook *Jihad* as its main duty; when he (saw) departed, the State was headed by the *Khulafaa’* from among the Companions and similarly the State’s main task was *Jihad*. Therefore, the evidence stipulating that conveying the Islamic *Da’wa* is the State’s main task is derived from the *Sunnah* and the *Ijma’* of the Companions.

Additionally, the Messenger of Allah ﷺ used to convey the call to Islam since Allah (swt) sent him as a Prophet until he departed this world. He ﷺ was the Head of State in Madinah and since he settled there he made his foreign policy the main activity and the State’s focus of attention. The activities undertaken ranged from raids, expeditions, intelligence gathering and signing treaties. All these activities were for the sake of conveying Islam and its *Da’wa* to all people. When the Messenger of Allah ﷺ sensed the strength of the State and its ability to convey the *Da’wa* internationally, he dispatched twelve envoys simultaneously to twelve monarchs inviting them to Islam, amongst them the Kings of Persia and Rome. Muslim reported from Anas Bin Malik: **“The Prophet of Allah wrote to Kisra and Caesar and Al-Najashi and to every powerful one calling them to Allah”**. When he ﷺ was satisfied about the might of the State within the Arabian Peninsula and about the spread of the *Da’wah* among the Arabs and people started to embrace the *Deen* of Allah (swt) in droves, he ﷺ looked towards conquering the Romans; hence, the battles of Mu’ta and Tabuk took place. This also serves as evidence that conveying the *Da’wa* is an obligation upon the State and that it is its main task.

## **Article 12**

**The Book, the *Sunnah*, the *Ijmaa’* of the *Sahabah* and the *Qiyas* (analogy) are the only evidences considered in *Shari’ah* laws, and it is not permitted to adopt any legislation from other than these evidences.**

This article does not imply that the State will adopt a method of *Ijtihad*; it rather means that the State will follow a specific method when adopting the *Shari'ah* rules. This is because the adoption of the *Shari'ah* rules could either be obligatory in some cases or, in other cases, permitted for the State. If this adoption were to be conducted in two contradictory methods, it would lead to a contradiction in the basics upon which the adoption has been conducted. Therefore, the State ought to adopt a specific method in adopting the *Shari'ah* rules. Three reasons prompted the adoption of such a method in the adoption of rules:

Firstly, the rule by which the Muslim should proceed is a *Shari'ah* rule and not a rational rule; in other words, it is the rule of Allah in the matter and not the rule laid down by man. Therefore, the evidence from which this rule is deduced must be what the Revelation has brought.

Secondly, the confirmation that the evidence - from which the rule has been deduced - has been brought by way of Revelation must be conclusive. In other words, it is imperative that the evidence, from which the *Shari'ah* rule has been deduced, has conclusive and decisive, not indefinite, evidence that it has been brought by way of Revelation. This is because it is part of the *Usul* (foundations) and not part of the branches; thus, to be most likely or probable is not sufficient since it is part of the '*Aqidah* matters and not part of the *Shari'ah* rules. This is so because the evidence required to deduce the rule from is evidence which has come by way of Revelation, not just any evidence. Therefore, it is imperative to decisively confirm that it has been brought by way of Revelation and the process of confirming that it has been brought by Revelation is an '*Aqidah* matter not a *Shari'ah* rule. Therefore, it is imperative to establish that the evidence has come by way of Revelation by definite evidence because matters of '*Aqidah* can only be taken conclusively.

Thirdly, what is conclusive is that man's behaviour in life proceeds according to his concepts about life. Although the viewpoint about life has the '*Aqidah* as its basis, it is nevertheless formed of a host of concepts, criteria and convictions which are existent in the *Ummah*. Not all of these thoughts, which are reflected in this host of concepts, criteria and convictions are part of the matters of '*Aqidah*. Rather, some of them are from the matters of '*Aqidah* and others are part of *Shari'ah* rules, and since rules are deduced with the least amount of doubt it is therefore feared that if the origin of the rules has not been conclusively confirmed as being brought by way of Revelation, then some of the non-Islamic thoughts may creep into the *Ummah* due to the presence of *Shari'ah* rules deduced from a foundation which Revelation has not brought in the first instance. If it is widespread and used over a long period of time it will influence the viewpoint about life held by the *Ummah* and consequently affects its behaviour. Accordingly, it is imperative to confirm that the evidences, upon which rules to be implemented by the State are deduced, must be those evidences brought by Revelation.

It is for these three reasons that the adoption of a specific method, according to which the *Shari'ah* rules are adopted, is imperative. As for the fact that the evidences are confined exclusively to the four general evidences mentioned above, this is confirmed through study. We have studied and scrutinised the evidences that have been confirmed by a conclusive evidence to have been brought by way of Revelation and we have not found anything other than these four at all.

As for the Quran, the evidence about the fact that it has been brought by way of Revelation from Allah (swt) in letter and spirit is conclusive. The miracle of the Quran serves as conclusive evidence that it is indeed the Word of Allah (swt) and not the word of man. Therefore, the conclusive evidence has been established that the Quran is the Word of Allah (swt). The Quran itself, which has been conclusively confirmed as being the Word of Allah by the evidence of the miracle, states that it is Revelation that descended upon the Messenger of Allah ﷺ; Allah (swt) says: ***"With it came down the Faithful Spirit \* To your heart so that you admonish"*** (TMQ 26:193-4);

***“And this Quran has been revealed to me”*** (TMQ 6:19);

***“Say I only warn you according to Revelation”*** (TMQ 21:45);

***“We have not sent down the Quran to you so that you become distressed”*** (TMQ 20:1);

***“As to you the Quran is bestowed upon you”*** (TMQ 27:6);

***“It is We Who have sent down the Quran in stages”*** (TMQ 76:23)

and ***“We revealed to you an Arabic Quran”*** (TMQ 42:7).

These are conclusive evidences establishing the fact that the Quran has been brought by way of Revelation from Allah (swt).

As for the *Sunnah*, the conclusive evidence about the fact that it is Revelation which has come from Allah (swt) in meaning, and that the Messenger of Allah ﷺ expressed it by his own words is what came clearly indicated in the Verses of the Quran. Allah (swt) says: ***“Nor does he speak of his desire. It is no less than Revelation sent down to him”*** (TMQ 53:3-4);

***“We have sent you Revelation as We sent it to Nuh and the prophets after him”*** (TMQ 4:163);

***“I only follow what is revealed to me”*** (TMQ 6:50);

***“Say truly I only follow what is revealed to me by my God”*** (TMQ 7:203);

***“Say I do but warn you according to Revelation”*** (TMQ 21:45)

And Allah (swt) says ***“and whatever the Messenger brought to you, take, and whatever he forbids you, abstain from it”*** (TMQ 59:7)

These are clear evidences denoting that whatever the Messenger of Allah ﷺ has uttered in terms of the *Sunnah* has come by way of Revelation; they also serve as clear evidences denoting that Allah (swt) has explicitly ordered us in the Quran to abide by what the Messenger of Allah ﷺ ordered us and to abstain from what he ﷺ prohibited for us. This command is general. Hence, the evidence about the fact that the *Sunnah* has come by way of Revelation is conclusive because it has been established by a conclusive Quranic text that is definite in its intended indication.

As for the *Ijma’* of the Companions, which is considered a *Shari’ah* evidence, it means the general consensus of the Companions that such rule is a *Shari’ah* rule, or their general consensus that the rule pertaining such and such matter is so and so. Hence, if they unanimously consented about a certain rule as being a *Shari’ah* rule, their *Ijma’* (general consensus) would be considered a *Shari’ah* evidence.

The evidence for this is reflected in two matters: firstly, Allah (swt) praised them in the Quran through a text that is conclusive and definite in meaning. Allah (swt) said: ***“The vanguards and the first from among the Muhajirin and the Ansar, and those who followed them in all the good deeds, Allah is well pleased with them as they are with Him, and He prepared for them gardens under which rivers flow so as to dwell therein forever; that is the great success.”*** (TMQ 9:100)

This praise by Allah (swt) of the *Muhajirin* (emigrants), the *Ansar* (Helpers) and those who followed them with righteousness, due to their emigration and their support, is a praise of the Companions because those praised are the Companions and the meaning of the verse is confined to them. This praise is for all of them and the truthfulness of those whom Allah (swt) praises in such a way is conclusive.

The second matter is that we have taken our *Deen* from those Companions since they are the ones who transmitted to us the very Quran that had descended upon our master Muhammad ﷺ. Hence, if we assumed that a flaw were to creep into one single matter from among what they had agreed upon, this means that the flaw could creep into the Quran; in other words, the flaw could creep into the *Deen* which we had taken from them and this is impossible from the

angle of *Shari'ah*. Therefore, although it would not be rationally impossible for the Companions to unanimously agree upon an erroneous matter - for this could happen since they are only human - however, this could not possibly happen to them from the *Shari'ah* point of view since if this were possible, it would then be possible for error to creep into the *Deen*. In other words, it would be possible for error to creep into the fact that this Quran that we have today is the very same Quran that descended upon our master Muhammad ﷺ, and this is impossible from the *Shari'ah* point of view; thus, it would be impossible for them to generally consent on something erroneous.

This serves as a conclusive proof that the *Ijma'* of the Companions is a *Shari'ah* evidence. In addition, Allah (swt) says: ***"We have without doubt sent down the Quran and We will assuredly protect it"*** (TMQ 15:9). Therefore, Allah (swt) has promised to protect the Quran and he who transmitted this Quran is he who protected it; thus, this serves as evidence about the truthfulness of their *Ijma'* in transmitting and compiling the Quran. Hence, it serves as proof about the soundness of their general consensus because if it were possible for their consensus to be flawed, it would be possible for the transmission of the Quran to be flawed and it would be possible for it to be unprotected. Therefore, since the non-protection of the Quran is impossible, as indicated by the Verse, then it is impossible for error to creep into its transmission or its compiling or its protection. Hence, the *Ijma'* of the Companions is a conclusive evidence.

However, what should be made absolutely clear is that the *Ijma'* of the Companions stipulating that such and such rule is a *Shari'ah* rule is simply uncovering an evidence; in other words, there exists for this rule an evidence derived either from the action, words or silence of the Messenger of Allah ﷺ, and that the Companions transmitted the rule but did not transmit the evidence. Hence, their transmission of the rule discloses the fact that there exists an evidence for that rule. Therefore, their general consensus does not mean that their personal opinions are in agreement over a specific matter for their personal opinions are not Revelation and each one of them is not infallible; thus, a companion's opinion cannot be regarded as a *Shari'ah* evidence. This is because the *Shari'ah* evidence must be brought by way of Revelation in order to be considered as *Shari'ah* evidence, and the Companions' opinions are not like that; therefore, they cannot be considered as *Shari'ah* evidence whether these were the opinions upon which they agreed or the opinions over which they disagreed. For this reason, the *Ijma'* of the Companions does not mean their agreement upon one single opinion, it rather means their general consensus about the fact that a rule is a *Shari'ah* rule, or such and such rule is a *Shari'ah* rule; in this case, it is not their opinion but rather a general consensus that it is from *Shari'ah*; hence, the *Ijma'* of the Companions is simply uncovering an evidence.

As for *Qiyas*, it is also *Shari'ah* evidence. Linguistically it means estimating and in the *Usul* terminology it is the making of analogy between a known matter upon another known matter in order to either confirm a rule for both of them or to disclaim it for both of them due to a mutual factor between them. Thus, it is comparing the rule of a known matter to another known matter due to their association in the '*Illah*' (the reason) of the rule. Accordingly it is the extending of the root to the branch or in other words the joining of the branch to the root. The meaning of carrying a known fact upon a known fact means that one of them shares the same rule with the other, so the rule of the root is established for the branch, and the branch shares the same rule as the root. This rule of the root could be a confirmation; Al-Bukhari reported from Ibn Abbas ***"A woman from Juhaynama came to the Prophet ﷺ and said: 'My mother made an oath to do the pilgrimage but she didn't fulfil it before her death, so should I go on her behalf?' He ﷺ said: 'Yes, do the pilgrimage on her behalf – do you see that if your mother had a debt you would have paid it off, so repay the debt to Allah since Allah is more worthy of it being fulfilled'"***. Here the Messenger of Allah ﷺ compared the debt to Allah to the debt of the human and stated that its settlement would suffice. In this instance, the rule is a confirmation that the settlement of the debt would suffice.

The rule of the root that is compared with could also be a disaffirmation as is the case in what is reported on the authority of Umar (ra) who asked the Prophet ﷺ about the kiss of the one who is fasting and whether it breaks the fast. The Prophet ﷺ then asked, ***“What if you rinsed your mouth out with water (while you were fasting), would that break your fast?”*** He replied ***“No”*** authenticated by Al-Hakim and confirmed by Al-Dhahabi. Here the Messenger of Allah ﷺ compared the kiss of a fasting person to the rinsing out of one’s mouth in that it does not invalidate the fast. Hence, the rule in this context is a disaffirmation, in this case the non-invalidating of the fast.

The meaning of this analogy being based upon a common factor between the two matters is that the *‘Illah* (*Shari’ah* reason) of the root is also found in the branch. It is on the basis of this *‘Illah* that the carrying over takes place and this *‘Illah* is the common factor between the compared and the compared with or in other words, between the root and the branch. An example of this is reflected when the Messenger of Allah ﷺ was asked about the purchase of dates by ripened dates: ***“He said ‘Would the Rutab become lighter if it dried?’ They said: ‘Yes.’ So he ﷺ said ‘In which case, no’*** (reported by Abu Ya’la with these words from Sa’d Bin Abi Waqqas and authenticated by Al-Hakim and Ibn Hibban). Here, the Messenger of Allah ﷺ asked about the *‘Illah* that exists in the usurious money, which is the increase, and whether it was also found in the sale of *Rutab* for dates, and when he ﷺ knew of its presence, he confirmed the rule of *Riba* (usury) for such as type of sale, and so he (said) ***“in which case, no”***. In other words, it is forbidden to exchange such commodity as it is because it decreases in weight once it is dried; thus, the Messenger of Allah ﷺ asked about the mutual factor which is the *Shari’ah* *‘Illah* of *Riba*.

This is the definition of *Qiyas* according to the *Shari’ah*. This definition has been obtained from the narrations of the Messenger of Allah ﷺ. Ibn Abbas narrated: ***“A woman came to the Messenger of Allah ﷺ and said: ‘O Messenger of Allah, my mother passed away before being able to fulfil a fast that she had vowed to Allah. Do I fast on her behalf?’ He ﷺ said: ‘What if your mother had a debt and you paid it off would that suffice her?’ She said: ‘Yes.’ He ﷺ said: ‘Then fast on behalf of your mother’*** (reported by Muslim). It is narrated by ‘Abd Allah Bin Al-Zubair that a man asked the Messenger of Allah ﷺ: ***“O Messenger of Allah, my father was an old man when Islam came, and could not ride an animal, do I perform Hajj on his behalf?”*** He ﷺ said: ***“What if your father had a debt and you paid it off on his behalf, would that suffice him?”*** He said: ***“Yes.”*** So he ﷺ said: ***“Then do perform Hajj on behalf of your father”*** (reported by Ahmad with a chain authenticated by Al-Zain, and reported similarly by Al-Darimi).

In these two narrations, the Messenger of Allah ﷺ linked the debt to Allah (swt) in fasting and in Hajj onto the debt to the human and they are both the linkage of a known matter upon another known matter, i.e. the association of the debt to Allah with the debt to the human in confirming that their settlement on one’s behalf would suffice. This is so because both of these matters are debts; thus the mutual factor between them is the debt and this is the *‘Illah* and the rule that has been confirmed for both of them is the sufficing of the settlement. This is the reality of *Qiyas* according to the *Shari’ah* from the *Shari’ah* text. Therefore, this definition is a *Shari’ah* rule that must be implemented and it is the binding rule of Allah upon the one who deduces it and upon the one who imitates it either as a *Muttabi* (a *Muqallid* who queries the evidence) or as an *‘Ammi* (a *Muqallid* who did not query the evidence). It is like any other *Shari’ah* rule, deduced from a *Shari’ah* evidence, because the *Shari’ah* definitions and principles deduced from the *Shari’ah* evidences are *Shari’ah* rules like all other *Shari’ah* rules.

This *Qiyas* is based upon the *‘Illah* or in other words upon the common factor between the known linked matter and the known matter it is linked to; that is, between the root and the branch. Hence, if the *‘Illah* is found, that is if the mutual factor is found between the compared and the compared with, then *Qiyas* can be done; otherwise, *Qiyas* does not take place at all. This *‘Illah* would be considered a *Shari’ah* evidence if it were mentioned in a



*Shari'ah* text or if it were analogous with what is listed by a *Shari'ah* text because the '*Illah*' upon which the *Qiyas* is based has been mentioned by *Shari'ah*.

By contrast, if this '*Illah*' were not mentioned in a *Shari'ah* text and it were not analogous with that which is listed in a *Shari'ah* text, such a *Qiyas* would not be considered a valid *Qiyas*, nor a *Shari'ah* evidence. This is because the reason upon which it is based has not been mentioned by a *Shari'ah* text; thus such *Qiyas* could not be from *Shari'ah* and consequently it cannot be a *Shari'ah* evidence.

Evidence about this *Qiyas* being a *Shari'ah* evidence is reflected in the fact that the *Shari'ah* text in which the '*Illah*' is mentioned or analogous with what is mentioned in the *Shari'ah* text could either come from the Book, the *Sunnah* or from the *Ijma'* of the Companions. These three evidences have been confirmed as being *Shari'ah* evidences through conclusive proof; thus, the evidence of the *Shari'ah*'*Illah* is conclusive and that is the evidence of *Qiyas*. This is so because the *Shari'ah* reason found in the rule that is mentioned by the text, which acts as the root, is what makes the rule in the branch a *Shari'ah* rule and it is what makes *Qiyas* feasible for without it *Qiyas* would not have existed in the first place. Therefore, its evidence will also serve as evidence for *Qiyas*.

This *Shari'ah**Qiyas* has been demonstrated to us by the Messenger of Allah ﷺ and he ﷺ considered it a *Shari'ah* evidence. The Companions also proceeded according to it and adopted it as a *Shari'ah* evidence when they deduced the *Shari'ah* rules. It has been reported that the Messenger of Allah ﷺ said to Mu'ath and Abu Moussa Al-Ash'ari when he was about to dispatch them to Yemen: ***"What will you judge by?" They said: "If we did not find the rule in the Book or in the Sunnah, we would make analogy between the two matters and whichever were closest to what is right, we would act upon it"*** (mentioned by Al-Amidi in *Al-Ahkam* and Abu Al-Husain in *Al-Mu'tamid*). Here Mu'ath and Abu Moussa explicitly stated that they would use *Qiyas* and the Messenger of Allah ﷺ approved this; therefore this serves as proof that *Qiyas* is a *Shari'ah* evidence.

It is reported on the authority of Ibn Abbas that a woman came to the Messenger of Allah ﷺ and said: ***"My mother has died and she has a month's fasting on her neck."*** So the Messenger of Allah ﷺ said: ***"What if your mother had a debt, would you settle it?"*** She said: ***"Yes."*** Upon this he ﷺ said: ***"Then the debt to Allah is more worthy of being settled"*** (reported by Al-Bukhari). Here the Messenger of Allah ﷺ wanted to teach this woman so he joined the debt to Allah to the debt of the human in the obligation of settling the debt and its sufficing, and this is exactly *Qiyas* itself. It is reported on the authority of Umar Bin al-Khattab (ra) who asked the Prophet ﷺ about the kiss of the one who is fasting and whether it breaks the fast. The Prophet ﷺ then asked ***"What if you rinsed your mouth out with water would (while you were fasting), would that break your fast?"*** He replied ***"No"*** (authenticated by al-Hakim and confirmed by Al-Dhahabi). Here the Messenger of Allah ﷺ rejected the rule of invalidating the fast for the act of kissing while fasting by comparing it with the act of rinsing out the mouth while fasting, which does not invalidate the fast, because neither of them enters the belly. Thus it was an explanation of the rule through the use of *Qiyas*.

In these three texts, the rule was not only given an '*Illah*', as in the case in many texts that denote *Qiyas*, rather, *Qiyas* itself was also approved, taught and explained through them and this serves as a valid argument stipulating that *Qiyas* is a *Shari'ah* evidence.

This is as far as the Messenger of Allah ﷺ is concerned. As for the Companions, it is reported that they used *Qiyas* as *Shari'ah* evidence in several matters. One example is what has been narrated by Said Bin Mansur in his *Sunan* from Al-Qasim Bin Muhammad ***"A man died and left behind his two grandmothers, his mother's mother and his father's mother, and so Abu Bakr came and gave the mother of his mother a sixth and left the mother of his father, and so a man from the Ansar said to him: "You gave the inheritance of a dead man to a woman who if she had died, the same man would not have inherited her; and you excluded the woman whom the man would have inherited all her legacy had she been the one who died",***

**and so he divided the sixth between them”**. This event was also mentioned by Al-Ghazali in *Al-Mustasfa* and Al-Amidi in *Al-Ihkam*. Here, the Companions compared the inheritance of the living from the dead with the inheritance of the dead to the living by assuming that the dead was living and the living was dead; thus, concluding that the mutual factor - the kinship between the two persons - is the same in both instances. When Abu Bakr heard this *Qiyas*, he submitted to it, implemented it and retracted from his own opinion.

Similar to this is what was reported that Umar (ra) wrote to Abu Musa Al-Ash'ari saying: **“Get acquainted with the similar and the identical matters and then make analogy between the matters according to your opinion”** (This was mentioned by Al-Shirazi in *Tabaqat Al-Fuqaha* and was narrated by Al-Bayhaqi in *Al-Ma'rifa Min Kitab Adab Al-Qadi*). Umar (ra) was the *Amir* of the believers while Abu Musa was a judge in this instance. Similarly, it was said to Umar (ra) that Samra had taken wine from Jewish traders as tithe which he then turned into vinegar and sold so Umar (ra) said: **“May Allah damn Samra, did he not know that the Messenger of Allah ﷺ say: “May Allah curse the Jews; fats have been made unlawful to them, so they embellished them and sold them and ate from the proceeds”** (reported by Muslim). Here, Umar (ra) compared wine with fat and concluded that its prohibition stipulates the prohibition of its sale. Another example is when Umar (ra) was not sure about the penalty of the seven who took part in the killing of one man so 'Ali (ra) said to him: **“O Amir of the believers! What if a group of people were to take part in a theft, would you cut their hands?” He said: “Yes.” So 'Ali said to him: “So likewise”** (mentioned by 'Abd Al-Razzaq in *Al-Musannaf*). This is a *Qiyas* between the killing and the theft, and all this indicates that *Qiyas* is *Shari'ah* evidence deduced from the *Sunnah* and the *Ijma'* of the Companions. Hence, what has been confirmed through the Messenger of Allah ﷺ is the *Sunnah* and what has been confirmed through the Companions is considered an *“Ijma' Sukuti”* (*Silent Consensus*) because the Companions who utilised *Qiyas* did so in the presence and the full knowledge of the rest of the Companions, and none of them condemned it; therefore, it was a general consensus.

However, the *Sunnah* and the *Ijma'* of the Companions have both been reported by way of individual report (*Ahad* narrations), thus they are considered as indefinite evidence. Therefore, the conclusive evidence about the fact that *Qiyas* is a *Shari'ah* evidence is reflected in what we mentioned with regard to the *Illah* being mentioned in the *Shari'ah* text, that is, in the Book and the *Sunnah* or in the *Ijma'* of the Companions. These three evidences have been confirmed as being *Shari'ah* evidences by way of conclusive evidence. Therefore, they act as the evidence for *Qiyas* because they are the evidence for the *Illah*.

It has been conclusively established that these four evidences, the Book, the *Sunnah*, the *Ijma'* of the Companions and *Qiyas* have come by way of Revelation from Allah (swt). Apart from these four, no other evidence has been established through conclusive evidence. The fact that they are not established by conclusive evidence is clear since those who use them as evidence do not claim that the proof that they are *Shari'ah* evidences is a definitive proof. The fact that they are not confirmed as (decisive) *Shari'ah* evidences is clear from the lack of conformity of the evidences which they bring forward – in their consideration as *Shari'ah* proofs – upon the issue that they are trying to establish the evidence upon. In other words, it is clearly apparent that there is a mistaken inference in what they present from the evidences upon what they are claiming, such as: the consensus of the Muslims, *Al-Masalih Al-Mursalah* or *Al-Istihsaan* and similar to them from the *Shari'ah* evidences.

So, those who claim that the consensus of the Muslims is a *Shari'ah* evidence draw their conclusion from the words of the Prophet ﷺ: **“My Ummah will not gather upon a misguidance”**. Ibn Hajr mentioned the narration as being *Mashhur* with many different paths, though all of them have debate around them, and in any case, this does not contain a proof since the misguidance here means apostasy from the *Deen* and not mistakes and with this meaning it was mentioned in the narration: **“My Ummah will not gather upon a misguidance (*Dalalah*), and so stick to the group (*Jama'at*), since the Hand of Allah is with the group”** (reported by Al-Tabarani with a chain whose men are all trustworthy through Ibn Umar). This

is correct since the Islamic *Ummah* would never unite upon apostasy from Islam. However, they could possibly unite upon a mistake and the simplest evidence for that is that the Islamic *Ummah* united upon leaving behind the work to establish the *Khalifah* for a long period and that was consensus upon a mistake.

With respect to those who say that seeking the benefits and repelling the harms is a *Shari'ah* for the *Shari'ah* rules and apply *Qiyas* accordingly, they infer this by the words of Allah (swt): **“And we did not send you except as a Mercy to the ‘Aalameen (mankind and jinn and all that exists)”** (TMQ 21:107). So, they consider the fact that he ﷺ is a mercy as a *Shari'ah*, and there cannot be mercy except through the attainment of the benefits and the repulsion of harm, and therefore, it is a *Shari'ah* for the legislation. This inference is incorrect from two angles; the first is that the subject was his ﷺ being sent, or in other words, the fact he ﷺ was a Messenger, and not the *Shari'ah* laws. If we submit that the intention of sending him ﷺ was his message i.e. the *Shari'ah*, the subject would be the whole of *Shari'ah* from the matters of *Aqidah* and rules collectively and not the *Shari'ah* rules alone. The second issue is that the fact that sending him ﷺ as a mercy for the universe is only a clarification for the *Hikma* (wisdom) behind sending the Prophet ﷺ; in other words, what would occur as a consequence of sending him. In the same manner, the words of Allah (swt): **“And we did not create Jinn and Mankind except to worship”** (TMQ 51:56), in other words, the result of creating them would be the worship so it is the *Hikma* of their creation and not the *Illah* for their creation. Likewise His (swt) words: **“That they may witness things that are of benefit to them”** (TMQ 22:28). The verse describes the *Hikma* from the Hajj, that is, the result that may be gained from the Hajj. His Words, **“Truly prayer prevents great sins and Munkar”** (TMQ 29:45), describe the *Hikma* for the prayer; in other words, the result that may be reached from prayer and so on. So, the verse here is not in the context of specifying an *Illah* because the *Illah* is the thing that due to its presence the rule is found or, in other words, is legislated. In order to understand the underlying *Illah* in the text, it is imperative that it must be an attribute and this attribute must indicate the underlying *Illah*, in that it is the *Sabab* (reason/cause) for the legislation or in other words that the legislation was for its sake, and in such a circumstance it is an inseparable attribute which is never absent, since the cause always results in the effect and therefore if the *Illah* is found then the effect is found.

The words **“mercy for the ‘Aalameen”** (TMQ 21:107) and the rest of the previous verses, even if they are considered as attributes and within the verses are the letters that would indicate an underlying *Illah*, the context of the words does not indicate the existence of an *Illah* because they could be absent and because the legislation was not for its sake. Accordingly, the Islamic *Shari'ah* could be a mercy for the one who believes in it and who acts according to it, such as: the first generations of Muslims, and it could be an affliction for whoever disbelieves in it, such as the disbelievers. So, the sending of the Messenger ﷺ is an affliction upon the disbelievers and they are from the *'Aalameen*. Additionally, the Islamic message is present today. This is since the sending has practically taken place and with that the Muslims who themselves believe in that message are today in hardship. So, it is not the sending alone, that is the existence of the *Shari'ah* alone, that is a mercy, and for that reason it is not an *Illah* for it. Based upon that, attaining the benefits and repelling the harms is not a *Shari'ah*; so, it is not taken as a basis for *Qiyas*.

As for those who say that rationality is from the Islamic evidences, we say that the discussion is about the *Shari'ah* rule or what is considered, with the most probability, as the rule of Allah. This is not present except in what came by Revelation, and the Revelation did not mention the rationality, and for that reason, there is no evidence whether conclusive or inconclusive to be found that states that rationality is from the *Shari'ah* evidences for the *Shari'ah* rules; so it is not considered to be from the *Shari'ah* evidences at all.

With respect to those who say that the opinion of the companion is from the *Shari'ah* evidences, they deduce this by saying that the two evidences for the *Ijma'* of the Companions are evidences for the single companion as well, since the praise for them (collectively) is also praise for one of them. In the same manner, since there cannot be shortcomings in their

conveyance (of the *Deen*) collectively, there can be no doubt with respect to the conveyance of one person from amongst them. Additionally, the words of the Messenger of Allah ﷺ, ***“My companions are like stars, whichever of them you follow you are guided”***, support the opinion of a companion being an evidence. This deduction is incorrect since the praise of the Prophet ﷺ for the companions collectively not individually is a proof that the *Ijma'* of the Companions is a *Shari'ah* evidence and the fact that the Companions did not convey the Quran individually is a proof that their consensus is a *Shari'ah* evidence. Rather, the *Shari'ah* evidence is the praise upon them and the fact that they collectively agree that a rule is the *Shari'ah* rule. So the evidence is two matters, praise and consensus and these are not found in the individual companion. In which case, the issue of praise and the conveyance of the Quran are not suitable to be proofs that the words of whoever conveyed the Quran from those whom Allah (swt) praised are *Shari'ah* evidences because in the same manner that Allah (swt) praised the Companions, He (swt) also praised those who followed them, and since the conveyance of the Quran even if by those whom Allah (swt) has praised does not make the words of the one who conveyed it a *Shari'ah* evidence, and due to that the inference made is invalid. What indicates the invalidity of this inference is that what an individual companion conveyed and what he narrated from the narrations is not considered to be definite – rather it is indefinite. Therefore, ***“The old man and woman if they commit fornication then stone them both”*** is not considered to be a verse from the Quran even though it was conveyed by a companion since there was no *Ijma'* upon it. In the same manner, the narrations that are transmitted by the Companions from the singular reports are not considered definite - rather they are indefinite.

This is different from the *Ijma'* of the Companions since what they agreed upon unanimously as being from the Quran is considered to be Quran and to be definite, and what they agreed upon unanimously in terms of narrations and were transmitted from them by *Mutawatir* (successive multiple chains) are considered to be definite evidences. Accordingly, the difference is vast between what the Companions agreed upon unanimously - where there is no disagreement, meaning it is definite and the one who denies it is a disbeliever - and what the single companion narrated which is indefinite and the one who denies it is not considered to be a disbeliever. Therefore, *Ijma'* of the Companions is *Shari'ah* evidence whereas the opinion of the individual companion is not considered to be from the *Shari'ah* evidences. In addition to that, contrary to the *Ijma'* of the Companions who do not agree upon a mistake, the individual companion can make mistakes and he is not free from them. The Companions used to differ over issues and each of them adopted a different opinion from the other; so, if the opinion of the companion were a proof then the proofs of Allah (swt) would be in disagreement and contradictory. Therefore, the opinion of a companion is not considered to be *Shari'ah* evidence.

As for those who say “the *Shari'ah* of those before us is *Shari'ah* for us”, they use the following words of Allah (swt) as evidence: ***“Truly We have sent the revelation to you as We sent the revelation to Nuh”*** (TMQ 4:163), ***“He (swt) has ordained the same Deen for you that He ordained for Nuh”*** (TMQ 42:13) and His (swt) words ***“Then, We (swt) have sent the revelation to you (O Muhammad ﷺ saying) Follow Millat Ibrahim”*** (TMQ 16:123).

These verses indicate that we are addressed by the legislation of the previous Prophets. In addition, the very duty of the Messenger ﷺ is that he came to inform about what Allah (swt) has obliged us to adhere to. Due to that, every letter in the Quran and every action that emanated from the Prophet ﷺ, any word that he pronounced or any confirmation from him must be adhered to except what was mentioned as being specific to him or other than him. So we are ordered by everything that is mentioned by the Quran or by narration except when a *Shari'ah* text comes to explain that it is specific to the Companions of the previous *Shari'ah* (plural of *Shari'ah*), and we are ordered by whatever has not mentioned in such a manner since Allah did not mention it in the Quran without reason and, therefore, we must be addressed by it.

This inference is incorrect. With respect to the verses, the intention of the first verse is that revelation is sent to him ﷺ in the same way it was sent to other Prophets, and the purpose of the second verse is that the basis of *Tawheed* (belief in Oneness of Allah(swt)) was legislated and that was what Nuh was ordained with. The intended meaning of the third verse is to follow the root of *Tawheed* since the word “*Millat*” means: the root of *Tawheed*. All the verses from this type are in this manner, such as His (swt) words: **“So follow their guidance”** (TMQ 6:90) and other verses. As for His (swt) words **“Truly, We did send down the Taurat, therein was guidance and light, by which the Prophets judged”** (TMQ 5:44), Allah (swt) by this meant the Prophets of the Tribe of Israel and not Muhammad ﷺ, and the Muslims only have one Prophet. As for what is narrated from Abu Hurayrah that the Messenger of Allah ﷺ said: **“The Prophets are brothers from Allat (i.e. different mothers), they have various mothers and their Deen is one”** (reported by Muslim), the meaning of “their Deen is one” is the *Tawheed* which is the basis that none differed upon. It does not mean what was sent from the Deen is one with all of them since we understand the opposite from His (swt) words: **“And for each from you We have prescribed a law and a clear way”** (TMQ 5:48). From this, it becomes clear that these evidences are not suitable to be inferred from, and the inference from them to prove that the *Shari’ah* from before us is a *Shari’ah* for us is incorrect.

On the other hand, there are evidences that decisively forbid the following of the *Shari’ah* of those before us whether it came in the Quran, the *Sunnah* or not in both. Allah (swt) said: **“And whoever seeks a Deen other than Islam, it will never be accepted of him”** (TMQ 3:85) and Allah (swt) said: **“Truly the Deen with Allah is Islam”** (TMQ 3:19). So, when there is a *Shari’ah* text stating that for anyone to embrace any Deen other than the Deen of Islam is conclusively not accepted, then how can it be requested from the Muslims to follow it? Allah (swt) says: **“And We have sent down to you the Book in truth, confirming the scripture that came before it and supreme over it”** (TMQ 5:48), the supremacy of the Quran over the previous Books does not mean that it was a confirmation for them since it is said in the same verse “confirming” and so it rather means that it is an abrogation of them. Also, there is an *Ijma’* that the *Shari’ah* of Islam is an abrogation for all the previous *Shara’ih*. More than that, Allah (swt) says: **“Or were you witnesses when death approached Ya’qub? When he said to his sons: ‘What will you worship after me?’ They said ‘We shall worship your God, the God of your fathers Ibrahim and Ismail and Ishaq, One God, and to Him we submit (as Muslims) \* That was an Ummah that has passed away. They shall receive the reward of what they earned and you of what you earn. And you will not be asked about what they used to do’”** (TMQ 2:133-4). So, Allah (swt) informs us that He will not ask us about what those Prophets did, and if we are not accounted about their actions, then we will not be accounted about their *Shari’ah* since conveying it and working according to it is from their actions. What we are not accountable for, we are not commanded with it and it is unnecessary for us. Additionally, it is narrated from Jaber that the Prophet ﷺ said: **“I have been given five that no one before me was given; each Prophet was sent to his people specifically and I have been sent to each Red and Black (that is, the whole of mankind)”** (Reported by Muslim) and from Abu Hurayrah that the Prophet ﷺ said **“I have been preferred over the Prophets by six”** (reported by Muslim), and then he ﷺ mentioned them and amongst them was **“And I was sent to all of the Creation”**. Hence, the Prophet ﷺ has narrated that every Prophet before our Prophet ﷺ was only sent specifically to their people; so, he was not sent to other than his people and they were not obliged by the *Shari’ah* of a Prophet other than their own. Therefore, it is confirmed that no one from the Prophets were sent to us and so their *Shari’ah* cannot be a *Shari’ah* for us. This is supported by what is mentioned clearly in verses from the Quran **“And to Thamud their brother Saleh”, “And to ‘Aad their brother Hud”, “And to Madyan their brother Shuaib”** (TMQ 11:50, 61, 84).

From all this, it is clear that the *Shara’ih* of those who came before us is not *Shari’ah* for us for three reasons: the first of them being that the proofs used as evidence only indicate the basis of *Tawhid* and do not indicate that all of the *Shara’ih* of the Prophets is one. Secondly, the *Shari’ah* texts which mention the prohibition of following any *Shari’ah* other than the *Shari’ah* of Islam, and thirdly every Prophet was sent to his people specifically and we are not

from his people so he is not a Messenger for us. We are, therefore, not addressed by his *Shari'ah* and are not bound by it. In that case, the *Shari'ah* of those before us is not considered from the *Shari'ah* evidences.

This is with regards to their use of the verses as proof. However, with respect to their inference that the Messenger ﷺ came to convey from Allah everything that must be adhered to, this is correct as to what he informed us that we must adhere to from Allah which is the *Shari'ah* that he came with. However, it is not correct (their inference) with respect to what he ﷺ did not order us to adhere to. So, the Prophet conveyed to us from Allah (swt) about the circumstances of those before us from the previous nations, but he informed us of that for the sake of example and admonition and not for us to be bound by their *Shari'ah*. So, the stories of the Prophets, as well as their affairs and the affairs of their nations, were narrated to us and their circumstances and what rules they used to follow were made clear to us. In addition, all of that was only for the sake of example and admonition and nothing else and it was not in order to be bound by their *Shari'ah*.

With respect to the stories and to the news (*akhbaar*), it is apparent that they came for admonition and lessons and this does not need any proof, and as for the conditions of the nations and what they used to follow in terms of rules, this was mentioned in way of reports about them and they were not mentioned from the perspective of being bound by them. They are like stories that came to explain the circumstances of the previous Prophets and the previous nations.

Above and beyond this, several of these rules contradict the Islamic *Shari'ah* in their details; therefore, if we were addressed by them, we would have been addressed by two different *Shari'ah*s and this is not possible. As an illustration from the legislation of Sulayman, Allah (swt) said: ***"He inspected the birds and said 'What is the matter that I see not the hoopoe? Or is his among the absentees? I will surely punish him with a severe torment, or slaughter him, unless he brings me a clear reason'"*** (TMQ 27:20-1) and there is no difference amongst the Muslims regarding the prohibition of the punishment of the bird and even if it was disobedient; rather, there is no difference even regarding the invalidity of punishing any animal and there are *Shari'ah* texts that came regarding this. The Prophet (saw) said: ***"The beasts damage is Jubaar"*** (agreed upon through Abu Hurayrah); it is mentioned in *Al-Muheet* dictionary: ***"The Jubaar is like the cloud which destroyed the cowardly, and Jubaar is loss and invalid"***. Therefore, the damage caused by livestock, as well as the bird, is not indemnified (i.e. the owner is not liable).

With respect to the *Shari'ah* of Musa, Allah (swt) says: ***"We forbade them every (animal) with undivided hoof and We forbade them the fat of the ox and sheep except what adheres to their backs or their entrails, or is mixed up with a bone"*** (TMQ 6:146), and in the *Shari'ah* of Islam all of that has been made permitted for the Muslims by His (swt) word: ***"and your food is permitted for them"*** (TMQ 5:5), and this fat is from our food so it is permitted for them. The words of Umm Maryam in the Quran, ***"I have vowed to you what is in my womb to be dedicated to Your services"*** (TMQ 3:35), are part of the *Shari'ah* of the people at the time of Zakariyyah and this is not permitted in Islam in origin. The words, ***"Every food was permitted for Bani Isra'il except what Isra'il forbade upon herself"*** (TMQ 3:93), are part of the *Shari'ah* of Ya'qub and in Islam it is not permitted to prohibit oneself from what Allah (swt) allowed; He (swt) says: ***"Why do you prohibit what Allah made permitted for you"*** (TMQ 66:1). The *Shari'ah* of the People of the Book at the time of the companions of the Cave includes, ***"The ones who won their point said verily we shall build a place of worship over them"*** (TMQ 18:21), and this is prohibited in Islam; the Prophet ﷺ said ***"Truly, those who if a good man died from amongst them would build a place of worship over his grave are the most evil of creation"*** (agreed upon).

Part of the *Shari'ah* of Musa are the words ***"And We ordained therein for them Life for Life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds Qisaas (equal for equal)"*** (TMQ 5:45), while we do not take from this because we are not ordered with it and only other

than us were ordered by it. Islam only obligated us with retaliation from all of these and in other issues by His (swt) words: ***“So whoever transgresses against you then transgress likewise against him”*** (TMQ 2: 194), His (swt) saying, ***“And if you punish, then punish them with the like of that which you were afflicted”*** (TMQ 16:126) and His (swt) words ***“The recompense for an evil is an evil like thereof”*** (TMQ 42:40). In addition, His (swt) words ***“and wounds Qisas”*** (TMQ 5:45) conflicts with *Qisas* (recompense) in Islam since the *Qisas* in Islam is the fine, and there is nothing in the Torah about accepting the fine. Rather, the fine is only in Islamic law and the fine is the blood money; so, the blood money for what falls short of life is called the fine. Likewise, many rules about *Qisas* in the stories that have been narrated about the previous Prophets and nations, explaining their circumstance and what they used to follow from laws, contradict the laws of Islam; so how can we be addressed by them?

It cannot be said that these laws have been abrogated by the Islamic *Shari'ah* since they were narrated without restriction and the laws which have come to us did not come as abrogation for laws before us. Rather they came as a *Shari'ah* for us and there is no relationship between these laws. Accordingly, the issue of abrogation is not found and the call regarding it is a claim that has no backing since abrogation is the nullification of the rule which is understood from a previous *Shari'ah* text by a subsequent one, such as the words of the Messenger ﷺ: ***“I used to prohibit you from visiting the graves so visit them”*** (reported by Muslim through Buraydah), and the report of Al-Rabi' in his *Musnad* through Ibn Abbas, ***“I used to prohibit you from visiting the grave, so visit them”***; therefore, the nullification and raising of the previous rule by a subsequent *Shari'ah* text is abrogation. Therefore, for abrogation to take place there must be an abrogated rule that was revealed before the abrogating rule, and for an indication to be present in the abrogating text that it is an abrogation for that rule, and anything other than this is not considered to be abrogation. The mere difference between two rules or contradiction between them does not make one of them an abrogation for the other; rather, there must be an indication in the abrogating text which indicates that it is an abrogation for a specific rule. Accordingly, these rules, narrated from the previous *Shara'ih*, are not abrogated by the rules of Islam which differs with them or contradicts them since there is nothing which indicates that. Furthermore, there is no relationship between them and the rules of Islam in legislation; so, they are abrogated by the abrogation of the previous *Shara'ih* by the *Shari'ah* of Islam and not by laws specific to them that came to abrogate them. With this, it is clear that the inference that we are addressed by what the Messenger ﷺ came with and are restricted by it as being an invalid inference since we are addressed by what came to us with him ﷺ from the legislation of Islam and restricted by that, and we are not addressed by what he related to us from the stories of the previous Prophets and their narrations, and neither are we addressed by what he explained to us from the circumstances of the previous nations and what laws they used to follow. Accordingly, it has become apparent with clarity that the legislation of those before us is not legislation for us and the invalidity of considering it being from the Islamic evidences is also apparent.

However, if another *Shari'ah* text is found with the laws from the *Shari'ah* of those before us which indicates that we are addressed by them, then, in that case, this rule would become found in the Book or in the *Sunnah*, and alongside it a *Shari'ah* text would be found that indicates that we are addressed by it in our *Shari'ah* and the address of the Legislator (swt) for us existed there which indicates that it is for us and so it would be obligatory to take action upon it then. However, this would not be because it was a *Shari'ah* of those before us but because of the address found in the same rule that is for us; in other words, because Allah (swt) addressed us by it and the Messenger ﷺ informed us that it was from the *Shari'ah* which he had come with, i.e. the laws of Islam.

It becomes apparent to the one who follows the laws that have come in the Book, the *Sunnah* and the previous *Shara'ih* that the text that comes indicating that we are addressed by it, that it is from our *Shari'ah*, could come in three circumstances:

Firstly, when the verse which the rule came with begins by directing the address towards us such as the verse regarding *Kanz* (hoarded wealth), Allah (swt) says: ***“O you who believe! Truly there are many of the rabbis and monks who devour the wealth of mankind on falsehood, and hinder (them) in the way of Allah. And those who hoard up gold and silver and spend them not in the way of Allah, announce unto them a painful torment”*** (TMQ 9:34). Allah (swt) has addressed us with this verse; so, whatever it mentioned is a *Shari'ah* for us. Accordingly, *Kanz* is prohibited in our *Shari'ah* even though part of the verse that prohibited it was explaining the circumstances of the rabbis and monks.

Secondly, when the verse which came with the rule has come with a word which indicates generality, such as the verses which mention ruling by other than what Allah has revealed. Allah (swt) says ***“And whosoever rules by other than what Allah has revealed then such are the disbelievers”*** (TMQ 5:44). So, the word “whosoever” indicates generality and this means that it encompasses us and thus we are addressed by it. Similarly, Allah (swt) says: ***“And whosoever rules by other than what Allah has revealed then such are the oppressors”*** (TMQ 5:45), and in the same way ***“And whosoever rules by other than what Allah has revealed then such are the sinful ones”*** (TMQ 5:49).

Thirdly, if the verse ends with something that draws our attention to the laws which are within it, such as the verse of *Qisas* where Qarun was mentioned; Allah (swt) says: ***“Truly Qarun was one of Musa's people, but he behaved arrogantly towards them. And we gave him of the treasures, that of which the keys would have been a burden to a body of strong men”*** until His (swt) words: ***“Know you not that the disbelievers will never be successful”*** (TMQ 28:76-82). This verse is followed directly afterwards by His (swt) words: ***“That home of the Hereafter, We shall assign to those who do not want grandeur in the land nor do mischief. And the good end is for the Muttaqun”*** (TMQ 28:83), and so the verses became an address to the Messenger ﷺ and to the believers. This draws attention to the laws which came (within them) when it is said: ***“those who do not want grandeur”*** and these were rules regarding Qaroon who wanted grandeur in the land but there is what indicates that we are addressed by these laws.

In these three circumstances, laws of the verses of previous people will be considered as laws from the Islamic *Shari'ah* since there is something that indicates that we are addressed by them and we adopt them in their characteristic as laws from the Islamic *Shari'ah* and not from the characteristic that they were from a *Shari'ah* of those before us since the *Shari'ah* of those who came before us is not a *Shari'ah* for us.

With regards to those who say that *Istihsaan* (application of discretion in a legal decision) is from the *Shari'ah* evidences, they are not able to come with single or even indefinite evidence from the *Shari'ah* that supports their claim. *Istihsaan* can be explained by those who take it as a *Shari'ah* evidence that: it is evidence which occurs to the *Mujtahid* when he or she is unable to make it apparent due to the lack of help to express it. It is also explained that it is to leave an aspect from amongst the aspects of *Ijtihad* without the completeness of the words for another aspect which is stronger than it and which would be like an unexpected factor on the first. In the same manner, it is explained that it is in an issue to abandon the rule comparable to it to another rule due to a stronger aspect that necessitates this move. Additionally, it is explained that it is to cut off an issue from comparable ones.

*Istihsaan* is divided into two categories; the first is *Istihsaan Qiyasi* and the second is *Istihsaan* of necessity. *Istihsaan Qiyasi* is to abandon the rule of an apparent *Qiyas* that comes to fore for a different rule by another *Qiyas* which is more subtle and hidden, but is a stronger proof, with a more satisfying viewpoint and a more correct derivation. An example of this is: if a person bought a car from two people in one agreement as a loan from them. Then, one of the two creditors was given part of this debt. However, he didn't have the right to take it specifically; rather, his partner in the debt has a right to claim his part of the receipt since he



(the first creditor) has appropriated it from the combined sale price in the single sale. Moreover, the appropriation of either of the two partners from the price of the combined sale between them is the appropriation of both the partners, in other words, it is an appropriation for the partnership and it is not for either of them to take specifically. So, if whatever was taken is destroyed while it is in the possession of the one who received it before the second partner took his share from it, then the deduction from the *Qiyas* is that it would be taken away from the total sum of the two, or in other words from the total sum of the partnership. However, in *Istihsaan* the loss would be considered to be taken only from the one who had received it and the loss would not be counted against the second partner according to *Istihsaan* since in origin he is not inseparable from the partnership of the one who received it; rather, he is able to leave what is received by the appropriator and become attached to the debtor by himself specifically. The other examples follow in the same manner. This is *Istihsaan Qiyasi*.

As for *Istihsaan* of necessity, it is what contradicts the rule of *Qiyas* by taking into account an incumbent necessity or a required benefit in order to fulfil the need or prevent the hardship. This occurs when the rule from the *Qiyas* leads to a hardship or a problem in some issues and so it is abandoned at that time by *Istihsaan* for another rule which would remove the hardship and repel the problem. This is like the example of the employee since his possession with respect to what he is employed upon is considered to be an *Amanat* (trust); so there is no liability (to be paid) if it is damaged while it is with him as long as he was not negligent. Therefore, if someone employed a person to work in his house to sew clothes for someone else for one month, he is considered a private employee. Then, if the clothes were damaged while they are in the employee's possession without any transgression from him, there is no payment of liability because he possessed it as a trust. Additionally, if someone employed someone to work in his shop to sew clothes for others and he used to sew clothes for all the people, then he is a general employee. So, if the clothes are destroyed while they are in this employee's possession without any transgression from him then there is no liability since he held them as a trust in the same manner. However, according to *Istihsaan*, there is no liability upon the private employee while there is for the general employee so that he (the general employee) would not accept more work than he is able to do since he might destroy the peoples' wealth.

This is the summary of *Istihsaan* and its evidences. It is apparent that they are not evidences; rather, they are simply rational amendments that are neither from the Book nor from the *Sunnah*. They do not even reach the level of being considered indefinite proofs let alone conclusive proofs that *Istihsaan* is from the *Shari'ah* evidences. This is from one angle and from another angle; whatever comes about from rational amendment is void.

With respect to the explanations of *Istihsaan*, all of them are invalid. As for the first explanation that the evidence is sensed in the mind of the *Mujtahid* and that he or she does not know what it is, it is not permitted to consider something an evidence as long as it remains unknown since the lack of ability to make it clear and apparent proves that it is not clear to the *Mujtahid* and that he or she lacks knowledge of it; so, it is not correct to be from amongst the *Shari'ah* evidences. As for the other explanations, all of their meanings are the same, i.e. to abandon similar issues to the issue at hand for another stronger view, in other words, to abandon *Qiyas* for stronger evidence. If these explanations intend by the "stronger evidence", a text from the Book or the *Sunnah*, then this is not *Istihsaan*; it is rather preference of the text, so it is deducing from the text which would be deduction by the Book or the *Sunnah* and not deduction by *Istihsaan*. If the "stronger evidence" is the mind by what it considers as benefit and this is the intended meaning, then this is invalid since *Qiyas* is built upon the *Shari'ah 'Illah* which is determined by the text and it is the address of the Legislator (swt) to us. The mind and the benefit are not *Shari'ah* texts and nor are they another '*Illah* stronger than the text; rather, there is no relationship between the mind and benefit with the *Shari'ah* text (i.e. what came as Revelation). For that reason, this abandonment is invalid.

This is regarding the explanations. As for the categorisation of *Istihsaan*, the invalidity of *Istihsaan Qiyasi* has become clear from the invalidity of the second explanation, which was to abandon the similar issues to the issue. Also, their consideration that it is a hidden *Qiyas* is invalid because it has no relationship with *Qiyas*; rather, it is simply reasoning by benefit (making the benefit an '*Illah*'). Regarding the example of the price of a combined sale which was sold in one agreement, it is not correct to differ in the rule, the loss of the wealth which one of the two partners appropriated, that it is a loss from the wealth of the partnership, for what one of the two partners appropriated from the wealth is from the appropriation of the partnership. Because the wealth, irrespective of whether it was the sold car or its price, is the wealth of the partnership and not the wealth of one of the partners; so its loss is the loss of the wealth of the company just like its appropriation is an appropriation of the wealth of the company. So, this beneficial (*Maslahi*) abandonment has no place and it contradicts the *Shari'ah*.

As for the *Istihsaan of necessity*, its invalidity is clear in that it is ruled by the mind and what the mind perceives as benefit; it is not a *Shari'ah* text and the adopted reason ('*Illah*') is preferred to the *Shari'ah* text (that is, the comprehension of *Shari'ah* text). All of this is invalid without any necessary discussion. Then, to make the shared employee liable and the private employee not liable is to prefer something without evidence to make it preferred and it contradicts with the *Shari'ah* text. It was reported by Al-Bayhaqi in *Sunan Al-Kubra* from 'Amr B. Shu'ayb from his father from his grandfather that the Messenger ﷺ said: **"then there is no liability upon the one who takes a trust"**. Similarly, through Al-Qasim Bin Abdul Rahman that 'Ali and Ibn Mas'ud said: "there is no liability upon the one who takes a trust", and in his *Sunan* Al-Bayhaqi reports from Jaber that Abu Bakr ruled that a deposit which had been kept in a bag, which was burnt and so was destroyed, was not to receive any liability in exchange; so, there is no liability upon anyone given a trust at all since the expression of the narration "no" is a negation of the genus (no liability) which indicates generality, and so it encompasses every one holding a trust whether they were a private employee or a general employee.

By this it is apparent that *Istihsaan* is not from the *Shari'ah* evidences, and it is not correct to consider it from the *Shari'ah* evidences since there is no proof at all, definite or indefinite, whether from the Quran, from the *Sunnah* or from the *Ijma'* of the Companions that indicates that it is from the evidences. This is besides the fact that it is using the mind as evidence which makes it invalid and that some of its examples contradicts *Shari'ah* texts.

As for those who say that *Al-Masalih Al-Mursalah* are from the *Shari'ah* evidences, in the same manner they are also unable to bring any proof for it; however, they consider the reasons behind the whole of the *Shari'ah* to be the obtaining of interests and the repulsion of harms. In the same way, they consider the reason behind each specific *Shari'ah* rule to be the obtaining of the interest or the repulsion of the harm. However, some of them make it a condition that the consideration that something is itself a benefit needs to be found mentioned in a text from the *Shari'ah* or mentioned that it is a type of interest but some of them do not make this a condition; rather, they consider the *Maslahah* (benefit) a *Shari'ah* evidence even if there is no mentioning of the consideration of it or its type in a *Shari'ah* text. This is because it comes under the general *Masalih* by which the benefits are sought and the harms are avoided.

*Al-Masalih Al-Mursalah* may be defined as: every interest which has no text narrated in the *Shari'ah* with respect to it or its type. So, the meaning of *Mursalah* is that it is not mentioned in evidence. They said that if the *Maslahah* was itself mentioned in a specific text, such as teaching, reading and writing, or was from a general text which mentioned its type which confirmed its consideration, such as the enjoining of every type of good and the forbiddance of all the acts of evil, then in these two situations it is not considered to be from *Al-Masalih Al-Mursalah*. Rather, *Al-Masalih Al-Mursalah* is forwarded from the evidence, in other

words, there is no evidence found upon it; instead, it is derived from the generality of the *Shari'ah* being sent to gain the interests and repel the harms. However, there is a difference made between the *Shari'ah* interests and those which are not legitimate since the *Shari'ah* interests are those that agree with the intentions (*Maqasid*) of the *Shari'ah*, and the interests that are illegitimate are those which contradict the intentions of the *Shari'ah*. So, *Al-Masalih Al-Mursalah* that are considered to be a *Shari'ah* evidence are those which agree with the intentions of the *Shari'ah*, and those which contradict with the intentions of the *Shari'ah* are not considered to be from *Al-Masalih Al-Mursalah*; consequently, it is not a *Shari'ah* evidence. Hence, *Al-Masalih Al-Mursalah* are those that the *Shari'ah* texts indicate its consideration in a general manner, and accordingly, specific *Shari'ah* rules are built upon its basis when there is no *Shari'ah* text regarding the event or anything which is comparable to it, in which case the interest would be the *Shari'ah* proof.

This is the summary of *Al-Masalih Al-Mursalah* and it is invalid from two angles:

Firstly: the *Shari'ah* texts from the Quran and the *Sunnah* are connected to specific actions of the worshipper; so, they are the *Shari'ah* evidence for the rule of the *Shari'ah* in that action, and they are not connected with the interests and no evidence came for the interest. When Allah (saw) said: **“Let there be a pledge taken”** (TMQ 2:283), and when He (swt) said: **“O you who believe when you contract a debt for a fixed period write it down”** (TMQ 2:282), and when He said: **“Take witnesses whenever you make a commercial contract”** (TMQ 2:282), He (swt) was explaining only the rules of mortgaging, writing down debts and witnessing the sale. He (swt) did not make it evident whether this was an interest or not, neither by expression nor by indication, and the text does not convey whether this rule was an interest or not, neither from close nor far or by any aspect from its various angles. So, from what angle is it said that these interests are indicated by the *Shari'ah* in order for this interest to be considered and subsequently to be considered as *Shari'ah* evidence?

Additionally, the *Shari'ah Illal* (plural of *Illah*) came in the same manner as the *Shari'ah* texts; connected to the actions of the worshipper and as evidence upon the indication of the *Shari'ah* rule in that action, and did not come to explain the interest nor the indication of the interest. So, when Allah (swt) says: **“in order that it may not become a fortune used by the rich among you”** (TMQ 59:7), **“so that there may be no difficulty to the believers in respect of the wives of their adopted sons”** (TMQ 33:37) and when He (swt) says: **“to attract the hearts of those who have been inclined”** (TMQ 9:60), He (swt) is only clarifying the *Illah* distributing the wealth amongst the poor rather than the rich in order to prevent the circulation of the wealth amongst the rich, and clarifying that the *Illah* of marrying the Messenger ﷺ to Zaynab is to be an explanation of the permissibility for someone to marry his adopted son's wife, and clarifying that the *Illah* for giving (money) in order to attract the hearts is the need for the State to bind the hearts together. So, He (swt) did not explain that this was benefit; rather, the explanation was that a specific issue was the *Illah* of a specific rule without any regard given to the interest or its absence and absolutely without any consideration to it. So, from what angle then, can it be said that the *Shari'ah* indicates these reasons such that the interests can be considered *Shari'ah* evidence? If the *Shari'ah* texts did not indicate that the *Shari'ah* came for the interest, neither in its indications upon the rule nor in its indications for the *Illah* of the rule, then it is not possible for it to be said that the texts indicate specific interests or by their type since nothing at all came regarding this in the *Shari'ah* texts. Accordingly, the invalidity of the claim that the *Shari'ah* texts came as a proof for specific interests or by their type has become clear, and from greater reasoning, the interests that were not mentioned by a text from the *Shari'ah* that indicates that they are from the *Shari'ah* evidences are also not considered.

Secondly, they made a condition for *Al-Masalih Al-Mursalah* that for them to be *Mursalah*, there must be no narration of a text in the *Shari'ah* that indicates that they are considered, neither specifically nor by their type, and so their stipulation is that there should not be a

specific proof for it from the *Shari'ah* and it is rather understood from the intentions of the *Shari'ah*. This alone is enough to make it void in the view of the *Shari'ah* because the lack of a proof which indicates it is enough to reject it since the rule sought is the rule of the *Shari'ah* and not the rule from the mind. Therefore, in order to consider it as being from the *Shari'ah*, it is imperative that there is a proof which indicates that it is found in what came with the Revelation, i.e. the Book and the *Sunnah*. So, the stipulation that there is no text from the *Shari'ah* that indicates it is sufficient to reject it as being from the *Shari'ah*.

With respect to *Al-Masalih Al-Mursalah* being understood from the intentions of the *Shari'ah*, the intentions of the *Shari'ah* are not a *Shari'ah* text which can be understood such that what is understood from them can be considered a proof, and so there is no value in what is understood from them as far as using them as evidence for *Shari'ah* law. Furthermore, what is meant by the intentions of the *Shari'ah*? If what is intended by it is what the texts indicate, such as the prohibitions of fornication, stealing, murder, alcohol and apostasy from Islam, then this is not an intention of the *Shari'ah*; rather, it is the law for the actions of the worshipper and there is no looking beyond the indication of the text. So, there is no place to consider that this law which was understood from the text is *Shari'ah* evidence; rather, it is a *Shari'ah* rule. By greater reasoning, there is no account given to what the mind imagines from that law as being the purpose of the *Shari'ah* to be from the *Shari'ah* evidences. So, how would you consider that which is conceived from the mere imagination as a purpose of the *Shari'ah* to be a *Shari'ah* evidence?!! Based upon this, the validity of what is understood from the intentions of the *Shari'ah* is completely and utterly void.

As for what is intended by what is understood from all the wisdom (*Hikma*) of the *Shari'ah*, i.e. the wisdom behind sending the Messenger ﷺ and the fact that he was a mercy for all creation, then this is a *Hikma* not an *Illah*, and the *Hikma* may or may not be attained. Accordingly, it is not taken as a basis used as evidence due to the possibility of its absence; therefore, by greater reasoning, what is understood from the *Hikma* cannot be taken as a basis that is used for evidence.

Due to this, it would be incorrect to consider that what is understood from what is known as the intentions of the *Shari'ah* as being from the *Shari'ah* evidences. It is also the case from this angle that the notion that what is understood to be from the purpose of the *Shari'ah* to be *Shari'ah* evidence is completely void. Accordingly, the invalidity of the notion that *Al-Masalih Al-Mursalah* is from the *Shari'ah* evidences has become clear.

This is from the angle of the causes that made them consider that *Al-Masalih Al-Mursalah* is *Shari'ah* evidence. As for the angle of the *Shari'ah* proof that they are from the *Shari'ah* evidences, there is absolutely no *Shari'ah* proof for that at all whether from the Book or the *Sunnah*; neither a conclusive proof nor an indefinite one. For this reason, it is incorrect to consider *Al-Masalih Al-Mursalah* as being from the *Shari'ah* evidences.

From all of this, it becomes clear that the evidence that the Revelation came with from Allah (swt), which are confirmed with definite proof, are the four evidences and nothing else, and they are: the Book, the *Sunnah*, the *Ijma'* of the Companions and *Qiyas* whose *Illah* is from the *Shari'ah*, and other than these four evidences have no definite proof that indicates them. Accordingly, it has become apparent that the *Shari'ah* evidences are only these four alone.

However, it should be clear that the rules deduced from evidences other than these four, from amongst the rules that an *Imam* considered as *Shari'ah* rules, are *Shari'ah* rules in the eyes of those who advocate them and those who oppose them because there exists a vague evidence denoting that they are considered as evidences. Hence, the one who considers the general consensus of the *Ummah* as being a *Shari'ah* evidence and who then goes on to deduce from this a rule; consequently, this rule would become a *Shari'ah* rule in his or her eyes and a binding *Shari'ah* rule upon him or her, and he or she would be forbidden from taking another rule instead. The same rule also becomes a *Shari'ah* rule in the eyes of those who oppose it but it does not become a binding *Shari'ah* rule upon them. The same applies to 'the *Shari'ah* of those before us is a *Shari'ah* for us', *Al-Masalih Al-Mursalah*, *Istihsaan* and rationality.

Hence, every rule deduced from any of these evidences is considered a *Shari'ah* rule in the eyes of those who advocate that what the rule has been deduced from is part of the *Shari'ah* evidences and in the eyes of those who oppose it as well. However, it is only a binding *Shari'ah* rule upon the one who deduces it and not binding upon the one who holds a different understanding. This is like the rules deduced from the texts since the difference in understanding the text does not make the deduced rule a *Shari'ah* rule in the eyes of the one who deduced it and illegitimate in the eyes of the one that opposed him or her in this understanding. Rather, it is a *Shari'ah* rule from the viewpoint of all the Muslims as long as the possibility of reaching such understanding from the text is possible; in other words, as long as the doubted evidence (*shubhat daleel*) exists. However, it is not considered a binding rule upon all the Muslims but only binding upon the one who has deduced it and the one who has emulated it, and not binding upon the one who has opposed it. Nonetheless, in any case it is a *Shari'ah* rule. Likewise, the rule deduced from an evidence is exactly like the rule deduced from the text; it is considered a *Shari'ah* rule in the eyes of all the Muslims whether for those who considered it a *Shari'ah* evidence or for those who did not consider it a *Shari'ah* evidence, provided the doubted evidence is existent, such as in the case of the previous evidences which we refuted their consideration as the *Shari'ah* evidences.

### **Article 13**

**In origin, every individual is innocent. No one should be punished without a court verdict. It is absolutely forbidden to torture anyone; and anyone who does this will be punished.**

This article covers three issues: The principle of innocence, the prohibition of imposing a penalty without a judge's sentence and the prohibition of torture.

As for the first issue, its evidence is derived from what was reported by Wa'il Ibn Hajr who said: *"A man from Hadramowt and a man from Kindah came to the Messenger of Allah ﷺ and the Hadhrami said: 'O Messenger of Allah ﷺ, this man has taken from land which belonged to my father.' The Kindi said: 'It is my land, it is in my possession and I am farming it. He has no claim over it.' the Messenger of Allah ﷺ said to the Hadhrami: 'Do you have any proof?' He said: 'No.' Upon this the Messenger of Allah ﷺ said: 'In this case you have his oath.' He said: 'O Messenger of Allah ﷺ! He is a rebel, he does not care what he swears and he does not fear of anything.' He ﷺ said: 'You have no other rights over him but this'"* (reported by Muslim). He ﷺ also said, *"the burden of proof is upon the plaintiff, and the onus of the oath lies with the defendant"* (reported by al-Bayhaqi with a *sahih* chain). In the first narration, the Messenger of Allah ﷺ commissioned the plaintiff with the proof, and this means that the defendant is innocent until proven guilty; in the second narration, the Messenger of Allah ﷺ explained that in origin, the proof should be provided by the plaintiff. This serves as evidence that the defendant is innocent until proven guilty.

As for the second matter, its evidence is derived from the saying of the Messenger of Allah ﷺ, *"He whose wealth I have taken, here is my wealth, let him take from it, and he whose back I have lashed, here is my back, let him lash it"* (reported by Abu Ya'la from al-Fadl bin 'Abbas). Al-Haythami said that in the chain of Abu Ya'la Ata' bin Muslim, who Ibn Hibban verified as trustworthy whereas others claimed he is weak, and the remainder of the men are trustworthy. It is narrated in *al-Mu'jam al-Awsat* of al-Tabarani with the wording *"Whoever's back I have lashed, here is my back let him do the same to it, and whosoever's honour I have abused here is my honour let him do the same to it, and whosoever I have taken wealth from here is my wealth let him do the same to it"*. And in Ibn Kathir's *al-Bidayah wa 'l-Nihayah* it came with the wording *"Whoever's back I have lashed, here is my back let him do the same to it, and whosoever I have taken wealth from, here is my wealth so take from it, and whosoever's honour I have abused, here is my honour let him do the*

**same**". The Messenger of Allah ﷺ said this in his capacity as a ruler; it means let the one who has been wrongly punished retaliate against me and this serves as evidence prohibiting the ruler from punishing any of the subjects without establishing the charge for which he deserves such punishment. Also, it is reported in the story of the *mula'annah* (husband's accusation of his spouse of adultery without witnesses) that the Messenger of Allah ﷺ said **"If I was going to stone anyone without proof I would have stoned her"** (agreed upon and the wording is from Muslim), and this means that he ﷺ did not stone her due to the absence of clear proof even though there was doubt over her. This understanding is confirmed by what is narrated by Ibn Abbas in the narration in which the Messenger of Allah ﷺ ordered a *mula'annah* to be carried out between the couple (refer to Quran 24: 4-9), where the text says **"So a man at the gathering said to Ibn Abbas: 'Is she the woman about whom the Messenger of Allah ﷺ said: 'If I were to stone anyone without proof I would stone such and such woman?'"** He said: **"No, that was a woman who used to display vice after Islam"** (agreed upon), meaning that she used to be indiscreet but it was not proven; neither through evidence and nor through admission. This means that the suspicion of adultery was there, but despite this the Messenger of Allah ﷺ did not stone her, for it had not been confirmed, and so he ﷺ said: **"If I were to stone anyone, I would stone such and such woman"**. The conjunction **"if"** in the Arabic language denotes abstention due to the absence of something, thus the stoning was not carried out due to the absence of evidence. This serves as evidence that the ruler is forbidden from imposing a penalty on anyone from among the subjects, unless he or she perpetrates a crime which the *Shari'ah* deems to be a crime, and once his or her perpetration of the crime has been proven before a competent judge and in a court of law, because the evidence could not be admissible unless it is established before a competent judge and in a court of law.

However, the ruler reserves the right to take someone accused of a crime into custody before the charge is established, pending a court appearance to look into the charge brought against him. However, the detention should be for a limited period of time and it would be wrong to detain the accused for an indefinite period. This period must be short. Evidence about the permissibility of detaining the accused is derived from what Al-Tirmidhi reported in a *hasan* narration, which Ahmad also reported, and al-Hakim stated that the narration has a *sahih* chain, on the authority of Bahz bin Hakim on that of his father on that of his grandfather who said: **"The Messenger of Allah ﷺ detained a person accused of a crime and then he released him."** It has also been reported similarly by al-Hakim on the authority of Abu Hurayrah that **"The Messenger of Allah ﷺ detained someone accused of a crime for a day and a night"**, and though the chain includes Ibrahim bin Khaitam who there is dispute over, it has also been reported through other chains by al-Bayhaqi in *al-kubra* and Ibn al-Jarud in *al-Muntaqi* on the authority of Bahzi bin Hakim bin Mu'awiyah on that of his father on that of his grandfather: **"The Prophet ﷺ detained someone accused of a crime for an hour during the day and then released him"**. All of this is evidence about the obligation of limiting the period of detention, and that it should be for the shortest time possible, since the Messenger of Allah ﷺ detained him for a day and a night, and that he detained him for an hour during the day. Besides, this detention is not a punishment, but it is rather a detention aimed at helping with the enquiries.

As for the third matter, it denotes the prohibition of imposing a penalty upon the accused before the charge against him has been established; it also denotes the prohibition of imposing a penalty which Allah (swt) has made as a punishment in the hereafter, that is the Hellfire, in other words the prohibition of punishing by burning with fire. As for the prohibition of inflicting a punishment before establishing the charge, its evidence is derived from the narration of the Messenger of Allah ﷺ in which he ﷺ was reported to have said **"If I were to stone anyone without proof, I would have stoned her"** (agreed upon from the narration of Ibn Abbas), despite the fact that she was known to be an adulteress according to what is understood from the words of Ibn Abbas. If it were fitting to inflict punishment upon the accused in order to make them confess, the Messenger of Allah ﷺ would have tortured that woman to make her confess, knowing that she was indiscreet about her illicit behaviour. It is absolutely forbidden to punish the accused and therefore it is forbidden to beat the accused

before the charge has been established. It is also forbidden to insult him or to inflict upon him any punishment as long as his guilt has not been confirmed. This is supported by what has been narrated from Ibn Abbas: ***“A man consumed alcohol and got intoxicated; he was spotted staggering in a mountain pass so he was taken to the Messenger of Allah ﷺ. As he neared the house of Abbas, he gave his escort the slip and entered Abbas’s house and hid behind him. They mentioned this to the Messenger of Allah ﷺ, so he ﷺ laughed and said: “Did he do it?” Then he ﷺ did not order them with anything regarding him”*** (reported by Abu Dawud and Ahmad, with the wording from Abu Dawud). So the Messenger of Allah ﷺ did not apply the punishment upon that man because he did not confess and nor were the charges against him established in his presence. This means that he was accused of drunkenness but this was not confirmed and thus he was not tortured in order to make him confess and no penalty was imposed upon him just for the mere accusation. Therefore, it would be wrong to inflict any punishment on the accused prior to the establishment of the charge before a competent judge and in a court of law.

As for the reports of *“al-ifk”* (the lie) incident that ‘Ali (ra) beat the slave-girl before the Messenger of Allah ﷺ, it should be recognised that the slave-girl was not accused, thus it cannot be used as evidence denoting the permissibility of beating the accused. Besides the narration of ‘Ali’s (ra) beating of Burayrah, the Messenger of Allah’s ﷺ slave-girl, was reported by Bukhari and he said that ‘Ali (ra) said to the Messenger of Allah ﷺ “Ask the slave-girl”. It was the Messenger of Allah ﷺ who did the asking. Bukhari did not mention that ‘Ali (ra) had beaten the slave-girl. To quote from the narration ***“‘Ali bin Abi Talib said O Messenger of Allah ﷺ, Allah has not made it hard upon you and there are plenty of other women apart from her, and if you asked the slave-girl she would tell you the truth.” So the Messenger of Allah ﷺ summoned the slave-girl and said: “O Burayrah!...”*** In another narration from al-Bukhari, it was reported: ***“The Messenger of Allah ﷺ came to my house and asked about my slave-girl, so she said: “No by Allah, I do not know of any blemish, apart from the fact that she would sleep to the point that the sheep would enter and eat her dough. Some of his companions rebuked her and said: “Tell the truth to the Messenger of Allah...”, and al-Bukhari did not mention that ‘Ali (ra) had beaten the slave-girl.***

However, in other reports, it was mentioned that ‘Ali (ra) had beaten the slave-girl. Ibn Hisham mentioned that he did beat her. In the *Sirah* of Ibn Hisham it was reported: ***“As for ‘Ali, he said: “O Messenger of Allah ﷺ Women are plentiful and you can easily change one for another. Ask the slave-girl, for she will tell you the truth.” So the Messenger of Allah ﷺ called Burayrah to ask her, and ‘Ali got up and gave her a violent beating, saying: “Tell the Messenger of Allah ﷺ the truth.” To which she replied: “I know only good of her””***. Assuming that this report is sound, it however does not stipulate the permissibility of beating the accused, because the slave-girl Burayrah was not accused in this case and it cannot be said that she was a witness. She was not beaten for being a witness because the Messenger of Allah ﷺ did ask other people but did not beat them. He ﷺ asked Zaynab Bint Jahsh and he did not beat her, despite the fact that her sister Hamnah Bint Jahsh used to spread rumours about Aisha (ra) as al-Bukhari reported in the narration of *al-ifk*: ***“...And her sister Hamna set about fighting her battle, so she perished alongside those who perished”***. Hence, Zaynab was suspected of knowing something and she was questioned, but she was never beaten. Therefore, it would be wrong to say that Burayrah was beaten in her quality as a witness; rather, she was rather beaten in her quality as the slave-girl of the Messenger of Allah ﷺ. The Messenger of Allah ﷺ is entitled to beat his slave-girl and to order her beating. The Messenger of Allah ﷺ did ask his slave-girl and he asked others as well and at the same time he kept silent over ‘Ali’s (ra) beating of the slave-girl and over the companions reprimanding her. However he ﷺ did not beat any other person and nor did he keep silent over the beating of any other person, which indicates that he ﷺ permitted her beating because she was his ﷺ slave-girl, and one is entitled to beat his slave-girl in order to discipline her or to investigate a matter. Therefore, this narration cannot be used as evidence about the permissibility of beating the accused and the evidence pertaining to the prohibition of his beating stands; this is reflected in the saying of the Messenger of Allah ﷺ: ***“If I were to***

*stone anyone without proof I would have stoned her”* (agreed upon from Ibn Abbas). Therefore, it is absolutely forbidden to beat, insult, reprimand or torture the accused. It is however permitted to detain him because evidence exists about this.

This is as far as the prohibition of inflicting punishment upon the accused prior to establishing the charge is concerned. As for the prohibition of inflicting a punishment which Allah (swt) has made a punishment in the Hereafter, its evidence is reflected in what al-Bukhari reported on the authority of ‘Ikrimah who said: *“A group of apostates were brought to the Amir of the believers ‘Ali so he burnt them; Ibn Abbas heard of this and said: If I had been him, I would not have burnt them because the Messenger of Allah ﷺ has prohibited this by saying: Do not punish with the punishment of Allah”*. Al-Bukhari narrated on the authority of Abu Hurayrah that the Messenger of Allah ﷺ said *“No one can punish by fire except Allah”*. Abu Dawud reported from the narration of Ibn Mas‘ud with the words, *“It is not proper that anyone should punish by fire except the Lord of the fire”*. Therefore, if the accused was brought before a competent judge in a court of law and shown to have committed the crime he was accused of, he should not be punished by fire, nor by that which is similar to it, such as electricity and nor by anything else which Allah (swt) punishes with. Furthermore, it is forbidden to inflict any punishment from among those not decreed by the Legislator (swt). This is so because the Legislator (swt) has determined the punishments to be imposed upon the guilty parties, and these are killing, lashing, stoning, exile, cutting, and imprisonment, destruction of property, imposing a fine, vilification and branding any part of the body. Apart from these, it is forbidden to inflict any other type of punishment upon anyone. Hence, no one should be punished by burning with fire, though it is permitted to burn his property, and nor should anyone be punished by pulling his nails, nor by pulling his eyebrows, nor by electrocution, nor by drowning, nor by pouring cold water over him, nor by starving him, nor by letting him go cold and nor by anything similar. Punishing the accused should be confined to the penalties decreed by the *Shari’ah* and the ruler is forbidden from applying any other form of punishment apart from these. Therefore, it is absolutely forbidden to torture anyone, and whoever does so will be violating the *Shari’ah*. If it is established that someone has tortured anyone else, he will be punished. These are the evidences of this article.

#### **Article 14**

**Actions are originally bound by the *Shari’ah* rules. Hence, no action should be undertaken unless its rule is known. The things on the other side are originally *mubah* (permitted) as long as there is no evidence that stipulates prohibition.**

The Muslim is commanded to conduct his actions according to the *Shari’ah* rules. Allah (swt) says *“No by your God, they shall not have true belief until they make you judge in all disputes between them”* (TMQ 4:65).

He (swt) also says, *“Whatever the Messenger brought you take it and whatever he forbids you abstain from it”* (TMQ 59:7).

Therefore, the origin is that the Muslim restricts himself to the *Shari’ah* rules. Besides that the *Shari’ah* principle states: *“No rule before the advent of Shari’ah”*. In other words, no matter should be given any rule whatsoever before the advent of the rule of Allah (swt) pertaining it. Hence, before the advent of Allah’s (swt) rule, no matter should be given any rule. This means that it should not be given the rule of permissibility, for the *Ibaha* is a *Shari’ah* rule that must be established through the address of the Legislator; otherwise it cannot be considered a *Shari’ah* rule. This is so because the *Shari’ah* rule is the speech of the Legislator related to the actions of the worshippers. Therefore, anything that has not been mentioned in the address of the Legislator cannot be considered a *Shari’ah* rule. Therefore, permissibility is not the non-advent of a prohibition, it is rather the advent of *Shari’ah* evidence stipulating the *mubah* (permitted); in other words the advent of the choice from the Legislator to either



undertake or abstain. Therefore, the origin is the abidance by the speech of the Legislator, not the *Ibahah*; because the rule of *Ibahah* itself requires a confirmation from the speech of the Legislator. This principle is general, covering the actions and the things. So if a Muslim wanted to perform any action, it would be incumbent upon him to abide by the rule of Allah (swt) pertaining that action. Therefore, he must search for that rule until he knows it and abides by it. In the same manner if a Muslim wanted to take or give anything, whatever that object may be, it is incumbent upon him to abide by the rule of Allah (swt) regarding that object. So he must search for that rule until he knows it and abides by it. This is what the verses and the *hadith* have indicated in their literal indication and their understanding. Therefore, it is forbidden for a Muslim to undertake any action or to act towards anything upon other than the *Shari'ah* rule; rather he is obliged to abide by the *Shari'ah* rule in every action he undertakes and in every matter. After Allah (swt) revealed ***“Today, I have perfected your Deen for you, completed my favour upon you and have chosen for you Islam as your Deen”*** (TMQ 5:3), and after He (swt) says, ***“And We have sent down to you the Book explaining everything”*** (TMQ 16:89), neither one single action, nor one single object has been left except that Allah (swt) has explained the evidence for its rule, and it is forbidden for anyone, having understood these two verses, to claim that some actions, some things or some situations are devoid of the *Shari'ah* rule; meaning that *Shari'ah* has completely ignored it and therefore it failed to designate an evidence or a sign to draw the attention of the obligated to the presence of this *Shari'ah* rule, in other words the presence of an *Illah* that indicated the rule to the person obligated to abide by it; is it *Wajib*, or *Mandub*, or *Haram*, or *Makruh* or *Mubah*? Such a claim and anything similar is considered a slander against *Shari'ah*. Therefore, it is forbidden for anyone to claim that such action is permitted because no *Shari'ah* rule related to it has been mentioned and the principle is that if no *Shari'ah* rule is mentioned it must be permitted, and in the same way it is not permitted for anyone to say that this object is permitted because there is no *Shari'ah* evidence related to it so the origin is permissibility if there is no *Shari'ah* evidence. It is forbidden to claim this because every action and everything has its evidence in *Shari'ah*; one must search for the rule of Allah (swt) pertaining to the action or the object to take it and apply it as opposed to making it permitted under the pretext that there is no evidence for it.

However, since the *Shari'ah* rule is the speech of the Legislator related to the actions of the worshippers, the speech has therefore come to deal with the action of the worshipper, not to deal with the object. This speech has come to deal with the object in consideration of its connection to the action of the worshipper. Thus the speech is originally directed at the action of the worshipper and the object came linked to the action of the worshipper. This is whether the speech was regarding the action without any mention of the object whatsoever, such as Allah (swt) saying ***“Eat and drink”*** (TMQ 2:60), or it has come regarding the object without any mention of the action whatsoever, such as Allah (swt) saying ***“Dead meat, blood and the flesh of the swine has been made forbidden to you”*** (TMQ 5:3). Accordingly, the rule of prohibition in these three things is only in relation to the action of the worshipper in terms of eating, buying, selling and hiring and other actions. Therefore, the *Shari'ah* rule deals with the action of the worshipper, whether this were a rule for the action or a rule for the object. This is why the origin in actions is to be restricted (to the *Shari'ah* rule) because the address is only related to the action of the worshipper.

However, by scrutinising the elaborated evidences of the *Shari'ah* rules, it becomes clear that within the texts which have come as evidences of the rules, the state of the text that acts as an evidence for the action is different to the state of the text that acts as evidence for the object, in terms of the manner in which the address is directed. In the text related to the action, the address is directed to the action alone, regardless of whether the object is mentioned or not. For instance, Allah (swt) says ***“Dead meat, blood and the flesh of the swine has been made forbidden to you”*** (TMQ 5:3)

Allah (swt) says, ***“And Allah has made trade lawful and He has forbidden usury”*** (TMQ 2:275)

And He (swt) says, ***“Fight the disbelievers who are close to you”*** (TMQ 9:123)

And He (swt) says, ***“Let the man of means spend according to his means”*** (TMQ 65:7)

And He (swt) says, ***“Let the trustee discharge his trust”*** (TMQ 2:283)

And Allah (swt) says, ***“Eat and drink”*** (TMQ 2:60)

And the Messenger of Allah ﷺ said ***“The buyer and the vendor reserve the right to change their minds provided they do not separate”*** agreed upon through Ibn Umar and others.

And he ﷺ said ***“Give the employee his wage”*** reported by Ibn Maja through Ibn Umar and al-Bayhaqi through Abu Hurayrah with a chain that was deemed as *Hasan* by al-Baghawi.

In all of these texts, the address has been directed at the action, and the object has not been mentioned.

And in other examples, Allah (swt) says, ***“Yet from each kind you eat tender flesh”*** (TMQ 35:12).

And He (swt) says, ***“It is He Who has made the sea so that you may eat thereof tender flesh”*** (TMQ 16:14).

And He (swt) says, ***“and We bring forth from it grains, so that they may eat thereof”*** (TMQ 36:33).

And He (swt) says, ***“Verily those who unjustly eat up the property of orphans”*** (TMQ 4:10).

And Allah (swt) says, ***“So that they may enjoy its fruits”*** (TMQ 36:35).

The address in all these is also directed at the action, although the object has been mentioned and this is similar to the address related directly to the action of the worshipper.

This state is different to the state of the text related to the object, where the address is directed exclusively towards the object, regardless of whether the action was mentioned alongside it or not. For instance Allah (swt) says ***“Dead meat has been made forbidden to you”*** (TMQ 5:3).

Allah (swt) also says ***“He has only forbidden to you dead meat, blood and the flesh of the swine”*** (TMQ 2:173).

Allah (swt) also says ***“And We have sent down water from the sky”*** (TMQ 23:18).

Allah (swt) also says ***“And We have made from water everything that is living”*** (TMQ 21:30).

Also, the saying of the Messenger of Allah (saw) pertaining the sea water: ***“Its water is pure and its dead flesh is Halal”*** (*Sahih* as reported by Malik through Abu Hurayrah).

In all of these the address is directed at the object without mention of the action.

For instance, Allah (swt) says ***“O you who have believed, Verily intoxicants, gambling, dedication of stones and divination of arrows are an abomination of Satan’s handiwork. Avoid such things that you may prosper”*** (TMQ 5:90).

Allah (swt) says ***“Did you see the water that you drink”*** (TMQ 56:68).

Allah (swt) says ***“Did you see the fire that you kindle”*** (TMQ 56:71).

Allah (swt) says ***“And from the fruit of the date palm and the vine you get out wholesome drink and food”*** (TMQ 16:67).

Allah (swt) says ***“And truly in cattle will you find an instructive sign from what is within their bodies between excretions and blood. We produce for your drink milk pure and agreeable to those who drink it”*** (TMQ 16:66).

The address in all of these texts is directed at the object, though the action has been mentioned. Such an address is related to the object; thus it is an outlining of a rule pertaining

to that object. However, the rule's relation to the object is reflected in the fact that it outlines its rule vis-à-vis the action of the worshipper, not vis-à-vis the object detached from the action of the servant, since it is inconceivable for a object to have a rule unless it is related to the servant. Therefore, the difference in the state of the text becomes clear with regard to the manner in which the address is targeted.

This difference indicates that although the *Shari'ah* rule is the speech of the Legislator related to the actions of the worshippers some rules specified to things have however come to outline the rule of these things in an unrestricted manner, even though their rule was in relation to the worshippers as opposed to being isolated from the worshipper. Through scrutiny, this indication outlines to us that the rules of things have come through a general evidence, which in turn has come to outline the evidence of the actions, and that whatever came specifically related to things is in fact an exception from the general rule which had come as evidence for them through the evidence of the actions. This is so because detailed study has revealed that the *Shari'ah* text in which the address was directly targeted at the action has come in general terms. Therefore all the things related to it would be permitted because the request to perform or the choice was general, encompassing all that which is permitted vis-à-vis this request, and the prohibition of something requires a text. For instance, Allah (swt) says ***“And (He) has subjected to you everything that is in the Heavens and Earth”*** (TMQ 45:13). This means that the things in the skies and the earth have been created for us by Allah, and therefore are permitted.

Allah (swt) also says ***“And Allah has permitted trade”*** (TMQ 2:275) which means that Allah (swt) has made the buying and selling of all things permitted; thus the *ibahah* of selling and buying any of these things does not require an evidence, because the general evidence comprises everything. So, the prohibition of selling something, such as alcohol for instance, requires evidence.

Also, Allah (swt) says ***“Eat of what is on Earth lawful and good”*** (TMQ 2:168) which means that eating everything is *Halal* (lawful); thus the eating of a specific item does not require an evidence to make it *Halal*, because the general evidence has made it *Halal*. The prohibition of eating something, such as dead meat for instance, requires evidence.

Allah (swt) says ***“Eat and drink but do not waste by excess”*** (TMQ 7:31) which means that the drinking of everything is permitted; thus the drinking of a specific item does not require an evidence to make it permitted, because the general evidence has made it permitted. However, the prohibition of drinking a specific item, such as intoxicants for instance, requires evidence.

Similar to these, general evidences are found permitting everything related to actions such as talking, walking, playing, smelling, inhaling, looking and other actions which man performs; thus the permission of anything related to them does not require an evidence, but the prohibition of anything related to these actions does require an evidence to make it forbidden.

Therefore, the evidences brought by the texts and targeted at the actions have outlined the rule of things in a general and unrestricted manner; therefore they do not require other texts to outline their rules. Thus, the advent of specific texts related to things, once the general rule of these things had been outlined, serves as evidence that these specific rules have come to exclude the rule of these things from the general rule. Hence, the *Shari'ah* texts have come to outline the *Shari'ah* rule pertaining things, denoting that they are permitted; hence, they are permitted unless a text exists to prohibit them. It is in this manner that the *Shari'ah* principle *“The origion of things is ibahah”* is derived. These are the evidences for this article.

## **Article 15**

**The means to *Haram* (unlawful) are forbidden if they most likely lead to *Haram*. But if there is a doubt that a means might lead to *Haram*, then this means will not be forbidden.**

The evidence of this article is reflected in Allah's (swt) saying ***"Do not revile those who call upon other than Allah lest they out of spite revile Allah in their ignorance"*** (TMQ 6:108). Insulting the disbelievers is permissible and Allah (swt) has insulted them in the Quran. However, if this insult were to lead the disbelievers to most probably insult Allah (swt), it would become prohibited. This is because insulting Allah (swt) is not permitted and it is prohibited in the sternest fashion. This is how the *Shari'ah* principle, ***"The means to Haram is forbidden"***, has been deduced. However, the means becomes prohibited if it would most likely lead to something prohibited, since the prohibition of insulting their idols was because it was the cause which would lead to the insulting of Allah (swt) – as demonstrated by the use of the letter "fa" (lest) of causality in the verse, and if it was not most likely that Allah (swt) will be insulted because of insulting their idols, like the most likely probability (*ghalabat al-dhann*) required in any *Shari'ah* rule, then the "fa" which indicates causality would not have been used to indicate the prohibition. Therefore, if the means were not considered in the most likely probability to lead to *Haram* but it was merely feared that it may lead to *haram*, such as a woman going out without a face cover, where it is feared that it might cause *Fitnah*, the means in this case would not be *Haram*, because the mere fear that it might lead to *Haram* is not sufficient to warrant a prohibition. On top of that, the *Fitnah* with respect to itself is not prohibited upon the woman herself. This is the evidence of this article.

Another similar principle to this one is the following principle: ***"If one specific item of a Mubah thing leads to harm, that particular item becomes Haram and the thing remains Mubah"***. This is reflected in what is narrated when the Messenger of Allah ﷺ passed through the land of Al-Hijr and people took water from its well. When they left the Messenger of Allah ﷺ said ***"Do not drink anything from its water and do not use it to make ablution for prayer. Whatever dough that you prepared, give to the animals and do not eat anything from it. None of you should go out at night unless he has a companion with him"*** reported by Ibn Hisham in his *Sirah* and Ibn Hibban in his *al-thiqat*. Drinking water is permitted, but that particular water, which is the water of Thamud, has been made prohibited by the Messenger of Allah ﷺ because it led to harm. However, water in general remained permitted. Also, it is permitted for a person to go out at night without a companion, but the Messenger of Allah ﷺ prohibited anyone from among that army, in that particular night and at that particular place, from going out because it led to harm. Apart from this, going out at night without a companion remained permitted. This serves as evidence that a particular item of the permitted thing becomes prohibited if it led to harm, while the thing in general remains permitted.

## The System of Ruling

### Article 16

**The system of ruling is a unitary system and not a federal system.**

The only correct system for ruling is the unitary system and nothing else is acceptable. This is because the *Shari'ah* evidence brought it alone and prohibited anything else; it was narrated by 'Abd Allah b. 'Amru b. Al-'As that he heard the Messenger of Allah ﷺ say ***“whoever pledges allegiance to an Imam, giving him the grasp of his hand and the fruits of his heart, and then another comes to contend with him over the leadership then strike the neck of the latter”*** (reported by Muslim). And it is narrated by Abu Sa'id al-Khudri that the Messenger of Allah ﷺ said, ***“If the pledge of allegiance is given to two Khalifahs, then kill the second of them”*** (reported by Muslim). The angle of deduction from these two narrations is that the first narration explains that in the scenario that the Imamate, in other words the *Khilafah*, is given to someone, then it is obligatory to obey him and if someone comes to dispute with him over this *Khilafah* it would be obligatory to fight him and to kill him if he did not give up his contention. So the narration clarifies that whoever contends the leadership of the *Khilafah* in the *Khilafah* must be fought. And this is an allusion to indicate the prohibition of the division of the state, encouragement not to permit its division and prohibiting any separation from it even through the use of force to maintain its unity. As for the second narration, it is regarding the scenario when the state does not have a head, in other words a *Khilafah*, and the leadership of the state, in other words the *Khilafah*, was given to two people and so the second of them should be killed, and by greater reasoning if it was given to more than two. And this is an allusion to indicate the prohibition of the division of the state. This means the prohibition of making the state into multiple states and it being obligatory that the state is one. Consequently the system of ruling in Islam is a unitary system and not a federal system and anything other than the unitary system is conclusively prohibited, and for this reason the article was drafted.

### Article 17

**The ruling is centralised and the administration is decentralised.**

This article was drafted in order to separate between the rule and the administration. The difference between the two of them is apparent from two angles: from the reality of each of them and from the actions of the Messenger of Allah ﷺ in the appointment of the governors (*Wali*) and the assignment of civil employees. As for the reality of each of them, the rule (*hukm*), power (*mulk*) and the authority (*sultan*) have the same meaning, and that is the authority which implements the laws. It is mentioned in the *al-Muheet* dictionary that “...*al-mulk* is greatness and *sultan*”, and in another place “*al-sultan* is the proof and the capability of *mulk*”, and in a third place “*al-hukm*: the decree...and *al-hakim* is the one who implements the *hukm*”. And this means that the rule linguistically means the decree and the *hakim* (ruler) linguistically is the implementer of the rule, and what is intended by the rule in this article is the terminological meaning; the implementation of the laws, in other words the power, the authority and the capability of rule. Or by another expression, the action of leadership which the *Shari'ah* obligated upon the Muslims with the words of the Messenger ﷺ ***“It is not permitted for three people in any open space on the Earth not to appoint one of them as their leader”*** reported by Ahmad through 'Abd Allah Bin 'Amru, and the action of leadership is the authority which is used to prevent injustice and to settle disputes, or by another expression the rule is the guardianship of the authority mentioned in His (swt) words ***“Obey***

***Allah and Obey the Messenger and the people of authority amongst you***” (TMQ 4:59) and His (swt) words ***“And if only they had referred it to the Messenger or to those charged with authority among them”*** (TMQ 4:83), which is the undertaking of practically governing matters. This is the reality of the rule. Based upon that, the guardianship of the authority, the leadership and the power are the rule, and anything else is considered to be administration. Consequently, what the *Khalifah* and the leaders from the governors and workers do in terms of managing the affairs of people by implementing the *Shari’ah* rules and the legal judgments is considered to be the rule; anything else from what they or others do from those who were appointed from the people or by the *Khalifah* is considered to be administration. Accordingly the difference between the ruling and administration has become obvious.

The *Shari’ah* gave the rule as described to the *Khalifah* who was elected by the *Ummah*, or the *Amir* chosen by them, so by the *Ummah*’s choice for the *Amir* or by her pledge of allegiance to the *Khalifah*, the *Khalifah* or the *Amir* then becomes the one who has the right to the rule, or the rule is for the *Khalifah* or the *Amir*. No one else can take the rule unless it was given to them by him, and in this manner the rule is centralised. In other words, the rule is for the *Ummah* to give to a person, *Khalifah* or *Amir*, and by giving them the rule by the pledge of allegiance or by selection or elections, the rule becomes his, and at that time he gives the right to rule to whomever he wishes and no one else has the right to rule unless he gives it to them. Accordingly, it becomes apparent that centralisation of the rule is the restriction of the right to the rule with the one whom the *Ummah* has selected, where he is entitled to the rule automatically. No one else is entitled to the rule automatically; rather they gain it through being granted it by someone else, and are limited with respect to this permission by time, place and situation, and in that case the reality of the ruling indicates that it is centralised and its centralisation is necessary.

As for the actions of the Messenger of Allah ﷺ, he used to send governors to the districts and order them to implement the *Shari’ah* rules upon the people. He also used to appoint civil employees in order to carry out the functions not to implement the laws. So for example he appointed governors and gave them the right to implement the laws and did not restrict the means and styles of implementation but rather left that to them. Some of them would be written letters which would include the *Shari’ah* rules but not the means or style of their implementation and others would be ordered to implement the *Shari’ah* of Allah (swt); so he appointed ‘Amru Bin Hazm as governor and wrote him a letter and he appointed Mu’adh Bin Jabal and he asked him how he would rule, and then he confirmed the correctness of his view. He also appointed ‘Itab b. Usayd as a governor in order to implement the *Shari’ah* of Allah (swt), and he used to appoint people as governors based upon the view of their suitability to execute; it is narrated ***“Imran Bin Husayn was employed over the collection of charity and when he returned he was asked: “Where is the money?”. He replied “You sent me for the sake of money? We took it from where we used to take it at the time of the Prophet ﷺ and give it where we used to give it”*** (reported by Ibn Maja and al-Hakim that authenticated it).

This is different to the civil employees, since their roles are limited and they do what is requested of them. For example, the Messenger of Allah ﷺ appointed ‘Abd Allah Bin Rawaha as an estimator who would estimate for the Jews; in other words estimate the yield of crops prior to harvest. It is reported by Ahmad with a *Sahih* chain from Jabir Bin ‘Abd Allah who said ***“Allah gave Khaybar to the Messenger of Allah as booty. The Messenger of Allah confirmed their status as they were and made it as an agreement between them, and so he sent ‘Abd Allah b. Rawaha who would estimate the yield then say to them: O gathering of Jews, you are the most hated people to me, you killed the Prophets of Allah, and you lied upon Allah, but this hatred does not carry me to do any injustice to you. I have estimated twenty thousand loads of dates so if you want they are for you, and if you didn’t then they are for me. So they said: It is with this that the heavens and the earth established and so we took it, so leave us”***. He ﷺ also used to send collectors for the *Zakat* who would collect and deliver it to him, and he would pay them their wages, as narrated by Bishr Bin Sa’id Bin al-Sa’adi al-Maaliki who said ***“Umar employed me over the charity, so when I completed it***

and gave it to him he ordered me to take wages, so I said “I only did it for the sake of Allah (swt)”. He replied “Take what I have given you since at the time of the Messenger of Allah ﷺ I did what you did and so he paid me, so I said similar to what you have said, and so he ﷺ said to me “If you are given something without asking then eat it and give it in charity” (reported by Muslim).

So ‘Imran b. Husayn disapproved of the ruler requesting the *Zakat* that he had gathered from him, since he had implemented the law of Allah (saw) and given it to those who had right over it in the same way he used to at the time he was appointed by the Messenger of Allah (saw), but Bishr b. Sa’id was an employee who did what he was assigned to do with respect to collecting the *Zakat* but he did not undertake the implementation of the *Shari’ah* rules. Accordingly the difference between the actions of the ruler and the actions of the civil employee has been made clear. So the actions of the ruler are the implementation of the *Shari’ah*, in other words the rule, power and authority, and the actions of the civil employees are to undertake the actions and not the implementation of the laws, and so they are not from the rule but rather they are only part of the administration.

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In addition, the difference between the actions of the ruler himself have become clear, since amongst them is the rule which is the implementation of the *Shari’ah* rules and the implementation of the judgements, and no one has the right to do these actions except for the one who is appointed with the right to rule according to the position given. And amongst the actions of the ruler are the styles and means used in order to achieve the implementation, and these are part of the administration, and these do not have to be defined for the ruler and he does not need to refer back to those who appointed him. Rather his appointment as a ruler gives him the right to use the means that he considers and the styles that he wants as long as those who appointed him did not specify specific styles and means for him, in which case he would be obliged by what was specified for him. In other words his appointment as a ruler gives him the right to carry out the administrative actions as long as there are not administrative systems in place originating from those who gave him the right to rule, in which case he would follow those systems.

Consequently it is clear that the meaning of centralised rule is the carrying out of the authority, in other words of the implementation of the *Shari’ah*, and no one possesses that authority unless he was given it by the *Ummah* and so it is restricted to him and is exercised by whoever he gives it to. The meaning of decentralised administration is that the ruler who has been appointed does not have to refer to those who appointed him in the issues of administration; rather he carries them out according to his opinion. And that is established from the reality of the rule as has been mentioned in the *Shari’ah* texts, and from the actions of the Messenger ﷺ in appointing the rulers.

This is the evidence for this article.

### **Article 18**

**There are four types of rulers: the *Khalifah*, the delegated assistant, the governor, and the worker (*‘amil*), and whoever falls under the same rule. As for anyone else, they are not considered rulers, but rather employees.**

The ruler in the article is the one holding authority who is responsible for governing the affairs, irrespective of whether the governance was for the whole State or for a part of it. Through deduction from the *Shari’ah* rules, the ones who are made responsible for governing the affairs, establishing the laws and are to be obeyed with respect to their implementation of the laws are these four: the *Khalifah*, the assistant (delegate minister), the governor, and the *Amil*; and they are to be obeyed due to their position of rule.

With regards to the *Khalifah*, he is the man who is given the pledge by the *Ummah* (nation) to establish the *Deen* (religion) as their representative, and so he establishes the *hudud*, implements the laws, and carries out the *Jihad*, and he is owed obedience: ***“Whoever gives the pledge of allegiance to the Imam giving him the grasp of his hand and the fruit of his heart should obey him if possible, and if another comes to dispute with him (over authority) strike the neck of the latter”*** (reported by Muslim through ‘Abd Allah b. ‘Amru b. al-‘As).

As for the delegate minister, he is the assistant who assists the *Khalifah* in running the governing of the affairs; in other words the general, continuous binding governorship. The evidence for this is that he is the one in a position of rule who must be obeyed in the issues that the *Khalifah* charged him with or requested him to assist him in carrying out the affairs. Ahmad reported with a good chain from Aisha (ra) that she said: the Messenger of Allah ﷺ said ***“Whoever Allah (swt) places in a position of responsibility in any issue from the affairs of the Muslims, while wanting good for him will give him an honest minister, such that if he forgets he will remind him, and if he remembers he will assist him”***

As for the governor, he is the man who the *Khalifah* gives authority to over one of the governorates of the State. The evidence that he is in a position of ruling who must be obeyed is what is reported by Muslim from Auf Bin Malik al-Ashja’i who said that he heard the Messenger of Allah ﷺ say ***“...whoever has a governor appointed over him whom he sees doing something from the sins against Allah, then hate what he does in terms of sins, but should not remove his hand from obedience”***. In another narration by Muslim the Messenger of Allah ﷺ said ***“if you see something from your governors that you hate, and then hate his action, and do not remove your hand from obedience”***.

As for the *‘Amil* he is the one who the *Khalifah* puts in charge of, or his representative, a village, town or part of a governorate. His work is like that of the governor except that he is ruling over a part of the governorate and not the whole of it and accordingly he is a ruler who must be obeyed like the governor, because he is a leader coming either from the *Khalifah* or the governor. Al-Bukhari reported from Anas b. Malik who said that the Messenger of Allah ﷺ said ***“Listen and obey even if a black slave whose head is like a raisin is placed in authority over you”***. Muslim reported from Umm al-Husayn who said that she heard the Prophet ﷺ give a sermon in the farewell pilgrimage where he said ***“and even if a slave is appointed over you, who leads you by the Book of Allah, then listen to him and obey”***.

With respect to the expression “and whoever falls under the same rule”, this means the *Madhalim* judge and the judge of judges if he is given the authority to appoint and remove the *Madhalim* judge, as well as the powers of the judges in *Madhalim*, since the judge of *Madhalim* is from the rule as is the subject of article 78.

#### **Article 19**

**It is not permitted for anyone to be in charge of ruling or any action considered to be from the ruling unless they are male, free, adult, sane, just, capable of carrying out the responsibility, and it is not permitted for anyone other than a Muslim.**

Allah (swt) has decisively prohibited for a disbeliever to be a ruler over the Muslims, as Allah (swt) says ***“Allah will never grant to the disbelievers a way over the believers.”*** (TMQ 4:141), and to make the disbeliever a ruler over the Muslims is to grant him a way over them, and Allah (swt) categorically forbade that through His (swt) use of the letter “never” which is an indication that the prohibition of the disbeliever having a way over the Muslims, in other words for the disbeliever to be a ruler over them, is a decisive prohibition and so it conveys that it has been made *haram*. Additionally, Allah (swt) made it a condition that the witness for the return to one’s wife after divorce has to be Muslim; Allah (swt) says ***“Then when they***



*are about to attain their term appointed, either take them back in a good manner or part with them in a good manner. And take as witness two just persons from among you*" (TMQ 65:2), and the understanding taken is not to take from other than among you. Also, the witness in debts has to be a Muslim; Allah (swt) says ***"And get two witnesses out of your own men"*** (TMQ 2:282); in other words not from men other than yours. So if a condition for witness in these two issues is that they must be Muslim, then by greater reasoning it is a condition for the ruler to be Muslim. Also, ruling is the implementation of the *Shari'ah* rules and the judgments of the judiciary, and they are ordered to judge according to the *Shari'ah*, so accordingly it is a condition that they are Muslim. The rulers are those who are charged with authority, and when Allah (swt) ordered the obedience to them and that issues related to security and fear be referred to them, it is made a condition that those charged with authority must be Muslims; Allah (swt) says ***"Obey Allah and obey the Messenger and those in authority from you"*** (TMQ 4:59) and ***"When there comes to them some matter touching (public) safety or fear, they make it known (among the people); if only they had referred it to the Messenger or to those charged with authority among them"*** (TMQ 4:83). He (swt) said ***"from you"*** in other words not from other than you, and ***"among them"*** in other words not from other than them. These verses indicate that it is a prerequisite that the one who has authority must be Muslim.

The fact that the Quran did not mention the one in authority except that it was accompanied with a mention that they were Muslims confirms that it is a prerequisite for the ruler to be Muslim. Also, the ruler has complete obedience from the Muslims and the Muslim is not charged with obeying the disbeliever, since he is commanded by the text only to obey the Muslim who holds the authority; Allah (swt) says ***"Obey Allah and obey the Messenger and those in authority from you"*** (TMQ 4:59), so the fact that it was ordered to obey those in authority from the Muslims and not other than them is another indication that it is not obligatory to obey the disbeliever who has authority and there is no ruler without obedience. It cannot be argued that the Muslim is charged with obeying the department manager if they were a disbeliever, since he is not a person of authority but rather he is a civil employee, so obedience to him is due to the command of the person of authority to obey the department manager, and the discussion is about the obedience to one of authority and not the employee. Due to this it would not be correct for someone to be in authority over the Muslims unless he is Muslim, and it is not correct for him to be a disbeliever, so accordingly it is absolutely not permitted for the ruler to be a disbeliever.

As for the condition that the ruler be male, it is due to what was narrated by Abu Bakrah saying ***"When the Messenger of Allah ﷺ was informed that the daughter of Kisra had been given the reign over the Persians he said "A people who appoint a woman over their command will never succeed" (reported by al-Bukhari).*** The notification of the Prophet ﷺ of the negation of success for whoever commissions a woman in authority over them is a prohibition of her assignment, since it is from the forms of request. And the fact that this notification came as a censure is an indication that the prohibition is decisive, and accordingly commissioning a woman to the ruling is *haram* (forbidden) and it is from this evidence that this condition of ruling is derived.

As for the condition that the ruler be just, this is because Allah (swt) made it a prerequisite that the witness be just; Allah (swt) says ***"And take as witness two just persons from among you"*** (TMQ 65:2), and so the one who is more significant than the witness, such as the ruler, must by greater reasoning also be just. That is because if the just character has been made a condition for the witness then for it to be a condition for the ruler is of a higher priority.

As for the condition of being free, that is because the slave does not possess the independence of conduct for himself, so how can he undertake the governing of other peoples' affairs. Also, the issue of being enslaved means that the time of the slave belongs to his master.

As for the condition of being an adult, this is because it is not permitted for the ruler to be a child, due to what was reported by Abu Dawud from 'Ali Bin Abi Talib (ra) who said that the

Messenger of Allah ﷺ said ***“The pen has been raised from three: from the child until they come of age, from the one asleep until they awake and from the insane until they recover”***, and it come with another wording ***“The pen has been raised from three: from the insane whose rationality is gone until he revives, from the one asleep until he awakes and from the child until he attains puberty”***. And the pen being raised means that it is not correct that he acts independently in his affairs, and he is not responsible according to the *Shari'ah*, and so accordingly it is not correct that he could be the *Khalifah* or anything else below him from the positions of ruling since he does not possess the right to act independently. Another evidence for the absence of permission for a child to be the *Khalifah* is what has been reported in al-Bukhari ***“from Abi Aqil Zuhra Bin Ma'bad, from his grandfather 'Abd Allah Bin Hisham, and he was in the era of the Prophet ﷺ. His mother Zainab bint Hamid took him to the Messenger of Allah and said: O Messenger of Allah! Take the pledge of allegiance from him, and so the Prophet ﷺ said He is small, and stroked his head and prayed for him”***. Therefore if the pledge of a child is not necessary and he is not obliged to give the pledge to the *Khalifah*, then by greater reasoning it is not permitted for him to be the *Khalifah*.

With respect to the condition of being sane, this is because it is not correct for him to be insane, due to the words of the Messenger of Allah ﷺ ***“The pen has been raised from three”*** in which he mentioned ***“the insane whose rationality is gone until he revives”***. From the meaning of the raising of the pen is that he is not responsible, since rationality is the focus of responsibility and a condition for the correctness of any transactions. The actions of the *Khalifah* are with regards to the law and implementing the *Shari'ah* injunctions, and so it would not be correct for him to be insane since it is not correct for the insane person to act independently with regards to his own affairs, so therefore by greater reasoning it stands that it would not be correct for him to have authority over the people's affairs.

As for the condition that he should be capable of carrying out the responsibility, this is from what is necessitated from the pledge with respect to the *Khalifah* and necessitated from the contract of appointment of anyone other than the *Khalifah* from the assistants and governors and workers (*'Ummal*), since the one who is incapable is not capable of upholding the affairs of the subjects by the Book and the *Sunnah* which he had given the pledge upon or agreed upon according to the contract of appointment.

From the various evidences to prove this:

1 – Muslim reported from Abu Dharr who said ***“I said: O Messenger of Allah, will you not appoint me? So he put his hand on my shoulder and he said: O Abu Dharr, you are weak, and it is an amanah (trust), and on the Day of Judgement it will be a disgrace and a regret except (for those) who take it by its right and perform its duties correctly”***

So this explains the issue by taking it by its right and performing what is upon him from it; in other words to be capable of it, and the indication which is decisive is that the Messenger ﷺ said who takes it and is not capable – ***“and on the Day of Judgement it will be a disgrace and a regret except (for those) who take it”***.

2 – Al-Bukhari reported from Abu Hurayrah that the Messenger ﷺ said ***“If the trust is betrayed and neglected, then expect the coming of the Hour”***. The man further asked about the trust and how it can be wasted or betrayed. The Messenger of Allah ﷺ said: ***“When the matter is entrusted to those who are unqualified to implement its duties, and then wait for the Hour”***

So this narration indicates the decisive prohibition for the responsibility to be placed with those who are incapable. The decisive indication (*qarina*) is wasting the trust and it is from the signs of the Day of Judgement; all this to indicate the great sin for the responsibility to be entrusted to whoever is not capable to fulfil it.

As for how the capability should be defined, this requires examination since it could be connected to bodily or mental illness etc., and for that reason it is left undefined for the

*Madhalim* court to confirm that, for example, the candidates for the *Khalifah* fulfil the necessary requirements.

## **Article 20**

**Accounting of the rulers by Muslims is one of their rights and an obligation of sufficiency upon them. The non-Muslim subjects have the right to voice complaint regarding the ruler's injustice towards them or misapplication of the rules of Islam upon them.**

When the ruler is appointed upon the people in order to rule them he has only been appointed to govern their affairs, so if he falls short in this governing then accounting him becomes necessary. Although his accounting lies with Allah (swt) and the recompense of his fault or negligence is punishment (from Allah (swt)), Allah (swt) gave the Muslims the right to account the ruler and made this accounting an obligation of sufficiency upon them, giving the *Ummah* the guardianship over the ruler's execution of his responsibilities. It has been made binding upon the *Ummah* to rebuke the ruler if he is faulty in these responsibilities or displays evil conduct; Muslim narrated from Umm Salamah that the Messenger of Allah ﷺ said ***"There will be rulers, so you will know and rebuke, so whoever knows is innocent, and whoever rebukes is safe, but the one who is pleased with them and follows them"***; in other words the one who knows the evil and so he changes it and whoever is not capable of changing it rejects it in his heart and so he is safe. Accordingly, it is obligatory upon the Muslims to account the ruler in order to change what he is upon and they would be sinful if they were content with and followed the actions of the ruler that are blameworthy.

As for the non-Muslims, they have the right to raise complaints regarding oppression of the ruler due to the narrations about the absolute prohibition of oppression irrespective of whether it was upon the Muslims or non-Muslims and due to the narrations regarding the prohibition of harming the people of *Dhimma*; the Messenger of Allah ﷺ said ***"Whoever oppresses someone with a covenant, or punishes him, or charges him with more than he can bear, or takes something from him against his will, then I will be his supporter on the Day of Judgement"*** (Reported by Abu Dawud and al-'Iraqi said the chain was good). This is a definitive prohibition on harming the one with a covenant and by greater reasoning this applies to the people of *Dhimma*. Also due to the prohibition of specific types of harm and similar to them are all harms; Abu Dawud narrated through Ibn 'Abbas from the Prophet ﷺ in the narration regarding the agreement with the people of Najran, ***"their churches would not be destroyed, and no priest of theirs is banished and they would not be coerced away from their faith"***. If a *Dhimmi* is oppressed or afflicted by harm from the ruler, he has the right to raise his complaints until the oppression is lifted from him and the one who oppressed him is punished. The complaint from him is heard in every case irrespective of whether he was justified in his complaint or not.

