

Sheikh Taqīuddīn An-Nabahānī

The Islamic Personality

VOL .TWO – ISLAMIC JURISPRUDENCE (*FIQH*)

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The Islamic Personality

الشخصية الإسلامية

VOL .TWO – ISLAMIC JURISPRUDENCE (*FIQH*)

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Translation of the Qur'ān

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

Qur'ānic verses appear in speech marks preceded by a reference to the Surah and verse number. Sayings (*Hadith*) of Prophet Muhammad ﷺ appear in inverted commas along with reference to the Hadith Book and its Reporter.

ﷺ - صلى الله عليه وسلم (Peace be upon him)

ﷻ - سبحانه وتعالى (Glory to Him, the Exalted)

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ
 مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ
 كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا
 (59) أَلَمْ تَرَ إِلَى الَّذِينَ يَزْعُمُونَ أَنَّهُمْ آمَنُوا بِمَا نُزِّلَ إِلَيْكَ
 وَمَا نُزِّلَ مِنْ قَبْلِكَ يُرِيدُونَ أَنْ يَتَحَاكَمُوا إِلَى الطَّاغُوتِ وَقَدْ
 أُمِرُوا أَنْ يَكْفُرُوا بِهِ وَيُرِيدُ الشَّيْطَانُ أَنْ يُضِلَّهُمْ ضَلَالًا بَعِيدًا
 (60) وَإِذَا قِيلَ لَهُمْ تَعَالَوْا إِلَى مَا أَنْزَلَ اللَّهُ وَإِلَى الرَّسُولِ
 رَأَيْتَ الْمُنَافِقِينَ يَصُدُّونَ عَنْكَ صُدُودًا (61) فَكَيْفَ إِذَا
 أَصَابَتْهُمُ مُصِيبَةٌ بِمَا قَدَّمَتْ أَيْدِيهِمْ ثُمَّ جَاءُوكَ يَحْلِفُونَ بِاللَّهِ
 إِنْ أَرَدْنَا إِلَّا إِحْسَانًا وَتَوْفِيقًا (62) أُولَئِكَ الَّذِينَ يَعْلَمُ اللَّهُ مَا
 فِي قُلُوبِهِمْ فَأَعْرِضْ عَنْهُمْ وَعِظْهُمْ وَقُلْ لَهُمْ فِي أَنْفُسِهِمْ
 قَوْلًا بَلِيغًا (63) وَمَا أَرْسَلْنَا مِنْ رَسُولٍ إِلَّا لِيُطَاعَ بِإِذْنِ اللَّهِ
 وَلَوْ أَنَّهُمْ إِذْ ظَلَمُوا أَنْفُسَهُمْ جَاءُوكَ فَاسْتَغْفَرُوا اللَّهَ وَاسْتَغْفَرَ
 لَهُمُ الرَّسُولُ لَوَجَدُوا اللَّهَ تَوَّابًا رَحِيمًا (64) فَلَا وَرَبِّكَ لَا
 يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي
 أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا (65)

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In the name of Allah, al-Rahman, al-Rahim

Studying *Fiqh*

Knowledge of the *Shari'ah* rules, which a Muslim is obliged with in his life, is an individual duty upon every Muslim because he is commanded to undertake all his actions according to the *Shari'ah* rules. This is because the address of accountability with which the Legislator addressed mankind, and the believers, is a decisive address which leaves no option for anyone concerning the creed (*iman*) or the activities of man. So Allah (swt)'s statement:

آمَنُوا بِاللَّهِ وَرَسُولِهِ

“Believe in Allah and His Messenger”

[TMQ 4:136]

Is like His (swt) statement:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“Allah permitted trade and forbade *riba*”

[TMQ 2:275]

Both of these *ayat* are addresses of accountability. They are both decisive addresses in relation to their address, not in relation to the subjects we were addressed with, due to the evidence of Allah's (swt) statement:

مَا كَانَ لِمُؤْمِنٍ وَلَا لِمُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ

“It is not for any believer, male or female, to have any option in any matter upon which Allah and His Messenger have judged”

[TMQ 33:36]

Also due to the evidence that every action will be accounted for as Allah (swt) said:

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ، وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ

“Whoever performs a particle's weight of good will see it, and whoever performs a particle's weight of evil will see it”

[TMQ 99:8-9]

And Allah (swt) said:

يَوْمَ تَجِدُ كُلَّ نَفْسٍ مِمَّا عَمِلَتْ مِنْ خَيْرٍ مُحْضَرًا، وَمِمَّا عَمِلَتْ مِنْ سُوءٍ تَوَدُّ لَوْ أَنَّ بَيْنَهَا وَبَيْنَهُ أَمَدًا بَعِيدًا وَيُحَذِّرُكُمُ اللَّهُ نَفْسَهُ

“The Day that every soul will be confronted with all the good it has done and all the evil it has done, it will wish that there was a great distance between it and (its evil). But Allah cautions you about Himself” [TMQ 3:30]

And He (swt) said:

وَدُوْنِي كُلِّ نَفْسٍ مَا عَمَلَتْ

“And each soul will be recompensed for all its actions” [TMQ 16:111].

Accountability has been addressed in a decisive manner, a Muslim is accountable in a decisive manner and he is obliged to restrict himself to the *Shar'a* rules when he undertakes any action. As for the subject of accountability i.e. any thing that Allah (swt) has made man accountable with, this can be obligatory (*fard*), recommended (*mandub*) or allowed (*mubah*), or it can be prohibited (*haram*) or disliked (*makruh*). As for the essence of accountability, it is decisive without any choice in it; so there is only one situation, namely the obligation of restricting oneself to it. Hence it becomes obligatory upon every Muslim to know the *Shari'ah* rules with which he is bound in the earthly life. As for knowing other than the *Shari'ah* rules with which he is bound in this life, this is a obligation of sufficiency (*Fard Kifayah*) and not an individual duty (*Fard Ain*) i.e. if some undertake and fulfil this, then it falls away from the rest. This is strengthened by what was narrated by Anas bin Malik (ra) that

The Messenger of Allah (saw) said:

طلب العلم فريضة على كل مسلم

“Seeking knowledge is obligatory upon every Muslim.”

Even though what is meant here is all the knowledge with which a Muslim is bound in his life, jurisprudence (*fiqh*) is a part of it in respect to the rules with which a Muslim is bound in his life such as creed (*aqeeda*), ritual worships (*ibadat*), social transactions (*mu'amalat*) etc. Hence studying *fiqh* is among the compulsory matters for Muslims; rather it is from the rules that Allah (swt) obliged upon them, whether it is an individual or collective duty. There have come noble *abadith* encouraging the studying of *fiqh* and verily the Messenger (saw) encouraged the study of *fiqh*.

Al-Bukhari narrated through Ibn Umar (ra): The Messenger of Allah (saw) said:

من يُرِدِ اللهُ به خيراً يفقهه

“The one for whom Allah wills good (khayr), He grants him *fiqh*.”

Saeed bin al-Musayyab narrated from Abu Hurayra (ra) who said: The Messenger of Allah (saw) said:

من يُرِدِ اللهُ به خيراً يفقهه في الدين

“The one for whom Allah wills good, He grants him *fiqh* in the deen” .

(narrated by Bin Majah).

Azzam bin Hakeem narrated from his uncle from the Messenger of Allah (saw) who said:

إنكم أصبحتم في زمان كثير فقهاؤه قليل خطبائه قليل سائلوه كثير معطوه، العمل فيه خير من العلم، وسيأتي على الناس زمان قليل فقهاؤه كثير خطبائه قليل معطوه كثير سائلوه، العلم فيه خير من العمل

“You are in a time of many jurists (*fuqaha*), few speakers, many who give and few who ask; so action in this time is better than knowledge. There will soon come a time of few jurists, many speakers, many who beg and few who give; so knowledge in this time is better than action.”

These *ahadith* are explicit in the virtue of *fiqh* and encouraging its study. It was narrated that Umar bin al-Khattab (ra) said:

لَمَوْتِ أَلْفِ عَابِدِ قَائِمِ اللَّيْلِ صَائِمِ النَّهَارِ أَهْوَنُ مِنْ مَوْتِ الْعَاقِلِ الْبَصِيرِ بِحَلَالِ اللَّهِ وَحَرَامِهِ

“The death of one thousand worshippers who pray at night and worship in the day is less serious than the death of one intelligent knower (baseer) of the halal and *haram* of Allah.”

Examples (*Namadhij*) of *Fiqh*

The Sahabah (ra) were Arabs and the Arabic language was intrinsic to them, and they were scholars with a precise and comprehensive understanding of the Arabic tongue. They would accompany the Messenger of Allah (saw) with the Qur'an being revealed while they were with the Messenger (saw). The Messenger (saw) would clarify the rule of Allah (swt) in the incidents so they would witness it with their eyes and ears, this is why they were also scholars of the *Shari'ah* with a comprehensive understanding of it. When an incident would occur in front of them requiring a clarification of the rule of Allah (swt), they would elucidate its *Shari'ah* rule (*hukm shari'i*) through elucidating their opinion that they deduced from the text of the understanding of the text (*ma'qul an-nass*). Often they would limit themselves to giving the rule without clarifying its evidence, thus the companions' judgement was transmitted in the form of their opinions. This is what led some to understand that the Sahabah would give their (own) opinions in judgements. The reality is that the Sahabah would give the *Shari'ah* rule which they deduced from their understanding of the *Shari'ah* texts, but they did not append it with evidence or clarify the legislative reason for the rule or the evidence for the legislative reason.

This led to speculation that this opinion is from the Sahabah (ra) and that it is allowed for a person to give his opinion in an issue as long as he has comprehensive knowledge about Islam and knows Arabic.

When the era came in which corruption happened in the Arabic tongue, principles of Arabic came to be taught in order to preserve the tongue. And when falsehood infiltrated the narrators, and there were *ahadith* narrated from the Messenger which he (saw) never said, the *ahadith* became a specific expertise taught with its principles (*usul*). Therefore, deducing rules became linked to the attainment of knowledge in the Arabic language and *Shari'ah* texts such that the *Shari'ah* rules came to be accompanied by evidence and even the way of deduction. *Fiqh* developed a new existence shaped through research resulting in a specific type of arrangement in categorisation. With the different styles of categorisation and arrangement, it became necessary to clarify the *Shari'ah* rules together with clarifying the rules as well as clarifying the way of deduction where the rule is one with different opinions. Islamic libraries were constructed with hundred of thousands of *fiqh* manuscripts in different styles of categorisation and presentation.

However, when the *kuffar* succeeded in invading Muslims after the 18th century CE, they began misleading them about the Islamic sciences and made them detest *fiqh* books like the (*sofista*) made people detest honey when they told them it was the excreta of flies. Islamic *fiqh* was placed in a dark environment until the Muslims turned their back on it. When Muslims turn their backs on *fiqh*, they turn their backs on knowing the Islamic rules thereby falling into ignorance about Allah's deen; and this is what actually happened.

Hence it is a must to encourage Muslims to come forward to study *fiqh* by offering a model of Islamic *fiqh* to affect the desire for studying it. It is beneficial to offer people a model of *Shari'ah* rules relating to public relationships known today as political rules or constitutional *fiqh*, a model of *Shari'ah* rules related to relationships between individuals known as civil law, and a model of *Shari'ah* rules related to evidences such that they become a clear *fiqh* model in order to build the desire for studying Islamic *fiqh* from the well-known books of *fiqh*.

The Khilafah

The Khilafah is the general or overall leadership for all the Muslims in the world in order to establish the laws of the Islamic *Shari'ah* and to carry the *da'wa* of Islam to the world. It is the same as the *Imamah*, as the *Imamah* and Khilafah have the same meaning. Several *sabeeh ahadith* mention them with the same meaning. Neither of the two terms has ever come with any meaning different from the other in any *Shari'ah* text i.e. the Qur'an or the Sunnah, as these two (sources) are the only *Shari'ah* sources. It is not compulsory to hold to the term of Khilafah or *Imamah*, but rather it is compulsory to hold to the meaning of the term.

Establishing the Khilafah is an obligation upon all Muslims in all regions of the world. Establishing it, like the performing of any obligation that Allah (swt) obliged upon Muslims, is an inevitable matter without choice or leniency in it. Negligence in performing it is one of the worst sins for which Allah (swt) punishes with the strictest of the punishments.

The evidence for establishing the Khilafah upon all Muslims (come from): The Qura'n, The Sunnah and *Ijmaa as-Sahabah*.

As for the Qura'n, Allah (swt) has ordered the Messenger (saw) to rule between Muslims by all that He (swt) revealed to him (saw), and His order (swt) to him was in a decisive manner. Allah (swt) addressed the Prophet (saw) saying:

فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم عما جاءك من الحق

"And rule between them by that which Allah revealed to you, and do not follow their vain desires away from the truth which came to you" [TMQ 5:48]

And He (swt) said:

وأن احكم بينهم بما أنزل الله ولا تتبع أهواءهم واحذرهم أن يفتنوك عن بعض ما أنزل الله إليك

"And rule between them by that which Allah revealed to you and do not follow their whims, and beware (be on the alert) that they may deviate you away from even some part of what Allah revealed to you" [TMQ 5:49]

The speech of Allah (swt) to the Prophet (saw) is a speech to his Ummah unless there is evidence which limits the speech to him (saw). In this case there is no such evidence, so the address is to all the Muslims to establish the rule (*hukm*). The establishment of the Khalifah does not mean other than the establishment of the rule and the authority. Moreover, Allah (swt) made it obligatory upon Muslims to obey those in authority i.e. the ruler, which indicates that the existence of the one in authority is obligatory upon Muslims.

Allah (swt) said:

يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم

"O you who believe obey Allah and obey the Messenger and those in authority amongst you" [TMQ 4:59]

Allah (swt) does not order obedience to someone who does not exist. This indicates that the existence of the person in authority is obligatory. When Allah (swt) commands obedience to those in authority then He (swt) is commanding their establishment. The result of establishing the ruler is the establishment of the *Shari'ah* rule (*hukm shar'i*) and the failure to establish it will

result in neglecting the *Shari'ah* rule (*hukm shar'i*). Thus his existence is obligatory as the result of the failure to establish it is will be from the prohibited matters i.e. the neglect of the *Shari'ah* rule (*hukm shar'i*).

As for the Sunnah, Nafi' reported saying: Abdullah bin 'Umar said to me that he heard the Prophet (saw) saying:

من خلع يداً من طاعة الله لقي الله يوم القيامة لا حجة له، ومن مات وليس في عنقه بيعة مات ميتة جاهلية

“Whoever removes his hand from obedience will meet Allah on the Day of Resurrection without having any proof for him, and whoever dies without a pledge of allegiance (*bay'ah*) on his neck dies a death of ignorance (*jahiliyyah*).”

So the Prophet (saw) made it compulsory upon every Muslim to have a *bay'ah* on his neck, and described that whoever dies without a *bay'ah* on his neck that he dies a death of *jahiliyyah*. The *bay'ah* cannot be for anyone except the Khalifah. The Prophet (saw) made it obligatory upon every Muslim to have on his neck a *bay'ah* to a Khalifah, yet he did not make it an obligation upon every Muslim to give *bay'ah* to a Khalifah. The duty is the existence of a *bay'ah* on the neck of every eligible Muslim i.e. the existence of a Khalifah who accordingly deserves a *bay'ah* upon the neck of every Muslim. So it is the presence of the Khalifah which places a *bay'ah* on the neck of every Muslim, whether the Muslim actually gave a *bay'ah* to him (in person) or not. Therefore, this hadith of the Prophet (saw) is evidence that the appointment of the Khalifah is an obligation and not a proof that giving the *bay'ah* is obligatory. This is so because what was rebuked by the Prophet (saw) was the absence of a *bay'ah* on the neck of a Muslim until he dies, but he did not rebuke the absence of the *bay'ah*.

Muslim narrated from Al-'Araj from Abu Hurairah (ra) from the Prophet (saw) who said:

إنما الإمام حجة يقا تل من ورائه ويتقى به

“Behold, the *Imam* is a shield from behind whom the people fight and by whom they protect themselves.”

And Muslim reported from Abu Hazim who said:

كانت بنو اسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه نبي، إنه لا نبي بعدي، وستكون خلفاء فتكثروا. قالوا: فما تأمرنا؟ قال: فوا ببيعة الأول فالأول، وأعطوهم حقهم فإن الله سائلهم عما استرعاهم

“I accompanied Abu Hurairah for five years and heard him reporting from the Prophet who said: The Prophets ruled over the children of Israel. Whenever a Prophet died another Prophet succeeded him, but there will be no Prophet after me. There will be Khulafaa and they will number many. They asked: What then do you order us? He said: Fulfil the *bay'ah* to them one after the other and give them their due right. Surely Allah will ask them about what He entrusted them with.”

And from bin 'Abbas from the Prophet (saw) who said:

من كره من أمره شيئاً فليصبر عليه، فإنه ليس أحد من الناس خرج من السلطان شيئاً فمات عليه إلا مات ميتة جاهلية

“If anyone sees in his *Amir* something that displeases him let him remain patient. For, behold, he who separates himself from the sultan (authority of Islam) by even so much as a hand span and dies thereupon, has died a death of *jahiliyyah*”.

In these *abadith*, the Prophet (saw) informs us that leaders will run the affairs of Muslims, and they include the description of the Khalifah as a shield i.e. a protection. So the description of the *Imam* as a shield is informative of the benefits of the presence of the *Imam*, thus it is a command for action. This is because if the information conveyed by Allah (swt) and the Prophet (saw) contained rebuke then it is a command of prohibition, and if it contained praise then it is a command for action.

If the ordered action is necessary to implement a *hukm shari'* (*Shari'ah* rule), or by its negligence a *hukm shari'* will be neglected, then this command is decisive. In these *abadith* there is information also that those who run the affairs of Muslims are *Khulafaa*, which indicates an order to appoint them. They also include a prohibition for Muslims to separate from the authority, which indicates the obligation upon Muslims to appoint an authority for themselves i.e. ruling. Moreover, the Prophet (saw) ordered the Muslims to obey the Khalifah and to fight those who dispute his authority as Khalifah, which indicates an order to appoint a Khalifah and to protect his Khalifah by fighting against whosoever disputes with him. Muslim reported that the Prophet (saw) said:

وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفْقَةَ يَدِهِ وَثَمْرَةَ قَلْبِهِ فَلْيُطْعَمْهُ إِنْ اسْتَطَاعَ فَإِنْ جَاءَ آخَرَ يَنْزِعُهُ فَاضْرِبُوا عُنُقَ الْآخِرِ

“He who pledged allegiance to an *Imam* giving him the clasp of his hand and the fruit of his heart shall obey him as long as he can, and if another comes to dispute with him you have to strike the neck of that man.”

So the command to obey the *Imam* is an order to establish him, and the command to fight those who dispute with him is evidence that this command is decisive in maintaining the presence of one Khalifah.

As for the *Ijma'a* of the Sahabah (ra) they all agreed upon the necessity to establish a successor or Khalifah to the Prophet (saw) after his death, and they all agreed to appoint a successor to Abu Bakr, then to 'Umar, then to 'Uthman, after the death of each one of them. The *Ijma'a* of the Sahabah (ra) to establish a Khalifah manifested itself emphatically when they delayed the burial of the Prophet (saw) after his death while engaged in appointing a successor to him, despite the fact that the burial of the dead person is *fard*, and that it is *haram* upon those who are supposed to prepare for his burial to engage themselves in anything else until they complete the burial. The Sahabah (ra) were obliged to engage themselves in preparing the burial of the Prophet (saw), instead some of them engaged themselves in appointing a Khalifah rather than carrying out the burial, and some others kept silent on this engagement and participated in delaying the burial for two nights despite their ability to deny the delay and their ability to bury the Prophet (saw). So this was an *Ijma'a* to engage themselves in appointing a Khalifah rather than to bury the dead. This could not be legitimate unless the appointment of a Khalifah is more obligatory than the burial of the dead. Also, all the Sahabah (ra) agreed throughout their lives upon the obligation of appointing a Khalifah. Although they disagreed upon the person to be elected as a Khalifah, they never disagreed upon the appointment of a Khalifah, neither when the Prophet (saw) died, nor when any of the *Khulafaa ar-Rashidun* died. Therefore the *Ijma'a* of the Sahabah is clear and strong evidence that the appointment of a Khalifah is obligatory.

Also the establishment of Islam and the implementation of the *Shari'ah* rules in all walks of life is compulsory on Muslims through definitely proven evidences. This duty cannot be achieved unless there is a ruler who has an authority. The *Shari'ah* principle states:

ما لا يتم الواجب إلا به فهو واجب

'What is necessary to accomplish a *wajib* (duty) is itself a *wajib*'

So the establishment of a Khalifah is also compulsory according to this divine principle.

Therefore, it is clear from these evidences that the establishment of the rule and the authority amongst Muslims is *fard*, and it is also clear that the appointment of a Khalifah who takes the charge of the rule and the authority is compulsory upon Muslims in order to implement the *Shari'ah* rules and not merely for the sake of rule and authority in themselves. Reflect upon what Muslim narrated of his saying (saw) via 'Awf bin Malik:

خيار أئمتكم الذين تُحبونهم ويُحبونكم ويصلون عليكم وتُصلون عليهم، وشرار أئمتكم الذين تبغضونهم ويبغضونكم وتلعنونهم ويلعنونكم. قيل: يا رسول الله أفلا ننازدهم بالسيف؟ قال: لا، ما أقاموا فيكم الصلاة

“The best of your *Imams* (leaders) are those whom you love and they love you, who pray for you and you pray for them; and the worst of your *Imams* are those whom you hate and they hate you and you curse them and they curse you. The Messenger of Allah (saw) was asked: Should we not face them with the swords? He said: No, not as long as they establish *salat* (meaning Islam) among you.”

This hadith is clear in informing about the good and bad leaders, and clear in prohibiting confronting them with the sword as long as they establish the *deen*, since establishing the *salat* (prayer) indicates upholding of the *deen* and ruling by it.

So the obligation upon Muslims to appoint the Khalifah who establishes the laws of Islam and conveys its call is a matter which has no doubt with regard to its certainty in the sound texts of *Shari'ah*. Moreover, it is an obligatory duty due to the fact that Allah (swt) made it *fard* upon Muslims to establish the rule of Islam and to protect the honour of Muslims. However, this duty is a collective one, so if some people of the Ummah accomplished it, the *fard* is fulfilled and thus responsibility drops from the rest of the Ummah. And if part of the Ummah was unable to achieve the *fard*, though they carried out the actions which establish it, then the responsibility remains upon all the Muslims, and the *fard* remains upon every Muslim as long as Muslims are without a Khalifah.

To refrain from establishing a Khalifah for the Muslims is among the greatest sins because it is abstaining from carrying out among the most important obligations of Islam upon which the implementation of the *deen* depends; nay even the very existence of Islam in the battlefield of life depends upon it as well. So Muslims as a whole commit a great sin by refraining from establishing a Khalifah for all Muslims. And if they all agreed to remain without a Khalifah the sin would befall all Muslims in all inhabited regions (entire world). However, if some of the Muslims embarked on working to establish a Khalifah and the others did not, the sin will drop from the shoulders of those who started to work to establish the Khalifah though the *fard* remains upon them until the Khalifah is appointed. (This is so) because the involvement in establishing the *fard* removes the sin for the delay in establishing it in its proper time, and for its non-establishment, due to one's work to establish it and his hatred of that which prevents him from establishing it.

As for those who were not engaged in the work to establish the *fard*, the sin will remain on them after three days have passed from the departure of the Khalifah until the appointment of a new Khalifah, because Allah (swt) has entrusted them with a *fard* which they did not carry out nor engage themselves in the work which is required for its completion. Therefore, they are deserving of sin and deserve the punishment of Allah (swt) in this life and the hereafter. Their deserving of sin due to their refraining from establishing the Khalifah, or performing the actions which (according to *Shari'ah*) establish the Khalifah, is explicitly clear in that a Muslim deserves the punishment of Allah (swt) when he ignores any of the duties enjoined upon him, particularly the obligation by which the other obligations are implemented, the rules of the *deen* are established, the cause of Islam is raised high and the word of Allah (swt) becomes exalted in the Islamic lands and the rest of the world.

As for what came in some of the *ahadith* regarding isolation from the people, and restricting oneself to adhering only to matters of personal worship of the matters of the *deen*, these *ahadith* are not suitable as evidence to refrain from establishing a Khalifah nor removing the sin due to this abstention. Whoever studies these *ahadith* carefully will find them related to the matter of adhering to the *deen* rather than permission to refrain from establishing a Khalifah for Muslims. For example, Al-Bukhari narrated about Bisr bin Ubaydullah al-Hadhrami that he heard Abu Idrees al-Khoolani say that he heard Hudhayfah bin al-Yaman saying:

كان الناس يسألون رسول الله صلى الله عليه وسلم عن الخير وكنت أسأله عن الشر مخافة أن يدركني، فقلت: يا رسول الله، إنا كنا في جاهلية وشر ف جاءنا الله بهذا الخير، فهل بعد هذا الخير من شر؟ قال: نعم. قلت: وهل بعد لك الشر من خير؟ قال: نعم، وفيه فتن. قلت: وما تدعوه؟ قال: قوم يَهْدُونَ بِغَيْرِ هُدًى يَعرِفُ مِنْهُمْ وَتُنَكِرُ. قلت: فهل بعد ذلك الخير من شر؟ قال: نعم، دُعاة على أبواب جهنم، من أجاهم إليها قذفوه فيها. قلت: يا رسول الله صُفِّهم لنا. قال: هم من جلدتنا، ويتكلمون بألسنتنا. قلت: فما تأمرني إن أدركني ذلك؟ قال: تَلَمَّع جماعة المسلمين وإمامهم. قلت: فإن لم يكن لهم جماعة ولا إمام. قال: فاعتزل تلك النقي كلها، ولو أن تعض بأصل شجرة، حتى يدركك الموت وأنت على ذلك

“The people used to ask the Prophet of Allah (saw) about the good and I used to ask him about the bad in fear that it might catch me. So I said: O Prophet of Allah! We were in times of *jahiliyyah* and mischief then Allah brought us this good, so is there any mischief after this good? He (saw) said: Yes. I said: Will there be any good after that mischief? He said: Yes, and it has smoke (dukhan). I said: What is its smoke? He said: People guiding but not on my guidance. You recognise some (from them) and deny some. I said: Will there be any mischief after that good? He said: Yes, callers (du’at) who invite at the doors of Hellfire. They throw him into it (hell) whoever accepted their invitation. I said: O Prophet of Allah, describe them to us. He said: They are of our own skin (of our people) and talk our language. I said: What do you order me to do if that (matter) caught me? He said: Adhere to the *jama’ah* of Muslims and their *Imam*. I said: What if the Muslims have no *jama’ah* nor an *Imam*? He said: Then separate from all those groups, even if you (have to) bite the root of a tree till death comes to you as such.”

This hadith is clear in its expression that the Prophet (saw) ordered the Muslims to adhere to the *jama’ah* of Muslims and to adhere to their *Imam*, and to leave those who invite people to the doors of hell. The questioner asked him what he has should do in relation to those callers at the doors of Hellfire in the situation wherein the Muslims have no *Imam* and no *jama’ah*; thereupon the Prophet (saw) ordered him to separate from all these groups, not to disassociate himself from the Muslims nor to abstain from the action for establishing an *Imam*. So his order is clear “*Separate from all those groups*”, and he emphasised the separation from those groups even to the extent that his isolation from them would make him clench to the trunk of a tree until death comes to him. Its meaning is to adhere to your *deen* and keep away from the misguiding callers who are at the doors of Hellfire. In this hadith there is no excuse or permission (for anybody) to abandon the work for establishing a Khalifah, it is, rather, confined to the command of adhering to the *deen* and abandoning the callers at the doors of hell, and the sin will remain on him if he does not work to establish a Khalifah. So he is ordered to abandon the misguiding groups in order to save his *deen* from the callers of the misguidance, even if he had to bite the root of a tree, but not to distance himself from the Muslim community and abandon the work for establishing the laws of the *deen* and establishing an *Imam* for Muslims.

Another example is what al-Bukhari narrated from Abu Said al-Khudri, who said:

يوشك أن يكون خير مال المسلم غنم يتبع بها شعف الجبال ومواقع القطر يفرّ بدينه من الفتن

“The Messenger of Allah (saw) said: A time will come that the best property of a Muslim will be sheep which he will take on the top of mountains and the places of rainfall (valleys) so as to flee with his religion from afflictions (*fitan*)”

This does not mean that one should isolate oneself from the Muslim community, abandon practising the laws of the *deen* and establishing a Khalifah for Muslims when there is no Khilafah on earth. All that it contains is an explanation of what is the best wealth of the Muslim at the times of affliction; it does not encourage separation from the Muslims and isolation from the people.

Accordingly, no Muslim on the face of this earth has an excuse to abandon the duty of establishing the *deen* which Allah (swt) has ordered, that is, the establishment of a Khalifah for Muslims when there is no Khilafah on the earth, when there is no one to implement the punishments (*hudood*) of Allah (swt) to protect the sanctities of Allah (swt), and no one to implement the laws of the *deen* and unify the Muslim community under the banner of *La ilaha illa Allah, Muhammad ur-Rasul Allah*. There is no permission in Islam to abandon the work for this duty until it is indeed completed.

The Time Limit Given for Muslims to appoint a Khalifah

The time limit given for Muslims to appoint a Khalifah is two nights. So no Muslim is allowed to stay for more than two nights without having a *bay'ab* on his neck. Making the upper limit as two nights is due to the fact that the appointment of a Khalifah is *fard* from the moment the previous Khalifah dies or is deposed. But it is allowed to delay the appointment while engaging in it for two nights. If the delay exceeded two nights and the Muslims did not establish a Khalifah, the matter is examined. If the Muslims were busy in establishing a Khalifah but could not complete it within two nights due to overpowering matters they couldn't resist, then the sin will drop from them because they are engaged in establishing the duty and they were forced to delay it by compelling power. The Prophet (saw) said:

رُفِعَ عَنْ أُمَّيِ الْخَطَأِ وَالنَّسْيَانِ وَمَا اسْتُكْرِهُوا عَلَيْهِ

“The sin due to mistake, forgetfulness and compulsion is removed from my Ummah.”

But if they were not engaged in performing the duty, then they will all be sinful until the Khalifah is appointed and only after that the *fard* will drop from them. But the sin they committed in neglecting the establishment of a Khalifah does not drop from them, it rather remains on them, and Allah (swt) will bring them to account for it the same way He (swt) brings any Muslim to account for any disobedience he commits when he neglects to perform a duty.

As for the evidence concerning the two night's time limit given to Muslims to perform the duty of establishing a Khalifah, it is the *Ijma'a* of the Sahabah. The Sahabah (ra) met in the courtyard of *Banu Sa'ida*, to discuss the appointment of a successor to the Messenger of Allah (saw) as soon as the news of the death of the Prophet (saw) reached them. They kept discussing in the courtyard, and on the second day they gathered the people in the mosque in order to give the *bay'ab*. This consumed two nights and three days. In addition, when 'Umar (ra) became certain that his death was imminent as a result of the stab wound, he entrusted the people of consultation (*shura*) and gave them three days to choose a new Khalifah. He recommended that if after the three days an agreement was reached about a Khalifah then the dissenter should be killed after the aforementioned three days. 'Umar (ra) also empowered fifty Muslims to carry out this action i.e. to kill the dissenter, despite the fact they were from the people of *shura* and of the eminent Sahabah (ra). This order was given in the presence of the Sahabah (ra), and no one was reported to deny or disagree with it, so it becomes *Ijma'a* of the Sahabah (ra) that Muslims are not permitted to stay without a Khalifah for more than two nights and three days, and the *Ijma'a* of the Sahabah is a legitimate *Shari'ah evidence (daleel)* like the Qur'an and Sunnah of the Messenger of Allah (saw).

Contracting (*In'iqad*) the Khilafah

The Khilafah is a contract of consent and choice, because it is a pledge to obey the one with the right of obedience among those in authority. So the consent of the person who is given the *bay'ah* to hold the Khilafah and the consent of those who give the *bay'ah* are essential. Therefore, if somebody rejected to be a Khalifah and declined it, he must not be compelled to accept it, but another person is selected instead. Also, it is not allowed to take the *bay'ah* from the people by force because, in this case, the pledge contract cannot be considered legal due to its contradiction with using force, since the Khilafah is a contract of consent and choice devoid of any compulsion like any other contract. However, if the pledge contract is accomplished by those whose *bay'ah* is considered (binding) then the *bay'ah* would be contracted, and the elected person would become the person in authority who must be obeyed. At this point the *bay'ah* given to him becomes a *bay'ah* of obedience rather than a *bay'ah* of the Khilafah contract. In this case he is allowed to force the rest of the people to give him the *bay'ah* because it is a *bay'ah* of obedience which is obliged by the *Shar'a*. It is not correct to say that it is illegal to use compulsion, because the *bay'ah* in this case is not the contracting *bay'ah* for the Khilafah. Accordingly, the *bay'ah* initially is a contract which is not legal except by consent and choice. But after the contract *bay'ah* is given to the Khalifah the *bay'ah* becomes obedience to his order, and compulsion comes from the fact that it is allowed to implement the order of Allah (swt). Since the Khilafah is a contract, then there must be a contractor for the contract to be considered legal, like in the judiciary where the person cannot be a judge unless he is appointed in this office by somebody else, and in the *imarah* nobody can be an *Amir* (leader) unless there is a person who appoints him in this office. Similarly in the Khilafah, no person can be a Khalifah unless he is appointed in this post as a Khilafah.

Thereupon, it is clear that nobody becomes a Khalifah unless the Muslims appoint him in this post, and he cannot have the authority of the Khilafah unless he is contracted to it. And this contract can only be implemented by two parties - the first is the one who asks for the Khilafah and the second is the Muslims who accepted him as their Khalifah. Therefore, the *bay'ah* of Muslims is essential to fulfill the Khilafah contract. Accordingly, if someone usurped power by force he will not become a Khalifah even if he declared himself a Khalifah for Muslims, because the contract of Khilafah has not been convened to him by the Muslims. And if he took the *bay'ah* from the Muslims by force, he is not considered a Khalifah by such *bay'ah*, because the *bay'ah* by force is illegal. And the Khilafah cannot be convened by it, since it is a contract of consent and choice (*Rada wa ikhtiyar*) which cannot be accomplished by force, but is convened by a *bay'ah* of consent and choice. However, if this usurper (*mutasallit*) managed to convince the people that it is in their interest to give him the *bay'ah*, and that the implementation of the *Shari'ah* laws requires from the people to give him the *bay'ah* and were convinced of that and accepted it, and they gave him the *bay'ah* by consent and choice, then he becomes a Khalifah the moment he was given the *bay'ah* by consent and choice, although he initially held the power by force. So it is a condition that the *bay'ah* must occur by consent and choice whether the person who obtained the *bay'ah* was the ruler or not.

As for the people by whose *bay'ah* the Khilafah is established this can be derived by examining what happened in the *bay'ah* of the *Khulafaa ar-Rashidun* and what the Sahabah (ra) agreed upon. In the *bay'ah* of Abu Bakr (ra) it was sufficient from the *ahl al-hal wal 'aqd* (the people of influence) among Muslims in Madinah alone; the opinion of Muslims in Mecca and the rest of the Arabian Peninsula were not sought, they were not even asked. It was the same case in the *bay'ah* of 'Umar (ra). As for the *bay'ah* of 'Uthman (ra), 'Abdurrahman bin 'Auf (ra) took the opinion of the Muslims in Madinah and did not confine it to the people of influence as Abu

Bakr (ra) did when he nominated 'Umar (ra). At the time of 'Ali (ra) it was sufficed with the *bay'ah* of the majority of the people of Madinah and Kufa, and he was singled by the *bay'ah*. His *bay'ah* was considered legal even by those who disagreed with him and fought against him, as they did not make *bay'ah* with anyone other than him, and neither did they object to his *bay'ah*. Rather they demanded revenge for the blood of 'Uthman (ra), so their case was considered as rebels who avenged a matter from the Khalifah and he had to explain it to them and fight them, but they did not form another Khilafah.

All this happened i.e. giving the *bay'ah* to the Khalifah from the people of the capital only without the rest of the regions, in the presence of the Sahabah (ra), and none of them disagreed or denied that action of limiting the *bay'ah* to the majority of the people of Madinah, though they disagreed on the person selected as the Khalifah and denied some of his actions, yet they did not deny that the *bay'ah* was made to him only by the majority of the people of Madinah. So this was *Ijma'a* of the Sahabah that the Khilafah is established by those who represent the opinions of the Muslims in the matter of ruling. This is so because the people of influence and the majority of the residents of Madinah represented the opinion of the majority of the Ummah in the matter of ruling in all the territories of the Islamic State at that time.

Accordingly, the Khilafah is convened if the *bay'ah* is made by the majority of those who represent the Islamic Ummah, who are under the authority of the Khalifah who is being replaced by another, as was the case at the time of the *Khulafaa ar-Rashidun*. Their *bay'ah* would then be a *bay'ah* of contract to the Khilafah. As for the *bay'ah* of the other people, it becomes a *bay'ah* of obedience after the Khilafah is convened to the Khalifah which is a *bay'ah* of submission to the Khalifah, not a *bay'ah* of contract to establish the Khilafah.

This would be the case if there was a Khalifah who died or was deposed and it is required to establish a Khalifah in his place. But if there is no Khalifah at all, then it becomes obligatory upon Muslims to appoint for themselves a Khalifah to implement the *Shari'ah* laws and convey the Islamic call to the world, as is the case since the removal of the Islamic Khilafah in Istanbul in 1343 after Hijrah (1924 Christian Era) until the present day, then every country in the Islamic world is eligible to elect a Khalifah and thereby establish a Khilafah. So if one country of the Islamic world appointed a Khalifah, and the Khilafah was established for him, it becomes obligatory upon Muslims to make a pledge of obedience to him i.e. a *bay'ah* of submission, after the Khilafah was convened to him by the *bay'ah* of the people in his country, whether this country was big like Egypt, Turkey and Indonesia or small like Albania, Cameroon and Lebanon, on condition that the country fulfils four criteria:

1. The authority in that country must be self-determined depending on Muslims only, not on any disbeliever state or disbeliever influence.
2. The security of Muslims in that country must be through the security of Islam and not the security of *Kufr* i.e. the protection of the country internally and externally must be Islamic from the power of Muslims in its capacity as a purely Islamic power.
3. The country must commence immediate implementation of Islam comprehensively and radically and also engage in delivering the Islamic call.
4. The elected Khalifah should fulfill the conditions of the Khilafah contract even if he is lacking the preferable conditions, because what matters are the contract conditions.

Therefore, if that country has fulfilled these four conditions, then the Khilafah has been established by the *bay'ah* of that country alone and it was convened with it alone as well, even if this country does not represent the majority of the influential people who represent the Islamic Ummah. This is so because establishing the Khilafah is a collective duty, and whoever performs this duty in the correct manner would accomplish the prescribed duty. And because the condition concerning the majority of the influential people applies if there was a Khilafah and

there was a need to appoint another Khalifah in place of the dead or deposed one. However if there was no Khilafah at all and the establishment of one is necessary, then by its establishment in accordance with *Shari'ah* the Khilafah will be convened legally by any Khalifah who satisfies the conditions of the contract regardless of the number of the people who elected him, as the matter would be then a question of fulfilling a duty neglected by the Muslims for more than three days. Their negligence to this duty is a termination of their right to choose whom they want for a Khalifah.

So if there arise some people who perform this duty, it suffices for the Khilafah to be established by them, and once the Khilafah is established in that country and contracted to a Khalifah it becomes a duty upon all the Muslims to rally under its banner and to give *bay'ah* to the Khalifah, otherwise they will be sinful before Allah (swt). The elected Khalifah must invite them to give him *bay'ah* and if they refused they will be considered as rebels whom the Khalifah must fight until they submit to his authority. If another Khalifah in the same or a different country is elected after the first Khalifah who had the Khilafah convened to him legally by satisfying the four aforementioned conditions, then the Muslims must fight the second Khalifah until he makes *bay'ah* to the first one. The evidence on this matter is what 'Abdullah bin 'Amr bin al-'Aas narrated, that he heard the Prophet (saw) saying:

وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفْقَةَ يَدِهِ وَثَمْرَةَ قَلْبِهِ فَلْيُطِعْهُ إِنْ اسْتَطَاعَ فَإِنْ جَاءَ آخَرَ يَنْزِعُهُ فَاضْرِبُوا عُنُقَ الْآخِرِ

“He who has pledged allegiance to an *Imam* and gave him the clasp of his hand and the fruit of his heart should obey him as much he can. If another person comes to dispute (his authority) then strike the neck of the latter.”

And also because the Khalifah of the Muslims is the one who unites the Muslims under the banner of Islam. So if the Khalifah is appointed, the Muslim community (*jama'ah*) would be formed and it becomes obligatory upon Muslims to join this community and *haram* upon them to dissociate themselves from it. Ibn 'Abbas (ra) reported that the Prophet (saw) said:

مَنْ رَأَى مِنْ أَمِيرِهِ شَيْئًا فَلْيَصْبِرْ عَلَيْهِ، فَإِنَّهُ مَنْ فَارَقَ الْجَمَاعَةَ شِبْرًا فَمَاتَ إِلَّا مَاتَ مِيتَةَ جَاهِلِيَّةٍ

“If anyone sees in his leader (*Amir*) something that displeases him should remain patient about it, because he who separates himself from the *jama'ah* even so much as a hand span and dies, he dies the death of *jabiliyyah*.”

Muslim reported from ibn 'Abbas from the Prophet (saw) who said:

مَنْ كَرِهَ مِنْ أَمِيرِهِ شَيْئًا فَلْيَصْبِرْ، فَإِنَّهُ لَيْسَ أَحَدٌ مِنَ النَّاسِ خَرَجَ مِنَ السُّلْطَانِ شِبْرًا فَمَاتَ إِلَّا مَاتَ مِيتَةَ جَاهِلِيَّةٍ

“If anyone hates something from his *Amir* let him remain patient about it because he who separates himself from the authority (*sultan*) by even so much as a hand span, and dies upon that, dies the death of *jabiliyyah*.”

The indication from these two *ahadith* is to adhere to the Muslim community and to the authority of Islam.

Non-Muslims have no right in the *bay'ah*, and it is not obligatory upon them because it is a *bay'ah* on Islam and on the Book of Allah (swt) and the Sunnah of the Messenger of Allah (saw) and it requires belief in Islam, the Qura'n and the Sunnah. Non-Muslims are not allowed to be involved in ruling or electing the ruler because they have no authority over Muslims and have no place in the *bay'ah*.

The Pledge (*Bay'ah*)

Bay'ah is an obligation upon all Muslims, and it is a right for every Muslim, man or woman. The evidence for it being an obligation is in many *ahadith* of the Prophet (saw), in which he said:

من مات وليس في عنقه بيعة مات ميتة جاهلية

“Whosoever dies without having a *bay'ah* upon his neck dies a death of *jahiliyyah*.”

As for being a right for Muslims, the *bay'ah* itself indicates that, because the *bay'ah* is offered by the Muslims to the Khalifah, and not by the Khalifah to the Muslims. The *bay'ah* of the Muslims to the Prophet (saw) was confirmed in the *ahadith*. Al-Bukhari reported that ‘Ubadah bin as-Samit (ra) said:

نا رسول الله صلى الله عليه وسلم على السمع والطاعة في المَنَ نَشَطَ والمَا كَرِهَ وَأَن لا ننازع الأمر أهله وَأَن نقوم أو أن نقول بالحق حيثما كنا لا نخاف في الله لومة لائم

“We made a *bay'ah* to the Prophet (saw) to hear and to obey in whatever pleases and displeases us, and that we would not dispute the order of those in charge, that we would speak the truth wherever we are, and that we would not fear the blame of anyone when acting or speaking for the sake of Allah.”

Al-Bukhari reported from Ayyub from Hafsa from Umm ‘Atiyah who said:

باين رسول الله صلى الله عليه وسلم فقراً (على أن لا يُشركن بالله شيئاً) ونهانا عن النياحة. فقَبَضَتْ امرأة منا يدها فقالت: فلانة أسعدتني وأنا أريد أن أجزيها. فلم يَقل شيئاً، فذهبت ثم رجعت

“We gave a *bay'ah* to the Prophet (saw) and he recited to me the verse *That they will not associate anything in worship with Allah* (TMQ 60.12). And he also prevented us from wailing and lamenting over the dead. A woman from us held her hand out and said, "Such-and-such a woman cried over a dead person belonging to my family and I want to compensate her for that crying" The Prophet did not say anything in reply and she left and returned.”

And in Al-Bukhari from Abu Hurairah (ra) who said: The Prophet (saw) said:

ثلاثة لا يكلمهم الله يوم القيامة ولا يزكيهم ولهم عذاب أليم: رجل على فضل ماء بالطريق يمدع منه ابن السبيل، ورجل باي إماماً لا يبایعه إلا لدنياه إن أعطاه ما يريد وثي له وإلا لم يف له، ورجل يبایع رجلاً بسلعة بعد العصر فحلف بالله لقد أعطني بها كذا وكذا فصَلَّه فأخذها ولم يَعْطَ بها

“(There are) three persons to whom Allah will not talk on the Resurrection Day, nor purify them, and for them is a severe punishment: A person who has an excess of water on the road and prevents the wayfarer from it; a person who gives *bay'ah* to an *Imam* for his worldly affairs only, so if the *Imam* gave him that which he wants he fulfilled (the *bay'ah*) to him, otherwise he would not; and a person trading a commodity to another after asr (late afternoon) and he swore by Allah that he was offered so and so for it, although he was not, and the person believed him and bought it.”

Al-Bukhari narrated from ‘Abdullah bin ‘Umar (ra) who said:

كنا إذا بايَّنا رسول الله صلى الله عليه وسلم على السمع والطاعة، يقول لنا: فيما استطعت

“When we gave a *bay'ah* to the Prophet (saw) to hear and obey, he would say to us: As much as you are capable of”

Jareer bin ‘Abdullah said:

بايعتُ النبي صلى الله عليه وسلم على السمع والطاعة، فلَقَّنني: فيما استطعتَ والنصح لكل مسلم

“I gave *bay'ah* to the Prophet (saw) to hear and obey and he instructed me: As much as you are able, and to give good advice to every Muslim.”

Al-Bukhari narrated from Junada bin Abu Umayyah who said:

دَخْنَا على عبادة بن الصامت وهو مريض، قلنا: أصلحك الله حدِّثْ بِحدِيثِ يَنْفَعُكَ اللهُ بِهِ سَمِعْتَهُ مِنَ النبي صلى الله عليه وسلم. قال: دعانا النبي صلى الله عليه وسلم فبايعناه. فقال فيما أخذ علينا أن بايَعنا على السمع والطاعة في مَنْتَوَلَكْهنا وعُسْرنا ويُسْرنا وأثْرَة علينا وأن لا ننازع الأمر أهله، إلا أن تروا كُفْرًا بواحا عندكم من الله فيه برهان

“We entered the house of ‘Ubadah bin as-Samit while he was ill and we said: May Allah make you healthy, inform us of a hadith you heard from the Prophet (saw) by which Allah (swt) may benefit you. He said: The Prophet (saw) invited us and we gave him our *bay'ah* (pledge of Allegiance). And among the conditions on which he took the pledge from us, was that we were to listen and obey (the orders) both at the time when we were active and when we were tired, and in the times of ease and hardship and when we see preference (for others over us), and not to dispute the authority of those who are entrusted with it saying: Unless you see open disbelief (*kufr bawab*) upon which you have a clear proof from Allah.”

The *bay'ah* for the Khalifah is in the hands of the Muslims, and it is their right; it is they who give the *bay'ah*, and it is their *bay'ah* which makes the Khalifah contracted for a Khalifah. The *bay'ah* can be by shaking hand or by writing. ‘Abdullah bin Dinar narrated saying:

قال: شهدت ابن عمر حيث اجتمع الناس على عبدالمملك قال: كتب إني أقر بالسمع والطاعة لعبدالله عبدالمملك أمير المؤمنين على سنة الله وسنة رسوله ما استطعتُ

“I witnessed bin ‘Umar where the people gathered around ‘Abdulmalik bin Marwan. He wrote: I agree to listen and obey to the slave of Allah, ‘Abdulmalik the Amir al-Mu’mineen, according to the Sunnah of Allah and the Sunnah of His Prophet as much as I am able.”

Moreover, the *bay'ah* is correct by any means (*waseelah*). However, the *bay'ah* has to be given by the mature person, so it is improper to be given by the young. Abu Aqeel Zahra bin Ma‘bed reported from his grandfather ‘Abdullah bin Hisham--who witnessed the Prophet (saw)--that his mother Zaynab, the daughter of Hameed, took him to the Prophet (saw) and said: O Prophet of Allah, take a pledge from him. The Prophet (saw) said:

هو صغير. فمسح رأسه ودعا له

“He is a child, wiped his head and made a du‘a for him.”

As for the words of the *bay'ah* they are not restricted to specific terms. However they must include acting according to the Book of Allah (swt) and the Sunnah of His Prophet (saw) by the Khalifah, and obedience in hardship and ease and obedience, and whatever pleases and displeases on the part of the person who gives the *bay'ah* (to the Khalifah). Whenever the one

who pledges has given his *bay'ah* to the Khalifah or the Khilafah is contracted to the Khalifah by the *bay'ah* of other Muslims, then the *bay'ah* has become a trust on the neck of the one who gives the *bay'ah* and he is not allowed to retract it. It is a right for the contract of the Khilafah until he has given it, and once he has given it he must abide by it. He is not allowed to retract from it. Al-Bukhari narrated from Jabir bin 'Abdullah (ra) that a Bedouin gave the Prophet (saw) his pledge on Islam, and an illness struck him so he said to the Prophet (saw): "Let me withdraw my *bay'ah* but the Prophet (saw) refused, and the man left. The Prophet (saw) then said:

المدينة كالكبر تنفي نجاستها وينصع طيبها

"Medina is like a furnace, it expels out the impurities and selects the good ones and makes them perfect."

And it is narrated from Nafi'a who said: Ibn 'Umar (ra) said to me that he heard the Prophet (saw) saying:

من خلع يداً من طاعة الله لقي الله يوم القيامة لا حجة له

"Whoever withdraws his hand from obedience (to the Amir) will find no argument (in his defense) when he stands before Allah on the Day of Resurrection."

To break the *bay'ah* of the Khalifah is withdrawing of one's hand from the obedience of Allah (swt). This is the case if his *bay'ah* to the Khalifah is a *bay'ah* of contract or it is a *bay'ah* of obedience to a Khalifah whom the Muslims accepted and gave their *bay'ah* to. However, if he gave his *bay'ah* in the beginning to a Khalifah and it was not completed because the Muslims as a whole did not accept him as Khalifah, then he has the right to withdraw from that *bay'ah*. The prohibition mentioned in the hadith is focused on the withdrawal of a *bay'ah* to a Khalifah, not to a man for whom the Khilafah was not accomplished.

The Conditions of Eligibility for the Khalifah

The Khalifah must fulfill seven conditions to be eligible for the Khalifah and to have the *bay'ah* contracted to him for the Khalifah. These seven conditions validate the contract, if one was missing, the Khalifah cannot not be convened. The conditions are:

1. **He must be a Muslim.** The Khalifah cannot be contracted to a *kafir* (disbeliever) whatsoever, nor is his obedience obliged because Allah (swt) says:

ولن يجعل الله للكافرين على المؤمنين سبيلاً

"Allah will never allow for the disbelievers a way (*sabeel*) over the believers"

[TMQ 4:141]

Ruling is the strongest way (*sabeel*) of the ruler over the ruled people. The expression of '*Lan*' (never) which is an indication of permanence is a connotation (*qareenah*) for the decisive prohibition for the disbeliever taking charge of any ruling whatsoever, whether it was the Khalifah or anything less significant than that.

2. **He must be male.** The Khalifah is not permitted to be a female i.e. he must be a man and it is invalid for the Khalifah to be a woman due to what was narrated from Abu Bakrah who said: Allah benefited me with a word I heard from the Prophet (saw) in the days of al-Jamal (camel) when I was about to join the people of al-Jamal and fight with them. He said: When the news arrived that the people of Persia appointed the daughter of Kisra as a queen over them, the Prophet (saw) said:

لن يفلح قوم ولّوا أمرهم امرأة

"Any people who appointed a woman to run their affairs will never succeed" (Al-Bukhari narrated this).

So the information from the Prophet (saw) about the negation of success of those who appoint a woman to look after their affairs is a prohibition to appoint her, as this is from the forms of request. And since this information included information of a rebuke for those who appoint a woman by negating success from them, it is a connotation for a decisive prohibition. So the prohibition here of appointing a woman came with a connotation which indicates that the request to refrain is a decisive request; thus the appointment of a woman is *haram*. The meaning of her taking charge of the rule here is taking charge of the Khalifah or any other ruling post lower than it, because the subject of the hadith is the appointment of the daughter of Kisra as a queen. So it is general in the subject of ruling which the hadith expressed about. It is not specific to the incident of appointing the daughter of Kisra alone, and it is not also general in every function, so it does not include any function other than the ruling in any way whatsoever.

3. **He must be mature.** The Khalifah is not allowed to be a child due to what was narrated from 'Ali bin Abu Talib (ra) that the Prophet (saw) said:

رُفِعَ الْقَلَمُ عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَبْلُغَ، وَعَنِ الْمَدْمُونِ حَتَّى يَبْتَلِيَ حَتَّى يَعْقِلَ

"The pen is raised from the sleeping person until he awakes and the youth until he reaches puberty and the mentally disabled until he comes back to his senses or recovers"

So whosoever has the pen lifted from him is not in a position to conduct his affairs and therefore legally he is not liable; so it is not correct for him to be a Khalifah or in any ruling

position subordinate to that, because he does not have the right of disposal. Another evidence for the illegality of the Khalifah being a child is that the Prophet (saw) refused a child to give him the *bay'ah*. He refused the *bay'ah* of 'Abdullah bin Hisham, and explained that it was due to his young age, saying "he is a child." So if the *bay'ah* is not accepted from the child and he is not allowed to give a *bay'ah* to another person as a Khalifah, then it is of greater reason that he is not allowed to be a Khalifah.

4. **He must be sane.** It is incorrect for him to be insane due to the Messenger of Allah's (saw) statement:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ

"The pen is raised from three..."

And he said among them (is)

الْمَجْنُونِ حَتَّى يَفِيقَ

"...the insane until he regains his sanity."

The one who has the pen lifted from him is not accountable; this is because the accountability depends on the mind and a condition for the legality of disposition. The Khalifah carries out the acts of the rule and implements the *Shari'ah* responsibilities, so it is invalid for him to be insane.

5. **He must be just.** Also it is invalid for him to be an evildoer (*fasiq*). Justice is an essential condition for the appointment contract of the Khalifah and its continuation, because Allah (swt) made it a condition for the witness to be just. Allah (swt) said:

وَأَشْهَدُوا ذَنْبِي عَدْلٍ مِنْكُمْ

"Let there witness two just (men) from among you "

[TMQ 65:2]

So if the condition of justice applies to a witness, it obviously applies even more as a condition for appointing of a Khalifah since the Khalifah is in an even greater position than the witness.

6. **He must be free.** The slave is possessed by his master, so he does not have the authority to dispose of his own self. So, by greater reason, he cannot conduct the affairs of others and so cannot take charge of ruling over the people.

7. **He must be capable to undertake the responsibilities of the Khalifah:** This is because this is from the requirements of the *bay'ah* and therefore the *bay'ah* to one incapable to undertake the responsibilities of the Khalifah is invalid.

These are the conditions of contracting the Khalifah to the Khalifah. Anything other than these seven conditions are not suitable to be a contracting condition though they may be from the conditions of preference if they are produced from sound texts, or if they came under a *hukm* proven by a sound text. This is so because in order for condition to be a condition of contract, its *daleel* should include a decisive demand that becomes a connotation for its obligation. So if the evidence does not include a decisive demand, then the condition is one of preference and not of contracting. No evidence including a decisive demand was reported other than these seven conditions, so they are alone the conditions of contract. Other conditions included in sound evidences are conditions of preference only. Therefore, it is not a condition of contract to the Khalifah that the Khalifah must be a *mujtabid* because there is no sound text on the matter, and also because the duty of the Khalifah is to rule and he does not necessarily need to make *ijtihad* since he can inquire about the *hukm*, follow a *mujtabid* and adopt laws according to the opinion of that *mutjabid*. It is therefore not necessary for him to be a *mujtabid*, although it is preferable; but if he were not a *mutjabid*, the Khalifah would still be contracted to him. Also it is not a contracting

condition to the Khilafah that the Khalifah must be brave, or of the people of good vision to manage the affairs of the community and to conduct its interests. This is so because no sound hadith was reported on this issue and it does not come under a *hukm shari'* which makes it a contracting condition; although it is preferable that the Khalifah be brave and carry deep insight and vision.

Also it is not a contracting condition for the Khilafah that the Khalifah must be from the Quraish. As for what was reported from Mu'awiya that he said: I heard the Messenger of Allah (saw) saying:

سمعتُ رسول الله صلى الله عليه وسلم يقول: إن هذا الأمر في قريش لا يهيبهم أحد إلا كبه الله على وجهه ما أقاموا الدين

“Authority of ruling will remain with Quraish, and whoever bears hostility to them, Allah will destroy him as long as they abide by the laws of the religion.”

(Al-Bukhari).

And it was narrated from ibn 'Umar that he said: The Prophet (saw) said:

لا يزال هذا الأمر في قريش ما بقي منهم اثنان

“Authority of ruling will remain with Quraish, even if only two of them remained.”

These *abadith* and others which were soundly ascribed to the Prophet (saw) about limiting the Khilafah to Quraish came in an informative form, and not even a single one of them came in the instructive form (*seegat al amr*). The informative form (*seegat al akhbar*), although it indicates a request, is not considered a decisive request unless it was associated with a connotation which indicates the confirmation; and these informative forms were not associated with any connotation which indicates emphasis (*ta'keed*) in any sound narration. So these *abadith* indicate that it is a recommendation and not an obligation, thus it is a condition of preference not a contracting condition. As for his saying in the hadith

لا يعاديهم أحد إلا كبه الله

“None will dispute with them except that Allah will destroy him”

This is another meaning in prohibiting their enemy and not a confirmation to his saying:

إن هذا الأمر في قريش

“This matter is in the Quraish.”

The hadith states that the matter is in the Quraish, and that their enemy is prohibited.

Moreover, the word “Quraish” is a name and not an adjective and in the terminology of *usul* (principles of *fiqh*) it is called a title (*laqab*). The meaning of the name i.e. the meaning of the title is not acted on at all, because the name i.e. the title carries no understanding (*la mafhum lahu*). Therefore the statement about Quraish does not mean that the Khilafah cannot in from other than the Quraish. So the saying of the Prophet (saw)

إن هذا الأمر في قريش

“This matter is in Quraish”

And

لا يزال هذا الأمر في قريش

“This matter will remain in Quraish”

Does not mean that it is illegal for the Khalifah to be from other than Quraish nor (does the saying) that the leadership will remain in Quraish mean that it is invalid for it to be in other than them. Rather it is in them and it is valid to be in other than them. Thus the statement about them does not prevent the Khalifah to be from other than them. Accordingly, this is a condition of preference and not a condition of contract.

Additionally, the Messenger of Allah (saw) did appoint as leaders ‘Abdullah bin Ruwaha (ra), Zaid bin Haritha (ra), and Usama bin Zaid (ra), and all of them were not from Quraish. Thus the Messenger (saw) gave leadership to people other than the Quraish. The word “*this matter*” means the authority i.e. the rule and it is not restricted in the Khilafah alone. We can conclude therefore that since the Messenger (saw) appointed other than Quraish in the ruling then this is evidence that ruling is not restricted to them and not prevented from people other than them. So these *abadith* state some of the people who are eligible for the Khilafah to indicate their preference, not to restrict the Khilafah within them and to prevent its contracting to people other than them. Also, Al-Bukhari narrated that the Messenger of Allah (saw) said:

اسمعوا وأطيعوا وإن استعمل عليكم عبد حبشي كأن رأسه زبيبة

"Hear and obey even if an Abyssinian slave whose head is like a raisin is placed in authority over you.

And Muslim narrated from Abu Dharr (ra) who said:

أوصاني خليلي ﷺ أن أسمع وأطيع وإن كان عبداً مُجَدَّعَ الأطراف

“My friend (i. e. the Holy Prophet) advised me to listen (to the man in position of authority) and obey (him) even if he were a slave maimed (and disabled).”

And in another narration:

إن أمر عليكم عبد مُجَدَّعُ أسود يقودكم بكتاب الله فاسمعوا له وأطيعوا

“If a maimed black slave is appointed a commander over you who leads you according to the Book of Allah, then listen to him and obey him.”

These *abadith* are explicit texts in allowing a black slave to take charge of leadership of the Muslims. This indicates explicitly that the Khilafah or leadership (*wilayah al-amr*) is permitted to be taken charge of by people who are not from Quraish, rather not even Arabs. So the *abadith* stated upon the preference of some of those who are from the people of the Quraish and not the restriction of the Khilafah within them nor the impossibility of contracting it to other than them.

Accordingly, it is not a condition that the Khalifah must be Hashemite or Alawite (from the family of ‘Ali) because it was confirmed that the Prophet (saw) had given the ruling to people other than Banu Hashim, and Banu ‘Ali. When he left for Tabuk he appointed Muhammad bin Maslamah (ra) as ruler over Madinah, and he was not a Hashemite or Alawite. He also appointed Mu‘adh bin Jabal (ra) and ‘Amr bin al-‘Aas (ra) as rulers for Yemen, and they were neither Hashemites nor Alawites. It was also proven by decisive evidence that the Muslims made the *bay‘ah* of Khilafah to Abu Bakr, ‘Umar and ‘Uthman, and that ‘Ali (ra) made *bay‘ah* to each one of them although they were not of Banu Hashim. And all the Sahabah agreed on their *bay‘ah*, and it was not narrated that anyone denied their *bay‘ah* although they were neither Hashemites nor Alawites. So this was an *Ijma‘a* from the Sahabah, including ‘Ali and ibn ‘Abbas and the rest of

the Hashemites, that it is allowed for the Khalifah to be non-Hashemite or non-Alawite. As for the *abadith* talking about the superiority of our master 'Ali (ra) and the household of the Prophet (saw), they indicate their preference, not that it is a condition for the Khilafah contract that the Khalifah must be from them.

From this it becomes clear that there is no evidence for any condition to contract the Khilafah other than the seven conditions mentioned above. As for the others, assuming the correctness of all the texts which made mention of them or that they came under rules deduced from sound texts, are conditions of preference and not conditions of contracting. What is legally required to become a Khalifah is the fulfillment of the conditions of contracting for the Khilafah. Other than that, Muslims are informed about the candidates for the Khilafah so as to decide the best among them. But any person chosen that they choose will have the Khilafah contracted to him as long as the conditions of contract alone were fulfilled by him even if he does not possess other than them.

Seeking the Khilafah Post

Seeking the Khilafah and contending for it is allowed for all Muslims, and it is not *makruh*. No text was reported which prohibits the competition for it. It was established that Muslims contended for it in the courtyard of *Banu Sa'ida*, while the Prophet (saw) was shrouded on his bed and not buried yet. It was also established that the six people of the *shura*, who were from the eminent Sahabah (ra), contended for the Khilafah in front of all the companions, and the latter did not deny this and they agreed with them on this debate. This *Ijma'a* of the Sahabah indicates that contending for the Khilafah is permissible, and it is allowed to ask for it, to seek it and to debate against each other by opinion and proof for the sake of attaining it. As for the prohibition of asking for the *imarah* (leadership) mentioned in the *ahadith*, this is a prohibition for weak persons who are not fit for it like Abu Dharr (ra). However, those who are fit for the *imarah* are allowed to ask for it. 'Amr bin al-'Aas (ra) asked for it and the Prophet (saw) appointed him as a *wali*. So the reported *ahadith* are specific to those who are not qualified for it, whether it was for an *imarah* or the Khilafah. As for those who are qualified for it, the Prophet (saw) did not prohibit them from asking for it and he gave the *imarah* to those who asked for it. So since the Prophet (saw) gave the *imarah* to those who asked for it, and also prohibited asking for the *imarah*, then the prohibition is taken to mean those who do not fulfil the conditions and not an absolute prohibition.

The Unity of the Khilafah

It is not allowed to have more than one Khalifah in the world because ‘Abdullah bin ‘Amru bin al-‘Aas (ra) narrated that he heard the Messenger of Allah (saw) say:

وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفْقَةَ يَدِهِ وَثَمْرَةَ قَلْبِهِ فَلْيُطِعْهُ إِنْ اسْتَطَاعَ، فَإِنْ جَاءَ آخَرَ يَنْزَعُهُ فَاضْرِبُوا عُنُقَ الْآخِرِ

“Whoever pledges an *Imam* giving him his handshake and the fruit of his heart should obey him as much as he can. If another comes to dispute him, strike the neck of the other (person).”

Also Abu Saeed al-Khudri narrated that the Messenger of Allah (saw) said:

إِذَا بُويعَ لِخَلِيفَتَيْنِ فَاقْتُلُوا الْآخَرَ مِنْهُمَا

“If a pledge is taken for two Khalifahs, kill the latter among them.”

And ‘Arfaja said that he heard the Messenger of Allah (saw) say:

مَنْ أَتَاكُمْ وَأَمْرَكُمْ جَمِيعًا عَلَى رَجُلٍ وَاحِدٍ يَرِيدُ أَنْ يَشُقَّ عَصَاكُمْ أَوْ يَفْرِقَ جَمَاعَتَكُمْ فَاقْتُلُوهُ

“If someone comes to you when you are united under one man and wants to break your strength and divide your unity, kill him.”

Abu Hazim also narrated that he accompanied Abu Hurairah (ra) for five years and heard him narrate about the Messenger of Allah (saw) saying:

كَانَتْ بَنُو إِسْرَائِيلَ تَسْوَسُهُمُ الْأَنْبِيَاءُ، كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ نَبِيٌّ، وَإِنَّهُ لَا نَبِيَّ بَعْدِي، وَسَيَكُونُ خُلَفَاءُ فَتَكْثُرُ، قَالُوا: فَمَا تَأْمُرُنَا؟ قَالَ: فَوَا بَيْعَةَ الْأَوَّلِ فَالْأَوَّلِ، وَأَعْطَوْهُمْ حَقَّهُمْ فَإِنَّ اللَّهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ

“The Prophets ruled over the children of Israel. Whenever a Prophet died another Prophet succeeded him, but there will be no Prophet after me. There will be Khulafaa and they will number many. They asked: What then do you order us? He said: Fulfill the *bay’ah* to them one after the other and give them their due. Surely Allah will ask them about what He entrusted them with.”

If the Khilafah was established for two Khalifahs in two countries at the same time, it would not be valid for either of them because the Muslims are not allowed to have two Khalifahs. It is not correct to say that the *bay’ah* is valid to the one that had it first because the matter is to establish a Khalifah, not to make a race for it. Also it is the right of all Muslims, not the right for the Khalifah, so the matter must go back again to the Muslims to establish one Khalifah in case when they had established two Khalifahs. It is incorrect to suggest a ballot between them because the Khilafah is a contract, and the ballot is not included in the contract. And it is incorrect to refer to the saying of the Prophet (saw):

فَوَا بَيْعَةَ الْأَوَّلِ فَالْأَوَّلِ

“Fulfill the *bay’ah* one by one”

Because this is the case if a pledge is given to Khulafaa when there exists a Khalifah; so the pledge is not valid except for the first one whose pledge was contracted, and whoever comes afterwards could not have the pledge contracted to him. The case under discussion is that if the Khilafah is established for two Khalifahs when the majority of the influential people elected two Khalifahs at the same time, and the pledge of each of them was contracted legally. So the two

contracts are cancelled and the matter must be returned to the Muslims; if they established the pledge for one of them then it is contracted anew, not as a confirmation to his previous case. And if they established it to other than them, then it is contracted (to that other person).

Thus the matter is a right to all Muslims not to persons who enter in a race for it. And if two Khulafaa were established, and the majority of the influential people in the affairs of ruling and Khilafah sided with one of them and it was they who elected him, while the minority was with the other, then the pledge would be for the one who the majority of the influential people in the matters of ruling elected. (This is so) whether he was elected first, second or third, because he is considered the legal Khalifah when the majority of the influential people elected him. The others must make a pledge to him for the sake of unity of the Khilafah; otherwise the Muslims will fight him because the Khilafah is contracted by the pledge of the majority of the Muslims. He thus becomes a Khalifah who must be obeyed by all Muslims and it becomes *haram* to elect another person.

However, the reality of the ruling is that the majority of the influential people, in whose hands lays the affairs of ruling, are usually found in the capital because that is where the main affairs of ruling are conducted. So if the residents of a province or provinces elected another Khalifah and the pledge to the one who is in the capital was given first, then the Khilafah is for him because the pledge given by the people of the capital is a connotation which indicates that the majority of the influential people are on his side, and the pledge in this case is for the first. But in the case that the Khalifah in the provinces was elected first, the preference is given to the one who has the majority of influential people on his side because the precedence of the people of the provinces in giving the pledge weakens the connotation that the majority of the influential people are present in the capital. In any case, it is not allowed to retain more than one Khalifah, even if this leads to fighting against the one who did not have the Khilafah contracted to him.

Succession (*Istikhlaf*) or Reign (*'Ahd*)

The Khilafah is not contracted by appointing a successor or heir, because it is a contract between the Muslims and the Khalifah. The pledge by the Muslims and the acceptance from the person whom they elect is a condition in the contract of the Khilafah. The appointment of a successor or heir does not suit to include this condition, so the Khilafah is not established with it. Accordingly, the appointment of the next Khalifah, by the existing Khalifah, is not included in the Khilafah contract because he does not have the right to contract it, and because the Khilafah is a right of the Muslims, not the Khalifah, and they contract it to whom they wish. So the appointment of the next Khalifah or recommending him by the existing Khalifah is not correct, because he gives something which he does not possess. Giving something which is not possessed by the giver is illegal. So the existing Khalifah cannot appoint another Khalifah to succeed him, whether he was his son or relative or a person remote to him, and the Khilafah is not contracted to him at all because its contract was not carried out by those who have it. Thus it is a redundant (*fudhuli*) contract.

As for what was narrated that Abu Bakr (ra) appointed 'Umar (ra), and 'Umar (ra) appointed the six persons from the Sahabah (ra), and that the Sahabah had agreed on that and they did not challenge this action and thus it was an *Ijma'a* from them; this does not indicate that the appointment of a successor is legal. This is because Abu Bakr (ra) did not appoint a Khalifah, rather he consulted the Muslims about who might be the Khalifah for them and he nominated 'Ali (ra) and 'Umar (ra). Then the Muslims in three months during the life of Abu Bakr (ra), chose 'Umar (ra) by their majority. Then after the death of Abu Bakr (ra), the people came and gave their pledge to 'Umar (ra), and hence the Khilafah was contracted to 'Umar (ra). But before the pledge 'Umar (ra) was not a Khalifah and the Khilafah was not established to him, neither by the nomination of Abu Bakr (ra) nor by his selection by the Muslims. It was rather contracted when they gave him their pledge and he accepted it. As for the appointment of the six people by 'Umar (ra), it was a nomination to them by him upon the request of the Muslims. Then 'Abdurrahman bin 'Auf (ra) consulted the Muslims about whom they wanted from the six people. The majority wanted 'Ali (ra) if he adhered to the practices of Abu Bakr (ra) and 'Umar (ra), otherwise they wanted 'Uthman (ra). When 'Ali (ra) rejected to adhere to the practices of Abu Bakr (ra) and 'Umar (ra), 'Abdurrahman bin 'Auf (ra) gave the pledge to 'Uthman (ra) and the people gave their pledge. So the Khilafah was contracted to 'Uthman (ra) by the pledge given to him by the people, not by the nomination of 'Umar (ra) or the selection of the people. Had not the people given him their pledge, the Khilafah would not have been contracted to him. Therefore, there must be a pledge by the Muslims to the Khalifah, and it is not allowed to occur by appointing a successor or an heir, because the *bay'ah* is a contract of ruling and the *Shari'ah* law of contract applies to it.

The Method to Appoint the Khalifah

When the *Shari'ah* made it obligatory upon the Ummah to appoint a Khalifah, it also defined the method by which the Khalifah is appointed. This method is proven by the Qur'an, the Sunnah and the *Ijma'a* of the Sahabah (ra), and this method is the *bay'ah*. So the appointment of the Khalifah is carried out by the *bay'ah* to him. The Proof that this method is the *bay'ah* is confirmed from the *bay'ah* of the Muslims to the Prophet (saw) and from the order of the Prophet (saw) for us to give *bay'ah* to the *Imam*. The *bay'ah* of the Muslims to the Prophet (saw) was not on his Prophethood; rather it was on ruling, since it was a *bay'ah* over action and not a *bay'ah* on belief. So the Prophet (saw) was given the *bay'ah* in his capacity as a ruler and not as a Prophet and a Messenger. Because the acknowledgement of the Prophethood and the Message is a matter of belief and not a *bay'ah*, so the *bay'ah* could only have been for him in his capacity as the head of the State. The *bay'ah* was mentioned in the Qur'an and the *ahadith*.

Allah (swt) said:

أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يَبَايِعُنَكَ عَلَىٰ أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ وَلَا يُكْتَلْنَ أَوْلَادَهُنَّ وَلَا يَأْتِينَ بِبَهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلَا يَعْصِيَنَّكَ فِي مَعْرُوفِكَ فَبَايِعْنَهُنَّ

"O Prophet, if the believing women come to give you a bay'ah that they will not associate anything as partners to Allah, not to steal, not to commit adultery, not to kill their children, not to produce any lie that they have devised between their hands and feet, nor disobey you in what is right then give them the bay'ah" [TMQ 60:12]

Allah (swt) also said:

إِنَّ الَّذِي يَبَايِعُونَكَ إِنَّمَا يُبَايِعُونَ اللَّهَ يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ

"Lo! Those who give bay'ah to you (Muhammad) they give bay'ah only to Allah. The hand of Allah is above their hands" [TMQ 48:10]

Al-Bukhari reported: Ismail related to us that Malik related to me from Yahya bin Said who said: "Ubadah bin Waleed informed me that my father informed me from 'Ubadah bin as-Samit (ra) who said:

بَايَعْنَا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى السَّمْعِ وَالطَّاعَةِ فِي الْمَنْشَطِ وَالْكَوْهِ وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ وَأَنْ نَقُومَ أَوْ نَقُولَ بِالْحَقِّ حَيْثُمَا كُنَّا لَا نَخَافُ فِي اللَّهِ لَوْمَةً لَائِمَةً

"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.

Al-Bukhari reported: Ali bin Abdullah related to us that Abdullah bin Yazeed related to us that Saeed (who is ibn al-Musayyib) who said: Abu 'Aqeel Zahrah bin Ma'bad narrated to me from his grandfather 'Abdullah bin Hisham who witnessed the Prophet (saw) that his mother Zaynab, daughter of Hameed, took him to the Messenger of Allah (saw) and said: "O Messenger of Allah, take his pledge. The Prophet (saw) said:

هو صغير . فمسح رأسه ودعا له

"He is a child, and rubbed (wiped) his head and said du'a for him."

Al-Bukhari said: ‘Abdan bin Abu Hamza related to us from Al-‘Amash from Abu Salih from Abu Hurairah (ra) who said: The Messenger of Allah (saw) said:

ثلاثة لا يكلمهم الله يوم القيامة ولا يزكيهم ولهم عذاب أليم: رجل على فضل ماء بالطريق يمنع منه ابن السبيل، ورجل بايع إماماً لا يبايعه إلاّ لدنياه إن أعطاه ما يريدوني له وإلاّ لم يف له، ورجل يبايع رجلاً بسلعة بعد العصر فحلف بالله لقد أعطي بها كذا وكذا فصدقه فأخذها ولم يعط بها

“(There will be three types of people whom Allah will neither speak to them on the Day of Resurrection nor will purify them from sins, and they will have a painful punishment: They are, (1) a man possessed superfluous water (more than he needs) on a way and he withholds it from the travelers. (2) a man who gives a pledge of allegiance to an *Imam* (ruler) and gives it only for worldly benefits, if the *Imam* gives him what he wants, he abides by his pledge, otherwise he does not fulfill his pledge; (3) and a man who sells something to another man after the `Asr prayer and swears by Allah (a false oath) that he has been offered so much for it whereupon the buyer believes him and buys it although in fact, the seller has not been offered such a price..”

From these three *abadith* it is explicit that the *bay'ah* is the method of appointing the Khalifah. The hadith of ‘Ubadah states that he gave *bay'ah* to the Prophet (saw) to listen and obey and this is a *bay'ah* to a ruler. The hadith of ‘Abdullah bin Hisham states that the Prophet (saw) rejected his *bay'ah* because he was not mature which indicates that it is a *bay'ah* on ruling. From the hadith reported by Abu Hurairah (ra) it is evident that it is a *bay'ah* to the *Imam*. The word ‘*Imam*’ in the hadith is undefined i.e. any *Imam*.

There are other *abadith* which refer to giving *bay'ah* to the *Imam*. It is reported in Muslim via Abdullah bin ‘Amru that the Prophet (saw) said:

من بايع إماماً فأعطاه صفقة يده وثمرة قلبه فليطعه إن استطاع، فإن جاء آخر ينازعه فاضربوا عنق الآخر

“Whoever gave *bay'ah* to an *Imam* giving him his handshake and the fruit of his heart should obey him as much as he can. If another person comes to dispute with him, strike the neck of the latter”.

Also Muslim narrates from Abu Said al-Khudri who said: The Prophet (saw) said:

إذا بويع لخليفتين فاقتلوا الآخر منهما

“If a *bay'ah* is given to two Khalifahs kill the latter of them.”

And Muslim narrated that Abu Hazim who said: “I accompanied Abu Hurairah (ra) for five years and heard him narrate from the Prophet (saw) who said:

كانت بنو اسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه نبي، وإنه لا نبي بعدي، وستكون لخطاء فتككّر، قالوا: فما تأمرنا؟ قال: فوا بيعة الأول فالأول

“The Prophets ruled over the children of Israel. Whenever a Prophet died another Prophet succeeded him, but there will be no Prophet after me. There will be *Khulafaa* and they will number many. They asked: What then do you order us? He said: Fulfill the *bay'ah* to them one after the other and give them their due. Surely Allah will ask them about what He entrusted them with.”

So the texts from the Qura'n and the Sunnah are clear that the method of appointing the Khalifah is the *bay'ah*. All the Sahabah understood this and followed it. So Abu Bakr (ra) was given a special *bay'ah* in the courtyard of *Banu Sa'ida*, and a public *bay'ah* in the mosque, those

who did not give him the *bay'ah* in the mosque and whose *bay'ah* is considered gave it later on like 'Ali bin Abu Talib (ra). 'Umar (ra) was given the *bay'ah* from the Muslims, 'Uthman (ra) also was given the *bay'ah* by the Muslims and 'Ali (ra) was given the *bay'ah* by the Muslims as well. So the *bay'ah* is the only method to appoint a Khalifah for the Muslims.

As for the practical details to conduct the *bay'ah*, they are evident in the appointment of the four *Khulafaa* who came directly after the death of the Prophet (saw), who are Abu Bakr (ra), 'Umar (ra), 'Uthman (ra) and 'Ali (ra). And all of the Sahabah (ra) accepted this and confirmed it. If it was against the *Shari'ah*, they would definitely have denied it because it is related to the most important thing upon which the well being of Muslims and perseverance of the Islamic rule depends. Whoever follows what happened in the appointment of these *Khulafaa* will find that some Muslims had debated in the courtyard of *Banu Sa'ida*, the nominees were Sa'd (ra), Abu 'Ubaydah (ra), 'Umar (ra) and Abu Bakr (ra) only, and as a result of the debate Abu Bakr (ra) was given the *bay'ah*. On the next day Muslims were called to the mosque and they gave him their *bay'ah*. As a result of this *bay'ah*, Abu Bakr (ra) became a Khalifah for the Muslims. When Abu Bakr (ra) felt that his illness carried with it death, he called upon the Muslims to consult them about who could become the next Khalifah. The opinion in these consultations focused on 'Ali (ra) and 'Umar (ra) only. He continued in these consultations for three months. When he completed them and knew the majority of the Muslims opinion he announced to them that 'Umar (ra) would be the Khalifah after him. Immediately after his death Muslims came to the mosque and gave the *bay'ah* of Khilafah to 'Umar (ra) so he became the Khalifah by this *bay'ah* from the Muslims not by the consultations or by the announcement by Abu Bakr (ra). When 'Umar (ra) was stabbed, the Muslims asked him to appoint a successor for himself but he refused. They insisted, so he left it among six of the Sahabah (ra). Then after his death, the nominees appointed one of them, 'Abdurrahman bin 'Auf (ra), as a representative. He referred to the opinion of the Muslims and consulted them. Then he declared the *bay'ah* to 'Uthman (ra). The Muslims stood up and gave their *bay'ah* to 'Uthman (ra), and thereby he became the Khalifah by the pledge of the Muslims and not by the announcement of 'Abdurrahman (ra). Later on 'Uthman (ra) was killed and the majority of Muslims in Madinah and Kufa gave their *bay'ah* to 'Ali bin Abu Talib (ra), so he too became the Khalifah by the *bay'ah* of Muslims.

From this it appears that the practical details to conduct the pledge of Khilafah is the debate among Muslims about who is suitable for the Khilafah. Once the opinion settles upon a list of people, their names will be publicised to the Muslims. For the one they choose from amongst them, they are asked to give him their *bay'ah*, and the rest of the nominees are also asked to give him their *bay'ah* as well. So in the courtyard of *Banu Sa'ida* the debate was about Sa'd (ra), Abu 'Ubaydah (ra), 'Umar (ra) and Abu Bakr (ra), then Abu Bakr (ra) was given the *bay'ah* which was equivalent to their selection. However, this selection was not binding for Muslims until his *bay'ah* was given by the Muslim populace. Abu Bakr (ra) discussed with the Muslims about 'Ali (ra) and 'Umar (ra) then he declared the name of 'Umar (ra), who was then given the *bay'ah*. 'Umar (ra) suggested the Khalifah to be from among the six people. After referring to the Muslims, 'Abdurrahman bin 'Auf (ra) declared the name of 'Uthman (ra) who was then given the *bay'ah*. And 'Ali (ra) was given the *bay'ah* immediately, as the situation was one of unrest, and it was known that no nominee was equivalent to him in the opinion of Muslims when 'Uthman (ra) was killed. Thus the matter of *bay'ah* proceeds after the debate to nominate suitable candidates and from these, one is elected as the Khalifah, and then the *bay'ah* for him is taken from the people. Although this matter was evident in the consultations made for Abu Bakr (ra), it is very clear in the case of the *bay'ah* given to 'Uthman (ra). Al-Bukhari narrated from Az-Zuhri that Hameed bin 'Abdurrahman informed him that Al-Miswar bin Makhrama told him that the group appointed by 'Umar (ra) met and consulted. 'Abdurrahman bin 'Auf (ra) said to them:

لست بالذي أنافسكم على هذا الأمر، ولكنكم إن شئتم اخترت لكم منكم"، فجعلوا ذلك إلى عبدالرحمن، فلما ولوا عبدالرحمن أمرهم فمال الناس على عبدالرحمن حتى ما أرى أحداً من الناس يتبع أولئك الرهط ولا يطأ عقبه، ومال الناس على عبدالرحمن يشاورونه تلك الليالي حتى إذا كانت الليلة التي أصبحنا منها فبايعنا عثمان، قال لا سِر: طرقتي عبدالرحمن بعد هجع من الليل فضرب الباب حتى استيقظت، فقال: أراك نائماً، فوالله ما اكتحلُت هذه الليلة بكبير نوم، انطلق فادعُ الزبير وسعداً، فدعوتهما له فشاورهما ثم دعاني فقال: ادعُ لي علياً، فدعوته فناجاه، حتى أبحار الليل، ثم قام علي من عنده وهو على طمع، وقد كان عبدالرحمن يخشى من علي شيئاً، ثم قال: ادعُ لي عثمان، فدعوته فناجاه، حتى فرق بينهما المؤذن بالصبح، فلما صلى للناس الصبح واجتمع أولئك الرهط عند المنبر فأرسل إلى من كان حاضراً من المهاجرين والأنصار وأرسل إلى أمراء الأجناد وكانوا وافوا تلك الحجة مع عمر، فلما اجتمعوا تشهد عبدالرحمن ثم قال: أما بعد يا علي، إني قد نظرت في أمر الناس فلم أرهم يعدلون بعثمان، فلا تجعلن علي نفسك سبيلاً، فقال: أبايعك على سنة الله ورسوله والخليفتين من بعده، فبايعه عبدالرحمن وبايعه الناس والمهاجرون والأنصار وأمراء الأجناد والمسلمون.

"I am not one who competes with you for this matter but if you wish I could choose for you one from among you. So they assigned this to 'Abdurrahman . When they charged 'Abdurrahman with this matter, people turned to him to the extent that I did not see any one who followed this group or stepped behind them. The people turned to 'Abdurrahman consulting him in those nights until the night of which we woke up in the morning and gave our pledge to 'Uthman. Al-Miswar said: 'Abdurrahman knocked at my door, after a part of the night had passed, until I woke up. He said: I see you sleeping. By Allah, my eyes did not find much sleep tonight. Set forth and call Az-Zubair and Sa'd. I invited them to him. He consulted with them. Then he called me and said: Call 'Ali for me, so I called him. He carried on a whispered conversation with him until the night faded away. Then 'Ali left him with some expectations, and 'Abdurrahman was afraid about something from 'Ali. Then he said call 'Uthman for me, so I called him. He carried on whispered conversation with him until they departed as the muezzin called for fajr prayer. After he led the people in the fajr prayer, and the group of six persons met near the minbar (pulpit), he sent for all the Muhajirs and Ansar who were present (in Madinah) and sent for the leaders of the army who delivered the pilgrimage that year with 'Umar. When they met, 'Abdurrahman recited the two testimonies of faith (shahadahs) and said: O 'Ali! I viewed the matter of the people and did not see them equalling anyone to 'Uthman, so do not let anything disturb yourself. And he said (to 'Uthman): I give you the *bay'ah* upon the way of Allah, His Messenger and the two Khulafaa who came after him. So 'Abdurrahman, the Muhajirs, the Ansar, the leaders of the army and rest of the Muslims gave him the *bay'ah*."

So the nominees for the Khilafah were limited to the group named by 'Umar (ra) after the Muslims had asked him to do so. 'Abdurrahman bin 'Auf (ra), after he withdrew himself from the nomination to the Khilafah, took the opinion of the Muslims about who would be the Khalifah. He then announced the name of the person who the Muslims wanted after consulting with them. After he announced the name of the person who the people wanted, the *bay'ah* was given to him and he became the Khalifah by this *bay'ah*. Therefore the *bukm shari'* concerning the appointment of the Khalifah is to limit the nominees for the Khilafah by those who represent the opinion of the majority of Muslims. Then their names are displayed to the Muslims and they are asked to select one of the nominees to be Khalifah for all. Then it is determined whom the majority of the Muslims have chosen, and the *bay'ah* from all the Muslims is taken for him, whether each person had specifically chosen him or not. This is the method because of the *Ijma'a*

of the Sahabah about ‘Umar (ra) limiting the nominees for the Khalifah to six specific persons, and the consensus of the Sahabah that ‘Abdurrahman (ra) takes the opinion of all the Muslims about who will be the Khalifah for them, and the consensus to give the *bay’ah* to the one who ‘Abdurrahman (ra) announced as the person elected by Muslims as a Khalifah is clear when he said:

إني نظرت في أمر الناس فلم أرهم يعدلون بعثمان

“I have looked at the people's tendencies and noticed that they do not consider anybody equal to ‘Uthman.”

All of these points clarify the *hukm shari’* concerning the appointment of the Khalifah.

Two issues remain to be examined. One of them is who are the Muslims who appoint the Khalifah? Are they the influential people or a certain specific number of Muslims? Or do all of the Muslims appoint the Khalifah? The second issue concerns the actions occurring in this century in elections such as secret ballots, polling boxes and counting votes. Are these matters consistent with Islam and does Islam allows them or not?

As for the first issue, Allah (swt), has given the authority to the Ummah and he (swt) made the appointment of the Khalifah a right and duty for all Muslims; and He did not make it a right for one particular group excluding another, nor for a *jama’ah* leaving another *jama’ah* aside, since the *bay’ah* is a duty upon all the Muslims. The Prophet (saw) said:

من مات وليس في عنقه بيعة فقد مات ميتة جاهلية

“Whoever dies without having a pledge upon his neck would die the death of *jahiliyyah*”,

And this is general for every Muslim. Therefore, the influential people do not possess the exclusive right to appoint the Khalifah and cannot ignore the rest of the Muslims. Nor do specific persons have the exclusive right. Rather, this right is for all the Muslims with no exception, it even includes the *fajirs* (wicked people) and *munafigeen* (hypocrites), provided they are mature Muslims because the *Shari’ah* text came in a general form in this instance and nothing came to limit it (make it specific to certain people) except the refusal of the pledge from the young who have not yet reached the age of puberty. So the text has to be taken generally.

However, it is not a condition that all Muslims practise this right. While it is a duty, because the *bay’ah* is *fard*, it is *fard kifayah* (obligation of sufficiency) and not *fard ain* (individual obligation). Thus, if some of the Muslims fulfill it, the duty drops from the rest of the Muslims. But all Muslims must be enabled to practice their right in electing the Khalifah, regardless of whether they use their right or not. In other words, every Muslim must be able to participate in selecting the Khalifah. So the issue is to enable the Muslims to carry out the duty of establishing the Khalifah which Allah (swt) prescribed upon them, in such a way that this duty falls (from their shoulders). The issue is not the actual participation of all the Muslims in conducting this duty. This is because the duty which Allah (swt) has prescribed is to establish the Khalifah for the Muslims by their consent, and it is not a requirement for all Muslims to perform it. Two matters result from this: One of them is that the consent of all the Muslims in the establishment of the Khalifah is achieved. Secondly, the consent of all the Muslims about the appointment is not achieved. The Muslims are however enabled (to participate in the appointment) in both cases.

With regards to the first matter, no condition is set concerning a specific number required to appoint the Khalifah. Rather any number of Muslims can give their *bay’ah* to the Khalifah and in this *bay’ah* the consent of the rest of the Muslims is attained by their silence, or by proceeding to obey him, or by anything which implies their consent, then the appointed Khalifah becomes a Khalifah for all the Muslims. He will legally be the Khalifah even if only three people appointed

him, because collectivity is achieved by carrying out the appointment of the Khalifah. The consent is achieved by their silence and through obedience or anything similar, on condition that this is accomplished by unfettered choice and in every respect enabling the expression of opinions for all. However, if the consent of all the Muslims was not achieved, then the appointment of the Khalifah would not be accomplished unless it was performed by a group that represents the consent of the majority of the Muslims, regardless of the number in this group. From here some jurists stated that the appointment of the Khalifah is established by the pledge given to him by the people of influence (*ahl al-hall wa al-'aqd*), because they consider the influential people as the group which achieves the consent of the Muslims through the pledge they give to any man who fulfils the contractual conditions of the Khalifah. Therefore, it is not the pledge of the influential people which establishes the Khalifah, nor is their pledge a condition for the legality of the appointment of the Khalifah. Rather the pledge of the influential people is evidence indicating that the consent of the Muslims to the pledge has been achieved, because the influential people are considered as representative of the Muslims. And every evidence which indicates that the consent of the Muslims with the pledge to a Khalifah is fulfilled completes the appointment of the Khalifah, and the appointment of the Khalifah by this *bay'ah* (pledge) would be legal.

Accordingly the *Shari'ah* rule is to establish the Khalifah by any gathering where appointment of the Khalifah achieves the consent of the Muslims by any indication that proves this consent. It is the same whether this indication is the pledge of the majority of the influential people, the majority of the representatives of the Muslims, the silent acceptance of the Muslims regarding the group that gave the pledge, their hurry to show obedience as a result of the pledge or by any similar means, as long as they were provided with the full facility to freely express their opinions. It is not a *Shari'ah* rule that this gathering must be only from the influential people or that they are four or four hundred or more, or that they must be the residents of the capital or the regions. Rather the *Shari'ah* rule is that their pledge fulfils the consent of the majority of Muslims by any indication together enabling them to freely express their opinion fully.

What is meant by all Muslims is those Muslims who live in lands controlled by the Islamic State i.e. those who are subjects of the former Khalifah if the Khalifah exists, or those by whom the Islamic State's establishment is accomplished and the Khalifah is contracted, in case the Islamic State was not established. They are the ones who stood to create it (the Khalifah) resume the Islamic way of life through it. As for the rest of the Muslims, their pledge and consent are not an essential condition, because they are believers outside the Islamic authority or they live in *Dar al-Kufr* (land of *kufr*) and they cannot join *Dar al-Islam*. So they have no right in the contracting pledge, but they must give the pledge of obedience because legally those who rebel from the Islamic authority are treated as rebels. As for those who live in *Dar al-Kufr*, the establishment of the Islamic authority is not achieved by them unless they establish it in reality or they enter into its domain. Therefore, the Muslims who have the right in the contracting pledge and their consent is considered a condition to ensure the legal appointment of the Khalifah are those Muslims by whom the authority of Islam is established in reality. It is not true to say that this is a rational study, or to say it has no *Shari'ah* evidence. This is because it is a study about the subject (*manal*) upon which the *Shari'ah* rule applies and not on the law itself, therefore it does not need a *Shari'ah* rule but rather must explain its reality. For example, the eating of dead meat is prohibited by the *Shari'ah* rule. Verification of what is the dead meat is the subject of the law i.e. the subject with which the law is related. So appointing of the Khalifah by Muslims is the *Shari'ah* rule, and that this appointment should be by consent and choice is also the *Shari'ah* rule. It is these provisions which need the *Shari'ah* evidence. As for who are the Muslims by whom the appointment is completed? And what is the matter by which the consent and choice are fulfilled? These (matters) are referred to as the subject of the law i.e. the subject which the law came to solve. The application of the *Shari'ah* rule upon the subject is the achievement of the law.

Therefore, it is needed to study the subject (*manat*) which the *Shari'ah* rule came to treat by explaining its reality.

It is incorrect to say that the subject (*manat*) of the law is the *'illah* (reason) of the law so it would necessarily need *Shari'ah* evidence because the subject of the law is different than the reason of the law. There is a great difference between *'illah* and *manat*. The *'illah* is the incentive for the law i.e. the thing which indicates the intention (aim) of the Lawgiver (*Ash-Shari'* i.e. Allah) for this law, and this must have a *Shari'ah* evidence so as to understand that it is the aim of the Lawgiver (Allah). Whereas the subject (*manat*) of the law is the subject for which the law came i.e. the question upon which the law applies, not its evidence or its *'illah*. What is meant by its being the subject with which the law is arrived at is that it is the subject with which the law suspends or hangs i.e. the law was brought to solve it. It does not mean that the law came because of it so as to be called the *'illah* of the law. So the *manat* of the law is that which is other than the conveyed (*ghayr an-naqliyya*) aspect of the *Shari'ah* rule. Its verification is different from the verification of the *'illah*. The verification of the *'illah* turns upon the comprehension of the text which came with a reason, and this is an understanding of what is conveyed and it is not the *manat*. The *manat* is other than what is conveyed; its meaning is the reality upon which the *Shari'ah* rule is to be applied.

If you say alcohol is *haram*, the *Shari'ah* rule is the prohibition of alcohol. Verifying that a certain drink is alcohol or not, so as to judge it as *haram* or not is a verification of the *manat*. So it is necessary to study whether the drink is alcohol or not in order to state that it is *haram*. The investigation of the reality of the alcohol is a verification of the *manat*. And if you said that the water allowed to use for *wudhu* is the unrestricted (*mutlaq*) water then the *Shari'ah* rule is that the *mutlaq* water is the one which is allowed for *wudhu*. So the verification that the water is unrestricted or restricted in order to judge upon it as allowed for *wudhu*, is a verification of the *manat*. Therefore, it is necessary to study the water to determine if it is free or restricted. This study of the reality of the water is the verification of the *manat*. And if you said the person who made *hadath* (discharged something from back or front) has to make *wudhu* for the prayer, then the verification that the person is *mubdath* or not *mubdath* is a verification of the *manat*, and so on. Shatebi said in "*Al-Muwafaqat*": "These subjects and their like which require defining the *manat* must take the evidence about it in conformity to the reality in relation to every incident." And he said: "*Ijtihad* could be connected with the verification of the *manat*, and this does not require knowledge of the aims of the Lawgiver (Allah) nor does it require knowledge of the Arabic language, because the aim of this *ijtihad* is knowing the subject as it is. Thus it requires knowledge without which this subject could not be recognised according to the aim of knowing it. Therefore the *mujtabid* has to be knowledgeable and *mujtabid* from this aspect which he considers in order to apply the *Shari'ah* rule to conform to what is required."

The investigation of the *'illah* returns to understanding the text which came with a reason. And this is an understanding of the conveyed matters and it is not the *manat*, rather the *manat* is other than the conveyed matters. It is meant to be the reality upon which the *Shari'ah* rule applies. If you say that alcohol is *haram*, the verification of whether a liquid is alcohol or not is the verification of the *manat*. And if you say the unrestricted (*mutlaq*) water is that with which *wudhu* can be performed, then the verification that the water is unrestricted or not is the verification of the *manat*. And if you said that the *mubdath* has to make *wudhu*, then the verification that the person is *mubdath* or not is the verification of the *manat*. Thus the verification of the *manat* is the investigation of the thing that is the subject of the law. Accordingly, it is not a condition that the one who verifies the *manat* be a *mujtabid* or a Muslim, but it is enough that he or she be knowledgeable in the matter. So the study of who are the Muslims whose *bay'ah* is evidence of the acceptance or consent is a study about the verification of the *manat*.

This is in regard to the first question. As for the second issue, regarding what occurs nowadays in conducting elections by secret ballot, using polling boxes, distributing votes and the like; all these are styles to perform the selection by consent. Therefore, they do not enter under the *Shari'ah* rule nor the question of *manat* of the *Shari'ah* rule which is the subject that the *Shari'ah* rule came to solve. This is because this matter is not concerned with the actions of the slaves nor the subject upon which the *Shari'ah* rule applies. Rather they are the means of the human actions to which the *Shari'ah* rule came i.e. the action which the speech of the Law-giver (Allah (swt)) is related to; which in this instance, is the establishment of the Khalifah by consent, provided there is complete facilitation to enable the expression of opinion. Therefore, these styles and means are not part of what the *Shari'ah* rules are sought for, and they are treated as matters which the general text has permitted. There is no special evidence to forbid them, so they are *mubah*. The Muslims have the right to select these or other styles. Any style which leads to enabling the Muslims to carry out the *fard* of appointing the Khalifah by consent and choice, then the Muslims are allowed to use it unless there came *Shari'ah* evidence which prohibits it.

It is incorrect to say that this style is a human act and should not be conducted except according to the *Shari'ah* rule, with an evidence to indicate its rule. It is incorrect to say so because the human action which must be conducted according to the *Shari'ah* rule and which must have an evidence that indicates its law, is the action which is considered as an origin (*asl*) or a branch (*far'*) of an origin whose evidence for the origin is not general but rather specific (*khaas*). An example for this is the prayer, whose evidence is only related to establishing it and it does not include every action included in the prayer. Therefore there must be an evidence for every action in it. However the action which is a branch for an action wherein general evidence applies to its origin, that general evidence applies upon all its branches. The prohibition of an action which is a branch requires an evidence to prohibit it, and remove it from the rule of its origin and thus give it a new rule. This is the same for all the styles. In the question of elections, the original action is the appointment of the Khalifah by consent and choice. As for the actions which branch out from that such as polling, using polling boxes, separating of votes and the like, they all enter under the rule of the origin and do not require another evidence. To exclude any of them from the rule of the origin, i.e. to prohibit it, is a matter which requires an evidence. This is the case for all the styles which are human actions. Concerning the means which are tools like the box in which the voting papers are put, these take the rule of things and not the rule for actions upon which applies the *Shari'ah* principle:

الأصل في الأشياء الإباحة ما لم يرد دليل التحريم

"In Principle things are permitted unless there exists an evidence of prohibition."

The difference between method (*tareeqah*) and style is that the method is an action which is considered by itself as an origin, or a branch to an action that does not have a general evidence for its origin; rather its evidence is specific to it. The style is an action which is a branch to an action—i.e. the origin—upon which there is no general evidence. Therefore, the method must depend upon a *Shari'ah* evidence because it is a *Shari'ah* rule, thus it must be adhered to and Muslims have no choice concerning it unless its rule is *ibaha* (of permissibility). This is different from the style which does not depend on a *Shari'ah* evidence; rather it is included in the rule of its origin. Therefore, it is not obligatory to follow a particular style even if the Messenger (saw) did so. Rather a Muslim is allowed to use any style as long as it leads to the performance of the action, and thus it becomes a branch to the action. Thus it is said that the style is defined by the type of action.

The *Shar'a* did not designate a specific person for the Khilafah

The view that the Messenger (saw) designated a specific person to be the Khalifah after him contradicts the *Shari'ah* texts. And the statement that the Messenger (saw) nominated certain persons to be *Khulafaa* after him until the Day of Judgement is even more contradictory to the Islamic texts.

As for invalidating (the opinion) that the Messenger (saw) nominated the Khilafah for someone after him, this is apparent in numerous ways:

First: This contradicts the pledge (*bay'ah*) since nominating a person means informing the Muslims as to who will be the Khalifah over them. Hence the Khalifah would be known so there would remain no need for legislating (*tashree'*) the pledge as the pledge is the method of appointing the Khalifah. So if he has already been appointed in advance, there remains no need to demonstrate the method of appointing him as, in fact, he has already been appointed. Nor can it be said that the pledge is the pledge of obedience to the Khalifah since the *Shar'a* has enunciated the obedience to the Khalifah and those in charge (*ulu al-amr*) in many other texts distinct from the text of the pledge. Obedience has been explicitly requested from Muslims; as for the pledge, it has been requested from Muslims in other request(s) not in consideration as being (merely) obedience, though it does include the meaning of obedience, but in consideration as being a contract for the Khilafah. Its meaning in all the *ahadith* that mentioned it is not obedience, rather it is about giving leadership to the one who is pledged and preparing to submit to this leadership. So making the pledge a condition for appointing the Khilafah contradicts the Messenger (saw) nominating a specific person to be Khalifah after him. Moreover, the words of the pledge which came in the correct (*Saheeh*) *ahadith* came in a general manner (*'aam*) without specification (*takhssees*), and unrestricted (*mutlaq*) without any restriction (*taqyeed*), for anyone. Were they to mean the pledge for a specific person they would not have been general and unrestricted. The word(s) of the *ahadith* are:

من مات وليس في عنقه بيعة،

“He who dies without a pledge on his neck,”

من بايع إماماً

“Whosoever pledges an *Imam*,”

And

ورجل بايع إماماً

“A man who pledges an *Imam*.”

The opinion that the Messenger (saw) designated a specific person to become Khalifah after him contradicts and invalidates the generality and unrestricted nature of the pledge. Therefore, it cannot be said that this means that the *ba'yah* is the very way of appointing the Khalifah while the appointment of the Khalifah is separate to the *ba'yah*, this is why the Khalifah is appointed first & then the *ba'yah* is given to him; one should not say this because the *ba'yah* is the method of appointing the Khalifah and this does not mean that it is exactly the same as his appointment. Nor should one say that it is compulsory to first appoint the Khalifah and acknowledge his appointment before giving him the *ba'yah* as this would mean that there is another method for appointing the Khalifah such that the *ba'yah* is merely for his obedience, whereas the *ahadith*

about the *ba'yah* all indicate that it is the method to appoint the Khalifah and there is no other way. Consider his (saw) statement:

من مات وليس في عنقه بيعة

“Whoever dies without a pledge on his neck”;

It is quite explicit in meaning that whoever dies without appointing his *Imam* via the pledge and it does not mean in any way whoever dies without obeying an *Imam*. This indicates that in this hadith the Prophet means the method of appointing the Khalifah and does not mean mere obedience. Also consider his (saw) statement:

إذا بويع لخليفتين فاقتلوا الآخر منهما

“When the pledge is given to two Khalifahs, kill the latter”;

This is explicit that if two Khalifahs are appointed, kill the later of them. Likewise all *abadith* of the Prophet are explicit that it is the method of appointing the Khalifah. The *abadith* of the Prophet are explicit in not meaning mere obedience or unrestricted (*mutlaq*) obedience; rather, they mean following the one appointed as the Khalifah with their meaning that this is the method of appointing the Khalifah. Further, there is not even one authenticated hadith, whether in narration or meaning, which demonstrates a method of appointing the Khalifah other than the *ba'yah*.

Second: *Abadith* have been narrated from the Messenger (saw) indicating that there will be disputes and contentions among people about the Khilafah and competition over it. If there was a text from the Messenger (saw) concerning the appointment of a (specific) person, there would not arise a dispute in the presence of that text or the Messenger (saw) would state that people would dispute with that person. Whereas the texts came saying that people would dispute between themselves and it also clarified the method to resolve this dispute and settle the issue of the Khilafah. Muslim narrated in his *Sabeeh*: Wahab bin Baqiyyat al-Wasiti narrated to me that Khalid bin Abdullah al-Juzairi told us from Abu Nadhra from Abu Saeed al-Khudri who said: The Messenger of Allah (saw) said:

إذا بويع لخليفتين فاقتلوا الآخر منهما

“If the pledge is given to two Khalifahs, kill the latter of them.”

Muslim also said in his *Sabeeh*: Zuhayr bin Harb and Ishaq bin Ibrahim narrated to me, with Ishaq saying we were informed and Zuhayr said it was narrated to us by Jareer, from Al-'Amash from Zaid bin Wahhab from Abdurrahman bin Abdurrabb al-Ka'aba who said: I entered the mosque and Abdullah bin 'Amru bin al-'Aas was seated in the shade of the *Ka'aba* with people gathered around him. So I joined them and sat with him. He said: We were with the Messenger of Allah (saw) in a voyage and we stopped at an encampment when an announcer (*mu'adhin*) of the Messenger of Allah (saw) announced the collective prayer. So we all gathered before the Messenger of Allah (saw) who said:

إنه لم يكن نبي قبلي إلا كان حقاً عليه أن يدل أمته على خير ما يعلمه لهم وينذرهم شر ما يعلمه لهم، إلى أن أتى: ومن بايع إماماً فأعطاه صفقة يده وثمرة قلبه فليطعه إن استطاع فإن جاء آخر ينازعه فاضربوا عنق الآخر

“There was no Prophet before me except that it was obligatory upon him to guide his Ummah to the best that he knew for them and warn them of the worst he knew for them until he said: Whoever pledged an *Imam*, giving him the clasp of his hand and the fruit of his heart, should

obey him as much as he can. If another comes to dispute with him, strike the neck of the other person.”

Muslim also narrated in his *Sabeeh*: Muhammad bin Bashar narrated to us that Muhammad bin Ja'far narrated to us that Shu'ba narrated to us from Furrat al-Qazzaz from Abu Hazm who said: I remained with Abu Hurayra for five years and heard him narrate from the Prophet (saw) who said:

كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه نبي، وإنه لا نبي بعدي، وستكون خلفاء فتكثُر، قالوا: فما تأمرنا؟ قال: فوا ببيعة الأول فالأول

“The children of Israel had Prophets taking care of their affairs as politicians (tasusuhum). Whenever one Prophet died, another followed him. However, there will be no Prophet after me but there will be Khulafaa who will be many. They said: What do you command us? He said: Fulfil the pledge one after the other.”

Muslim narrated in his *Sabeeh*: Uthman bin Abu Shayba narrated to us that Yunus bin Abu Ya'fur narrated to them from his father from Arfaja who said he heard the Messenger of Allah (saw) saying:

من أتاكم وأمركم جميعاً على رجل واحد يريد أن يشق عصاكم أو يجمعكم فاقتلوه

“Whoever finds when all your affairs have been united under one man, intending to incite rebellion or divide your unity, kill him.”

This means that the Khilafah is the right of all Muslims such that anyone can contend for it. This contradicts the (saying that) the Messenger (saw) nominated a specific person to be the Khalifah after him.

Third: The *abadith* which came with the word *Imam* denoting the Khalifah came with this word in an unspecified form; and when it came in an specified one, it either came specified with “the” (“*al*”) of the species or related to a collective noun. In the possibilities which came specified with “*al*”, it was the “*al*” of species by evidence of the sentence. The Messenger said:

من بايع إماماً

“Whoever pledges an *Imam*”,

قام إلى إمام جائر

“...stood against an unjust *Imam*”,

يكون بعدي أئمة

“there will be *Imams* after me.”

And he said:

فالإمام الذي على الناس راعٍ وهو مسؤول عن رعيته

“The *Imam* is the one who is a guardian (ra'i) over the people and he is responsible for his citizens”,

إنما الإمام جنة يُقاتل من ورائه ويُنْتَفَى به

“Verily the *Imam* is a shield from behind whom they fight and by whom they are protected”

and he said:

لأئمة المسلمين

“...to the *Imam* of the Muslims”,

خيار أئمتكم

“The best of your *Imams*”,

شرار أئمتكم

“...the worst of your *Imams*.”

All this indicates that the Messenger (saw) left the issue concerning who would be the Khalifah after him unspecified without specifying him. This is explicit in its indication that the Messenger (saw) did not designate a specific person for the Khilafah but rather left it as a right for all Muslims. When you add to this that some texts came with the collective (*jam'u*) language, this becomes a clear text in negating the *Imam* being a specific person.

Fourth: The Sahabah (ra) differed in their time about the persons to be the Khalifah among them. This difference among persons is evidence that the Messenger (saw) did not designate a specific person for the Khilafah. Among the very people who differed are those of whom it is said that the Messenger enunciated upon their Khilafah, namely: Abu Bakr (ra) and Ali (ra). Despite their differences, none of them ever argued that there was a text from the Messenger (saw) that the Khilafah is for him nor did any of the Sahabah (ra) argue that there was a text for certain people in general. Were there any text, they would have argued with them; so their failure to argue using any text means that there is no text for a specific person for the Khilafah. Nor should anyone say that there is a text which was known after them but it did not reach them, because we take our deen from the Sahabah (ra). They are the ones who conveyed the Qur'an, and narrated the hadith, to us. So if there is no text or any text from the Sahabah (ra), then it is not recognised in any way. We take whatever came from them while throwing away whatever did not come from them. In relation to the issue of a text for a Khalifah after the Messenger (saw), we find that all the Sahabah (ra) without exception including Abu Bakr (ra) and Ali (ra) agreed upon the absence of any text for a specific person for the Khilafah due to their failure to mention this despite the need for speaking and the necessity for mentioning the text if it existed. This indicates the invalidity of the Messenger (saw) designating a person for the Khilafah. Nor should one say that the failure to mention the text was due to the precaution to preserve the unity of the Muslims for this means hiding a rule of Allah and not delivering it at the very time it was urgently required, particularly in such an important matter for the Muslims. This hiding in the deen of Allah is not possible to come from the Sahabah (ra) of the Messenger of Allah (saw).

Fifth: There have come explicit texts that the Messenger (saw) did not appoint a Khalifah by the meaning that a specific person will be Khalifah after him. Al-Bukhari narrated from Abdullah bin Umar (ra) who said: It was said to Umar, will you not appoint a Khalifah? He said:

إن أستخلف فقد استخلف من هو خير مني، أبو بكر، وإن أترك فقد ترك من هو خير مني، رسول الله صلى الله عليه وسلم

“If I appoint a Khilafah, verily one better than me did appoint a Khalifah i.e. Abu Bakr. And if I do not, then one better than me did not i.e. the Messenger of Allah (saw).”

Muslim narrated from bin Umar that Umar bin al-Khattab (ra) said:

إن الله عز وجل يحفظ دينه وإني لئن لا أستخلف فإن رسول الله صلى الله عليه وسلم لم يستخلف، وإن أستخلف فإن أبا بكر قد استخلف

“Verily Allah *‘azza wa jall* will preserve the deen. If I do not appoint a Khalifah, verily the Messenger of Allah (saw) did not appoint; and if I do appoint, verily Abu Bakr did appoint.”

This is a clear text that the Messenger (saw) did not appoint a Khalifah. Nor should one say that this is Umar’s opinion for when a companion says, ‘The Messenger (saw) did this or did not do this or we were in his time like this or there was in his time such and such’, this is a hadith used as evidence not merely a companion’s view. Moreover, Umar said this within the hearing and sight of the Sahabah (ra), and Ali (ra) was present and this statement reached him and he did not oppose it, which indicates their agreement upon what Umar (ra) narrated.

This is all with respect to the absence of any specific text designating a specific person for the Khilafah. As for the texts brought by those who say that there are texts designating a specific person, among these texts are those brought to indicate that the Messenger appointed Abu Bakr (ra) to become Khalifah after him whereas others are brought to indicate that he appointed Ali (ra) as the Khalifah after him. We must present them and explain their contents.

As for the texts brought by those who say the Messenger (saw) appointed Abu Bakr (ra), they are divided into two: One portion in which the Messenger (saw) praises Abu Bakr (ra) wherein there is nothing to indicate that the Messenger (saw) appointed him. The other portion is one wherein some deduce by deduction that the Messenger (saw) appointed Abu Bakr (ra) while others deduce that he nominated Abu Bakr (ra). We will present their model by presenting some of them, noting that none of them exceed the meaning of praise.