In the book *al-Amwal* by Ibn Abi 'l-Dunya with a *Sahih* chain to Sa'id Ibn al-Musayyib, as also said by al-Hafiz in the introduction of *al-fath*, when Abu Bakr (ra) spoke to a Jew known as Fenhaas inviting him to Islam, Fenhaas replied to him saying ***"By Allah O Abu Bakr, we have no need of Allah and He is needy of us, and we do not implore Him the way He implores us, and we are not in need of Him and He is not able to dispense with us, and if He was not poor then He would not have asked for a loan of our wealth as your companion claims, forbidding you from interest and giving it to us, and if He was not in need of us then He would not have given it to us"***. So Fenhaas was alluding to His (swt) words ***"Who is he that will lend to Allah a goodly loan so that He may multiply it to him many times?"*** (TMQ 2:245), but Abu Bakr was unable to have patience over this reply and so became angry and hit Fenhaas in the face with a powerful strike, and said ***"By the One who my soul is in His Hand, if there was not a covenant between us and you I would have struck your head O***

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**enemy of Allah**". So Fenhaas then complained about Abu Bakr (ra) to the Messenger of Allah ﷺ, and the Prophet ﷺ listened to his complaint and asked Abu Bakr (ra), and so Abu Bakr (ra) told him what was said to him. When Fenhaas was asked about this he denied what he had said to Abu Bakr about Allah (swt), and so His (swt) words **"Indeed, Allah has heard the statement of those who say: 'Truly, Allah is poor and we are rich!' We shall record what they have said and their killing of the Prophets unjustly, and We shall say: 'Taste you the torment of the burning (Fire)'"** (TMQ 3:181) were revealed. The cause for the revelation of this verse is mentioned by Ibn Abi Hatim and Ibn al-Munthir with a good chain from Ibn Abbas as mentioned by al-Hafiz in *al-fath*. And it is well known that Abu Bakr (ra) was a *Wazir* (minister) of the Messenger ﷺ, in other words an assistant, and so he was a ruler, and Fenhaas was a covenanter, and the Messenger ﷺ heard the complaint from the covenanter, and so by greater reasoning it must be heard from the *Dhimmi*, and on top of that he has been given the covenant of *Dhimmah*.

As for complaints regarding the misapplication of the implementation of the rules of Islam upon them, then this is from the rights of the Muslims and non-Muslims; some Muslims complained to the Messenger ﷺ about Mu'ath Bin Jabal lengthening the recitation in prayer – al-Bukhari reported from Jabir Bin 'Abd Allah who said **"A man was coming with his water buckets as night fell, and he saw Mu'adh praying so he left his container and joined the prayer. Mu'adh recited the chapter of the cow (al-baqarah), or the women (al-nisa'), and so the man left – and then he heard that Mu'adh maligned him – and so he went to the Prophet and complained about Mu'adh. The Messenger repeated to him three times O Mu'adh are you a fattan (someone sowing discord), if you led the prayer recit 'Sabbih isma Rabbi ka 'l-A'la' (Al-A'la – The Most High 87), Wash-shamsi wad-duha-ha' (Ash-Shams – The Sun: 91) or wa' l-layli idha yaghsha (Al-Layli – The Night: 92), since when you lead the prayer, amongst those who pray with you are the old, the weak, and those who have needs to attend to"**. And so the Messenger ﷺ listened to the complaint about Mu'adh and chastised him such that he even said to him **"Are you fattan?(someone sowing discord)"** three times, and Mu'ath was the governor over Yemen and was the *Imam* of his people. This event has a number of narrations so irrespective of whether the complaint was regarding him and he was in Yemen or he was the *Imam* of his people, it is a complaint regarding someone who had been appointed by the Messenger ﷺ, so it is a complaint about the ruler, and regarding the implementation of the *Shari'ah* rules, since the *Shari'ah* rule is that the *Imam* should lighten the prayer due to the words of the Messenger ﷺ **"Whoever leads the people (in prayer) then he should make it light"** (agreed upon with this wording from Muslim). So it was a complaint about the poor application of the rules of Islam.

In the same way that a complaint from the Muslim regarding prayer is listened to, any complaint regarding all other rules are also listened to and not prayer alone, since the misapplication of the *Shari'ah* rules is considered to be an act of injustice. Accordingly the complaint is a right for the Muslim and *Dhimmi*, since the Messenger ﷺ said **"I wish to meet Allah (swt) and no one is requesting me due to an injustice"** (reported by Al-Tirmidhi who said the narration is *Hasan Sahih*). The word "one" in the narration encompasses the Muslim and the *Dhimmi*, since he did not say **"and no Muslim is requesting me"**, but rather he said **"and no one is requesting me"**.

All of this is the evidence for the article.

## **Article 21**

**The Muslims have the right to establish political parties in order to account the rulers or to reach the rule through the *Ummah* on the condition that their basis is the Islamic 'Aqidah and that the rules they adopt are *Shari'ah* rules. The formation of a party does not require any permission. Any group formed on an un-Islamic basis is prohibited.**

Its evidence is the words of Allah (swt) ***“Let there arise out of you a group of people inviting to all that is good (Islam), enjoining Al-Ma'ruf (Islamic Monotheism and all that Islam orders one to do) and forbidding al-Munkar (polytheism and disbelief and all that Islam has forbidden). And it is they who are the successful.”*** (TMQ 3:104). The angle of using this verse as an evidence for the establishment of political parties is that Allah (swt) ordered the Muslims to have a group which carries out the *Da'wah* to Islam amongst them, and likewise carries out enjoining the *ma'ruf* and forbidding the *munkar*, so His (swt) saying ***“Let there arise out of you a group”*** is an order to create a structured group which has the characteristic of the group from amongst the groups of Muslims, since He (swt) said ***“from you”***, and the intention of His (swt) words ***“Let there arise from you”*** is to let a group from the Muslims rise and not that the Muslims be a group; in other words let their arise from the Muslims an *Ummah*, and the meaning is not that the Muslims should be an *Ummah*.

This is because the word ***“from”*** (*min*) in the verse is for partitioning (*tab'id*) and not for clarifying the genus, and the way to check is that the word “some” (*ba'd*) should be able to replace it, so it can be said ***“Let some of you arise as a group”***, whereas the word *min* cannot be replaced with “some” in the verse ***“Allah promised those who believe from you”*** (TMQ 24:55), since it cannot be said that ***“Allah promised some of those who believed from you”*** and so in this case it is for clarifying the genus; in other words the promise is not restricted to the generation of the companions (may Allah (swt) be pleased with them) but it is for all those who believed and did good actions.

Based upon that, as long as the ***from*** (*min*) in the verse is for partitioning, this entails two issues: firstly, that establishing a group from amongst the Muslims is an obligation of sufficiency and not an individual obligation and secondly that the presence of a bloc that has the characteristic of being a group from the Muslims is sufficient for this obligation as long as the number of this bloc is enough such that it retains the characteristic of being a group and as long it is capable of establishing the action required from it in the verse. So the words ***“and let there arise”*** are addressing the whole of the Islamic *Ummah*, but they are exerted over the word *Ummah* – that is, the group; in other words the request is asked from all the Muslims and the thing that is requested is the creation of a group that has the characteristic of a group, and so the meaning of the verse is bring about O Muslims a group which will carry out two actions: the first of them that it will call to the good and the second that it will enjoin the *ma'ruf* and forbid the *munkar*. So it is a request for the creation of a group and this request has had the action of this group explained.

Although this request is simply an order ***“let there arise”***, however there is an indication which points to it being a decisive request, since the action which the verse explains this group being established for is an obligation upon the Muslims to carry out as is confirmed by other verses and in numerous narrations, and so that is an indication that this request is a decisive request and accordingly the order in the verse is an obligation. Therefore the verse indicates that it is imperative upon the Muslims to establish a group from amongst themselves that will carry out the *da'wa* to the good – in other words to Islam – and will enjoin the *ma'ruf* and forbid the *munkar*.

This is from the angle that the establishment of a group that will carry out these two actions mentioned in the verse is obligatory upon the Muslims and they will all become sinful if this group was not in existence. As for the issue that this group mentioned in the verse to be established is a political party, then the evidence for that is two issues: firstly that Allah (swt) did not request in this verse that the Muslims carry out the *Da'wah* to the good and the enjoining of the *ma'ruf* and the forbiddance of the *munkar*; rather it was only requested in the verse to establish a group which will carry the two actions out and so the request is not to carry out the two actions but rather to establish a group that will carry them out, and so the order is exerted over the establishment of a group and not over the two actions. The two actions are the explanation of the work of the group, whose creation is requested, and the two actions are not themselves the issue requested, rather they are the specific characteristics for the type of group whose creation is requested.

In order for this group to be a group which is able to undertake the action in its characteristic as a group, it is imperative that it has specific issues in order to be and remain a group while undertaking the action. In order for the group to gain this characteristic which came in the verse – and that is a group that undertakes the two actions – it is imperative that it possesses what brought it about as a group and keeps it as one while it works. What makes it a group is the presence of a bond that bonds together its members such that they become a single body, i.e. a bloc. Without the presence of this bond the group whose creation is requested, in other words a group which works according to its characteristic as a group, would not be found. What keeps the group as a group while it is working, is the presence of an *Amir* for it whom obedience to is obligatory. That is because the *Shari'ah* ordered that every group of three and more must appoint an *Amir*; the Prophet ﷺ said ***“It is not permitted for three in an open space upon the Earth not to appoint one of themselves as their Amir”*** (reported by Ahmad through ‘Abd Allah b. ‘Amru), and because the leaving of obedience removes one from the group; he ﷺ said in an agreed upon narration with this wording from Muslim ***“Whoever sees something from his Amir that he hates then let him be patient since the one who separates from the group by a hand-span and then dies, the death is one of jahilliyah”***; so he made going against the *Amir* a separation from the group. Therefore the issue that maintains the group while it is working is the obedience to the *Amir* of the group. And these two characteristics are necessary in order to bring about the group which will carry out the two actions while it is a group, and they are the presence of a bond for the group and the presence of an *Amir* to whom obedience is obligatory. These two indicate that His (swt) words ***“And let there arise out of you a group”*** means: and bring about from amongst yourselves a group which has a bond which bonds its members together and an *Amir* to whom obedience is obligatory. And this is the bloc or the party or the association or the organisation or any name from the names which are applied to the group which fulfils what makes it a group and maintains it as group while it is working. And with that it becomes apparent that the verse is an order to form parties, associations, groups or their likes. As for the reality that this order is an order to bring about political parties, that is because the order is a request to bring about a specific group by specifying the action that it will carry out, and not simply any group. The verse explains the action that the group will carry out in its characteristic as a group and this explanation identified the type of group whose creation was requested; in other words it identified the type of association whose creation was requested, since the verse mentioned: to bring about from the Muslims a group that calls to the good and enjoins the *ma'ruf* and forbids the *munkar*. So this is to be a characteristic for this group, and it is a defined characteristic, so the group that meets this characteristic is the one which is obligatory to be brought about, and anything else is not obligatory. As for the call to the good, or the *da'wa* to Islam, then it is possible for an group to carry it out, and it is possible for a party or an organisation to carry it out. However, enjoining the *ma'ruf* and forbidding the *munkar* which came in a general form, is an action which can only be carried out by a political party, because it encompasses the ordering of the rulers by the *ma'roof* and forbidding them from the *munkar*. In fact, this is the most important action from the enjoining of the *ma'ruf* and the forbiddance of the *munkar*, and it is part of this verse, since it came in a general form ***“and enjoin the ma'ruf and forbid the munkar”***, and the *alif* and *lam* ('the') represent the genus so accordingly it is from the forms of generality. This action is from the most important acts of the political party, and is what grants the political aspect to the party or association or organisation, and makes it a political party or a political association or a political organisation. And since this action, the ordering of the rulers with the *ma'ruf* and forbidding them from the *munkar*, is from the most important acts of enjoining the *ma'ruf* and forbiddance of the *munkar*, and since the enjoining of the *ma'ruf* and the forbiddance of the *munkar* is one of the two requested actions in the verse which are to be the actions of the group which must be created, accordingly the order in the verse is related to a specific group and that is the group whose work is the *da'wa* to Islam, the ordering of the rulers with the *ma'ruf* and forbidding them from the *munkar*, and ordering the rest of the people likewise with the *ma'ruf* and forbidding them from the *munkar*.

This is the group whose establishment Allah (swt) made obligatory upon the Muslims; in other words it fulfils all of these characteristics found in the verse describing it. The group which has this characteristic is the political party. It cannot be argued that the creation of a group which calls to Islam, and orders the people with the *ma'ruf* and forbids them from the *munkar* and does not confront the rulers is sufficient to fulfil this obligation. That cannot be argued since the fulfillment of the obligation does not occur unless the group which the Muslims brought about fulfils all of its characteristics. In other words it fulfils the enjoining of the *ma'ruf* and the forbiddance of the *munkar* alongside the *Da'wah* to the good, since the attachment in the verse came with the letter “*and*” (*wa*) which indicates participation, and because the words to order the *ma'ruf* and forbid the *munkar* came in a general meaning with a form from the forms of generality - therefore it has to remain upon its generality and its generality has to be fulfilled. So the obligation cannot be established unless the work of the group in enjoining the *ma'ruf* and forbidding the *munkar* was general, as it came in the verse, with no exceptions made. So if the ordering the rulers with *ma'ruf* and forbidding them from the *munkar* is excluded, or in other words if the political actions are excluded, then the group requested in the verse is not present, and this group is not the one requested by the verse because it excluded an important action from the enjoining of the *ma'ruf* and the forbiddance of the *munkar*, and the verse came in its generality and so this characteristic is not complete unless the ordering of the rulers by the *ma'ruf* and forbidding them from the *munkar* is part of the groups actions. For this reason the obligation as mentioned in the verse is not fulfilled except by the establishment of a political group, in other words a political party or association or organisation; that is, the group which carries out the enjoining of the *ma'ruf* and forbiddance of the *munkar* generally without excluding anything from it, and this is not found except with a political party or association or something that resembles them.

Accordingly, Allah (swt) has ordered in this verse the establishment of political parties which will carry out the work of the Islamic *da'wa*, and the accounting of the rulers by enjoining them with the *ma'ruf* and forbidding them from the *munkar*. This is the angle of deduction from this verse as an evidence for the article.

It cannot be argued that this verse says “*Ummah*”, in other words a single party, and that this means the absence of multiple parties. This cannot be argued because the verse did not say “*One Ummah*”, so it did not mention one group but rather it said “*Ummah*” in the unknown form and without any description. That means to establish a group is obligatory. If a single group was established then the obligation has been met, but it does not prohibit the establishment of multiple groups or multiple blocs. The carrying out of the obligation of sufficiency by one in which one is enough to carry it out, does not prohibit other than that one to carry out this obligation. And the word group here is the name of a genus, in other words the word group is used and what is intended by it is the genus and not the single unit; Allah (swt) said “*You are the best Ummah raised for mankind*” (TMQ 3:110) and what is intended is the genus. And comparable to that are the words of the Messenger ﷺ “*Whoever from you sees a munkar then he should change it*” (reported by Muslim through Abu Sa'id al-Khudri), so the intention is not a single *munkar* rather the genus of *munkar*, and there are many similar examples. So it holds true upon the single unit from the genus and also upon multiple units from that genus. It is therefore permitted that a single party could exist in the *Ummah*, and permitted that several parties could exist, but if a single party is present then the obligation of sufficiency has been met if that party carried out the required actions in the verse. However, this does not prevent the establishment of other parties, since the establishment of the political party is an obligation of sufficiency upon the Muslims, so if one party is established and others want to bring about a second party in other words to carry out that obligation it is not permitted for them to be prevented, since this is the prevention from carrying out an obligation, which is prohibited. Accordingly, it is not permitted to prevent the establishment of multiple political parties. This only applies to those political parties that are established upon what the verse mentioned; that is the call to the good, the enjoining of the *ma'ruf* and the prohibiting of the *munkar* which encompasses the rulers and accounting the rulers. As for anything else, then it has to be considered - if it was established to carry out

something prohibited such as the call to nationalism, or to spread un-Islamic ideas, or similar, then the establishment of such blocs is prohibited and will be prevented by the State, with each participant being punished. If they were not established to carry out something prohibited, such as to carry out something permitted, then what is established upon a permitted basis would be permitted. However, it would not be considered establishing the obligation that Allah (swt) obligated in the text of this verse unless it was a political party which had all the characteristics mentioned in the verse.

Since the carrying out of the obligation does not require the permission of the ruler, rather to make the fulfilment of an obligation reliant upon the permission of the ruler is something prohibited, therefore the establishment of political parties and their creation does not require a permit.

#### **Article 22**

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

- a. Sovereignty is for the *Shar'* rather than for the people**
- b. The authority is for the *Ummah***
- c. To appoint a single *Khalifah* is an obligation upon the Muslims**
- d. The *Khalifah* alone has the right to adopt *Shari'ah* rules, so he is the one who enacts the constitution and the rest of the laws.**

This article explains the basis of the rule, which cannot exist without this basis. If anything from this basis goes then the rule goes. The intention is the Islamic ruling; in other words the authority of Islam, not any rule. And this basis has been derived after scrutiny of the *Shari'ah* evidences.

The first principle that the sovereignty belongs to the *Shari'ah* has a reality, and that is the word sovereignty, and this word has its indication, and its indication is that it is for the *Shari'ah* and not for the people. As for its reality, that is that this word is a Western definition and what is meant by it is the execution of the wishes and its direction. If the individual was the one who applied his wishes and executed them then the sovereignty would be for him, and if his wishes were executed and controlled by other than him then he would be a slave. If the wishes of the *Ummah* or in other words if the collective will of its individuals was directed on its behalf by individuals from amongst themselves who were consensually given the right to direct them, then it would be its own master, and if the *Ummah's* will was controlled by others forcefully then it would be enslaved. For this reason the democratic system says: the sovereignty is for the people or in other words they are the ones who execute their will and establish upon it whomsoever they want and give them the right of directing their will. This is the reality of sovereignty which is intended to apply to the ruling.

As for the rule regarding this sovereignty, it is for the *Shari'ah* and not for the people, since the one who directs the wishes of the individuals according to the *Shari'ah* is not the individual as they themselves wish, but rather the will of the individual is directed by the orders and prohibitions of Allah (swt). And the proof for that are His (swt) words ***"But no by your Lord they can have no faith until they make you (Muhammad (saw)) judge in all disputes between them"*** (TMQ 4:65), and the words of the Prophet ﷺ ***"One of you does not believe until his desires follow what I have brought"*** (reported by Ibn Abi 'Asim in *al-Sunna*). Al-Nawawi said after reporting the narration from 'Ab Allah b. 'Amru b. al-'As in *al-Arba'in* that it is a *Sahih Hasan* narration. So what reigns in the *Ummah* and the individual and directs the will of the *Ummah* and the individual, is what the Messenger ﷺ came with. So the *Ummah* and the individual submit to the *Shari'ah* and accordingly the sovereignty is for the *Shari'ah*. Due to this the *Khalifah* is not contracted by the *Ummah* as a servant of theirs to implement what they want, as is the case in the democratic system, but rather the *Khalifah* is



contracted by the *Ummah* upon the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ, to implement the Book of Allah (swt) and the *Sunnah*; in other words to implement the *Shari'ah* and not whatever the people may want, to the point that if the people who contracted him go against the *Shari'ah* they are fought against until they desist. Consequently, the evidence was derived for the principle that the sovereignty is for the *Shari'ah* not the people.

As for the second principle - the authority is for the people - it is taken from the fact that the *Shari'ah* made the appointment of the *Khalifah* by the *Ummah* and the *Khalifah* takes his authority from this contract. As for the fact that the *Shari'ah* made the appointment of the *Khalifah* to be by the *Ummah* – this is clear from the narrations regarding the pledge of allegiance. It is narrated from 'Ubadah b. Samit who said ***"We gave the pledge of allegiance to the Messenger of Allah ﷺ upon hearing and obedience in whatever was pleasing and hated"*** (agreed upon), and from Jarir Bin 'Abd Allah who said ***"We gave the pledge of allegiance to the Messenger of Allah ﷺ upon hearing and obedience"*** (agreed upon), and from Abu Hurayrah that the Messenger of Allah ﷺ said ***"Three people who Allah will not talk to on the Day of Judgement, and will not purify them, and they will have a severe punishment: a man who has spare water with him in the desert and prevents it from a traveller, and a man who pledges allegiance to an Imam for no reason other than his worldly purpose, and if he gains what he wants from him then he is loyal otherwise he is not, and a man who sells a man something after the 'asr prayer and swears by Allah that he had paid such and such for it, so the man believes him even though it was not true"*** (agreed upon). Accordingly, the pledge is from the side of the Muslims to the *Khalifah* and not from the *Khalifah* to the Muslims, and so they are the ones who give him the pledge or establish him as a ruler upon them, and what occurred with the rightly guided *Khulafaa'* is that they only took the pledge of the allegiance from the *Ummah* and they did not become *Khulafaa'* except by the pledge of the *Ummah* with them.

As for the effect that the *Khalifah* takes the authority from this pledge, then this is clear from the narrations of obedience and in the narrations about the unity of the *Khalifah*. 'Abd Allah Bin 'Amru b. al-'As said that he heard the Messenger of Allah ﷺ say ***"and whoever contracted an Imam and gave him the grasp of his hand and the fruits of his heart then he must obey him as much as he is able, and if another comes to compete with him (over this pledge of allegiance) then strike the neck of the second"*** (reported by Muslim, and from Nafi'), ***"Whoever removes his hand from the obedience to Allah will meet Allah on the Day of Judgement without any proof for himself, and who dies without the pledge of allegiance upon his neck dies a death of jahilliyyah"*** (reported by Muslim), and from Ibn Abbas that the Messenger of Allah ﷺ said ***"Whoever hates something from his leader, then he should be patient with him, since there is no one from the people who removes themselves from the authority by even a hand-span and then dies except that they die the death of jahilliyyah"*** (agreed upon). Abu Hurayrah narrated that the Prophet ﷺ said ***"The tribes of Isra'il were ruled by the Prophets, every time a Prophet died he was followed by another Prophet, and there will be no Prophets after me, and there will be Khulafaa' (successors) and they will be many. The companions then asked, "What do you order us?" To which the Prophet replied Fulfil your pledge of allegiance to them one after another, and give them their rights, and truly Allah will ask them about their responsibilities"*** (agreed upon).

These narrations indicate that the *Khalifah* only gets his authority via this pledge, since Allah (swt) ordered obedience to him by this pledge – ***"Whoever contracted an Imam then he must obey him"*** – so he took the *Khilafah* through the pledge and obedience to him is obligated because he is the *Khalifah* who has been contracted. So it means that he took the authority from the *Ummah* and the obligation of the *Ummah* obeying whomsoever it contracted, in other words the one who has the pledge of allegiance upon their necks, by this pledge given to him, and this indicates that the authority is for the *Ummah*. On top of that, the Messenger ﷺ, even though he was a Messenger, took the pledge of allegiance from the people. This was a pledge upon the rule and authority and not a pledge upon the Prophethood, and he took it from the women and the men and not from youngsters who had not yet reached the age of

distinction. So the fact that the Muslims are the ones who establish the *Khalifah* and contract him upon the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ, and the fact that the *Khalifah* only takes his authority through this pledge, is clear evidence that the authority is for the *Ummah* to give to whomsoever they please.

As for the third principle, that to appoint a single *Khalifah* is obligatory upon the Muslims, the obligation of appointing the *Khalifah* is fixed in the noble narration, on the authority of Nafi' who said that 'Abd Allah b. Umar said that he heard the Messenger of Allah ﷺ say ***"Whoever removes his hand from the obedience to Allah will meet Allah on the Day of Judgement without any proof for himself, and who dies without the pledge of allegiance upon his neck dies a death of jahilliyyah"*** (reported by Muslim through 'Abd Allah b. Umar). The angle of deduction from this narration is that the Messenger ﷺ made it obligatory upon every Muslim to have the pledge of allegiance to the *Khalifah* upon their neck, and did not make it necessary that every Muslim has to give that pledge to the *Khalifah*. So the obligation is the presence of the pledge upon the neck of every Muslim, in other words the presence of a *Khalifah* due to whom there is a pledge present upon the neck of every Muslim. Accordingly, it is the presence of the *Khalifah* that makes the pledge present upon the neck of every Muslim irrespective of whether they had given him the pledge personally or not.

As for the issue of the *Khalifah* being one, it is due to the narration of Abu Said al-Khudri that the Messenger of Allah ﷺ said, ***"If the pledge of allegiance is given to 2 Khalifahs, kill the latter of them"*** (reported by Muslim), and this is an unambiguous prohibition of allowing more than one *Khalifah* for the Muslims.

With respect to the fourth principle, which is that the leader of the State alone has the right to adopt the laws, this has been established by the *Ijma'* of the companions that the *Khalifah* alone has the right to adopt the laws, and from this *Ijma'* the famous *Shari'ah* principles: *"The order of the Imam resolves the difference"*, *"The order of the Imam is executed"* and *"The ruler can issue as many judgements as there are problems that appear"* are all derived.

### **Article 23**

**The state apparatus is established upon thirteen institutions:**

- 1. The *Khalifah* (Leader of the State)**
- 2. The Assistants (delegated ministers)**
- 3. Executive minister**
- 4. The Governors**
- 5. The Amir of Jihad**
- 6. The Internal Security**
- 7. The Foreign Affairs**
- 8. Industry**
- 9. The Judiciary**
- 10. The People's Affairs (administrative apparatus)**
- 11. The Treasury (*Bayt al-Mal*)**
- 12. Media**
- 13. The Ummah's Council (*Shura* and accounting)**

The evidence for this is the actions of the Messenger ﷺ, since he established the state apparatus in this form. He ﷺ was himself the leader of the State, and he ordered the Muslims

to establish a leader for the state when he ordered them to establish the *Khalifah* and the *Imam*. He ﷺ said ***“Whoever removes his hand from obedience (to the ruler) will meet Allah with no proof for himself, and whoever dies without the pledge of allegiance (to the ruler) upon his neck dies a death of jahilliyyah”*** (reported by Muslim), and the pledge of allegiance is the pledge of allegiance to the *Khalifah*. And the companions agreed upon the necessity of establishing a successor, a *Khalifah*, to the Messenger of Allah ﷺ after his death. The consensus of the companions upon the establishment of a *Khalifah* is clearly confirmed by their delaying of the burial of the Messenger of Allah ﷺ due to their busyness in electing a successor to him ﷺ.

As for the assistants, the evidence is from what Abu Dawud narrated with a good chain from Aaisha (ra) who said that the Messenger of Allah ﷺ said ***“If Allah wants good for a leader, he gives him an honest Wazir, such that if he forgets the Wazir reminds him, and if he remembers then the Wazir supports him, and if Allah wants other than that he gives him an evil Wazir, such that if he forgets the Wazir does not remind him and if he remembers he does not help him”***. And Tirmidhi reported from Abu Said al-Khudri that the Messenger ﷺ said ***“There is not a Prophet except that he has two ministers from the inhabitants of the heavens and two ministers from the inhabitants of the Earth, as for my two ministers from the heavens they are Jibril and Mika'il, and as for my two ministers from the people of this Earth they are Abu Bakr and Umar”***. The meaning of the word ***“my two ministers (Waziraya)”*** here is my two assistants for, since this is the linguistic meaning, and the word ‘minister’ according to its contemporary meaning is a Western definition, and what is intended by it is a specific act of ruling. This meaning was not known to the Muslims and contradicts the system of ruling in Islam as is made clear in that section.

The executive minister is what was known as *al-Katib* (the recorder) at the time of the Messenger of Allah ﷺ and the righteous successors, and his job is to assist the *Khalifah* in the execution, follow up and accomplishment of tasks. Bukhari narrated in his *Sahih* from Zaid Bin Thabit ***“The Prophet ordered him to learn the writing of the Jews until I was able to write in their language for the Prophet and read to him what they had written to him”*** and Ibn Ishaq reported from ‘Abd Allah Bin al-Zubair, ***“The Messenger of Allah used to dictate to ‘Abd Allah Bin al-Arqam b. ‘Abdi Yaghooth, and used to respond to the Kings on his behalf”***. Al-Hakim reported a narration in *al-Mustadrak* which he authenticated, and al-Dhahabi confirmed the authentication, from ‘Abd Allah Bin Umar who said ***“A message from a man arrived to the Prophet, so he said to ‘Abd Allah Bin al-Arqam: Reply on my behalf, and so he wrote his reply and then read it to him, and so he ﷺ said You were correct and did well, May Allah confirm it, and so when Umar took leadership he used to consult him”***.

As for the governors, both al-Bukhari and Muslim reported from Abu Birda ***“The Messenger of Allah sent Abu Musa and Mu’adh Bin Jabal to Yemen, and each of them was sent to a province, he said: And Yemen is two provinces”***. And in the report with Muslim from Abu Musa the Messenger ﷺ said ***“I will not appoint someone who desires the position to our work, rather go O Abu Musa and ‘Abd Allah Bin Qays, and so he sent him to Yemen and then Mu’adh Bin Jabal was sent thereafter”***. Al-Bukhari and Muslim reported from ‘Amru Bin ‘Auf al-Ansari ***“And the Messenger of Allah was the one who made a settlement with the people of Bahrain, and made al-‘Ala Bin al-Hadrami in charge of them”***. Ibn Abdul al-Birr in *al-isti’ab* said ***“The Messenger of Allah ﷺ made ‘Amru b. al-‘As the governor over Oman, and he remained in that position until the death of the Messenger of Allah ﷺ”***.

The evidence for the position of *Amir* of *Jihad* comes from the *Sunnah*:

Ibn Sa’d reported in *al-Tabaqat* that the Messenger of Allah ﷺ said ***“The Leader (Amir) of the people is Zaid Bin Haritha, and if he is killed then Ja’far Bin Abi Talib, and if he is killed then ‘Abd Allah Bin Rawaha and if he is killed then whomever the Muslims are satisfied with will become their leader”***. Al-Bukhari reported from ‘Abd Allah b. Umar (ra) who said ***“The Messenger of Allah appointed Zaid Bin Haritha in charge for the Mu’ta***

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*expedition” and al-Bukhari reported in the narration of Salamah Bin al-Akwa’ that he said, “I went on seven expeditions with the Messenger of Allah, and one with Zaid Bin Haritha who had been appointed over us”. And al-Bukhari and Muslim reported from ‘Abd Allah b. Umar who said “The Prophet ﷺ sent out an expedition and appointed Usama Bin Zaid to lead it, and so some of the people criticised his leadership, and so the Prophet ﷺ said: You criticise his leadership and you criticised that of his father before him, I swear by Allah he is fit for leadership”. Muslim reported from Barida who said, “Whenever the Messenger of Allah ﷺ would appoint an Amir over the army or expedition he would counsel him”.*

As for the Internal Security, this is the office that will be led by the head of the Police, and its objective would be to protect the security in *Dar Al-Islam*. If they were incapable then the army would be appointed with the permission of the *Khalifah*. The evidence is from what was reported by al-Bukhari from Anas *“In relation to his position to the Prophet, Qais Bin Sa’d was like the police for the Amir”*.

With respect to Foreign Affairs, the Messenger ﷺ used to establish external relations with other states and bodies. He ﷺ sent ‘Uthman Bin ‘Affan to negotiate with Quraysh, just as he ﷺ negotiated with the messengers of Quraysh. In the same manner he sent messengers to the kings, and received messengers from the kings and leaders, and concluded agreements and peace settlements. And likewise, his successors, after him ﷺ, established diplomatic relations with other states and bodies. And they appointed others to do that for them, on the basis that what the individual does himself can be delegated to someone else on his behalf, and deputise someone else to carry it out for him.

As for Industry, its evidence is from the Quran and the *Sunnah*. Allah (swt) said *“And make ready against them all you can of power, including steeds of war (tanks, planes, missiles, artillery) to threaten the enemy of Allah and your enemy, and others besides whom, you may not know but whom Allah does know. And whatever you shall spend in the Cause of Allah shall be repaid unto you, and you shall not be treated unjustly”* (TMQ 8:60). With regards to the *Sunnah* Ibn Sa’d reported in *al-Tabaqat* from Makhul *“The Messenger used catapults against the people of Ta’if for forty days”*. And al-Waqidi in *al-Maghazi* said *“and the Messenger of Allah ﷺ consulted his companions, and so Salman al-Farsi said to him O Messenger of Allah, I think we should use catapults against their fortifications, when we were in Persia we used to use catapults against fortification and they were used against us. And so we used to be hit by catapults and used to hit our enemies with it, and if it wasn’t for the catapults the siege would take long. And so the Messenger of Allah ﷺ ordered him to build a catapult with his own hands, and it was used against the fortifications of al-Ta’if”*. And Ibn Ishaq said in his *Sirah* *“until the day that the wall protecting Ta’if broke, a number of the companions of the Messenger of Allah entered under shields, and then marched forward to the wall in order to destroy it...”* Also, preparation for that which puts fear into the enemy is obligatory and this preparation cannot be carried out without industry, and therefore industry is obligatory from the rule *“whatever is required to complete an obligation is itself an obligation”*. The *Khalifah* or anyone he appoints is the one who will manage it.

With respect to the judiciary, the Prophet ﷺ used to act as the judge personally, and appointed others to judge between the people. He used to undertake the judging himself as narrated by Umm Salamah that the Messenger of Allah ﷺ said *“I am only human, and you bring your disputes to me – perhaps some of you are cleverer in presenting their case than others, and so I judge in his favour according to what I hear. So whoever I judged for and gave them something that is rightfully for their brother, then do not take it, since I have only cut for him a part of the hellfire”* (agreed upon with the wording from al-Bukhari). And the narration of Abu Hurayrah and Zayd b. Khalid al-Juhani who said *“A bedouin came and said: O Messenger of Allah, judge between us by the Book of Allah. The one he disputed with stood up and said: He speaks truth, judge between us by the Book of Allah...”* (agreed upon and the wording is from al-Bukhari).

As for the appointment of others to the judiciary, the evidence is what al-Hakim narrated and stated was *Sahih* based upon the conditions of Muslim and al-Bukhari which was also confirmed by al-Dhahabi, from Ibn Abbas who said ***“The Prophet ﷺ sent ‘Ali to Yemen and said: Teach them the rules (Shari’ah) and judge between them. He replied I have no knowledge of judging, and so he ﷺ struck his chest and said O Allah guide him to judgement”***. Al-Hakim also narrated and authenticated upon the conditions of Muslim and al-Bukhari, and al-Dhahabi agreed with him, that ‘Ali (ra) said ***“The Messenger of Allah ﷺ sent me to Yemen and so I said: You have sent me to a people of experience, and I am young! He said: If two disputers come to you, do not judge for either of them until you listen to the second as you listened to the first. Ali said: And so I remained giving judgement”***.

With respect to the consensus, al-Mawardi mentioned in *al-Hawi*, “The righteous khulafaa’ used to judge between the people, and appointed the judiciary and the rulers...and so it is a consensus through their actions”. Ibn Qudamah mentioned in *al-Mugni* “The Muslims are agreed on the legitimacy of appointing judiciary”.

As for the peoples’ affairs (the administrative apparatus) the Messenger of Allah ﷺ used to manage the affairs and used to appoint writers for their administration. He ﷺ managed the peoples’ interests, took care of their affairs, resolved their problems, organised their relationships, protected their needs and directed them to what would benefit their matters. All of these are from the administrative affairs, which directs their lives without problems or complication.

In the issue of education, the Messenger of Allah ﷺ made ransom of the disbelieving prisoners that they should teach ten of the Muslim children. Ransom is part of the war booty, which is the property of the Muslims, and so ensuring education is an interest from the Muslims’ interests.

And in medical practice – the Messenger of Allah ﷺ was given a doctor as a gift and so he was made available to the Muslims. The fact that the Messenger of Allah ﷺ was given a gift which he did not use himself, and nor took it but rather gave it to the Muslims is a proof that medical practice is an interest from the people’s interests. In an authentic narration from Aaisha (ra) which is agreed upon she said ***“Sa’d was injured on the day of the battle of the ditch, having been hit by an arrow in the arm vein from a Qurayshi man called Ibn al-Ariqa, and so the Messenger of Allah ﷺ set up a tent for him in the mosque and used to visit him from nearby”***. It is understood from the concern of the Messenger ﷺ, who was the head of the State, over Sa’d while he was ill, by keeping him within the mosque, that medical practice or treatment is an interest from the Muslims’ interests which the state takes care of. The righteous *Khulafaa’* followed the same practice. Al-Hakim narrated in *al-Mustadrak* from Zayd b. Islam from his father who said ***“I fell severely ill in the time of Umar b. al-Khattab, and so Umar called a doctor for me, and so he warmed me up to the point I would suck on date pits due to the intense heat”***.

In affairs of work the Messenger of Allah ﷺ advised a man to purchase rope and an axe and then to collect wood and sell it to the people instead of asking them for money such that one person would give and the next would refuse. This was in the narration from Abu Dawud and Ibn Maja which mentioned ***“and he ordered him to buy an axe with the other dirham and bring it to me. He then brought it to him. The Messenger of Allah ﷺ fixed a handle on it with his own hands and said: Go, gather firewood and sell it, and do not let me see you for fifteen days. The man went away and gathered firewood and sold it, and when he returned he had earned ten dirhams”***. And in a narration from al-Bukhari the Messenger of Allah ﷺ said, ***“No doubt, it is better to take a rope and tie a bundle of wood and sell it whereby Allah will keep his face away (from Hellfire) rather than ask others who may give him or not.”*** So he ﷺ used to solve the problem of work in that matter as one of the interests of the Muslims.

With regards to the highways, the Messenger of Allah ﷺ used to organise the pathways in his time by making the space of the pathway seven cubits if there was a dispute. Al-Bukhari narrated in the chapter of *al-Tariq al-Mita'* (the space between the road) ***“The Prophet judged that seven cubits should be left as a public way when there was a dispute about the pathway”***, and Muslim narrated ***“if they disputed about the pathway, it was judged to be seven cubits in width”***, which was an administrative organisation at that time and if the need was greater it would have been met, as it is in the *Shafi'i* school of thought.

In agriculture, al-Zubayr and a man from the Ansar had a dispute regarding irrigation, and so the Prophet ﷺ said ***“O Zubayr, irrigate and then send the water to your neighbour”*** (agreed upon with the wording from Muslim).

This is the manner in which the Messenger of Allah ﷺ managed the affairs of the people and the righteous *khulafaa'* after him managed them either by themselves or by appointing someone to manage them.

As for the treasury, there are plenty of evidences that indicate that the *Bayt al-Mal* was under the direct authority of the Messenger ﷺ, the *Khalifah*, or whoever was entrusted with it by the *Khalifah*. And so the Messenger of Allah ﷺ sometimes used to directly store the wealth and he had a storehouse. He ﷺ would directly take the wealth, apportion it and put it in its place. At other times he ﷺ would appoint others to undertake these issues. The righteous *khulafaa'* after him ﷺ carried on in the same way after him ﷺ, either directly taking charge of the affairs of the treasury or appointing others to do it on their behalf.

The Messenger of Allah ﷺ would either place the wealth in the mosque, as has been narrated by al-Bukhari from Anas who said ***“Wealth from Bahrain was brought to the Prophet ﷺ, and so he said: Spread it out in the mosque”***, or in one of his ﷺ wives' rooms as has been narrated by al-Bukhari from Uqbah who said ***“I prayed the 'asr prayer behind the Prophet ﷺ in Madinah, when he finished he did salam and stood up quickly and stepped over the people to reach the rooms of his wives. Some of the people were alarmed at his haste, and when he came out he saw they were puzzled by his haste, and so he said: I remembered something of gold nuggets that I had with me, so I didn't like that it had occupied me, so I ordered it to be distributed”***.

During the era of the righteous *Khulafaa'* the place where the wealth would be stored became known as the *Bayt al-Mal* (treasury). Ibn Sa'd mentioned in *al-Tabaqat* from Sahl b. Abi Hathmah and others ***“Abu Bakr had a Bayt al-Mal which had no one guarding it, so it was said to him – Won't you appoint someone to guard it? He replied it had a lock on it. He used to distribute it until it became empty. When he moved to Madinah, he took it and placed it in his house”***. It is reported by Hinad in *al-Zuhd* with a good chain from Anas ***“a man came to Umar and said O leader of the believers, fund me because I want to participate in the Jihad, and so Umar said to a man – take him to the Bayt al-Mal so he can take whatever he wishes”***.

As for information, the evidence for it is from the Quran and the *Sunnah*.

With respect to the Quran, He (swt) said ***“When there comes to them some matter touching (public) safety or fear, they make it known (among the people), if only they had referred it to the Messenger or to those charged with authority among them, the proper investigators would have understood it from them (directly)”*** (TMQ 4:83).

As for the *Sunnah*, the narration of Ibn Abbas during the opening of Makkah which is found in *al-Mustadrak* of al-Hakim who said it was authentic and upon the conditions of Muslim, and al-Dhahabi confirmed this, which mentioned “and the news was kept from the Quraysh, and so they did not receive any information about the Messenger of Allah ﷺ and did not know what was being undertaken”. And a Mursal narration from Abu Salama with Ibn Abi Shaybah which mentioned: and then the Prophet ﷺ said to Aaisha (ra), ***“Prepare me, and do not inform anyone about it...and then he ordered that the highways be obstructed, and so the people of Makkah were kept in the dark and no news reached them”***

This indicates that the information which is connected to the security of the state is tied to the *Khalifah* or an institution which meets this aim.

As for the *shura* (consultative) council, the Messenger ﷺ did not use to have a specific permanent council, but rather he used to consult the Muslims at numerous times in line with His (swt) words **“and consult them in the affairs”** (TMQ 3:159). An example of these consultations comes from what has been narrated by Muslim from Anas about the day of the battle of Badr: **“The Messenger of Allah ﷺ consulted when he heard that Abu Sufyan had gotten away. He said: Abu Bakr spoke, and he turned from him, and then Umar spoke and he turned from him, and so Sa’d Bin Ubada stood up and said: It is us you want (to know about our opinion) O Messenger of Allah. By the One in whose Hand is my soul, if you order us to plunge our horses into the sea, we would do so. If you order us to goad our horses to the most distant place like Bark al-Ghimad, we would do so. So he Messenger of Allah ﷺ called upon the people (for the encounter) and they set out and encamped at Badr”**. Al-Bukhari reported another example from the day of al-Hudaybiyah through al-Miswar and Marwan who said **“The Prophet ﷺ travelled until he was at Ghadir al-Ashtat when his spy came to him and said, ‘Quraysh have gathered forces against you and they have gathered the Abyssinians against you. They will fight you and bar you from the House and stop you.’ He said, ‘O people! Tell me what you think. Do you think that I should attack their families and the offspring of those who desire to bar us from the House? If they come to us, Allah, the Mighty and Exalted, has cut off a spy from the idolaters. Otherwise, we will leave them bereft.’ Abu Bakr said, ‘O Messenger of Allah, you set out aiming for this House without any desire to fight anyone or to make war on anyone. Make for it and we will fight whoever bars us from it.’ He said, ‘Proceed in the name of Allah!’”**. Though he ﷺ gathered the Muslims and consulted them, he would call specific people consistently to consult with, and these were the leaders of the people; Hamza, Abu Bakr, Ja’far, Umar, ‘Ali, Ibn Mas’ud, Sulayman, ‘Ammar, Hudhayfah, Abu Dharr, al-Miqdad, and Bilal (may Allah be pleased with them). They could be considered as a *shura* council for him due to his specifically seeking them out consistently for consultation.

In the same manner the righteous *khulafaa*’ would consult the people generally, and would specifically seek out individuals for consultation. Abu Bakr (ra) used to specially consult men from the emigrants and Ansar in order to take their opinion if an issue occurred, and they were the people of *shura* to him. The people of *shura* in his time were the ‘*ulama*’ and those who would give *fatawa* (verdicts). Ibn Sa’d reported from al-Qasim **“If an issue occurred at the time of Abu Bakr al-Siddiq which made him want to consult with the people of insight and Fiqh, he would call some men from the emigrants and Ansar; he would call Umar, Uthman, Ali, ‘Abd al-Rahman b. ‘Awf, Mu’adh Bin Jabal, Abai Bin Ka’ab and Zayd b. Thabit**. All of these used to give *fatawa* during the *Khilafah* of Abu Bakr (ra), and the people would refer to them for verdicts and so this was the way that Abu Bakr (ra) preceded and when Umar (ra) took charge he used to call that same group of men.

All of this indicates taking a specific council that represents the *Ummah* for the fixed *shura* that is mentioned in the text of the Quran and *Sunnah*, which is called the People’s Council (*Majlis al-Ummah*) since it is the representative of the *Ummah* in *shura*. In the same manner, its work would include accounting due to the evidence recorded. Muslim reported, **“There will be rulers whose good deeds you will like and whose bad deeds you will dislike. One who sees through their bad deeds (and tries to prevent their repetition by his hand or through his speech), is absolved from blame, but one who hates their bad deeds (in the heart of his heart, being unable to prevent their recurrence by his hand or his tongue), is (also) safe (so far as Allah’s wrath is concerned). But one who approves of their bad deeds and imitates them is spiritually ruined. They asked. “Shouldn’t we fight against them?” He replied: No, as long as they still pray”** and prayer here is a metaphor for ruling by Islam.

Part of accounting is Muslims disputing at the start of the issue and at the head of them is Umar (ra) who did that to Abu Bakr (ra) when he was insistent to fight against the apostates. Muslim and al-Bukhari reported from Abu Hurayrah who said, **“When the Prophet died and**

*Abu Bakr became his successor and some of the Arabs reverted to disbelief, Umar said, "O Abu Bakr! How can you fight these people although the Messenger of Allah said, "I have been ordered to fight the people till they say: None has the right to be worshipped but Allah, and whoever said, None has the right to be worshipped but Allah, Allah will save his property and his life from me, unless (he does something for which he receives legal punishment) justly, and his account will be with Allah?" Abu Bakr said, "By Allah! I will fight whoever differentiates between prayers and Zakat as Zakat is the right to be taken from property (according to Allah's Orders). By Allah! If they refused to pay me even a kid they used to pay to the Messenger of Allah, I would fight with them for withholding it." Umar said, "By Allah: It was nothing except that I noticed Allah opened Abu Bakr's chest towards the decision to fight, therefore I realised that his decision was right.""*

Likewise, Bilal Bin Rabah (ra) and al-Zubayr (ra) and others disputed with Umar (ra) about his decision regarding splitting the land of Iraq between the fighters, and how a Bedouin argued with Umar (ra) regarding protecting some of the land; Abu 'Ubayd narrated in *al-Amwal* from Aamir Bin 'Abd Allah Bin al-Zubayr, I consider it to be from his father, who said *"A Bedouin came to Umar and said O Amir of the believers, we fought over our land in Jahiliyyah, and we gave it up in Islam – will you protect it? Umar bowed his head and blew and twisted his moustache – and if an issue would trouble him he would twist his moustache and blow – so when the Bedouin saw what he was doing he repeated himself, and so Umar said: The property is the property of Allah, and the Slaves are the Slaves of Allah, I swear by Allah had I not been charged with that in the Path of Allah I would not have protected a handspan of the land"*, and Umar (ra) used to protect some of the land from the general property for the Muslim cavalry. In the same way a woman accounted him over his prohibition of people increasing the *mahr* over four hundred *dinar*, saying to him: *"This is not for you Umar – did not you hear the words of Allah "But if you intend to replace a wife by another and you have given one of them a Qintar (of gold i.e. a great amount as Mahr), take not the least bit of it back"* (TMQ 4:20), and so he said the woman is correct and Umar (ra) is wrong.

In this way, the explanation for this article has been made clear in that the Messenger ﷺ established a specific apparatus for the State with a specific form and applied that until he met His Lord (swt). The righteous *khulafaa'* after him continued upon the same method, ruling according to this apparatus that the Messenger ﷺ set up, as seen and heard by the companions, and for this reason it is specified that the apparatus of the Islamic State should be upon this form.

Commented [s5]: Aamir



## **The Khalifah**

### **Article 24**

**The Khalifah is the representative of the Ummah in exercising the authority and in implementing the Shari'ah.**

The *Khilafah* is the general leadership for all of the Muslims in the World, in order to establish the rules of the *Shari'ah* and to carry the Islamic call to the world. The ones whom appoint the one who undertakes this leadership, in other words appoint the *Khalifah*, are the Muslims alone. Since the authority belongs to the *Ummah*, and the implementation of the *Shari'ah* is obligatory upon the Muslims, and the *Khalifah* is a leader for them, accordingly his reality is that he is their representative in the authority and the implementation of the *Shari'ah*. Therefore, there is no *Khalifah* unless the *Ummah* gives him the pledge of allegiance; their pledge to him is proof that he is their representative. The obligation of obedience to him is proof that this pledge, which concludes the contracting of the *Khilafah* to him, gives him the authority, and this means that he is their representative in the authority. And upon this basis this article has been drafted.

### **Article 25**

**The Khilafah is a contract of choice and consent, so no one is compelled to accept it, and no one is compelled to choose the one who would undertake it.**

The proof for this is the evidence that any *Shari'ah* contract is completed between two parties since it is a contract like all the other contracts. On top of that, the narration of the Bedouin who gave the pledge of allegiance to the Messenger ﷺ and then returned to request the cancellation of his pledge, which the Messenger ﷺ refused, is proof that the *Khilafah* is a contract. It is narrated by Jabir b. 'Abd Allah that a Bedouin gave the pledge of allegiance to the Messenger of Allah ﷺ and then became ill and so said, "Cancel my pledge", so he ﷺ refused. Then he returned and said, "Cancel my pledge", so he ﷺ refused. The man then left. The Messenger ﷺ said ***"Madinah is like bellows; it rejects its dirt and purifies its goodness"*** (agreed upon by Muslim and al-Bukhari). As the pledge upon the *Khilafah* is a pledge upon obedience to the one who has the right to be obeyed from the people of authority, then it is a contract upon choice and consent and so it is not correct by compulsion; neither compulsion on the one given the pledge nor compulsion upon those who are giving the pledge due to the words of the Messenger ﷺ ***"Mistakes, forgetfulness and what they have been forced upon, have been raised from my Ummah"*** (reported by Ibn Maja through Ibn 'Abbas), and this is general for every contract including the contract of the *Khilafah*. Accordingly, every contract that occurs due to compulsion is void, since it has not been contracted. In the same manner as the other contracts, the *Khilafah* is not contracted by compulsion.

Likewise, the *Khilafah* is not completed except with two contracting parties like any other contract; so someone would not be a *Khalifah* unless someone appoints him to the *Khilafah* and so if someone appoints themselves as *Khalifah* without a pledge from those whom the *Khilafah* is contracted through, he would not be a *Khalifah* unless they gave him the pledge with satisfaction and consent, in which case he becomes *Khalifah* after this pledge; as for before it then he would not be considered such. If the people are forced to give the pledge, the person would not be the *Khalifah* after this pledge which was taken by compulsion, and the *Khilafah* would not be contracted to him since it is a contract which is not contracted through compulsion due to the words of the Messenger ﷺ ***"Mistakes, forgetfulness and what they***

*have been forced upon, have been raised from my Ummah*”, and what has been raised is considered to be void.

#### **Article 26**

**Every sane, adult Muslim, a male or a female, has the right to elect the leader of the State and to give him the pledge of allegiance; while the non-Muslims do not have such right.**

The reality of the *Khilafah* is evidence that every Muslim has the right to elect the *Khalifah* and to give him the pledge, since there are narrations which indicate that it is the Muslims who give the pledge of allegiance to the *Khalifah*, irrespective of whether they were male or female; it is narrated by ‘Ubadah b. Samit *“We gave the pledge of allegiance to the Messenger of Allah...”* reported by al-Bukhari, and narrated from Um Attiyya who said *“We have the pledge of allegiance to the Messenger of Allah...”* also from al-Bukhari, and what Ibn Kathir reported in *al-Bidayah wa ‘l-Nihayah* when ‘Abd al Rahman b. ‘Auf was appointed to take the opinion of the Muslims as to who should be the *Khalifah* he said *“I did not leave a man nor a woman except that I took their opinion”*, and not one of the companions rebuked him over this. So every Muslim, a male or a female, has the right to elect the *Khalifah* and to give him the pledge of allegiance. As for the non-Muslims they have no right in these issues since the pledge of allegiance is upon the Book and the *Sunnah* and he does not believe in either of them, since if he believes in them he would be a Muslim.

#### **Article 27**

**If the *Khilafah* is contracted to an individual by the pledge of those it is valid to be contracted with, the pledge of the remainder of the people is a pledge upon obedience and not a pledge of contracting; and so any one who is seen to have the potential of rebellion is forced to give the pledge.**

The evidence for this is what happened in the pledge of the four *Khulafaa*’, because it was an *Ijma*’ of the companions. In the pledge of Abu Bakr (ra), the people of power and influence (*ahl al-hal wa ‘l-aqd*) of Madinah alone were sufficient, and that was the case in the pledge of Umar (ra), and in the pledge of ‘Uthman (ra) it was enough to take the opinion of the Muslims in Madinah, and take the pledge from them, and in the pledge of Ali (ra) the pledge of the majority of the people of Madinah and Kufa was enough. All of this indicates that it is not necessary that all the Muslims have to give the pledge in order to contract the *Khilafah*; rather the pledge of most of their representatives is enough. As for the remainder, then if they gave a pledge their pledge is upon obedience.

With respect to forcing those whom may rebel to take the pledge after the pledge of the majority of the representatives, the evidence is the resolve of our master Ali (ra) to make Mu’awiyah give him the pledge and agree with what the people had agreed, and his forcing of Talha and az-Zubayr to take his pledge, and none of the companions rebuked him for doing so, though some of them gave him advice not to remove Mu’awiyah from the governorship of as-Sham. The silence of the companions upon the actions of one of them, if it was from the actions that are rebuked – such as forcing someone to take the pledge whereas it is a contract upon satisfaction and consent – is considered to be an *Ijma*’ of silent consent, and is considered a *Shari’ah* evidence.

#### **Article 28**

**No one can be *Khalifa* unless the Muslims appoint him, and no one possesses the mandatory powers of the leadership of the State unless the contract with him has been concluded according to the *Shari'ah*, like any contract in Islam.**

The evidence is that the *Khalifah* is a contract upon satisfaction and consent, since its reality as a contract means it is not contracted except through two contracting parties, and therefore no one is the *Khalifah* unless he was appointed to it by those whose agreement completes the conclusion of the contract according to the *Shari'ah*. So if someone appoints himself *Khalifah* without the pledge from those whom the *Khalifah* is contracted through, then he would not be a *Khalifah* until his pledge occurs with choice and consent from those whom the conclusion of the contract takes place. So the fact that the *Khalifah* is a contract necessitates the presence of two contracting parties, with each of them having the necessary *Shari'ah* qualifications to be entrusted with the contract and conclude it.

If a conqueror came about and took the ruling by force he does not become a *Khalifah* by that, even if he announces himself as *Khalifah* of the Muslims, since the *Khalifah* was not contracted to him by the Muslims. If he took the pledge of allegiance from the people by force and compulsion, he does not become the *Khalifah* even if he was given the pledge, since the pledge given through compulsion and force is not considered and so the *Khalifah* cannot be contracted by it. This is because a contract of choice and consent cannot be completed through compulsion and force, and so it is not contracted except through a pledge given with satisfaction and consent. However, if this conqueror managed to convince the people that it was in the benefit of the Muslims to give him the pledge, and that the implementation of the *Shari'ah* would be complete through giving the pledge to him – and so the people became convinced and satisfied with that and gave him the pledge of allegiance on that basis with their own choice, then he would become the *Khalifah* from the moment that he was given that pledge by the people freely even though he took the authority through force and power. Therefore, the condition is the contracting of the pledge, and this is only reached through consent and choice, irrespective of whether the one who reached it was the ruler and leader, or wasn't.

#### **Article 29**

**It is stipulated that the authority of the region or the country that gives the *Khalifah* a contracting pledge is autonomous dependent upon the Muslims alone, and not upon any disbelieving state; besides the security of the Muslims in that country, both internally and externally, is by the security of Islam not the security of the disbelief. With respect to the pledge of obedience taken from other countries, there are not such conditions.**

The evidence is the forbiddance of the disbelievers having authority over the Muslims, in accordance with the His (swt) words “*Allah will never grant to the disbelievers a way over the believers*” (TMQ 4:141), so if the authority of the disbelievers over the Muslims is present in any part of the Islamic lands, then that land would not be suitable to establish the *Khalifah*, since the establishment of a *Khalifah* is simply the establishment of an authority. Since that land does not possess the authority it therefore cannot give it. Also its authority is an authority of disbelief, and the *Khalifah* is not established with the authority of disbelief.

This is from the angle of the authority; as for the issue of security, its evidence is the evidence for *Dar Al-Islam* and *Dar Al-Kufr*, since the establishment of the *Khalifah* would make the abode into an abode of Islam, and it is not possible for an abode to be an abode of Islam simply by establishing the rule of Islam but rather it is imperative that its security is by the security of Islam and not that of disbelief, since the conditions for the abode to be considered

an abode of Islam are: firstly, to be ruled by Islam and secondly, for its security to be the security of Islam and not the security of disbelief.

### **Article 30**

**The only conditions for the one who is given the pledge to be the leader of the State is that he fulfils the contracting conditions of the contract, even if he does not fulfil the preference conditions, since what matters are the contracting conditions of the contract.**

The proof for this is the evidences that were narrated regarding the characteristics of the *Khalifah*. In some of the narrations regarding his characteristics the request is non-decisive, such as his ﷺ words ***“This order is in Quraysh”*** (reported by al-Bukhari from Mu’awiyah). This narration is informative, and it is in the informative form, and though it conveys the meaning of a request, it is not considered decisive so long as it is not accompanied by an indication that confirms its decisiveness, and there is no such indication from an authentic narration. As for what is transmitted in the narration, ***“Whoever is against them, while they are establishing the Deen, will be thrown in the fire by his face by Allah”*** – this is to do with showing enmity to them and not as a confirmation for his ﷺ words ***“This order is in the Quraysh”***. This is apart from the fact that the word “Quraysh” is a noun and not an adjective, and is called a *laqab* (title) in *Usul al-Fiqh*, and the understanding (*Mafhum*) of the noun, or *laqab* is not acted upon since the noun or *laqab* does not have a *Mafhum*. For that reason the text about the Quraysh does not mean that other than they cannot be appointed.

Based upon this, this narration indicates a preferred condition and not a condition of contracting due to the absence of an indication that would make the request decisive; rather there is an indication that makes it non-decisive. When the Messenger ﷺ offered himself to the tribe of ‘Amir Bin Sa’asa’a who asked ***“Will the order remain with us after you”***, to which he ﷺ said ***“The order is in the Hand of Allah, He places it wherever He wills”***, narrated by Ibn Ishaq from al-Zuhri, then this indicates that the request was non-decisive since the reply of the Messenger ﷺ indicates the permission for the order to be with them after him ﷺ, and permitted to be with other than them, which indicates that the condition of being from Quraysh is a condition of preference.

As for the conditions of contracting, they are those that are related with a decisive request such that their absence leads to an absence of contracting (as is understood from the definition of what is a condition). In other words, the result of its absence would mean the invalidity of the *Khilafah* for him if he was not from Quraysh. The reply of the Messenger ﷺ to the tribe of ‘Amir takes the request away from being decisive, as opposed to what has been narrated in the texts for the conditions of contracting. For example, the condition of maturity comes from the fact that the Messenger ﷺ refused to take the pledge of allegiance from a child – when he refused to take allegiance from ‘Abd Allah b. Hisham – and the reason was due to his young age. Therefore, it is evidence that it is a condition for the *Khalifah* to be adult, since if the pledge is not correct from the child then by greater reasoning it would not be correct for the child to be the *Khalifah*.

Whatever characteristic has been mentioned by a decisive request is considered a condition for the contracting of the *Khilafah* with him, and anything else is not made a condition for contracting even if there is a text which mentions it as long as the request was non-decisive.

### **Article 31**

**There are seven conditions for the *Khalifah* to be contracted, which are: to be male, Muslim, free, adult, sane, just, and from the people who have the capability.**

Since the *Khalifah* is a part of the ruling (guardianship), or rather it is the greatest guardianship, for that reason the text of the 19<sup>th</sup> article is mentioned here, in other words the obligation for the seven mentioned conditions to be fulfilled:

The evidence that the *Khalifah* should be male is what has been narrated from the Messenger ﷺ that when he heard that the Persians had given the rule to the daughter of Kisra, he ﷺ said ***“A people who appoint a woman as their leader will never succeed”*** (narrated by al-Bukhari from Abu Bakrah); this narration contains a decisive prohibition regarding a woman being appointed the leader of a State, since the expression ***“never”*** indicates permanency, which is an exaggeration in negating the success, so it is a blame, which means that the request to leave the *Khalifah* from being a woman is a decisive request, and for this reason it was made a condition that he should be male.

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As for the condition that he should be Muslim, this is due to His (swt) words ***“Allah will never grant to the disbelievers a way over the believers.”*** (TMQ 4:141), which is also a decisive prohibition since the expression ***“never”*** indicates permanency, and is information with the meaning of a request. As long as Allah (swt) prohibited the disbelievers having a way over the believers, then He (swt) prohibited for them to be made rulers over them, since the rule is the greatest way over the Muslims. Additionally, the *Khalifah* is the person of authority, and Allah (swt) made it a condition that the person of authority should be a Muslim. Allah (swt) said ***“Obey Allah and Obey the Messenger and the people of authority amongst you”*** (TMQ 4:59) and He (swt) said ***“When there comes to them some matter touching (public) safety or fear, they make it known (among the people); if only they had referred it to the Messenger or to those charged with authority among them”*** (TMQ 4:83). The words ***“people of authority”*** are not mentioned in the Quran unless it is also mentioned that they are from the Muslims, which indicates that the person of authority must be a Muslim. And since the *Khalifah* is the person of authority, and he is the one who appoints the people of authority, then it is a condition that he must be a Muslim.

With respect to the condition that he should be free, this is since the slave is owned by his master and so does not control the independence of conduct for himself, and by greater reasoning he does not control the conduct of others, and therefore he cannot control the guardianship over the people.

As for the condition that he should be an adult, this is due to what was narrated by ‘Ali b. Abi Talib (ra) that the Messenger ﷺ said ***“The pen is raised from three: the one who is asleep until they wake, the child until they become an adult, and the madman until he becomes sane”*** and in a narration ***“and the one who is afflicted with madness until he recovers”***, reported by Ibn Maja and al-Hakim from ‘A’ishah, and the wording is from Ibn Maja. Al-Tirmidhi and Ibn Khuzaymah also reported a similar narration through ‘Ali (ra).

What is understood from lifting the pen is that it is not correct for him to act independently in his own affairs, so it would not be correct for him to be the *Khalifah*. Also, it is narrated from Abu Hurayrah that the Messenger ﷺ said ***“Seek protection with Allah from the head of the seventy and the leadership of the child”*** reported by Ahmad from Abu Hurayrah, which includes proof that it is not correct for a child to be the *Khalifah*. There is another narration from Abu ‘Aqil Zahrah Bin Ma‘bad, on the authority of his grandfather ‘Abd Allah Bin Hisham who lived at the time of the Prophet ﷺ, and his mother Zaynab bint Hamid took him to the Messenger ﷺ and said ***“O Messenger of Allah, take the pledge from him”***, and so the Messenger ﷺ said ***“He is young”***, and touched his head and prayed for him, as reported by al-Bukhari. Since the child is not permitted to give the pledge, then by greater reasoning he is not permitted to be given the pledge either.

As for the condition of being sane, the narration which was just mentioned ***“the pen is raised from three”*** to ***“the one who is afflicted with madness until he recovers”***, and in another narration ***“the madman until he wakes”***, and from the understanding of raising of the pen is

that it is not correct for him to act independently in his own affairs, so it would not be correct for him to be the *Khalifah* and act upon the affairs of other people.

With respect to the condition of being just, this is because Allah (swt) made it a condition for the witness to be just; He (swt) says ***“And take as witness two just persons from among you”*** (TMQ 65:2), and so the one who is more significant than the witness, and that is the *Khalifah*, must by greater reasoning also be just. That is because if the just characteristic has been made a condition for the witness then for it to be a condition for the *Khalifah* is of a higher priority.

As for the condition that he is a capable person from amongst those who are able to fulfil the responsibility, this is necessitated by the pledge of allegiance, since the one who is not capable would be incapable of running the affairs of the people by the Quran and the *Sunnah* for those who gave him the pledge upon them.

The evidence for that includes:

1. Muslim narrated from Abu Dharr ***“I said: O Messenger of Allah, will you not use me? He placed his hand upon my shoulder and then said O Abu Dharr, you are weak, and it is an ‘amanah (trust), and on the Day of Judgement it will be a disgrace and a regret except (for those) who take it by its right and perform its duties correctly”.***

This explains that giving the order its due right and performance is only done by those who are capable of it, and the indication that engenders decisiveness is what the Messenger ﷺ said about whoever takes it and is not capable of it ***“and on the day of Judgement it will be a disgrace and a regret except for he who takes it”.***

2. Al-Bukhari reported from Abu Hurayrah that the Messenger of Allah ﷺ said, ***“If the trust is abandoned, then wait for the Hour. He said: How would it be abandoned O Messenger of Allah? He ﷺ replied: if the ruling was given to those who were not suitable for it, then wait for the Hour”***

The narration indicates a decisive prohibition for the guardianship to be placed with one who is not suitable for it. And the decisive indication is that such an act would mean the abandonment of the trust, which is from the signs of the Hour, which is an indication of the enormity of the prohibition of it being undertaken by those not suitable for it.

As for how capability should be defined, this requires establishing the reality since it might be connected to bodily or mental illness, etc. and therefore its definition is left for the *Madhalim* court, which will confirm that the conditions of contracting have been met in the candidates for the *Khilafah*.

## **Article 32**

**If the position of the *Khilafah* becomes vacant due to the death of its leader, his resignation or his removal, it is obligatory to appoint a *Khalifah* within three days from the date that the position of the *Khilafah* became vacant.**

Appointing the *Khalifah* becomes obligatory from the moment that the previous *Khalifah* dies or is removed. However, it is permitted for the appointment to occur within three days with their nights as long as it is due to working to achieve it. If it takes longer than three nights and the *Khalifah* has still not been appointed, then the issue is considered – if the Muslims are working to establish it but are unable to achieve that during the three night time limit due to overwhelming circumstances that they are unable to overcome, then the sin is lifted from them since they are busy working to establish the obligation and are compelled to delay its establishment due to whatever forced them. It is reported from Ibn Hibban and Ibn Maja from Ibn Abbas: the Messenger of Allah ﷺ said: ***“Allah has excused for my Ummah mistakes, forgetfulness and what they are forced to do”***. If they were not made busy with such overwhelming issues, then the most time allowed for the appointment is three days with their nights.

The evidence for the obligation of immediately working to establish the pledge of allegiance (*Bay'a*) to the *Khalifah* due only to the vacation of the position of the *Khilafah* is the *Ijma'* of the companions. They immediately hurried to gather at *Saqifa Bani Sa'idah* after the death of the Messenger ﷺ on the same day and before his ﷺ burial, and the pledge of contracting (*bay'at al-in'iqad*) was completed on the same day with Abu Bakr (ra), and the next day the people gathered in the mosque to give the pledge of obedience (*bay'at al-ta'ah*).

Limiting the time to establish the appointment of the *Khalifah* to three days is due to that when it became apparent that Umar (ra) was going to die from his stab wound, he delegated the issue of appointment of his successor to the people of *Shura*, and limited them to three days, and then commissioned that if the *Khalifah* was not agreed upon within the three days, those who differed after the three days should be killed. He appointed fifty men from the Muslims in order to execute this - in other words to kill the dissenter, even though they were from the senior companions, and all of this was seen and heard by the companions and none of them rebuked it even though normally anything similar to it would have been reproachable, so it is considered an *Ijma'* of the companions that it is not permitted for the position of *Khalifah* to be left vacant for more than three days, and the *Ijma'* of the companions is an Islamic evidence in the same manner as the Quran and the *Sunnah*.

Al-Bukhari reported through al-Miswar Bin Makhramah who said: *“Abdur-Rahman called on me after a portion of the night had passed and knocked on my door till I got up, and he said to me, ‘I see you have been sleeping! By Allah, during the last three nights I have not slept enough’.* And Ibn Kathir mentioned in the book *al-Bidayah wa 'l-Nihayah* *“When the night whose morning would have been the fourth day after the death of Umar, ‘Abd al-Rahman Bin ‘Auf came to the house of his nephew al-Miswar Bin Makhramah and said ‘You are sleeping O Miswar? By Allah I did not get much sleep for the last three’ - in other words the last three nights and when the people prayed the Morning Prayer the pledge with ‘Uthman (ra) was completed.*

### **Article 33**

**A temporary leader is appointed to take charge of the affairs of the Muslims, and to prepare for the election of the new *Khalifah* after the vacation of the position of the *Khilafah* according to the following process:**

- a. **When the previous *Khalifah* feels that his life is coming to an end, or is committed to resigning, he has the right to appoint the temporary leader.**
- b. **If the *Khalifah* dies or resigns before appointing the temporary leader, or the position of the *Khilafah* becomes vacant due to another reason, then the eldest of the assistants becomes the temporary leader unless he intended to be a candidate for the *Khilafah* in which case the next senior assistant is to be given the position and so on.**
- c. **If all of the assistants intend to be candidates, then the eldest of the executive ministers will become the temporary leader or the one after him in seniority if he intends to be a candidate, and so on.**
- d. **If all of the executive ministers intend to be candidates for the *Khilafah*, then the position of the temporary leader is given to the youngest executive minister.**
- e. **The temporary leader does not have the right to adopt rules.**
- f. **The temporary leader makes all effort to complete the appointment of a new *Khalifah* within three days, and it is not permitted for this to be extended except due to overwhelming circumstances approved by the *Madhalim* court.**

When the *Khalifah* feels that his death is close, close to the time that the *Khilafah* would become vacant, he may appoint a temporary leader to be responsible for the Muslims' affairs during the period of steps being taken to appoint the new *Khalifah*. He would undertake his work after the death of the *Khalifah* and his main work would be to complete the appointment of the new *Khalifah* within three days.

It is not permitted for the temporary leader to adopt rules, since this is the right of the *Khalifah* who has been given a pledge by the *Ummah*. In the same manner, it is not permitted for him to be nominated for the *Khilafah* or to support the nominees, since Umar (ra) appointed someone other than those who were nominated for the *Khilafah*.

The responsibility of this leader ends with the appointment of the new *Khalifah* since his task was time-constrained to this goal.

The evidence for this is what Umar (ra) did when he was stabbed and this was done without any opposition from the companions and so is considered to be an *Ijma'*.

Umar (ra) said to the six candidates ***"Suhayb will lead you in prayers during the three days that you are consulting on the issue"*** and then he said to Suhaib, as mentioned in *Ta'rikh al-Tabari*, ***"lead the people in prayer for three days....if five of them agreed upon a man while one disagreed, then strike his head with a sword.."***. This means that Suhaib was appointed as a leader over them – he was appointed as a leader for the prayer and leadership of the prayer meant leadership over the people. Also, he was given the right to apply the punishment (strike his head) and the only one who can establish punishment by death is the leader.

This issue took place in front of the companions without any dissenters and so it is an *Ijma'* that the *Khalifah* can appoint a temporary leader who undertakes the steps to appoint the new *Khalifah*. In the same manner based upon this it is permitted for the *Khalifah* during his lifetime to adopt an article which would state that if he died without appointing a temporary leader to oversee the appointment of a new *Khalifah*, someone is to be the temporary leader.

Based upon this, it is adopted that if the *Khalifah* did not appoint a temporary leader during his terminal illness, then the temporary leader would be the eldest of his assistants as long as they are not a candidate, in which case it would be the next senior in age from his assistants, and so on, and then the executive ministers in the same manner.

This is applied in the event of the removal of the *Khalifah*, so the temporary leader would be the eldest assistant as long as he is not a candidate, and if he is a candidate then the next one in seniority and so on until all the assistants are considered, in which case it would then fall to the eldest executive minister and so on. If all of them want to be candidates then the youngest of the executive ministers is compelled to become the temporary leader.

This leader is different from the one the *Khalifah* appoints in his place when he goes out for *jihad* or a journey, as the Prophet ﷺ used to do when he went out for *jihad* or the final *hajj*, or similar. In this situation the one who is delegated in his stead has the powers that the *Khalifah* defines for him to take care of the affairs necessitated by the delegation.

#### **Article 34**

**The method of appointing the *Khalifah* is the pledge of allegiance (*Bay'a*). The practical steps to appoint the *Khalifah* and his *Bay'a* are:**

- a. The *Madhalim* court announces the vacancy of the position of the *Khilafah***
- b. The temporary leader takes control of his responsibility and announces the opening of the nomination procedure immediately**
- c. Applications of the candidates fulfilling the contracting conditions would be accepted, excluding the other applications, by the decision from the *Madhalim* court.**



- d. The candidates who have been accepted by the *Madhalim* court, are then short listed twice by the Muslim members of the *Shura* council: first; they select the six candidates who got the highest votes from them, and the second stage is to select the two candidates who got the highest votes
- e. The names of the two are announced and the Muslims are requested to vote for one of them
- f. The result of the elections is announced and the Muslims are informed of the one that got most of the votes.
- g. The Muslims promptly set out to give the pledge to whoever got most of the votes, as the *Khalifah* of the Muslims upon the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ.
- h. Once the pledge has been completed, the *Khalifah* is announced to the public, until the news of his appointment has reached the whole *Ummah*, with mentioning of his name and that he fulfilled the characteristics that make him valid for contracting the *Khilafah* to him.
- i. After completing the steps to appoint the new *Khalifah* the responsibility of the temporary leader ends.

When the *Shari'ah* obligated the appointment of a *Khalifah* upon the *Ummah*, it specified the method by which he would be appointed. This method has been defined by the Quran and *Sunnah* and the consensus of the companions. This method is the pledge of allegiance (*Bay'a*). The appointment of the *Khalifah* occurs through the taking of the *Bay'a* of the Muslims upon the action by the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ. What is meant by "Muslims" is those Muslims who were under the responsibility of the last *Khalifah* if the *Khilafah* was established or the Muslims of the area which the *Khilafah* was being established within if it was not already established.

The fact that this method (*Bay'a*) is confirmed by the Muslims' *Bay'a* to the Messenger ﷺ, and from the order of the Messenger ﷺ upon us to give the *Bay'a* to the *Imam*. As for the *Bay'a* of the Muslims to the Messenger ﷺ, it was not a *Bay'a* on Prophethood but rather upon ruling, since it was a *Bay'a* upon action and not upon confirmation (of the truth of his ﷺ Prophethood). So he ﷺ was given the *Bay'a* upon the basis that he was a ruler and not that he was a Prophet or a Messenger, since the confirmation of belief in Prophethood and his ﷺ message is *Iman* and not *Bay'a*. Therefore all that remains is that the *Bay'a* must have been in respect of him ﷺ being the head of the state. The *Bay'a* is mentioned in the Quran and the *Sunnah*. Allah (swt) says: "***O Prophet! When believing women come to you to give you the Bay'a (pledge), that they will not associate anything in worship with Allah, that they will not steal, that they will not commit illegal sexual intercourse, that they will not kill their children, that they will not utter slander, intentionally forging falsehood (i.e. by making illegal children belonging to their husbands), and that they will not disobey you in Ma'ruf (Islamic Monotheism and all that which Islam ordains) then accept their Bay'a (pledge)***" (TMQ 60:12), and Allah (swt) says "***Verily, those who give Bay'a (pledge) to you (O Muhammad) they are giving Bay'a (pledge) to Allah. The Hand of Allah is over their hands***" (TMQ 48:10). Al-Bukhari reported: Isma'il said that Malik said to me from Yahya b. Sa'id who said: 'Ubadah b. al-Walid said his father said to him from 'Ubadah b. al-Samit "***We gave the oath of allegiance to Allah's Apostle that we would listen to and obey him both at the time when we were active and at the time when we were tired and that we would not fight against the ruler or disobey him, and would stand firm for the truth or say the truth wherever we might be, and in the Way of Allah we would not be afraid of the blame of the blamers***". And in Muslim from 'Abd Allah b. 'Amru b. al-'As that the Messenger of Allah ﷺ said "***He who swears allegiance to a Khalifah should give him the pledge of his hand and the sincerity of his heart (i.e. submit to him both outwardly as well as inwardly).***"

***He should obey him to the best of his capacity. If another man comes forward (as claimant to Khalifah) disputing his authority, they (the Muslims) should behead the latter***". And also in Muslim from Abu Sa'id al-Khudri that the Messenger of Allah said ***"If the Bay'a is given to two Khalifahs (khalifatayn) then strike the neck of the latter"***. Muslim also reported from Abu Hazem who said: I sat with Abu Huraira for five years, and I heard him say from the Prophet ﷺ ***"The tribes of Isra'il were ruled by the Prophets, every time a Prophet died he was followed by another Prophet, and there will be no Prophets after me, and there will be khulafaa' (successors) and they will be many"***.

The texts of the Quran and *Sunnah* are explicit that the method to appoint the *Khalifah* is the *Bay'a*. It could also be understood from the consensus of the companions, who acted upon this, and the *Bay'a* to the righteous *Khulafaa'* are clear in this regard.

The practical steps which conclude with the action of the appointment of the *Khalifah* before the giving of the pledge to him are understood from what occurred with the righteous *khulafaa'* who came straight after the death of the Messenger ﷺ. They were Abu Bakr (ra), Umar (ra), 'Uthman (ra) and 'Ali (ra), may Allah be pleased with them. All of the companions were silent upon and consented to the steps taken, even though they were steps which would have been rejected if they contradicted the *shari'a* since they were connected to the most important issue upon which the Muslim entity rested and the continuity of the ruling by Islam.

Whoever followed what occurred in the appointment of those *khulafaa'*, they would find that some of the Muslims discussed the issue in *Saqifa Bani Sa'idah* and that the candidates were Sa'd (ra), Abu 'Ubaida (ra), Umar (ra) and Abu Bakr (ra). However, both Umar (ra) and Abu 'Ubaida (ra) did not wish to contest the issue against Abu Bakr (ra), and so the issue was really between Abu Bakr (ra) and Sa'd Bin 'Ubada (ra) and no one else, with the result of the discussion being that the *Bay'a* was given to Abu Bakr (ra). Then on the second day the Muslims were called to the mosque to give him their *Bay'a*, and so the *Bay'a* in *al-Saqifa* was one of contracting, and with it the person becomes the *Khalifah* of the Muslims, and the *Bay'a* in the mosque on the second day is the *Bay'a* of obedience.

When Abu Bakr (ra) felt that his illness was terminal and specifically that the Muslim armies were involved in battles with the major powers of the time, the Persians and the Romans, he called the Muslims in order to consult them upon who should be the *Khalifah* for them and spent three months doing this consultation. When he had completed it and knew the opinion of the majority of the Muslims, he commissioned them, or in modern terminology nominated, that Umar (ra) should be the *Khalifah* after him. This commissioning or nomination was not a contract for Umar (ra) to be the *Khalifah* after him, since after the death of Abu Bakr (ra) the Muslims attended the mosque to give their *Bay'a* to Umar (ra) and through that he became the *Khalifah* of the Muslims, and not through the consultations, or Abu Bakr's (ra) commission, since if the nomination by Abu Bakr (ra) was a contract for the *Khilafah* then he would not have required the *Bay'a* of the Muslims. This is on top of the texts mentioned earlier which explicitly indicate that the only manner for a person to become the *Khalifah* is through the *Bay'a* given by the Muslims.

At the time that Umar (ra) was stabbed the Muslims requested that he appoint a successor which he refused to do. They pressed upon him and so he made, or nominated, six candidates for them, after which he appointed Suhayb to lead the people in prayer and to prevail upon those whom Umar (ra) had nominated until they decided upon a *Khalifah* from amongst themselves during the three days he had specified for them. He said to Suhayb ***"if five of them agreed upon a man while one disagreed, then strike his head with a sword."*** as has been reported by al-Tabari in his *al-Ta'rikh*, as well as Ibn Qutaybah who authored the book *al-Imama wa 'l-Siyasa* which is commonly known by *al-Ta'rikh al-Khulafaa'*, and Ibn Sa'd in *al-Tabaqat al-Kubra*. Then Umar (ra) appointed Abu Talha al-Ansari along with fifty men to guard them, and charged al-Miqdad Bin al-Aswad with finding a place for them to meet. Then after the death of Umar (ra) and subsequent to the council settling upon the candidates,

‘Abd al Rahman Bin ‘Auf said: Which of you would remove yourselves (from consideration) and assume responsibility to select the best of you? To which all of them remained silent. Then ‘Abd al Rahman said I remove myself and then consulted each of them individually asking them who they considered the most worthy of the responsibility if they didn’t consider themselves, and he found that their answers were limited to two: ‘Ali (ra) and ‘Uthman (ra). After that ‘Abd al Rahman sought the opinions of the Muslims asking them which of the two they would prefer. He asked the men and women, surveying the opinion of the people, not just during the daytime but even during the night. Al-Bukhari narrated from al-Miswar Bin Makhrama who said ***“Abdur-Rahman called on me after a portion of the night had passed and knocked on my door till I got up, and he said to me, “I see you have been sleeping! By Allah, during the last three nights I have not slept enough”***. After the people had offered morning prayer, *Bay’a* of ‘Uthman (ra) was completed. He became the *Khalifah* through the *Bay’a* of the Muslims, and not because Umar (ra) limited it to six. Then ‘Uthman (ra) was killed, and so the masses of the Muslims in Madinah and Kufa gave their *Bay’a* to ‘Ali b. Abi Talib (ra), and so he became the *Khalifah* through the *Bay’a* of the Muslims.

By close examination of the manner of their *Bay’a*, it becomes clear that the candidates for the *Khilafah* were announced to the people and that they all fulfilled the necessary conditions of contracting. After this the opinion of the influential people (*ahl al hal wa ‘l-‘aqd*) from the Muslims was taken, the representatives of the *Ummah*, and the representatives were well known in the era of the righteous *Khulafaa* since they were the companions, may Allah be pleased with them, or the people of Madinah. Whoever the companions, or the majority of them, wanted to become *Khalifah* was given the *Bay’a* of contracting, and thus became the *Khalifah* to whom obedience was obligatory, and so the Muslims would give them the *Bay’a* of obedience. In this manner the *Khalifah* is found and becomes the authorised representative of the *Ummah* in ruling and authority.

As for the issue of limiting the candidates, then by following the manner in which the righteous *khulafaa* were appointed, it becomes clear that the candidacy was limited. In *Saqifa Bani Sa’idah* the candidates were Abu Bakr (ra), Umar (ra), Abu ‘Ubaida (ra) and Sa’d Bin ‘Ubada (ra) and that was all, though Umar (ra) and Abu ‘Ubaydah (ra) didn’t wish to compete against Abu Bakr (ra) and so in practical terms the candidates were Abu Bakr (ra) and Sa’d Bin ‘Ubada (ra). Then the *ahl al hal wa ‘l-‘aqd* elected Abu Bakr (ra) the *Khalifah* in *al-Saqifa* and gave him the *Bay’a* of contracting, and the next day the Muslims gave Abu Bakr (ra) the *Bay’a* of obedience in the mosque.

Abu Bakr (ra) nominated Umar (ra) as the *Khalifah* for the Muslims, without there being any other candidate, and then the Muslims gave him the *Bay’a* of contracting and then the *Bay’a* of obedience.

Umar (ra) nominated six candidates for the Muslims and told them to elect the *Khalifah* from amongst themselves, then ‘Abd al-Rahman b. ‘Awf discussed with five of them and limited them to two: ‘Ali (ra) and ‘Uthman (ra), after the others had charged him to do. After that he surveyed the opinion of the people and that opinion settled upon ‘Uthman (ra) as the *Khalifah*.

As for ‘Ali (ra), there was no other candidate for the *Khilafah* and so the masses of the Muslims in Madinah and Kufa gave him the *Bay’a* and he became the fourth *Khalifah*.

And due to the *Bay’a* of ‘Uthman (ra) being settled within the maximum permitted time to elect the *Khalifah* – three days and nights – and also that the candidates were limited to six and then after that to two, we will mention how that occurred with the details in order to understand the issue we are discussing:

1. Umar (ra) died on Sunday morning in Muharram 24 A.H. from the effects of being stabbed by Abu Lu’lu’a, may Allah (swt) curse him, when Umar (ra) was standing in prayer in the pulpit of the mosque during the Wednesday morning prayer four days

before the end of Dhul Hijja 23 A.H. Suhayb led the prayer for him in accordance with his will.

2. When they had completed the issue of Umar (ra), al-Miqdad gathered the council of six which had been entrusted by Umar (ra) in one of the houses and Abu Talha took care of their needs. They sat therein and discussed and then appointed Abd al-Rahman b. 'Awf to select the *Khalifah* from amongst them with their consent.
3. 'Abd al-Rahman began to discuss with them and he asked each of them: If he was not to be the *Khalifah* then who did he think should be from amongst the others? Their answers were limited to 'Ali (ra) and 'Uthman (ra), and so Abd al-Rahman limited the candidacy to two from the original six.
4. After that Abd al-Rahman began to consult the people as is well known.
5. On Tuesday night - in other words the night of the third day after the death of Umar (ra) on Sunday, Abd al-Rahman went to the house of his nephew al-Miswar Bin Makhramah. The following is taken directly from *al-Bidayah wa 'l-Nihayah* of Ibn Kathir:

***“When the night whose morning would have been the fourth day after the death of Umar, Abd al-Rahman b. 'Awf came to the house of his nephew al-Miswar Bin Makhrama and said “You are sleeping O Miswar? By Allah I did not get much sleep for the last three (nights)” in other words the last three nights after the death of Umar (ra) which occurred on Sunday morning, which was Sunday, Monday and Tuesday night – until he said “Go and call ‘Ali and ‘Uthman for me...and then he went out with them to the mosque...the people were called to the prayer in congregation”, which was the Wednesday morning prayer. Then he took Ali’s (ra) hand, may Allah (swt) be pleased with him and honour his face, and asked him regarding taking the Bay’a upon the Book of Allah (swt), the Sunnah of His Messenger ﷺ and the actions of Abu Bakr (ra) and Umar (ra). ‘Ali (ra) famously replied: upon the Book and the Sunnah – yes. As for the actions of Abu Bakr (ra) and Umar (ra), he would make his own Ijtihad. Abdul Rahman removed his hand, took the hand of ‘Uthman (ra) and asked the same question. ‘Uthman (ra) replied: By Allah yes, and so the Bay’a was completed with ‘Uthman (ra).*”**

Suhayb led the people in the morning and midday prayer that day, and then 'Uthman (ra) led them in the afternoon prayer as the *Khalifah* of the Muslims. This means that despite the contracting Bay'a to 'Uthman (ra) starting at the Morning Prayer, the leadership of Suhayb did not expire except after the Bay'a of the influential people in Madinah to 'Uthman (ra). This was completed a little before the afternoon prayer, where the companions summoned each other to give Bay'a to 'Uthman (ra) until after the middle of that day had passed and before the afternoon prayer. When the taking of the Bay'a was completed before the afternoon prayer, the leadership of Suhayb finished, and 'Uthman (ra) led the people in the afternoon prayer as their *Khalifah*.

The author of *al-Bidayah wa 'l-Nihayah* explains why Suhayb led the people in the afternoon prayer though 'Uthman (ra) took the Bay'a at the morning prayer, saying: “The people gave him the Bay'a in the mosque, then he was taken to the house of *shura* (i.e. the house where the people of consultation met), so the rest of the people gave him the Bay'a . It seems he did not finish taking the Bay'a until after the midday prayer. So, Suhayb prayed that prayer in the Prophet’s mosque, thus the first prayer in which the *Khalifah*, leader of the believers 'Uthman (ra) led the Muslims was the afternoon prayer”.

Consequently the following matters must be considered when making nominations for the post of *Khilafah* after it becomes vacant (through death or dismissal), which are:

1. The work regarding candidacy and appointment must be done day and night until the task is completed.

2. Nominees have to be short listed in terms of fulfilling the contractual conditions, a matter that is conducted by the *Madhalim* court.
3. Nominees are short listed twice: to six and then to two. The council of the *Ummah* conducts this short listing as representatives of the *Ummah*. This is because the *Ummah* delegated Umar (ra) to represent them, who nominated six people and the six nominees delegated a representative from amongst themselves, ‘Abd al Rahman, who short listed the nominees to two after discussion. Thus, the reference in all of this is the *Ummah*’s council; in other words its representatives.
4. After the completion of the elections and the *Bay’a*, the *Khalifah* is announced to the public such that all of the *Ummah* are aware of it, and his name and characteristics that mean he fulfils the criteria for the contraction of the *Khilafah* are also mentioned.
5. The task of the temporary leader expires after the completion of the taking of the *Bay’a* by the *Khalifah*, rather than by the announcement of the results. The leadership of Suhayb did not finish by the election of ‘Uthman (ra), but rather by the completion of his *Bay’a*.

This is the case if there was a *Khalifah* and he passed away or was removed and a *Khalifah* needs to be appointed to replace him.

If there is no *Khalifah* at all, it becomes obligatory upon the Muslims to appoint a *Khalifah*, to implement the rules of the *shari’a* and to carry the Islamic call to the world, as is currently the case since the removal of the Islamic *Khilafah* in Istanbul, on 28<sup>th</sup> Rajab 1342 AH (3<sup>rd</sup> March 1924). In such a situation, every one of the Muslim countries in the Islamic world is suitable to appoint a *Khalifah*, and the *Khilafah* would be contracted to him. So, if one of the Muslim countries gave the *Bay’a* to a *Khalifah*, and the *Khilafah* was contracted to him, it becomes obligatory upon the Muslims in the other countries to give him the *Bay’a* of obedience or in other words a *Bay’a* of submission to his authority. This is after the *Khilafah* has been concluded to him through the *Bay’a* of the people of his country. The following four conditions have to be fulfilled in that country:

1. The authority of the country must be in the hands of the Muslims and not in the hands of a non-Islamic country or under a non-Islamic influence.
2. The security of the Muslims in that country must be guaranteed by Islam; in other words its protection at home and abroad should be in the name of Islam and by Islamic forces to the exclusion of all others.
3. The implementation of Islam should take place with immediate effect in a comprehensive and radical manner; the *Khalifah* must be involved in the conveying of the call to Islam.
4. The *Khalifah* must fulfil all the contractual conditions, although he might not fulfil the preferred conditions, since what matters are the conditions of the contract.

Should that country satisfy these four conditions then the *Khilafah* would be established by the *Bay’a* of that country alone, and the *Khilafah* would be concluded by it alone. The *Khalifah* to whom they gave the *Bay’a* would become the legitimate *Khalifah* and any *Bay’a* to other than him would be invalid.

Any country that might give the *Bay’a* to another *Khalifah* after that, then their *Bay’a* would be invalid, due to the saying of the Messenger of Allah ﷺ

**“If *Bay’a* was given to two *Khalifah*, then kill the latter of them”** and his ﷺ saying **“Fulfil the *Bay’a* of the first, then the first”** and his ﷺ saying **“Whoever gave *Bay’a* to an imam, giving him the clasp of his hand and the fruit of heart, let him obey him as much as he could. If anybody else came to challenge his authority, then strike the head of the latter.”**

**The method of the Bay'a:** In the aforementioned we have explained the evidences for the Bay'a as the prescribed method of appointing a *Khalifah* in Islam. Regarding its practical implementation, it is through shaking the hand as well as by writing. It has been narrated by 'Abd Allah b. Dinar who said: *"I witnessed Ibn Umar when people agreed on Abd al-Malik b. Marwan saying: 'I write herewith that I agree to hear and obey 'Abd Allah Abd al-Malik, the leader of the believers, according to the Book of Allah and the Sunnah of His Messenger, and to the best of my ability'".* The Bay'a can also be given by any other means.

The Bay'a should only be given by an adult as the Bay'a of the minor is not valid. Abu Aqeel Zahrah b. Ma'bad reported on the authority of his grand-father 'Abd Allah b. Hisham who lived during the time of the Messenger of Allah ﷺ, that his mother Zaynab bint Hamid took him to the Messenger of Allah ﷺ and said "O Messenger of Allah, take Bay'a from him" upon this the Messenger of Allah ﷺ said *"He is young"* and he ﷺ wiped over his head and prayed for him, as narrated by al-Bukhari.

As for the wording of the Bay'a, it is not restricted to any specific wording, but it should include the commitment that the *Khalifah* acts according to the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ and that the person who gives the Bay'a should pledge to obey in that which they liked and disliked and in ease and hardship. A law will be published that will determine this wording in accordance with the previous points.

Once the Bay'a is given to the *Khalifah*, then the Bay'a becomes a trust on the neck of the one who gave the Bay'a, where he is not allowed to withdraw it. For it is his right in terms of appointing the *Khalifah* until he gives it. But once he gave it, he is not allowed to withdraw it. Even if he wanted to do so, he is not permitted to withdraw his Bay'a. Al-Bukhari narrated from Jabir Ibn 'Abd Allah that a Bedouin gave the Bay'a to the Messenger of Allah ﷺ on Islam, but he became unwell, so he said: "Relieve me of my Bay'a", which the Messenger of Allah ﷺ refused. Then he came and said the same, but the Messenger ﷺ rejected. So he left the town. The Messenger of Allah ﷺ said *"The town 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' on the authority of 'Abd Allah b. Umar that he heard the Messenger of Allah ﷺ say *"Whoever withdraws a hand from obedience, he would meet Allah on the day of judgement without having proof for himself"*.

Breaking the Bay'a to the *Khalifah* is a withdrawal of the hand from the obedience to Allah (swt). However, this is the case if his Bay'a to the *Khalifah* was a Bay'a of contracting, or a Bay'a of obedience to a *Khalifah* was accepted and pledged by the Muslims. But if he pledged himself to a *Khalifah* initially, and the Bay'a was not completed, then he has the right to relieve himself from that Bay'a, in view of the fact that the contracting Bay'a has not been concluded to him from the Muslims. So the prohibition in the hadith is focused on withdrawing a Bay'a to a *Khalifah*, not to a man for whom the *Khilafah* contract was not completed.

### **Article 35**

**The Ummah is the one who appoints the *Khalifah*. However, it does not possess the right to remove him once the pledge of allegiance has been concluded according to the *Shari'ah* method.**

This article has two halves; the first that the *Ummah* is the one who holds the right to appoint the *Khalifah*; the second being that the *Ummah* does not possess the right to remove him.

As for the first half, the proof for it is the narrations regarding the pledge of allegiance, since no one possesses the right to undertake the position of the *Khilafah* except through the pledge, because the pledge is the method to appoint the *Khalifah*. This is established from the pledge

of the Muslims to the Messenger ﷺ and from the command of the Messenger ﷺ for us regarding the pledge, and that the righteous *Khulafaa* only undertook the *Khalifah* through the pledge of allegiance.

With respect to the second half, its evidence is the order to obey the *Khalifah* even if he commits something reproachable, or is oppressive, as long as it is not a clear disbelief. It is narrated by Muslim from Ibn ‘Abbas that the Messenger of Allah ﷺ said ***“Whoever sees something from his Amir that he hates then let him be patient since the one who separates from the group by a hand-span and then dies, the death is one of jahilliyah”***, and the word ***“his Amir”*** is general, and the *Khalifah* falls under it since he is the *Amir* of the believers. And in the narration of Yazid b. Salamah al-Ju’fi in Tabarani in which he said ***“O Messenger of Allah, if there were leaders over us who took the right from us and prevented us from the right, can we fight them?” He replied “No, they are accountable for what they did and you are accountable for what you did”***.

Al-Bukhari and Muslim reported (with the wording here from Muslim) through ‘Ubadah b. Samit who said: ***The Messenger of Allah ﷺ called us and we took the oath of allegiance to him. Among the injunctions he made binding upon us was: Listening and obedience (to the Amir) in our pleasure and displeasure, in our adversity and prosperity, even when somebody is given preference over us, and without disputing the delegation of powers to a man duly invested with them (Obedience shall be accorded to him in all circumstances) He ﷺ said: except when you see clear Kufr/disbelief which you have proof from Allah.***

And it is narrated from Abu Dharr that the Messenger of Allah ﷺ said, ***“O Abu Dharr, how would you act with those governors who would take sole possession of this booty?” He said “By the One who sent you with the Truth, I would place my sword over my shoulder and then fight until I met with you (in other words met his death)”. He ﷺ said, “Should I not tell you what is better than that? Have patience until you meet me”*** (reported by Ahmed and authenticated by al-Zain, and it is also reported by Abu Dawud).

In all of these narrations the *Khalifah* acted in a way that would mandate his removal and despite that the Messenger ﷺ ordered obedience to him and to be patient over his oppression, which indicates that the *Ummah* does not have the right to remove the *Khalifah*.

Additionally, the Messenger ﷺ refused to allow the Bedouin to cancel his pledge of allegiance. It is narrated by Jabir Bin ‘Abd Allah that a Bedouin gave the pledge of allegiance to the Messenger of Allah ﷺ and then became ill and so said, “Cancel my pledge”, so he ﷺ refused. Then he returned and said, “Cancel my pledge”, so he ﷺ refused. So the man left. The Messenger ﷺ said ***“Madinah is like bellows; it rejects its dirt and purifies its goodness”***, which indicates that if the pledge is given it is binding upon those who gave it and which means they do not have the right to remove the *Khalifah* since they do not have the right to cancel their pledge of allegiance to him. It cannot be argued that the Bedouin wanted to leave Islam and not just the obedience to the ruler through his cancellation of the pledge of allegiance. This cannot be justified since if he did that then his action would have been one of apostasy and the Messenger ﷺ would have killed him, because the apostate is killed. Also, the pledge is not a pledge upon Islam but rather a pledge upon obedience. Accordingly he wanted to remove himself from the obedience and not from Islam. Consequently, it is not correct for the Muslims to turn away from their pledge and so they do not possess the right to remove the *Khalifah*.

However, the *Shari’ah* clarifies at what point the *Khalifah* removes oneself without a need to be removed, and when he deserves to be removed, and none of these mean that the *Ummah* has the right to remove him. Rather they account him with the powerful word of truth against oppression and fight against him if he announces clear disbelief. The power to remove him when he deserves it is held by the *Madhalim* court.

### Article 36

The *Khalifah* possesses the following powers:

- a. He is the one who adopts the *Shari'ah* rules derived by a correct *Ijtihad* from the Book of Allah (swt) and the *Sunnah* of his Messenger ﷺ necessary for managing the affairs of the *Ummah* so that they become laws (*qawanin*) which are obligatory to obey, and it is not permitted to oppose them.
- b. He is responsible for governing the domestic and foreign affairs of the State, and he takes command of the Army; he has the right to announce war, to sign peace treaties, truces and all other types of agreements.
- c. He is the one who can accept or reject foreign ambassadors and appoint and remove the Muslim ambassadors.
- d. He is the one who appoints and removes the assistants and governors. They are all responsible to him as they are responsible to the *Shura* council.
- e. He is the one who appoints and removes the head judge and judges with the exception of the *Madhalim* judge in the event of his looking into a case regarding the *Khalifah*, his assistants or his head judge. He also has the power to appoint and remove the department managers, the commanders of the army, and its generals. All of these are responsible to him and not to the *Shura* council.
- f. He is the one who adopts the *Shari'ah* laws according to which the budget of the State is decided, beside the sections of the budget and the amounts allocated to each aspect, irrespective to whether it was related to revenue or expenditure.

With respect to the detailed evidences for the six paragraphs mentioned in the article:

The evidence for paragraph “a” is the *Ijma'* of the companions, since the law (*qanun*) is a technical term which means: The command which is issued by the authority in order to govern the people according to it; and it is also known as “the collection of rules which the authority imposes upon people to follow in their relations”, in other words if the authority orders specific rules, these rules are laws which the people are bound by, and if the authority did not order them then they are not considered laws and the people are not bound by them. The Muslims act according to the rules of the *Shari'ah* and therefore they act according to the orders and prohibitions of Allah (swt) and not the orders and prohibitions of the authority. So they act according to the rules of the *Shari'ah* and not the orders of the authority. But, these *Shari'ah* rules were differed over by the companions, so some of them understood something from the *Shari'ah* texts whereas others understood something different from them, and each of them proceeded according to what they had understood, and their understanding would be the rule of Allah (swt) for them.

However, there are *Shari'ah* rules that the Muslims would all have to proceed according to one opinion in order to facilitate the management of the affairs of the *Ummah*, as opposed to each one following their own *Ijtihad*. This actually happened; Abu Bakr (ra) thought that the wealth should be distributed amongst the Muslims equally, since it was their right collectively. As for Umar (ra), he thought that it was not correct to give the one who had previously fought against the Messenger of Allah ﷺ the same as the ones who had fought alongside him, or to give the poor the same as the rich. However, Abu Bakr (ra) was the *Khalifah* and so ordered the implementation of his opinion, in other words the adoption of the equal distribution of the wealth. The Muslims followed his opinion and the judges and governors acted according to it, and Umar (ra) submitted to the opinion of Abu Bakr (ra) and he acted according to it and implemented it. When Umar (ra) then became the *Khalifah*, he adopted an opinion which contradicted the opinion of Abu Bakr (ra); in other words he ordered his opinion which was to distribute the wealth according to preference rather than



equally. Therefore he distributed the wealth according to those who embraced Islam earlier and according to need and the Muslims followed his opinion and the judges and governors acted according to it. So, there was an *Ijma'* of the companions that the *Imam* could adopt specific rules and order their enactment, and that it was upon the Muslims to obey that even if it went against their own *Ijtihad*, and they had to leave acting according to their own opinions and *Ijtihad*. These adopted rules are the laws. Consequently, the passing of laws is for the *Khalifah* alone and no one else possesses that right at all.

As for paragraph “b”, its proof is the action of the Messenger of Allah ﷺ since he was the one who used to appoint the governors and the judges and account them, and he was the one who used to monitor the buying and selling, and prohibit cheating, and distribute the wealth amongst the people. He ﷺ was also the one who used to help the one who was unemployed to find work and used to undertake all the domestic affairs of the State. In the same way, he ﷺ used to address the Kings, meet the messengers and the delegations, and used to undertake all the foreign affairs of the State. Additionally, he ﷺ used to practically undertake the leadership of the Army and so in the battles he would personally take leadership of the fighting. He ﷺ was the one who sent the expeditions out and appointed their leaders. This was to the extent that he appointed Usama Bin Zaid as a leader over an expedition in order to send it to the land of *as-Sham*, even though the companions disapproved due to his young age, but the Messenger ﷺ forced them to accept his leadership. This indicates that the *Khalifah* is the practical leader of the Army, and not merely the Commander in Chief alone. Additionally, it was the Messenger ﷺ who declared the wars against the Quraysh, Bani Quraythah, Bani al-Nadir, Bani Qaynuqa', Khaybar and the Romans. Every war which occurred was declared by the Messenger ﷺ, which indicates that the declaration of war is only for the *Khalifah*. He ﷺ also contracted treaties with the Jews, and with Bani Mudlij and their allies from Bani Damrah, and he was the one who concluded the treaties with Yuhannatu b. Ruba, the companion of Ayla. He ﷺ concluded the treaty of Hudaibiyah even though the Muslims were angry with it, but he did not refer to them and rejected their opinions and signed the treaty. All of which indicates that the *Khalifah* alone is the one who concludes the treaties, irrespective of whether it was a peace treaty or any other kind of agreement.

As for paragraph “c”, its evidence is that the Prophet ﷺ met the messengers of Musailama, and met Abu Raafi' as a messenger from the Quraysh; he ﷺ was the one who sent messengers to Heracles, Caesar, al-Maqawqis (of Egypt), al-Harith al-Ghassani the king of al-Hira, al-Harith al-Himiari the king of Yemen and to Najashi of the Abyssinians. He ﷺ sent 'Uthman Bin 'Affan (ra) at Hudaibiyah as a messenger to the Quraysh. All of this indicates that the *Khalifah* is the one who accepts or rejects to meet the ambassadors and is the one who appoints them.

With respect to paragraph “d”, the Messenger ﷺ used to appoint the governors; he appointed Mu'adh as a governor over Yemen. He ﷺ was the one who used to remove the governors; he removed al-'Alaa Bin al-Hadrami from Bahrain. Also, the reason why he removed al-'Alaa was due to the complaints of the people about him, which indicates that the governors are held responsible in front of the people they are governing in the same way they are held responsible in front of the *Khalifah* and in front of the *Shura* council since it represents all of the provinces. This is with respect to the governors. As for assistants, the Prophet ﷺ used to have two assistants, Abu Bakr (ra) and Umar (ra), and he did not remove them nor appoint anyone other than them throughout his life. So he ﷺ was the one who appointed them and did not remove them. However, since the assistant only takes his authority from the *Khalifah*, and he is his representative, then the *Khalifah* would have the right to remove him, proven by analogy to the one given proxy, since the one who gave proxy to someone has the right to remove it, unless there is a narrated text which prohibits removing him in special circumstances.

The proof for paragraph “e” is that the Messenger ﷺ made Ali (ra) the judge for Yemen and in *al-isti'ab* that the Messenger ﷺ appointed Mu'ath Bin Jabal as judge over al-Janad, a province in Yemen.

Umar (ra) used to appoint and remove the judges; he appointed Shuraih as a judge over Kufa and Abu Musa as a judge over Basra, while he removed Sharahbeel Bin Hasana from his governorship over *as-Sham*, and appointed Mu'awiyah. So Sharahbeel said to him ***“Did you remove me due to cowardice, or treachery?”*** He replied ***“Neither of them, but I simply wanted a man more powerful than the other”*** as it was reported in the *musannaf* of Abdul Razzaq. 'Ali (ra) appointed Abu Aswad and then removed him, and so he asked ***“Why did you remove me and I did not betray you nor commit a crime”***, so 'Ali replied ***“I saw that you would disregard those who disputed you”***. Both Umar (ra) and 'Ali (ra) did this within the sight and hearing of the companions, and none of them rebuked them over this. This is therefore all evidence that the *Khalifah* has the right to appoint judges generally, and in the same way to appoint someone else to appoint the judges, analogous to appointing a proxy, since he is able to deputise all his mandatory powers to anyone in the same way that he is permitted to appoint anyone as a proxy for him in everything that he is permitted to carry out.

As for making an exception for the removal of the *Madhalim* judge while investigating a case raised against the *Khalifah* or his assistant or his head judge, this is due to the *Shari'a* rule ***“the means to a haram are haram”***, since giving the power to the *Khalifah* to remove him in this situation means that there would be an influence on the verdict of the judge, and additionally it would prevent an Islamic ruling, which is *haram*. Placing the power to remove the *Madhalim* judge in the hands of the *Khalifah* is a means to this *haram*, and especially since this rule relies upon most probably doubt and not certainty. For that reason the power to remove the *Madhalim* judge in this instance is left with the *Madhalim* court, and in other circumstances the rule remains on its origin which is that the right to appoint and remove belongs to the *Khalifah*.

With respect to the appointment of the department managers, the Messenger ﷺ used to appoint registrars to administer the affairs, and they were equivalent to department managers. Al-Harith b. 'Awf was appointed in charge of his ﷺ seal; Mu'ayyib b. Abi Fatimah was appointed as registrar of the war booty; Huthaifa Bin al-Yemaan used to register the yield of the crops in the Hijaz; al-Zubayr b. al-'Awwam used to register the *Zakat*; and al-Mugheera Bin Shu'ba used to register the debts and transactions, and so on.

As for the commanders of the Army, and the standard bearers, the Messenger ﷺ appointed Hamza Bin Abdul Muttalib (ra) as a commander over thirty men in order to impede the Quraysh along the sea shore. 'Ubaydah Ibn al-Harith (ra) was appointed over sixty men and was sent to the Raabigh valley to face the Quraysh. Sa'ad Bin Abi Waqqas (ra) was appointed over twenty men and was then sent in the direction of Makkah. In the same manner he ﷺ used to appoint the commander of the Army, all of which indicates that the *Khalifah* is the one who appoints the commanders and standard bearers.

All of these were responsible to the Messenger ﷺ, and were not responsible to anyone else, thus indicating that the judges, department managers, commanders of the Army and the rest of the civil servants are not responsible except to the *Khalifah*, and they are not responsible to the *Shura* council. No one is responsible to the *Shura* council except for the assistants and governors, and in the same way the administrators, since they are all types of rulers. Other than these, no one else is responsible in front of the *Shura* council; rather they are all responsible in front of the *Khalifah*.

As for paragraph “f”, the various sections of revenues and expenditure of the budget of the State are limited by the *Shari'ah* rules, so no one is given a single *dinar* unless it is due to them from a *Shari'ah* rule, and not a single *dinar* is spent except according to the *Shari'ah* rule. However, the details of the expenditures, or what is known as the sections of the budget, are decided according to the opinion and *Ijtihad* of the *Khalifah*, and the same applies to the revenues. For example, he would decide that the tax from the *kharajiyyah* land would be *x* amount, and that the *Jizya* to be taken should be *y* amount, and similar to these are the sections of the revenues. He is the one who would decide that *x* amount should be spent upon the roads, and *y* amount upon the hospitals, and so on across all the sections of the budget.

Therefore, it is referred to the opinion of the *Khalifah*, and the *Khalifah* is the one to decide according to his opinion and *Ijtihad*. This is since the Messenger ﷺ was the one who took the revenues from the administrators, and would take charge of how it was spent; some of the governors were given the permission to collect the revenues such as when Mu'adh b. Jabal was appointed governor over Yemen. After that, each of the righteously guided *Khulafaa'* individually in their capacity as the *Khalifah* used to take the revenues and spend them according to their opinion and *Ijtihad*, and no one rebuked them over this. There was no one other than the *Khalifah* who would act independently with respect to collecting a single *dinar* and no one would spend it unless he had permission from the *Khalifah* to do so, as what happened in Umar's (ra) appointment of Mu'awiyah who was given a general governorship and so could collect and spend the revenues. All of this indicates that the sections of the budget of the State are drafted by the *Khalifah* alone, or by someone deputised by him.

These are the detailed evidences regarding the powers of the *Khalifah*. And all of them are collected together in what was reported by al-Bukhari from 'Abd Allah Bin Umar that he heard the Messenger ﷺ say "***The Imam is responsible and is questioned over his responsibility***", and in the narration of Ahmad and al-Bayhaqi and Abu Awanah from 'Abd Allah Bin Umar "***The Imam is responsible and is questioned over his responsibility***", in other words everything that is connected to managing the affairs of the subjects from all issues is only for the *Khalifah* and restricted to him alone, and he can delegate whom he wants, to what he wants, as he wants, by proof that it is analogous to proxy.

#### **Article 37**

**The *Khalifah's* adoption is restricted by the *Shari'ah* rules; he is prohibited to adopt any rule which is not derived according to a legitimate deduction from the *Shari'ah* evidences, and he is restricted with what he adopted of the rules, and by what he bound himself to with respect to the method of derivation. So he is not permitted to adopt a rule which has been derived according to a methodology which contradicts the methodology he adopted, and he cannot give an order which contradicts the rules that he had adopted.**

There are two issues in this article: the first being that the *Khalifah* is restricted in the adoption of rules to adopting from the *Shari'ah* rules; in other words he is restricted by the Islamic *Shari'ah* in legislation and enacting laws. Therefore, it is not permitted for him to adopt anything which contradicts that since they would be the rules of *Kufr* (disbelief); if he adopted rules from other than the Islamic rules, and he knew that what he had adopted was something other than the Islamic *Shari'ah*, then the words of Allah (swt) "***And whosoever rules by other than what Allah has revealed then such are the disbelievers***" (TMQ 5:44) apply to him, so if he believed in the rule that he had adopted, then he would commit disbelief and apostatise from Islam. If he did not believe in it, but he took it upon the basis that it did not contradict Islam, in the same manner that the Ottoman *Khulafaa'* acted during their final days, then it would be forbidden for him but he wouldn't commit disbelief. If he had a semblance of an evidence, such as the one who legislates a rule which has no evidence, due to a benefit that he thinks is there, and relies upon the rule of *Al-Masalih al-Mursalah*, or the "preventing the means" or "the means of the actions" or anything similar, then if he thought that these rules were *Shari'ah* rules and evidences, it wouldn't be forbidden for him and nor would he commit disbelief. However, he is mistaken, and what he has derived is considered a *Shari'ah* rule by all of the Muslims, and it is obligatory to obey it if the *Khalifah* adopts it, since it is a *Shari'ah* rule, and it would have a semblance of an evidence even if he was mistaken in the evidence, since he is like the one who is mistaken in the deduction from the evidences. In any case, it is obligatory for the *Khalifah* to restrict his adoption to the Islamic *Shari'ah*, and to restrict himself to adoption of *Shari'ah* rules derived by a correct deduction from the *Shari'ah* evidences. The evidence for this:

**Firstly:** What Allah (swt) obligated upon every Muslim, whether they were the *Khalifah* or not, to conduct all of their actions according to the *Shari'ah* rules; Allah (swt) says **“But no by your Lord they can have no faith until they make you (Muhammadﷺ) judge in all disputes between them”** (TMQ 4:65). Conducting the actions according to the *Shari'ah* rules necessitates the adoption of a specific rule when there are a number of understandings of the address of the Legislator; in other words, when the *Shari'ah* rule is numerous. So adoption of a specific rule in those issues where there are a number of opinions is obligatory upon the Muslim when he wants to undertake the action, in other words, when he wants to apply the rule, and so it is obligatory upon the *Khalifah* when he wants to carry out his action and that is the rule.

**Secondly:** The text of the pledge of allegiance which the *Khalifah* is contracted upon, obliges him to adhere to the Islamic *Shari'ah*, since it is a pledge upon the Book and the *Sunnah*, and so it is not permitted for him to leave these two - rather whoever intentionally goes outside these two commits disbelief and if it was unintentional then he would be sinful.

**Thirdly:** The *Khalifah* is appointed in order to implement the *Shari'ah*, and so it is not permitted for him to implement anything from outside the *Shari'ah* upon the Muslims, since the *Shari'ah* prohibits such an action in a decisive manner which reaches the level whereby the one who implements other than Islam has their *Iman* negated, which is an indication for it being decisively prohibited. This means that the *Khalifah* is restricted in his adoption of the rules, in other words, in his drafting of the laws according to the *Shari'ah* rules alone, and if he drafts any laws based upon anything else, then he will commit disbelief if he believes in it, and will be sinful if he doesn't.

These three evidences are the proof for the first issue in this article. As for the second issue of the article which is that the *Khalifah* is restricted by what he has adopted and by what he adheres to in terms of a method of deduction, the proof for this is that the *Shari'ah* rule which the *Khalifah* implements is the *Shari'ah* rule for him, and not for others; in other words, the *Shari'ah* rule which he adopted in order for his actions to proceed in accordance with and not any *Shari'ah* rule. So if the *Khalifah* deduced a rule, or followed someone else in it, that *Shari'ah* rule would be the rule of Allah (swt) for him, and he would be restricted by this *Shari'ah* rule in his adoption of it for the Muslims. It would not be permitted for him to adopt anything different to it, since it would not be considered to be the rule of Allah (swt) for him, because it would not be a *Shari'ah* rule with respect to him, and accordingly it would not be a *Shari'ah* rule with respect to the Muslims. Therefore, his orders that he issued for the sake of the subjects would be restricted according to this *Shari'ah* rule which he had adopted, and it is not permitted for him to issue orders which contradict whatever he had adopted from the rules. This is because that order which he issued would not be considered the rule of Allah (swt) for him, and so would not be considered a *Shari'ah* rule with respect to him, and then it would not be a *Shari'ah* rule in respect to the Muslims, in which case, it would be as though he had issued an order which was not based upon the *Shari'ah* rule. Due to this, it is not permitted for him to issue any order which contradicts what he adopted from the rules.