Al-Bukhari narrated from Abu Saeed al-Khudri that the Prophet (saw) said:

إن من أفن الناس علي في صحبته وماله أبا بكر، ولو كنت متخذاً خليلاً غير ربي لاتخذت أبا بكر، ولكن أخوة الإسلام ومودته، لا يبقين في المسجد باب إلا سدّه إلا باب أبي بكر

“Verily the most gracious of people to me in his companionship and wealth is Abu Bakr. Were I to take an intimate friend (khaleel) other than my Lord, I would have taken Abu Bakr (ra) but instead there is the brotherhood of Islam and its love. There should not remain in the mosque any door but that it should be closed except for the door of Abu Bakr.”

Muslim also narrated this hadith but with different wording, although similar to these ones. There is nothing in this hadith to make a person say that he appointed Abu Bakr (ra) as Khalifah. All that it contains is praise for Abu Bakr (ra) from the Messenger (saw), and the Messenger (saw) praised many companions by name. There have come *abadith* with praise for Umar (ra), Uthman (ra), Ali (ra), Sa’d bin Abu Waqqas (ra), Talha (ra), Az-Zubayr (ra), Abu ‘Ubaydah bin al-Jarrah (ra), Al-Hassan (ra) and Al-Hussein (ra), Zayd bin Haritha (ra), Usama bin Zayd (ra), Abdullah bin Ja’far (ra), Khadija (ra), Aisha (ra), Fatima (ra) daughter of the Prophet (saw), Umm Salamah (ra), Bilal (ra) and others. Praise by itself does not in any way whatsoever indicate appointment to be Khalifah.

As for the *abadith* from which some deduced the Khilafah of Abu Bakr (ra), they are four *abadith* which we will present and clarify all that they contain. These *abadith* are:

First: Al-Bukhari narrated from Al-Qasim bin Muhammad (ra) who said:

وأرأساه. فقال رسول الله صلى الله عليه وسلم: ذاك لو كان وأنا حي فأستغفر لك وأدعو لك. فقالت عائشة: وا ثكلياه، والله إني لأظنك تحب موتي، ولو كان ذاك لظلمت آخر يومك معرساً ببعض أزواجك. فقال النبي صلى

الله عليه وسلم: بل أنا وأرأساه، لقد هممتُ أو أردت أن أرسل إلى أبي بكر وابنه فأعهد أن يقول القائلون أو يتمنى المتمنون. ثم قلت يا أبا الله ويدفع المؤمنون أو يدفع الله ويأبى المؤمنون

“Aisha said: O my head so the Messenger of Allah (saw) said: If it were to happen and I were alive, I would ask for you to be forgiven and pray for you. Aisha said: That is a serious matter. By Allah, I believe that you would like my death so that if it happened, you would spend the rest of your days wedded happily with some of your wives. The Prophet (saw) said: Rather it is my head which is heavy. I intended or planned to send for Abu Bakr and his son so as to give him a promise (‘ahd) so that no person will speak or a wisher wish. Then I said that Allah will reject and the believers prevent that or Allah will prevent and the believers reject.”

Muslim narrated this hadith from Aisha (ra) in this wording from her: The Messenger of Allah (saw) said to me in his illness:

ادعني لي أبا بكر أباك وأحاك حتى أكتب كتاباً، فإني أخاف أن يتمنى متمنٍ ويقول قائل: أنا أُولي، ويأبى الله والمؤمنون إلا أبا بكر

“Call for me your father, Abu Bakr, and your brother so that I write a book for I fear that a wisher will wish or a speaker say: I am better (or take precedence). But Allah will reject, and so the believers, except for Abu Bakr.”

Secondly: Al-Bukhari narrated from Muhammad bin Jubayr bin Mut’im from his father who said:

: أتت النبي صلى الله عليه وسلم امرأة فكلّمته في شيء، فأمرها أن ترجع إليه، قالت: يا رسول الله، أرايت إن جئت ولم أجدك—كأنها تريد الموت— قال: فإن لم تجدني فأني أبا بكر

“A woman came to the Prophet (saw) and spoke to him about something; and he commanded her to return to him. She said: O Messenger of Allah, what if I came and did not find you—as if she meant death—so he said: If you do not find me, then go to Abu Bakr.”

Muslim narrated this hadith from Muhammad bin Jubayr bin Mut’im from his father in the words:

أن امرأة سألت رسول الله صلى الله عليه وسلم شيئاً، فأمرها أن ترجع إليه، فقالت: يا رسول الله، أرايت إن جئت فلم أجدك—قال أبي: كأنها تعني الموت— قال: فإن لم تجدني فأني أبا بكر

“A woman asked the Messenger of Allah (saw) something and he commanded her to return to him. She said: O Messenger of Allah, what if I come and do not find you—My father said: As if she meant death—so he said: If you do not find me, then go to Abu Bakr.”

Thirdly: Al-Bukhari narrated from Aisha (ra), the mother of the believers,

أن رسول الله صلى الله عليه وسلم قال في مرضه: هُوَ أبا بكر يُصلي بالناس. قالت عائشة: قلت: إن أبا بكر إذا قام في مقامك لم يسمع الناس من البكاء، فمر عمر فليُصلِّ، فقال: هُوَ أبا بكر فليُصلِّ بالناس. فقالت عائشة: فقلت لحفصة: قولي إن أبا بكر إذا قام في مقامك لم يسمع الناس. ففعلت حفصة. فقال رسول الله صلى الله عليه وسلم: إنكَن صواحب يوسف، هُوَ أبا بكر فليُصلِّ بالناس. فقالت حفصة لعائشة: ما كنت لأصيبُ منك خيراً

“That the Messenger of Allah (saw) told me during his illness: Command Abu Bakr to lead the people in prayer. Aisha said: I said: When Abu Bakr stands in your place, people do not hear him for his crying so command Umar to lead prayers. He said: Command Abu Bakr to lead people in prayer. Aisha said: I said to Hafsa: Say that when Abu Bakr stands in your place, the people do not hear, and she did that. The Messenger of Allah (saw) said: You are like the companions of Yusuf. Command Abu Bakr to lead the people in prayer. Hafsa said to Aisha: I will never achieve any good through you!”

Fourthly: Muslim narrated from bin Abu Mulkiyya who said:

سَمِعْتُ عَائِشَةَ وَسُئِلَتْ مَنْ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مُسْتَخْلَفًا لَوْ اسْتَخْلَفَ؟ قَالَتْ: أَبُو بَكْرٍ. فَقِيلَ لَهَا: ثُمَّ مَنْ بَعْدَ أَبِي بَكْرٍ؟ قَالَتْ: عُمَرُ. ثُمَّ قِيلَ لَهَا: مَنْ بَعْدَ عُمَرَ؟ قَالَتْ: أَبُو عُبَيْدَةَ بْنِ الْجَرَّاحِ. ثُمَّ انْتَهَتْ إِلَى هَذَا

“I heard Aisha being asked: Whom would the Messenger of Allah (saw) have appointed as Khalifah after him had he so appointed? She said: Abu Bakr. She was asked: Then whom after Abu Bakr? She said: Umar. She was then asked: Then whom after Umar? She said: Abu ‘Ubaydah bin al-Jarrah, and she stopped at that.”

All these *ahadith* are not suitable evidence for the Messenger (saw) appointing Abu Bakr (ra) as Khalifah. The first hadith is rejected for two reasons: The first is that the Messenger (saw) said:

هَمَمْتُ وَأَرَدْتُ

“I wished or intended”

But he did not do so, so this is not an evidence. For the evidence is the Messenger’s (saw) saying, action or silent consent; anything other than these is not considered *Shari’ah* evidence. Secondly, Aisha (ra) is Abu Bakr’s daughter so were this hadith present she would have informed Abu Bakr (ra). Then he would have argued with it when he went to the courtyard (*saqeefa*) to contend with the Ansar when they gathered to pledge allegiance to a Khalifah amongst them. Therefore this hadith is rejected (*mardud*) and is unsuitable to be an evidence for the appointment of Abu Bakr (ra) as Khalifah.

As for the second hadith, it does not indicate the appointment of Abu Bakr (ra) as Khalifah because the woman said: “*If I did not find you*”; so it is correct that she failed to find him due to his absence in a war or any other matter. There is nothing in it to indicate that she meant by her words “*If I did not find you*” that you had died. The words which came in the hadith “*As if she meant death*” are the words of Jubayr and his understanding. So the Messenger’s command for her to go to Abu Bakr (ra) if she came and did not find him is no proof for the appointment of Abu Bakr (ra) as Khalifah after the Messenger (saw). Even if we were compelled to take her understanding to mean death, these words still would not designate Abu Bakr as Khalifah after him (saw).

As for the third hadith, this is the appointment over prayer and nothing else. Appointment over prayer does not mean appointment in authority (*hukm*). As for their statement: “*The Messenger of Allah was pleased with him in a matter of the deen, so should we not be pleased with him in a matter of the world (dunya)*”; this is their understanding, and it is erroneous because there is a large difference between prayer and ruling. Not all who are suitable to become a leader (*Imam*) in prayer are suitable to be a leader in ruling. Moreover, the text is specific to prayer so it does not encompass other things, nor should it be taken to mean other things due to the specificity (*kebhususiyya*) of the text.

As for the fourth hadith, it is not considered a hadith as it does not relate anything from the Messenger (saw); rather it is Aisha’s opinion. The Sahabah’s opinion is not a proof nor

considered *Shari'ah* evidence, so this (statement) is rejected as it is not a hadith and has no value in relation to the *Shari'ah* rules.

This is in relation to the *abadith* presented by those who argue for Abu Bakr's appointment as Khalifah. As for the *abadith* presented by those who say the Messenger (saw) appointed Ali (saw), they are of three categories: A category in which the Messenger (saw) praised our master Ali (ra), a category in which some have deduced that the Messenger (saw) appointed Ali (ra), and a category which came up among the ones who used these *abadith* as evidence to say that there exists clear text that the Messenger (saw) appointed Ali (ra) as the Khalifah.

As for the first category in which the Messenger (saw) praised Ali (ra), we will present a model from them by mentioning some of the *abadith* and the others don't exceeding the meaning of praise.

Al-Bukhari narrated from Sahl bin S'ad (ra)

أن رسول الله صلى الله عليه وسلم قال: لأُعْطِيَنَّ الرِّايَةَ غداً رجلاً يَفْتَحُ اللهُ على يديه. قال: فبات الناس يدوكون تلهلم أيُّهم يُعْطَاهَا. فلما أصبح الناس غدوا على رسول الله صلى الله عليه وسلم كلهم يرجو أن يُعْطَاهَا، فقال: أين علي بن أبي طالب؟ فقالوا: يشكيت عينيه يا رسول الله. قال: فأرسلوا إليه فأتوني به فلما جاء به صَقَّ في عينيه ودعا له فبرأ حتى كأن لم يكن به وجع فأعطاه الراية

“That the Messenger of Allah (saw) said: I will give the flag (*rayah*) tomorrow to someone by whose hands Allah will conquer. He said: So the people spent the night thinking which one of them it would be given to. When people woke up, they went early in the morning to the Messenger of Allah (saw) hoping it would be given to them, but he said: Where is Ali bin Abi Talib? They said: His eyes are paining O Messenger of Allah. He said: Send for him to come to me. When he came, he spit in his eyes and prayed for him. He was cured as if he never had pain, and he gave him the flag.”

Muslim narrated this hadith from Abu Hurairah with the words:

أن رسول الله صلى الله عليه وسلم قال يوم خيبر: لأُعْطِيَنَّ هذه الراية رجلاً يحب الله ورسوله، يفتح الله على يديه. قال عمر بن الخطاب: ما أحببتُ الإمارة إلاَّ يومئذ. قال: فتساورت لها رجاء أن أَدْعَى لها. قال: فدعا رسول الله صلى الله عليه وسلم علي بن أبي طالب فأعطاه إياه

“The Messenger of Allah (saw) said on the day of Khayber: I will give this flag to someone who loves Allah and His Messenger by whose hands Allah will conquer. Umar bin al-Khattab said: I had never wished for leadership except for that day. He said: I visualised it hoping that i would be called for it. He said: The Messenger of Allah (saw) called Ali bin Abi Talib and gave him the flag.”

Al-Bukhari narrated in the chapter of virtues of Ali (ra) that the Messenger of Allah (saw) said to Ali (ra):

أنت مني وأنا منك

“You are of me and I am of you.”

Muslim narrated from ‘*Amir* Bin S'ad bin Abi Waqqas (ra) from his father who said: Muawiya bin Abu Sufyan (ra) commanded S'aad (ra) saying: What has prevented you from insulting Abu Turab (ra)? He said: When I remember three (things) which the Messenger of Allah (saw) said of

him, I will never insult him. That I should have even one of these is more beloved to me than red camels. The Messenger of Allah (saw) left him behind in some of his war expeditions, so Ali (ra) said to him: O Messenger of Allah (saw), have you left me behind with women and children? The Messenger of Allah (saw) said to him:

أما ترضى أن تكون مني بمنزلة هارون من موسى، إلا أنه لا نبي بعدي

“Are you not pleased to be in the same status next to me like the status of Harun next to Musa, except that there is no Prophet after me.”

I also heard him say on the day of Khayber:

لَأُعِطَّ الرَايَةَ رَجُلًا يُحِبُّ اللَّهَ وَرَسُولَهُ وَيُحِبُّهُ اللَّهُ وَرَسُولَهُ

‘I will give the flag to a man who loves Allah and His Messenger, and whom Allah and His Messenger love.

He said: We moved for it and he said:

: فقال ادعوا لي علياً، فأُتِيَ به أرمداً، فبصق في عينيه ودفع الراية إليه، ففتح الله عليه

“Call Ali, so he was brought and he had sore eyes. He spit in his eyes and gave him the flag, and Allah conquered through him.’

And when this verse was revealed:

فقل تعالوا ندعُ أبناءنا وأبناءكم

Say: *Come and let us call our sons and your sons*

[TMQ 3:61],

The Messenger of Allah (saw) called Ali (ra), Fatima (ra), Hassan (ra) and Husain (ra) and said:

اللهم هؤلاء أهلي

‘O Allah, this is my family.’”

Muslim narrated from Sahl bin S’aad who said: A man from the family of Marwan was appointed (as ruler) over Madinah. He said: He called Sahl bin S’aad and commanded him to insult Ali (ra). He said: Sahl refused, so it was said to him: If you refuse, then say: Allah curse Abu Turab (ra). Sahl said: Ali (ra) has no name more beloved to me than Abu Turab (ra), and he would be pleased when called by it. It was said to him: Inform us of the incident as to why he was called Abu Turab (ra), so he said: The Messenger of Allah (saw) came to Fatima’s house and did not find him in the house, so he said:

فقال: أين ابن عمك؟ فقالت: كان بيني وبينه شيء فغاضبني فخرج فلم يقل عندي. فقال رسول الله صلى الله عليه وسلم لإنسان: انظر أين هو. فجاء فقال: يا رسول الله هو في المسجد راقداً. فجاءه رسول الله صلى الله عليه وسلم وهو مضطجع قد سقط رداؤه عن شقه فأصابه تراب، فجعل رسول الله صلى الله عليه وسلم يمسحه عنه ويقول: قم أبا التراب، قم أبا التراب

“Where is the son of your paternal uncle?” She said: There was something between him and me, and he made me angry and left without telling me. So the Messenger of Allah (saw) said to someone: “Go find out where he is.” He came back and said: O Messenger of Allah, he is resting in the mosque. So the Messenger of Allah (saw) came to him while he was reclining. His cloak

had fallen from his body and dirt had touched him, so the Messenger of Allah (saw) began wiping it off him while saying: “Stand up, O Abu Turab.”

Muslim narrated from ‘Adiyy bin Thabit from Dharr who said: Ali said:

الذي فلق الحب وبرأ النسمة إنه لعهدُ النبي الأمي صلى الله عليه وسلم إليَّ أن لا يجيني إلا مؤمن ولا يبغي عليَّ إلا منافق

“By Him Who split up the seed and created something living, the Prophet (may peace and blessings be upon him) gave me a promise that no one but a believer would love me, and none but a hypocrite would nurse grudge against me..”

There is nothing in these *abadith* to make someone say that the Messenger (saw) appointed Ali (ra) to be Khalifah after him. The hadith of Khayber is praise from the Messenger of Allah. The Messenger’s (saw) statement to Ali (ra):

أنت مني وأنا منك

“You are of me and I am of you”

Is a praise from the Messenger of Allah (saw). As for the hadith of S’aad in which came:

أما ترضى أن تكون مني بمنزل هارون من موسى

“Are you not pleased to have the status before me as that of Harun with Musa”,

This subject will be discussed in the second category of the *abadith* on the topic. In it is also the hadith of Khayber which is a praise and in it is that Ali (ra), Fatima (ra), Hassan (ra) and Husain (ra) are his family which is a praise, and the hadith of Sahl bin S’ad is a praise. Just like the Messenger of Allah (saw) praised Ali (ra), he also praised others among his Sahabah (ra). The Messenger’s praise for a person does not in any way indicate his appointment.

As for the second category of *abadith* which are those from which some deduced that the Messenger (saw) stated textually that Ali would be the Khalifah after him, they are summarised in these four texts:-

1- Al-Bukhari narrated from Mus’ab bin S’ad from his father

أن رسول الله صلى الله عليه وسلم خرج إلى تبوك واستخلف علياً وقال: أتخلفني في الصبيان والنساء؟ قال: ألا ترضى أن تكون مني بمنزلة هرون من موسى؟ إلا أنه ليس نبي بعدي

“That the Messenger of Allah (saw) left for Tabuk and appointed Ali, so he said: Do you leave me behind along with women and children? He said: Are you not pleased to have the same status with me as Harun had with Musa, except that there is no Prophet after me?”

Muslim narrated from ‘Amir bin S’ad bin Abi Waqqas (ra) from his father who said: The Messenger of Allah (saw) said to Ali (ra):

أنت مني بمنزلة هرون من موسى إلا أنه لا نبي بعدي

“You are to me of the same status as Harun was to Musa, except that there is no Prophet after me.”

And Muslim narrated from Ibrahim bin S’ad from S’ad that the Prophet (saw) said to Ali (ra):

أما ترضى أن تكون مني بمنزلة هرون من موسى

“Are you not pleased to have the same relation with me as Harun had with Musa?”

Ibn Ishaq narrated by saying: The Messenger of Allah (saw) left behind Ali bin Abi Talib (ra) to look after and supervise his family. The hypocrites started spreading false rumors and said to him that: He (saw) did not leave him behind except for the reason that it was hard on him and so that it could become easy for him. When the hypocrites said that, Ali bin Abi Talib (ra) took his weapons and moved out until he met the Messenger of Allah (saw) who was encamped at Al-Jarf and said: O Prophet of Allah (saw), the hypocrites claimed that you left me behind because it was hard for me and to make it easy for me. He said:

كذبوا، ولكنني خلقتك لما تركت ورائي، فارجع فاخلفني في أهلي وأهلك، أفلا ترضى يا علي أن تكون مني بمنزلة هرون من موسى إلا أنه لا نبي بعدي، فرجع علي إلى المدينة، ومضى رسول الله صلى الله عليه وسلم على سفره

“They lied; rather I left you behind due to what I left behind me so return and supervise my family and your family on my behalf. Are you not pleased, O Ali, to have the same status before me as Harun had before Musa except that there is no Prophet after me?”

So Ali returned to Madinah and the Messenger of Allah (saw) continued on his journey. As-Sayyid Abd al-Husain Sharaf ud-Deen mentioned the following in the book “*Al-Muraja'at*”: “The hadith of Jabir bin Abdullah who said: The Messenger of Allah (saw) said:

يا علي إنه يحل لك في المسجد ما يحل لي، وإنك مني بمنزلة هرون من موسى، إلا أنه لا نبي بعدي

O Ali, verily it is allowed for you in the mosque what is allowed for me, and your relation with me is that of Harun with Musa except that there is no Prophet after me.”

2. Muslim narrated from Yazid bin Hayyan who said: I left with Husain bin Sabra and Umar bin Muslim to Zayd bin Arqam (ra). When we sat with him, Husain said to him: “Verily, O Zayd, you met a great deal of good. You saw the Messenger of Allah (saw), heard his hadith, fought with him and prayed behind him. Verily, O Zayd, you met a great deal of good. So relate to us, O Zayd, of what you heard from the Messenger of Allah (saw). He said: O son of my brother, by Allah I have become old and my time has approached. I have forgotten some of that, which I understood from the Messenger of Allah (saw), so accept whatever I relate to you and do not force me on that which I do not relate. Then he said: The Messenger of Allah (saw) stood one day before us speaking at the waters known as Khum between Makkah and Madinah. He thanked Allah, praised Him, exhorted and reminded then said:

أما بعد ألا أيها الناس فإنما أنا بشر يوشك أن يأتي رسول ربي فأجيب، وأنا تارك فيكم ثقلين، أولهما كتاب الله فيه الهدى والنور فخذوا بكتاب الله واستمسكوا به. فحث على كتاب الله ورغب فيه. ثم قال: وأهل بيتي، أذكركم الله في أهل بيتي، أذكركم الله في أهل بيتي، أذكركم الله في أهل بيتي. فقال له حصين: ومن أهل بيته يا زيد؟ أليس نساؤه من أهل بيته؟ قال: نساؤه من أهل بيته، ولكن أهل بيته من حرم الصدقة بعده. قال: ومن هم؟ قال: هم آل علي وآل عقيل وآل جعفر وآل عباس. قال: كل هؤلاء حرم الصدقة؟ قال: نعم

" Now to our purpose. O people, I am a human being. I am about to receive a messenger (the angel of death) from my Lord and I, in response to Allah's call, (would bid good-bye to you), but I am leaving among you two weighty things: the one being the Book of Allah in which there is right guidance and light, so hold fast to the Book of Allah and adhere to it. He exhorted (us) (to hold fast) to the Book of Allah and then said: The second are the members of my household I

remind you (of your duties) to the members of my family. He (Husain) said to Zaid: Who are the members of his household? Aren't his wives the members of his family? Thereupon he said: His wives are the members of his family (but here) the members of his family are those for whom acceptance of Zakat is forbidden. And he said: Who are they? Thereupon he said: 'Ali and the offspring of 'Ali, 'Aqil and the offspring of 'Aqil and the offspring of Ja'far and the offspring of 'Abbas. Husain said: These are those for whom the acceptance of Zakat is forbidden. Zaid said: Yes.”

As-Sayyid Abd al-Husain Sharaf ud-Deen mentioned in his book “*Al-Muraja'at*” this hadith via the following narration which At-Tabarani narrated through a chain whose authenticity is unanimously accepted from Zayd bin Arqam (ra) who said: The Messenger of Allah (saw) spoke at Ghadeer Khum underneath some trees and said:

أيها الناس يوشك أن أدعى فأجيب، وإني مسؤول وإنكم مسؤولون، فماذا أنتم قائلون؟ قالوا: نشهد أنك قد بلغتَ وجاهدتَ ونصحتَ، فجزاك الله خيراً. فقال: أليس تشهدون أن لا إله إلا الله وأن محمداً عبده ورسوله، وأن جنته حق وأن ناره حق، وأن الموت حق وأن البعث حق بعد الموت، وأن الساعة آتية لا ريب فيها وأن الله يبعث من في القبور؟ قالوا: بل نشهد بذلك. قال: اللهم اشهد. ثم قال: أيها الناس إن الله مولاي، وأنا مولى المؤمنين، وأنا أولى بهم من أنفسهم، من كنت مولاه فهذا مولاه —يعني علياً— اللهم وال من والاه وعاد من عاداه. ثم قال: يا أيها الناس إني فوطكم وإنكم واردون على الحوض، حوض أعرض ما بين بصري إلى صنعاء، فيه عدد من النجوم، قدحان من الفضة، وإني سألتكم حين تردون علي عن الثقلين كيف تخلفوني فيهما، الثقل الأكبر كتاب الله عز وجل، سبب طرفه بيد الله تعالى وطرفه بأيديكم، فاستمسكوا به لا تضلوا ولا تبللوا، وعني أهل بيتي، فإنه قد نبأني اللطيف الخبير أنهما لن ينقضيا حتى يردا علي الحوض

“O people, it is about to be that I am called and I will respond (indicating death). Verily, I am accountable and you are accountable, so what will you say? They said: We will testify that you conveyed, struggled and advised so may Allah recompense you well. He said: Do you not bear witness that there is no deity but Allah and Muhammad is His slave and Messenger, that Paradise is true and Hellfire is true, that death is true and resurrection after death is true, that the Hour (of Judgement) will come without any doubt, and that Allah will resurrect all those in their graves? They said: Yes, we do bear witness. Then he said: O people, verily Allah is my Patron and I am the patron of the believers such that I take precedence before them over their own selves. Whoever takes me as his patron then this one is his patron—meaning Ali. O Allah, befriend whoever befriends him and take as enemy whoever takes him as an enemy. Then he said: O people, verily I will leave you and you will find me at the Cistern, a cistern wider than the distance from Basra to Sana'a. In it are tumblers of silver the number of stars. Verily I will ask you when you come before me on the two weighty things, how you took care of them after me. The weightier and greater one is the Book of Allah 'azza wa jalla, a (sabab) of which one end is in the hands of Allah and the other in your hands. Hold tightly to it so that you do not go astray or change, and my *Utra* (household), the people of my house. Verily The Kind & All-Knowing (swt) has informed me that they will never separate until they come before me at the cistern (fountain)”

(This is the end of what As-Sayyid Abd al-Husain Sharaf ud-Deen mentioned).

And Shaikh Abd al-Husain Ahmad Al-Ameeni An-Najafi stated the following in his book “*Al-Ghadeer*”: “When he finished his rites of worship i.e. the Prophet (saw) and left for Madinah,

together with the mentioned group(s) of people, he reached Ghadeer Khum in Al-Jahfa where the roads branch for the people of Madinah, Egypt and Iraq. This was the 15th day of Dhul-Hijja and Jibril, the trustworthy, descended to him from Allah (swt) with His saying:

يا أيها الرسول بلِّغ ما أنزل إليك من ربك

"O Messenger, deliver what was revealed to you from your Lord" [TMQ 5:67]

And He commanded him to cause Ali (ra) to stand to let the people know and inform what was revealed regarding his patronage and the obligation of obedience upon every one. The first of the people were close to Al-Jahfa so the Messenger of Allah (saw) commanded those who had proceeded to return and enclosed those who had delayed at that place, and he prohibited people from encamping beneath the five large trees. When the people took camp and those underneath them (the trees) stood until the *dhubr* prayer was announced, he headed for them and prayed beneath them. It was a sizzling day where a man placed some of his cloak upon his face and some under his feet due to the severe heat, and the Messenger of Allah was shaded by a garment upon the *sumra* tree due to the sun. When he (saw) finished his prayer, he stood to speak in the middle of the people on the hump of a camel and he spoke with a raised tone with every one hearing him and he (saw) said:

الحمد لله ونستعينه ونؤمن به ونتوكل عليه ونعوذ بالله من شرور أنفسنا ومن سيئات أعمالنا الذي لا هادي لمن ضل ولا ضل لمن هدى، وأشهد أن لا إله إلا الله وأن محمداً عبده ورسوله، أما بعد: أيها الناس قد نبأني اللطيف الخبير أنه لم يعمر نبي إلا مثل نصف عمر الذي قبله، وإني يوشك أن أدمى فأجبت، وإني مسؤول وأنتم مسؤولون فماذا أنتم قائلون؟ قالوا: نشهد أنك قد بلّغت ونصحت وجهدت فجزاك الله خيراً. قال: أليستم تشهدون أن لا إله إلا الله وأن محمداً عبده ورسوله، وأن جدته حق وناره حق، وأن الموت حق وأن الساعة آتية لا ريب فيها وأن الله يبعث من في القبور؟ قالوا: بلى نشهد بذلك. قال: اللهم اشهد. ثم قال: أيها الناس ألا تسمعون؟ قالوا: نعم. قال: فإني فوط على الحوض وأنتم واردون عليّ الحوض، وأن عرضه ما بين صنعاء وبُصرى، فيه أقداح عدد النجوم من فضة، فانظروا كيف تخلفوني في الثقلين. فنادى مناد وما الثقلان يا رسول الله؟ قال: الثقل الأكبر كتاب الله طرف بيد الله عز وجل وطرف بأيديكم، فتمسكوا به لا تفلتوا، والآخر الأصغر عتي، وإن اللطيف الخبير نبأني أنهما لن يتفرقا حتى يردا عليّ الحوض، فسألت ذلك لهما ربي، فلا تقدموهما فتهلكنوا ولا تقصروا عنهما فتهلكنوا، ثم أخذ بيد عليّ فرفعهما حتى روي بياض آباطهما وعرفه القوم أجمعون، فقال: أيها الناس من أولى الناس بالمؤمنين من أنفسهم؟ قالوا: الله ورسوله أعلم. قال: إن الله مولاي وأنا مولى المؤمنين وأنا أولى بهم من أنفسهم، فمن كنت مولاه فعليّ مولاه، يقولها ثلاث مرات، وفي لفظ أحمد إمام الحنابلة أربع مرات، ثم قال: اللهم وإل من والاه وعاد من عاداه، وأحب من أحبّه، وابغض من أبغضه وانصر من نصره، واخذل من خذله، وأدر الحق معه حيث دار، ألا فليبلغ الشاهد الغائب.

"All praise is due to Allah whom we ask for help, believe in and depend upon. We ask Allah to protect us from the evils of our souls and bad deeds, the One whom none can guide whom He causes to go astray or misguide whom He guides. I bear witness that there is no god but Allah and Muhammad is His slave and Messenger. As for what follows: O people, verily the The Kind

& All-Knowing (swt) has informed me that He does not grant longevity to a Prophet except half the like of the one before him. Verily it is about to be that I will be called and I will respond. Verily I am accountable and you are accountable, so what will you say? They said: We bear witness that verily you have conveyed, advised and struggled so may Allah reward you well. He said: Do you not bear witness that there is no god but Allah and that Muhammad is His slave and Messenger that His paradise is true and His hellfire is true, that death is true, that the Hour will come without any doubt and that Allah will resurrect those in the graves? They said: Yes, we bear witness to this. He said: O Allah, do bear witness. Then he said: O people, will you not listen? They said: Yes. He said: Verily I will go to the cistern (*alkauthar*) and you will be presented at the cistern, whose breadth is that between Sana'a and Basra, before me. In it are cups of silver the number of which are the number of stars, so look how you take care of the two weighty things after me. An announcer announced: And what are the two weighty things, O Messenger of Allah? He said: The greater of the two weighty things is the Book of Allah, one end of which is in the hand of Allah and the other in your hands so hold fast to it and you will not go astray. The other smaller one is my household (*'utra*). Verily the Kind & All-Knowing (swt) informed me that they will not go away until Ali reaches the cistern and I asked that from my Lord. So do not precede them or neglect them and if you do so you will perish. Then he took the hand of Ali and raised it until their armpits were seen and everyone recognised him and he said: O people, who takes precedence before the believers over their own selves? They said: Allah and His Messenger know best. He said: Verily Allah is my Patron (*mawla*) and I am the patron of the believers such that I take precedence before them over their own selves. So whoever has me as his patron then Ali is his patron. He said this three times, and in the words of *Imam Ahmad*, *Imam* of the Hanbalis, four times. Then he said: O Allah, befriend whoever befriends him and become an enemy to whoever takes him as an enemy. Love whoever loves him and hate whoever hates him, support whoever supports him and abandon whoever abandons him, and let the truth be with him wherever he is resides. Verily, let the witness who is present inform the (one who is) absent.”

3. Those who say that the Messenger (saw) clearly announced the Khilafah of Ali (ra) narrated *abadith* in their books. As for these *abadith*, we will not make the place of research in them their narrations, despite the fact that the two sheikhs Al-Bukhari and Muslim did not narrate them, nor were they narrated via any trustworthy narrators and most of them are among the fabricated *abadith*. We will not make their narrations the subject of research such that they say that these *abadith* were not narrated by trustworthy narrators before you but were narrated by trustworthy narrators before us so that the one for whom the hadith is authenticated uses it as an evidence. We will not make that the domain of research; rather we will make the matter of research the texts themselves as they came in the narrations. These are the texts from which they deduced that the Messenger (saw) appointed Ali to be the Khalifah after him—and these *abadith* are known as the *abadith* of “*wilayah*”—from which we will present some of them and the rest carry the same meaning and even the same wordings.

- a) Abu Dawud At-Tayalisi narrated from Ibn Abbas (ra) that the Messenger of Allah (saw) said to Ali ibn Abi Talib (ra):

أنت ولي كل مؤمن بعدي

“You are the wali of all believers after me.”

- b) It has been narrated in *Kanz al-'Ammal* from Imran bin Husain who said that the Messenger of Allah (saw) sent an expedition and appointed Ali bin Abi Talib (ra) over them. He chose for himself a slave girl from the fifth (*kebums*) and they rejected this from him. Four of them agreed to complain about him to the Prophet (saw) so, when they came, one of the four stood and said: O Messenger of Allah (saw), do you not see that Ali (ra) did such and such,

and he (saw) turned away from him. The second stood and said the same, so he turned away from him. The third stood and said the same, so he turned away from him. And the fourth stood and said the same as they had said. The Messenger of Allah (saw) turned towards them with anger visible in his face and said:

: ما تريدون من عليّ؟ إن علياً مني وأنا منه، وهو ولي كل مؤمن من بعدي

What do you want for me with regards to Ali? Verily Ali is from me and I am from him, and he is the *waliy* of every believer after me.”

- c) And in a long hadith from ‘Amru bin Maymun from ‘Ibn Abbas (ra) who said: The Messenger of Allah (saw) sent so and so with *Surah At-Tambab*. He then sent Ali (ra) after him to take it from him and said:

لا يذهب بها إلاّ رجل هو مني وأنا منه

“No one should take it except a man who is from me and I am from him.”

- d) *Ikanz al-'Ammal* from Wahhab bin Hamza who said: I travelled with Ali (ra) and I saw harshness from him, so I said that when I will return I will complain about it. So I returned and mentioned Ali (ra) to the Messenger of Allah (saw) and he said:

لا تقولن هذا لعليّ فإنه وليكم بعدي

“Do not say this for Ali, as he is your *waliy* after me.”

- e) In *Kanz al-'Ammal* from ‘ibn Abbas who said: The Messenger of Allah (saw) said:

من سرّه أن يحيا حياتي ويموت مماتي ويسكن جنة عدن غرّها ربي، فليوال علياً بعدي وليوال وليّه

“Whoever is pleased to live my life, die my death and to reside in the paradise of Eden irrigated by my Lord then let him befriend Ali as a *waliy* after me.”

- f) In *Muntakhab al-Kanz* from Zayyad bin Mutarraf who said: I heard the Messenger of Allah (saw) saying:

من أحبّ أن يحيا حياتي ويموت ميتتي ويدخل الجنة التي وعدني ربي وهي جنة الخلد، فليتولّ علياً وذريته من بعدي، فإنهم لن يخرجونكم من باب هدى ولن يدخلوكم باب ضلالة

“Whoever would like to live my life, die my death, and enter the paradise promised to me by my Lord—and it is an eternal paradise—then let him befriend Ali and his descendants after me. Verily they will never remove you from the door of guidance nor enter you into the gate of misguidance.”

- g) In *Kanz al-'Ammal* from Ammar bin Yasir who said: The Messenger of Allah (saw) said:

أوصي من آمن بي وصدقني بولاية علي بن أبي طالب، فمن تولاه فقد تولاني ومن تولاني فقد تولى الله، ومن أحبّه فقد أحبني ومن أحبني فقد أحب الله، ومن أبغضه فقد أبغضني ومن أبغضني فقد أبغض الله

“I bequeath whoever believes in me and trusts me with the *wilayah* of Ali bin Abi Talib. Whoever befriends him has befriended me and whoever befriends me has befriended Allah. Whoever loves him has loved me, and whoever loves me has loved Allah. Whoever hates him has hated me, and whoever hates me has hated Allah.”

- h) Also in *Al-Kanz* from Ammar it has been narrated in a *marfu* hadith :

اللهم من آمن بي وصدقني فليتولّ علي بن أبي طالب، فإن ولايته وولايتي وولايتي ولاية الله تعالى

“O Allah, whoever believes and trusts in me, let him befriend Ali bin Abi Talib. Verily his *wilayah* is my *wilayah* and my *wilayah* is the *wilayah* of Allah ta'ala.”

4. There are *abadith* narrated by those who say that the Messenger (saw) openly declared the Khilafah of Ali (ra). These *abadith* have not been narrated by any trustworthy person and most of them are fabricated *abadith*. We present them not to research them from the angle of their narration so that they are claimed to be authenticated for those who narrate them. Rather we present them to make the point of research their texts according to what came in their texts. These *abadith* contain the brotherhood of the Messenger (saw) with Ali (ra), and making him the heir after him. We present a few of them with the remainder carrying the same meaning and even the same wordings.

a) The Prophet (saw) established a brotherhood between the Muhajirin and chose Ali (ra) for himself. In what came of the hadith of the first brotherhood, “so Ali said: O Messenger of Allah (saw), verily my soul left me and my spine has been broken when I saw you do what you did with your companions other than me. If this is a sign of your anger with me, then I complain only to you and beg your pardon. The Messenger of Allah (saw) said:

والذي بعثني بالحق ما أخرجتك إلاّ لنفسي وأنت مني بمنزلة هرون من موسى، غير أنه لا نبي بعدي، وأنت أخي ووارثي. فقال: وما أرتُ منك؟ قال: ما ورت الأنبيا من قبلي: كتاب ربهم وسنة نبيهم

By the One who sent me with truth, I only left you for myself. You are to me of the status of Harun to Musa except that there is no Prophet after me. You are my brother and inheritor. He said: What will I inherit from you. He said: What did the Prophets inherit before me, the Book of their Lord and the Sunnah of their Prophets.”

b) The Prophet (saw) made a brotherhood between the Muhajirin and the Ansar five months after the *hijrah*, but he did not make a brotherhood between Ali (ra) and any of the Ansar; rather he chose him (Ali) for himself. It came in the hadith of the second brotherhood

أن الرسول صلى الله عليه وآله وسلم قال لعليّ: أَعْضِبْتَ عَلِيّ حِينَ آخَيْتَ بَيْنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَلَمْ أَوْأَخِ بَيْنَكَ وَبَيْنَ أَحَدٍ مِنْهُمْ. أما تَرْضَى أَنْ تَكُونَ بِنِي بِمَنْزِلِ هَرُونَ مِنْ مُوسَى، إِلَّا أَنَّهُ لَيْسَ بَعْدِي نَبِيٌّ

“That the Messenger (saw) said to Ali: Did you become angry at me when I made a brotherhood between the Muhajirin and Ansar but did not make a brotherhood between you and any of them? Are you not pleased to be similar to the status of Harun to Musa for me except that there is no Prophet after me”

c) It is narrated that the Messenger (saw) went out one day to his companions with his face brightened so Abdurrahman bin Awf (ra) asked him and he said:

بشارة أتتني من ربي في أخي وابن عمي وابنتي بأن الله زوج علياً من فاطمة

“Good news came to me from my Lord about my brother and paternal uncle’s son and my daughter, that Allah will marry Ali with Fatima.”

When the *sayyid Annisa's* (leader of the women) deserving groom for her marriage was being considered, the Prophet (saw) said:

يا أم أيمن ادعي لي أخي. فقالت: هو أخوك وتُنكحه؟ قال: نعم يا أم أيمن. فدعت علياً فجاء

“O Umm Ayman, call my brother for me. She said: He is your brother yet you are marrying him (to your daughter)? He said: Yes, O Umm Ayman. So she called Ali and he came.”

And the Prophet (saw) spoke to him one day regarding a judgement between him, his brother Ja'far (saw) and Zayd bin Haritha (saw), saying:

وأما أنت يا علي فأخي وأبو ولدي ومني وإلي

“As for you, O Ali, (you are) my brother, the father of my son, and from me and for me.”

d) The Messenger (saw) promised to Ali (ra) one day saying:

أنت أحي ووزيرى تقضى دي نبي وتنجز موعدي وتبرئ ذمتي

“You are my brother and my wazeer. You will repay my debts, fulfill my commitments and complete my responsibilities.”

3) In *Kanz al-'Ammal*, he (saw) said:

مكتوب على باب الجنة لا إله إلا الله محمد رسول الله، علي أخو رسول الله

“It is written on the gate of Paradise: There is no god but Allah, Muhammad is the Messenger of Allah, Ali is the brother of the Messenger of Allah.”

These four texts, which are the texts in which the Messenger (saw) made him (Ali) of the status of Harun to Musa, the text that he left the Book of Allah and His progeny, the text of *wilayah*, and the text of brotherhood, are the texts from which some Muslims deduced that the Messenger (saw) appointed Ali (ra) i.e. made him the Khalifah after him. Let us take them text by text:

As for the first text, which is the text which made Ali at the status of Harun to Musa before the Messenger (saw), its meaning is clarified though studying the occasion in which it was said and studying its wording. As for the occasion, the Messenger (saw) said this hadith on the day of the battle of Tabuk. Therein the Messenger (saw) appointed in Madinah in his place Muhammad bin Maslamah (ra) to supervise the Muslims' affairs and administer the rule, and appointed our master Ali (ra) over his family and commanded him to supervise them. The hypocrites shook him and said: He did not leave him behind except because it had become hard on him he wanted to make it easy for him. When the hypocrites said this, Ali (ra) took his weapon and left until he met the Messenger (saw) who was encamped at Al-Jarf and said:

يا نبي الله، زعم المنافقون إنك إنما خلفتني أنك استقلتني وتخففت مني، فقال: كذبوا، ولكني خلفتك لما تركت ورائي، فارجع فاخلفني في أهلي وأهلك، أفلا ترضى يا علي أن تكون مني بمنزلة هرون من موسى إلا أنه لا نبي بعدي

“O Prophet of Allah, the hypocrites claimed that you left me behind because you found a burden on me and wished to make it light for me. He (saw) said: They lied, rather I left you behind due to what I left behind me. So return and take my place over my family and your family. Are you not pleased, O Ali, that you are of the same status to me as Harun to Musa except that there is no Prophet after me?”

So the Messenger of Allah (saw) continued on his travel. The hadith about Ali (ra) being the same status for the Messenger (saw) as Harun for Musa concern to his (saw)'s appointing him over his (saw) family by the evidence of Ali's (ra) own statement:

أتخلفني في الصبيان والنساء

“Do you leave me behind with women and children?”

The reality of the incident is that he was appointed over his family so it cannot be taken to mean that he was appointed over the Khilafah, particularly when it is known that he (saw) appointed Muhammad bin Maslamah as the ruler in his place and specified Ali (ra) to supervise over his family when he said to him, “*my family and your family.*” Moreover, the Messenger’s (saw) appointment of one of his companions over the rule when he left for battle does not mean that this appointed person is the Khalifah in his place by the evidence that the Messenger (saw) appointed many in the battles. In the battle of Al-‘Asheera he appointed Abu Salamah bin Abd al-Asad over Madinah, in the battle of Safwan he appointed Zayd bin Haritha (ra) over Madinah, in the battle Banu Lahyan he appointed ibn Umm Maktum (ra) over Madinah, and so on. The appointment by the Messenger (saw) of someone to rule over Madinah until he returns from his battles does not indicate that means his appointment over the Khilafah, so what if he appointed him only over his family while appointing another in authority until he returns from his battle.

This is in relation to the appointment. As for the saying of the Messenger (saw):

ألا ترضى أن تكون مني بمنزلة هارون من موسى

“Are you not pleased to be similar to the status of Harun with Musa?”

The meaning of its words is: Are you not pleased that there is for you, in what you are appointed over, what Harun supervised for Musa. It is the resemblance of Ali (ra) with Harun in the way of resemblance being the appointment i.e. your similitude in my appointing you (or leaving you behind) is similar to that of Harun when Musa appointed him. This is the meaning of the words of the hadith and these words do not have any other meaning. This meaning is specified and becomes the only meaning due to Ali’s (ra) saying to the Messenger:

أتخلفني في الصبيان والنساء

“Do you leave me behind with children and women?”

With the Messenger’s statement:

ألا ترضى أن تكون مني بمنزلة هارون من موسى

“Are you not pleased to be related to me similar to the status of Harun with Musa?”

This came in response to this question of Ali (ra) and as a response to his statement. To understand what is meant by this hadith one must return to the Glorious Qur’an to see within the issue of Musa’s appointing Harun to see what it is. Returning to the Glorious Qur’an, we find that this event is mentioned in the Qur’an in the following text:

وواعدنا موسى ثلاثين ليلة وأتمناها بعشر فتم ميقات ربه أربعين ليلة، وقال موسى لأخيه هرون اخلفني في قومي وأصلح ولا تتبع سبيل المفسدين

“And we appointed for Mūsā (Moses) thirty nights and added (to the period) ten (more), and he completed the term, appointed by his Lord, of forty nights. And Mūsā (Moses) said to his brother Hārūn (Aaron): “Replace me among my people, act in the right way (by ordering the people to obey Allāh and to worship Him Alone) and follow not the way of the Mufsidūn (mischief-makers)” [TMQ 7:142].

So the hadith’s meaning becomes: Are you not pleased that I appoint you over my family like Musa appointed Harun over his people, so that you become before me of the status of Harun to

Musa due to the appointment? So the hadith's intent is to pacify our master Ali's heart as he came displeased by this appointment, and at the same time it informs Ali (ra) that he will take his (saw) place over his family when he is absent just like Harun took Musa's place over his people when he was absent. As for his saying:

إلا أنه لا نبي بعدي

“Except that there is no Prophet after me”,

This negates the resemblance of Prophethood because Harun was a Prophet (saw) so he was a Prophet (saw) taking the place of another Prophet (saw) when he was absent. So the Messenger (saw) excluded Prophethood to remove any imagination that he is of the same status in Prophethood. Nor should one say that his statement,

لا نبي بعدي

“No Prophet after me”

Means after my death as the words are related to appointment during his life. This is because Harun was a Prophet along with Musa during his life not after his death; he was his deputy (*khaliifa*) over his people while he (Musa) was absent during his life not after his death. So the Messenger only made his statement: “*Except that there is no Prophet after me*” because Harun was a Prophet during Musa's absence while he lived; so he made this statement in order to negate Prophethood from Ali (ra). Moreover, the Messenger of Allah (saw) informed us in an authenticated hadith narrated by Al-Hakim that Harun died during Musa's life. So there does not raise the issue of appointment after death as it did not exist in Harun and Musa, who are those with whom resemblance is made, thus it does not exist in the Prophet (saw) and Ali (ra) who are the resemblers.

This is the hadith's meaning nor does it contain any indication to appointment for the Khalifah nor can it be understood in any way that the Messenger (saw) intended by this hadith to clearly state and make Ali (ra) the Khalifah over the Muslims after the Messenger's (saw) death. The hadith discussed is related to the appointment of Ali (ra) over the Messenger's (saw) family during his absence due to the battle of Tabuk. As for the remaining narrations which came in this hadith i.e. his (saw) saying:

ألا ترضى أن تكون مني بمنزلة هرون من موسى

“Are you not please to be before me of the status of Harun with Musa?”

Some of them are authenticated narrations like those by Al-Bukhari and Muslim in their hadith from ‘*Amir* and Ibrahim, the two sons of S’ad, while others are not authenticated, but all of them came with the same text. This means that the hadith was said in Tabuk and at other times. The response to this is that the authentic narrations are a narration which is a part of the incident i.e. narrations with the Messenger's (saw) words alone separated from the incident which does not mean that it is an incident other than the incident of Tabuk. Narrators and collectors of hadith frequently narrate a part of a hadith or a part of an incident, shortening it to the place of evidence. Even if we accept that the hadith was not only about the incident of Tabuk but was said in Tabuk and other times, then this would mean that the Messenger (saw) appointed our master Ali (ra) over his family permanently during Tabuk and at other times; nor would it mean his appointment (may Allah ennoble his face) over the Khalifah after the Messenger's (saw) death. All that the explanation of the hadith's word and meaning indicate is: Are you not pleased that I appointed you over my family during my absence just like Harun supervised for Musa during his absence, except that Harun was a Prophet and you are not a Prophet because there is

no Prophet after my Prophethood. This came in Muslim's narration from Amir bin S'ad from his father:

أما ترضى أن تكون مني بمنزلة هرون من موسى إلا أنه لا نبوة بعدي

“Are you not pleased that you become before me of the status of Harun with Musa except that there is no Prophet after me”

i.e. after my Prophethood. This is the similitude with which the Messenger (saw) compared Ali (ra) in relation to him just like Harun in relation to Musa i.e. the appointment and nothing else, appointment during his absence and nothing else, and appointment over his family as came in the hadith's text in its entirety. The frequency with which a hadith is repeated does not change its meaning to give it an alternative meaning. So the appointment in Tabuk was only over the Messenger's (saw) family as is proven without doubt, while the other narrations in other than Tabuk conveyed the same text mentioned in Tabuk in words and meaning without mentioning the restriction in the incident of Tabuk i.e. the family. Rather, they do not mention any restriction at all thus we measure them upon what was mentioned in the narration of Tabuk. This is because the narration of Tabuk is restricted to the family while the other narrations are free of any restriction in the appointment so we measure the unrestricted upon the restricted. Nor should one say that the other narrations are general as the words of the hadith are not from the general words as the texts of all the narrations whether the narration: “*Are you not pleased*” or the narration: “*Verily you*” or the narration: “*You*” and the similar which is of the weightage of Harun with Musa; all these words are specific to a specific status which is of the status of Harun with Musa which is not of the general status. Except that the status of Harun to Musa came unrestricted in some of the narrations which were not restricted by any restriction, while they were restricted to the family in some of the narrations so we measure the unrestricted upon the restricted such that all the narrations are restricted to the family.

As for the rest of the matters which Musa sought from Allah in his statement:

واجعل لي وزيراً من أهلي، هرون أخي، اشُدْ به أزري، وأشركه في أمري

“*And appoint for me a helper from my family, Hârûn (Aaron), my brother. Increase my strength with him, And let him share my task (of conveying Allâh's Message and Prophethood)*” [TMQ 20:29].

There is no place for them in relation to the status of Harun to Musa nor the appointment as the Khalifa since it is a prayer which Musa Made to Allah to make his brother an assistant to him and to give him the Prophethood along with him because the matters which Musa prayed to Allah (swt) to associate Harun with him upon were Prophethood and the Message so the association was only in these matters not the rule, as Musa was not a ruler but only a Prophet. Moreover, the request was a request for assistance for him and associating him in his matter, not a request for his appointment (in rule).

Above all this, these matters are not an indication to the status of Musa to Harun; rather an indication for the status of Musa to Harun is his appointing him over his people during his absence; so his status before him is that he took care of his people during his absence. There is no existence for assistance and association in the Prophethood in the statement of the Messenger: “*of the status of Harun to Musa*” infact the meaning is restricted to the appointment over the people and the texts do not carry any meaning other than this.

It has been said that Musa was a ruler because a *Shari'ah* was revealed to him to rule by ,as there are solutions and punishments within it, and he was a leader of an army which intended to occupy *Bait al-Maqdis* when his people said to him:

اذهب أنت وربك فقاتلا

“*You and your Lord go and fight!*”

[TMQ 5:24],

So his appointment of Harun over his people was an appointment in Prophethood and also in authority. The response to this is that Musa was not a ruler, nor is it narrated in the Qur’an or elsewhere that he would execute the rules upon the children of Israel (*Banu Israil*) by strength and the authority or that he was a ruler over them. Those who ruled Banu Israil with the *Shari’ah* of Musa were not Musa himself or in his lifetime, rather it was those Prophet who came after him like Dawud, Sulayman and other kings. As for Musa’s leadership over the armies, it never occurred. The *ayaat* which are in Surah *Al-Maidah* from *ayah* 19 to *ayah* 26 do not have anything within them which indicates Musa’s leadership over the army; rather what is within them is that Musa (as) requested his people to enter the Holy Land. They refused and said to him that there are giant aggressive people within it so they would never enter until these giants left; they asked him and his Lord to go and fight but he did not go so the result was their exile for forty years in the wilderness. As for the revelation of the *Shari’ah* to Musa (as) with solutions and punishments, this does not mean that Musa (as) ruled with these; rather the reality is that he came with it and conveyed it to Banu Israil. He tried to take them to *Bait al-Maqdis* but they strayed in the wilderness and they did not stabilise until his period had ended. After their punishment with the exile ended, they moved and were ruled by kings and Prophets among them by the *Shari’ah* of Musa, which is stated by the Qur’an in more than one Surah. Moreover, the *ayaat* in which Harun was appointed are explicit that it was an appointment on behalf of Musa in Prophethood when Musa went to meet Allah (swt), which is in Surah Al-‘Araf from *ayah* 141:

وَوَاعَدْنَا مُوسَى ثَلَاثِينَ لَيْلَةً وَأَتَمَمْنَاهَا بِعَشْرِ فِتْمٍ مِيقَاتٍ رَبِّهِ أَرْبَعِينَ لَيْلَةً وَقَالَ مُوسَى لِأَخِيهِ هَارُونَ اخْلُفْنِي فِي قَوْمِي
وَأَصْلِحْ وَلَا تَتَّبِعْ سَبِيلَ الْمُفْسِدِينَ

“*And we appointed for Mûsâ (Moses) thirty nights and added (to the period) ten (more), and he completed the term, appointed by his Lord, of forty nights. And Mûsâ (Moses) said to his brother Hârûn (Aaron): "Replace me among my people, act in the right way (by ordering the people to obey Allâh and to worship Him Alone) and follow not the way of the Muḥsidân (mischievous-makers)"* [TMQ 7:142].

وَاخْتَارَ مُوسَى قَوْمَهُ سَبْعِينَ رَجُلًا

“*And Musa chose from his people seventy men*”

[TMQ 7:155].

All of these are related to the Prophethood and appointment in it, and the throwing of the tablets (by Musa), and the *Banu Israil* taking to worship the *calf* and the like; there is nothing within them with the slightest relationship to rule and authority. It is not possible to suspect that it is related with the rule and authority, so there is no evidence that Musa was a ruler and he never appointed Harun in the rule at all.

This is the meaning of all the revealed *abadith* whether they came with a cause like the incident of Tabuk or without any cause, which indicate that the Messenger (saw) made Ali (ra) supervise his family while he was absent during his lifetime similar to how Musa made Harun supervise his people while he was absent during his lifetime. With this action i.e. the Messenger’s (saw) appointment of Ali (ra), Ali became to the Messenger (saw) comparable to the status of Harun to Musa. There is no indication in these *abadith* that the Messenger (saw) stated that Ali (ra) would become the Khalifah over the Muslims in ruling after the Messenger of Allah (saw)’s death.

As for the second text and the hadith of Ghadeer Khum, in the authenticated narration i.e. the narration of Muslim, it exhorts Muslims to hold fast to the Book of Allah and the family of his (saw) house, to be gracious to them, to honour and not to hurt them. There is no indication

within it that the Messenger (saw) appointed his family over the Khilafah. The hadith states: “*As for the people of my house, I exhort you before Allah in the people of my house*”; there is nothing in this that indicates that he made the family of his house the *Khulafaa* in the rule over the people after his death. The words are clear in their stated text (*mantuq*) and meaning such that it can never be understood that he appointed the family of his house, or any one of them, to rule Muslims via the Khilafah after him. As for the second and third narrations, and all narrations similar to them, they do not change what came within it. There are two matters in these narrations. First, making Allah the patron in his statement:

إن الله مولاي وأنا مولى المؤمنين، وأنا أولى بهم من أنفسهم، من كنت مولاه فهذا مولاه —يعني علياً— اللهم وال من والاه وعاد من عاداه

“Verily Allah is my Patron, and I am the patron of the believers such that I am dearer to them than their own souls. So the one for whom I am his patron, then this is his patron meaning Ali. O Allah, befriend whoever befriends him and be an enemy to whoever is an enemy to him.”

As for the second matter, this is that he advised his progeny to undertake good deeds by saying:

وعترتي أهل بيتي، فإنه نبأني اللطيف الخبير أنهما لن ينقضيا حتى يردا عليّ الحوض

“And my progeny, the people of my house, for verily the kind and All knowing informed me that they will never end until they arrive at the cistern.”