Also, the method of deduction causes a change in the understanding of the *Shari'ah* rule, so if the *Khalifah* considered the *Illah* to be a *Shari'ah* *Illah* if it is derived from a *Shari'ah* text, and he does not think that *maslahah* is a *Shari'ah* *Illah*, and he does not consider *Al-Masalih Al-Mursalah* to be a *Shari'ah* evidence, then it means that he has specified a method of deduction for himself. In which case, it would be obligatory for him to be restricted by it, and it would not be correct for him to adopt a rule whose evidence was based upon *Al-Masalih Al-Mursalah*, or to take an analogy based upon an *Illah* which was not derived from a *Shari'ah* text, since that rule would not be considered a *Shari'ah* rule for him as he does not recognise its evidence as a *Shari'ah* evidence, in which case in his view, it would not be a *Shari'ah* rule. As long as it is not considered to be a *Shari'ah* rule for the *Khalifah*, then it would not be a *Shari'ah* rule for the Muslims and so it would be as if he adopted a rule from other than the *Shari'ah* rules, which is prohibited for him. If the *Khalifah* was a *Muqallid* (someone who follows another person's *Ijtihad*), or a *Mujtahid* in an issue and not a *Mujtahid mutlaq* or

*Mujtahid madhhab*, and he did not have a specific method of deduction, then he would be permitted to adopt any *Shari'ah* rule as long as it has an evidence, as long as that evidence is a semblance of an evidence; he would not be restricted by anything in his adoption of the rules but rather he would only be restricted by what he issued in terms of orders such that they should not be issued except according to what he had adopted from the rules.

### **Article 38**

**The *Khalifah* has the complete right to govern the affairs of the subjects according to his opinion and *Ijtihad*. He can adopt anything of the permitted issues that he needs to run the affairs of the State and to manage the peoples' affairs and he is not permitted to contradict any *Shari'ah* rule for the sake of benefit. For example, he cannot prohibit the single family from having more than one child on the pretext of shortage of foodstuffs, or fix prices on the pretext of preventing exploitation, or appoint a non-Muslim or a woman as a governor on the pretext of looking after the affairs or benefit, nor anything else which contradicts the *Shari'ah* rules. It is not permitted for him to prohibit a permitted matter and nor to allow a prohibited matter.**

The *Khalifah* has the complete right to govern the affairs of the subjects according to his opinion and *Ijtihad*, but he is not permitted to contradict any *Shari'ah* rule using benefit as the proof – so he cannot prevent the subjects from importing goods for the sake of protecting the State's industry, unless it would damage the State's economy, or fix prices for the sake of preventing exploitation, or force the owner to rent his property for the sake of easing housing, unless there was a pressing emergency for that, nor anything else which contradicts the *Shari'ah* rules. It is not permitted for him to prohibit something permitted and to make something prohibited permitted.

The proof for this is the words of the Prophet ﷺ ***“The Imam is responsible and he is questioned over his responsibility”*** reported by al-Bukhari through 'Abd Allah Bin Umar, and also that the rules which the *Shari'ah* gives to the *Khalifah* such as his independence of action according to his opinion and *Ijtihad* in the wealth of the commissioned *Bayt al-Mal* (state treasury), and such as the coercion of the people to follow a specific opinion in the single issue, and whatever else is similar. This narration gives the *Khalifah* the complete right in governing the affairs of the subjects without any restriction, and the rules of the *Bayt al-Mal*, adoption, preparation of the Army, appointing the governors, and whatever else which has been given to the *Khalifah* was given to him in an absolute manner without any restriction, which is proof that he can carry out the governing of the affairs according to how he views without any restriction, and to obey him is obligatory while disobeying him is a sin. However, the undertaking of this governing must be done according to the rules of the *Shari'ah*; in other words, according to the *Shari'ah* texts. So the mandatory power, even if it has been given to him absolutely, is restricted by the *Shari'ah*; in other words, according to the rules of the *Shari'ah*. For example, he has been granted the power to appoint the governors as he pleases, but it is not correct to appoint the disbeliever, or child, or woman as a governor, since it has been prohibited by the *Shari'ah*. Another example is that he may permit the opening of embassies of the disbelieving countries in the lands which are under his authority, and he is allowed to do that without any restriction, however it is not correct to permit the opening of embassies for a disbelieving country that wants to use the embassy as a tool for control over the Islamic lands, since the *Shari'ah* prohibited that. Likewise, he may draft the sections of the budget, and the necessary amounts for each section, but he may not draft a section in the budget for building a dam whose cost is beyond the revenues of the *Bayt al-Mal* on the basis that he will collect taxes to pay for it. This is because it is not permitted from the *Shari'ah* to raise taxes for the sake of something which is not vital such as this dam. In this manner, though he has absolute power in governing the affairs which have been given to him by the *Shari'ah*, but this absoluteness can only operate according to the rules of the *Shari'ah*. Additionally, what is meant by the absolute right in the governing of the affairs is

not that he can draft laws which he sees as necessary for the governing of the affairs of the lands, but rather the meaning is that he has been given the independence of action to act according to his opinion of how the affairs should be carried out in those issues that have been permitted to him, at which point he drafts the laws in those issues which he has been permitted to undertake according to his opinions, and then it becomes obligatory for the people to obey him since the *Shari'ah* gave him the independence of action to apply his opinion in those issues and ordered us to obey him. So he may make this opinion into a law which people are obliged by. For example, he has been given the right to manage the affairs of the *Bayt al-Mal* according to his opinion and *Ijtihad*, and order the people to obey him accordingly, so he can draft financial laws for the *Bayt al-Mal* at which point it becomes obligatory to obey these laws. Likewise, he has been given the leadership of the Army and the management of its affairs according to his opinion and *Ijtihad*, and the people are ordered to obey him accordingly. So he may draft laws regarding the leadership of the Army and for its administration at which point it becomes obligatory to obey those laws. Likewise, he has been given the right to manage the interests of the subjects according to his opinion and *Ijtihad*, and to appoint people to manage the interests and work with them according to his opinion and *Ijtihad*, and the people have been ordered to obey him accordingly. So he may draft laws for the Administration of the Affairs, and he may draft laws regarding the civil servants at which point it becomes obligatory to obey those laws. He may draft laws for every issue that has been left to the opinion and *Ijtihad* of the *Khalifah* in the issues which he has the mandatory powers, and it would be obligatory to obey those laws.

It cannot be argued that these laws are styles, and that the styles are from the permitted issues, and so they are permitted for all the Muslims in which case it is not permitted for the *Khalifah* to specify specific styles and make them obligatory, since it is making it obligatory to act upon something permitted, and to obligate an act upon something permitted is making the *mubah* (permitted) *fard* (obligatory), and making the *mubah* (permitted) *haram* (prohibited) by prohibiting anything other than these styles, and this is not allowed. This cannot be argued, since the permitted are styles from the angle that they are styles, as for the styles of administrating the *Bayt al-Mal*, they are permitted for the *Khalifah* and not every person, and the styles of the leadership of the Army are permitted for the *Khalifah* and not every person, and the styles of the management of the interests of the subjects are permitted for the *Khalifah* and not all the people. Therefore, the obligation of acting according to this permitted issue which the *Khalifah* decided upon, does not make that *mubah* (permitted) into a *fard* (obligation), rather it only makes obeying the *Khalifah* obligatory according to what the *Shari'ah* gave to him from the right to act independently according to his opinion and *Ijtihad* or in other words, in what he decided from opinion and *Ijtihad* in order to govern the issues. Since although it was originally permitted, the *Khalifah* made it mandatory and prohibited anything else, but it is permitted for the *Khalifah* to govern according to it, since the governing is his issue, and it is not permitted for any other person since this governing is not their issue. Therefore, it is not obligatory to adhere to what the *Khalifah* adopted from the permitted actions in order to govern the affairs; in other words, what the *Shari'ah* gave to the *Khalifah* to act independently in according to his opinion and *Ijtihad*, from the angle that the *Khalifah* made something *mubah* (permitted) into *fard* (obligatory), and made the *mubah* into *haram* (prohibited), but rather from the angle that the obedience to the *Khalifah* is obligatory in whatever the *Shari'ah* gave to the *Khalifah* to act independently in according to his opinion and *Ijtihad*. So, every *mubah* (permitted issue) that the *Khalifah* made binding in order to facilitate the governing of the issues becomes obligatory upon every individual from the subjects to adhere to. Based upon this, Umar bin al-Khattab (ra) registered the departments, and based upon this, the *Khulafaa'* laid down specific arrangements for their administrators and for the subjects, and obliged them to work according to these arrangements and prohibited them to work in any other way. Based upon this, it is permitted to draft administrative laws and the remaining laws which are from this type, and obedience to them is obligatory in the same manner as obedience to the rest of the laws, since the obedience is to

the *Khalifah* according to what he orders, from what the *Shari'ah* has given him in terms of rights and independence to act.

However, this is only in the permitted issues which are for the governing of the affairs, in other words, what has been given to the *Khalifah* to act independently in according to his opinion and *Ijtihad*, such as the organisation of the administrations, arranging the soldiers and similar, and not in all the permitted issues but rather only what is permitted for the *Khalifah* in his capacity as a *Khalifah*. As for the rest of the rules from the *fard* (obligation), *mandub* (recommended), *makruh* (disliked), *haram* (prohibited) and the *mubah* (permitted) for all the people, then the *Khalifah* is restricted in those according to the *Shari'ah* rule. He is not permitted to stray outside of these at all, due to the words of the Prophet ﷺ ***“Whoever does an action which is not based upon our order then it is rejected”***, which is general encompassing both the *Khalifah* and anyone else.

With regards to that which has not been given to the *Khalifah* to run according to his opinion and *Ijtihad* but instead was permitted for all of the people – it is not permitted for him to legislate laws which force people upon it; for example, the techniques of leading the Army are run according to his opinion and *Ijtihad*, but the people are permitted to wear the clothes that they like according to the appearance they like and so it is not permitted to draft laws which would limit the appearance of their clothes. And they are permitted to build their houses according to any architectural style they like, and so it is not permitted for the *Khalifah* to draft laws which would limit the styles for their houses, since this is a *mubah* (permitted) issue for all the people, so any forcing of the people upon a specific thing in this type of *mubah* (permitted) issue at the expense of others, is equivalent to obligating and prohibiting the *mubah*, and this is not permitted for the *Khalifah*. If he did it, obedience to him would not be obligatory and the issue would be raised to the court of the *Madhalim* (injustices). Rather, his adoption is limited to a single area, which is that in which he has been given the independence to act according to his opinion and *Ijtihad*. It is permitted for him to make the people adhere to a specific opinion and *Ijtihad*, and obedience to him is obligatory; in other words, it is permitted for him to draft laws in these issues, in other words those issues which are permitted for the *Khalifah* and not for the general people such as the styles of leading the Army and so on. In such issues, he can obligate people to follow his specific opinion and *Ijtihad*, and it would be obligatory upon them to obey him, in other words, it is permitted for him to draft laws in such issue, while it is not permitted for him to do so at all in anything other than these issues.

Accordingly, it is not permitted for the *Khalifah* to make prohibited what has been permitted or to make permitted what has been prohibited with the justification that it is for the governing of the affairs. So it is not permitted for him to say that it is not permitted to sell wool to outside of these lands with the justification that it is for the sake of governing the affairs; this is since trade is *mubah* (permitted). It is not permitted to make it *haram* (prohibited) or to prevent it. But, if selling wool or weapons or anything from amongst the *mubah* (permitted) things is confirmed to cause a harm, then selling that thing alone becomes *haram* (prohibited) because it leads to a harm, while the object itself remains *mubah* (permitted); this is according to the principle taken from when the Prophet ﷺ prohibited the Army from drinking from the wells of Thamud.

### **Article 39**

**The *Khalifah* does not have a fixed term of office; as long as the *Khalifah* preserves the *Shari'ah* and he implements its rules, and is capable of carrying out the affairs of the State, he remains as a *Khalifah* as long as his situation does not change to one that would remove him from the leadership of the State. If his state changes in this manner, then it is obligatory to remove him from his position at that time.**

The proof for this is that the text of the pledge of allegiance mentioned in the narrations came in an absolute form and was not restricted by any specific period. Additionally, the righteously guided *Khulafaa'* were each contracted upon a pledge in an absolute form, which was the pledge mentioned in the narrations, and their terms were not fixed. So each one of them undertook the *Khilafah* from the time they were contracted until they died, which is an *Ijma'* of the companions that the *Khilafah* does not have a fixed term, rather it is absolute, and if someone is contracted, they remain as *Khalifah* until they die. This is the case unless something occurs to the *Khalifah* which would remove him, or make it necessary to remove him at that time. But this is not a limit upon the term of the *Khilafah*, rather it would be something that occurred which led to a deficiency in the conditions of the *Khilafah*, since the form of the pledge of allegiance which has been determined by the *Shari'ah* texts and the *Ijma'* of the companions made the *Khilafah* an indeterminate term. However, it is limited by the undertaking of what he was contracted upon, which was the Book and the *Sunnah*, in other words, the implementation of the *Shari'ah*; if he did not protect the *Shari'ah* or did not implement it, then he would display open disbelief which would make resistance against him obligatory upon the *Ummah* due to the narration ***“Unless you witness an open Kufr”*** (agreed upon narration from 'Ubadah b. al-Samit).

#### **Article 40**

**The issues which alter the state of the *Khalifah* and therefore remove him from the *Khilafah* are three:**

- a. **If one of the contracting conditions of the leadership of the State becomes deficient, such as if he apostatises, or commits flagrant sin, or becomes mad, or anything similar. This is because these are from the conditions of contracting, and the conditions of continuation.**
- b. **The incapability to execute the duties of the *Khilafah*, for any reason whatsoever.**
- c. **Coercion over him which makes him unable to independently act in the interests of the Muslims according to his opinion in agreement with the *Shari'ah*. So if an overpowering force could subdue him to the point that he became unable to govern the affairs of the subjects by his opinion alone according to the *Shari'ah* rules, he is considered legally incapable of executing the duties of the State, in which case he would be removed from the *Khilafah*. This could occur in two situations:**

**The first situation:** For an individual or group of individuals from his advisors to hold sway over him to the point they began to take full control of running the affairs. If it was believed that he could be liberated from their influence, he is admonished for a specific time, and if he does not remove their influence, then he is removed. And if it was not believed that he could be liberated, he is removed immediately.

**The second situation:** For him to become a prisoner in the hands of an overpowering enemy, either literally or by his submission to the influence of the enemy. This situation is evaluated – if it was hoped he could be liberated, then there is a delay until no such hope remains, and if there were no hope in his liberation, then he is removed; if there was no hope in his liberation, then he is removed immediately.

The proof for this is the texts that have been related in regards to the conditions of the *Khalifah*, since these texts indicate that these conditions are conditions for continuation and not simply conditions for taking the position alone. When the Messenger ﷺ said ***“Any people who appoint a woman as their leader will never succeed”*** (reported by al-Bukhari from Abu Bakrah), his words included the ruling, so as long as the person is a leader, he could not be a woman; so if a man who was a ruler became a woman, due to any reason, then he would have



lost this condition and it would be obligatory to remove him immediately. In the same manner, when Allah (swt) said ***“O you who believe, obey Allah and obey the Messenger and the people of authority amongst you”*** (TMQ 4:59), His (swt) words ***“Amongst you”*** next to ***“People of authority”*** clearly means that the person of authority must be an adherent of Islam as long as he is a person of authority. So if the person of authority became someone not from amongst us, in other words became a disbeliever, then this characteristic which the Quran stipulated for the person of authority would be lost - the loss of the condition of being Muslim - at which point he becomes removed from this position of authority since it is not correct for him to be a person of authority while he is not from amongst us, in other words not a Muslim. And the same applies to all the texts which have been related in regards to the conditions of the *Khalifah*; they are comprehensive texts which encompass the perpetual characteristics that are necessary for the one described, which indicates that they are conditions of continuation and not simply conditions for taking the position alone. Based upon that, the conditions for the contracting of the *Khalifah* are also the conditions for removing him, since their presence is a condition for the contracting of the *Khalifah*, and a condition for its continuation due to the generality of the text, and their loss means the loss of its continuation, and so it is prohibited for the person to remain in their position. This is the proof for paragraph “a” of the article.

As for paragraph “b”, its evidence is that the contract of the *Khalifah* is over the execution of its duties; so if he becomes incapable to execute what he was contracted upon, it becomes obligatory to remove him since he has become like one who in reality is not there. Additionally, due to his inability to execute the actions which are commissioned to him as *Khalifah*, the issues of the *Deen* and the interests of the Muslims would be suspended, and this is an evil that must be removed, and it cannot be removed except by his removal so as to be replaced by someone else. His removal in this situation would become mandatory. It should be known that this is not linked to a specific reason; rather anything which afflicted him leading to his incapacity in executing his actions necessitates his removal. If it does not make him incapable, then he is not removed, and for this reason it cannot be said that losing limbs from his body necessitates removal or not, in the same way, it cannot be said that if he is afflicted by a specific illness, it necessitates his removal or not. This is since there is no text regarding this at all; rather the *Shari’ah* rule is that the one incapable of executing the actions which they have been commissioned for necessitates his removal, whatever the reason for this incapacity. This is not specific for the *Khalifah*, rather it is general and applies to everyone who is commissioned to an action, irrespective of whether he was appointed as a ruler such as a governor or as an employee such as a department manager; his incapacity necessitates his removal.

The proof for paragraph “c” is the same as the proof for paragraph “b”. That is because the incapacity to execute the actions that have been commissioned to him as the *Khalifah* is of two types: literal incapacity and legal incapacity. Literal incapacity is when he is physically incapable, in other words, the loss of the physical capability to execute the actions, and this is what was discussed in paragraph “b”. Legal incapacity is when he is physically able to execute the actions, but he is incapable of freely acting to undertake the actions, and so the rule of literal incapacity would apply to him, since he is unable to undertake the execution of the actions which have been commissioned to him by himself, due to his incapability of freely acting in the affairs by himself, and so he becomes like the one who is absent; for this reason, it is necessary to remove him. This has two situations: the first is being confined, and the second is being overpowered.

As for the situation of confinement, it is when someone from his assistants takes control over him, and takes full control of implementing the issues while preventing him from dealing with them, and the one in control is the one who deals with the position of the *Khalifah*, and so the *Khalifah* in this situation is considered to be like the one who is confined and is prevented from freely speaking. Since the contract of the *Khalifah* only proceeds upon the person of the *Khalifah*, and therefore it is obligatory to attend to the *Khalifah* himself, this confinement

over him or the full control of his assistants means that he has lost the ability to execute the actions that have been commissioned to him; accordingly, he has become like the one who is absent and must be removed. However, this situation will be evaluated; if there was some hope that the influence of the one who took control over the *Khalifah* could be removed and that his confinement could be broken, then his removal is delayed; if the confinement is not broken, then he is removed.

As for the situation of being overpowered, such as when he becomes a prisoner in the hand of the overpowering enemy and is unable to liberate himself from them, then he is prevented from the contract of the leadership given to him due to his incapability of looking into the affairs of the Muslims. This is the case whether the enemy was from amongst the disbelievers or rebellious Muslims. In this situation, it is obligatory upon all the *Ummah* to save him either through fighting or paying a ransom, and if there was no hope of this happening, then if he was a prisoner in the hands of the disbelievers, he would be removed immediately. If, however, he was a prisoner of the rebels, the situation would be evaluated; if they had an *Imam*, and they lost hope in recovering the *Khalifah*, then he would be removed at the time, and if they did not have an *Imam*, then he would be considered as the one who is in the situation of confinement, in other words, they would delay for a period, and if his imprisonment was not ended, he would be removed.

These are the proofs for the three paragraphs and in totality, they are the proofs for the conditions of the *Khilafah*. So, in the same manner, the ability to carry out what has been commissioned to him is a condition. Thus, his incapacity to carry out what he has been commissioned to do entails the loss of this condition. However, it should be noticed that the loss of some of these conditions remove him from the *Khilafah*, in other words, annul the contract instantly, and the loss of some of them does not remove him from the *Khilafah* but would mandate his removal. The three situations of apostasy from Islam, being completely mad and becoming a physical prisoner in the hands of the disbelievers with no hope of releasing him, remove him from the *Khilafah* and he has deposed himself immediately even if his removal was not ruled upon. Therefore, it would mean that it is not obligatory to obey him, and his orders are not implemented and the contract of the *Khilafah* with him is annulled.

As for if his just character is damaged by the appearance of clear sin, or changing his sex to female or someone whose gender is not clear, or if he became afflicted by temporary madness, or he became literally incapable of carrying out the *Khilafah*, or he is confined through being influenced by an individual or group from his advisors who take full control of executing the affairs, or he becomes a physical prisoner with the hope of being able to be liberated, or he falls under the influence of the disbelievers who control him; in these seven circumstances, it is obligatory for him to be removed, however, he is not removed except by a judge's verdict. In all of these seven circumstances, it is obligatory to obey him and execute his orders until the order to remove him is issued; this is because none of these situations results in the automatic annulment of the contract of the *Khilafah* but rather relies upon the verdict of a judge. The difference between the conditions which if lost result in his removal from the *Khilafah* and those conditions whose loss does not remove him from the *Khilafah* but rather mean that he is deserving of being removed, is that those conditions whose loss makes the contract invalid from its origin and quality, in that they return to the contract or are one of its pillars, then the contract would be invalid in this case since if they were not present at the time of the contracting of the *Khilafah*, then the contract would be invalid and would not have been concluded. If they appear during the period of the *Khilafah*, the contract would be invalid, and would be void as well. This would occur with conditions such as the condition of Islam, sanity and the capability to carry out the actions individually. As for the conditions whose loss does not make the contract invalid, but rather its basis remains legitimate, but it makes it invalid from its properties, since it does not return to the contract itself, nor to one of its pillars, but rather to a property attached to it. In this case, the contract is not invalid but rather is imperfect. So if all these conditions were not present at the time of contracting the

*Khilafah*, the *Khilafah* is contracted but it would be imperfect and its annulment would rely upon the verdict of a judge. In the same manner, if they appear during the period of the *Khilafah*, then the contract would become imperfect, but it would not void itself. Rather, its annulment would rely upon the verdict of a judge. Examples of this would be like the condition of being male, just and whatever is similar. It is from this explanation, that the difference between the changing of the condition of the *Khalifah* which removes him from the *Khilafah*, and the changing of condition which does not remove him from the *Khilafah* but rather makes him deserving of being removed has been arrived at.

#### **Article 41**

**The court of the *Madhalim* (injustices) is the only authority that can decide whether the change in the situation of the *Khalifah* removes him from the leadership or not, and it is the only authority that has the power to remove or warn him.**

The evidence is that the occurrence of any issue from the issues that the *Khalifah* is removed for and those for which his removal is deserved, is a complaint from the injustices, and so it must be removed. And in the same manner it is one of the issues that require confirmation, and so it is imperative to be established in front of a judge. Since the court of *Madhalim* (injustices) is the one which rules to remove the injustices, and its judge is the one who has the power to confirm the injustice and rule upon it, accordingly the court of *Madhalim* decides whether any of the previous ten circumstances have occurred or not, and whether the *Khalifah* is removed.

However, if the *Khalifah* is afflicted by any of the circumstances and removes himself, then the issue is closed, and if the Muslims see that it is necessary for him to be removed due to this situation occurring and he disagrees with them, then the issue is referred to judgement due to the words of Allah (swt) “***And if you differ in anything amongst yourselves, then refer it to Allah and His Messenger***” (TMQ 4:59); in other words, if you and the people of authority disagreed, and this is a disagreement between the person of authority and the *Ummah*, and to refer it to Allah (swt) and His Messenger (saw) is to refer it to judgement, or in other words the court of the *Madhalim*.

The *Madhalim* court has the power to limit the period of notice to remove the mastery over him, or the period of grace for freeing him from imprisonment, during which the temporary leader would work, and after if the *Khalifah* then could carry out his powers without being under the mastery of others or imprisoned, then the work of the temporary leader would end. If the mastery over him or imprisonment did not end, then the court would rule to remove him, and the temporary leader would begin the process of appointing the new *Khalifah*.

## The Delegated Assistants (*Tafwid*)

### Article 42

**The *Khalifah* appoints a delegated assistant or more for himself, who carry the responsibilities of ruling. So he delegates to them the management of affairs, where they conduct them according to their opinion and *Ijtihad*.**

**On the death of the *Khalifah*, the role of his assistants ends, and they do not continue in their work except for the period of the temporary leader.**

The proof for this article is what Al-Tirmidhi narrated; the Messenger ﷺ said “***My two ministers in the World are Abu Bakr and Umar***” (reported by al-Hakim and Al-Tirmidhi from Abu Said al-Khudri). This narration has been used by the *fuqaha*’ and has been accepted by most of the scholars, so it is a *Hasan* narration and accordingly is a *Shari’ah* evidence that the *Khalifah* can appoint assistants. The narration used the word “***minister***” in the linguistic meaning, which is assistant, and the Quran uses it with this meaning; Allah (swt) said “***And appoint for me a minister from my family***” (TMQ 20:29), in other words, an assistant. And the ministry was present during the time of the Messenger ﷺ, and its proof is the text of the narration from Al-Tirmidhi. However, it was the Messenger ﷺ who was the one who ruled, and there is nothing which indicates that he made Abu Bakr (ra) and Umar (ra) carry out what he ﷺ did from ruling, but making them into ministers indicates that he commissioned them to assist him; in other words, commission for both of them to carry out what he ﷺ did from ruling. After the death of the Messenger ﷺ, Umar (ra) was the minister of Abu Bakr (ra), and used to carry out what the *Khalifah* used to carry out in terms of ruling, and that was apparent to the point that some of them used to say to Abu Bakr (ra), “*We don’t know whether Umar is the Khalifah or you*” reported by Ibn Hanbal in *Fada’il al-Sahabah* from Nafi’. After the death of Abu Bakr (ra), ‘Uthman (ra) and ‘Ali (ra) were the ministers of Umar (ra), and each of them carried out what Umar (ra) did in terms of ruling, except that the power of the personality of Umar (ra) meant that the actions of assistance of the two ministers were not so apparent as that of Umar (ra) with Abu Bakr (ra), although due to the power of the personality of ‘Ali (ra), it was clear that he carried out these actions in the time of Umar (ra). After the death of Umar (ra), ‘Ali (ra) and Marwan b. Al-Hakam (ra) were the two ministers of ‘Uthman (ra). However, ‘Ali (ra) was not content with some of the actions, and so his work with ‘Uthman (ra) was not prominent since he was similar to someone withdrawn. On the other hand, Marwan (ra) was apparent in his undertaking of the ministry, in other words, the actions of ruling.

The *Khalifah* would delegate the management of affairs to his minister, and this occurred with each *Khalifah* from the righteous *Khulafaa*’ in that their assistant (minister) was present, though how the assistants practised the management of affairs differed from one to the other. It is understood from the linguistic meaning of the word “minister”, or assistant to the *Khalifah*, that it means an assistant for the actions of the *Khalifah*, and since the word came general without any restrictions, then it means assistant for the *Khalifah* in all of the actions of the *Khilafah*. This is what is understood from the narration, and is supported by what occurred with Umar (ra) and Abu Bakr (ra), and so the *Shari’ah* meaning of the word is the one who assists the *Khalifah* in all the actions of the *Khilafah*. However, he does not possess the mandatory powers of the *Khalifah* himself. Rather, if the *Khalifah* said “I have appointed so and so as a minister for me”, or “as an assistant for me”, or “act on my behalf in what I govern”, or anything similar, then the person would have all the mandatory powers of the *Khalifah* as his representative. In *al-Ahkam as-Sultaniyyah*, al-Mawardi called them the “minister of authorisation” (*Wazir Al-Tafwid*), and defined it with this meaning, saying, “As for the minister of authorisation, he has taken his ministry from the Imam who authorised him to manage the affairs according to his opinion, and for them to proceed according to his

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*Ijtihad*". It is however necessary that the *Khalifah* is aware of every action that the delegated minister undertakes, since he is an assistant and not a *Khalifah*, and so he is not independent; rather the *Khalifah* inspects every action of him, whether it was small or big.

This *Shari'ah* reality of the assistant or minister differs completely with the reality of the minister in the democratic system. Since the cabinet in the democratic system is the government, and it is a group of people established with its characteristic as a specific group for ruling, as the ruling for them is for the group and not for the individual; in other words, the leadership is collective and not individual. So the ruler who possesses all power of ruling is the cabinet or the group of ministers collectively, and no single one of them possesses the power absolutely, but rather the power of ruling is in the cabinet collectively. As for the individual minister, he is appointed to specialise in a particular section of ruling, in which he possesses the mandatory powers that the cabinet as a whole determined for him, and whatever powers in this section were not given to him remain with the cabinet and not him.

In Islam, there is no cabinet of ministers who hold the power collectively (on the democratic model); rather the leadership is for the *Khalifah* who is given *Bay'a* by the *Ummah* in order to rule them by the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ. The *Khalifah* appoints ministers for himself (ministers of *Tafwid*) who are given general authorisation to act on his behalf and generally support the *Khalifah* in carrying the responsibilities of the *Khilafah*, and so they are ministers according to the linguistic meaning, or in other words assistants of the *Khalifah* in what they are charged with.

Accordingly the wide difference between the word "minister" and "ministry" in the system of Islam, and the word "minister" and "ministry" in the system of democracy, has become clear. Since the meaning that is understood from the democratic meaning of the word "minister" is dominant in the minds of the people, and when it is used the only thing that comes to mind is the democratic meaning, in order to avoid confusion and to specify the *Shari'ah* meaning alone, it is not correct to use the term "minister" alone for the assistant of the *Khalifah* without specifying it. Rather, the term "assistant" should be used in its real meaning, or the term "minister" and "ministry" should be specified such that it is removed from the democratic understanding, and the Islamic meaning alone is understood, such as using the term "minister of authorisation" (*Wazir Al-Tafwid*)

The assistant is appointed and removed at the order of the *Khalifah*. At the death of the *Khalifah*, the assistants' role comes to an end, and they only continue through to the end of the period of the temporary leader. They then require a new authorisation from the new *Khalifah* in order to continue in their role, and they do not require to be formally removed since their role ended with the death of the *Khalifah* who took them as assistants.

#### **Article 43**

**The conditions for the assistant are the same as the conditions for the *Khalifah*; in other words, to be male, free, Muslim, adult, sane, just; and he is from the people of the capability in whatever actions were delegated to him.**

The evidence here is the evidence for the *Khalifah*, so it is obligatory for him to be a male due to words of the Prophet ﷺ **"Any people who appoint a woman as their leader will never succeed"** (reported by al-Bukhari from Abu Bakrah).

He must be a Muslim due to His words **"And never will Allah grant to the disbelievers a way (to triumph) over the believers"** (TMQ 4:141); therefore, it is forbidden for a non-Muslim to be a ruler over the Muslims, since ruling is the greatest way over the Muslims.

He is to be free since the slave does not have control over his own issues and so he cannot undertake the control of other peoples' affairs.

He should be an adult, due to the words of the Messenger ﷺ ***“The Messenger of Allah said, the pen is raised from three – the one asleep until they wake, from the young until they become grown, and from the madman until they become sane/regain their sanity”*** and in a narration ***“and from the one afflicted (with madness) until they recover”*** (reported by Ibn Maja and al-Hakim from ‘A’ishah, and the wording is from Ibn Maja). Al-Tirmidhi and Ibn Khuzaima reported the same from Ali.

From the raising of the pen is that his actions in his own affairs are not valid, and so it is not valid for him to act in the affairs of others. In addition, the narration of Abu ‘Uqayl Zuhra Bin Ma’bad from his father ‘Abd Allah b. Hisham who was at the time of the Prophet when his mother Zaynab Bin Humayd took him to the Messenger of Allah ﷺ and said: O Messenger of Allah, take Bay’a from him. He ﷺ replied ***“He is small, and so he wiped his head and prayed for him”*** as reported in al-Bukhari. So as long as the child is not permitted to give the Bay’a, then by greater reasoning, he cannot accept it.

As for being sane, this is due to the narration just mentioned ***“The pen is raised from three”*** until it was mentioned ***“and from the madman until they become sane”*** and in a report ***“and from the one afflicted until they recover”***. From the raising of the pen is that his actions in his own affairs are not valid and so it is not valid for him to act in the affairs of others.

He should be just, since Allah (swt) made it a condition for the witnessing, saying ***“And take as witness two just persons from among you”*** (TMQ 65:2), and so it is a condition for the assistant by greater reasoning.

It is a condition for the assistant to be from the people of sufficiency in the actions of ruling since that is necessitated from undertaking ruling, since the one who was not capable would not be able to carry it out. And also due to the evidence mentioned, including: Muslim reported through Abu Dharr: ***“I said: O Messenger of Allah, will you not use me? He placed his hand upon my shoulder and then said O Abu Dharr, you are weak, and it is an Amanah (trust), and on the Day of Judgement, it will be a disgrace and a regret except (for those) who take it by its right and perform its duties correctly”***.

The Messenger of Allah ﷺ considered taking it without its right, in other words, if the person was not suitable for it, would be a disgrace and regret, which is an indication upon the decisiveness of the order.

#### **Article 44**

**It is a condition for the empowering of a *delegated assistant (Tafwid)*, that his empowerment encompasses two issues: The first being general responsibility, and the second being the representation. Accordingly, it is necessary for the *Khalifah* to say to him “I appoint you on my behalf as my deputy” or anything that is of a similar meaning from the wordings that encompass the general responsibility and representation. This authorisation enables the *Khalifah* to send the assistants to specific locations, or transfer them to other places and other work as is required as the assistant of the *Khalifah*, and without the need for a new authorisation since it all falls under the original empowerment.**

The evidence for this is the reality of the work of the assistant, since the minister of *Tafwid*, or the assistant of *Tafwid*, who is the minister that the *Khalifah* appointed to carry the responsibility of ruling and authority with him. He is authorised to manage the affairs according to his opinion, and to conduct them according to his *Ijtihad* in agreement with the *Shari’ah* rules, and so the *Khalifah* empowers him with a general handling and representation. The representation here is a contract, and contracts are not correct unless they are contracted with a direct word, and so for this reason, it has been made a condition that empowering an assistant must occur with wording that indicates he is a representative in the place of the

*Khalifah* and has the general control. Such as if the *Khalifah* said to him “I granted you what is upon me, to act on my behalf”, or says, “I made you a minister, and decided upon your representation” or something similar. In other words, it should encompass the general representation and general control by any manner it is understood, so it is imperative that the empowerment of the assistant is upon words that indicate the reality of the assistant, which is the representative of the *Khalifah*, and takes everything in terms of mandatory powers which the *Khalifah* has. In other words, it is imperative that the contract of ministry with the assistant is upon a wording which encompasses two conditions: the first being general control, the second being representation, and if the wording does not explicitly cover these two conditions, then the ministry for the assistant is not contracted.

Though he is empowered with representation and general control, it is permitted for the *Khalifah* to use him in a specific action or place at a period of time, and for other work or another place at another time. The two sheikhs (Muslim and al-Bukhari) reported from Abu Hurayrah “*The Messenger of Allah ﷺ sent Umar to collect the Sadaqah*”. Al-Nasa’i and al-Darimi reported “*When the Prophet ﷺ returned from ‘umra, he sent Abu Bakr for the hajj*”. In other words, Abu Bakr (ra) and Umar (ra) – who were the two ministers for the Messenger of Allah ﷺ, were charged with general control over specific actions, and not in all the actions at the time of the Messenger ﷺ, despite that they were assistants authorised with general control and representation as inferred from the ministry of authorisation (*wizara’ al-Tafwid*). ‘Ali (ra) and ‘Uthman (ra) did the same at the time of Umar (ra). And even during the time of Abu Bakr (ra) when his assistant Umar (ra) was very apparent in exercising general control and representation, to the point that some of the companions would say to Abu Bakr (ra) that we don’t know whether Umar (ra) or you is the *Khalifah*, despite that Abu Bakr (ra) would make Umar (ra) responsible for the judiciary in some periods, as has been reported by al-Bayhaqi with a chain that was strengthened by al-Hafiz.

From the *Sirah* of the Messenger ﷺ and the righteous *Khulafaa’* after him, it is understood that the assistant is authorised in the general control and representation, but it is permitted for the *Khalifah* to seek the help of the assistant in a particular place or action, just as the Prophet ﷺ did with Abu Bakr (ra) and Umar (ra), and as Abu Bakr (ra) did with Umar (ra). This is like charging an assistant to pursue the northern governorships, and another with the southern ones, and it is permitted to use the first one in the place of the second and vice versa, and to move this one to the work of such and such person, and the other to another work according to what was necessitated to assist the *Khalifah*. None of this requires a new authorisation, rather it is valid in this case to move him from one action to another to assist, since he was originally authorised with general control and representation, and so all of these actions are part of his authorisation as an assistant. This is a difference between the assistant and the governor, since the governor is empowered with the general control in an area, and so he is not moved from it, rather he requires a new empowerment, since the new place is not part of the original authorisation/empowerment. However, an assistant who is empowered with the general control and representation can be moved from assistance in one place to another place without needing a new empowerment, since he was originally empowered with general control and representation in all actions.

#### **Article 45**

**The work of the assistant is to report to the *Khalifah* after whatever he has executed of the actions of management, and whatever he implemented of government and guardianship, in order that his powers do not become like that of the *Khalifah*. Therefore, his work is to raise his reports and to implement whatever he is ordered to.**

The evidence for this is also the reality of the assistant, since he is the authorised representative of the *Khalifah*, and the representative only carries out the work as a

representative of the one who authorised him. Therefore, he is not independent from the *Khalifah*, rather he reports every action, totally as Umar (ra) used to do with Abu Bakr (ra) when he was his minister. So he used to inform Abu Bakr (ra) about his opinion and would implement according to what he thought.

The meaning of reporting to the *Khalifah* is not to seek his permission in every individual part of the various actions, since this contradicts the reality of the assistant; rather the meaning of reporting to him is to confer with him in the issue, such as the need for a particular governorate to have a capable governor empowered, or to eliminate what the people complain about regarding the lack of food in the markets, or other than that from all of the issues of the State, or to present these issues simply as a report which can be looked over, and be informed about what concerns him. Accordingly, these reports are enough in order to carry out everything that is mentioned in them with all of his details without the need for the issuance of permission to act. However, if the order not to implement these reports is issued, then it is not correct for him to implement them. Therefore, these reports are simply the presentation of the issues, or consultation regarding them, and not seeking permission to undertake them and the assistant may implement the reports as long as the *Khalifah* does not stop him from implementation.

With respect to the last part of the article “and to implement whatever he was ordered to”, this is because the assistant does not take the powers of ruling in himself like the *Khalifah*, rather he takes them based upon his ministry from the *Khalifah*, and upon that if the *Khalifah* orders him to do something, then it is upon him to implement it, and it is not permitted for him not to implement it. Giving the assistant the capability to manage the affairs through his opinion and *Ijtihad* is in those issues which the *Khalifah* did not order him, whereas if he was ordered to implement an issue, it is obligatory upon the assistant to implement it in the manner that the *Khalifah* ordered, and he may not implement it in another way.

#### **Article 46**

**It is imperative that the *Khalifah* scrutinises the actions of the *delegated assistants* (*Tafwid*) and their management of the affairs, in order to confirm what was right, and to correct any errors, since the management of the affairs of the *Ummah* has been delegated to the *Khalifah* and is decided by his *Ijtihad*.**

It is imperative that the *Khalifah* scrutinises the actions of the *delegated assistants* (*Tafwid*) and their management of the affairs, in order to confirm what was right, and to correct any errors, since the management of the affairs of the *Ummah* has been delegated to the *Khalifah* and is attributed to his *Ijtihad*. The evidence for this is the narration regarding the responsibility over the subject, which is the words of the Prophet ﷺ “**The Imam is a guardian, and he is responsible for his subjects**”. The *Khalifah* has been delegated to manage the affairs and he is responsible over the subjects. On the other hand, the assistant is not responsible over the subjects; rather he is only responsible over whatever he carried out from the work. The responsibility of the subjects is limited to the *Khalifah* alone, and for that reason, it is obligatory for him to scrutinise the actions and management of his assistant, in order to carry out his responsibility for his subjects. Additionally, the assistant could make a mistake and therefore it is imperative to correct the error that occurred, and so it is necessary to scrutinise all his actions.

#### **Article 47**

**If the assistant conducted an issue, and the *Khalifah* ordered him to do it, then he must implement it as the *Khalifah* ordered him to do so, without any addition or deletion. If the *Khalifah* returned to oppose the assistant rejecting what he has already executed,**



then the matter is examined; if it was a rule that he had implemented properly, or wealth that he placed in of its right place, then the opinion of the assistant is implemented, since it is in origin the opinion of the *Khalifah*, and the *Khalifah* cannot revoke what he himself had implemented of rules and spent of wealth. If what the assistant had executed was in anything else, such as appointing a governor or preparation of an army, then it is permitted for the *Khalifah* to oppose the assistant, and the opinion of the *Khalifah* is implemented, and the actions of the assistant are cancelled because the *Khalifah* has the right to redress his own action so he may redress the actions of the assistant.

This article is a description of how the assistant carries out his work, and how the *Khalifah* scrutinises the actions of the assistant, and this is taken from what is permitted for the *Khalifah* to reverse, and what is not permitted for him to reverse from the actions, since the action of the assistant is considered to be the action of the *Khalifah*. The explanation for this is that the assistant is permitted to rule independently, as is the *Khalifah*, since the conditions for ruling are considered in him, and it is permitted for him to look into the *Madhalim* (injustices) and to appoint others to look into them, since the condition for the *Madhalim* are considered in him, and he is permitted to undertake the *Jihad* by himself and to empower those who will undertake it, since the conditions of war are considered in him, and he is permitted to undertake the implementation of the issues personally or to appoint someone else to implement them since the conditions of opinion and management of affairs are considered in him. However, this does not mean that it is not correct for the *Khalifah* to cancel whatever the assistant carries out as long as the report has been raised to him, rather what it means is that he possesses what the *Khalifah* does in terms of mandatory powers, but this is on behalf of the *Khalifah* and not independent of him.

Accordingly, it is permitted for the *Khalifah* to oppose the assistant by rejecting what he has done and cancelling what has been carried out, but within the limits of what it is permitted for the *Khalifah* to reverse if he had done it himself. Therefore, if the assistant had implemented a rule in the correct manner, or gave wealth where it was necessitated, and subsequently the *Khalifah* came and opposed the assistant in this after its implementation, then there is no value in his opposition; rather the action of the assistant is implemented, and the opinion and opposition of the *Khalifah* is rejected, since in origin it is his opinion, and in issues similar to these situations it is not correct for him to reverse his own opinion or cancel whatever implementation had been completed. Consequently, it is not correct for him to cancel the action of his assistant in these issues. If the assistant had empowered a governor, an administrator, a commander of the Army, or any other appointment, or had laid down the running of economic issues, military plans, plans for industrialisation, or anything similar, then it is permitted for the *Khalifah* to cancel it. This is because it is considered to be the opinion of the *Khalifah*, but is from the issues that are permitted for the *Khalifah* to reverse if he had undertaken them himself, and so it is permitted to cancel the work of his representative in them. Therefore in this situation, it is permitted to cancel the actions of the assistant.

The rule in this is: *Everything that the Khalifah is able to correct from his own actions, is permitted for him to correct from the actions of his assistant, and everything that the Khalifah is not permitted to correct from his own actions, he is not permitted to correct from the actions of his assistant.*

#### **Article 48**

**None of the *delegated assistants (Tafwid)* specialises in a specific department from the departments of the administrative institution, rather his responsibility is general, since those who undertake the administrative affairs are employees (civil servants) and not**

**rulers, while the *delegated assistant* is a ruler. He is not entrusted with a specific authority in any of the tasks since his responsibility is general.**

The proof is what is meant by the words “*my two ministers*” in the narration from Al-Tirmidhi, in that the assistant is the assistant to the *Khalifah* in the *Khilafah* - in other words in ruling, and so he is a ruler and not a civil servant. For that reason, it is not permitted for him to deal with the administrative affairs since those are dealt with by civil servants and not by rulers. The assistant is a ruler and not a civil servant and so his work is taking care of the affairs and not to undertake work that employees are paid to do. Therefore, he should not undertake administrative affairs. This does not mean that it is forbidden for him to do any administrative work, rather that he should not be specified to do administrative work; rather he has general control.

As for not specifying his empowerment, this is because he is an assistant, and the assistant is empowered in representation and general control. Due to this, he does not require a new empowerment for every issue that the *Khalifah* seeks his help in, or for any area he sends him to, since his empowerment was not specific. As for the one who is empowered with a specific empowerment, he would be holding a specific responsibility such as the head of the judiciary, the head of the Army, the governor over the charity and so on; and this would require a new empowerment in every specific authority they were charged with.

## The Executive Assistant (*tanfidh*)

### Article 49

The *Khalifah* appoints assistants for implementation and their work is administrative. They are not rulers and their department is the institution that executes what the *Khalifah* issues in both of the internal and foreign affairs authorities and submits what comes to him from these authorities. The department is the intermediary between the *Khalifah* and others, conveying to and from him in the following matters:

- a. Relations with the people
- b. International relations
- c. The military
- d. The institutions of the State other than the military

The executive assistant is the minister whom the *Khalifah* appoints to be his assistant in the execution of matters, the following up and implementation of his orders. He is the intermediary between the *Khalifah* and the various State departments, the subjects and the foreign office. He conveys messages to and from the *Khalifah*. He is an assistant in executing orders and is not authorised over them or entrusted with them i.e. his role is one of execution and administrative and not ruling. His department is a tool used to execute what the *Khalifah* issues to the internal and foreign offices, ensuring submission to the *Khalifah* in all that comes to him through these offices. His department acts as an intermediary between the *Khalifah* and others, where it conveys to them on his behalf and conveys to him from them.

The executive assistant used to be called a secretary (*al-Katib*) at the time of the Messenger of Allah ﷺ and the righteous *Khulafaa*'. Then he became known as the keeper of the *diwan* of letters or correspondence. Later, it was decided that he is called the secretary of composition or the keeper of the diwan of composition and then the jurists named him the executive assistant (*Wazir al-tanfidh*).

As for the actions regarding the four issues mentioned – the evidence is through examination of the evidences related to the *Katib* (*Wazir al-tanfidh*) at the time of the Messenger ﷺ and the actions of the righteous *Khulafaa*' in front of the masses of companions:

- a. The messages sent to the subjects directly. Such as:
  - His ﷺ message to the people of Najran. Abu 'Ubayd narrated in *al-Amwal* from Abu al-Malih al-Huthali which mentioned at its end “***’Uthman Bin ’Affan and Mu’ayyib witnessed it, and he wrote***”. Abu Yusuf reported it in *al-Kharaj* and mentioned that the *Katib* was al-Mughaira, and then it mentioned the message of Umar (ra) with the *Katib* being Mu’ayyib, and then the message of 'Uthman (ra) to them with the *Katib* being his servant Hamran, and then the message from 'Ali (ra) with the *Katib* being 'Abdullah b. Abi Rafi'.
  - His ﷺ message to Tamim al-Dari. Abu Yusuf mentioned in *Al-Kharaj* saying “***Tamim al-Dari stood (Tamim Bin Aws, a man from Lakhm) and said O Messenger of Allah, I have a neighbourhood from the Romans in Palestine – there is a village which is called Hibra, and another called Aynun. If Allah opens as-Sham to you, grant them to me as a gift. And so he ﷺ said – They are yours. He said – write that for me, and so he wrote: In the name of Allah, this is a message from Muhammad the Messenger of Allah to Tamim Bin Aws al-Dari, that he has all the houses of the two villages Hibra and Aynun, and their plains, mountains, water, agriculture, plants and its cattle, and for who comes after him. No one should contest over it with them, and no one should incline to take it by force,***

*whoever oppresses and takes anything from it, then they will have the curses of Allah and the angels and all of the people. 'Ali was the one who wrote it".* When Abu Bakr (ra) took the leadership, he wrote them a message which mentioned *"In the name of Allah – this is a message from Abu Bakr the guarantor of the Messenger of Allah succeeded on the Earth, he wrote to the people of Dari, no one should spoil anything by their hand from the villages of Hibra and Aynun, and whoever heard and obeyed Allah, then do not spoil anything from them, and should build two entrances around them to prevent anyone who intended to do so from entering"*

b. International relations:

- The Treaty of Hudaibiyah: Al-Bukhari narrated from al-Miswar and Marwan regarding the treaty: **"So the prophet ﷺ called the Katib (writer)..."**. Abu Yusuf also narrated in the book *Al-Kharaj* saying: **"Muhammad Ibn Ishaq and al-Kalbi informed me, some others added in the narration saying: He said: Write (plural)"**, without mentioning the name of the writer. Ibn Kathir reported **"Ibn Ishaq said al-Zuhri said...then the Messenger of Allah called upon 'Ali Ibn Abi Talib and said: 'Write (singular)..."**. Abu 'Ubayd narrated it in the book of *al-Amwal* from Ibn 'Abbas, where he said: **"....and he said to 'Ali: 'O 'Ali, write..."** and al-Hakim narrated from Ibn 'Abbas, and al-Dhahabi authenticated and approved it, saying: **"....O 'Ali, write..."**. The text of this peace treaty is well known and does not need mentioning here.

c. The Military:

- The letter of Abu Bakr (ra) to Khalid (ra), in which he commands him to travel to as-Sham. Abu Yusuf said in the book *al-Kharaj*: **"Khalid wanted to take Al-Heerah as his centre. However, the letter of Abu Bakr came to him commanding him to travel to as-Sham as reinforcement for Abu 'Ubaydah and the Muslims..."**

d. The institutions of the state other than the military

- The letter of the Messenger ﷺ to Mu'adh regarding the tenth (*al-ushr*): Yahya Ibn Adam narrated in the book of *Al-Kharaj* from Al-Hasan, he said: "The Messenger of Allah ﷺ wrote to Mu'adh in Yemen: **"The tenth is due in whatever was irrigated with rain or with sizable water; and half of a tenth is due in whatever is irrigated with a bucket."** Al-Sha'bi wrote the same narration. Ibn Abu Shaybah has also narrated similar in his book about ruling.

The *Khalifah* can appoint writers (*Kuttab*) according to his needs; rather it could reach to the level of being an obligation if he could not fulfill the obligatory tasks without appointing them. The authors who wrote the history of the Messenger of Allah ﷺ mention that he had about twenty such writers.

## **Article 50**

**The executive assistant should be a Muslim man, since he is from the close associates of the *Khalifah*.**

The executive assistant is directly connected to the *Khalifah*, like the delegated assistant, and is from the close associates of the *Khalifah*. His work is attached to the ruler (the *Khalifah*), and his work necessitates that he could be pursued by the *Khalifah* and meet with him separately at any time of the night or day, which means that it is not suitable with the circumstances of a woman in terms of the *Shari'ah* rules. Therefore, the assistant should be a man.

In the same way, it is not permitted for the executive assistant to be a non-Muslim, rather it is obligatory for him to be a Muslim since he is from the close associates of the *Khalifah* – due to His (swt) words ***“O you who believe! Take not as (your) Bitanah (advisors, consultants, protectors, close associates) those outside your religion since they will not fail to do their best to corrupt you. They desire to harm you severely. Hatred has already appeared from their mouths, but what their breasts conceal is far worse”*** (TMQ 3:118). The prohibition of the *Khalifah* taking close associates from non-Muslims is explicit in this verse and therefore it is not permitted for the executive assistant to be a non-Muslim. Rather, it is obligatory for him to be Muslim, due to his direct connection with the *Khalifah*, and the fact that he is not separate from him, like the delegated assistant. It is permitted to have more than one executive assistant according to the need and the work that is required interfacing between the *Khalifah* and others.

#### **Article 51**

**The executive assistant is directly connected to the *Khalifah*, like the delegated assistant, and is considered as an assistant but only in terms of execution and not in ruling.**

The *Khalifah* is the ruler who undertakes the ruling and the implementation, and governing the peoples' affairs. Undertaking the ruling, implementation and governing requires administrative work and this necessitates the creation of a specific structure which would be with the *Khalifah* to manage the affairs which are required by the responsibilities of the *Khalifah*. So this necessitates assistants who are appointed by the *Khalifah* to execute and carry out the administrative actions, not the actions of ruling. So their action is to assist the *Khalifah* in administration, not ruling, and so he does not undertake any action of ruling that the delegated assistant would do. Therefore, he is not appointed as a governor or worker (*'amil*), and does not govern the peoples' affairs, but rather his work is administrative to execute the ruling actions, and the administrative actions that are issued from the *Khalifah* and the delegated assistants. For that reason, he is called the executive assistant.

The jurists called him the executive minister (*Wazir al-tanfidi*); in other words, the executive assistant, on the basis that the word *Wazir* linguistically indicates the assistant, and they said: this *Wazir* is the interface between the *Khalifah* and the subjects and governors, he carries out what the *Khalifah* orders, executes what is issued, follows through what is ruled, informs about the assignment of governorship and the preparation of the military and defence. He also presents to the *Khalifah* the replies back from them, and whatever has occurred in order to carry out whatever he has been ordered. So he is the one assigned for the execution of the affairs, and not as a governor over them, nor empowered over them. He is similar to the head of the office of the Presidents in the contemporary era.

## The Governors

### Article 52

**The lands which are ruled by the State are divided into units, where each unit is called a *Wilayah* (province). Each province is divided into units and each unit is called an *'Imalah* (district). The one who governs the province is called the *Wali* (governor) or *Amir* and the one who governs the *'Imalah* is called the *'Aamil* (worker) or *Hakim* (ruler).**

The governors are rulers since the governorship is ruling; it is mentioned in the *al-Muhit* dictionary: ***“And to govern something and upon it governorship (wilayah) and guardianship (wilayah), or it is the root and wilayah is the plan and leadership and authority”***, and requires empowerment by the *Khalifah* or one whom he delegated to empower and so the governor is not appointed except by the *Khalifah*. The origin of governorship or leadership, in other words, in the governors and leaders, is the action of the Messenger ﷺ. It is confirmed that he ﷺ appointed governors over lands, and gave them the right to rule over the regions. He appointed Mu'adh Bin Jabal over *al-Jund*, Ziyad Bin Labid over Hadramout and Abu Musa al-Ash'ari over Zabid and 'Aden. The governor is the representative of the *Khalifah* and he undertakes whatever actions he represents the *Khalifah* in according to what he has been delegated. The governorship does not have a specific limit according to the *Shari'ah* so everyone who acts on behalf of the *Khalifah* in any action of ruling is considered to be a governor in that action according to the words which the *Khalifah* specified during his appointment. However, the governorship of the lands or the leadership is over a defined area, since the Messenger ﷺ used to define the area which he would be a governor over or empower the leadership for the leader.

This governorship is of two types - general or specific; general encompasses all of the issues of ruling in the governorship and being empowered in this manner means that the *Khalifah* delegates to him the leadership of the city or region of the governorship over all of its people, and the handling of the issues in all of his actions, and so he has a general control. As for the specific leadership, this is when the leader's leadership is limited to the management of the Army, governing of the subjects, protection of the borders and defence of the sanctities in that region or city. He cannot interfere with the judiciary and the collection of taxes.

The Messenger ﷺ appointed general governorships, such as the appointment of 'Amru b. Hazm over Yemen. He also appointed specific governorships, such as the appointment of 'Ali Bin Abi Talib (ra) over the judges in Yemen. The *Khulafaa'* after him ﷺ continued in the same manner, and so they used to appoint general governorships such as Umar Bin al-Khattab (ra) appointing Mu'awiyah Bin Abi Sufyan to a general governorship. They would also appoint specific governorships, such when 'Ali Bin Abi Talib (ra) appointed 'Abdullah Bin 'Abbas over Basra in everything other than the finances and appointed Ziyaad over the finances.

The governorship in the first eras was of two types: governorship of the prayer and the governorship of the land taxes. Accordingly, in the history books they use two expressions when talking about the governorship of the leaders: the first being the leadership over the prayer and the second being the leadership over the prayer and the land taxes. In other words, the leader could either be a leader of the prayer and the land taxes or the leader of the prayer alone. The meaning of the word prayer in the governorship or leadership is not that he was the *Imam* of the people in their prayer alone; rather its meaning was the governorship over them in all of their affairs except the finances. So the word prayer meant the ruling with the exception of the collection of the taxes.

If the governor was both over prayer and land taxes, his governorship was general, and if it was limited to the prayer or to the land taxes, then his governorship was specific. In every case, this returns back to the arrangements of the *Khalifah* in the specific governorship, so he can make it specific to the land taxes, or the judiciary, or to make it specific to everything other than the finances, judiciary and Army; he does whatever he thinks is good for the administration of the State or the administration of the province. This is since the *Shari'ah* did not limit specific work for the governor, but rather limited the work of the governor or leader to ruling and authority, and that he is acting on behalf of the *Khalifah* and is a leader over a specific place, and this is according to what the Messenger did.

Rather the *Shari'ah* gave the *Khalifah* the right to appoint general and specific governorships, according to what he sees from the actions, and that is apparent from the action of the Messenger ﷺ. Built upon the limiting of the leadership of the leader or the governorship of the governor to a city or region by the Messenger ﷺ, article fifty-two was drafted which divided the State into provinces and districts.

### **Article 53**

**The *Khalifah* appoints the governors. The '*Ummal* (workers) are appointed by the *Khalifah* and by the governors if they have been delegated that power. The preconditions of the governor and '*Ummal* are the same as the conditions for the assistants, so it is imperative that they are free, just, Muslim, adult men and are from the people who have the capability to do what they are assigned to, and they are chosen from the people of *taqwa* (God fearing) and power.**

The evidence for this article is the action of the Messenger ﷺ and the companions after him. The Messenger ﷺ used to undertake the empowerment of the governors or leaders of the lands, and used to empower them with the full governorship as what happened with 'Amru b. Hazm, who was the governor over the whole of Yemen. In the same manner, the Messenger ﷺ would sometimes empower someone with part of the responsibilities from the governorship, as what happened with Mu'adh Bin Jabal and Abu Musa, who were sent to provinces independent of each other in Yemen, and said to them ***"Make things easy and not difficult, and give glad tidings and do not disparage, and obey"*** (agreed upon narration reported from Abu Musa). The fact that the governor is permitted to appoint '*Ummal* in his governorship this is taken from the fact that the *Khalifah* can entrust the governor to appoint '*Ummal*.

With respect to making the conditions for the governors the same as those for the assistants, this is since the governor is like the assistant in that he is acting on behalf of the *Khalifah* in ruling - so he is a ruler - and so the same conditions that apply to the *Khalifah* apply to him, since the conditions for the assistant are the same as those for the *Khalifah*. Therefore, it is a condition that he is male, due to his ﷺ words ***"A people who appoint a woman over their command will never succeed"*** (reported by al-Bukhari from Abu Bakrah). And the appointment in the narration is the ruling, by the evidence of his ﷺ words ***"their command"***, and the word ***"their command"*** if it is next to governor, and governorship/ appointment, then the meaning of governor and appointment is specified as ruling and authority.

It is a condition that he be free since the slave does not possess himself and so cannot be a ruler over others. He must be a Muslim, due to His (swt) words ***"Allah will never grant to the disbelievers a way over the believers."*** (TMQ 4:141). He should be adult and sane due to the narration ***"The pen is raised from three"*** (reported by Abu Dawud from 'Ali Bin Abi Talib(ra)) which includes ***"The child until he reaches puberty and the madman until he regains sanity"***. And in another narration from Abu Dawud from 'Ali b. Abi Talib (ra), ***"The messenger of Allah said the pen is raised from three, from the madman until he regains sanity, from the one asleep until they awake and from the child until they become an adult"***

and in the same manner the narration from Ahmad from 'A'ishah (ra) who said that the Messenger of Allah ﷺ said ***"The pen is raised from three, from the child until they become adult, from the one asleep until they awake and from the one who is not sane"*** and from the understanding of raising of the pen is that he is not accountable for action, and the raising of the pen raises the rule, so it would not be correct for them to undertake the implementation of the rules, or in other words the authority.

In the same manner, it is a condition that he be just, since Allah (swt) made justice a condition for the witness and so therefore by greater reasoning it is a necessity for the ruler, due to the words ***"O you who believe if a fasiq comes to you with any news, then verify it"*** (TMQ 49:6), so He (swt) ordered the verification for the word of the *fasiq*, and the rule of the ruler has to be accepted without any verification, so it is not permitted for the ruler to be from those whose word is not accepted and whose rule requires verification.

It is a condition that he is from the people of capability and ability to carry out what he has been appointed to do from the actions of ruling, since the Messenger ﷺ said to Abu Dharr ***"I see that you are weak"*** (reported by Muslim from Abu Dharr), and in another narration ***"O Abu Dharr, you are weak and this is a trust"***, which is evidence that whoever is weak or incapable of undertaking the burdens of ruling is not suitable to be a governor.

The Messenger ﷺ used to choose the governors from the people who were suitable for rule and the people of knowledge who were known for *taqwa*, and he chose them from the people who would do the best in what they were appointed, and would fill the hearts of their subjects with *Iman* and the dignity of the State. It is narrated from Sulayman Bin Buraydah from his father who said ***"If the Messenger of Allah ﷺ appointed a leader over the Army or an expedition, he would exhort him to fear Allah in his rule, and advise the Muslims with him with good"*** (reported by Muslim), and the governor is the leader over his governorship and therefore falls under the meaning of this narration.

#### **Article 54**

**The governor has the mandatory powers of ruling and responsibility over the tasks of the departments in his governorship as a delegate of the *Khalifah*, so he has all the powers in his province that the assistant has in the State. He has leadership over the people of his province and control over everything that is connected with it apart from the finances, judiciary and Army. However, the police come under his leadership from the angle of implementation not administration.**

Its evidence is that the governor is the delegate of the *Khalifah* in the position that he was appointed to and so he has the mandatory powers of the *Khalifah* in that position, and he is similar to the assistant with respect to the general control if his governorship was a general one; in other words, he has been given the general control in that position. He has specific control in the issues that he was appointed to alone if his governorship was specific, and he has no mandatory powers for control in other than that.

The Messenger ﷺ used to appoint the governors to unrestricted governorships in ruling, such as when he ﷺ sent Mu'adh to Yemen and made him in charge of the prayer and *Sadaqah*. And some were appointed a specific governorship in a particular aspect, such as when he appointed Farwah Bin Masyak over the tribes *murad* and *mathij* and *zabid*, and sent Khalid Bin Said Bin al-'Aas with him over the charity. Accordingly, Mu'adh had a general governorship over the prayer and charity, whereas the governorship of Farwah Bin Masyak was specific to the prayer, and that of Khalid Bin Said to the charity.

In the same manner, the Messenger ﷺ would send some governors and not teach them how to proceed - he sent 'Ali b. Abi Talib (ra) to Yemen and did not teach him anything due to his ﷺ knowledge of him and his capability. He would send others and teach them how to proceed -



he ﷺ sent Mu'adh to Yemen and he said to him **“How will you judge if a case is brought to you?” Mu'adh replied “I would judge by the Book of Allah” to which the Prophet ﷺ asked “And if you do not find (an answer) in the Book of Allah?” Mu'adh said “Then by the Sunnah of the Messenger of Allah”. The Prophet ﷺ then asked “And if you do not find (an answer) in the Sunnah or the Book of Allah” to which Mu'adh replied he would exert his own opinion (meaning Ijtihad based upon the Quran and Sunnah) So he (saw) said “All Praises for Allah who made the messenger of the Messenger of Allah confirm what Allah and His Messenger love”** (reported by Ahmad, Al-Tirmidhi, al-Darimi and Abu Dawud, with the wording from Ahmad). Ibn Qudama mentioned similar to it in *al-Mughni* and al-Amidi in *al-Ihkam*, so the narration is *mashhur*, and recognised scholars have taken it, and so from this angle it is considered *Hasan*.

Accordingly, it is permitted to appoint governors to general governorships or specific ones, as it is permitted to explain to them how to carry out their work in detail or in general.

Though it is permitted for the *Khalifah* to appoint governors to a general governorship, and to a specific governorship, it is confirmed from the general governorship of Mu'awiyah that he became independent of the *Khalifah* at the time of 'Uthman (ra), and the authority of 'Uthman over him was not apparent. After the death of 'Uthman (ra), the *Fitnah* occurred because Mu'awiyah had powers of ruling in all issues in the land of *al-Sham*. And it is confirmed since the days of the weakness of the Abbasid *Khulafaa'* that independence of governorates occurred, to the point that the *Khalifah* had no authority over them except for prayers being made and money being stamped in his name. From this, the bestowing of general governorships caused harm to the Islamic State, and for that reason the governorship of the governor is specific to that which does not lead to independence from the *Khalifah*. Since it is the Army, finances, and judiciary which enable the independence, because the Army is the power, and the finance is the support for life, and the judiciary makes apparent the protection of the rights and the establishment of the punishments, so accordingly the governorship for the governors is a specific governorship in other than the judiciary, Army and finance, since if they are in the hands of the governor, they can cause the danger of independence, and what that entails for the security of the State. Based upon this the second part of this article was drafted.

As for the final part, the governor is a ruler and it is imperative that he has the power of execution and for this reason the police are under his leadership and his leadership over it is comprehensive in the same manner it is comprehensive over all issues apart from the three just mentioned. However, the police are considered a part of the Army, so its administration is under them, but it is under the control of the governor.

## **Article 55**

**The governor is not obliged to inform the *Khalifah* of what he has carried out within his authorised command. If a new problem arises which has no precedent, he has to inform the *Khalifah* about it first, and he then proceeds according to the instructions of the *Khalifah*. If he was afraid that the problem would be exacerbated if delayed, he carries out the action and then must inform the *Khalifah* later on about the reason for not informing him beforehand.**

The evidence is that the Prophet ﷺ empowered his governors and did not request them to inform him of what actions they undertook and they did not use to report to him about anything. Rather, they used to undertake their actions with full independence, each of them ruling in his leadership by his opinion; this was the manner of Mu'adh, and 'Attab Bin Asid, al-'Ala' b. al-Hadrami, and of all of the governors of the Messenger of Allah ﷺ – which indicates that the governor does not inform the *Khalifah* about anything from his actions. And in this regard, he is different from the assistant, since the assistant must inform the

*Khalifah* about every action that he undertakes, whereas it is not obligatory upon the governor to inform the *Khalifah* about any of his actions.

It is obligatory that the *Khalifah* scrutinise every action the assistant undertakes, whereas it is not necessary for him to scrutinise every action of the governor, though he studies the situation of the governors and scrutinises the news from them. Accordingly, the governor has unrestricted action in his governorship, which is why Mu'adh said to the Messenger ﷺ when he was sent to Yemen ***"I will do Ijtihad according to my opinion"***; so this is evidence that the governor does not inform the *Khalifah*, rather he exercises his opinion. It is not forbidden to take the opinion of the *Khalifah* in the important issues, but he does not seek his opinion in unimportant issues in order that the interests of the people are not delayed. If something new occurs, he leaves it to the opinion of the *Khalifah*, because the empowerment of the governorship is that the *Khalifah* delegates the leadership of a city or region to the governor which is a governorship over all its people, and control in the known issues from his actions. So if a new issue which was not previously known occurred, it is left for the examination of the *Khalifah*, unless it was feared that this would be detrimental, in which case the governor undertakes the issue and then informs the *Khalifah*, since it was an issue that was unprecedented.

#### **Article 56**

**Every province has an assembly elected from its people and championed by the governor. The assembly has the authority to participate in expressing opinions on administrative matters and not on ruling; and this would be for two objectives:**

**Firstly - providing the necessary information about the situation of the governorate and its needs to the governor and to express their opinion about that.**

**Secondly - in order to express their contentment or complaint about the rule of the governor over them.**

**The opinion of the assembly is not binding in the first instance and is binding in the second – if they complain about the governor he is removed.**

It is not known that the governors of the Messenger ﷺ used to have a provincial assembly and it is not known from the actions of the Messenger ﷺ that he selected a provincial assembly, and in the same way, nothing similar is known from the righteously guided *Khulafaa'*. From this, the provincial assembly is not part of the ruling apparatus or the *Shari'ah* rules, since the ruling apparatus is every action from the acts of ruling that has a *Shari'ah* evidence and anything which has no evidence is not from the ruling apparatus. Rather it is examined, and if it is a branch action that is derived from a root, then it follows that root and is from the styles and means that are permitted to be acted upon - in other words from what is called administration; and if the root or branch action has evidence, then it is not correct to undertake it except in accordance with the *Shari'ah* evidence.

The provincial assembly is a branch action that is derived from the actions of the governorship, since the governor undertakes the ruling and administration, and the people of the province are more knowledgeable than him regarding the reality of their province and what occurs within it. Accordingly, it is vital that he has information that he can rely upon in order to undertake his actions and this information is present amongst the people of the province. Based upon this, it is imperative for him to refer to the people of the province while he is governing them.

This is from one angle, and from another angle his ruling of the province must be upon a basis that the people of the province are not angered, since if they are angry with him, then it would be upon the *Khalifah* to remove him, since the Messenger ﷺ removed al-'Ala' b. al-Hadrami

as his *'amil* over Bahrain since the delegation of 'Abd Qays complained about him as mentioned by Ibn Sa'd in *al-Tabaqat*. Accordingly, it is imperative that the opinion of the people of the province regarding his undertaking the ruling over them is known as to whether they are content or not.

Additionally, it is imperative for him to refer to the people of his province while he is governing them, due to the following two reasons: to gather the information which the governor requires and for his knowledge of what the people of his province think about his ruling – therefore it is necessary for him to refer to the people of his province. To facilitate this reference, the governor establishes a provincial assembly which is elected from the people of his province, so that he can refer to it for the two issues: gathering information and knowing the opinion of the people of the province regarding the rule of the governor. Accordingly, this assembly does not have any consultation (*Shura*) or taking of opinion and nothing to do with the practice of ruling; rather it is to look into the administrative action. Its opinion is not binding but rather it is present in order to assist the governor. The first one who created this assembly was Umar b. 'Abd al-'Aziz, since before he became the *Khalifah*, he was the governor over Madinah, and if he conducted a leadership assembly, he would meet two men of the opinion formers and leaders of their tribes, and said to them ***“It is an assembly of evil and strife, and you two have no action other than to examine me (in other words observing me), so if you see something from me which does not agree with the Truth, then make me afraid and remind me of Allah”***. So the origin is to refer to the people of the province and the observation of the governor from their side and in order to achieve this reference, a provincial assembly is created beside the governor.

#### **Article 57**

**The governor's term of office in a particular province is not to be long. He must be discharged whenever he becomes firmly established in his province or the people become enchanted with him.**

Its proof is that the Messenger ﷺ used to appoint governors for a period and then remove them and no governor remained over his governorship for the complete period of the time of the Messenger ﷺ. Ibn Abdul Birr conveyed in *al-Isti'ab* that the Messenger ﷺ appointed 'Uthman b. Abi al-'As al-Thaqafi over al-Ta'if; he remained there through the life of the Messenger of Allah ﷺ and the *Khilafah* of Abu Bakr (ra) and two years of the *Khilafah* of Umar (ra) at which point he was removed, which was a rare occurrence. For most of the time of the Messenger ﷺ, he ﷺ would not extend people's time as governors. This indicates that a governor is not appointed to a permanent governorship but rather he is appointed for a specific time and then removed. However, the length of his governorship is not defined by a specific period, long or short, since there is nothing that indicates that from the actions of the Messenger ﷺ. The most that can be said about the issue is that most of the time the Messenger ﷺ appointed a governor, he did not remain as a governor there through the whole of his ﷺ time; rather he ﷺ would appoint and then remove them.

Though it is permitted to extend the period of governorship such as what occurred with 'Uthman b. Abi al-'As, however it is apparent that the length of the period of the governorship of Mu'awiyah in *al-Sham* at the time of Umar (ra) and then 'Uthman (ra), caused what resulted in the strife which shook the entity of the Muslims, and so it is understood from this that lengthening the governorship of the governor in the province results in harm upon the Muslims and the State, and based upon this the words that the term of office for the governor is not to be long were drafted into this article.

#### **Article 58**

**The governor is not moved from one province to another, since his appointment was for a general control in a specific area. Therefore he has to be discharged first and then reappointed.**

Its proof is the action of the Messenger ﷺ since he ﷺ used to remove the governors and it is not narrated that he transferred a governor from place to place. Additionally, the governorship is one of the contracts that is completed by a direct wording, and the contract of the governorship is upon the province or city, which specifies the place where the governor rules, and the powers of ruling remain with him as long as the *Khalifah* does not remove him. So if he is not removed, then he remains a governor over it, and if he is transferred to another place, he is not removed from his first location by this transfer and is not appointed over the location that he has been transferred to, since his separation from the first location requires a direct word that he has been removed from the governorship over it and his appointment over the place that he has been transferred to requires a new contract of appointment which is specific to that location. Accordingly, it is taken that the governor is not transferred from location to location by transfer; rather he is removed from a location and appointed to a new governorship for the new location.

#### **Article 59**

**The governor can be discharged if the *Khalifah* decides so or if the *Shura* council expresses dissatisfaction with him - whether justified or not - or if the provincial council expressed discontent with him. However, the governor can only be dismissed by the *Khalifah*.**

Its proof is the action of the Messenger ﷺ; he appointed Mu'adh Bin Jabal over Yemen and then removed him from it without a reason, and removed al-'Ala' b. al-Hadrami who was his *'amil* over Bahrain because the delegation of 'Abd Qays complained about him. Umar Bin al-Khattab (ra) used to remove governors with and without reason; he removed Ziyad b. Abi Sufyan and did not announce a reason and removed Sa'd b. Abi Waqqas (ra) since the people complained about him, and said ***"I did not remove him due to incapability, nor due to treachery"***. This indicates that the *Khalifah* can remove the governors whenever he pleases, and it is upon him to remove the governor if the provincial council complain about him, and similar to the people of his province is the *Shura* council (*Shura* and accounting), which represents all of the provinces.

#### **Article 60**

**The *Khalifah* must examine the actions of the governors and continually assess their performance strictly. He must deputise people to monitor their situations, investigate them, and periodically gather all or some of them, and listen to the complaints of the subjects regarding them.**

It is confirmed that the Prophet ﷺ used to test the governors when he appointed them as he did with Mu'adh and Abu Musa, and explained to them how they should proceed as he did with 'Amru b. Hazm in his message famous amongst the people of knowledge as mentioned by Ibn 'Asakir in *Tarikh Damascus* and al-Hafiz said in *al-Isaba* ***"...and the Prophet ﷺ appointed 'Amru Bin Hazam over Najran..."*** and it is reported from him that the message he ﷺ wrote to him was regarding the obligations and blood money and other issues, as narrated by Abu Dawud and Al-Nasa'i, Ibn Hibban and al-Darimi and others.

Likewise he ﷺ would make them aware of some important issues as he did with Abaan Bin Saïd when he appointed him over Bahrain as has been mentioned in *al-Tabaqat* of Ibn Sa'd from al-Waqidi when it was said to him ***“Take good care of 'Abd Qays and honour their leaders”***. In the same way, it is confirmed that he ﷺ used to account the governors, investigate their circumstances and listen to what was narrated to him regarding their news. He ﷺ also used to account the governors over the taxation and expenditures; it is narrated by Abu Hamid al-Sa'idi ***“The Prophet ﷺ employed a man from Bani Asad who was called Ibn al-Lutabbiyyah to collect the charity. When he came, he said “This is for you and this was given as a gift to me”. Then the Prophet ﷺ stood upon the pulpit, praised Allah and glorified Him and then said “What is the matter with the worker who we sent, and so he came and said this is for you and this is for me, so let him sit in the house of his father and mother, and let him see whether he is gifted anything or not. By the One who my soul is in His Hand, he did not come with anything except that he comes with it on the Day of Judgement carrying it upon his neck whether it was a camel that brays or a cow that is mooing or a sheep that bleats”. Then he raised his hands till we could see the whiteness of his armpits and said: “Have I not conveyed?” three times”*** (agreed upon narration).

Umar (ra) used to be severe in his monitoring of the governors and appointed Muhammad Bin Maslamah (ra) to examine their circumstances and investigate them. He would gather the governors in the pilgrimage season in order to look into what they had done, listen to the complaints of the subjects regarding them and to remind them of the affairs of the governorship and establish their circumstances. It is narrated from Umar (ra) that one day he said to those around him ***“Do you think that if I appointed over you the best whom I knew, and then ordered him to be just, that have I completed what was upon me?”*** They replied, yes. He said ***“No, until I looked into his actions – did he act according to what I ordered him to or not”*** (reported from al-Bayhaqi in *al-Sunan* and al-Shi'ab from Tawus). Umar (ra) used to strictly account his governors and *'Ummal*, and his severity in accounting them would lead to him sometimes removing one of them due to a doubt for which there was no definite evidence and he used to remove them due to suspicion which did not reach the level of doubt. He was once asked about that and so said ***“The thing of small importance which can correct a people is to replace for them a leader in the place of a leader”*** (reported by Abu Shibah in *al-Tarikh al-Madinah*, and by Ibn Sa'd in *al-Tabaqat* from al-Hasan).

However, even with his strictness over them he used to allow them freedom of conduct, would protect their standing in government, listen to them and be attentive to their proofs. If the proof convinced him, he would not hide his conviction of it and his praise of the *'amil*. One day, it reached him that his *'amil* over Hims, 'Umayr b. Sa'd, said while upon the pulpit, ***“Islam will remain strong as long as the authority is severe. And the severity of the authority is not fighting by the sword or striking by the whip, but it is judging according to the Truth and applying the justice”*** as mentioned by Ibn Sa'd in *al-Tabaqat* from Saïd b. Suwayd. So Umar (ra) said regarding him, ***“I wish that I had a man similar to 'Umayr Bin Sa'd whom I could rely upon over the actions of the Muslims”***.

Commented [szc8]: Name?

## The Amir of Jihad – the Military Department – the Army

### Article 61

**The War Department is in charge of all the affairs connected to the armed forces of the Army and police, and the treaties, tasks, military equipment and similar. They are also responsible for the military colleges, expeditions and everything that is necessary from the Islamic culture and the general culture necessary for the Army, as well as everything connected to war and its preparation, and the head of this department is called the Amir of Jihad**

The war department is one of the State's institutions, and its head is called the *Amir of Jihad*, rather than the manager of *Jihad*. This is because the Messenger ﷺ used to call the leaders of the Army *Umara'*. Ibn Sa'd narrated that the Messenger of Allah ﷺ said ***"The Amir of the people is Zayd Ibn Haritha; if he was killed, then the Amir is Ja'far Ibn Abi Talib; and if he was killed, the Amir is 'Abdullah Ibn Ruwahah; and if he was killed, let the Muslims choose one man from among them and make him their Amir"***. Al-Bukhari narrated that 'Abdullah Ibn Umar (ra) said: ***"The Messenger of Allah ﷺ appointed Zayd Ibn Haritha as Amir in the expedition of Mu'ta..."*** and al-Bukhari narrated from Salamah b. al-Akwa': ***"I went on an expedition with Zayd; he was appointed Amir over us"***. Al-Bukhari and Muslim narrated that 'Abdullah Ibn Umar (ra) said: ***"The Prophet ﷺ sent an army and appointed Usamah b. Zayd as an Amir over them. So some people defamed his leadership, so the prophet ﷺ said: 'If you defame his leadership, you defamed the leadership of his father before. By Allah! He is worthy of leadership..."*** The companions, may Allah be pleased with them, used to call the Army of Mu'tah the Army of *Umara'*. Muslim narrated from Buraydah who said: ***"The Messenger of Allah ﷺ used to advise the person whom he appointed as Amir over an army or an expedition..."***

The war department takes charge of all the issues connected to the armed force as mentioned in the article. The task of sending spies against the belligerent disbelievers is also the role of the war department and a special section is created for this purpose.

The evidences for this are well known from the life of the Messenger ﷺ:

The evidences for preparation being the words of Allah (swt) ***"And make ready against them all you can of power, including steeds of war (tanks, planes, missiles, artillery) to threaten the enemy of Allah and your enemy, and others besides whom, you may not know, but whom Allah does know. And whatever you shall spend in the Cause of Allah shall be repaid unto you, and you shall not be treated unjust"*** (TMQ 8:60).

And what was reported by Ibn Sa'd in *al-Tabaqat* from Makhul ***"The Prophet ﷺ used catapults against the people of Ta'if for forty days"***. And Ibn Hisham mentioned in his *Sirah* ***"Someone I trust narrated to me that the Messenger of Allah ﷺ was the first to use catapults in Islam"***

The evidences for training: Muslim reported from 'Uqbah Bin Amir who said: I heard the Messenger of Allah ﷺ say while on the pulpit ***"And make ready against them all you can of power – truly power is archery, truly power is archery, truly power is archery"***. Al-Bukhari reported from Salama Bin al-Akwa' who said ***"The Prophet ﷺ passed by a group of people from Aslam competing with each other, and so he ﷺ said: Shoot O Bani Isma'il! Your forefathers were archers, shoot and I am with such and such tribe. He said: so one of the two teams held back, and so the Messenger of Allah ﷺ said: What is wrong that you don't shoot? They said: O Messenger of Allah, we shouldn't shoot while you are with them? He ﷺ said: Shoot and I am with all of you"***.

And Muslim reported ***“Fuqayman al-lakhmi said to 'Uqbah Bin Amir: You are aiming on these two targets, it is difficult for you. 'Uqbah said: If it wasn't for something I heard from the Messenger of Allah, I wouldn't have suffered. Al-Harith said: So I said to Ibn Shamama: What was that? He said: He ﷺ said: Whoever learns archery then leaves it, then he is not from us, or he has committed a sin”.***

And Abu Dawud reported a narration that al-Hakim authenticated and al-Dhahabi confirmed – with the wording from Abu Dawud – from Khalid b. Zayd who said: I used to shoot against 'Uqbah b. 'Amir, and so he passed by me that day and said: O Khalid, come out with us to shoot, and so I delayed. He said: O Khalid, come, I will tell you something that the Messenger of Allah ﷺ told me, and I will say it as the Messenger of Allah ﷺ said: ***“Allah puts three into paradise for a single arrow: the one who fashioned it taking care it was good, and the one who shoots with it, and the one who helps the shooter; do archery and ride, and to do archery is more beloved to me than riding. Three things that are not counted from idle pastimes: A man who trains his horse, playing with his family, and shooting with his bow and arrow, and whoever leaves archery deliberately after having learnt it, it is a blessing that is left, or he said blessing that they denied”.***

The evidence regarding the necessary culturing of the Army: Allah (swt) said in the chapter of *al-Tawba*: ***“Verily, Allah has purchased of the believers their lives and their properties for (the price) that theirs shall be the Paradise. They fight in Allah's Cause, so they kill (others) and are killed. It is a promise in truth which is binding on Him in the Taurat (Torah) and the Injeel (Gospel) and the Quran. And who is truer to his covenant than Allah? Then rejoice in the bargain which you have concluded. That is the supreme success (The believers whose lives Allah has purchased are) those who turn to Allah in repentance (from polytheism and hypocrisy, etc.), who worship (Him), who praise (Him), who fast (or go out in Allah's Cause), who bow down (in prayer), who prostrate themselves (in prayer), who enjoin (on people) al-Ma'ruf (i.e. Islamic Monotheism and all what Islam has ordained) and forbid (people) from Al-Munkar (i.e. disbelief, polytheism of all kinds and all that Islam has forbidden), and who observe the limits set by Allah (do all that Allah has ordained and abstain from all kinds of sins and evil deeds which Allah has forbidden). And give glad tidings to the believers”*** (TMQ 111-112). Allah (swt) did not make it sufficient to give one's life and money to be from those who are given glad tidings, but rather added that they are repenters, worshippers, fasting, praying, enjoining the good and forbidding the evil and observing the limits set by Allah (swt), upright upon them and not transgressing them, rather there is a safe distance to kept away from them.

Allah (swt) said ***“O you who believe! Endure and be more patient (than your enemy), and guard your territory by stationing army units permanently at the places from where the enemy can attack you, and fear Allah, so that you may be successful”*** (TMQ 3:200).

Al-Bukhari and Muslim reported from Sahl Bin Sa'd al-Sa'idi that the Messenger of Allah ﷺ said ***“To guard Muslims in Allah's Cause for one day is better than the world and whatever is on its surface, and the place of one's whip in Paradise is better than the world and whatever is on its surface; and a morning's or an evening's journey which a slave (person) travels in Allah's Cause is better than the world and whatever is on its surface”***

And al-Bukhari reported from 'Abd Allah b. Abi 'Awfa that the Messenger of Allah ﷺ said ***“Know that paradise lies beneath the shade of swords”.***

Al-Bukhari reported from 'Abd al-Rahman b. Jabir that the Messenger of Allah ﷺ said ***“Anyone whose both feet get covered with dust in Allah's Cause will not be touched by the (Hell) fire”.***

Al-Hakim reported a narration which he authenticated, and al-Dhahabi confirmed his authentication, from 'Imran b. Husayn that the Messenger of Allah ﷺ said ***“The place of a man in the lines in the Cause of Allah is better to Allah than sixty years of a man's worship”.***

Al-Bukhari reported from Abu Hurayrah that the Prophet ﷺ said *“There are one hundred levels in Paradise that Allah has prepared for those who partake in Jihad in the Cause of Allah, what is between every two levels is like what is between the heaven and the Earth”*.

Muslim reported from Anas who said: *“The polytheists advanced (towards us), and the Messenger of Allah ﷺ said: Get up to enter Paradise which is equal in width to the heavens and the Earth. 'Umayr Bin al-Humam al-Ansari said: Messenger of Allah, Paradise equal in extent to the heavens and the Earth? He said: Yes. 'Umayr said: Excellent, excellent! The Messenger of Allah ﷺ asked him: What prompted you to utter these words? He said: Messenger of Allah ﷺ, nothing but the desire that I be among its residents. He ﷺ said: You are (surely) among its residents. 'Umayr then took out dates from his bag and began to eat them. Then he said: If I were to live until I have eaten all these dates of mine, it would be a long life. He threw away all the dates he had with him. Then he fought the enemies until he was killed”*.

The evidence of encouragement to fight:

Allah (swt) said *“Then fight (O Muhammad) in the Cause of Allah, you are not tasked (held responsible) except for yourself, and incite the believers (to fight along with you), it may be that Allah will restrain the evil might of the disbelievers. And Allah is stronger in might and stronger in punishing.”* (TMQ 4:84).

And He (swt) said *“O Prophet! Urge the believers to fight. If there are twenty steadfast persons amongst you, they will overcome two hundred, and if there be a hundred steadfast persons they, will overcome a thousand of those who disbelieve, because they (the disbelievers) are people who do not understand.”* (TMQ 8:65).

Ibn Ishaq reported saying: *“Then the Messenger of Allah ﷺ went to the people and encouraged them saying: By the One who the soul of Muhammad is in His Hand, a man who fights today and is killed while he is patient, considering it from his good deeds, attacking and not retreating, then Allah will put him into Paradise”*.

Ahmad reported with an authentic chain from Abu Hurayrah who said: *“So he looked and saw me, and said: O Abu Hurayrah and so I replied: I am present, Messenger of Allah, and so he said: Call the Ansar (supporters) to me, and no one other than an Ansar should come to me. So I called them, and they came, then they came around the Messenger of Allah ﷺ. He ﷺ said: Do you see the rabble of Quraysh and their followers? Then he said tying his hands together: kill them until you meet me at Safa”*.

Muslim reported from 'Abbas b. 'Abd al-Muttalib who said, *“I witnessed the day of Hunayn with the Messenger of Allah ﷺ...The Messenger of Allah ﷺ said O 'Abbas, call out to the people of Samura (the tree under which the companions gave the Prophet the Bay'a of ridwan before the treaty of al-Hudaybiyah). 'Abbas (who was a man with a loud voice) called out at the top of his voice: Where are the people of Samura? And by God, when they heard my voice, they came back (to us) as cows come back to their calves, and said: We are present, we are present”*.

The evidences to have patience and more endurance than the enemy at the battlefield:

Allah (swt) said, *“O you who believe! When you meet (an enemy) force, take a firm stand against them and remember the Name of Allah much (both with tongue and mind), so that you may be successful.”* (TMQ 8:45).

And He (swt) said, *“O you who believe! Endure and be more patient (than your enemy), and guard your territory by stationing army units permanently at the places from where the enemy can attack you, and fear Allah, so that you may be successful.”* (TMQ 3:200).

And He (swt) said, *“Then, verily! Your Lord for those who emigrated after they had been put to trials, and thereafter strove hard and fought (for the Cause of Allah) and were patient, verily, your Lord afterward is, Oft-Forgiving, Most Merciful”*. (TMQ 16:110).



Muslim reported from Jabir who said ***“We did not give the Bay’a to the Messenger of Allah ﷺ upon death, rather we gave it upon not retreating”.***

Al-Bukhari reported from ‘Abdullah Bin Abi Awfa that the Messenger of Allah ﷺ said ***“If you meet them (on the battlefield), then have patience”.***

The proof for preparing the Army such that they are not taken by surprise:

Al-Bukhari reported from Abu Hurayrah that the Prophet ﷺ said ***“Tuba (a tree in Paradise) for the slave who took the reins of his horse in the path of Allah, his head is dishevelled, his feet are dusty, if he is appointed in the vanguard, he is perfectly satisfied with his post of guarding, and if he is appointed in the rearward, he accepts his post with satisfaction; (he is so simple and unambiguous that) if he asks for permission, he is not permitted, and if he intercedes, his intercession is not accepted”.***

Al-Tirmidhi reported a narration that he considered *Hasan* from Ibn ‘Abbas who said: I heard the Messenger of Allah ﷺ say ***“Two eyes which the hellfire will not touch: an eye that cries out of the fear of Allah, and an eye that spends the night on guard in the path of Allah”.***

Al-Hakim reported a narration he authenticated, and which al-Dhahabi confirmed, from Ibn Umar that the Prophet ﷺ said ***“Should I not inform you about a night better than the night of Qadar (a night in the last ten days of Ramadan)? A guard who is guarding in a land where he is afraid he will not return to his family”.***

## **Article 62**

**Jihad is obligatory upon the Muslims and military training is compulsory. Every male Muslim who has reached the age of 15 is obligated to undertake military training in order to prepare him for Jihad. Recruitment is an obligation of sufficiency.**

The evidence for the article is from the Book and the *Sunnah*; Allah (swt) says ***“And fight them until there is no more Fitnah (strife) and the Deen is for Allah”*** (TMQ 2:193), and He (swt) said ***“Then fight the leaders of disbelief”*** (TMQ 9:12), and it is narrated from Anas that the Messenger of Allah ﷺ said ***“Fight against the idol worshippers with your wealth, hands and tongues”*** (reported by Ahmad and al- Nasa’i with the wording from Al-Nasa’i, and both al- Nasa’i and al-Hakim authenticated it and al-Dhahabi confirmed it). And Mu’adh b. Jabal said that the Prophet ﷺ said ***“The peak of Islam is Jihad in the path of Allah”*** (reported by Ahmad).

When modern warfare requires military training in order to undertake what is required by the *Shari’ah* in terms of defeating the enemy and liberating lands, then this training would be obligatory in the same manner that *Jihad* is, in accordance with the *Shari’ah* principle ***“Whatever is required to complete an obligation is itself obligatory”***. This is because the order to fight encompasses training, since it is a general order ***“and fight them”***, which is an order to fight as well as an order to do whatever makes you capable of fighting. Above and beyond that, Allah (swt) said ***“And make ready against them all you can of power”*** (TMQ 8:60), and training and expert military experience is preparation of power, since they are required in order to become capable of fighting. Accordingly, training is part of the power that must be prepared in the same way as military equipment, supplies and so on.

As for recruitment, in other words, to make people soldiers in the Army under military preparedness on a permanent basis, which means the creation of *Mujahidin* who practically undertake the *Jihad* and its requirements, then this is an obligation since undertaking the *Jihad* is a constant obligation which continues irrespective of whether the enemy attacks us or not. Accordingly, recruitment is an obligation of sufficiency.

As for *Jihad* being an obligation upon the Muslims and not upon the rest of the subjects of the State – this is because the type of *Jihad* which has been made obligatory in the verses

regarding *Jihad* is the fighting against the disbelievers, and this does not come from the disbelievers, and so therefore according to this meaning the *Jihad* cannot be obligatory upon the non-Muslims. However, it is permitted for the non-Muslim subjects of the State to fight the enemy alongside the Muslims, since Quzman who was an idol-worshipper went out and fought the idol-worshippers alongside the companions of the Messenger of Allah ﷺ on the day of Uhud and the Messenger of Allah ﷺ did not forbid him doing so.

With respect to it being an obligation upon the men and not women – this is due to what is reported from Ahmad and Ibn Maja through Aisha (ra) who said: O Messenger of Allah ﷺ, do women have to do *Jihad*? He ﷺ said ***“Yes, they have to do Jihad in which there is no fighting: Hajj and ‘Umra”***.

And as for limiting it to those fifteen and above, this is due to the narration reported by al-Bukhari from Nafi’ who said ***“Ibn Umar told me that the Messenger of Allah saw him on the day of Uhud, and he was fourteen at the time, and did not allow him to partake, and then on the day of al-Khandaq when I was fifteen he gave me permission to go”***. Nafi’ said I met Umar b. ‘Abd al-Aziz when he was the *Khalifah* and mentioned this narration to him, so he said: This is the limit between the young and adult, and he wrote to his workers to make it obligatory upon anyone who reached the age of fifteen. In other words, he ordered to prepare provisions for them in the army office.

#### **Article 63**

**The Army has two sections: the reserve section, which is all those Muslims who are capable of carrying arms, and the section of regular soldiers, who get salaries from the State budget in the same manner as the civil servants.**

Its evidence is the evidence of the obligation of *Jihad*, since every Muslim is obligated with *Jihad* and its training and accordingly all of the Muslims are a reserve army since *Jihad* is obligatory upon them. As for making a section of them to be full-time regular soldiers, its evidence is the rule *“Whatever is required to complete an obligation is itself obligatory”*, since the carrying out of *Jihad* consistently, along with the defence of the Islamic lands and protecting the honour of the Muslims from the disbelievers cannot be done except with a permanent army. Therefore, it is obligatory upon the leader to establish a permanent army.

As for setting a salary for those soldiers in the same manner as the civil servants, with respect to the non-Muslims, this is clear since they are not required to fight against disbelievers, but if they undertake *Jihad*, it is accepted from them, at which time it is permitted to give them money as well as to give them a share from the portion of booty which is intended to bring the hearts closer to Islam – due to what is narrated by al-Zuhri ***“That the Messenger of Allah (saw) took support from some Jews during a battle, and gave them shares”*** (reported by Al-Tirmidhi and it is from the Maraseel of al-Zuhri, and Ibn Qudamah used it as an evidence in *al-Mugni*). Also, it is narrated that ***“Safwan b. Umayya accompanied the Prophet ﷺ on the day of Hunayn and he was a disbeliever, so he was given a share of the spoils, and this was from the portion to bring the hearts closer to Islam”***, as mentioned by Ibn Qudama in *al-Mugni* and Ibn Hisham in his *Sirah*.

Al-Bukhari reported from Abu Hurayrah that the Messenger of Allah ﷺ said ***“O Bilal, Stand up and announce that no one enters Paradise except for a believer, and Allah may support this Deen with an irreligious man”***. And Ibn Hisham mentioned in his *Sirah* that Quzman, who was an idol worshipper, accompanied the companions of the Messenger of Allah ﷺ on the day of Uhud, and he killed seven or eight of the idol worshippers, and so the Messenger ﷺ said ***“Truly Allah supports this Deen with an irreligious man”***. Al-Shawkani mentioned this in his book *al-Darari al-Mode’a* and *Nayl al-Awtar* and it is confirmed by those who wrote the life of the Prophet ﷺ.

All of these evidences indicate the permissibility for a disbeliever to be part of the Islamic Army and to give him money due to his presence there. Additionally, the definition of employment is a contract upon a service for recompense, which indicates that employment is permitted upon every service that the employer could use from an employee, and so it includes employing someone to be in the Army, and for partaking in fighting, since it is a service. Accordingly, the generality of the evidence for employment upon any service is an evidence for the permissibility of employing a disbeliever to be in the Army and partake in fighting. However, it must be under the flag of the Muslims and not a flag of disbelief as is clarified in the reality of the evidences mentioned, since the disbelievers who fought with the Muslims did so under the flag of the Muslims and not under the flag of disbelief; in other words, they fought as soldiers as part of the Muslims' Army. Built upon this, it is permitted for the people of *Dhimmah* to fight in the Army of the Muslims for a wage, which can occur if the *Khalifah* considers that their fighting as soldiers in the Army of the Muslims bring a benefit to the Muslims and there is no harm as a result, in which case, it is permitted to accept them in the Army of the Muslims and to pay them. In other words, this is made permitted for them. However, if there was harm from their entering the Islamic Army, then this permitted issue from amongst the permitted issues would be forbidden due to the harm, in accordance with the rule regarding harm as is mentioned in its section in *Usul*.

This is with regards to the non-Muslim. With respect to the Muslim, even though *Jihad* is an act of worship, it is permitted to employ a Muslim for the military and fighting, due to the generality of the evidence for employment. Also, employment upon the undertaking of an act of worship whose benefit is not limited to the one who did the act is permissible, due to the words of the Prophet ﷺ ***“The most deserved of payment you took is (for the teaching of) the Book of Allah”*** (reported by al-Bukhari from Ibn 'Abbas). Teaching the Quran is an act of worship, so in the same manner that it is permitted to employ a Muslim in order to teach the Quran, or to lead the prayer, or to make the call to prayer, which are all acts of worship, it is likewise permitted to employ someone for the sake of *Jihad* and to be in the Army. Moreover, there is evidence on the hiring of Muslims for *Jihad* even though it is a duty upon them. Ahmad and Abu Dawud narrated that 'Abdullah Bin Umar (ra) said that the Prophet ﷺ said ***“Al-Ghazi has his ajr and al-Ja'il has his ajr”***. The *Ghazi* is the one who personally goes out to battle, while the *Ja'il* is the one who fights on someone else's behalf for a wage. It is written the *al-Muhit* dictionary *“al-Ji'ala...is the amount given to someone doing an action...and what is assigned to a Ghazi if he fights on your behalf for a wage.”* *Ajr* is used to mean both wage and reward. As for what is well known among people that *ajr* always means the reward which comes from Allah (swt) to His servant for doing a good deed and that *ijarah* is the reward for an action from one person to another which includes employment – in actual fact, there is no support for this differentiation. Rather what the language stated is that the *ajr* is the reward for an action. It is mentioned in the *al-Muhit* dictionary that *ajr* is the reward for the action, like the *ijara*. The meaning of the narration is that *Ghazi* has his reward while the *Ja'il* has his wage, since the word can have many meanings, and the indication in the narration would specify the intended one. In this case, the word *Ghazi* indicates that what is meant by *ajr* is reward from Allah (swt), and the word *al-ja'il* indicates that *ajr* means wage, because each of them is an indication that specified the intended meaning. Al-Bayhaqi narrated on the authority of Jubayr b. Nufayr who said: ***“The Messenger ﷺ said, “Those of my Ummah who fight and take wages, and strengthen themselves against their enemy are like the mother of Moses who breastfed her son and took her ajr”*** and similar is reported by Said Bin Mansur, and the meaning of the word *ajr* here is wage. Therefore, the Army has salaries in the same manner as the civil servants.

#### **Article 64**

**The Army is given banners and flags and the Head of State (the *Khalifah*) gives the banners to whomever he appoints to lead the Army, whereas the flags are provided by the brigadiers.**

1. *Al-liwa'* (banners) and *al-rayah* (flag) – from the linguistic angle, they both mean *al-'alam* (sign) as mentioned in the *al-Muhit* dictionary. The *Shari'ah* gave each of them, in terms of usage, a *Shari'ah* meaning along the following manner:

The white banner: written upon it *La ilaha illa Allah, Muhammad Rasul Allah* in black, which is given to the *Amir* or leader of the Army. It is used to identify his position, and follows the position. The evidence for attaching the banner to the *Amir* of the Army: ***“The Prophet ﷺ entered Makkah on the day of al-Fath and his banner was white”*** reported by Ibn Maja from Jabir, and on that day the Messenger ﷺ was the leader of the Army. In the same way, the Messenger of Allah ﷺ used to attach the banners to the leaders of the armies that he sent out, as has been mentioned in *“‘Uyun al-Athar fi Funun al-Maghazi wal-Shama'il wal-Siyar”* by Imam al-Hafiz Abi al-Fath who is known by the name Ibn Sayyid al-Nas who died in 734 AH, where he stated *“...on Monday, four days before Safr of the 11 year of Hijrah, the Messenger of Allah ﷺ ordered the people to prepare to fight against the Romans. When it was the next day, he called Usamah Bin Zayd, and said to him go to the place your father was killed, so prepare the horses and you are the Amir of the Army...and so when it was Wednesday the Messenger of Allah ﷺ began to feel pain...then when it was Thursday he gave a white banner to Usamah, then he said go out on the expedition in the path of Allah, and fight those who disbelieved in Allah, and so he went out with the banner tied...”*

The Black Flag: written upon it *La ilaha illa Allah, Muhammad Rasul Allah* in white, which is given to the heads of the divisions of the Army (brigade, unit, etc.). The evidence is that during Khaybar in his role as the leader of the Army, the Messenger ﷺ said, ***“I will give the flag, or the flag will be taken, tomorrow, to a man who loves Allah and His Messenger, or he said Allah and His Messenger love him, Allah will open for him, so I give it to 'Ali and we want him, and so they said: Here is Ali, and so the Messenger of Allah gave him the flag and Allah opened the way for him”*** (agreed upon from Salama b. al-Akwa'). 'Ali (ra) at that time was considered as the head of a battalion or brigade of the Army. Similarly in the narration from al-Harith Bin Hassan al-Bakri, ***“We came to Madinah and saw the Prophet ﷺ on the pulpit, with Bilal standing in front of him holding his sword, and there were black flags in front of the Messenger ﷺ, so I asked ‘What are these flags?’ They said ‘Amru Bin al-'Aas has just arrived from an expedition”*** reported by Ahmad in *al-Musnad* and elsewhere, and in the report of Al-Tirmidhi from al-Harith Bin Hassan al-Bakri he said the wording, ***“I came to Madinah, entered the Mosque and found it crowded with people, and there were black flags swaying and Bilal was holding a sword in front of the Prophet ﷺ, I said ‘What is the matter?’ They said: ‘He ﷺ wants to send 'Amru Bin Al-'Aas to a certain place”***. The meaning of ***“black flags”*** is that there were many flags with the Army, and when the *Amir* of the Army was one person – and that was 'Amru Bin al-'Aas, this means that they must have been with the heads of the brigades and units.

This is how the banners were attached to the *Amir* of the Army, and the flags with the rest of the Army, its divisions, brigades and units. Accordingly, there is a single banner and many flags for each army.

Therefore, the banners are a sign for the *Amir* of the Army and no one else, and the flags are signs with the soldiers.

2. The banner is attached to the *Amir* of the Army, and it is a sign for his position; in other words, it stays with the position of the *Amir*. As for during the battle, the leader of the battle, irrespective of whether it was the *Amir* of the Army or another leader who was appointed by the *Amir* of the Army, is given the flag to carry it during the fighting on the battlefield, and for this reason, it is called *umm al-Harb* (the mother of the war) since it is carried by the leader of the battle in the battlefield.

For that reason for the duration for which the war takes place, each leader of a battle has a flag, and this is an issue known at that time, and the continuation of the flying of the flag is an

evidence of the strength of the leader of the battle. It is part of the administrative organisation that is required according to the customs of war.

Lamenting the deaths of Zayd, Ja'far and Ibn Rawahah, the Messenger of Allah ﷺ told the people before the soldiers delivered the news ***"Zayd took the flag and was killed, so Ja'far took the flag and was killed, and so 'Abdullah Bin Rawahah took the flag and was killed"*** (reported by al-Bukhari).

In the same manner, if the war is taking place and the leader of the Army in the battlefield is the *Khalifah* himself, then it is permitted for the banner to be raised in the battlefield and not simply the flag alone. It is reported in the *Sirah* of Ibn Hisham that in the major Badr battle, both the banner and the flag were present on the battlefield. It is reported in the *Sirah* "Ibn Ishaq said: and the banner was given to Mus'ab Bin 'Umayr Bin Hashim Bin 'Abd Manaf Bin 'Abd al-Dar. Ibn Hisham said: and it was white...and Ibn Ishaq said: and there were two black flags in front of the Messenger of Allah ﷺ: one with 'Ali Bin Abi Talib which was called *al-'Uqab*, and the other with some of the Ansar".

As for during times of peace, or at the end of the battle, then the flags are distributed in the Army with the divisions, brigades and units raising them...as is mentioned in the narration of al-Harith Bin Hassan al-Bakri regarding the Army of 'Amru Bin al-'Aas.

The first banner to be tied in Islam was the banner of 'Abdullah Bin Jahsh, and a black flag with a white crescent was tied for Sa'd b. Malik. All of this indicates that it is imperative that the Army has flags and banners, and that the *Khalifah* is the one who assigns the banners to whomever he assigns over the Army. As for the flags, it is permitted for the *Khalifah* or the brigadiers to present them. The narration of Umm Salamah that the Messenger of Allah ﷺ said ***"I will give the flag to a man who loves Allah and His Messenger, and Allah and His Messenger love him, so I give it to 'Ali"*** shows the permissibility of the *Khalifah* doing so. The permissibility of the brigadiers presenting the flags to others can be understood from the narration of al-Harith Bin al-Hassan al-Bakri which mentioned ***"there were black flags"***, since its meaning is that there were many flags with the Army while they had a single leader, which was 'Amru Bin al-'Aas. Irrespective of whether they were returning from or leaving for an expedition, this means that flags were with the heads of the brigades, and there is nothing to indicate that it was the Messenger ﷺ who appointed the flags to them. However, it is permitted for the *Khalifah* to give the brigadiers the power to give the flags to the brigade heads, and this is more appropriate for discipline, even though all of this falls under what is permitted, or in other words *mubah*.

#### **Article 65**

**The *Khalifah* is the Commander of the Army and he appoints the Chief of General Staff, a general for each brigade, and a commander for every division. The remaining ranks in the Army are appointed by the brigadiers and commanders. The appointment of a person in the General Staff is according to his level of military expertise and is carried out by the Chief of General Staff.**

The *Khalifah* is the general leader for all of the Muslims in this world, in order to establish the rules of the *Shari'ah* and carry the Islam to the rest of the people. The main method to carry Islam to the rest of the world is *Jihad*, and so it is imperative that he undertakes *Jihad*, since the contract of the *Khalifah* is upon him personally, and therefore it is not permitted for anyone else to undertake it. Accordingly, the management of the issue of *Jihad* is specific to the *Khalifah* and it is not permitted for anyone else to undertake it. Even though every Muslim undertakes *Jihad*, the undertaking of *Jihad* and the management of *Jihad* are two different things. *Jihad* is obligatory upon every Muslim, but the management of *Jihad* is for the *Khalifah* alone, and not anyone else. The *Khalifah* can appoint someone to carry out on

his behalf what has been obligated upon him as long as he is under his observation and supervision, while it is not permitted to give him complete independence without his monitoring and supervision. The monitoring that the *Khalifah* undertakes here is not like the type of reporting that the assistant gives him; rather the one who he has delegated remains directly under his orders and direct supervision. The leadership of the Army can be given to whomever he pleases with the condition that they are under the control of the *Khalifah* and his direct supervision. It is not permitted for him to appoint someone without retaining direct supervision and control over him, which must not be simply symbolic. This is because the contract of the *Khilafah* is upon him personally and so it is obligatory for him to manage the affairs of *Jihad*. Accordingly, what is said in other non-Islamic systems that the Head of State is the Commander and Chief of the Army, and this leadership is symbolic while another independent commander is appointed to the Head of the Army, is considered invalid according to the Islamic viewpoint, and is something that the *Shari'ah* does not agree to. Rather, the *Shari'ah* obligates that the *Khalifah* should be the practical Commander of the Army.

As for non-leadership positions in the technical, administrative or other matters, the *Khalifah* may appoint others to act independently on his behalf in the same manner as the governors, and it is not necessary for them to be under his direct control or for him to supervise them. Additionally, the Messenger ﷺ used to personally undertake the practical leadership of the Army and the leadership during the battles, and would appoint commanders over sections of the Army that would go out for battle expeditions without him. He ﷺ used to appoint a commander for each expedition, and sometimes would take the precaution of appointing someone else to succeed them if they were killed, as happened with the battle of Mu'tah. Al-Bukhari reported from 'Abd Allah b. Umar (ra) who said: ***"The Messenger of Allah made Zaid Bin Haritha in charge of the expedition to Mu'tah, and he said if Zaid is killed, then Ja'far Bin Abi Talib should take the flag, and if Ja'far is killed, then 'Abdullah Bin Rawahah should take it"***. Therefore, the *Khalifah* is the one who appoints the commander of the Army, appoints the brigadiers and gives them the banners and appoints the leaders of the divisions. The Army which was sent to *al-Sham* like the Army of Mu'tah and the Army of Usamah was a single brigade, with the evidence being that the Prophet ﷺ had tied the banner for Usamah. The expeditions that fought in the Arabian Peninsula and returned back to Madinah, such as the expedition of Sa'd Bin Waqqas which he ﷺ sent towards Makkah, were all in the form of divisions. This indicates that the brigadiers and the commanders of the divisions are appointed by the *Khalifah*. It is not confirmed that the Prophet ﷺ appointed anyone other than leaders of the Armies and the commanders of the expeditions, which indicates that their appointment in the battlefield was left to their leaders.

With regards to the Chief of Staff who is responsible for the technical matters, he is similar to the Commander of the Army in terms of being appointed by the Head of State and he can be made independent and carry out his duties without being directly supervised by the *Khalifah*, although he has to be under his command.

#### **Article 66**

**The Army is a unified entity which has specific bases. However, it is necessary that some of these bases are placed in different provinces and others in strategic locations. Some of the bases should be permanently mobile fighting forces. These bases are organised in numerous groups, with each group being given a number as a name, such as the first Army, the third Army, or they can be named after a province or district.**

The Islamic Army is a single entity composed from several Armies, and each one is given a number: so it is said: the first Army, the third Army, or they are named according to the

province or district, and it is said: the Army of *al-Sham*, the Army of *Misr*, and the Army of *San'a'* for example.

The Islamic Army is placed in specific bases, and in each base there is a group of soldiers, either a single Army, or division, or numerous Armies. However, it is obligatory to place these bases in different provinces, and some of them in military bases, and some of them in permanently mobile bases to be strike forces. Each base is given a specific name, such as al-Habanya Base, and each has a specific flag.

These arrangements, are either from permitted issues and therefore left to the opinion of the *Khalifah* and his *Ijtihad*, such as naming every Army according to its province or district, or to assign a specific number for each of them, or they could be from the issues of “*Whatever is required to complete an obligation*” if they were necessary to protect the land, such as the arrangements of the Armies on the borders, and placing and putting the bases across various strategic locations to protect the land and so on.

Umar bin al-Khattab (ra) used to divide the Army bases amongst the provinces, and so soldiers were assigned for Palestine and another for **Mosul**, and another in the centre of the State, and he used to have an Army with him prepared to fight upon the first indication.

Commented [s9]: MAwsul in Iraq?

#### **Article 67**

**It is obligatory to provide the Army with the highest level of military education and raise its intellectual level as far as possible. Every individual in the Army should be given Islamic culture that enables him to have an awareness of Islam, to at least a general level.**

This article comes under the generality of the words of the Messenger ﷺ “***Seeking knowledge is an obligation***” reported by Ibn Maja from Anas Bin Malik, and al-Zarkashi said in *al-Tadhkirah*: al-Hafiz Jamal al-Deen al-Mizzi said: the chains of this report reach the level of *Hasan*. Al-Sakhawi said that it has a corroborating narration (*shahid*) through Ibn Shahin with a chain whose men are all trustworthy. The word “knowledge” encompasses every type, including military, since military expertise has become a necessity for every army, and it is not possible to fight war and engage battles unless it has that expertise. Therefore, it has become obligatory due to the rule “*Whatever is required to complete an obligation is itself obligatory*”.

As for the Islamic culture, it is a personal obligation for each person to learn whatever is required for them to undertake their actions, and anything else is an obligation of sufficiency, due to the words of the Prophet ﷺ “***Whoever Allah wants good for, He gives him understanding of the Deen***” (agreed upon narration through Mu’awiyah, and reported by Al-Tirmidhi through Ibn ‘Abbas). This applies to the Army that conquers countries to convey the call to Islam, as it does for every Muslim, though it is more important for the Army.

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 “***Many times the one who is informed has more awareness than the one who heard it directly***” (agreed upon from the narration of Abu Bakrah and the wording is from al-Bukhari), is an indication of encouragement to have awareness. Also the Quran says, “***For people who contemplate***” (TMQ 10:24), and He (swt) says, “***They have hearts (minds) by which they understand***” (TMQ 22:46), which indicates the status of thought.

#### **Article 68**

**It is obligatory that each base should have sufficient numbers of officers of the General Staff who possess expert military knowledge and experience in drawing up plans and**

**running battles. The Army as a whole should possess as many of these officers as possible.**

Its evidence is the same as article 67, based upon the rule “*Whatever is required to complete an obligation is itself obligatory*”. If military education is not digested theoretically through learning, and practically through continuous training and application, then it will not produce experience which enables one to engage in battles and to draw up plans. Therefore, providing expert military education is obligatory. Continuous study and training is also obligatory in order that the Army continues to prepare for *Jihad* and engagement at any moment. Since the Army exists in many bases and every one of them has to be able to engage in battle immediately, there should be an ample number of staff in each camp according to the principle “*Whatever is required to complete an obligation is itself obligatory*”.

#### **Article 69**

**It is obligatory to provide the Army with weapons, supplies and equipment, as well as all necessities and requirements, which enable it to carry out its mission as an Islamic Army.**

Its evidence is the words of Allah (swt) “*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 8:60). So the preparation for fighting is a duty, and this preparation should be open so as to intimidate the enemies and the hypocrites from amongst the subjects. His (swt) saying, “*to strike terror*” is the reason (*Illah*) 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. Therefore, it is a duty to provide all the arms and equipment for the Army in order that intimidation is produced and by greater reasoning in order to ensure that the Army is capable of carrying out its mission which is *Jihad* to convey the call to Islam. When Allah (swt) addressed us regarding preparation, He (swt) stated that the reason (*Illah*) for it is intimidating the known enemies, and those who are not apparent.

Allah (swt) said “*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 8:60). It is necessary to notice the precise accuracy of the verse, where Allah (swt) did not order Muslims to make preparation for the purpose of fighting, but rather for the purpose of intimidation, which is more profound. This is because the enemy’s knowledge of 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 wars and attain victory.



## The Internal Security

### Article 70

**The Department of Internal Security is responsible for everything related to security, and prevents anything that threatens the internal security. It protects the security of the land through the police, and does not resort to the Army except by the order of the *Khalifah*. The head of this department is called the (Manager of Internal Security). This department has branches in the provinces, each of which is called (Section of Internal Ssecurity) and the head of the section is called the Police Chief, *Sahib al-Shurtah*, in the province.**

The Department of Internal Security is responsible for anything pertaining to internal security and headed by the manager of internal security. This department would have a branch in each province called the internal security section, which will be headed by the Police Chief in the province who will be under the responsibility of the governor in terms of execution. He would follow the Department of Internal Security pertaining to administration; a matter that would be organised by a special law.