There is nothing other than these two matters in all these *abadith*, despite all their number and differing narrations. As for the first matter, which is the friendship, we shall discuss it during the discussion upon the *abadith* of (*wilayat*) directly after this text. As for the second matter, it does not differ from being an advice to Muslims to be good to his progeny,, the people of his house, by being gracious to them, honouring and not annoying them as they will be questioned about them. Also that the family of the house and the Book of Allah (swt) will remain linked until the Day of Judgement. There exists nothing in this *abadith* and the *abadith* of Ghadeer Khum more than advising Muslims to do good to his progeny; there is nothing within in it indicating the appointment of Ali (ra), or the people of his house, over the Khilafah after the death of the Messenger of Allah (saw). Where is the appointment in the Messenger’s (saw) statement according to all previous narrations narrated in the hadith of Ghadeer Khum:

وإني سأسئلكم حين تَرِدُون عَلَيَّ عن الثقلين، كتاب الله وعترتي أهل بيتي

“Verily I will question you when you reach me about the two weighty matters, the Book of Allah and my (‘utra), the family of my house”

Or his statement:

وإني قد تركتُ فيكم الثقلين: كتاب الله وعترتي

“Verily I have left for you two weighty matters, the Book of Allah ta’ala and my progeny (‘utra)”

Or

وإني تارك فيكم الثقلين: كتاب الله وعترتي أهل بيتي

“Verily I leave for you two weighty things, the Book of Allah and my progeny (‘utra), the family of my house”

Or:

فانظروا كيف تخلفوني في الثقلين

“Be careful how you take my place over the two matters”

Or:

فلا تقدموهما فتهلكوا ولا تقصروا عنهما فتهلكوا

“Do not go ahead of them so that you perish nor neglect them so that you perish.”

Is there more in these texts than reminding the Muslims about his progeny (saw) and exhorting them to be good to them? Does anyone understand from this that this means that they are the *Khulafaa* in ruling over Muslims after the Messenger of Allah (saw)’s death? From where is this taken? From the stated text of the words or their meanings? Thus there is no evidence in the hadith of Khum for the appointment of Ali (ra), or the people of his family, over the Khilafah; so deducing through it fails.

As for the third text, which is the *abadith* of (*wilayah*), these *abadith* by these words were not narrated by the two Sheikhs Al-Bukhari and Muslim. Moreover, even if these *abadith* are authenticated before those who rely upon them as evidence for Ali’s appointment, the texts they present cannot possibly be used to deduce such appointment. All their words are no more than

ولي كل مؤمن بعدي

“The *waliy* of every believer after me”,

وليكم بعدي

“Your *waliy* after me”,

أنت ولي كل مؤمن بعدي

“You are the *waliy* of every believer after me”,

ولي المؤمنين من بعدي

“The *waliy* of the believers after me”,

فإنه وليكم بعدي

“Verily he is your *waliy* after me”,

فليوال علياً بعدي

“Let him take Ali as *waliy* after me”,

فليتول علياً وذريته من بعدي

“Let him take Ali and his descendants as *waliy* after me”,

فمن تولاه فقد تولاني

“Whoever takes him as *waliyy* has taken me as *waliy*”,

فإن ولايته ولايتي

“Verily his *wilayah* is my *wilayah*”,

وال من والاه

“Befriend whoever befriends him.”

All these words and their like from all the rest of the narrations do not differ from the word *al-waliyy*, *al-man'ala* and *al-muwalat*; so they are known as the hadith of (*al-wilayah*). The interpretation of all of them is in the hadith of Ghadeer Khum:

اللهم وال من والاه وعاد من عاداه

“O Allah, be a *waliyy* for those who take him as *waliyy*, and be an enemy for those who take him as an enemy.”

The meaning here is their support and that they be with him and bear friendship (*al-wala*) and love for them. The word “*waliyy*” and “*tawallaad*” have come in the Qur’an. Allah (swt) said:

وهو يتولى الصالحين

“He (swt) protects (*yatawalla*) the righteous (*as-saliheen*)” [TMQ 7:196]

And:

ومن يتولى الله ورسوله والذين آمنوا فإن حزب الله هم الغالبون

“And whoever protects (*yatawalla*) Allah and His Messenger and the believers, verily the party of Allah are the victorious” [TMQ 5:56]

And:

إنما وليكم الله ورسوله والذين آمنوا

“Verily your only *waliyy* is Allah and His Messenger and those who believe”

[TMQ 5:55]

And:

إنما سلطانه على الذين يتولونه

“His (*Satan*) only authority is over those who take him as *waliyy*”

[TMQ 16:100]

And:

الله ولي الذين آمنوا

“Allah is the *waliyy* of the believers”

[TMQ 2:257]

And:

ليس لها من دون الله ولي

“They do not have against Him any *waliyy*”

[TMQ 6:70]

And:

ومن يتخذ الشيطان ولياً

“And whoever takes Satan as his waliy”

[TMQ 4:119]

And:

لا تتخذوا اليهود والنصارى أولياء

“Do not take the Jews and Christians as awliyad”

[TMQ 5:51]

And:

فقد جعلنا لوليه سلطاناً

“Verily We have ordained for his waliy a way”

[TMQ 17:33]

And:

إن وليي الله

“Verily my waliy is Allah”

[TMQ 7:196]

And:

ذلك بأن الله مولى الذين آمنوا وأن الكافرين لا مولى لهم

“That is because Allah is the waliy of those whose believe and the disbelievers had no waliy” [TMQ 47:11].

In the (Arabic) language: the friend (*al-waliyy*) is opposite to the enemy so it is said: He took him as a friend. The (*mawla*) is the supporter and the master (*as-sayyid*). Friendship is opposite to enmity. And the *waliy*: One who takes care of affairs of the minor like the father and grandfather. The *waliy* of the marriage contract, the properties and the orphan is the one who takes care of the affair and becomes his sponsor. In the *Mu'jam Lisan al-'Arab* (an Arabic dictionary): “*Al-waliy* is among the names of Allah (swt) who is the Helper (*An-Nasir*) and he is the One in Charge (*Al-Mutavalli*) of the affairs of the universe and all creatures, the Supervisor (*Al-Qaim*) over them.” And it said: “The *waliy* is the truthful (*as-siddiq*), the Helper, the follower (*at-tab'i*) and the beloved.” Abu Al-'Abbas said about his statement (saw): “The one for whom I am his (*mawla*), then Ali is his (*mawla*)” i.e. whoever loves and befriends me should befriend him. None of this is the meaning of rule (*hukm*) and authority (*sultan*). Even the interpreters of this hadith who say that it is a clear text for the Khilafah of Ali (ra) are unable to come with any clear meaning in the language that the word “*mawla*” means the rule and authority linguistically. For example, Sheikh Abd al-Husain Ahmad Al-Amini An-Najafi says the following in his book “*Al-Ghadeer*” in explaining the hadith of Al-Ghadeer: “At this point there no longer remains for the researcher any refuge from committing suicide that “*mawla*” came with the meaning of the foremost suitable in something even if we condescend that this is one of its meaning and that linguistically it is a word with several meanings.” The word “*mawla*” came with twenty seven meanings without mentioning the rule and authority among them. He said: After we know about the meanings of “*mawla*” which reach up to twenty seven meanings, it is not possible that it comes with a meaning in the hadith except with that which conforms to it in meaning, (and these meanings) are:

- 1) The Lord
- 2) Paternal uncle

- 3) Paternal uncle's son
- 4) Son
- 5) Daughter's son
- 6) The slave who is freed
- 7) One who frees a slave
- 8) Slave
- 9) Owner
- 10) Follower
- 11) One who is blessed
- 12) Partner
- 13) Confederate/ Ally (*haleef*)
- 14) Companion
- 15) Neighbour
- 16) Guest
- 17) In-law
- 18) Relative (*qareeb*)
- 19) Benefactor/Beneficent
- 20) One lost from his friends/dead (*faqeed*)
- 21) Friend (*waliyy*)
- 22) Foremost/More suitable in something
- 23) Leader (*sayyid*) who is not the owner or one who freed a slave
- 24) Beloved
- 25) Helper
- 26) Agent (*mutassariif*) in the matter
- 27) The one in charge (*mutawalli*) of the matter.

These are the meanings which came and not even one clear meaning came for the word “*manla*” to denote rule and authority. Thus when he interpreted this meaning in relation to the hadith, he reached one of its meanings which he chose and said:

على أن الذي نرتأيه في خصوص المقام بعد الخوض في غمار اللغة ومجاميع الأدب وجوامع العربية أن الحقيقة من معاني المولى ليس إلا الأولى بالشيء وهو الجامع لهاتيك المعاني جمعاء ومأخوذ في كل منها بنوع من العناية

“Verily that which we consider in this specific issue after researching in the deluge of the language, the dictionaries of literature and the dictionaries of Arabic is that the reality of the meaning of “*al-manla*” cannot be but the foremost suitable in something which collect these meanings collectively and is taken from each one of them with a manner of attention.”

So it is apparent from this that the word did not come with the meaning of ruler and that “*al-muvalat*” did not come with the meaning of rule, neither in the Qur’an or Hadith or the language. Words are interpreted either by their linguistic or *Shari’ah* meanings, so from where was the

explanation of this *abadith* taken that the “*waliyy*” and “*muwalat*” means giving the Khilafah to Ali (ra) and his family? When we follow those who deduced by these *abadith* in any of the meanings of “*waliyy*” and “*muwalat*”, there never comes the meaning of supervising the rule in any of the texts. It is true that if we relate the word “*waliyy*” with the word “*amr*”, then its meaning becomes the ruler and it is said “*waliyy al-amr*”. In the *abadith* which they call the *abadith* of “*al-wilayah*”, the word “*amr*” never comes together with the word “*waliyy*” in any of their narrations, or any other narrations, which negates the meaning of taking care of the Khilafah after the Messenger of Allah (saw) from the *abadith*.

It is true that the word “*wilayah*” alone not the words “*mawla*” or “*waliyy*” or “*muwalat*” is a word with many meanings including support (*nusra*) and authority i.e. the rule. In the *abadith* which they narrated is the hadith mentioned in *Kanz al-'Ammal* which came with the word “*wilayah*” so one may say this means rule according to what the language states. The response is that this word came in the hadith by the meaning of taking as a friend which is indicated by the hadith’s text. Its text, according to what is narrated by those who use it as evidence, is:

اللهم من آمن بي وصَلَّقني فليَتول علي بن أبي طالب، فإن ولايته وولايتي وولاية الله تعالى

“O Allah, whoever believes in me and trusts me, let him befriend Ali bin Abi Talib for verily his *wilayah* is my *wilayah* and my *wilayah* is the *wilayah* of Allah *ta'ala*.”

This text specifies that its meaning is support as the Messenger (saw) requested that whoever believes in him (saw) to befriend Ali (ra) because whoever supports him supports the Messenger (saw) and whoever supports the Messenger (saw) supports Allah (swt). This is the meaning of the word “*wilayah*” and this is why it was expressed by the word “*faa*”:

فإن ولايته وولايتي

“For verily his *wilayah* is my *wilayah*.”

It is not possible to understand that giving him authority (*sultan*) is giving me (the same); rather the only understanding is whoever supports him supports me. So it becomes clear that all the *abadith* which came (saying) that Ali (ra) is the “*waliyy*” of every believer after the Messenger (saw) and their “*mawla*”, and that they must give him “*muwalat*” and befriend him because his “*wilayah*” is the “*wilayah*”, all these *abadith* according to the language and Qur’anic texts cannot possibly be taken (as meaning) taking charge of the rule whether in respect to the meaning of the word or its position in the sentence(s) which came in the aforementioned *abadith*. So these are not evidence that the Messenger (saw) appointed Ali (ra) to the Khilafah after him thus their arguing with these texts fails.

Here we must take note of two issues. First among the two is the fact that the word is conjugated from a specific article and it does not mean that all conjugations of this article are unified in meaning so that one of them takes the other’s meaning. The language can have more than one word for a meaning or it may give only one meaning laid down for a word without giving this meaning to any other word, according to how the Arabs laid it down. The similarity of words in conjugation does not mean similarity in meaning; rather the word takes the meaning for which the Arabs laid down for it without taking note of the article of conjugation. The word “*ja’a*” and the word “*aja’a*” are from one article; despite that, the meaning of “*ja’a*” is he came and the meaning of “*aja’a*” is to give refuge to (*alja’a*). “*An-nadhum*” with a “*kasra*” on the “*nun*” means emaciated camel, whereas with a “*dhumma*” on the “*nun*” it means garment. As for the word “*mawla*”, it does not mean that because one of its meanings is the agent, and the one in charge, of the affair and the foremost of the people then this means the rule and authority because the word “*waliyy al-amr*” means the rule and authority due to the same conjugation. The “*mawla*” differs in meaning from “*waliyy al-amr*” just like the agent and one in charge of the affair

differs in meaning from “*waliy al-amr*.” “*Waliy al-amr*” is specific for the ruler, whereas “*mawla*” has many meanings none of which is the ruler. The agent in the affairs means the one in charge in every affair and not the ruler specifically and the ruler is not understood from it because the language did not place this meaning for it. The matter is one of acceptance according to what the Arabs placed for the word, not what someone may understand from a collection of words or various indications. Therefore, as long as the Arabs did not place the use of the word “*mawla*” to mean rule and authority then it can never be interpreted as such. This is first, as for the second it is the contextual connotation in general, however they, cannot give a word a meaning other than what the Arabs place for it in their explicit speech. Connotations specify one of the meanings of a collective word or contrastive to the word, and divert it from another, but it does not create a new meaning for this word which the Arabs did not place for it. The word “*mawla*” came in the hadith called the hadith of two weighty matters or the hadith of Khum, and there came connotations in the sentence(s) indicating encouragement to Muslims to trust based upon their trust of the Messenger (saw), does not give it a new meaning that Ali (ra) becomes the ruler after the Messenger (saw), as long as the language did not place for it this meaning. From this it becomes clear that the hadith of Khum and others which came with the words “*mawla*” and “*waliy*” cannot lead to the deduction that Ali (ra) is the Khalifah due to the Arabs not explicitly placing this meaning for this word.

As for the fourth text which is the hadith of brotherhood, its mere reading when one views that its sentence and words will not lead it be used as evidence. The texts which came upon this are:

أنت أخي وارثي

“You are my brother and inheritor”,

أخي وابن عمي

“My brother and paternal uncle’s son”,

أخي وأبو ولدي

“My brother and father of my son”,

ومني وإلي

“From me and for me”,

أخي ووزير ي تقضي دي ني وتنجز وعدي وتبرئ ذقي

“My brother and assistant (wazeer) who repays my debts, fulfills my promise and frees me from by responsibilities”,

علي أخو رسول الله

“Ali is the brother of the Messenger of Allah.”

All of these are words and sentences from which one cannot possibly deduce the appointment in any way. This is because they do not go beyond matters linked between a pair, the first expressing the extreme closeness of the second to him by (saying he is) his brother. The Messenger (saw) expressed his extreme closeness to Ali (ra) to him by calling him his brother and saying that he is from him, is his assistant and repays his debts. This is not any general matter nor does it relate to the rule or Khilafah. Even if we insist that Ali (ra) is the Messenger’s (saw)

brother or his son, this does not indicate its meaning to be that he is the Khalifah after him. His statement to Ali that:

أنت أخي أو ابني أو وزير

“You are my brother or son or assistant”

Or other similar things have no relationship in any way whatsoever, either in the language or the *Shari'ah*, to the rule or carry any indication relating to the appointment over the Khilafah. These *ahadith* are not suitable to be evidence that the Messenger (saw) promised Ali (ra) the Khilafah after him, and accordingly they do not fulfil as evidence.

As for the third type in which clear texts(s) came that the Messenger (saw) appointed Ali (ra) to become Khalifah after him, they are two *ahadith*: the first is one of the narrations of the hadith of Ghadeer in one narration by the writer of the book “*Al-Ghadeer*” and the second is the hadith which they call the hadith of the house. As for the narration of the writer of the book of “*Al-Ghadeer*”, he mentioned a narration in the beginning of his book without mentioning the words “my heir and Khalifah” and then mentioned another later narration which he ascribed to At-Tabari which came with the words “my heir and Khalifah” explicitly. So he, Sheikh Abd al-Husain Ahmad Al-Amini An-Najafi, the writer of the book “*Al-Ghadeer*” said in his book under the chapter “*Al-Ghadeer in the Book of Al-'Aziz*”: “Al-Hafidh Abu Ja'far Muhammad bin Jareer At-Tabari who died in 310 Hijri narrated in his narration in the book of “*Al-Wilayah*” among the chains of the hadith of Al-Ghadeer from Zayd bin Arqam (ra) who said: ‘When the Prophet (saw) stopped at Ghadeer Khum in his return from the farewell pilgrimage at the time of forenoon when the sun was very hot, he commanded to assemble the tents around the lofty trees which were assembled. He called for the collective prayer so we gathered. He gave a lengthy khutbah and said: “Verily Allah (swt) revealed to me:

بَلِّغْ مَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ وَاللَّهُ يَعْصِمُكَ مِنَ النَّاسِ

‘Convey what has been revealed to you from your Lord And if you don't then you have not delivered his message and Allah will protect you from the people’

[TMQ 5:67]

وقد أمرني جبريل عن ربي أن أقوم في هذا المشهد وأعلم كل أبيض وأسود أن علي بن أبي طالب أخي ووصيي وخليفتي والإمام بعدي

Jibril commanded me on behalf of my Lord that I stand at this witness point and inform all white and black persons (i.e. all people) that Ali bin Abi Talib is my brother, heir, Khalifah and the *Imam* after me.”

This is one of the narrations of the hadith of Ghadeer Khum, and due to the meaning of its text it is rejected so that what is said within it of the bequest, appointment and leadership after the Messenger is void without any basis for many causes such as:

1. This *ayah* was not revealed in the farewell pilgrimage, rather it was revealed after Surah *Al-Fath* in the year of Hudaibiyya. This *ayah* is from Surah *Al-Maidah* which was revealed after Surah *Al-Fath*, and Surah *Al-Fath* was revealed during his (saw) return from the Treaty of Hudaibiyya. One glance to the Mushaf shows clearly the time of the revelation of the *ayah*: “O Prophet, convey what has been revealed to you” and shows it was revealed after *Al-Fath*. So the *ayah* was revealed four years before the farewell pilgrimage and has no relationship with the hadith of Ghadeer Khum in all the narrations since all narrations of the hadith of Ghadeer Khum say that it happened in the farewell pilgrimage. This alone is enough to reject this

hadith and certify its invalidity of what is claimed within it about the testament and appointment.

2. The meaning of the *ayah* is clear in its stated text and understanding that the Messenger is commanded to convey what was revealed to him from his Lord, and that which was revealed to him from his Lord was the Islamic Message. This is designated and made the sole meaning intended, nothing else, by His statement in the same *ayah*: “*And if you do not, then you have not conveyed His Message*” i.e. if you do not convey what was revealed to you then verily you have not conveyed His message. This is a clear text that the intention of the *ayah* “*What was revealed to you*” is the message of Allah and nothing else. Moreover, whenever the word deliver (*balligh*) comes in the Qur’an it means conveying the message of Allah (swt) and it has never come with any other meaning in the Qur’an. Allah (swt) said:

يَبْلَغُونَ رَسُولَاتِ اللَّهِ

“*And they conveyed the message of Allah*”

[TMQ 33:39]

And:

أَبْلَغَكُمْ رَسُولَاتِ رَبِّي

“*I convey to you the message of my Lord*”

[TMQ 7:62]

And:

أَبْلَغُوا رَسُولَاتِ رَبِّهِمْ

“*I convey the message of my Lord*”

[TMQ 72:28]

Also, whenever the words

مَا أَنْزَلَ إِلَيْكَ

“*What was revealed to you*”

[TMQ 5:64]

These *ayat* were revealed in the Qur’an, the purpose is the *Shari'ah* and it does not come with any other meaning in the Qur’an. Allah (swt) said:

وَالَّذِينَ يُؤْمِنُونَ بِمَا أَنْزَلَ إِلَيْكُمْ وَمَا أَنْزَلَ مِنْ قَبْلِكَ

“*And those who believe in what was revealed to you and what was revealed before you*”

[TMQ 2:4]

And:

نُؤْمِنُ بِمَا أَنْزَلَ عَلَيْنَا

“*We believe in what was revealed to you*”

[TMQ 2:91]

And:

آمَنَّا بِاللَّهِ وَمَا أَنْزَلَ إِلَيْنَا وَمَا أَنْزَلَ إِلَىٰ إِبْرَاهِيمَ

“*We believed in Allah and what was revealed to us and what was revealed to Ibrahim*” [TMQ 2:136]

And:

وَأَنَّ مِنْ أَهْلِ الْكِتَابِ لَمَنْ يُؤْمِنُ بِاللَّهِ وَمَا أُنزِلَ إِلَيْكُمْ وَمَا أُنزِلَ إِلَيْهِمْ

“And verily among the people of the Book are those who believe in Allah and what was revealed to you and what was revealed” [TMQ 3:199]

And:

هَلْ تَنْقَمُونَ مِنَّا إِلَّا أَنْ آمَنَّا بِاللَّهِ وَمَا أُنزِلَ إِلَيْنَا وَمَا أُنزِلَ مِن قَبْلِ

“Are you angry with us except that we believed in Allah and what was revealed to us and what was revealed earlier?” [TMQ 5:59]

And:

وَلَوْ أَنَّهُمْ أَقَامُوا التَّوْرَةَ وَالْإِنْجِيلَ وَمَا أُنزِلَ إِلَيْهِمْ مِنْ رَبِّهِمْ

“If only they had established the Torah and Gospel and what was revealed to them from their Lord” [TMQ 5:66]

And:

حَتَّى تَقِيمُوا التَّوْرَةَ وَالْإِنْجِيلَ وَمَا أُنزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ وَلِيَزِدَنَّ كَثِيرًا مِنْهُمْ مَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ طُغْيَانًا وَكُفْرًا

“Until you establish the Torah and Gospel and what was revealed to you from your Lord. But what was revealed to you from your Lord will only increase the excess and disbelief of many of them” [TMQ 5:68]

And:

وَإِذَا سَمِعُوا مَا أُنزِلَ إِلَى الرَّسُولِ تَرَى أَعْيُنَهُمْ تَفِيضُ مِنَ الدَّمْعِ

“When they heard what was revealed to the Messenger you see their eyes flowing with tears” [TMQ 5:83]

And so in all the *ayah* of the Qur’an. As for the *ayah*:

بَلِّغْ مَا أُنزِلَ إِلَيْكَ

“Convey what was revealed to you” [TMQ 5:67],

In the *ayah* before and in the *ayah* after it was mentioned the words “what was revealed” with one meaning i.e. the *Shari’ah*. Even the words in the following *ayah* are the same:

مَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ

“What was revealed from your Lord” [TMQ 5:67].

All this goes to specify the meaning of “what was revealed to you” in His saying: “Convey what was revealed to you” [TMQ 5:67] to be the Islamic *Shari’ah*. This is clear to all who follow these two words, “convey” and “what was revealed to you”, in all the *ayah* of the Qur’an.

3. The word “revealed” in His saying: “what was revealed to you” is a past participle verb built upon an ambiguous (*fi’l madhi mubni li al-majbul*) which means that what is intended from him is to convey all that has already been revealed to him from his Lord i.e. what came to him from the revelation and revealed to the Messenger (saw); so Allah (swt) commands the Messenger (saw) to convey to the people what has previously been revealed to him. So the meaning becomes to convey something revealed before the *ayah*’s revelation not to convey a specific matter which came with the *ayah*’s revelation such that the *ayah* was revealed because of it

and he was commanded to convey it so the Messenger translated it to mean the testament and appointment. Therefore it is not possible to make the hadith an explanation for the *ayah* as the hadith which became the cause of the *ayah*'s revelation says that the *ayah* was revealed upon the incident mentioned by the hadith, so it was revealed upon something at the time of its happening. Whereas the *ayah* is explicit that it is the conveyance of something that occurred before the *ayah* was revealed. Therefore the hadith is not suitable to be the cause of the revelation.

4. The word "*what (ma)*" in His saying: "*what was revealed to you*" is a relative pronoun (*ism mawsul*) noun or intended indefinite noun (*nakira maqsuda*) which makes it suitable that what was revealed to him is one matter and one rule or many matters and many rules i.e. its meaning could be to convey the rule revealed to you or deliver everything which We (swt) revealed to you from the various matters and rules. That which would specify either of these two meanings is the contextual connotation and the mere reading of the *ayah*, let alone its scrutiny, clarifies that His saying: "*Then you have not revealed His message*" designates by His statement "*His message*" that the meaning of "*what*" is all what was revealed to you which is the message of Allah (swt). This decisively negates that the meaning of "*what*" is one rule revealed to you; moreover, the word "*His message*" has clarified the meaning of "*what was revealed to you*" to be the message of Allah.
5. Verily His (swt) statement at the end of the *ayah*:

والله يعصمك من الناس إن الله لا يهدي القوم الكافرين

"Allah will protect you from the people. Verily Allah does not guide the disbelieving folk" [TMQ 5:67]

Is an assurance from Allah to the Messenger (saw) and safety to him from the harm which will affect him as a result of delivering His (swt) message. This assurance is not because of harm which will affect him from delivering one rule, rather from conveying the entire message to the disbelievers and particularly where its conveyance is accompanied by fighting. The meaning of the end of *ayah* is that Allah will protect you in conveying this message by *jihad* from the harm of the people because when the *ayah* was revealed, the method of delivering the message was *jihad* i.e. fighting with swords. It is not possible that it is meant that He (swt) will protect you from those envious of Ali (ra) in making the Khilafah for him i.e. protect you according to their view from Abu Bakr (ra), Umar (ra), Uthman (ra) and their like as the protection in the *ayah* is from the people not believers. The meaning of "*the people*" is specified to be the disbelievers by His statement in concluding the *ayah*:

إن الله لا يهدي القوم الكافرين

"Verily Allah will not guide the disbelieving folk"

[TMQ 5:67].

So this promise from Allah (swt) to His Messenger (saw) to protect and preserve him from the harm of disbelievers in conveying what was revealed to him specifies that the meaning of the conveyance in the *ayah* is the conveyance of the message of Islam. It has been said that there is no meaning in His statement: "*Convey what was revealed to you*" while he is conveying in practice. The response to this is that this command to convey does not depart from one of two matters: Either the Messenger has concealed the message without conveying it, or there are people to whom the message has not been conveyed so the absence of conveyance to them is considered the absence of conveyance to the world. It is impossible for this command to mean his concealing a specific rule revealed to him which he did not convey or conveyance of one rule without which the message is not complete because the concealment of one rule will denigrate the Messenger's (saw) Prophethood and his message like the concealment of the entire message, so it is impossible for it to mean the concealment of one specific rule. Also the *ayah* says:

فَمَا بَلَّغْتَ رِسَالَتَهُ

“Then you would not have conveyed His message” [TMQ 5:67].

This negates the conveyance which means that he has not delivered the message not that he has not conveyed a specific rule, in particular the conveyance of one rule is considered the conveyance of the message. The Messenger (saw) from the first day onwards conveyed the rules according to their revelation such that the conveyance of each rule was considered the conveyance. Thus it is impossible for the meaning to be not conveying one specific rule; rather the sentence’s meaning is that he has not conveyed the message. Since it is impossible for him to not convey the message, and it has been proven that before the *ayah* he was (already) conveying, the meaning of the *ayah*’s revelation becomes that there are people to whom the message has not been conveyed such that the absence of conveyance to them is considered absence of conveyance to the world. And the message’s conveyance is not considered conveyance except if it is conveyance to the world. Due to this Allah (swt) commanded him to convey the message to the people whom it has not reached i.e. convey it to the world until it is considered conveyance and that this conveyance be by the method of *jihad*. This meaning is strengthened (by the fact) that the *ayah* was revealed to the Messenger (saw) after the Treaty of Hudaibiyya. Quraysh used to be the chief enemy whom the Messenger (saw) fought with in spreading the *da’wa* until that time, so the treaty with them would perhaps lead one to understand the stopping of conveyance via *jihad*. So Allah commanded him to continue the conveyance via the method of *jihad* to the rest of the people whom he has not conveyed to among the Arabs, Romans, Persians, Copts and others such that his conveyance becomes conveyance of the message to the world so that the conveyance of this message is considered universal. This is what occurred in practice. After the revelation of this *ayah* the Messenger (saw) fought the Jews at Khayber, prepared the battle of Mu’tah, went with a large army to Tabuk and remained there, conquered Makkah, and wrote to the kings of Persia, the Copts, Rome and other kings which clarified from him the meaning of the revelation of His statement:

بَلِّغْ مَا أُنزِلَ إِلَيْكَ

“Convey what was revealed to you” [TMQ 5:67].

And:

فَمَا بَلَّغْتَ رِسَالَتَهُ

“Then you would not have conveyed His message” [TMQ 5:67].

And:

وَاللَّهُ يَعْصَمُكَ مِنَ النَّاسِ

“Allah will protect you from the people” [TMQ 5:67].

And:

إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الْكَافِرِينَ

“Verily Allah will not guide the disbelieving folk”. [TMQ 5:67].

As for the hadith of the house as narrated in *Kanz al-‘Ammal* and as explained in *Nahj al-Balagha*, it is summarised as followed: When

وَأَنْزِلُ عَشِيرَتَكَ الْأَقْرَبِينَ

“*And warn your nearest kinsfolk*”

[TMQ 26:214]

was revealed,

The Messenger (saw) called Ali (ra) to prepare food and call the family of Abd al-Muttalib so Ali (ra) executed these commands. After the people had become satisfied and relaxed, the Messenger stood before them speaking:

يا بني عبدالمطلب إني والله ما أعلم أن شاباً في العرب جاء قومه بأفضل مما جئتمكم به، عن جئتمكم بخير الدنيا والآخرة، وقد أمرني الله أن أدعوكم إليه، فأياكم يؤازرني على هذا الأمر على أن يكون أخي ووصيي وخليفتي حكيم؟ أحجم القوم عن الدعوة إلاّ علياً وهو أحدثهم سناً، فقد أجاب قائلاً: أنا يا رسول الله أكون وزيرك عليه. أما النبي فقد أعاد القول ولا يزال القوم مُحجّمين، ولا يزال علي معلناً القبول، وعندئذ أخذ النبي بركة علي وقال للحاضرين: هذا أخي ووصيي وخليفتي فيكم، فاسمعوا له وأطيعوا. والقوم يضحكون من النبي ودعوته، وقد قالوا لأبي طالب وهم يخرجون من دار النبي: قد أمرك أن تسمع لابنك وتطيع

O Banu Abd al-Muttalib, by Allah I do not know any youth among the Arabs who has come to his people with a thing better than what I have come to you with. Verily I have come to you with the good of this world and the Hereafter. Allah has commanded me to call you to Him, so which one of you will assist me in this matter so that he may become my brother, inheritor and my Khalifah among you? The people kept away from the *da'wa* except Ali, the youngest among them, who responded saying: I, O Messenger of Allah, will be your assistant upon this matter. The Messenger repeated his statement and the people remained away while Ali continued announcing his acceptance. So the Messenger took the neck of Ali and said to those present: This is my brother, inheritor and my Khalifah among you so listen to him and obey. The people laughed at the Prophet and his invitation, and said to Abu Talib while leaving the Messenger's house: 'He has commanded you to listen to your son and obey him.'"

This is the summary of the hadith of the house as narrated by those who depend upon it as evidence.

Al-Bukhari narrated the incident of the day when

وأندر عشيرتك الأقربين

“*And warn your nearest kinsfolk*”

[TMQ 26:214]

Was revealed (saying) that the Messenger (saw) stood upon (Mount) Safa, without mentioning the preparation of food. Ahmad bin Hanbal narrated in his *Musnad* two hadiths, one about the preparation of food without mentioning it was the day in which “*And warn your nearest kinsfolk*” was revealed and another mentioning that the preparation of food was on the day the *ayah* was revealed. We will show these texts first then explain what they contain.

Al-Bukhari narrated from Ibn ‘Abbas (ra) who said: When

ولما نزلت (وأندرو عشيرتك الأقربين) صعد النبي صلى الله عليه وسلم على الصفا فجعل ينادي: يا بني فهر، يا بني علي، لبطن قريش، حتى اجتمعوا، فجعل الرجل إذا لم يستطع أن يخرج، أرسل رسولاً لينظر ما هو، فجاء أبو لهب وقريش فقال: أريتمكم لو أخبرتمكم أن خيراً بالوادي تريد أن تُغيّر عليكم أكنتم همدؤي؟ قالوا: نعم، ما

جرّينا عليك إلاّ صدقا. قال: فإني نذير لكم بين يدي عذاب شديد. فقال أبو لهب: تباً لك سائر هذا اليوم،
ألهذا جمعتنا؟ فنزلت (تبّت يدا أبي لهب وتبّ، ما أغنى عنه ماله وما كسب

“And when *And warn your nearest kinsfolk* was revealed, the Messenger stood upon Safa and started announcing: O Banu Fihir, O Banu Adiy for all the (butun) of Quraysh until they gathered together. Whoever was unable to go had sent a messenger to see what was happening. Abu Lahab and Quraysh came and he said: ‘If I told you there were horses (men) in the valley intending to attack you suddenly, would you believe me?’ They said: Yes, we have not tried you in anything except to find you saying the truth. He said: Verily, I am a warner to you before a severe punishment! Abu Lahab said: Woe be upon you for the rest of the day. Is it because of this that you gathered us? So ‘Perish the two hands of Abû Labab (an uncle of the Prophet [sal-Allâhu ‘alayhi wa sallam]) and perish he!, His wealth and his children will not benefit him!’ [TMQ 111:1-2] was revealed”

This indicates that the incident of the preparation of food was not on the day in which “*And warn your nearest kinsfolk*” was revealed as it does not concur with what occurred in the hadith’s text.

Ahmad bin Hanbal said in his *Musnad*: ‘Affan related to us that Abu Awana related to us from Uthman bin al-Mughira from Abu Sadiq from Rabi’a bin Najidh from Ali (ra) who said: The Messenger of Allah (saw) gathered or called Banu Abd al-Muttalib in all their groups to eat and drink. He prepared for them a quantity of food which they ate until they were satisfied. He said: The food remained as if it had not been touched. Then he called for a saffron drink which they drank until they will full, and the drink remained as if it had not been touched. Then he (saw) said:

يا بني عبدالمطلب، إني بُعثتُ لكم خاصة وإلى الناس بعامة، وقد رأيتم من هذه الآية ما رأيتم فأيكم يبايعني على أن يكون أخي وصاحبي؟ قال: فلم يقم إليه أحد. قال: فقامت إليه وكنت أصغر القوم. قال: فقال: اجلس. قال: ثلاث مرات، كل ذلك أقوم إليه فيقول لي اجلس، حتى كان في الثالثة ضرب بيده على يدي

“O Banu Abd al-Muttalib, I have been sent specifically to you and to humanity in general. You have now seen of this sign (*ayah*) what you saw, so which one of you will give me a pledge in order to become my brother and companion?” He said: None of them stood, so I stood for him though I was the youngest of the group and he said: Sit down. He repeated it three times following which I stood for him and he said ‘Sit down’, until the third time he struck my hand with his hand.”

This clarifies that there is no moment in this incident of the revelation of “*And warn your nearest kinsfolk*”, and that the Messenger (saw) offered Islam to them so that whoever became a Muslim would become his brother and companion and that he did not say anything to Ali (ra).

As for the second narration, Ahmad bin Hanbal narrated in his *Musnad*: “Aswad bin Amir related to us that Shareek related to us from Al-‘Amash from Al-Minhal from Tbad bin Abdullah al-Asadi from Ali who said: When the *ayah* “*And warn your nearest kinsfolk*” was revealed, the Messenger (saw) gathered the family of his house. Thirty people gathered; they ate and drank then he (saw) said to them:

من يضمن عني ديني ومواعيدي ويكون معي في الجنة ويكون خليلي في أهلي؟ فقال رجل لم يسمه شريك: يا رسول الله أنت كنت بحراً، من يقوم بهذا. قال: ثم قال الآخر: قال: فعرض ذلك على أهل بيته. فقال علي أنا

"Which one will guarantee my debts and promises so as to be with me in Paradise, and he will be my Khalifah over my family? A man, whom Shareek did not name, said: O Messenger of Allah, you were an ocean (bahr) so who could take care of this? Then another said (the same?). He offered that to the family of his house, so Ali (RA) said: I (will)."

The word inheritor or Khalifah does not appear in these two texts in any way at all. Rather it is only the word Khalifah which appears restricted to his family, and the Khilafah over the family is not the Khilafah in the post of rule or leadership nor does it have any relationship with that. These are the texts which came in the *Sabeeh* books, and they came in numerous narrations with similar wordings and unified meanings, and there did not appear in any of them the words inheritor or Khilafah. There has never appeared, either via any of the compilers of the *Sabeeh* (books of *abadith*) or any of the trustworthy narrators, in even one hadith the word(s) inheritor of Khalifah in any way at all either in relation to Ali or anyone else, so the evidence falls due to the absence of any evidence for it in the *Sabeeh* books.

As for the text narrated by those who contend about the appointment of Ali which they named the hadith of the house, this text with this narration (*riwayah*) is rejected in its meaning (*Dirayah*). A hadith is rejected in its dirayah based on its meaning, and its narration based on its chain. So if it is rejected in its chain or meaning then it cannot be considered and it falls as evidence. As for rejecting its meaning, this is due to many reasons including:

Firstly: In this hadith it appears that the Messenger (saw) sought the assistance of the family of Abd al-Muttalib in his *da'wa* with the condition that the rule became theirs after them. This is void from two aspects: firstly, this contradicts the Messenger's statement and action in the incident in which he refused the request from the tribe that the rule becomes theirs after him if they become Muslims to which he replied:

الأمر بيد الله يضعه حيث يشاء

"Authority is a matter which belongs to Allah, and He (swt) will place it where He wishes."

Ibn Hisham narrated in his book of the Sirah of the Prophet (saw): Ibn Ishaq said that Az-Zuhri narrated that he met *Banu Amr bin Sa'sa'ab* so he invited them to Allah 'azza wa jalla and offered himself to them. One man among them, whom they called Bayjirat bin Furra, said to him: By Allah, if I were to take this youth from the Quraysh, I will eat (i.e. conquer) the Arabs through him. Then he said: What if we were to pledge to support your matter then Allah will grant you victory over those who oppose you. Will the rule be with us after you? He said: "The rule is for Allah and He places it where He wills." He said: So he said to him: Will we sacrifice our throats for you, then when Allah (swt) grants you victory the rule becomes for someone else? Then we have no need of your matter, and they rejected him." How can the Messenger (saw) say: "The matter belongs to Allah and He will place it where He wills" i.e. the matter of the Khilafah and the rule after him, yet he says to Banu Abd al-Muttalib:

فأبكم يؤازريني على هذا الأمر على أن يكون أخي ووصيي وخليفتي فيكم؟

"Which one of you will assist me upon this matter so that he may become my brother, inheritor and Khalifah among you?"

Is this not a clear contradiction? Inevitably, it is necessary that one of these two statements be rejected. Since it is said of the hadith of the house that it occurred when

وأندر عشيرتك الأقربين

"Warn your nearest kinsfolk"

[TMQ 26:214]

Was revealed i.e. the third year of the messenger ship and the hadith:

الأمر لله يضعه حيث يشاء

“The matter belongs to Allah and He places it where He wills”

when the Messenger (saw) offered himself to the tribes i.e. in the tenth year after the messenger ship and therefore after the hadith of the house; so it is the hadith of the house which is rejected. As for the second side, it is that the Messenger (saw) in this hadith offered something to the disbelievers so that they may become Muslims, rather he offered them the greatest thing which is the Khilafah after him over all Muslims as the price for their entering into Islam. This contradicts the Messenger’s action in his *da’wa* and the *Shari’ah* rules. The Messenger would invite people to Islam because it is the correct deen and it has never been narrated from him, even through a weak hadith that he offered anything whether small or large to a *kafir* in exchange for his entering into Islam. As for those whose hearts are to be reconciled, they are Muslims who are given from the *zakat* in order to strengthen the State through them, not *kuffar* who are given so that they enter Islam. Nor is it allowed to give something to *kuffar* in exchange for their entering Islam.

Secondly: The hadith mentions that the Messenger (saw) prepared a wedding feast and meal for *kuffar* in order to invite them to Islam, and he gathered them around a meal so that they may enter Islam and he did not prepare food for Ali (ra) who had already accepted Islam. So if these people reject Islam and reject that the rule becomes theirs after him in exchange for Islam, there is no place there for Ali (ra) for giving his acceptance as he is not being invited to Islam because he is already a Muslim, and there is no speech addressed to him. This is why there is no place in this gathering such that he says to him:

هذا أخي ووصيي وخليفتي فيكم فاسمعوا له وأطيعوا

“This is my brother, inheritor and my Khalifah among you so listen to him and obey”

Since he is not the target of the address or the negotiation.

Thirdly: The hadith mentions that the group rejected Islam, and despite him repeating his offer they persisted in rejecting Islam and rejecting that the rule becomes theirs after him in exchange for entering Islam. They remained *kuffar* so how could the Messenger (saw) say to them in addressing them:

هذا خليفتي فيكم

“This is my Khalifah among you”

Commanding them with hearing and obeying him while he knows they are *kuffar* who have rejected Islam? And how could he be the Khalifah among them while they are *kuffar*?

Fourthly: The narration they narrate says:

هذا أخي ووصيي وخليفتي فيكم فاسمعوا له وأطيعوا

“This is my brother, inheritor and my Khalifah among you so listen to him and obey”

This is an address to the family of Abd al-Muttalib since the words started with his saying “O Banu Abd al-Muttalib.” So it is specific to them as he made him a Khalifah over them i.e. over the family of Abd al-Muttalib not the Khalifah of the Muslims since he said, “and my Khalifah over you.” Thus he is not the Khalifah for the Muslims as is depicted by the explicit text. Nor can one say here that the lesson is by the generality of the text not the specificity of the cause since this is

a specific incident not a cause (*sabab*) not mentioning that the words are also specific and not general: “O *Banu Abd al-Muttalib*”, “*my Khalifah among you*” so the specification is demanded due to this being a specific incident not a cause, and also due to the absence of general words.

Just one of these four matters suffices to reveal the falsehood of this hadith and its contradiction, and it is obligatory to reject its narration (*dirayah*). Therefore it is clarified that the Messenger (saw) did not explicitly state making Ali (ra) the Khalifah after him. From all this it becomes clear that the *abadith* narrated by those who argue that the Messenger (saw) designated a person for the Khilafah after him are rejected *abadith* unsuitable to depend upon as evidence so they fall. There remains no evidence that the Messenger (saw) designated anyone to be in charge of the Khilafah after him; rather the evidence has been established contrary to that i.e. that the Messenger (saw) left the matter to the Muslims to choose whom they want in relation to the person but he specified for them the method for appointing the Khalifah.

As for the error in the views that the Messenger (saw) designated the persons who would be *Khulafaa* after him, it is clear from the absence of evidence of the *abadith* which they claim designated Ali (ra) for it. Those who say that the Khilafah is for them only say this because they are the descendants of Ali (ra), so if their evidence does not apply in respect to Ali (ra) it also naturally does not apply in respect to his descendants due to the proof not applying in respect to him. Moreover, the *abadith* which they narrate in its consideration as evidence for the Khilafah of the descendants of Ali (ra) by a clear text from Allah and His Messenger (saw) are the *abadith* related to the family of the house which all indicate praise and no more than that. The hadith of the two weighty matters i.e. the hadith of Ghadeer Khum is considered a model for them, and its failing in argument has been demonstrated clearly so the rest of the *abadith* follow it.

General Responsibilities/Duties

The Legislator (i.e. Allah) fixed the obligatory general responsibilities upon the ruler explicitly without leaving any area for obscurity or confusion. He clarified the ruler's responsibilities in relation to what is obligatory upon him in his personal capacity as a ruler, and his responsibilities in respect of his relationship with the citizens.

As for the ruler's responsibilities in his personal capacity as a ruler, they are clear in the *ahadith* in which the Messenger (saw) clarified some of the ruler's attributes. The most apparent of them are strength, consciousness of Allah (*taqwa*) and kindness, and that he should not be one who causes aversion. The Messenger (saw) opined that the ruler must be strong, and that the weak person is not suitable to become a ruler. Muslim narrated from Abu Dharr (ra) that the Messenger of Allah (saw) said:

يا أبا ذر أراك ضعيفاً وإني أحب لك ما أحب لنفسي، لا تَأْمُرْ عَلَى اثْنَيْنِ وَلَا تَوَلَّيْنِ مَالِ يَتِيمٍ

“O Abu Dharr, I see that you are weak and I like for you what I like for myself. Do not rule over (even) two persons, and do not manage an orphan's property

Muslim also narrated from Abu Dharr who said:

قلت: يا رسول الله ألا تستعملني؟ قال: فضرب بيده على منكبي ثم قال: يا أبا ذر إنك ضعيف وإنها أمانة وإنها يوم القيامة حزي وندامة إلا من أخذها بحقها وأدى الذي عليه فيها

“I said: O Messenger of Allah, Why do you not appoint me to an (official) position?” He (saw) patted me on the shoulder with his hand and said, "O Abu Dharr, you are a weak man and it is a trust and it will be a cause of disgrace and remorse on the Day of Resurrection except for the one who takes it up with a full sense of responsibility and fulfills what is entrusted to him (discharges its obligations efficiently)..”

The meaning of strength here is strength of personality i.e. intellectual and emotional strength. It is necessary that this intellect be the ruling intellect by which he understands matters and relationships, and that his emotional disposition (*nafsiyya*) be that of a ruler who understands that he is a ruler so he directs his inclinations with the command of an *Amir*. Since the strength of the personality has within it the potential of domination and authority, there is an obvious need that the ruler has an attribute which protects him from the evil of authority. So it is necessary that he has the attribute of *taqwa* within himself and in his taking care of the Ummah. Muslim and Ahmad from Sulayman bin Buraydah from his father:

كان رسول الله صلى الله عليه وسلم إذا أمر أميراً على جيش أو سرية أوصاه في خاصته بتقوى الله ومن معه من المسلمين خيراً

“Whenever the Messenger of Allah (saw) would appoint an Amir over an army or expedition, he would command him with *taqwa* with himself and to be good to those Muslims who are with him.”

The ruler, if he is conscious of Allah (swt) and fears Him, and accounts Him in his own soul secretly and openly, then this would stop him from enslaving the citizens. However, the *taqwa* would not prevent him from harshness and severity since in his taking account of Allah he would restrict himself to His commands and prohibitions. And since he is a ruler, it is natural in his position to be severe and hard, and because of this the Legislator (*Ash-Shari*) commanded him to

be friendly and not to be hostile to the citizens. From Aisha who said: I heard the Messenger of Allah (saw) saying in his house of mine:

اللَّهُمَّ مَنْ بِيَّ مِنْ أُمَّةٍ شَيْئاً فَشَقَّ عَلَيْهِمْ، فَشَقَّ عَلَيْهِ، وَمَنْ لِي مِنْ أُمَّةٍ شَيْئاً فَفَرَّقَ بَيْنَهُمْ فَارْفُقْ بِهِ

“O Allah! Treat harshly those who rule over my Ummah with harshness, and treat gently those who rule over my Ummah with gentleness”

(Narrated by Muslim).

He also commanded to be the one who gives glad tidings and not the one who repels people away. It has been narrated from Abu Musa who said: When the Messenger of Allah (saw) sent one of his companions in some of his affairs, he would say to him:

بَشِّرُوا وَلَا تَنْفَرُوا، وَيَسِّرُوا وَلَا تَعَسِّرُوا

“Make things easy and do not make them difficult, cheer the people up by conveying glad tidings to them and do not repulse (them).

(Narrated by Muslim).

This is in relation to what is obligatory for the ruler to have within his personality. As for his relationship with the citizens, the Legislator commanded him to encompass the citizens with good advice, warned him not to touch the public wealth in any way, and compelled him to adhere to ruling by Islam alone without associating it with anything else. Verily Allah (swt) prohibited Paradise to the ruler who does not encompass his citizens with good advice or betrays them in anything. From Mu'aqqil bin Yasar who said: I hear the Prophet (saw) saying:

مَا مِنْ عَبْدٍ اسْتَرْعَاهُ اللَّهُ رَعِيَةً لَمْ يُحِطْهَا بِنصيحةٍ إِلَّا لَمْ يَجِدْ رائحةَ الجنةِ

“There is no slave whom Allah gives charge over citizens then he does not give them good advice except that he will not smell the odour of Paradise” (narrated by Al-Bukhari).

He (Al-Bukhari) also narrated from Mu'aqqil bin yasar who said: I heard the Messenger of Allah (saw) saying:

مَا مِنْ وَاٍلٍ يَلِي رَعِيَةً مِنَ الْمُسْلِمِينَ فَيَمُوتُ وَهُوَ غَاشٍ لَهُمْ إِلَّا حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ

“No governor (wali) will govern Muslim citizens and dies while betraying them except that Allah will prohibit Paradise for him.”

Muslim narrated from Mu'aqqil who said:

I heard the Messenger of Allah (saw) saying:

مَا مِنْ أَمِيرٍ يَلِي أَمْرَ الْمُسْلِمِينَ ثُمَّ لَا يَجْهَدُ لَهُمْ وَيَنْصَحُ إِلَّا لَمْ يَدْخُلِ الْجَنَّةَ مَعَهُمْ

“There is no leader who will govern the Muslims' affair then does not exert himself for them nor show sincere friendship except that he will not enter Paradise with them”

And it has been reported from Abu Said: The Messenger of Allah (saw) said:

لِكُلِّ غَادِرٍ لُؤَاءٍ يَوْمَ الْقِيَامَةِ يُرْفَعُ بِقَدْرِ غَدْرِهِ، أَلَا وَلَا غَادِرٌ أَكْبَرُ غَدْرًا مِنْ أَمِيرٍ عَامَةٍ

“There is a flag for every traitor on the Day of Judgement which will be raised according to the level of his treachery, and there is no traitor greater in his treachery than the general leader”

(narrated by Muslim).

The Messenger has clearly & severely emphasised exerting effort on behalf of the citizens and encompassing them with good advice which clarifies the high level of responsibility (of the ruler) over them. As for touching public wealth, he warned about this and was severe in this warning. So when he saw this in one of his governors he was harsh with him and spoke to the public about this matter. It has been reported from Abu Hamid As-Sa'idi that the Prophet (saw) appointed ibn Al-Luttaybah over the *sadaqat* of Banu Sulaym. When he returned to the Messenger of Allah (saw) who accounted him, he said: This is what is for you and this is a gift given to me. So the Messenger of Allah (saw) said:

فَهَلَّا جَلَسْتَ فِي بَيْتِ أَبِيكَ وَبَيْتِ أُمِّكَ حَتَّى تَأْتِيَكَ هَدِيَّتِكَ إِنْ كُنْتَ صَادِقًا؟

“Why doesn't he stay at the house of his father or the house of his mother and see whether he will be given gifts or not if he was telling the truth”

Then the Messenger of Allah (saw) stood and spoke to the people. He praised Allah (swt) and extolled Him, then said:

أَمَّا بَعْدُ فَإِنِّي أَسْتَعْمَلُ رِجَالًا مِنْكُمْ عَلَى أُمُورٍ مِمَّا وَلَا بِنِي اللَّهِ فَيَأْتِي أَحَدَكُمْ فَيَقُولُ هَذَا لَكُمْ وَهَذِهِ هَدِيَّةٌ أُهْدِيَتْ لِي، فَهَلَّا جَلَسَ فِي بَيْتِ أَبِيهِ وَبَيْتِ أُمِّهِ حَتَّى تَأْتِيَهُ هَدِيَّتُهُ إِنْ كَانَ صَادِقًا؟ فَوَاللَّهِ لَا يَأْخُذُ أَحَدُكُمْ شَيْئًا بِغَيْرِ حَقِّهِ إِلَّا جَاءَ بِحِمْلِهِ يَوْمَ الْقِيَامَةِ

“As for what follows, verily I appointed a man among you upon matter Allah made me responsible. So one of you came to me saying: This is for you and this is a gift given to me. Why then did he not sit in his father's house and mother's house such that his gifts would reach him if he was truthful? By Allah, none of you will take from it without due right except that he will bear it on the Day of Judgement”
(narrated by Al-Bukhari).

This is an allusion to Allah's accounting him and punishing him over his action, which is a severe warning to the ruler not to touch the public wealth in any way whatsoever including through any interpretation or *fatwa*.

In relation to the rules by which the ruler is obliged to rule with, the Legislator has restricted this and compelled him to rule by the Book of Allah and the Sunnah of His Messenger (saw). It gave him the right to perform *ijtihad* in both of them, and forbade him to seek from other than Islam or to ever adopt from other than Islam. As for restricting the rule to the Book and the Sunnah, this is explicit from the Qur'anic *ayat*. Allah (swt) said:

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ

“Whoever does not rule by all that Allah revealed is among the disbelievers

[TMQ 5:44]

And:

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ

“Whoever does not rule by all that Allah revealed is among the transgressors

[TMQ 5:47]

And:

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

“Whoever does not rule by all that Allah revealed is among the oppressors

[TMQ 5:45].

This means limiting the rule to what Allah revealed, and that which Allah revealed to His Messenger (saw), our master Muhammad (saw), is the Noble Qur’an in wording and meaning and the Sunnah in meaning not wording. Therefore the ruler is restricted in his rule within the limits of the Book and Sunnah. The Legislator permitted him to perform *ijtihad* upon the Book and Sunnah i.e. exerting effort to understand and deduce rules from both of them. It has been narrated that the Messenger (saw) sent Mu’adh to Yemen and said to him:

أن الرسول صلى الله عليه وسلم أرسل معاذاً إلى اليمن فقال له: بم تحكم؟ قال: بكتاب الله. قال: فإن لم تجد؟ قال: بسنة رسول الله. قال: فإن لم تجد: قال: أجتهد رأيي. قال: الحمد لله الذي وفق رسول رسول الله لما يجهه الله ورسوله

“By what will you judge? He said: By the Book of Allah. He said: If you do not find it (explicitly there)? He said: By the Sunnah of the Messenger of Allah. He said: If you do not find it (explicitly there)? He said: I will perform *ijtihad* (and reach to) my opinion. He said: Praise be to Allah who bestowed the messenger of the Messenger of Allah with what Allah is pleased and as is His Messenger.”

He gave the ruler a reward if he made a mistake in *ijtihad*, thereby encouraging him to perform *ijtihad* and keeping him far away from (sticking) rigidly to the merely apparent (meaning of the) texts. Al-Bukhari narrated from Amr bin Al-‘Aas that he heard the Messenger of Allah (saw) saying:

إذا حكم الحاكم فاجتهد ثم أصاب فله أجران وإذا حكم فاجتهد ثم أخطأ فله أجر

“When the ruler judges and performs *ijtihad* then gets it right there are two rewards for him. And when he rules and performs *ijtihad* and errs, there is one reward for him.”

The *Shar’a* exaggerated in restricting the rules by which the ruler rules as being (from) Islam and nothing else. Despite giving the ruler the right to perform *ijtihad* even if he errs, it was strict in restricting the ruling by Islam and prohibited his ruling by anything else. Rather, it even prohibited him asking about the ruler from other than Islam or that he associates with Islam anything not from it. Allah (swt) said addressing the Messenger (saw):

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

“Rule between them by what Allah revealed and do not follow their desires, and beware that they do not deviate you from even some of what Allah revealed to you”

[TMQ 5:50]

And He (swt) said:

فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم عما جاءك من الحق

“Rule between them by what Allah revealed and do not follow their desires after the truth has come to you”

[TMQ 5:49].

The speech to the Messenger (swt) is the address to his Ummah so this is an address to every ruler. Muslim narrated from Aisha (ra) who said: The Messenger of Allah (saw) said:

وَمَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ

“Whoever innovates in this matter of ours anything not of it, it is rejected”

And in another narration:

مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ

“Whoever performs any action not in accordance with our matter (Islam), it is rejected.”

And Al-Bukhari narrated from Ubaidullah bin Abdullah that ibn Abbas (ra) said:

كَيْفَ تَسْأَلُونَ أَهْلَ الْكِتَابِ عَنْ شَيْءٍ وَكِتَابِكُمْ الَّذِي أَنْزَلَ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَحْدَثُ، تَقْرَأُونَهُ مَحْضًا لَمْ يَشِبْ وَقَدْ حَدَّثَكُمْ أَنَّ أَهْلَ الْكِتَابِ بَلَّلُوا كِتَابَ اللَّهِ وَغَيَّرُوهُ وَكَتَبُوا بِأَيْدِيهِمُ الْكِتَابَ وَقَالُوا: هُوَ مِنْ عِنْدِ اللَّهِ لِيَشْتَرُوا بِهِ ثَمَنًا قَلِيلًا؟ أَلَا يَنْهَاكُمْ مَا جَاءَكُمْ مِنَ الْعِلْمِ عَنْ مَسْأَلَتِهِمْ؟

“How do you ask for the People of the Book about anything and the Book which was revealed to the Messenger of Allah (saw) is more recent. You read it pure and it is not old. And it has told you that the People of the Book changed the Book of Allah and altered it. They wrote the Book with their own hands and they said: ‘This is from Allah’ in order to purchase a measly price for it. Does not the knowledge which came to you prohibit from asking them?”

This hereby clarifies the restriction by which he (the ruler) is obliged to rule by; it restricted his responsibility in the rules to the rule by what Allah (swt) revealed.

These obligatory responsibilities upon the ruler show that the Legislator delineated the public responsibilities clearly and these responsibilities are upon the ruler as a ruler irrespective of his being a Khalifah or his assistant, governor (*wali*) or official (*amil*). All of them are rulers and they are bound by these responsibilities. Therefore if these are the responsibilities of the governors and leaders, and others among the rulers, then they are the Khalifah’s responsibilities. Since they are obligatory upon the leader therefore they are obligatory upon the one bearing the greater burden by greater reason. Moreover, there are general *abadith* addressing whoever oversees an affairs among the Muslims’ affairs, whether a Khalifah or a governor. The Messenger’s statement:

مَا مِنْ عَبْدٍ اسْتَرْعَاهُ اللَّهُ رَعِيَّةً

“There is no slave whom Allah appoints over the citizens”

And his statement:

أَعْظَمُ غَدْرًا مِنْ أَمِيرٍ عَامَةٍ

“The greatest treachery is from the general leader”

And Allah’s statement:

وَمَنْ لَمْ يَحْكَمْ

“Whoever does not rule”

[TMQ 5:44].

All these came with general words covering the governor and covering the Khalifah. And the address to the Messenger (saw) is the address to every ruler, whether Khalifah or governor.

Additionally, the Messenger (saw) clarified the Khalifah's responsibility to his citizens textually in the hadith which clarified the general responsibilities. Al-Bukhari narrated from Abdullah bin Umar (ra) that the Messenger of Allah (saw) said:

ألا كلكم راع وكلكم مسؤول عن رعيته، فالإمام الذي على الناس راع وهو مسؤول عن رعيته، والرجل راع على أهل بيته وهو مسؤول عن رعيته، والمرأة راعية على أهل بيت زوجها وولده وهي مسؤولة عنهم، وعبد الرجل راع على مال سيده وهو مسؤول عنه، ألا فكلكم راع وكلكم مسؤول عن رعيته

“Verily each one of you is a guardian and each one of you is accountable over his charge. The *Imam* is a guardian over the people and he is accountable over his citizens. The man is a guardian over the people of his house and he is accountable over his charges. The woman is a guardian over the people of the house of her husband, and she is accountable over them. The man's slave is a guardian over his master's property and he is accountable over it. Verily each one of you is a guardian and each one of you is accountable over his charge.”

He made the Khalifah responsible with a general responsibility over his citizens. Therefore the general responsibilities are imposed upon the Khalifah as they are concerning the leader.

The Legislator has completely guaranteed the ruler's performance of burdens of these public responsibilities via guidelines (*tanjeeb*) and legislation. As for the guidelines (*tanjeeb*), He warned the ruler of Allah's punishment if he neglected and failed to fulfill his burdens. He clarified that there is disgrace and regrets if the weak person who could not fulfill what is imposed upon him undertook it (the rule), the Messenger (saw) asked Allah that He (swt) be severe to the one who is severe upon the Islamic Ummah and Allah prohibited Paradise for who does not encompass the Ummah with good advice among other warnings which demonstrated to the ruler his end if he failed to fulfill his responsibilities i.e. the punishment of Allah. However, the *Shar'a* was not satisfied with this but also made the Ummah responsible for the ruler's performance of his responsibilities; it compelled them to denounce him if he fell short of fulfilling his responsibilities or sinned in his transactions. And it even commanded the Ummah to fight him by the sword if he ruled by other than Islam so that it became open disbelief, and made the one who dies in the way of denouncing the ruler the prince of martyrs. He (saw) said:

سيد الشهداء حمزة ورجل قام إلى إمام جائر فنصحه فقتله

“The prince of martyrs is Hamza bin Abdul-Muttalib and the man who stood before the unjust ruler to command and forbid him, and he was killed.”

It made the one who is pleased with the ruler's neglect and follows him (upon that) accountable before Allah (swt) and not safe from His (swt) punishment. Muslim narrated from Umm Salamah that the Messenger of Allah (saw) said:

كفون أمراء فتمعرفون وتُنكرون فمن عرف برئ ومن أنكر سلم ولكن من رضي وتابع. قالوا: أفلا نقاتلهم؟ قال: لا، ما صلوا

“There will be leaders. You will recognise and reject (some of what they do). Whoever recognises is guiltless and whoever rejects is safe, but the one who is pleased and follows (is neither guiltless nor safe). They said: Should we not fight them? He said: No, not as long as they prayed”

And in another narration:

فمن كره فقد برأ ومن أنكر فقد سلم ولكن من رضي وتابع

“Whoever dislikes is guiltless and whoever rejects is safe, but the one who is pleased and follows (is not).”

This narration explains the first narration. About his statement,

فمن عرف برئ

“Whoever recognises is guiltless”

An-Nawawi said in his explaining this hadith: “Its meaning, and Allah (swt) knows the best, is: The one who knows the *munkar* such that it is not ambiguous to him has found a path to innocence from his sin and punishment by changing it by his hand or tongue; and, if he is too weak, then hating it by his heart.” And his statement:

ومن أنكر سلم

“Whoever rejects is safe”

I.e. the one who is unable to change it by his hand and tongue and rejects it by his heart is safe from associating with them in the sin

ولكن من رضي وتابع

“But the one who is pleased and follows”

I.e. the one who is pleased by their action and follows them in acting upon it is neither guiltless nor safe. In this hadith the Messenger (saw) commanded rejecting against the ruler and obliged it through any means possible by the hand on condition that it does not reach fighting i.e. less than the sword or the tongue in any way whatsoever i.e. by words or by the heart if he is too weak to use the hand or tongue. He considered the one who does not reject a partner to the ruler in sin when he said that the one who is pleased by what they do and follows upon that is neither guiltless nor safe from sin. However this rejection is only when they act wrong but still rule by Islam. If they leave the implementation of Islam and implement the rules of kufr, the *Shar'a* is not satisfied with mere rejection by hand, tongue and heart but it rather made the method of changing what they do, or them (the rulers), the sword and fighting. In the hadith of Umm Salamah which was narrated by Muslim,

قالوا: أفلا نقاتلهم؟ قال: لا، ما صلوا

“They said: Should we not fight them? He said: No, not as long as they prayed”

And in the hadith of Awf bin Malik which was narrated by Muslim,

ألا نقاتلهم يا رسول الله؟ قال: لا، ما صلوا

“It was said: O Messenger of Allah, should we not oppose them by the sword? He said: No, not as long as they establish the prayer over you”

And in a narration they said:

قيل: يا رسول الله أفلا ننايذهم بالسيف؟ فقال: لا، ما أقاموا فيكم الصلاة

“We said: O Messenger of Allah, should we not oppose them due to that? He said: No, not as long as they establish the prayer over you.”

And in Al-Bukhari from Ubadah bin As-Samit who said:

دعانا النبي صلى الله عليه وسلم فبايعناه، فقال فيما أخذ علينا أن بايعناه على السمع والطاعة في منشطنا
ومكهنطينا ويُسْرنا وأثْرَة علينا وأن لا ننازع الأمر أهله إلا أن تروا كفراً بواحاً عندكم من الله فيه برهان

“The Prophet (saw) invited us and we gave him a pledge. He said: Among what he made a condition over us is that we pledge him to hear and obey in matters we are energetic about and what we dislike, in what we find difficult and what we find easy, and even when others are preferred over us and that we should not dispute the authority with those who possess it--He said--Unless you see open disbelief (*kufr bawal*) for which you have from Allah clear poof (*burhan*).”

The understanding of this hadith is that we dispute the authority with those who possess it if we see open disbelief, and that we dispute with them by the sword and fight them if they do not establish the prayer over us. This, in relation to the ruler, is a metaphoric expression (*kinayah*) for ruling by Islam i.e. as long as they rule by Islam then there is no fighting, opposition or dispute. If they rule with other than Islam, then it is obliged at that very time to fight, oppose and dispute with them. In this way, Islam has completely guaranteed the execution of the public responsibilities.

The Islamic State is a human state and not a Theocratic State.

The Islamic State is the Khilafah as it is the position in which the one who supervises it possesses all the competence of ruling and authority, and adopts all the rules without exception. It is the general leadership over all Muslims in the world to implement all the Islamic *Sbar'a* rules, by the thoughts it came with and the rules it legislated, and to carry the Islamic *da'wah* to the world, by informing them of Islam, calling them to it and jihad in the way of Allah. It is also known as the *Imamah* and the leadership over the believers. It is a human role not a divine one, which exists to implement the *deen* of Islam over human beings and to spread it among them. It is definitely not the Prophethood as the Prophethood and Messengership conotates to the Prophet or the Messenger the *Sbar'a* from Allah (saw) via the means of revelation to deliver it to the people without paying attention to his implementing it. Allah (swt) says:

وما على الرسول إلاّ البلاغ المبين

"There is nothing upon the Messenger except the clear conveyance" [TMQ 24:54]

And:

فإنّما عليك البلاغ

"Verily it is upon you the conveyance" [TMQ 3:20]

And:

ما على الرسول إلاّ البلاغ

"There is nothing upon the Messenger except the conveyance" [TMQ 5:99].

This is different from the Khilafah which is the implementation of Allah's *Sbar'a* upon human beings. It is not a condition upon the Prophet (saw) or Messenger (saw) to implement what Allah (swt) revealed to him in order to be a Messenger, rather the condition to become a Messenger or Prophet is that Allah reveals a *Sbar'a* to him and commands him to convey it. Musa (as), Isa (as) and Ibrahim (as) were Prophets and Messengers though they did not implement the *Shari'ah* they came with nor were they rulers. Therefore the post of Prophethood and Messengership is not the post of Khilafah. Prophethood is a divine post which Allah gives to whomever He wills, while the Khilafah is a human post in which the Muslims pledge whomever they wish over them from among the Muslims. Our master Muhammad (saw) was a ruler who implemented the *Shari'ah* he came with, so he would be in charge of the Prophethood and Messengership while at the same time he would be in charge of the post of leadership of the Muslims in establishing the Islamic rules. Allah (swt) commanded him to rule just like He commanded him to convey the message as He said to him:

وَأَنْ أَحْكُمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ

"Rule between them by what Allah revealed" [TMQ 5:47]

And:

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ

"Verily we revealed the Book to you in Truth so that you rule between the people by what Allah showed you" [TMQ 4:105]

Just like He (swt) said to him:

يا أيها الرسول بلِّغ ما أنزل إليك من ربك

"O Messenger, convey what has been revealed to you from your Lord "[TMQ 5:67]

And:

وأوحى إليّ هذا القرآن لأنذركم به ومن بلغ

"This Qur'an has been revealed to me so that I warn you and whoever it is conveyed to" [TMQ 6:19]

And:

يا أيها الملتزم قم فأنذر

"O you enshrouded in a cloak, Stand up and warn" [TMQ 74:1].

Except that when he was in charge of conveying the message by speech like conveying Allah's saying:

وأحل الله البيع وحرم الربا

"Allah has permitted trade and forbidden riba" [TMQ 2:275]

or by action like the Treaty of Hudaibiyya, he would be decisive in conveying and command decisively to undertake the action; nor would he consult but would rather reject all opinion if he was advised anything different from what the revelation came with. And when he was asked of a rule for which no revelation had descended yet, he would keep silent and not reply until the revelation descended. Whereas when he would undertake an action he would consult people and act according to the opinion of experts or the opinion of the majority even where it differed from his opinion, and when he would judge between people he would not be decisive saying that what he judged with conformed with the reality rather he was judging according to what he heard of the evidence. When Surah *Bara'ah* was revealed, he (saw) commanded Ali bin Abi Talib (ra) to go meet Abu Bakr and commanded him to announce inculpability "*Bara'ah* to the people during the Hajj period. So he read it to them Arafah and went around to the people until he had conveyed it. When he signed the Treaty of Hudaibiyya he rejected the opinion of all the *Sahabah* (ra) and compelled his opinion upon them as it was revelation from Allah (swt). When Jabir asked him: "How should I judge over my wealth?", He did not answer him until the revelation descended with the rule. Al-Bukhari narrated via bin al-Munkadir who said:

سمعتُ جابر بن عبد الله يقول: مرضتُ فجاءني رسول الله صلى الله عليه وسلم يعودني وأبو بكر وهما ماشيان فأتاني وقد أغمي عليّ فتوضأ رسول الله عليه السلام ثم صبّ وضوءه عليّ فأفقتُ فقلتُ: يا رسول الله وربما قال سفيان: فقلتُ: أي رسول الله، كيف أقضي في مالي؟ كيف أصنع في مالي؟ قال: فما أجابني بشيء حتى نزلت آية الميراث

"I heard Jabir bin Abdullah saying: I was ill so the Messenger of Allah (saw) came to visit me together with Abu Bakr walking. They found me when I was unconscious. The Messenger of Allah (saw) made wudhu then poured some water upon me. I woke up and said to the Messenger of Allah (saw): O Messenger of Allah, how should I judge over my wealth? What should I do with my wealth? He said: He did not answer me at all until the *ayah* of inheritance was revealed."

This was in the undertaking of the burden of Prophethood and Messengership and conveying to the people, whereas in undertaking the burden of rule he would behave differently. In Uhud he collected the Muslims in the mosque, consulted over whether to fight inside Madinah or outside; the opinion of the majority was to fight outside while the Messenger's opinion was to fight inside. He acted upon the majority opinion, left and fought outside Madinah. Similarly when he judged between people, he would warn them from causing him to judge for them against someone else's due right. Al-Bukhari narrated from Umm Salamah about the Messenger of Allah (saw) that he heard a dispute at the door of his house so he went to them and said:

إِنَّمَا أَنَا بَشَرٌ وَإِنِّي يَأْتِينِي الْخِصْمُ، فَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَبْلَغُ مِنْ بَعْضٍ فَأَحْسِبُ أَنَّهُ صَادِقٌ فَأَقْضِي لَهُ بِذَلِكَ، فَمَنْ قَضَيْتُ لَهُ بِحَقِّ مُسْلِمٍ فَإِنَّمَا هِيَ قِطْعَةٌ مِنَ النَّارِ فَلْيَأْخُذْهَا أَوْ لِيَتْرَكْهَا

"I am only a human being, and litigants with cases of dispute come to me, and someone of you may happen to be more eloquent (in presenting his case) than the other, whereby I may consider that he is truthful and pass a judgment in his favor. If ever I pass a judgment in favor of somebody whereby he takes a Muslim's right unjustly, then whatever he takes is nothing but a piece of Fire, and it is up to him to take or leave."

Similarly he narrated from him that he (saw) said:

وَإِنِّي لِأَرْجُو أَنْ أَلْقَى رَبِّي وَلَيْسَ أَحَدٌ مِنْكُمْ يَطْلُبُنِي بِمَظْلَمَةٍ فِي دَمٍ وَلَا مَالٍ

"Verily I wish to meet Allah 'azza wa jalla without anyone seeking from me an injustice I committed against him, whether in blood or money."

This goes to indicate that he would undertake two roles: the position of Prophethood and Messengership, and the position of leading the Muslims in this world in establishing the *Shari'ah* of Allah (swt) which was revealed to him. He would dispose in undertaking each role according to what it required, so he would conduct one differently from the other. He took the pledge of the people in ruling, taking it from both women and men but not from young children who had not yet reached puberty, which emphasises that it was a pledge upon ruling not upon Prophethood. From here we find we find that Allah (swt) never censured him in anything to do with conveying the message or undertaking its burden, rather he would request him not to be troubled due to people's failure to respond to him as the undertaking of the burden of the message was conveying alone; so there was no duty upon him except to convey. Allah (swt) said:

فَلَا تَذْهَبْ نَفْسُكَ عَلَيْهِمْ حَسْرَاتٍ

"Let not your souls go out in (vainly) sighing for them"

[TMQ 35:8]

And:

وَلَا تَحْزَنْ عَلَيْهِمْ وَلَا تَكُ فِي ضَيْقٍ مِمَّا يَمْكُرُونَ

"Do not grieve over what they are plotting"

[TMQ 16:27]

And:

إِنَّ عَلَيْكَ إِلَّا الْبَلَاغَ

"The only (duty) upon you is conveying"

[TMQ 42:48].

However Allah (swt) censured him over his undertaking of the burden of ruling in the actions he performed in implementing rules previously revealed to him and already conveyed. Allah (swt) censured him over doing something contrary to what was better. Allah (swt) said:

ما كان لنبي أن يكون له أسرى حتى يُشخّن في الأرض

"It is not for a Prophet to have captives of war until he made great slaughter in the world" [TMQ 8:67]

And:

عفا الله عنك لم أذنت لهم

"Allah forgive you! Why did you grant them permission?" [TMQ 9:43].

All this is clear that the role of leading Muslims in the rule was different from the role of Prophethood. From this it becomes clear that the Khilafah, which is the general leadership over all Muslims in the world, is a human post not a divine one. Since it is a role which the Messenger (saw) used to be in charge of and he left it while obliging that a Muslim should take it over for him so that he takes the place of the Messenger of Allah (saw) and be his Khalifah in ruling but not in Prophethood. It is a Khilafah to the Messenger in leading the Muslims to implement the Islamic rules and conveying the message not in receiving revelation or taking a *Shari'ah* from Allah.

As for the Messenger (saw)'s infallibility, it comes from his being a Prophet not from his being a ruler. This is because infallibility is an obligatory attribute for all Prophets and Messengers, irrespective of whether they themselves were the ones to rule over people by their *Shari'ah* and implement it or whether they were merely restricted to conveying it without ruling with it or implementing it. Our master Musa (as), our master Isa (as) and our master Ibrahim (as) were infallible just like our master Muhammad (saw) was infallible as the infallibility is for Prophethood and the Message not the rule. As for his (saw) not doing any *haram* action during his undertaking the burden of ruling nor leaving any obligatory action, this came from his being infallible in relation to Prophethood and the Message not in relation to his being a ruler. So his (saw) undertaking the rule did not require his being characterised with infallibility, but practically he was infallible due to his being a Prophet and Messenger. Accordingly, he would undertake the rule in his description as a human being ruling over human beings. The Qur'an has come explicitly stating that he is a human being. Allah (swt) said:

قل إنما أنا بشر مثلكم

"Say: Verily I am only a human similar to you" [TMQ 18:110]

Then it clarified distinguishing him from the rest of humanity (by saying):

يوحى إليّ

"It has been revealed to me" [TMQ 6:50].

The distinction from the rest of humanity is that he is revealed to i.e. in the Prophethood. Apart from that he is a human like the rest of mankind. So he is in the rule a human like other people so whoever becomes Khalifah after him would doubtless be a human being like the rest of the people since he is his Khalifah in the rule not in Prophethood or the Message. Therefore infallibility is not a condition for it since it is not one of the matters which require infallibility which is only required for Prophethood. He is a ruler, nothing else, so there is no place for requiring infallibility for those who are in charge of it. In fact, it is not allowed to require infallibility for the one undertaking it as infallibility is restricted to Prophets and it is not allowed for other than Prophets as its existence for the Prophet and Messenger (saw) is required for conveyance. So it is infallibility in conveyance and its acquirement in never performing a *haram* naturally follows the infallibility in conveyance as the infallibility in the latter cannot be complete save with the infallibility from performing *haram*. The matter which requires it is the conveyance,

not the people's belief or non-belief or the error in actions or its absence; rather the matter requiring it is the conveyance of the message, nothing else. This is because were he not made infallible from Allah (swt), it would be possible for him to conceal the message, add to or reduce in it, lie against Allah (by saying) what He had not said or made a mistake and convey other than what he had been commanded to convey. All this is negated in a message from Allah (swt) and negated in his being a Messenger who must be believed. Therefore it is inevitable that the Messenger be characterised with infallibility in conveying the message, so the infallibility from committing *haram* naturally comes due to this. Due to this, the scholars differed in respect to the infallibility of Prophets from committing *haram*; some said he is infallible from committing the greater sins (*kabair*) only and the small sins (*saghair*) are acceptable from him, while some said he is infallible from committing both greater and smaller sins. They said this according to whether the actions are consequent upon the completion of the conveyance or not. If the fulfilment of the conveyance is consequent upon them, then the infallibility in conveyance covers them such that the Prophet becomes infallible from (committing) them as the conveyance is not completed save with his being infallible from them. Whereas if the completion in conveyance is not consequent upon them, then the infallibility does not cover them so he is not infallible from them as the conveyance is accomplished without it. Accordingly there is no difference among the Muslims that the Messenger (saw) is not infallible in committing actions which are contrary to what is better, as the conveyance of the message is not dependant upon them. Thus the infallibility is specific to conveyance and therefore it does not exist except for Prophets and Messengers nor is it possible in anyone other than them.

Verily the evidence for infallibility is rational not textual as there has not come any *Shari'ah* texts, whether a clear text in the Qur'an or Hadith, upon the existence of infallibility for anyone whether the Prophets, the Messengers or others. As for Allah's statement:

إِنَّمَا يَرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا

"Verily, Allah only intends to remove filth (*rijs*) from you, the family of the house, and purify you completely"
[TMQ 33:33],

Its meaning is that He intends to remove from you any doubt and accusation. This *ayah* is a piece among three *ayat*. Allah (swt) said:

يَا نِسَاءَ النَّبِيِّ لَسْتُنَّ كَأَحَدٍ مِنَ النِّسَاءِ إِنِ اتَّقَيْتُنَّ فَلَا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ وَقُلْنَ قَوْلًا مَعْرُوفًا .
وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى وَأَقِمْنَ الصَّلَاةَ وَآتِينَ الزَّكَاةَ وَأَطِعْنَ اللَّهَ وَرَسُولَهُ إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ
عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا وَادْكُرْنَ مَا يُتْلَى فِي بُيُوتِكُنَّ مِنْ آيَاتِ اللَّهِ وَالْحِكْمَةِ إِنَّ اللَّهَ كَانَ لَطِيفًا
خَبِيرًا

"O wives of the Prophet, you are not like any other woman. If you fear (Allah) then be not too complaisant of speech lest one in whose heart is a disease should be moved with desire but speak a speech (that is) just. And stay quietly in your houses and make not a dazzling display like that of the former times of ignorance, and establish prayer and give the *zakat* and obey Allah and His Messenger. Verily Allah only wishes to remove filth from you, O family of the house, and purify you completely. And remember what is recited in your homes of the signs of Allah and the Wisdom. Verily Allah is Courteous, All-Knowing" [TMQ 33:32-34].

There is no relationship between this *ayah* and infallibility in any way whatsoever. It is not possible to understand from His statement "to remove filth from you" i.e. to make you infallible. Rather the removing of filth is the removing of all dirt and the meaning here is metaphorical filth i.e. doubt and suspicion as is explicitly clear in the sentences before this sentence in the two *ayat*. The purification here is cleansing from doubt and suspicion because the meaning(s) of the word

filth is material filth, metaphorical filth and even punishment as it has come in the Qur'an with these meanings. Allah (swt) said:

فاجتنبوا الرجس من الأوثان

"Avoid the filth of the idols"

[TMQ 22:30]

And:

كذلك يجعل الله الرجس على الذين لا يؤمنون

"Similarly does Allah ordain the filth upon those who do not believe" [TMQ 6:125].

In these two *ayat*, filth is metaphorical filth. And Allah (swt) said:

فاجتنبوا الرجس من الأوثان

"Or the meat of pig for verily it is filth"

[TMQ 22:30]

i.e. ritual impurity meaning physical filth. And Allah (swt) said:

كذلك يجعل الله الرجس على الذين لا يؤمنون

"Thus Allah puts the wrath on those who believe not"

[TMQ 6:125].

So His statement in the *ayah* "to remove the filth from you" means to remove metaphorical filth i.e. suspicion. As for His saying: "And purify you completely" verily the word *yutabirukum* (to purify you) and the word purification never came with the meaning of infallibility, neither in the language, Qur'an or the Hadith. In the language, to purify (*tabara*) something purification (*tabeera*) means to remove impurity from it, and the woman is pure (*tabira*) from menstruation and (*tabira*) from impurity and defects, and (*tabara*) in the *Shar'a* is removing the (*badath*). He (saw) said:

لا يقبل الله صلاةً بغير طهور

"Allah does not accept prayer without purity (tuhur)"

And it has come in the Qur'an with this meaning. Allah (swt) said:

وثيابك فطهر

"And purify your garment"

[TMQ 74:4]

And:

ماءً لِيُطَهِّرَكُمْ بِهِ

"Water so that you may be purified by it"

[TMQ 8:11]

And:

ولا تَقْرُبُوهُمْ حَتَّى يَطْهَرُوا

Do not approach them until they purify themselves

[TMQ 2:222]

With the meaning here being purity from ritual impurity and menstruation. Allah (swt) said:

اصطفاك وطهرك

"Chose you and purified you"

[TMQ 3:42]

i.e. from faults and also:

وإن كنتم جُنُباً فاطَّهروا

"And if you are (*junub*) then purify yourselves"

[TMQ 5:6]

I.e from the impurity. The purification of the believers also came when Allah (swt) said:

ما يريد الله ليجعل يعكلم من حرج ولكن يريد ليظهركم ولي تَمَّ نِعْمَتَهُ عَلَيْكُمْ

"Allah does not wish to make difficulty (*haraj*) for you but rather He wishes to purify you and complete His blessing upon you"

[TMQ 5:6].

All these texts specify that the meaning of the *ayah* is that Allah (swt) cleansed them from doubt and suspicion, and negates that its meaning is infallibility hence the *ayah* does not indicate infallibility.

Therefore there is no textual evidence for the existence of infallibility for anyone; there is only rational proof for it. The mind is what compels that there be infallibility in conveyance for the Prophet and Messenger as his being a Prophet and Messenger requires that he be infallible otherwise he cannot be a Prophet or Messenger. The mind is the one which compels that one not given the responsibility to convey a message from Allah (swt) is not allowed to be infallible as he is a human being, and his nature (*fitra*) with which Allah (swt) created him is that error and forgetfulness occur in him. And as long as he is not given responsibility with a message from Allah (swt), this means there is nothing which requires that he be infallible. If it is claimed that he is infallible, then this means that he is responsible with a message from Allah which is not permitted since there is no Prophet after Muhammad, the Messenger of Allah (saw). Allah (swt) said:

ولكن رسول الله وخاتم النبيين

"But he is the Messenger of Allah and seal of the Prophets"

[TMQ 33:40].

Claiming infallibility means claiming Messengership since the Messenger is a conveyor from Allah, and there is within him due to his attributes as a human being the potential of error and misguidance in conveying from Allah, protecting the message of Allah from error and change in the conveyance requires that the Messenger be infallible from error and misguidance. For this reason alone, infallibility is an attribute of the Messenger and it alone requires infallibility. If it is claimed for anyone other than him while being known that the only matter requiring it is conveying the message from Allah then it is equivalent to claiming for this other person what requires infallibility and its cause i.e. conveying the message. Thus it would be claiming that he is responsible to convey a message from Allah (swt). Therefore it is not allowed to require infallibility for the Khalifah as requiring it means that he is responsible to convey a message from Allah (swt) thus requiring him to be infallible, and this is not permitted.

This makes it clear that the Khalifah is a human being who can make a mistake or be correct, and it is allowed to occur from him what occurs from any human being of neglect and forgetfulness, falsehood, treachery, sins as he is a human being and not a Prophet or Messenger. The Messenger (saw) informed that it is possible for the *Imam* to err, and he informed that it may occur from him what may cause people the hate him and curse him due to injustice, sins etc. He even informed that clear disbelief may occur from him. Muslim narrated: Zuhayr bin Harb related to me that Shababa related to us that Warqa related to me from Aby Zayyad from Al-'Araj from Abu Hurayray from the Prophet (saw) who said:

إِنَّمَا الْإِمَامُ جِدَّةٌ يُقَاتَلُ مِنْ وَرَائِهِ وَيُتَّقَى بِهِ، فَإِنْ أَمَرَ بِتَقْوَى اللَّهِ عَزَّ وَجَلَّ وَعَلَّلَ كَانُ لَهُ بِذَلِكَ أَجْرٌ، وَإِنْ يَأْمُرُ بِغَيْرِهِ كَانُ عَلَيْهِ مِنْهُ

“Verily the *Imam* is a shield from behind whom they fight and by whom they are protected. If he commanded with the fear (taqwa) of Allah ‘azza wa jalla and does justice then there is reward for that for him. If he commands with other than that, then there is the same against him.”

This means that the *Imam* is not infallible and it is possible for him to command other than the fear of Allah. Muslim also narrated: Uthman bin Abi Sheeba related to us that Jareer related to us from Al-‘Amash from Zayd bin Wahhab from Abdullah who said: The Messenger of Allah (saw) said:

إِنَّمَا سَتَكُونُ بَعْدِي أُمَّرَةٌ وَأُمُورٌ تُنْكِرُونَهَا. قَالُوا: يَا رَسُولَ اللَّهِ كَيْفَ تَأْمُرُ مَنْ أَدْرَكَ مِنْكَ ذَلِكَ؟ قَالَ: تَوَدُّونَ الْحَقَّ الَّذِي عَلَيْكُمْ وَتَسْأَلُونَ اللَّهَ الَّذِي لَكُمْ

“Verily there will be after me some improper preferences and matters which you will reject. They said: O Messenger of Allah, what would you command anyone of us when that reaches him? He said: Fulfill the rights due from you and ask Allah (for) what is due to you.”

Muslim narrated: Ishaq bin Ibrahim Al-Handhalee related to us that Isa bin Yunus informed us that Al-Awza’i related to us from Zayd bin Yazid bin Jabir from Zareeq bin Hayyan from Muslim bin Qurta from ‘Awf bin Malik from the Messenger of Allah (saw) who said:

خِيَارُ أُمَّتِكُمُ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ وَيُصَلُّونَ عَلَيْكُمْ وَتُصَلُّونَ عَلَيْهِمْ، وَشَرَّارُ أُمَّتِكُمُ الَّذِينَ تَبْغُضُونَهُمْ وَيَبْغُضُونَكُمْ وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ. قِيلَ: يَا رَسُولَ اللَّهِ أَفَلَا نُنَابِذُهُمُ بِالسَّيْفِ؟ قَالَ: لَا، مَا أَقَامُوا فِيكُمْ الصَّلَاةَ. وَإِذَا رَأَيْتُمْ مِنْ وَلَا تَكُمُ شَيْئاً تَكْرَهُونَهُ فَارْهَبُوا عَمَلَهُ وَلَا تَنْزِعُوا يَدَاكُمْ مِنْ طَاعَةٍ

“The best of your rulers are those whom you love and who love you, who invoke God's blessings upon you and you invoke His blessings upon them. And the worst of your rulers are those whom you hate and who hate you and whom you curse and who curse you. It was asked (by those present): Shouldn't we overthrow them with the help of the sword? He said: No, as long as they establish prayer among you. If you then find anything detestable in them. You should hate their administration, but do not withdraw yourselves from their obedience.”

Al-Bukhari narrated: “Ismail related to us that Bin Wahhab related to me from Amru from Bukayr from Busr bin Said from Junada bin Abu Umayyah who said: We entered to ‘Ubadah bin As-Samit who was ill and we said: May Allah improve you. Relate to us a hadith which you heard from the Prophet by which Allah will help you. He said:

دَعَا نَبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَبَايَعَنَاهُ، فَقَالَ فِيمَا أَخَذَ عَلَيْنَا أَنْ بَايَعَنَا عَلَى السَّمْعِ وَالطَّاعَةِ فِي مَنْشَطِنَا وَمَكْرَهِنَا وَعَسَلَرَنُوبِيسِرِنَا وَأَثَرَةَ عَلَيْنَا وَأَنْ لَا نَنَازِعَ الْأَمْرَ أَهْلَهُ إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بَرَهَانٌ

“The Prophet (saw) called us so we gave him a pledge. So he said in what we took from us that we pledged him to hear and obey in what attracts us and what we hate, in hardship and ease, and when others are preferred over us and that we do not dispute the rule with those in authority (He said): Unless you see clear disbelief (*kufr bawab*) upon which you have from Allah a clear proof (sultan).”

And from Aisha who said: “The Messenger of Allah (saw) said:

ادرعوا الحدود عن المسلمين ما استطعتم، فإن كان له مخرج فخلوا سبيله، فإن الإمام أن يخطئ في العفو خير من أن يخطئ في العقوبة

" Avert the legal penalties from the Muslims as much as possible, if he has a way out then leave him to his way, for if the *Imam* makes a mistake in forgiving it would be better than making mistake in punishment."

Tirmidhi narrated this hadith which is clear that the *Imam* can err, forget and sin. Despite that, the Messenger (saw) commanded to continue obeying him as long as he rules by Islam and clear disbelief has not occurred from him and he has not commanded with sin. After the news of the Messenger (saw) about the *Khulafaa* that there will be some which the Muslims will dislike yet he commanded obedience, is there after that any possibility of saying that the Khalifah must be infallible and that it is not permitted from him what is permitted from human beings?

This is from the reality of the Khalifah in relation to the absence of the condition of infallibility, rather even the absence of permission to even make it a condition. However, those who said it is required that the Khalifah be infallible have presented evidences for their view, so we must examine and clarify what is within them. These evidences are summarised in four evidences:

1. The *Imam* stands in the position of the Messenger in preserving the *Shari'ah*, conveying and teaching it, supervising the citizens' affairs, establishing justice among them, assisting the oppressed, establishing the mandatory Islamic punishments (*budood*) and discretionary punishments (*ta'zeer*) and implementing Islam in the *Shari'ah* way. Therefore it is inevitable that he be infallible and pure from all evil, large or small, whether they occurred deliberately or through forgetfulness, from the beginning of his life to the end.
2. If sin is possible from the *Imam*, it will require an infallible *Imam* to prevent him from committing sins and erring. And if it is permitted for the second to err and perform sins, then it would require another infallible *Imam* to prevent this from him, and it would continue in this manner until the matter ends with an infallible *Imam* against whom it is not possible to commit sins or errors. Therefore there must be an infallible *Imam*.
3. The *Imam* is a divine post to protect the *Shari'ah* rule revealed with the objective to be followed and acted upon, not a rule of the people. Nor is the *Shari'ah* a law and constitution among the (normal) constitutions of government possible to be played with. So the Lord of the people whose matter is glorified would not entrust a ruler over the people except one who is infallible such that the people are at ease with him and the rules from him upon their truly being the rules of Allah (swt) without any doubt entering into it which would prevent acting upon or following them. This is not possible except with the infallibility of the ruler supervising the *Shari'ah's* preservation as the fallible person due to the possibility of sin and error upon him cannot be depended upon nor can one be definite that what he leads the people to is the rule of Allah (swt) in that which is indefinite before the people. The objective is not his establishment to preserve some of the rules (while) not (preserving) other (rules), but rather all that came from the Prophet (saw) Thus there must be someone who knows all the rules and a protector for all of them to act according to them as long as there is a world; were there to be appointed one who knew (only) some of the rules, or upon whom sin and error is possible, his appointment would be contrary to the objective of responsibility i.e. obedience to and acting upon all that the *Shari'ah* came with which is known to remain until the Day of Judgement. Since contradiction of the objective is impossible from the All-Wise (swt), then appointing one who is fallible or knowing only some of the rules is impossible.
4. The texts came indicating the obligation that the Khalifah be infallible.

There are Qur'anic *ayat* which came announcing this which is clear from three *ayat*.

a) Allah (swt) says:

لا ينال عهدي الظالمين

"My promise does not include the oppressors" [TMQ 2:124]

The statement from Allah (swt) is an evidence upon the obligation of an infallible *Imam* who is a protector of *Shari'ah*. This *ayah* is in Surah Al-Baqarah. Allah (swt) said:

وَإِذْ بَدَأْنَا لِمَىٰ إِبْرَاهِيمَ رَبِّهِ بِكَلِمَاتٍ فَأَتَمَّهُنَّ قَالَ إِنِّي جَاعِلُكَ لِلنَّاسِ إِمَامًا قَالَ وَمِنْ ذُرِّيَّتِي قَالَ لَا يَنَالُ عَهْدِي الظَّالِمِينَ

"And when Ibrahim was tested by his Lord with certain words which he fulfilled. He said: I will make you an Imam for the people. He said: And of my offspring? He said: My promise will not reach the oppressors" [TMQ 2:124].

The words making him are those making him an *Imam* as the *ayah* coming after this *ayah* give sense to. When Ibrahim heard Allah's statement:

إِنِّي جَاعِلُكَ لِلنَّاسِ إِمَامًا

"Verily I will make you an Imam for the people" [TMQ 2:124]

And saw the greatness of this honourable post; he hoped that his descendants would have a share of it. So Allah (swt) said:

لا ينال عهدي الظالمين

"My promise does not reach the oppressors" [TMQ 2:124].

Its meaning is that this post will not be given to someone who is blemished or will become stained with injustice, which is more general than whether this one is unjust to his own soul or someone else even if only for a short time in his life. Rather it is given to someone who does not do any injustice in his life.

b) Allah (swt) said:

أَفَمَنْ يَهْدِي إِلَى الْحَقِّ أَحَقُّ أَنْ يُتَّبَعَ أَمْ مَنْ لَا يَهْدِي إِلَّا أَنْ يُهْدَىٰ

"Is the one guided to the Truth of more right to be followed or the one who does not guide unless he is guided?" [TMQ 10:35].

This is an evidence for the obligation of the infallibility of the *Imam* as he guides to the truth, and the one from whom an error is possible does not guide to it though it may happen that he achieves the truth.

c) Allah (swt) said:

أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

"Obey Allah and obey the Messenger and those in authority among you"

[TMQ 4:59].

This *ayah* is an evidence for the infallibility of those in authority i.e. infallibility of the *Imam*, because Allah (swt) commanded the obedience of those in authority in an unrestricted manner without specifying the obedience for a specific or period. This requires that the obeyed one is infallible as a fallible one can command with sin and error. If his obedience was obliged while this is (his) situation though it is forbidden, this obliges that the Lord whose matter is glorified

has commanded to combine two opposites or contradictory matters which is impossible. The obeyed one must be infallible. Also, Allah (swt) linked obedience to those in authority with obedience to the Messenger (saw) whose obedience is linked to His (swt) obedience which requires exaltation. Those meant in authority here are the infallible *Imams*.

These are the evidences of those who say that it is a condition that the *Imam* be infallible. The response to each one of this is summarised in the following:

Firstly: The Khalifah takes the place of the Messenger in rule by implementing the *Shari'ah* not conveying it from Allah (swt); he is his (saw) Khalifah in rule not in conveying from Allah (swt). This does not require from him that he be infallible as the office of rule does not require infallibility, whether rationally or by *Shari'ah*. True, there are some attributes required for the Khalifah which are: Islam, being a man, being free (not a slave), maturity (i.e. having attained puberty), sanity, uprightness and ability. Each one of these attributes has been required based upon evidence(s) the *Shari'ah* came with. However, requiring these conditions does not mean that the Khalifah is infallible from contradicting them; rather they mean that the one who is in charge of this post is obliged to have these attributes when he is appointed to it not that he is infallible from losing them. It is possible for him to lose them upon which either he deserves removal or he leaves the Khalifah (i.e. he no longer remains the Khalifah). Requiring these attributes from the Khalifah is like requiring justice from the witness in relation to his description with it in order to accept his testimony; this does not mean requiring him to be infallible from contradicting it. Therefore the Khalifah's standing in the Prophet's place in rule is not evidence that he must be infallible. As for conveying the *Shari'ah* by the Muslims, it is not conveying it from Allah (swt). Rather it is performing what Allah (swt) demanded from the Muslims to carry the *da'wah* to mankind, to teach them the thoughts of Islam and its laws and it cannot ever mean anything other than that. It is not conveyance from Allah (swt); rather it is one of the responsibilities which the Messenger (saw) came with and it is not like the conveyance of the Messenger (saw) from Allah (swt). Therefore it does not require infallibility; performing it is like performing the other *Shari'ah* responsibilities. It is not obliged upon the Khalifah in his capacity as Khalifah; rather it is obligatory upon every Muslim who knows the *Shari'ah*. The Khalifah is commanded to convey the *Shari'ah* in his capacity as a Muslim; this is in his capacity as a scholar if he is one, as conveying is obligatory upon the Muslim knowledgeable in the *Shari'ah* in what he knows. Infallibility is not obligatory upon the conveyors nor is it a condition for them. As for carrying the Islamic *da'wah* obliged upon the Khalifah in his capacity as Khalifah, this is obliged upon him in his capacity as a ruler in whose hands is the authority. It is obliged upon him to carry it via a specific method i.e. *jihad*, which does not require infallibility. Rather there is no place for requiring it.

Secondly: The Khalifah does not, when he sins require an *Imam* to prevent him from committing sins, rather he requires an Ummah that will account him and change it or him. The Messenger (saw) clarified that the Ummah will account him and requested it to reject (any *munkar*) from him; he made the one who is pleased with him and follows him upon his sin responsible before Allah. Muslim narrated: Both Abu Ghassan Al-Masma'iy and Muhammad bin Bishar from Mu'adh (with the words being from Abu Ghassan) who related to us (i.e. bin Hisham Al-Dastawai) that my father related to me from Qatadah that Al-Hassan related to us from Dhubbah bin Mahsin Al-'Anziyy from Umm Salamah, wife of the Prophet (saw), from the Prophet (saw) who said:

إنه يستعمل عليكم أمراء فتعرفون وتنكرون، فمن كره فقد برئ، ومن أنكروا فقد سلم، ولكن من رضي وتابع.

قالوا: يا رسول الله، ألا نقاتلهم؟ قال: لا، ما صلوا

“Verily there will be appointed rulers over you. You will recognise (some of what they do) and deny (some of what they do). Whoever dislikes (the munkar from them) will be guiltless, and whoever denies it will be safe; but whoever is pleased and follows (will not be guiltless or safe). They said: O Messenger of Allah, should we not fight them? He said: No, not as long as they prayed.”

Through this the *Sbar'a* clarified the method to prevent the Khalifah from committing sins. It is not via the existence of an *Imam* who prevents him but rather the Ummah does that. The one who says that the Khalifah requires another Khalifah to prevent him from committing sins does not understand what ruling means and he does not have a vision of it because the Khalifah does not prevent another Khalifah but rather he fights him over for the rule. Or he follows him, thereby becoming a governor or *Wali* not the Khalifah, or he fights him for rebellion. So how can one imagine that a Khalifah prevents another Khalifah from committing sins?

Thirdly: The *Imamah* is not a divine post but a human one. It does not exist to protect the *Shari'ah* rule but rather to implement the *Shari'ah* which Allah (swt) revealed to our master Muhammad (saw). As for the protection of the *Shari'ah*, verily Allah (swt) guarantees to protect it when He (swt) guarantees to protect the Qur'an. Allah (swt) said:

إنا نحن نزلنا الذكر وإنا له لحافظون

"Verily We revealed the Remembrance and We will be its protector" [TMQ 15:9].

The objective in establishing the Khalifah is not that he is appointed to protect all that the Prophet (saw) came with such that it is said that it is obligatory for him to know all the rules and be a protector for all of them. Rather the objective in establishing him is to establish the rules of the Book and Sunnah i.e. to implement Islam and carry its *da'wah* to the world which does not require from him to know all the rules and protect all of them. Therefore it is not required for him to be infallible so accordingly appointing him does not necessarily mean contradicting the objective for which he was appointed. As for the people's trust in him such that they take all rules from him as the rules of Allah (swt) in reality without any doubt which prevents acting upon and following them, this does not come from the Khalifah being infallible or fallible. Rather it comes from the evidence of the rule itself; if it is a *Shari'ah* evidence and has been deduced by a *Shari'ah* deduction, the people will trust that this rule is a *Shari'ah* rule and no doubt will enter into them in this situation preventing them from acting upon and following it without looking to who the Khalifah is, even if he himself differs from the rule they deduced. This is because a difference of opinion in deduction does not make a rule legitimate before a mujtahid and illegitimate before another. Rather it is a *Shari'ah* rule before all Muslims as long as there is (even) obscure evidence (*shubha daleel*) from the *Shari'ah* evidence before the deducer of the rule and it is possible according to the linguistic and *Shari'ah* knowledge's that one can deduce this type of deduction. As for his being fallible due to the possibility of sin and error upon him leading to lack of trust in him, and that one is not definite that what he leads to is the law of Allah (swt), the issue here is one of the rule and the ruler i.e. the rule he rules by and arrives at and the ruler who rules and arrives at. The trust sought is not whether the ruler arrives at Allah's (swt) law or whether he rules by it or not. The consideration is only in the rule which he rules by and adopts in relation to it being an Islamic law or not. It is not in relation to the person who gives it as to whether he is infallible or not. That which makes the people implicitly trust the rule so as to prevent doubt entering into it which would prevent them from acting upon or following it is their consideration of the rule itself as to whether it is legitimate or not. It does not depend on whether the Khalifah from whom they take the rule is infallible or not.

Moreover as for the post of the Khalifah, the Lord of the Worlds does not appoint a Khalifah for His Messenger nor does the Messenger appoint a Khalifah for himself. Rather, the Muslims appoint a Khalifah over themselves whom they pledge upon the Book of Allah and the Sunnah

of His Messenger (saw). The evidence for this is the *ahadith* of the pledge, and their coming in general texts and their ascription to an unrestricted *Imam* not a specific one. Similarly the evidence for that are the general responsibilities upon the Khalifah in his relation with the Ummah. Therefore the post of Khalifah does not require infallibility in any way whatsoever.

Fourthly: As for the texts which came as evidence for the requirement of infallibility, there does not exist in them even one text which is related to infallibility. As for the first evidence which is the *ayah*:

لا ينال عهدي الظالمين

"My promise does not cover the oppressors" [TMQ 2:124],

The word *Imam* therein does not mean the Khilafah or the rule. The word *Imam* came in the Glorious Qur'an in many *ayat*. Allah (swt) said:

ومن قبله كتاب موسى إماماً ورحمة

"And before him the book of Musa (as an) *Imam* and mercy" [TMQ 11:17]

And:

والذين يقولون ربنا هب لنا من أزواجنا وذرياتنا قرّة أعين واجعلنا للمتقين إماماً

"And those who say: O our Lord, grant for us from our wives and our offspring the comfort of our eyes and make us *Imams* for the pious" [TMQ 25:74].

The meaning of the word *Imam* in these two *ayat* is a guide. *Imam* Al-Bukhari said: "The statement of Allah (swt):

واجعلنا للمتقين إماماً

"And make us *Imams* for the pious" [TMQ 25:74].

He said: Leaders who follow those before us and are followed by those after us." The word *Imam* in Allah's statement:

وإذ ابتلى إبراهيم ربه بكلمات فأتمهن قال إني جاعلك للناس إماماً قال ومن ذريتي قال لا ينال عهدي الظالمين

"And when Ibrahim was tested by his Lord with some words which he fulfilled. He said: I make you an *Imam* for the people. He said: And my descendants? He said: My promise does not cover the oppressors" [TMQ 2:124].

The meaning here is Prophethood and example as the *ayat* which are after it discuss about the *Ka'abah*, the people of Ismail then the granting of Prophethood to Ibrahim so the meaning becomes: We made you an *Imam* whom the people imitate and a Prophet whom people follow. It is not possible that the word *Imam* here means the Khilafah or rule, especially since Ibrahim was never in charge of the rule nor was he a ruler but was a Prophet and Messenger. So Allah (swt) said to him that this post which is the example and Prophethood is not for oppressors when he requested from Him (swt) to ordain for his descendants what He ordained for him. So there is no evidence in the *ayah* for the infallibility of the Khalifah. Moreover, the opposite meaning for the word oppressors is trustworthy not infallible persons. So those who are not oppressors does not mean that they are infallible; rather it means those who are characterised with the absence of oppression which is justice. As for the second text which is the *ayah*:

أفمن يهدي إلى الحق

"Is the one guided to the Truth"

[TMQ 10:35],

Its meaning and Allah (swt) knows best is: Is the one who is following the guidance i.e. the Messenger (swt) more worthy to be followed or the one who is misguided nor does he guide except if another guides him. The whole subject is guidance and following the guide, and it has no relationship with the rule or Khilafah. The *Imam* rules the people and his duty is ruling not guidance; he punishes the misguided and disobedient persons, and fights the disbelievers. The word guide is not used here except for the Messenger. The meaning does not apply upon the Khalifah, and there is no relationship between this *ayah* and Khalifah's infallibility. Is the rule guidance or the implementation of the *Shari'ah*?

As for the third text which is the *ayah*:

أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم

"Obey Allah and obey the Messenger and those in authority among you"

[TMQ 4:59],

It is the command to obey those in authority, and linking this with obedience to Allah (swt) and obedience to the Messenger (saw). It is evidence that its rule is like the rule of obeying Him (swt) and obeying the Messenger (saw), nothing else. It came in practice generally within the *ayah*; it is, however, specified by other *ayat* and numerous *ahadith*. It was specified by those *ayat* and *ahadith* related to obedience in other than sin and other than disbelief; and it did not stop there but rather commanded fighting the *Imam*. The specifying *ayat* and *ahadith* are explicit upon this. Allah (swt) said:

ولا تُطع من أغفلنا قلبه عن ذكرنا

"Do not obey the one whose heart we have made forget our remembrance"

[TMQ 18:28]

And:

فلا تطع الكافرين

"Do not obey the disbelievers"

[TMQ 25:52]

And:

فلا تُطع المكذبين

"Do not obey the liars"

[TMQ 68:8]

And:

ولا تُطع كل حلاف مهين

"Do not obey each despicable swearer"

[TMQ 68:10]

And:

ولا تُطع منهم آثماً أو كفوراً

"Do not obey among them the sinful or the disbeliever"

[TMQ 76:24].

The speech to the Messenger (saw) is the speech to his Ummah as long as there came no evidence that it is specific for him and among his specificities; no evidence came here that it is

specific for him so it is a speech to his Ummah. Al-Bukhari narrated from Nafi' from Abdullah (ra) from the Prophet (saw) who said:

السمع والطاعة على المرء المسلم فيما أحبَّ وكره ما لم يؤمر بمعصية، فإذا أمر بمعصية فلا سمع ولا طاعة

“To hear and to obey is obligatory upon the Muslim person in what he likes and dislikes except if he is commanded with a sin. If he is commanded with a sin, there is no hearing or obedience.”

And he (saw) said in the matter of obeying the Khalifahs and leaders according to what Muslim narrated:

قالوا: أفلا نقاتلهم؟ قال: لا، ما صلوا

“They said: Should we not fight them? He said: Not as long as they prayed.”

He also narrated:

قيل: يا رسول الله أفلا ننايذهم بالسيف؟ فقال: لا، ما أقاموا فيكم الصلاة

“It was said: O Messenger of Allah, should we not confront them with the sword? He said: Not as long as they establish the prayer over you?” and: “...except if you see clear disbelief.”

And Al-Bukhari and Muslim narrated:

فمن كره فقد برئ ومن أنكر فقد سلم ولكن من ضي وتابع

“Whoever dislikes (then he) is guiltless and whoever rejects (then he) is safe, but whoever follows (is neither guiltless nor safe)”

(Reported by Muslim)

These *ayat* and *abadith* specify the obedience to the Khalifah for other than sin or disbelief. Therefore the statement does not come that the fallible can command with sin and error such that if his obedience is obliged this would necessarily mean that Allah (swt) has commanded the joining between two contradictory matters by commanding obedience to the Khalifah and prohibiting sins. This statement does not come because there does not exist the joining between two contradictory matters as He commands obedience in other than sin and disbelief, commands with non-obedience in sin and disbelief, and commands the prohibition of sins. So there is no contradiction in His commands (swt) in this issue. This clarifies that this *ayah* is not suitable as evidence upon the requirement of infallibility so such deduction by it fails.

These are the evidences of those stating (the requirement) of infallibility. Each one of them has fallen from the rank of deduction and is not suitable as proof. Therefore from this it is clarified that it is not required from the Khalifah that he be infallible rather it is not allowed to entail this and that the Khalifah is a human post not a divine one. Thus the Islamic State is a human state and not a Theocratic state.

Deposing or Removal of the Khalifah

A Khalifah is deposed immediately if his personal situation has changed in a way that necessitates his removal; alternatively the Khalifah must be deposed in certain situations where he is not allowed legally to continue as a Khalifah. The difference between the two situations is that in the first case which removes him from the position of Khalifah, allegiance to him is not obligatory the moment the incident has occurred. But in the second case in which he necessarily has to be deposed, obedience to him remains obligatory until his deposition is completed. There are three matters which effectively change his situation and would remove him from the position of Khalifah according to the first criteria above:

Firstly: If he left Islam and insisted on apostasy.

Secondly: If he became totally insane and did not regain his sanity.

Thirdly: If he became captive in the hands of an overpowering enemy, and he cannot escape from them and his rescue from captivity is impossible.

In these three cases he is removed as Khalifah and is deposed at once, even if no decision was announced to depose him. So his obedience is not obligatory, and his orders are not executed by those who have evidence of the presence of any one of the above cases. But it must be proved that any of these cases did occur to him, and this proof should be in front of the *madhalim* court, which decides to remove the Khalifah and judges on his deposition so that the Muslims can appoint another Khalifah.

What changes his situation in a way that does not immediately remove him from the Khilafah, but he cannot remain as a Khalifah, are five matters:

Firstly: His justice was challenged, by becoming openly *fasiq*.

Secondly: He changes to a female or became bisexual.

Thirdly: He becomes insane, but not entirely, so he regains his sanity sometimes and madness at other times. In this case no guardian or deputy can be appointed for him, because the contract of the Khilafah falls to him personally, and it is not allowed, in this case, for another person to act as a deputy to him.

Fourthly: Incompetence to accomplish the duties of the Khilafah for any reason, whether due to loss of a part of his body, or an incurable disease that prevents him from performing the deeds. The crucial point is that due to his incompetence to perform the deeds as a Khalifah, the affairs of the *deen* and the interests of the Muslims are neglected. This is a *munkar* that must be removed, and it cannot be removed except by disposing the Khalifah in order to facilitate establishing a Khalifah other than him. So deposing him in this case becomes a *wajib*.

Fifthly: Overpowering that renders him incompetent to run the affairs of Muslims by his opinion according to *Shari'ah*. If an overpowering force subjected him to the extent that he became unable to run the affairs of the Muslims by his own opinion according to the rules of *Shari'ah*, then he becomes legally incompetent to carry out the duties of the Khilafah, so he must be deposed. This matter could be conceived in two cases.

First case: One or more members of his court overpowered or controlled him, so they go forth to execute the affairs and overpower him. They proceed by their opinion, such that he becomes unable to disagree with them and is compelled to proceed according to their opinion. In this case, it is examined; if he is likely to save himself of their influence within a short period of time then he is given this short period to remove them and rid himself of them. If he did that, then the objection disappears and the incompetence is removed. Otherwise he must be deposed.

Second case: He falls into a situation similar to captivity. This is when he falls under the control of an enemy and under his influence, who directs him as he likes and deprives him of his will in running the affairs of Muslims. In this case, it is examined; if it is possible for him to free himself from their control within a short period of time, then he is given this short period. If it is possible to free him, and to salvage him from the enemy's control, then the objection disappears and the incompetence is removed. Otherwise he must be deposed.

In these five cases, the Khalifah must be deposed once any one of these occurs. However their occurrence needs a proof that has occurred and such proof should be before the court of *madhalim*. It judges the cancellation of the Khilafah contract and deposes the Khalifah, so he is deposed and Muslims contract the Khilafah for another person within three days.

The Leadership (Al-Imarah)

The *imarah* or *riyasah* or *qiyadah* have the same meaning, and *rais* and *qaid* and *Amir* have the same meaning. As for the Khilafah, it is the leadership of all Muslims in the world and it is from the leadership and is categorised under the leadership. The Khalifah is an *Amir* and is known as the *Amir* of the believers. The *imarah* is more general and the Khilafah is more specific, and both of them are *riyasah*. The word “Khilafah” is specific to a well-known position, and the word “*imarah*” is general for every *Amir*. The Muslims are commanded to appoint an *Amir* over them as they are commanded to appoint a Khalifah, because the *imarah* is from the types of rule which is the authority over the matter (*wilayah amr*) in what he is given authority over. The distinction between it and the Khilafah is that the Khilafah is general for all the Muslims in the world, so this is specific for who appointed him and in what he was given authority over. It does not exceed those who appointed him in the same way it does not exceed what he was given authority over. The *riyasah*, *qiyadah* and *imarah* are *hukm shari*; they are not styles. Muslims are restricted in it with the limits of what Allah (swt) commanded in it and what the *Shar'a* came with.

It is an obligation upon every group (*jama'ah*) of Muslims performing a collective matter to appoint an *Amir* over them. Whereas if the matter is specific to each individual without involving another matter, then it is not requested from them in this case to establish an *Amir* over them. The *imarah* is established over a group in a matter associated between them, so that there is for him the authority and for them a decisive word. The reality of the existence of a collective matter between any groups inevitably compels them to establish an *Amir* over them or else this matter will be cause of trouble between them and discord will result between them. As for the establishment of a leader for the group who performs a collective matter between them being obligatory upon Muslims, this is due to what Abdullah bin 'Amru narrated that the Prophet (saw) said:

لا يحل لثلاثة يكونون بغلاة من الأرض إلا أمروا عليهم أحدهم

“It is not allowed for three people who are in the open space except that they appoint one of them over them as Amir.”