The Internal Security Department is the department responsible for administering everything linked to security. It takes charge of maintaining security within the country through use of the police force. This is the main means to maintain security. Hence, it is permissible for the Internal Security Department to use the police at any time, in any way it likes, and its orders must be implemented immediately. However, if the police require the help of the armed forces, a request is submitted to the *Khalifah*. 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.

### Article 71

**The police (*shurtah*) have two branches: the military police, who are under the command of the Amir of Jihad, in other words, the war department, and the police who are under the control of the Ruler to protect the security, and they are under the authority of the Department of Internal Security. The two branches have specific training and specific culture in order for them to carry out their responsibilities in the best manner.**

Police forces are divided into two parts: the military police and the police that work under the command of the Ruler, who must have a special uniform and special signs specific for keeping security.

Al-Azhari said: “*shurtah* of any thing is its best. This includes *shurat* because they are the best soldiers. It is also said that *shurtah* are the first group that come ahead of the Army. It is also mentioned that they are called *shuratan* because they have signs that characterise them, in terms of uniform and status”, this is also chosen by al-Asma’i. It is also mentioned in *al-Qamus*: “*Shurtah*, where the individual is called *shurat*, would mean the first battalion that attend the war and is ready for death, it is also the helper of the governors; and they were called so because they announced themselves through signs that characterise them.”

In regards to the military police, which is one of the divisions of the Army that has its sign, it comes ahead of the Army to control its matters, it is a part of the Army and follows the *Amir of Jihad*; in other words, it follows the war department.

Regarding the police that are put under the service of the rulers, they follow the Department of Internal Security. Al-Bukhari narrated from Anas: ***“That Qays Ibn Sa’d used to be in front of the Prophet ﷺ in the position of the policeman towards the Amir”***. What is meant here is Qays Ibn Sa’d Ibn ‘Ubadah al-Ansari al-Khazraji. Al-Tirmidhi narrated it with the wording: ***“Qays Ibn Sa’d used to be in front of the Prophet ﷺ in the position of the policeman for the Amir. Al-Ansari said: It means he was one of the people that discharged his issues”***.

The *Khalifah* is allowed to make all the police that are responsible for internal security part of the Army, in other words, that they are placed within the war department, and he is also permitted to make an independent department, in other words, an internal security department.

In this article it is adopted that this section will be independent; in other words, the police that are placed under the service of the rulers to protect their security must follow the Internal Security Department as an independent organisation that answer directly to the *Khalifah* like other State organisations. This is due to the narration from Anas mentioned previously about Qays Ibn Sa’d, and following the independence of the four departments related to *Jihad* as mentioned before. Each one of them would follow the *Khalifah*, rather than to be left all together as one organisation.

Thus the *shurtah* would follow the Department of Internal Security.

## **Article 72**

**The most prominent issues that threaten the internal security that are under the responsibility of the Department of Internal Security to treat are: apostasy, rebellion and banditry, attacks on people’s wealth, attacking people and their honour and co-operating with the people of suspicion who spy for the belligerent disbelievers.**

The function of the Department of Internal Security is to protect the internal security of the State and the actions which could lead to a threat to internal security are many including:

Apostasy from Islam, rebellion against the State manifested in destructive activities and actions of sabotage such as strikes or the occupation of vital centres of the State, and aggression against private, public, or State property. It might also be through rebellion against the State by use of arms.

Other actions which undermine internal security include banditry, in other words, highway robbery, and attacking people to rob their wealth and killing them.

Similarly, the attack on the property of people by theft, looting, robbery, misappropriation, as well as attacks on people through assault, injuring, and killing, in addition to attacks on their honour through lying, slandering and rape.

One of the other tasks of the Internal Security Department is to deal with suspicious people and protecting the *Ummah* and the State from their danger and harm.

These are the most important actions that could threaten the internal security. The Department of Internal Security protects the State and the people from all these actions. Therefore, whoever is declared an apostate, and is sentenced to death if he did not repent, then this department executes the death sentence. If those who declare apostasy are a group, then they have to communicate with them and ask them to return to Islam, and the State should not punish them if they repent, return to Islam and abide by the *Shari’ah* rules. 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 they must proceed to do so, but if they are large

in number and the police force is unable to overpower them, then they have to request the *Khalifah* to provide them with additional military force to help them. If this military force is not sufficient, then they must ask the *Khalifah* to order the Army to provide them with assistance.

This is concerning apostates. However, in regards to people who rebel 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, along with 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 requests the *Khalifah* to provide it with a military force in order to stop the destruction and sabotage from those who rebelled against the State.

However if the people who rebel against the State use weapons and were able to establish themselves in an area and became a force that the Department of Internal Security is unable to subdue, and it was unable to eliminate through the use of the police force alone, then it requests the *Khalifah* to provide it with a military force or an army force, depending on its need in eliminating the rebellion. Before it fights against them, the department should communicate with them to see what complaints they may have. It should ask them to return to obedience and the *Jama'ah* and to surrender their arms. If they respond favourably and return back, then the State should hold back from fighting them. If they reject and insist on rebelling, then it fights against them in order to discipline them and not to annihilate and destroy them. It fights against them, so that they turn back to obedience and give up rebellion and surrender their arms.

In regards to those that use violence, such as the highway robbers, who attack people, forcibly obstruct the highways, steal property and kill, the Department of Internal Security will dispatch a police force to pursue them and impose the relevant punishment upon them, which may be killing and crucifying, amputating their opposite limbs or deporting them to another place, according to the verse:

***“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 5:33).***

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 verse. 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 will 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 or country far away from the State.

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 *Khalifah* to provide it with a military force or an army, according to what is required.

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

The police are entrusted with keeping the public order, supervision over the internal security and carrying out all aspects of implementation. This is due to the mentioned narration from Anas who reported that the Messenger ﷺ used to keep Qays Ibn Sa'd before him like a

police chief. This indicates that police are stationed before the rulers, which means they undertake whatever the rulers want of the execution force for implementing the *Shari'ah*, keeping order and protecting security. This is in addition to conducting patrols, which involves patrolling during the night to pursue thieves and arrest wrongdoers and the wicked. 'Abd Allah b. Mas'ud (ra) was a leader over the night patrols at the time of Abu Bakr (ra). Umar bin Al-Khattab (ra) used to take charge of night patrols by himself, taking his servant in his company and sometimes 'Abd al-Rahman b. 'Awf (ra). Therefore, it is wrong that some Islamic countries make the owners of the shops appoint guards at night to guard their houses, or appoint guards given by the State at the cost of the owners of the shops. This is because this work is part of the night patrolling which is the duty of the State and of the functions of the police. So, people are not charged with it and nor charged with its costs.

With regards to dealing with the suspicious people who are the people that pose harm and danger to the State entity, to the community or to the individuals; these types of suspects must be pursued by the State. Whoever, from the *Ummah* has knowledge of any of these must report it. The evidence for this is what al-Bukhari and Muslim reported from Zayd b Arqam when he said: ***"I was in an expedition, and heard 'Abd Allah b Ubay say: Do not spend upon those with the Messenger of Allah ﷺ so as to disperse away from him; and if we return, the precious will expel the humiliated, I mentioned that to my uncle Umar, who mentioned it to the Prophet ﷺ, so he called upon me and I told him...."*** In the narration by Muslim, ***"I came to the Prophet ﷺ and informed him of that"***. Ibn Ubay was well known for going back and forth to the disbelievers who were at war with the Muslims, and his relations with them such as those with the Jews around Madinah and the enemies of Islam. Here, it is required to closely examine upon the context of this example so as not to mix it with espionage on the citizens, which is prohibited due to His (swt) saying: ***"And do not spy"*** (TMQ 49:12); therefore, spying is only limited to the suspects.

The suspicious people are those who go back and forth to the belligerent disbelievers, either practically or in terms of their ruling (in other words potentially), and that is because spying is allowed on the belligerent disbelievers as part of the war policy, and for preventing harm from falling upon Muslims. Additionally, the *Shari'ah* evidences in this subject include all the belligerent people. This is because if they were actual belligerents, then the obligation of spying on them is quite clear. If they were potential belligerents, then spying on them is allowed for war is expected with them at any time.

Thus any citizen that frequently visits the warring disbelievers would be under suspicion due to his contact with those we are permitted to spy on, in other words, the belligerent disbelievers.

The details of this issue will be as follows:

1. Spying on the actual belligerent disbelievers is obliged upon the State; a matter which, besides the above mentioned evidences, is emphasised by the rule: ***"that which is necessary to perform an obligation is itself obligatory."*** This is because the knowledge of the force of the enemy, its plans, its objectives and its strategic locations and the like are necessary to defeat the enemy. This is undertaken by the War Department, and it includes the citizens that make contact with the actual belligerent disbelievers, since in origin there is not usually contact between the citizens and the belligerents, as the relation between them is a relation of war.
2. Spying on the potential belligerent disbelievers is allowed; and it is obligatory upon the State to prevent any harm, such as, when it is feared they would help the actual belligerents or join them. The potential belligerent disbelievers are of two types:

**The first:** The potential belligerent disbelievers in their country whom the War Department would spy on, and it would be the War Department who was responsible for spying upon them.

**The second:** The potential belligerent disbelievers that enter our country, such as the ambassadors, the covenants and their like. These have to be put under observation and spying by the Internal Security Department.

The Department of Internal Security takes charge of surveillance and spying on the citizens who frequently visit the officials amongst the potential belligerent disbelievers or their representatives in our country. The War Department also takes charge of the citizens who frequently visit the officials amongst the actual belligerent disbelievers or their representatives in their own country. This however requires two conditions:

**The first:** There should appear clear evidence through surveillance, carried out by the War Department and Internal Security of the officials amongst the potential belligerent disbelievers or their representatives that the frequent visits to these disbelievers or their representatives, inside or outside the State, are not natural and attract attention.

**The second:** Whatever is discovered by the two departments has to be presented to the judge of *hisbah*; and then the judge of *hisbah* rules upon the matter.

If such a case arises then it is allowed for the Department of Internal Security to spy on those citizens that make such frequent visits to the officials amongst the potential belligerent disbelievers or their representatives in our country. It is also permitted for the War Department to spy on the citizens that make frequent visits to the officials amongst the potential belligerent disbelievers and their representatives in their own country. These are the evidences related to all of this:

1. Spying on Muslims is *haram* as stipulated in this verse. Allah (swt) says:

***“And do not spy on each other...”*** (TMQ 49:12)

This is general prohibition of spying and it has to continue as general unless there is specific evidence. This is confirmed by the narration reported by Ahmad and Abu Dawud with a chain from Al-Miqdad and Abu Umamah when they said: ***“The Messenger of Allah ﷺ said: If the leader looked for suspicion amongst the people, he would ruin them”***. Therefore, spying on a Muslim is prohibited. This rule also applies on the people of the *Dhimmah* from the citizens of the State. Thus spying is prohibited upon the citizens, Muslims and non-Muslims.

2. Spying on actual belligerent disbelievers, such as those who are at war with us and on the potential belligerent disbelievers, such as those who enter our country with covenant or under our protection like ambassadors and others, or the actual belligerent disbelievers in their own country, is allowed. It is in fact obligatory to spy on the actual belligerent and on the potential belligerent in case of harm.

The evidences are clear in the life of the Messenger of Allah ﷺ, which are as follows:

- It was reported in the *Sirah* of Ibn Hisham about the expedition of 'Abd Allah b. Jahsh (ra), where he ordered him to travel for two days without opening the letter he wrote for him. After 'Abd Allah b. Jahsh (ra) travelled for two days he opened the letter of the Messenger of Allah ﷺ and read it. It read ***“If you read this letter of mine, travel till you reach Nakhlah that comes between Makkah and Ta'if, where you camp and monitor Quraysh from there and collect for us their news.”***

It was reported in the *Sirah* of Ibn Hisham regarding the events of the battle of Badr that Ibn Ishaq said: ***“The Messenger of Allah ﷺ and Abu Bakr rode till they met a sheikh from the Arabs. He asked him about Quraysh and about Muhammad and his companions and any information he got about them. The sheikh said I will not inform you till you tell me from where are you? The Messenger of Allah ﷺ said, if you tell us, we would tell you. He said, is this for that? He said: yes. The Sheikh said: ... I was informed that Quraysh had left in such and such day. If the one that informed me said the truth, then they would be in such and such place, naming the place where Quraysh is. When he finished his news, he said: From where are you? The Messenger of Allah ﷺ said: Water, and they then turned away***

*from him. He said, the sheikh was saying: From water, or from the water of Iraq? Then the Messenger of Allah ﷺ returned back to his companions. When night fell, he sent 'Ali Ibn Abi Talib, Zubayr Ibn Al-'Awwam and Sa'd Ibn Abi Waqqas together with some of his companions (may Allah be pleased with them) to the Water of Badr to seek the news from there, in other words, to spy upon Quraysh"*

- Ibn Ishaq also reported that Ibn Hisham mentioned under the title: "Basbas Ibn 'Amru and 'Uday Ibn Abu Al-Zaghba' spy for news", till he said, "'Uday and Basbas heard that (meaning: heard that which the two maids said at the Water regarding the news of Quraysh). So, they jumped onto their two riding camels and went to the Messenger of Allah ﷺ where they informed him of that which they heard".

Though these evidences were regarding Quraysh, which was an actual belligerent, the rule applies to the potential belligerent since war is expected with them. The only difference is that spying is obligatory in the case of the actual belligerent because the war policy for defeating the enemy requires that. It is however allowed regarding the potential belligerent because war is expected with them. If there is possible harm from them, in other words, it is expected they might help the belligerent or actually join them, then spying on them becomes obligatory as well.

Thus, spying on the belligerent disbelievers is allowed for Muslims and obligatory upon the State to provide. This is due to the order of the Messenger of Allah ﷺ to do so as mentioned above. It also comes under the rule: *"That which is necessary for performing an obligation is itself obligatory"*.

If some citizens, whether Muslims or non-Muslims, frequently visited the belligerent disbelievers, whether they were actual or potential belligerents, in our country or in their country, then these are suspects and hence it is allowed to spy on them and follow their news. This is because they frequently visit those whom it is allowed to spy on and because harm is expected from them on the State if they spied for the advantage of the disbelievers.

However, to allow spying on such citizens, the above mentioned two conditions must be verified, and so if those two conditions were not met, then it is prohibited to spy upon the citizens irrespective of whether they were Muslims or from the people of *Dhimma* due to the explicit texts regarding that which have been mentioned previously.

The War Department takes charge of spying on the citizens that frequently visit the actual belligerent, as well as on the citizens that frequently visit the officials amongst the potential belligerent and their representatives in their own country. The Department of Internal Security takes charge of spying on the citizens that frequently visit the officials amongst the potential belligerent disbelievers and their representatives in our country.

## **The Foreign Affairs Department**

### **Article 73**

**The Department of Foreign Affairs is in charge of all the affairs connected to the relations of the *Khilafah* state with the foreign states, whether from the political angle, or economic, industrial, agricultural and trade aspects, or postal, cable and wireless connections and so on.**

The Foreign Affairs Department undertakes the responsibility of all foreign affairs, pertaining to the relation of the *Khilafah* State with foreign states, whatever these affairs and relations may be, whether they are related to the political aspect and what it entails in the forming of pacts, peace treaties, ceasefires, negotiations, appointing ambassadors, sending

messengers and delegates, and establishing embassies and consulates, or relations that are related to matters that are economic, agricultural or are to do with trade, as well as postal communications or wire and wireless communications and so on. All of these matters are run by the Foreign Affairs Department, because they are concerned with the relations of the *Khilafah* State with other States.

The Messenger ﷺ used to establish foreign relations with other states and entities, as was explained in the section regarding the executive assistant. He ﷺ sent 'Uthman b. 'Affan (ra) to negotiate with Quraysh just as he ﷺ negotiated with the delegates of Quraysh. He ﷺ sent delegates to the kings and he ﷺ received the delegates of kings and *amirs* and concluded pacts and peace treaties. Similarly, his *Khulafaa'* used to establish political relations with other states and entities. They would appoint people to carry these actions out on their behalf, on the basis that whatever action a person can perform by himself, he can delegate it to some other person to carry it out on his behalf.

Due to the complications of international life, and the vastness and variety of international political relations, we adopt that the *Khalifah* should delegate an institution within the state specific to the international relations where the *Khalifah* follows its work as he does with any other ruling and administrative institutions in the state, whether directly or through the executive assistant, in accordance with the related *Shari'ah* rules.

## The Department of Industry

### Article 74

**The Department of Industry is in charge of all the affairs connected to industry, whether heavy industry such as the manufacturing of engines, machines, vehicles, materials and electrical equipment, or light industry. Similarly, whether the factories are of the public property type or they are included in the private property and have a relationship to the military industry. All types of factories must be established upon the basis of military policy.**

The department of industry is the department that takes charge of all the affairs related to industry, whether they pertain to heavy industry like the manufacturing of motors, engines, vehicles, materials, and electrical equipment, or light industry; and irrespective of whether the factories were public or private property which have a relationship with the military industries. The factories in all sectors must be based on the war policy. This is because *Jihad* and fighting require an army, and in order to fight this army requires weapons. In order that these weapons be of the highest level and fully available, it is necessary to have an industry within the State, particularly the military industry, due to its strong relationship with *Jihad*.

In order that the State becomes independent of other countries and does not become influenced by any of them it should manufacture and develop 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 both the evident and potential enemies, as Allah (swt) says: *“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 intimidate all the evident and potential enemies. Therefore it is a duty upon the State to manufacture weapons by itself and it is not allowed to depend upon other states, because this allows other states to control it, its will, its weapons and its fighting.

It is quite clear in the world today that the states which sell weapons to other states do not usually sell every weapon, particularly the most developed weapons. They do not even sell weapons except with certain conditions that cover their utilisation. They will not sell them except in quantities that they, rather than the purchasing countries, decide. This gives the state which sells arms, authority and influence over the state which buys the arms, enabling it to enforce its own will upon 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 which exports its arms and increase its submission to another state's 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 independently manufacture its own arms and everything it requires for its war machine and spare parts. This can't be achieved unless the State possesses heavy industry and started to build factories which produce heavy industry, both military and non-military alike. Thus it is necessary that the State have factories for producing all types of atomic weapons, rockets, satellites, airplanes, tanks, mortars, naval ships, armoured vehicles and all types of heavy and light weapons. It is necessary that it have factories which produce machines, motors, materials, and electronics, and factories which have a 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 which is obliged upon the Muslims by the saying of Allah (swt): ***“Make ready for them all that you can of (armed) force.”*** (TMQ 8:60).

Since the Islamic State conveys the message of Islam by *Da'wah* and *Jihad*, it should be a state which should be continually ready to carry out *Jihad*. This requires the existence of heavy and light industry built upon the basis of its war policy. Thus in case it wanted at any time to transform these factories for military purposes, it would easily do so at any time. Therefore all the industry in the *Khilafah* State should be based on the 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 Judiciary

### Article 75

**The Judiciary is the pronouncement of the rule that becomes binding. It settles the disputes between the people and prevents that which harms the community's rights, or it eliminates the disputes arising between people and members of the ruling system – both rulers and civil servants – from the Head of State downwards.**

The origin of the judiciary and its legitimacy is the Book and the *Sunnah*. As for the Book, the words of Allah (swt) ***“And rule between them by what Allah has revealed”*** (TMQ 5:45), and His (swt) words ***“And when they are called by Allah and His Messenger to judge between them”*** (TMQ 24:48). As for the *Sunnah*, the Messenger ﷺ used to undertake the judiciary by himself and judge between the people, such as what Bukhari narrated from Aaisha (ra), the wife of the Prophet ﷺ, that she said ***“‘Utba b. Abi Waqqastold his brother Sa’ad Bin Abi Waqqasthat the child of Zuma’a is his, so keep him with you. In the year of the conquest, Sa’ad took him and said ‘The child is the son of my brother, and he has entrusted him to me’. ‘Abd b. Zuma’ah stood up to him 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’ad said ‘O Messenger of Allah! He is son of my brother and he has entrusted him to me.’ And ‘Abd Bin Zuma’ah 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’”***. And the Messenger of Allah ﷺ used to appoint judges; he appointed ‘Ali (ra) as the judge over Yemen and he ﷺ gave him instructions about how to judge by saying ***“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, and then you would know how to judge”*** reported by Al-Tirmidhi, and Ahmad, and in the report of Ahmad with the wording ***“If two disputing men come to you, do not speak until you have heard the second as you heard from the first”***.

The method of adjudication carried out by the Messenger ﷺ can be deduced from the narration of Aaisha (ra) that Sa’ad and ‘Abd Bin Zuma’ah disputed over the son of Zuma’ah, so each one of them claimed that he was his. The Messenger of Allah ﷺ informed them of the *Shari’ah* rule that the son of Sawda bint Zuma’ah was the brother of ‘Abd Bin Zuma’ah, and that the child belongs to the one on whose bed it is born. Therefore, his ﷺ judgement was information about the *Shari’ah* rule which he then enforced upon them, and so Abd Bin Zuma’ah took the child. This is the proof for Article 75, which gives the definition of the judiciary, and this definition serves as a description of the reality. However, since it is a *Shari’ah* reality, and since the *Shari’ah* definition is in fact a *Shari’ah* rule, it therefore requires evidence from which it is to be deduced, and this narration serves as an evidence for the definition of the judiciary found in this article.

Some people defined the judiciary as being the “settling of disputes between people”, and this definition is deficient from one angle, and from another angle it is not a description of the reality of the judiciary as reflected in the Messenger of Allah’s ﷺ actions and sayings. Rather, this definition is merely an explanation of what may or may not occur from the judiciary. The judge may rule upon the case and not settle the dispute between the parties. Therefore, the comprehensive and exclusive definition would be the one mentioned in this article and it has been deduced from the narrations.

Also, this definition includes the judgement between people, and this is mentioned in the narration of Aaisha (ra). It also includes the *Hisbah* (public order) which is: ***“Conveying the Shari’ah rule for the purpose of enforcing it regarding that which causes harm to the rights of the community”***. This is what has been narrated in the narration of the heap of food. It is

narrated in *Sahih* Muslim on the authority of Abu Huraira that the Messenger of Allah ﷺ passed by a heap of food and put his hand inside it, and his fingers became wet, so he said to the vendor ***“What is this O owner of the food?”*** 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 is not from me”*** and in the report in Ahmad and Ibn Maja and al-Darimi ***“whoever cheats us is not from us”***.

It also includes the *Madhalim* (injustices), because they are part of the judiciary and not part of the ruling, since they are complaints against the ruler. The *Madhalim* is defined as *“Conveying the Shari’ah rule for the purpose of enforcing it regarding the disputes which occur between the people and the Khalifah, his governors or civil servants, and regarding what occurs between the Muslims due to differences in the meaning a text from the Shari’ah texts used in order to judge by them and to rule according to them.”* The *Madhalim* were mentioned in the narration of the Messenger of Allah ﷺ regarding the fixing of prices where he said ***“And verily I hope that I will meet Allah without having anyone claiming against me a Madhlamah (injustice) I inflicted on him in blood or wealth”*** reported by Ahmad from Anas Bin Malik, and in his ﷺ words ***“Whoever I took wealth from, then here is my wealth he should take from it, and whoever’s back I whipped, here is my back so he should take recompense from it”*** reported by Abu Ya’la from al-Fadl Bin ‘Abbas. Al-Haythami said that ‘Ata’ b. Muslim, who is in the chain of Abu Ya’la, has been considered trustworthy by Ibn Hibban and others, whereas others have weakened him, and the rest of the narrators are trustworthy. This indicates that the issue of the ruler, governor or civil servant is raised to the judge of the Court of Injustices (*Madhalim*) in any claim of an injustice, and the judge of the Court of Injustices (*Madhalim*) conveys the *Shari’ah* rule which would be binding.

Based upon this, the definition would encompass the three types of judiciary reflected in the narrations and actions of the Messenger of Allah ﷺ. These are the settling of disputes between people, preventing whatever may harm the rights of the community and the settling of the disputes between the subjects and the rulers, or between the subjects and the civil servants in their work.

#### **Article 76**

**The *Khalifah* appoints a supreme judge to the judiciary from the male, adult, free, Muslim, sane, just people who know jurisprudence, and if he was given the power to appoint and remove the *Madhalim* judge, and had the power of judgement in the *Madhalim*, then he would have to be a *Mujtahid*. He would have the power to appoint judges, discipline them, and remove them as part of the administrative systems. As for the remainder of the civil servants of the courts, they are connected to the Department Manager who is responsible for the courts’ affairs.**

The origin is that the *Khalifah* can appoint governors to a specific governorship upon one of the issues in all the parts of the State, just as he can appoint a governor to a specific governorship upon one of the issues in a specific location, similar to how he can appoint a governor to a general governorship in a specific location. So, just as the *Khalifah* can empower a leader for *Jihad*, and one for *haji*, and one over the land taxes, he can also empower a leader for the judiciary. He can give that leader the right to appoint judges, remove them and discipline them, in the same way that he can give the leader of *Jihad* the right to appoint Majors and Corporals over the soldiers, and discipline them and remove them. Due to this it is permitted for the *Khalifah* to appoint a Supreme Judge, or in other words, a leader over the judiciary. This Supreme Judge, or leader of the judiciary, would be a ruler and not a civil servant, since he is a governor who has undertaken a governorship - in other words ruling - just like any leader or governor over any of the issues. However, he is not considered to be an assistant for the *Khalifah* in the judiciary because he was given a specific

appointment, in other words in all the issues of judiciary, and so his appointment is in the judiciary and does not go beyond that. As for the assistant, he is given a general appointment in all the issues, so the *Khalifah* can seek his help in all issues, unlike the Supreme Judge who can assist in the judiciary alone.

It is not confirmed that the Messenger ﷺ appointed a Supreme Judge, in the same way that it is not confirmed that any of the righteous guided *Khulafaa* appointed a Supreme Judge. There is nothing that indicates that the judiciary in the territories used to have deputies who would carry out the judiciary in the towns and villages, neither in the time of the righteous guided *Khulafaa*, and not even by the time of the Umayyads. The first appointment of a supreme judge by the *Khalifah* was at the time of Harun al-Rashid, and the first judge to be given this description was the judge Abu Yusuf, the famous *Mujtahid*, who was a companion of Abu Hanifah. Accordingly, it is permitted for the *Khalifah* to appoint a judge who is given the power to appoint and remove judges; so it is from the permitted actions.

Based upon this it is permitted for the *Khalifah* to appoint a “Supreme Judge”. However, his pre-conditions are the same of those of the judge and the ruler, since he is a judge and a ruler since he has been given the power to appoint judges and to adjudicate in court cases. In other words, it is a condition for the Supreme Judge to be male, adult, free, Muslim, sane, just, and from the people who know the jurisprudence, since the condition of capability in this case means that he should know jurisprudence since his work is responsibility over the judiciary in addition to his powers of judging. The Messenger ﷺ has blamed whoever judges with ignorance and informed us that they would be from the people of the hellfire; he ﷺ said “***And a man who judges for the people based upon ignorance, then he is in the hellfire***” (reported by the authors of the *Sunan* and al-Hakim who authenticated it from Buraydah). From this evidence it has been made a condition that the judge should be from the people who know the jurisprudence. The Supreme Judge should be a *Mujtahid* if he was given the power to appoint and remove the *Madhalim* judge, and the powers to judge in the *Madhalim*, since such a judgement requires *Ijtihad* as is explained in article 78.

As for what is mentioned in the article about the appointment of civil servants for the courts, these people are employees and the evidence for the permission of their appointment is the evidence for the hiring of an employee.

#### **Article 77**

**The Judges are of three types: One is the Judge (*qadi*), and he undertakes settling the disputes between people over transactions and penal codes. The second is the *Muhtasib*, who undertakes the settling of any breach of law that may harm the rights of the community. The third is the judge of the Court of Injustices (*Madhalim*), who undertakes the settling of disputes between the people and the State.**

This article explains the types of judiciary. The evidence about the judge that settles disputes between people is derived from the actions of the Messenger of Allah ﷺ, and from his appointment of Mu’adh b. Jabal (ra) over an area of Yemen.

As for the evidence for 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 words of the Messenger of Allah ﷺ, for he said “***Whoever cheats is not from us***” (reported by Ahmad and Ibn Maja from Abu Hurayrah). He used to confront the cheaters and punish them. Qays b. Abi Gharzah al-Kanani reported “***We used to buy cargo in Madinah and we would call ourselves brokers, so the Messenger of Allah (saw) came out to us and called us with a better name, he (saw) said: ‘O you gathering of traders, truly selling entails foolish talk and the taking of oaths, so mix it with charity’***” (reported by the authors of the *Sunan* and al-Hakim who authenticated it, and Al-Tirmidhi said it is *Hasan Sahih*). And it is

narrated that al-Bara' b. 'Azib and Zayd b. Arqam were partners, so they both bought some silver with money on the spot and by credit. This news reached the Messenger of Allah ﷺ, so he ﷺ ordered ***"What was by money is permitted, and what was by credit must be rejected"*** (reported by Ahmad from al-Minhal). All of this is the judiciary of *hisbah*.

Calling the judiciary that settles the disputes that may harm the right of the community as *Hisbah* is in fact a technical term referring to a specific task carried out in the Islamic State, which is the monitoring of the traders and skilled workers in order to prevent them from cheating in their trade, work, or products, forcing them to use measurements and scales and preventing anything else that may harm the community. These are the very types of actions that the Messenger of Allah ﷺ demonstrated, ordered to be observed, and undertook in settling their issues, as is clear from the narration al-Bara' b. 'Azib, where he ﷺ prevented both parties from selling silver by credit. Therefore, the evidence about the *Hisbah* is from the *Sunnah*. In the same manner, these evidences include that the Messenger of Allah ﷺ appointed Sa'id b. al-'As over the Makkah market after it had been conquered as is mentioned in *al-Tabaqat* of Ibn Sa'd, and in *al-isti'ab* of Ibn Abdul Birr. And Umar Bin al-Khattab (ra) appointed al-Shifa, a woman from his clan, as a market judge (inspector), in other words a judge of *Hisbah*, as he also appointed 'Abd Allah b. Utba over the market of Madinah, as reported by Malik in *al-Muwatta* and al-Shafi'i in his *Musnad*. He personally used to also deal with the judiciary of the *Hisbah*, and would go around the markets just like the Messenger ﷺ used to do. The *Khulafaa'* went on carrying out the *Hisbah* until when al-Mahdi came he established a special department for the *Hisbah*, making it a part of the institutions of the judiciary. At the time of al-Rashid, the *Muhtasib* (judge of *Hisbah*) would go around the markets, checking the weights and measures for any cheating, and to look into the traders' transactions.

The proof for the judiciary that is called the Judge of the Court of Injustices (*Madhalim*), is the action of the Messenger ﷺ since he appointed Rashid b. 'Abd Allah as a judge for the Court of Injustices (*Madhalim*), and additionally he ﷺ said ***"Whoever I took wealth from, then here is my wealth he should take from it, and whoever's back I whipped, here is my back so he should take recompense from it"*** reported by Abu Ya'la from al-Fadl Bin 'Abbas. Al-Haythami said that 'Ata b. Muslim who is in the chain of Abu Ya'la has been considered trustworthy by Ibn Hibban and others, whereas others have weakened him, and the rest of the narrators are trustworthy. This is nothing other than the judiciary of the injustices (*Madhalim*), because it is encompassed by the definition of the judiciary of injustices (*Madhalim*), which is the investigation into what occurred between the people and the *Khalifah*. Therefore the evidence for the judiciary of injustices (*Madhalim*) is the actions and words of the Messenger ﷺ. However, he ﷺ did not make a judge specific to the injustices (*Madhalim*) alone for all the areas of the State, and the *Khulafaa'* after him proceeded in the same manner, in that they used to deal with the injustices (*Madhalim*) as occurred with 'Ali Bin Abi Talib (ra) – but he did not make it during a specific time or with a particular style, rather the injustice (*Madhlamah*) would be looked into as it occurred, and so it was part of the overall actions. The situation remained the same until the days of 'Abd al-Malik b. Marwan, who was the first *Khalifah* to deal with the injustices (*Madhalim*) separately at a specific time with a particular style, so he used to designate a specific day, and would look into the injustices, and subsequently if anything was difficult for him he would pass it to his judge who would rule upon it. After that, built upon this system, the *Khalifah* would appoint a delegate who would look into the injustices raised by the people, and the Court of Injustices (*Madhalim*) became a specific apparatus, and used to be called *"Dar al-'adl"* (the House of Justice). This is permitted from the angle of appointing a judge who is specific for it, since it is permitted for the *Khalifah* to appoint someone as a delegate to undertake his work in all the mandatory powers that he has and it is permitted from the angle of specifying a particular time, and style, since it is from the permitted issues.

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## Article 78

**Whoever undertakes the responsibility of judgement must be a Muslim, free, adult, sane, just, a *faqih* (person who knows jurisprudence/*Fiqh*), and aware of how to apply the rules to the events. And the person who undertakes the judiciary of injustices (*Madhalim*) in addition to the conditions mentioned, must also be male and a *Mujtahid* (capable of deriving his own *Fiqh*/conducting *Ijtihad*).**

Its evidence is what was mentioned previously for the evidence for the Supreme judge, except that it is not a condition in the judge who settles the disputes and the judge of *hisbah* to be male, rather it is permitted for the judge to be a woman, since it is not a position of ruling but rather a judge, in other words they convey the *Shari'ah* rule while they are not the one who implements it. Accordingly, the narration "**A people who appoint a woman over their command will never succeed**" reported by al-Bukhari, does not apply, since it is regarding governorship which is ruling. And the reason for the narration was when the people of Persia were ruled by a woman; it is narrated from Abu Bakrah who said "**When the Messenger of Allah ﷺ was notified that the people of Persia were ruled by the daughter of Kisra he said 'A people who appoint a woman over their command will never succeed'**" (reported by al-Bukhari). So the reason for the words of the narration was a specific subject which was mentioned explicitly in the text of the narration, which is ruling, in other words authority, and the judiciary is not an authority. Accordingly the narration is specific to ruling and does not encompass the judiciary, and that is for two reasons:

**Firstly**, the text which is related in a specific subject is like the text which is an answer to a question, and so it is necessary to make it specific to the issue of the question or event, and it is not correct for it to be general in all issues, because the question is reflected in the answer, and because the words are in a specific subject it is necessary to limit them to that subject, since the word of the Messenger ﷺ is connected to the question or event, and so the rule is connected to that. This is different than if the Messenger ﷺ had said that initially (not in response to an event) in which case it would be general and connected to the generality. As for if his ﷺ word is a comment upon a specific event, or an answer to a specific question, then the situation is different. If the text, in other words the words of Allah (swt) or the words of the Messenger ﷺ, were definitely connected to a question or event, then the rule is connected to that without any doubt. This is with respect to the subject that either came from a question or event. And it is not with respect to the questioner or whom the event occurred upon, since the consideration in both of them is given to the generality of the words and not to the specific cause. And this is why there is a difference made between the cause and the subject, so the consideration is to the generality of the words and not to the specific cause, since the words are not connected to the cause, and so they remain upon their generality. This is different to the event or question, in other words different to the subject which was included by the event, or the subject which was included by the question, since the words are definitely connected to it, and there is no doubt in that, since the narration was only for its sake, or due to it, and due to this it is specific to the subject, and not general. Accordingly the narration "**A people who appoint a woman over their command will never succeed**" is specific to ruling, and does not encompass the judiciary.

This is the first reason. As for the second reason, the words "**over their command**" are from governorship, and this is the governorship of the command, and the judge is not a governor, and is not a governor for the command. Accordingly the judge does not come under this narration, so the narration does not encompass the judiciary.

This is from the angle of the indication of the narration and as for the angle of the permission for a judge to be a woman, the judge is an employee like the rest of the civil servants. And it is permitted for an employee to be male or female; "**If they suckle the children for you, give them their due payment**" (TMQ 65:6). The judge is appointed to undertake an action according to the *Shari'ah*, or in other words to inform the two disputing parties of the *Shari'ah* rule which would be binding upon them, and he is not appointed in order to

implement the *Shari'ah*. Due to this the definition of the employee would apply to him, since it is a contract upon a service for compensation, which is opposite to the ruler since the definition would not apply to him, since he is not contracted over a specific service, rather he is given the command to execute the *Shari'ah*, and for this reason it is not permitted for a ruler to be a woman because he is a governor of a command (*wali amr*). It is permitted for the judge to be a woman, since the judge is an employee and not a ruler.

With regards to the rest of the conditions for the judge, their proofs were discussed in the section about the conditions of the *Khalifah*. Similarly the evidence for the condition that they be a *faqih* (to know jurisprudence) is the narration ***“The judges are of three kinds”*** until he ﷺ said ***“and the man who judges between people based upon ignorance, then he is in the hellfire”*** (reported in the Sunan and authenticated by al-Hakim from Buraydah).

This is for the judiciary of *hisbah* and the judiciary that resolves the disputes between the people, where it is permitted for the judge to be a woman. As for the judge of the Court of Injustices (*Madhalim*), it is a condition that he is male, like the Supreme Judge, because his work is both ruling and judging, since he rules upon the ruler, and implements the *Shari'ah* upon him, and for that reason it is a condition that he is male along with the rest of the conditions of the judge, of which being a *faqih* is one. However, in addition to that, it is a condition that he should be a *Mujtahid*, because as part of the injustices (*Madhalim*) he may be required to look into whether the ruler has ruled by other than that which Allah (swt) has revealed, or in other words has ruled by a law that has no *Shari'ah* evidence, or to look into whether the evidence he used does not apply to the event. This type of injustice (*Madhlamah*) can only be dealt with by a *Mujtahid*, since if he were not a *Mujtahid*, he would be judging on something he knows little about or has no knowledge about at all, and that is forbidden and not permitted. Therefore, in addition to the conditions of the ruler and those of the judge, he should also be a *Mujtahid*.

#### **Article 79**

**The *qadi*, the *muhtasib* and the *Madhalim* judge may be given a general appointment to pronounce judgement on all problems throughout the State, or alternatively they can be given an appointment to a particular location and to give judgement on particular types of cases.**

The evidence is the actions of the Messenger ﷺ, since he appointed ‘Ali b. Abi Talib (ra) as a judge for Yemen as reported by Ahmad with an authentic chain from Ali (ra) who said ***“The Messenger of Allah sent me to Yemen. I said O Messenger of Allah, you send me to a people who are older than me and I am young and not insightful in adjudicating. So he ﷺ placed his hand on my chest and said O Allah! Make his tongue firm and guide his heart. O Ali, if two disputing people come to you, do not judge between them until you have listened to the second as you listened to the first, so if you did that the judgement would become clear to you. After that was said to me, I did not differ or become confused on a case again”***. He ﷺ appointed Mu’adh as a judge over a part of Yemen, Abu Umar b. ‘Abd al-Barr mentioned in *al-Isti’ab* ***“Ibn Ishaq said: The Messenger of Allah made a brotherhood between Mu’adh Bin Jabal and Ja’far b. Abi Talib, they witnessed al-Aqaba and Badr and all of the events, and the Messenger of Allah sent him to al-Janad in Yemen to teach the people Quran and the Shari’ah of Islam, and to judge between them, and to collect the Sadaqah from the workers...”***

He ﷺ appointed ‘Amru b. al-‘As to give judgement in one particular case. Ibn Qudamah mentioned in *al-mughni* saying ***“From ‘Uqbah b. Amir who said: Two disputants brought their dispute to the Messenger of Allah, and so he said – Judge between them. I said: You have priority over me to do that. He ﷺ said: Even so. I said: On what should I judge? He said: Judge, and if you are correct you will have ten rewards and if you made a mistake you***

*will get one reward*". Ibn Qudamah said, and Ahmad reported the same narration with a chain whose men were all authentic to 'Uqbah b. Amir from the Prophet ﷺ, except that he ﷺ said *"And if you did Ijtihad and were correct you will have ten rewards, and if you did Ijtihad and you made a mistake you will get one reward"*.

#### **Article 80**

**The courts should be comprised of only one judge who has the authority to pronounce judgement. One or more judges are permitted to accompany him, however they do not have the authority of judgement but rather the authority of consulting and giving their opinion, and their opinion is not considered binding.**

Its proof is that the Messenger ﷺ did not appoint two judges to one case, but rather he would appoint a single judge for the single case, which indicates the impermissibility of having a multiplicity of judges in a single case. Additionally, the judiciary is the informing of the *Shari'ah* rule which is then binding, and the *Shari'ah* rule for the single Muslim is not multiple, since it is the rule of Allah (swt), and the rule of Allah (swt) is one. It is correct that there could be multiple understandings of it, but concerning the Muslim from the angle of action according to it, the *Shari'ah* rule is singular and is never multiple. So anything other than what he understood to be the rule of Allah (swt) concerning oneself is not the rule of Allah (swt) for him, though it is considered in his view to be a *Shari'ah* rule. Whatever he took by imitation (*taqlid*), and then acted upon, is considered to be the rule of Allah (swt) concerning him, and anything else is not the rule of Allah (swt) for him. When the judge informs him of the rule of Allah (swt) concerning him, and this is binding upon him, it is necessary that this notification be singular since it is informing him of the rule of Allah (swt) which is binding for him, and so in reality he is acting according to the rule of Allah (swt), and the rule of Allah (swt) in the situation of practical action is not multiple, even though there may be multiple understandings. Accordingly it is not correct for there to be multiple judges, since it is impossible for the rule of Allah (swt) to be multiple.

This is with respect to the single case, or in other words in a single courtroom. 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 *Khalifah*, so it is like the proxy where plurality is permitted and thus it would be permitted to have several judges in one area. If the disputing parties could not agree on which court 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.

#### **Article 81**

**The judge can only give a verdict in a court session, and any evidence and oaths can only be considered in the court session.**

Its evidence is what is narrated by 'Abd Allah Bin al-Zubayr who said, *"The Messenger of Allah ﷺ ruled that the two disputers should sit between the hands of the ruler"* (reported by Ahmad and Abu Dawud with the wording from Abu Dawud). This narration explains the form in which judgement is carried out and it is a lawful form in itself. There must be a specific form in which the judicial process be conducted, which is for the two disputing parties to sit before the ruler, and this would be the court session. Therefore, this is a condition for the validity of the judicial process i.e. it is imperative that there be a specific assembly where the judgement is to be conducted for it to be a valid judgement and this



would be for the two disputing parties to sit before a ruler. This is supported by the narration of Ali (ra) when the Messenger of Allah ﷺ said to him ***“O ‘Ali if two disputing parties sit before you then do not judge between them until you listened to the second as you listened to the first”*** (reported by Ahmad), which also explains the specific form with his ﷺ words ***“if two disputing parties sit before you”***. So the court session is a condition for the validity of the judgement, and in the same manner it is a condition for the consideration of the oaths, due to the words of the Messenger ﷺ ***“and the oath is upon the one who was accused”*** (agreed upon from Ibn Abbas), and he would not have this attribute, the attribute of being accused, except in a court session. In the same manner, there would be no consideration for evidence unless given in a court session, due to the words of the Messenger ﷺ ***“The burden of proof is upon the plaintiff”*** (reported by al-Bayhaqi with an authentic chain as Ibn Hajar said), and this attribute would not be given except in the court session.

#### **Article 82**

**It is permissible to vary the grades of courts in respect to the type of cases. Some judges may thus be assigned to certain cases of particular grades and other courts to be authorised to judge the other cases.**

Its evidence is that the judiciary is delegated by the *Khalifah* and it is just like proxy, with no difference between them. The judiciary is one form of proxy, and it is permitted for proxy to be general or specific. Therefore, it would be permitted to appoint a judge to deal in specific cases only, and prohibited from dealing with any other ones. It is 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 courts, and Muslims had this in the first era. Al-Mawardi wrote in his book entitled *al-Ahkamal-Sultaniyyah*: “Abu ‘Abd Allah al-Zubayr said: ‘The leaders here in Basra used to appoint a judge at the central mosque, and they called him the judge of the mosque. He used to judge in disputes involving amounts below twenty Dinars and two hundred Dirhams, and he used to impose maintenance (*nafaqah*). He would not exceed his boundaries and nor the duties entrusted to him’”. The Messenger of Allah ﷺ delegated others on his behalf in the judiciary in a single case such as when he delegated ‘Amru b. al-‘As, and he ﷺ delegated others on his behalf in the judiciary in all of the cases in a particular province as he did when he delegated ‘Ali b. Abi Talib (ra) over the judiciary in Yemen. This indicates that it is permitted to have a specific and general judiciary.

#### **Article 83**

**There is no court of appeal, and no court of cassation, so the judiciary, as far as the method by which the cases are treated, is of a single level. If the judge pronounced a verdict, it would become binding, and it cannot ever be annulled by the verdict of another judge unless he ruled by other than Islam, or contradicted a definite text from the Quran, *Sunnah* or *Ijmaa’* of the companions, or it became clear that he gave a verdict that contradicted the reality of the situation.**

This article explains that the ruling of a judge cannot be annulled, neither by himself nor by any other judge. The evidence that the ruling of the judge is not annulled is that the companions had an *Ijma’* upon it. Abu Bakr (ra) ruled in the issues according to his *Ijtihad*, and Umar (ra) differed with him and did not annul his rulings, and Ali (ra) differed with Umar (ra) in his *Ijtihad* and did not annul his rulings, and Ali (ra) disagreed with both Abu Bakr (ra) and Umar (ra) and did not annul their rulings. The people of Najran came to ‘Ali (ra) and said “O leader of the believers, the judgement is in your 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 (ra) judged that in the shared inheritance, the rights of brothers from the father’s side are abrogated. 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. This was mentioned by Ibn Qudamah in *al-Mughni* and al-Bayhaqi from al-Hakam Bin Mas’ud al-Thaqafi. He also judged differently in relation to the grandfather and he never reversed any of the earlier sentences, as is mentioned by al-Bayhaqi in *al-Sunan al-Kubra*.

As for what has been reported about Shurayh having judged in the case of two paternal cousins, where one of them was one of the mother’s brothers, that the estate should go to the brother, this was referred to Ali (ra) who said “Bring him to me”. When he came he said to him “Where in the Book of Allah did you find this?” He said Allah (swt) says **“But kindred by blood are nearer to one another”** (TMQ 8:75), so ‘Ali (ra) said to him **“Allah also says ‘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 4:12), and he then reversed his ruling as is mentioned in some narration. Ibn Qudamah replies to this in *al-Mughni* in the chapter of the judiciary saying “It is not confirmed that Ali reversed his ruling, but if it was confirmed it may be that Ali was certain that he contradicted the text of the Quran in the verse which he mentioned and therefore he voided his ruling”. It is confirmed that the companions used to rule in issues according to their *Ijtihad* and that the *Khalifah* used to differ with them in their *Ijtihad* in the eras of Abu Bakr (ra), Umar (ra) and ‘Ali (ra), and none of them would annul the rulings of the other. And it is confirmed that Umar (ra) ruled by opposite and different rulings in single issues, and would execute all of the rulings and not reverse the first ruling by the second one even though they were contradictory, and it is confirmed that he said regarding this “That sentence applies to that case and this sentence applies to this one” (mentioned by Ibn Qudamah in *al-Mughni* and al-Bayhaqi from al-Hakam b. Mas’ud al-Thaqafi). This indicates the irreversibility of the judge’s rulings. Ibn Qudamah said in *al-Mughni*: “As for if his *Ijtihad* changed without contradicting a text or an *Ijma*’, or if his *Ijtihad* differed from the *Ijtihad* of those before him, he should not reverse it just because it is different, for the companions have an *Ijma*’ on that”.

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As for what has been narrated from the message of Umar Bin al-Khattab (ra) to Abu Musa from his words **“Do not allow a judgement you passed yesterday, which you reviewed and gained the right guidance, prevent you from returning to the truth, for the truth is qadim (old), and to return to the truth is better than to continue with the falsehood”** as reported by al-Bayhaqi in *al-Sunan* from Sa’id Bin Abi Burda, and Khatib al-Baghdadi in *al-Tarikh* from Sa’id Bin Abihi, and al-Daraqutni from Abu ‘l-Malih al-Hathali, what was intended in the 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 annul yesterday’s judgement. That is why Umar (ra) said **“to return to the truth”** and he did not say 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 it is permissible to annul a judgement. This is why in Islam there is nothing called judicial precedent. In other words, there is no place to say that in such and such a case the judgement would be 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 if he thinks that the new ruling is more correct. As for the case itself, the rule of Allah (swt) would have been applied to it, therefore the judge would be forbidden from annulling that rule or changing it. This is why there are no courts of appeal in Islam, and nor there is any court of cassation. The judiciary, from the point of view of process, should be of the same level. The *Shari’ah* principle states: **“Ijtihad is not annulled by another Ijtihad.”** So no *Mujtahid* could serve as an authoritative

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source for another *Mujtahid*, and thus it would be forbidden to have courts that annul the judgements of other courts.

However if the judge did not rule by the Islamic *Shari'ah* rules, and ruled by *Kufr*, or by what contradicts a definite text from the Quran, *Sunnah* or *Ijma'* of the companions, or what contradicts the reality of the situation, such as giving a ruling of *Qisas* as a result of killing someone, and then the real killer became apparent, then in these situations and similar the rule of the judge is nullified. This is due to the words of the Messenger of Allah ﷺ ***“Whoever introduces into our issue something that is not from it, then it is rejected”*** (reported by al-Bukhari and Muslim from Aishah(ra)). And it is reported by Abu Dawud from Jabir ***“A man committed fornication with a woman, so the Messenger ordered he should be lashed, then he was told that he was married, and so he ordered him to be stoned”*** and Malik Bin Anas reported in *al-Muwatta* ***“A woman who gave birth, after six months was brought to ‘Uthman Bin ‘Affan and so he ordered her to be stoned, and so Ali said to him – That is not to be applied upon her, Allah said in His Book “and the bearing of him and the weaning of him is thirty months” (TMQ 46:15) and He said “Mothers shall suckle their children for two whole years; (that is) for those who wish to complete the suckling” (TMQ 2:233) and the pregnancy is six months and so she is not to be stoned, and so ‘Uthman sent for her but she had already been stoned”***. And ‘Abd al-Razzaq reported from Imam al-Thawri ***“if a judge ruled in contradiction to the Book of Allah, or the *Sunnah* of the Messenger of Allah ﷺ, or something agreed upon, then the judge after him should nullify it”***.

The one who has the power to nullify these rulings is the judge of the *Madhalim*.

#### **Article 84**

**The *muhtasib* is the judge who investigates all cases, in the absence of an individual litigation, involving the rights of the public that do not involve the *hudud* (proscribed punishments) and criminal acts.**

This article is the definition for the judge of the *hisbah*, and it is taken from the narration regarding the heap of the food, since the Messenger ﷺ found dampness in the heap of the food and ordered that it should be placed on top of the food so that the people could see it. Accordingly, these were the general rights of the people that the Messenger ﷺ was looking into and judged upon by ordering the moist food to be placed on the top of the heap in order to remove any cheating. This encompasses all of the rights which are of this type, and does not encompass the *hudud* and criminal acts, since they are not of this nature, and because the origin here is the disputed issues between people.

#### **Article 85**

**The *muhtasib* has the authority to judge upon violations as soon as he learns of them, irrespective of the location and without the need to hold a court session. A number of policemen are put at his disposal to carry out his orders and to execute his verdicts immediately.**

This article clarifies that a judicial court would not be required for the *muhtasib* to look into the case at hand, rather he passes the judgement upon the offence the moment he is sure that it took place, and he has the power to judge at any place and at anytime, whether in the market, in the house, while riding on the back of an animal or in the car, or during the day or night. This is because the evidence that confirms the need to have a judicial court in order to rule upon a case does not apply to the *muhtasib*, because the narration which confirmed this condition states ***“that the two disputers should sit between the hands of the ruler”*** and ***“if***

*the two disputing parties sat before you*” (reported by Ahmad from Ali (ra)). This situation does not exist with the judge of the *hisbah*. For there is no plaintiff and no defendant, but rather there is a public right that has been violated or there is a violation of the *Shari'ah*. Also, when the Messenger of Allah ﷺ looked into the case of the heap of food, he ﷺ 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 *hisbah* do not require a judicial court.

#### **Article 86**

**The *Muhtasib* has the right to appoint 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 *Hisbah* in the areas to which they have been assigned, and in the cases for which they have been delegated.**

This article is restricted by whether the appointment of the *muhtasib* included the right to appoint delegates for him; or in other words the right to appoint others. This is if he had been appointed by the *Khalifah*. However, if the appointment was made by the Supreme Judge, the clause must be approved first, and in addition to this, the appointment of the Supreme Judge must include a clause that gives him power to allow the judges that he appoints to delegate others to act on their behalf, in other words, to give them the right to have deputies. If the Supreme Judge did not have such power, then he would not be in a position to approve such delegation, thus the *muhtasib* would not be allowed to have deputies; in other words, he would not have the right to delegate. The power of the judge to delegate on his behalf, whether it be the *muhtasib*, the *qadi* (judge) or the judge of the Court of Injustices (*Madhalim*), is not in the hands of the judge unless the *Khalifah* allows him to do so or if the permission to recruit judges and to allow those appointed to delegate were given to the Governor of the Judiciary, in other words, the Supreme Judge. This is because the judge is appointed to the judiciary, in other words a specific type of judiciary, which is the *hisbah*. Therefore, if he were not given the right to delegate, in other words the right to appoint a deputy for himself, he would not then possess the mandatory power to appoint anyone. This applies to the *qadi* and the judge of the Court of Injustices (*Madhalim*), for each of them would be appointed to the judiciary according to the appointment clause, and they do not possess any other power, in other words they do not have the power to appoint judges unless it was mentioned in the contract of their appointment. For this reason, he does not have the right to appoint deputies to perform the duties of *hisbah* on his behalf, unless this was part of his contract. The same applies to the Supreme Judge.

As for the permissibility of appointing deputies, this is because when the Messenger of Allah ﷺ was presented with a case, he appointed someone as a delegate for himself. Accordingly, 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 and asked him for the verdict, the Messenger of Allah ﷺ said at that incident, ***“Go O Unays (a man from Aslam) to this man's wife, if she admitted guilt then stone her,”*** (agreed upon from Abu Hurayrah and Zayd Bin Khalid), which indicates that the judge can send a delegate on his behalf to judge upon an issue that he has specified for him, and in the same way this can be for the *muhtasib* since he is a judge. However, the judge must allow his deputy to deal with the case as a whole; in other words, he must be allowed to look into the complaint and pronounce judgement himself, if the appointment to deputise is to be considered valid. This is because the judiciary is the conveying of the rule which is then binding, so in this context it cannot be split, and therefore he cannot appoint him to merely investigate without judging but rather the appointment must be complete so that he becomes a judge and his judgement becomes valid. Even if he did not actually pronounce a judgement, his work would be valid, since 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; in other words, 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, if he has been given the power to appoint deputies. The conditions for those whom the judge appoints as his deputies are that they must be Muslim, free, just, adult and possessing knowledge of jurisprudence in the issues which he will be looking into; in other words the deputy of the *muhtasib* has the same conditions as the *muhtasib* since they are both judges.

#### **Article 87**

**The judge of the Court of Injustices (*Madhalim*) is appointed to remove all injustices which have been inflicted upon any person who lives under the authority of the State, irrespective of whether the person is from the subjects of the State or not, and irrespective of whether the injustice was committed by the *Khalifah* or anyone below him from the rulers and civil servants.**

This article has the definition of the judge of the Court of Injustices (*Madhalim*) and the basis for the Judiciary of Injustices (*Madhalim*) is what was narrated from the Prophet ﷺ when he described any act carried out by the ruler on other than the truth while ruling over the subjects as being an injustice (*Madhlamah*). 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 fix the prices?' He said 'Truly Allah is the Recipient, the Extender of wealth, the Provider, and the Pricer, and And verily I hope that I will meet Allah without having anyone claiming against me a Madhlamah (complaint) I inflicted on him in blood or wealth,'" (reported by Ahmad).* So he ﷺ considered price fixing as an injustice (*Madhlamah*), because if he ﷺ had done it he ﷺ would have done something that he ﷺ had no right to do. In the same manner, he ﷺ also made the issues that affect the public rights which the State organises for the people as part of the injustices (*Madhalim*), such as the irrigation of farming lands by common water by taking turns. The Messenger of Allah ﷺ looked into the dispute over irrigation that took place between al-Zubayr Bin al-Awwam (ra) and a man of the Ansar. He ﷺ witnessed it personally and said to al-Zubayr (ra): *"You irrigate first O Zubayr and then the Ansari," (agreed upon and the wording is from Muslim).* Therefore, any injustice (*madhlama*) 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 an injustice (*madhlama*), as understood from the two narrations. The matter would be referred to the *Khalifah* to rule upon it or whoever deputises for the *Khalifah* from the judges of the Court of Injustices (*Madhalim*).

#### **Article 88**

**The judge of the Court of Injustices (*Madhalim*) is appointed by the *Khalifah*, or by the Supreme Judge. His accounting, discipline and removal are done by the *Khalifah* or by the Supreme Judge if the *Khalifah* had given him the powers to do so. However he cannot be removed during his investigation of a *Madhlamah* against the *Khalifah*, or the executive assistants, or the Supreme Judge; rather the power to remove him in these circumstances is for the Court of Injustice Acts (*Madhalim*).**

The judge of *Madhalim* is appointed by the *Khalifah*, or by the Supreme Judge. This is because the *Madhalim* is part of the judiciary, for they are the conveying of the *Shari'ah* rule by way of enforcement, and all the types of judges must be appointed by the *Khalifah*. This is

confirmed by the Messenger of Allah's ﷺ actions since he ﷺ used to appoint the judges as was explained previously. All this means that it is the *Khalifah* who appoints the judge of *Madhalim*, yet the Supreme Judge could appoint the judge of *Madhalim* if the *Khalifah* made provisions for this in his appointment clause. It is allowed for the main court of injustices (*mahkamat al-Madhalim*) in the centre of the State to examine only the *Madhalim* that occurred from the *Khalifah*, his assistants and the Supreme Judge. However, the branches of the court of injustices in the provinces examine the *Madhalim* that occur from the governors and the other State employees. The *Khalifah* has the right to give the Central Court of Injustices the authority of appointment and removal of the *Madhalim* judges in the branch *Madhalim* courts that come under its authority in the provinces.

The *Khalifah* is the one that appoints and removes the members of the main court of injustices in the centre of the State. As for the removal of the head of the central court of injustices - in other words the *Madhalim* judge responsible in examining the removal of the *Khalifah* - it should in principle be the right of the *Khalifah* to remove him, as it is he who has the right to appoint him like all the judges. However, it is possible, if the power of removing the judge were left to the *Khalifah* during a case, then this power would lead to something prohibited. In such a situation the principle of "*the means that leads to something prohibited (haram) are prohibited*" would apply. The strong likelihood of such a scenario arising is enough for applying this principle.

This situation is when there is a case against the *Khalifah* or his assistants or his Supreme Judge (in case the *Khalifah* was given the mandatory power of appointing and removing the *Madhalim* judge). This is because keeping the mandatory power of removing the *Madhalim* judge in the hands of the *Khalifah* in this case would influence the verdict by the judge and accordingly it would limit the capability of the judge to remove the *Khalifah* or his assistants if deemed necessary. This mandatory power of removing the judge in this case is a means for *haram*, or in other words leaving it in the hand of the *Khalifah* in this case is prohibited.

As for the remaining cases, the rule remains as it is; in other words, the power of removing the *Madhalim* judge is left to the *Khalifah*, just like his appointment.

#### **Article 89**

**There is no limit to the number of judges that can be appointed for the Court of Injustice Acts (*Madhalim*), rather the *Khalifah* can appoint as many as he may deem necessary to eradicate the *Madhalim* (injustice acts), whatever that number may be. Although it is permitted for more than one judge to sit in a court session, only one judge has the authority to pronounce a verdict. The other judges only assist and provide advice, and their advice is not binding.**

The evidence that the judge of the Court of Injustices (*Madhalim*) can be more than one is that the *Khalifah* is permitted to appoint one or more deputies to act on his behalf. However, if there are a number of judges of the Court of Injustices (*Madhalim*), their power to look into the injustices (*Madhalim*) cannot be divided, so each one of them would have the right to look into the cases of injustices (*Madhalim*). The *Khalifah* is however allowed to specify a judge for the Court of Injustices (*Madhalim*) in one province, or to specify him to a certain type of case, because he has the right to give a general governorship over the injustices (*Madhalim*) or a specific governorship if he wished. He can give a governorship over the whole of the State, or over a city or region, as he sees fit.

As for the fact that when the judge of the Court of Injustices (*Madhalim*) looks into a case he should look into it on his own, this is because of what was mentioned earlier regarding the prohibition of having numerous judges in a single case, while it is permitted to have more than one judge in the same area. However, it is permitted for other judges of the Court of

Injustices (*Madhalim*) to sit with him in court in a consultative capacity only, and they would not participate in the verdict. This is referred to his contentment and choice – so if he did not prefer that and opposed their sitting with him then they would not do so, since no one who distracts the judge from looking into his work should sit with him. However, if he left the court session he should consult them in the issue.

#### **Article 90**

**The Court of Injustice Acts (*Madhalim*) has the right to remove any ruler or civil servant in the State, in the same way that it has the right to remove the *Khalifah*, if the elimination of the *Madhlamah* required this removal.**

This article clarifies the powers of the Court of Injustices (*Madhalim*) with respect to removal of the rulers, since the ruler is appointed by a contract, known as the Contract of Assignment which is also called the Contract of Empowerment. The *Khalifah* has the right of the governorship which is the ruling, and he has the right of empowerment which is the appointment, and the empowerment is a contract that can only be completed with direct wording. Therefore the removal of the ruler appointed by the *Khalifah* would be a termination of that contract, and the *Khalifah* undoubtedly reserves that right since the Messenger ﷺ appointed the governors and removed them. The righteously guided *Khulafaa'* also appointed the governors and removed them. In the same manner the *Khalifah* could also delegate to those whom he appointed the right to appoint and remove. However, the Court of Injustices (*Madhalim*) does not have the right to remove the rulers on behalf of the *Khalifah*, for it does not act on his behalf in appointing and removal; it rather acts on his behalf in looking into the injustices (*Madhalim*). So if the presence of that ruler in his province was an injustice (*madhlamah*), the court has the right to remove that injustice (*Madhlamah*); in other words, it has the right to remove that ruler from office. Therefore, its power to remove the rulers is not done on behalf of the *Khalifah*, rather it is only removing the injustice (*Madhlamah*), and accordingly those who have been ruled upon to be removed are removed even if the *Khalifah* is not pleased with it, since his removal in this situation is the ruling upon the removal of an injustice (*Madhlamah*), and this applies to everyone including the *Khalifah*, since the ruling of the judge is a ruling for everyone.

As for its powers to remove the *Khalifah*, in the same manner it is ruling upon the removal of an injustice (*Madhlamah*), since if one of the circumstances where the *Khalifah* is removed automatically or necessitated his removal occurs, then his remaining in office would be an injustice (*Madhlamah*). And it is the Court of Injustices (*Madhalim*) which rules upon the removal of the injustices (*Madhalim*), so it is the one who rules upon his removal. Therefore, the judgement of the Court of Injustices (*Madhalim*) to remove the *Khalifah* would be a judgement aimed at removing an injustice (*Madhlamah*), and so if removal of the *Madhlamah* necessitated his removal, the judgement for his removal would be given.

#### **Article 91**

**The Court of Injustice Acts (*Madhalim*) has the authority to investigate any case of injustice (*Madhlamah*), irrespective of whether it is related to officials of the State, the Head of State's deviation from the *Shari'ah* rules, interpretation of the legislative texts in the constitution, law (*qanun*) and other *Shari'ah* rules within the framework adopted by the Head of State, or the imposition of a tax, or anything else.**

Its evidence is that the Messenger ﷺ considered that price-fixing by the ruler was an injustice (*Madhlamah*), and saw that the arrangements of the State in setting the order of people to

irrigate their land from the public water was an issue that could lead to an injustice (*Madhlamah*). This indicates that the action of the ruler which contradicts the Truth or the *Shari'ah* rules is an injustice (*Madhlamah*) if it was connected to the *Khalifah* (Head of State), because the Messenger ﷺ was the Head of State. And if it was connected to officials of the state it would also be an injustice (*Madhlamah*), because they are the delegates of the Head of State, and so it would also be connected to the *Khalifah* because it is connected to the action which they were delegated to and not to themselves as individuals. Accordingly, the narration regarding price fixing is evidence that the violation of the Head of State is an injustice (*Madhlamah*), and the Court of Injustices (*Madhalim*) is the entity which has the power to look into the injustices (*Madhalim*), which is the evidence for the first part of the article.

As for the second part, which is the investigation into a text for the constitution or canons, it is because the constitution is the basic law, and the law is the order of the authority, and so investigating it is investigating the order of the authority. Therefore it comes under the narration regarding price fixing since it is an investigation of the actions of the *Khalifah*. Above and beyond that, Allah (swt) said, ***“and if you differ in anything amongst yourselves then refer it to Allah and His Messenger”*** (TMQ 4:59), or in other words, if you and those in authority differed over something. Differing over an article of the constitution or law is a difference between the subjects and the people of authority regarding a *Shari'ah* rule, and so it is referred to Allah (swt) and His Messenger ﷺ – referring to Allah (swt) and His Messenger ﷺ is referring it to the Court of Injustices (*Madhalim*), in other words, to the judgement of Allah (swt) and His Messenger ﷺ.

With regards to the third part of the article, the Messenger ﷺ said, ***“Whoever I took wealth from, then here is my wealth he should take from it,”*** reported by Abu Ya'la from al-Fadl Bin Abbas, and he ﷺ said, ***“And verily I hope that I will meet Allah without having anyone claiming against me a Madhlamah (complaint) I inflicted on him in blood or wealth,”*** (reported by Ahmad from Anas), and so the taking of wealth from the subjects by the *Khalifah* without right is considered an injustice (*Madhlamah*), and to take the wealth which the *Shari'ah* did not obligate upon the subjects is an injustice (*Madhlamah*), and due to this the Court of Injustices (*Madhalim*) can investigate the taxes since they are wealth taken from the subjects. Its investigation into the taxes is only to see whether that tax is lawfully obliged by *Shari'ah* upon the Muslims, such as the money taken to feed the needy, which would not be an injustice (*Madhlamah*), or whether that tax is not obliged by the *Shari'ah*, such as money taken to build a dam that is not considered essential, which would therefore be an injustice (*Madhlamah*) that has to be removed. This is why the Court of Injustices (*Madhalim*) has the power to examine taxes.

## **Article 92**

**The judiciary of the Injustice Acts (*Madhalim*) is not restricted by a court session or the request of the defendant or the presence of the plaintiff. It has the authority to look into any case of injustice even if there is no plaintiff.**

Its proof is the evidence which confirms the conditions for the correct session to look into a case does not apply to the Court of Injustices (*Madhalim*) due to the absence of a plaintiff, since there is no requirement for the presence of a plaintiff, as it will look into the injustice (*Madhlamah*) even if no one was a plaintiff. Also, the lack of necessity for the defendant to be present, because the court looks into the case without requiring the defendant to be present since it is looking closely at the injustice (*Madhlamah*) and the defendant. Therefore the evidence which makes the court session a condition - which is the words of the Messenger ﷺ ***“that the two disputers should sit between the hands of the ruler”*** reported by Ahmad and



Abu Dawud from ‘Abd Allah Bin al-Zubayr, and ***“if the two disputing parties sat before you”*** reported by Ahmad from Ali (ra) - does not apply. Based upon that, the Court of Injustices (*Madhalim*) can look into the injustice (*Madhlamah*) simply due to it arising, without any restraint at all, neither due to location, time, nor court session, or anything else.

However, due to the position of this court, from the angle of its powers, it used to be surrounded by what gave it an imposing and great image. In the time of the Sultans in Egypt and *ash-Sham* the sitting of the Sultan during which the injustices (*Madhalim*) were looked into was called *“The House of Justice”*, and one of his delegates would undertake the session with judges and jurists present. Al-Maqrizi mentioned in his book entitled *“Al-Suluk Ila Ma’rifat Duwal al-Muluk”* (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 House of Justice. They used to sit there to remove the injustices (*Madhalim*), and there would be witnesses, judges and jurists all present. There is no harm in making the Court of Injustices (*Madhalim*) a splendid building, for this would be from the permitted issues, especially if this reflected the might of justice.

### **Article 93**

**Every person has the right to appoint whomsoever he wishes as a proxy (*wakeel*) for oneself in the disputes and defence, irrespective of whether he is Muslim or not, male or female. There is no distinction in this matter between the commissioner and the proxy. The proxy is permitted to be appointed for a fee according to the terms agreed upon with the commissioner.**

This article explains the permission of proxy in disputes, and its evidence is the evidence for the granting of proxy, since it is general and encompasses every type of proxy. Proxy is confirmed by the *Sunnah*; it is narrated by Abu Dawud with its chain of narration that Jaber Bin Abdullah said: ***“I wanted to go out to Khaybar, so I went to the Messenger of Allah ﷺ and said to him ‘I want to go out to Khaybar’, so he said ‘Go to my proxy, and take fifteen loads, and if he wanted anything from you then place your hand upon his collarbone,”*** (authenticated by al-Hafiz in *al-talkhis*), and it is narrated from him ﷺ that he ﷺ gave proxy to Abu Rafi’ regarding the acceptance of marriage to Maymunah; Ahmad reported in *al-Musnad* from Abu Rafi’: ***“The Messenger of Allah married Maymuna, and I was the messenger between them”***. So anything that the person’s free conduct in is considered valid, and can be deputised, can be given as a proxy, whether male or female, Muslim or disbeliever. Also, the issue of proxy in disputes is itself confirmed by the *Ijma’* of the companions, since Ali (ra) gave a proxy to Uqayl before Abu Bakr (ra) and said ***“Whatever is decided for him is for me, and whatever is decided upon him is upon me”***, and he appointed Abdullah Bin Jafar as a proxy to ‘Uthman (ra) and said ***“Truly the disputes are quhm and the devil attends them, and I hate to attend”***. This was mentioned by Ibn Qudamah in *al-Mughni* and he said “these stories have spread since they are famous and no one mentioned anyone who rejected them”. The meaning of *quhm* is destructive. Based upon this, proxy is permitted when requesting and establishing rights, whether the commissioner is present or absent at the judgement, healthy or sick, and the agreement of the disputing party is not required since it is a right in which deputising is permitted without any restrictions irrespective of whether the disputing party agreed or not.

It is permitted for the proxy to be appointed for a fee, since it is a permitted type of employment, as employment is general and encompasses every issue including deputising. Because the definition of employment is a contract upon an exchange of a service for compensation and this applies to the service of proxy and so the definition applies to it. So if the appointment of proxy is done for a fee, then the proxy is entitled to the fee from the commissioner according to the terms that they are both content with. However, it is

imperative that a contract of employment is put into effect and that both of them agree upon it in order for him to be entitled to the fee, because the appointment of proxy itself is a contract which does not necessitate any fee, but an agreed fee upon the contract is what would necessitate it. Accordingly, it is imperative that there is a contract of employment upon the proxy along with the contract of appointing the proxy. Both appointment of proxy and taking fee are permitted without restriction, irrespective of whether the person takes it as a profession with which he makes his living out of or not, and due to this the work of what is known today as lawyers and barristers is considered valid in terms of being valid to take a fee for it, but their seeking judgement from *Kufr* laws to confirm the truth from the falsehood is what is not permitted. Rather the truth is what Islam confirmed as the truth, and the falsehood is what it made false, and there is no value for what is different from that even if the rules of *Kufr* confirmed it.

#### **Article 94**

**It is permitted for the one who has been vested with a specific responsibility, like a custodian or guardian, or general responsibility such as the *Khalifah*, ruler, civil servant, *muhtasib*, or judge of the Court of Injustice Acts (*Madhalim*), to appoint a person to his position as a proxy - within the bounds of his authority – in disputes and defence alone, and there is no difference whether they were the plaintiff or defendant.**

Its evidence is the evidence for the giving of proxy, since as it is valid for a person to deputise another person to act on their behalf in the issue they have control over such as buying, selling, and disputes, in the same manner it is valid to deputise another person to act on their behalf in the issues they are acting on, on behalf of someone else. So the proxy, if given the right to deputise in the issue that they were given the proxy in, can deputise someone for themselves in that which they have control over as a result of being given the proxy. Accordingly, the guardian can deputise someone else to act on their behalf with the wealth of the one they are guardian over, and in the same manner the custodian of the *waqf* is permitted to deputise whomever they please in all the affairs that he has the power of control over from the leasing of the *waqf* and so on. Similar to them is the ruler, who is permitted to deputise whomever he pleases in any of the issues he has control over. Unless the ruler is the *Khalifah*, in which case it is permitted for him to deputise whomever he pleases because he possesses control over every matter, and so he is like the one who deputises on his own behalf, whereas anyone other than the *Khalifah*, from those who are his delegates such as the assistants, governors, and department managers, do not have the power to deputise on their behalf in that which they have been deputised control over unless the *Khalifah* gave them the right to do so. This is because they are the delegates of the *Khalifah*, and so they are similar to the deputies, and the deputy has no right to deputise his duty unless he was given that right. So if his deputation gave him that power, then he would have the right of deputation irrespective of whether he was a plaintiff or defendant, since the right to deputise is general and encompasses every issue that he acts in. Based upon that, what is known today as the attorney general (lawyer of the government), and the public prosecutor and prosecution, or anything else similar, then from the angle of the rules of proxy the work is valid according to the *Shari'ah*, since the *Shari'ah* permitted this type of deputation.

#### **Article 95**

**The contracts, transactions, and verdicts which were ratified and whose implementation was completed before the establishment of the *Khilafah* are not nullified by the judges of the *Khilafah* and nor do they review them, unless a case:**

- a. **Has a continued effect which contradicts Islam, so it is obligatory to review it.**
- b. **Or if it was connected with harm to Islam and the Muslims which was brought about by the previous rulers and their followers, and so it is permitted for the *Khalifah* to review such cases.**
- c. **Or if it was connected to wealth which had been misappropriated and still remains in the hands of the one who had taken it.**

Considering the contracts, transactions, and cases which were ratified and whose implementation was completed before the establishment of the *Khilafah*, they are considered valid between their parties when their implementation was completed before the *Khilafah*, and the judges of the *Khilafah* do not nullify them nor restart them and would not entertain any discussions around them after the establishment of the *Khilafah*.

There are three exceptional circumstances:

1. If the case which had been ratified and whose implementation had ended, has a continued effect against Islam.
2. If the case was connected to harming Islam and the Muslims.
3. If the case was connected to the misappropriation of wealth which remains in the hand of the one who had misappropriated it.

With respect to not voiding the contracts, transactions and cases which were ratified and whose execution was completed before the establishment of the *Khilafah* state, this is because the Messenger ﷺ did not void the transactions, treaties, and verdicts of the time of *jahiliyyah* when their abode became the abode of Islam (*Dar Al-Islam*). The Messenger ﷺ after the conquest of Makkah did not return to the house which he had emigrated from, when Uqayl b. Abi Talib had inherited – in accordance with the laws of the Quraysh – the houses of his clan who had accepted Islam and emigrated, and had dealt with them and sold them, amongst them the house of the Messenger ﷺ. At that time it was said to the Messenger ﷺ: "Which house will you take?", and so he ﷺ said **"Did Uqayl leave us a residence?"** and in a narration **"Did Uqayl leave a house for us?"**, and he had sold the houses of the Messenger of Allah ﷺ and he ﷺ did not void those transactions. And the narration as reported by al-Bukhari from Usamah Bin Zayd **"He said at the time of the conquest: O Messenger of Allah where will you stay tomorrow?" The Prophet ﷺ said "And did Uqayl leave a house for us?"**. In the same vein it is reported that when Abu 'l-'Aas b. al-Rabi' became Muslim and emigrated to Madinah – and his wife Zaynab, the daughter of the Messenger of Allah ﷺ, had become Muslim and emigrated after Badr while he remained on his *Shirk* in Makkah – the Messenger returned his wife Zaynab to him without renewing his marriage contract with her, confirming the contract they had in the period of *jahilliyyah*. Ibn Maja reported from Ibn Abbad **"The Messenger of Allah ﷺ returned his daughter to Abu al-'As b. al-Rabi' after two years, upon their first marriage contract"** and in the report in Ahmad **"Yazid said to us that Muhammad Bin Ishaq informed us from Dawud Bin Husain from Akrama from Ibn 'Abbas that the Messenger of Allah returned his daughter to Abu al-Aas, her husband, upon the first marriage contract after two years and did not take a new dowry"**. This took place after Abu al-'As had embraced Islam.

With regards to dealing with the cases that have a continuous effect that contradicts Islam, the Messenger of Allah ﷺ voided the interest that remained upon the people after they became part of the Islamic State, and allowed them to keep their capital. In other words, once *Dar Al-Islam* was established whatever was left to them in terms of interest was voided. Abu Dawud reported through Sulayman b. 'Amr from his father: I heard the Messenger of Allah ﷺ say in his farewell pilgrimage: **"All of the interest from the time of jahilliyyah is voided. Your capital is yours to keep; you will neither inflict nor suffer oppression"**.

In the same manner, those who had married more than four in accordance with the laws of *jahilliyyah*, after they were part of the *Dar Al-Islam* they were compelled to keep just four. Al-Tirmidhi reported from Abdullah Bin Umar that Ghaylan Bin Salamah al-Thaqafi embraced Islam, and he had ten wives in *jahiliyyah* who embraced Islam with him, ***“so the Prophet ﷺ ordered him to select four from amongst them”***.

Based upon this, the contracts which have a continuous effect that contradicts Islam are to have the effect removed after the establishment of the *Khilafah*, and this removal is obligatory.

For example, if a woman embraced Islam and she was married to a Christian before Islam, after the *Khilafah* this contract would be voided in accordance with the *Shari'a* rules.

As for dealing with the cases that inflict hurt upon Islam and the Muslims, this is because the Messenger ﷺ ordered the killing of a few men who had caused harm to Islam and the Muslims during the time of *jahiliyyah* after the conquest of Makkah, and so they were killed even if they tied themselves to the curtains of the Ka'bah, in knowledge that the Messenger of Allah ﷺ said ***“Islam wipes away what was before it”*** (reported by Ahmad and al-Tabarani from ‘Amru b. al-‘As); in other words, whoever harms Islam and the Muslims is an exception to this narration.

Since the Messenger ﷺ gave amnesty to some of them, such as ‘Ikrimah b. Abi Jahl, it is permitted for the *Khalifah* to apply the case upon them or give them amnesty. This is applied upon those who torture the Muslims due to their saying the word of truth, or those who defame Islam, and so the narration ***“Islam wipes away what was before it”*** does not apply to them, rather they are an exception to it, and the application of the case upon them is in accordance with whatever the *Khalifah* decides.

As for dealing with cases to do with misappropriated wealth that remains with the one who misappropriated it, Muslim reported from Wa'il Bin Hujr who said ***“I was with the Messenger of Allah ﷺ when two men disputing over a piece of land came to him. One of them said: Messenger of Allah, this man appropriated my land without justification in jahiliyyah (the days of ignorance). The (claimant) was Imru' al-Qays Bin 'Abis al-Kindi and his opponent was Rabi'a b. 'Ibdan. He ﷺ said (to the claimant): Have you evidence (to substantiate your claim)? He replied: I have no evidence. Upon this he ﷺ remarked: Then his (that is of the defendant) is the oath. He (the claimant) said: In this case he (the defendant) would appropriate this (the property). He ﷺ said: There is then no other way left for you but this. He (the narrator) said: When he (the defendant) stood up to take oath, the Messenger of Allah ﷺ said: Whoever appropriated the land wrongfully would meet Allah in a state that He would be angry with him”***.

The Messenger accepted to listening to the claim of the man regarding land misappropriated with knowledge that this occurred in *jahilliyyah*.

Accordingly, whoever took a piece of land, or misappropriated a pasture of an individual's wealth, or took some wealth from the public or state property, and it was misappropriated, the claim regarding it would be accepted.

As for anything other than these three situations, the contracts, transactions, and cases before the *Khilafah* are not voided nor restarted, so long as they had been concluded and executed before the establishment of the *Khilafah*.

For example if a man had been given a two year jail sentence for the charge of breaking school doors, and he had completed the two years before the establishment of the *Khilafah* and had left prison, and then after the establishment of the *Khilafah* he wanted to make a claim against his imprisonment since he thought he did not deserve prison, this claim is not accepted, since the case occurred and was ruled upon and executed before the establishment of the *Khilafah*, and so his account is with Allah (swt).

If a man was sentenced to ten years of which two years had passed and then the *Khilafah* was established, then in this case the *Khalifah* can look into it, and can remove the punishment in its entirety, so the man leaves prison innocent of what he was accused of, or suffices with what was spent, in other words the sentence given to him is considered to be two years and he leaves the prison or the remaining sentence is looked at and the *shari'a* laws are complied with in respect to what has a relation to what is correct for the citizens, and especially the cases connected to the individuals' rights, and what is correct between people.

## The Administrative System

### Article 96

**Management of the government's and people's affairs is carried out by offices, departments, and administrations, whose task is to ensure the management of the State's business and the carrying out of the people's interests.**

The Messenger of Allah ﷺ used to run and carry out the affairs and appoint secretaries for their administration. Thus, the Messenger ﷺ used to carry out the affairs of the people in Madinah, solve their problems, organise their relations, secure their needs, and direct them to that which suited them. All of these matters are of the administration issues that eased their life from problems or complications:

In matters of education, the Messenger of Allah ﷺ made the ransom of the disbelieving prisoners of war the teaching of ten Muslims, where the ransom (the teaching of ten Muslims) was in return for spoils (education), which became property of the Muslims. Thus, securing education was one of the Muslims' affairs.

In healthcare, the Messenger of Allah ﷺ was given a doctor as a gift, but he assigned him to the Muslims. The fact that the Messenger of Allah ﷺ received a gift and he ﷺ did not use it, nor take it, but rather assigned it to the Muslims is evidence that healthcare is one of the interests of the Muslims.

In regards to employment, the Messenger of Allah ﷺ directed a man to buy a rope and then an axe and collect firewood and sell to the people instead of begging from them, where somebody might give him while another would resist. Thus, solving the problems of work was also one of the Muslims' interests. Abu Dawud and Ibn Maja narrate: *"A man from the Ansar came to the Prophet ﷺ and asked from him (Sadaqah). The Messenger ﷺ said 'Don't you have anything in your house?' He said, 'Yes.' The Prophet ﷺ said, 'Bring them to me.' He brought them to him. The Messenger of Allah ﷺ took them in his hand, and said, 'Who would buy these two?' A man said, 'I would take them for two dirhams.' He gave them to him and took the two dirhams. He gave them to the Ansari and said, 'Buy with one of them and give it to your family and buy with the other an axe and bring it to me.' He brought it to him. Then he tied with his hand a rod to it and said, 'Go and collect firewood and sell, and do not let me see you for fifteen days.' He did that, and came back having ten dirhams".*

Al-Bukhari reported from Abu Hurayrah that the Messenger of Allah ﷺ said: *"It is better for any one of you to take a rope and bring a bundle of firewood on his back, and sell it, than to beg the people, who might give him or reject".*

On the issue of roads, the Messenger of Allah ﷺ organised the roads at his time by making the road of seven cubits in case of dispute. Al-Bukhari narrated from Abu Hurayrah *"The Prophet ﷺ decided in case there was a dispute the road would be of seven cubits".* The narration by Muslim says: *"If you had disputes over the road make its width seven cubits".* Ahmad reported from Ibn 'Abbas *"The Messenger of Allah said: The space between the road is seven cubits"* and in another report by Ahmad from 'Ubada b. al-Samit *"In a case regarding the public space of a pathway that the people wanted to build in he judged that seven cubits should be left for the path".*

This was from the administrative organisation of that time, and if there is need for wider than that it is allowed according to the opinion of the school of al-Shafi'i.

The Messenger of Allah ﷺ has also prevented transgression against the road. Tabarani reported in *Al-Sagheer*: *"Whoever took a handsan of the road of Muslims Allah would encircle him from seven earths on the Day of Judgement."*

In matters of agriculture, Al-Zubayr disputed with a man from the Ansar regarding irrigating from a stream of water flowing in their lands. The Messenger of Allah ﷺ said: ***“O Zubayr! Irrigate and then send the water to your neighbour”*** (agreed upon with the wording from Muslim).

Thus, the Messenger of Allah ﷺ used to run the affairs of the Muslims and solve their problems easily and simply, without complication. He ﷺ used to seek the help of some of the companions in conducting that, thus making the affairs of the people an organisation entrusted to the *Khalifah*, or he appointed a competent manager over it that took charge of it. This is what is adopted here so as to reduce the burden of the *Khalifah*, particularly since the affairs of the people have increased and branched out. Accordingly, there would be an organisation for the people's affairs entrusted to a competent manager, and run by styles and means that assist the citizens living there, that provides for them the necessary services without complication and rather provides ease and simplicity.

This system consists of administrations, departments, and directorates. The administration is the overall management of any government affair, such as citizenship, transportations, money coinage, education, health, agriculture, employment, roads and others. This administration would undertake the management of its own affairs and all the departments and directorates under its control. The department would also 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 carry out the peoples' interests.

The administrative apparatus is a style from the styles of undertaking an action, and is an instrument from the various means, and so it does not require a specific evidence; it is sufficient to provide a general evidence that indicates its origin, and it cannot be argued that these instruments are the actions of the worshipper and therefore it is not correct for them to proceed except in accordance with the *Shari'ah* rules. The reason this cannot be argued is because these actions are based upon a general evidence for their origin, and so it encompasses everything that branches off it in terms of actions, unless a specific *Shari'ah* evidence for the action which is a branch of the origin is found in which case the specific evidence is followed. For example, Allah (swt) says ***“And give Zakat”*** (TMQ 73:20), which is a general evidence, and there are evidences for the actions which branch out from it, for the calculation of the *nisab* (amount after which *Zakat* is due upon the wealth), the collectors, and the categories which are eligible to receive the *Zakat*; these are all actions which branch out from ***“and give Zakat”***. There are no evidences regarding how the collectors should collect it, whether they should be riding or walking, should they employ some people to help them with it or not, should it be recorded in a booklet, are they assigned a place where they gather, should they have a storage in order to place in it whatever is gathered, should the storage be underground or built like the grain warehouses and should the *Zakat* which is monetary be collected in bags or boxes. These and similar issues are actions which branch out from ***“and give Zakat”***, and they are encompassed by the general evidence since there is no specific evidence regarding them. This is the same for all the styles. Accordingly, the style is the action that is a branch of an action that has general evidence. Consequently, there is no need for it to have evidence, since the general evidence of its origin is an evidence for it.

For that reason the administrative styles can be taken from any system, if they were suitable to make the work of the administrative apparatus easier and fulfil the needs of the people, since the administrative styles are not a rule that requires *Shari'ah* evidence. Due to this, Umar (ra) took the style of the *diwan* (register) for recording the names of the soldiers and citizens, in order to distribute the wealth to them from the public or state wealth such as benefits or salaries.

‘Abid Ibn Yahya reported on the authority of al-Harith b. Nufayl that Umar (ra) consulted the Muslims about the recording of *Dawawin*, and ‘Ali b. Abi Talib (ra) suggested, “Divide all

the funds you collect each year and do not keep any of it.” ‘Uthman b. ‘Affān (ra) said, "I see that there are a lot of funds being distributed amongst 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-Walid b. Hisham b. al-Mughira said, "I was in *al-Sham* and I noticed that its kings had introduced a *Diwan* and recruited soldiers, so why don't you do the same?" Umar (ra) took his advice and summoned ‘Aqil b. Abi Talib and Makhramah b. Nufayl and Jubayr Ibn Mat‘am, who were young men from Quraysh, and said, "Record the people according to where they live."

When Islam reached Iraq, the *diwan* of payments and fund collection continued as before. The *diwan* of *al-sham* was in Latin for it had been part of the Roman Empires, and the *diwan* of Iraq was in Persian for it had been part of the Persian Empire. At the time of Abdul Malik Ibn Marwan the *diwan* of *al-sham* was translated to Arabic (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 *diwan* was introduced for the ‘*Amils* and *Walis* to record each appointment and each removal and other *dawawin* were used in the treasury (*Bayt al-Mal*) to record revenues and expenses and so on. The introduction of a *diwan* was depending on 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 *diwan* along with other employees, and in some cases the chief was allowed to appoint the employees himself, and they were sometimes appointed to him.

A *diwan* would thus be set up according to need, along with the styles and means that would help in carrying out that need. It is permitted to have different styles and means in every era, and in every province, and in every country.

#### Article 97

**The policy of the administration of services is based on simplicity of the system, speed in processing tasks and competence of the administrators.**

This is taken from the nature of processing the services, for the person who requires a service needs to have it quickly and efficiently processed. The Messenger of Allah ﷺ said ***“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 b. Aws). Therefore, the perfection in executing actions is ordered by the *Shari'ah*. 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 that would spare people of unnecessary delay. **Thirdly**: the ability and competence of the employees. This is required to perfect the performance and result of the task.

The reported evidences regarding these three include:

#### **Simplicity**

- The agreed upon narration from Abu Musa with the wording from al-Bukhari: from Sa'id b. Abi Burdah from his father from his grandfather: When the Messenger ﷺ sent Mu'ath Bin Jabal he said: ***“Make things easy, and do not make them difficult, and give glad tidings, and do not let them have aversion (to good deeds – such as by being difficult or heavy upon them) and you both should work in cooperation and mutual understanding.”***



- The narration of ‘Amru b. Murra found with al-Hakim who authenticated it and al-Dhahabi confirmed it, he said: I heard the Messenger of Allah ﷺ say ***“Whoever closes the door to those who have a need, those with nothing, and the poor, Allah will close the door of the sky to him in his poverty and neediness.”***
- The narration of Abu Maryam al-Azdi with al-Hakim who authenticated it and al-Dhahabi confirmed it: I heard the Messenger of Allah ﷺ ***“Whoever is in charge of anything of the Muslims’ affairs, and withdraws himself without solving their needs, poverty, and wants, Allah withdraws Himself on the Day of Judgement from his needs, wants and poverty”***. Al-Hakim said in *al-Mustadrak ‘ala al-Sahihayn*: This narration has an authentic chain, Bukhari and Muslim did not report it, and its chain is an authentic *shami* one.
- The narration of Mu’adh with Ahmad and authenticated by al-Zain: The Messenger of Allah ﷺ said: ***“Whoever takes charge of anything of the peoples’ affairs, and withdraws himself from those who are weak and needy, Allah Withdraws from him on the Day of Judgement”***

#### Speed in completion

- Al-Tabarani with a chain whose men are all trustworthy except for Baqiya, who is disagreed upon, from Abu Hurayra who said: The Messenger of Allah ﷺ said ***“I warn you from ‘iqrad.” They asked: O Messenger of Allah what is ‘iqrad? He said: For one of you to be an Amir or an ‘amil, and so the widowed and weak come to him and it is said to him: Wait until we consider your need, and so they are left waiting, their need is not dealt with nor are they told what to do and so they leave, and a rich noble man comes and so they sit by his side and then say: What is your need? And so he replies such and such. And so he said: Take care of his need, and be quick about it”***.
- Ibn Shihbah in his *Ta’rikh* reports from Ibn Shuthab who said: Umar (ra) said “O people, do not delay today’s work until tomorrow, since if you did that the work would catch up with you such that you would not know to start what you left.”
- Al-Shafi’i said in *al-Umm*: More than one person of the people of knowledge informed us that when Umar Bin al-Khattab (ra) came to see what they had gained from Iraq, the treasurer said to him: I will put it in the treasury (*Bayt al-Mal*). He said: No by the Lord of the Ka’ba, it will not be placed under the roof of a house until I have divided it.
- Ahmad in *al-Zuhd* and Ibn ‘Abd alBirr in *al-Isti’ab* and Ibn Abi ‘Asim in *al-Zuhd*, from a number of people – that Ali (ra) used to order for the treasury to be swept and washed, then he would pray in it hoping that he would see the Day of Judgement and there was nothing being held in the treasury from the Muslims’ wealth.

#### Capability

- Ahmad from Huthaythah, with a *Hasan* chain, that the Messenger of Allah ﷺ said ***“A people who were weak and poor fought against a people who were strong and plentiful, and so Allah gave the victory to the weak amongst them, and so they took revenge upon their enemy by dominating them, and so Allah became angry with them until the day they would meet Him”***
- Muslim from Abu Musa who said that the Messenger of Allah ﷺ said ***“I swear by Allah I would not appoint over this work anyone who asked for it nor anyone who covets it.”***
- Al-Bayhaqi in *Al-Shub* from Umar (ra) who said “The only one who should judge between people is the one with sound judgement, skillful, does not look for shameful acts, is not hateful of his people, and is not afraid of the blame of the blamers.”

- Al-Hakim in *al-Mustadrak* mentioned a narration from Zayd b. Aslam, from his father, from Umar (ra), which he authenticated and al-Dhahabi confirmed that: Umar (ra) said to his companions: Wish for something. Some of them said: I wish that this house was full of gold, which I could spend in the cause of Allah and give charity. A man said: I wish it was full of crystals and jewellery so I could spend it in the cause of Allah and give charity. Then Umar (ra) said: Wish for something, and so they said: We don't know O Leader of the Believers. And so Umar (ra) said: I wish that this house was full of men like Abu Ubaydah b. al-Jarrah and Mu'adh b. Jabal and Salim the servant of Abu Huthayfah Huthaifah b. al-Yaman."

#### **Article 98**

**Anyone who carries citizenship, and is competent, whether male or female, Muslim or non-Muslim, can be appointed as a manager for an administration, a department, or a division, and to be a civil servant in it.**

This has been taken from the rules regarding employment, since it is permitted to employ any employee, irrespective of being Muslim or non-Muslim, due to the generality of the evidences of employment; Allah (swt) said *"Then if they give suck to the children for you, give them their due payment"* (TMQ 65:6) which is general, and it is reported in al-Bukhari from Abu Hurayrah that the Messenger ﷺ said *"Allah said: Three who I am against on the Day of Judgement...A man who hires a worker who completes his work and then does not give him his wage"* which is general and not specific to the wage of Muslims. The Messenger ﷺ employed a man from *Bani al-Dayl* who was upon the religion of his people, which indicates the permissibility of employing a non-Muslim in the same way as a Muslim. And in the same manner it is permitted to employ a woman in the same way that it is permitted to employ a man due to the generality of the evidences as well. Accordingly, it is permitted for a woman to be the manager of a department in a state department, and to be a civil servant in them, and it is permitted for a non-Muslim to be a manager of a department from the state departments as well as to be a civil servant, since they are employees, and the evidences for employment are general.

#### **Article 99**

**A general manager has to be appointed for each office; and every department and administration has a manager who is responsible for its management, and is directly responsible for it; and they are accountable in terms of their work to whoever is in charge of the highest post of their offices, departments or administrations; and they are accountable in terms of their adherence to the general rules and systems by the governor and 'Amil.**

In order for the offices, departments, and administration to work they must have managers. Therefore every office has a general manager who is directly in charge of managing the office affairs, and is responsible over all of the departments and administration that come under it. Each department and administration has an appointed manager who is directly responsible for it, and for all that comes under it in terms of branches and sections.

This is with respect to establishing the administration of offices, or establishing the *diwan*, however, with respect to the responsibility of these civil servants, they are employees, and at the same time they are citizens, and so from one angle they are employees, in other words from the angle of undertaking their work, they are accountable to their department head, or

manager. And from the angle that they are citizens, they are accountable to the rulers from the governors and assistants, and in front of the *Khalifah*, and they are restricted by the *Shari'ah* rules, and the administrative systems.

#### **Article 100**

**The managers in all departments, administrations, and divisions are not dismissed except for reasons connected with the administrative systems, but it is permitted to transfer them between posts or to suspend them from working. Their appointment, transfer, suspension, discipline, and removal are all done by whoever is in charge of the highest post of their office, department, or administration.**

This is taken from the rules of employment, since if the employee is employed for a period it is not correct to remove him from what he has been employed to do, but it is possible to vacate him from the work, which is called suspension. However in this situation he deserves his pay, since employment is from the binding contracts and not the permitted contracts, so if the employment contract is contracted then the contract is binding upon both parties. As for the adherence to the administrative systems, this is like the conditions of employment, and so it is necessary to fulfil them; the Messenger ﷺ said *“The Muslims are bound by their conditions”* reported by Abu Dawud from Abu Hurayra, and in the report by al-Hakim and al-Daraqutni from Aaisha (ra): *“The Muslims are bound by their conditions”*. As for transferring the person between posts, this is according to the contract of employment, so the one who is employed to dig a ditch is not transferred to building houses, and the state departments are the same manner. If someone is given a general appointment for a specific work, then it is permitted to transfer him from place to place in that work, and if he was given a general appointment, then it is permitted to transfer him without any restrictions; in other words his transfer is carried out according to the contract of appointment.

#### **Article 101**

**The civil servants other than the managers are appointed, transferred, suspended, disciplined, and removed by the one who is in charge of the departments, administrations or divisions.**

The civil servants in the state are all employees, in accordance with the rules of employment. Their appointment and removal, transfer and discipline, are done by the one responsible for the highest administration of their offices, departments or administration.

This is based on the rules regarding employment, since it is obligatory to adhere to whatever is necessitated by their contract, just as it is obligatory upon him to adhere to what he was contracted for, since the contract is binding upon both parties upon what they agreed, so if the employee is employed for a period, it is not valid to remove him from what he was employed to do for the defined period.

As for the adherence to the administrative systems, this is considered from the conditions of employment that must be adhered to. He ﷺ said, *“The Muslims are bound by their conditions”* (reported by Abu Dawud from Abu Hurayrah). With respect to transferring the civil servants from one task to another, this falls under the employment contract and so it is treated according to the contract when appointed.

The one responsible to appoint, discipline and remove them is the one who is in charge of the highest administration of their offices, departments, and administrations, since he is the one who is responsible for the office they work in, and is the one who has the power that is necessitated by the responsibility he has been assigned to.



## The Treasury (*Bayt al-Mal*)

### Article 102

**The treasury (*Bayt al-Mal*) is the administration responsible for the revenues and expenditure in accordance with the *Shari'ah* rules in terms of their collection, storage and spending. The head of the office of the treasury is called the Treasurer of the Treasury (*Khazin Bayt al-Mal*). The offices in the provinces fall under it and the head of each office is called the Trustee of the Treasury (*Sahib Bayt al-Mal*).**

*Bayt al-Mal* is a noun made from a genitive construction. It is used to mean the place where the state's revenues are kept until they are spent. It could mean the authority responsible for receiving and spending the funds entitled for Muslims.

We have adopted – as we explained earlier - that the governor is given a special authority that excludes the army, judiciary and funds. Thus, the whole army will be a central department (presided over by the *Amir of Jihad*). The judiciary will be a central department (known as judiciary) and the entire funds form a central department (known as the treasury), which is separate from any other organisation in the State, and is subordinate to the *Khalifah* as are the other organisations.

This is in addition to the fact that there are abundant evidences that the treasury was under the direct authority of the Messenger ﷺ or the *Khalifah*, or whoever he appointed to preside over it. The Messenger of Allah ﷺ would sometimes deal directly with the funds and he ﷺ had a safe. He ﷺ used to receive the funds, distribute them, and spend them in their due place. On other occasions he ﷺ used to appoint somebody to take care of that. This is what the righteous *Khulafaa'* used to do after him ﷺ, where they either took charge of the treasury by themselves, or they delegated others to do that on their behalf.

The Messenger of Allah ﷺ used to place the funds in the mosque, as Al-Bukhari narrated from Anas, he said: ***"Some funds were brought to the Prophet ﷺ from Bahrain. He said: 'Spread it in the mosque.'"***

He would sometimes put it in one of the rooms of his wives, as it was narrated by Al-Bukhari from Uqbah, he said: ***"I prayed the afternoon behind the Prophet ﷺ in Madinah. He gave salam at the end of the prayer and stood up quickly. He crossed the lines of the Muslims behind him going to some of his wives' rooms. The people were amazed at his speed. He came back to them, and saw they were surprised at his speed. He said, 'I remembered some gold dust with us, so I hated it would occupy me, and I ordered it should be divided'".***

With respect to keeping it in a safe - Muslim narrated from Umar (ra) that he said: ***"So I said to her, 'Where is the Messenger of Allah ﷺ?' She said 'He is in his safe in the wooden oriel.' I gazed in the safe of the Messenger of Allah ﷺ and I suddenly saw an amount of barley of about one sa' (a small cubic measure) and equal to that of tree fruits used for juice on one side of the room. I saw as well an un-tanned skin hanging in the room. My eyes wept. The Prophet said 'What makes you weep, son of al-Khattab?' I said 'O Prophet of Allah! Why I should not weep when this mat has influenced your side and this is your safe in which I do not see except that which I see'."***

At the time of the righteous *Khulafaa'*, the place in which funds were kept came to be known as *Bayt al-Mal*. Ibn Sa'd mentioned in *al-Tabaqat* from Sahl Ibn Abu Hathmah and others: "Abu Bakr used to have a house in Al-Sanh not guarded by anybody. So it was said to him, 'Why do you not put somebody to guard it?' He said, 'It has a lock.' He used to give out that which was in it until it became empty. When he moved to Madinah, he moved it and placed it in his house." Hinad narrated in *al-Zuhd* with a good chain from Anas, he said: "A person came to Umar and said, 'O Leader of the Believers! Support me for I want to go in Jihad.

Umar replied, ‘Hold his hand and take him to *Bayt al-Mal* so he can take the funds he wants.’ In *al-Sunan al-Kubra* by al-Bayhaqi, which was authenticated by Ibn Hajar from ‘Abd Allah b. Wadi‘ah, said: “Salim, the servant of Abu Hudhayfah, was a servant to a woman from us called Salma bint Ye‘ar, she freed him in her days of Jahiliyyah. When he was killed in al-Yamamah, his heritage was brought to Umar Ibn al-Khattab. So he called upon Wadi‘ah Ibn Khidham and said, ‘This is the heritage of your servant, and you deserve it more.’ He said, ‘O Leader of the Believers. Allah has made us of no need to him. Our woman has freed him unrestricted; so we do not want to bring disgrace to ourselves, (or to bring loss upon us) from his matter.’ So, Umar put his inheritance wealth in the *Bayt al-Mal*.” Al-Bayhaqi and al-Darimi narrated, and Ibn Hazm authenticated it: “Sufyan b. ‘Abd Allah b. Rabi‘ah al-Thaqafi found a leather bag and brought it to Umar b. Al-Khattab. He said, ‘Announce it for one year; and if it was recognised (by someone) then give it (to them), otherwise it is yours.’ No body recognised it, so he met him the next year and mentioned it to him. Umar said, ‘It is yours, for the Messenger of Allah ﷺ ordered us to do that.’ He said, ‘I do not want it.’ Umar took it and put it in the *Bayt al-Mal*.” Al-Darimi and Ibn Abi Shaybah narrated from ‘Abd Allah b. ‘Amru who said: “A servant passed away at the time of Uthman without having a relative. So, he ordered that his wealth be put in *Bayt al-Mal*.” Ibn ‘Abd al-Barr narrated in *al-Istidhkar* from Anas Ibn Sirin “Ali used to divide the funds until the *Bayt al-Mal* became empty, then he would wash it and sit inside.”

This is in regards to the first meaning of *Bayt al-Mal*, which is the place. With regards to the second meaning, which is the responsible authority, this is necessitated by the fact that the funds are sometimes not kept in a place, such as the lands, oil wells, gas wells, mines, and the charity funds that are taken from the wealth and paid to its deserving people without being kept in a place. The *Bayt al-Malis* sometimes used to mean the responsible authority as narrated by al-Bayhaqi in *Sunan*, Ahmad in *al-Musnad*, and ‘Abd al-Razzaq in His *Musannaf*, from Lahiqa Ibn Hameed **“Ibn Mas‘ood was sent to preside over the judiciary and *Bayt al-Mal*.”** It would not mean that Umar (ra) sent him as a doorman to the *Bayt al-Mal*, but rather he meant that he was responsible to collect and spend the funds. This is the same meaning as narrated by Ibn Al-Mubarak in *al-Zuhd* from al-Hasan, when the leaders of Basra came with Abu Musa al-Ash‘ari and requested him to assign food for them. He said, in concluding his words to them: ‘O Leaders! I have assigned two sheep and two patches of arable land to you from the *Bayt al-Mal*’; thus it can mean the responsible authority.

The one that disposes of the revenues and deals with the expenses of *Bayt al-Malis* is the *Khalifah*.

The Messenger of Allah ﷺ was the one that received the donations of ‘Uthman (ra) to the army of hardship (*‘usrah*) in his lap. Ahmad narrated and Al-Tirmidhi reported a narration - they considered it to be *Hasan gharib*, and al-Hakim authenticated it and al-Dhahabi agreed with him - from ‘Abd al Rahman b. Samrah that he said: **“Uthman came to the Prophet ﷺ with one thousand dinars when he prepared the Army of the Hardship (Tabuk) and he emptied it in the lap of the Prophet ﷺ. He said the Prophet ﷺ started to turn them around and say: ‘Uthman will not be harmed by any work he does after today, and he repeated it many times’.”** He ﷺ used sometimes to divide them by himself. Al-Bukhari narrated from Anas: **“Funds from Bahrain were brought to the Prophet ﷺ. He said ‘spread them in the mosque’. When he finished the prayer, he sat down close to them and left nobody he saw without giving him. So, when the Messenger of Allah ﷺ stood up there was not a single dirham left with them”.**

Abu Bakr (ra) took responsibility of dividing by himself the funds coming from Bahrain. Al-Bukhari narrated from Jabir who said: **“The Messenger of Allah ﷺ said: ‘If funds came from Bahrain, I would give you thus and thus and thus, i.e. three times. When the Messenger of Allah ﷺ passed away and the funds came from Bahrain, Abu Bakr ordered somebody to call: Whoever has some debt or something with the Messenger of Allah ﷺ let him come to us. So I went to him and said the Messenger of Allah ﷺ said: ‘for me is thus and thus, so he gave me three times.’”**

In the narration mentioned above of Sufyan al-Thaqafi regarding the leather bag which he found and announced to Umar (ra): “Umar took it and put it in the *Bayt al-Mal*”. Al-Shafi‘i reported in *al-Umm* “More than one of the scholars told us that when the spoils of Iraq reached Umar Ibn al-Khattab, the trustee of the *Bayt al-Mal* told him, ‘let me put them in the *Bayt al-Mal*’. He said: ‘No! By the Lord of the Ka’bah, it will not be kept in any house until I have divided it.’ So he ordered it should be put in the mosque, and leather mats were put on top of it and men from the Muhajir and al-Ansar guarded it. In the morning, al-‘Abbas b. ‘Abd al-Muttalib and ‘Abd al-Rahman b. ‘Awf went out with him, he was either holding the hand of one of them, or one of them was holding his hand. When they saw him, they removed the leather mats away from the funds. So, he saw a scene he never saw before. He saw the gold, sapphire, crystals, and pearl sparkling and he cried. One of them said to him, ‘By Allah! This is not a day of crying, rather a day of praising and delight.’ He said ‘By Allah! I did not think of it your way. Rather, such funds will not increase in any people except their harm falls between them.’ Then he turned to the Qiblah, rose up his hands and said, ‘O my Lord! I seek protection with you from being allured, for I hear You (swt) saying: **“We lead them on from whence they do not know”**. (TMQ 7:183). Then he said, ‘Where is Suraqah Ibn Ja’sham?’ He was brought to him while his arms were hairy and slim. He gave him the two bracelets of Kisra. He said, ‘Wear them’ and he did. He then said, ‘Allah is great.’ He said, ‘Allah is Great’ He said, ‘Say all Praise is to Allah, who wrested them from Kisra Ibn Hirmiz and dressed Suraqah b. Ja’sham with them, a Bedouin from Bani Midlaj.’ He started to turn over the funds with a stick and said, ‘Indeed the one that rendered that is honest.’ A man said to him, ‘Let me tell you, you are the trustee of Allah (ameen), and they render to you that which you rendered to Allah. So, if you reveled they would revel.’ He said, ‘You said the truth.’ then he distributed it”. We mentioned before also the narration of ‘Abd Allah b. ‘Amru as reported by al-Darimi “A servant passed away at the time of Uthman without having a relative. So, he ordered that his wealth be put in *Bayt al-Mal*”. This is aside from the narration of Anas Ibn Sirin in *al-Istidhkar* that “Ali used to divide the funds until the Bayt al-Mal became empty, then he would wash it and sit inside (on the floor).”

The Messenger of Allah ﷺ would sometimes appoint one of his ﷺ companions to preside over the division of the funds, or he ﷺ used to appoint him over some of the issues of the funds. Al-Bukhari reported a narration from ‘Uqbah that the Messenger of Allah ﷺ said: **“I remembered some gold dust with us, so I hated it would occupy me and so I ordered it should be divided”**. The narration of Ibn Shihab, as reported by Ibn Abi Shaybah through a narration considered *Hasan* by al-Hafiz Ibn Hajar al-‘Asqalani, al-Mundhiri and al-Haythami says: **“The Messenger of Allah ﷺ entered the safe of Bilal in which he put the Sadaqah (charity) and found in it a heap of dates, so he said, ‘What are these dates, O Bilal?’ He said ‘O Messenger of Allah, I took it for your hard times.’ He said, ‘Do you feel safe from waking up and finding it to fume in Hell? Spend and do not feel fear of reduction or stinginess from the Owner of the Throne.”** And also in the narration: “‘Abd al Rahman b. ‘Awf used to take charge of the Sadaqah of camels and sheep at the time of the Messenger of Allah ﷺ, and Bilal used to take charge of the Sadaqah of fruits; while Mahmiyyah Ibn Juz’ used to take charge of the fifth (of the Messenger of Allah and his household)”. And Khalifah said: “And Bilal was responsible for his expenses”.

Ibn Hibban reported in his *Sahih* from ‘Abd Allah b. Lahya Al-Huzani, who said: “I met with Bilal, the *mu’adhin* of the Messenger of Allah ﷺ and said, ‘O Bilal! How much were the expenses of the Messenger of Allah ﷺ?’ He replied, ‘He did not have anything. I was the one that took care of that since he was sent as a Messenger till the day he ﷺ passed away. If a Muslim came to him and he ﷺ saw him not dressed he ordered me to rush and borrow some money so as to buy him a cloak to dress him and also feed him’”. Muslim reported from Abu Rafi’, the servant of the Messenger of Allah ﷺ, who said: **“The Messenger of Allah ﷺ borrowed a young camel. Then he received some camels of the Sadaqah, and so he ordered Abu Rafi’ to repay the man his young camel. I said I did not find in the camels except a four year old good camel. The Messenger of Allah ﷺ said: give it to him, for the best people are those who are best in repayment”**.

It is also mentioned in the narration of Ibn Abbas, which is agreed upon: That when the Messenger of Allah ﷺ sent Mu'adh to Yemen, he ﷺ said: ***"If they obeyed you then inform them that Allah has obliged upon them a Sadaqah which is taken from their rich and given to their poor. If they accepted that from you, then avoid taking the best of their wealth, and protect yourself from the invocation of the oppressed, for there is no curtain between it and Allah"***. It is also reported in Muslim from Abu Hurayrah ***"that the Messenger of Allah ﷺ sent Umar to collect the Sadaqah"***.

The Righteous *Khulafaa'* followed him ﷺ in his ﷺ method, so they used to appoint some other people to run the affairs of funds. Ibn Ishaq and Khalifah said: "Abu Bakr appointed Abu 'Ubaydah b. al-Jarrah in charge of Bayt al-Mal, and then he sent him to al-Sham". Al-Dhahabi said commenting on the life of Mu'ayyib that "Abu Bakr and Umar appointed him in charge of the *Bayt al-Mal*". In Ibn Kathir's *al-Bidayah wa 'l-Nihayah* he mentioned from 'Abd Allah b. Zubayr "The Messenger of Allah ﷺ used 'Abd Allah b. al-Arqam b. 'Abdu Yaghuth as a scribe, and he used to reply to the Kings on his behalf, and it was mentioned that he used to order him to write to some of the Kings and would stamp what he read to him due to the trust he had with him, and he wrote to Abu Bakr and made him responsible for the *Bayt al-Mal* and Umar b. al-Khattab consented to that". Ibn Sa'd narrated in *al-Tabaqat* and Ibn Hajar in *al-Isabah* that the treasurer of Umar (ra) was his servant Yasar Ibn Numayr. Ahmad in his *Musnad* and 'Abd al-Razzaq in *Al-Musannaf* reported from Lahiq b. Hamid that he said, "And he sent Ibn Mas'ud in charge of judiciary and *Bayt al-Mal*", meaning to Kufa. Khalifah reported from Malik Ibn Anas from Zayd b. Aslam that "Umar appointed 'Abd Allah b. Arqam in charge of the *Bayt al-Mal*". Ibn Khuzymah reported in his *Sahih* from 'Urwah b. Al-Zubayr that "'Abd al-Rahman b. 'Abd al-Qari said, 'I was in charge of the *Bayt al-Malat* the time of Umar b. al-Khattab". Ibn Hajar narrated in *al-Fath* in the context of speaking about the virtues of 'Abd Allah b. Mas'ud: "And he was appointed by Umar and 'Uthman in charge of the *Bayt al-Mal* in Kufa". Al-Jahshayari mentioned in *al-Wuzara' wa 'l-Kuttab* "that 'Abdullah b. Arqam Ibn 'Abdu Yaghuth, one of the scribes of the Prophet, used to run the *Bayt al-Mal* to him", meaning to 'Uthman (ra). Al-Hakim mentioned in *al-Mustadrak* from Al-Zubayr Ibn Bakkar that, "*Abdullah Ibn Al-Arqam Ibn Abdu Yaghuth was in charge of Bayt al-Mal at the time of Umar and the beginning of the authority of Uthman till he passed away; and he had some companionship (with the Messenger)*". Ibn 'Abd al-Barr said in *al-Isti'ab*: "Zaid Ibn Thabit was in charge of the *Bayt al-Mal* during the *Khilafah* of Uthman; Zaid used to have a slave called Wahib, Uthman saw him helping them in the *Bayt al-Mal*, so he said: 'Who is this?' Zayd replied, 'A slave to me.' Uthman said, 'I see that he helps the Muslims, and he is entitled for a right, and I allocate it to him.' So he allocated to him two thousand. Zayd said, 'By Allah, you cannot allocate two thousand to a slave', so he allocated to him one thousand". Al-Sadfi mentioned in the book about the scholars of Egypt and the companions of the Messenger of Allah ﷺ who entered it: "Abu Rafi' was referred after that to 'Ali b. Abi Talib, so he put him in charge of *Bayt al-Mal* in al-Kufa". Ibn 'Abd al-Barr said in *al-Isti'ab*: "'Ubayd Allah b. Abu Rafi' was a treasurer and secretary to 'Ali". Al-'Ayni mentioned in *Umdat al-Qari*: "'Abd Allah b. Wahb al-Suwa'i, 'Ali used to honour him, love him and trust him, so he was put in charge of *Bayt al-Mal* in Kufa". 'Ali appointed Ziyad in charge of Basra. Al-Jahshiyari said: "When he left Basra, he placed him in charge of *Al-Kharaj* and *diwan*".