And also due to what Abu Said narrated that the Messenger of Allah (saw) said:

إذا خرج ثلاثة في سفر فليؤمروا عليهم أحدهم

“When three people go out on a journey, let them appoint one of them as Amir.”

This is also due to what Al-Bazzar narrated via a correct chain that Umar bin Al-Khattab (ra) said:

إذا كنتم ثلاثة في سفر فأمروا أحداكم ذلك أمير أمره رسول الله صلى الله عليه وسلم

“If you are three on a voyage, then appoint one of you over you as Amir. That is the Amir whom the Messenger of Allah (saw) commanded”

Al-Bazzar also narrated from ibn Umar (ra) via a correct chain that the Messenger of Allah (saw) said:

إذا كانوا ثلاثة في سفر فليؤمروا أحدهم

“If they are three on a voyage, let them appoint one of them as Amir”

And the hadith of Abu Said al-Khudri (ra):

إذا خرج ثلاثة في سفر فليؤمروا أحدهم

“If three go out on a voyage, let them appoint one of them as Amir”

(narrated by Abu Dawud).

These *abadith* are explicit in that it is prescribed for any number reaching three and more to appoint one Amir over them, except that his statement(s) in the *abadith*: “in an open space” and “in a voyage” which indicates that they are gathered together in a collective matter between them in an open space or travelling in a voyage or the like in a collective matter which includes a party, an organisation, an expedition, army, tribe, city and region etc. So if this is prescribed for three who are in an open space in the land or are travelling, then its legitimacy for a greater number or a bigger job is of more precedence and more worthiness. The *abadith* are general for open space, on a voyage or any matter other than these two which is larger and greater than them as the conforming understanding indicates this. The principle of *usul* (roots of jurisprudence) is that the meaning of the speech (*fahwa al-khitab*) is acted upon. Thus if something is commanded or prohibited, the understanding of what he is commanded or prohibited with enters together with the stated text (*mantuq*) into what is commanded or prohibited. Nor is it restricted to merely what was stated, meaning that if a thing is commanded or prohibited then this command or prohibition includes what is greater or larger by precedence. Its example is the prohibition of abusing and beating of (one’s) parents from the indication of Allah’s statement:

ولا تَقُلْ لهما أُفٌّ

Do not say (*uff*) to either of them

[TMQ 17:23]

And the prohibition of destroying the orphans’ wealth from the indication of Allah’s statement:

إن الذين يأكلون أموال اليتامى ظلماً

Verily those who eat the orphans’ wealth unjustly

[TMQ 4:10].

And his returning what is less than the (*qintar*) or not paying what is more than a *dinar* from Allah’s statement:

ومن أهل الكتاب من إن تأمنه بقنطار يؤدّه إليك ومنهم من إن تأمنه بدينار لا يؤدّه إليك

And of the people of the Book is one who when entrusted with a (*qintar*) will return it to you, and among them is the one who when entrusted with a *dinar* will not return it to you [TMQ 3:75].

The Messenger (saw) commanded the appointment of one *Amir* in a voyage and open space. Accordingly, this command is based upon what is more dangerous, and important, than being present in open space, and it includes such matters by greater reason (*bab uwla*). This clear conforming understanding in the preceding *abadith* is strengthened by the practice of the Messenger (saw) who appointed an *Amir* in what was more dangerous than a voyage. He appointed a leader in the Hajj, in the battles and in the provinces of the State.

This is in respect to the obligation of establishing an *Amir* for every group in a place or common matter associated between them. As for this *Amir*, the *Shari’ah* has obliged that he be one and it not permitted to be more than one. Islam does not have collective leadership (*qiyadah*) or collective presidency (*riyasah*). Leadership in Islam is strictly singular so it is obliged for the *Rais* or *Amir* or *Qaid* to be one, and he is not allowed to be more than one. The evidence for this is clear from the text of the preceding *abadith* and the actions of the Messenger (saw). All the *abadith* state: “one of them”, “one of you” and the word (*abad*) is the word **one** (*wahid*) which indicates the number i.e. one and not more. This is understood from the contrary understanding (*mashum*

mukhalafah). The contrary understanding of the number, attribute (*sifat*) and objective is acted upon without a text; and the contrary understanding is not negated except in one situation which is where there comes a text annulling it like Allah's statement:

ولا تُكْرَهُوا فَتِيَاتِكُمْ عَلَى الْبِغَاءِ إِنْ أَرَدْنَ تَحَصُّنًا

“Do not compel your women slaves into prostitution if they prefer chastity”

[TMQ 24:33].

The contrary understanding is that if they do not wish chastity then they are compelled (into prostitution). However this contrary understanding is annulled by Allah's statement:

ولا تقربوا الزنا إنه كان فاحشة وساء سبيلاً

“Do not come near to fornication. Verily it is a foul deed and an evil way”

[TMQ 17:32].

If there does not come any text annulling the contrary understanding, then in this case it is acted upon like Allah's statement:

الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة

“(As for) the fornicator, female and male, lash each one of them” [TMQ 24:2].

And like his (saw) statement:

إذا بلغ الملاءة لمتين لم يحمل خبثاً

“When the water reaches two (*qullat*), then it does not carry filth (*khabath*).”

The rule in these two texts runs restricted by specified number, and this restriction indicates that what is beyond these numbers are contrary to it (in the rule). This indicates the absence of permission for what is less than one hundred (lashes) and that what is more than two (*qullat*) does not carry filth. Therefore the Messenger (saw)'s statement:

فليؤمروا أحدهم

“Let them appoint one of them”,

إلا أؤمروا أحدهم

“Except that they appoint one of them”,

فأؤمروا أحدهم

“Appoint one of you”

Indicate by contrary understanding (*mashum mukhalafā*) that it is not allowed to appoint more than one. Thus leadership is for one, and it is not permitted to be for more than one by the text of the *ahadith* in their stated text (*mantuq*) and understanding (*mashum*). This is strengthened by the Messenger (saw)'s action in that in all incidents wherein he appointed (a leader), he would appoint one and not any other (number). He never appointed more than one in one place.

As for the hadith narrated, that the Messenger (saw) sent Mu'adh and Abu Musa Al-Ash'ari to Yemen and said to them:

يَسِّرًا وَلَا تَعَسِّرًا وَبَشِّرًا وَلَا تَنْفِّرًا وَتَطَاوَعًا

“Facilitate things for the people (treat the people in the most agreeable way), and do not make things difficult for them, and give them glad tidings, and let them not have aversion (i.e. to make the people hate good deeds) and you should both work in cooperation and mutual understanding, obey each other”

This does not indicate that he appointed two in one place. The hadith came in Al-Bukhari with the text:

حَدَّثَنَا مُسْلِمٌ حَدَّثَنَا شُعْبَةُ حَدَّثَنَا سَعِيدُ بْنُ أَبِي بَرْدَةَ عَنْ أَبِيهِ قَالَ: بَعَثَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ جَدَّهُ أَبَا مُوسَى وَمَعَاذًا إِلَى الْيَمَنِ وَقَالَ: يَسِّرًا وَلَا تَعَسِّرًا وَبَشِّرًا وَلَا تَنْفِّرًا وَتَطَاوَعًا

“Muslim related to us that Shu’bah related to us that Sa’id bin Abi Burdah related to us from his father who said: The Messenger (saw) sent his grandfather Abu Musa and Mu’adh to Yemen and said: ‘Facilitate things for the people (treat the people in the most agreeable way), and do not make things difficult for them, and give them glad tidings, and let them not have aversion (i.e. to make the people hate good deeds) and you should both work in cooperation and mutual understanding, obey each other.”

The same hadith came in the book of war expeditions (*Al-Maghaẓi*) saying:

حَدَّثَنَا مُوسَى حَدَّثَنَا أَبُو عَوَانَةَ حَدَّثَنَا عَبْدُ الْمَلِكِ عَنْ أَبِي بَرْدَةَ قَالَ: بَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَبَا مُوسَى وَمَعَاذًا إِلَى الْيَمَنِ قَالَ: وَبَعَثَ كُلَّ وَاحِدٍ مِنْهُمَا عَلَى مَخْلَافٍ، قَالَ: وَالْيَمَنِ مَخْلَافَانِ، ثُمَّ قَالَ: يَسِّرًا وَلَا تَعَسِّرًا وَبَشِّرًا وَلَا تَنْفِّرًا. فَانْطَلَقَ كُلُّ وَاحِدٍ مِنْهُمَا إِلَى عَمَلِهِ

“Musa related to us that Abu ‘Awanah related to us that Abdulmalik related to us from Abu Burdah who said: The Messenger of Allah (saw) sent Abu Musa and Mu’adh to Yemen. He said: He sent each one of them to a province and Yemen has two provinces and said: ‘Be easy and not difficult, give glad tidings and do not repel (people). So each one of them went to carry out his work”

This narration clarifies the other narrations that he sent two to Yemen. He made for each one a region of it so they were not two *Amirs* in one place. Rather each one of them was *Amir* at a place different from where the other was *Amir*. Therefore it is not allowed for one matter (to have) two leaders (*rais*) nor for one place two leaders. Rather it is obligatory to have only one *Amir* and it is prohibited for there to be more (than one). However it must be understood that *ri’asah* and *imarah* and *qiyadah* in Islam is not honorary authority as the honorary authority requires following the chief (*ẓa’im*). As for *ri’asah* in Islam, it grants the right to the leader to take care of the affairs and authority over the matter in which leadership is for him and the execution of all that falls within the leadership according to the competence for which he was appointed *Amir* within the limit given by the *Shar’a* in the matter which the *rais* was appointed.

As for what has spread throughout the Muslim lands of establishing collective leadership in the name of an assembly or committee or administrative apparatus, and what is similar to these, to which they give the leadership competency. This contradicts the *Shar’a* when leadership is given to this apparatus or assembly or committee since leadership is given to a group which is prohibited by the text of the *ahadith*. Whereas if the committee or assembly or apparatus is for the purpose of bearing responsibility and debating in the matters and for consultation (*shura*), in such a reality it is allowed and it is from Islam, this is because the Muslims are praised for taking consultations in their matters. Their opinion is considered obligatory by majority when it is related to performing actions and it is accepted as a consultation when it is regarding the rules

and opinions which lead to thoughts and technical opinions and definitions. When the *Amir* decides upon something then he executes what he views (correct) in whatever is not related to performing actions. As for what the communist thinkers differed about regarding whether leadership is collective or individual, there is no room for researching this in Islam. This is because Islam has specified leadership to be individualistic by text and action, and the *Ijmaa as-Sahabah* has happened over it and the Ummah has bound itself upon this during all eras.

Obedience (*At-Ta'ah*)

Obedience is a fundamental matter for the existence of discipline in the State, and from the most important manifestation to indicate the general discipline in the State and Ummah. Due to this, the Qur'an emphasised obedience in many *ayat* despite the existence of revelation, miracles, the message and the Messenger (saw)'s personality which by themselves are enough to create obedience. The *ayat* came commanding obedience i.e. when it is obligatory to exist, a command which obliges its fulfilment, and it came prohibiting obedience i.e. when it is not permitted to exist, a prohibition which obliged its non-performance, and it considered that possessing such manners as something that the Muslim must put himself far away from. We find that the Qur'an, when it refers to obedience, saying:

أَطِيعُوا اللَّهَ وَالرَّسُولَ

“Obey Allah and the Messenger” [TMQ 3:32]

And:

فَاتَّبِعُونِي وَأَطِيعُوا أَمْرِي

“Follow me and obey my command” [TMQ 20:90]

And:

وَاسْمَعُوا وَأَطِيعُوا

“Hear and obey” [TMQ 64:16]

And:

وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يَدْخُلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ

“Whoever obeys Allah and His Messenger, He will admit him into gardens underneath which rivers flow” [TMQ 4:13]

And:

مَنْ يُطِيعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ

“Whoever obeys the Messenger has obeyed Allah” [TMQ 4:80]

And:

وَمَنْ يُطِيعِ اللَّهَ وَالرَّسُولَ فَأُولَئِكَ مَعَ الَّذِينَ أَنْعَمَ اللَّهُ عَلَيْهِمْ

“Whoever obeys Allah and the Messenger, they are among those whom Allah has granted favour” [TMQ 4:69].

So Allah has commanded unrestricted obedience in this *ayat*; obedience came without restriction. We find that the Messenger (saw) commands obedience to the rulers and governors in all situations except if what was commanded was a sin. From ibn Abbas (ra) from the Prophet (saw) who said:

من كره من أميره شيئاً فليصبر فإنه من خرج من السلطان شبراً مات ميتة جاهلية

“Whoever dislikes something from his *Amir* should be patient about it for verily, none among the people will go out/rebel from the authority (*sultan*) by even a hand span and die upon that except that he dies a death of ignorance (*jahlīyyah*).”

The Messenger (saw) considered the failure to obey the *Amir* as separation from the community. Abu Rija Al-‘Attardi related and said: “I heard ibn Abbas (ra) (narrating) from the Prophet (saw) who said:

من رأى من أميره شيئاً يكرهه فليصبر عليه، فإنه من فارق الجماعة شبراً فمات إلا مات ميتة جاهلية

“Whoever sees in his *Amir* something he dislikes, let him be patient. For, verily, whoever separated from the community by (even a) hand span and dies, his death is one of ignorance” (narrated by Muslim).

Among what the Muslims pledged the Prophet upon was obedience. From Junadah bin Abu Umayyah who said: “We entered upon Ubadah bin As-Samit when he was ill and said: May Allah improve your health. Relate (to us) a hadith for which Allah (swt) will benefit you from what you heard from the Prophet (saw). He said:

دعانا النبي صلى الله عليه وسلم فبايعناه. فقال فيما أخذ علينا أن بايعنا على السمع والطاعة في منشطنا ومكرهنا وعسرنا ويسرنا وأثرة علينا وأن لا ننازع الأمر أهله إلا أن تروا كفراً بواحاً عندكم من الله فيه برهان

The Prophet (saw) invited us and we gave him a pledge (*bay'ah*). He said: Among what he took as condition(s) upon us is that we pledged to hear and obey in what we find pleasing and what we dislike, in our ease and hardship, even if others are preferred over us and that we do not dispute the authority of those who possess it, he said, except if you see open disbelief (*kufir bawab*) for which you have clear proof from Allah”

(Narrated by Al-Bukhari).

The *ayat* and *ahadith* came from commanding obedience, except that this obedience is restricted by the limits of Islam, there came other *ahadith* prohibiting obedience in (matters of) disobedience to Allah (swt). He (saw) said:

لا طاعة لمخلوق في معصية الخالق

“No obedience to the created in disobedience to the Creator”

(narrated by Ahmad).

And Nafi' related from Abdullah (ra) from the Prophet (saw) who said:

السمع والطاعة على المرء المسلم فيما أحبَّ وكره ما لم يؤمر بمعصية، فإذا أمر بمعصية فلا سمع ولا طاعة

“Hearing and obedience is obliged upon the Muslim man in whatever he likes or dislikes except if he is commanded with a sin. If he is commanded with a sin, there is no hearing or obeying”

(Narrated by Al-Bukhari).

However, Allah (swt) commanded with this obedience when it is for the general discipline. As for when this obedience is contrary to Islam or in a way opposite to the way of Allah (swt), then Islam has prohibited obedience. Due to this, Allah (swt) explicitly forbade us from some (types of) obedience when He said:

يا أيها الذين آمنوا إن تطيعوا فريقاً من الذين أوتوا الكتاب يردّوكم بعد إيمانكم كافرين

“O you who believe, if you obey a party (fareeqa) of those given the Book they will turn you disbelievers after your belief”
[TMQ 3:100]

And:

ولا تطع من أغفلنا قلبه عن ذكرنا واتبع هواه وكان أمره فُطراً

“Do not obey the one whose heart we have made neglectful of Our Remembrance so he followed his desire and his affair was lost”
[TMQ 18:28]

And:

وإن تُطع أكثر من في الأرض يضلوك عن سبيل الله

“If you obey most of those in the earth, they will misguide you from the way of Allah” [TMQ 6:116]

And:

فلا تُطع الكافرين

“Do not obey the disbelievers” [TMQ 25:52]

And:

فلا تُطع المكذبين

“Do not obey those who give lie (to the Truth)” [TMQ 68:8]

And:

ولا تُطع منهم آثماً أو كفوراً

“Do not obey the sinful or disbeliever among them” [TMQ 76:24]

And:

ولا تُطع كل حلاف مهين

“Do not obey each swearing (mabeen)” [TMQ 68:10].

All these *ayat* prohibit obeying persons (with specific) attributes. Anyone investigating (these persons or attributes) will find them clearly against Islam and in a way other than the way of Islam. Allah (swt) has clarified them to us so that we devote ourselves in developing the obedience in ourselves i.e bring in place a general discipline. And so as to keep this discipline far away from the areas where, if obedience occurs, it would be harmful to the entity (i.e. of the State). Therefore, it is obliged upon the Muslim that, when he responds to Allah’s (swt) command of obedience, to also avoid obeying those whom Allah (swt) has prohibited (us from) obeying them.

The Khalifah's adoption of rules and styles i.e. adopting canons

The meaning of the word “canons” in the Arabic language is fundamentals (*usul*) with the singular being “canon” (*qanun*). It is a foreign word which has been arabicised. The canon in the foreigner’s terminology means the command published by the ruler so that the people follow it. The canon is also known as “the collection of rules which the ruler compels people to follow in their relationships.” The canon is essentially of two categories. Firstly, the rules which organise the relationships from their basis are of two types. The first is the basic canon which is the constitution, the second is the rest of the canons which are not (part of) the constitution. As for the second category of canons, they are the ones which organise secondary actions which do not have a rule specific to them but whose basis has a general rule. Or it organises the means i.e. the styles by which the basic actions, which have a general rule but whose branch has no specific rule for it, are performed. Or it organises the tools. They are termed as administrative canons or administrative systems or something similar. Since the speech of the Legislator actions came related to the actions of the slaves and obliging the restriction of oneself to them, therefore their organization comes from Allah (swt). The Islamic *Shari’ab* came related to all actions of the people and all their relationships, whether their relationship with Allah or their relationship with themselves or their relationship with others. Therefore there is no place in Islam for people to legislate canons to organise the systems as they are restricted by the *Shari’ab*. Allah (swt) said:

وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

“Whoever exceeds the limits of Allah, they are the oppressors” [TMQ 2:229]

And:

وما آتاكم الرسول فخذوه وما نهاكم عنه فانتهوا

“Whatever the Messenger gave you, take. And whatever he forbids for you, abstain”

[TMQ 59:7]

And:

وما كان لمؤمن ولا مؤمنة إذا قضى الله ورسوله أمراً أن يكون لهم الخيرة من أمرهم

“It is not for the believer, male or female, when Allah and His Messenger have judged in a matter to have choice in their matter” [TMQ 33:36].

Muslim narrated from Aisha that the Messenger of Allah (saw) said:

كل عمل ليس عليه أمرنا فهو ردّ

“Whoever performs an action not in accordance with our matter, then it is rejected.”

Allah (swt) is the One who legislates laws for the people, not the ruler, and He compels them and the ruler to follow them in their relationships, to restrict themselves by them and to prevent them from following (any) other (rules). Therefore there is no place for the human being to lay down rules to organise people’s relationships, nor any place for the ruler to compel people or give them an option to follow principles and rules laid done by human beings organising their relationships. However the *Shari’ab* rules, which is the speech of the Legislator related to the actions of the slaves, came in the Qur’an and the Sunnah and there is much with them that carries (potentially) different meanings according to the Arabic language and the *Shar’a*. So it is natural and inevitable that people differ in understanding them, and that this difference in

understanding leads to the limit of separation and differences in the intended meaning(s). Therefore it is inevitable to have separated and different understandings so that due to this, there can be separated and differing opinions in one rule. When the Messenger (saw) said in the battle of the Allies:

لا تُصَلُّوا العصر إلا في بني قريظة

“No one should pray *Asr* except in (the camp of) Banu Quraydha”,

Some people understood that he meant hurrying and they prayed *Asr* along the way, while (other) people understood he meant the meaning of the sentence (literally) so they did not pray *Asr* and delayed it until they reached Banu Quraydha where they then prayed it. When (the matter) reached the Messenger (saw), he consented to the two groups each (according to) their understanding. When the Messenger (saw) said:

لا صلاة إلا بفاتحة الكتاب

“(There is) no prayer for the one who did not recite the opening of the Book (*Fatihah al-Kitab*)”,

People understood that he meant no correct (*sabeeh*) prayer so they said that reciting the *Fatihah* is a pillar of the prayer such that the prayer of the one who does not recite it is invalidated. Whereas other people understood that he meant the complete prayer so they said that reciting the *Fatihah* is not a pillar of the prayer; rather, reciting the Qur’an is the pillar such that if one doesn’t recite the *Fatihah* but recites any *ayah* of the Qur’an then his prayer is correct. Similarly, they differed over his (saw) statement:

لا يُقتل مسلم بكافر ولا ذو عهد بعهده

“The believer is not killed for a disbeliever, nor the one with a covenant during his covenant.”

A group understood that if the Muslim killed a disbeliever, he is not killed for it (in retaliation) but is punished, for example, by imprisonment since the Messenger’s (saw) statement

لا يُقتل مسلم بكافر

“The believer is not killed for a disbeliever”

Is explicit in not killing him. Others understood that he distinguished between the belligerent disbeliever (*kaffir harbi*) and the pledged disbeliever (*kaffir dhimmi*) so the Muslim is killed for the covenanted disbeliever if he kills, and likewise the disbeliever under treaty (*kaffir mu’abid*) and the protected disbeliever (*kaffir must’aman*) since the Messenger’s (saw) statement in the same hadith indicated this in his saying:

ولا ذو عهد بعهده

“Nor the disbeliever with a covenant during his covenant.”

Its meaning is that a Muslim is not killed for a disbeliever, nor is the covenanted person killed for a disbeliever. Since the covenanted person is a disbeliever, it necessitates that the word disbeliever means belligerent i.e. the covenanted disbeliever is not killed for a belligerent disbeliever. So the hadith’s meaning is that the Muslim is not killed for a belligerent disbeliever, nor is a covenanted person killed for a belligerent disbeliever; its understanding is that the Muslim is killed for a non-belligerent disbeliever and the covenanted person is killed for a non-belligerent disbeliever. The covenanted person is a disbeliever and his being like the Muslim who is not killed for a disbeliever indicated that the meaning of the word “disbeliever” in the hadith is the belligerent disbeliever not the *dhimmi*. This is strengthened by what is narrated that there was

a Muslim brought to the Messenger of Allah (saw) who had killed a Jew so he killed him. With this variation in understanding, there is variation in the rule. The same applies to many *ayat* and *ahadith*. The difference of opinions in one rule makes it inevitable upon the Muslim to adopt one opinion among them as they are all *Shari'ah* rules and the rule of Allah in respect of one person cannot be more than one. Therefore it is inevitable to specify one rule among them to adopt, thus the Muslim's adoption of the *Shari'ah* rules is essential and there is absolutely no escape from this in any way when one performs the action. The mere obligation of acting upon one rule whether it is obligatory or recommended or prohibited or disliked or allowed obliges the adoption of a specific rule. Therefore it is obligatory upon each Muslim to adopt whether he is a *mujtahid* or a follower (*muqallid*), Khalifah or not. When he adopts a specific rule, this *Shari'ah* rule becomes the rule of Allah upon him and it becomes obligatory upon him to act according to it alone, teach it to people and call to Islam based upon it. This is because the meaning of the Muslim's adoption of the rule is to act according to it, teaching it to others and calling to it when he calls to the rules and thoughts of Islam. When the Muslim adopts a specific rule this rule becomes in itself the rule of Allah upon him, and it is not allowed for him to leave it except in three (cases):

Firstly, if the weakness of the evidence becomes clear to him and there appears stronger evidence than its evidence which is attributed to him that the rule of Allah is that indicated by the stronger evidence. In this case, it is obliged upon him to leave what he adopted and to adopt the new opinion since it has become the rule of Allah upon him.

Secondly: If he begins to think that the new opinion was adopted by one more knowledgeable than him in deduction and more precise in deduction or has more comprehensive knowledge about the *Shar'a*. In this case, it is allowed for him to leave what he adopted and adopt something else due to what is proved about the famous Sahabah who left their opinions and adopted the opinion of others. Abu Bakr (ra) adopted Ali's (ra) opinion and left his opinion, and Umar (ra) adopted Ali's (ra) opinion and left his own.

Thirdly: If the intention is to unify the Muslims' standpoint upon one opinion. In this case, it is allowed for the Muslim to leave the opinion he adopted and adopt the opinion which he wishes to unify the Muslims' standpoint due to what was proved about Uthman who accepted to take the pledge from the people upon the Book of Allah and the Sunnah of His Messenger and the opinion(s) of the two Sheikhs after him, Abu Bakr and Umar. The Sahabah consented to him doing what he did which is leaving what he adopted and adopting what Abu Bakr (ra) and Umar (ra) had adopted. In these situations, the Muslim leaves what he adopted and adopt something else; apart from these (situations), he is not allowed to leave it in any way since the *Shari'ah* addressed each individual and it is upon each Muslim to adopt what he reached via *ijtihad* or following (*taqleed*). Once he adopted, he is obliged upon what he adopted save the situations excluded by the *Shari'ah* evidence.

This is in relation to each individual organising his relationships with himself. As for taking care of the affairs of the Ummah by the Khalifah, his undertaking the ruler's responsibilities and establishing the rules of Allah upon the people, there is no doubt that he must adopt specific rules to direct the people's affairs according to them. He must also adopt specific rules in what is general for all Muslims in all affairs in the affairs of ruling and authority like zakat, land tax (*kharaaj*), foreign relationships and all that relate to the unity of the State and rule. Adoption in these situations by the Khalifah is obligatory not optional, because it is an obligatory matter in relation to the actions he undertakes in his capacity as a Muslim obliged to direct all his actions according to a specific rule which is the rule of Allah upon him. There is no difference in this between personal matters and public matters. In relation to the affairs of rule and authority, they are within the basic actions in taking care of the affairs which are obliged for him to direct according to one specific rule. As for what relates to the unity of the State, it must be directed

according to one specific rule since the unity of the State is obligatory and each action leading to it is obligatory. Therefore adopting one rule for all that relates to it is obligatory, not optional. As for anything beyond that, it is allowed for the Khalifah to adopt specific rules to compel the people to act upon, and it is allowed for him not to adopt. He will act in this matter according to what he sees as more beneficial for the good of Muslims, strengthening the spread of Islam, teaching of its rules and more suitable for the justice of the rule and strength of the authority. Abu Bakr (ra) did adopt *Shari'ah* rules which he obliged upon the people, and Umar (ra), Uthman (ra) and Ali (ra) adopted rules after him which they obliged people to act upon. The Sahabah were silent about this throughout their time, and none of them was heard about rejecting the adoption of rules, obliging them upon the people and not acting upon rules they had adopted; even though it is from what is rejected since it is obliging people to leave the rules they adopt which are rules of Allah (swt) upon them. Thus, it is an *Ijma'a* of the Sahabah that the Khalifah can adopt specific rules and oblige people to act upon them. Therefore if the Khalifah adopts specific rules, whether they were within what he is obliged to adopt or in what he is allowed to adopt, it is obligatory upon every Muslim among his citizens to act according to this rule and leave acting upon the rule he had previously adopted. This is because what the Khalifah adopted became the rule of Allah upon him in respect of action. It is not permitted for him to act in contradiction to it; rather it is obligatory for him to act according to it alone even if it were contrary to what he thought and even if it were weak evidence in his view. This is due to what the *Ijma'a* of the Sahabah concluded that the *Imam* can adopt specific rules; commanded acting upon them and it is obliged for the Muslims to obey him even if it differed from their *ijtihad*. The famous *Shari'ah* principles about this are:

للسلطان أن يُحِثَّ من الأفضية بقدر ما يُحِثُّ من مشكلات

“The ruler can (yuhaddithu) in judgements (aqdhiyya) according to how the problems occur”

And

أمر الإمام يرفع الخلاف

“The *Imam*'s command resolves the dispute”

And

أمر الإمام نافذ ظاهراً وباطناً

“The *Imam*'s command is executed openly and inwardly”

I.e. between him and the people is the obedience to the State, and between him and Allah (swt) is that what the *Imam* adopts becomes the rule of Allah upon him in respect of action. However, the obedience of the people to the *Imam*'s command, the obligation upon them to act according to what he adopted in the rules, and not acting upon their opinions and what they adopted is not considered an adoption of what the *Imam* adopted. It is rather obedience to his (the Khalifah's) command and executing what he adopted in terms of action not the adoption of what he adopted. Therefore it is permitted for any Muslim to teach what he adopted of the rules and to call to them when he invites to Islam even if they differed from the *Imam*'s adoption. This is because the *Ijma'a* of the Sahabah is upon the obligation to act according to the Khalifah's adoption not teaching or invitation (*da'wah*); it is specific to action. Thus we find that whereas Abu Bakr (ra) would divide wealth between Muslims equally without looking into who embraced Islam early or not, Umar (ra) had a different opinion which is (considering) a man and his precedence (in embracing) Islam and another man and his lateness. He debated Abu Bakr (ra) in this, but he obeyed what Abu Bakr (ra) adopted and remained adopting his opinion. When he was appointed Khalifah, he invalidated acting upon Abu Bakr's (ra) opinion and acted upon his

opinion. Therefore there is a distinction between the Muslim adopting the opinion and his obedience to what the Khalifah adopted. Obedience to the Khalifah's adoption obliges acting upon it only and not calling towards it or teaching it. As for adopting the opinion, it is (for) teaching it, calling to it and acting upon it. Therefore it is allowed for there to exist political groups i.e. parties which adopt opinions different from those adopted by the Khalifah, but they are all like the rest of the Muslims, obliged in respect of action to act according to what the Khalifah adopted and nothing else.

However, when the Khalifah adopts *Shari'ah* rules he chooses a specific rule in its capacity as a *Shari'ah* rule deduced by *Shari'ah* ijtiḥad. He does not legislate from his own self; verily Allah (swt) is the only Legislator. Thus he is restricted within the *Shar'a* and the *Shari'ah* rules since the condition of his pledge (*bay'ah*) is to act upon the Book and the Sunnah. And since he, in his capacity as a Muslim even if he is a Khalifah is restricted by the commands and prohibitions of Allah (swt), is obliged to stop within the limits of the *Shari'ah* rules and is not permitted to transgress them in any way whatsoever. It is not permitted for him to come with a rule, even if a single one, from other than the Islamic *Shar'a*. The Messenger's (saw) statement is clear:

كل عمل ليس عليه أمرنا فهو ردّ

“Whoever performs an action not in accordance with our command, it will be rejected.”

Therefore it is not permitted for the *Imam* to make the allowed (*halal*) forbidden (*haram*) or make the forbidden allowed, nor to abolish a rule or prevent acting upon a rule since this is *haram* for the Khalifah as it is *haram* for every Muslim. Nor should one say that the benefit of the Muslims requires forbidding such and such since Allah has specified the Muslims' benefit by specific rules; if the Khalifah comes and views the benefit in other than these (rules), then he would have abrogated them which is never permitted. Thus one cannot say that taking care of the Muslims' affairs has allowed him to direct them according to his ijtiḥad because Allah has allowed him to take care of the Muslims' affairs by the Book and Sunnah i.e. the *Shari'ah* rules and allowed him to (perform) ijtiḥad within their limits. He does *ijtiḥad* in the secondary actions which have no explicit text but whose origins (*usul*) came with an explicit text which is general; he does ijtiḥad to choose what he sees as more suitable and beneficial. As for what came with the rule of Allah (swt) upon it, there is no place for the Khalifah's *ijtiḥad* in this affair; rather he is obliged to execute the *Shari'ah* rules as they are without any substitution or change. Yes, he can view an action as allowed but it leads to a *haram* which the *Shar'a* forbade such as viewing that the exchange of a specific book would inevitably lead to corruption of the people in their deen or would inevitably lead to spreading debauchery among the people so he prevents it. He can see an action as allowed but it would inevitably lead to a harm which the *Shar'a* came obliging its removal such as seeing that placing goods before the stores would prevent people passing by the road in the road or annoy by passers so in this case he prevents the allowed and punish whoever does it. However this is not forbidding the *halal* but rather executing a *Shari'ah* rule he deduced from the *shari'ah* principle:

الوسيلة إلى الحرام محرمة

“The means to *haram* is forbidden”

And the principle

كل فرد من أفراد المباح، إذا كان ضاراً أو مؤدياً إلى ضرر، حرم ذلك الفرد، وظل الأمر مباحاً

“Every permitted thing if it is harmful or will lead to a harm is prohibited and the matter remains permitted”

Or someone else deduced it and he (the Khalifah) adopted and executed it. In this case it is obliged upon him to do this as it is a *Shari'ah* rule which is obligatory to be executed. So he would have prevented *haram* and not what is allowed. Similarly, if there is a matter or a rule which can potentially be performed via numerous secondary actions for whose origin came general evidence, then in this case all the actions through which it is possible to perform the rule or matter are of the permissible actions. This is like the Khalifah reaching the knowledge of the people's opinion, or their opinion concerning who should represent them in the *Majlis Ash-Shura* which is similar to what is known as the electoral canon. All these secondary actions are from the permissible actions, so it is permitted for the Khalifah to command with one of them in exception among the others, wherein obeying him is obligatory. In this case he would not have obliged a permissible action or prevented another permissible action, but would have adopted a rule and adopted a means by which to execute a rule. At this point, obeying him is obliged in the rule he adopted and the action leading to it since it follows the rule and the follower takes the rule of the followed. Similar to this are all the organizational and administrative canons as they are compelling a permissible action as it is compelling what follows a rule adopted by the Khalifah and compelling it requires leaving anything other than it i.e. preventing it. It is just like adopting rules and it does not come from the *Shari'ah* rules. He would not have obliged a permissible action or prohibited another permissible action, but rather he did of what the *Shari'ah* allowed him in adopting rules and what would lead to performing them. In these three situations: Preventing what leads to *haram*, or (preventing) what leads to harm, or compelling specific styles among many, the Khalifah has not left the *Shari'ah* rules or his competency from adoption and there is an evidence for each one of them.

There is nothing here to legitimise and permit the Khalifah to change any *Shari'ah* rule under the pretext of benefit; rather he must completely restrict (himself) to all the *Shari'ah* rules in everything.

As for what is said that the Messenger (saw) did forbid permissible matters and prevented them in taking care of the Muslims' affairs, there is no proof in it for the *Imam* to do this in taking care of the Muslims' affairs. This is because the Messenger (saw) is a legislator on behalf of Allah (swt) so if he forbade an allowed (thing) or allowed a forbidden rule then he has verily abrogated it. Abrogation is specific to the Qur'an and Sunnah i.e. by the Qur'an and Hadith, not for anyone other than the Messenger (saw). As for his preventing specific allowed things, this is either because they would lead to harm which Allah had forbidden or to a *haram* forbidden by Allah. This is legislation for us, and does not relate to taking care of the affairs, so it is not taken as evidence to give the *Imam* the competency to change the rules under the pretext of taking care of the affairs of the people. Whoever reviews some of the Messenger's (saw) actions; this would become manifestly clear for example:

1. It was narrated that in the battle of Tabuk when the Messenger (saw) passed by Al-Hijf, he encamped there and people sought to drink from its well. When they rested, the Messenger of Allah (saw) said:

لا تشربوا من مائها شيئاً ولا تتوضأوا منه للصلاة، وما كان من عجين عجنتموه فاعلفوه الإبل ولا تأكلوا منه شيئاً ولا يخرجن أحد منكم الليلة إلاّ ومعه صاحب له

“Do not drink any of its water nor perform *wudhu* for prayer from it. And if there is any dough you have kneaded from it, feed your camels from it and do not eat anything of it. And let not anyone of you go out during the night except with a companion for him.”

It appears from this example that the Messenger (saw) prohibited the use of an allowed thing so he forbade an allowed thing, whereas the reality of the incident is not like this. Rather, its reality is that the Messenger prohibited a specific thing of the allowed things not an allowed

rule or an allowed thing. This specific thing would inevitably lead to a harm for which a text came forbidding its occurrence. The Messenger (saw) knew that drinking water from this well would result in a definite harm such that what the Messenger (saw) did was not forbidding an allowed action but rather forbidding what would lead to a harm forbidden by *Shar'a* which is harm befalling the army. Similarly his prohibition of anyone going out alone except that he have a companion is the prohibition of a specific action of the allowed matters, a specific action which would definitely lead to a harm that is forbidden by the *Shar'a*. The evidence for this is that those people whom the Messenger (saw) commanded did what they were commanded except two men from *Banu Sa'ida*. One went out to relieve himself and the other went out searching for his camel. As for the one who went out to relieve himself he collapsed in his place and the one who went to find his camel, the wind carried him and cast him on the two mountains of *Tayyi*. When the Messenger of Allah (saw) was informed about this he said:

ألم أنهكم أن يخرج منكم أحد إلاّ ومعه صاحبه

“Did I not prohibit any one of you from going out except with a companion for him?”

Then the Messenger of Allah made *du'a* for the one who had collapsed and he was cured; as for the one who fell between the two Mountains of *Tayyi*, he was later brought back to the prophet (saw) in Madinah by the people of *Tayyi*. Another evidence for this is that when the Messenger of Allah (saw) passed by Al-Hijr, he covered his face with his cloth and spurred his camel and said:

لا تدخلوا بيوت الذين ظلموا إلاّ وأنتم باكون خوفاً أن يصيبكم منها ما أصابهم

“Do not enter the houses of those who wronged their souls except that you cry fearing that what befell them befalls upon you.”

Here we must note the distinction between forbidding a specific action of the allowed actions or forbidding a specific thing of the allowed things, and forbidding an allowed action or forbidding an allowed thing. Forbidding an allowed thing is where the action has been allowed by the *Shar'a*, then the ruler comes and forbids it on the pretext that there is a harm existing in it; such as importing goods from outside has been allowed by *Shar'a* but the ruler views that allowing importing causes harm to (internal) factories and forbids it. This is forbidding an allowed action which is never allowed for the ruler since the *Shar'a* knew, when it allowed it, that it would be beneficial or harmful and gave it the rule of permissibility. Forbidding it is not allowed as this would be abrogating the *Shar'a* rule which is void in all circumstances. As for forbidding a specific thing among the allowed things, this is when it occurs to him that one of the allowed matters would lead to a harm which the *Shar'a* came to forbid so the ruler considers it correct to forbid this matter to lift the harm. For instance, the ruler considers that importing sugar leads to closing and the bankruptcy of sugar factories within the country making it dependent upon the kuffar in importing sugar. At this point, it is allowed for the ruler to prevent importation of sugar to prevent the harm to the whole Ummah which is her dependency upon the kuffar for one of its necessities and it's the lack of sufficiency. In this case, it is allowed to prevent this allowed matter and it is not forbidding an allowed thing; rather, the allowed thing i.e. importing remains allowed. It is rather the forbidding of an allowed matter which is importing sugar. This is like the Messenger (saw) forbidding the drinking of water from a specific well in which he knew there was harm. His forbidding did not forbid an allowed matter i.e. he did not forbid water, but rather he forbade a specific matter of the allowed matter which is drinking from this well. Accordingly, forbidding a specific thing of the allowed actions is permitted whereas forbidding an allowed thing is never permitted.

2. It is narrated that when the Messenger (saw) was returning from Tabuk, he prevented those who reached water before him from drinking from it until he reached. A group of hypocrites preceded (the others) and drank from it. When the Messenger (saw) came and found that those who preceded had drunk from it such that he did not find any water, he cursed those who preceded and drank from it. This is also preventing a specific thing from the allowed things, as this leads to a harm which is preferring a group with the water exclusively over the rest of the army despite the dire need for it in the desert. Accordingly, this is not forbidding an allowed thing under the pretext of taking care of the affairs.
3. Muslim narrated via Amru bin Ash-Shareed from his father who said: In the delegation from Thaqif there was a man suffering from leprosy so the Prophet (saw) sent to him:

إنا قد بايعناك فارجع

“We have (taken) your pledge so return”

And he (saw) prevented him from mixing with the people. This is not forbidding the allowed, rather it is forbidding an action which would lead to harm. Due to this, it has come in another hadith narrated by Ahmad via Tareeq bin Hurayra:

فَرِّمْ مِنَ الْمَجْذُومِ فَرَارِكَ مِنَ الْأَسَدِ

“Flee from a leper the way you flee from the lion.”

In this way it becomes clear to the one following what is used as evidence in this matter from the Messenger’s (saw) hadith that there is no forbidding of an allowed (matter) in them. Rather it is forbidding a specific thing of the allowed thing, and this specific thing leads to a harm which the *Shar’a* came forbidding it. Therefore this is legislation and evidence that the *Imam* can prevent specific things from the allowed things, and specific actions of the allowed actions, this is if it leads to harm which the *Shar’a* came to prevent. As for what is narrated about the Sahabah regarding (certain) incidents, it is clear to anyone who follows them that they are forbidding an allowed (action) which leads to *haram* or leads to a harm which the *Shar’a* came to prevent, and some of them are compelling an allowed (*mubah*) action (in order) to perform a *Shari’ah* rule or a matter the *Shar’a* commanded some and prevented others such as the adoption in styles. This is allowed for the *Imam*, for eg; the compilation of the registers (*diwan*) by Umar (ra), and obliging one *mushaf* and burning all (other) *mushafs* by Uthman. Of this type is Umar (ra) obliging the Sahabah to stop (discussing the) hadith when this preoccupied them from the Qur’an, and his preventing the prominent Sahabah from leaving Madinah to the conquered lands so that the people are not enchanted by them and they are not enchanted by the world. Similar to this is what the governors, rulers and Khulafaa did in compelling those who knead dough to placing their turbans on their forehead so that their sweat does not fall in his dough, and to place a piece of cloth upon their nose so that nothing from it falls into the dough and shave their armpits so that nothing from it falls into the dough, and other similar things which came in the *Fiqh* books. All of them fall within the *shari’ah* principle

الوسيلة إلى الحرام محرمة

“The means to *haram* is forbidden”

And the *shari’ah* principle

كل شيء معين يؤدي إلى الضرر المحقق فهو حرام

“Each specific thing which leads to a definite *haram* is *haram*”.

There is nothing here which indicates that it is allowed for the Khalifah to forbid a *mubah* or allow a *haram* under the pretext of taking care of the affairs. Therefore the canons according to the foreign understanding i.e. that they are the ruler's commands in an unrestricted (manner) are not obligatory to be obeyed as long as the Khalifah's command is not in adopting a *Shari'ah* rule and obliging this rule. The canons are what the Khalifah adopted from the *Shari'ah* rules. However, the Khalifah may command what he considered of the principles to perform the *Shari'ah* rules or the actions or matters requested by the *Shar'a* such as the administrative canons or systems. This is considered adoption of styles which follows the adopted rules and these canons are obligatory to be obeyed as the Khalifah adopted them and because they are within the statement of the Glorified:

وأطيعوا الله وأطيعوا الرسول وأولي الأمر منكم

“O you who believe, obey Allah and obey the Messenger and those in authority among you” [TMQ 4:59]

Since the obedience came in general covering everything the *Shar'a* did not come to prevent.

JIHAD

Jihad is expending (one's) effort in fighting in the way of Allah (swt) directly or assisting by wealth or opinion or increasing numbers or other than that. The fighting to raise the word of Allah is jihad. As for jihad by speaking in the path of Allah (swt), this is jihad if the speech relates directly to fighting in the way of Allah. If it does not relate directly to it, it is not *Shar'i* jihad even if it involves difficulty and even if the results benefit in raising the word of Allah (swt). This is because jihad in *Shar'a* is specific to fighting, so there enters within it everything related directly to fighting. Similar to the opinion is writing and speaking; they are jihad if they are related directly to fighting in the way of Allah (swt) like the speech to the army to encourage it to fight directly or words inciting fighting the enemies. If not, this is not (jihad). Neither political struggle nor rebuking the rulers is termed jihad though their reward is high and their benefit to the Muslims great. The issue is neither difficulty nor the benefit, but rather it is the *Shar'i* meaning with which it came for this word. The *Shari'ah* meaning is fighting and all that it relates to from opinion, speech, writing, strategy and other things.

The cause of jihad is not *jizyah* even though we stop (fighting) them when they accept the *jizyah*. Rather, the cause of jihad is that those whom we fight are disbelievers (*kuffar*) who rejected the *da'wah*. Allah (swt) said:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا
الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

Fight those who do not believe in Allah nor the Last Day, nor forbid what Allah and His Messenger have forbidden, nor follow the deen of truth among the People of the Book until they pay the jizyah from their hands while they are humiliated'

[TMQ 9:29].

The command to fight them is (due to) their attribute of disbelief i.e. fight them because they do not believe in Allah and the Last Day etc. So this description is a restriction and at this point it becomes a cause. So the cause of fighting is disbelief. It came in another *ayah*:

يَا أَيُّهَا الَّذِينَ آمَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلْيَجِدُوا فِيكُمْ غِلْظَةً

"O you who believe, fight those who encircle you (close to you geographically) of the disbelievers and let them find harshness in you"

[TMQ 9:123]

So the command to fight them is due to the attribute of disbelief. There are many similar *ayat* such as:

فَقَاتِلُوا أَوْلِيَاءَ الشَّيْطَانِ

"Fight the allies of Satan"

[TMQ 4:76]

And

فَقَاتِلُوا أئِمَّةَ الْكُفْرِ

"Fight the leaders of disbelief"

[TMQ 9:12]

And

وقَاتِلُوا الْمُشْرِكِينَ

“Fight the polytheists altogether”

[TMQ 9:36]

All these *ayat* command the fighting due to a specific attribute which is the cause of fighting i.e. disbelief. As for the payment of *jizyah*, the Qur’an combined it with humiliation as the cause of stopping the fighting not the cause of fighting. From here it is understood that the cause of jihad is disbelief. If those whom we fight accept the *da’wah* they become Muslims; if they refuse to accept Islam (but) accept to pay the *jizyah* and be ruled by Islam, it is accepted from them and they are not fought as it is not permitted to force them to accept Islam. As long as they accept to be ruled by it and pay the *jizyah*, they have submitted to the *da’wah* even if they have not accepted Islam. Accordingly, it is not allowed to fight them after they accept to be ruled by it and pay the *jizyah*. However, if they accept to pay the *jizyah* but refuse to be ruled by Islam, it is not allowed to accept this from them because the cause of fighting which is that they are disbelievers who have refused to accept the *da’wah* remains standing so fighting them remains obligatory, an obligation which has not fallen from the Muslims’ necks. As for the emergency treaties in which the Khalifah accepts from them the *jizyah* while leaving them to rule themselves by the system of disbelief, due to the absence of compliance of the external and internal circumstances for it, the *Shar’a* gave concession to this emergency situation in the situations of necessity so no analogy is done upon it. Therefore the cause of jihad is that those whom we fight are disbelievers who refused to accept the *da’wah* and there is no other cause for jihad.

As for *jizyah* together with humiliation being a cause to stop fighting, this is only with non-polytheist Arabs. As for polytheist Arabs, it is not accepted from them except Islam or fighting due to Allah’s statement:

تَقَاتِلُوهُمْ أَوْ يُسَلِّمُوا

“You will fight them or they will become Muslims”

[TMQ 48:16].

Jihad is obligatory by the explicit text of the Qur’an and Hadith. Allah (swt) said:

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةً وَيَكُونَ الدِّينُ كَلِمَةً

“Fight them so that there remains no (*fitnah*) and the *deen* becomes only for Allah”

[TMQ 8:39]

And He (swt) said:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

“Fight those who don’t believe in Allah nor the Last Day, nor forbid what Allah and His Messenger have forbidden, nor follow the *deen* of truth among the People of the Book until they pay the *jizyah* from their hands while they are humiliated”

[TMQ 9: 29]

And Allah (swt) said:

إِلَّا تَنْفَرُوا يَعْذِبْكُمْ عَذَابًا أَلِيمًا

“If you do not go out (for jihad), He will punish you with a painful punishment”

[TMQ 9: 39]

And He (swt) said:

يا أيها الذين آمنوا قاتلوا الذين يلونكم من الكفار وليجدوا فيكم غلظة

“O you who believe, fight those who encircle you of the disbelievers and let them find harshness in you”
[TMQ 9: 123].

It is narrated from Anas (ra) who said: “The Messenger of Allah (saw) said:

جاهدوا المشركين بأموالكم وأيديكم وألسنتكم

“Fight the polytheists with your wealth, your hands and your tongues”

(narrated by An-Nisai).

Also from Anas that the Prophet (saw) said:

لَغَدْوَةٌ أَوْ رَوْحَةٌ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنَ الدُّنْيَا وَمَا فِيهَا

“Verily! Setting out in the early morning or in the evening in order to fight in Allah's way is better than the world and what it contains.”

(narrated by Al-Bukhari).

He also narrated that he (saw) said:

أُمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَقُولُوا لَا إِلَهَ إِلَّا اللَّهُ

“I was commanded to fight the people until they say “There is no god but Allah”

Imam Ahmad and Abu Dawud narrated from Anas who said: The Messenger of Allah (saw) said:

...والجهاد ماضٍ منذ بعثني الله إلى أن يقاتل آخر أممي الدجال، لا يبطله جور جائر، ولا عدل عادل

“...jihad will be performed continuously since the day Allah sent me as a prophet until the day the last member of my community will fight with the Dajjal (Antichrist). The tyranny of any tyrant and the justice of any just (ruler) will not invalidate it.”

It has been narrated from Zayd bin Khalid who said: The Messenger of Allah (saw) said:

من جهز غازياً في سبيل الله فقد غزا، ومن خلّفه في أهله بخير فقد غزا

“Whoever prepares a warrior in the way of Allah has (also) fought, and whoever takes care of his family in goodness (*khayr*) after him has (also) fought” (narrated by Ahmad).

It is narrated from ‘Ata bin Yazid al-Laithi that Abu Said al-Khudri (ra) related to him:

: يا رسول الله أي الناس أفضل؟ فقال رسول الله صلى الله عليه وسلم: مؤمن يجاهد في سبيل الله بنفسه وماله

“It was said: O Messenger of Allah, which of the people is better? The Messenger of Allah (saw) said: ‘A believer who does jihad in the way of Allah by his body and wealth’ (narrated by Al-Bukhari).

And he (saw) said:

من مات ولم يَغْزُ ولم يُجِدِّثْ نفسه بالغزو مات على بقية من النفاق

“Whoever dies without fighting or his soul thinking of fighting has died upon a branch of hypocrisy.”

It has been narrated from Abi Awfa (ra) that the Messenger of Allah (saw) said:

إن الجنة تحت ظلال السيوف

“Know that paradise is beneath the shade of swords”

(narrated by Al-Bukhari).

It is narrated from Abu Hurayra (ra) who said:

مرَّ رجل من أصحاب رسول الله صلى الله عليه وسلم بشعب فيه عينة من ماء عذب فأعجبته لطيبها فقال: لو اعتزلت الناس في هذا الشعب ولن أفعل حتى أستأذن رسول الله صلى الله عليه وسلم، فذكر ذلك لرسول الله فقال: لا تفعل، فإن مقام أحدكم في سبيل الله أفضل من صلاته في بيته سبعين عاماً

“One of the Sahabah of the Messenger of Allah (saw) passed by a ravine with rivers of sweet water in it and was astounded by its beauty, so he said: What if I separated from the people and stayed in this ravine? But I will never do it until I seek permission from the Messenger of Allah (saw) so he mentioned that to the Messenger of Allah who said: Do not do (so) for the standing of one of you in the way of Allah is better than his praying in his house for seventy years”
(narrated by At-Tirmidhi).

Jihad is an obligation of sufficiency (*farḍ kifāyah*) offensively, and an individual obligation (*farḍ ‘ayn*) against the enemy who attacks them while being a obligation of sufficiency upon the rest. The obligation does not fall until the enemy is expelled and the Islamic land liberated from their filth. The meaning of jihad being an obligation of sufficiency offensively is that we start fighting the enemy even if they do not start (fighting) us. If no Muslim performs the fighting offensively at any period then they will be sinful for leaving it. If the people of Egypt perform the offensive jihad then (its obligation) falls from the people of Indonesia, as there exists practical fighting by Muslims against belligerent disbelievers therefore the obligation of jihad has occurred. However if fighting broke out between Muslims and disbelievers but the sufficiency (*kifāyah*) has not occurred by the people of Egypt fighting the disbelievers alone, then its obligation does not fall from the people of India and Indonesia by the performance of the people of Egypt and Iraq. Rather it is obligatory upon the nearest (Muslim) then the nearest to the enemy until sufficiency occurs; if sufficiency does not occur except with all the Muslims, then jihad becomes obligatory upon all the Muslims until the enemy is subdued. Jihad is an obligation of sufficiency (*farḍ kifāyah*) if the Khalifah has not told him to advance; as for the one whom the Khalifah has told him to take part, then jihad has become obligatory upon him due to Allah’s statement:

يا أيها الذين آمنوا ما لكم إذا قيل لكم انفروا في سبيل الله أثأقلتم إلى الأرض

“O you who believe, what is wrong with you that when it is said: ‘Go forth in the way of Allah’ you hold firm to the earth”
[TMQ 9:38]

And his (saw) statement:

إذا استُنِفْتُمْ فأنفروا

“And if you are asked to advance, then advance.”

(Narrated by Bukhari & Muslim)

The meaning of the sufficiency in jihad in the Islamic State is that there arise for jihad a people whose fighting is sufficient; whether they are an army for whom there are books of accounts (*dawamin*) for this as was the case in the time of Umar (ra), or they had prepared themselves for jihad freely as was the case in the time of Abu Bakr (ra). It is the same whether the first ones or the latter ones or both of them together such that if the enemy targets them they are able to defend so it is a obligation of sufficiency upon them. If they are unable to defend, then the Khalifah prepares others for jihad and so on. Offensive jihad does not mean that we initiate fighting the enemy directly; rather we must first call them to Islam.

If is not allowed for Muslims to fight those whom the Islamic *da'wah* has not reached; rather, the disbelievers must first be called to Islam. If they reject, then they are asked to pay the *jizyah*; and if they reject, we fight them. Muslim narrated from Sulayman bin Buraydah from his father:

كان رسول الله صلى الله عليه وسلم إذا أمر أميراً على جيش أو سوية أو صاه في خاصته بتقوى الله ومن معه من المسلمين خيراً ثم قال: اغزوا باسم الله، قاتلوا من كفر بالله، اغزوا ولا تغلوا، ولا تغدروا، ولا تمثّلوا، ولا تقتلوا وليدة، وإذا لقيت عدوك من المشركين فادعهم إلى ثلاث خصال أو خلال فأيتهن ما أجابوك فاقبل منهم وكف عنهم. ادعهم إلى الإسلام، فإن أجابوك فاقبل من منهم وكف عنهم، ثم ادعهم إلى التحول من دارهم إلى دار المهاجرين، وأخبرهم أنهم إن فعلوا ذلك فلهم ما للمهاجرين وعليهم ما على المهاجرين. فإن أبوا أن يتحولوا منها فأخبرهم أنهم يكونوا كأعراب المسلمين الذي يجري عليهم ولا يكون لهم في الفياء والغنيمه شيء إلا أن يجاهدوا مع المسلمين. فإن هم أبوا فسلّمهم الجزية، فإن أجابوك فاقبل من منهم وكف عنهم. وإن أبوا فاستعن بالله عليهم وقاتلهم

“Whenever he appointed a man to lead a military detachment, the Messenger of Allah (saw) would advise him especially to fear Allah and treat the Muslims with him well. He (saw) said: ‘Fight in the Name of Allah and in the cause of Allah. Fight those how disbelieve in Allah. Fight but do not be treacherous, do not steal from the spoils of war, do not mutilate and do not kill children. When you meet your enemy from among the polytheists, call them to one of three things. Whichever of them they respond to, accept it from them and refrain from fighting them. Invite them to accept Islam, and if they respond then accept it from them and refrain from fighting them. Then invite them to leave their land and move to the land of the polytheists. Tell them that if they do that, then they will have the same rights and duties as the polytheists. If they refuse, then tell them that they will be like the Muslim Bedouins (who live in the desert), subject to the same rulings of Allah as the believers. But they will have no share of Fay’ or war spoils, unless they fight alongside the Muslims. If they refuse to enter Islam, then ask them to pay the Poll-tax. If they do that, then accept it from them and refrain from fighting them. But if they refuse, then seek the help of Allah against them and fight them”

And from ibn Abbas (ra):

ما قاتل رسول الله صلى الله عليه وسلم قوماً قط إلا دعاهم

“The Messenger of Allah (saw) never fought except that he invited them”

(Narrated by Ahmad).

And from Furwat bin Maseek who said:

قلت: يا رسول الله أقاتل بمُقبِل قومي ومُدبرهم؟ قال: نعم. فلما وليت دعائي فقال: لا تقاتلهم حتى تدعوهم إلى الإسلام

“I said to the Messenger of Allah, should I fight with those of my people advancing (against) those of them fleeing? He said: Yes. When I turned (to go), he called me and said: Do not fight them until you invite them to Islam.”

The Khalifah and Jihad

Jihad is an absolute obligation, and it is not restricted or conditional upon anything. The *ayah* concerning it is absolute:

كُتِبَ عَلَيْكُمُ الْقِتَالُ

“*Fighting is prescribed upon you*”

[TMQ 2:216].

The presence of the Khalifah has no interference upon the obligation of jihad; rather jihad is obligatory whether there is a Khalifah or not. However, when there is a Khalifah whose Khalifah has been contracted legally and who has not left it for any reason, the matter of jihad is delegated to the Khalifah and his *ijtihad* as long as he is the Khalifah even if he was wicked as long as he remains in the headquarters of the Khalifah. The citizens are obliged to obey his opinion over this even if he were to command any one of them to fight together with a wicked Amir due to what Abu Dawud narrated with his chain from Abu Hurairah (ra): The Messenger of Allah (saw):

الجهاد واجب عليكم مع كل أمير برّاً كان أو فاجراً

“Jihad is obligatory upon you together with every Amir, whether he is righteous or wicked.”

It is obliged upon the Muslims’ Khalifah to expend his effort at every time to go out personally or send Muslim armies or expeditions, then be confident in the beautiful promise of Allah (swt) to support him in Allah’s statement:

يا أيها الذين آمنوا إن تنصروا الله ينصركم

“*O you who believe, if you support Allah then He will support you*” [TMQ 47:7].

He is obliged to begin organizing the army in the country’s extremities so as to be sufficient against those who they are facing from the disbelievers. It is not allowed for the Khalifah to leave any frontier empty of a group of Muslims who are sufficient to fight the enemy; rather it is obligatory that all frontiers be packed with the Islamic army at all times.

It is obliged that he establishes all that will defend the Muslims and the Muslims’ land from the enemy’s harm such as fortresses, trenches or anything, and it is obliged that he prepares what he can of all types of strength to protect the Islamic State and Islamic land from the disbelievers and their conspiracies.

It is obliged that the Khalifah personally supervises the practical leadership of the army in its military policy and administration. When he places upon it a leader with military expertise he only places him as his representative, since the Khalifah is not only Allah commander of the army but rather its practical leader. The Messenger (saw) supervised the army leadership himself, and when he would send expeditions would do so in his capacity as an army leader. Umar (ra) would send detailed information to his leaders in Persia and *Sham* which indicates that the Khalifah is the army’s leader practically. His obedience is obligatory upon every individual in the army whether he is a soldier or leader, just the same as it is obligatory upon every individual citizen. Muslim has narrated from a chain of Abu Hurairah (ra) that the Prophet (saw) said:

من أطاعني فقد أطاع الله ومن عصاني فقد عصى الله ومن يطيع الأمير فقد أطاعني ومن يعصي الأمير فقد عصاني، وإنما الإمام جنة يقاتل من ثورلوي تقي به

“He who obeys me, obeys Allah, and he who disobeys me, disobeys Allah. He who obeys the chief, obeys me, and he who disobeys the chief, disobeys me. The Imam is like a shelter for whose safety the Muslims should fight and where they should seek protection.”

The meaning of the *Imam* being a shield is (that he) is a shield because he prevents the enemy from harming Muslims. However the Khalifah should not command a decisive command that has no effect except within the people’s capability; if he knows that they will not be able to perform he does not command them with it strictly. Nor should he carry the Muslims to suicide, nor command them with something for which he fears betrayal from them.

This is when there is a Khalifah; if the Khalifah is absent, jihad is not delayed in any way whatsoever since its benefit disappears with its delay. If the Khalifah sends an army and commands over them an Amir who is killed or dies, then it is upon the army to appoint one of them as did the Prophet’s Sahabah in the army of Mu’tah upon which the Messenger (saw) consented. If the army has an Amir, none of the army can leave the camp for any purpose except with the Amir’s permission. And if he commands the doing of something or the leaving of something, his obedience is obligatory and it is forbidden to contradict him due to Allah’s statement:

إِنَّمَا الْمُؤْمِنُونَ الَّذِينَ آمَنُوا بِاللَّهِ وَرَسُولِهِ وَإِذَا كَانُوا مَعَهُ عَلَىٰ أَمْرٍ جَامِعٍ لَّمْ يَذْهَبُوا حَتَّىٰ يَسْتَأْذِنُوهُ

“The believers are only those who believe in Allah and His Messenger, and when they are with him in a collective matter do not go until they seek his permission”

[TMQ 24:62].

What applies here to the Prophet applies to the Khalifah, and the Amir is measured by analogy upon the Khalifah and (also) due to his (saw) statement:

وَمَنْ يُطِيعِ الْأَمِيرَ فَقَدْ أَطَاعَنِي وَمَنْ يَعْصِيَ الْأَمِيرَ فَقَدْ عَصَانِي

“Whoever obeys the Amir has verily obeyed me, and whoever disobeys the Amir has verily disobeyed me.”

The meaning of the Khalifah supervising the army's leadership

The Khalifah is the general leader of the Muslims in order to establish the Islamic *Shar'a* rules, and carry the Islamic *da'wah* to the world. So establishing the *Shar'a* and carrying the *da'wah* to the world are the two matters for the sake of which the post of the Khalifah exists; so both of them are the work of the post of the Khalifah. It is not correct for anyone to supervise them other than the Khalifah nor is it allowed for the Khalifah to establish someone who would supervise both of them instead of him because they are the two matters upon which the *bay'ah* is given and the *bay'ah* contract takes place upon his person. So he is not allowed to delegate someone else to perform the work upon which the contract took place. This is because each contract which occurred upon the contractor's person like the employee, agent and partner it is not permitted for him to delegate someone else to perform the work over which the contract took place. When the Khalifah contract occurs upon a specific person, it is not allowed for this person to delegate someone else to stand in his place in what the Khalifah contract occurred upon his person, which is the general leadership of Muslims to establish the *Shar'a* rules and carry the *da'wah*.

Accordingly this clarifies that carrying the *da'wah* is what the Khalifah was established for i.e. the existence of the Khalifah, as it is, exists in order to perform. It is not permitted for other than the Khalifah to supervise it even though it is valid for each Muslim to perform it. Therefore the carrying of the *da'wah*, even if it is obligatory upon all Muslims and every individual can perform it; nevertheless, none can supervise it except the Khalifah.

The Khalifah's supervision of the carrying of the *da'wah* has a specific method which is jihad; and jihad only exists with the presence of the mujahideen, the power which is prepared for fighting and the fighting itself. Therefore the existence of the army, its preparation and the work which it performs is the method of carrying of the *da'wah* to the world. Accordingly it is the Khalifah who supervises the leadership of the army since he is the one who supervises the carrying of the *da'wah* so he is the one who supervises the jihad. So he, not any other, supervises the leadership of the army. The supervision of the army leadership is not undertaking its administration, training or undertaking any technical matter within this rather these are all styles and means. The Khalifah, even though he supervises its affairs with a general supervision, does not perform this. Rather supervising the army is supervising its formation, preparation and supervising the matter of undertaking its work. This is because the soldier who is attached to jihad (i.e.) the mujahid, the strength prepared to terrorise the enemy and the fighting are considered of the actions of jihad so accordingly Allah (swt) commanded them when He commanded the jihad; and the fighting itself is jihad. Therefore the supervision of the mujahideen, their training, and their performing the fighting is only for the Khalifah and no one else. So the meaning of the Khalifah's leadership of the army is that he supervises, not anyone else, the planning of policy related to creating the army, preparing and strengthening it, and the policy related to its performing its work i.e. fighting. And (also) that he supervises, not anyone else, the direct supervision of the execution of this policy. Therefore it is the Khalifah who supervises planning all military policy, internal and external, and planning the war policy, internally and externally; and it is absolutely not correct for anyone else to supervise this. Yes, it is permitted for him to seek assistance from whoever he wishes in planning this policy and supervising its execution, but he is absolutely not allowed to leave someone else to supervise it. This is the meaning of the Khalifah's supervision of the army's leadership. It is not allowed for other than the Khalifah to supervise this leadership in any way whatsoever.

There are two questions arising from the place of the army itself in respect of it being the power with which jihad is performed in its capacity as the sole method of the Khalifah's supervision of the carrying of the *da'wah*, and in respect of it being the power which stands to protect the

authority of the Khilafah i.e. the State internally and externally. As for the question arising from the position of the army in respect of it being the power with which jihad is performed in its capacity as the method supervised by the Khalifah in the carrying of the *da'wab*, this is a question related to the State's foreign policy in which the army and military considerations have no place. This is because the foreign policy of the Islamic State is based upon carrying the *da'wab* to the world, and since the method of the Khalifah's supervision of the carrying of the *da'wab* lies only in jihad thus the Islamic State is in a perpetual state of jihad. Accordingly the whole Islamic Ummah believes that war between her and the rest of the States is possible at any time and that the State's policy must be based upon continuous preparation for jihad. Since fighting practically is not allowed except after first conveying to them the Islamic *da'wab* in a manner which captures the attention, therefore the policy of the Islamic State aims at creating a situation between it and other States which enables the conveying of Islam to peoples and nations in a way which captures attention; and that is based upon preparation to enter into war at any moment if the carrying of the *da'wab* requires this. Creating the situation which enables conveying the Islamic thoughts and rules in a manner capturing attention is an inevitable matter, as it is one of the rules of jihad and the basic condition to initiate fighting practically. Therefore it is obligatory upon the Khalifah to create this situation and it is obliged upon him to use the utmost effort of his capability in the way of creating it. He must spend whatever money is required to create it just like he must traverse danger in order to conquer, defend the might of Islam or protect the sacred charge of Muslims. Accordingly increasing the military strength, attention to military preparation and complete attention to military evaluations are essential elements in creating this situation and preserving it since the military strength is the sole shield against the strength of disbelief and the disbelieving states. This is what gives the army or military power an effect in the Khalifah's supervision in carrying the *da'wab*; this means that the army and be-weaponed power have an influence in foreign policy as they are its pillars from where comes a danger to the foreign policy i.e. upon the Khalifah's supervision over the carrying of the *da'wab*. Accordingly it is obligatory to understand the reality of the issue in respect of the army's influence in the Khalifah's supervision of the carrying of the *da'wab* i.e. in respect of the danger of this upon the State's foreign policy. If this danger is not understood in its reality, this will result either in stopping in the carrying of the *da'wab* to the world or confusion and tumbling down in the foreign policy.

The building of the military strength of the Islamic State is not merely defensive preparation only; rather it is an obligatory matter which is inevitable in order for the Khalifah to undertake what the Muslims pledged him upon i.e. for the State to undertake what Allah (swt) obliged upon it which is the carrying of the *da'wab*. Or, in other words, for the State to undertake its foreign policy in the way Allah (swt) obliged it and to preserve this policy to remain moving correctly and productively. Therefore building the military strength, on top of its being the sole armour possessed by the Ummah against the terror of belligerent disbelievers and their possible attack, is the sole method to make the State's foreign policy an Islamic policy.

However even though the Islamic State is inevitably obliged to build military strength via a strong military apparatus, this does not mean that military considerations dominate over the State's foreign policy nor that the military apparatus has influence, whether big or small, over the foreign policy. This is because the military opinion is an opinion by a specific profession emanating from those whose job is to guarantee the State a military excellence if war occurs between it and other States. Naturally and practically, their opinion encompasses all precautions; but it is not permitted that it exceeds in its consideration as being advice only; nor is it permitted to exceed being the advice of persons in a specific profession whose thought does not exceed a specific aspect in this subject. Accordingly it is not correct to follow this advice in everything, small or large; nor is it correct to study it except in the place it occupies in a general study of foreign policy. It is adopted in its technical expertise only, so it is taken when it is its technical expertise and what is taken within it in its place in the foreign policy; it is advice and not

consultation. That is, the Khalifah seeks it when he studies foreign policy and it is permitted to listen to it when it is said for mere listening on condition that it is in the situation of careful attention to the foreign policy and careful attention to the place of this advice in the resolutions of the foreign policy. It is allowed to give it more (regard) than that. This is because if he does not do this, and gives it greater consideration than it being mere advice, there will without any doubt be danger to the foreign policy; either confusion or tumbling down in the foreign policy or the halting of the carrying of the *da'wah*. Infact, there could be more than that as there could result tumbling down of the State and siege from the area upon which its authority is spread. Therefore it is not allowed to give the military opinion more (regard) than being merely advice.

When soldiers fulfil their work in their military capacity, they fulfil it as people of expertise. They do not permit into their considerations the benefiting from world public opinion or whether the invitation to Islam has been conveyed in a manner capturing attention; and their influence in meeting the enemy. They do not attempt to take into their measurements the redoubtable possibilities in the spiritual and morale strength; nor do they take concern to understand the actions of the *da'wah* carriers who live in the enemy lands or who go there for *da'wah*. They do not understand diplomatic means or the great influencing value of political actions. Due to this, military thinking is a subjective thought and not comprehensive political thinking. If their advice is taken it is valuable advice in its subject, but if they are given the authority of action and resolution, and if their advice has any type of compulsion this will without doubt cause harm to political steadiness and conduct. Therefore it is not allowed to permit the military apparatus to have influence in the foreign policy and the military opinions do not occupy a place exceeding their being no more than mere technical advice, not being general advice.

However, restricting the place of soldiers' opinions to being mere technical advice does not mean neglecting military evaluations; rather its meaning is only that the Khalifah must make his evaluations dominant over military evaluations. It is upon him, when he plans the final plan to be ready in bearing the responsibility by ignoring purely military evaluations at certain times. He must make the evaluations of non-soldiers such as the assistants (*mua'winiin*), governors, people of influence and scholars as more (worthy) than military evaluations; nevertheless the Khalifah must value the position of high ranking soldiers in the State, whether in respect of defending the land or initiating jihad with the disbelievers. Therefore it is obligatory upon him and the whole Ummah to preserve military strength just like the individual preserves the gift of his eye(s). However it is the politicians, not the soldiers, who dominate the planning of foreign policy and they are the ones to resolve how to prepare to face the dangers of war, when should they enter into war if it occurs and when this occurs how quickly and when. It is obligatory upon the Khalifah to always make the military power a following department and also not to allow the military apparatus, or any individual, to exceed the role of the following policy.

This is in relation to the role of the military apparatus and its opinions. As for how the Khalifah evaluates military evaluations, it is not sufficient to adopt them as no more than mere technical advices then give military evaluations an influence in his decisions on the foreign policy. Rather military evaluations must be considered as mere advise, and it impossible that there is influence of this advice on the foreign policy i.e. it is not allowed for him to base the foreign policy upon it or that it has an effective impact over it. It is forbidden that military evaluations dominate the foreign policy; rather it is obligatory to leave military evaluations at the margin of the State's foreign policy. Military evaluations must remain, in their being military evaluations whether emanating from soldiers or civilians in a place distant from influencing the Khalifah when he plans the foreign policy.

Military matters take a distinct tangible form. If you are able to see cannons, military ships, planes, bases, nuclear bombs and missiles; and you are able to be convinced easily and without difficulty about their influence in success or defeat in conquest or siege, advance or retreat.

These are material things whose dimensions can be measured; they have a material influence whose results are possible to be sensed. This is opposite to spiritual and morale strength, and political manoeuvring and regional and world public opinion as these are not material matters. It is not easy to understand their influence and sense their results since they are intangible things, unseen and unsensed though they are very important and of higher vitality in foreign policy and even in war and conquest. Therefore military evaluations must remain at the margin of foreign policy so as to remain secondary there in whereas spiritual strength comes first and then the morale strength is dominant. Political manoeuvrings and subtleties must have a prominent place in evaluation, and that all these should be collected together in a united political strength which is not subjected to separation, supervised by one Khalifah. From this we can understand three meanings of the Khalifah's supervision of the army leadership solely and practically, and the danger of giving the army formal leadership or supreme command as has come according to some expressions.

Making military evaluations dominant over foreign policy as was done by some Khulafaa had a terrible influence leading to halting the carrying of the *da'wah* to the world in the second period of the Abbasid age and the end of the Ottoman age. Islamic conquests stopped in the Roman land at the limits of Turkish lands in the side of *Bilad AsSham*, and in Western Europe they retreated from France and stopped at the Spanish borders despite the fact that the spiritual energy remained strong and Islamic thoughts were in the age of concentration and consolidation. However, when soldiers would give their opinions about their strength and the enemy's strength, and made these opinions the first consideration in entering war or not, the deciding decision was the summer and winter campaigns so that jihad remained existing in working according to the *Shar'a* rules without going beyond this to be political actions or political evaluations. In the days of the Ottomans, the Islamic armies reached the walls of Vienna in Austria after sweeping Europe including Greece, Bulgaria, Romania, Albania and Yugoslavia so that the authority of Islam spread over all these quarters. Until the public opinion in Europe was that the Islamic army could not be conquered. When military evaluations dominated foreign policy as an effect of the industrial revolution which occurred in Europe in the eighteenth century CE, the spread of Islam stopped and the ebb began which led to the complete destruction of the authority of Islam.

This is in as far as the army is the power with which jihad is performed. As for it being the power which stands to preserve the authority internally and externally, this is related to the material power in respect of it being the authority's life i.e. the rule. It is the one which protects it, and it has the potential to destroy it and the potential to establish it, though only temporarily. Therefore the place of the army and armed forces is an important place in the authority in its essence as an authority. This inspires (one) that the army has a large influence in the authority; however, the reality is that even if it allowed for the military evaluations to have a presence in foreign policy in relation to taking their advice, it is not allowed in any situation for the military apparatus nor for any individual within it to have a presence in the authority more than his being a soldier. This is because the authority, even if it is preserved by the military apparatus, there is no presence for soldiers within it. The authority is not a tangible material power or dependent upon material power; rather it only executes (*tanfeedh*) the system of relationships in the society and depends upon the Ummah or people since it is concealed in reality within them, or the stronger section among them. Soldiers and the military apparatus have no relationship with them. Yes, soldiers do undertake the execution and it cannot possibly exist without material power i.e. without soldiers, but their role in it is the role of a tool and nothing else. It is not allowed for their role in execution to exceed the role of a gun in a soldier's hand when he fires upon the enemy; i.e. (the gun) has absolutely no will nor its own opinion regarding that. It is dangerous for the rule (*hukm*) to have soldiers in the authority i.e. the rule in any situation whatsoever. Verily any role for them within it, however little, will make it a police state like the

role of the police officers (in relation) to prisoners, not an authority which executes the organising of relationships.

Any role that exists for soldiers in the authority, however small, will be a danger to the rule, the ruler and the State's entity. This is because the rule within it is more appropriate for truth, within it there is restriction to the *Shar'ah* and in it justice is realized. It pays no consideration to material power in relation to the rule, neither for the ruler nor the ruled. Its strength is hidden in its perception of the affairs of the people and its citizens, not due to the tools of execution it has. If the material power exists within it, it will spoil its nature as rule and transform it into mere absolute authority and domination; at this point there ceases to exist the reality of the rule and authority.. Accordingly it is not allowed for soldiers and the military apparatus to have any presence within it; rather they must remain tools in the hands of the ruler with absolutely no free will in the rule or opinion but rather mere dumb tools devoid of all that is related to will, opinion etc. This is in relation to its danger to the essence of the rule. As for its danger to the ruler, the military apparatus and soldiers are men within whom is the survival instinct, one of whose most important manifestations is leadership. If they are left to have a presence in the rule, and they see themselves as able to destroy the ruler and that they preserve him and his authority, they will imagine that they are the basis of authority and that upon them depends the ruler's authority. This will agitate within them the sensation of leadership and add to it; also the material power is in their hands so they will take the rule by force from him. Therefore it is a calamitous danger for the ruler to allow the military apparatus or soldiers any presence in the authority. This occurred in the Islamic State in the time of the Abbasids and Ottomans. Some of the Khulafaa became weak in front of the soldiers, and it was not long before they overthrew them or made them tools in their hands. A result of this was the decline which occurred in the rule of the Islamic State in the days of these Khulafaa.

As for the danger of the presence of any role for soldiers in the rule to the Ummah's entity and the State's entity, the Islamic State due to the nature of the thought it carries is surrounded by enemies. The *Shari'ah* rule which the State and the Ummah must adhere to is that the whole world is either an Islamic homeland or a war homeland. The lands which rule by Islam and the Islamic flag shades them are the Islamic homeland; everything else throughout the world is Kufr or war homeland. Therefore the Islamic State is surrounded by enemies at all times waiting for the opportunity to attack. If soldiers are given any presence in the rule, however small their role, their incitement by the enemies is easier than the incitement of politicians since the nature of their work is material military work so it is difficult for them to understand remote manoeuvres and hidden political ramifications. Therefore they can be incited to seize the rule or change the rulers in exchange for some gains for the country according to their opinion or personal gains for them. Herein exists danger not to the ruling personalities nor upon the rule itself but upon the Ummah's entity and the State's entity because the Ummah's entity is the collection of people together with the collection of concepts, measurements and convictions. The State's entity is the collection of people with the authority to rule with the collection of measurements, concepts and convictions. If the soldiers seize the rule due to foreign incitement, there would infiltrate into them, i.e. the soldiers, concepts, measurements and convictions other than those in the State. Therein defects will enter into the State's entity; there could even enter the influence of *Kafir* states which will result in dissipation and decline. Accordingly, tolerance for any presence for the military presence or soldiers in the authority i.e. rule is an abominable danger.

The Islamic Ummah Suffered from the danger of the presence of a role soldiers in authority via what befell it of the infiltration of defects into the entity of the State and Ummah, and then the destruction of the entity of the Islamic State and the entity of the Islamic Ummah from existence. In the last period of the Ottomans, the embassies of the *Kafir* states in Istanbul influenced the soldiers until there entered in the State apparatus unIslamic concepts, measurements and convictions. The role of *Madhat Pasha* and the officers together with him in

creating these concepts, measurements and convictions is of the most prominent roles, particularly the coup that brought Abdulhamid to be the Khalifah and the coup that removed Abdulhamid from the Khilafah and brought Muhammad Rashad as Khalifah. Before that, the role of Muhammad Ali in Egypt was great in making himself a French agent in striking the Islamic Khilafah in Istanbul. Then the role of Mustapha Kamal, following the defeat of the Ottoman State in World War One, in conspiring with the English in destroying the Khilafah in exchange for removing the Khulafaa from Istanbul and helping him in the peace conference. These roles undertaken by soldiers shook the entity of the Islamic State and then removed it, and then removed the entity of the Islamic Ummah from existence. Therefore it is not allowed to permit the military apparatus or soldiers any presence in authority.

The Martyr

Martyrs (*shuhadaa*) are of three types; the *shabeed* of the Akhirah but not by the rules of the world; the *shabeed* of the world only and the *shabeed* of the world and Akhirah. As for the *shabeed* of the Akhirah only and not of this world, they are mentioned in the *abadith*. In some narrations they are seven, in some eight, in some nine and in some eleven. The authentic (position) as what came in Muslim is that they are five who are: (*al-mat'un*) who is the one who dies in the plague i.e. the famous pestilence, the (*mabtun*) who is the one with diarrhoea, the drowned person who dies because of water, the one who dies of (*al-hadm*) i.e. the collapsed building, and the one who dies in the way of raising the word of Allah outside the battlefield. Muslim narrated from Abu Hurayra (ra) that the Messenger of Allah (saw) said:

بينما رجل يمشي بطريق وجد غصن شوك على الطريق فأخذه فشكر الله له وقال: الشهداء خمسة: المطعون والمبتون والغرق وصاحب الهدم والشهيد في سبيل الله عز وجل

“A man walking along the road found a thorn-branch in the road and removed it. Allah was grateful to him and forgave him. He (saw) said: The martyrs (shuhadaa) are five: (*al-mat'un*), (*al-mabtun*), the drowned one, the one who died in a collapsed (building) and the *shabeed* in the way of Allah ‘azza wa jalla.”

Muslim narrated from Abu Hurairah (ra) who said: The Messenger of Allah (saw) said:

مات مؤمن الشهيد فيكم؟ قالوا: يا رسول الله من قُتل في سبيل الله فهو شهيد. قال: إن شهداء أمتي إذا لقليل. قالوا: فمن هم يا رسول الله؟ قال: من قُتل في سبيل الله فهو شهيد، ومن مات في سبيل الله فهو شهيد، ومن مات في الطاعون فهو شهيد، ومن مات في البطن فهو شهيد. قال ابن مقسم: اشهد على أبيك في هذا الحديث أنه قال والغريق شهيد

“Whom do you consider a *shabeed* among you? They said: O Messenger of Allah, the one killed in the way of Allah is a *shabeed*. He said: Then the *shuhadaa* among my Ummah would be few. They said: Then who are they, O Messenger of Allah? He said: The one killed in the way of Allah is a *shabeed*, the one who dies in the way of Allah is a *shabeed*, the one killed in pestilence is a *shabeed*, the one killed due to the stomach is a *shabeed* (ibn Muqsim said: I testify that upon your father in this hadith that he said) and the drowned person is a *shabeed*.”

The meaning of these *shuhadaa* is that there is for them in the Akhirah the reward of the *shuhadaa*; as for this world, they are washed and prayed over. When the word “*shabeed*” is said in connection with reward and the hadith about that, it is correct to generalize it to these (persons). However, if the word “*shabeed*” is used in an unrestricted manner without any connotation, then it is not taken to denote these (persons) but rather to denote only those killed in the way of Allah.

As for the *shabeed* of the world not the Akhirah, he is the one who takes the rules of the *shabeed* of the world in so far as he is not washed nor prayed over but rather buried in his clothes. However he does not take in the Akhirah the reward of the *shabeed* who fought to raise the word of Allah the highest. This is the one who fights in other than the way of Allah such as fighting for fame or booty alone or while retreating. This is because the *abadith* specified the *shabeed*'s reward for the *shabeed* who fights in the way of Allah (swt), and the one fighting advancing not retreating. Muslim narrated from Abu Musa al-Ash'ari

جَلَّأَ رَأَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللَّهِ، الرَّجُلُ يُقَاتِلُ لِلْمَغْنَمِ، وَالرَّجُلُ يُقَاتِلُ لِيُذَكَّرَ، وَالرَّجُلُ يُقَاتِلُ لِيُبْرَى مَكَانَهُ، فَمَنْ فِي سَبِيلِ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ قَاتَلَ لَتَكُونَ كَلِمَةُ اللَّهِ أَعْلَى فَهُوَ فِي سَبِيلِ اللَّهِ

“That a man came to the Prophet (saw) and said: O Messenger of Allah, the man who fights for booty, the man who fights to be mentioned and the man who fights so that his rank is seen. Which one is in the way of Allah? The Messenger of Allah (saw) said: “The one who fights so that the word of Allah be highest is the one in the way of Allah.”

Muslim narrated from Abu Musa:

سئل رسول الله صلى الله عليه وسلم عن الرجل يقاتل شجاعة، ويقَاتِلُ حميَّةً، ويقَاتِلُ رياءً، أي ذلك في سبيل الله؟ فقال رسول الله صلى الله عليه وسلم: من قاتل لتكون كلمة الله هي العليا فهو في سبيل الله

“The Messenger of Allah (saw) was asked about the man who fights (to show his) courage, the one who fights out of anger, and the one who fights to show off (hypocritically). The Messenger of Allah (saw) said: The one who fights so that the word of Allah is highest is in the way of Allah.”

The Messenger made a condition of the *shabeed* being forgiven his sins that he fights advancing not retreating. Muslim narrated from Abdullah bin Abi Qatadah from Qatadah that he heard it being narrated from the Messenger of Allah

وسلم أنه قام فيهم فذكر لهم أن الجهاد في سبيل الله والإيمان بالله أفضل الأعمال. فقام رجل فقال: يا رسول الله أرايت إن قُتِلت في سبيل الله تُكفَّرَ عني خطاياي؟ فقال له رسول الله صلى الله عليه وسلم: نعم، إن قُتِلت في سبيل الله وأنت صابر محتسب قُتِلت غير مدبر. ثم قال رسول الله صلى الله عليه وسلم: كيف قلت؟ قال: أرايت إن قُتِلت في سبيل الله تُكفَّرَ عني خطاياي؟ فقال رسول الله صلى الله عليه وسلم: نعم، إن قُتِلت في سبيل الله وأنت صابر محتسب قُتِلت غير مدبر. إلا الدين، فإن جبريل عليه السلام قال لي ذلك

“That he stood among them and reminded them that jihad in the way of Allah and decisive belief in Allah is the best deeds. So a man stood up and said: O Messenger of Allah, do you see that if I fought in the way of Allah that all my errors would be forgiven? The Messenger of Allah (saw) said to him: Yes, if you fought in the way of Allah and you are patient, hopeful, advancing and not retreating. Then the Messenger of Allah (saw) said: What did you say? He said: Do you see that if I fought in the way of Allah that all my sins would be forgiven? The Messenger of Allah (saw) said: Yes, if you are patient, hopeful, advancing and not retreating except for debts as Jibril (AS) told me that.”

The understanding of this is that the retreating fighter’s sins are not forgiven nor does he have the reward of the *shabeed*. As for the one fighting for fame, the Messenger (saw) clarified that he would be punished and (yet) called him *shabeed*. Muslim narrated from Sulayman bin Yasar who said: People dispersed about Abu Hurairah (ra) and Natil who was from the people of Sham said to him: O Sheikh related to us a hadith you heard from the Messenger of Allah (saw). He said: Yes, I heard the Messenger of Allah (saw) saying:

سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: إِنَّ أَوَّلَ النَّاسِ يُقْضَىٰ يَوْمَ الْقِيَامَةِ عَلَيْهِ رَجُلٌ اسْتَشْهَدَ فَأُتِيَ بِهِ فَعَرَّفَهُ نِعْمَةَ فَعَرَّفَهَا. قَالَ: فَمَا عَمِلْتَ فِيهَا؟ قَالَ: قَاتُلْتُ فِيكَ حَتَّى اسْتَشْهَدْتُ. قَالَ: كَذَبْتَ، وَلَكِنَّكَ قَاتَلْتَ لِأَنَّ يُقَالُ جَرِيءٌ، فَقَدْ قِيلَ. ثُمَّ أُمِرَ بِهِ فَسُحِبَ عَلَىٰ وَجْهِهِ حَتَّى أُلْقِيَ فِي النَّارِ

“Verily the first person(s) to be judged on the Day of Judgement is a man who was killed as a *shabeed*. He is brought to Him (Allah) and He informs him of the bounties (of Allah) and he acknowledges them. He (swt) says: What did you do with them? He answers: I fought for you until I was killed as a *shabeed*. He says: You lied. Rather you fought so that it be said ‘(he is) brave’ and it has been said. Then He commands regarding him and he is dragged upon his face until he is thrown into the Fire”

Till the end of the hadith. This indicates that the one killed for fame, even if he takes the rules of the *shabeed* in this world, will not gain the reward of the *shabeed* on the Day of Judgement but would be punished.

As for the *shabeed* of the world and the Akhirah, he is the one who fights the disbelievers to raise the word of Allah and was killed in the battle (field) between Muslims and disbelievers, whether the fighting was in the land of war or the Islamic land. Allah (swt) said:

وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أحيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُونَ

“Do not think that those killed in the way of Allah are dead. Rather they are alive and receiving sustenance before their Lord”
[TMQ 3:169].

This *shabeed* is the one upon whose rights came in the *Shari’ah* rules. He is specified as the one killed in the war with disbelievers; similarly the one who was wounded in the battlefield then died of the wound he received in the battlefield is also considered like the one killed in the battlefield. As for other than these, they are not considered *shabeed*. Accordingly the one killed in fighting with rebels (*bughat*) is not considered *shabeed* nor the one wounded in the battlefield then recovered from the wound then died because of it. The *shabeed* who has specific rules, and the one about whom Allah stated that he is alive, is specified to the one killed in the battlefield with the disbelievers to raise the word of Allah and the one injured in the battlefield then died due to this wound.

The rule of this mentioned *shabeed* is that he is neither washed nor shrouded in burial shrouds; rather he is buried in his blood and clothes because the *shabeed* is resurrected on the Day of Judgement with the smell of his blood like the sweetest-smelling musk. As for not washing the *shabeed*, this is due to what Al-Bukhari narrated from Jabir who said:

كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَجْمَعُ بَيْنَ الرَّجُلَيْنِ مِنْ قَتْلَىٰ أَحَدٍ فِي الثَّوْبِ الْوَاحِدِ ثُمَّ يَقُولُ: أَيُّهُمَا أَكْثَرَ أَخَذًا لِلْقُرْآنِ؟ فَإِذَا أَشِيرَ إِلَيْهِ إِلَىٰ أَحَدِهِمَا قَامَهُ فِي اللَّحْدِ، وَأَمَرَ بِدَفْنِهِمْ فِي دِمَائِهِمْ وَلَمْ يُغْسَلُوا وَلَمْ يُصَلَّ عَلَيْهِمْ

“The Messenger of Allah (saw) would collect two men of those killed in Uhud in one cloth, and then he would say: Which one of them knew more of the Qur’an? If one of the two was indicated to him, he brought him forward in the grave-niche (*libd*) and said: I am a witness over these. He commanded their burial with their blood and did not pray over them nor wash them.”

And Ahmad (narrated) that the Prophet (saw) said about those killed in Uhud:

لَا تَغْسَلُوهُمْ فَإِنَّ كُلَّ جَرْحٍ أَوْ كُلَّ دَمٍ يَفُوحٌ مَسْكَاً يَوْمَ الْقِيَامَةِ. وَلَمْ يُصَلَّ عَلَيْهِمْ

“Do not wash them because each wound or (each drop of) blood will diffuse musk on the Day of Judgement and he did not pray over them.”

It is narrated that the Prophet (saw) said about those killed in Uhud:

زملوهم بدمائهم ولا تغسلوهم فإنه ما من جرح يُجرح في سبيل الله إلا وهو يأتي يوم القيامة وأوداجه تشخب دماً
اللون لون دم والريح ريح مسك

“Cover them in their blood and do not wash them as there is no wound wounded in the way of Allah save that it will come on the Day of Judgement with its jugular vein flowing blood whose colour is the colour of blood and the odour is the odour of musk.”

It has been narrated from Anas

أن النبي صلى الله عليه وسلم لم يُصلِّ على قتلى أحد ولم يغسلهم

“That the Prophet (saw) did not pray over those killed in Uhud or pray over them.”

Just as he did not wash those killed in Uhud, he did not wash the *shuhadaa* of Badr; similarly he did not wash the *shuhadaa* of Khandaq and Khayber. So it became clear that the *shabeed* is not washed. Similarly the *shabeed* is not enshrouded as the dead person is shrouded; rather he is shrouded in the clothes that he has due to the Messenger of Allah (saw)’s statement about those killed in Uhud:

زملوهم بدمائهم وكلوهم

“Cover them in their wounds and blood” (narrated by Ahmad).

And also due to what ibn Abbas (ra) narrated

أن رسول الله صلى الله عليه وسلم أمر بقتلى أحد أن يُنزع عنهم الحديد والجلود وأن يُدفنوا في ثيابهم بدمائهم

“That the Messenger of Allah (saw) commanded about those killed in Uhud that the iron and skins be removed from them and that they be buried with their blood and clothes” (narrated by Abu Dawud).

As for the prayer over the *shabeed*, it is allowed to pray over them and it is allowed not to pray over them. As for the permissibility of prayer over them, this is due to the narrations which came that the Messenger (saw) prayed over those killed in Uhud after their burial and prayed over Hamza and a man killed in the battlefield. In Al-Bukhari it is narrated from Uqbah bin ‘Amir

أنه صلى الله عليه وسلم صلى على قتلى أحد بعد ثماني سنين صلاته على ميت كالمودع للأحياء والأموات

“He (saw) prayed over those killed in Uhud after eight years, the prayer over the dead was like a farewell to those alive and those dead.”

And from Abu Dawud from Malik al-Ghiffari

أنه صلى الله عليه وسلم صلى على قتلى أحد عشرة عشرة في كل عشرة حمزة حتى صلى عليه سبعين صلاة

“He (saw) prayed over those killed in Uhud in groups of ten with Hamza in each ten until he prayed seventy times over him.”

Abu Dawud narrated from Abu Salim from a man of the Prophet (saw)’s Sahabah who said:

أغرنا على حي من جهينة فطلب رجل من المسلمين رجلاً منهم فضربه فأخطأه وأصاب نفسه، فقال رسول الله صلى الله عليه وسلم: أخوكم يا معشر المسلمين، فابتدره الناس فوجدوه قد مات فلَّفه رسول الله صلى الله عليه وسلم بثيابه ودمائه وصلى عليه ودفنه. فقالوا يا رسول الله أشهيد هو؟ قال: نعم، وأنا له شهيد

“We attacked by surprise a tribe from Juhainah. A man of the Muslims sought a man of them to strike him, but he missed and struck himself. The Messenger of Allah (saw) said: Your brother, O community of Muslims so the people hastened and found him dead. The Messenger of Allah (saw) covered him in his clothes and blood, prayed over him and buried him. They said: Is he a *shabeed*? He said: Yes, and I am a witness for him.”

These are three established *abadith*, and they are explicit in indicating that the *shabeed* is prayed over.

As for the permission not to pray over the *shabeed*, this is because there came other *abadith* that the Messenger (saw) did not pray over the *shabeed*. Abu Dawud and At-Tirmidhi narrated from Anas

أن النبي صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ لم يصل على قتلى أحد ولم يغسلهم

“That the Prophet (saw) did not pray over those killed in Uhud or wash them.”

And Ahmad narrated from Anas

أن شهداء أحد لم يغسلوا ودفنوا بدمائهم ولم يصل عليهم

“The *shubadaa* of Uhud were not washed. They were buried in their clothes and not prayed over.”

Al-Bukhari narrated from Jabir bin Abdullah (ra) who said:

كان النبي صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يجمع بين الرجلين من قتلى أحد في ثوب واحد ثم يقول أيهم أكثر أخذاً للقرآن؟ فإذا أشير له إلى أحدهما قدمه في اللحد وقال: أنا شهيد على هؤلاء يوم القيامة، وأمر بدفنهم في دمائهم ولم يغسلوا ولم يصل عليهم

“The Prophet (saw) would combine between two men of those killed in Uhud then say: Which one of them memorized more of the Qur’an? When one of the two was indicated to him, he would bring him forward in the grave-niche and he said: I am the witness over these on the Day of Judgement, commanded their burial in their blood and did not wash them or pray over them.”

These *abadith* are established and of explicit indication that the *shabeed* is not prayed over. Ash-Shafi’ responded to the hadith of ibn Abbas (ra) and what came of its meaning regarding praying over those killed in Uhud before their burial “*that the information came as if it were specific ones in the face of mutawatirah that the Messenger did not pray over those killed in Uhud.*” All these *abadith* are established whether those narrated that the Messenger (saw) prayed over the *shubadaa* or those narrated that he didn’t pray over them. There is no way to reject any of them due to their authenticity, and because they are of those used as proofs in narration and meaning. There is no way to outweigh one over the other as it is remote that the Sahabah forgot to pray over those *shubadaa*, just as it is also remote for them to leave an issue which is opposite of what is established about him (saw) of praying over the dead. So how can one be outweighed over the other? Nor should one say that the prayer in the *abadith* which established the prayer over the *shabeed* is the du’a so that his saying “prayed” means made du’a. One cannot say this since the *Shari’ah* realities precede the linguistic (realities) as long as there is no connotation. Here there is

no connotation so it is inevitable that the meaning of prayer is the *Shari'ah* prayer over the dead. Nor should one say that the *abadith* of praying over the dead abrogates the *abadith* of not praying over them since one of them, which is the prayer over those killed in Uhud after eight years is prayed to later than all the *abadith* since it came in the narration of ibn Hibban

ثم دخل بيته ولم يخرج حتى قبضه الله

“Then he entered his house and did not go out until Allah caused him to die.”

One should not say that because the lateness of the hadith alone is not sufficient indication of abrogation; rather there must be another connotation from which abrogation is understood. Here no connotation is present so there is no abrogation in it. So all the narrations remain recognized and are taken to mean that not praying over the *shabeed* is allowed. It is not narrated that the Messenger (saw) prayed over those killed in Badr, Khandaq or Khayber. They are also taken to mean that if one prays over the *shabeed* there is nothing (wrong) in that and people are not prevented from praying over them. The *shabeed* is named *shabeed* (witness) as Paradise is witnessed for him by the explicit text of the Qur'an. Allah (swt) said:

ن الله اشترى من المؤمنين أنفسهم وأموالهم بأن لهم الجنة يقاتلون في سبيل الله فيقتلون ويقتلون

“Verily Allah purchased from the believers their souls and wealth in return for paradise. They fight in the way of Allah, killing and being killed”
[TMQ 9:111].

Muslim narrated from Jabir who said:

قال رجل: أين أنا يا رسول الله إن قُتلت؟ قال في الجنة فألقى تمرات كن في يده ثم اتل حتى قُتِل

“A man said: Where am I, O Messenger of Allah, if I am killed? He said: In Paradise. So he threw the dates that were in his hands and fought until he was killed and in the hadith of Suwaid. A man said to the Prophet (saw) on the day of Uhud.”

It is narrated from Anas bin Malik (ra) that the Messenger of Allah (saw) went with his Sahabah until they preceded the polytheists to Badr. The polytheists came and the Messenger of Allah (saw) said:

قال رجل للنبي صلى الله عليه وسلم يوم أحد وعن أنس بن مالك أن رسول الله صلى الله عليه وسلم انطلق وأصحابه حتى سبقوا المشركين إلى بدر وجاء المشركون فقال رسول الله صلى الله عليه وسلم: لا يقدم أحد منكم إلى شيء حتى أكون أنا دونه فدنا المشركون فقال رسول الله صلى الله عليه وسلم: قوموا إلى جنة عرضها السموات والأرض. قال يقول عمير بن الحمام الأنصاري يا رسول الله جنة عرضها السموات والأرض؟ قال: نعم. قال: بخ بخ. فقال رسول الله صلى الله عليه وسلم: ما يملكك على قولك بخ بخ. قال: لا والله يا رسول الله إلا رجاء أن أكون من أهلها. قال فإنك من أهلها. فأخرج تمرات من قرنه فجعل يأكل منهن ثم قال: لئن أنا حييت حتى آكل تمراتي هذه إنها لحياة طويلة فرمى بما كان معه من التمر ثم قاتلهم حتى قُتِل

“Let none of you precede to anything without my being. The polytheists came close so the Messenger of Allah (saw) said: Stand forth to a Paradise whose breadth is that of the heavens and the earth. He said: ‘Umayr bin al-Hammam al-Ansari said: O Messenger of Allah, a Paradise whose breadth is that of the heavens of the earth? He said: (*Bakh! Bakh!*). So the Messenger of Allah (saw) said: What carried you to your statement, (*Bakh! Bakh!*). He said: Nothing, by Allah, except the hope that I be one of its people. He said: Verily you are one of its people. He removed dates from his (*qaran*) and began eating from them. Then he said: If I were to live until

I ate these dates, it would then be a long life! He threw the dates that had then fought them until he was killed”

(Narrated by Muslim).

So Allah (swt) and the Messenger of Allah (saw) have witnessed the Paradise for the *shabeed*. As for the life of the *shabeed*, it is established by the explicit text of the Qur’an. Allah (swt) said:

وَلَا يَحْزَنُونَ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أحيَاءٌ عِنْدَ رَبِّهِمْ يُرَزَقُونَ فَرحِينَ بما آتاهم الله من فضله ويستبشرون بالذين لم يَلْمَحُوا بهم من خلفهم أن لا خوف عليهم ولا هم يحزنون، يستبشرون بنعمة من الله وفضل وأن الله لا يضيع أجر المؤمنين

“Do not think that those killed in the way of Allah are dead, rather (they are) alive with sustenance before their Lord. Pleased with what Allah gave them of His favours and with good tidings for those behind them who have not met them, that there is no fear for them nor do they grieve. They have glad tidings of blessings from Allah and His favour, and verily Allah does not cause the reward of the believers to be lost”

[TMQ 3:169].

This life for the *shubadaa* is unseen which we do not understand nor perceive as it is in the eternal abode. Although we do not understand this hidden life nor perceive it, nevertheless we believe in its existence but do not understand its reality. Our conviction in its existence is an inevitable matter as it is established by a definite Qur’anic text. Allah (swt) said:

ولا تقولوا لمن يُقتل في سبيلِ الله أَمْواتٌ بَلْ أحياءٌ وَلكن لا تَشعرون

“Do not say of those killed in the way of Allah (are) ‘dead’... Rather they are alive but you do not know”
[TMQ 2:154].

The life of the *shubadaa* is from the unseen (matters) in which iman is obliged. As for the virtue of the *shubadaa*, it is a great virtue without an equivalent and he (saw) clarified it in numerous *abadith*. Al-Bukhari narrated from Qatadah who said: I heard Anas bin Malik (ra) from the Prophet (saw) who said:

ما من أحد يدخل الجنة يحب أن يرجع إلى الدنيا وله ما على الأرض من شيء إلا الشهيد يتمنى أن يرجع إلى الدنيا فيُقتل عشر مرات لِمَا يرى من الكرامة

“No one who enters Paradise would like to return to the world to obtain all that is upon the world except the *shubadaa* who would wish to return to the world to be killed ten times due to what he sees of the honour (*karamah*).”

And in Al-Bukhari:

وقال المغيرة بن شعبه: أَخبرنا نبينا صلى الله عليه وسلم عن رسالة ربنا من قُتِلَ منا صار إلى الجنة). وقال عمر للنبي صلى الله عليه وسلم: (أليس قَتَلنا في الجنة وقتلناهم في النار؟ قال: بلى

“Al-Mughira bin Shu’bah said that our Prophet (saw) informed us of the message of our Lord that whoever is killed among us goes to Paradise and Umar said to the Prophet (saw): ‘Are not our dead in Paradise and their dead in the Fire. He said: Yes.”

And from Abdullah bin ‘Amru bin al-‘Aas that the Messenger of Allah (saw) said:

يُغفر للشهيد كل ذنب إلا الدين

“All the *shabeed*'s sins are forgiven except the debt” (narrated by Muslim).

He also narrated that the Prophet (saw) said:

القتل في سبيل الله يكفر كل شيء إلا الدين

“The one killed in the way of Allah has all his sins wiped out except the debt.”

And Al-Bukhari and Muslim narrated from Abu Hurairah (ra) from the Prophet (saw) who said:

تَكْفُلُ اللَّهُ لِمَنْ جَاهَدَ فِي سَبِيلِهِ لَا يُخْرِجُهُ مِنْ بَيْتِهِ إِلَّا جِهَادًا فِي سَبِيلِهِ وَتَصَدِيقَ كَلِمَتِهِ بِأَنْ يُدْخِلَهُ الْجَنَّةَ أَوْ يُرْجِعَهُ إِلَى مَسْكَنِهِ الَّذِي خَرَجَ مَعَهُ مَا نَالَ مِنْ أَجْرٍ وَغَنِيمَةٍ. وَالَّذِي نَفْسٌ مَحْمِيْدَةٌ مَا مِنْ كَلِمَةٍ يُكَلِّمُ فِي سَبِيلِ اللَّهِ إِلَّا جَاءَ يَوْمَ الْقِيَامَةِ كَهَيْئَتِهِ حِينَ كَلِمَةٍ، لَوْنُهُ لَوْنُ دَمٍ وَرِيْحُهُ رِيْحُ مَسْكٍ. وَالَّذِي نَفْسٌ مَحْمِيْدَةٌ لَوْلَا أَنْ رَجَالَاً مِنَ الْمُؤْمِنِينَ لَا تَطِيْبُ نَفُوسُهُمْ أَنْ يَتَخَلَّفُوا عَنِّي وَلَا أَجِدُ مَا أَحْمِلُهُمْ عَلَيْهِ مَا تَخَلَّفْتُ عَنْ سَرِيَّةٍ تَغْدُو فِي سَبِيلِ اللَّهِ. وَالَّذِي نَفْسٌ مَحْمِيْدَةٌ بِيَدِهِ لَوَدِدْتُ أَنْ أُقْتَلَ فِي سَبِيلِ اللَّهِ ثُمَّ أَحْيَا ثُمَّ أُقْتَلَ ثُمَّ أَحْيَا ثُمَّ أُقْتَلَ ثُمَّ أَحْيَا ثُمَّ أُقْتَلَ

“Allah guarantees security for the one who dies jihad in His way, not leaving his house for any other reason except jihad in His way and believing in His words, that He will enter him into Paradise or return him to his abode from which he left together with what he achieved of reward or booty. By the One in whose hand lies the should of Muhammad, whoever is wounded in the way of Allah will not come on the Day of Judgement except in his form when he was wounded, his colour the colour of blood and his odour the odour of musk. By the one in whose hand lies the soul of Muhammad, were it not that there were men among the believers whose souls are not pleased to stay behind me (when I go) nor do I find that could carry them upon, I would not stay behind any expedition that goes out in the way of Allah in the morning. By the One in whose hand lies the soul of Muhammad, I would love to die in the way of Allah then I am resurrected then killed, then resurrected then killed, then resurrected then killed.”

Guarding the frontiers (*Ar-Ribat*)

The *Ribat* is among what follows jihad, and it is to position at the frontiers to strengthen the Muslims. The frontier is every place at the borders with the enemy whose people are frightened by the enemy and they frighten the enemy. In other words, it is the place beyond which there is no Islam. The meaning of *ribat* is to stay at the frontiers to honour the deen and repel the evil of the disbelievers from Muslims. Staying at any place where the attack of the enemy is expected with the intention to prevent it is considered *ribat* because the *ribat* of tethered horses in Allah's statement:

وأَعْلَوْا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ

“Prepare for them as much as you can of *ribat* of horses so as to terrorise the enemy of Allah and your enemy”
[TMQ 8:60]

because these (people) tether their horses and those (also) tether, each one preparing for his master; so the established residence was called a frontier and there is *ribat* in the home even if there are no fighting horses. Accordingly whoever stays in the frontier with the intention to repel the enemy is considered one guarding the frontier whether it is the place of his residence i.e. his home where he normally resides or not, as the understanding is not whether the place is his residence or not but rather the intention is to repel the enemy and frighten him. The virtue of *ribat* is great and its reward is large since *ribat* is the defending of Muslims and their honour, and strength to the people of the frontier and those fighting. *Ribat* is the origin of jihad and its branch, and there came numerous texts on the virtue of *ribat*. It came in Sahih Muslim from Salman (ra) who said: I heard the Messenger of Allah (saw):

رباط يوم في سبيل الله خير من صيام شهر وقيامه، وإن مات فيه أُجْرِي عليه الذي كان يعمل وأُجْرِي عليه رزقه وأمن الفتان وبُعْث يوم القيامة شهيداً

“The *ribat* of a day and night in the way of Allah is better than fasting and praying for a month. And if he dies, the actions he performed would continue for him, and his sustenance would flow upon him and he would be safe from afflictions and he would be raised as a martyr on the day of judgement”

At-Tabarani narrated with a chain of trustworthy people a *marfu'* hadith:

من مات مرابطاً أَمِنَ الْفَزَعِ الْأَكْبَرَ

“And the one who dies as a *murabit* in the way of Allah is safe from the great terror.”

And from 'Umamah from him (saw) who said:

إن صلاة المرابط تَعْلَلُ خَمْسَمِائَةَ صَلَاةٍ وَنَفَقَتَهُ الدِّينَارَ وَالدَّرْهَمَ مِنْهُ أَفْضَلُ مِنْ سَبْعِمِائَةِ دِينَارٍ نَفَقَةً غَيْرِهِ

“The prayer of the *murabit* is counted as five hundred prayers and his spending a dinar and dirham upon is better than seven hundred dinars that he spends in anything else.”

It is narrated from Fudhala bin 'Ubayd who said: I heard the Messenger of Allah (saw) saying:

كُلُّ مَيِّتٍ يُجْتَمَعُ عَلَيْهِ إِلَّا الْمُرَابِطَ فِي سَبِيلِ اللَّهِ فَإِنَّهُ يَنْمُو لَهُ عَمَلُهُ إِلَى يَوْمِ الْقِيَامَةِ

“The actions of all dead persons cease except the one who dies a *murabit* in the way of Allah. His actions increase until the Day of Judgement and he is safe from the affliction of the grave.”

Ribat can be short or long. Any period that one stayed with the intention of *ribat* is *ribat*, whether long or short. That is why the Prophet (saw) said:

رباط يوم، رباط ليلة

“*Ribat* of a day and night.”

It is better for the *murabit* to travel to the frontiers to live there so that he becomes a *murabit*. This is why many of the predecessors lived in the frontiers in order to be *murabitun*. The people of the frontiers are alone considered *murabitun* if their intention in residing is repelling the enemy and frightening them, and if sufficiency is achieved by them alone. If it is not achieved except with the frontiers which are before these, then they are also (part of) *ribat*.. What is considered *ribat* is the *murabit* residents in their land by whom repelling the enemy and their terrifying is achieved, and they are considered *murabit*.

Similar to the guarding - *murabatah* in the way of Allah (swt) is the guarding in the way of Allah (swt) for which there is great virtue. It has been narrated from ibn Abbas (ra) who said: I heard the Messenger of Allah (saw) saying:

عينان لا تمسهما النار: عين بكت من خشية الله، وعين باتت تحرس في سبيل الله

“Two eyes will never be touched by the fire of Hell; an eye which weeps out of Fear of Allah and an eye which spends the night in guarding in the Cause of Allah.”

It has been narrated from Uthman (ra) who said: I heard the Messenger of Allah (saw) saying:

حرس ليلة في سبيل الله أفضل من ألف ليلة قيام ليلها وصيام نهارها

“Guarding one night in the way of Allah is better than praying one thousand night and fasting their days.”

The Islamic army

Jihad is obligatory upon Muslims without distinction between the pious and the impious, or the sincere in belief and the hypocrite. When the *ayaat* of jihad came, they came in general. When the texts come in general, they remain general as long as there is no specific text specifying them; there came no text specifying jihad for some Muslims and not others, so the texts remain general. Accordingly it is allowed to enrol hypocrites, the impious and the one who fights due to anger in the Islamic army. As for the permission for them to be present with the sincere believers in fighting the enemies, and the Islamic army, this is due to the generality of the *ayaat* of jihad. This is also because the Messenger (saw) took the assistance of the head of the hypocrites, Abdullah bin 'Ubayy, in jihad; he attended some battles and the military consultations with him (saw) on the day of Uhud before the battle. Allah (swt) reproved the Messenger when he permitted the hypocrites to stay behind the fighting in Tabuk. Allah (swt) said:

عفا الله عنك لم أذنت لهم حتى يتبين لك الذين صدقوا وتعلم الكاذبين

“Allah forgive you! Why did you give permission to them before it had been shown to you those who are sincere and you knew the liars?” [TMQ 9: 43].

As for the impious, this is due to the generality of the *ayat* and due to what Said bin Musayyab narrated from Abu Hurairah (ra) who said:

أمر رسول الله صلى الله عليه وسلم بلالاً فنادى في الناس أن لا يدخل الجنة إلا نفس مسلمة وأن الله ليؤيد هذا الدين بالرجل الفاجر

“The Messenger of Allah (saw) commanded Bilal who announced to the people that none will enter Paradise except the Muslim would, and that Allah will strengthen this deed through a reprobate man”

(narrated by Al-Bukhari).

This is also because jihad is one of the obligations implemented by the Khalifah. If he does not implement it upon upon the impious, who is a Muslim, this would be leaving the implementation of a rule of Allah (swt) which is *haram* and not permitted. Accordingly it is obliged to implement jihad upon the impious as it is implemented upon the pious equally.

Seeking the assistance of disbelievers in fighting

It is permitted to seek assistance from the disbelievers in their capacity as individuals on condition that they are under the Islamic flag irrespective of whether they are *dhimmis* or not, or whether they are citizens of the Islamic State or not. As for seeking assistance from them as a specific nation with an entity independent from the Islamic State, this is absolutely not allowed. So it is forbidden to seek their assistance in their capacity as an independent State. The evidence for permitting the seeking of assistance of disbelievers as individuals is

أن قزمان خرج مع أصحاب رسول الله صلى الله عليه وسلم يوم أُحد وهو مشرك فقتل ثلاثة من بني عبدالدار حَمَلَة لواء المشركين حتى قال صلى الله عليه وسلم: إن الله لي أزر هذا الدين بالرجل الفاجر

“That Quzman went out with the Sahabah of the Messenger of Allah (saw) on the day of Uhud while he was a polytheist. He killed three (men) from Banu Abd ad-Dar who carried the polytheists’ flag until he (saw) said: Verily Allah will assist this deed by a dissolute man.”