The treasury (*Bayt al-Mal*) can be divided into two parts:

**Revenues:** It includes three registers (*diwan*):

- **The register of the booty and *kharaj*:** This includes the spoils of war, *kharaj*, lands, *Jizya*, booties and taxes.
- **The register of the public property:** This includes oil, gas, electricity, minerals, seas, rivers, lakes, springs, forests, pastures and *hima* (protected lands).
- **The register of *Sadaqah*:** This includes *zakah* of money, merchandise, harvest and fruits, camels, cows and sheep.



**Expenditure:** This includes eight registers:

- The register of the *Daral-Khilafah*.
- The register of the State's services.
- The register of grants.
- The register of jihad.
- The register of expenses of *Sadaqah*.
- The register of expenses of public property.
- The register of emergency.
- The register of general budget, general accounting and general inspection.

## The Media

### Article 103

**The institution of the Media Office is responsible for drawing up and executing the political media strategy for the State in order to support the interests of Islam and the Muslims. Internally, it works to build an Islamic society that is strong and cohesive, and it refutes that which is malicious while confirming that which is good. In external affairs it is to promote Islam during peace and war, in a manner that explains the greatness of Islam, its justice and the strength of its army, and expose the corruption and oppression of manmade system and the weakness of its army.**

Media is one of the important matters for the call to Islam (*Da'wah*) and the State. It is not one of the interests of the people that are under the authority of the department of peoples' affairs. Rather, it is directly connected to the *Khalifah* as an independent institution, just like any of the institutions of the State.

The presence of a distinguished media policy that presents Islam strongly and effectively would provoke the minds of the people to turn toward Islam, to study it and to think about it. It also facilitates the annexation of Islamic lands to the *Khilafah* State. Furthermore, there are many issues of media which are closely related to the State and they cannot be published without the *Khalifah's* instruction. This is manifested in the military matters and related issues, such as the movement of the armies, and the news of victory and defeat and the military industries. This type of news must be linked directly to the *Imam* so he can decide which news has to be concealed and which news must be announced and advertised.

The evidence for this is the Book and the *Sunnah*.

With regards to the Book, His (swt) saying: ***"And if any tidings, whether of safety or fear, come to them, they announce it, whereas if they had referred it to the Messenger and those in authority, then those among them who are able to think out the matter would have known it"*** (TMQ 4:83) - the subject of the verse is the news.

With regards to the *Sunnah* it is the narration of Ibn 'Abbas about the conquest of Makkah as is reported by al-Hakim in *al-Mustadrak*, described as authentic based on the condition of Muslim, and Al-Dhahabi confirmed that. The narration mentions: ***"The news was obscured from Quraysh; so the news of the Messenger of Allah ﷺ would not reach them, and nor would they know what he is planning regarding them"***. There is also the *Mursal* (narration not directly connected to the Messenger ﷺ rather the name of a companion is missing) of Abu Salamah as reported by Ibn Abi Shaybah, which mentions: ***"Then the Prophet ﷺ said to Aaisha: 'Prepare me, and do not inform anyone about it...and then he ordered that the highways be obstructed, and so the people of Makkah were kept in the Dark and no news reached them.'"***

There is also the narration of Ka'b which is agreed upon regarding the Battle of Tabuk which says: ***"The Messenger of Allah ﷺ never intended an expedition without alluding to something else, until he made during a very hot weather, a distant place, a desert and a huge enemy. So, he explained to the Muslims their matter to be ready for their raid, and he thus informed them of the destination he wants."***

There is also the narration of Anas as reported by Al-Bukhari ***"The Prophet (saw) announced the death of Zayd, Ja'far and Ibn Ruwaha before the news of their death reached him. He said: Zayd took the flag but he was killed, then Ja'far took it and he was killed, then Ibn Ruwaha took it and he was killed; he said that while he was crying. Lastly one of the swords of Allah took it till Allah granted them victory."***

Some of the applications of this rule at the time of the Righteous *Khulafaa* ' is that which is narrated by Ibn al-Mubarak in the subject of *jihad*; Al-Hakim reported in *al-Mustadrak* - and he considered it authentic based on the condition of Muslim, which al-Dhahabi confirmed - from Zayd b. Aslam from his father from Umar b. al-Khattab (ra) "that he was informed that 'Abu 'Ubaydah was surrounded and the enemy rallied against him. So, Umar wrote to him, 'Peace is upon you. After that, there is not any difficulty that befalls a believer except Allah made for him a way out of it; and never a hardship would defeat two eases.' "***O you who believe! Endure, out do all others endurance, be ready and observe your duty to Allah, in order that you may succeed.***" (TMQ 3:200) He said: Abu 'Ubaydah wrote to him, "Peace is upon you, after that Allah says in His Book: ***"Know that the life of this world is only play, and idle talk, and pageantry, and boasting among you, and rivalry in respect of wealth and children."***" (TMQ 57: 20). He said, then Umar went out holding his letter, sat on the pulpit and read it to the people of Madinah and said, "O people of Madinah! Abu 'Ubaydah expresses to you that you should show interest in Jihad."

There are other types of news which have no direct connection to the State, and do not require the direct opinion of the *Khalifah*, such as the daily news, the political, cultural, and scientific programmes, and the international affairs. Though these may interfere with the viewpoint of life in some parts, and with the view of the State towards international relations, but despite that the type of State control over them differs from the first type of news.

Accordingly the media institution must contain two main departments:

**The first:** Its task is related to news that has connection with the State, such as the military matters, the military industry and international relations, and so on.

The task of this department is the direct supervision of such news. So, such news is not broadcasted in the state media or the special sources of media except after their presentation to the institute of media.

**The second:** is related to other news; and its supervision of them is not direct. Both state and private media do not need any permission for presenting such news.

#### **Article 104**

**The media owned by any citizen of the State does not require a permit; rather they are simply required to inform the media office, such that the office knows about the media means that are being established. The owner and the editors of any media means are responsible for every article they publish and are accounted for anything which contradicts the *Shari'ah* in the same manner as any other citizen.**

Sources of media do not require any permission for work. Rather, every citizen in the Islamic State is allowed to set up a source of media, whether written, audio or visual. He must only inform the media institution about the media outlet he wishes to establish.

He also needs permission for publishing the news connected with the State, as mentioned above. With regards to the other news, he can publish it without prior permission.

In all cases, the owner of the media outlet is responsible for the information he publishes, and he will be accounted for any violation of the *Shari'ah* like any other citizen.

## **The *Ummah* Council (The Consultation (*shura*) and Accounting (*muhasabah*))**

### **Article 105**

**The individuals who represent the Muslims' views to the *Khalifah* are the *Ummah* Council, and the individuals who represent the people in the provinces are the Provincial Councils. It is permitted for non-Muslims to be members in the *Shura* council for the sake of raising any complaints against any oppression by the rulers or misapplication of the laws of Islam.**

This is a Council formed by individuals representing the opinion of the Muslims at large, to which the *Khalifah* can refer to, in order to consult 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 consultation with some men from the Ansar and the emigrants who represented their people. It is also derived from the Messenger's ﷺ assigning some of his companions for consultation (*shura*). He used to refer to them more than others for seeking opinion, such as Abu Bakr (ra), Umar (ra), Hamza (ra), 'Ali (ra), Salman al-Farisi (ra), Hudhayfah (ra)....

It is also deduced from the fact that Abu Bakr (ra) designated some men from the Muhajir and the Ansar for seeking their opinion when something happened. The people of the consultation (*shura*) at the time of Abu Bakr (ra) were the scholars and the people capable of giving legal edicts. Ibn Sa'ad reported from al-Qasim: "when something happened and Abu Bakr wanted to consult the people of opinion and the people of jurisprudence, he called from the emigrants and the Ansar. Umar, 'Uthman, 'Ali, 'Abd al-Rahman b. 'Awf, Mu'adh b. Jabal, 'Ubay b. Ka'b and Zayd Bin Thabit. They all used to give their opinion during the *Khilafah* of Abu Bakr. People would also take their legal edicts (fatwa). When Umar became *Khalifah* he would also call these people". There are also evidences that call upon the Muslims to account the rulers. Muslims exercised such accounting as happened at the time of the Righteous *Khulafaa*'. As the *Ummah* is allowed to be represented in consultation (*shura*), she is also allowed to be represented in accounting. All of this indicates that it is allowed to have a special council that represents the *Ummah* in accounting and in the consultation that is established by the text of the Quran and *Sunnah*. It is called the *Ummah* Council because it represents the *Ummah* in consultation and accounting.

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 misimplementation of Islam upon them or the lack of services to them or the like.

### **Article 106**

**The members of the Provincial Councils are directly elected by the people in their provinces, and the number of members of any Provincial Councils is decided according to the ratio of the inhabitants in such province to the whole population of the State. The members of the *Ummah* Council are elected directly by the Provincial Councils. The start and end of the terms of the *Ummah* Council are the same as those of the Provincial Councils.**

The members of the *Ummah* Council are elected and not appointed. They are representatives of the people to voice the opinions of the public and the representative should be chosen by the person whom he represents and should never be imposed upon him. Furthermore, the members of the *Ummah* Council are representatives of the people's opinions, whether they are individuals or groups; so to know the representative of people in a large area, and those

peoples who are not well known, does not come about unless this representative is chosen by them. Also, the Messenger of Allah ﷺ did not choose those whom he consulted based on their ability, competence and personalities; rather he chose them because they were chiefs among their people, regardless of their ability and competence; in the second *Bay'a* of al-'Aqabah, the Muslims who gave him the *Bay'a* were not known to him and this is why he left the matter of choosing the chiefs to them, by saying: ***“Choose from among you twelve leaders who will be responsible for themselves and their people”*** (as reported in the *Sirah* of Ibn Hisham from Ka'b b. Malik).

We can thus conclude from the fact that the members of the *Ummah* Council represent the opinion of the Muslims at large, and since the reason (*'Illah*) 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 cannot be achieved if the persons were not known (to the *Khalifah*) unless there was a general election, all of this proves that the members of the *Ummah* Council should be elected and not appointed.

The method of election is as follows:

1. In accordance with Article 56, a Provincial Council is elected for two goals: The first is to provide necessary information to the governor (*wali*) about the situation and needs of the province (*wilayah*). The purpose of that is helping the governor in conducting his task in a way that provides a comfortable and secure life for the people of the province and facilitates the fulfillment of their needs and the provision of their services. The second is to express contentment or complaint about the governance of the governor over them. This is because the complaint of the majority of the council of the province against the governor obliges his removal. This means the reality of the Provincial Council is administrative for helping the governor by informing him of the reality of the province and for expressing the contentment or complaint about him. All of this motivates him to improve his work. This council has other mandatory powers such as those of the *Ummah* Council, as explained below.
2. In accordance with Article 105 and the previous explanation, an *Ummah* Council is set up (for consultation and accounting), which must be elected by the *Ummah* and representative of her. It has mandatory powers which will be explained in the next article.
3. This means there will be election for selecting the members of the Provincial Council and another election for the members of the *Ummah* Council.
4. To facilitate the election process and save the citizens from repeated elections, we adopt the election of the Provincial Councils first, then those who won in the Provincial Councils would gather and elect from among themselves the *Ummah* Council. This means the Provincial Council would be directly elected by the *Ummah*, while the *Ummah* Council would be elected by the Provincial Councils. Hence, the beginning and end of the term of the *Ummah* council is the same as that of the Provincial Councils.
5. One that is elected from the Provincial Councils to the *Ummah* Council is replaced by the one with the highest votes among those who failed in the elections of the Provincial Councils. A lot is cast between those who got the same number of votes.
6. The people of the *Dhimmah* elect their representatives in the Provincial Councils and these representatives elect their representatives in the *Ummah* Council. All of this takes place at the same time of the election of the Provincial Councils and the *Ummah* Council in the State.

Consequently, a law has been prepared that takes into consideration the matters mentioned, and explains the measures used for the election of the Provincial Councils and the *Ummah* Council.

#### **Article 107**

**Every citizen who is adult and sane, has the right to be a member of the *Ummah* Council or the Provincial Council, whether they are male, female, Muslim or non Muslim; the non-Muslim member is restricted to raising complaints regarding the oppression of the rulers or the misapplication of the laws of Islam.**

Any Muslim who holds the citizenship of the State, provided he is mature and sane, has the right to be a member of the *Ummah* Council, irrespective of whether they were male or female. This is because the Council of the *Ummah* has no mandate to rule and it does not come under the narration that prevents the woman from becoming a ruler. It is rather within the issue of consultation (*shura*) and accounting, which is a right for both men and women. In the thirteenth year of the Messenger of Allah's ﷺ Prophethood, in other words in the year he emigrated, there came to him ﷺ seventy-five Muslims, among whom were two women, and they all gave him the Second *Bay'a* of al-'Aqaba, which was a *Bay'a* of war and fighting and a political *Bay'a*. Once they had all given their *Bay'a*, he said to all of them: ***"Choose from among you twelve leaders (naqibs) who will be responsible for themselves and their people."*** This is part of a long narration reported by Ahmad through Ka'b Bin Malik and it is an order from him ﷺ addressed to everyone, to elect from all who were present. He ﷺ did not specify the men nor exclude the women, neither in regard to who would 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 *'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 *naqibs*, and gave them the right to be chosen as *naqibs* from among the Muslims.

The Messenger of Allah ﷺ sat once to take the *Bay'a* from the people, with Abu Bakr (ra) and Umar (ra) sitting with him, and both men and women gave him the *Bay'a*. This *Bay'a* was one for ruling, and not on Islam, for the women were already Muslims. After the *Bay'a* of the *Redhwan* in Hudaybiyah the women gave him their *Bay'a* too. Allah (swt) says: ***"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 (or fornication), that they will not kill their children, that they will not utter slander intentionally or in falsehood, and that they will not disobey you in any just matter, then do receive their oath, and pray to Allah for the forgiveness of their sins, for Allah is oft-forgiving, most merciful"***. (TMQ 60:12)

This *Bay'a* was also a *Bay'a* on ruling, as the Quran states that the women were believers, and the *Bay'a* was that they would not disobey him in any good thing.

In addition to that, the woman has the right to represent and be represented in voicing an opinion. This is because she has the right to voice her opinion, so she can choose her representative; and moreover since deputyship does not necessitate being a man, she has the right to represent those who elect her.

It was also confirmed that our master Umar (ra) used to seek the opinion of the Muslims when a problem faced him, whether it related to the rules of the *Shari'ah* or governing or any of the actions of the State. When a problem faced him he used to call the Muslims to the mosque, and he used to call the men and women, and seek the opinion of all of them. He withdrew his opinion when a woman opposed him regarding limitation of the dowry.

Non-Muslims have the right, like the Muslims, to be represented in the Council of the *Ummah*, and to be representatives of their electorate in it, so as to express the opinion on their behalf regarding the misapplication of the rules of Islam upon them and the oppression of the ruler that might fall upon them. This is because Allah said ***"So ask the people of knowledge if you don't know"*** (TMQ 16:43).

However, non-Muslims would not be allowed to voice their opinion in matters related to legislation, because the Islamic legislation emanates from the Islamic belief ('*Aqidah*). It is a host of practical divine rules deduced from their elaborate evidences, which treat human problems according to a specific viewpoint outlined by the Islamic belief. The non-Muslim embraces a doctrine that is alien and contradictory to the Islamic '*Aqidah* and his viewpoint about life contradicts the Islamic viewpoint and therefore his opinion is not sought in matters of legislation.

The non-Muslim also does not have the right to elect the *Khalifah*, nor to participate in the short listing of the candidates from whom the *Khalifah* is to be elected, for he has no right in ruling. As for other matters that form part of the *Ummah* Council's mandatory powers, he is just like the Muslim in these matters and in voicing an opinion regarding them.

#### **Article 108**

***Shura* (consultation) and *Mashwarah* (deliberation) is the taking of opinion in its absolute meaning, and it is not binding in legislation, definitions, and nor intellectual issues such as disclosing facts, nor technical and scientific issues; and it is binding when the *Khalifah* consults in any operational issue and the actions that do not require research and deep examination.**

*Shura* is from the verb *shawara*, which is to seek opinion and consultation, and it is said I sought *shura* from him – is to seek *mashurah* for him.

*Shura* and *mashurah* have the same meaning as *mashwara*. In *Lisan al-'Arab* it mentioned: it is said So and so is good *mashurah* and *mashwarah*, in two dialects. Farraa' said: *al-mashura* comes from *mashwarah*, and then it became *mashura* for the sake of ease. And al-Layth said: *al-mashwara* is on the form *mafa'la* derived from *al-isharah*, and it is said: *mashura*, which is *shura* and *mashura* and similarly *mashwarah*, and you say 'I did *shura* with him in an issue, and I sought *shura* from him', and it is mentioned in *Mukhtar al-Sihah*: *al-mashwarah* is *al-shura*, and also *al-mashurah*, we say from it '*shaawarahu* (I did *shura* with him) in an issue, and I sought *shura* from him', with the same meaning.

The origin of the legitimacy of *al-shura* is the order of Allah (swt) to His Messenger ﷺ to seek consultation with the Muslims when He (swt) said: **"And consult (*wa shawirhum*) them in the issue"** (TMQ 3:159), and this indicates a request, and the indication that came with this request, which are reported in the texts, indicates that this is a request for something recommended. These texts are:

1. Allah praises *shura* through his praise of the believers, by making the issue of *shura* linked to them: **"...and those who conduct their affairs by mutual *Shura* (consultation)"** (TMQ 42:38).
2. The Messenger of Allah ﷺ would often consult (take *shura*) from his companions in many issues, which indicates the extent of his ﷺ concern to do it and how he ﷺ considered it important and useful and to teach the Muslims after him ﷺ to be careful to undertake it. Al-Tirmidhi reported from Abu Hurayrah: **"I did not see anyone who took *shura* (*mashura*) from his companions more than the Messenger of Allah ﷺ"**.
3. The order of Allah (swt) to His Messenger ﷺ to conduct *mashawara* (consultation) with the believers, when He (swt) ordered him ﷺ to be kind and remissive towards them, and to seek forgiveness for them, when He (swt) said: **"And by the Mercy of Allah, you dealt with them gently. And had you been severe and harsh hearted, they would have broken away from about you; so pass over (their faults), and ask (Allah's) Forgiveness for them; and consult them in the affairs"** (TMQ 3:159).

Accordingly the origin of the rule of *shura* (consultation) is that it is recommended.

However, when the *Khalifah* consults the *Ummah* Council, he must adhere to the opinion of the majority in practical affairs that do not require research and deep consideration, such as the internal affairs of the state linked to ruling, education, health, trade, industry, agriculture, and so on, and in the same manner when he is held accountable for actions which are being practically undertaken from these affairs and actions. This is derived from when the Messenger of Allah ﷺ left his ﷺ own opinion for the opinion of the majority in the issue of leaving Madinah to meet the army of the idol-worshippers in the battle of Uhud. This is despite the fact that the opinion of the Messenger ﷺ and the senior companions was to remain in Madinah and not to leave. It is also derived from his ﷺ words to Abu Bakr (ra) and Umar (ra) ***“If the two of you agree in an issue I consult you on (mashura) I will not differ with you”*** (as reported by Ahmad with a *Hasan* chain from ‘Abd al-Rahman Bin Ghanam al-Ash’ari).

Whereas if the *Khalifah* consults the Council on anything else, such as consulting them on technical and conceptual issues that require research and deep consideration, or the affairs of war, insight and strategy, then the opinion of the majority is not binding and the *Khalifah* retains the right to make the decision. This is derived from the Messenger of Allah’s ﷺ acceptance of the opinion of al-Hubab Bin al-Munthir in specifying the place for the battle of Badr and not paying attention to the opinions of the companions; rather he ﷺ did not even consult them regarding it. And it is also based upon the rejection of the opinion of the companions by Abu Bakr (ra) in regards to not fighting the apostates and those who withheld their *zakah* at the beginning of his *Khilafah*. In the same manner, when the Council holds the *Khalifah* accountable for an action that has already been practically carried out, the majority opinion is not binding.

Likewise, the opinion of the people is not sought regarding legislation, since the legislation is from Allah (swt) and not the people and consultation (*shura*) in what Allah (swt) has legislated is only within the permitted (*mubah*) issues, since in issues other than the *mubah* there is no choice, rather it is compulsory to accept what is reported of obligations, recommended and disliked issues, or that which is prohibited. Therefore, the actions that there is consultation in are only those that fall under the permitted (*mubah*) acts.

#### **Article 109**

***Shura* (consultation) is a right for the Muslims alone and the non-Muslims do not have a right to it. It is permitted for all of the subjects to put forward opinions, whether Muslim or not.**

The fact that *Shura* is a right for the Muslims is proven by the two verses ***“And consult them in the issue”*** (TMQ 3:159) and ***“And who conduct their affairs by mutual Shura (consultation)”*** (TMQ 42:38) with respect to the Muslims, and His (swt) words ***“So ask the people of knowledge if you don’t know”*** (TMQ 16:43) with respect to the non-Muslims. So Allah (swt) ordered the questioning of the People of the Book regarding whatever we do not know, and this is proof for the permissibility of taking their opinion, and if it is permissible to take their opinion it is permissible for them to be members of the *Shura* council.

#### **Article 110**



**The issues which fall under consultation (*Shura*) are decided by the opinion of the majority without considering whether it is correct or incorrect. As for any other issues which fall under *Shura*, the correct opinion is sought without any consideration given to the majority or minority.**

The evidence for this is the actions of the Messenger ﷺ, since in the Battle of Uhud he ﷺ took the opinion of the majority, while in the Battle of Badr he ﷺ took the opinion of al-Hubab Bin al-Munthir and left his ﷺ own opinion, and did not refer to the opinion of the majority. In the Expedition of Hdaybiyah he ﷺ held onto his ﷺ own opinion alone and paid no attention to the opinions of Abu Bakr (ra) and Umar (ra). In fact, he ﷺ did not pay attention to the opinion of all the Muslims, and forced them to abide by his ﷺ opinion even though they hated it. So if these three actions are compared with the words of the Messenger ﷺ to Abu Bakr (ra) and Umar (ra), ***“If the two of you agree in Mashura I will not differ with you”*** (reported by Ahmad), and with the words of Allah (swt) ***“And consult them in the issue”*** (TMQ 3:159) and ***“And who conduct their affairs by mutual Shura (consultation)”*** (TMQ 42:38), then the explanation of the meaning of the two verses and the narration is that whatever is like the example of the situation of al-Hdaybiyah, which is where the *Shari’ah* rule is apparent, then it is of the power of the *Khalifah* to act upon it, and *Shura* in the issue is not binding. Whatever is similar to the situation of Badr, where the issue requires insight and thought, or where the proposing of an opinion was in a specialist issue, then the correct opinion is sought without any consideration for whether it was the opinion of the majority or of a single person. And whatever is similar to the situation of Uhud, which is the opinion regarding actions, then the opinion of the majority is followed; this is what falls under the category of *“Mashurah”* and the meaning of the words of the Prophet (saw) to Abu Bakr (ra) and Umar (ra) ***“If the two of you agree in Mashurah I will not differ with you”*** (reported by Ahmad).

#### **Article 111**

**The *Ummah* Council has five powers which are:**

- 1. (a): The *Khalifah* has to consult the Council and the Council has the right to advise him in operational matters and actions related to carrying out the affairs of the domestic policy that do not require deep intellectual research and serious examination, like matters of ruling, education, health, economy, trade, industry, agriculture and the like, and the opinion of the Council in these areas is binding.**  
**(b): In the intellectual matters that require deep research and serious examination, and issues which require experience and knowledge, and technical and scientific issues, and similarly the financial issues, the army, and foreign policy, the *Khalifah* has the right to consult the Council about them and to acquaint himself with its opinion; however the opinion of the Council is not binding in these matters.**
- 2. The *Khalifah* has the right to notify the Council of 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, if they disagree with the *Khalifah* regarding the validity of their deduction or their evidence, in terms of their disagreement with the method of adoption from the basis of legislation (*usul*) adopted in the State, then the decision will be referred to the Court of *Madhalim*, and its verdict in this matter is binding.**
- 3. The *Council* has the right to hold the *Khalifah* accountable for all matters that took place effectively within the State, whether these were related to domestic or 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 *Khalifah* differed about the legitimacy of an action that had been already executed the matter should be referred to the Court of *Madhalim* to settle the question. Its verdict on the matter is binding.

4. The *Ummah* Council has the right to express discontent of the assistants, governors or the '*amil*s. Its opinion in such a case would be binding and the *Khalifah* should dismiss them at once. If the opinion of the *Ummah* Council differed from the opinion of the council of the concerned province regarding contentment and discontent of the governors and '*amil*s, the opinion of the council of the province overrides.

5. Muslim members of the Council have the right to restrict the nomination of candidates for the *Khilafah* from amongst those who fulfilled the qualification conditions as decided by the *Madhalim* Court. Their opinion in this is binding, and candidates other than those shortlisted by the Council should accordingly not be considered.

This article explains the powers of the *Ummah* Council. The evidences for these powers are as follows:

**The first point, (a):** The evidence for the fact that the opinion of the *Ummah* Council regarding practical actions and matters, which do not require research and deep consideration, is binding, is deduced from the Messenger of Allah's ﷺ compliance with the opinion of the majority in going out of Madinah to meet the army of the idol worshippers in the Battle of Uhud. This is despite the opinion of the Messenger of Allah ﷺ and the senior companions to stay in Madinah and not to leave. It is also taken from his saying to Abu Bakr (ra) and Umar (ra): **"If the two of you agree in a consulted matter (Mashurah) I will not differ with you"** (reported by Ahmad). Therefore, the practical matters related to the opinion leading to an action, in terms of providing services to the citizens for reassuring their livelihood, and in terms of maintaining their security, strengthening their defences and driving danger away from them; the majority opinion of the Council in all of these issues is binding upon the *Khalifah* even if it disagreed with his wish, which happened with the Messenger of Allah ﷺ going out to Uhud in compliance with the opinion of the majority.

**The first point, (b):** In principle, the *Khalifah* takes the opinion of the scholars, experts and specialists regarding the matters of this section. This is in accordance with what happened with the Messenger of Allah ﷺ when he ﷺ took the opinion of al-Hubab b. al-Mundhir, in selecting the location of the Battle of Badr. It was reported in the *Sirah* of Ibn Hisham: **"When the Messenger ﷺ camped at the nearest side of the water of Badr, al-Hubab b. al-Mundhir was not content with that site. He said to the Messenger: "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". Hubab b. al-Mundhir 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, filled it with water and threw in their (water) pots."** So the Messenger of Allah ﷺ agreed with the opinion of al-Hubab and followed it.

In this incident, which has to do with 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 technical matters and thoughts which require study and scrutiny, together with definitions. In all such matters, reference is made to the experts and specialists, rather than to

the ordinary people's opinion. There is no value in such matters with the majority, but rather weight is given to knowledge, experience, and specialisation.

This also applies to financial matters, because the *Shari'ah* has determined the types of funds which must be collected and the areas over which they need to be allocated (spent). The *Shari'ah* has also determined the cases when taxes are imposed; therefore there is no point in seeking the opinion of the people in the collection and allocation of funds. Similar to this is the army; the *Shari'ah* has left to the *Khalifah* 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 *Shari'ah*. 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 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 *Khalifah* is allowed to present these matters to the *Ummah* Council for its consultation and opinion, because such presentation is from the permitted issues (*mubah*) and the opinion of the Council in these matters is not binding as in the incident of Badr. Rather the decision is entrusted with the concerned person.

The following examples are to distinguish the difference between points (a) and (b):

For deciding the building of a bridge over a river to serve the interests of the people in a village, almost isolated in terms of communications and the like, then the majority opinion of the council on this matter is binding to the *Khalifah* in building the bridge to solve the communication problem of the village. As for deciding the right technical location for building the bridge, and the best engineering design of the bridge, whether it should be a suspension bridge or standing over pillars in the river, etc; the experts and specialist people are consulted in such matters, rather than the majority opinion of the council.

Likewise, building a school for the children of a village, where its children find great difficulty in reaching the schools in the towns, the majority opinion of the *Ummah* Council on this matter is binding to the *Khalifah*. In regards to the choice of the location of the school in the village in terms of the soil strength suitable for design, as well as the style of its building, whether is possessed by the State, i.e. whether it is built, bought or leased, in such matters the experts and specialist people are consulted and the majority opinion of the council is not sought, though the *Khalifah* is allowed to consult with them over the matter, but their opinion is not binding.

As regarding a country at the frontiers, defying the danger of an enemy, then the majority opinion of the *Ummah* Council is binding in terms of the village's fortification and driving the danger of the enemy away from it, and preventing its exposure to killing and expulsion after any aggression from the enemy. However, the method of building such fortifications and any fighting means used to drive the danger away from it; such things need the consultation of the experts and specialist people, rather than the majority opinion of the council.

**The second point:** Legislation belongs to Allah (swt) alone. Allah (swt) says:

*"Verily, the decision rests with Allah only."* (TMQ 12: 40)

*"But nay, by your Lord, they will not be true believers until they make you judge of what is in dispute between them, and find within themselves no dislike of that which you decided and submit with full submission."* (TMQ 4: 65)

In the explanation of the Messenger ﷺ to His (swt) saying: *"They have taken as lords beside Allah their rabbis and their monks"*, (TMQ 9:31), Al-Tirmidhi reported through 'Adiyy b. Hatim who said: *"I came to the Prophet ﷺ while wearing a cross of gold in my neck. He said: O Adiyy! Throw out this idol. And I heard him reading in chapter of Baraa'ah: "They have taken as lords beside Allah their rabbis and their monks"* (TMQ 9: 31). *He ﷺ said: As regarding they did not worship them; but when they allowed them something they took as halal and when they forbade them of something they prohibited it".*

Therefore, legislation is not taken from the opinion of the council, neither by consensus or majority. It is rather taken from the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ, and from that which is indicated by them through valid *Ijtihad*. Thus, the Messenger ﷺ refused the opinion of many Muslims regarding the Hudaibiyah peace treaty, and said: ***“I am the servant of Allah and His Messenger, and will never disobey his order”***. This is because the peace was a revelation from Allah (swt) and therefore the opinion of the people is not sought regarding legislation. Based on that, the adoption of the *Shari’ah* rules, enacting of laws and the adoption of the rules and canons are of the mandatory powers of the *Khalifah* alone as explained before. It is all derived from the *Shari’ah* texts, irrespective if it was from his *Ijtihad* or that of other respected *mujtahids*. However, it is allowed for the *Khalifah* to submit to the *Ummah* Council whatever he wants to adopt of *Shari’ah* laws and canons so as to find out its opinion regarding it. This is like what Umar bin al-Khattab (ra) did when he referred to the Muslims over the divine rules, which the companions 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. So Umar (ra) 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 *Jizya* over their persons. The reference of Umar (ra) and Abu Bakr (ra) before him to the companions for their opinion over the divine rules without an objection from the companions to this, indicates their *Ijma’*. This serves as evidence that the *Khalifah* has the right to do that.

With regard to reference to the *Madhalim* Court in case the *Khalifah* differed with the *Ummah* Council regarding the validity of the deduction of these canons, or regarding their evidences or terms of the adoption from the sources (*usul*) adopted by the State, in this case the authority of the *Madhalim* judge is to examine the law adopted by the *Khalifah*, to determine whether it has a *Shari’ah* evidence and whether the evidence applies to the incident. Therefore, if the *Khalifah* differed with the Council (in other words, with the majority of the Council) over the law which the *Khalifah* adopted in terms of being a valid *Shari’ah* law or not, then this dispute is settled by the Judge of *Madhalim*, because it is from his specialty and the opinion of *Madhalim* Court is binding.

Non-Muslim members of the Council have no right in examining the laws and cannons which the *Khalifah* wants to adopt. This is because they do not believe in Islam, and because their right is restricted to voicing their concerns regarding any oppression that might fall upon them from the rulers, rather than expressing their view regarding the *Shari’ah* laws and cannons.

**With regards to the third point**, its evidence is the general meaning of the texts related to bringing the rulers to task. Ahmad narrated from Ibn Umar, who said: “The Messenger of Allah ﷺ said: ***“There will be Amirs 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 hawd (basin)”***.” Ahmad narrated from Abu Sa’id al-Khudri, who said: “The Messenger of Allah ﷺ said: ***“...The best of Jihad is (to say) a word of truth before an oppressive ruler”***.” Al-Hakim narrated from Jabir from the Prophet ﷺ who said: ***“The master of martyrs is Hamza bin ‘Abd al-Muttalib and a man who stood to an oppressive ruler where he ordered him and forbade him so he (the ruler) killed him”***. Muslim narrated from Umm Salama that the Messenger of Allah ﷺ said: ***“There will be Amirs, you recognise some of what they do and deny some. Whoever recognised he would be free of responsibility, and whoever denied he will be safe; but whoever accepted and followed (he will be not)”***. These texts are in general form and indicate holding to accounting the ruler in accordance with the rules of the *Shari’ah*. Furthermore accounting can be over any action. This holding to account by the Council of the *Khalifah* and other assistants, governors, and *‘amils* would be over any action which has been actually executed whether this action disagreed with the *Shari’ah* rule, was wrong or harmful to Muslims, or was unjust or complacent toward the citizens in looking after their affairs. The *Khalifah* must respond to this accounting and the objections by showing his view and evidence regarding his words, actions, and tasks he undertook, so that the Council can be assured of a good

performance, the sincerity, and honesty of the *Khalifah*. If, however, the Council does not accept the view of the *Khalifah* 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 like the issues in (a), otherwise it would not be binding as in the issues in (b). If the accounting, for example, was regarding not providing the school in the previous example then the accounting is binding. If the accounting was regarding the design he chose for the school then his accounting is not binding.

If those who account differed with the rulers over any matter from the legal (*Shari'ah*) point of view, the matter is referred to the court of unjust acts (*Madhalim*) by a request from the Council, due to what Allah (swt) says: ***"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 4:59)

This means that if the Muslims dispute with the people of authority over a matter, they should refer it to Allah (swt) and to the Messenger ﷺ, that is to arbitrate from the *Shari'ah*. This means to refer to the Judiciary, that is to the court of unjust acts, and its opinion is binding because it has the power in this case.

**In regards to the fourth point**, its evidence is that the Messenger of Allah ﷺ removed al-'Ala' b. al-Hadrami, his *'amil* over Bahrain, because the delegate of 'Abd al-Qays complained about him to the Messenger ﷺ. Ibn Sa'd narrated on the authority of Muhammad Bin Umar: ***"That the Messenger of Allah wrote to al-'Ala' b. al-Hadrami to come to him with twenty men from 'Abd al-Qays. He reached him with twenty men headed by 'Abd Allah b. 'Awf al-Ashajj, and appointed after him al-Mundhir Bin Sawwa. The delegate complained of al-'Ala' b. al-Hadrami so the Messenger of Allah removed him and appointed Aban Bin Sa'id b. Al-'Aas and said to him: 'Take care of 'Abd al-Qays and respect their chiefs'."*** Also, Umar Bin al-Khattab (ra) removed Sa'd Bin Abi Waqqas (ra) from the governorship simply 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 province have the right to express their anger and discontent for their governors and *amirs*, and the *Khalifah* thus has to remove them. Likewise, the *Ummah* Council is allowed, as a representative of all Muslims in the State, to express its anger and discontent for the governors and *'amils* and the *Khalifah* has to remove them immediately if the complaint came from the majority of the Provincial Council or the majority of the *Ummah* Council. In the case of conflict between the views of these two councils, then the priority is given to the Provincial Council, for it is more aware and more acquainted than the *Ummah* Council of the condition of the governor.

**With regards to the fifth point**, this point has two issues: The first one is the short-listing of the nominees and the second is reducing the shortlist to six people and then to two.

As for the first issue, from following the manner of appointing the guided *khulafaa'* it appears there was short-listing of nominees made by the representatives of the Muslims directly or through requesting the *Khalifah* to shortlist the nominees on their behalf.

In the hall of *Bani Sa'idah*, the nominees were Abu Bakr (ra), Umar (ra), Abu 'Ubaydah (ra) and Sa'id b. 'Ubadah (ra). These were considered sufficient and the nominations were restricted to them. This took place before the people of the hall, and then by the consent of the companions later on, where they gave the *Bay'a* to Abu Bakr (ra).

Towards the end of Abu Bakr's (ra) authority, he consulted with Muslims for about three months, discussing with them the post of *Khilafah* after him. After they discussed this with him they agreed to his nomination of Umar (ra); in other words, the nomination was restricted to one candidate.

Restricting of nominees was more clear and obvious after the stabbing of Umar (ra) for they requested him to nominate candidates for them so he confined it to six (nominees) at the expense of all others, and he emphasised that matter, as is well known.

At the time of nominating ‘Ali (ra), he was the only nominee, without having any one else with him and so there was no need for short-listing.

Short-listing of nominees used to take place before a gathering of Muslims; a matter which would have been opposed and not executed had it been not allowed, for this prevents the right of others in nomination. Therefore, short-listing the nominees for *Khilafah* post is allowed due to the consensus (*Ijma’*) of the companions. Thus, the *Ummah*, or in other words her representatives, are allowed to shortlist the nominees, whether this short-listing was conducted directly by the *Ummah*, or through authorising the outgoing *Khalifah* to do that on their behalf.

This is in regards to short-listing. In regards to evidence for the short-listing of the nominees to six people at first, this is taken from the action of Umar (ra); whilst shortening the list to two after that, is taken from the action of Abdul Rahman Ibn Auf (ra). Additionally, this verifies the meaning of the *Bay’a* by the majority of the Muslim electorate for if the nominees were more than two, then the winner amongst them might get for example thirty percent of the electorate, i.e. less than their majority. The winner would get the majority in the case that the nominees were not more than two.

In regards to short-listing of the six and two nominees by the *Ummah* Council, this must be by the *Madhalim* Court to ensure that the nominees fulfil the qualification conditions; this is because the short-listing conducted by the *Ummah* Council is for electing a *Khalifah* from amongst them. It means, in other words, that they must fulfil the qualification conditions. Therefore, the *Madhalim* Court would exclude from the nominees to the *Khilafah* anyone who does not fulfil the qualification conditions. After that the *Ummah* Council would make the shortlist from the nominees decided by the *Madhalim* Court to have fulfilled the qualification conditions.

This is where the fifth point is derived from.

## The Social System

### Article 112

**The primary role of women is that she is a mother and responsible over the household and she is an honour that must be protected.**

This article is derived from numerous evidences: **firstly**, the evidences which encourage marriage and that the woman has more rights in the nursing of the child. **Secondly**, the evidences which prohibit the woman from leaving her husband’s house without his permission and obligate her to serve her husband. **Thirdly**, the evidences regarding the *awrah* (private parts of body that must be covered in public and in front of non-family members), the private sphere of life for her, the prohibition of *khalwah* (for an unrelated man and woman to be alone together in private space), the prohibition of the woman travelling without a close male relative and the prohibition of *tabarruj* (beautification which attracts attention).

The first evidence has been mentioned in a narration from Anas that the Prophet ﷺ used to instruct people to be chaste, while vigorously prohibiting celibacy; he ﷺ said **“Marry from those who are tender and fertile, for indeed I will compete with the Prophets in your great numbers on the day of judgement”** (reported by Ahmad with a *Hasan* chain). Ma’qal b. Yasar narrated **“A man came to the Prophet and said “I have found a woman who is beautiful and of noble descent but she cannot bear children. Shall I marry her?” He said “No”. Then he came to him again for the second time and he prevented him. Then he came to him a third**

**time, so the Prophet said “Marry those who are tender and fertile (women), for indeed I will compete against the other nations with your great numbers”**”(reported by Abu Dawud and Ibn Hibban and al-Hakim, who authenticated it). This indicates that the wisdom behind marriage and the intended result is childbirth, and he ﷺ prohibited marrying a woman who was known by her fiancé to be barren, though this is a non-decisive prohibition due to the absence of an indication of decisiveness, as well as the evidences reported that permit withdrawal, in other words for the sake of preventing pregnancy. From these evidences is what Muslim reported from Jabir who said **“We used to withdraw at the time of the Messenger of Allah ﷺ, and so that reached the Messenger of Allah ﷺ and he did not prohibit it”**. So it is permitted to marry a woman who is barren, though it is preferable to marry those who can bear many as it is recommended in accordance with the previous narrations. In other words, the woman is primarily to be a mother, and then a wife and to have spousal relations in accordance with what the *Shari'ah* made permitted and recommended. Additionally, it is narrated from ‘Abd Allah b. ‘Amru b. al-‘Aas **“A woman said “O Messenger of Allah, this is my son whom my stomach carried, my breast is a water-skin for him, and my lap is a guard for him. His father has divorced me and wants to take him away from me”. So he ﷺ said “You have more right to him as long as you do not remarry”**” (reported by Abu Dawud and al-Hakim that authenticated it and al-Dhahabi confirmed it). So the narration enumerated the various situations which occur between a mother and child, which indicates the importance of her motherhood, and he ﷺ gave her custody. These two narrations indicate that the primary role of the woman is to be a mother, in addition to the rules related to pregnancy, birth and suckling the child.

As for the second evidence, it is narrated from Anas that a man travelled having prohibited his wife from leaving their home, and subsequently her father became ill and so she sought permission from the Messenger of Allah ﷺ to visit him, and the Messenger ﷺ said to her **“Fear Allah, do not disobey your husband”** as mentioned by Ibn Qudamah in *al-Mughni*. It is narrated from Abu Hurayrah that the Messenger of Allah ﷺ said **“It is not allowed for a woman to fast while her husband is present, unless she has his permission”** (agreed upon narration). And it is narrated from Ibn ‘Abbas that the Prophet ﷺ said **“The husband has a right over his wife that she does not undertake any voluntary fasting except with his permission”** (reported by al-Tabarani). The *Shari'ah* has given women the right to visit their father if they became ill, and the right to do voluntary fasting, but it made it subservient to the husband’s right over her, which indicates that the primary role is that she is responsible over the home.

Additionally it is reported that the Prophet ﷺ **“obliged his daughter Fatima with the housework, and ‘Ali with the outdoor work”** reported by Ibn Abi Shaybah from Damrah b. Habib, and although Abu Bakr Bin Maryam al-Ghassani is in the chain of the narration, the meaning of it is in the narration which Ahmad reported in *al-Musnad* with a *Hasan* chain from ‘Ali (ra) which mentioned: **“...and so ‘Ali said O Messenger of Allah, I swear by Allah I irrigated the land until my chest hurt, and Fatima said I have grinded flour until my hands got blisters, and Allah has brought you many captives so help us (in this work)...So he said ﷺ should I inform you of something which is better than what you asked me? They said yes. He said: Some words which Jibril taught to me: After each prayer Say Glory to Allah (sabih) ten times, Praise be to Allah (hamd) ten times, and Allah is Great (kabbir) ten times, and when you go to bed then Sabih, Hamd thirty three times each and Kabbir thirty four times. I swear by Allah, I did not leave doing that from the time that the Messenger of Allah taught me. Then Ibn al-Kawa asked him: Not even on the night of Siffin (the battle with Mu’awiyah)? So he replied: May Allah fight you O people of Iraq, Yes, not even the night of Siffin”**.

In this report the Messenger ﷺ did not blame Ali (ra) for working on the irrigation outdoors, nor Fatimah (ra) for grinding flour indoors, but rather gave them some words which would make the difficulty of life easier for them, and be of more benefit and lasting to them in the hereafter.

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Similarly the narration indicates the obligation of the work of the woman in her house, and the man's work outside of it, since the request for a servant is an evidence of the difficulty of the work upon her inside and him outside, and if these issues were not obligatory upon them there would be no indication from the difficulty of the work, in which case there would be no difficulty and no hardship, if it was not obligatory.

This is from the angle of what is understood from the narration of Ahmad as a support for the narration of Ibn Abi Shaybah.

Also Abu Hanifah used the narration, as did a number of jurists, such as Abu Bakr Bin Abi Shaybah who reported the narration, as well as Abu Ishaq al-Jurjani who also reported the narration through numerous chains as mentioned by the author of *al-Mughni*, though he (ibn Qudama) did not use it himself.

In the same way Ibn Habib al-Maliki in *al-Wadiha* took the narration and used it. Ibn Hajar mentioned in *Fath al-Bari*: "And Ibn Habib reported from Asbagh and Ibn al-Majishun from Malik that the housework is obliged upon the woman, even she was noble, if her husband was not financially able to pay (for a servant). He said: and for that reason the Prophet ﷺ obliged Fatima with the indoor work and Ali the outdoor".

Based upon that we take the mentioned narration of Ibn Abi Shaybah **"he ﷺ obliged his daughter Fatima with the housework, and Ali with the outdoor work"**.

And he ﷺ used to order his wives to help him. Muslim reported from Aaisha (ra) the mother of the believers that the Messenger of Allah ﷺ said **"O Aaisha, bring the knife and sharpen it with a stone"**. And Ahmad reported with an authentic chain from Ya'ish b. Takhfa Bin Qays al-Ghifari who said my father was from the *al-suffa* (poor people at the time of the Prophet ﷺ)...until he mentioned **"So we went with him to the house of Aaisha, so he said: O Aaisha, feed us, then he said, O Aaisha, bring us drinks"**. If serving him conflicted with any action that the *Shari'ah* made *mubah* (permitted) for her, such as trade, or anything recommended, such as recommended prayers, then serving him is preferred. So it would be upon her to leave behind the optional and recommended actions and instead serve him. These two evidences are proof that the primary role for the woman is to be responsible for the household.

As for the third evidence, the Prophet ﷺ said **"If a girl reached puberty (indicated by starting menstrual cycle), it is not correct that any part of her should be seen other than her face and two hands up to the wrists"** reported by Abu Dawud as a Mursal narration from Qatadah, and Qatadah had met the companion Anas and so his Mursal narrations are acted upon. This is the restriction for the woman's clothing and her *awrah*, and it a proof that she is an honour that must be protected.

Additionally, Allah (swt) said **"O you who believe, do not enter houses other than your own, until you were familiar with (sought permission) and greeted those in them"** (TMQ 24:27), and so Allah (swt) prohibited to enter houses without the permission of their occupants, and considered lack of permission to be estrangeent, and the granting of permission to be made familiar, and said **"until you were familiar with (sought permission)"** which is an allusion that indicates requesting permission. The permission here is intended to prevent entering into a house when the woman is not covered, which is why permission is necessary even with the mother. In a narration: **"That Malik told me from Safwan b. Sulaym from 'Ata' b. Yasar a man asked the Prophet ﷺ 'Should I seek permission to see my mother?'. He ﷺ said 'Yes'. So the man said 'she is in the house with me'. He ﷺ said 'Seek her permission. So the man said 'She has no one else to serve her except for me, should I still seek permission every time to see her?'. He ﷺ said 'Seek her permission. Would you like to see her naked?' The man replied 'No'. So the Prophet ﷺ said 'So seek permission'"** reported by Malik in *Al-Muwatta* and Abu Dawud in *al-Marasil* from 'Ata' b. Yasar, and Ibn 'Abd al-Barr said in *al-Tamhid* that it is an authentic Mursal narration, and in *al-Istidhkar* he said it is from the authentic Mursal narrations. And Allah (swt) said **"and not to show off their adornment**



*except that which is apparent, and to draw their veils all over and not to reveal their adornments except to their husbands, or fathers, or their husband's fathers, or their sons, or their husband's sons, or their brothers or their brother's sons, or their sister's sons, or their women, or the slaves whom their right hand possesses, or old male servants who lack vigour, or small children who have no sense of feminine sex.*" (TMQ 24:31). Therefore, Allah (swt) has defined what can be shown by the woman in her private life, and that she can only let her family (*maharim* – those men who cannot marry her) and those who do not have sexual desires (children and elderly) see more than her face and hands. This restriction clearly indicates that she is an honour which must be protected, and so she is surrounded with these rules. In the same manner that her *awrah* is defined, the people who are permitted to see more from her *awrah* are also precisely defined, which indicates that the woman is protected.

Additionally, it has been narrated from Ibn 'Abbas that he heard the Prophet ﷺ addressing the people saying *"A man should not be alone with a woman unless she has a mahram (male family member) with her"* (agreed upon). It is also narrated that the Prophet ﷺ said *"It is not permitted for a woman who believes in Allah and the Day of Judgement to travel a day and nights journey without a mahram"* (reported by Muslim). And in the narration of Ibn 'Abbas that the Prophet ﷺ said *"A woman should not travel unless she is with her mahram"* *A man stood up and said 'O Messenger of Allah, my wife has gone to pilgrimage and I was assigned to such and such expedition' and so the Messenger ﷺ said "Then leave and go on pilgrimage with your wife"* (reported by Muslim from Ibn 'Abbas). So the Messenger ﷺ withdrew him from the army which was going out to battle, in order to protect his wife.

Also, Allah (swt) said *"And as for women past child-bearing who do not expect wedlock, it is no sin on them if they discard their (outer) clothing in such a way as not to show their adornment"* (TMQ 24:60). The meaning is not that they should not be beautified, since beautification is permitted for the woman without any restriction, rather they should not display their beautification in such a way that would turn men's attention towards them, and so the prohibition is for the open display of the beautification and not the beautification itself.

These evidences all indicate conclusively that the woman is an honour that must be protected, and accordingly the proof of this article has been made clear.

### **Article 113**

**In origin men and women are segregated, and do not come together except for a need by *Shar'* agree to it and agrees to their assembly for it , such as trade and the pilgrimage.**

This article is derived from numerous evidences. Firstly: the *Shari'ah* divided the Muslim's life between the general and private spheres, and in the woman's private life she can display what is above her *awrah* to her *maharim* (close family relatives), whereas in her public sphere she cannot display anything from her body except her face and hands. Secondly, the *Shari'ah* made the rows of the woman in prayer behind that of the men. Thirdly, the *Shari'ah* ordered men to lower their gaze from the women, and vice versa. Fourthly, the woman has been ordered to cover herself in modest clothing which covers every part of the places of adornment, except for that which is apparent from her (in other words, her hands and face). Fifthly, it is permitted for her to display what is above her *awrah* in her private life between her *maharim*.

All of the evidences for these rules indicate that the basis is that men are segregated from women, and so each of them lives in a different sphere of life than the other. Along with this, the woman has had certain issues made permitted, recommended and obligatory upon her. Therefore, it is imperative that she undertakes what is obligatory, and recommended, and permitted, but without *tabarruj* (beautification which attracts attention) and with the clothing which Allah (swt) described in the Quran with His (swt) words *"and to draw their veils all*

**over**” (TMQ 24:31) is the upper/outer clothing; whereas His (swt) words **“draw their jilbabs all over their bodies”** is referring to the clothing from underneath, because the *jilbab* is worn above the clothing. Al-Jawhari said in *al-Sihhah* “The *Jilbab* is the cover and some say it is a sheet”. In the al-Muheet dictionary it mentions “the *Jilbab* is in the form of the *Sirdab* or the *Sinmar*, which is the gown or a large garment for women under the cover, or conceals her clothing like a cover”. And to **“draw”** (*idnaa*) clothing is to lower it to the bottom; it is said **“draw the cover, lower it”**, and the meaning of drawing here is lowering, and the only meaning of lowering the clothing is to lower it to the bottom. And His (swt) words **“in such a way as not to show their adornment”** (TMQ 24:60) is with respect to the open display of beautification (*tabarruj*).

Therefore, she is allowed to go out dressed in accordance with what the *Shari’ah* specified for her, and meet with men in order to undertake what the *Shari’ah* allowed her to do, such as buying, selling, employment, appointing proxies, custody and so on, and to carry out what has been made obligatory upon her such as *hajj* and paying the *Zakah*, or recommended upon her such as voluntary charity, helping the poor, treating the sick and so on. These needs have been confirmed from the legislative angle for her by the *Shari’ah*, whether they were obligatory, recommended, or permitted, and has confirmed the gathering of men and woman while they are undertaken. Therefore, these evidences indicate that the method of life in Islam is to segregate men from the women in the private sphere, and allow men and women to gather in the public sphere in order to carry out whatever was obligatory, recommended, or permitted upon them with the dress in accordance with what the *Shari’ah* specified for her. These are the evidences for this article.

#### **Article 114**

**The woman has been given the same rights as man, and whatever was obliged upon man is also obliged upon the woman, except that which was specified for her or him by the *Shari’ah* evidences. Accordingly, she has the right to partake in trade, agriculture and industry, and to undertake contracts and transactions, to possess all forms of property, to invest her wealth whether personally or through proxy, and to personally carry out all worldly affairs.**

The evidence for this article is that when the Legislator (swt) addressed the worshippers, He (swt) addressed them in their characteristic as human beings, with no concern as to whether the one addressed was male or female. Allah (swt) said **“O mankind, Verily I am sent to you all as the Messenger of Allah”** (TMQ 7:158), **“O mankind, fear Allah”** (TMQ 4:1), **“O you who believe, answer Allah and the Messenger”** (TMQ 8:24), **“Fasting has been prescribed for you”** (TMQ 2:183), **“Whoever of you witnesses the month, must fast”** (TMQ 2:185), **“And establish prayer”** (TMQ 2:43), **“Take from their wealth”** (TMQ 9:103), **“Sadaqah is only for the poor and destitute”** (TMQ 9:60), **“And those who hoard gold and silver”** (TMQ 9:33), **“And Allah permitted trade and forbade usury”** (TMQ 2: 275), amongst many other similar texts. In all of these the Legislator (swt) addresses humankind with a general address irrespective of whether the one addressed was male or female. And the generality of the address of the Legislator (swt) remains upon its generality. Accordingly, the *Shari’ah* came for humankind and not for men in their characteristic of being male, or for women in their characteristic of being female, rather for mankind from the angle of being human. Therefore, whatever the *Shari’ah* commanded came for humankind, and whatever it includes in terms of rights and obligations are for and upon humankind. This is the evidence for the part of the article which mentions that the woman has the same rights and obligations as the man, because the *Shari’ah* came for humankind, and both male and female are human, and it did not come specifically for woman or man, and so the two of them are equal in respect to the address of the Legislator (swt) regarding the *Shari’ah* rules for humankind.

This generality in the address of the Legislator (swt) remains upon its generality in everything, and remains upon its generality in every rule as long as the *Shari'ah* did not relate it through a *Shari'ah* text as a rule specific for women or men, in which case that rule alone that the text addressed would be specific to women or men. The *Shari'ah* remains upon its generality addressing humankind irrespective of gender, ***“O mankind, Verily I am sent to you all as the Messenger of Allah”***(TMQ 7:158), and all of the remaining rules remain upon their generality for humankind irrespective of gender ***“O you who believe, answer Allah and the Messenger”*** (TMQ 8:24), ***“And obey Allah and the Messenger”*** (TMQ 3:132), ***“Whoever of you witnesses the month, must fast”*** (TMQ 2:185), ***“And take as witness two just persons from among you”*** (TMQ 65:2) and whatever else came regarding the rules. All of these remain upon their generality which addressed humankind without regard as to whether they were male or female.

Therefore, in origin the Legislator (swt) made the *Shari'ah* for humankind, not for men or women specifically, but rather for both of them as human beings. Then, the Legislator (swt) laid down some rules specific for women and some specific for men, however this specificity is restricted to those rules alone and does not go beyond them or the texts which came to explain them. Neither of them is charged with a rule specifically unless there is a clear text related which specifies it to one of the two genders. So the specification of women or men with certain rules is an exception to the generality, and so the *Shari'ah* remains upon its generality as do all of its rules, and any exception is limited to what the text mentions and does not go any further. For example, there are specific rules for women such as leaving prayer, and eating in Ramadan during the menstrual cycle, and such as making the witness statement of a single woman sufficient in those cases which only they would be privy to such as virginity without requiring the normal condition regarding witnesses, as this is specific to women and there are texts regarding it, but it does not apply to anything else at all; rather she remains addressed by the address of the Legislator (swt) in the same manner as man is, since the address is for humankind and not for a specific gender. Also, for example, there are rules which are specific to men such as ruling or authority, and so it is not valid for anyone other than a man to undertake it. This is specific to men, and has had a text narrated regarding it, and so it is specific to men alone. However this specification is related to ruling alone and not the judiciary or managing the departments of the state because the text came regarding ruling, or those who govern, and nothing else. And it is restricted to what came in the text alone, and will not be specified at all by anything which is not related by text; rather the man remains addressed by the address of the Legislator (swt) in the same manner as the woman since the address is for humankind and not for a specific gender.

Based upon this, there is nothing in Islam called women's rights or men's rights, or women's obligations and men's obligations. Rather, the rights and obligations in Islam are for humankind in their characteristic as human beings, without any attention as to whether they are male or female; rather irrespective of their gender. Accordingly, all the laws of the *Shari'ah* are for humankind while some are exceptions - so sometimes the woman is addressed in her characteristic as a female by specific text and at other times the man is addressed in his characteristic as a male by specific text.

Due to the generality of the *Shari'ah* and its rules, the woman can work in trade, agriculture, and industry in the same way as the man, since the address of the Legislator (swt) came for humankind.

She can undertake all the verbal actions of contracts and transactions, since the address of the Legislator (swt) came for humankind.

She can own any type of property and invest her wealth whether personally or otherwise, since the address of the Legislator (swt) came for humankind.

She can teach and carry out *Jihad* since the address of the Legislator (swt) came for humankind.

She can partake in politics, join political parties and account the ruler, since the address of the Legislator (swt) came for humankind.

She can directly engage in all the affairs of public life, in exactly the same manner as the man, in everything due to the citizen and whatever is required to make a living, since the address of the Legislator (swt) came for humankind.

#### **Article 115**

**It is permitted for a woman to be appointed in civil service and positions in the judiciary apart from the Court of Injustices. She can elect members of the *Ummah*'s council, and be a member herself, and she can participate in the election of the Head of State and in giving him the pledge of allegiance.**

The evidence for the article is the evidence for employment, since the civil servant and judge are employees. The evidence for employment is general and unrestricted. It is narrated that the Prophet ﷺ said ***"Give the employee his wages before his sweat dries"*** (reported by Ibn Maja from Abdullah Bin Umar). The word "employee" here is general and encompasses both women and men. In the same vein, al-Bukhari reported from Abu Huraira that the Prophet ﷺ said ***"I will be opposed to three on the Day of Judgement"*** until he ﷺ said ***"and a man who employed an employee, and did not pay him though he completed his work"***; the word employee is unrestricted and encompasses both women and men. The definition of employment is ***"a contract upon an exchange of a service for remuneration"*** and the work in government departments and judiciary is a service, undertaken upon a contract between the State and the civil servant in exchange for remuneration, which is the salary. Umar b. al-Khattab (ra) appointed al-Shifa, who was a woman from his tribe, as a judge in the market place (*hisbah*) in Madinah, though it is not permitted for a woman to be a judge of the *Madhalim* court and nor to be the chief judge responsible for the *Madhalim* judiciary, since that is considered a ruling position.

As for the *Ummah* council which is for consultation and accounting, consultation (*Shura*) is confirmed by a general evidence ***"And consult them in the issue"*** (TMQ 3:159), ***"And who conduct their affairs by mutual Shura (consultation)"*** (TMQ 42:38), and when the Messenger ﷺ saw that the Muslims refused to shave and cut their hair, he ﷺ went to Umm Salamah and said to her ***"The Muslims are destroyed"*** as reported by al-Bukhari from al-Mawar Bin Makhzama, and he ﷺ told her what had happened, so she said to him ﷺ ***"Shave your head, they will not differ from you"***, so he ﷺ followed her advice and as a result the Muslims shaved and cut their hair. Then she said to him ***"Set off with them quickly"***, and so he ﷺ took her advice. So he ﷺ took the opinion of a woman, which indicates that he took her opinion in any issue whether politics or otherwise. The member of the *shura* council is simply a proxy to represent opinion, and it is permitted for a woman to be appointed as a proxy in the same manner as a man, due to the generality of the evidence. The issue of accounting is the same since the texts regarding enjoining the good and forbidding the evil are general, encompassing both men and women – Muslim reported from Umm Salama that the Messenger of Allah ﷺ said ***"There will be Amirs, where you recognizes some of what they do and deny some. Whoever recognized he would be free of responsibility, and whoever denied he will be safe; but whoever accepted and followed (he will be not)"*** They said: ***Should we not fight them? He ﷺ said – no so long as they pray"*** and prayer here is an allusion to ruling by Islam, and the narration is general for both men and women. So just as men account the rulers, so do women.

As for the issue of men accounting the rulers, al-Bukhari and Muslim reported from Abu Huraira: ***"When the Messenger of Allah died and Abu Bakr took leadership, and those from the Bedouins disbelieved, Umar said: How can we fight people and the Messenger of Allah said I have been ordered to fight the people until they say La ilaha illa Allah, and whoever***

*does so then their wealth and blood are protected except by its right, and their account is with Allah. And so Abu Bakr said: I swear by Allah, I will fight whosoever differentiates between the prayer and the zakah, since zakah is the right of the wealth, By Allah, if they deny me a young goat that they would have paid to the Messenger of Allah I would fight them over their denial. Umar said: By Allah, it was only that Allah had opened the chest of Abu Bakr (to understanding), and so then I realised it was the truth".* As for women accounting the ruler, it is mentioned by al-Qurtubi in his *Tafsir*, al-Amidi in *al-Ihkam* and al-Ghazali in *al-Mustasfa* that a woman accounted Umar (ra) when he prohibited people from giving dowry of greater than four hundred *dirham*. She said to him: You have no right to do this Umar. Have you not heard the words of Allah *"and you have given one of them a Qintar (of gold i.e. a great amount as dowry, take not the least bit of it back"* (TMQ 4:20)so he said: A woman is correct, and Umar is wrong.

With respect to her participation in elections for the *Khalifah* and giving him the pledge of allegiance, the narration of Umm 'Atiyyah explicitly mentions how the women gave the pledge of allegiance, reported by al-Bukhari from Umm 'Atiyyah: **"We gave the Prophet the pledge of allegiance and he read for us that they should not disbelieve in Allah, and he forbade us from wailing (over the dead), so one of us withdrew her hand"**, and the verse **"And if the believing women come to give you the pledge of allegiance"** (TMQ 60:12)is also explicit in mentioning the woman's pledge of allegiance, and therefore it is permitted for her to elect the *Khalifah* and give him the pledge of allegiance.

#### **Article 116**

**It is not permitted for a woman to take a ruling position; so she cannot be a *Khalifah*, nor an assistant, governor or 'Amil, nor undertake any action considered to be ruling. In the same manner she cannot be the head judge and nor a judge in the *Madhalim* court, nor the Amir of Jihad.**

The evidence for this article is what al-Bukhari narrated from Abu Bakra who said **"When the Messenger of Allah ﷺ was informed that the daughter of Kisra had been given the reign over the Persians he said 'A people who appoint a woman over their command will never succeed'"**. This explicitly mentions that a woman is not permitted to take a ruling position. Accordingly, women are not permitted to undertake anything at all from any of the actions of ruling, whether the *Khalifah*, assistant, governor, Supreme judge, judge in the *Madhalim* court, or 'amil in the district, due to the explicitness of the narration forbidding it.

As for women not taking the position of the *Amir* of *Jihad*, despite it not being a ruling position, this is because *Jihad* is not obligatory upon women and so she cannot assume leadership over those for whom *Jihad* is obligatory.

#### **Article 117**

**The woman lives in public and private spheres; in the public sphere she is permitted to live with women, *maharim* men, and foreign men (men whom she can marry) on the condition that nothing other than her face and hands can be revealed, and that the clothing is not revealing, besides there is not any open display of adornments. As for the private sphere, she is not permitted to live with anyone other than women and her *maharim*, and she is not permitted to live with unrelated/foreign men. She is restricted by all the *Shari'ah* rules in both spheres.**

The evidence for this article is the verse mentioning seeking permission **"O you who believe, do not enter houses other than your own, until you were familiar with (sought permission)**

*and greeted those in them*” (TMQ 24:27), and the verse regarding revealing the beautification to the *maharim* - *“and not to show off their adornment except that which is apparent, and to draw their veils all over and not to reveal their adornments except to their husbands, or fathers, or their husband’s fathers, or their sons, or their husband’s sons, or their brothers or their brother’s sons, or their sister’s sons”* (TMQ 24:31) - which are the evidences for the private sphere. The verse mentioning the complete clothing *“and to draw their veils all over Juyubihinna (i.e. their bodies, faces necks and bosoms)”* (TMQ 24:31) and the *Jilbab* *“draw their Jilbabs (veils) all over their bodies”*, and the verse regarding the prohibition of the open display of adornments *“in such a way as not to show their adornment”* (TMQ 24:60), along with the texts which indicate the obligatory, recommended and permitted actions which Allah (swt) legislated for woman and man without distinction, are all evidences for the public sphere.

However, when Allah (swt) permitted the woman to participate in the public sphere with men, such as the permissibility for her to participate in trade, agriculture, industry, the civil service, the judiciary, membership of political parties, accounting the ruler, and dealing with life’s affairs in the same manner as the man, at the same time He (swt) laid down specific rules. So the clothes which she is permitted to come out with in the public sphere have been specified, in that she has to cover all of her body other than her hands and face, and not display her adornments and beautification openly; Allah said *“and not to show off their adornment except only that which is apparent”* (TMQ 24:31). Ibn ‘Abbas said this is the face and hands, as reported by al-Bayhaqi in *al-Sunan al-Kubra*. The Prophet ﷺ said *“If a girl reached puberty (indicated by starting menstrual cycle), it is not correct that any part of her should be seen other than her face and two hands up to the wrists”* (reported by Abu Dawud as a Mursal narration), and Allah (swt) said *“in such a way as not to show their adornment”* (TMQ 24:60), and the Prophet ﷺ also said *“Any woman who put on perfume, and then walked alongside people in order for them to smell her, is a fornicator”* (reported by Al-Nasa’i from Abu Musa al-Ash‘ari, and al-Hakim authenticated it and al-Dhahabi confirmed it).

As for how the woman should live in the private sphere, she has been prohibited from living with anyone other than women, *maharim* or children, and she has been prohibited from appearing in this private sphere in light clothes except in front of those just mentioned. Allah (swt) said *“and not to show off their adornment except to their husbands, or fathers, or their husband’s fathers, or their sons, or their husband’s sons, or their brothers or their brother’s sons, or their sister’s sons, or their women, or the slaves whom their right hand possesses, or old male servants who lack vigour, or small children who have no sense of feminine sex.”* (TMQ 24:31).

It is not permitted for anyone to come into her private sphere before taking permission, irrespective of whether they were *mahram* or not; Allah (swt) said *“do not enter houses other than your own, until you were familiar with (sought permission) and greeted those in them”* (TMQ 24:27); and the Messenger ﷺ ordered a man to take permission before entering his mother’s place.

These are the evidences for this article.

### **Article 118**

**It is not permitted for a woman to be alone with a non-mahram. It is not permitted for her to reveal the adornments (*tabarruj*) and the ‘*awrah* in front of foreign men.**

This article explains three issues:

**Firstly** – the prohibition of *khulwah* (to be alone in a private space with a non-mahram). The evidence is the words of the Messenger ﷺ *“A man should not be in khulwah with a woman,*

since the third of them is the devil”, reported by Ahmad with an authentic chain from Umar (ra). And his ﷺ words **“A man should not be in khulwah with a woman unless her mahram was with her”** (reported by Muslim).

**Secondly** – prohibition of open display of adornments (*tabarruj*), or anything which attracts attention. The evidences are His (swt) words **“in such a way as not to show their adornment”** (TMQ 24:60) and His (swt) words **“and not to stamp their feet so as to reveal what they hid of their adornment”** (TMQ 24:31). This is a prohibition of one of the actions of *tabbaruj*, and *tabarruj* linguistically means to reveal the beautification. It is mentioned in *al-Muhit* dictionary “she did *tabarruj* – she displayed her beauty to the men”, which is also the *Shari'ah* meaning for it. So *tabarruj* is different from beautification, because beautification is one thing whereas revealing that beautification is something else; it is possible for her to be beautified and not doing *tabarruj* if her beautification was normal and not of the type to attract attention. Therefore the meaning of prohibiting *tabarruj* is not the absolute prohibition of beautification, since *tabarruj* is the revealing of the beauty and charms to the foreign men; it is said the woman did *tabarruj*, she revealed her beauty and charms to foreign men. Also supporting these texts that prohibited the actions of *tabarruj*, is that with investigation it becomes apparent that they only prohibit the revealing of beautification and charms, and the prohibition of beautification generally is not something which is understood from them. So the words of Allah (swt) **“and not to stamp their feet so as to reveal what they hid of their adornment”**(TMQ 24:31) is plainly prohibiting the revealing of the beautification, since He (swt) said **“so as to reveal what they hid of their adornment”**. It is narrated from Abu Musa al-Ash'ari who said **“The Messenger of Allah said “Any woman who put on perfume, and then walked alongside a people in order for them to smell her, is a fornicator”**”, in other words is like a fornicator, reported by Al-Nasa'i and al-Hakim who authenticated it. This narration is also prohibiting an action of *tabarruj*, and it is clear from his words **“put on perfume, and then walked alongside a people in order for them to smell her”** that it is a prohibition of revealing the beautification, in other words the putting on of perfume so that men could smell her. It is narrated by Abu Hurayrah who said **“The Messenger of Allah ﷺ said “Two categories of people of the hellfire that I haven't seen until now: women naked while dressed, they will incline and seduce, upon their heads will be something like the humps of inclining camels, they will not enter paradise nor smell its fragrance, and men who will have sticks like the tails of cows which they use to whip people”** (reported by Muslim); so this is also from the actions of *tabarruj*. It is clear from his ﷺ words **“naked while dressed”** that it means the revealing of adornments. His ﷺ words **“incline and seduce”** is talking about movements that attract men's attention. And the words **“upon their heads will be something like the humps of inclining camels (*bukht*)”** is talking about revealing the beautification done to their hair, in other words treating and heaping it around a turban or headscarf or anything similar until it became like the hump of a camel. And the **“*bukht*”** is the Afghani camel, in other words they arranged their hair to look like the hump of an Afghani camel. This is clearly prohibiting the revealing of beautification to men. And similar to this are all the texts which are related to the prohibition of any action of *tabarruj*, all of which make it clear that the prohibition is regarding revealing the beautification in order to provoke men's inclination towards the woman. And this is supported by the linguistic meaning of *tabarruj* which is to reveal the beautification, which is different from beautification itself. Therefore, what is forbidden is the *tabarruj* with its linguistic indication, and by the indications of the narrations which prohibit any of its actions, whereas beautification without *tabarruj* is not forbidden.

**Thirdly**, the prohibition of uncovering the 'awrah in front of foreign men (men they are able to marry). It is mandatory upon the woman to conceal all of her body apart from her face and hands, according to the evidence **“and not to show off their adornment except that which is apparent”** (TMQ 24:31); Ibn 'Abbas said this means the face and hands as reported by al-Bayhaqi in *al-Sunan al-Kubra*, Ibn 'Abd al-Barr in *al-Tamhid* and Ibn Kathir in *al-Tafsir*. And the Messenger ﷺ said **“If a girl reached puberty (indicated by starting menstrual cycle), it is not correct that any part of her should be seen other than her face and two hands up to the**

*wrists*” (mursal narration reported by Abu Dawud), at which point he ﷺ grasped his ﷺ arm, and there was the distance of a grasp between his ﷺ hand and where he ﷺ grasped his arm. Therefore, the whole of the woman’s body apart from her face and hands are *awrah*, and so it is obligatory for her to conceal it.

The Legislator (swt) made it a condition of the clothing that it covers the skin, in other words obligated covering the skin by what covers its colour, or in other words the skin and its colour whether white, red, dark, black or anything else. In other words, the cover should cover the skin and its colour such that the colours of the skin underneath are not known, otherwise it would not be considered as a cover for the *‘awrah* and rather the *‘awrah* would be considered visible and not covered, since the *Shari’ah* cover is that which conceals the colour. The evidence that the Legislator (swt) obligated covering of the body by covering the skin such that its colour is not known is from his ﷺ words **“it is not correct that any part of her should be seen”**. This narration is a clear proof that the Legislator (swt) made it a condition of covering the *‘awrah* that nothing should be seen from it, or in other words the skin should be covered by something that does not reveal what is behind it, and so it is obligatory for the woman to cover her *‘awrah* by a dress which is not delicate, in other words does not convey what lies behind it and does not disclose what is under it.

#### **Article 119**

**It is prohibited for any man or woman to undertake any work which could undermine the morals, or causes corruption in the society.**

The evidence for this article is what was narrated from Rafi’ b. Rifa’ah who said **“The Prophet ﷺ forbade us from benefiting from the slave woman except that which she did with her hands, and said ‘in this manner’ with his fingers, such as bread-making, sewing, and inscribing”** reported by Ahmad and authenticated by al-Zayn, as well as al-Hakim who also authenticate it; in other words he ﷺ prohibited the woman from any work which took advantage of her femininity, while allowing any other type of work. This is understood from the part of the narration which mentions **“except that which she did with her hands”**, in other words intended to benefit from her efforts, and its understanding is the prohibition of taking advantage of her femininity. Also, the *Shari’ah* principle **“The means to something forbidden is also forbidden”** prohibits any work that could lead to anything forbidden. And the *Shari’ah* principle **“If one type of a permitted thing leads to a haram, only that one is prohibited, and the thing remains permitted”** prohibits every person, male or female, from working in a job originally permitted for men and women, if the work for that person specifically would lead to a *haram* for him, or the *Ummah*, or the society, whatever type of *haram* that may be.

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#### **Article 120**

**Marital life is one of tranquillity; and the couple should live together as companions. The guardianship (*qawwamah*) of the husband over the wife is a guardianship of care and not ruling. It has been made obligatory for her to obey him, and obligatory upon him to financially support her according to the expected standard of living of one like her.**

The evidences for this article are the words of Allah (swt) **“It is He Who created you from a single person, and created from him his wife, in order that he live with her”** (TMQ 7:189), and His (swt) words **“And from among His Signs is that he created from you wives in order that you may live with them, and He has put mercy and affection between you”** (TMQ 30:21), and living here means contentment. The words of Allah (swt) **“And they (women) have rights like those over them according to what is reasonable”** (TMQ 2:228), and Ibn



‘Abbas said ***“They have the right of good companionship, and being taken care of, in the same way that she is to be obedient according to what has been obligated over her with respect to their husbands”*** as mentioned by al-Qurtubi in his *Tafsir*. And His (swt) words ***“and live with them honourably”*** (TMQ 4:19), and the living (*‘ishrah*) is the mixing and blending. It is narrated from Jaber that the Messenger of Allah ﷺ said in his address in the farewell pilgrimage ***“Fear Allah with respect to the women, since you took them as a trust with Allah, and you made them permissible to yourselves with the Word of Allah”*** (reported by Muslim). And it is narrated that he ﷺ said ***“The best of you are the best of you towards their families, and I am the best of you to my family”***, reported by Al-Tirmidhi from Aaisha (ra), and he considered it *Hasan Sahihgharib*, and Ibn Hibban, and al-Hakim who authenticated it. And he ﷺ said ***“The best of you are the best of you towards their wives”***, reported by Al-Tirmidhi from Abu Hurayrah and he said it was *Hasan Sahih*. And he ﷺ used to have a good close relationship with his family - playing with his wives, acting kindly towards them and joking with them. If he ﷺ had prayed the *isha* prayer, and entered his house, he would chat with his wife a little before sleeping and make her feel close in that way. All of these evidences indicate that the marital life is one of tranquillity and that the husband must do whatever is required to make the marital life tranquil. It is narrated from Ibn ‘Abbas that he used to say ***“I beautify myself for my woman, in the same way she beautifies herself for me. I love to take every right I have upon her cleanly, which means her rights over me are obligatory, since Allah (swt) said “And they have rights, like those over them” (TMQ 2:227)”*** (reported by al-Qurtubi in his *Tafsir*).

Though Allah (swt) has made the man guardian over the household, since He (swt) said ***“And the men are guardians (qawwamun) over the women”*** (TMQ 4:34), this guardianship is a guardianship of care and not one of rule and authority. In the *al-Muhit* dictionary it says “established ... the man and the woman, and upon her, what he prohibited and he fulfils her issue”, which indicates that the meaning of the guardianship of man over woman from a linguistic point of view is to pay for her maintenance and carry out whatever she needs, and so this linguistic meaning is the meaning used in the verse since there is no *Shari’ah* meaning that has been related regarding it. Therefore this is the meaning of ***“guardians (qawwamun) over the women”***, and so it is necessary that the guardianship of the man over the woman is to fulfil her issues, and for his relationship with her to be the relationship of companionship, which is how Allah (swt) characterised it saying ***“And His companion”*** (TMQ 80:36), meaning his wife.

The Prophet ﷺ used to be a companion to the wives in his household, and not as a leader dominating over them, and they used to consult him ﷺ and discuss with him ﷺ. It is narrated from Umar b. al-Khattab (ra) that he said ***“By Allah, in Jahiliyyah we never used to take account of our women in any issue, until Allah revealed whatever He has regarding them, and apportioned for them what has been apportioned, so while I was thinking over an issue my wife said to me ‘If only you did such and such’. So I replied to her ‘What business is it of yours, and why are you talking about an issue that I am dealing with?’ Then she said to me ‘How strange it is to you O Ibn al-Khattab, that you don’t want anyone to answer you back, and your daughter answers back to the Messenger of Allah until he spends the whole day angry’.*** So Umar (ra) said ***“I gathered my cloak and left my place until I reached Hafsa, and so I said to her ‘O my daughter, you answer back to the Messenger of Allah until he spends his day angry?’ She replied ‘By Allah, we do answer back to him’ Then I said ‘You know that I warn you about the Punishment of Allah and the anger of His Messenger.”*** And it is narrated from Anas that he said ***“I gave some of the wives of the Prophet ﷺ food in a bowl, then Aaisha knocked the bowl with her hand and so whatever was in it fell out, and so the Prophet ﷺ said ‘Food for food and container for container”*** (reported by Al-Tirmidhi and he said it is *Hasan Sahih*).

These narrations indicate that the guardianship of the Messenger ﷺ over his wives was one of care and not one of rule, and so they were like companions to him and not subjects, as indicated by his relationship with them being one of companionship.

Allah (swt) has made it obligatory for the woman to obey her husband and has prohibited her from disobedience; He (swt) said *“As to those women on whose part you see ill-conduct, admonish them, refuse to share their beds, and beat them (lightly), and if they return to obedience then do not seek any way (of annoyance) over them”* (TMQ 4:34). And the husband has been obliged to pay for her maintenance; Allah (swt) said, *“Let the rich man spend (upon her) according to his means, and the man whose resources are restricted should spend according to what Allah has given him”* (TMQ 65:7). The Prophet ﷺ said *“You have right over your women, and your women have right over you. As for your right over your women, they should not prepare your bed for anyone you dislike, nor permit anyone you do not like into your home. Their right over you is for you to be good to them in providing their food and dress”* (reported by Al-Tirmidhi from Ibn al-Ahwas from his father). In the narration of Muslim from Jabir: *“you have right over them, and that they should not allow anyone to sit on your bed whom you do not like...Their rights upon you are that you should provide them with food and clothing in a fitting manner”*, and it is narrated that Hind came to the Messenger of Allah ﷺ and said: *“O Messenger of Allah, Abu Sufyan is a stingy man and doesn't give me and my child enough maintenance except what I take from him without his knowledge”* and so he ﷺ replied *“Take whatever is sufficient for you and your child that is reasonable”* (agreed upon narration from Aaisha). Accordingly, these are the evidences for this article.

#### Article 121

**The married couple must fully assist each other in the housework, and the husband must carry out all the work which is usually undertaken outside the house, while the wife carries out all the work which is usually undertaken inside the house, according to her capability. He must provide her with a servant as required to assist with the tasks that she is unable to carry out alone.**

The evidence for this article are the actions and words of the Messenger ﷺ, since he ﷺ *“obliged his daughter Fatimah with the housework, and ‘Ali with the outdoor work”* reported by Ibn Abi Shaybah from Damrah b. Habib, and although Abu Bakr Bin Maryam al-Ghassani is in the chain of the narration, Abu Hanifah took it and Ibn Hajar said regarding it in *al-Fath* “that was deduced from the narration of ‘Ali b. Abi Talib that when Fatima came to the Prophet and asked him for a servant he indicated to her to what should be said when you go to bed”. And the narration that al-Bukhari reported from ‘Ali b. Abi Talib (ra), *“Fatimah came to the Prophet asking for a servant. He said, “May I inform you of something better than that? When you go to bed, recite “Subhan Allah’ thirty three times, ‘Alhamdulillah’ thirty three times, and ‘Allahu Akbar’ thirty four times”. ‘Ali added: I have never failed to recite it ever since. Somebody asked, even on the night of the battle of Siffin?” He said, No, even on the night of the battle of Siffin.”*

This indicates the obligation of the wife carrying out the housework, since her request for a servant is an evidence for the heaviness of the housework upon her, and if the housework was not obligatory upon her there would be no indication from the heaviness, since she would not have been obliged to do the housework, and so then there would have been no heaviness and hardship. This indicates that the wife does the housework according to her capability, and if she requires a helper or more then they are provided for her, according to the evidence of Fatimah’s request from the Messenger. And it indicates that the husband undertakes the work outside of the house, and in such a manner they assist each other.

#### Article 122

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**Custody of the child is a right and duty upon the mother, irrespective of whether she is a Muslim or not as long as the child needs this care. If the child no longer needs the care, then the situation is examined. If both of the parents are Muslim then the child, whether boy or girl, chooses whomever they would like to live with, and they will join whomever they choose, irrespective of whether that was the man or woman. If one of them is non-Muslim, then there is no choice between them; and they rather will join the Muslim parent.**

The evidence for this article is what was narrated by Abdullah Bin 'Amru b. al-'As: ***"A woman said 'O Messenger of Allah, this is my son whom my stomach carried, my breast is a water-skin for him, and my lap is a guard for him. His father has divorced me and wants to take him away from me'. So he ﷺ said 'You have more right to him as long as you do not remarry'"*** (reported by Abu Dawud and al-Hakim who authenticated it, and al-Dhahabi confirmed it). This indicates that the mother has more right to the child while they still require nursing, since the Messenger ﷺ ruled for her to continue nursing him as long as she was not married, and did not give the child the choice, which indicates that he still required nursing. It is narrated by Ibn Abi Shaybah from Umar (ra) with an authentic chain whose reporters are all trustworthy that he divorced Umm 'Asim, then came to her while 'Asim was in her lap, and wanted to take him from her. The two of them argued until the young boy began crying, and so they went to Abu Bakr as-Siddiq (ra) who said ***"Her touch, lap and smell are better for him than you, until he grows up and then can choose for himself"***. Accordingly the young child who still needs nursing remains the mother's right and it is obligatory upon her and similarly upon her mother and grandmother, and upon every women from those who have the right of custody.

When the child becomes older, such that they are above the age of nursing which is by confirming whether he can do without it or not – which differs between children depending upon their circumstances – so a boy may not require it and he was five years old, and another when they were younger or older, and should be according to an expert's opinion. Based upon that, if they were not reliant upon nursing they are given the choice between the parents; Abu Hurayrah reported ***"The Prophet gave a boy the choice between his mother and father"*** (reported by Ahmad and Al-Tirmidhi who authenticated it). And Abu Dawud reported a narration from Abu Hurayrah that Ibn Hibban authenticated: ***"While I was sitting with the Prophet a woman came and said: O Messenger of Allah, my husband wants to take my son, and he brings me water from the well of Abu 'Inaba, and helps me, and so the Prophet said...This is your father and this is your mother, so take the hand of whichever of the two you wish. So he took the hand of his mother and so she left with him."***

These evidences indicate that once the child, whether boy or girl, reaches the age that they no longer require suckling and nursing, they are given the choice between their mother and father, irrespective of whether they were three years old or more as long as they no longer required nursing. If they still required nursing then the ruling is given in favour of the mother and the child is not given any choice.

However, if the women, such as the mother, was a disbeliever and requested to nurse her child, then if they were lower than the age of suckling or requiring nursing then the child is ruled in her favour in the same way as the Muslim woman, with no difference between them due to the generality of the narration ***"You have more right to him as long as you do not remarry"***. As for when the child is above the age of nursing, such that they are at the age or above the age they no longer need to be suckled, and no longer require nursing, then the child is not given the choice but rather is given to the Muslim parent. If the wife was the Muslim then the child would be given to her and if the husband was the Muslim then the child would be given to him, due to His (swt) words ***"And never will Allah grant to the disbelievers a way over the believers"*** (TMQ 4:141), and custody gives the custodian a way over the Muslim. Also due to his ﷺ words ***"Islam is above and nothing is made above it"***, reported

by al-Daraqutni from ‘Aith al-Muzni with a *Hasan* chain, and the custodian is above the child. Keeping the child under the custody of the disbeliever who will teach them disbelief is not allowed, and for that reason the child is taken from them.

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As for what was narrated by Abu Dawud from ‘Abd alHamid b. Ja’far from his father from his grandfather Rafi’ b. Sinan that ***“after he had embraced Islam, his wife refused to do likewise and so she went to the Prophet ﷺ and said “She is my daughter. She has finished suckling or is about to”. Rafi’ said “She is my daughter”. The Prophet ﷺ said to him sit on one side, and told his wife to sit on the other. He ﷺ then said “Call her”, and so the girl inclined to her mother, and so the Prophet ﷺ said “O Allah, guide her”, and then she inclined to her father, and so he took her”***. This narration is authenticated by al-Hakim and al-Dhahabi agreed with him, and al-Daraqutni mentioned that the girl’s name was Umayra. Ahmed and Al-Nasa’i both narrated this narration with a different chain, Al-Nasa’i narrated from ‘Abd al-Hamid b. Ja’far al-Ansari from his grandfather ***“that his grandfather embraced Islam, while his wife refused, and so he brought his young son who has not reached puberty, and said The Prophet ﷺ sat the father in one place and the mother at another, and then gave the young boy the choice and said “O Allah guide him”, and so he went to his father”***. Ibn Jawzi mentions that between the two chains of narrations the chain that mentions that it was a boy is the more correct.

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The Messenger ﷺ was not content with what the child had chosen, rather he prayed for him and so he chose his Muslim father, or in other words the child was given to the Muslim of the two parents.

## The Economic System

### Article 123

**The management of the economy is to take in consideration the viewpoint about the targeted society when considering the the fulfilment of the needs. So what the society ought to be should be made the basis for the fulfilment of the needs.**

This article is deduced from several evidences and the *Shari'ah* rule can be deduced from single or multiple evidences. It has been deduced from the limitation of the ownership of things by a specific method, and the limitation of the causes of ownership to particular causes, and the limitation of how wealth can be invested according to a particular method, and from the prohibition of certain things and actions, and so the management of the economy has been deduced from the evidences for these four issues.

The management of the economy which has been deduced from these evidences is that it is obligatory that the view regarding wealth, from the angle that it fulfils the needs must be connected to the *Shari'ah* rule regarding that wealth, and built upon it. Wheat and honey are considered to be from the wealth, because Allah (swt) made the two of them permitted. Whereas cannabis and alcohol are not considered to be from the wealth, since Allah (swt) made the two of them forbidden. The money which is used to purchase, and that which is paid as a salary, is from the wealth since the *Shari'ah* permitted earning money in these two situations, whereas stolen money and money earned through a void contract is not considered to be from the wealth because the *Shari'ah* forbade them both. So the *Shari'ah* rule must be examined when considering how to fulfil the needs, and it is obligatory that it is the basis for the consideration of the reality of the wealth fulfilling a need, or in other words the basis upon which the wealth is produced and consumed. This is the meaning of the article when it says that the management of the economy is the view towards how the society should fulfil the needs, since what the society should be upon, in other words what the relationships between the people should be based upon, is that these relationships should be restricted by and proceed according to the *Shari'ah* rules. Therefore it is obligatory that the consideration of what the society should be upon, in other words it being restricted by the *Shari'ah* rules, is present when considering how to fulfil the needs, and it should be connected to the *Shari'ah* rules and based upon them, irrespective of whether that is regarding the production of the wealth or its consumption.

Accordingly, the origin of wealth in the system of Islam is that in order for it to be considered an economic matter permitted to be produced and consumed, depends on what the society should be, in other words the restriction of the relationships between people by the *Shari'a* rule. And based upon this the wealth is examined from the angle of it fulfilling the need of human beings, the individual or the society, and upon this basis production and consumption occurs.

Though the restriction to the *Shari'ah* rule is the basis, which is general with regards to the obligation of making the *Shari'ah* rule decide every action of the Muslim, the *Shari'ah* did not leave the management of the economy general based upon general evidences such as the words of Allah (swt) "***And whatsoever the Messenger ﷺ gives you, take it, and whatever he forbids you, abstain from it***" (TMQ 59:7). Rather it came with detailed evidences specific to the distribution of wealth and how to fulfil the needs with it, which are the evidences which limit the method of ownership, its causes, and investment, and prohibition of certain things and actions. Therefore the management of the economy in Islam is not the consideration of wealth from the angle of how it can fulfil the need alone, but rather it also looks at whether it is permitted, and whether the need which it fulfils is permitted; in other words it is based upon

the consideration of the wealth from the angle of the relationships between people restricted by the *Shari'ah* rules.

#### **Article 124**

**The primary economic problem is the distribution of wealth and benefits to all of the subjects of the State, and facilitating their utilisation of this wealth and benefits, by enabling them to strive for them and possess them.**

This article explains that the economic problem has two halves: the first being the need of the people, in other words guaranteeing that the wealth of the country reaches every individual subject such that no one is prohibited from it and secondly, facilitating every individual subject to possess and benefit from this wealth.

As for the first half, its evidences are the verses and narrations that came regarding the matters of the poor people, the needy and the travellers. There are several of these evidences of varying nature such that they focus the attention on the importance of this problem.

As for the verses, Allah (swt) says:

*“And feed the poor who have a very hard time”* (TMQ 22:28)

*“And whatever you spend in good, it will be repaid to you in full, and you shall not be wronged; for the poor who in Allah’s cause are restricted”* (TMQ 2:272-3)

*“Sadaqah (Zakat) is only for the poor, the needy, and those employed to collect, to attract the hearts of those inclined (to Islam), to free the captives, and for those in debt, and for Allah’s cause, and for the traveller”* (TMQ 9:60)

*“And what Allah gave as booty to His Messenger from the people of the townships – it is for Allah, His Messenger, the relatives, the orphans, the needy, and the traveler....for the poor emigrants”* (TMQ 59:7-8)

*“If you disclose your alms-giving, it is well, but if you conceal them and give to the poor, that is better for you”* (TMQ 2:271)

*“And those who can fast (with difficulty) they can feed a poor person”* (TMQ 2:184)

*“And he who is unable to do so, should feed sixty poor”* (TMQ 58:4)

*“And they give food, despite their love of it, to the poor, the orphan and the captive”* (TMQ 76:8)

*“Or giving food in a day of hunger; To a relative orphan; Or to a poor cleaving to dust (out of misery)”* (TMQ 90:14)

*“Say: whatever you spend of good must be for your parents, and kindred, and orphans, and the poor, and the traveller”* (TMQ 2:215)

*“But righteousness is the one who believes in Allah, the Last Day, the Angels, the Book, the Prophets, and gives his wealth in spite of love for it, to the kinsfolk, the orphans, the poor, the traveller, and to those who ask”* (TMQ 2:177)

*“or, for expiation he should feed the poor”* (TMQ 5:95)

*“for expiation feed ten poor people”* (TMQ 5:89)

*“And in their properties there was the right for the (poor) one who asked and the (poor) one who does not ask”* (TMQ 51:19)

*“And those in whose wealth there is a recognised right; for the beggar who asks; and for the one who has lost his property and wealth”* (TMQ 70:24-5)

As for the narrations, the Messenger of Allah ﷺ said ***“Whenever the people of an area wake up with a hungry person amongst them, then they have removed the covenant with Allah”*** (reported by Ahmad from Ibn Umar, and authenticated by Ahmad Shakir).

And it is narrated from him ﷺ from what he related from Allah ***“The one who goes to bed full while he knows that his neighbour is hungry, does not believe in Me”*** (reported by al-Bazzar from Anas with a chain considered *Hasan* by al-Haythami and al-Mundhiri).

These verses and narrations, and all the verses related regarding spending, the rules of *Sadaqat* (charities), the rules of *Zakat*, and repeatedly encouraging the support of the poor, the needy, the travellers, and those who ask (beggars), in other words whoever can be described as poor, all clearly indicate that the economic problem is the poverty of individuals, i.e. the poor distribution of wealth amongst the individuals which results in the poverty of the individuals. Therefore the problem is the distribution of wealth to every individual subject of the State, and so it is obligatory to address this distribution such that the wealth reaches everyone. The evidences which came regarding this distribution is that it must reach every individual, and in order for it to reach every individual it is necessary to address the one who has been prevented from it, in other words address the poor, needy, travellers, and those who ask (beggars) – in other words whoever can be characterised as being poor. These are the evidences for the first half of the article.

As for the second half of the article, its evidence is that Allah (swt) gave a general permission for ownership in every permitted manner of gaining possession, so the Messenger ﷺ said ***“Whoever puts a wall around a land (that doesn’t have an owner) then it is his”*** reported by Ahmad and Abu Dawud with a chain that Ibn al-Jarud and al-Zayn authenticated, and Allah (swt) said ***“Lawful to you is the pursuit of water-game”*** (TMQ 5:96) and so on. Therefore, the permission of ownership and the generality of this permission for every individual subject of the State, whether Muslim or non-Muslim, indicates the facilitation of possession of property, and striving for it, and the evidences regarding the utilisation of food, clothing, shelter, and general enjoyment came in the same manner. Allah (swt) said ***“So eat thereof”*** (22:28) and the Messenger ﷺ said ***“No one eats food better than that which he ate from his own handiwork”***, reported by al-Bukhari through al-Miqdam, and Allah (swt) said ***“So eat from what Allah provided for you, lawful and good”*** (TMQ 5:88), ***“Eat of the good lawful things We have provided for you”*** (TMQ 2:57) and ***“Who has forbidden the adornment with clothes given by Allah, which he has produced for His slaves, and all kinds of lawful food?”*** (TMQ 7:32); this is beside other evidences. All of these came in a general form, and the generality of this permission encompasses the utilisation by every individual subject whether Muslim or *Dhimmi*; and all of this mean that the *Shari’ah* facilitated possession and utilisation of wealth for every individual subject of the State.

Built upon this, the *Shari’ah* evidences came and clarified the root problem and its treatment. The root problem was clarified as being the poverty of individuals, and the lack of facilitation for every individual to possess and utilise wealth, while at the same time the evidences amply demonstrated the treatment for poverty. The evidences permitted the possession and utilisation of wealth in a general sense, and made this permission the basis in economic issues. This is the root problem, or by an alternative expression, the root problem is the distribution of wealth, and not its production, since it is the poverty of individuals and the lack of facilitation for them to possess and utilise the wealth, and not the poverty of the country and its need of wealth. Therefore, the problem is one of distribution and not production.

The proof that the root problem is distribution and not production is the *Shari’ah* evidences which came regarding the treatment of poverty, permitting ownership, and utilising the possessions, and in the same manner, the reality of economic life. As for with respect to the *Shari’ah* evidences, there are evidences which came to treat the poverty of individuals, permit ownership and utilisation; in other words evidences which came regarding distribution. And there are evidences which came regarding the treatment of the poverty of the country, in other

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words, regarding production. By close investigation of the evidences for the two matters, it becomes clear that the evidences regarding the poverty of individuals, and the permission of ownership and utilisation, are many in number to the point that they attract increased attention, which indicates heightened importance, and that they came to treat a root issue and not a branch.

The verses and narrations related to poverty, in other words to the poor distribution and its rectification, are abundant in number, and the evidences which came regarding the permission of ownership and utilisation of wealth are likewise abundant. This is from one angle, and from another angle the issue that they are treating, which is the possession of wealth, is a root issue in economics to the point that there is nothing more fundamental, and all economic problems stem from it, which means that it is the root problem. Accordingly, the root problem is distribution. In other words, the reality that the evidences regarding poverty, permission of ownership and the utilisation of it are abundant, and the reality that they treat the fundamental issue from which all economic problems stem, is evidence that the root problem in economics is distribution.

This is different to the evidences regarding the poverty of the country, or by an alternative expression, the evidences regarding production. These are limited in number, and came to treat what is necessary for production, and not production itself, while that which addresses production directly is barely mentioned. *Shari'ah* evidences came which necessitate the creation of wealth in the country, in other words necessitate the treatment of production; so the words of Allah (swt) ***"Make ready, against them, your strength to the utmost of your power"*** (TMQ 8:60) necessitates the presence of wealth in the country and obligates the work to bring it about. Spreading security for the subjects of the State, and carrying out their interests and what that necessitates that in terms of building roads, providing water systems, building schools and mosques, providing medical services and education, dealing with emergencies such as earthquakes and floods, undertaking whatever is necessitated by burdens of the subjects; all of this and anything similar necessitates the presence of wealth and the effort to produce it.

In the same manner, treating the poverty of individuals, which is the root problem, cannot occur without the presence of wealth, so it necessitates working to produce it. Therefore, these rules address what necessitates production, and not production itself. However, they indicate the obligation of production from the angle that whatever is necessary to complete an obligation is itself an obligation. As for the rules which directly encourage the production of wealth, although they exist they are few in number; Allah (swt) said ***"Then when the prayer is ended, you may disperse through the land and seek the bounties of Allah"*** (TMQ 62:10), and He (swt) said ***"so walk in the path thereof (of agriculture etc.) and eat of His provision"*** (TMQ 67:15), and the Prophet ﷺ said ***"No one eats food better than that which he ate from his own handiwork"*** (reported by al-Bukhari through al-Miqdam). The Prophet ﷺ also said ***"Whoever seeks good and lawful things from the World, not asking, working in order to spend it on his family, and merciful to his neighbour, meets Allah and his face is like the moon on the night of Badr"*** (reported by al-Bayhaqi in *al-Shu'ab al-Iman* from Makhul as a Mursal narration). And he ﷺ said ***"seeking the lawful (halal) is obligatory upon every Muslim"*** (reported by al-Tabarani in *al-Awsat* from Anas, with a chain considered *Hasan* by al-Haythami and al-Mundhiri). These evidences are explicit in encouraging the seeking of provision, in other words encouragement of production, or by another expression the treatment of the poverty of the country. However, what is also apparent from them is that they address the individual, and that the encouragement of production is only for the treatment of their individual needs, either to fulfil the need or to increase their property; in other words the permissibility of utilisation.

This is from one angle. From another angle what these evidences address or what they necessitate is only the work for property, and not work alone. In other words, it is production for the sake of possession and not simply production alone, which indicates that the work produces possession, which points to it being a branch issue and not a root one. It is a branch



of possession, and not a root for it. That is why the rules which necessitate production came mentioning possession, and that possession necessitates production, and that the rules which directly address production came mentioning utilisation. So in one verse it made the effort for the sake of food, and made food from effort in the first narration, and expressed effort through the words seeking the world and seeking that which is lawful (*halal*) in the second and third narrations, so all these rules with their evidences mean possession of wealth. All of this indicates that production is not the root problem, rather it is a problem amongst the economic problems, and in the same manner it indicates that the root problem is ownership, or by an alternative expression possession, and this means that the root problem is distribution.

This is all with respect to the *Shari'ah* evidences, as for with respect to the reality of the economic life, no one denies that every country which suffers from economic unrest is due to suffering from poor distribution, and not due to low production. The socialist system, including communism, only arose as a result of the oppression which the society suffered from the capitalist system, or in other words a result of poor distribution. The social benefits which the capitalists tried to implement in their system are all connected to the distribution. The socialist solutions only deal with the issue of distribution, and the regions which are called the third world such as the Islamic countries in these days, are only backward due to the poor distribution, and not due to the poverty of the country. Accordingly, the reality of the root problem in economics is poor distribution and not lack of production. This is something that can be sensed, and every person can sense it, whether Muslim, capitalist or socialist. This is since the world as a whole produces much more than the people require, but the poor distribution is what makes some people obscenely rich, while others are destitute and poor. Even in the countries that suffer from low production the root economic problem is distribution first and then low production. Based upon this, the reality of the economic life indicates that the root problem in the economy is distribution, and not production.

#### **Article 125**

**It is obligatory to guarantee that all the basic needs are met for everyone, and are completely met on an individual basis, and to guarantee that every individual is facilitated to satisfy the extra needs (non-essential needs) to the highest level possible.**

This article has two halves: firstly, guaranteeing that the basis needs are satisfied and secondly, facilitation of the satisfaction of the luxurious needs.

The first half has several evidences for it, since the Legislator (swt) encouraged earning, seeking provision and effort, and made the effort to earn provisions a duty; Allah (swt) said ***“so walk in the path thereof (of agriculture etc.) and eat of His provision”*** (TMQ 67:15) and ***“Then when the prayer is ended, you may disperse through the land and seek the bounties of Allah”*** (TMQ 62:10). The Prophet ﷺ said ***“It is enough sin for a man that he deprives those whom he supports”*** (reported by Abu Dawud with an chain that al-Nawawi authenticated from ‘Abd Allah b. ‘Amru b. al-‘As). This is the origin in guaranteeing the person’s satisfaction of all their basic needs through his earning. So Allah (swt) made work a duty upon the needy male who is capable in order for him to satisfy his needs. This means that work is compulsory on this capable person and if he does not undertake it he would be punished as is the case with every duty. As for women, and those men who are incapable of work, it is a duty to provide them with maintenance and this is a binding right for them, and the State is bound to provide it. Maintenance of the wife is a duty upon the husband; the Prophet ﷺ said ***“And their right over you is that you provide for them and dress them with what is good”***. Maintenance for the children is a duty upon their father; Allah (swt) said ***“the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis”*** (TMQ 2:233), and the Messenger of Allah ﷺ said to Hind ***“Take whatever is***

**sufficient for you and your child that is reasonable**” after she had complained that Abu Sufyan was a miserly man. Maintenance for the inheritor; Allah (swt) said **“and on the heir (of the father) is incumbent the like of that (which was upon the father)”** (TMQ 2:233) after His (swt) words **“the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis”**, so the *Shari’ah* obligated the maintenance of the female without restriction upon the inheritor, since it did not make seeking an earning a duty upon her, and obligated upon him the maintenance for the incapable males, if they were poor.

In the absence of anyone who was obligated to pay maintenance, or if they were present but unable to pay the maintenance, the *Shari’ah* obligated this maintenance upon the *Bayt al-Mal*, in other words upon the State. It is narrated that Abu Hurayrah said **“The Messenger of Allah ﷺ said “Whoever left behind an orphan (kallan), then they are upon us, and whoever left behind wealth, then it is for their inheritor”** (agreed upon from Abu Hurayrah), and the *kall* is the weak who has no father or son. In another chain of the narration it is mentioned **“whoever leaves behind wealth then it is for their inheritor, and whoever leaves behind debt or children (diyya’an) then they are for us and upon us”** (reported by Muslim from Jabir), and the *diyya’an* is in other words the children; it is mentioned in *al-Muhit* dictionary **“al-diya’ is also the children”**. So through these evidences the *Shari’ah* has guaranteed the fulfilment of the basic needs of the poor if they were female, or a male who was not capable of earning or if his earnings were not enough.

The incapable according to the *Shari’ah* is either the one literally unable to work, or the one who is incapable from the view of the law, meaning the one who is unable to find work through which he could gain his earning. Both of these are considered incapable.

Through these evidences the *Shari’ah* guaranteed them the fulfilment of all of their basic needs by maintenance, for the female without restriction, and for those men who are either literally or legally incapable, and this is initially upon the husband and any inheritor, and if they were not found or were incapable then upon the *Bayt al-Mal*, in other words the State.

In order for the *Shari’ah* to guarantee that the *Bayt al-Mal* could carry out this maintenance, special concern is given to specific income, and so the *Bayt al-Mal* has a section for the *Zakat* for the poor; **“Sadaqah (Zakat) is only for the poor, the needy”** until the words **“and for the traveller”** (TMQ 9:60). If the *Zakat* is not sufficient, then the maintenance must be paid from other income to the *Bayt al-Mal* due to the words of the Prophet ﷺ **“whoever leaves behind debt or children then they are for us and upon us”** (reported by Muslim from Jabir), in other words upon the State, and due to his ﷺ words **“The Imam is a guardian and he is responsible for his subjects”** (reported by al-Bukhari from Abdullah Bin Umar), and amongst the most important responsibilities to his subjects is to guarantee the fulfilment of their basic needs. Therefore their maintenance is provided from the income of the *Bayt al-Mal*, since it is from the State responsibilities to distribute the maintenance to the poor. If the confirmed income of the *Bayt al-Mal* was not sufficient, taxes would be imposed upon the rich Muslims in accordance with what would be enough to provide this maintenance, and it would be taken from them by force in order to get it to the *Bayt al-Mal* for the sake of this maintenance, since this is from the reasons that the *Khalifah* can impose taxes. This is because if the *Zakat* and the confirmed income of the *Bayt al-Mal* is not sufficient to provide the maintenance, then it becomes a duty upon all of the Muslims; the Messenger ﷺ said **“Whenever the people of an area wake up with a hungry person amongst them, then they have removed the covenant with Allah”** (reported by Ahmad from Ibn Umar and authenticated by Ahmad Shakir), which is a report that implies a request to feed the hungry, and is connected to a blame, and so the request is definite, which therefore indicates that it is obligatory upon them. Therefore, the *Khalifah* can impose taxes upon who is capable of them, and take it from them even by force if necessary, since he is executing a duty.

This is all evidence that the *Shari’ah* obligated guaranteeing the satisfaction of all the basic needs for all the individuals, on an individual basis, and specified the income which

guarantees the undertaking of this fulfillment, and guarantees its undertaking and continuation of it.

This is from the angle of guaranteeing the fulfilment for all of the individuals, on an individual basis. As for the angle that the fulfilment is of all the basic needs, the reality of life for the individual is that the basic needs are food, clothing and shelter, and the *Shari'ah* evidences which came guaranteed maintenance, and maintenance is food, clothing and shelter. Above and beyond that there are evidences that indicate that these three (food, clothing, and shelter) are the basic needs, and anything else is surplus and extra.

As for the evidences that maintenance is food, clothing and shelter, Allah (swt) said ***“the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis”*** (TMQ 2:233) and said ***“Lodge them where you dwell according to your means”*** (TMQ 65:6) and said ***“on a scale of the average of that which you feed your own families”*** (TMQ 5:89), and so Allah (swt) clarified that food, clothing and shelter is maintenance. The Prophet ﷺ said about women, in other words wives, ***“And their right over you is that you provide for them and dress them with what is good”*** (reported and authenticated by Al-Tirmidhi from Amru b. al-Ahwas). In another narration he ﷺ said ***“And their right over you is to provide for them and cloth them with what is reasonable”*** (reported by Muslim from Jabir). These are evidences that the maintenance is food, clothing and shelter, and that these are the basic needs.

As for the evidences that food, clothing and shelter are the basic needs and anything else is extra, it is narrated from the Prophet ﷺ that he said ***“Everything other than the shade of a house, the chunk of bread and a clothing to cover his ‘awrah, and water, and the son of Adam has no right in anything surplus to that”***. And it is narrated with a different wording ***“The son of Adam has no right to anything except these properties: a house to live in, a clothing to cover his ‘awrah (parts of body that must be covered in public), a chunk of bread, and water”*** (reported by Al-Tirmidhi who said it is *Hasan Sahih*). The wording of the two narrations indicates that what has been mentioned in these narrations, which was food, clothing and shelter; ***“shade of a house”*** ***“a house to live in”*** ***“a clothing to cover his ‘awrah”***, ***“a chunk of bread and water”*** is enough and sufficient. And his ﷺ words in the narration ***“and the son of Adam has no right in anything surplus to that”*** is absolutely clear that these three are the basic needs. Therefore, these two narrations relate that the basic needs are food, clothing and shelter, and anything extra is not basic. By fulfilling these three, the basic needs of individuals would have been satisfied.

As for the evidence that this satisfaction must be complete satisfaction, this is what was related in the evidences when it mentioned that this fulfilment must be reasonable (*bi 'l-ma'ruf*), and be of a sufficient amount, since Allah (swt) said ***“on a reasonable basis (bi 'l-ma'ruf)”*** in His (swt) words ***“the father of the child shall bear the cost of the mother’s food and clothing on a reasonable basis”*** (TMQ 2:233), and the Messenger ﷺ said ***“reasonable (bil ma'roof)”*** in his words ***“And their right over you is to provide for them and cloth them with what is reasonable”***. And the meaning of what is reasonable (*bi 'l-ma'ruf*), is in other words what is reasonable between people. And he ﷺ said ***“whatever is sufficient”*** in his words to Hind, ***“Take whatever is sufficient for you and your child that is reasonable (bil ma'roof)”*** (agreed upon from the narration of Aaisha (ra)), and so it mentions that it should be a sufficient amount. This indicates that the satisfaction should be complete, or in other words all of the basic needs should be satisfied according to what is reasonable amongst the people. So sufficiency is a condition, in other words until they are satisfied by food, covered in clothes, and have accommodation. Along with sufficiency, it is a condition that this sufficiency is met by what is reasonable, in other words not simply sufficient by the lowest criteria, but rather sufficient by what is reasonable in that country which they live, and the people that they live amongst. Accordingly it is confirmed that the satisfaction must be complete, and all of this is the evidence for the first half of the article.

Additionally, the *Shari'ah* evidences did not obligate meeting the basic needs of the individuals person by person alone; rather they also obligated fulfilling the basic needs of the *Ummah* by ensuring security, medical care and education for the citizens.

Security is one of the primary obligations of the State, since it spreads security and safety for its citizens, to the point that the State loses its entity if it is not able to provide it. Accordingly it is a condition in *Dar Al-Islam* that the Islamic State is capable of preserving its security with its own powers, and this is why when the Messenger of Allah ﷺ informed the Muslims about the abode of their emigration, the first thing he mentioned was security. He ﷺ said to his companions in Makkah according to what Ibn Ishaq reported in his *Sirah* ***"Allah made brother for you and an abode that you feel safe in"***, and similarly when the Ansar met the Messenger of Allah ﷺ and his companion Abu Bakr (ra), the first thing they said to them as reported by Ahmad with an authentic chain from Anas ***"They were met by about five hundred from the Ansar. The Ansar said: Set off, you are both in safety and obeyed"***, and so the spreading of safety for the citizens is from the essential duties of the State.

Health and medical care are from the obligations of the State such that they must be readily available for the citizens, from the angle of clinics and hospitals, and public utilities used for treatment by the Muslims. So, medical treatment from this angle is part of the interests and public utilities. The interests and public utilities must be undertaken by the State since they are from the issues that the State is responsible over, in accordance with the words of the Messenger ﷺ ***"The Imam is a guardian, and he is questioned over his responsibility"*** (reported by al-Bukhari from Abdullah Bin Umar). This text is general regarding the responsibility of the State for health and medical care since they are part of the obligatory responsibilities of the State.

There are evidences specific to health and medical care: Muslim reported from Jabir who said ***"The Messenger of Allah sent Ubay Bin Abi Ka'b, so he cut a root for him and then ironed it on him"***. And Al-Hakim narrated in *al-Mustadrak* from Zayd b. Aslam from his father who said ***"I fell severely ill in the time of Umar b. al-Khattab, and so Umar called a doctor for me, and so he warmed me up to the point I would suck on date pits due to the intense heat"***.

In his capacity as a ruler, the Messenger ﷺ sent a doctor to Ubay, and Umar (ra), the second righteous *Khalifah*, called a doctor for Aslam to treat him, which are two evidences that health and medical care are from the essential needs of the citizens that the State must make sure are readily available for whoever needs them.

As for the evidence of education (being a basic need), the Messenger of Allah ﷺ made ransom of the disbelieving prisoners that they should teach ten of the Muslim children. Ransom is part of the war booty, which is the property of the Muslims, and the consensus of the companions on setting aside a specific amount from the treasury (*Bayt al-Mal*) as salary for teachers.

Accordingly, it is obligatory upon the State to provide security, medical care and education for all of the citizens, and to make that part of the treasury issues, without any difference made between the Muslims and *Dhimmi*, or rich and poor.

The importance of the essential needs for the individual and *Ummah* is explained by the Messenger of Allah ﷺ in that the provision of these needs is like possessing the world in its entirety, an allusion expressing the importance of these needs. Al-Tirmidhi reported from Salamah b. 'Ubayd Allah b. Mihsan al-Ansari from his father, who was a companion, said: The Messenger of Allah ﷺ said ***"Whoever wakes up safe in himself, with a healthy body, and he has the food for his day, it is as though the world has been given to him"*** (Abu 'Isa said this narration is *Hasan gharib*). And similarly Ibn Maja reported it with a *Hasan* chain, and Abu Nu'aym has a similar report in *al-Hilyah* from Abu 'l Darda', but with the extra part 'all of it', in other words ***"as though the whole of the world has been given to him"***.

These evidences all indicate the obligation of guaranteeing the fulfilment of all the basic needs for all of the citizens individually, in terms of food, clothing and shelter, and in the same manner indicates the necessity of the wide provision of the essential services for the *Ummah* from security, health and education.

As for the second half from the article, facilitating the fulfilment of the luxurious needs (non-essential needs), then the obligation of work upon the capable male is an evidence for the facilitation of the fulfilment of the luxurious needs in the same manner as the basic needs. This is because the encouragement for earning is not restricted to the fulfilment of the basic needs, so this generality is evidence that the *Shari'ah* enables the individual to fulfil their non-essential needs from their earnings. Additionally, the permission to enjoy the good/lawful things is also an evidence for the facilitation of the fulfilment of the luxurious needs:

Allah (swt) ***“Eat from the good lawful things We have provided for you.”*** (TMQ 2:57)

And ***“Say who has forbidden the adornment with clothes given by Allah which He has produced for His slaves, and all kinds of good and lawful things from food.”*** (TMQ 7:32)

And ***“And let not those who covetously withhold of that which Allah has bestowed on them of His Bounty think that it is good for them, nay it will be worse for them, the things which they covetously withheld, shall be tied to their necks on the Day of Judgement.”*** (TMQ 3:180)

And ***“O you who believe! Make not unlawful the good and lawful things which Allah has made lawful to you.”*** (TMQ 5:87)

And ***“Let the rich man spend according to his means.”*** (TMQ 65:7)

And ***“and forget not your lawful portion from this world.”*** (TMQ 28:77)

All of this is evidence that the *Shari'ah* permitted every individual to fulfil his non-essential needs, so by this permission it enabled him to satisfy himself. On top of that is what has been related to the prohibition of miserliness, and rebuke of whoever prohibits the enjoyment of lawful things, which clearly indicates this enablement.

#### **Article 126**

**The wealth belongs to Allah (swt) alone, and He (swt) has made human beings the trustees of it. Through this general trust they have been given the right to ownership of wealth.**

**Allah (swt) has permitted for the individual to possess the wealth; so through this specific permission, he managed to possess it practically.**

The evidence for this article are His (swt) words ***“And give them something out of the wealth of Allah which He has bestowed upon you”*** (TMQ 24:33); so the wealth is ascribed to Allah (swt). And His (swt) words ***“And give you increase in wealth and children”*** (TMQ 71:12); so the increase in the wealth for people is ascribed to Allah (swt). Also, His (swt) words ***“spend of that whereof He has made you trustees”*** (TMQ 57:7), and so accordingly He (swt) made man the trustees of Allah (swt) in the wealth, as it was Allah (swt) who made them the inheritors, so the wealth in origin belongs to Allah (swt). Therefore the ownership of the wealth is with Allah (swt), but He (swt) has made the people the trustees of it, which has given them the right to its ownership. For this reason the verse regarding the entrustment is not an evidence for private ownership, but rather it is evidence that the human being from the aspect of being human, has the right of ownership of wealth.

As for practical private ownership, or in other words the fact that it is permitted for him to actually possess wealth, this comes from another evidence, which is the cause which permitted the individual to practically come into possession. For example his ﷻ words

***“whoever puts a wall around a land then it is his”*** (reported by Ahmad and Abu Dawud with a chain authenticated by al-Jarwad and al-Zayn), and his ﷺ words ***“whoever revives dead land, then it is his”*** reported by al-Bukhari for Umar as a *ta’liq* (title heading without chain mentioned) and also reported by Ahmad and Al-Tirmidhi with an authentic chain from Jabir, and the words of Allah (swt) ***“There is a share for men and a share for women from what is left by parents and those nearest related”*** (TMQ 4:7) and ***“Lawful to you is (the pursuit of) water-game”*** (TMQ 5:96), amongst other texts.

Accordingly, the right of ownership of whatever Allah (swt) created is confirmed for every human, and practical ownership requires permission from the Legislator (swt) regarding how it can be achieved and which wealth can be sought. In other words, evidence from the *Shari’ah* is required which permits this possession to practically take place. Therefore the article comprises of three elements.

Firstly, that ownership is for Allah (swt): ***“And do give them something out of the wealth of Allah”*** (TMQ 71:12).

Secondly, that the person has the right to own wealth, the evidence being the verse regarding entrustment/succession ***“spend of that whereof He has made you trustees”*** (TMQ 57:7).

Thirdly, that the practical taking of ownership of the wealth by the individual requires permission from the Legislator (swt) - in other words evidence which permits the ownership of it in practical terms, and the evidence for this are the texts regarding the permission of practically taking ownership.

Accordingly the evidences for this article have been made clear.

#### **Article 127**

**There are three types of property – private, public and State.**

The evidence for each type of property has been deduced from the Quran and *Sunnah*, and through close examination of all of the types of property deduced from the *Shari’ah* evidences. Investigation of the *Shari’ah* evidences regarding property along with the definition of every type of property deduced from a *Shari’ah* evidence, indicates that the type of ownership is confined to the three mentioned in this article.

#### **Article 128**

**Private property is *Shari’ah* rule determined by the property itself or the benefit from it. This qualifies the one that owns a property to benefit of it or gets an exchange for it.**

The evidence of this article is the *Shari’ah* evidences which indicate that the definition of private ownership is the permission of the Legislator (swt) for the utilisation of the property itself, which encompasses His (swt) permission with respect to utilisation, which in turn requires an evidence for every utilisation since it is the action of the worshipper, and so it is imperative that there is an address from the Legislator (swt) regarding it. In the same way it also encompasses His (swt) permission with respect to whether the property itself can be utilised or not, which does not require an evidence for every item. Rather, the origin in every property is that it has been permitted to be owned due to the general evidence in His (swt) words ***“And He has subjected to you all that is in the heavens and all that is in the Earth”*** (TMQ 45:13), and so the prohibition of owning a specific property requires a text.

Accordingly the evidences for the permission of utilisation permitted the possession of the property, and the evidences which permitted every thing for human beings gave him the

general permission to own anything, and so it has been deduced from these two issues that the definition of ownership is the permission of the Legislator (swt) for the utilisation of the property itself. This is the meaning of the definition mentioned in this article.

If we take the example of the ownership of a loaf of bread, it would be said that the loaf of bread is the property, and it is determined that the *Shari'ah* rule regarding it is that the Legislator (swt) gave permission for people to utilise it, through consumption, benefiting from it and exchanging it. This permission for utilisation necessitates that the owner, who is the one whom the permission relates to, is enabled to eat the loaf of bread and similarly is enabled to sell it. So the determined *Shari'ah* rule for the property, in other words the loaf of bread, is that there is permission to consume and exchange it.

The definition mentioned in this article was based upon this, and this definition means the permission of the Legislator for the utilisation of the property. The article was drafted upon this basis.

#### **Article 129**

**Public property is the permission of the Legislator (swt) for the community to collectively utilise the property itself.**

The evidence for this article is that the *Shari'ah* evidences indicate that the definition of public property is the permission of the Legislator (swt) for the community to collectively utilise the property, and the evidences for this definition are the texts related regarding public property. The words of the Messenger ﷺ *“The Muslims are partners in three: water, pastures and fire”* reported by Ahmad from a man from the companions of the Prophet ﷺ, and his narrators are trustworthy, and what Al-Tirmidhi narrated from Abyad b. Himal *“He came to the Prophet ﷺ and asked him to grant him asaltladen land, and he granted it to him. And when he left, one person in attendance with the Prophet said “Do you know what you granted him? You granted him the countless water”. He ﷺ then took it away from him”*. The countless water is that which does not deplete, in other words if you extracted a mineral from it, it does not deplete. And he ﷺ said *“Mina is a way station for whoever gets their first”* reported by Al-Tirmidhi from Aaisha (ra) and he said it is *Hasan Sahih*, and Mina is the famous location in the *Hijaz* which the pilgrims descend to after standing at Arafat, and all the people can rest their camels there if they arrive there before others. And the Prophet ﷺ affirmed that people participate in the use of general roads. The definition of public property was derived from all of this, since these texts indicate that the Legislator (swt) gave permission to people to participate collectively in these things and hence it was deduced. On this basis the article was drafted.

#### **Article 130**

**State property is every wealth whose expenditure is determined by the opinion and *Ijtihad* of the *Khalifah*, such as the wealth derived from taxes, land tax and *Jizya*.**

Its evidence is that the *Shari'ah* evidences indicated that the definition of State property is the permission of the Legislator (swt) for the *Khalifah* to spend the wealth according to his opinion and *Ijtihad*. The Messenger ﷺ used to spend the wealth from the war booty according to his opinion and *Ijtihad*, and likewise the wealth from the *Jizya* and land taxes which were collected from the different lands. There is a *Shari'ah* text which shows that it was left to the Messenger ﷺ to spend it according to how he ﷺ saw fit, which is an evidence that the *Imam* can spend this wealth according to his opinion and *Ijtihad*, since the action of the Messenger

ﷺ is a *Shari'ah* evidence and so it is a permission for the *Imam* to spend this wealth as he sees fit according to his opinion and *Ijtihad*. Therefore, that is the definition of State property.

For this reason, the expenditure of the *Zakat* has not been left to the *Khalifah* to decide according to his opinion and *Ijtihad*, rather the categories it can be spent upon have been specified and the State is the guardian over spending it in those areas, and so the *Khalifah* cannot increase the categories according to his opinion and *Ijtihad*.

Based upon this, if there is a *Shari'ah* text reported that permits the *Imam* to spend specific wealth according to his opinion and *Ijtihad*, then that wealth is considered to be the State's wealth, and the text of the Legislator (swt) is a permission for the *Imam* to spend it according to his opinion and *Ijtihad*. Accordingly, the wealth of war booty, land taxes, *Jizya* and anything similar from taxes, and the returns from the State properties, is all State wealth. The definition which was deduced from the actions of the Messenger ﷺ, and the generality of the texts which came ordering the utilisation of this wealth, apply upon all of the aforementioned issues. This article was drafted upon this basis.

This is the definition for every category of property, and these are the evidences that each of these definitions was deduced from. By examining these definitions which were drafted regarding ownership, and the evidences which they were deduced from, it becomes clear that property falls under one of the following three categories: private property, public property and State property. As for the wealth from *Zakat*, this is not possessed by any specific person, rather it is possessed by specific sections, and so it is considered to be from the category of private property, since the Legislator (swt) permitted those sections to possess it through the conveyance of the one giving it, irrespective of whether that was the one giving the *Zakat* directly or the *Imam*, and for that reason it is not considered to be a fourth category of property. Accordingly, property is categorised according to these three categories, and the details of the *Shari'ah* evidence for article 127 have been made clear.

#### **Article 131**

**Private property consisting of liquid and fixed assets is restricted to the following five *Shari'ah* means:**

- a. **Work**
- b. **Inheritance**
- c. **The need of wealth for the sake of living**
- d. **Donation from the wealth of the State to its subjects**
- e. **Funds taken by individuals without any effort or purchase**

There must exist means through which the Legislator (swt) permits ownership, so if the *Shari'ah* cause is present, then the ownership of the wealth is present. If on the other hand the *Shari'ah* means is not present then there is no ownership of the wealth even if it is practically possessed, since ownership is the possession of the wealth through a *Shari'ah* means through which the Legislator (swt) permitted its possession. The Legislator (swt) restricted the means of possession to specific circumstances, limited them to a specific number, and did not leave them unrestricted, and made them clear expansive lines under which are a number of parts which are its branches and issues from its rules. They were not given a specific comprehensive *Illah* (*Shari'ah* reason) and so other comprehensive issues are not made analogous to them. That is because new needs only occur in the present wealth, and not in the transactions; in other words not in the system of relations but rather in its subjects. Therefore it is necessary to limit the transaction to specific circumstances, which apply to new and numerous needs, and upon the wealth from the angle that it is wealth, and upon the effort from the angle that it is effort. And in the restriction of private wealth in a manner that agrees



with the nature (*fitrah*), and organising the ownership such that the society is protected from the mistakes that result from it if left unrestricted.

This article explains the *Shari'ah* means for ownership, in other words the situations which the Legislator (swt) permitted the utilisation of the property. It is imperative that the practical means of ownership are known and not the means of increasing the property. The Legislator (swt) clarified the means of ownership, in other words the means for the ownership of the original wealth, which means the means which brings about the ownership of wealth for the individual after he did not own it originally. And the Legislator (swt) clarified the means of increasing the wealth, in other words the means for increasing the wealth which he owned. The *Shari'ah* came with rules connected to both ownership and increasing ownership. The trade and rent contracts are from the rules which are related to increasing the wealth, in other words increasing ownership. Working in hunting, and partnerships, are from the rules connected to ownership, in other words with possession of the origin of the wealth. This article is concerned with the means for ownership and not those of increasing the ownership.

The evidence for this article is the investigation of the evidences which explained the permission of the Legislator (swt) for the utilisation of the product, in other words investigation of the evidences regarding practically taking possession. With investigation, it becomes clear that the primary means for possession are five and all the means of possession fall under one of these five.

As for the evidences for these five means: the first means(A) is work, and its evidences are the evidences of the circumstances that an individual gains wealth through effort, in other words creation of wealth from the angle that it is done through work, which are seven circumstances:

**First:** Reviving dead land, its evidence being the words of the Prophet ﷺ ***“whoever revives dead land, then it is his”*** reported by Ahmad and Al-Tirmidhi with an authentic chain and also by al-Bukhari from Umar, and his ﷺ words ***“whoever repopulates a land which didn't belong to anyone then it is his”*** reported by al-Bukhari from Aaisha (ra). And his ﷺ words ***“whoever puts a wall around a land then it is his”*** reported by Ahmad and Abu Dawud with a chain authenticated by Ibn al-Jarwad and al-Zayn. Dead land is the land where there are no signs that anyone holds its possession and so there is nothing in terms of fencing, agriculture, building or anything similar. Reviving it is through anything which indicates inhabitation, such as agriculture, planting trees, building and so on. Similar to revival is to place something which indicates that someone has taken possession of it, such as planting hedges or fencing or pillars and so on.

And so any individual citizen who revives a dead land takes possession of it according to the rules of the *Shari'ah*, irrespective of whether they were a Muslim or a *Dhimmi*: because the texts are general, encompassing all the individual citizens.

**Second:** Hunting, its evidence being the words of Allah (swt) ***“when you finish the ihram you may hunt”*** (TMQ 5:2), and His (swt) words ***“Lawful to you is (the pursuit of) water-game”*** (TMQ 5:96).

**Third:** To act as a middle-man or commission agent, the evidence being what was narrated from Qays b. Abi Gharza al-Kanani who said ***“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: ‘O you gathering of traders, truly selling entails foolish talk and the taking of oaths, so mix it with charity’”*** (reported by Ahmad with an authentic chain).

**Fourth:** the *mudarabah* partnership (where one person invests wealth into a partnership, and the other invests effort), its evidence being what was narrated from al-Abbas Bin Abdul-Muttalib that when he handed a property as *mudarabah*, he used to stipulate on the partner not to travel with it by the sea, nor to descend a valley nor to trade with live things, otherwise he would have to guarantee losses incurred. The Prophet of Allah ﷺ became aware of that and

he ﷺ approved of it. Even though al-Hafiz said that “al-Bayhaqi reported it with a chain that he found weak”, *mudarabah (al-qirad)* is confirmed by the consensus of the companions: Ibn Hazm said in *Maratib al-Ijma'* regarding it after he mentioned that he did not find an evidence for it in the *Sunnah*: “but it is a correct consensus. We are certain that it used to take place at his ﷺ time, and he ﷺ knew about it and confirmed it, and if it was not for that it would not be permitted”, the same as al-Hafiz reported about Ibn Hazm in *Talkhis al-Khabir*.

From the evidences of the consensus of the companions:

Malik reported from Zayd Bin Aslam from his father that he said: ‘Abd Allah and ‘Ubayd Allah, the two sons of Umar (ra) went out with the army to Iraq. They passed by Abu Musa al-Ash’ari, who was the *Amir* of Basra, and he welcomed them and said: If I was able to help you with any issue, I would. Then he said: Here is some of the wealth from the wealth of Allah (swt) that I want to send to the leader of the believers. I will lend it to you, so buy some of the goods from Iraq, and sell them in Madinah. Give the capital to Umar (ra) and keep the profit for yourselves. They replied: we would like that. So he did that and wrote to Umar (ra) informing him about their taking the wealth. When they returned to Madinah they sold the goods and made a profit, and so when they gave the original capital amount to Umar (ra), he said: Were all the soldiers given similar to what you were given? They replied in the negative. And so Umar (ra) said: Because you were the sons of the leader of the believers, he gave it to you. Give me the money and its profit. ‘Abd Allah remained silent. As for ‘Ubayd Allah, he said: this is not necessary for you O leader of the believers, if this wealth was reduced or destroyed we would have guaranteed it (in other words paid the original capital in full). And so Umar (ra) said: Give it to me. Abdullah remained silent and ‘Ubayd Allah repeated what he had said. A man from those sitting around Umar (ra) said: O leader of the believers, if you made it a *qirad* for him? (in other words a *mudarabah* partnership), and so Umar (ra) said: I made it as a *qirad* (loan) for him. So, Umar (ra) took the original capital, and half of the profit, and his two sons took the other half of the profit. This was reported in *al-Muwatta* and al-Hafiz said its chain is authentic and this was done in front of a crowd of the companions.

Similarly the action of *al-qirad (al-mudarabah)*:

Malik reported from al-Ala Bin ‘Abd al-Rahman from his father from his grandfather that ‘Uthman b. ‘Affan (ra) gave him money as *qirad* to work with it, and the profit to be split between them.

And al-Bayhaqi reported in *al-Sunan al-Kubra*, and al-Hafiz said that the chain is strong, from Hakim b. Hizam that he used to give money to a man on the basis of *qirad*, and made it a condition that he wouldn’t go to the Wad valley with it, and not buy animals with it, nor transport it overseas, and if he did any of that he would be liable for it. He said: if he overstepped the limits, he would be liable.

**Fifth:** the *musaqah* (renting trees for a portion of their yields) partnership, its evidence is what was narrated by ‘Abd Allah b. Umar who said **“The Messenger of Allah ﷺ contracted the people of Khaybar over half of what was produced of fruit or crops”** (agreed upon).

**Sixth:** working for someone else for a salary, the evidence being His (swt) words **“Then if they give suck to you children for you, give them their due payment”** (TMQ 65:6), and what was narrated by Aisha (ra) who said **“The Messenger of Allah hired a man from Bani al-Dil as an experienced guide who was of the same Deen as his people. They handed to him their two female riding camels, and fixed an appointment with him to meet them at the cave of Thawr after three nights”** (reported by al-Bukhari).

**Seventh:** Buried minerals/treasures, and its evidence being the words of the Messenger ﷺ **“And in the treasure there is a fifth (for taxes)”** (agreed upon from Abu Hurayrah).

These are the evidences for the seven circumstances which are the evidences for the first means of ownership which is work.

As for the second means (B), inheritance, its evidence is the words of Allah (swt) **“Allah commands you as regards your children’s (inheritance): to the male, a portion equal to that of two females; if (there are only) daughters two or more their share is two thirds of the inheritance”** (TMQ 4:11) alongside the rest of the texts regarding inheritance from the Quranic verses and the narrations from the *Sunnah*.

The third means (C) is the need for wealth for the sake of living, and its evidence is the evidence for maintenance, from the fact that it is obligatory to be given to the individual if they are unable to earn enough practically, such as the one who is small, or incapable of work, or is legally considered like the one unable to work even though he is capable. So the *Shari’ah* made it obligatory upon those close inheritors to him to provide him with maintenance and if they are unable to then it falls upon the *Bayt al-Mal*. The indication of that evidence is that he possesses that wealth which he took as maintenance in order to survive.

The fourth means (D) is the State donation of some of its wealth, such as granting some portions of land, or giving wealth in order to repay the debts, or agricultural assistance. The evidence for the granting of land is what was narrated from Bilal al-Muzni that **“the Prophet ﷺ granted him of the land of al-Aqiq”** reported by Abu ‘Ubayd in *al-Amwal*, and what was narrated from ‘Amru b. Shu’ayb who said **“The Prophet granted land to some people from Mozinah or Johainah”** reported by Abu Yusuf in *al-kharaj*. With respect to the issue of giving money to repay the debts, Allah (swt) gave some of the shares of *Zakat* to indebted people; He (swt) said **“and for those in debt”** (TMQ 9:60). The Messenger ﷺ said **“whoever left behind a debt then it is upon me, and whoever left wealth then it is for his inheritors”** (agreed upon from the narration of Abu Hurayrah), and the meaning of the words of the Messenger ﷺ **“upon me”** is that it is upon the State, or in other words upon the *Bayt al-Mal*. And as for giving the farmers money for the sake of agriculture, Umar b. al-Khattab (ra) gave money from the *Bayt al-Mal* in Iraq to assist the farmers in the cultivation of their land and helped them pay for their requirements without taking anything back from them, and no one rebuked him over that even though it was something that should have been rebuked (if it was not permitted in origin), and so it is an *Ijma’*.

Therefore, these three circumstances: granting land, giving money to repay debts, and giving financial assistance for agriculture, are all causes for ownership. The *Imam* has the right to spend the wealth of the State according to his opinion and *Ijtihad* in any permitted issues and so whoever has the money spent upon them has gained the ownership of the wealth through this donation.

As for the fifth means (E), it encompasses five circumstances:

**First:** The relationships of individuals with each other, such as giving gifts (*hadiyah*), donations (*hibah*), and through a bequest (*wasiyyah*). It is narrated from Abu Hamid as-Sa’adi who said **“We fought alongside the Messenger of Allah (saw) at Tabuk. The King of Ayla gave the Prophet ﷺ a white mule and a cape as a gift”** (reported by al-Bukhari). This is evidence for the permission of gifts. And the Prophet ﷺ said **“If you give gifts you will love each other”**, reported by al-Bukhari in *al-Adab al-mufrad* from Abu Hurayrah, and also reported by al-Bayhaqi, which indicates the permissibility of gifts, and he ﷺ said **“No one should take back their gift, except what the father gave to his son”** reported by Ibn Maja from Amru Bin Shu’aib from his father from his grandfather, and he ﷺ said **“The one who takes back his donation (hibah) is like the one who takes back his vomit”** agreed upon from Ibn ‘Abbas, which indicates the permissibility of donations. And he ﷺ said to Sa’ad Bin Malik **“Bequeath a third, and a third is a lot”** (agreed upon from Sa’d). This is the evidence for the permissibility of leaving behind a will.

**Second:** being entitled to wealth as a recompense for harm, such as the compensation for killing someone and the compensation for injury; Allah (swt) said **“and whosoever kills a believer by mistake he must set free a believing slave and pay compensation to their family”** (TMQ 4:92), and the Prophet ﷺ said **“Five camels for a tooth”** (reported by al-Bayhaqi and authenticated by Ibn Hibban and al-Hakim), and he ﷺ said **“The recompense**

Commented [s19]: Bequest?

*for a finger or of hands or legs is ten camels for each one*” (reported by Al-Tirmidhi from Ibn ‘Abbas, and he said that the narration is *Hasan Sahih*). Al-Bayhaqi reported something similar in the book of Abu Bakr Bin Muhammad. Therefore, the bereaved family receive the compensation for the one killed and the injured person received the compensation for the limb lost.

**Third:** being entitled to *mahr* (dowry) and its dependencies; Allah (swt) said **“And give the women their dowry”** (TMQ 4:4), and so she possesses her dowry simply through the marriage contract.

**Fourth:** that which is found. The Messenger ﷺ was asked about anything which was found and he said **“Whatever you found on the used (meeta) road or on a village then announce it in the area around it one year, if its owner comes (then it is his) otherwise you can keep it”** (reported by Abu Dawud from ‘Abd Allah b. ‘Amru b. ‘al-As). ‘Iyad Bin Himar said: the Messenger of Allah ﷺ said **“whoever found a lost property, let him have two just witnesses over it, or protect it and tie it, and if its owner comes do not hide it from them since they have more right to it, and if the owner does not appear then it is the wealth of Allah given to whomever He pleases”** (reported by Ahmad with an authentic chain), and so the lost property is owned by whoever found it if the conditions are met.

**Fifth:** the recompense of the *Khalifah*, assistants, governors, and all other rulers. It is narrated from the Prophet ﷺ that when he appointed ‘Itaab Bin Usaïd as a governor over Makkah, he ﷺ paid him a *dirham* for each day. It is narrated that ‘Itab addressed the people in Makkah and said **“O people, Allah starves the heart of a person who is hungry after spending a dirham, so I have no need for anyone”** (reported by Ibn Sa’d in *al-Tabaqat* with a Mursalchain whose narrators are trustworthy). And it is narrated that the day after Abu Bakr (ra) was given the pledge of allegiance, he went out to sell clothes as he used to before taking the pledge, and so he met Umar (ra) on the way who asked him **“where are you going”** to which Abu Bakr (ra) replied **“To the market”**. So Umar (ra) asked him **“And what about the Muslims’ issues?”** to which Abu Bakr (ra) replied **“And how will I feed my family?”**. Umar (ra) then said **“We will give to you, and so they gave him half a sheep every day”**, reported by Ibn Hajr in *Fath al-Bari*, and al-Zayla‘i reported something similar in *Nasab al-Rayah*. That was a consensus of the companions to recompense the *Khalifah*. So this is the recompense for the *Khalifah*, governors, and *‘amil* which they then possess. Therefore it is from the causes of possession and it is not a salary, so it is not categorised under the section of hiring an employee.

These five circumstances are encompassed by the fifth means from the means of ownership. These evidences for the five means of ownership are confirmed through investigation of the texts as being the only means of ownership. In which case they are the permission of the *Shari’ah* for ownership, and anything other than these five means are from the means of increasing property, such as trade, industry, agriculture, which are not means of ownership. With this explanation the evidences of the article have been clarified.

## **Article 132**

**The disposal of property is restricted by the permission of the Legislator (swt), for both of spending and investment. Squandering, extravagance and miserliness are all forbidden. Capitalist companies, co-operatives and any other type of transactions which contradict the *Shari’ah* are forbidden. Interest, fraud, monopolies, gambling and anything similar are all forbidden.**

The evidence for this is the evidence regarding spending wealth and the evidence of verbal disposal of wealth such as selling, renting and so on, which are the evidences regarding increasing property.

As for the evidence of expenditure, Allah (swt) said ***“Let the rich man spend according to his means”*** (TMQ 65:7).

Regarding the prohibition of squandering, Allah (swt) said ***“and do not waste by extravagance, truly Allah does not love those who are extravagant”*** (TMQ 7:31), and He (swt) said ***“but spend not wastefully in the manner of a spendthrift; truly the spendthrifts are the brothers of the devils”*** (TMQ 17:26-7).

With respect to the prohibition of miserliness, Allah (swt) said ***“And those who when they spend are neither extravagant nor miserly, but hold a medium (way) between those (extremes)”*** (TMQ 25:67).

With respect to verbal disposals, the Legislator (swt) restricted them to specific transactions, such as selling, rent, partnership, and so on, and specified the manner they should be undertaken and prohibited any other method. The Prophet ﷺ said ***“Every action which is not based upon our order is rejected”*** (reported by Muslim from Aaisha (ra)). So this is a restriction that the transactions have to be carried out upon a specific method, and a clear prohibition of specific transactions, which is that the transactions to increase wealth are restricted to that which is in accordance with the permission of the Legislator (swt).

There are actions which have been ordered to be undertaken based upon a specific restricted form, and the *Shari'ah* texts related conditions for the concluding of a transaction and conditions for its validity in a decisive manner. Therefore, to carry out this transaction upon the form that has been explained by the *Shari'ah* text is obligatory, and it should fulfil all the conditions for contraction and the validity that were mentioned in the *Shari'ah* text. If it was undertaken in a manner which contradicts the text or does not fulfil all the conditions for contraction and validity, then it has contradicted the *Shari'ah*, and it would either be invalid if the conditions on contraction were not met, or defective if it contradicted anything that the *Shari'ah* ordered or prohibited. This would be a contradiction against the *Shari'ah*, in other words contradiction of the orders and prohibitions of Allah (swt), which is sinful since it is considered to be something that the *Shari'ah* forbade.

An example of that is the *Shari'ah* contract: the Legislator (swt) ordered that it should be between two contracting parties; the Prophet ﷺ said ***“The two traders have the choice”*** (agreed upon from Ibn Umar and Hakim Bin Hizam), and Allah (swt) said in a *qudsi* narration ***“I am the third of the two partners”*** (reported by Abu Dawud from Abu Hurayrah, and he authenticated it and al-Dhahabi confirmed it). And He (swt) ordered the contract to be upon offer and acceptance. So if the contract in any transaction does not fulfil these conditions: two contracting parties along with offer and acceptance, the contract is invalid and not concluded. Any action which occurred in this transaction is considered as a sin and a *haram* action, since it would be considered a transaction that the *Shari'ah* had forbidden. An example of that would be the share companies, since they are concluded from one side, and by someone simply signing to the conditions of the company they become a partner and also by simply buying shares in the company they become a partner. According to the capitalists this is from the actions of individual choice, like an endowment or bequest in Islam. So in the share company there are not two contracting parties but rather there is only one party, and there is no offer and acceptance - rather there is acceptance alone. In the *Shari'ah* the company must be based upon a contract of offer and acceptance between two contracting parties, and similar to it is selling, renting, marriage and any other comparable contracts. Accordingly, the share company is not contracted and so is invalid and *haram*, since it contradicts the *Shari'ah* and is considered to be prohibited by it. The share company neglected the order of Allah (swt) with respect to the conditions of contracting a company, and is an action that Allah (swt) prohibited since He (swt) prohibited people from contradicting His (swt) orders, ***“And warn those who oppose his (the Messenger's) orders”*** (TMQ 24:63). Therefore establishing such a

company would be committing a sin and a *haram* action, and so it is from the transactions forbidden by the *Shari'ah* because every invalid contract is *haram*.

In a similar fashion, life insurance, or any insurance for goods or property is *haram*, since it is a contract between the insurance company and the insuring person in which the latter asks the insurance company to give him a promise that it will compensate him for that object which he loses or for its price with regard to goods or property, or a certain sum of money with regard to life and the like such as insurance for a limb. This takes place if the accident which was specified occurs within a defined period in exchange for a certain amount of money. In insurance there is no person being guaranteed, nor a joining of liabilities, since there is no person present who the company guaranteed and joined their liability to. Also in insurance there is no financial obligation for the believer with anyone that the insurance company committed him to, since the believer did not have a financial obligation to anyone, and then the company came and guaranteed him. Insurance is a guarantee, and the guarantee according to the *Shari'ah* is the joining of the liability of the guarantor with that of the one being guaranteed to fulfil the obligation, and so it is imperative that there should be a joining of liabilities, and there must be a guarantor, someone being guaranteed, and the issue that he is being guaranteed for, and it is imperative that it is a guarantee for a confirmed obligation they are liable for. These are the conditions for contraction and validity in the guarantee, and as long as the insurance contract does not fulfil these *Shari'ah* conditions then it is invalid according to the *Shari'ah* and is *haram*. Therefore to take out insurance is committing a sin and a *haram* action and consequently is a transaction that the *Shari'ah* prohibited because every invalid transaction is *haram*.

These actions such as partnerships and guarantees have been restricted to a specific manner and specific conditions explained by *Shari'ah* texts, and so it is obligatory to be bound to them, and this is proof that the actions to increase property are restricted by the permission of the Legislator (swt).

There are actions which have had direct prohibitions related, such as fraud, due to what was narrated from Abdullah Bin Umar (ra) that a man mentioned to the Prophet ﷺ that he had been cheated in a sale, so he ﷺ said ***"If you buy and sell, then say no deceit"*** (agreed upon from Ibn Umar). And he ﷺ said ***"Selling in the gathering is deceit, and deceit is not permitted for a Muslim"*** (reported by Ahmad and Ibn Maja from Abdullah Bin Mas'ud, and Ibn Abi Shaybah and 'Abd al-Razzaq reported it *mawquf* (the chain ends at the companion) to Ibn Mas'ud with an authentic chain). Accordingly fraud is *haram*. Also, actions like monopolising, due to the words of the Prophet ﷺ ***"whoever monopolises is wrong"***, (reported by Muslim from Mu'ammār b. 'Abd Allah al-'Adawi), and like gambling due to the words of Allah (swt), ***"O you who believe intoxicants and gambling and animals slaughtered for idols and arrows used for seeking decision are an abomination from the handiwork of the devil and so stay away from them in order that you may be successful"*** (TMQ 5:90). Similarly, interest, due to words of Allah (swt), ***"Allah has permitted trade and forbade interest"*** (TMQ 2:275). This clear prohibition for these actions and those similar to them is a restriction upon how to conduct the increase in property, as it should not be done through these and similar transactions. This is another evidence that the action to increase property is restricted by the permission of the Legislator (swt).

### **Article 133**

**Tithed land (*'ushriyyah*) constitutes land within the Arabian Peninsula and land whose owners had embraced Islam, whilst possessing the land, before the Islamic State conquered them by Jihad. Taxed land (*kharajiyah*) is all land, other than the Arabian Peninsula, which was opened by jihad, whether through war or peace treaties. The *'ushriyyah* land, together with its benefits, is owned by individuals, whereas the *kharajiyah* land is owned by the State, while individuals own its benefits. Every**

**individual has the right to exchange, through *Shari'ah* contracts, the tithed land and the benefits of taxed land. All people can inherit these, the same as with all other wealth.**

Its evidence is that land is the same as wealth, and is considered as booty for the Muslims if it was taken through war, similar to all the war booty. This would be the *kharajiyyah* land and control of it belongs to the *Bayt al-Mal*. If on the other hand, its inhabitants accepted Islam, then it would be considered like the wealth of the Muslims, owned by them and they are responsible for it, and this is the '*ushriyyah*land.

As for the evidence as to the land being a booty like the rest of the wealth, Hafs b. Ghiyath narrated from Abu Dhi'b from al-Zuhri who said ***"The Messenger of Allah ruled that the people who became Muslim from Bahrain have their blood and wealth protected, apart from their land, since it was a booty for the Muslims, since they did not embrace Islam at first and rather resisted"***(from the book *Al-Kharaj* by Yahya b. Adam).

With respect to the fact that it is not split amongst the fighters like the rest of the booty, this is because of the difference which occurred regarding this rule between Bilal (ra) and al-Zubayr (ra) on one side and Umar (ra) on the other, while the evidence of Umar (ra) was stronger, as well as his being supported by ten people from the Ansar and *Muhajirin*. Al-Zubayr (ra) thought that the land of Egypt which had been opened should be like the transferable wealth which was divided between the fighters, but Umar (ra) rejected this when Amru Bin al-Aas (ra) wrote to him, and so he replied ***"leave it so that the children of the next generation will fight from it"***; in other words, it will be property for the Muslim generations to come. And Bilal (ra) held the same opinion al-Zubayr (ra) with respect to the land of Iraq, and so Sa'ad (ra) wrote to Umar (ra) about that so Umar (ra) replied to him: ***"and leave the lands and rivers for its workers in order that it can provide for the Muslims, since if we divided it between those who were present, there would be nothing for those who came after them"***(reported by Abu 'Ubayd in *al-Amwal* and Abu Yusuf in *Al-Kharaj* and Yahya b. Adam in *al-Kharaj*, from Yazid b. Abi Habib). Umar's (ra) proof for this was the words of Allah (swt), ***"And what Allah gave as booty to His Messenger from them – for this you made no expedition with either cavalry or cameleers..."*** (TMQ 59:6), and then Allah (swt) said ***"it is for Allah, His Messenger, the kindred (of the Messenger), the orphans, the poor, and the traveller"*** (TMQ 59:7), then said ***"for the poor muhajirin"*** (TMQ 59:8), and then was not content until others were joined to them and so said ***"and those, who before them had homes and had adopted the faith, love those who emigrate to them"*** (TMQ 59:9) who are the *Ansar* specifically, and then was not content until others were joined to them and so said ***"and those who came after them"***, which is general encompassing everyone who came after them, and in this manner the booty was made for all of those mentioned. So this was Umar's (ra) evidence regarding that the land whose inhabitants had not embraced Islam and was opened through conquest would become a wealth for all of the Muslims until the Day of Judgement, and that the *Imam* possesses its benefits for the sake of the people. He consulted with the Muslims, and they differed, and so he called for ten of the leaders and respected people from the *Ansar*, five from al-Aws and the other five from al-Khazraj, and he said to them ***"I thought that I should keep the infidels on the land, and put a land tax upon it, and a Jizya upon their necks that they have to pay, and so it would be a booty for the Muslims who fought and for their offspring after them. Do you see these frontiers that require men to defend them, do you see these large cities like as-Sham and al-Jazeera and Kufa and Basra and Misr which have to be loaded with soldiers, and money has to be spent upon them, so from where will we get the money if we divided the land and the infidels?"*** (As reported by Abu Yusuf in *al-Kharaj*) So all of them said ***"Your opinion is our opinion, since what you have said and opined is correct"***. Therefore Umar's (ra) citation of the verse and the reason that leaving the land would mean it would be continuous revenue for the *Bayt al-Mal* was powerful evidence, and accordingly the land that was conquered was considered as a *kharajiyyah* land; it was owned by the State and its inhabitants utilised it.

This is the rule irrespective of whether the land was conquered through force such as the land of Iraq, or through agreement, such as the city of *Bayt al-Maqdis*. However, in the situation that the land was conquered through agreement, if the agreement stipulated a certain amount of tax then it is obligatory to interact upon the basis of that agreement, due to the words of the Messenger ﷺ ***“Truly you may fight a people, and they protect themselves and their children with their wealth, and make peace with you through a treaty, so do not take anything more than that from them, because it is not permitted for you”***. Abu ‘Ubayd said regarding this narration: the *Sunnah* in the land opened by treaty is that it is not worked more than what was agreed, even if they were capable of more than that, due to his ﷺ words ***“so do not take anything more than that from them, because it is not permitted for you”***, reported by Abu ‘Ubayd in *al-Amwal*, and even though there is an unknown narrator in the chain, the companions all adhered to leaving the land opening by treaty according to the treaty it was opened with, as from the narration ***“and the Muslims are upon their conditions, except for a condition that makes the halal prohibited, or makes the haram permitted”*** which Al-Tirmidhi reported and said was *Hasan Sahih*, from Kathir b. ‘Abd Allah b. ‘Amru b. al-‘Awf al-Muzani from his father from his grandfather, and is applied here.

If no condition is made as happened with *Bayt al-Maqdis* then it is treated like the land which was conquered through force, since it is booty for the Muslims.

All of this applies outside of the Arabian Peninsula. As for the Arabian Peninsula, all of its land is considered to be *‘ushriyyah* land since the Prophet ﷺ conquered Makkah through force and left its land to its inhabitants, and did not impose any land tax upon them. This is because the tax is upon the land in the way that the *Jizya* is upon the individual, and so it is not established in the Arab land in the same way that no *Jizya* was established upon them, because the idol worshippers from the Arabs had the choice of either embracing Islam, or the sword, ***“you will fight against them, or they will become Muslims”*** (TMQ 48:16), and so accordingly their land is *‘ushriyyah* and not *kharajiyah*, just like any land whose inhabitants embraced Islam.

The *‘ushriyyah* land has *zakah* upon it, which is that the State takes 10 per cent of its actual produce if it is irrigated by natural means, and if it is irrigated by watering or industrial irrigation then 5 per cent of the actual produce is taken. Muslim reported from Jabir who said ***“Whatever is irrigated by rivers and clouds is 10 per cent, and whatever is irrigated by watering is 5 per cent”***. This tenth is considered *Zakat* and is to be placed in the *Bayt al-Mal*, and should not be spent except upon one of the eight categories mentioned in the verse: ***“As-Sadaqat (here it means Zakat) are only for the Fuqara’ (poor), and Al-Masakin (the poor) and those employed to collect (the funds); and to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah’s Cause, and for the wayfarer; a duty imposed by Allah. And Allah is All-Knower, All-Wise”*** (TMQ 9:60). It is reported from al-Hakim, al-Bayhaqi and al-Tabarani from the narration of Abu Musa and Mu’adh when the Prophet ﷺ sent them to Yemen, to teach the people the issues of the *Deen*, and so he ﷺ said: ***“Do not take Sadaqah except from these four: barley, wheat, raisins and dates”***.

As for the *kharajiyah* land, the tax of *al-kharaj* is applied. The State takes a specific amount from the owner of the land, which is specified and limited according to the approximate produce of the land in usual circumstances, and not upon the actual produce. It is calculated according to its potential, in order that neither the owner of the land nor the *Bayt al-Mal* (treasury) is disadvantaged. The *kharaj* is taken from the owner each year, irrespective of whether the land was cultivated or not, or whether it was fertile or barren. Abu Yusuf reported in *Al-Kharaj* from ‘Amru b. Maymun and Harithah b. Madrib, saying ***“Umar Bin al-Khattab sent ‘Uthman Bin Hanif to Sawad, and ordered him to survey it, and so he placed tax of a dinar and a qafiz upon each part of arable land”***. Al-Hujaj b. Artā’a from Ibn Awf narrated ***“Umar b. al-Khattab surveyed the land of Sawad, up to the Jalwan mountain, and so each part of arable land that water reached by bucket or anything else, whether it was cultivated or not, was charged a dirham and a qafiz”*** (reported by Abu Yusuf in *al-Kharaj*).



As for imposing the tax upon the *kharajiyyah* land, this is because the tax (*al-kharaj*) is the word for leasing and revenue, as used in the words of the Prophet ﷺ **“*al-kharaj is by guarantee*”** (reported by Ahmad and the authors of the books of *sunan*, and Al-Tirmidhi said it was *Hasan Sahih* and similarly al-Hakim authenticated it and al-Dhahabi agreed with him). And the land here is owned by the *Bayt al-Mal*. Then, it is given to the people in order to utilise it, and a tax is levied upon them which is for a fixed amount annually, and so it is just like a lease for them, which is why its calculation is left to the *Khalifah*, but it cannot exceed what the land is able to produce. The *kharajis* put in the *Bayt al-Mal* in other than the *zakah* section, and it is spent upon all aspects the State sees fit like the other wealth.

The *kharaj* imposed upon the land which was conquered by force remains forever, and so if the people embraced Islam or sold the land to Muslims, the *kharaj* is not voided, since its characteristic of being opened by conquest remains until the end of time. It is obligatory upon them to pay the *ushr* with the *kharaj*, since the *kharaj* is a right upon the land and the *ushr* is a right obligated upon the produce of the land of the Muslim according to the verses and narrations. There is no contradiction between these two rights, since they are obligated due to two different causes. As for what the *Hanafis* use as proof for the non-joining between ‘*ushr* and *kharaj*, the narration they report from the Messenger of Allah ﷺ **“*The ushr and kharaj are not combined in the land of a Muslim*”** – this is not a narration, and is not confirmed by any of the collectors of narrations from the words of the Messenger ﷺ.

So the payment of *Kharaj* is started first. If after paying *Kharaj* there remains crops and fruits which reach the *nisab* (prescribed minimum amount) on which *Zakat* has to be paid, then the *Zakat* is exacted. If it does not reach the *nisab* then there is no *Zakat* on him.

If the Muslim owns ‘*ushriyyah* land, then he has to pay the *Zakah* upon the basis of either 10 per cent or 5 per cent, and if he owns *kharajiyyah* land then he has to pay both *kharaj* and *zakah*, in other words 10 per cent or 5 per cent.

If a disbeliever owns *kharajiyyah* land then he has to pay *kharaj* and if he owns ‘*ushriyyah* land then he must pay *kharaj* and not ‘*ushr* since the land must not be left unused, and since he is not from those upon whom the ‘*ushr* applies so then *kharaj* is assigned.

As for whoever revives a dead land from the *kharaj* land, which previously had *kharaj* paid upon it before it became dead land, then it becomes *kharajiyyah* land, irrespective of whether it was a Muslim or non-Muslim who revived it.

This is if it was revived for the sake of agriculture. However, if it was for residential purposes or to establish factories, storehouses or pens, then neither ‘*ushr* nor *kharaj* would apply to it, irrespective of whether the land was originally for ‘*ushr* or *kharaj*. When the companions opened Iraq and Egypt, they developed Kufa, Basra and Fustat, which were then inhabited at the time of Umar (ra), and others came and inhabited the areas with them, and they did not charge them *al-kharaj*, and nor was *Zakat* paid from it since it is not obliged upon homes and buildings.

It is possible to trade and inherit ‘*ushriyyah* and *kharajiyyah* land from its owners, because it is a literal possession belonging to its owner, and so all the rules regarding possession apply to it. In relation to ‘*ushriyyah* land this is clear, and as for *kharajiyyah* land then possession of it is the same as possessing ‘*ushriyyah* land without any difference between them from the angle of possession, except for two issues: firstly, with respect to what it is that is owned and secondly, with respect to what is obligatory upon the land. As for the issue of what it is that is possessed, the owner of the ‘*ushriyyah* land possesses the land itself and its yields, while the owner of the *kharajiyyah* land possesses the yields alone. Consequently, if the owner of ‘*ushriyyah* land wanted to give it as a charity, he is permitted to do so anytime he wishes. However, the owner of *kharajiyyah* land is unable to do so, since in order to give anything as an endowment, it is a condition that the person donating it own the object itself, and the

owner of *kharajiyah* land does not own the land itself but rather owns its yields, since the title of the land itself belongs to the *Bayt al-Mal*.

And as for the issue of what is obligatory upon the land, the 10 or 5 per cent is applicable to the *'ushriyyah* land; in other words the *Zakat* upon what was actually produced by the land if it reaches the minimum applicable amount (*nisab*). The land tax (*kharaj*) is imposed upon the *kharajiyah* land, in other words the annual amount specified by the State, irrespective of whether it was planted or not, cultivated or not, or whether the crop was harvested or there was a drought. These two issues are the only differences between the rules regarding the *'ushriyyah* and *kharajiyah* land, and there is nothing apart from them which differentiates between the two, and so the rules regarding them are the same, which are the rules regarding possession of wealth. Therefore, the right is there for the land, whether *'ushriyyah* or *kharajiyah*, to be exchanged by means of any of the types of *Shari'ah* transactions such as contracts and so on, and for them to be inherited from their owners like all other types of wealth.

#### **Article 134**

**Dead land is possessed through its revival and fencing. Any other type of land is not possessed except through a *Shari'ah* means such as inheritance, purchase, and donation by the State.**

The evidence for the article are the words of the Prophet ﷺ ***“whoever revives dead land, then it is his”*** reported by al-Bukhari *mawquf* to Umar (ra), and it is narrated with an authentic chain connected to the Prophet ﷺ by Ahmad and Al-Tirmidhi from Jabir, and ***“whoever puts a wall around land then it is his”*** reported by Ahmad and Abu Dawud with a chain authenticated by al-Jarwad and al-Zayn, and ***“Any people who revive something from the land, then they have more right to it”***, and ***“Aadiy land is for Allah and His Messenger, and then for you after that”*** reported by Abu 'Ubayd by an authentic *Mursal* narration, and Abu Yusuf mentioned in *Al-Kharaj* from Salam b. 'Abd Allah that Umar b. al-Khattab (ra) said on the pulpit: ***“so whoever revives a dead land then it is for him, and the one who fenced it off has no right to it after three years”***. The text of these narrations indicate that if an individual revives a dead land or fences it, in other words putting stones, fencing or a wall around it, then it becomes their possession. The understanding of the texts is that if the land was not dead then he could not take it into possession through revival or fencing, even if it was not cultivated, or not suitable for cultivation without any work being done to it, and even if the owner was not known. Therefore if the land was not dead then it cannot be possessed except by one of the causes of possession if its owner was known, and if the owner was unknown it could not be possessed unless the *Khalifah* granted it, and so it becomes possessed through this grant. If it is dead land, then it is possessed either through its revival or by placing one's authority over it even if that occurs without necessarily reviving the land.

The dead land is the land where there are no signs upon it that it belongs to anyone, so there is no evidence of any kind of walling, agriculture, building or anything similar, and no owner or anyone utilising it. This is the dead land, and anything else is not considered dead land even if there was no owner or person utilising it.

#### **Article 135**

**It is completely prohibited to rent land for agriculture, irrespective of whether the land was *kharajiyah* or *'ushriyyah*. Likewise, temporary share-cropping is also prohibited. *Musaaqa* (renting trees for a portion of their yields) is permitted without restriction.**

There are several evidences for the article, and all of them mention the prohibition of renting land; it is narrated from Rafi' Bin Khadij who said *"We used to partake in share-cropping at the time of the Messenger of Allah; so he mentioned that some of his uncles came to him and said: The Messenger of Allah forbade us from an issue that we used to get benefit from, and obedience to the Messenger of Allah is more beneficial; He said: so we asked, what was that? He said The Messenger of Allah ﷺ said "Whoever has land, he has to plant upon it or let his brother plant upon it, and he cannot lease it for a third or quarter of its yield or for a specified (amount of) food"* (reported by Abu Dawud). It is narrated from Ibn Umar who said *"We didn't used to see any problem with share-cropping until we heard Raafi' Bin Khadij say that the Messenger of Allah forbade it"* (reported by Ibn Qudamah in *al-Mughni* and also by Muslim and al-Shafi'i with slight differences). Jaber said *"The Messenger of Allah ﷺ forbade al-mukharabah"* (reported by Muslim), and the *mukharabah* is share-cropping. Al-Bukhari narrated on the authority of Jabir: *"We used to engage in share-cropping, giving a third and a quarter and a half, and so the Prophet ﷺ said "Whoever has land then he should cultivate it or grant it to someone else, and if he does not do that then it is taken from him"'*". Abu Dawud narrated from Zayd b. Thabit who said *"The Messenger of Allah ﷺ forbade al-mukhabara. I asked – and what is al-mukhabara. He said to work on the land for a half, or a third, or a quarter"*, and the narration of Rafi' *"The Prophet ﷺ forbade the leasing of farms"* (agreed upon). And Zahir b. Rafi' narrated *"The Messenger of Allah called me and said "What are you doing with your land?" I said "We rent it out for a quarter or for amounts of dates and barley". He said "Do not do that, either cultivate it or hold onto it"* (agreed upon). It is narrated from Abu Sa'id who said *"The Messenger of Allah prohibited al-muhafalah"* (reported by Al-Nasa'i and Muslim), and *al-muhafalah* is the renting of land for wheat. In *Sahih al-Bukhari* it is mentioned that the Messenger of Allah ﷺ said *"Whoever has land should cultivate it, or grant it to someone else, and if he refuses then his land is taken from him"*, and in *Sahih Muslim* from Jabir, *"The Messenger of Allah ﷺ forbade the land to be used for a rent or share of the crop"*. In *Sunan Al-Nasa'i* it is narrated *"The Messenger of Allah prohibited the leasing of land. We said O Messenger of Allah, in which case we will lease it in exchange for some of the grain. He said no. We said we will lease it in exchange for figs. He said no. We said we used to lease it upon rabee'. He said no, cultivate it or give it to your brother"*. And *rabee'* is the small river, in other words the river valley, meaning we used to lease for the part cultivated upon the *rabee'* or in other words next to the water. It is also narrated that 'Abd Allah b. Umar met and asked Rafi' Bin Khadij who said *"I heard from my two uncles, who were amongst those who partook in Badr, that the Messenger of Allah prohibited the leasing of land"* reported by Muslim, and he mentioned the narration which mentions that Ibn Umar stopped leasing land.

These narrations explicitly mention that the Messenger of Allah ﷺ prohibited the renting of land. And though a prohibition merely indicates a request to desist, the indication here indicates that the request is decisive. As for the issue of the prohibition of share-cropping, Abu Dawud mentioned a narration on the authority of Jabir who said *"I heard the Messenger of Allah ﷺ say "Whoever does not leave al-mukhabara (share-cropping) then war from Allah and His Messenger is announced to him"* (authenticated by Ibn Hibban and al-Hakim, and al-Mundhiri did not comment upon it). As for the general leasing of land, when the Messenger of Allah ﷺ prohibited them from leasing the land, the companions said to him ﷺ we will lease it in exchange for some of the grain and he ﷺ said no, so they said we will lease it in exchange for figs, and he ﷺ said no. And they then said we used to lease it upon the river valley, and he ﷺ said no. Then he ﷺ emphasised that by saying cultivate it or give it to your brother. This is clearly insistence upon the prohibition, which is a confirmation for it. And the decisiveness is apparent from the narration, since the Messenger ﷺ prohibited them from leasing the land in any way. The companions wanted to make certain circumstances as exceptions from this general prohibition, and so they presented the first circumstance to the Messenger ﷺ in order for him ﷺ to permit it for them by saying *"in which case, we will lease it for some of the grain"*, and the Messenger ﷺ answered them by rejecting their request by

saying no. Then, they presented him ﷺ with a second situation different from the first in order to get his ﷺ permission for it, so they said ***“we will lease it in exchange for figs”***, to which the Messenger ﷺ replied no, rejecting that request as well. Then they presented a third situation other than the first two to the Messenger ﷺ in order to get his ﷺ permission, saying ***“We used to lease it upon the river valley”***, and so he ﷺ replied to them for a third time rejecting what they had requested by saying no. He ﷺ did not stop at that, but rather he ﷺ limited the way that the land could be used to one of two options, saying ***“Cultivate it or give it to your brother”***. This repetition of the rejection alongside the differing circumstances alone is enough to indicate that the prohibition was a decisive one. Additionally, this restriction is also sufficient on its own to indicate decisiveness, since his ﷺ words ***“Cultivate it or give it to your brother”*** are for the sake of restriction, and the word ***“or”*** is to give a choice between two issues, do this or this, which means do not do anything other than these options. Based upon this, this narration, due to the repetition and the manner of that repetition, and the restriction mentioned, clearly indicates decisiveness and so it is an indication that the prohibition related in the narrations prohibiting renting the land generally is a decisive prohibition.

Something else that supports the fact that the prohibition is for *tahrim* (prohibition), is what has been narrated in Abu Dawud from Rafi' (and authenticated by al-Hakim) who said ***“He was cultivating a land, and the Prophet ﷺ walked by him while he was irrigating it, and so he asked him Who is this cultivation for, and who does the land belong to? And so he said I am cultivating it with my seeds and my work, and I own a half of it, and the other half is owned by the family of so and so. Then the Messenger ﷺ said You two have dealt with interest, so give the land back to its owner and take your expenses”***. The Prophet ﷺ described this transaction as being usury, and usury is *haram* according to definite text. Additionally, the Messenger ﷺ requested Rafi' to return the land to its owner, with whatever was there in terms of agriculture, and to take his expenses from them; in other words he ﷺ requested him to void the transaction. This indicates that the prohibition is a decisive one and so it is *haram*.

Therefore, these three narrations - the narration of Jabir which mentions the threat for partaking in *mukhabarah*, in other words share-cropping, and the narration of Al-Nasa'i with the repetition and restriction, and the narration of Raafi' which describes the renting of land as being usury and voiding the transaction - are a definite indication that the prohibition is decisive, which indicates the *tahrim* of renting land generally.

Due to what is mentioned explicitly in these narrations, and what is understood from them, there is not the slightest doubt that it is forbidden to rent land generally. Yet some of the scholars are found to have permitted the renting of land. So we will also explain the evidences that some of the scholars used to permit the renting of land, not simply to criticise those evidences but in order to show their invalidity.

Those who permit the renting of land say that the land is an object that benefit can be derived from while it remains, and so it is permitted to rent it for a price or something similar, such as for a crop rotation, and the rule regarding goods is the same as the rule regarding prices. The invalidity of this opinion is extremely apparent, since even though land is an object which benefits could be taken from while the land remains such as through crop rotation, but the text came to explicitly state that renting land is *haram*, so even if the definition of renting applies to it, the text came and forbade it, and for that reason it is *haram*. So though the evidence for renting is general and encompasses any type of renting, however there is an evidence which came forbidding the renting of land which restricts it to renting anything other than land, and so the renting of land was made as an exception and it was forbidden. That is why it is *haram*. Similar to this are the words of Allah (swt) ***“Eat of that which is lawful and good on the earth”*** (TMQ 2:168) which is general and includes everything, and the words of Allah (swt), ***“deadmeat, blood and pork are forbidden upon you”*** (TMQ 5:3) and then it is restricted by other evidences, which are made as exceptions from the generality of these things. Accordingly, the evidence they use for the permissibility of renting land has been refuted.

Those who permit the renting of land say that the evidence for this is what has been narrated about Hanthala b. Qays from Rafi' b. Khadij who said ***"My two uncles used to rent land upon a quarter of the yield, or whatever the owner of the land took from the land, at the time of the Prophet, then he ﷺ prohibited the renting of land. So I said to Raafi' "How about (renting) with gold and silver?" Raafi' said "there is no problem with gold and silver"***(reported by al-Bukhari).

It is clear from the narration in al-Bukhari that the sentence ***"there is no problem with gold and silver"*** is not from the words of the Messenger of Allah ﷺ but rather it is from the words of Rafi'. This is confirmed by what has been related in the narration in Muslim from Hanthala Bin Qays al-Ansari himself, who said, ***"So I asked Rafi' Bin Khadij about renting the land with gold and silver and Rafi' said "There is no harm in it for the people let out land situated near canals and at the ends of the streamlets or portion of fields. (But it so happened) that at times this was destroyed and that was saved. Whereas (on other occasions) this portion was saved and the other was destroyed and thus no rent was payable to the people (who let out lands) but for this one (which was saved). It was due to this that he (the Prophet) prohibited it. But if there is something definite and reliable, there is no harm in it."***, which explains explicitly that the speaker of those words was Rafi' and not the Prophet ﷺ, and so it is an opinion of Rafi' related by him in the narration, and the words of Rafi' are not a *Shari'ah* evidence, and his opinion is not a *Shari'ah* evidence. This is especially the case when there is text which directly contradicts it. So Rafi' understood from the prohibition of the Messenger ﷺ to rent land, and the land at that time used to be rented for what was produced from it, that the renting of land with gold and silver was no problem. What supports this being the specific understanding of Rafi' is what was mentioned in the report in al-Bukhari from Hanthala Bin Qays al-Ansari that he heard Rafi' b. Khadij say: ***"We worked on farms more than the people of Madinah. We used to rent the land at the yield of specific delimited portion of it to be given to the landlord. Sometimes the vegetation of that portion was affected by blights etc., while the rest remained safe and vice versa, so the Prophet forbade this practice. As for gold or silver, they were not used at that time (for renting the land)"*** (reported by al-Bukhari). So he said ***"As for gold and silver, they were not used at that time"***, and what was in the report of Muslim, Abu Dawud and Al-Nasa'i from Rafi' in the same narration ***"As for something that was known and guaranteed then there is no problem"***, and so all of this is the understanding of Rafi', and his understanding is not considered to be a *Shari'ah* evidence, and at the same time there is evidence which contradicts his view.

And those who permit the renting of land also argue that the evidences related to the prohibition of renting land are only regarding the type of renting which took place at that time, which was that a man would rent the land for a portion of what he harvested from it, in that the one renting would cultivate a part of the land in the river valley for the owner as rent, or give a fixed amount of food, or a portion of the yields from the land. These were the types of renting which were reported in the narrations prohibiting them, and so these are the forbidden types of renting land while anything else is permitted, and for this reason it is permitted to rent land for gold and silver.

The answer to that is that the evidences which prohibit renting of land were not limited to what they used to conduct their transactions with, but rather came in a general form: ***"Whoever has land, he has to plant upon it or let his brother plant upon it, and he cannot lease it for a third or quarter of its yield or for a specified (amount of) food"*** (reported by Abu Dawud). ***"The Messenger of Allah ﷺ forbade al-mukharaba"*** (reported by Muslim from Jabir). ***"Whoever has land then he should cultivate it or grant it to someone else, and if he does not do that, then it is taken from him"*** (reported by al-Bukhari from Jabir). ***"The Messenger of Allah ﷺ forbade the land to be used for a rent or share of the crop"***(reported by Muslim from Jabir). The prohibition in these narrations are all general, to the point that when they asked about the types of farming, the answer of the Messenger ﷺ was not specific, but rather he ﷺ added a general rule – it is mentioned in *Sunan Al-Nasa'i* that the

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Messenger ﷺ prohibited renting of land, and so they said ***“in which case, we will lease it for some of the grain”***, and the Messenger ﷺ answered them by rejecting their request by saying no. Then, they presented him ﷺ with a second situation different from the first in order to get his ﷺ permission for it, so they said ***“we will lease it in exchange for figs”***, to which the Messenger ﷺ replied no, rejecting that request as well. Then they presented a third situation other than the first two to the Messenger ﷺ in order to get his ﷺ permission, saying ***“We used to lease it upon the river valley”***, and so he ﷺ replied to them for a third time rejecting what they had requested by saying no. He ﷺ did not stop at that, but rather he limited the way that the land could be used to one of two options, saying ***“Cultivate it or give it to your brother”***. It is reported from Zuhayr Bin Rafi' who said ***“The Messenger of Allah sent for me and asked, ‘What are you doing with your farms?’ I replied, ‘We give our farms on rent on the basis that we get the yield produced at the banks of the water streams (rivers) for the rent, or rent it for some bunches of barley and dates.’ The Messenger of Allah said, ‘do not do so, cultivate (the land) yourselves, or keep it uncultivated’”*** (agreed upon). From the two previous narrations it is clear that after the Messenger ﷺ prohibited them from what they used to do, he ﷺ ended his ﷺ words with a general text ***“Cultivate it or give it to your brother”***, ***“Cultivate it yourselves, or keep it uncultivated”***, and therefore the narrations remain general and not restricted to how they used to transact, so something unrestricted is not restricted; in other words they are not restricted to how they used to rent land when the prohibition was made, rather the prohibition remains general for all renting of land, completely, similar to the prohibition of interest which occurred when the people used to carry out usurious transactions with a high rate of interest, and all interest was prohibited not just the type of transactions they used to do. Accordingly, renting the land by anything is prohibited, whether by gold, silver or anything else. Therefore, the deduction of those who restrict the narration to the types of land rental which people used to do at the time the prohibition came has been proven false.

Those who permit the renting of land also say that the evidence for this permission is what has been extracted by Abu Dawud and Al-Nasa'i, with the wording of Al-Nasa'i, ***“The Messenger of Allah prohibited al-muhaaqalah (renting of land for wheat) and al-muzaabanah, and he said: Only three people cultivate, a man who has land, a man who has been given land, and a man who rents land for gold and silver”***.

Further, what Al-Hafidh in *al-Fath* mistakenly attributed to Abu Dawud, while it is from Al-Nasa'i, he said: ***“Ubayd Allah bin Sa'ad bin Ibrahim told us, my uncle told me, he said my father told us from Muhammad ibn Ikrimah from Muhammad ibn Abdur Rahman ibn Labiyyah from Sa'ad b. Abi Waqqas (ra) who said “It used to be that the people who owned farms would rent them by share-cropping, and they argued over that, and so the Messenger of Allah prohibited them from renting in that manner, and said “Rent it with gold and silver””, and Al-Nasa'i added “this narration was reported from Sulaiman from Raafi' who said from one of his uncles”***.

They also use the narration from Abu Dawud who said: ***“Uthman ibn Abi Shayba told us Yazeed ibn Haroon told us Ibrahi ibn Sa'ad informed us from Muhammad bin Ikrimah bin Abdur Rahman bin Al-Harith bin Hisham from Muhammad bin Abdur Rahman bin Abi Labeeba from Saeed ibn Musayyib from Sa'ad, he said: “We used to rent the farms by a portion of the crop and what came from the water upon it, so the Messenger of Allah prohibited us from renting in that manner, and ordered us to rent it with gold and silver”***.

They said that these three narrations indicate the permission of renting land with gold and silver.

The reply to this is that these narrations are not suitable to be used as evidence for the permission of renting land by gold and silver.

With respect to the first narration, Al-Nasa'i explained clearly that the words of the narration which are raised (*marfu'*) to the Messenger ﷺ are the prohibition of *al-muhaaqalah* and *al-muzaabanah*, and the remainder is extra/combined (*mudraj*) from the words of Saeed Bin al-

Musayyib. In *Sunan Al-Nasa'i* it mentions the following at the end of the narration: ***“Israil differentiated it from Tariq, and so he did irsal (mursal) of the first part (in other words, made it from the words of the Prophet without mentioning the narrator), and made the second part from the words of Sa‘id”***.

The second and third narrations are not suitable for use as evidence, this is because both chains come through Muhammad Bin ‘Abd al-Rahman Bin Libi, and it is sometimes said Ibn Abi Libi, who was not deemed as trustworthy except by Ibn Hibban. Ibn Hajr said in *al-Taqrīb*: “weak, does a lot of *irsal* (not mentioning the name of the narrators in between)”, and al-Dhahabi said in *Mizān al-‘Itidāl*: “Yahya said: his narration are not to be considered, and al-Daraqutni said he is weak, and another said he is not strong” and in *al-Tathīl* ‘ala ‘l-*Tahdhīb*: “Ibn abi Hatim said: Hamad from a man (in other words Ibn Umar), who said: I asked Malik about Muhammad b. ‘Abd al-Rahman who narrated from Saeed Ibn Musayyib, and he said: he is not trustworthy”.

As for those who deemed the report as *Hasan* such as Al-Albani, their conclusion is not accurate, since they relied upon additional witnesses to make this result. This cannot occur if the text contradicts that which is authentic, and it mentions at the end of both narrations that the Messenger of Allah ﷺ ordered them to rent with gold and silver, and yet it was reported in al-Bukhari from Rafi‘, ***“As for gold and silver they were not used at that time”***, or in other words they were not used in transactions for renting land, even though renting land took place and gold and silver was available and they used to transact with it in issues other than renting land, and if the Messenger ﷺ had ordered them to rent with gold and silver then it would have taken place at that time, and he would have reported that. But he didn’t report that, and over and above that he reported that in fact gold or silver was not used for renting land at that time.

Accordingly the making *Hasan* of the report through additional witnesses (other narrations) is not correct since the end of the two narrations mentions ***“and ordered us to rent it with gold and silver”***, and so this part of the two narrations remain weak and cannot be used as evidence.

Those who permit the renting of land also claim that the evidence for permitting land rental, is that the people used to do so, as well as the *Ijma’* of the companions. As for the peoples’ transactions, it is narrated that Ibn Umar used to rent his land at the time of the Messenger of Allah ﷺ, Abu Bakr (ra), ‘Uthman (ra) and part of the time in the governorship of Mu‘awiyah, and Ibn al-Arabi al-Maliki narrated an *Ijma’* of the companions upon the permission of renting land, which indicates that renting land is permitted.

The response to this is: the fact that people transact a certain way is not a *Shari‘ah* evidence for its permission, but rather the evidence must be a *Shari‘ah* text either from the Book or the *Sunnah*. In addition to that, the narration regarding Ibn Umar renting his land is not suitable for an evidence since once he heard the narration (prohibiting the renting of land) he stopped doing it. This has been confirmed by two narrations from him that he stopped renting land due to it being prohibited; in the narration from Rafi‘ from Ammayah it is mentioned ***“ibn Umar stopped renting land”***, and in the narration from Ibn Umar himself he said ***“We didn’t use to see any issue in share-cropping until we heard Rafi‘ Bin Khadij say the narration”***, and the understanding from this is that he then saw a problem in share-cropping, and share-cropping is renting of land. Based upon this, the evidence regarding peoples’ transactions is rejected, and the use of Ibn Umar’s actions as proof is likewise rejected. As for the *Ijma’* of the companions, which is claimed to be an *Ijma’* upon the permission of renting land, it is rather *Ijma’* upon *al-musaqah* (renting trees for a portion of their yields) based upon the Messenger of Allah ﷺ leasing the land of Khaybar to the Jews, and it is not an *Ijma’* upon renting land. This is because Ibn al-Arabi was the one who narrated this *Ijma’*, and mentioned it in the explanation of the narration of Umar (ra) that the Prophet ﷺ did business with the people of Khaybar, and so the companions had an *Ijma’* on the permission of this renting. Therefore, this is the *Ijma’* that he is relating, which is an *Ijma’* upon *al-musaqah* and

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not upon the renting of land, and so it cannot be used as evidence. Accordingly, it is not suitable to be used as an evidence to indicate the permission of renting land.

And those who permit renting of land claim that there is an *Ijma'* of the companions upon the permission of renting land by gold and silver as an evidence, and the author of *al-Fath* wrote ***“And Ibn Munthir claimed that the companions agreed upon the renting of land by gold and silver”***, and so this *Ijma'* is an evidence for the permission of renting by gold and silver.

The answer to this is that the narrations related to the prohibition of renting land invalidate this *Ijma'* since the prohibition was general, as the Prophet ﷺ said ***“Whoever has land should cultivate it, or let his brother cultivate it, and if not then give it up”*** (reported by Muslim from Jabir), and in the narration from Muslim from Abu Hurayrah who said that the Messenger of Allah ﷺ said ***“Whoever has some land, then he should cultivate it, or let his brother cultivate it, and if he refuses then his land is taken (from him)”***. His ﷺ words ***“and if not then give it up”***, and ***“if he refuses then his land is taken (from him)”***, is evidence for the absence of permission for renting by gold and silver. In the same manner, the narrations limit the rule to two options at the exclusion of any others as has been previously explained: the words of the Prophet ﷺ ***“cultivate it or give it to your brother”***, gave him two options to choose between, and there is no third option apart from them, and the consensus mentioned permits a third option (gold and silver), which is contradictory. This requires *tarjeeh* (weighing up the evidences), and the narrations mentioned have a stronger chain than that of the consensus, and this is apart from the fact that consensus is only upon something that all have either agreed its permission or prohibition; as for something which has not occurred yet, then it cannot have an *Ijma'* upon it, and renting land by gold and silver was not something that the people used to do, as narrated in Bukhari from Rafi', ***“As for gold and silver, they were not used at that time”***, and from Hanthala b. Qays ***“I asked Rafi' Bin Khadij about renting land with gold and paper, and so he replied no problem with it, the people at the time of the Messenger of Allah ﷺ used to rent it upon what grew on the river banks, and what was around the front of the small rivers, and part of what was cultivated, and so some was destroyed and some was handed over, and the people did not used to rent except by this method, and therefore it was criticised, as for what is known and guaranteed then there is no problem with it”***. These two narrations indicate that renting land by gold and silver did not take place at that time, which negates the presence of an *Ijma'* upon something that took place. The *Ijma'* of the companions is simply a method to uncover an evidence (*kashif 'an dalil*), and not an opinion of theirs that they agreed upon after debating and agreeing upon it. Therefore their *Ijma'* that the rule for this action is such and such means that they heard the Messenger ﷺ say that rule, or he ﷺ was seen to do it, or he ﷺ remained silent upon it (having known of it being done), and so the companions narrate the rule without relating the evidence. This cannot occur except with something that occurred in reality, since the *Shari'ah* was legislated upon actions that were done and occurrences that took place, and not upon academic hypotheses, and therefore it is imperative that the *Ijma'* of the companions is upon something that was present. And as long as the presence of people renting land by gold and silver has been negated by authentic narrations, then this is a negation of the presence of any *Ijma'* of the companions upon it. In the same manner when Umar (ra) said to a crowd of companions from the pulpit ***“so whoever revives a dead land then it is for him, and the one who fenced it off has no right to it after three years”*** (mentioned by Abu Yusuf in *Al-Kharaj* from Salim b. 'Abd Allah). And so he prohibited the one who fenced the land from any rights after three years, since his word “right” is an indefinite noun in the context of a negation which is therefore general and encompasses a negation of all rights. So, if he was allowed to rent it by gold and silver, it wouldn't have been taken from him after three years, and Umar (ra) said this and acted upon it in front of the sight and hearing of the companions and none of them refuted him and so it is a consensus.

And those who permit the renting of land say that the evidence for its permissibility is the narration from Ibn 'Abbas who said ***“Truly, Allah did not prohibit share-cropping. He said for one of you to grant his brother is better for him than to take something fixed”*** (agreed



upon). Ibn Maja mentioned the narration ***“from Ibn Abbas, that he heard people increased renting land, and said Glory to Allah, the Messenger of Allah only said “One of you should grant it to his brother” and did not prohibit renting it”***, and in another report from Ibn ‘Abbas ***“The Messenger of Allah did not prohibit share-cropping but he ordered people to be kind with each other by his ﷺ words “Whoever has some land, then he should cultivate it, or let his brother cultivate it, and if he refuses then his land is taken (from him)”*** (reported and authenticated by Al-Tirmidhi from Ibn ‘Abbas), and in the same manner what is reported from Thabit, ***“The Messenger of Allah ﷺ prohibited share-cropping and ordered renting and said no problem with that”*** (as reported by Muslim). And so these narrations indicate the permission of renting.

The answer to this is that the narration of Ibn Abbas in all of its reports is information of his understanding of the words of the Messenger ﷺ, and not a report from the Messenger ﷺ. They are an explanation that he understood that the prohibition of renting land by the Messenger ﷺ was not for *tahrim*, and so he said ***“did not prohibit it”***. And it is explicitly mentioned by him in the second report, since it is clarified he understood it from the words of the Messenger ﷺ, as he explained his understanding by mentioning the narration which he had understood from when he said ***“did not prohibit share-cropping but he ordered people to be kind with each other by his (saw) words...”***. As long as it is the understanding of Ibn ‘Abbas and not a narration from the Prophet ﷺ then it is not considered to be a proof, and cannot be used as evidence. As for the narration of Thabit who said ***“and ordered renting”***, this contradicts the other narration ***“The Messenger of Allah prohibited the leasing of land”*** and the other narration ***“The Messenger of Allah prohibited any rent to be taken for land, or any share of it (crops)”*** (reported by Muslim from Jabir), since his words ***“and ordered renting”*** is general, encompassing all types of renting, and his words ***“the leasing of land”*** and ***“any rent to be taken”*** are also general; in other words the order to rent is general and the prohibition is general, and this cannot be reconciled, since they are both general. It is not the case that one of the two is general and the other specific, or general from one angle and specific from another, and the other is general from another angle and specific from an angle other than the narration and so on...such that reconciliation between the evidences could have been possible. Rather the generality of the order and prohibition are equal, and so *tarjeeh* is necessary and so the prohibition is given precedence and the narration ordering renting is rejected because if two texts contradict then the precedence is given to the prohibition ahead of the order due to his ﷺ words ***“Leave what causes you doubt for that which does not cause you doubt”*** (reported by Al-Tirmidhi who said it is *Hasan Sahih*), and accordingly the use of these narrations as evidence has been negated.

Those who claim that renting land is permitted also state that the evidence for its permission is what has been reported by Abu Dawud that Zayd Bin Thabit said ***“May Allah forgive Raafi Bin Khadij, I know more about that than Rafi’, he heard the Prophet ﷺ when two men (from the Ansar) were fighting over it and so he ﷺ said “If this is your issue then do not rent the farms””***.

In other words Zayd b. Thabit said he knew more about that (meaning renting land) than Rafi’, and that when the Prophet ﷺ heard two men had fought so he ﷺ said ***“If this is your issue, then do not rent out the farms”***. And al-Bukhari reported from Amru Bin Dinar who said ***“I said to Tawus, if you left behind al-mukhabara (share-cropping) since they claim that the Prophet ﷺ prohibited it. He said More knowledgeable than them (intending Ibn ‘Abbas) told me that the Prophet ﷺ did not prohibit it and rather he said “For one of you to grant his brother is better for him than to take a fixed kharaj upon it””***, and *al-kharaj* linguistically means leasing of the land. So these two narrations indicate the permission of renting.

The reply to this is that the narration of Zayd does not indicate the permission of renting land, but rather it indicates its prohibition, and as for the understanding derived from the condition in his words ***“If this is your issue”***, this is voided by the narrations which comprehensively prohibit renting for farming, and also it is voided since it falls under the usual situation –

meaning that renting in the manner that they used to would normally lead to disputes and differences since some land is more fertile than other. This is similar to the voiding of the condition in His (swt) words, ***“And force not your maids into prostitution, if they desire chastity”*** (TMQ 24:33), so this condition is voided as it falls under the usual situation – most of the time their maids hated prostitution, and so this understanding, or this understanding derived from the condition, is voided since it was merely a description of what was the case in usual circumstances (that a woman would hate to be forced into prostitution), and it also voided the texts which prohibited fornication generally and were not limited.

As for the second narration from ‘Amru b. Dinar, likewise it does not mean ***“the permission to grant and the permission to take rent, but granting is better”***; rather it prohibits taking the rent. This is because the sentence ***“to grant his brother is better for him than to take a fixed kharaj upon it”*** is an informative sentence which conveys a request, in other words it is as though he ﷺ said ***“Grant your brother and don’t take kharaj from him”***, and so it contains a request to grant, in other words give, without recompense, and prohibiting take *kharaj* or in other words rent. It requires an indication to explain the type of prohibition *“request to leave”*, and the indications are in other narrations which convey that it is a decisive request since they prohibit the taking of rent comprehensively such as his words ﷺ ***“Whoever has land, he has to plant upon it or let his brother plant upon it, and he cannot lease it for a third or quarter of its yield or for a specified (amount of) food”*** (reported by Abu Dawud). And ***“Whoever has land then he should cultivate it or grant it to someone else, and if he does not do that then it is taken from him”***. And from Rafi’ ***“The Messenger of Allah prohibited renting farms”*** (agreed upon). And ***“The Messenger of Allah ﷺ forbade the land to be used for a rent or share of the crop”*** (reported by Muslim from Jabir). And it is reported that ‘Abd Allah b. Umar met Rafi’ b. Khadij and asked him and so he replied: I heard my uncles, and they were from those who saw Badr, say: ***“The Messenger of Allah prohibited renting land”*** (by Muslim).

Those who claim that renting land is permitted say that the proof for its permissibility is what is reported by Ibn Umar ***“The Messenger of Allah ﷺ contracted the people of Khaybar over half of what was produced of fruit or crops”***, and Abu Ja’far said ***“The Messenger of Allah ﷺ contracted the people of Khaybar over half, and then Abu Bakr (did the same), and then Umar, and then Uthman and Ali and then until today they give a third and a quarter”*** (mentioned by Ibn Qudamah in *al-Mughni* and he said it is *Sahih mashhur*). And al-Bukhari reported from Ibn Umar ***“The Prophet ﷺ contracted the people of Khaybar upon a half of what they produced from the land, in terms of crops or fruits, so he used to give his wives one hundred loads, eighty of dates, and twenty of barley, then Umar divided Khaybar and gave the wives of the Prophet ﷺ the choice to be given land and water from it, or to continue taking the loads, and so some of them chose the land, and others the loads, and Aisha chose land”***. Therefore this narration indicates the permission of renting land for a part of its yields, and so indicates the permissibility of renting land absolutely.

The reply to this is that the land of Khaybar was wooded land irrigated by water, and between the trees was a flat land whose area was less than that of the area of the wooded land. It was this land that was cultivated, and this is supported by what was mentioned in some of the narrations ***“The Prophet ﷺ contracted the people of Khaybar over what they produced from the palm trees and trees”*** (reported by al-Daraqutni from Ibn Umar). And in the narration of Ibn Abbas ***“its land and its palm trees”***. Accordingly, the reality of what the Messenger ﷺ did when he ﷺ leased Khaybar is that it was *musaqah* (renting trees for a portion of their yields) and not share-cropping, or in other words renting of a wooded land and not the rental of the land alone, rather the rental of trees and the land with them, which is *musaqah*, and this is permitted without any difference. It is permitted to rent a tree for a fixed portion of its fruits in exchange for someone watering and harvesting them, and the land is rented since the tree is on the land, on the condition that there is more land with trees than empty land in order that the rental be for the trees and not the land. So this is *musaqah* which is permitted, and what is forbidden is the renting of land and not the *musaqah*. A detailed look at the narration in

Bukhari reveals that the land was mainly full of trees, and the land with trees was greater than the empty land, and there was water there to irrigate the trees, which means it was *musaqah*. Look at the words in the narration, **“so he used to give his wives one hundred loads, eighty of dates, and twenty of barley”**, and his words, **“to be given land and water from it”**, which indicates that the land of Khaybar used to have trees, and that its rental was on the basis of *musaqah*, and not share-cropping nor renting of the land.

Based upon that, the narration cannot be used as an evidence for the permissibility of renting land, and therefore its use is negated.

In summary therefore the prohibition of renting is an issue which is as clear as can be. And accordingly the evidence for the article has been proven with the most prominent manner of deduction.

As for *musaqah* – the renting of trees for a portion of their fruits or the renting of trees with the land they are on for a portion of the fruit and crops, as long as there are more trees than empty land - the proof for this is the *Shari'ah* meaning of *musaqah* and the permission for *musaqah* in the narrations reported regarding it. Al-Bukhari reported from Abu Hurayrah who said **“The Ansar said to the Prophet ﷺ Divide the palm trees between us and our brother. He said: No. So they said: Give us the assistance and we will give you a share of the fruits. They said: We heard and we obeyed”**. And al-Bukhari extracted through Nafi' that 'Abd Allah b. Umar informed him **“The Prophet ﷺ contracted the people of Khaybar upon a half of what they produced from the land, in terms of crops or fruits, so he used to give his wives one hundred loads, eighty of dates, and twenty of barley, then Umar divided Khaybar and gave the wives of the Prophet ﷺ the choice to be given land and water from it, or to continue taking the loads, and so some of them chose the land, and others the loads, and Aaisha chose land”**, and Muslim and Abu Dawud and Al-Nasa'i reported **“The Messenger of Allah ﷺ gave the Jews the date palms and land of Khaybar, for them to work upon it with their wealth, and the Messenger of Allah ﷺ would have half of its fruits”**. Ahmad and Ibn Maja reported from Ibn 'Abbas, **“The Prophet ﷺ gave Khaybar's land and date palms as a division over half”**. These narrations indicate that *musaqah* is the renting of trees alone for part of their fruits, as is apparent from the narration of Abu Hurayrah regarding the actions of the Ansar. They also indicate that *musaqah* is the renting of trees with land for a portion of the fruits of the trees and the yield of the land, as is apparent from the narration of Nafi' from 'Abd Allah b. Umar **“contracted the people of Khaybar upon a half of what they produced from the land, in terms of crops or fruits”**, and likewise from the narration of Muslim, Abu Dawud and Al-Nasa'i **“date palms and land of Khaybar”** and the narration of Ibn Abbas **“Khaybar's land and date palms”**. So they indicate that the renting is either of the trees alone, or the trees and the land with them. Similarly they indicate that the land should be less than the trees, as is clear from the narration of Nafi' from 'Abd Allah b. Umar **“hundred loads, eighty of dates, and twenty of barley”**. Accordingly it is confirmed that the reality of *musaqah* is renting the trees for a portion of its fruits, or renting the trees and land for a portion of the fruit and the crops, as long as the trees are more than the land. Additionally these narrations are evidence for the permissibility of *musaqah*.

#### Article 136

**Everyone that owns land is compelled to use it, and those that require financial help are given money from the *Bayt al-Mal* to enable them to utilise their land. If anyone neglects utilising the land for three years continuously, it is taken from them and given to someone else.**

The evidence is what Abu Yusuf reported in *Al-Kharaj* from Salim b. 'Abd Allah that Umar b. al-Khattab (ra) said from the pulpit: **“whoever revives a dead land then it is for him, and the one who fenced it off has no right to it after three years”**. Umar (ra) said this in the sight

and full hearing of the companions, and none of them rebuked him and so it is a consensus. This is explicit evidence that if someone revives a dead land, or places stones or anything which shows his possession of it upon it, then he takes possession of it. However, if he does not utilise the land for a period of three consecutive years then it is taken from him. The one who revived it and the one who fenced it off are the same from the angle of ownership, and from the angle of it being taken away from them. It cannot be said that the issue of ownership is restricted to the one who revives **“whoever revives”**, and that the issue of dispossessing it is restricted to the one who fenced it off **“and the one who fenced it off has no”**, with the understanding that ownership is for the reviver, and taking the land away if it was neglected is restricted to the one who fenced it off and excludes the reviver. This is because the wording is from the metaphorical style of deletion (*ḥathf*), and so the one who fenced also falls under ownership, and the reviver under the ruling of dispossession: as if Umar (ra) said “whoever revived a dead land then it is for him, and he has no right to it after three years, and whoever fenced a dead land then it is for him and he has no right to it after three years”.

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Though Umar’s (ra) words mentioned dead land that is taken into an individual’s possession through reviving it or fencing it off, in other words by placing his hand upon it, and that if he neglects it for three years then it is taken from his possession, there are other texts which are reported about land which is not revived and fenced, and not dead, rather as part of a cultivated land that was granted to people. It is reported from Yahya b. Adam through the chain of ‘Amru b. Shu’ayb who said **“The Prophet ﷺ granted land to some people from Muzaynah or Juhaynah and they neglected it. Other people came and cultivated it. Umar said: If the land was granted by me or by Abu Bakr, I would have returned it (to those people). But it was granted by the Messenger of Allah ﷺ”**.

What is meant is that more than three years had passed, or in other words if it had been granted from the time of Abu Bakr (ra), three years would not have passed yet, and similarly if it had been granted in the time of Umar (ra), and so Umar (ra) would have returned it to the one it had been granted to. However, it was the Prophet ﷺ who granted it, and so more than three years had passed and so it was not possible to return it, rather Umar (ra) confirmed its ownership to the ones who had revived it. And it is apparent from the narration that it occurred more than a year after Umar (ra) took the leadership, and it was land granted from the time of the Messenger of Allah ﷺ, in other words, it was granted more than three years earlier, and for that reason Umar (ra) did not return it; it is also clear that the event was regarding land that had been granted and was not revived or fenced land.

Abu ‘Ubayd reported in the book of *al-Amwal* from Bilal Ibn al-Harith al-Muzni, that “the Messenger of Allah ﷺ had granted him all of al-Aqiq. He said that during the time of Umar, he (Umar) said to Bilal, ‘The Messenger of Allah ﷺ did not grant you the place to fence it away from the people but rather to use it. So take of it as much as you can afford and return the rest’. It is clear from this that neglect of the land due to the lack of capability to utilise it is a cause for taking the land away, as understood and acted upon by Umar (ra), and the limit of neglect before it is mandatory to take the land is three years as mentioned in the previous words of Umar (ra).

It cannot be said that this is only regarding land that has been granted, since the issue was not a question nor an event that occurred which the text was specific to, rather it is general, and is general for all possessed land. Therefore the cause for taking away the possession of land if it was neglected is not because it was land that was originally granted but rather because it was neglected. This is confirmed by the words of Umar (ra), **“whoever neglected a land for three years and did not build upon it, and then someone else came and built upon it then it is theirs”** (reported by Yahya b. Adam in *Al-Kharaj* and Ibn Zanjawi in *al-Amwal* from ‘Amru b. Shu’ayb), and his word **“a land”** is an unrestricted term which encompasses all types of possessed land, irrespective of whether it was dead and then taken into ownership through revival and fencing, or if it was built upon and taken into ownership by being granted or inheritance or buying or a gift...the rule is applied to it – it is taken if it is not used for three years.

This indicates that the land which was possessed by an individual, irrespective of whether that was by revival, fencing, granting, or purchasing... is taken away from the owner if he left it unutilised for three consecutive years, as was indicated by the action of Umar (ra) in the incident with Amru Bin Shu'ayb and by his words **"whoever neglected a land"**, and by the incident of Bilal, and it is not known that any of the companions rebuked him over that event though it is from the things that are rebukable, because it is forcefully taking a cultivated land from its owner without giving anything in exchange, and the one taking it is the *Khalifah*; it is accordingly *Ijma'* of the companions. This is because the *Ijma' sukuti* (silent *Ijma'/Ijma'* of consent) is when one of the companions does an action that would normally be rebuked in front of a group of them, and none of them rebuke it, and so it is a *Shari'ah* evidence. Based upon this the cultivated land that is owned by an individual, is taken from them by compulsion without exchange if they left it uncultivated for a period of three consecutive years.

From this, it is clear that the rule encompasses all land, regardless of whether it was possessed through revival, grant, inheritance, purchase or anything else – every land which is neglected for three years is compulsorily taken back by the State from its owner without any compensation.

The issue of being three consecutive years is understood from the text, which applied to taking the land and to its neglect for three years. He said **"Whoever neglected a land for three years"**, and so the issue of neglect applies after three years, and it is understood from this that the three years are consecutive. This is confirmed without any lack of clarity by his words **"and the one who fenced it off has no right to it after three years"**, and so the negation applies "after three years", and it is not said "after three" if they were not consecutive, and would only be used if they were consecutive following one after the other.

As for giving the farmers help from *Bayt al-Mal* (treasury) to enable them to cultivate their land, its evidence is what Umar (ra) did in Iraq. When he conquered Iraq he left the land in the hands of its inhabitants, and did not divide it amongst the fighters even though it was part of the booty. He gave the farmers money from the *Bayt al-Mal* (treasury) in order to strengthen them to cultivate their land even though they had not yet embraced Islam, even though farmers in their characteristic as farmers are not from those who deserve anything from *Bayt al-Mal* (treasury) since as long as they own land they cannot be counted as being poor. Anything similar to these two issues would normally be rebuked due to their contradiction with the rules regarding war booty and the rules regarding *Bayt al-Mal* (treasury). As for the first issue which is leaving the land which was taken as booty with those who cultivated it, and not dividing it amongst the fighters, there were companions who rebuked Umar (ra), and a discussion took place between them. As for the second issue, which was giving the farmers in Iraq money from the *Bayt al-Mal* (treasury) in order for them to cultivate their land, none of the companions rebuked Umar (ra), and so it is an *Ijma'* (consensus) upon the permission of giving farmers what is required from *Bayt al-Mal* (treasury) to enable them to cultivate their land.

These are all the evidences for this article.

### **Article 137**

**There are three categories of Public Ownership:**

- a. Public utilities, such as the open spaces in the towns.**
- b. Vast mineral resources, like oil fields.**
- c. Things which, by their nature, preclude ownership by individuals, such as rivers.**

The evidence of the article is the evidence for article 129, and so the evidence for clause “c” is the affirmation of the Messenger ﷺ upon the people sharing the ownership of the public pathways, and his ﷺ words **“Mina is a way station for whoever gets there first”** reported by Al-Tirmidhi from Aaisha (ra), and he said it is *Hasan Sahih*, and Ibn Khuzaymah who authenticated it; in other words Mina, which is the famous place in the Peninsula, is a public property for all the people. So whoever gets there first and rests there, they have the right to it.

As for clause “b”, its evidence is what was reported from ‘Amru b. Qays **“I asked the Messenger of Allah ﷺ to grant me a salt laden land and so he granted it to me. It was said O Messenger of Allah ﷺ, it is comparable to a countless water – in other words it does not deplete – and so the Messenger of Allah ﷺ said “In which case, no”**” (reported by Al-Nasa’i), and the groundwater is that which is not depleted, and so the salt laden land was compared to the groundwater which is not depleted. The intention here is not the salt but rather the minerals, the evidence being that when he ﷺ knew that it was non-depleting he ﷺ prohibited it, though he ﷺ initially knew that it was salt, and granted the land initially, and so the prohibition is due to it being a vast mineral resource. Abu ‘Ubayd said **“When the Prophet ﷺ realised it included ground water, he revoked it, because it is the Sunnah of the Messenger of Allah ﷺ in relation to pasture, fire and water, to make all the people partners in their possession. So he disliked limiting possession to one person at the exclusion of others”**. Accordingly, every mineral which is non-depleting, i.e. its size is not evaluated as a small quantity, is considered to be a public property. Had it been limited to a small amount then it is not considered to be a public property, as evidenced by the narration.

As for clause “a”, its evidence is the words reported by one of the companions of the Prophet ﷺ Abu Kharras who said: the Messenger ﷺ said **“The Muslims are partners in three: water, pastures and fire”** (reported by Ahmad), and his ﷺ words **“Three are not denied (to anyone): water, fire and pastures”** (reported by Ibn Maja from Abu Hurayrah). This narration has an *Illah* that its prevention is because they are from the public utilities. So the Messenger ﷺ permitted individual ownership of water in al-Ta’if and Khaybar, and they owned it at the expense of others in order to irrigate their crops and gardens, and so if there was absolute partnership in water, he ﷺ would not have allowed individuals to own it. Therefore from the words of the Messenger ﷺ **“The Muslims are partners in three: water...”**, and **“three are not denied”** along with his ﷺ permission for individuals to own water, an *Illah* can be deduced that the partnership in water, pastures and fire, is due to the fact that they are public utilities that the public cannot live without, and so anything that is considered to be a public utility such as the open space in the towns, the areas for wood and the grazing pastures are all public property.

This is the evidence for public ownership.

As for the fact that these three alone constitute publicly owned property, this is from examination. Through the examination of the evidences regarding public ownership, it was found that they were limited to these categories, and so subsequently the evidence for this article has been made clear.

### **Article 138**

**Factories by their nature are private property. However, they follow the rule of the product that they are producing. If the product is private property then the factory is considered to be private property, such as textile factories. If the product is public property then the factory is considered public property, such as factories for iron ore production.**

This article has two parts: Firstly, the origin is that factories are owned by individuals, and secondly, that the factory takes the rule of the product that it produces.

As for the first part, its evidence is that ***“the Messenger ﷺ had a ring made”*** reported by al-Bukhari from ‘Abdullah b. Umar, and a pulpit as reported by al-Bukhari from Sahl b. Sa’d al-Sa’idi, and they were produced by individuals who personally owned the factory. Additionally, people used to have things made for them at the time of the Messenger ﷺ and he ﷺ remained quiet over it, to the point that some of them used to make weapons, like Khubab who used to make swords in *jahiliyyah* (the era of ignorance before Islam) and continued after he embraced Islam, and his story is mentioned in the *Sirah* of Ibn Hisham with Al-‘As Bin Wa’il al-Sahmi when he bought a sword from Khubab. When Khubab came to al-‘As to confirm the price he joked with him saying: I’ll pay the price for it in Paradise. This indicates that he ﷺ affirmed individual ownership of factories, irrespective of whether they were weapon, mineral or carpentry factories or anything else. It is not reported that he ﷺ prohibited the ownership of factories, and there is no text which states that factories are public property, in the same way that there is no text which states that factories belong to the State. Therefore, the evidence that factories can be private property remains general.

This is the evidence for the first part. As for the second, its evidence is the rule *“The factory takes the rule of what it produces”*, and this rule is deduced from the Prophetic narration; it is reported that the Messenger ﷺ said ***“Allah cursed the one who drinks alcohol, and the one who ordered its squeezing (of the grapes etc.) and the one who squeezes it...”*** which is part of a narration in Abu Dawud from Ibn Umar that is authenticated by Ibn al-Sakan, and the complete narration is ***“Allah cursed the one who drinks alcohol, and the one who ordered its pressing (of the grapes etc.) and the one who presses it and the one who carried it and the one it was carried to.”*** and so the prohibition of pressing wine is not a prohibition of pressing itself, but rather it is a prohibition of pressing wine specifically. Therefore, pressing is not forbidden (*haram*), but rather it is the pressing to produce alcohol which is forbidden. So pressing is forbidden due to the forbiddance of alcohol, and so it took the rule of the thing that it was being pressed for, and so the prohibition applies to pressing, or in other words the process of pressing, and so it applies to the instruments used for pressing. Therefore the production takes the rule of the product that it is producing, and the factory takes the rule of the product that it manufactures, and this is the evidence that the factory takes the rule of what it produces, in other words it is the evidence for this rule, since the forbiddance of the factory came from the forbiddance of the product that it produces. The narration is not evidence that factories are public property; rather it is only evidence for the factory taking the rule of the product that it produces. This is the evidence for the second part; in other words the rule deduced from the narration is the evidence for this part.

Factories are therefore judged upon this basis; so if the product they produce is not from the materials which are counted as public property, then these products are owned individually, such as textile factories, because the Messenger ﷺ affirmed the production of swords, clothes and shoes which are all things that are individually owned. If the factories were producing materials which are counted as public property, such as factories to extract oil, and steel, then they are considered to be public and not private property. This is because when the Messenger ﷺ prohibited the production of alcohol, he gave the factory the rule of the material it produces, which is the evidence for this article.

#### **Article 139**

**The State is not permitted to transfer private property into public property, since public property is confirmed by the nature and characteristic of wealth and not by the opinion of the State.**

The evidence are the words from the agreed upon narration of the Messenger ﷺ through Abu Bakra ***“Your blood, wealth and honour are sanctified like the sanctification of this day of yours, in this land of yours, in this month of yours”***, which is general and encompasses

every person, and so it is forbidden to take the wealth of any individual, whether Muslim or not, except for a legislated reason. Therefore it is forbidden for the State to take the wealth of any individual except for a *Shari'ah* reason. Accordingly, it is forbidden for the State to take the wealth of any individual into its possession on the grounds of benefit, or to make it public property for the benefit of the *Ummah*, since the narration forbade that and benefit does not make it permitted, as its permission would require a *Shari'ah* evidence. It cannot be said that the *Imam* can do that as part of governing the interests of the *Ummah* since he has the right to manage the affairs. This is because the management of the affairs is the undertaking of the interests of the people according to the *Shari'ah* rules, and not the undertaking of the peoples' interests according to the opinion of the *Khalifah*, and so the *Khalifah* has no power at all to permit whatever Allah (swt) forbade, and if he did so the action would be considered an injustice which he would be taken to court for, and the wealth would be returned to its owner.

Based upon this, what is called nationalisation is not from the *Shari'ah* in any shape or form, since if a property had the nature and characteristic of public property then it would be obligatory upon the State to make it part of the public property, and it would have no choice in that, and so this would not be considered nationalisation but rather the nature and characteristic of the property meant that it was in reality part of the public property, and it would be forbidden for the State to allow it to be privately owned. As for if the property was owned by an individual and did not have the characteristic or nature of public property, then it would be forbidden for the State to nationalise it, and if it did so it would be taken to court and the property would be returned to its owner. This is since the Messenger of Allah ﷺ took the salted land back from Abyad Bin Hammal after he ﷺ had granted it to him, once it became apparent that it was not depleted.

#### **Article 140**

**Every individual from the *Ummah* has the right to utilise anything from public property, and it is not allowed for the State to permit someone to individually possess or utilise it.**

*Ummah* in this article is the citizens in *Dar Al-Islam*, or in other words all those who carry the citizenship of the State, irrespective of whether they were Muslim or *Dhimmi* (non-muslims), and the State is compelled to take care of them all the time, which includes providing the basic needs for them. This is in accordance with the *Shari'ah* rules they are subject to. Amongst them is that every individual from the subjects has the right to utilise anything from the public property, and the *Dhimmi* and Muslim have the same rights to utilise the public facilities.

It cannot be said that the narration "*the Muslims are partners in three*" means that the public property is for the Muslims alone, rather this narration and similarly the narration "*the people are partners*" are specified by the narration of Muslim through Buraydah which mentions "*Then invite them to migrate from their abode to the abode of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin*" and the *Dar al-Muhajirin* is the *Dar Al-Islam*, and so this text limits the rights of citizenship to those who migrate to the *Dar Al-Islam*, or in other words they carry the citizenship of *Dar Al-Islam*. Therefore, this does not encompass all the Muslims in the world but rather only those in *Dar Al-Islam*, and in the same way, non-Muslims who live in *Dar Al-Islam* and carry citizenship are not exempted, because the narration of Buraydah makes enjoyment of the right of citizenship conditional to migration to *Dar Al-Islam*. Accordingly, the Muslim in *Dar Al-Islam*, and the *Dhimmi* who lives in *Dar Al-Islam* and carries its citizenship fall under the application of this article.



This is for the citizens in *Dar Al-Islam*; they can utilise from the public property, and none of them should be prevented from doing so irrespective of whether they were Muslims or *Dhimmis*.

The issue of the Muslim subjects utilising the public property is clear.

As for the *Dhimmi*, there are several texts and incidents from the time of the Messenger ﷺ and the righteous *khulafaa'* which all indicate this.

- They used to walk in the markets, buying and selling, and the markets are public property. Ahmad reported from Ka'b Bin Malik ***"While I was walking through the market, a Christian came with some food to sell, saying: who will direct me to Ka'b Bin Malik?"*** and this indicates that the Muslims and *Dhimmis* used to visit the markets for their needs in the same manner.
- They used to utilise the water, fire and pastures. Ibn Maja reported from Abu Hurayrah that the Prophet ﷺ said ***"Three are not denied (to anyone): water, fire and pastures"***. The companions agreed that the Christians of *al-Sham* could drink from the rivers with the Muslims, and similarly the same applied to those who remained Magians in Iraq and Bahrain, and similarly the Coptics in Egypt used to drink and irrigate from the Nile. They would all cut wood from the forests, irrigate their crops from the public rivers and shepherd their flocks in the public pastures. Today they would utilise petrol and its derivatives and electricity, since they are both from the "fire" mentioned in the narration.
- They have the right to revive dead land, due to what is reported by Ahmad and Al-Tirmidhi with an authentic chain from Jabir who said that the Messenger of Allah ﷺ said ***"whoever revives a dead land, then it is for him"*** and what was reported by al-Bukhari from Aaisha (ra) that the Prophet ﷺ said ***"whoever inhabits a land where there is no one, then he has more right to it"***. And what is reported by Abu Dawud At-Tayalisi from Aaisha (ra) who said that the Messenger of Allah ﷺ said ***"The slave is the slave of Allah, and the land is the land of Allah, and whoever revives any part of dead land then it is his, and the oppressor has no right of possession"***.

All of these evidences are general and encompass all citizens, irrespective of whether they were Muslims or not.

- Also, all of citizens whether Muslim or *Dhimmi* can use the methods of transportation from land, sea and air. As for the land, the *Dhimmis* used to use it at the time of the Messenger of Allah ﷺ. Al-Tirmidhi reported from Aaisha (ra) who said ***"The Messenger of Allah was wearing two symmetrical heavy dresses, and if he sat and sweated they became heavy on him, and so clothing arrived from al-Sham to a named Jew, and so I said: if you went to him and bought two dresses from him which were soft..."***. As for the sea, they used to use it in the same manner as the Muslims at the time of the companions, and today that is analogous to the use of the airways.
- They can also use the general paths and the public communications as they are analogous to the public transportation.

This is the evidence for the first part of the article that all of the individual subjects have the right to utilise the public property.

As for the second part, which is that it is not allowed for the State to permit someone to individually possess or utilise it – its evidence is the narration of Abyad Bin Hammal when the Prophet ﷺ granted him some land which was salt laden, and when he ﷺ was informed that what he ﷺ had given him was similar to non-depleted water he ﷺ took it back from him. Al-Tirmidhi reported from Abyad Bin Hammal that ***"He came to the Prophet ﷺ and asked him to grant him asaltladen land, and he granted it to him. And when he left, one person in attendance with the Prophet said "Do you know what you granted him? You granted him***

*the non-depleted water". He ﷺ then took it away from him".* The other evidence is that which Al-Tirmidhi reported from Aaisha (ra) and he said it is *Hasan Sahih*, and Ibn Khuzaymah reported in his *Sahih*, that the Messenger ﷺ said **"Mina is a way station for whoever gets their first"**, and the narration of al-Sa'ab b. Jathamah with al-Bukhari **"No protection (Hima) except for Allah and His Messenger"**.

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It is clear that most of the capitalist monopolies and rich companies and individuals who have imaginary wealth, have managed to do so because of the special privileges they get to exploit the different types of public property, such as gas, petrol and the other mineral resources, and the communications, transport, water and other things.

#### **Article 141**

**The State is allowed to protect some of the dead land and any part of public property for any public interest.**

The evidence is the report that the Prophet ﷺ said **"No protection (Hima) except for Allah and His Messenger"** reported by al-Bukhari from al-Sa'ab Bin Jathama, and the protection is to protect something that was for the general Muslims which then prevents the people from it, and to take it for themselves and so the Messenger ﷺ prohibited that, or in other words he ﷺ forbade it. Therefore it is not permitted for any person to do it including the *Khalifah* for himself, because he cannot permit what Allah (swt) forbade. From this understanding, it is prohibited for the State to give ownership to someone for anything that is part of public property, which would lead to the prevention of others benefiting from it. As for the State itself, in other words the *Khalifah*, it is permitted for him to take something from the dead land and public property for the sake of the interests of the Muslims, and not his own, and the evidence for this is what was reported from Ibn Umar who said **"The Prophet ﷺ protected al-Naqi' for the horses of the Muslims"** (reported by Ibn Hibban), and *al-Naqi'* is the place where the water settles and so there are a lot of plants due to the water; in other words it is a fertile place for grazing. And it is reported from Abu 'Ubayd from Amir b. 'Abd Allah b. al-Zubayr, I consider it to be from his father, who said **"A Bedouin came and said O Amir of the believers, we fought over our land in Jahiliyyah, and we became Muslims while it is still under our possession, – will you protect it? Umar bowed his head, blew and twisted his moustache – and if an issue would trouble him he would twist his moustache and blow – so when the Bedouin saw what he was doing he repeated himself, and so Umar said: The property is the property of Allah, and the Slaves are the Slaves of Allah, I swear by Allah had I not been charged with that in the Path of Allah I would not have protected a hand-span of the land"**. The narration is explicit in the permissibility of the State protecting; in other words it is permitted for the State to do something specific with what falls under public property such as the grazing pastures in order to fulfil the interests of the Muslims, and the companions after the Messenger ﷺ used to do the same, and so it has become a normal practice for every *Khalifah*.

#### **Article 142**

**Hoarding of wealth is prohibited, even if Zakat is paid upon it.**

Its evidence is the words of Allah (swt) **"And those who hoard gold and silver and do not spend them in the Path of Allah then announce to them a painful torment"** (TMQ 9:34), which is an evidence for the unrestricted forbiddance of hoarding wealth. Though this verse was revealed to do with the People of the Book, its words are general, and we are addressed by them as is clear from the beginning of the verse which says **"O you who believe, Truly,**

*there are many of the rabbis and monks who devour the wealth of mankind in falsehood, and hinder from the Path of Allah, and those who hoard gold and silver...*"(TMQ 9:34).

The evidence that the verse forbade the hoarding of gold and silver in a general, unrestricted way irrespective of whether the *Zakat* had been paid upon it or not is as follows:

**First:** the generality of this verse. The text of the verse, from both its wording and understanding, are evidence that the prohibition of hoarding wealth from gold and silver is a comprehensive prohibition. So, the opinion of permitting hoarding after the payment of *Zakat* is departure from the ruling of the verse whose indication is definite. This cannot be accredited except with evidence which would change the meaning of the verse or abrogate it, and there is no authentic text which takes it from its original meaning, and it is not possible that there could be evidence which takes it from its original meaning since it has a definite indication. So nothing remains except that there could be evidence which abrogates it, and there is no evidence which abrogates it. Therefore, its ruling remains confirmed, which is the forbiddance of hoarding wealth, even if *Zakat* was paid upon it; in other words the unrestricted forbiddance of hoarding.

**Second:** Ahmad reported with an authentic chain from Abu Umamah who said: *"A man from the Ahl al-Suffa who used to live in the masjid died, and a dinar was found in his garments, and so the Messenger of Allah ﷺ said "cauter", then another died and two dinars were found on him and so the Messenger of Allah said "Two cauters" "*, and this means that it is completely forbidden to hoard gold and silver, even if it was only two or even just one *dinar*, as long as it is being hoarded, in other words the storage of wealth without a need that it would be spent on. And the Messenger ﷺ said that in respect to these two men because they were from those who used to live on charity and yet they had gold on them, and so he said *"cauter"* and *"Two cauters"*, alluding to His (swt) words *"On the day when that (hoarded wealth) will be heated in the fire of Hell and with it will be branded their foreheads, their flanks and their backs"* (TMQ 9:35), which is part of the verses of hoarding; in other words he ﷺ was alluding to the verses regarding hoarding. This is an evidence for the complete, comprehensive forbiddance of hoarding irrespective of whether it amounted to the value which *Zakat* should be paid upon or not, and irrespective of whether *Zakat* was paid upon it or not; so any hoarding is prohibited.

**Third:** The conjunction in His (swt) words *"and do not spend them in the Path of Allah"* (TMQ 9:34) contrasts with His (swt) words *"And those who hoard gold and silver"* (TMQ 9:34) and thus indicating accordingly that the verse covers two rules: the first being the hoarding of wealth and the second the lack of spending in the path of Allah (swt). The text of the verse indicates the threat of a severe punishment connected to these two issues - in other words for those who hoard gold and silver and those who do not spend them in the path of Allah (swt), then announce to them a severe punishment. Therefore, it becomes clear that he who does not hoard, but does not spend in the path of Allah (swt), is encompassed by the threat, and likewise the one who spends in the path of Allah (swt) and yet he hoards wealth is also encompassed by the threat. Al-Qurtubi said: *"Whoever does not hoard, and withholds spending in the path of Allah, must also be the same"*. The intention of the words *"in the path of Allah"* in the verse is *Jihad*, since it is mentioned alongside spending. When the words *"in the path of Allah"* are connected to spending, then their meaning is *Jihad*, unless there is an indication found which takes it away from that meaning. Accordingly, the words *"and do not spend them"* are not suitable as an evidence that if they hoard wealth and spend from it in the path of Allah (swt) they are not included in the punishment, since the meaning of the verse is not, and whoever hoards wealth in that they do not spend it in the path of Allah (swt) then announce to them a severe punishment, with the conjunction being explanatory and so therefore if the hoarded wealth was spent in the path of Allah (swt), the hoarder would not be punished. Rather, the meaning of the verse is that whoever hoards then announce to them a punishment and whoever does not spend in the path of Allah (swt) then announce to them a punishment. The conjunction is a conjunction of dissimilarity and not explanatory. Therefore the forbiddance of hoarding is unrestricted, irrespective of whether some of it was spent in the

path of Allah (swt) or not, and the issue of the forbiddance of hoarding is a different issue than the forbiddance of not spending in the path of Allah (swt). Accordingly, it is clearly seen that the verse forbids hoarding wealth even if *Zakat* had been paid upon it and even if some had been spent in the path of Allah (swt).

**Fourth:** Bukhari reported from Zayd b. Wahb who said *“I passed by Abu Dharr in Al-Rabtha so I asked him: What brought you to this place? He replied: We were in Ash-Sham where I had a dispute with Mu’awiyah over “And those who hoard gold and silver and do not spend it in the way of Allah” (TMQ 9:34) and so Mu’awiyah said: “This was revealed concerning the People of the Book” so I said “It was revealed concerning them and us”, and this was the issue between us. So he wrote to Uthman complaining about me, and so Uthman wrote to me telling me to come to Madinah, so I came there and the people gathered around me as though they had never seen me before. I mentioned this to Uthman, and so he said “If you wish, withdraw from here and remain close”. This is what led me to this place, and if an Abyssinian was placed over me I would listen and obey”*. Therefore the difference between Abu Dharr and Mu’awiyah was regarding who the verse was revealed about, and not its meaning, and if Mu’awiyah or ‘Uthman (ra) had an authentic narration which mentioned that if *Zakat* was paid from a wealth it would not be considered a hoard, Mu’awiyah would have used it against Abu Dharr’s opinion and Abu Dharr would have been silenced or ‘Uthman (ra) would have used it to silence him. This indicates that the generality of the verse and its unrestricted nature was not the cause of difference between Mu’awiyah and Abu Dharr, and between Mu’awiyah and ‘Uthman (ra), and it is not confirmed that they had a narration which opposed that.

Accordingly it is clear that the verse is general covering all gold and silver, irrespective of whether some of it was used in *Jihad*, and whether *Zakat* had been paid upon it, and whether it reached the amount required for *Zakat* to become obligatory or not. Therefore, all hoarding is forbidden (*haram*).

Those who permit hoarding if *Zakat* had been paid upon it have no authentic evidence and all of their evidences are not considered valid due to their weakness and the poor chains of narrations. Even though Bukhari wrote a section entitled *“Chapter – It is not a hoard when Zakat has been paid upon it”*, he did not produce a single narration which indicates the heading, since not even a single one was authentic to him. All the narrations used as evidence for the permissibility of hoarding once *Zakat* had been paid upon it are not authentic except for a single one of them. This narration is the narration regarding jewellery which was reported by Umm Salamah, and all of the other narrations which were reported in this issue are considered as lies, and have been criticised from both the angle of the chain and text of the narration.

With respect to the narration of Umm Salamah that they use as an evidence to prove the permissibility of hoarding gold and silver if *Zakat* is paid upon it, it is as follows: Abu Dawud reported from the chain of Thabit b. Ajlan from Ataa from Umm Salamah who said: *“I used to wear gold jewellery, and so I said O Messenger of Allah, is it a hoard? So he said “As long as you paid its Zakat it is not a hoard”*”. The word used in the narration is *al-awdhah*, which is a type of jewellery. It is mentioned in the *al-Muhit* dictionary *“al-wadhah...and it is silver jewellery and its plural is awdhah”*. This narration is weak because Thabit b. Ajlan is controversial when he is the single narrator in a narration. Al-Dhahabi said regarding Thabit in his biography: *From the narrations which are refuted from Thabit is the narration of ‘Attab from ‘Ata’ from Umm Salamah”*. Despite that, even if it was authentic, it is limited to the jewellery which women wear, and is not considered to be a hoard if its value reaches the *nisab*, and subsequently the *Zakat* on it had been paid. This is the evidence for the payment of *Zakat* upon jewellery and it being made an exception from the generality of hoarding. This narration is not suitable to be used as an evidence for the permissibility of hoarding if *Zakat* had been paid upon it, from two angles:

**Firstly:** This narration came as an answer to a question, and every text which is an answer to a question, or came regarding a specific subject, is necessarily limited to what the question was about, and to that specific subject, and it is not considered general for everything since the words are connected to the question, or in other words to the specific subject, and so they are specific and limited to that question and subject and do not apply beyond them. Accordingly, the narration is specific to jewellery, and so if *Zakat* is paid upon jewellery it is permitted to hoard it and anything else is not permitted. It cannot be argued that the *Shari'ah* rule is *"the consideration is given to the generality of the words and not to the specification of the cause"* and the words here are general and so they are not specific to jewellery and rather they encompass jewellery and anything else. This cannot be argued because this rule is for the cause, and not for the reply to a question or a specific subject. It is a correct rule and its text indicates that it is a rule for the cause and nothing else, since it says *"not to the specification of the cause"*, and there is a difference between the cause and the specified subject, and between the cause and the reply to a question.

The cause is when an issue happens and then a *Shari'ah* rule is revealed regarding it, such as the case for the revelation of the verse ***"It is not for the believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision"*** (TMQ 33:36). The cause for the revelation of this verse was that the Messenger ﷺ engaged his niece Zaynab to his servant Zayd, then her brother 'Abd Allah b. Jahsh refused, and so Allah (swt) revealed this verse. Therefore this is the cause of the revelation, and the rule *"the consideration is given to the generality of the words and not to the specification of the cause"* applies to it. Another example is the cause for the revelation of the verse regarding inheritance; the Messenger visited Jabir b. 'Abd Allah while he was ill and asked the Messenger of Allah ﷺ ***"How should I deal with my wealth? What should I do with my wealth?"***, and the Messenger ﷺ did not reply until the verse of inheritance was revealed (agreed upon narration from Jabir) and so this was the cause of the revelation.

In the same way, all the causes of revelation are of this type, and it is upon this that the mentioned rule applies, which is different to the reply to a question, and to a specific subject. Since the specific subject is the issue that was being talked about, and the issue that was being sought when the rule came regarding it, and the rule did not originate by itself, so therefore it is limited to that subject. In the same manner the words of the Messenger ﷺ can be connected to a specific question, and so the words used in a reply to a question are limited to that question.

For example, what al-Bukhari mentioned from Abu Hurayrah who said ***"when we were sitting down with the Prophet, a man came and said O Messenger of Allah ﷺ I am destroyed. And so the Prophet ﷺ asked him what did you do? He said I deliberately had intercourse with my wife during Ramadan. And so he ﷺ said to him "Do you have a slave you can free? He said no. So he ﷺ asked him: Are you able to fast two consecutive months? He said no. So he ﷺ said: Could you feed sixty poor people? He said no. So the Prophet ﷺ waited, and in the meantime someone brought him a branch with a date and so he ﷺ said: Where is the questioner? The man replied: Here. So he ﷺ said: Take this and give it in charity. The man said: Upon someone poorer than me O Messenger of Allah ﷺ? I swear by Allah! There is no household poorer than me around. And so the Prophet ﷺ laughed until his teeth could be seen and then said: Feed your family with it"***.

The answer of the Messenger ﷺ is specific to the question asked, and so the words ***"Free a slave"*** are connected to the question of the Bedouin. Another example is the report that when he ﷺ was asked about the permissibility of selling dates if they get dried, and so the Prophet ﷺ asked ***"Do they become less in weight when they dry?"*** and they replied yes, and so he ﷺ said ***"In which case, no"*** reported by Abu Ya'la with this wording from Sa'd b. Abi Waqqas, and al-Hakim and Ibn Hibban authenticated it. So, the answer of the Messenger ﷺ is specific to what he has been asked, in other words selling ripe dates for dried ones, and so his words ***"In which case, no"*** are connected to the question. This is not a cause for the rule, rather it is a reply to a question, and there is a big difference between both. Accordingly, the general

wording which comes as a reply to a question is not a cause for the rule, it is only an explanation for the matter in question, and if general wording came as legislating a new rule for an issue that happened, then the legislation of the rule would be general, and the occurrence of the issue was the cause for the legislation of the rule. So the wide difference between the cause and the answer to a question becomes apparent. Therefore, the general rule encompasses its cause and anything else, whereas the answer to a question is specific to the question, since the words of the Messenger ﷺ are connected to it.

As for the question to the Messenger ﷺ regarding the sea water and his ﷺ answer ***“Its water is pure and its dead meat is halal...”*** (reported by Al-Tirmidhi from Abu Hurayrah and Abu ‘Isa said the narration is *Hasan Sahih*), it is also specific to what was asked about, which was the sea water, but the Messenger ﷺ explained more than he was asked about to the questioner. It still remains as the answer of the Messenger ﷺ specific to what he ﷺ was asked about, which was sea water, and it is limited to that. In the same manner when he ﷺ was asked about the *“Budha’ah”*, well water, and he ﷺ said ***“Its water is pure”*** (reported by Al-Tirmidhi from Abu Sa’id al-Khudri, and he said it is *Hasan* and Ahmad authenticated it), which is also connected to the question, and so he ﷺ replied to the question about the well water but his reply to the questioner encompassed more than what he ﷺ was asked about, yet it still remains as the answer of the Messenger ﷺ connected to the question. So he ﷺ was asked about ablution from sea water, and his answer was general encompassing ablution, *Ghusl* (ablution from major impurities) and more. In the book *al-Imam Sharh al-Ilmam* it is written “why did he ﷺ not answer then with yes when they said “can we make ablution with it?”. We say – because it would have been restricted to the situation of necessity, and this is not the case. Also, it would be understood from the restriction of the answer to “yes” that only ablution could be made from it, and the remainder of impurities and dirt could not be purified by it”.

Therefore the answer of the Messenger ﷺ regarding the sea water and well water is limited to what he ﷺ was asked about, and not general to everything. However, he ﷺ answered the questioner with more than what he asked, but still in the subject of his question, and the discussion is not about the conformity of the answer to the question, such that it could be said that the answer of the Messenger ﷺ was more general than the question of the questioner. Rather the discussion is that the answer was limited to the subject matter of the question, and was limited to that without going beyond it to another subject, and not about the conformity of the answer to the question. Shawkani mentioned in *Nayl al-Awtar*: “and from the benefits of the narration is the legitimacy of giving extra in the answer to the question, in order to limit the benefit (from a direct answer) and the lack of necessity to be restricted”. Bukhari wrote a chapter on the issue entitled “Chapter – who answers the questioner with more than what he asked”. And he mentioned the narration of Ibn Umar that “a man asked the Prophet ﷺ: what does the pilgrim wear? So he said: “He does not wear shirts, and nor turbans, nor trousers, nor hooded cloaks, nor robes from saffron. If you do not find two sandals then wear two leather socks, and cut them such they are below the ankles”, so it was though he was asked about a situation of choice and so he answered it, and then he gave extra information about a situation of exigency, which is not unusual to the question since a travel may lead to that”. This all indicates that the reply is limited by the question; notice his words *“not unusual to the question”*, irrespective of whether the reply was in conformity with what the questioner asked or was more than he asked, the answer is specific to the question. For this reason the question of Umm Salamah was regarding jewellery and so the answer of the Messenger ﷺ is specific to jewellery, and is limited to it, and does not apply to anything beyond it, because it is an answer to a question and not a cause for the revelation of a rule. Accordingly, the use of this narration as an evidence to prove the permissibility of hoarding if *Zakat* had been paid upon it has been shown to be invalid, since the narration is specific to jewellery.

The second of the two reasons: the verse of *Zakat* is general for every hoard, and the narration of Umm Salamah is specific to jewellery, and so the narration would be a specification for the generality of the verse. Therefore the hoarding that is forbidden is the hoarding of anything

other than jewellery, whereas it is not prohibited to hoard jewellery if the *Zakat* on it is paid. It is not possible from any angle for the narration to be general to every type of hoard, and the simplest evidence that it is not general is that if it was then it would be an abrogation of the verse, since the verse would be general as would the narration and so it would be an abrogation for the verse. And the narration is an *ahad* (singular) narration and so it is inconclusive whereas the verse is definite, and the narrations cannot abrogate the Quran even if they were *mutawatir* (multiple chains of narrations such that the narration becomes definitely confirmed). This is because the Quran is definitely confirmed by words and meaning, and we worship Allah (swt) by its words and meaning, whereas the *mutawatir* narration is definitely confirmed from its meaning and not its words, and we do not worship Allah (swt) with its words, and so it cannot abrogate the Quran. If this is the case for the *mutawatir* narration, then what about the singular one? And so accordingly the use of this narration to prove the permissibility of hoarding if *Zakat* is paid upon it has been proven invalid, due to the impermissibility of Quran being abrogated by a narration.

Those who permit the hoarding of gold and silver if *Zakat* has been paid upon it, claim that the evidence for its permissibility is that the verse forbidding hoarding is abrogated by the verses which made *Zakat* obligatory, and that those verses abrogated the verse of hoarding by obligating *Sadaqah*, in other words *Zakat*, upon it. The reply to this is that *Zakat* was made obligatory upon the Muslims in the second year after Hijrah, whereas the verse of hoarding was revealed in the ninth year after Hijrah, and what is revealed earlier does not abrogate what is revealed later. On top of that, it is imperative that there is an evidence which indicates that this verse is an abrogation for the other verse in order for it to be abrogation, and if there is no evidence found which indicates that abrogation, then it is not considered to be an abrogation. Abrogation is the cancellation and lifting of the rule derived from a previous text by a subsequent text, and the cancellation of the previous rule by a subsequent text is conditional upon the subsequent text mentioning that it is an abrogation for the previous rule, such as his ﷺ words ***"I used to forbid you from visiting the graves, now visit them"*** (reported by Muslim from Buraydah) and His (swt) words ***"O you who believe, when you consult the Messenger in private, spend something in charity before your private consultation. That will be better and purer for you. But if you find not (the means to do so) then truly Allah is the oft Forgiving most Merciful"*** (TMQ 58:12). This verse enjoins spending charity when coming for consultation if possible, and then another verse comes and abrogates it ***"Are you afraid of spending in charity before your private consultation? If then you do not do it, and Allah has forgiven you, then at least perform prayer and give Zakat and obey Allah and His Messenger"*** (TMQ 58:13). This verse therefore lifts the injunction to pay charity when coming for private consultation. The narration explains explicitly within its text that it is an abrogation, and the verse explains it is an abrogation through indication by His (swt) words ***"Are you afraid of spending on charity before your private consultation?"***, and so it is imperative that the text includes something that indicates that it is an abrogation from the previous text, either explicitly or through implicit indication. It is not sufficient for abrogation that there is an apparent conflict between the two texts, because there is no conflict between verses of Quran. As for what some Scholars have said, that these verses suggest conflict between them and claim that they are abrogated, the text of those verses themselves are explicit in the absence of any conflict and reconciliation between the texts is clear and there is nothing in the verses which indicates abrogation. Therefore it is imperative that the subsequent text which is claimed to be an abrogation for a previous one includes something, either explicitly or by indication, that proves it is an abrogation. There is nothing in the verses of *Zakat* which indicate from near or far that they are an abrogation for the verse regarding hoarding, whether explicit or by an indication, and so they are not an abrogation for it. Even those who say that conflict between a subsequent and previous text makes the subsequent text an abrogation for the previous one, do not say that the verses of *Zakat* abrogate the verse regarding hoarding because there is nothing that suggests a conflict between the two, since the verses of *Zakat* are an address to pay *Zakat*, and the verse regarding hoarding is an address to call for the absence of hoarding. There is no conflict between these two issues, since there

could be payment of *Zakat* and hoarding, and there could be the absence of payment of *Zakat* and the absence of hoarding. This is an additional reason why there is no abrogation even according to this opinion, and so from what angle is this abrogation claimed? Accordingly, the fact that the *Zakat* was legislated in the second year after hijrah and the verse regarding hoarding was revealed in the ninth year after hijrah, in other words seven years after *Zakat* had been obligated, and the fact that the verses of *Zakat* do not encompass, explicitly or through indication, what is necessary to indicate that they are an abrogation for the verse regarding hoarding, and above and beyond that there is no conflict between them, in other words no conflict between the verses of *Zakat* and the verse regarding hoarding, therefore the claim that the verse regarding hoarding is abrogated is a false claim and so it is rejected.

Those who claim that it is permitted to hoard gold and silver if *Zakat* has been paid upon them say that the evidence for its permissibility is what has been reported in Bukhari ***“from Ibn Umar who said that a Bedouin asked him about the verse “And those who hoard gold and silver”: Whoever hoarded it, so had not paid the Zakat upon it and so woe unto them, this was before the revelation of the verse of Zakat, and so when that was revealed Allah made it as a purification for the wealth”***. It cannot be argued that this narration from Ibn Umar is a specification for the Quran by the *Sunnah*, or an abrogation of the Quran by the *Sunnah*. Rather this narration is an authentic information regarding that abrogation, and so it is from the category of abrogation of Quran by Quran, since what abrogated the Quran in this case was the Quran because *Zakat* was made obligatory by the Quran and not the *Sunnah*, and so it is obligatory to accept it since it is an authentic narration which reports that the verse is abrogated by another verse, and so the forbiddance of hoarding is abrogated. Therefore whatever has had *Zakat* paid upon it can be hoarded.

The answer to this is from four angles:

**First:** This is an *ahad* narration which claims that the verse has been abrogated, and so as it is *ahad* it is indefinite like any other *ahad* narration, whereas the verse itself is definite, and what is definite is preferred to what is indefinite and so the verse is preferred due to the absence of anything abrogating it, and so it is acted upon due to the absence of abrogation because it is preferred and the claim of abrogation is rejected.

**Second:** The informing about the abrogation of a verse is like a reported narration which included a rule which abrogates another rule that was found in a verse of the Quran, so in the same manner that the narration cannot abrogate the verse even if it includes what indicates its abrogation, in the same way the information from Ibn Umar is not an abrogation for a verse of Quran simply by his statement that it is abrogated.

**Third:** Ibn Umar did not inform that the verse was abrogated as information from the Messenger ﷺ; in other words he did not report that the Messenger ﷺ said that the verse is abrogated. Rather he was giving his opinion that the verse has been abrogated, since when the Bedouin asked him about the verse he replied that it has been abrogated and he did not relate that the Messenger ﷺ had informed him that it had been abrogated, and so it is the opinion of Ibn Umar that the verse was abrogated by *Zakat*. In other words it was Ibn Umar’s understanding that *Zakat* abrogated this verse, and it was not a narration from the Messenger ﷺ, and the opinion of Ibn Umar is not considered to be a *Shari’ah* evidence since the opinion of a companion is not considered to be a *Shari’ah* evidence for a *Shari’ah* rule, let alone as an abrogation of Quran.

**Fourth:** *Zakat* was obligated in the second year after *hijrah*, and the verse which forbade hoarding was revealed in the ninth year after *hijrah*, and so how can the earlier rule of *Zakat* abrogate a verse which was revealed seven years later? And therefore this narration is rejected from its text (*dirayyatan*).

These four angles are without a doubt sufficient to show that using this narration as evidence is invalid, and to invalidate the claim that the verse is abrogated, and accordingly this



narration is not suitable to be used as a proof that it is permissible to hoard if *Zakat* had been paid upon it.

And those who permit hoarding if the *Zakat* is paid upon it say that the evidence is that the Muslim is not accountable financially beyond *Zakat*, and the evidences for this are many, such as the agreed upon narration of the Messenger ﷺ to the Bedouin **“Nothing else is upon you, unless you want to give in charity”**, and his ﷺ words **“There is no right over wealth except for *Zakat*”**, and the words of the Messenger ﷺ **“There is no right over wealth except *Zakat*”** (reported by Ibn Maja from Fatimah bint Qays), and the narration in Tirmidhi that he considered *Hasan* from Abu Hurayrah that the Prophet ﷺ said **“If you paid the *Zakat* on your wealth then you have fulfilled what is upon you”**. These narrations indicate that there is nothing upon a Muslim’s wealth except for *Zakat*, so the words of the Messenger ﷺ **“Nothing else is upon you”** and **“there is no right over wealth”** and **“you have fulfilled what is upon you”** are general and so they encompass anything obligated from wealth. And this therefore indicates the permissibility of hoarding as long as the *Zakat* that is obligatory upon the Muslim is paid.

The answer to this is that the forbiddance of hoarding is an issue independent from *Zakat*, and the information mentioned prevents the obligating of any other rights in addition to *Zakat*, which does not prevent the presence of additional rules connected to wealth. Hoarding is from the rules relating to wealth and not from the obligatory rights upon the wealth. So Allah (swt) did not impose any right other than *Zakat* over the wealth owned by the Muslim from the angle of it being wealth, but He (swt) legislated other rules for wealth which are not from the rules of *Zakat*, such as the rules of interest in gold and silver, and those relating to exchange of gold and silver, and those relating to gold and silver found buried, which are all from the rules regarding wealth. The rules regarding wealth found in the ground are from the financial rules like the rest of the rules, and they are not from the obligatory rights upon the wealth, and so accordingly these narrations have nothing to do with the hoarding of wealth, and consequently these narrations do not indicate the absence of the forbiddance of hoarding wealth if the *Zakat* on it had been paid, and therefore the use of these narrations as evidence has been invalidated.

This is with the knowledge that the two last narrations are disputed over as al-Hafiz considered them both weak in *al-Talkhis*, and especially the narration from Ibn Maja, since it is weak with a text that is conflicting.

Ibn Maja reported in his *Sunan*: Ali Bin Muhammad told us from Yahya Bin Adam from Sharik from Abu Hamza from al-Sha’bi from Fatimah bint Qays that she heard the Messenger ﷺ say **“There is no right over wealth except *Zakat*”**.

But Al-Tirmidhi reported it in his *Sunan*: Muhammad b. Ahmad Bin Muddawiya from al-Aswad Bin Amir from Sharik from Abu Hamza from al-Sha’bi from Fatimah bint Qays who said I asked, or the Prophet ﷺ was asked, about Zakah, and so he ﷺ said **“In the wealth there is a right, except for Zakah”**.

Its chain confirming, and rejecting the right except for *Zakat* is weak, and the weakness from Sharik though he is trustworthy but he had a bad memory, and from Abu Hamza who is agreed to be considered weak due to his contradictions and bad memory, and for this reason he mentioned the narration once confirming and once rejecting.

These are all the evidences of those who say that hoarding is permitted as long as *Zakat* has been paid upon it, in other words all the evidences from which it is possible to find a semblance of an evidence that indicates the permissibility of hoarding if *Zakat* had been paid upon it, and they are flimsy evidences, and what is apparent is the effort to catch any way of using them as evidence, and it may be possible to say that there is nothing which justifies their use as evidence. The evidence that the verse regarding hoarding was revealed seven years after the obligation of *Zakat* is enough to explain the invalidity of using these evidences

as proof. Therefore it is clear that the verse is explicit that hoarding is comprehensively forbidden (*haram*) even if *Zakat* had been paid upon it.

One issue remains which is: what is intended by the words hoarding (*Al-Kanz*) in the verse? The answer is that what is meant by hoarding is collecting wealth on top of wealth without a need. Hoarding linguistically means to collect wealth on top of wealth and to preserve it, and wealth is hoarded in other words collected, and the hoard is anything which has been collected together, under or over ground. It is mentioned in the *Al-Muheet* dictionary "*Al-Kanz: the buried wealth, and it is hoarded and gold and silver and whatever is used to protect wealth*". Imam Abu Ja'far al-Tabari said "*Al-Kanz: Everything that is collected together, irrespective if it was held under or over ground*", and the one who wrote *al-'ain* said "*and it was stored*". This is the meaning of *Al-Kanz* (the hoard) linguistically, and the Quran is explained by the linguistic meaning alone, unless the *Shari'ah* related a *Shari'ah* meaning for something, in which case it is explained by its *Shari'ah* meaning. And the word *Al-Kanz* has no authentic *Shari'ah* meaning related for it, and so it must be explained by its linguistic meaning alone, which is that simply collecting wealth on top of wealth without a need, for its own sake, is considered to be the blameworthy hoarding for which Allah (swt) promised a painful punishment for the one who carried it out. Therefore burying wealth means to keep it preserved needlessly, and to store the wealth in other words not having a need for it, since if wealth is for spending it is not needed to be buried or stored. Accordingly the intention behind the words hoarding of wealth in the verse is to store it without a need for which it is spent, and so it applies to every type of storing of gold and silver without a need.

#### **Article 143**

***Zakat* is collected from Muslims, and is taken from the wealth which the *Shari'ah* has specified such as money, the profits of trade, cattle and grains. It is not taken from anything which the *Shari'ah* did not mention. It is taken from every owner irrespective of whether they were legally responsible/accountable (*mukallaf*) such as the mature, sane person or whether they were not legally responsible such as the child and the insane. The *Zakat* is placed in a specific section of the *Bayt al-Mal*, and is not spent except upon one or more of the eight categories mentioned in the noble Quran.**

This article encompasses the following five issues: first: the obligation of *Zakat* upon the Muslims; second: it is taken from the property that the *Shari'ah* specified and nothing else; third: it is taken from every owner; fourth: it is placed in a specific section of the *Bayt al-Mal*; fifth: it is not spent upon anyone other than the specific individuals that meet certain characteristics and numbers.

As for the first issue, which is the obligation of *Zakat*, its evidence is the noble Quran such as His (swt) words "***And give Zakat***" (TMQ 2:43), and "***and (O wives of the Prophet) give Zakat***" (TMQ 33:33), and "***Men whom neither trade nor sale diverts from the Remembrance neither of Allah nor from performing prayer nor from giving Zakat***" (TMQ 24:37). And there is also proof from the *Sunnah*, when the Messenger of Allah ﷺ sent Mu'adh to Yemen and said to him "***Tell them that Allah obligated upon them charity (Sadaqah) which is taken from their rich and given to their poor***" (agreed upon from Ibn Abbas), and the narration "***Islam is built upon five***" agreed upon from Ibn Umar, in which he ﷺ mentioned "***and to give Zakat***". It is reported from Abu Hurayrah that a Bedouin came to the Prophet ﷺ and said "***Guide me to an action that if I did it I would enter Paradise***". He ﷺ said "***Worship Allah and do not associate anything with Him, and establish the obligatory prayers, and pay the necessary Zakat, and fast Ramadan***" (reported by al-Bukhari). And it is narrated from Qais who said: "***Jarir Bin Abdullah said "We gave the pledge of allegiance to the Prophet ﷺ to establish the prayer and give Zakat and give advice/ be sincere to every Muslim"***" (agreed upon). These evidences indicate the obligation

of *Zakat*, and as for the fact that it is not taken from anyone other than the Muslims, this is due to the words of the Messenger ﷺ in the narration of Mu'ath ***"taken from their rich"***, and as for the fact that it is given to the Muslims and not to anyone else is due to the words in the same narration ***"and given to their poor"***, in other words the Muslims.

With respect to the second issue, which is that *Zakat* is not taken from any property other than that which has been specified by the *Shari'ah*, its evidence is that the Legislator (swt) restricted the categories from which *Zakat* is taken by defining the amount which is taken from each of these categories. So everything that the *Shari'ah* defined a *nisab* (minimum level after which the *Zakat* becomes obligatory) for, has *Zakat* taken from it once it reaches the *nisab* and if it doesn't reach it then nothing is taken from it, due to what was related from Jabir who said ***"The Messenger of Allah said "There is no Sadaqah on less than five dirham, and nothing on less than five female camels, and nothing upon less than five portions of dates"*** (reported by Muslim).

*Zakat* is not taken from property that has not had a *nisab* defined by the *Shari'ah*. This is because though the verse is summarised (*mujmal*), the narrations came and explained it. And so the narrations regarding *Zakat* explain the generality of the verse and are not specifications for it. There is a large difference between explanation and specification. The prayer came in a summarised form ***"and establishes the prayer"*** and the Messenger ﷺ came and explained it, and so anything outside of what the Messenger ﷺ explained as part of the prayer is not permitted to be considered relevant, since we are restricted by what the Messenger ﷺ explained. In the same manner, the verse regarding *Zakat* came in a summarised form ***"and give Zakat"*** (TMQ 2:43), ***"take from their wealth"*** (TMQ 9:103), ***"Sadaqaat (Zakat) are only for"*** (TMQ 9:60), and the narrations came and explained the categories from which *Zakat* is taken by explaining the amount which is taken from these categories, and the *nisab* for them, *Zakat* is not taken from anything else, and it is forbidden to take *Zakat* from anything other than whatever the *Shari'ah* mentioned the *nisab* for and the amount taken from it. So accordingly there is no *Zakat* upon housing, or cars or olives, since the Legislator did not mention the *nisab* for any *Zakat* upon them, nor the amount which should be taken from them if they reached the value of the *nisab*, and therefore there is no *Zakat* upon them, and taking *Zakat* is limited to the properties which have been mentioned in a *Shari'ah* text. Therefore *Zakat* is only taken from the ten things which have been mentioned in authentic texts, which are camels, cows, cattle, gold, silver, wheat, barley, dates and raisins.

As for camels and cattle, the evidence is what has been related from al-Zuhri from Salem from his father who said ***"And the Messenger wrote the Sadaqah (Zakat), and did not send it to his workers before he died, he said: and so Abu Bakr sent it after him and acted according to it until he died, and then Umar sent it and acted according to it until he died. He said: Umar died the day he died, and he gave his will at that time. He said: in it, was that there was a sheep (to be given) for every five camels, until twenty four camels, if there were twenty five camels then a female baby camel (bint al-makhaadh) is due, and if they didn't have one then a male camel son of a milk-bearing camel (ibn laboon), if there were more than thirty five camels then a daughter of a milk-bearing camel (bint laboon) is due up until forty five camels, and if there is one more up until sixty then a female camel (hiqqah) is due, and if there is more than that up until seventy five then a female camel whose front teeth (jaza'a; older than four years) is due, and for more than that up until ninety then two daughters of milk-bearing camels are due, and if there are more than that up until one hundred and twenty then two female camels are due, and if there are more than that then for every fifty a female camel is due and for every forty a daughter of a milk-bearing camel is due. And in cattle, for every forty until one hundred and twenty one female sheep is due, if there is one more than that up until two hundred then two female sheep are due, and if there are more than that then up until three hundred three female sheep are due, and if there is more than that then nothing is due until four hundred, at which point a female sheep is due for every one hundred"*** (reported by Ahmad and Abu Dawud and Al-Tirmidhi). It is narrated from Anas, ***"Abu Bakr wrote to them: This is the***

**obligation of Sadaqah which the Messenger ﷺ obliged upon the Muslims and which Allah and His Messenger ﷺ commanded with**” (reported by al-Bukhari), and then mentioned camels and cattle in the same manner as the narration of al-Zuhri. The *bint al-makhaadh* is a female camel between one and two years, and a *bint labun* is older than two years whose mother is milk bearing through giving birth, and the daughter of such a camel is called the *bint labun*. And the *hiqqah* is the female camel older than three years, and the *jaza'a* is older than four. The fact that the narrations mentions the *bint labun* for more than thirty five camels indicates the permissibility to give a *bint labun* instead, which is why Bukhari added ‘female’.

As for cows, the evidence is what has been related from Mu’adh Bin Jabal who said **“The Messenger of Allah ﷺ sent me to Yemen and ordered me to take a baby cow (al-tabee’ah, al-tabee’a; male or female) for every thirty camels, and a cow (musinna) for every forty”** (reported by Ahmad, Abu Dawud, Al-Nasa’i and Al-Tirmidhi who considered it *Hasan*). Yahya b. al-Hakm narrated from Mu’adh who said **“The Messenger of Allah sent me to take the Sadaqah from the people of Yemen, and so ordered me to take a tabee’a from every thirty, and a musinna from every forty, and then they asked me what should be given for between fifty and sixty, and sixty and seventy, and eighty and ninety, and so I returned and informed the Prophet ﷺ who ordered me not to take anything between those”** (reported by Ahmad with a chain considered *Hasan* by al-Zayn). The *tabee’ah* and *tabee’a* are the male and female cows of less than one year in age, and the *musinna* is the female cow in her second year, and the fact that the narration mentions the *musinnah* indicates that the male cow will not suffice in its place, however Tabarani related from Ibn ‘Abbas a narration raised to the Prophet ﷺ which mentioned **“and in every forty there is a musinna or a musinn”** which indicates its permissibility.

As for gold and silver, its evidence is what is related from ‘Ali b. Abi Talib (ra) from the Prophet ﷺ who said **“If you had two hundred dirhams for a year, then five dirhams are due from them, and there is nothing upon you (in terms of gold) until you have twenty dinars, so if you had twenty dinars for a year then half a dinar is due”** (reported by Abu Dawud and it is *Hasan*). A *dirham* is six *daaniqs*, and a *daniq* is two *qiraats*, and a *qiraat* is two *tazuj* and a *tazuj* is two *habbah*, and a *habba* is a sixth of an eighth of a *dirham*, which is a part of the forty eight parts of a *dirham*. This is the weight of the *Shari’ahdirham* which is mentioned in the narration. A *dinar* is a *mithqaal*, and the *mithqaal* is a *dirham* and 3/7 of a *dirham*, which is the weight of the *Shari’ahdinar* mentioned in the narration.

As for wheat, barley, dates and raisins, the evidence is what has been related by al-Hakim and al-Bayhaqi and al-Tabarani from the narration of Abu Musa and Mu’adh when the Prophet ﷺ sent them both to Yemen in order to teach the people the issue of their *Deen*, saying **“Do not take Sadaqah except from these four: Barley, wheat, raisins and dates”** (authenticated by al-Hakim and Bayhaqi said that the narrators are trustworthy and the chain is connected). Al-Daraqutni reported in his Sunan from Abdullah Bin Amru who said **“The Messenger of Allah only made Zakat in the following four: Barley, wheat, raisins, and dates”**, and it is narrated from al-Shu’ba that the Prophet ﷺ wrote to the people of Yemen saying **“Sadaqah is only in wheat, barley, dates and raisins”** (reported by al-Bayhaqi from al-Shu’ba as a *Mursalnarration*).

As for the narrations that mention *Zakat* upon corn – they are weak. For example Ibn Maja reported from ‘Amru b. Shu’ayb from his father from his grandfather **“The Messenger of Allah made Zakat in the following: Barley, wheat, raisins, dates and corn”**. Al-Hafiz said in *al-Talkhis*: “Their chains, in other words the chains of al-Daraqutni and Ibn Maja, are baseless since al-Arzami is in them and he is rejected.” And similarly what al-Bayhaqi reported from al-Hasan who said **“The Messenger of Allah did not make Zakat obligatory except in ten things: Camels, cows, sheep, gold, silver, barley, wheat, dates, raisins – Ibn ‘Uyayaba said: I think he said and corn”**. Al-Hafiz said in *al-Talkhis* that the report of al-Hasan is a *Mursalnarration* from ‘Amru b. ‘Ubayd who is very weak, and Abu Hatim said his narrations are not considered. Similarly al-Bayhaqi himself mentioned in his *Sunan al-Kubra* in another report from al-Hasan which had ‘Amru b. ‘Ubayd in it: **“The Messenger of Allah**

*did not obligate Sadaqah except upon ten and then he mentioned them, and mentioned a type of barley*". So, the two narrations with their weak chains, are different, and so accordingly the narration about the *Zakat* upon corn is weak.

These are the four categories (wheat, barley, dates and raisins) that have *Zakat* taken from them, and no *Zakat* is taken from anything else at all. As for what is narrated from Jabir that the Prophet ﷺ said **"A tenth is due from whatever is watered by rivers and rain, and a twentieth from whatever is irrigated"** (reported by Muslim), and what is narrated from Ibn Umar that the Prophet ﷺ said **"A tenth is due from whatever is watered by the sky and rivers or is 'itriyya , and a twentieth is due from whatever is watered by sprinkling"** (reported by al-Bukhari), and *al-'itri* is something that takes its water through its roots without necessarily being watered, and from Abu Sa'id that the Prophet ﷺ said **"There is no Sadaqah due on anything less than 5 Awsuq"**. All of these narrations are summarised (*mujmal*) texts regarding the *Zakat* upon crops and fruits, which other narrations came and explained, and defined exactly what has *Zakat* taken from it, and above that their explanations came in a restrictive manner, such as what was mentioned by al-Hakim and al-Bayhaqi and al-Tabarani, **"Do not take Sadaqah except from these four"** (authenticated by al-Hakim and al-Bayhaqi said its narrators are trustworthy). And what al-Daraqutni reported in his *Sunan*: **"The Messenger of Allah only made Zakat in: Barley, wheat, raisins, and dates"**. There is no doubt that the words **"not"** and **"except"** in the first narration, and **"only"** in the second, are all styles of restricting. Accordingly they indicate the restriction of *Zakat* of crops and fruits to these four, and this is why the narrations **"whatever is watered by the sky"** and **"whatever is watered by the rivers"** and so on are not related to taking *Zakat* from whatever is grown, but rather they are summarised texts explained by other texts, and *Zakat* upon what is grown is restricted to being taken from the five mentioned categories and nothing else. This is supported by other narrations of the same meaning, such as what was related by al-Daraqutni in his *Sunan* from 'Amru b. Shu'ayb from his father from his grandfather that the Prophet ﷺ said **"A tenth is due from dates, raisins, wheat and barley"**. All of this indicates that *Zakat* upon crops and fruits is only taken from specific categories, counted in some narrations as four which are barley, wheat, raisins and dates, and there are many narrations about this and all of them authentic. This all confirms that there is no *Zakat* on crops and fruits except what is mentioned in these texts.

With respect to His (swt) words **"And give its right on the day of its harvesting"** (TMQ 6:141), this verse was not revealed for *Zakat* since it is a Makkan verse, and *Zakat* was only obligated in Madinah, which is why it mentions pomegranates which does not have anything due upon it. Mujahid said: "if he harvested his crop he would throw it to them from the grain tips, and if he found (fruit on) his palm trees he would throw it to them from the stalks". And an-Nakha'i and Abu Ja'far said "this verse is abrogated, and it is understood in relation to whatever resulted from his harvesting, evidenced by the fact that the pomegranate mentioned after it has no *Zakat* upon it". It is mentioned in the *Al-Muheet* dictionary "harvesting crops, and plants are harvested....to cut by sickle". So even if it is accepted that it is part of *Zakat* then it is applied to whatever has been harvested, because pomegranate is not harvested, and so it is from the summarised class of evidence, and the narrations came and explained from which harvested things *Zakat* applies to, which are wheat, barley and corn. In any case, since the verse was revealed in Makkah, and *Zakat* had not yet been obligated, there is enough reason not to use it as evidence.

As for what was related from Abu Sayyarah who said **"I said: O Messenger of Allah, I have bees. He said then pay a tenth. I said: O Messenger of Allah, protect their mountains for me, so he agreed"**, and what was narrated from 'Amru b. Shu'ayb from his father from his grandfather who said: **"Hilal, one of the tribe of mut'aan came to the Messenger of Allah with a tenth of the bees he had, and asked him to give him one of the valleys which was called Salba, and so he gave him that valley. When Umar Bin al-Khattab became ruler, Sufyaan Bin Wahb wrote to him asking him about it, and so Umar wrote: If they give you what they used to give to the Prophet, which was a tenth of his bees, then protect Salba for**

*him, and if not, they are only flies of the rain, anyone who likes can eat it*", these are not suitable as evidence that *Zakat* is taken from honey. This is because the chain of the narration of Abu Sayyarah is disconnected (*munqati'*), as it is from Sulayman b. Musa from Abu Sayyaara and Bukhari said "Sulaiman did not meet anyone from the companions and there is nothing regarding *Zakat* on honey that is authentic". The narration of 'Amru b. Shu'ayb is reported by Abu Dawud and Al-Nasa'i, and Ibn 'Abd al-Barr considered it *Hasan* in *al-Istidhkar*, but despite that it does not indicate that *Zakat* is obliged upon honey, since he paid it voluntarily and the valley was kept for him in exchange, as proven by the evidence of what Umar (ra) did having understood the reason and therefore made a similar order. This is supported by what is reported from Sa'd b. Abu Dhi'ab ***"That the Prophet ﷺ appointed him over his people and he said to them: Give a tenth of the honey"***, which is considered a weak narration by Bukhari and al-Azdi and others, and any how Shafi'i said "And Sa'ad Bin Abi Dhi'ab told what was indicated that the Prophet ﷺ did not order him with that, but rather it was something he thought of and so he voluntarily gave it through his people". All of this indicates that there is no *Zakat* upon honey and even the narrations which are used as evidence indicate that there was no obligatory *Zakat* upon it.

All of these texts indicate that no *Zakat* is taken from anything which the *Shari'ah* has not explained the *nisab* for. This is because the texts explain the *nisab*, and the amount which should be taken, and therefore *Zakat* is obligatory upon it. And the question would be, upon what basis can *Zakat* be taken from anything which has no text related to it? And upon what basis could a specific amount be taken from it? This is especially the case since the texts which explained the *nisab* and the amount due did not come with an *illah*, and so it would not be correct to do *Qiyas* upon them (in other words, to use them as a basis for analogy). Above that, there are other texts which have explained the specific things that *Zakat* is due upon, and didn't stop there but rather restricted *Zakat* to these things, and used more than one style to demonstrate this restriction. This alone indicates that *Zakat* is not taken from anything other than the specific items which are mentioned in the texts, and nothing at all is due from anything else.

It might be argued that the text in the Quran and *Sunnah* made the obligation of *Zakat* general upon all wealth, since in the Quran He (swt) said ***"Take Sadaqah from their wealth"*** (TMQ 9:103), ***"And those in whose wealth there is a right"*** (TMQ 70:24) and in the narration ***"Teach them that Allah made Sadaqah from their wealth obligatory upon them"*** (agreed upon from Ibn 'Abbas), and this encompasses all the categories of wealth, and so *Zakat* is binding upon all of them except from anything the *Shari'ah* made as an exception, and the *Shari'ah* did not make anything an exception except for horses and slaves due to his ﷺ words ***"There is no Sadaqah due from a Muslim upon his slave and horse"*** (agreed upon from Abu Hurayrah).

The response is that this text is summarised (*mujmal*) and requires clarification, and the *Sunnah* clarified it comprehensively like interest, since the prohibition regarding interest came summarised and the *Sunnah* explained it, so it cannot be said that interest is prohibited in everything since the prohibition was general, rather it is said that interest is prohibited in usurious wealth which the *Sunnah* came and explained since the text was summarised and the *Sunnah* explained it, and so there is no interest in anything else. In the same manner it cannot be said that *Zakat* is obligatory in everything since the order for it came in a general form, but rather it is said that *Zakat* is obligatory in the wealth which the *Sunnah* came and explained the *nisab* of the *Zakat* for, and in that manner explained the categories of wealth that *Zakat* is taken from. This is since Allah (swt) gave a general summarised order for *Zakat*, and did not explain the amount which should be taken nor when it should be taken, and so the narrations came and explained the obligatory amounts due, the *nisab* after which these amounts become due, when they would be obligatory, and whether it would become due simply due to it being held such as with crops or after a period of time such as with gold and silver. Consequently *Zakat* is taken according to this explanation from the *Sunnah*, and so the wealth which the *Sunnah* explained how and when *Zakat* is taken from is the wealth upon which *Zakat* is due,

and anything else has no *Zakat* due upon it. Rather, it cannot be taken from it in any way since the time of when it would be due is not known, or the amount to be taken, or the *nisab* after which it would become due, and so it would not be at all possible to take from anything other than what the *Shari'ah* explained.

There are clear texts reported in these issues: it is related from Abu Hurayrah who said ***“The Messenger of Allah ﷺ said “There is no one who owns gold or silver, and does not pay its right, except that on the Day of Judgement plates are made from the hellfire for him, and his sides and forehead and back is branded with them”*** (agreed upon), and he ﷺ said ***“There is no Sadaqah on less than five dirham”*** (reported by Muslim from Jabir), and it is related from Ali Bin Abi Talib (ra) from the Prophet ﷺ ***“If you had two hundred dirham for a year, then five dirham are due from them, and there is nothing upon you (in terms of gold) until you have twenty dinar, so if you had twenty dinar for a year then half a dinar is due”*** (reported by Abu Dawud and it is *Hasan*). And the Prophet ﷺ said ***“There is no one who owns camels or cows or cattle and does not pay its Zakat, except that on the Day of Judgement they are greater than they were and they butt him with their horns and trample him under their hooves”*** (agreed upon from Abu Hurayrah), and he ﷺ said ***“A tenth is due on dates, raisins, wheat and barley”*** (reported by al-Daraqutni in his *Sunan* from ‘Amru b. Shu’ayb from his father and from his grandfather). And it is reported from the same chain: ***“The Messenger of Allah ﷺ only made Zakat in wheat, barley, dates and raisins”***. And from Mu’adh Bin Jabal when he was sent to Yemen by the Prophet ﷺ who said to him ***“Take the grain from the grain, the sheep from the flock, the camel from the camels, and the cow from the cows”*** (reported by Abu Dawud, Ibn Maja and al-Daraqutni).

Accordingly, *Zakat* is only obligatory upon the wealth which the text came and explained, and is not obligatory upon anything else at all.

As for the claim that the Prophet ﷺ made certain wealth as an exception from *Zakat*, which are the slaves and horses, and this means that anything which was not made an exception has *Zakat* due upon it, is a false claim, since the Prophet ﷺ did not make specific wealth as an exception from *Zakat* as he ﷺ did not say that *Zakat* is obligatory upon all wealth except for slaves and horses. Rather the order regarding *Zakat* came summarised (*mujmal*) and the texts clarified in detail what was summarised, and so the issue of exception is not present at all. As for the story of the slaves and horses, the Messenger ﷺ did not make them as an exception but rather he simply informed that there is no *Zakat* due upon them; al-Bukhari reported from Abu Hurayrah who said ***“The Prophet ﷺ said “There is no Sadaqah due from a Muslim upon his horse and boy”***, and in another chain from Abu Hurayrah from the Prophet ﷺ who said ***“There is no Sadaqah due from a Muslim upon his slave and horse”***, and from Ali (ra) who said ***“The Messenger of Allah said “I have exempted you from Sadaqah upon your horses and slaves so give Sadaqah”*** (reported by Ahmad and the authors of the *Sunan*, and al-Hafiz said its chain is *Hasan*), and this is not an exception rather it is only information, and therefore it is not wealth which has been made as an exception from *Zakat*.

In the same manner there is a text which mentions that there is no *Zakat* on donkeys; Abu Hurayrah said ***“The Messenger of Allah ﷺ was asked about Zakat upon donkeys and so he said “Nothing has come to me with respect to it except for this verse – whoever does an atom’s weight of good will see it, and whoever does an atom’s weight of evil will see it”*** (agreed upon), and he ﷺ was also asked about horses as mentioned in the narration of Abu Hurayrah. This was not an exception, rather it was simply an answer to a question, and this cannot be considered as the Messenger ﷺ making slaves, horses and donkeys as exceptions to wealth and so saying: “there is no *Zakat* upon these and *Zakat* has been made obligatory upon all wealth”, since this completely contradicts the *Shari'ah* texts on the issue. There is no exception reported in the texts at all, because exception occurs if there is a general text regarding a rule, and in the same text, in other words the same sentence, there is an exception made to that through one of the instruments or styles used to make an exception. For example, “the people came except Muhammad”, or “*Zakat* has been obligated upon everything except for horses and slaves”. Or it could occur if there was a general text, and another specific text

came which specified the generality of the first text and was thereby an exception from it, and this is not present in the texts regarding the horses, slaves and donkeys because the text regarding *Zakat* was a summarised (*mujmal*) text and the *Sunnah* came and explained it. Additionally the narration regarding the horses and slaves did not come as a general sentence which was then made an exception to through the use of one of the instruments or styles of making exceptions, but it was rather a separate sentence and is therefore considered to be information and not an exception.

As for *Zakat* upon trade, the evidence for its obligation is the narration and the *Ijma'* of the companions: Abu Dawud reported by his chain from Sumura Bin Jundub who said ***“The Messenger of Allah ﷺ used to order us to pay the Zakat upon what we had prepared for trading”*** (al-Hafiz said in *Bulugh al-Muram* that Abu Dawud reported it and its chain has some weakness). And from ‘Amru b. Hamas from his father who said ***“Umar ordered me saying: Pay the Zakat upon your wealth, and so I said: I have no wealth apart from pipes and condiment. So he said: Value them and then pay the Zakat upon them”*** (reported by Ahmad, al-Shafi’i and others). These and similar stories to this spread and no one amongst the companions rebuked it and so therefore it is considered to be an *Ijma'*. There is no *Zakat* due upon pipes and condiment themselves, and they are not normally possessed in such a big quantity such that there would *Zakat* due upon them unless they were amassed for trade, and so this is an indication that they were prepared for trading.

As for the third issue, which is the taking of *Zakat* from every owner, this means that *Zakat* is taken from every Muslim, male or female, sane or insane, mature or prepubescent. With respect to male and female, this is apparent from the generality of the texts, since *Zakat* is a right connected to the wealth and it is the single duty due from the wealth from the angle of it being wealth, which is why Allah (swt) said ***“Take Sadaqah (alms) from their wealth”*** (TMQ 9:103) and ***“And those in whose wealth there is a recognised right”*** (TMQ 70:24) and in the narration ***“then tell them what Allah has obligated upon them from Sadaqah upon their wealth”*** (agreed upon from Ibn ‘Abbas), and in the agreed upon narration which came as an answer to the question of the Bedouin ***“then he is asking about Islam”*** until he said: ***“and the Messenger of Allah ﷺ mentioned Zakat to him, and he said: Is there anything else upon me? He ﷺ said: no, unless you give it voluntarily”*** which indicate that the obligation is upon the wealth from the aspect of it being wealth, without any consideration as to whether the owner was legally responsible or not. Allah (swt) made many obligations upon the Muslim who owned wealth in his characteristic as someone who possessed wealth, or in other words was rich, such as the obligation of *Jihad* with wealth, and finding the hungry, and paying expenses, and so on, but He (swt) did not obligate anything upon the wealth which was owned by Muslims except for one right which is *Zakat*, and restricted the obligatory rights over wealth to it and forbade any other right to be imposed upon it. This indicates that the obligation is empowered over the wealth in its aspect as wealth without looking at whether the owner was legally responsible or not, and this is a proof that wealth is what has *Zakat* taken from it, even if its owner was not legally responsible, in other words even if they were a child or insane. Additionally, when Allah (swt) ordained obligations upon the Muslim, in his capacity as an owner of wealth, in other words rights connected to wealth, they were obligated upon the Muslim generally irrespective of whether they were legally responsible or not, such as paying upkeep for close relatives and wives, and any criminal penalties or fines, and paying the value of anything which they destroyed, and so all of these are obligatory upon the child and the insane since they are connected to the wealth, and the *Zakat* is the same since it is a right connected to wealth. Above and beyond that, the Prophet ﷺ said ***“Whoever takes responsibility for an orphan, trade on his behalf and do not leave him to eat Sadaqah”***, in other words the *Zakat*, reported by Al-Tirmidhi and al-Daraqutni from Amru Bin Shu’ayb from his father from his grandfather ‘Abd Allah b. ‘Amru, and even though al-Muthna b. al-Sabah, who is differed over, is in the chain, it is also reported from ‘Amru b. Shu’ayb to Umar Bin al-Khattab (ra) as a *mawquf* narration, and analogy (*Qiyas*) is made with the insane on the basis that both are not legally responsible, and so whatever is



obligatory upon the child who is not legally responsible is similarly obligatory upon the insane person.

As for the fourth issue, which is the fact that it is placed in a special section in the *Bayt al-Mal*, this is because whatever wealth is due to the Muslims, and the owner is not specified, then it is from the rights of the *Bayt al-Mal*. And every right which is necessary to be spent upon the interests and affairs of the Muslims, is a right upon the *Bayt al-Mal*. *Zakat*, although it is from what the Muslims deserve, however its owner has been specified by the text of the Legislator (swt), since the *Shari'ah* specified its owner at the time it specified the aspects which it should be spent upon, and limited it to those eight areas alone. Allah (swt) said ***"Sadaqah (Zakat) is only for the poor, the needy, and those employed to collect it, to attract the hearts of those inclined (to Islam), to free the captives, and for those in debt, and for Allah's cause, and for the traveller"*** (TMQ 9:60), and as long as it has been restricted to these aspects then it is not from the rights of the *Bayt al-Mal*, since it is wealth for specific aspects which is not permitted to be spent anywhere else, and the *Bayt al-Mal* is simply the place for safekeeping it, but it is not considered part of the rights of the *Bayt al-Mal*. Rather the *Bayt al-Mal* is simply the place for storing the wealth because it is paid to the *Khalifah* and he is the one who distributes it; it is reported from Anas that a man said to the Messenger of Allah ﷺ ***"If I gave the Zakat to your messenger then am I free of blame with Allah and His Messenger"***, he ﷺ said ***"Yes, if you gave it to my messenger then you are free of blame with Allah and His Messenger, so you have its reward, and its sin is on the one who alters it"*** (reported by Ahmad and authenticated by al-Haythami and al-Zayn). And it is reported from Bashir b. al-Khasasiyah who said ***"We said: O Messenger of Allah, a people from the people of Sadaqah make assault/aggression against us, can we hide our wealth according to what they violate against us? He said: No"*** (reported by Abu Dawud and 'Abd al-Razzaq, and al-Mundhiri did not comment upon it). So this is proof that the *Zakat* is paid to the *Khalifah* and he is the one who sends his governors and workers to gather it, and then it is spent upon the specified aspects according to his opinion and *Ijtihad*, which is why the place for safekeeping it is the *Bayt al-Mal*. However this is simply to store the *Zakat* since it cannot be spent anywhere except upon the areas specified, and therefore it is placed in a special section. So even though *Zakat* is from the income of the *Bayt al-Mal* since it is paid to the *Khalifah*, and people are punished if they defer paying it, it is not spent unrestrictedly according to his opinion and *Ijtihad*, but rather his opinion and *Ijtihad* is restricted within the aspects, or restricted to those deserving of *Zakat* alone and nothing else.

As for the fifth issue: the fact that it is not spent except upon the specific individuals whose characteristics and numbers have been defined, is because Allah (swt) specified whom *Zakat* can be given to and limited its spending to those whom He (swt) had defined; Allah (swt) said ***"Sadaqah (Zakat) is only for the poor, the needy, and those employed to collect, to attract the hearts of those inclined (to Islam), to free the captives, and for those in debt, and for Allah's cause, and for the traveller"*** (TMQ 9:60). So it has been limited by the word ***"Only (innama)"*** which is from the styles of restriction, and therefore it is not permitted to spend it on anyone other than them at all, which is why the Messenger ﷺ said ***"Sadaqah is not permitted for the rich, nor the one who is strong upright"*** reported by Al-Tirmidhi from 'Abd Allah b. 'Amru, and he said it was *Hasan*, and al-Hakim reported it from Abu Hurayrah and he authenticated it. And he ﷺ said regarding *Zakat* ***"There is no part of it for the rich, nor the one able to earn"*** reported by Ahmad and Abu Dawud and Al-Nasa'i and al-Dhahabi said that the narration is authentic and its narrators are trustworthy.

So this is evidence that it is not spent on anything at all outside of the mentioned eight categories.

#### **Article 144**

***Jizya* is collected from non-Muslims (people of *dhimma*). It is to be taken from the adult men if they are capable of paying it, and it is not taken from women or children.**

Its evidence is from the Quran and the *Sunnah*. As for the Book, Allah (swt) said ***“until they pay the Jizya if they are capable and feel themselves subdued”*** (TMQ 9:29). As for the *Sunnah* then ***“the Messenger of Allah wrote to the fire-worshippers of Hajar, calling them to Islam, so whoever becomes Muslim it is accepted from him, otherwise the Jizya is imposed upon him and their slaughtered meat is not eaten and they are not married to a woman”*** (reported by Abu ‘Ubayd in *al-Amwal*, Abu Yusuf in *Al-Kharaj* and others). It is only taken from the one capable due to His (swt) words ***“from a hand”***, in other words from the one capable. It is taken from the men, not the women or children, due to the words of the Prophet ﷺ to Mu’adh ***“Take one dinar from every (halim) adult man”*** (reported and authenticated by al-Hakim). And al-Bayhaqi reported in his *Sunan al-Kubra* from ‘Amru b. Shu’ayb from his father from his grandfather that the Messenger of Allah ﷺ ***“obliged Jizya upon every (muhtalim) male adult from the people of Yemen, of one dinar”*** and the use of the words *halim* and *muhtalim* with the masculine form indicates that it is not taken from women nor those who have not reached puberty, and similarly Umar (ra) wrote to the leaders of the army ***“Impose the Jizya, and do not impose it upon the women and children, and do not impose it except upon the one who uses the blade”***, and it is not known that anyone rebuked him over that and so it is considered to be an *Ijma’*. In the same manner it is not taken from the insane as he is analogous with the child.

#### **Article 145**

**Land tax is payable upon the *kharajiyyah* land according to its capacity. *Zakat* is collected from the *‘ushriyyah* land according to the actual production.**

The evidence is what has been reported from al-Zuhri who said ***“The Messenger of Allah ruled that the people who became Muslim from Bahrain have their blood and wealth protected, apart from their land, since it was a booty for the Muslims, since they did not embrace Islam at first and rather resisted”*** (reported by Yahya b. Adam in *Kitab al-Kharaj*), in other words they had resisted the Muslims. This is evidence that the lands of the countries that are conquered are considered part of the booty. Except that our master Umar (ra) came and kept the ownership of the land with the *Bayt al-Mal* and left its benefits for those who lived upon it, and took land taxes from them in exchange for that utilisation, and these taxes were according to the potential of the land and not a fixed amount. Accordingly, areas of arable land (called *jarib*) in parts of Iraq were taxed a *qafiz* or a *dirham*, and in other places the tax was upon different sizes of areas of arable land other than *jarib*, and in areas of *al-Sham* different sizes were used, and so it is known from this that he managed each land according to its capacity.

This was with respect to the *kharajiyyah* land, and as for the *‘ushriyyah* lands, which are the lands whose inhabitants embraced Islam without conquest, along with the Arabian Peninsula, the *Zakat* is taken from what is actually produced from the land, and this would be a tenth if it was watered by rainwater, and a twentieth if it was watered by irrigation.

#### **Article 146**

**Muslims pay the taxes that the *Shari’ah* has permitted to be levied upon them in order to cover the expenditure of the *Bayt al-Mal*, on the condition that it is levied on that which is surplus to the individual’s needs according to what is normal, and has to be sufficient to cover the needs of the State.**

This article includes three issues: firstly, the payment of taxes; secondly, that these taxes are not taken unless it is surplus wealth to personal needs according to the norms; thirdly, they are only taken as required to fulfil the needs of the *Bayt al-Mal* and not beyond that.

As for the first issue, the word “tax” is a Western term, which means what the authority imposes upon the subjects in order to manage their affairs. The question is: Is it permitted for the Islamic State to impose taxes upon the Muslims in order to administer their affairs? The answer to this is that the *Shari’ah* defined the income of the *Bayt al-Mal* and fixed this income to administer the affairs of the subjects, and did not legislate taxes in order to administer their affairs. Additionally, the Prophet ﷺ used to administer the affairs of the subjects using these incomes, and it is not confirmed that he ﷺ imposed a tax upon the people, and that has not been reported from him ﷺ at all. When he ﷺ learnt that the people on the borders of the State were taking taxes upon the goods that were entering the land, he forbade them from doing so; it is reported from ‘Uqbah Bin Aamir that he heard the Messenger of Allah ﷺ say **“The person who imposes custom duties will not enter Paradise”** (reported by Ahmad and authenticated by al-Zayn and al-Hakim), and Abu Khayr heard from Ruwayfi’ b. Thabit who said **“I heard the Messenger of Allah ﷺ say “The person who imposes custom duties is in Hellfire””** reported by Abu ‘Ubayd in *al-Amwal*, and it was reported by Ahmad and authenticated by al-Zayn. And he said: “It means *al-‘ashir*”, and *al-‘ashir* is the one who takes a tenth from the foreign trade. This indicates the forbiddance of imposing taxes according to the Western meaning of the word. The Messenger ﷺ said in an agreed upon narration from Abu Bakra, **“Your blood, wealth and honour are sanctified like the sanctification of this day of yours in this land of yours in this month of yours”**, which is general and encompasses everybody including the State, and taking taxes is taking the wealth of the Muslim without his agreement, which indicates the impermissibility of taking it.

However, if the income of the *Bayt al-Mal* from the defined areas and fixed amounts were not sufficient to administer the affairs of the subjects, since it could occur that there are issues which require administering and the income of the *Bayt al-Mal* had already been spent, then would it be permissible in this situation to impose taxes or not? The answer to that is that what the *Shari’ah* obligated upon the *Bayt al-Mal* includes what was obligated upon it alone and not obligated upon the Muslims, and what was obligated upon both the *Bayt al-Mal* and upon the Muslims. It is not permitted for the State to impose taxes for the sake of whatever was obligated upon the *Bayt al-Mal* alone and not upon the Muslims, so if there is money found in the *Bayt al-Mal* it is used and if there is nothing then it is delayed until they find enough to carry it out, and no taxes at all are imposed upon the Muslims for its sake. This is because the *Shari’ah* did not obligate that issue upon the Muslims, and so it is not permitted to impose taxes for it since taking taxes in this situation would be considered to be oppression which is forbidden (*haram*). Likewise, it would also be considered as making obligatory something that Allah (swt) did not make obligatory, which is like forbidding something permitted, or permitting something forbidden, which is enmity against the *Shari’ah* and the one who does it is considered to be a disbeliever if he believed in it, and sinful if he did not, accordingly it is not permitted for the State to impose a tax upon the Muslims which the *Shari’ah* did not make obligatory from the Quran and the *Sunnah*. Examples of this would be for the sake of the salaries of those collecting the *Zakat*, and giving to people in order to bring them closer to Islam/those whose hearts are to be reconciled, and giving to slaves in order to purchase their freedom, and to those indebted in order to repay what they owe. And such as building a new road while there was another one present, or building a dam while there was rain water, or establishing a hospital while there was another one present which fulfilled the need, or anything else similar to these, where its absence does not lead to the existence of *haram*, but rather its presence leads to betterment and is complementary to what exists. It is not permitted for the State to impose taxes upon the Muslims for anything like this in order to carry it out, since the *Shari’ah* did not obligate that. The jurists said regarding similar issues that their right upon the *Bayt al-Mal* is considered according to “presence not absence”, so if there was wealth present then they would deserve to have it spent upon them, and if it was absent then the absence voided their right.

As for what the *Shari'ah* obligated upon both the *Bayt al-Mal* and the Muslims, then if there was no wealth to be found in the *Bayt al-Mal*, or its wealth was finished, then in this situation the State could impose taxes upon the Muslims in order to carry out the affairs which the *Shari'ah* obligated upon both them and the *Bayt al-Mal*.

This is because it is confirmed by text that Allah (swt) obligated that upon them, and made the *Imam* responsible over them, so he is the one who collects this wealth from them and spends it upon the interests, such as the necessary expenditure upon the poor, the needy and the wayfarers, and there was not enough in the *Bayt al-Mal* from the income of *Zakat* and everything else to spend upon them. This is since feeding the poor is obligatory upon the Muslims, as he ﷺ said ***“Any people who wake up while a man from them is hungry then they are free of the covenant of Allah (swt)”*** (reported by Ahmad from Ibn Umar and authenticated by al-Hakim). Also, if there is not enough in the *Bayt al-Mal* for the necessary expenditure upon the soldiers and war, and everything that is required for military preparedness, then a tax is imposed upon the Muslims in order for it to be carried out due to His (swt) words ***“and strive with you wealth and your lives in the cause of Allah”*** (TMQ 9:41) and ***“and those who strive hard and fight in the cause of Allah with their wealth and their lives”*** (TMQ 4:95), and it is reported from Anas who said: ***The Messenger of Allah ﷺ said “Strive against the idol worshippers with your wealth and your hands and your tongues”*** (reported by Ahmad and al-Nisa'i and al-Nisa'i and al-Hakim authenticated it and al-Dhahabi agreed). And in the same manner everything which if it were not undertaken would cause a harm to the Muslims, such as opening a route where there was no alternative, and opening a hospital whose opening was a necessity, and anything else similar whose expenditure would be deserved from the angle of interest and service without an alternative, and being a necessity from the necessities, and that the *Ummah* would be afflicted with a harm if it was not present, then taxes are imposed upon the Muslims in order to carry it out because the removal of harm is obligatory upon the Muslims; the Prophet ﷺ said ***“No causing harm and no harming”*** (reported by Ahmad from Ibn 'Abbas, and al-Hakim from Abu Sa'id al-Khudri, and he authenticated it and al-Dhahabi agreed). Likewise paying salaries for the army, judges and teachers, since these are from the issues that the *Shari'ah* obligated upon the Muslims, since learning has been made obligatory upon them, and so has establishing the courts and *Jihad*, as has been indicated by explicit texts. Therefore the State is permitted to impose taxes in order to carry out these issues which the *Shari'ah* obligated upon the Muslims alongside the *Bayt al-Mal*, since the texts are explicit in their obligation upon the Muslims. This is the evidence for the first issue of the article.

As for the second issue, its evidence is the words of the Messenger ﷺ ***“The best Sadaqah is from what exceeds your needs (ghina)”*** (agreed upon from Hakim Bin Hizam and Abu Hurayrah), and *al-ghina* is what the person did without, after taking what was necessary to fulfil his needs. It is reported from Jabir that the Messenger of Allah ﷺ said ***“The best of Sadaqah is that after giving which the (giver) remains rich and the upper hand is better than the lower hand, and begin from the members of your household”*** (agreed upon). And in another narration in Muslim from Jabir ***“Start by giving Sadaqah to yourself, and if anything remains then for your family”***. So he ﷺ made providing for the person whom it is obligatory to support secondary to providing for oneself, and the tax is similar to that because it is like support and *Sadaqah*. And Allah (swt) said ***“And they ask you what they should spend, say that which is beyond your needs”*** (TMQ 2:219), in other words that which would not be difficult to spend, which would mean that which is extra. This indicates that what is obligatory upon the Muslim as far as their wealth is concerned, irrespective of whether that was *Zakat* or maintenance, is only taken from whatever he has that is extra over what he needs according to the norms. Similar to that is the tax, so it is not taken from the Muslim except from that which is extra and above what someone like him would require to fulfil their needs, or in other words what is extra to what he needs to feed, cloth, shelter and provide help for himself and his wives, and what he spends to fulfil his needs and whatever is similar for someone in his position, because this is the meaning of the Messenger's ﷺ words ***“what exceeds your needs”***.

As for the third issue, its evidence is the forbiddance of the *Shari'ah* from taking what is not obligatory, and whatever is additional to the needs is not obligatory upon the Muslim, and so it is forbidden to take it, and for this reason the amount taken is what is required for the *Bayt al-Mal* and nothing more. 'Ali (ra) suggested to Umar Bin al-Khattab (ra) that there should be nothing remaining in the *Bayt al-Mal* saying to him ***“Every year, divide whatever wealth you received and do not hold onto anything from it”*** (reported by Ibn Sa'd from al-Waqidi), and it is reported ***“that Ali used to spend everything in the Bayt al-Mal to the point that he would sweep it and then sit it in”*** (reported by Ibn 'Abd alBarr in *al-Istidhkar* from Anas b. Sirin). The *Khulafaa'* used to do this with respect to the income other than taxes, so how would they have treated the income from taxes? By greater reasoning there should remain nothing in the *Bayt al-Mal*, and so nothing more than what is necessary is taken.

This is the evidence for the three issues of this article.

#### **Article 147**

**The State has the right to impose taxes in order to undertake anything that the *Shari'ah* obligated upon the *Ummah* if the funds in the *Bayt al-Mal* were insufficient since the obligation for funding it would be transferred onto the *Ummah*. The State has no right to impose a tax for the sake of whatever is not obligatory upon the *Ummah* to undertake, and so it is not permitted to collect fees for the courts or departments or to fulfil any service.**

The evidence for this is the same evidence that was mentioned for the first issue of the last article, in that the *Shari'ah* defined the general income, and that the Messenger ﷺ did not impose taxes and forbade the taking of custom duties, because it is a tax, and so it is a prohibition that encompasses every tax. It also mentioned that if there was no wealth in the *Bayt al-Mal* to spend upon whatever the *Shari'ah* obligated upon the *Bayt al-Mal* and the *Ummah*, the obligation transfers onto the *Ummah*, and whatever the *Shari'ah* obligated upon the *Bayt al-Mal* alone then its obligation does not transfer on to the *Ummah* even if there was nothing left in the *Bayt al-Mal* for it, rather it is delayed until the money for it is found and no taxes are imposed upon the *Ummah*. In the same way, no taxes are directly imposed upon the *Ummah* for the sake of anything that was not obligatory upon it, and similarly indirect taxes are also not imposed; so no fees are collected for the courts, or the departments, or import stamps, or permit fees, or anything similar. As for postal stamps, they are not considered to be indirect taxes, but rather they are the price for transporting letters, which is permitted. Therefore no indirect tax for the sake of anything which the *Shari'ah* did not obligate upon the Muslims should be collected, since they are just like the direct taxes without any difference between them, and it is not permitted to impose them upon the *Ummah*.

#### **Article 148**

**The budget of the State has permanent chapters determined by *Shari'ah* rules. As for the sections of the budget, the amounts allocated for each section, and the issues of each section covered by these amounts are left to the opinion of the *Khalifah* and his *Ijtihad*.**

The word *budget* is a Western term, and its meaning is the explanation of the income that the State takes, and an explanation of its chapters, which are the aspects that are gathered in the budget, and an explanation of its sections, which are the branches of these aspects, and an explanation of the amounts which are incoming. Alongside that, there is a draft of the explanation of the expenditure that the State will spend, by explaining its chapters which are the aspects upon which the expenditure will be used, and an explanation of its sections, in

other words the branches of these aspects, and an explanation of the amounts that will be spent upon every one of the issues mentioned in each section. This is the reality of the budget. This reality was not known to the Muslims; rather they knew the *Bayt al-Mal*, and the income was sent there and the expenditure was spent from it. However, the presence of income for the *Bayt al-Mal* and the fact that the expenditure comes from it, embodies the reality of the budget even if it was not named with that term, and there is nothing to prevent the use of this term according to its terminological meaning, which is the collection of the chapters of income and expenditure, with sections for each of these. Built upon this, the State has a budget, and the *Bayt al-Mal* is responsible for this budget.

As for the preparation of this budget in terms of its chapters, sections and amounts which are drafted, these have been decided by the *Shari'ah* laws. So the *Shari'ah* laws introduced and decided income such as land taxes and booty, and expenditures were introduced and decided how it should be spent, and it was confirmed what must be spent upon and what needs to be spent upon if the money is found to do so. The income and expenditure were introduced and decided by the *Shari'ah* rules, and therefore the chapters of the budget are permanently based upon that, since the *Shari'ah* decided them and the *Shari'ah* rule is permanent and does not change.

As for the sections, which are the branches which branch off from them such as the land tax upon the land with a natural water supply, and the land tax upon irrigated land, or anything similar, the *Khalifah* can draft them, since they are part of the management of the affairs which have been left to his opinion and *Ijtihad*. In the same manner, the amounts which are drafted are done so according to his opinion and *Ijtihad*, such as how much the *Jizya* and land tax would be, and anything similar, since it is part of what he is responsible for. Accordingly, the evidences for the *Shari'ah* rules are regarding the income and expenditure of the *Bayt al-Mal*, and the control over whatever is in the *Bayt al-Mal* that the *Shari'ah* did not specify is left to the opinion and *Ijtihad* of the *Khalifah*.

These three evidences: the evidences regarding the income, those regarding the expenditures, and the evidence that the *Imam* is responsible for governing the affairs, are the evidences for this article. As long as the *Khalifah* has the right to draft the sections of the incomes and amounts which are drafted in each section according to his opinion and *Ijtihad*, then there is nothing to prevent the drafting of an annual budget for the State including its sections and the amounts for each section, whether that is for the income or expenditure. What would be prohibited is drafting an annual budget for the sake of new chapters, and not its income and expenditure, since these chapters have been decided by the *Shari'ah* rules and so they are permanent.

#### **Article 149**

**The permanent sources of income for the *Bayt al-Mal* are the booty, *Jizya*, land tax, a fifth of buried treasure, and *Zakat*. This income is collected continuously irrespective of whether there was a need or not.**

The evidences for this article are the evidences which include the income, so the evidence for booty is the words of Allah (swt) *“And what Allah gave as booty to His Messenger from the people of the townships – it is for Allah, His Messenger, the orphans, the needy, and the wayfarers”* (TMQ 59:7). The evidence for *Jizya* is His (swt) words *“until they pay the Jizya if they are capable and feel themselves subdued”* (TMQ 9:29). The evidence for land tax is what was reported from Abu ‘Ubayd regarding the *kharajiyah* land when he said *“We found reports from the Messenger of Allah ﷺ and the Khulafaa’ after him who had conquered the lands, regarding three rules: The land of those who had embraced Islam, so it belongs to them, and this is the land of ‘ushr (a tenth) and there is nothing (imposed) upon them other than that. And land which was opened through a peace treaty based upon an agreed*

land tax, so they are upon what they agreed upon and nothing more is imposed upon them. And the land which was taken by force, which is the subject that the Muslims differed over, so some of them said it should be treated like booty, so a fifth is taken off it (by the State) and it is divided, and so four fifths is divided between those who had conquered the land, and the remaining fifth is for Allah (swt). And some said, no, rather its rule is left to the Imam, if he thinks it should be left as booty and so a fifth is taken and the rest is divided in the same manner that the Messenger of Allah ﷺ did then he can do that, and if he thinks that it should be kept as a spoil of war and so it is left undivided but rather it is left for the generality of the Muslims, as Umar did with al-Sewaad. These are the rules regarding land which has been conquered". The story of Muslims' discussion with Umar (ra) regarding the land of Sewaad (land of Iraq) is also reported by Abu Yusuf in *al-Kharaj*.

As for the fifth of treasures its evidence is the words of the Messenger ﷺ **"There is a fifth due on buried treasures"**. And as for *Zakat*, its evidences are many, Allah (swt) said **"And give Zakat"** (TMQ 2:43), and the Prophet ﷺ said to Mu'adh **"Inform/tell them what Allah obligated upon them from Sadaqah which is taken from their rich and given to their poor"**.

All of these evidences convey the meaning of obligation, and so paying this wealth is an obligation, which is why it is taken perpetually regardless of the need, since Allah (swt) made it obligatory, and the obligation must be carried out.

#### **Article 150**

**If the permanent revenues of the *Bayt al-Mal* are not sufficient to cover the expenditure of the State, then it is possible to impose taxes upon the Muslims. It becomes obligatory to impose taxes as follows:**

- a. To fulfil the obligatory expenses upon the *Bayt al-Mal* for the poor, needy, and wayfarers, and to undertake the obligation of Jihad.
- b. To fulfil the obligatory expenses upon the *Bayt al-Mal* for remunerations of the civil servants and soldiers, as well as compensation for the rulers.
- c. To fulfil the obligatory expenses upon the *Bayt al-Mal* to undertake the services and needs such as establishing roads, extracting water, building mosques, schools and hospitals.
- d. To fulfil the obligatory expenses upon the *Bayt al-Mal* which are necessary in case of a disaster which afflicted the subjects such as famine, floods and earthquakes.

The evidence for this is that the *Shari'ah* prohibited the authority to impose taxes upon the Muslims simply based upon an order emanating from him; the Prophet ﷺ said **"The person who imposes custom duties will not enter Paradise"** (reported by Ahmad and authenticated by al-Zayn), and the custom duty is tax which is taken from the tradesmen at the borders of the country. This prohibition encompasses every tax due to the agreed upon narration of the Messenger ﷺ through Abu Bakra, **"Your blood, wealth and honour are sanctified like the sanctification of this day of yours in this land of yours in this month of yours"**, which is general and so encompasses the *Khalifah* in the same way it encompasses the rest of the people. As long as the *Shari'ah* prohibited taking taxes, it is not permitted for the *Khalifah* to impose them upon the people based upon an order he made. However, if the purpose was something that Allah (swt) had made obligatory upon the Muslims, then it is permitted for the *Khalifah* to impose taxes upon the Muslims and take it from them by force for such purpose.

In this circumstance taking them would not be based upon an order from the authority but rather based upon what Allah (swt) had ordered, and the authority is merely implementing the order that Allah (swt) had made. So the *Shari'ah* permitted the *Khalifah* to take taxes if it was

ordered by Allah (swt), with the condition that the order to take the taxes is from the *Khalifah* together with what Allah (swt) ordered the Muslims to fulfil, and not simply an order from the *Khalifah* alone to impose this tax. Based upon this, what the *Shari'ah* obligated upon the Muslims and the *Bayt al-Mal* is spent upon from the *Bayt al-Mal*, and if nothing is found in the *Bayt al-Mal*, or if whatever was there had already been spent, or was not sufficient to fulfil the expenditure needs, then the *Khalifah* may impose taxes upon the Muslims according to the *Shari'ah* rules which obligated that issue upon the Muslims in the first place. And what were mentioned in the article are details of what Allah (swt) has obligated upon the Muslims.

As for clause “a” its evidence is that Allah (swt) obligated the *Khalifah* to spend upon the poor, needy and wayfarer, and to spend in order to undertake the obligation of *Jihad*, and this was also made an obligation upon the Muslims; the Prophet ﷺ said **“The one who goes to bed full while his neighbour is hungry and he knows does not believe in me”** (reported by al-Bazzar from Anas and al-Haythami and al-Mundhiri considered it *Hasan*). And there are evidences related which mention the poor, needy, wayfarers and beggars and the verse of *Zakat*. And the evidences of *Jihad* include His (swt) words **“and strive with your wealth and your lives in the cause of Allah”** (TMQ 9:41).

As for clause “b”, its evidence is that Allah (swt) obligated the *Khalifah* to pay for the expenses related to the civil servants, and the salaries for the soldiers according to what was agreed with them, and it is obligatory for the *Bayt al-Mal* to recompense the *Khalifah* and the rest of the rulers, due to the evidence that the companions specified some money for Abu Bakr (ra) from the *Bayt al-Mal* in return for him leaving his trade and being completely free to carry the duties of the *Khilafah*. In the same manner Allah (swt) made education, establishing the courts and *Jihad* with wealth obligatory upon the Muslims, and obligated them to establish the *Khalifah* in the same way it is obligatory upon them to establish the leader. As for the provisions for the soldiers, he ﷺ said in a report from Abu Dawud from Abdullah Bin Umar **“Al-Ghazi has his ajr and al-Ja'il has his ajr plus the Ghazis”**. And as for the maintenance of the civil servants, which are the teachers, judges, and those whom Allah (swt) has made it constantly obligatory to ensure they are established, then it is obligatory to pay the wages of those who undertake these issues, from the angle of the indication of necessity, in other words the obligation to establish a judge necessitates the obligation of paying his wage, and from the angle of **“Whatever is required to complete an obligation is itself an obligation”**, since the appointment of teachers and judges cannot be possible without the availability of money to cover their salaries. As for the remaining civil servants, if their work is part of what Allah (swt) obligated upon the Muslims and upon the *Bayt al-Mal* such as the *Imams* of mosques, and the civil servants in the War Department and anything else similar, then taxes are imposed for their sake. With respect to whatever Allah (swt) obligated upon the *Bayt al-Mal* alone such as the ones who collect the wealth from the people, then taxes are not imposed for their sake. And as for the recompense for the rulers, Allah (swt) obligated the Muslims to establish the ruler, and so it is obligatory for them to pay what is required to ensure he is free for his duties.

As for clause “c”, its evidence is that Allah (swt) obligated the *Khalifah* to undertake the management of the interests of the Muslims by spending upon whatever interest they have and facilitating anything they need. The interest is what the whole *Ummah* uses, such as extracting the water, education, fixing the roads, and anything similar, and the utility is from the facilitation, which is what people utilise in order to fulfil their interests, such as a place of rest for travellers/passengers, public toilets, hospitals for the treatment of the ill and building mosques for the worshippers. It is said to utilise something is to use it, and so the Muslim utilises the space of the mosque for sitting and its water for ablution. So the *Shari'ah* obligated the *Khalifah* with issues such as building roads, extracting water, building schools, mosques and hospitals and anything else similar, since they are part of the management of the affairs, and because the interest is to attain a benefit and protect against a harm, and not making these available leads to harm. And utilisation is whatever the people utilise to fulfil their needs, and its lack of availability would necessarily bring about harm, and removing the



harm is an obligation upon the *Khalifah* and in the same manner is obligatory upon the Muslims; it is reported from Ibn ‘Abbas who said: ***The Messenger of Allah ﷺ said “No causing harm and no harming”*** (reported by Ahmad from Ibn Abbas and reported and authenticated by al-Hakim from Abu Sa‘id al-Khudri), and he ﷺ said ***“Whoever causes harm, Allah inflicts harm upon him, and whoever makes things difficult Allah makes it difficult upon him”*** (reported by Ahmad from Abu Sarmah with a chain that al-Zayn authenticated, and similarly reported and authenticated by al-Hakim from Abu Sa‘id al-Khudri). Therefore what would occur from harm upon the Muslims if there was no provision for what the interest and utility necessitated if there was no recompense must be considered, and it would be obligatory upon the *Khalifah* and the Muslims to ensure it is provided if this provision removed that harm. What made it obligatory upon the *Khalifah* is clear since it is part of managing the affairs, and what made it obligatory upon the Muslims is the generality of the evidences, since the words ***“No causing harm and no harming”*** are general, and in the same way ***“whoever makes things difficult”*** is general therefore encompasses the *Khalifah* and also encompasses all of the Muslims.

As for clause “d”, its evidence is the evidence of saving the one who is in trouble, since issues like floods and earthquakes and the like, fall under this issue. As for those who may be starving they fall under the narration ***“The one who goes to bed full while his neighbour is hungry and he knows”*** (reported by al-Bazzar from Anas and considered *Hasan* by al-Mundhiri), and the narration ***“Whoever from the people of the land”*** (reported by Ahmad from Ibn Umar and authenticated by Ahmad Shakir). Therefore it is obligatory upon the *Bayt al-Mal* and the Muslims due to the generality of the evidences.

#### **Article 151**

**Money taken at the borders of the State from custom duties, income derived from public or State property, inheritance for which there is no inheritor and the assets of the apostates are all considered to be part of the revenue of the *Bayt al-Mal*.**

The evidence for the article is what has been reported from Umar (ra) regarding the Muslims taking from the traders of those they were at war with according to what they took from the Muslim traders; it is reported by Ibn Abu Shayba in *al-Musannaf* ***“from Abu Mijliz – that Umar sent Uthman Bin Hanif who imposed upon the wealth of people of dhimma that they differed over, a tax of one dirham from every twenty and wrote to Umar who was content and gave him permission, and he said Umar: How much should we take from the people of war if they come to us? He said: How much do they take from you if you go to them? They said: A tenth. He said: So take the same from them”***.

Abu ‘Ubayd reported in *al-Amwal* from ‘Abd alRahman Bin Ma’qal who said: I asked Ziyaad Bin Hudair about whom they would take a tenth from. He said ***“We didn’t use to take a tenth from a Muslim, nor from someone who had a covenant. I said: So who did you take the tenth from? He said: The disbelievers from the people of war, so we used to take from them as they used to take from us”***. This is an evidence that custom duties which are taken from non-subjects of the State are considered to be from the sources of income of the *Bayt al-Mal*.

This is with respect to the taxes, as for the wealth which is produced by public property, the *Khalifah* has been made the representative of the Muslims in managing their interests, and so whatever is from the public wealth which all of the individual citizens are able to enjoy, then they are left to them to use as they please, such as rivers and well water which could be used for irrigation. But if the usage of some prevents others, such as steel minerals, which leads to the one who is capable taking it while the one incapable gets nothing of it, then the *Khalifah* takes responsibility for managing this resource and extracting whatever is there in order to enable all the citizens to benefit from its sale. Accordingly, this wealth is placed in the *Bayt al-Mal* and is considered to be from its sources of income because the *Khalifah* is the one who

manages it. However, it is not spent according to the opinion and *Ijtihad* of the *Khalifah* in everything, since it is for the general citizens, and his opinion and *Ijtihad* is regarding the equality and inequality in expenditure, and not upon who it is paid for, since it is not from the State property.

And as for the wealth which has no inheritor for it, it is placed in the *Bayt al-Mal*. If an inheritor is found then it is given to them, and if not then it is considered as the property of the *Bayt al-Mal* because the *Bayt al-Mal* is the inheritor of anyone who has no inheritor, since the Muslims used to give the inheritance of the one who had no inheritor to the Messenger ﷺ, and he ﷺ used to ask whether the person had any progeny or relatives? And (if he didn't have any) then he ﷺ would order it to be given to whomever he considered, which indicates that it is a source of income for the *Bayt al-Mal*.

As for the wealth of the apostates, this is considered to be booty for the Muslims and is placed in the *Bayt al-Mal* in the register of war spoils and *kharaj*, and is spent upon what they are used for. His wealth is not inherited, since if one of the couple apostatised before consummating the marriage the contract is voided immediately and so there is no inheritance between them, and if the apostasy occurred after consummation then the marriage contract between them is voided, and if either of them die neither of them inherits from the other, since one of them is Muslim and the other a disbeliever. Similarly if the apostate was from those who inherit from a Muslim who died, the apostate does not inherit since he is a disbeliever and the one who left the inheritance is a Muslim, and a disbeliever does not inherit from a Muslim. Accordingly, his share of the remainder of the inheritance, if there were other inheritors, and if not then all of it is considered as booty for the Muslims, and it is placed in the *Bayt al-Mal*. If the apostate died and he had inheritors from his sons, father, mother or siblings who were Muslim, they do not inherit from him, since a Muslim does not inherit from a disbeliever and it is all considered to be booty for the Muslims and is placed in the *Bayt al-Mal* for the Muslims. From Usamah b. Zayd who said: the Messenger of Allah said **"A Muslim does not inherit from a disbeliever, and a disbeliever does not inherit from a Muslim"** (agreed upon). And 'Abd Allah b. Umar said that the Messenger of Allah ﷺ said **"People from two religions do not inherit from each other"** (reported by Ahmad and Abu Dawud). Similarly if all of his inheritors apostasise with him, all of their wealth has no sanctity and it becomes booty for the Muslims, and they do not inherit from each other.

#### Article 152

The expenditure of the *Bayt al-Mal* is divided across six sections:

- a. The eight categories which deserve the *Zakat* to be spent upon them, from the chapter of *Zakat*.
- b. The poor, the needy, the wayfarer, Jihad, and those in debt – if there is nothing found in the chapter of *Zakat*, they are given money from the permanent sources of income of the *Bayt al-Mal*, and if nothing is found then those in debt are not given anything. Taxes are imposed in order to fulfil the expenses required for the poor, the needy, the wayfarer, and Jihad, and the State takes a loan in case of fear of *fasad* (corruption).
- c. The individuals who provide services to the State such as the civil servants, the soldiers and the rulers are paid from the *Bayt al-Mal*. If there were insufficient funds in the *Bayt al-Mal* then taxes are imposed in order to fulfil the expenditure needs, and the State takes a loan in case of fear of *fasad* (corruption).
- d. The essential services and utilities such as roads, mosques, hospitals and schools are funded by the *Bayt al-Mal*, and if there are insufficient funds in the *Bayt al-Mal* taxes are imposed to fulfil these expenses.

- e. The non-essential services and utilities are funded by the *Bayt al-Mal*, and if funds found in the *Bayt al-Mal* are insufficient then they are not funded, but rather delayed.
- f. Emergency situations such as earthquakes and floods are funded by the *Bayt al-Mal*, and if the funds were not found the money required is taken as a loan immediately which is then repaid through raised taxes.

The evidence for clause “a” of this article is the verse of *Sadaqah*, which is the words of Allah (swt), “*Sadaqah (Zakat) is only for the poor, the needy, and those employed to collect, to attract the hearts of those inclined (to Islam), to free the captives, and for those in debt, and for Allah’s cause, and for the wayfarer.*” (TMQ 9:60).

As for clause “b”, it is obligatory upon the *Bayt al-Mal* to spend upon the poor, the needy, the traveller and *Jihad* whether the money was in the *Bayt al-Mal* or not, since it is part of what Allah (swt) obligated upon the *Bayt al-Mal* and the Muslims. Therefore, if the money is not found in the *Bayt al-Mal* then taxes are imposed upon the Muslims for its sake, because it is obligatory upon them as confirmed by the *Shari’ah* evidences. As for those in debt, they are part of what Allah (swt) obligated upon the *Bayt al-Mal* and not upon the Muslims. The reason why it is obligatory upon the *Bayt al-Mal* is due to the words of the Messenger ﷺ “*I am more responsible over every believer than themselves, so whoever left behind a debt then it is upon me, and whoever left wealth then it is for his inheritors*” (reported by Muslim from Jabir), and it was upon him ﷺ in his ﷺ characteristic as the Head of the State, and so it is part of what Allah (swt) obligated upon the *Bayt al-Mal*. It is reported from Abu Hurayrah that the Prophet ﷺ said, “*Any believer who died and left behind wealth then whoever is from his family inherits it, and whoever leaves behind a debt or children then come to me, since I am his protector*” (reported by al-Bukhari). Accordingly the debt is upon the *Bayt al-Mal*. If there was wealth in the *Bayt al-Mal* it is obligatory to spend it, and if no funds were found, then no taxes would be imposed, since there is nothing to indicate that it is an obligation upon the Muslims. In the explanation of *Sahih Muslim* by al-Nawawi it is said that “*The Prophet did not use to pray over anyone who died with a debt that he did not manage to fulfil, in order that people would not be careless in taking debts and neglect repayment, and so he would rebuke them by not praying over them. When Allah opened the conquests for the Muslims he ﷺ said ‘whoever left behind a debt, it is upon me’ in other words to fulfil it, and he used to fulfil them*” which is evidence that it is paid from the *Bayt al-Mal* if the money is found.

As for clause “c”, the evidence is what has been mentioned that Allah (swt) obligated education, judging and *Jihad* upon the Muslims, and He (swt) obligated establishing the *Khalifah* upon them, and made it obligatory upon the *Khalifah* to govern the affairs with whatever that necessitates in terms of rulers and civil servants, and for those to be able to fulfil their obligations it is necessary for the *Bayt al-Mal* to give the civil servants their salaries, and the rulers their compensations, from the rule “*Whatever is required to complete an obligation is itself an obligation*”. If whatever is in the *Bayt al-Mal* is not sufficient, then taxes are collected in order to meet these expenses, and if it is feared that instability/corruption (*fasad*) could occur then loans can be taken to fulfil the need.

As for clause “d”, in order to reach its evidence it is necessary to understand in detail that the evidence to fund the obligatory expenditures on the benefits and utilities where no alternative exists is that it is part of the management of the affairs, and the narration says “*and he is responsible for his subjects*” (reported by al-Bukhari from Ibn Umar), and the fact that the *Ummah* would be afflicted by harm in the absence of it being carried out and the Messenger ﷺ said “*No causing harm and no harming*” (reported by Ahmad from Ibn ‘Abbas, and reported and authenticated by al-Hakim from Abu Sa’id al-Khudri). Accordingly, these are

the evidence for the obligation upon the *Khalifah* for the interest and utilities, which is why it is obligatory upon him in an absolute sense whether they were from the essentials or non-essentials. The evidence for their obligation upon the Muslims are the words ***“No causing harm and no harming”***, which is why the non-essential interests are not obligatory upon them since the *Ummah* would not be afflicted with harm if they were not undertaken, and nothing is obligatory upon the *Ummah* except that which would cause a harm if it was not undertaken.

Accordingly, not every interest and utility is obligatory upon the Muslims, rather only those interests which would cause harm if they were not undertaken. As for the *Bayt al-Mal*, it is obligatory for it to undertake every issue which brings benefit for the Muslims, and everything which, if left without being undertaken, would cause them harm. Due to the restriction of the evidence of its obligation upon the *Ummah* with the narration ***“No causing harm and no harming”***, taxes are not imposed upon the Muslims in order to undertake the non-essential interests and utilities such as widening the roads which are sufficient for the people without the widening or building a hospital that could be managed without, and anything else similar from non-essential interests. If the money is found in the *Bayt al-Mal* the State would undertake them, and if not they would be delayed until the money is found, and it is not correct for taxes to be imposed for the sake of undertaking them.

As for clause “f”, its evidence is the evidence for saving the one in trouble: in an agreed upon narration from Abu Musa al-Ash’ari, that the Prophet ﷺ said, ***“Every Muslim must pay Sadaqah”*** So they asked: O Prophet of Allah, and what about the one who doesn’t find any? He said: He should work with his hands, such that he benefits himself and pay Sadaqah. They said: And if he didn’t find any? He said: he should help the one in trouble. They then said: And if he didn’t find that? He said: then he must do good and refrain from doing wrong, that is Sadaqah for him.”

And in the same way, the agreed upon narration from Ibn Umar that the Messenger of Allah ﷺ said ***“The Muslim is the brother of the Muslim, he does not oppress him nor give him up, and whoever helps his brother in need, Allah will fulfil his need, and whoever lifts a difficulty from a Muslim, Allah will lift a difficulty from the difficulties of the Day of Judgement from him, and whoever covers a Muslim, Allah will cover him on the day of Judgement”***.

This is general encompassing both the *Khalifah* as well as the rest of the Muslims, and so it is obligatory upon the *Bayt al-Mal* and upon the Muslims. If sufficient funds are found in the *Bayt al-Mal* then they are spent upon from there, and if there were not sufficient funds found then taxes are collected for its sake because it is obligatory upon the Muslims to help those in trouble.

With respect to the taking out of loans in a situation where corruption (*fasad*) is feared, as mentioned in clauses “b” and “c” and “f”, this is because corruption is a harm afflicting the Muslims, and its removal would be obligatory due to the narration ***“No causing harm and no harming”***. So, if the funds were not available, and loans were not taken out, and waiting for the money could cause harm, then it would be obligatory to take out a loan to remove the harm. It would then be necessary for the State to take a loan for the amount required to remove the harm. It is not permitted to take out a loan for the sake of anything other than these three situations, because spending in other situations depends on the presence of funds, but if the funds are not present money should not be borrowed for it. As for anything which is entitled to funds whether or not they were found in the *Bayt al-Mal*, then if the funds are found they are spent upon it, and if they are not found then they are sought through taking taxes from the Muslims in order to fulfil what is required. This occurs if it is possible to wait and no harm occurs due to waiting, and so it is delayed until the taxes have been collected, and if it cannot be waited for and the people would be afflicted with harm due to any delay then at that time a loan would be taken out for its sake. So accordingly the State would not take out a loan except for the situations which would cause harm if nothing was spent, which

are those situations and things whose entitlement to funds remains whether the funds were found or not.

### **Article 153**

**The State guarantees to create work for all of those who carry its citizenship.**

The evidences for this article is that it is part of the generality of the words of the Prophet ﷺ ***“The Imam is a guardian and he is responsible for his subjects”*** (reported by al-Bukhari from ‘Abd Allah b. Umar), and from the most important issues of managing the affairs is creating work for those who are capable but do not find any. The fact that maintenance of the poor person who has no relative capable of maintaining them is upon the State is due to his ﷺ words ***“Whoever leaves behind wealth then it is for his inheritors and whoever leaves behind an orphan then he is upon us”*** (agreed upon from Abu Hurayrah). And in the narration of Abu Hurayrah ***“and whoever left behind wealth then whoever is from his family inherits it, and whoever leaves behind a debt or a loss (diyyaa’) then he should come to me, since I am his protector”*** (agreed upon, and the wording is from al-Bukhari).

The State ought to secure jobs for those whom she is bound to spend on for their living. Ibn Maja reported from Anas Bin Malik who said: ***“A man from the Ansar came to ask the Prophet ﷺ for charity. The Prophet ﷺ asked “What do you have in your house?” The man “I have some fabric which we use to wear sometimes and other times to sit on and a cup which we use to drink water”. The Prophet ﷺ said “bring them to me”. So he brought them and the Prophet took them in his hand and said “Who will buy these two?” A man said “I will take them for one Dirham”. The Prophet ﷺ said “Who will pay more than a dirham twice or three times”. A man said “I will take them for two dirhams”. The Prophet ﷺ took the money and gave it to the Ansari. The Prophet ﷺ said “Buy food with one of them and give it to your family, and use the other to buy an axe-head and bring it back to me”. The man did that, and so the Prophet ﷺ then tied a hand to the axe-head and said “Go and cut wood, and I won’t see you for fifteen days”. And so the man went to cut wood and began to sell it. He returned and he had collected ten dirhams. The Prophet ﷺ said “Buy food with some of it, and clothing with some. This is better than asking for charity which you will be asked about on the Day of Judgement. Asking charity is permissible for only three cases: extreme poverty, paying off a large loss, or for paying blood-money in case of killing someone by mistake.”*** Al-Tirmidhi reported a shorter version that he considered *Hasan* from Anas Bin Malik, ***“The Messenger of Allah sold some fabric and a cup and said: Who will pay more than a dirham? Who will pay more than a dirham? and so a man gave him two dirham and so he sold them to him”***. And it has been reported in the narration of Ibn Maja that the Messenger ﷺ said ***“Who will pay more than a dirham twice?”*** and in the narration of Al-Tirmidhi the Messenger ﷺ said ***“who will pay more than a dirham? Who will pay more than a dirham”*** or in other words the sale was completed through the auction.

So the Messenger of Allah ﷺ dealing with employment directly in his ﷺ capacity as the head of the State means that the State has to provide work for those unemployed.

Above that, the maintenance from the *Bayt al-Mal* is due for the one who is incapable, both practically and legally. The one who is practically incapable is the person unable to work. The one who legally has the rule of the one who is incapable though is not practically incapable, is the person able to work but unable to find it, and so he is considered incapable in the eye of the law, and it is obligatory to give him maintenance. Therefore providing work for the one who is considered incapable from the view of the law is exactly like providing maintenance for the practically incapable person. Additionally, the *Shari’ah* forbade asking, in other words begging, and permitted it from the authority in other words the State; it is reported from Abu Hurayrah who said ***“The Messenger of Allah ﷺ said “This issue strains a man’s face, except if the man asked an authority or if it was an issue that was imperative””*** reported by

Al-Tirmidhi and Al-Nasa'i, Al-Tirmidhi said it is *Hasan Sahih*, and Ahmad reported something similar which al-Zayn authenticated, which is proof that it is permitted to ask the authority, in other words the State, and this means that she is responsible for him and for his maintenance, or securing a job/work for him.

#### **Article 154**

**Company employees and those employed by individuals have the same rights and duties as employees of the State. Everyone who works for a wage, irrespective of the nature of the work, is considered an employee. In matters of dispute between employers and employees over salary levels, the salary level is to be assessed on the basis of the market. If they disagree over something else, the employment contract is to be assessed according to the rules of the *Shari'ah*.**

Its evidence is the evidence for hiring, since the employee is hired; Allah (swt) said ***“Then if they give suck to you children, give them their due payment”*** (TMQ 65:6), and the Prophet ﷺ said in a *qudsi* narration ***“Allah said: I will be opposed to three on the Day of Judgement”*** until he said ***“and a man who hired a worker an employee, and did not pay him though he completed his work”*** (reported by al-Bukhari from Abu Hurayrah).

If the salary was not known, the contract of employment is legitimately contracted and if there is a dispute over its value then its calculation is referred to the market value. So, if the salary is not mentioned in the employment contract, or if the employee and employer differed over the mentioned salary, then the market salary level is referred to, and that is analogous to the issue of marriage dowry. When the dowry is not explicitly mentioned, or there is a dispute over it, then the custom is the referee. This is based upon what was reported by al-Nisa'i and Al-Tirmidhi who said it was *Hasan Sahih* ***“‘Abd Allah Ibn Mas'ud was asked about a man who married a woman, and did not consummate his marriage with her before dying, so he said: She has the dowry of her women, no less and no more, and she has a waiting period to observe, and she is entitled to inheritance. Ma'qil Bin Sinaan stood up and said: The Messenger of Allah ﷺ ruled for Buro' bint Wathiq just as you ruled”***, and the meaning of his words ***“she has the dowry of her women”*** is in other words the dowry similar to women like her. So the *Shari'ah* made the dowry of someone similar obligatory for the one whose dowry was not mentioned, and the same occurs if there was a dispute over the dowry mentioned. As the dowry is a necessary exchange upon which the marriage contract is based, every type of necessary exchange upon which a contract is based is made analogous to it, without looking at what is given for this compensation, whether it was money as in a sale, or a benefit or effort as in employment or a gift as in the marriage contract. As for the evidence that the dowry is a fee, Allah (swt) said ***“give them their due payment”*** (TMQ 4:24), and so their dowries were considered as payments or a fee.

Based upon that, the market value is considered in the case of the absence of mentioning the compensation in the contract, or if there was a dispute over it, and so therefore that is why in this case the market salary value is used for the judgement in employment, and the price of a similar product in purchasing when it is not mentioned in the contract or there is a dispute over it.

Based upon this the employee has the right to the market salary if the salary was not mentioned, or if there was a dispute between them and the employer over the salary. If the salary was known in the contract then in that case the salary would be that specified. And if it was not known or it was differed over then the salary would be the market salary.

#### **Article 155**

**The salary is to be determined according to the benefit of the work, or the benefit of the employee, and not according to the knowledge and/or qualifications of the employee. There have to be no annual increments for employees. Instead, they have to be given the full value of the salary they deserve for the work they do.**

The evidence for the article is the *Shari'ah* definition of hiring, because the *Shari'ah* definition is a *Shari'ah* rule which is the same as a *Shari'ah* principle because it is deduced from a *Shari'ah* evidence or evidences through a correct *Ijtihad*. Accordingly, it is considered an evidence for the issue that it applies to in the same manner that the *Shari'ah* rule is considered an evidence for the issue that it applies to, and the *Shari'ah* text is considered in both of these situations to be an evidence for the *Shari'ah* rule which applies to the issue, or for the *Shari'ah* definition that applies to the issue. The *Shari'ah* definition of hiring is “*a contract upon an exchange of a service for remuneration*”, and the service in the case of the employee is either the service of work that he carries out, such as an engineer, or a personal service such as the servant; these two types of services are the ones that the contract can apply to, and it is not correct that anything else has a contract upon it. From this, it is seen that the contract cannot apply to the service of the level of knowledge, or amount of qualifications, but rather upon the service of the employee, either by providing personal service or his work. The salary is in exchange for this service that the contract applies on, and for this reason what is termed as the grade of civil servant, in other words how the value of the salary is set, is not done in accordance with the qualification or knowledge, but rather it is only set according to the person themselves if they were going to undertake the work themselves such as a servant, or according to the use of the work they were doing and their experience such as an engineer, and nothing else, because this is in harmony with the definition.

#### **Article 156**

**The State has to guarantee the living expenses of the one who has no money, no work and no relatives responsible for his financial maintenance. The State is responsible for housing and maintaining the disabled and handicapped people.**

The evidence for this article is what was mentioned as evidence in article 153, which was the words of the Messenger ﷺ “*Whoever leaves behind an orphan (kall) then he is upon us, and whoever leaves behind wealth then it is for his inheritors*” (agreed upon from Abu Hurayrah), and the *kall* is the weak, and encompasses the poor, anyone incapable and the physically disabled. And the words of the Messenger ﷺ “*and whoever leaves behind a debt or a loss (diyya') then come to me, since I am his protector*” (agreed upon from Abu Hurayrah), encompass everyone left at a loss or in perdition including the poor, incapable, physically disabled and the like.

#### **Article 157**

**The State works to circulate the wealth amongst the subjects, and prevents it from circulating solely amongst a particular sector of society.**

The evidence is the verse from Surah Al-Hashr, the words of Allah (swt), “*in order that it may not become a fortune used by the rich among you*” (TMQ 59:7), and so this gave the reason (*illah*) as to why the booty from *Banial-Nadeer* was given to the emigrants rather than to the supporters (*ansar*) from Madinah, even though they were all Muslims, and no one from the *Ansar* apart from two poor men, Abu Dajana and Sahl b. Hanif, were given anything. The reason given was in order that the wealth did not circulate amongst the rich alone, and

this is a *Shari'ah Illah* which is present and absent according to the presence and absence of its cause. Accordingly, any time that a disparity is present, the *Khalifah* must work to achieve balance by putting this verse into practice, because from one angle it has an *Illah* present, and also because its words are general even though the reason for the verse was specific, and the *Shari'ah* principle is “*the consideration is given to the generality of the words and not to the specificity of the cause*”, and so it is applicable at all times.

#### **Article 158**

**The State makes it easier for all the citizens to be able to satisfy their extra (non-essential) needs, and to achieve equality in society in the following way:**

- a. By giving out liquid and fixed assets from the funds of the *Bayt al-Mal*, and from the war booties, and anything similar.**
- b. Donating some of its cultivated land to those who have insufficient land. Those who possess land but do not use it are not given more. Those who are unable to cultivate their land are given financial assistance to enable them to cultivate it.**
- c. Giving help to those unable to repay their debts by providing funds from the *Zakat*, and the war booty, and anything similar.**

The evidence for clause “a” is that Allah (swt) gave the wealth of the *Banial-Nadir* to the Prophet ﷺ in order for him to give it to whom he wished, and the Messenger ﷺ gave it specifically to the emigrants rather than the *Ansar*, and did not give any of the *Ansar* anything apart from two men from amongst them. The wealth of *Bani al-Nadir* was part of the booty, and similar to the booty is the rest of the wealth which is derived from fixed sources such as the land tax, because its expenditure has been placed under the responsibility of the *Imam* to spend according to his opinion and *Ijtihad*, except for if the text came explaining where it should be spent such as the expenditures of *Zakat*, in which case it would not be allowed to spend it except upon whatever the text mentioned. This is only with respect to the fixed sources of income, but as for the wealth collected from the taxes upon the Muslims, it cannot be given out because the text was regarding the booty and analogy upon it is made with anything similar, which are the fixed sources of income for the *Bayt al-Mal*.

As for clause “b” its evidence is the action of the Messenger ﷺ when dividing the land; it is reported from Amru Bin Hareeth who said “*The Messenger of Allah ﷺ drew me (an area) for a home in Madinah with his bow, and said “I will give you more”*” (reported by Abu Dawud and he considered it *Hasan*), and in a narration reported by Ahmad and authenticated by al-Zayd and also reported by al-Bayhaqi, with both of them through ‘Alqamah b. Wa’il from his father, “*That the Prophet ﷺ granted him some land in Hadramout, He said: he sent Mu’awiyah in order to give it to him*”. And “*Tamim al-Dari asked the Messenger of Allah ﷺ to grant him parts of the land that used to belong to him in al-Sham before it was conquered, which was the city of Hebron, and so the Messenger ﷺ granted it to him*” (reported by Abu ‘Ubayd in *al-Amwal* and Abu Yusuf in *al-Kharaj*). Another evidence is what Umar Bin al-Khattab (ra) did in giving the farmers of Iraq some money from the *Bayt al-Mal* in order for them to cultivate their land, and the companions remained silent over it, and so it is considered an *Ijma’*.

As for clause “c”, its evidence is what Allah (swt) mentioned regarding the *Zakat* wealth with His (swt) words “*and for those in debt*” (TMQ 9:60), and the words of the Messenger ﷺ “*I am more responsible over every believer than himself, so whoever left behind a debt then it is upon me, and whoever left wealth then it is for his inheritors*” (reported by Muslim from Jabir), and the *Shari'ah* ordained that the wealth from the booty can be spent by the *Imam* according to his opinion and *Ijtihad*, which could include repaying the debts.



#### **Article 159**

**The State supervises agricultural affairs and its produce in accordance with the needs of the agricultural policy which is to achieve the potential of the land to its greatest level of production.**

Its evidence is the words of the Prophet ﷺ ***“The Imam is a guardian and he is responsible for his subjects”*** (reported by al-Bukhari from ‘Abd Allah b. Umar), and supervising the general agricultural affairs is part of managing the affairs, which is why it is part of the obligation of management upon the *Imam*. However, the State does not undertake the agricultural affairs directly, because the Messenger ﷺ left it to the Muslims; he said in the narration regarding the pollination of the trees ***“You are more knowledgeable in your worldly affairs”*** (reported by Muslim from Aaisha (ra) and Anas, and Ibn Hazm reported it in *al-Ihkam* with his own chain and authenticated to Aaisha (ra) and Anas).

In another report from Anas, ***“The Prophet ﷺ passed by a people who were pollinating the trees, and so he said: If you didn’t do it, it would be better. He said: so they did that and the yield declined. He ﷺ passed them and said: “What is wrong with your trees”, and they said: You said to do such and such. He ﷺ said: You are more knowledgeable in your worldly affair”***. And in the report with Ahmad from Anas, the Messenger of Allah ﷺ said ***“If it is something from your worldly affairs, then you are more knowledgeable about it, and if it was from the issues of the Deen, then come to me”***. This indicates that the State does not directly supervise the agriculture, nor undertake it, but rather undertakes general supervision by organising what is permitted according to the various styles which are selected in order to increase and strengthen the agriculture, facilitating it to ease any issues, as well as planning an agricultural policy which would lead to raising the production levels.

#### **Article 160**

**The State supervises the whole affairs of industry. It directly undertakes those industries which are connected to whatever is part of the public property.**

This article has two halves: firstly, supervision over the whole of industry; secondly, directly undertaking some of the industrial affairs. As for the first half its evidence is that the Messenger ﷺ consented to private ownership of factories such as those for shoes, swords, clothes and other things. ***“The Prophet ﷺ had a ring made for him”*** (reported by al-Bukhari from ‘Abd Allah Bin Umar) and ***“He ﷺ had a pulpit made”*** (reported by al-Bukhari from Sahl Bin Sa’d al-Sa’idi). This indicates that factories are run by private individuals and not the State. Therefore, it is not different to agriculture. However, it is part of the managing of the affairs that Allah (swt) obligated upon the State with the words of the Prophet ﷺ ***“The Imam is a guardian and he is responsible for his subjects”*** (reported by al-Bukhari from ‘Abd Allah Bin Umar), and so the State has to generally supervise the industrial issues by organising what is permitted according to the various styles which would assist the advancement of production, and by opening markets for it, and making sure raw materials are available, and so on.

As for the second half, the evidence for it is the *Shari’ah* principle ***“The factory takes the rule of what it produces”***; it is reported from Anas that ***“the Messenger ﷺ cursed ten to do with alcohol: the one who ordered its pressing (of the grapes etc.) and the one who pressed it, the one who carried it and the one it was carried to”*** (reported by Abu Dawud from Ibn Umar and authenticated by Ibn al-Sakn). And so the production of pressing the grapes for

alcohol was prohibited by the Messenger ﷺ because it produces alcohol, even though pressing is permitted; so the production took the rule of the material that it produced, and this is general. Based upon this, the factory takes the rule of the material it produces, and so the factories that produce anything considered part of public property are part of public property, since they take the rule of what they produce.

Public property belongs to all the Muslims, and it is not allowed for an individual or group of individuals to independently own it such that others are prevented from its ownership. From this understanding, the *Khalifah* is the one who manages these factories and prevents private ownership of them, since private ownership would prevent others from being able to gain ownership, and therefore the State has to directly manage the factories which are part of public property, such as those for oil extraction, steel and gold mining and so on. However, it is treated as a specific interest in terms of its income, expenditure and the rest of its affairs, and its profits are placed in the *Bayt al-Mal* in a section specified for it, since it is not considered to be part of the State property, but rather part of public property.

#### **Article 161**

**Foreign trade is assessed on the basis of the citizenship of the trader and not the origin of the goods. Merchants from countries in a state of war with the State are prevented from trading in the State, unless given a special permission for the merchant or the goods. Merchants from countries that have treaties with the State are treated according to the terms of the treaties. Merchants who are subjects of the State are prevented from exporting any goods that the country needs, or any goods which strengthen the enemy militarily, industrially or economically. However, they are not prevented from importing any property they own. Countries with whom there is a real war between us and their people (such as Israel) are excluded from these rules, since in all relationships with them they take the rules of the actual belligerent countries, whether those rules were linked to trade or not.**

This encompasses three issues: firstly: the merchandise is assessed on the basis of the citizenship of the trader, not its origin; secondly: the rules regarding the trader differ according to their citizenship; thirdly: the circumstances in which import and export are forbidden.

As for the first issue: the evidence is that the *Shari'ah* rules related to the foreign merchants are the rules of trade, and the rules of entering property from the domain of war (*Dar Al-Harb*) into the domain of Islam (*Dar Al-Islam*), and taking property out of *Dar Al-Islam* into *Dar Al-Harb*, and the rules regarding strengthening the enemies against the Muslims. The *Shari'ah* rule is the address of the Legislator (swt) connected to the actions of the worshipper, which is why foreign trade is connected to the trader and not to the origin of the goods, since the rules of the *Shari'ah* connected to foreign trade were only revealed with respect to individuals. The revealed rule connected to property is only connected to it from the angle of it being owned by a specific individual, not only from the angle that it is property. In other words, in consideration that it is property owned by a specific person and not only in consideration that it is a property. Accordingly, the rules connected to foreign trade are the rules connected to the individuals from the angle that the *Shari'ah* looks at them and their wealth, in other words from the angle of the rule of Allah (swt) regarding them, and from the angle that the rule of Allah (swt) is in the wealth which is owned by them. From here it is seen that the rules of foreign trade are not connected to the origin of the goods but rather to the merchant.

As for the second issue, it is reported from the narration of Sulaiman Bin Buraydah from his father regarding the instruction of the Messenger ﷺ for the leaders of the armies that the Messenger ﷺ said to the leader **“Call them to Islam, so if they agree, accept it from them**

*and desist from fighting them. Then, invite them to migrate from their household to the household of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin. If they refuse, inform them they would be treated like the Bedouin Muslims, and they would proceed as the Muslims would, and they will have no share in the war booty or spoils unless they fought Jihad alongside the Muslims*" (reported by Muslim). The angle of deduction from this narration is the words of the Messenger ﷺ **"Then, invite them to migrate from their household to the household of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin"**, which mentions in the text that it was a condition to migrate in order to get the same privileges and obligations as the Muslims, in other words to be encompassed by the rules, and if they did not migrate then they would not have those privileges and obligations, and so the rules would not apply to them. Additionally, the Messenger ﷺ considered migration to the household of the *Muhajirin (Dar Al-Muhajirin)* as a condition to have a right over the war booty and spoils, and by analogy this applies to the rest of the properties, and so the one who does not migrate to *Dar Al-Muhajirin* is equally treated as the non-Muslims from the angle of the sanctity of their wealth, which means that the rules regarding property are inapplicable to them because they did not migrate to *Dar Al-Muhajirin*. And *Dar Al-Muhajirin* was *Dar Al-Islam*, and anything else was *Dar Al-Kufr* (domain of disbelief), which is why the Messenger ﷺ used to go out on expeditions to any land which was not part of *Dar Al-Muhajirin* as he assessed it to be *Dar Al-Harb*. However, if the inhabitants were Muslims he ﷺ would not fight against them nor kill them, but rather would invite them to come to *Dar Al-Islam*, and if they were non-Muslims he would fight them as was indicated by this narration, and also indicated by what was reported from Anas who said **"Whenever the Messenger of Allah ﷺ wanted to attack a people, he would wait until dawn, if he heard the Adhan (call to prayer) he would refrain, and if he did not hear it, he would attack after dawn"** (reported by al-Bukhari). So the Messenger ﷺ used to consider that anything outside of *Dar Al-Muhajirin* was *Dar Al-Harb*, in other words *Dar Al-Kufr*, even if its inhabitants were Muslims, and the rule regarding them is the rule for *Dar Al-Kufr* from the angle of the applicability of the rules, including the rules regarding property. There is no difference between the Muslims and non-Muslims other than that the Muslims are not fought and killed, and their wealth is not taken, whereas the non-Muslims can be fought and killed and their wealth can be taken. Other than this, the rules regarding them are the same, and this is the evidence for *Dar Al-Kufr* and *Dar Al-Islam*. Whoever resided in *Dar Al-Kufr* or *Dar Al-Harb* then their citizenship is to *Kufr* and so the rules regarding *Dar Al-Kufr* are applied upon them in entirety, irrespective of whether they were Muslim or not, except that the Muslim's blood and wealth are protected. Based upon them, the merchant from a warring nation (called a *Harbi*) cannot enter our lands whether they were Muslim or not, unless they were given assurances of security, because they are *Harbi*, and because the Messenger ﷺ said **"The protection of the Muslims is one, all of them proceed according to it"** (agreed upon from 'Ali), and he ﷺ said to Umm Hani **"O Umm Hani, we granted asylum to whoever you granted asylum to"** (agreed upon), and so the entrance of a *Harbi* into *Dar Al-Islam* is dependent upon him being giving assurances of security. And his wealth is also given security along with him, and it would require specific security assurances if he wanted to import it separate from him.

As for the one who has a covenant, then he is treated in accordance with his covenant, due to the words of Allah (swt) **"so fulfil their covenant"** (TMQ 9:4), and there is no difference between the Muslim and non-Muslim in this respect, because both of them are considered as *Harbi* since they carry the *Kufr* citizenship, and so they are treated as the *Harbi* who has a covenant.

The one who carries the Islamic citizenship, whether they were Muslim or *Dhimmi*, is not prevented from exporting and importing the goods they want, and in the same manner no custom duties are taken from them. As for not preventing them from importing or exporting any goods they want, this is due to the words of Allah (swt), **"and Allah permitted trade"** (TMQ 2:275), which is general and so encompasses all trade, irrespective of whether it was in

*Dar Al-Islam* or in *Dar Al-Kufr*, in other words it encompasses both domestic and foreign trade. There is no text that restricts this generality or prevents the Muslim or *Dhimmi* from exporting or importing wealth into or from *Dar Al-Islam*, and it is also general encompassing both Muslim and *Dhimmi*, and there is no text which prohibits the *Dhimmi* or restricts the permission to trade to Muslims. As for not taking any custom duty from them, this is due to what was reported by Abu Ubaid in *al-amwal* from ‘Abdal-Rahman b. Ma’qal who said: I asked Ziyad b. Hudayr: **Whom did you used to take a tenth from? He said – we did not use the traders from Dar al Harb similar to what they used to do with us when we go to them.” to tax Muslims nor the one who was under covenant. I said: Then whom you used to tax? He said:** And the *‘ashir* was the one who took a tenth from the goods which were entering *Dar Al-Islam* from *Dar Al-Harb*. These are the evidences for *Dar Al-Islam* and *Dar Al-Harb* and the lack of entry for a *Harbi* into *Dar Al-Islam* unless he is given an assurance of security, whether he was a Muslim or disbeliever, and to treat one who has a covenant in accordance with that covenant, and the general permission for the Muslim and *Dhimmi* to trade, which are the evidences for the second issue of this article.

As for the third issue, its evidence is the principle “*If one item of a permitted thing leads to harm, only that one item is prohibited, and the thing remains permitted*” which was deduced from the Messenger ﷺ forbidding the army from drinking from the wells of Thamud which were on the way to Tabuk. Therefore, every merchandise whose export would cause harm to the country, such as food, or whose export would strengthen the enemy against the Muslims, such as weapons and strategic materials, are prevented from being exported, irrespective of whether it was a Muslim, *Dhimmi*, a person who had a covenant or a *Harbi* who was engaged in their export. Similarly, this rule applies on the import of goods. If the export of these goods did not cause harm then they are not prevented from being exported or imported by the Muslim and *Dhimmi*, and the rules related to the one who has a covenant and the *Harbi* apply to them.

## **Article 162**

**All individual subjects of the State have the right to establish scientific research laboratories connected to life issues, and the State must also establish such laboratories.**

Scientific research is nothing more than knowledge which man can learn, and Allah (swt) permitted knowledge generally; He (swt) said “**Read in the name of your Lord who Created you**” (TMQ 96:1) and “**He has taught man that which he knew not**” (TMQ 96:5), and the Prophet ﷺ said “**Whoever Allah wants good for, he gives him knowledge of the Deen**” agreed upon from Mu’awiyah, and al-Bukhari reported a narration *ta’liq* (without the chain) but mentioned it decisively (that is – he considered it to be a narration): “**and the knowledge is only by learning**” and al-Hafiz also said in *al-fath* that the chain reaches back to the Prophet ﷺ.

These evidences indicate the permissibility of knowledge from the angle of it being knowledge, since His (swt) word “**Read**” is general encompassing reading of everything, and His (swt) words “**He has taught man that which he knew not**” (TMQ 96:5) includes all knowledge. The words of the Messenger ﷺ “**Indeed the knowledge...**” is the genus defined by *alif* and *lam* (the), so it is from the terms of generality. This all indicates that learning anything is permitted, and that any knowledge is permissible.

Accordingly, the generality of the evidences indicate the unrestricted permissibility of knowledge. Based upon this, any individual from the subjects of the State can seek knowledge, in other words any knowledge, and to use the necessary means to arrive at

scientific facts and truths, and so every individual has the right to initiate any research laboratories he wants, and to help whoever he pleases to establish laboratories.

These laboratories would be private property and would not be a part of public or State property. However, it is permitted for the State to possess such private property in its capacity as a semantic entity, just as any real person could own them. Its ownership of a laboratory would not make it the property of the State; rather it would remain private property, however it would be owned by the State and it would be part of the State's property while it remains a type of private property. When the State undertakes the establishment of laboratories, it is only doing it from the angle of managing the affairs of the subjects, and establishing the obligation that Allah (swt) put upon it which is to produce knowledge, part of which would include establishing laboratories.

#### **Article 163**

**Individuals are prevented from possessing laboratories producing materials that could harm the *Ummah* or the State, or materials that the *Shari'ah* forbade.**

Its evidence is the *Shari'ah* principle "*If one item of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted*", and laboratories whose private ownership leads to harm are prevented from being privately owned, such as nuclear laboratories and anything else whose private ownership would lead to harm.

#### **Article 164**

**The State provides free health care for all, but it does not prevent the use of private medical care or the sale of medicine.**

Healthcare is part of the interests and utilities which the people cannot do without and so it is considered to be from the essentials. The Messenger ﷺ ordered people to take treatment: "*A Bedouin came and said: O Messenger of Allah, should I take treatment? He said Yes, Truly Allah did not send a disease except that He sent its medicine with it, the one who knows it knows it and the one who is ignorant of it is ignorant of it*" (reported by Ahmad from Usama Bin Shareek). And in another version from al-Tabarani in *al-Mu'jam al-Kabir*, reported from Usamah b. Sharik "*We were with the Messenger of Allah, when some Bedouins came and said O Messenger of Allah, should we seek treatment? He said Yes, O Slaves of Allah seek treatment, truly Allah did not place an illness except that He laid down its cure and medicine*". And in Al-Tirmidhi also from Usamah b. Sahrir with the wording: "*The Bedouins said: O Messenger of Allah should we seek treatment? He said: Yes O Slaves of Allah! Do seek treatment, for truly Allah did not place an illness except that He laid down its cure and medicine, or he said the illnesses except for one. They said: O Messenger of Allah and what is that? He said: elderliness*", and Al-Tirmidhi said this narration is *Hasan Sahih*. Elderliness is the end of life, which is usually followed by death.

This indicates the permissibility of seeking treatment. Through treatment, benefit is gained and harm is prevented, so it is considered to be an interest, and on top of that the clinics and hospitals are a utility which the Muslims use for the sake of seeking treatment and cure, and so healthcare is therefore part of the benefits and utilities. The State is obliged to provide the benefits and utilities, because it is part of what the State must practically manage due to the words of the Messenger ﷺ "*The Imam is a guardian and he is responsible for his subjects*" (reported by al-Bukhari from 'Abd Allah Bin Umar). This is from the responsibilities of guardianship and for that reason it is obligatory upon the State to ensure it is provided to the people. From the evidences for that:

Muslim reported from Jabir who said ***“The Messenger of Allah sent a physician to Ubay b Ka’b, who cut a vein for him and then cauterised it”***.

Al-Hakim narrated in *al-Mustadrak* from Zayd b. Aslam from his father who said ***“I fell severely ill in the time of Umar Bin al-Khattab, and so Umar called a doctor for me, and so he warmed me up to the point I would suck on date pits due to the intense heat”***

Based upon this, it is obligatory upon the State to provide free medication and medical facilities, since it is part of the expenditures obligated upon the *Baytal-Mal* from the angle of being an interest and utility without recompense, and accordingly the State must provide all the health services without cost. This is the evidence that healthcare is part of what the State is obliged to provide to the people for free.

As for the permissibility of hiring a doctor, and paying him a fee, this is because seeking treatment is permitted (*mubah*); as mentioned previously the Prophet ﷺ said ***“O Slaves of Allah seek treatment”***, and since treatment is a service that the one paying for can achieve, therefore the definition of hiring is applicable to it, and there has been no prohibition narrated regarding it. Above that, it is reported from Anas ***“The Prophet ﷺ did hijama (blood-letting) with Abu Tiba, and paid him double, and he spoke to his masters and so they made it cheaper for him”*** (reported by al-Bukhari from Anas), and what is intended by master was his owners since he was owned by a group, as indicated by the report in Muslim. It is reported by Ibn ‘Abbas ***“The Prophet ﷺ did hijamah and paid a fee to the one doing it, and if it was forbidden he wouldn’t have paid him”*** (reported by Ahmad with this wording, and by Muslim and al-Bukhari with a different wording). In those days *hijamah* was part of the treatments that people would care for their health with, which indicates that to pay a fee for it is permitted. And similar to the fee for a doctor, is the selling of medicines since it is something permitted encompassed by the words of Allah (swt) ***“And Allah permitted trade”*** (TMQ 2:275), and there is no text narrated to forbid it.

## **Article 165**

**Development and investment by foreign funds within the State are forbidden. It is also prohibited to grant franchises to foreigners.**

The two words “*investment*” and “*development*” are Western terms. The term investment means that the money itself produces profit, which is by yielding interest. As for the term development, it means to use the money in industry, agriculture or trade, in order to produce profit.

Based upon this understanding, all investment is not allowed, since it is interest and interest is forbidden (*haram*). Although the text regarding foreign investment is explained by the rule that it is prohibited to engage in interest with a *Harbi*, in the same way as a *Dhimmi* and a Muslim without any difference between them due to the generality of His (swt) words ***“and prohibited interest”*** (TMQ 2:275), and since there is no authentic text which specifies it then it remains general. It cannot be said that the narration ***“there is no interest between the Muslims and the enemy in the Dar al-Harb”*** specifies it since the narration is weak as it is Mursal from Makhul. Shafi’i said in *al-Umm* that it is not confirmed and it is not an evidence, and Ibn Muflih said the report is unknown - so it is not suitable as an evidence to prove the permission of interest, and nor does it specify/restrict the verse, and so the verse remains general. Therefore, foreign investment is forbidden in the same way as investment from the subjects (Muslims and *Dhimmis*) because it is interest and thus it is forbidden.

As for the prohibition of development through foreign funds this is because it leads to *haram* in agreement with the rule “*the means to the prohibited (haram) are prohibited (haram)*”, and the strongest possibility is enough to make something prohibited, so what about when foreign development leads to a confirmed *haram*? It is confirmed by the senses and by information whose authenticity is trusted that the use of foreign funds for development in the country is the method to extend the influence of the disbelievers over them, and extending their influence in the land is *haram*.

As for concessions, it is also a Western term, and has two meanings. Firstly, that a particular foreign State is given special rights with the consideration that they are an obligation for that state upon the Islamic State, such as the concessions that the Islamic State gave in the nineteenth century while it was weak, and such as the concessions that Britain and France used to have in Egypt, such as the foreign subjects being judged according to the laws of their country rather than the laws of Islam, and the example of the State having no authority over the foreigners. These concessions, with this meaning, are forbidden from two angles; firstly: they take away from the sovereignty of the Islamic State, and give the disbelieving States authority over the Islamic lands, which is something decisively forbidden (*haram qat'an*); secondly: they prevent the rule of Islam being applied upon the non-Muslims in the Islamic State and make the rule of disbelief (*Kufr*) applicable in its stead, which is also decisively forbidden. Due to this, concessions according to the meaning mentioned are prohibited.

As for the second meaning of concessions, it means to give a permit to carry out a permitted action, and those without the permit would be forbidden. This is all forbidden, irrespective of whether it was being applied to the foreigner or not, since any permitted issue is permitted for everyone, and so to restrict it to a particular individual while prohibiting others, is forbidding something which is permitted for the people. It is correct that the State can organise the permitted issues according to the styles which would enable it to benefit from them in the best manner; however it is not correct that this organisation would prohibit anyone from something that was permitted.

Accordingly, concessions according to this meaning are also prohibited for the foreigner and the one who was not a foreigner, and the text mentions foreigner since giving the concession to him is a cause of harm, since it gives him control over the country, as is the case with the oil concessions.

#### **Article 166**

**The State issues its own independent currency, and it is not permitted for it to be linked to any foreign currency.**

The evidence for the first half of this article is the evidence that gave the *Imam* the right to manage the affairs with the words of the Prophet ﷺ “*The Imam is a guardian*” (reported by al-Bukhari from ‘Abd Allah Bin Umar), and organising the permitted issues is from the management of the affairs. To create a specific currency for the State is from the permitted issues, so it is permitted for the State to create a specific currency, and in the same way it is permitted for the State not to do so. The Messenger ﷺ did not create a specific currency based upon specific consistent characteristics, and in his ﷺ time the State did not have its own currency, and the situation remained the same throughout his time and the time of the righteous guided *Khulafaa*’ after him, and during the beginning of the Umayyad period up until the time of ‘Abd alMalik b. Marwan who decided to change everything from the gold and silver that was being used, whether minted or not, to the currency with an Islamic minting and of equal weight without any disparity. Consequently, he minted Dirhams from silver and Dinars from gold, and from that time the Islamic *dinars* and *dirhams* were minted whereas they were not known before then. So to issue a currency is permitted and is not obligatory upon the State, unless safeguarding the economy of the land from ruin and

protecting it from its enemies required the issuing of a currency, at which point its issuance would be obligatory, in accordance with the *Shari'ah* principle "*Whatever is necessary to accomplish a duty is in itself a duty*".

As for the second part of the article, the evidence for its forbiddance is that it would make the State follow whichever disbelieving state it links its currency too, as was the scenario when Iraq used to be linked to Sterling, and over and above that it would be at the mercy of that disbelieving state from the financial angle. Both of these issues are forbidden, and the *Shari'ah* principle states that "*the means to the prohibited (haram) are prohibited (haram)*", and so to link the currency of the Islamic State to a foreign State is forbidden.

#### **Article 167**

**The currency of the State is to be restricted to gold and silver, whether minted or not. No other form of currency for the State is permitted. The State can issue something as a substitute for gold or silver provided that the *Bayt al-Mal* has the equivalent amount of gold and silver to cover the issued coinage. Thus, the State may issue coinage in its name from brass, bronze or paper notes and so on as long as it is covered completely by gold and silver.**

When Islam decided the rules of selling and hiring, it did not specify what would be exchanged for the goods or service and benefit such that upon that basis that thing would become obligatory. Rather it left man to exchange using anything as long as there was mutual consent for that exchange, and so it is permitted to marry a woman upon teaching her sewing, and to buy a car in exchange for working in the factory for a month, and it is permitted to work for an individual for a specific amount of sugar. The *Shari'ah* left the issue of exchange open for people so that they could base it upon whatever they wanted, which is proven by the generality of the evidences for trade and hiring such as "*And Allah permitted trade*" (TMQ 2:275) – for anything and by anything, and the narration "*Pay the employee his wage before his sweat dries*" (reported by Ibn Maja); in other words that the worker should receive his salary when he finishes his work, whatever the nature of that wage. Additionally, these things that are used for exchange are not actions such that they would in origin be restricted (to the evidence) and so their permission would require an evidence, but rather they are things. The origin regarding things is that they are permitted as long as there is no evidence to prohibit them, and there is no evidence reported which prohibits using anything as an exchange, and so accordingly it is permitted to carry out *Shari'ah* transactions with them whether buying and selling, giving as a gift or exchanging with the exception of anything where there is a text prohibiting its exchange. Based upon this, exchanging goods for money, and money for goods is permitted without any restrictions, except for exchanging money with money because it has specific rules and so it is restricted by those rules. In the same manner, exchanging effort for money, and money for effort, is permitted without restriction unless the goods or service have been mentioned in a text as being forbidden. Accordingly, to exchange goods for a specific form of money, and in the same manner to exchange a service or effort for a specific unit of money, is also permitted without any restriction, whatever the unit of that money may be. So irrespective of whether that unit doesn't have anything backing it, such as fiat currency, or if it was backed by a specific amount of gold, such as secured paper currency, or if the unit was backed by gold and silver to its value such as representative paper currency, all of them are considered to be allowed to trade with. Therefore it is correct to exchange goods or services for any unit of money and it is permitted for the Muslim to sell for any currency and to buy with any currency and to hire with any currency and to be employed for any currency.

However, if the State wanted the lands that it ruled to adopt a specific unit of money, such that it implements the rules of the *Shari'ah* related to finance from the angle of it being wealth such as *Zakat*, exchange, interest and anything else, and the rules related to the individual



who owned the wealth such as blood money, the minimum stolen amount that would be considered theft, and so on, then it does not have an open hand to use any specific monetary unit, but rather it is restricted to use only a specific type of money and no other. The *Shari'ah* specified the monetary unit, from a specific genus which the text mentioned, and this is gold and silver. So if the State wanted to issue a currency, it is restricted to the money being gold and silver and nothing else. The *Shari'ah* did not leave the State to issue any money it pleased, from any type it wanted, but rather it specified the monetary units which the State could make as a currency for itself if it wanted to issue a currency with specific monetary units; which are gold and silver alone. The evidence for this is that Islam connected to gold and silver with fixed rules, and without any change. So when blood money was specified, it was specified from a specific amount of gold, and when the cutting of the hand of the thief was obligated, the minimum amount that the punishment would be applied for was specified from gold; the Messenger ﷺ said in his message to the people of Yemen ***"The believing soul (if killed) is one hundred camels, and the people of money it is one thousand dinars"*** (mentioned by Ibn Qudamah in *al-Mughni* from what was reported from 'Amru b. Hazim from the letter of the Messenger of Allah to the people of Yemen). And in the report in *al-Nisa'i* regarding the letter of the Messenger of Allah ﷺ to the people of Yemen ***"and upon the people of gold it is one thousand dinar"*** in place of ***"people of money"***. And he ﷺ said ***"Do not cut (the hand) except for a quarter of a dinar and more"*** (reported by Muslim from Aaisha (ra)).

This defines specific rules with *dinars* and *dirhams*, and the weight of the *dinar* measured by gold, and the *dirham* by silver, which made them monetary units analogous to the value of objects and effort. This monetary unit is the currency and its basis. The fact that the *Shari'ah* textually connected gold and silver to the *Shari'ah* rules when these rules were related to currency is evidence that the currency can only be from gold and silver alone.

Additionally, when Allah (swt) obligated *Zakat*, He (swt) obligated it upon gold and silver alone, and specified the *nisab* from gold and silver, and so the consideration that the *Zakat* upon money is by gold and silver specifies that the currency is gold and silver, and if there was a currency other than them then *Zakat* for money would have been obligatory upon it. Because there is no text for *Zakat* upon money except upon gold and silver, this indicates that there is no consideration for any other type of money. Also, the rules of currency exchange which were revealed regarding monetary transactions alone addressed gold and silver alone and all of the financial transactions mentioned in Islam are dealt with in gold and silver. And currency exchange is to sell money for money, either to sell one type of money with itself, or to sell it for another type of money, and by another expression currency exchange is to sell a currency for a currency. The *Shari'ah* specified currency exchange – which is a purely monetary transaction – with gold and silver alone, which is a clear evidence that the currency must be from gold and silver and nothing else. He ﷺ said ***"Sell gold for silver as you please"*** (reported by al-Bukhari from Abu Bakra). And Muslim reported similar to it through Ubada Bin al-Samit. The Messenger ﷺ also said ***"Gold for silver is interest unless it is exchanged hand to hand"*** (agreed upon from Umar).

Above that, the Messenger ﷺ specified gold and silver as money, and made them alone the measures of monetary value which the values of goods and efforts were measured against, and upon which basis transactions were carried out. The measures for this currency were the *awqiya*, the *dirham*, the *daniq*, the *qirat*, the *mithqal*, and the *dinar*. These were all well known and famous at the time of the Prophet ﷺ, and the people would transact with them. And it is confirmed that he ﷺ consented to them. All of the trade and marriages took place with gold and silver, as has been confirmed by several authentic narrations, and so the fact that the Messenger ﷺ made gold and silver the currency, and the fact that the *Shari'ah* linked some of the *Shari'ah* rules with them alone, and that *Zakat* upon money is limited to them, and currency exchange and financial transactions were limited to them, are all clear evidence that the money of Islam is only gold and silver and nothing else.

However, it is necessary to be clear that the fact that the *Shari'ah* specified the currency that the State can issue as being monetary units from gold and silver, does not mean that the State restricts the exchanges between the people in the lands which are ruled by this currency, rather it means that the *Shari'ah* rules which the *Shari'ah* specified the use of these specific monetary units cannot be carried out other than in accordance with this money. As for general exchanges, they remain permitted as brought by the *Shari'ah*. It is not permissible for the State to restrict them to a particular unit; in other words it is not permissible to restrict them to its or any other currency, since this restriction would be the forbiddance of something permitted, which is not permitted for the State to do. However, if the State thought that permitting any other currency in the lands it had authority over would lead to damaging its currency, its finance or its economy, in other words would lead to harm, then it would be permitted to prevent it in accordance with the principle *"the means to the prohibited (haram) are prohibited (haram)"*. In the same manner, if it thought that a particular currency would lead to that harm, then it could prohibit that currency in accordance with the rule *"If one type of a permitted thing leads to harm then only that one is prohibited, and the thing remains permitted"*. This is also applied to exporting the currency of the State, and importing and exporting foreign currency, in the same way that it is applied upon the transactions within the State.

#### **Article 168**

**It is permissible to have exchange between the State currency and the currency of other states like the exchange between the State's own coinages. It is permissible for the exchange rate between two currencies to differ provided the currencies are different from each other. However, such transactions must be undertaken in a hand-to-hand manner and constitute a direct transaction with no delay involved. The exchange rate can fluctuate without any restriction as long as it is between two different currencies. All citizens can buy whatever currency they require from within or outside the State, and they can purchase the required currency without obtaining prior permission or the like.**

Its evidence are the words of the Prophet ﷺ *"Sell gold for silver and silver for gold as you please"* (reported by al-Bukhari from Abu Bakra), and it is reported from Malik b. Aws al-Hadathan that he said *"I came and asked who would exchange some Dirhams, whereupon Talha Bin 'Ubayd Allah, who was sitting with Umar b. al-Khattab, said: "Show us your gold, and then come back to us at a later, after our servant comes we would give you your silver". Upon this Umar said: "No by Allah, you shall give him his silver or return his gold to him, as the Messenger of Allah said: "Gold for silver is interest unless it is exchanged hand to hand""* (reported by Muslim).

It is reported that al-Bara' b. 'Azib and Zayd Bin Arqam used to be partners, and so they bought silver for money and a deferred payment, and when the Messenger of Allah ﷺ heard about this he ﷺ ordered them with the words *"Whatever was paid by money is permitted, and whatever was for a deferred payment must be returned"* reported by Ahmad from Abu al-Minhal, and al-Bukhari reported from Sulaiman Bin Abi Muslim who said *"I asked Abu al-Minhal about money exchange from hand to hand. He said, "I and a partner of mine bought something partly in cash and partly on credit." al-Bara' b. 'Azib passed by us and we asked about it. He replied, "I and my partner Zayd Bin Al-Arqam did the same and then went to the Prophet and asked him about it. He said, 'Take what was paid by money and leave what was on deferred'"*; in other words they were currency traders. These narrations are evidence for the permissibility of currency exchange, and this can take place in domestic transactions as well as foreign transactions, so just as the gold of a currency can be exchanged for its silver and vice versa, in the same way foreign money can be exchanged for local money, irrespective of whether that was done domestically or outside the country, and when two different currencies are exchanged there is a difference between them called the

exchange rate. The exchange rate is the proportion between the weight of pure gold in the currency of a state and the weight of pure gold in the currency of another state. For this reason, the exchange rate will change according to the change in this proportion and according to the change of price of gold in the countries.

The rules of exchange between silver and gold apply to contemporary paper money because the *Illah* (money and value) are present in it due to law of the State binding monetary transactions with it. That is because the narrations regarding exchange are reported to do with minted gold and silver as names of a genus, which has no understanding derived from it nor is any analogy made to it, and in the same manner the reports came to do with *dinar* and *dirham* coinage, and from this the *Illah* of money can be derived, in other words its use for prices and wages, and so analogy can be made from that. So in the narration of Malik b. Aws mentioned previously he used to exchange *dirhams*, and *dirhams* is a word which is understood as money. And so accordingly whatever is applied to the exchange between gold and silver in terms of what is permitted and prohibited is applied to exchange between fiat currency according to the contemporary laws of states, in other words the exchange between one genus must be exchanged on the spot and in equal amounts, and exchange between two different types must be done on the spot, but the price between the two can be as you please.

The *Shari'ah* rule regarding exchange rate is that it is permitted, and is not restricted by anything, since currency exchange is permitted, and so accordingly the price of exchange (exchange rate) is permitted. Hence, anyone can buy a currency which he wants according to the price which he desires, and all of that falls under the permissibility of exchange.

This is the proof of this article for the permissibility of currency exchange, and the permissibility for its price to fluctuate.

#### **Article 169**

**It is completely prohibited to open banks, and the only one permitted will be the State bank, and there are no transactions upon interest. This will be dealt with by a particular department of the *Bayt al-Mal*. Financial loans will be undertaken in accordance with the rules of the *Shari'ah* and the financial and currency transactions will be facilitated.**

The work of the bank falls under three types: interest based transactions such as bonds and credits, transferral transactions such as cheques and deposits.

The transferral transactions and deposits are both permitted according to the *Shari'ah* and the evidence for that are the evidences for transfers and the evidences for trusts. So it is permitted for a Muslim to open a bank in order to provide transferral transactions and services for deposits and whatever else that are similar from whatever are permitted by the *Shari'ah* such as currency transactions. In such a case, opening a bank would not be considered forbidden, since only the bank which operates with interest is forbidden. However, these transactions do not make large profits or its profits could only help in establishing something similar to the shops for currency traders. It would not be possible for anyone to open a bank with such money due to the lack of capability to make enough profits for it, since the profits from transfers and deposits, and the profits from currency exchange transactions are very small compared to the profits from interest, and the large profits are the profits which are from investments in interest based transactions and so these are the profitable investments. Accordingly the profits from transfers, deposits and currency exchange transactions would not be sufficient to open banks in the meaning they are known as in the world today, but rather it would only be sufficient to open shops with limited services, such as the shops of currency traders, which is not applicable to what are known as banks today. The opening of banks could not occur except with interest based transactions, and the bank is only opened for the sake of interest based transactions, and interest is forbidden (*haram*) according to decisive

Qur'anic text ***“and forbade interest”*** (TMQ 2:275), and for that reason opening a bank according to its current understanding is forbidden.

However, the giving of loans is permitted without restriction, due to the words of the Messenger ﷺ ***“There is no Muslim who gives a Muslim a loan twice, except that one of the times is counted as charity”*** (reported by Ibn Maja from ‘Abd Allah b. Mas’ud), and it is reported from Anas who said ***“The Messenger of Allah ﷺ said “On the night of ascent, I saw written on the door of Paradise (the reward of) Charity is ten times and (the reward of) the loan is eighteen times, so I said O Jibril, how is the loan greater than charity? He said Because the one who asks, asks, and he has something, and the one who seeks a loan does not seek it except due to a need””*** (reported by Ibn Maja).

Likewise, deposits are permitted due to the words of Allah (swt), ***“Truly Allah commands that you should render back the trusts to those to whom they are due”*** (TMQ 4:58), and He (swt) said ***“then if one of you entrust the other, let the one who is entrusted discharge his trust (faithfully)”*** (TMQ 2:283), and due to the words of the Messenger ﷺ ***“Give the trust to the one who entrusted you, and don't betray who betrayed you”*** (reported by Al-Tirmidhi from Abu Hurayrah, and he said that the narration is *Hasan gharib*). And it is reported about him ﷺ ***“that he had some deposits with him, and so when he wanted to make Hijrah (emigration to Madinah) he gave them to Um Ayman and ordered Ali to return them to their owners”*** (as reported by Ibn Qudamah in *al-Mughni*).

Transfer of loans is permitted due to the words of the Messenger ﷺ ***“The delay (of payment) by a rich person is oppression, and if one of you passes (his debt) onto someone rich then accept it”*** (reported by Muslim), and in a version by Ahmad in *al-Musnad* ***“whoever transferred his right to a rich person then accept it”***.

These three transactions which the bank undertakes are permitted by the *Shari'ah* and the only thing forbidden is taking interest upon loans. The bank cannot be opened and operate except with interest, so therefore it is imperative to provide these services to people without interest, since they have become part of peoples' affairs and accordingly it is necessary for the State to open a bank as a branch of the *Bayt al-Mal*. Then it would undertake these three transactions according to the opinion and *Ijtihad* of the *Imam*, because they are part of the permitted issues whose management is run according to his opinion and *Ijtihad*, and so this is the evidence that the State must open a bank which would undertake the settling of peoples' affairs.

## The Education Policy

### Article 170

**It is imperative that Islamic 'Aqidah is the basis for the education curriculum. The syllabi and the ways of teaching are all drafted in a manner that does not deviate from this basis.**

It is said linguistically: a man learns knowledge ('ilm) – he arrives at the true knowledge, and he learns something – he knows it. In the *al-Muhit* dictionary it mentions “he learnt it is like he heard it as knowledge...and knowledge is in the person, and the man is a scholar, and knowledgeable”. This linguistic meaning is the basis of the meaning of the word knowledge and its derivations, and so the linguistic meaning of the word and its derivations are taken as long as there is no indication present which transfers it to the terminological meaning. What is meant by “education curriculum” is the linguistic meaning; in other words every knowledge. The education curriculum is an expression meaning the basis upon which the information which is desired to be learnt is built upon; from one angle this is the subjects which are encompassed by this information and from another angle how this information is going to be given. It therefore encompasses two issues: firstly, the topics for study, and secondly, the ways of teaching. Since the Islamic 'Aqidah is the basis of the Muslim's life, and the basis for the Islamic State, and for the relationships between the Muslims, in other words the basis for the society, then it is imperative that every piece of information that the Muslim receives is based upon the Islamic 'Aqidah. This is irrespective of whether the information was connected to his life, or to his relationship with others, or to the political situation in the State, or connected to any aspect of this life, or what came before it or what comes after it. The Messenger ﷺ used to first call people to Islam, in other words for them to embrace the Islamic 'Aqidah. Once they embraced Islam, he ﷺ started teaching them the rules of Islam, and so the 'Aqidah was the basis of the teachings of the Messenger ﷺ to the Muslims. When the sun was eclipsed at the time that his ﷺ son Ibrahim died, the people said that the sun had eclipsed due to the death of Ibrahim, and so he ﷺ said to them ***“The Sun and the Moon are two signs from the signs of Allah, they do not eclipse due to anyone's death nor due to anyone's life”*** (agreed upon). And so the Prophet ﷺ made the 'Aqidah the basis for the information he ﷺ gave regarding the solar and lunar eclipses. It is reported by al-Bukhari from Abu Sa'īd al-Khudri who said ***“We went out with the Messenger of Allah ﷺ in the expedition of Bani Mustaliq and we took some prisoners from the Arabs and so we wanted the women, and we were afraid about withdrawal (coitus interruptus), and we wanted to engage in it, and so we asked the Messenger of Allah ﷺ and he said “There is nothing upon you if you do it, since truly Allah has Written what He Created until the Day of Judgement”, and in another narration they asked the Prophet ﷺ about withdrawal and he ﷺ said “There is nothing upon you if you do it, since Allah has Written whoever He Created until the day of Judgement” and Muslim reported similar to this. So the Messenger ﷺ answered their question regarding withdrawal from the angle of whether it prevents pregnancy, and made belief in the Knowledge of Allah (swt) the basis of his ﷺ answer; in other words he ﷺ made the Islamic 'Aqidah the basis of his ﷺ answer. And there are several narrations which indicate that making the Islamic 'Aqidah the basis for the education curriculum is an obligatory issue upon the State, and that it is not permitted for it to stray from that at all. However, making the 'Aqidah the basis for the education curriculum does not mean that every piece of information emanated from it, because that was not requested by the Shari'ah. This also contradicts the reality, since not every piece of information emanates from the Islamic 'Aqidah, since the 'Aqidah is specific to beliefs and laws, and has no relationship to anything else. Rather, the meaning of making it the basis for the education curriculum only***

means that all the information connected to beliefs and laws must emanate from the Islamic 'Aqidah, since that is what the 'Aqidah came with. As for with respect to any information other than beliefs and laws, the meaning of making the Islamic 'Aqidah the basis for it is that these information and laws should be built upon the Islamic 'Aqidah; in other words the Islamic 'Aqidah is used as the criterion, so anything that contradicts it is rejected and not believed in, and whatever does not contradict it is permitted to be accepted. So the 'Aqidah is the criterion for acceptance and beliefs.

As for the angle of information and learning, there is nothing that prohibits it from being learnt, since the evidences which encourage seeking knowledge are general; the Prophet ﷺ said ***"Seeking knowledge is obligatory"***, al-Zarkashi said in *al-Tadhkirah* "and al-Hafiz Jamal al-Dinn al-Mizzi said: this is reported from many paths such that it reaches the level of a *Hasan* narration", and the word "knowledge" which is general covering all knowledge that is beneficial. And Abu Dawud, Ahmad, Ibn Hibban, and al-Bayhaqi in *al-Shu'ab* all reported from Kathir b. Qays that he ﷺ said, ***"Whoever sets out on a path seeking knowledge, Allah sets him on a path from the paths of Paradise"*** and the word "knowledge" is general, covering all knowledge that is beneficial.

And in the noble Quran there are ideas and beliefs which contradict Islam such as ***"and nothing destroys us except time"*** (TMQ 45:24) and other such examples, which indicate the permissibility of learning those ideas which contradict the Islamic 'Aqidah. Accordingly, to learn information without adopting it or believing in it is permissible and there is nothing wrong with it, but what is prohibited is to adopt the ideas that contradict the Islamic 'Aqidah. For example, the idea of Darwin says: people evolved from apes, whereas Allah (swt) said ***"Verily the likeness of Isa before Allah is the likeness of Adam. He created him from dust, then (He) said to him: "Be" – and he was"*** (TMQ 3:59), and the communist theory of material evolution claims that material evolves eternally, and there is nothing else which developed it, and so there is no God, whereas Allah (swt) says ***"O you who believe, believe in Allah"*** (TMQ 4:136), in other words in His (swt) existence, and He (swt) says ***"Allah Who created the heavens and the earth and all that is between them"*** (TMQ 25:59). *The Book of Pre-Islamic (Jaahili) Literature* mentions that the story of Ibrahim was fabricated and that there is no substance in it but rather it was invented by the narrators, even though the story of Ibrahim is mentioned in the Quran and it tells it as a story that occurred in reality and so denying it is a rejection of the Quran. Therefore, these types of information and anything similar are not placed in the education curriculum if that would lead to them being adopted and believed in, and so therefore for example they would not be a part of primary education, since this would lead to it being adopted (by the young children learning). In the same manner, if it is made part of the curriculum, it is imperative that its incorrectness be explained and that its ideas are dismantled such that no one would adopt them or believe in them.

In this manner, the Islamic 'Aqidah is made the basis for the education curriculum, so it is made the criterion for adopting information from the angle of confirming it as true and believing in it, and not simply from the angle that it is simply information.

#### **Article 171**

**The education policy is to form the Islamic mentality and disposition. Therefore, all subjects in the curriculum must be chosen on this basis.**

#### **Article 172**

**The goal of education is to produce the Islamic personality and to increase peoples' knowledge connected with life's affairs. Teaching methods are established to achieve this goal; any method that leads to other than this goal is prevented.**

The reality of these two articles is that the meaning of the educational policy is the principle, or principles, upon which information is given. As for the goal of the education, this is the objective which the provision of that information is aiming for. So the education policy is the basis which is built upon and the goal of education is the intention which is intended by establishing it.

Therefore the education policy is connected to the subjects taught, and the goal of the education is connected to the methods of teaching. And the reality of man is that he comprehends things and actions, and so makes a judgement about them, and comprehends things and actions and so inclines towards them, and there is nothing which is outside of these two issues. The reality of information is that it is either information which develops the mentality in order to judge upon actions and things, and information about those actual actions and things in order to utilise them, and there is nothing which is outside of these two issues. Islam made the Islamic '*Aqidah*' the basis for the Muslim's life, and the basis for his thoughts, and in the same manner the basis for his inclinations. The verses of the Quran, and the narrations of the Prophet ﷺ which provoke thought, such as His (swt) words ***"and think deeply about the creations of the heavens and the earth"*** (TMQ 3:191), and the words of the Messenger ﷺ ***"Contemplation for an hour is better than a year of worship"*** (reported by al-Qurtubi in his *Tafsir*), are only because they provoke him to believe in Allah (swt). The verses and narrations which mention inclinations, such as His (swt) words ***"Say: if your fathers"*** until His (swt) words ***"are more beloved to you than Allah and His Messenger"*** (TMQ 9:24), and the Messenger's ﷺ words ***"No one of you truly believes until I am more beloved to him than his father and his son and all of the people"*** (agreed upon from the narration of Anas), are only mentioned as inclinations restricted by the Islamic '*Aqidah*'. Therefore it is imperative that the judgement of a Muslim upon actions and things is built upon the basis of the Islamic '*Aqidah*', and in the same manner it is imperative that his inclinations towards actions and things are built upon the '*Aqidah*'.

When it is the information which forms his mentality, from the angle of the judgement upon things, and forms his disposition from the angle of the inclinations towards things, accordingly it is imperative that all of this information is built upon the Islamic '*Aqidah*', irrespective of whether it is information to develop the mentality, or information which is adopted in order to utilise actions and things. In other words it is imperative that the information which forms the mentality of the Muslim be built upon the Islamic '*Aqidah*', and in the same manner it is imperative that the information which forms his disposition is built upon the '*Aqidah*'. And upon this basis, it is imperative that the education policy forms the Islamic mentality and disposition. The education policy has been deduced from the reality of information from its aspect of being information, and from the collection of verses connected to thought and inclinations, and linking them to the reality of information, and Article 171 was drafted upon this basis.

Article 172 has been taken from the action of the Messenger ﷺ in his ﷺ teaching of the Muslims, irrespective of whether that was in Makkah before the emigration, or in Madinah afterwards, since he ﷺ intended from teaching them that each one of them becomes an Islamic personality in his mentality and disposition - in other words in their judgement upon actions and things and their inclinations towards them. So on top of teaching them the rules which treated their life's issues, he ﷺ used to teach them the noble values, such as how to seek the Pleasure of Allah (swt), such as honour and such as how to carry the responsibility of spreading the guidance to mankind, and guiding them to Islam, with an influential method, and productive styles. Allah (swt) said ***"Invite to the way of your Lord with wisdom and fair preaching, and argue with them in a way that is better"*** (TMQ 16:125), and he ﷺ used to make them memorise the Quran, and teach them the rules of Islam and enjoin them to follow the orders and avoid the prohibitions, and alongside that he ﷺ would permit them to learn what they required for their livelihood, from trade and agriculture and industry. And so these

actions of the Messenger ﷺ were what formed the Islamic personality, and these are the evidences for this article.

### **Article 173**

**There must be weekly classes in Islamic sciences and Arabic, with the same time and amount allocated as the classes for the rest of the sciences.**

The taught subjects are of two types: scientific knowledge to develop the mind, in order that the person can judge the words, actions and objects from the angle of their reality and characteristics, and from the angle of their adaptation to human nature – such as chemistry, physics, astronomy, mathematics and other experimental sciences. This knowledge has no direct relationship with the building of the personality. As for the *Shari'ah* knowledge of the words, actions and objects, in order to explain the defining *Shari'ah* rule (*taklifi*), if it was obligatory, recommended, permitted, disliked or prohibited, or to explain the *Ahkam al-Wad'* such as whether it was a cause, condition or prevention, or a concession (*rukhsa*) or an original rule (*'azimah*), or if it was valid (*Sahih*), void (*batil*) or defective (*fasid*), and accordingly the Islamic mentality is built. If these *Shari'ah* rules are accompanied by the goal of getting the Muslim to take an Islamic position towards objects, actions and words in terms of their inclinations towards or against them, and to take or leave them when fulfilling their bodily needs and instincts, then the Islamic disposition is built. The Islamic personality is built from the Islamic mentality and disposition, which makes the Islamic belief (*'Aqidah*) the basis for its thoughts and inclinations.

Islam asks the Muslim to think about the creation of the universe, mankind and life, such as His (swt) words ***“and they think deeply about the creation of the heavens and the earth”*** (TMQ 3:191), ***“Do they not look at the camels, how they are created?”*** (TMQ 88:17) and ***“Thus Allah brings the dead to life and shows you His Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) so that you may understand”*** (TMQ 2:73). In the same manner, Islam also asks the Muslim to adhere to the *Shari'ah* rules in his laws, actions and inclinations: He (swt) said ***“But no, by your Lord, they can have no Faith, until they make you (O Muhammad) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission”*** (TMQ 4:65), and ***“And whatsoever the Messenger (Muhammad) gives you, take it, and whatsoever he forbids you, abstain (from it)”*** (TMQ 59:7), and ***“O you who believe! Take not for Awliya' (supporters and helpers) your fathers and your brothers if they prefer disbelief to Belief”*** (TMQ 9:23), and ***“And say (O Muhammad) Do deeds! Allah will see your deeds, and (so will) His Messenger and the believers. And you will be brought back to the All-Knower of the unseen and the seen. Then He will inform you of what you used to do”*** (TMQ 9:105).

Just as it is requested from the school to be the first incubator to build the distinguished Islamic personality, in the knowledge of the rules of the basis of jurisprudence (*Usul al-Fiqh*), language and *Tafsir*, it is also requested to be the first incubator to build the distinguished Islamic personality with the scientific knowledge such as atomic science, astronomy and computing. The Islamic *Ummah* which gave birth to leaders in politics, governance and *Jihad* such as Abu Bakr (ra), Khalid (ra) and Salah al-Deen, is the same *Ummah* which gave birth to the scholars in jurisprudence and science such as al-Shafi'i, al-Bukhari, al-Khawarizmi and Ibn al-Haytham. The goal of teaching all of this knowledge in the school stage is to build the Islamic personality of the student, and to prepare him to enter into the realm of practical life, or to prepare him to continue higher studies in order to create distinguished personalities which are necessary to raise the intellectual and scientific level of the *Ummah*, and to prepare it to lead the world to take all the people from the darkness of disbelief to the light of Islam, and from the oppression of manmade law to the justice of the *Shari'ah* law. And in the same manner to work to harness what is in the heavens and the earth for the benefit and well being



of mankind in that which pleases Allah (swt), in accordance with His (swt) words ***“But seek, with that (wealth) which Allah has bestowed on you, the home of the Hereafter, and forget not your portion of lawful enjoyment in this world”*** (TMQ 28:77).

Based upon this, there will be classes in scientific and *Shari'ah* knowledge, and it is obligatory to balance the classes to meet the requirements of the two sections in order for the Muslim to be capable to live on this earth which Allah (swt) made him a successor upon, in a manner which Allah (swt) and His Messenger ﷺ love.

The scientific knowledge that we are concerned with are those that do not have a direct relationship with the viewpoint about life, and do not emanate from the Islamic belief, but rather are built upon it, such as the necessary skills and knowledge to prepare the student to enter the realm of practical life. The first thing that the student is taught are those sciences that are necessary to interact with the environment he lives in such as mathematics and the general sciences about the tools and machinery used such as electronic and electrical equipment, and domestic tools. And in the same manner the principles and rules of traffic in the roads and streets, and the teaching of these subjects would take into account the environment in which the students live, such as if it was industrial, agricultural or trade, and if it was mountainous, desert or a plain, and whether it was hot or cold. The goal in teaching these subjects until the age of ten is to enable the student to interact with the things around them, and to utilise them according to their age and needs.

After the age of ten, they start to be taught the branches of mathematics in stages, and similarly the other sciences such as physics, chemistry and biology, and beneficial sports such as swimming, jumping and shooting at targets. After puberty they are taught military skills under the supervision of the army, and then they can continue in the higher education institutions and universities to learn beneficial knowledge from the sciences to the extent necessary.

#### **Article 174**

**A distinction should be drawn between the empirical sciences such as mathematics on the one hand and the cultural sciences on the other. The empirical sciences and all that is related to them are taught according to the need and are not restricted to any stage of education. As for the cultural sciences, they are taught at the primary and secondary levels according to a specific policy which does not contradict Islamic thoughts and rules. In higher education, these cultural sciences are studied like other sciences provided they do not lead to a departure from the education policy and its goal.**

Its evidence is the generality of the evidences which permit learning knowledge, since they encompass all knowledge, and so it is permitted for the Muslim to learn all knowledge. However, learning some knowledge leads to deviation of the beliefs, or weakness in the *'Aqidah* and so these types of knowledge are forbidden from being taught as long as they result in that, and if they lost that effect then it would be permitted to learn it, applying the principle *“If one type of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted”*.

Accordingly, the general evidences which permit learning and the *Shari'ah* principle are the proof for this article.

Since learning what causes a deviation and weakness in the beliefs easily influences children, it is therefore prohibited to teach anything of these types of knowledge in the primary and secondary stages of education. As for higher education, then knowledge such as philosophy and anything similar are taught, in order to refute them and show their falsehood, and nothing from these subjects is taught without also teaching its refutation and invalidity alongside it. The noble Quran mentions the ideas and beliefs of others, but they are mentioned in order to explain their invalidity and to reject them. And in the same way, when the educational

programme is drafted, these types of subjects are drafted in higher education in order to refute them and explain their falseness.

#### **Article 175**

**The Islamic culture must be taught at all levels of education. In higher education, departments should be assigned to the various Islamic disciplines as will be done with medicine, engineering, physics and anything similar.**

The evidence for the article is the action of the Messenger ﷺ, since he ﷺ used to teach the rules of Islam to men, women, the elderly and the youth, which indicates that Islam teaches every generation, and so it is learnt at all levels of education. Knowledge other than the laws of Islam such as the sciences and industries is permitted, however its reality is that they are studied after gaining basic knowledge that is essential such as the principles that are required to enter some of the sciences and industries such as medicine and engineering, and so they are taught after this information has been acquired. Therefore their teaching is done in higher education. Built upon the reality of the information and the action of the Messenger ﷺ, this article was drafted, and so this is what necessitated it.

#### **Article 176**

**Arts and crafts may be related to science, such as commerce, navigation and agriculture. In such cases, they are studied without restriction or conditions. Sometimes, however, arts and crafts are connected to culture and influenced by a particular viewpoint of life, such as painting and sculpting. If this viewpoint of life contradicts the Islamic viewpoint of life, these arts and crafts are not taken.**

The evidence is the evidence for Article 162, which was the generality of the evidences which permitted knowledge/science, and the principle that one type of a permitted thing is prohibited if it leads to harm, because the arts and industries are information, and so they are permitted since they are encompassed by the generality of the evidences regarding knowledge. If they bring about harm due to their being influenced by a particular viewpoint then they are prohibited. This is the case if there is no text forbidding it. As for when there is a text which forbids it, such as drawing something which has a soul (*ruh*), whether human, animal, bird or otherwise, or sculpting something with a soul, then it is prohibited because it is forbidden due to the narrations reported which decisively prohibit drawing and sculpting.

#### **Article 177**

**The State's has one unique curriculum and no other curriculums are allowed to be taught. Private schools are allowed as long as they adopt the State's curriculum and establish themselves on the State's educational policy and accomplish the goal of education set by the State, on condition they do not allow mixing between male and female, whether student or teacher, and they are not specific to a sect, religion, school of thought, race or colour.**

To enforce a single education curriculum upon the people is a permitted issue, since it is from the permitted issues which have been left to the *Imam* to enforce upon the people with a particular style if chosen, which is what 'Uthman bin Affan (ra) did when he copied the

Quran and sent it to the different regions of the State. All types of knowledge are permitted, and the methods of teaching are all permitted, since they are all part of information.

However, organising this information which is taught or upon which teaching is carried out in a specific curriculum is a style to systemise the education, similar to the style to organise the departments of the State. So the *Imam* can adopt a specific style and make the people abide by it, since it is from the issues which are part of the governing of the affairs, and therefore obedience to him in it would be obligatory.

The State can prohibit any teaching which is carried out upon alternative curricula with the evidence that it is from the issues that have been given to the *Imam* to deal with according to his opinion and *Ijtihad*, and it is permitted for him to select a particular style to undertake it. If he decided upon one particular style, obedience to him would be obligatory, and it would be forbidden to contradict him, since obedience to him is mentioned in the Quran, ***“Obey Allah and the Messenger and those of you in authority”*** (TMQ 4:59), and mentioned in the words of the Prophet ﷺ, ***“Whoever obeys the leader has obeyed me”*** (agreed upon from the narration of Abu Hurayrah), and his ﷺ words ***“and listen and obey even if a black slave with a head like a raisin was appointed over you”*** (reported by al-Bukhari from Anas). This is only obedience to him in that which has been left for him to act in according to his opinion and *Ijtihad*, and obedience to him in this circumstance is obedience to the ones in authority. As for the *Shari’ah* rules such as the recommended, permitted, obligatory, and the forbidden, then obedience to him in these issues if he ordered them would be obedience to Allah (swt) and not to him, due to the evidence that if he ordered them to commit a sin he is not obeyed. It is reported from Nafi’ from Abdullah that the Messenger ﷺ said ***“The Muslim must listen and obey in that which he likes and dislikes except if he was ordered with a sin. If he was ordered with a sin, then there is no listening or obedience”*** (reported by al-Bukhari). And Ahmad reported with an authentic chain from ‘Imran b. Husayn, ***“No obedience to something created in disobedience to the Creator”***. Therefore, his rights in governing the affairs are in what has been left to his opinion and *Ijtihad*, and the obedience to his order by those who were ordered by it is in these issues. So if he governed permitted issues upon a particular basis, such as drafting a specific curriculum which was then ordered to be implemented and for any difference to be prohibited, consequently obedience to him would be obligatory.

This is with respect to the fact that the State has one unique education curriculum.

As for the issue of private schools, the Messenger ﷺ used to send teachers to people in order to teach them Islam, and would permit the Muslims to teach other, which indicates that every person can teach whoever he wishes, whether for a fee or for free, and he is permitted to open a school. However, like the rest of the individual subjects, he is compelled to follow the State curriculum, in other words the curriculum that the *Khalifah* ordered, due to the evidence that was aforementioned regarding obedience to whatever the *Imam* ordered.

If it is asked how can the *Dhimmi* teach their children their religion if the private schools have to be in agreement with the syllabus of the Islamic State – then the answer is that they are not prohibited from teaching their religion and rituals in their houses and places of religious worship, or in other words in places other than the public life such as the schools since this proceeds upon the governance that the State lays down. The *Dhimmi* used to learn their rituals in their churches and their churches were present at the time of the Messenger ﷺ and the righteous *khulafaa’*. Al-Bukhari reported from Abu Hurayrah who said ***“While we were in the mosque the Messenger ﷺ came out to us and said: Go to the Jews, and so we went with him until we came to the midras house, and the Prophet ﷺ stood and called them O Jews, Embrace Islam you will be safe...”*** and the *madras* is the place of their worship which they used to read the Torah and in which they would also gather for prayers on their religious festivals. It is mentioned in the *al-Muhit* dictionary “al-midras: the place which the Quran is read, and from it is the *madras* of the Jews”, in other words where the Jews would read their Torah. In *Lisan al-‘Arab* it mentions “fuhr of the Jews: the place of their *madras* which they would gather in on their religious festivals to pray there”. In other words, at the time of the

Messenger ﷺ they were not prohibited from learning their religion in their churches and synagogues. This continued throughout the time of the righteous *khulafaa*: it is reported by ‘Abd alRazzaq in his *Musannaf* from ‘Ali b. Abi Talib (ra) “he saw a people with their clothes hanging low and so he said: As though they were Jews leaving their fuhr. We asked ‘Abd al-Razzaq what is their *fuhr*? He said their church”. In other words, ‘Ali (ra) described those who prayed with their clothes hanging low as being like Jews who left their synagogues after finishing their worship inside. In other words – the *Dhimmis* used to practice their religions and do their rituals of worship in their churches and synagogues, or in the places connected to them, and they did not have specific schools according to the known meaning.

As for the evidence to prohibit mixing in private schools, in the same way that it is prohibited in the schools of the State:

- Al-Bukhari reported from Abu Sa’id al-Khudri who said: “***Some women requested the Prophet ﷺ to fix a day for them as the men were taking all his ﷺ time. On that he ﷺ promised them one day for religious lessons and commandments. Once during such a lesson the Prophet ﷺ said, A woman whose three children die will be shielded by them from the Hell fire. On that a woman asked, If only two die? He replied, Even two (will shield her from the Hell-fire).***” In other words, the teaching of the women was separated from that of the men, and it was not mixed. The prayer was also done in separate rows, and when they left the mosque they would not leave together thus mixing, rather the Messenger ﷺ and the companions who had prayed would wait until the women left and then they would leave.
- Al-Bukhari reported from Umm Salamah: “***Whenever the Messenger of Allah ﷺ finished his prayers with Taslim, the women would get up and he would stay on for a while in his place before getting up. Ibn Shihab said, I think (and Allah knows better), that the purpose of his stay was that the women might leave before the men who had finished their prayer***”, and in another report “***he used to give salam, and so the women would leave and enter their houses before the Messenger of Allah would leave***”

And therefore teaching must not be mixed.

As for the issue of the private schools not being specific to a sect, religion, school of thought, race or colour – this is because schools established on this basis lead to effects upon the unity of the State and focus upon points of difference, especially since schools play an important role in building the mentality and disposition of the students. At the end of the ‘Uthmani *Khilafah* such schools were a destructive element in the body of the State. Therefore these schools are prohibited due to what damage they produce and that they lead to the *haram*, in other words the evidence is the rule of harm and the rule regarding the means to the prohibited being prohibited.

This is apart from the call that is found in the Quran and the *Sunnah* to know other people and to discard tribalism, and not to differentiate on the basis of race or colour. Allah (swt) says “***O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that (believer) who has taqwa. Verily, Allah is All-Knowing, All-Aware***” (TMQ 49:13). And the Messenger ﷺ said in a narration reported by Muslim from Abu Hurayrah, “***Whoever separates from the jama’h and leaves obedience (to the leader of the Muslims) and dies then he dies the death of one of jahiliyyah, and whoever fights under a flag of ignorance, getting angry for the sake of tribalism or fighting for the sake of tribalism or calling to tribalism, and then he dies then his death is that of jahiliyyah***”. And it is reported by Ahmad with a chain from Abu Nadrah authenticated by al-Zayn: Someone who heard the sermon of the Messenger of Allah ﷺ in the middle of the days of *tashriq* told me that he ﷺ said: ***O people – your Lord is one, and your father is one, there is no preference for an Arab over a non-Arab, nor a non-Arab over an Arab, nor for the red over the black, nor the black over***

*the red, except in taqwa (piety). Have I not conveyed? They said: The Messenger of Allah ﷺ has conveyed”*

These are all the evidences for the article.

#### **Article 178**

**It is an obligation upon the State to teach every individual those matters that are necessary for the mainstream of life, male or female, in the primary and secondary levels of education. This must be provided free of charge to everyone, and the State should, to the best of its ability, provide the opportunity for everyone to continue higher education free of charge.**

Its evidence is that it is from the essential interests and utilities for people, since teaching the individuals what they require in mainstream life is from the essential interests, since it achieves benefit and repels harm. This is why it is obligatory upon the State to provide for these interests according to what mainstream life necessitates, and according to the number of youth present that require to be taught those issues. Primary and secondary education of the masses has become a necessity due to the nature of life between nations in this era, and is no longer from the non-essential issues, so accordingly the primary and secondary education for every individual of what is required to partake in the mainstream of life is an obligation upon the State, while it remains one of the essential interests. Therefore, it is obligatory upon the State to provide sufficient primary and secondary schools for all the subjects of the State who wish to study and provide them with what they require to partake in life's affairs free of charge. The Messenger ﷺ made the ransom of the disbelieving prisoners that they should teach ten of the Muslim children, and that was from the war booty which is part of what the *Khalifah* may spend in the interests of the Muslims, and is evidence that the spending upon education is without anything given in exchange.

Higher education is also from the interests, so anything from it which is part of the necessities such as medicine must be provided by the State, in the same manner as primary and secondary education, since it achieves benefit and repels harm and is from the issues that the *Shari'ah* obligated upon the State. As for anything from the non-essential issues, such as literature, then the State should provide for it if the finances were available.

The primary and secondary teaching, along with whatever is essential for the *Ummah* in terms of further education, is considered part of the obligatory interests upon the expenditure of the *Bayt al-Mal*, without anything in return.

#### **Article 179**

**The State ought to provide the means of developing knowledge, such as libraries and laboratories, in addition to schools and universities, to enable those who want to continue their research in the various fields of knowledge, like jurisprudence, narrations and *Tafsir*, and thought, medicine, engineering and chemistry, and such as inventions and discoveries and so on. This is done to create an abundance of *Mujtahidun*, outstanding scientists and inventors.**

The evidence for the article are the words of the Prophet (saw) *“The Imam is a guardian and he is responsible for his subjects”* (reported by al-Bukhari from Abdullah Bin Umar), and the principle *“Whatever is necessary to accomplish a duty is in itself a duty”*. Libraries, laboratories and the rest of the means of developing knowledge are part of the affairs of the *Ummah* which the *Imam* must govern, and if he falls short he is accounted over it. If the *Ijtihad* in jurisprudence and the creation of inventions which are necessary for the sake of

military preparations, are not possible without these means of developing knowledge, then to provide these means becomes an obligation upon the *Khalifah* in accordance with the principle “*whatever is necessary to accomplish a duty is in itself a duty*”. If they help to achieve these goals, and simplify the issue of *Ijtihad* and invention, then they are part of the governing of the affairs which achieve benefits; in which case they would not be obligatory, and so if the State had the finances it would establish them and otherwise not. Due to all of this, the provision of libraries, laboratories and the remaining means to develop knowledge fall under what the *Imam* must provide, or in other words what falls upon the State to provide.

#### **Article 180**

**The exploitation of writing books for educational purposes at whatever level is strictly forbidden. Once a book has been printed and published, nobody has the right to reserve the publishing and printing rights, including the author. However, if they were ideas he had, which were not yet printed or published, the owner has the right to be paid for transferring these ideas to the public as he paid for teaching.**

The evidence for it is the permissibility of taking a fee for teaching and the permission of knowledge for people. As for the permissibility of taking a fee for education, it is confirmed from the words of the Messenger ﷺ “***The most right deserving thing you took a fee for is the Book of Allah***” (reported by al-Bukhari from Ibn ‘Abbas), and so by greater reasoning a fee can be taken for teaching anything else; additionally it is confirmed from the fact that the Messenger ﷺ allowed the prisoners from the battle of Badr to each teach ten Muslims as their ransom, which is making a payment for education. Authoring is the writing of knowledge, or in other words the giving of knowledge through writing and so it is like imparting it verbally. Knowledge can be passed to people verbally or in a written form and in both circumstances it is permitted to take a fee for it. However, if the teacher imparts something verbally or through writing, the knowledge that the learner took becomes possessed by him, and so he has the right to impart that knowledge to anyone else whether verbally or through writing, and he has the right to take a fee for it. The prisoners from Badr had no right over those who learnt reading and writing from them other than their fee, and those who learnt from them could teach others reading and writing for a fee without the permission of their teachers, and without their teachers having any right.

Additionally, knowledge, from the angle that it is permitted, and the meaning of its being permitted is that it is permissible for anyone to take it, and permitted for anyone who teaches it to take a fee, and not simply the teacher who taught it originally. So from this it is seen that the knowledge is possessed by anyone who knows it, and is not the sole possession of the one who taught it, and it is the possession of the one who knows it as long as it remains with him, and so he can take a fee for teaching it to someone else, or can teach it to others for free. So if it emerges from him through his teaching of it to an individual or a group, or talking about it in public, or conveying it to the people by any means, it becomes permissible for all of the people in accordance with the evidences which generally permit knowledge, and it becomes permissible for whoever took that knowledge individually or part of a group, to give it to whoever they wish irrespective of whether the one who taught them initially gave them permission or not, and whether they were content for that to happen or not.

This is evidence that no one possesses the right to publish since it is knowledge, so as long as it remains with him he has the right to charge a fee for it, and if he imparts it to the people verbally or through writing, by any means at all, it becomes permitted for all the people, and it becomes permitted for every one of them to teach it to someone else and to charge a fee for teaching. So to make the rights of publishing specific to the author is forbidding the permitted; forbidding knowledge by prohibiting it being taken except with permission and

forbidding charging a fee for it by prohibiting it being taught for a fee except with permission,  
and so accordingly it is not permissible for anyone to possess publishing rights.

## Foreign Policy

### Article 181

**Politics is taking care of the affairs of the *Ummah* domestically and internationally. It is performed by the State and the *Ummah*. The State takes on this task practically through government, and the *Ummah* accounts the State upon it.**

This article is the definition of politics and this is a general definition held by everyone since it characterises the reality of politics as what it actually is. So it is similar to the definition of the mind, the definition of the truth, the definition of authority and other definitions from the meanings which have a single reality for all people which they do not differ over since it is a perceptible reality, and so rather they only differ over its rules. In addition to that, the linguistic meaning of politics (*saasa, yasuso, siyasa*) is governing of the affairs; it is mentioned in the *al-Muhit* dictionary “I governed the citizens *siyasatan* – meaning I commanded them and I forbade them”, and this is the governing of affairs through commandments and prohibitions. Additionally there are narrations related regarding the actions of the ruler, accounting the ruler and concern for the Muslim affairs, and the definition has been derived from all of these; so the words of the Prophet ﷺ in an agreed upon narration, the wording here from al-Bukhari from Ma’qal b. Yasar: *“There is no worshipper that Allah puts in a position of responsibility, who does not act sincerely towards it, except that he will not find the scent of Paradise”*, and his ﷺ words, *“There is no governor who takes charge of governing the Muslims, and then dies, and he had been cheating them, except that Allah prohibits him from Paradise”*, and his ﷺ words *“There will be leaders who you will know and reject, so whoever rejects them is innocent from them, and whoever holds themselves (from following them) is safe, but the one who is pleased with them and follows them (is blameworthy)”* They said: *Should we not fight them? He ﷺ said “No, as long as they pray”*” (reported by Muslim from Umm Salamah), and his ﷺ words, *“Whoever wakes up and his concern is other than Allah, then he is not from Allah, and whoever is not concerned with the Muslims then he is not from them”* reported by al-Hakim in *al-Mustadrak* from Ibn Mas’ud, and it is reported from Jarir b. ‘Abd Allah who said *“We gave the pledge of allegiance to the Messenger of Allah ﷺ upon establishing the prayer and giving Zakat, and giving the advice to every Muslim”* (agreed upon), and it is reported from Jarir b. ‘Abd Allah who said *“I went to the Prophet ﷺ and gave him the pledge of allegiance upon Islam, and he made it a condition to give the advice to every Muslim”* (reported by al-Bukhari).

The definition of politics deduced from all of these narrations, whether related to the ruler and his undertaking of ruling, or to the *Ummah* and its accounting of the ruler, or to the relationship of the Muslims with each other in being concerned over their issues and advising each other, is that it is the governing of the affairs of the *Ummah*, and therefore the definition of politics which this article mentioned is a *Shari’ah* definition deduced from the *Shari’ah* evidences.

### Article 182

**It is absolutely forbidden for any individual, party, group or association to have relations with a foreign state. Relations with foreign countries are restricted to the State alone because the State has the sole right of governing the affairs of the *Ummah* practically. The *Ummah* can account the State regarding foreign relations.**



Its evidence is the words of the Prophet ﷺ ***“The Imam is a guardian and he is responsible for his subjects”*** (reported by al-Bukhari from ‘Abd Allah b. Umar), and the *Shari’ah* gave the practical undertaking of the governing of the affairs which would be binding to the ruler alone, and so it is not permitted for the subjects to carry out the actions of the ruler and it is not permitted for any of the Muslims to carry out the actions of the ruler unless they were appointed to do that according to the *Shari’ah*, either through a pledge of allegiance from the people if he was the *Khalifah*, or by appointment from the *Khalifah*, or from one of his assistants or governors whom had given the right to make appointments. Anyone who had not been appointed through the pledge of allegiance, and had not been appointed by the *Khalifah*, is not permitted to undertake anything from the practical governing of the affairs of the *Ummah*, domestically or internationally.

It is imperative here that this rule is clarified from the angle of the evidence, and the reality upon which the evidence applies. As for the evidence, the authority has been given by the *Shari’ah* to the ruler alone and governing the people has been left to the ruler alone; the Messenger ﷺ said ***“Whoever hates something about his leader should be patient over him, since there is no person who removes himself even a hand span from the authority and dies except that he dies the death of Jahiliyyah”*** (agreed upon from the narration of Ibn ‘Abbas), and so it made rebellion against him rebellion against the authority, and consequently in that case he is the one who alone possesses the authority. The Messenger ﷺ said ***“The tribes of Isra’il were ruled by the Prophets, every time a Prophet died he was followed by another Prophet, and there will be no Prophets after me, and there will be khulafaa”*** (agreed upon from the narration of Abu Hurayrah), and its meaning is that the Muslims are ruled by the *Khulafaa*, and therefore the one who rules the Muslims has been specified. The understanding from this is that other than the *Amir* would not be an authority and that other than the *Khulafaa* do not rule. This is evidence that the governing of the affairs is for the ruler alone and not for anyone else. Additionally, the action of the Messenger ﷺ shows that he ﷺ was the authority, and undertook the ruling of the people with it by his ﷺ characteristic of being the Head of State, and he ﷺ was the one who appointed whoever would undertake the actions of authority or the actions of ruling the subjects. So he ﷺ appointed the one who would take his ﷺ place in Madinah whenever he ﷺ went out for any of the battles, and he ﷺ appointed the governors, judges, money collectors, and whoever undertook an interest such as distributing water, estimating the amounts of fruit (for tax purposes), and so on. This is all evidence that the authority and ruling the people is restricted to the ruler, in other words to the *Khalifah* and whoever the *Khalifah* appointed, to the *Amir* and whoever the *Amir* appointed. The authority is the governing of the affairs of the people that is binding upon them, and ruling the subjects is reported in the words of the Messenger ﷺ ***“were ruled by”***, which is the governing of the people that is binding upon them. Built upon this is that governing the affairs of the people is a binding governance; in other words the undertaking of the responsibility of the ruler is restricted to the ruler, and so it is completely forbidden for anyone else to undertake it, since the *Shari’ah* gave the authority and looking after people’s affairs to the *Khalifah* and whoever he appoints. So if anyone other than the *Imam* or those appointed by him carries out the actions of ruling and authority, and takes upon themselves ruling the people, their action contradicts the *Shari’ah* and is considered to be void, and every void action is forbidden (*haram*), and so it is not permitted for anyone other than the *Khalifah* or who he appointed, in other words other than the ruler, to undertake any action of ruling and authority. Consequently, he does not undertake the governing of the affairs of the people in a binding manner, in other words he does not rule the people, since this is from the actions of the ruler and it is not permitted for anyone other than the ruler to carry it out.

This is from the angle of the evidence; as for from the angle of the reality, the undertaking of governing some of the affairs in a binding manner by a group is from the understanding of the democratic rule. The democratic rule is made up of institutions, the highest of which is the cabinet, in other words the government, but there are others who carry out governing some of the affairs in a binding manner, or in other words undertake ruling in some particular area. For example, there are unions, so the lawyers’ union undertakes governing the affairs of the

lawyers in their professional capacity, and this is binding upon them and so they have authority over them in specific issues; it grants them the right to practise law and signs off on any punishments upon them, and sets up a retirement fund for them, and other things that are from the actions of ruling and authority which the State appointed to it in regards to the legal profession, and its judgement is implemented just like the judgement of the cabinet without any difference. This is the same with the doctors' union and the rest of the unions. This is the reality upon which the evidence applies with respect to within the State. Internationally, some of the democratic countries permit the opposition party to communicate with other states, and gives it the right to conduct negotiations with those states while it is not ruling, and it has agreements with other states regarding issues connected to the relationships between the two states that they will implement once they get into power. This is the reality upon which the evidence applies with respect to international affairs.

Therefore this reality which is that some institutions such as syndicates undertake governing some of the affairs domestically in a binding manner, and some institutions such as the political parties undertake some of the affairs internationally in a manner which is binding, is not at all permitted by Islam. This is because the authority and undertaking ruling of the people has been given to the *Khalifah* or *Amir* alone, or to whom the *Amir* or *Khalifah* appointed, and so it is not permitted for anyone else to undertake a single issue from it since this would contradict the *Shari'ah*.

Additionally, undertaking the governing of the affairs in a manner that is binding is a governorship over the people, and governorship is a contract that must be concluded between two sides, either between the *Ummah* and the *Khalifah*, or between the *Amir* and the *Ummah* who appointed him, or between the *Khalifah* or *Amir* and who they appointed. Whoever undertakes the governing of the affairs without a contract of governorship, then his action is invalid, and every invalid action is forbidden (*haram*) without any difference. Therefore, undertaking the governing of the affairs in a manner which is binding would be invalid, and from this understanding it is forbidden for political parties and individuals in the *Ummah* to have any relationship with any foreign state in which that relationship would include what would be considered as undertaking the governing of an issue from the issues of the *Ummah* in a binding manner, and this is the evidence for this article.

### **Article 183**

**Ends do not justify means, because the method is integral to the thought. Thus, the obligation and the permitted cannot be attained by performing a forbidden action. Political means must not contradict the political methods.**

Allah (swt) set rules in order to treat the problems of man, such as trade, renting, partnerships and so on, and set other rules in order to implement these treatments between the people, such as the discretionary (*ta'zir*) punishment for the one who cheats in trade and cutting the hand of the thief as a prescribed punishment (*hadd*). And in the same manner, He (swt) set rules to treat the problems that occur between the Islamic State and the disbelieving states, such as the rules regarding the one who is covered by a treaty and the one who takes amnesty, and the rules regarding the *Dar al-Harb* and the rules regarding conveying the call to Islam to them in a way that attracts attention, and so on. And He (swt) set other rules in order to implement these rules, such as the protection of the blood and property of someone who has amnesty being equivalent to the blood and property of the Muslim, and the prohibition of fighting the disbeliever before they have been called to Islam in a manner which attracts attention, and so on. Therefore, the method in Islam is the *Shari'ah* rules, and so victory is not achieved through betrayal and conquest is not achieved through breaking a treaty. So in the same way that the goal must be defined by the *Shari'ah*, what is used to reach that goal must be from what the *Shari'ah* permitted, since the goal and the means are both part of the actions of the

worshipper, and what makes the action permitted or forbidden is the *Shari'ah* evidence, and not the results which are produced by it, nor the goal which is sought by it since Allah (swt) says, "***And so judge (you O Muhammad) among them by what Allah has revealed***" (TMQ 5:49), not by what results the actions produce, or these actions are used to reach, and so the rule regarding the means is the *Shari'ah* evidence just like the rule regarding the goal. In other words, the fact that the *Shari'ah* evidence is what establishes the permissibility or impermissibility of the goal is evidence that the goal does not justify the means, in other words does not make it permitted if there is *Shari'ah* evidence which has forbidden it. Accordingly the means are not permitted because its intended goal was permitted, or obligatory, or recommended, or because its goal had benefit or good or a victory; rather the means would be permitted if the *Shari'ah* permitted it and would be forbidden if the *Shari'ah* forbade it. In other words, it must be in accordance with the rules of the *Shari'ah*, because every action of the Muslim must be directed by the *Shari'ah*, and agree with the *Shari'ah* rule, because the definition of the *Shari'ah* rule is the address of the Legislator (swt) connected to the actions of the worshippers, and so it is obligatory that all the actions of the Muslim are in accordance with the *Shari'ah* rule.

Based upon this, the Muslims reject and disapprove of the principle that the ends justify the means. It is correct that Islam has principles deduced from its evidences that give the means used to reach the goal the rule of the goal, such as the principle "*the means to the forbidden are forbidden*", and such as the principle "*If one type of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted*", and the principle "*Whatever is necessary to accomplish a duty is in itself a duty*", however this is if the means is permitted or obligatory. If on the other hand the means are forbidden, then the goal does not make it permitted, whether it was obligatory or permitted; rather the means would remain forbidden. From this understanding, the goal does not justify the means, or in other words the obligatory or permitted goal does not make the forbidden means permitted. The article was drafted in accordance with this.

#### **Article 184**

**Political manoeuvres are necessary in foreign policy, and the effectiveness of these manoeuvres is dependent on concealing (your) aims and disclosing (your) acts.**

This article is from the permitted issues left to the opinion and *Ijtihad* of the *Imam*, and the political manoeuvres are the actions which are undertaken by the State which are intended for goals other than the goals which are apparent from the action undertaken. The Prophet ﷺ used to carry out these manoeuvres, such as the expeditions which he carried out at the end of the first and beginning of the second year *Hijri*, as the apparent goal of these expeditions was that the Messenger ﷺ wanted to attack the Quraysh, but the reality behind them was to intimidate the Quraysh and make the other Arab tribes take a neutral position regarding the conflict between him ﷺ and the Quraysh. The evidence for that is that these expeditions were small in number - sixty, or two hundred, or three hundred - which is not large enough to fight the Quraysh, and he ﷺ did not fight the Quraysh in any of them. All that resulted from them was that he ﷺ concluded treaties with some of the Arab tribes, such as his alliance with Damra and concluding friendly relations with Bani Mudlij. Another example is his ﷺ trip to Makkah in the sixth *Hijri* year intending to perform the pilgrimage, and his ﷺ announcing that while there was a state of war between him and the Quraysh under whose authority the Ka'bah was at that time. The intention of that journey was to arrive at an armistice treaty with the Quraysh in order to deal with Khaybar, since it had reached him ﷺ that Khaybar and the Quraysh were negotiating an agreement to attack Madinah. The evidence for this being a political manoeuvre is that he ﷺ was pleased to return without having completed the pilgrimage once he ﷺ had achieved the treaty, and he ﷺ then attacked and dealt with Khaybar two weeks after his ﷺ return. All of these are political manoeuvres. The power of these

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manoeuvres are the actions which are undertaken, such as that the manoeuvre is announced and apparent, but the goals of it are hidden, and so its effectiveness is dependent upon the prominence of the action and the concealment of the goals.

#### **Article 185**

**Some of the most important political means are exposing the crimes of other states, demonstrating the danger of erroneous politics, exposing harmful conspiracies and undermining misleading personalities.**

This article is part of the styles, and is part of the permitted issues, and the Messenger ﷺ used to expose the crimes of Bani Quraythah when they broke the treaty on the day of *al-ahzaab*, and when the Quraysh attacked him because ‘Abd Allah Bin Jahsh (ra) took two men as prisoners and killed another during the sacred month and so they claimed that Muhammad ﷺ and his ﷺ companions had made the sacred month permitted (and so violated the custom), and spilt blood, seized wealth and captured men during it. When the Quraysh attacked him with that, Allah (swt) revealed verses which exposed their false politics trying to turn the Muslims away from their religion. He (swt) said *“They ask you concerning fighting in the Sacred Months. Say, Fighting therein is a great (transgression) but a greater (transgression) with Allah is to prevent mankind from following the Way of Allah, to disbelieve in Him, to prevent access to al-Masjid al-Haram (at Makkah), and to drive out its inhabitants, and Al-Fitnah is worse than killing.”* (TMQ 2:217).

And when the Jews of Bani Quraythah conspired to kill the Messenger ﷺ by throwing a rock upon him ﷺ when he ﷺ was sitting next to a wall, the Messenger ﷺ exposed their conspiracy and their being exiled was punishment for it. Ibn Ishaq said *“The Prophet ﷺ went out to Bani Nadir to ask them to help pay the blood money for the two dead men of Bani ‘Amir who were killed by ‘Amru b. Umiyyah al-Damri. They had a promise of safe passage from the Prophet ﷺ according to Yazid b. Ruman. Bani Nadir and Bani ‘Amir had a treaty and were allies. When Allah’s Messenger ﷺ went to Bani Nadir asking them for help to pay the blood money for the two men, they said, ‘Yes, O Abu’l-Qasim! We will help you, since you asked us for help.’ Yet, when they met each other in secret, they said, ‘You will not find a better chance with this man than this,’ while the Messenger of Allah ﷺ was sitting next to a wall of one of their houses. They said: ‘who will ascend this wall and drop a stone on this man and rid us of his trouble’ ‘Amr b. Jahsh b. Ka’b volunteered and ascended the wall of the house to drop a stone on the Messenger ﷺ ...The news of this plot was conveyed to the Prophet ﷺ from heaven, and he stood up and went back to Madinah. The Messenger of Allah ﷺ ordered the preparation of war and marching forth to them...then he exiled them”*.

And the Quran attacked Abu Lahab by name, *“Perish the two hands of Abu Lahab (an uncle of the Prophet), and perish he”* (TMQ 111:1) and others by their characteristics, all of which is considered undermining harmful personalities.

These are the evidences for this article.

#### **Article 186**

**One of the most important political methods is the manifestation of the greatness of the Islamic thoughts in governing the affairs of individuals, nations and states.**

This article is part of what the Islamic State must undertake since it is obligatory and not simply permissible. That is because it is the duty of the State to carry the call to Islam in a manner which attracts attention, because Allah (swt) said **“and the Messenger’s duty is only to convey (the message) in a clear (mubeen) way”** (TMQ 24:54), and the word *mubeen* is a description indicative of relation to the *hukm* (*wasf muflhim*), and consequently it is a restriction for the conveyance. Conveying the call to Islam in a manner which attracts attention cannot be achieved except through the manifestation of the greatness of the Islamic thoughts. Amongst the great Islamic thoughts are the way that the Islamic State deals with the *Dhimmi*, the one given amnesty, and the one who has a covenant, and the fact that the ruler is an implementer of the *Shari’ah* and not a dictator over them, and the fact that the *Ummah* accounts the ruler with complete discipline. So in the same manner that it is obligatory upon the *Ummah* to account the ruler, it is obligatory to obey him even if oppressed, and it is forbidden for it to obey him in a sin, and it has the full right to revolt against him, and it is obligatory to revolt if he showed clear disbelief. And the ruler and the ruled are equal in all affairs, and the *Ummah* can complain against him as they would against any other individual regarding any right in front of any judge, and they can complain about him to the judge of *Madhalim* if he contradicts the *Shari’ah* while ruling. And there are other Islamic thoughts of such nature, so accordingly it is obligatory to manifest them and accentuate their greatness until the greatness of Islam is displayed and until the call to Islam is conveyed in a manner which attracts attention. The manifestation of these thoughts is not from the political style rather they are from the political methods.

In addition to that, the *Shari’ah* rule is that practically fighting the disbelievers is not permitted until after the call to Islam has been conveyed to them: al-Tabarani reported in *al-Kabir* from Farwah b. Mosaik who said **“I said O Messenger of Allah ﷺ; Shall I fight with those of my people who accepted Islam the others who refused it? He said Yes. After I turned around he called me and said: Do not fight them until you have called them to Islam”**. And Al-Tirmidhi reported something similar. And from Ibn ‘Abbas, **“The Messenger of Allah ﷺ did not fight a people until he called them”** (reported by al-Darimi, Ahmad and al-Hakim). This is evidence for the obligation of the call to Islam before fighting. And for the call to Islam to be complete, it is imperative that the conveyance of the call to Islam to them be done in a way that attracts attention. From this, the issue of presenting the greatness of the Islamic thoughts is an obligation, because the conveyance in a manner which attracts attention is achieved through it. Therefore it is from the rules regarding the method, and not from the styles.

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## Article 187

**The political cause of the *Ummah* is Islam, in the strength of the status of the State, the best implementation of its rules and continuity in carrying its call to mankind.**

The meaning of the words *the political cause* is the matter that the State and the *Ummah* face and is a duty upon them to undertake whatever it necessitates from the governing of affairs. This issue could be general, and so it would be the political cause, or it could be specific in which case it would be a political cause, or it could be a part of a matter, and so in which case it would then be an issue from the various issues of the cause. For example, the issue that faces the Islamic *Ummah* and obliges her to undertake whatever it requires of the running of the affairs is the re-establishment of the *Khilafah*, so this would be the political cause, and anything else from the various causes such as the case of Palestine and the case of the Caucasus countries are issues of this cause, and though they are issues which the Islamic *Ummah* faces and they are affairs that need to be taken care of, however they are part of the return of the *Khilafah*. When the Islamic State is established, its political cause would be to implement Islam domestically and carry the call to Islam internationally, so if it becomes stabilised in a place then its political cause would be the one mentioned in this article.

Subsequently if it implemented Islam correctly and its international profile was strengthened, then its political cause would become carrying the call to Islam to the world, until Allah (swt) made Islam dominant over all other ways of life.

Therefore, the political cause is what the State and *Ummah* face from the important political issues that the *Shari'ah* obligated upon them. So the State is obligated to work to establish it in accordance with what the *Shari'ah* required of it to do, and this does not require an evidence because it is part of the implementation of the rules of the *Shari'ah* upon the issues as they occur.

For this reason, the political cause changes as the issues that occur change. The political cause for the Messenger ﷺ while he was in Makkah in the stage of the call was to make Islam manifest, which is why when Abu Talib said to him, ***"Your people have come to me and said such and such, whatever they had said to him, so spare me and yourself, and do not make me carry what I cannot bear"***, the Messenger ﷺ thought that his uncle would forsake him and give him up, and his support for him was weakened, so he said to him, ***"O Uncle, by Allah, if they place the sun in my right hand and the moon in my left hand in return for giving up this matter, I will never desist until either Allah makes it triumph or I perish defending it"*** (Sirah of Ibn Hisham). These words indicate that the political cause for the Messenger ﷺ at that time was making Islam manifest. When he ﷺ was in Madinah, the State had been established and a number of battles occurred between him ﷺ and the main enemy, the head of disbelief which at that time was the Quraysh, the political cause of him ﷺ remained the manifestation of Islam. This is why on his ﷺ way to pilgrimage before reaching Hudaibiyah, after he heard that the Quraysh came to know that he was on the way and had come out in order to fight him, a man from Bani Ka'ab said to him, ***"They heard about your journey, and so they left wearing tiger skins, and they camped in Thi-Tuwa making oaths to Allah that you would never enter"***, and so the Messenger ﷺ said ***"Woe upon the Quraysh! War has destroyed them. What would it matter to them if they left me to deal with the rest of the Arabs"*** until his ﷺ words ***"So what do the Quraysh think? By Allah, I will continue to struggle for what Allah sent me with until Allah makes it manifest or until this Salifah is separate"*** (reported by Ahmad from al-Maswar and Marwan). The *Salifah* is the surface of the neck, and the Messenger ﷺ used its separation as a metaphor for death; in other words "until death".

So the political cause in both situations was the same. However, in the first situation he ﷺ made clear his ﷺ insistence to continue conveying the call to Islam until Allah (swt) made it manifest, and in the second situation, in other words at the time the State was established, he ﷺ made clear his ﷺ insistence upon *Jihad* until Allah (swt) made Islam manifest.

After the Prophet ﷺ arrived at an armistice treaty with the Quraysh, which was the great opening, since it was the preparation for the conquest of Makkah and made the Arabs come to the Messenger of Allah ﷺ embracing the religion of Islam in droves, at which point the political cause for the Messenger ﷺ was not simply making Islam manifest but rather it became making it manifest and dominant over all other ways of life through battles against the states following other ways of life, such as the Romans and Persians. This is the reason why the chapter of the opening (*al-fath*) was revealed to him ﷺ, including the words of Allah (swt), ***"He it is who sent His Messenger with the guidance and the religion of truth for it to be dominant over all other religions."*** (TMQ 48:28). So accordingly, if the Islamic State implemented Islam well, and its international profile was strong, the political cause for it would become making Islam dominant over all other religions and preparation for defeating those who carry other ideologies and other religions.

This is what the article is based upon.

#### Article 188

**The foreign policy revolves around carrying the call to Islam; and the relationship between the State and all of the other states is built upon this basis.**

This article is taken from the letters that the Messenger ﷺ wrote to the kings, and the preparation of the army of Usamah to *Balqa* and *al-Darum* in Palestine in order to fight the Romans, and his ﷺ insistence upon sending the Army despite his ﷺ illness which he ﷺ was to die from. This indicates that the call to Islam is the basis for the relationship between the Islamic State and any other state in the world, and this relationship necessitates the equipping of armies, and the preparation for fighting, such that if the opportunity to fight those who do not respond to the call to Islam after it has been conveyed to them in a manner which attracts their attention, then the force required for *Jihad* is ready. Therefore, the call to Islam is the basis for every relationship with any state, so it is the basis for the foreign policy.

#### **Article 189**

**The relationship of the State with other states present in the world is built upon four considerations. These are:**

- 1. The existing states in the Islamic world are considered to be part of one land and therefore they are not included within the sphere of foreign affairs. Relations with these countries are not considered to be in the realm of foreign policy and it is obligatory to work to unify all these countries into one state.**
- 2. States who have economic, commercial, good neighbouring or cultural treaties with our State are to be treated according to the terms of the treaties. If a treaty states so, their subjects have the right to enter the State with an identity card without the need for a passport provided our subjects are treated in a like manner. The economic and commercial relations with such states must be restricted to specific items and characteristics which are deemed necessary and which at the same time do not lead to the strengthening of these states.**
- 3. States with whom we do not have treaties, and the actual imperialist states, such as Britain, America and France, and those states that have designs on the State, such as Russia, are legally considered to be belligerent states. All precautions must be taken towards them and it would be wrong to establish diplomatic relations with them. Their subjects may enter the Islamic State, but only with a passport and a visa specific to every individual and for every visit, unless they become practically belligerent.**
- 4. States that are actually belligerent states, such as Israel for example, a state of war must be taken as the basis for all dealings with them. They must be dealt with as if a real war existed between us – irrespective of whether an armistice exists between us or not - and all their subjects are prevented from entering the State.**

This article was derived from the rules regarding *Dar Al-Islam* and *Dar Al-Kufr*, and from the rules regarding the one with a covenant and the one who has amnesty.

The first clause is related to the Islamic lands which used to be ruled by Islam, such as India for example, or where the majority are Muslims such as in Lebanon. All of the Islamic lands since the destruction of the *Khilafah* in 1342 *Hijri* until it is re-established anew with the Permission of Allah (swt), are *Dar Al-Kufr*, because some of them are ruled by other than Islam and their external security is not the security of Islam. Others are secured by Muslims but are ruled by other than Islam. All of these are considered to be *Dar Al-Kufr* and since they used to be *Dar Al-Islam* it is imperative to work to revert them back to being *Dar Al-Islam*,

but as long as they are ruled by other than Islam, or their security is other than the security of Islam, then they remain as *Dar Al-Kufr*, and so the rules of *Dar Al-Kufr* apply to them. It being *Dar Al-Kufr* does not mean that all its inhabitants are disbelievers, and it does not mean that in *Dar Al-Islam* that all its inhabitants are Muslims. Rather, the meaning of *Dar* (abode) here is a *Shari'ah* term "*Shar'i reality*", in other words it's the *Shari'ah* which gives it this meaning, like the terms *Salah* and *Siyam* and others from the *Shari'ah* terms.

Based upon it, the term *Dar Al-Islam* is applied to a country where the majority of its inhabitants are Christians for example, but it is part of the Islamic State. This is because the laws applied are the laws of Islam and the security of the land is by the Islamic security so long as it remains part of the Islamic State.

And in the same vein, with respect to the land where most of the people are Muslims but it is part of a State that does not rule by Islam, and its security is not upheld by the Muslim army but rather by the army of the disbelievers, the term *Dar Al-Kufr* would be applied to it despite the fact that most of its inhabitants were Muslim. So the meaning of the word *Dar* here is a *Shari'ah* reality and no regard is given to the proportion of Muslims when the term is used, rather the laws applied and the security of the people are considered. In other words, the meaning of *Dar* is taken from the *Shari'ah* texts which clarify this meaning, just like the meaning of the term *Salah* is taken from the *Shari'ah* texts which explained it. And similarly all *Shari'ah* terms take their meaning from the *Shari'ah* texts and not from the linguistic meaning of the term.

The rules regarding *Dar Al-Kufr* are completely different to the rules regarding *Dar Al-Islam*, so there are rules specific to it.

If the Muslim who lives in *Dar Al-Kufr* is unable to openly practise the rituals of his *Deen* there, then he has to move to another *Dar Al-Kufr* in which he would be able to do so due to His (swt) words: **"Verily, as for those whom the angels take (in death) while they are wronging themselves they (the angels) said 'In what (condition) were you' they reply 'We were weak and oppressed on the Earth' They say 'Was not the earth of Allah spacious enough for you to emigrate therein'. Such men will find their abode in Hell – what an evil destination"** (TMQ 4:97).

This is if there is no *Dar Al-Islam* as is the case today.

However, if there was a *Dar Al-Islam*, the rules related to emigration from *Dar Al-Kufr* to *Dar Al-Islam* are accordingly:

1. Whoever is capable of emigrating, and is unable to openly practise his *Deen* in his country nor carry out the Islamic rules required of him – then the emigration to *Dar Al-Islam* is obligatory upon him. In this circumstance it is not permitted for him to reside in *Dar Al-Harb*, in other words *Dar Al-Kufr*. Rather the emigration to *Dar Al-Islam* is obligatory. The evidence is the verse mentioned: **"Verily, as for those whom the angels take (in death) while they are wronging themselves they (the angels) said 'In what (condition) were you' they reply 'We were weak and oppressed on the Earth' They say 'Was not the earth of Allah spacious enough for you to emigrate therein'. Such men will find their abode in Hell – what an evil destination"** (TMQ 4:97) as it is also suitable for deduction here. Additionally, this is indicated by what Al-Tirmidhi reported from Jarir that the Messenger of Allah ﷺ said, **"I am free from a Muslim between the polytheists. They said: Why O Messenger of Allah? He said: such that their fires are not seen"**, and in Abu Dawud **"They said: Why O Messenger of Allah. He ﷺ said: such that their two fires are not seen"** meaning that if both of them lit their fires you could not distinguish between them, as an allegory to not live in their abode.

As for what al-Bukhari reported **"No emigration (Hijrah) after the conquest of Makkah"** and his ﷺ words **"no Hijrah after al-fath"** and **"Emigration is finished, but there is Jihad and intention"**, and what was reported that when Safwan b. Umayyah embraced Islam it was



said to him: no *Deen* for the one who doesn't emigrate, and so he came to Madinah and the Prophet ﷺ said to him, ***"What brought you here Abu Wahb? So he said: It was said to me that there is no Deen for the one who does not emigrate. He ﷺ said: Abu Wahb – return to Makkah and stay in your places, emigration is finished and now there is Jihad and intention, so if I sought you to come out for war, then come"*** (as reported by Ibn Asakir). All of this negates emigration after the conquest of Makkah, but this negation has the *Shari'ah Illah* (cause) derived from the narration itself, since his ﷺ words ***"after the conquest of Makkah"*** comes in a form that includes the *'Illah*, which means that the conquest of Makkah was the *'Illah* behind negating the need to emigrate. Since the *'Illah* is present and absent with the *ma'lul* (caused), it is not specific to the conquest of Makkah rather it applies to the conquest of any place, with the evidence of another report ***"there is no Hijrah after al-fath (conquest)"***. This is supported by what al-Bukhari reported from Aaisha (ra) when she was asked about emigration; she replied, ***"There is no emigration today – the believer used to escape with his Deen to Allah and His Messenger, as he was afraid of facing the trials. As for today, when Allah has made Islam dominant, and the believer can worship his Lord wherever he wishes"*** which indicates that the emigration for the Muslim before the conquest was in order to escape with his *Deen* thus avoiding being afflicted, and this was negated after the conquest of Makkah since he then became capable of openly practising his *Deen* and establishing the laws of Islam. So the conquest upon which this was based is the *'Illah* for negating the need to emigrate, and not the conquest of Makkah as a specific incident. Accordingly, what is meant is that there is no emigration from a land once it has been conquered. And his ﷺ words to Safwan that emigration is finished meant emigration from Makkah after it had been conquered, since emigration is to leave the land of the disbelievers and from *Dar Al-Kufr*, so then if a land is conquered and becomes *Dar Al-Islam* then it does not remain as a land of disbelievers nor a *Dar Al-Kufr*, and so there is no *Hijrah* from it, and accordingly every land which is conquered does not have a *Hijrah* from it after its conquest (since it has become part of *Dar Al-Islam*). This is supported by what Ahmad reported from Mu'awiyah who said: I heard the Messenger of Allah ﷺ say ***"Hijrah doesn't end while repentance is accepted, and repentance is accepted until the sun rises from the West"*** and Ahmad also reported from the Prophet ﷺ that he ﷺ said ***"Hijrah does not end while Jihad remains"*** and in another narration ***"Hijrah does not end while the enemy is fought"***, which indicate that the emigration from *Dar Al-Kufr* to *Dar Al-Islam* continues and does not end.

2. The one who is capable to emigrate, but is able to openly practice his *Deen* in his country, and establish the *Shari'ah* laws required of him. In this case the emigration is recommended and not obligatory...the evidence being that the Messenger ﷺ used to encourage emigration from Makkah before its conquest while it remained *Dar Al-Kufr*, and explicit verses were revealed regarding it such as His (swt) words ***"Verily, those who have believed, and those who have emigrated (for Allah's Religion) and have striven hard in the Way of Allah, all these hope for Allah's Mercy. And Allah is Oft-Forgiving, Most-Merciful"*** (TMQ 2:218) and His (swt) words ***"Those who believed and emigrated and strove hard and fought in Allah's Cause with their wealth and their lives are far higher in degree with Allah. They are the successful"*** (TMQ 9:20), and this is all explicit in requesting emigration. As for it not being obligatory, this is because the Messenger ﷺ sanctioned Muslims who remained in Makkah. It is reported that when Nu'aim al-Nahham wanted to emigrate, his tribe Banu Adi said to him: stay with us and remain upon your *Deen*, and we will prevent whoever wishes to harm you, and continue to support us as you have supported us; he used to help the orphans and widows. And so he delayed his emigration for a period and then emigrated later, and so the Prophet ﷺ said to him ***"Your people were better to you than mine to me, my people expelled me and wanted to kill me, whereas yours took care of and protected you"*** (mentioned by Ibn Hajar in *al-Isabah*).
3. As for one who was not capable, then Allah (swt) is forgiving, and he is not requested to do so due to his inability to emigrate, either due to sickness or being

forced to stay, or due to weakness such as women, children and the like. The evidence is His (swt) words, ***“Except the weak ones among men, women and children who cannot devise a plan, nor are they able to direct their way.”*** (TMQ 4:98).

4. As for one who is able to practise his *Deen* openly in his country, and implement the rules of the *Shari'ah* requested from him, and at the same time he possesses the capability to transform the *Dar Al-Kufr* he lives in into *Dar Al-Islam* – it is prohibited in such a situation for him to emigrate from *Dar Al-Kufr* to *Dar Al-Islam*, irrespective of whether he possessed the capability himself or by organising himself with the Muslims in his land, or through getting help from Muslims from outside of his land, or through co-operation with the Islamic State, or through any of the permitted means. It is obligatory upon him to work to change the *Dar Al-Kufr* into a *Dar Al-Islam*, and in such a situation it is prohibited for him to emigrate from there. The evidence for this is that the work to make his land join to *Dar Al-Islam* is obligatory, and so if he does not support it and he is capable to perform it and left behind the action of seeking it to join the *Dar Al-Islam* and instead emigrates, then he has committed a sin just like the neglect of any other obligation.

Based upon this, if there was a *Dar Al-Islam*, taking up permanent residence in *Dar Al-Kufr* is prohibited for the one who is obligated to emigrate. Above that, taking a permanent residence in *Dar Al-Kufr* makes that Muslim from the people of *Dar Al-Kufr*, and so the rules which apply to *Dar Al-Kufr* apply to his relationship with the Islamic State and from the angle of his relationships with other individuals, and so the *hudud* (prescribed punishments) are not applicable to him, and *Zakat* is not collected from him, and anyone from *Dar Al-Islam* cannot inherit from him, and it is not obligatory to get maintenance from anyone in *Dar Al-Islam* from those people who are obligated to pay for him if he had resided there, because the *Shari'ah* is not applied upon the people of *Dar Al-Kufr*. Accordingly, they are not obligated by what the Muslims are obligated by and nor do they have the rights that the Muslims have, so they are not encompassed by the rules. The evidence for that is that the Muslims request two issues from those in *Dar Al-Kufr*: firstly, Islam; secondly, to come under the authority of Islam. It is related on the authority of Sulayman b. Buraydah on that of his father who said ***“Whenever the Messenger of Allah ﷺ appointed anyone as Amir of an army or an expedition, he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say: “Conquer in the Name of Allah and in the Way of Allah. Fight against those who disbelieve in Allah. Conquer and do not embezzle the spoils; do not break your pledge and do not mutilate the dead bodies. Do not kill the children and if you encountered your enemies who are polytheists, invite them to three courses of action. If they respond to any of these, then accept it from them and withhold yourself from doing them any harm. Invite them to Islam; if they respond to you accept it from them and desist from fighting them. Then invite them to migrate from their abode to the abode of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims, what applies to the Muslims applies to them, but they will not get any share from the spoils of war or Fai’ except when they actually perform Jihad with the Muslims”*** (reported by Muslim). So the Messenger ﷺ said ***“Then invite them to migrate from their abode to the abode of the Muhajirin and inform them that if they do so, they shall have all the privileges and obligations of the Muhajirin”*** (reported by Muslim). This text makes emigration a precondition for them to have the same privileges and obligations as us, in other words for them to be encompassed by the rules. The understanding of his ﷺ words ***“if they do so, they shall have”*** is that if they do not do that then they do not have the privileges of the *Muhajirin*, nor do their obligations apply to them, since achieving the result is connected to achievement of the condition, and so if the condition is not met the result is not achieved. So if they do not migrate then they do not have the privileges that the Muslims in *Dar Al-Islam* have. The words of the Messenger ﷺ ***“they will have the status of Bedouin***

**Muslims, what applies to the Muslims applies to the them**” means from the angle that they will not be killed, nor will their wealth be taken as war booty, and not from the angle of the rules applying to them, since the subject of the rules was explicitly explained by the condition mentioned just previously. The Messenger ﷺ explained the issue of wealth further, and mentioned in the same narration **“they will not get any share from the spoils of war or Fai”**, and so the Messenger ﷺ considered that their refusal to migrate nullified their right to the war booty and spoils of war, and any other wealth is also encompassed through analogy with the war booty and spoils of war. In other words, they have no rights with regard to anything connected to wealth, and so the one who did not migrate to the abode of the *Muhajirin* is just like the non-Muslims with regards to these financial rights. Therefore, he does not have the privileges of the Muslims and nor do the obligations upon them apply to him, which means that the financial rules do not apply to him since he did not migrate to the abode of the *Muhajirin*. This was an emphasis on financial rights, although all of the rules do not apply to him due to the words of the Messenger ﷺ **“if they do so, they shall have all the privileges and obligations of the Muhajirin”**. It is the case that the abode of the *Muhajirin* (which was Madinah at that time) alone was *Dar Al-Islam*, and anything else was *Dar Al-Harb*, in other words *Dar Al-Kufr*, which is why when the Messenger ﷺ used to go out on expeditions against every land other than the abode of the *Muhajirin* considering it to be *Dar al-Harb*, according to the evidence related from Anas who said **“Whenever the Messenger of Allah (saw) wanted to attack a people, he would wait until dawn, if he heard the Adhan (call to prayer) he would refrain, and if he did not hear it, he would pray and then attack”** (reported by al-Bukhari). And on the authority of Isam al-Muzani who said: **“Whenever the Messenger of Allah (saw) dispatched a task force or an expedition, he used to say to them: “If you see a mosque, or if you hear a mu’adhin, do not kill anyone”** (reported by the five except for Ibn Maja, and Al-Tirmidhi said it is *Hasan gharib*). These two narrations indicate that the Messenger ﷺ considered anything other than the abode of the *Muhajirin* to be *Dar Al-Kufr* and did not differentiate between Muslims and non-Muslims other than that the Muslims are not fought, not killed and their wealth is not taken as booty, whereas the non-Muslims are fought, they can be killed and their wealth can be taken as booty, while in everything else the rule is the same. So every land which is not *Dar Al-Islam* is considered to be *Dar Al-Harb*, and takes the rules of *Dar Al-Harb*.

This all indicates that the rule is related to the abode, and so whoever takes residency in *Dar Al-Harb*, in other words *Dar Al-Kufr*, while there was *Dar Al-Islam*, then the rules of *Dar Al-Harb* apply to him whether he was a Muslim or a disbeliever, and they are the same in that respect, except that when the land is opened by force then the Muslim is not killed nor is his wealth taken as booty. In the same manner, the rules regarding *Dar Al-Islam* apply to the one who is resident in *Dar Al-Islam*, and the Muslims and the *Dhimmi* are equal in this respect. This means that differences in rules result from differences in the abode. Accordingly, whoever resides in *Dar Al-Kufr* whether Muslim or non-Muslim is not encompassed by the laws of Islam at all, due to the words of the Messenger ﷺ in the narration of Sulayman b. Buraydah **“if they do so, they shall have all the privileges and obligations of the Muhajirin”**, since its understanding is that if they did not do that, in other words if they did not migrate to the abode of the *Muhajirin*, then they would not have their privileges and nor would their obligations apply to them; in other words they are not encompassed by the laws of Islam which are applied in the Islamic State (*Dar Al-Islam*) since they do not carry its citizenship, except for two rules which are: the inviolability of their blood and what wealth they have at the time of the conquest of *Dar Al-Kufr* in which they lived, and this is due to words of the Messenger ﷺ from ‘Abd Allah Bin Umar who said: The Messenger of Allah ﷺ said **“I have been ordered to fight people until they profess that there is no god but Allah. If they said it, their lives and their wealth would be inviolable to me, except that which is by right and Allah will account them”** (agreed upon from the narration of Umar, Abu Hurayrah, Ibn Umar and others, with the wording from Muslim). As for the one who permanently resides in *Dar Al-Islam*, whether they were Muslim or *Dhimmi*, they are covered by all the

rules of Islam which the State implements in *Dar Al-Islam* other than what the *Shari'ah* exempts the non-Muslims from such as their worship.

This consideration of the abode from the angle of it being *Dar Al-Kufr* or *Dar Al-Islam* is what is referred to as citizenship. Whoever resides in *Dar Al-Islam*, whether Muslim or non-Muslim, carries the Islamic citizenship (citizenship of *Dar Al-Islam*), and so the rules of Islam are applied upon him by the State, and whoever resides in *Dar Al-Kufr*, whether a Muslim or disbeliever, carries the citizenship of *Dar Al-Kufr*, and so the rules of Islam are not applied upon him by the State. Accordingly, the consideration is given to the permanent residency and not to temporary stay, and so if a Muslim resides in *Dar Al-Islam* and goes to *Dar Al-Kufr* for the sake of commerce, treatment, seeking knowledge, visiting relatives, to take a vacation, or any other purpose, and resides there for months or years but he carries the Islamic citizenship, in other words his permanent residency that he is going to return to was in *Dar Al-Islam*, then he is considered from the people of *Dar Al-Islam*, even if he was living in *Dar Al-Kufr*. And if a Muslim was a resident in *Dar Al-Kufr*, and came to *Dar Al-Islam* for commerce, treatment, to seek knowledge, visit their relatives, to take a vacation, or any other purpose, and so stayed in *Dar Al-Islam* for a day, month, year, or more, but he carries the citizenship of *Kufr*, in other words his permanent residency that he is going to return to is in *Dar Al-Kufr* then he is considered to be from the people of *Dar Al-Kufr*, and so the rules of the one given amnesty apply to him, and so he cannot enter *Dar Al-Islam* except with security, in other words except with the permission of the State. Therefore the subject is not temporary residency, however long that residency may be, but rather the subject is permanent residency, or in other words carrying the citizenship.

Based upon this, if the Islamic State was established then the *Khilafah* would be present, the lands that it governs with the authority of the Muslims, and the security of Islam, then they would become *Dar Al-Islam*, and anything else would have to be examined: if they were not ruled by Islam or the security was the security of *Kufr*, then it would be *Dar Al-Kufr* or in other words *Dar Al-Harb* even if all of the inhabitants were Muslims, and the rules of *Dar Al-Harb* would apply to it. However, if it was ruled by Islam, and the security was the security of Islam, but it had not joined to the *Khilafah*, then it would be *Dar Al-Islam* and the rules of Islam would apply to it, and the rule regarding it would be like the rule of the rebels, their contracts would be considered valid and their appointment as judges and governors would be valid, and the rule of their judgements and governorships is considered valid, but they are fought in order to make them give allegiance to the *Khalifah* due to the narration ***"If the pledge of allegiance is given to two Imams then kill the second of them"*** (reported by Muslim from Abu Said); in other words fight against him. Based upon this, if the Islamic State was established on any part of the Muslim lands such as Iraq, Turkey and Syria for example, then the rule of the Muslim who resides in England, America, Russia or anywhere else from the various abodes of *Kufr* and lands of the disbelievers would be the rule of the one who was in *Dar Al-Harb*, with no difference between the Muslim and disbeliever except for the inviolability of their blood and wealth upon the conquest of that land. As for the Muslims who are in the Muslim lands, then if they implemented Islam and did not become part of the *Khilafah*, then their lands are *Dar Al-Islam* and they would take the rule of rebels (*bugha*). If they did not implement Islam then they would be *Dar Al-Kufr*. In the same way, every land from the lands of Islam which remained not implementing Islam, or whose external security was not the security of Islam, is considered to be *Dar Al-Kufr*, and the rule of *Dar Al-Harb* is applied to it, even if all the people there were Muslims. There is no difference whether it was neighbouring the Islamic State, which is the lands which the *Khalifah* of the Muslims ruled or were not adjacent to it. So the Islamic State will consider all the Islamic lands which were ruled by Islam, or which the majority of people there are Muslims, as a single Islamic land which must join the Islamic State, and be subservient to the Islamic flag, and for there to be a pledge to the *Khalifah* upon its neck.

The phrase the *security of Islam* means to be protected by the authority of Islam, and the phrase *security of Kufr* means to be protected by the authority of disbelief; it is mentioned in

the *al-Muhit* dictionary “Safety and security like a companion against fear”, and Abu Dawud related from Sa’ad who said **“When it was the day of the conquest of Makkah, the Messenger of Allah ﷺ gave security to the people, except for four men and two women who he named”**, and from Aubi b. Ka’ab, **“when it was the day of conquest a man who is not known said: (There will be) no Quraysh after today, so the announcer of the Messenger of Allah ﷺ announced that the black and the white have been given safety, except so and so and so and so, people who he named”** (reported by Ahmad in *al-Musnad* with a *Hasan* chain, and al-Hakim reported something similar in *al-Mustadrak* as well as Ibn Hibban in his *Sahih*, both from Aubi b. Ka’ab). So this is the meaning of security. It being added to Islam or *Kufr*, is simply to connect it to the authority which is providing the security, because the security in the State is achieved by the authority. Therefore, the security of Islam is the security by the authority of the Muslims and the security of *Kufr* is the security by the authority of *Kufr*.

Domestic security is to secure the blood, wealth and honour of every one of the subjects by the security of the authority; whereas the external security is that the State’s borders are protected by its authority from invasion against it, and not by any other authority.

As for the second clause in the article, its evidence is that Islam permitted entering into treaties with other nations; Allah (swt) said **“Except those who join a group, between you and whom there is a treaty (of peace)”** (TMQ 4:90), and He (swt) said **“and if he belonged to a people with whom you have a treaty of mutual alliance, compensation (blood money) must be paid to his family”** (TMQ 4:92), and He (swt) said **“and if they seek your help it is your duty to help them except against a people with whom you have a treaty of mutual alliance”** (TMQ 8:72). The Messenger ﷺ concluded a treaty with Yuhannatu Bin Ruba, the companion of Ayla, and concluded a treaty with Bani Damrah. There were conditions in these treaties which were applied, and it is a duty upon the Muslims to be bound by these conditions due to the words of the Prophet ﷺ **“The Muslims are upon their conditions”** (reported by Al-Tirmidhi who said it was *Hasan*), as long as this condition does not contradict Islam. If the condition did contradict Islam it would be rejected due to the words of the Messenger ﷺ in the narration of Al-Tirmidhi, **“except for a condition which prohibits something permitted or permits something prohibited”** and his ﷺ words **“Every condition not in the Book of Allah is invalid”** (agreed upon from Aaisha (ra)). Therefore the Muslims carry out the implementation of these conditions according to what was mentioned in the texts of the treaties as long as they do not contradict Islam. So the evidence for this clause is the evidence that permits treaties and the evidence for the obligation of fulfilling the conditions.

As for the second half of this clause connected to the economic and commercial relations, this is in consideration of what harm upon the *Ummah* could result from the economic agreements, such as if the raw materials were exported out of the country, or resulted in the closure of factories in the country, or anything else similar, so therefore the agreements are restricted to whatever does not cause harm and anything which causes harm is prohibited through the application of the principle **“If one type of a permitted thing leads to a harm, only that one is prohibited, and the thing remains permitted”**, and the same applies to the circumstances of the commercial agreements.

These States are legally considered to be belligerent States, because they are disbelievers who do not submit to Islamic authority, so they are considered to be belligerents because the Messenger ﷺ said **“I have been ordered to fight the people until they witness that there is no God except for Allah, and that Muhammad is His Messenger”**, which is general. Their being legally considered as belligerents, in other words with respect to the laws, is due to the agreements between us and them.

As for the third clause, its evidence is the evidence for the rules of *Dar Al-Harb* in the absence of any treaty between us and them. The evidence to not create any diplomatic relations with the countries which are mentioned in the article is the fact that if their having

embassies in a land which was under the authority of Islam would lead to harm because the job of embassies of countries like these is to try to increase the influence of their States in the countries where they had their embassies, so consequently they are prohibited in accordance with the practical application of the principle of prohibiting something permitted if it leads to harm. However, their subjects are not prevented from entering the country unless their entrance would lead to harm. And a visiting envoy would not be prohibited from entering the country unless the entrance of the specific person sent as an envoy, not their envoys generally, would lead to harm.

These countries are legally considered as belligerent (rather than actual belligerent) due to their falling under his ﷺ words, ***"I have been ordered to fight the people until they witness that there is no God except for Allah, and that Muhammad is His Messenger"***, from the angle that they are disbelievers. As for their being considered as belligerents from a legal rather than actual perspective, this is because there is no fighting between us and them, and there has been no announcement of an actual war between us from our side or theirs. If some or part of these countries come to be in a situation of actual war with us, in other words if they attacked the Muslim lands, then they would be treated according to the fourth clause of this article which deals with actual war, and for that reason America and Britain are considered as actual belligerents after they began their war upon Iraq and Afghanistan, and any other country which declared war on any of the Muslim lands would also be considered the same, and the rules to do with actual war are applied as long as the situation of war remains between us and them.

As for the fourth clause, its evidence is the evidence of *Jihad* from the issue of fighting the disbelievers, and the evidences that make the blood and property of the non-Muslims from amongst them permitted, and the evidences of fighting in the battle; Allah (swt) said ***"fight those who are close to you from the disbelievers"*** (TMQ 9:123), and the Prophet ﷺ said ***"I have been ordered to fight people until they profess that there is no god but Allah and Muhammad is the Messenger of Allah"*** agreed upon with the wording from Muslim, and he ﷺ made an exception for the Muslims amongst them with his words ﷺ, ***"If they said it, their lives and their wealth would be inviolable to me, except that which is by right"***. And Allah (swt) said, ***"And whoever turns his back from them that day, unless it be a stratagem of war, or to retreat to a troop (of his own), he had indeed drawn upon himself wrath from Allah"*** (TMQ 8:16), and also due to the words of the Messenger ﷺ, ***"Stay away from the seven destructive things"***, and he ﷺ enumerated them until he ﷺ said ***"and to turn away on the day of advance (into battle)"*** (agreed upon from the narration of Abu Hurayrah).

And other rules of fighting and battles and the rest of the evidences regarding *Dar al-Harb* and the battles.

It is not permitted to have a permanent peace treaty with these countries that were practically belligerent, in other words a permanent cessation of fighting, or permanent truce, since this prevents *Jihad* which continues until the day of Judgement, just as a permanent truce prevents the spread of Islam until Allah (swt) makes it dominant over all other *Deens*. Allah (swt) says ***"And fight them until there is no more Fitnah (disbelief and polytheism: i.e. worshipping others besides Allah) and the religion (worship) will all be for Allah Alone"*** (TMQ 8:39), and the Messenger ﷺ said ***"Jihad continues from when Allah sent me until the last of my Ummah fights the Dajjal"*** (reported by Abu Dawud from Anas).

As for a temporary treaty with these countries, and a temporary cessation of the war, it is looked at as follows:

- a. If the State which is in the actual war against us, has land which is not Islamic land upon which its entity is formed, then it is permitted to have a temporary truce with it, in other words to stop the war with it for a temporary time, if the pause is in the interest of Islam and the Muslims, and according to the conditions that the *Shari'ah* confirmed.

The evidence for this is the treaty of al-Hudaybiyah, which was between the Islamic State which the Messenger ﷺ had established in Madinah and the Qurayshi state which was established upon the land which Islam had not yet conquered, in other words it was not established upon Islamic land.

- b. If the State which was at war with us, was established as an entity in its entirety upon Islamic land, in other words the entity did not have any land connected to it which had not been conquered by the Muslims, such as Israel – the Jewish State which has stolen Palestine – then it is not permitted to have a treaty with it, since the establishment of this State was invalid according to the *Shari'ah*, and since a treaty with it would mean to give up Islamic land to it, which is prohibited and a crime against Islam. Rather, the situation of actual war has to remain with it, irrespective if there was a truce which was contracted with it by illegitimate rulers in the Muslim lands, or not.

And so accordingly any treaty with the Jewish State, even over a handspan of the land, is prohibited by the *Shari'ah* because it is usurping and occupying and its whole entity is established on Muslim land and it is a surrender of Islamic land to it, and establishing its control over the Muslims there, which is not permitted according to the *Shari'ah*. Islam requires that all of the Muslims fight against it, and so their armies must be sent to fight, and all those capable of fighting be gathered as soldiers in the army, and for this to continue until the Jewish State is finished and the Muslim lands are rescued from it. Allah (swt) says, ***“And never will Allah grant to the disbelievers a way (to triumph) over the believers”*** (TMQ 4:141) and His (swt) words, ***“Then whoever transgresses the prohibition against you, you transgress likewise against him”*** (TMQ 2:194) and ***“and turn them out from where they have turned you out”*** (TMQ 2:191).

#### **Article 190**

**All military treaties and pacts (with other States) are completely prohibited, along with anything of their type, or connected to them such as political treaties and agreements covering the leasing of military bases and airfields. It is permitted to conclude good neighbour relations, economic, commercial, financial, cultural and armistice treaties.**

The definition of “*treaties*” is that they are agreements that States conclude between themselves with the goal of organising a specific relationship and defining the rules and conditions which that relationship submits to. The Islamic jurists used the term “*al-muwada'at*”, and the evidence for the permissibility of concluding treaties between the Muslims and disbelievers are the words of Allah (swt), ***“between you and whom there is a treaty (of peace)”*** (TMQ 4:90) and ***“and if he belonged to a people with whom you have a treaty of mutual alliance”*** (TMQ 4:92), and ***“and if they seek your help it is your duty to help them except against a people with whom you have a treaty of mutual alliance”*** (TMQ 8:72), and the word *al-mithaq* used in the verses means treaties. The Messenger ﷺ concluded several treaties with the disbelievers, however it is a precondition for the validity of the contracting of the treaty that the subject that the contract was upon was something that the *Shari'ah* had permitted. There are various types of treaties, such as non-political and political treaties.

Non-political treaties are the agreements which specify the manner of the relationship between the two States with respect to a particular issue between the two of them such as financial, economic, commercial, industrial and cultural relationships, and anything else similar, and so these are considered in the light of the *Shari'ah* according to their subject, and the *Shari'ah* rules connected to that subject are applicable. That is why economic treaties are permitted, since the rules regarding renting and international commerce are applicable, and commercial treaties are also permitted, since the rules regarding selling and international

commerce are applicable, and financial treaties are permitted, since the rules of exchange apply, and cultural treaties are permitted since the rules regarding education and teaching apply from the angle of scientific material, and from the angle of definite and speculative results which are produced by learning and teaching them.

There are three categories of political treaties:

Firstly, those that are permitted, which are those that do not affect the nature of the State, and do not decrease its domestic and international authority, and do not give the disbeliever any authority over it, such as peace and armistice treaties - the Messenger ﷺ concluded an armistice treaty with the Quraysh in the armistice treaty of Hdaybiyah.

Also permitted are treaties to not commit acts of aggression against one another; the Messenger ﷺ concluded treaties to not commit acts of aggression with Bani Damra and Bani Mudlij. In the same manner, treaties upon friendly relations are permitted since the Messenger ﷺ concluded a treaty upon friendly relations with the Jews and so on.

The second category of treaties are those which are necessary for the State if it is in a position of difficulty and constraint, and these are permitted, such as a treaty to take *Jizya* from a State while it remains ruled by a *Kufr* system, or a treaty with a State giving it money in exchange for its neutrality with us.

The third category are those treaties which are prohibited, such as treaties of protection, or permanent neutrality and treaties which delineate permanent borders, and those for leasing airfields and military bases and anything else similar. These treaties are not permitted, because the subject of the treaty is not permitted, since protection gives the disbeliever authority over the Muslims, and makes the security of the Muslims the security of disbelief (*Kufr*). Permanent neutrality is not permitted, because it reduces the authority of the Muslims. Delineating permanent borders is not permitted because it means not carrying the call to Islam and the suspension of the rules of *Jihad*. Leasing airfields is not permitted because it gives the disbelievers authority over *Dar Al-Islam* and the same applies to military bases.

As for military treaties, they are forbidden due to the words of the Prophet ﷺ ***“Do not take light from the fire of the disbelievers”*** (reported by Ahmad and Al-Nasa’i), and the fire of a people is a metaphor for their structure in war. It is also forbidden due to his ﷺ words ***“I do not rely /seek help from a polytheist”*** (reported by Muslim from Aaisha (ra)). And from Aaisha (ra) in Abu Dawud and Ibn Maja, ***“We do not seek help of a polytheist”*** and his ﷺ words, ***“We do not seek help with the disbelievers against the polytheists”*** (reported by Ibn Abi Shayba from Sa’id b. al-Mundhir).

With regard to what is reported by Ahmad and Abu Dawud from Dhi Makhmar who said: I heard the Messenger of Allah ﷺ say ***“You will make a safe treaty with the Romans, and you and they will fight an enemy behind them”*** – his ﷺ words ***“and you and they will fight an enemy behind them”*** is taken to mean individual Romans, and not their State, and that is because he ﷺ said ***“You will make a safe treaty with the Romans, and you will fight”*** and the treaty between the Muslims and disbelievers is only when they accept the *Jizya* and to enter under the rule of the Muslims, since Islam ordered the Muslims to give the disbelievers they fight the choice between three: Islam, *Jizya* or war. If the treaty occurred and they were disbelievers, this could not happen except in the situation they were paying *Jizya* and their falling under the Islamic flag. So therefore his ﷺ words ***“you will make a treaty”*** is an indication that they were under the flag of the Muslims, and so they would be individuals at that time, and this is supported by what happened with the Romans. The Muslims fought and defeated them, and occupied their lands, and the Romans fought with the Muslims as individuals, but the Roman State did not fight alongside the Islamic State against another enemy behind them. This confirms that what is meant by the narration is individual Romans, and not as a State, and it is obligatory to interpret it in this way in order to reconcile and use all of the evidences – as is well known in *Usul al-Fiqh*, using the two evidences is better than voiding one of them, and there is no recourse to weighing the evidences unless reconciling



them is not possible. Accordingly it is clear that there is no evidence which permits seeking the help of the polytheists as a State; rather the evidences are explicit against that without any restriction.

These are the evidences for this article.

#### **Article 191**

**The State is forbidden to belong to any organisation which is based on anything other than Islam or which applies non-Islamic rules. This includes international organisations like the United Nations, the International Court of Justice, the International Monetary Fund and the World Bank, and regional organisations like the Arab League.**

The subject which the international and regional organisations are established upon has been prohibited by the *Shari'ah*.

The United Nations is established upon the basis of the Capitalist system, which is a system of *Kufr*; above and beyond which it is a tool in the hands of the large nations, particularly America, which exploits it for the sake of imposing its influence over the smaller nations, which the current states in the Islamic World are a part of.

The International Court of Justice judges with a system of *Kufr*, and going to it for a judgement is to take a judgement from other than what Allah (swt) has revealed.

The International Monetary Fund is established upon giving loans of hard currency with interest, and on a basis of exchange that is forbidden according to the *Shari'ah*, and so it does not give hard currency in exchange for the local currency on the spot, but rather it gives hard currency to the State which is in need of hard currency, in exchange that after a period of time it repays it the equivalent from its own currency with additional interest which is specified. This kind of currency exchange is forbidden since it is a type of currency exchange that has been prohibited, because currency exchange either has to be carried out on the spot without any delay, since if there is a delay it is forbidden as the narration has mentioned. And in the same manner it also includes interest which is also forbidden.

The World Bank is established upon utilising interest, like any other bank.

The Arab League is established upon the basis of the Capitalist system, and it explicitly mentions in its constitution that it is to protect the independence of the Arab states, in other words the protection of the separation and division of the Islamic lands, which is prohibited.

Similar to the Arab League is the Organisation of Islamic Conference and its like.

For these reasons, it is forbidden for the Islamic State to belong to any of these organisations.

**This is the draft constitution, or the necessary evidences for it, and we have clarified the evidences for the rules which are part of the articles of the constitution, and explained what was necessary to be explained, and it is clear that this constitution is an Islamic constitution, in other words it is composed of *Shari'ah* rules deduced from *Shari'ah* evidences, in other words from the Book (Quran), the *Sunnah*, the *Ijma'* of the companions, and *Qiyas*. This is why it is a duty upon the Muslims to act according to it.**