And the tribe of Khuza’ah went out with the Prophet (saw) in the year of the conquest to fight the Quraysh, and Khuza’ah at that point remained polytheist until the Messenger of Allah (saw) said to them:

يا معشر خزاعة ارفعوا أيديكم عن القتل، فقد كثر القتل إن نفع لقد قتلتهم قتلاً لأدينه

“O people of Khuza’ah, raise your hands from fighting. Verily the fighting has exceeded (limits) if it occurs. You have performed a prohibited killing.”

All these *ahadith* are authentic, indicating explicitly the permission of seeking of assistance of disbelievers as individuals i.e. the permissibility of a disbeliever being in the Muslims’ army fighting the enemy together with Muslims. However, the disbeliever is not compelled to be in the army nor compelled to fight since jihad is not obligatory upon him. He is not given from the booty but an insignificant gift is given to him i.e. he is given a measure of money. If the disbeliever requests to fight together with Muslims i.e. that he be in the Muslims’ army, it is allowed in all types of services in the army if he is trusted and betrayal is not feared from him. As for what came from Aisha (ra) when she said:

خرج النبي صلى الله عليه وسلم فَبَلَ بدر فلما كان بَحْرَة الويرة أدركه رجل قد كان تَذكر منه جرأة وبجدة، ففرح به أصحاب الرسول صلى الله عليه وسلم حين رأوه، فلما أدركه قال: جئت لأتبعك فأصيب معك. فقال له رسول الله صلى الله عليه وسلم: تؤمن بالله ورسوله؟ قال: لا. قال: فارجع فلن أستعين بمشرك

“The Prophet (saw) left for Badr. When he was in the land of the nomads, a man of exceptionally mentioned bravery and energy overtook him, and the Sahabah of the Messenger (saw) were pleased when they saw him. When he overtook him, he said: I came to follow you and achieve (booty) together with you. The Messenger of Allah (saw) said to him: Do you believe in Allah and His Messenger? He said: No. He said: Then return for I will never seek the assistance of a polytheist. She said: Then they went on until we were by the tree. The man overtook him and said to him like what he said the first time. So the Prophet (saw) said to him like what he said the first time. He said: Return for I will never seek the assistance of a polytheist. He said: Then he returned and overtook him at the desert. He said to him like what he said the

first time: Do you believe in Allah and His Messenger? He said: Yes. So the Messenger of Allah (saw) said to him: Then go” (narrated by Muslim).

This hadith does not contradict what is established that he (saw) sought the help of the polytheists. This is because this man made it a condition that he fights and takes the booty for he said:

جئت لأتبعك فأصيب معك

“I came to follow you and achieve (booty) together with you.”

Booty is not given except to the Muslims, so the Prophet’s refusal to seek assistance from him is taken to mean that seeking of assistance from individual disbelievers is delegated to the Khalifah’s command. If he wills, he seeks assistance; and if he wills, he refuses.

As for what was narrated from Khubayb bin Abdurrahman from his father from his grandfather:

: أتيت النبي صلى الله عليه وسلم وهو يريد غزواً أنا ورجل من قومي ولم نسلم، فقلنا: إنا نستحي أن يشهد قومنا مشهداً لا نشهده معهم. فقال: أسلمتُما؟ فقلنا: لا. فقال: إنا لا نستعين بالمشركين على المشركين. فأسلمنا وشهدنا معه

“I came to the Messenger of Allah (saw), myself and a man of my people while we had not embraced Islam while he intended to fight. We said: We are ashamed that our people witness an assembly without us witnessing with them. He said: Do you embrace Islam? We said: No. He said: We do not seek assistance of polytheists against polytheists. So we embraced Islam and witnessed together with them.”

This hadith is taken to mean that seeking of assistance of disbelievers is delegated to the Khalifah’s opinion; if he wills, he seeks assistance and if he so wills, he refuses. The Messenger (saw) sought assistance in Uhud and the conquest of Makkah and refused to seek assistance in Badr and from Khubayb and the man together with him until they embraced Islam. Since it is established that the Messenger (saw) sought assistance from individual disbelievers while they were upon disbelief, and it is (also) established that he rejected assistance from individuals until they embraced Islam and this is evidence that seeking assistance of individual disbelievers in fighting is allowed and that it is delegated to the opinion of the Khalifah. If he wills he can accept assistance and if he so wills he will refuse it. Al-Baihaqi mentioned the text of Ash-Shafi’: Verily the Prophet (saw) intuitively perceived into the character of those he returned so he returned them expecting their Islam. And Allah (swt) verified his belief.

As for the evidence that it is not allowed to seek assistance from the disbelievers in their capacity as an independent State, this is due to what Ahmad and An-Nasai narrated from Anas who said: The Messenger of Allah (saw) said:

لا تستضيئوا بنار المشركين

“Do not seek light from the fire of the polytheists.”

The fire of a people is a metaphoric expression for their entity in war as an independent tribe or State. Al-Baihaqi said: The authentic is what Al-Hafidh Abu Abdullah informed us via a chain leading to Abu Hameed as-Sa’idi who said:

خرج رسول الله صلى الله عليه وسلم حتى إذا خلف ثنية الوداع إذا كتبية قال: من هؤلاء؟ قالوا: بني قينقاع رهط عبد الله بن سلام. قال: أو تسلّموا؟ قالوا: لا. فأمرهم أن يرجعوا وقال: إنا لا نستعين بالمشركين. فأسلموا

“The Messenger of Allah (saw) went out until they crossed Thaniyya al-Wida’ when when there appeared a squadron and said: Who are these? They said: Banu Qaynuqa and they are in the company of Abdullah bin Salam. He said: Have they embraced Islam? They said: No, they are upon their religion. He said: Tell them to return. Verily we do not seek the assistance of the polytheists.”

The Messenger (saw) returned the company of Abdullah bin Salam of Banu Qaynuqa since they came as a nation united in a Kafir squadron, and they came under their flag in their capacity as being from Banu Qaynuqa between whom and the Messenger (saw) were treaties; they were like a State. Due to this, he rejected them. Their rejection was due to their coming under their flag and with their State, by the evidence of his (saw) accepting the assistance of the Jews in Khayber when they came as individuals. This hadith of Abu Hameed As-Sa’idi includes the *Shari’ah* reason (*illah*), so if it exists the rule exists and if it is absent the rule is absent. The reason in the hadith is clear in the hadith’s text where it says:

إذا كتيبة. قال: من هؤلاء؟ قالوا: بو قينقاع رهط عبدالله بن سلام

“When there appeared an squadron. He said: Who are these? They said: Banu Qaynuqa who are the company of Abdullah bin Salam.”

The meaning of their being a squadron is that they are an independent army with an independent flag, since for every squadron there is flag. So they were a Kafir squadron with an independent flag and from the Jewish Banu Qaynuqa who were from the ranks of a State between whom and the Messenger (saw) were treaties. This was the reason for rejecting them, not merely because they were disbelievers with the evidence that he commanded them to return based upon this and their rejection of Islam not due to their rejection of Islam alone. This is strengthened by the hadith of Anas:

لا تستضيئوا بنار المشركين

“Do not seek light by the fire of polytheists”

Since it has control over the entity and it is strengthened by the Messenger’s accepting assistance from Quzman in the same place of the event of Uhud although he was a polytheist. The meaning of this is rejecting the assistance of disbelievers in their capacity as an entity, and accepting their assistance in their capacity as individuals. Therefore seeking assistance of disbelievers as a *Kafir* nation or tribe or State, and under their own flag as a part of their State is absolutely not allowed in any case. As for Khuza’ah going out together with the Prophet (saw) against the Quraysh the year of conquest and it was an independent tribe, this does not indicate the permissibility of seeking assistance of a nation with an independent entity because Khuza’ah was present in the year of Hdaybiyya when the peace treaty between the Quraysh and the Muslims was written. When it came in the text of the treaty:

وأنه من أحب أن يدخل في عقد محمد وعهده دخل فيه، ومن أحب أن يدخل في عقد قريش وعهدهم دخل

فيه

“Whoever would like to enter into the contract of Muhammad and his pledge can enter into it, and whoever would like to enter into the contract of Quraysh and their pledge can enter into it.”

Based upon this text, Khuza’ah leaped and said: We are in the contract of Muhammad and his pledge, and Banu Bakr leaped and said: We are in the contract of Quraysh and their pledge. So Khuza’ah came together with the Muslims in this treaty which was between Quraysh and the Muslims, and the Messenger (saw) entered them under his protection as a group in his State according to the contract. Therefore it fought as a tribe under the Muslims’ flag and as a part of

the Islamic State, not like an independent State so they were like individuals not like an entity. As for what some imagine of Khuza'ah having an alliance or treaty with the Messenger (saw), this is not correct. Based upon this treaty, the tribe of Banu Bakr entered together with Quraysh as a part of them. The tribe of Khuza'ah entered together with Muslims as a part of them. Accordingly the war of Khuza'ah together with the Messenger (saw) was not a war of a disbelieving tribe together with Muslims; rather it was a war of individual disbelievers in a disbelieving tribe together with Muslims under the flag of Muslims. This is allowed without any problem in it. As for what was narrated by Ahmad and Abu Dawud from Dhu Makhmar who said: I heard the Messenger of Allah (saw) saying:

سُتَصَالِحُونَ الرُّومَ صِلْحًا تَغْزُونَ أَنْتُمْ وَهُمْ عَدَاؤٌ مِنْ وِرَائِكُمْ

“You will make a treaty of peace with the Romans, and you and they will fight enemies beyond them,”

And his saying

تَغْزُونَ أَنْتُمْ وَهُمْ عَدَاؤٌ مِنْ وِرَائِكُمْ

“You and they will fight enemies beyond them”

Is taken to mean individual Romans and not their State. This is because he said:

سُتَصَالِحُونَ الرُّومَ صِلْحًا تَغْزُونَ

“You will make a treaty of peace with the Romans and fight”

And the peace between Muslims and disbelievers is only when they accept to pay the *jizyah* and their entering under the rule of Muslims. Islam has commanded Muslims to offer the disbelievers whom they fight between three (matters): Islam or *jizyah* or war. When peace occurs and they are disbelievers, it cannot be except in the situation of paying the *jizyah* and their entering under the Islamic flag. His statement:

سُتَصَالِحُونَ

“You will make peace with them”

Is a connotation (*qareena*) that they are under the Muslims' flag so they would then be individuals. This is strengthened by the reality of what occurred with the Romans. Muslims fought them, defeated them and occupied their land. Some Romans fought together with Muslims as individuals. It never occurred that Romans fought in their capacity as a State with the Islamic State enemies beyond them. This never occurred at any time which emphasizes that the meaning of the hadith of Romans is individuals and not as a State, and it is obligatory to take it as such. This clarifies that there is no evidence indicating the permissibility of seeking assistance of polytheists as a State; rather the explicit texts are about the absolute impermissibility of this.

All this is in relation to seeking assistance of the disbelievers to fight by himself together with Muslims. As for seeking assistance of the disbeliever by taking weapons from him; this is allowed whether the weapons are from an individual or a State based on this being a guaranteed loan. This is due to what was narrated that when the Messenger of Allah (saw) decided to travel to meet Hawazin, it was mentioned to him that there were shields and weapons with Safwan bin Umayyah. He sent to him, while he was still a polytheist on that day, and said:

يا أمية أعونا سلاحك هذا نلق فيه عدونا غداً. فقال صفوان: أغصباً يا محمد؟ قال: بل إعارة مضمونة حتى نؤديها لك. فقال: ليس بهذا بأس، فأعطاه مائة درع بما يكفيها من السلاح، فسأله رسول الله صلى الله عليه وسلم أن يكفيهم حملاً لها ففعل

“O Umayyah, lend us your weapons so that we meet our enemy with them. Safwan said: Do you seize by force Muhammad? He said: No, rather a guaranteed loan until we return them to you. He said: There is nothing wrong with his. So he gave him one hundred shields with weapons sufficient for them. They claimed that the Messenger of Allah (saw) required them to carry them (weapons) for them, and he did.”

It is clear herein that the Messenger (saw) sought help from a disbeliever by taking weapons from him, even if he was an individual; he was the head of a tribe. The mere taking of weapons from a disbeliever is an indication upon the permissibility of seeking assistance from a disbeliever by taking weapons from him without restriction as long as there came no evidence specifying not seeking assistance from them as a State just like in seeking assistance in fighting. However, there came no such evidence preventing taking weapons from a State so it remains unrestricted in permitting taking them from the disbeliever absolutely whether by loan or purchase. Usually, the taking of weapons by a State usually occurs from a State, so it is allowed to seek assistance by taking weapons from a disbeliever State.

Preparing the Islamic army

The preparation of the Islamic army takes place from the *Bait al-Mal* since the wealth of the *Bait al-Mal* is disposed for the interests of Muslims. So among that which it is disposed for is preparing fighters. Accordingly it is obliged to organise the fighters in one Islamic army under the leadership of the Khalifah however numerous the divisions of the army and the military aspects of its organisation. They must all be under one flag however numerous its banners. The preparation of the whole army is from the *Bait al-Mal* not from elsewhere; if anyone wishes to prepare any of the fighters, despite the presence of the *Bait al-Mal*, this is paid to the *Bait al-Mal*. Preparation takes place from it for everything small or big for the army. If there is no money in *Bait al-Mal* and there is urgent need to prepare the army to defend the Muslims, it is upon the Khalifah to oblige the amount required for this is what is obligatory upon all Muslims. If there does exist money in *Bait al-Mal* from the permanent revenues of *Bait al-Mal*, it is used for this. If not, its obligation falls upon the Muslims' so the Khalifah takes it from the Ummah to undertake its expenses for the army and its preparation. What is spent in preparing the army is from the money spent in the way of Allah (swt) whether the army was in a state of war or not, as jihad is continuous till the Day of Judgement and preparing the army with all that is necessary for fighting is continuous until the Day of Judgement.

Flags and Banners

It is necessary to have the flags and banners. The difference between the flag and banner is that the flag (*lima*) is what is tied at the edge of a spear and bent around it, and it is called “*al-‘alam*” (the standard). It is said it is called “*lima*” because it is bent due to its largeness so it is not spread except when necessary. It is a large standard and a sign for the Amir of the army, so it is enacted wherever he is. As for the banner (*rayah*), it is a sign given to the army and is metaphorically called the “mother of war” and its plural is “*rayal*”. The banner is tied on a spear or a mast and is left until the wind swirls it.

The Islamic army in the times of the Messenger (saw) had its banners and flags. Al-Bukhari narrated from Anas that the Prophet (saw) announced the death of Zayd (ra) , Ja’far (ra) and ibn Rawaha (ra) to the people before their news reached the people and said:

أخذ الراية زيد فأصيب ثم أخذ جعفر فأصيب ثم أخذ ابن رواحة فأصيب

“Zayd took the banner and was struck, then Ja’far took (it) and was struck, then ibn Rawaha took (it) and was struck.”

It is narrated that the Prophet (saw) encouraged the people to fight Rome at the end of Safar, and he called Usamah. Then he said to him:

سر إلى موقع مقتل أبيك فأوطئهم الخيل فقد وليتُك هذا الجيش، واغز صباحاً على إبنى وحرِّق عليهم وأسرع المسير تسبق الخير، فإن ظفرك الله بهم فأقول للبت

“Travel to the place where your father was killed and mount (attack) them by tethered horses. I have given you command upon this army. Attack by surprise the people of Ibnî in the morning and burn them. Hurry in a travel which precedes information. If Allah grants you victories then reduce your stay with them.”

The illness of the Messenger of Allah (saw) began on the third day and he tied a flag for Usamah by his own hands. Usamah took it and gave it to Buraydah, and he encamped at Al-Jurf. It has been narrated from Al-Harith bin Hasan Al-Bakri who said:

قَمَنا المدينة فإذا رسول الله صلى الله عليه وسلم على المنبر وبلال قائم بين يديه متقلد بالسيف وإذا رايات سود، فسألت: ما هذه الرايات؟ فقالوا: عمرو بن العاص قَمَ من غزاة

“We came to Madinah and at that time the Messenger of Allah (saw) was upon the *minbar* with Bilal standing in front of him holding a sword. There were black banners and I asked: For whom are these banners? They said: ‘Amru bin al-‘Aas who has come from some battles.”

It came in the two Sahih (books of *ahadith*)

لأعطينَ الراية رجلاً يحب الله ورسوله ويحبه الله ورسوله، فأعطاها علياً

“That the Prophet (saw) said: ‘I will give the banner to a man who loves Allah and His Messenger, and Allah and His Messenger loves him. So he gave it to Ali.”

It has been narrated from Anas in An-Nisai

أن ابن مكتوم كانت معه رايات سوداء في بعض مشاهد النبي صلى الله عليه وسلم

“That ibn Umm Maktum used to have black banners with him in some of the scenes (wars) of the Prophet (SAW).”

It is clear from the aforementioned *abadith* that the army in the time of the Prophet (saw) had its banners and flags. Close scrutiny of the texts clarifies that the banner is smaller than the flag and the flag is bigger than the banner. The flag is tied for the leader of the army and the banner is given to the army. The flag is located at the camp of the army as a sign for the army leader, and the banners are with the leaders of regiments and expeditions, and with different army units. The army has many banners for it whereas it has only one flag. This is the relationship of one with the other.

As for the colour, it has been established that the Messenger (saw)’s banner was black and his flag was white. It has been narrated from ibn Abbas (ra) who said:

كانت راية النبي صلى الله عليه وسلم سوداء ولواؤه أبيض

“The banner of the Messenger of Allah (saw) was black and his flag was white.”

It has been narrated from Jabir:

أن النبي صلى الله عليه وسلم دخل مكة ولواؤه أبيض.

“The Prophet (saw) entered Makkah and his flag was white.”

In the aforementioned hadith of Al-Harith bin Hasan it has been narrated

وإذا رايات سود

“And there were black banners.”

These *abadith* indicate that the banner has a black colour whereas the flag is white.

As for its shape, what came is that the banner has four corners and it is made of wool. It has been narrated from Al-Bara bin Azib who was asked how was the Messenger (saw)’s banner? He said:

كانت سوداء مربعة من نمرّة

“It was black, four-cornered from (*namirah*).”

The meaning of “*namirah*” i.e. a “*hibaral*” i.e. “*baradal*” from wool. It is written upon it “*La ilaha illa Allah, Muhammad Rasul-Allah.*” Ibn Abbas (ra) narrated in Abu Shaykh the words:

كان مكتوباً على راية النبي صلى الله عليه وسلم لا إله إلا الله محمد رسول الله

“It was written in the banner of the Messenger of Allah (saw): *La ilaha illa Allah, Muhammad Rasul-Allah.*”

What is said of the banner is also said of the flag. The flag has four corners (*arkan*), and is made of wool and “*La ilaha illa Allah, Muhammad Rasul-Allah*” is written upon it, except that it is bigger than the banner and the writing is black letters whereas the banner has white letters.

According to the form which came in the texts and in conformity to the reality of the standards, it is noted that for each banner and flag are four clear corners (*arkan*) extended in its length and breadth. The measurement of its breadth is two-thirds its length. The length of the flag is 120 centimetres and its breadth 80 centimetres, and the banner’s length is 90 centimetres and its breadth is 60 centimetres. It is allowed to use flags and banners of greater or lesser measurement.

It is preferred that each division and unit has its own banner in shape and colour, raised together with the State's flag so as to be a specific sign for the division and unit.

Just as flags and banners are used for the army, they are also used for the State's structures, departments and utilities. The flag is raised in the office of the Khalifah above the residence of the Khalifah, and the banners in all the utilities of the State, its departments, administration and institutions. It is also permitted for individual citizens to raise it over the institutions, roads and houses.

Captives

When the Muslims take their enemy as prisoners of war, the matter of these captives is delegated to the Khalifah's direct command and there is no opinion for those who captured them, the battlefield commander or army leader. This is because once the fighter becomes a prisoner of war, the command regarding him is the Khalifah's opinion and the Khalifah follows the *Shari'ah* rule concerning captives. The rule of the prisoners of war is established by a definite Qur'anic text which is that the Khalifah is given a choice between release and ransom due to Allah's statement:

فَإِذَا لَقِيتُمْ لُذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْبَحْتُمُوهُمْ فَشُدُّوا الْوَتَاقَ فَإِمَّا مَدًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا

“When you meet those who disbelieve, strike the neck(s) until when you have inflicted severe slaughter upon them then bind strongly the fetters. Then afterwards either the release or the ransom until the war lays down its burdens” [TMQ 47: 4].

This is explicit in the rule of the prisoners of war and it is a specified rule in numerous ways: Of these (ways) is that this explicit text came in Surah Muhammad which is the first Surah revealed regarding the matter of fighting. Its revelation was after the Messenger (saw) arrived in Madinah from Makkah, and it is called the Surah of fighting. It was revealed after Surah Al-Hadeed and before the battle of Badr. It clarified the rule of prisoners of war before any battle had occurred or any prisoners of war had been captured. If added to this is that this is the *ayah* which clarifies explicitly what is done to prisoners of war, it becomes clear that it is the text of the rule of prisoners of war and the basis to which return all other texts regarding the subject. And from these ways which specify this rule on prisoners of war is that the *ayah* came with the language of *“imma”* which indicates the choice between two things without any third to them. It said: *“Then bind strongly the fetters. Then afterwards either the release or the ransom.”* When *“imma”* comes between two things, it restricts the choice between them and prevents there being other than them or that it is not one of them two. So there is specification due to specifying the choice in *“imma”* the impermissibility of there being other than what the Qur'an gave as a choice in the rule of captives. This is strengthened in when the Messenger (saw) released Thamama bin Wail, the chief of the people of Yamamah, Abu 'Uzzah the poet, Abu Al-'As bin Ar-Rabi' and he said about the prisoners of war from the Battle of Badr:

لَوْ كَانَ الْمُطْعَمُ بْنُ عَلِيٍّ حَيًّا ثُمَّ سَأَلَنِي فِي هَؤُلَاءِ لِأَطْلَقْتَهُمْ لَهُ

“If Mut'im bin Adiy was alive and he talked to me about these, I would release them to him.”

He ransomed the prisoners of war from Badr and they were seventy three men, and he ransomed the day of Badr two men for one man. It is narrated from Aisha (ra) who said:

لَمَّا بَعَثَ أَهْلُ مَكَّةَ فِي فِدَاءِ أُسْرَاهُمْ بَعَثَتْ زَيْنَبُ فِي فِدَاءِ أَبِي الْعَاصِ بِمَالٍ وَبَعَثَتْ بِقِلَادَةٍ كَانَتْ لَهَا عِنْدَ خَدِيجَةَ أَدْخَلَتْهَا عَلَىٰ أَبِي الْعَاصِ، قَالَتْ: فَلَمَّا رَأَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَقَّ لَهَا رِقَّةً شَدِيدَةً فَقَالَتْ: إِنْ رَأَيْتُمْ أَنْ تَطْلُبُوا لَهَا أُسِيرَهَا وَتَرَبُّوا لَهَا الَّذِي لَهَا. قَالُوا: نَعَمْ

*“When the people of Makkah sent about ransoming their prisoners of war, Zaynab sent money to ransom Abu Al-'Aas. She sent in in a necklace that was for Khadijah which she (*adkehalat*) upon Abu Al-'As. She said: When the Messenger of Allah (saw) saw it, he was very*

compassionate about it and said: If you see that can release her captive for her and return that which is hers? They said: Yes.”

It has been narrated from Imran bin Hussein

أن رسول الله صلى الله عليه وسلم فدى رجلين من المسلمين برجل من المشركين من بني عقييل

“That the Prophet (saw) ransomed two men from the Muslims for one man of the polytheists from Banu ‘Aqeel.”

It has been narrated from ibn Abbas (ra) who said:

كان ناس من الأسرى يوم بدر لم يكن لهم فداء، فجعل لهم رسول الله صلى الله عليه وسلم فداءهم أن يعلموا أولاد الأنصار الكتابة

“There were people of the prisoners of war from Badr who had no ransom, so the Messenger of Allah (saw) made their ransom to teach reading to the children of the Ansar.”

These *ahadith* together with the *ayah* indicate explicitly that the rule of prisoners of war is release or ransom. It is ascribed to Al-Hasan, ‘Ata and Said bin Jubayr that they disliked the killing of prisoners of war and said: If only he released or ransomed him as was done with the prisoners of war of Badr, and because Allah (swt) said:

فُتِّلُوا الْوَثَاقَ فَمَا مَدَّأَ بَعْدَ وَإِمَّا فِدَاءَ

“Then bind strongly the fetters, then afterwards either the release or the ransom”

So He (swt) gave a choice between these two after the captivity and nothing else. All this is explicit that the Khalifah chooses in the prisoners of war between two matters nothing else, which is release or ransom. As for what is narrated that the Prophet (saw) killed the men of Banu Quraydha, all this is because of the ruling of the arbitrator in arbitration not that they were prisoners of war. As for what is narrated that he (saw) killed An-Nadhr bin Al-Harith and ‘Uqbah bin Abu Mu’ayt in custody on the day of Badr, and Abu ‘Uzzah on the day of Uhud, this does not indicate that this is the rule of prisoners of war as he did not do this for all captives or in every battle. Rather he did this in some battles with some persons, contrary to release and ransom which he did for all prisoners of war in all battles. What caused the killing of these persons specifically is that the Messenger (saw) saw in their personalities definite danger for Muslims; so it is the killing of specific persons for reasons specified to them, nor was it the killing of prisoners of war. Ahmad and Al-Bukhari narrated from Abu Hurairah (ra) who said: The Messenger of Allah (saw) sent us on an expedition and said:

بَدَّعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي بَعْثٍ فَقَالَ: إِنْ وَجَدْتُمْ فَلَانًا وَفَلَانًا لِرَجُلَيْنِ فَاحْرِقُوهُمَا بِالنَّارِ، ثُمَّ قَالَ حِينَ أَرَدْنَا الْخُرُوجَ: إِنْ كُنْتُ أَمَرْتُكُمْ أَنْ تَحْرِقُوا فَلَانًا وَفَلَانًا وَإِنَّ النَّارَ لَا يَعْذِبُ بِهَا إِلَّا اللَّهُ فَإِنْ وَجَدْتُمُوهُمَا فَاقْتُلُوهُمَا

“If you find so and so for two men of Quraysh, then burn them with fire. Then the Messenger of Allah (saw) said when we intended to depart: I had commanded you to burn so and so and so and so. Verily none punishes with fire except Allah *‘azza wa jall* so if you find them, then kill both of them.”

Accordingly it is clarified that killing is not from the *Shar’u* rules on prisoners of war; rather killing is a *Shar’u* rule on specific people from whom the Khalifah views there is danger so he commands their killing even if they are Prisoners of war. As for what is narrated about the Messenger of Allah (saw) enslaving after the revelation of this *ayah*, this was the enslaving of captives (*sabaya*) and not the prisoners of war i.e. he would enslave the women and children who

were together with the army in the battlefield not fighting men. If enslaving of male fighters was established, this would happen from him (saw) but there is no evidence to prove that this occurred despite the numerous cases of captives being captured from the Arabs during his (saw) time. As for what some books of history narrated about the Messenger (saw) enslaving Banu Najjya of the Quraysh, their males and females, this is not narrated in the books of hadith nor even some books of Sirah like the Sirah of ibn Hisham so it is not used as a proof. Even if they were to be authentic, the narration states the words: “*He enslaved Banu Najjyya, their males and females*” so it mentioned males and females. The narration does not say their men and women so it is taken to mean the *sabaya* i.e. children, male and female, and this are allowed. Accordingly the Messenger (saw) did not enslave any man; rather he enslaved the *sabaya*, male and female. The established realities in the *abadith* that are considered proofs strengthen this. The one who follows the actions of the Messenger (saw) finds that he did not enslave any man taken as a prisoner of war, nor from the Arabs or other than them. Rather what is narrated from him is that he enslaved the captives (*sabaya*). In the battle of Badr, there were no women with the enemy so that is why no captives were taken in it. Rather prisoners of war were taken so the Messenger (saw) ruled upon them with ransom. In the battle of Hunain, Hawazin came out to fight the Messenger (saw) and their women came out with them. When the Muslims won, the Hawazin fled and they left the women behind them so they were taken as captives (*sabaya*) and they were placed with the booty. In Banu Mustaliq, the enemy left behind their women so they were taken as captives (*sabaya*). In Khayber they were fought and their forts conquered. The women who were together with the fighters were taken as captives (*sabaya*) while the remaining people were left just like the men were left. These incidents all indicate that the Messenger (saw) used to capture men fighters and the women who were with the fighters were taken as captives (*sabaya*), as well as the children. As for other men and women who were not in the battle, they were not taken as prisoners of war or as captives (*sabaya*). This indicates that the Messenger (saw) did not enslave prisoners of war. This clarifies that the Messenger (saw)’s action in relation to prisoners of war occurred according to the stated text of the *ayah*. Verily he released them at certain times and he took ransom at other times. He did not enslave the prisoners of war nor kill them; rather he only took captive the women and children, and killed specific persons due to their particularity in the danger they posed to Muslims.

As for the question of imprisonment of captives which became similar to the prisoners of war, people at that time considered the women who went out with fighters, and children, like the consideration of properties in the technical definition of war without (any) difference in that between the Arabs and others. The war technical definition would consider booties as properties and imprisoned ones. The Messenger (saw) came and consented to that definition, so he considered women who went out together with the fighters and children like the properties of booty among booties. So they were enslaved and the ruling of booty applied over them not the rule of prisoners of war. The rule of prisoners of war remains, giving the Khalifah the choice between release or ransom and nothing else. This rule will remain until the Day of Judgement. If the Islamic State fights its enemies, the captives are considered between release and ransom; and if women go out with them to the battles, after victory in the battle the women are taken as captives (*sabaya*) and they are like the properties of the booties.

This rule on prisoners of war and captives is general for people without distinction between Arabs and others; it is not specific to Arabs. This is because the *ayah* and *abadith* are general, and there is no evidence what would specify it to non-Arabs or exempt Arabs from it. So it remains in its generality conveying Arabs and others. As for the hadith of Mu’adh which which was extracted by Ash-Shafi’ and Al-Baihaqi that the Messenger (saw) said on Uhud:

لو كان الاستغاق جائزاً على العرب لكان اليوم

“If enslaving were allowed upon the Arabs, it would be today”

This is a weak hadith. In its chain is Al-Waqidi who is very weak (*dhajif*). At-Tabarani narrated it via another way and within it is Yazid bin 'Iyadh who is weaker than Al-Waqidi. This type of hadith does not stand as proof so it is not allowed to be *Shari'ah* evidence. As for what is narrated of the Messenger (saw) enslaving Arab women and their children, and not enslaving their men, this is correct but it does not indicate the non-permissibility of enslaving Arab men and the permissibility of enslaving others. Rather it is general, encompassing Arabs and others. As for the incident occurring with Arabs, this is a reality of a situation with no understanding for it i.e. the situation which occurred was with Arabs so it does not mean it is specific to them and is not for others. Moreover, the *Shari'ah* principle is that *the value is in the generality of the words and not the specificity of the cause*. The incident, even if it occurs with a person or a group, it is not specified with this person or group. Rather its rule is a general rule.

Similarly the absence of enslaving men occurred with Arabs since the reality was that the Messenger (saw) was fighting the Arabs so the rule is not specific to them; rather it is general for all people. Just like if he would fight a specific tribe like Quraysh for example, the rule would not be specific to them. However all this i.e. the rule of captivity and imprisoned ones is general over all people except Arab polytheists. The polytheist Arabs are excluded from it starting from the fourth month and the ninth day of Dhul-Hijja, in the ninth year of Hijra until the Day of Judgement. It is not accepted from them except Islam or fighting, and captives and imprisoned ones are not taken from them. As for Arab polytheists before this date, the rule included them. Similarly the Arab non-polytheists of the Jews and Christians; this rule includes them in the revelation of the *ayat* till the Day of Judgement since the exclusion is specific to Arab polytheists from the day of conveying these *ayat* to the polytheists among the Arabs and it is the ninth of Dhul-Hijja and four months after it. It does not include within it others among the Arabs nor did it include the polytheists before this date. As for excluding these polytheists from among the Arabs originally from this mentioned date, this is established by an explicit text of the Qur'an. Allah (swt) said:

سُـدْعِنَ إِلَى قَوْمٍ أُولِي بَأْسٍ شَدِيدٍ تَقَاتُوا لِمَوْتِهِمْ أَوْ يَسْلُبْكُمْ

“You will be called to a people of great boldness. You will fight them or they will embrace Islam” [TMQ 48:16]

And He said:

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرْمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَأَحْصُرُوهُمْ وَاقْعُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِن تَابُوا وَأَقَامُوا الصَّلَاةَ فَخَلُّوا سَبِيلَهُمْ

“When the sacred months finish, fight the polytheists wherever you find them. Seize them, surround them and wait for them at each ambush. If they repent, and establish the prayer and pay the *zakat*, then free their way” [TMQ 9: 5]

And He said:

فَسَبِّحُوا فِي الْأَرْضِ أَرْبَعَةَ أَشْهُرٍ وَاعْلَمُوا أَنَّكُمْ غَيْرُ مُعْجِزِي اللَّهِ

“Travel in the land for four months, and know that you do not defeat Allah!”

[TMQ 9:2]

This is explicit in excluding Arab polytheists from the generality of *ayat*. So the Arab polytheists are not accepted, after the revelation of these *ayat* and finishing the new moon of four months, except Islam or war. As for what is narrated about the Messenger (saw)'s enslaving of Arabs, this

is enslaving Jews and Christians and enslaving Arab polytheists before the revelation of these *ayat*. As for afterwards, it is not accepted from Arab polytheists except Islam or war.

The War policy

War policy is taking care of the affairs of war upon the position of its matter so as to make the victory for Muslims and defeat for their enemies. The immediate practical aspect is apparent in it. The *Shar'a* allowed within war things it forbade in other than it, and forbade things within it that it allowed in other than it. It allowed within it lying to the enemy whereas this is forbidden in other than war. In this way, it made for the war policy rules considered specific to war. From these considerations are those related with regards to dealing with the enemy. Of these is what is related to the actions of war itself, others are related to the Islamic army and others related to other than these.

Among what is related to dealing with the enemy, Islam ordained for the Khalifah and Muslims to do with the enemy similar to what the enemy did to the Muslims and permit upon the enemy similar to what the enemy allowed upon the Muslims, even if it were from the forbidden things. Allah (swt) said:

وإن عاقبتهم فعاقبوا بمثل ما عوقبتم به ولئن صبرتم لهو خير للصابرين

“If you are punished with then punish with similar to what you were punished with. And if you are patient, it is better for the patient ones”
[TMQ 9:126].

It is narrated that the cause for the revelation of this *ayah* is that the polytheists mutilated Muslims on the day of Uhud; they slit open their stomachs, cut their private parts and slit the tips of their noses. They did not leave anyone without mutilating him except Handhala bin Ar-Rahib. The Messenger of Allah (saw) stood over Hamza who had been mutilated, and he was an evil sight as his stomach had been split and his nose cut so he said:

أما والذي أحلف به إن أظفري الله بهم لأمتن بسبعين مكانك

“By the One who is sworn by, if Allah grants me victory over them I will mutilate seventy in your place”

So this *ayah* was revealed. The *ayat* was revealed in war, and even though it prohibits excess in mutilation nevertheless it is explicit in allowing Muslims to do similar to what the disbelievers did to them. It is even understood from the *ayah* the permissibility of mutilated those killed among the disbelievers who mutilated those killed among the Muslims, except that it is not exceeded in mutilation what they did although mutilation is *haram* and there came news regarding that. However, the Muslims can do it if disbelievers mutilated those killed among the Muslims. Similar to this is deceit and breaking the covenant if the enemy does that or it is feared from him that he will do it, then it is allowed for us to do it. Otherwise it is not allowed for us to do it. It is allowed for us to do this even though there are prohibitions about it according to the war policy since its prohibition is only where the enemy has not done it. If they do it, it is allowed for Muslims to do it. Allah (swt) said:

وإما تخافن من قوم خيانة فانبذ إليهم على سواء

“If you fear treachery from a people, then throw it against them equally (*ala siwa*)”

[TMQ 8:58].

Accordingly it is allowed for Muslims to use nuclear weapons in their war with the enemy, even if this was before the enemy used them against them (Muslims) as all States permit the use of nuclear weapons in war. So it is allowed to use them although it is forbidden to use nuclear

weapons since they destroy humanity whereas jihad is to revive humanity with Islam and not to exterminate humanity.

Of what is related to actions of war is that Muslims can burn the trees of disbelievers, their food, farms, and homes and destroy them. Allah (swt) said:

ما قطعتم من لينة أو تركتموها قائمة على أصولها فبإذن الله ولي خزيِّ الفاسقين

“You did not cut any palm-tree (leena) or leave it standing upon its roots except by the permission of Allah and in order to disgrace the transgressors” [TMQ 59:5].

The Messenger of Allah (saw) did burn the palm-trees together with his realization that it would be interpreted against him. As for what is narrated by Yahya bin Said Al-Ansar that Abu Bakr As-Siddiq (ra) said to the army leader he sent to Sham:

لا تعقرن شاة ولا بعيراً إلا لمأكلة ولا تحرقن نخلاً ولا تغرقنه

“Do not hamstring sheep or camels except for food nor burn palm-trees or flood them”

Upon which all the Sahabah consented without any one disputing this, this is the origin in war which is not spoiling habitation or cutting trees. However, if the Khalifah or army leader views that gaining the battle necessitates him destroying habitation or cutting trees, or hastening to gain the battle requires this, then it is allowed in war policy to cut trees and destroy habitation as did the Messenger of Allah (saw). Similar to this is killing and burning cattle, and all that the enemy possesses; if the war policy requires this, then he may do it even if it was forbidden. Allah (swt) said:

ولا يطئون موطئاً يغيب الكفار ولا ينالون من عدو نيلاً إلا كتب لهم به عمل صالح

“Nor do they tread any foot-print which angers the disbelievers or acquire/ obtain (nala) anything from the enemy except that a good deed is written fro them”

[TMQ 9:120].

This speech is general in everything and there is no other evidence what would bind or specify this *ayah* in its essence, whether any other *ayah* or hadith, so it remains in its generality. There came authenticated *ahadith* about the permissibility of burning houses, and burning and cutting trees. It has been narrated from ibn Umar:

أن النبي صلى الله عليه وسلم قطع نخل بني النضير وحرق

“Verily the Messenger of Allah (saw) cut and burnt the palm-trees of Banu Nadhir.”

Upon this Hasan said

It was easy for the nobles of Quraish to burn Buwaira whose sparks were flying in all directions,

And upon this the *ayah* was revealed:

ما قطعتم من لينة أو تركتموها

“You did not cut any palm-tree or leave it standing upon its roots” [TMQ 59:5].

It is narrated from Jareer bin Abdullah who said: The Messenger of Allah (saw) said:

ألا تريخني من ذي الخلصة؟ قال: فانطلقت في خمسين ومائة فارس من احمس، وكانوا أصحاب خيل، وكان ذو الخلصة بيتاً في اليمن لختعم وبجيلة فيه نصب بعيد يقال له كعبة اليمانية، قال: فأتاها فحرقها بالنار وكسرهما، ثم

بعث رجلاً من أمّس يكنى أبا أرطأة إلى النبي صلى الله عليه وسلم يبشّره بذلك، فلما أتاه قال: يا رسول الله، والذي بعثك بالحق ما جئت حتى تركتها كأنها جمل أجرب. قال: فبرك النبي صلى الله عليه وسلم على خيل أمّس ورجالها خمس مرات، وبرك أي دعا لهم بالبركة

“Will you not grant me rest from Dhu al-Khalsa. He said: So I departed with one hundred and fifty horsemen from Ahnus, and they were people of tethered horses. Dhu al-Khalsa was a house in Yemen for Khath’am and Bujayla with idols that were worshipped, and it was called the *Ka’aba* of Yemen. He said: so I came to it, burnt it with fire and destroyed it. Then a man from Ahnus whose epithet was Abu Arta’a was sent to the Prophet (saw) to give him the good news about this. When he reached him, he said: O Messenger of Allah, by the One who sent you with the truth, I did not come until I had left it as if it were camels. He said: “So the Prophet (saw) blessed the horses of Ahnus and their men five times”

And “*barraka*” means prayed for blessing for them. And Ahmad, Abu Dawud and ibn Majah narrated from Usamah bin Zayd who said:

بعثني رسول الله صلى الله عليه وسلم إلى قرية يقال لها أبني، فقال: ائتها ثم حرق

“The Messenger of Allah (saw) sent me to a town called Ibni and said: Reach it then burn.”

This Ibni is the Yubna of Palestine. It also appears in the testament of Umar (ra) narrated by Malik in Al-Muwatta and its comparison with these *ahadith* that burning and cutting of trees, and the destruction of homes is only where the battle or war requires this. So it enters into the war policy.

Of what relates to the Islamic army is that the *Imam* or army leader can prevent the hypocrites, transgressors, those put to flight, agitators and their like from going to the battlefield due to Allah’s statement:

ولكنّ الله انبعاثهم فثبّطهم وقيل اقعدا مع القاعدین. لو خرجوا فيكم ما زادوكم إلاّ خبالاً ولأوضعوا خلالكم
بيغونكم الفتنة

“but Allāh was averse to their being sent forth, so He made them lag behind, and it was said (to them): “Sit you among those who sit (at home) Had they marched out with you, they would have added to you nothing except disorder, and they would have hurried about in your midst (spreading corruption) and sowing sedition among you”

[TMQ 9:47]

Although the *Imam* does not prevent the hypocrite or transgressor from participating within it. However, if the war policy requires preventing them from going to battle or undertaking or supervising a specific action, it is allowed for the Khalifah and the army leader to do so.

As for what is related to other than dealing with the enemy, the actions of war or the Islamic army, this is what occurred with the Messenger (saw) in his return from the battle of Banu Mustaliq. He returned with the Muslims in surpassing haste. He would walk during the night and day to his utmost effort until he reached Madinah. He exhausted the Islamic army even though the rule is being easy with the army. From Jabir who said:

كان رسول الله صلى الله عليه وسلم يتخلف في المسير فيزجي الضعيف ويُرّف ويدعو لهم

“The Messenger of Allah (saw) would lag behind in travel, gently urge the weak and put him behind him and make *du’a* for them”

(narrated by Abu Dawud).

However the war policy in relation to what Abdullah bin 'Ubayy bin Salul was doing of creating strife between Muslims, the *Muhajireen* and *Ansar*, necessitated not travelling according to the travel of the weakest of the army but travelling the travel of their strongest so as not to leave a place for discussion or debate.

In such manner the war policy requires that the *Imam* undertake the actions required to take care of the affairs of war so as to gain victory in the battle or war and defeat for the enemy. However, this is restricted to where no text came upon a specific action; if there exists a specific text, it is not allowed to perform this action under the pretext of war policy. Rather it is obliged that one restricts (himself) to the text according to the context in which it came. If the text came in a definite form without reason (*illah*), then it is not allowed to undertake the action; if the text came with an (*illah*) reason, then the text is followed according to the reason. If the text came with a prohibition, and it came that the Messenger (saw) did it in specific circumstances, then one cannot undertake the action except in those circumstances. There came texts about actions which the *Shar'a* prevented so the prevention is followed according to what came. Nor should one say the war policy (allows it) because the war policy is general except where there came a text excluding a matter for the generality so the text is followed in what is specified by it. Ahmad narrated from Safwan bin 'Asal who said: The Messenger of Allah (saw) sent us in an expedition and said:

سيروا باسم الله وفي سبيل الله، قاتلوا من كفر بالله، ولا تمتلوا ولا تغلروا، ولا تقتلوا وليداً

“Travel in the name of Allah and in the way of Allah. Fight those who do not believe in Allah. Do not mutilate, deceive or kill a child.”

Al-Bukhari narrated from ibn Umar who said:

وجدت امرأة مقتولة في بعض مغازي النبي صلى الله عليه وسلم، فنهى رسول الله صلى الله عليه وسلم عن قتل النساء والصبيان

“A woman was found killed in one of the battles of the Messenger of Allah (saw), so the Messenger of Allah (SAW) prohibited the killing of women and children.”

And Ahmad narrated from Al-Aswad bin Sar'i who said: The Messenger of Allah (saw) said:

لا تقتلوا الذرية في الحرب. فقالوا: يا رسول الله أوليس هم أولاد المشركين؟ قال: أوليس خياركم أولاد المشركين

“What is wrong with the people whose killing exceeded today until they killed children? A man said: O Messenger of Allah (saw), they are merely the children of polytheists. He said: Verily the best of you are the children of polytheists.”

Abu Dawud narrated from Anas that the Messenger of Allah (saw) said:

انطلقوا باسم الله وبالله وعلى ملة رسول الله، لا تموتة شيخاً فانياً ولا طفلاً صغيراً ولا امرأة، ولا تغلوا، وضعوا غنائمكم وأصلحوا إن الله يحب المحسنين

“Go forth in the name of Allah, with Allah and in the creed of the Messenger of Allah. Do not kill a perishing old man, a child or a woman and do not betray. Gather together your booties and be righteous as Allah loves the righteous.”

These *abadith* prohibited specific actions in war so it is not correct that they be done in war under the pretext of Messenger of Allah (saw); rather they are only done in the way the texts came.

There came texts that allowed doing all these matters by shooting cannons and bombshells, and all that strikes from afar with something heavy even if women and children are killed if it is not possible to reach the disbelievers except by killing them due to their mixing with them. Al-Bukhari narrated from As-S'ab bin Jithama

أن رسول الله صلى الله عليه وسلم سئل عن أهل الدار من المشركين يبيتون فيصاب من نسائهم وذرائعهم، ثم قال: هم منهم

“That the Messenger of Allah (saw) was asked about the people taking shelter among the polytheists and their women and children, if they are struck. He said: They are of them.”

It has come in the Sahih of ibn Hibban from S'ab who said:

سألت رسول الله صلى الله عليه وسلم عن أولاد المشركين أنقتلهم معهم؟ قال: نعم

“I asked the Messenger of Allah (saw) about the children of polytheists whom we kill along with them. He said: Yes, for they are of them.”

At-Tabarani extracted from Thawr bin Yazid

أن النبي صلى الله عليه وسلم نصب المنجنيق على أهل الطائف

“That the Prophet (saw) hoisted a catapult upon the people of Taif.”

When the catapult is fired, it does not distinguish between women, children, trees etc which indicates that heavy weapons such as cannons and bombshells when used in war then it is allowed to kill, destroy and spoil everything by them. Similarly if it is not possible to reach the disbelievers except by killing women and children; if they are struck due to their mixing with them, killing them is allowed. As for doing each one of these matters alone without the catapult or other than the situation of not being possible to distinguish them and the disbelievers whom we are fighting, in this there is a detailed statement according to what came in the texts. As for children, it is absolutely *haram* to kill them in other than the two previously mentioned situations; the same applies to the slave i.e. the employee who is with a people through compulsion as he is among the weak people. This is due to the the prohibition of killing either of them in a definite way without being reasoned by any reason. As for women, it is looked into; if she fights then it is allowed to kill her and if she does not, then it is not allowed to kill her. This is according to what Ahmad and Abu Dawud narrated from Rabah bin Rabi' that he left together with the Messenger of Allah (saw) in a battle which was fought with Khalid bin Walid at its front. Rabah and the Sahabah of the Messenger of Allah (saw) passed by a woman killed in what the front (group) had struck. They stopped to look at her and were astounded by her beauty, until the Messenger of Allah (saw) met them upon his mount so they made a place for him. The Messenger of Allah (saw) stopped over her and said:

ما كانت هذه لتقاتل. فقال لأحدهم: اِ لِحَقِّ خَالِدًا فَقُلْ لَهُ: لَا تَقْتُلُوا ذُرِيَةَ وَلَا عَسِيْفًا

“This is not someone to fight. Go meet Khalid and say to him: Do not kill children or the hireling.”

So the hadith made the reason for the prohibition of killing her that she does not fight. This is strengthened by Abu Dawud narrated from 'Ikrimah that the Prophet (saw)

أن النبي صلى الله عليه وسلم مرَّ بامرأةٍ مقتولةٍ يوم حنين فقال: من قتل هذه؟ فقال رجل: أنا يا رسول الله، غنمتُها فأردفتُها خلفي فلما رأت الهزيمة فينا أهوت إلى قائم سيفي لتقتلني فقتلتها، فلم ينكر عليه رسول الله صلى الله عليه وسلم

“Passed by a woman killed on the day of Hunain and said: Who killed this one? A man said: I did, O Messenger of Allah (saw). I took her as booty and placed her behind me. When she saw defeat over us, she extended (her hand) to the hilt of my sword to kill me so I killed her. The Messenger of Allah (saw) did not prohibit (this).”

This clarifies that when the women fights, killing her is allowed; and if she does not fight then killing her is not allowed. As for the perishing old man, if he is perishing without there remaining any benefit to the disbelievers or harm to Muslims, it is not allowed to kill him due to the prohibition of killing him. However, if there is benefit in him for the disbelievers or harm to Muslims, it is allowed to kill him. This is due to what Ahmad and At-Tirmidhi narrated from Samra that the Prophet (saw) said:

اقتلوا شيوخ المشركين

“Kill the old men of the polytheists”

And also due to what Al-Bukhari narrated from the hadith of Abu Musa that when the Prophet (saw) finished from Hunain, he sent Abu Amir over the army of Awtas. He met Dureed As-Sama, and he was one hundred (years) and something, and they had brought him to plan the war for them. Abu Amir killed him and the Prophet (saw) did not reject that from him. Accordingly the hadith of Anas (ra) is taken to mean the perishing old man without being any benefit in him or harm emanating from him; he is the perishing old man as came in the same hadith.

These matters for which came prohibition about performing them are not done except according to how the text came with them. Anything beyond that is not allowed. No action done by Muslims to their disbeliever enemy is repulsive as long as this action occurred in the situation of war, whether this action was allowed (halal) or forbidden (*haram*) outside of war. Nothing is excluded from this except the action for which there has come an absolute prohibition against it in war.

Lying in war

All lying is definitely *haram* due to a definite Qur'anic text, and its prohibition is among the rules known from the deen by necessity, without distinction as to whether it is for the benefit of Muslims or the interests of the deen or opposite to that. The texts came forbidding it generally, absolutely and without reasoning. Allah (swt) said:

إِنَّمَا يَفْتَرِي الْكُذِبَ الَّذِينَ لَا يُؤْمِنُونَ بِآيَاتِ اللَّهِ

“*Verily those who fabricate lies are those who disbelieve in the ayat of Allah*”

[TMQ 16:105]

And Allah (swt) said:

ثُمَّ نَبَّأْتَهُم بِمَقَالِكُمْ لَعْنَةُ اللَّهِ عَلَى الْكَافِرِينَ

“*Then let us invoke (nabtahil) and make the curse of Allah upon the liar*”

[TMQ 3:61].

This decision, its absoluteness and generality cannot be reasoned, restricted or specified except by another text, and there is no entry for the mind except to understand the text and nothing else. There did not come in the Sahih any text which gives any reasoning or restriction, whether in the Book or Sunnah. As for specifying the text, there came a text regarding it which excluded from the forbidding of lying specific things which alone were specified; it is not allowed to exceed them in any case whatsoever. Nothing is excluded from the forbidding of lying except what was specified by evidence of the mentioned in the *abadith* namely: the situation of war, to the woman and reconciling between two due to the text about them. Ahmad, Muslim and Abu Dawud narrated from Umm Kulthum bint ‘Uqbah who said:

لم أسمع النبي صلى الله عليه وسلم يرخّص في شيء من الكذب مما تقول الناس إلا في الحرب، والإصلاح بين الناس، وحديث الرجل امرأته وحديث المرأة زوجها

“I did not hear the Prophet (saw) giving permission in anything over which the people say (lies) except in three: in war, reconciling between people, and the story of the man to his wife and the hadith of the woman to her husband.”

From Asma bint Yazid who said: The Messenger of Allah (saw) said:

يا أيها الناس ما يجعلكم أن تتابعوا على الكذب كتتابع الفَرَّاشِ في النار؟ الكذب كله على ابن آدم حرام، إلا في ثلاث خصال: رجل كذب على امرأته ليرضيها، ورجل كذب في الحرب فإن الحرب خدعة، ورجل كذب بين مسلمين ليصلح بينهما

“O you people, what has carried to you follow lying like the moths following fire? All lying from the son of Adam is *haram* except in three situations: the man lying to his wife to please her, the man lying in war as war is deceit and the man lying between Muslims to reconcile between them.”

These three are of those excluded from the forbidding of lying by an authentic text, so lying is not allowed in other than that as nothing is excluded from the generality of the text except what the evidence specifies alone. The word “**in war**” which came in the hadith has only one meaning

and no more which is the situation of active war in the matter of war, so lying is absolutely not allowed except in the situation of war. As for what is authenticated from the Prophet (saw)

أنه كان إذا أراد غزوة ورى بغيرها

“That when he intended war, he would conceal in other than that”;

The meaning is that when he intended a matter he would not show it, such as when he intended to fight towards the direction of the east he would ask about a matter in the direction of the west so that the one who heard and saw him would think that he intended the direction of the west. As for his saying clearly of his intending the west whereas his (true) intention was the east, this never occurred. So this is not informing contrary to the reality but was rather double- entendre (*tawriyya*). Moreover, it enters into active war, and the matter of war, since it is going to the battlefield to fight the enemy actively so it is deceit which came in his (saw) statement:

الحرب خدعة

“War is deceit”

(narrated by Muslim)

As for what was narrated by Jabir that the Messenger of Allah (saw) said:

من لا كعب بن الأشرف فإنه قد آذى الله ورسوله؟ قال محمد بن مسلمة: أتحب أن أقتله يا رسول الله قال: نعم. قال: فائذن لي فأقول. قال: قد فعلت. قال: فأتاه فقال: إن هذا -يعني النبي صلى الله عليه وسلم- قد عذانا وسألنا الصدقة. قال: وأيضاً والله قد اتبعناه فدكره أن ندعه حتى ننظر إلى ما يصير إليه أمره. قال: فلم يزل يكلمه حتى استمكن منه فقتله

“Who will deal with K’ab bin Al-Ashraf for he has annoyed Allah and His Messenger? Muhammad bin Maslamah: Would you like for me to kill him, O Messenger of Allah? He said: Yes. He said: Then give me permission to tell (lies). He said: I have done so. He said: So he reached him and said: Verily this one i.e. the Prophet (saw)—has put us to task and has asked us for sadaqah. He said: By Allah similarly we have followed him and we dislike leaving him until we see where his matter will reach: He said: He did not stop talking to him until he had a chance to overpower him and killed him.”

This was also in the situation of war. Even if the words of the hadith state that the words which Muhammad bin Maslamah said were true, not false, as it was only allusion but Muhammad bin Maslamah asked permission to say everything and it was permitted to him. So it enters within it the permission to lie explicitly and metaphorically, and it enters into the situation of war. As for what Ahmad and An-Nisai narrated from the tale of Al-Hajjaj bin ‘Ilat in his seeking permission to say about him whatever he wished for his benefit in rescuing his property from the people of Makkah. The Prophet (saw) gave him permission and he informed the people of Makkah that Khayber had defeated the Muslims; this also enters into the situation of war because the people of Makkah were in a situation of active war with the Muslims. Al-Hajjaj bin ‘Ilat was from the Muslims and he was going to the enemy disbelievers who were in the situation of active war, so lying was allowed against them. The permission of lying is not restricted to the battlefield nor to fighters; rather it is allowed for the Muslims to lie against their enemies, the disbelievers, if they are in the situation of active war with them. As for was extracted by At-Tabarani in *Al-Ansat*:

الكذب كله إثم إلا ما نفع به مسلم أو دفع به عن دين

“All lying is sinful except that by which a Muslim benefits or by which he defends his deen”

This is in Al-Bazzar with the words:

الكذب مكتوب إلا ما نفع به مسلم أو نفع به عنه

“Lying is written except that by which a Muslim benefits or by which he defends it”,

It was said in *Majmu' Al-Zawaid*: In its chain is Rushdayn and Abdurrahman bin Ziyad bin An'am, and both are weak so it is a weak hadith which is rejected and not used as a proof. So it is not suitable as evidence.

Accordingly all lying is *haram* and not allowed except in three (matters): in war, reconciling between people, and the story of the man to his wife and the story of the woman to her husband. Everything else is definitely *haram* as the forbiddance of lying came generally in the Qur'an covering all lying, then the hadith came specifying it in other than war, reconciling between people, and the story of the man to his wife and the story of the woman to her husband. It excluded these three from the forbidding so they alone are allowed and everything else is *haram*. Particularly since the hadith restricted the permissibility to three and said:

الكذب كله على ابن آدم حرام، إلا في ثلاث خصال

“All lying from the son of Adam is *haram* except in three situations”

And

لم أسمع النبي يرخِّص في شيء من الكذب إلا في الحرب..

“I did not hear the Prophet giving permission in anything of what the people say except in three: war...”

Etc. This restriction means all other is *haram*. All the *abadith* which came are in the situation of active war; all *abadith* other than them are weak and are not used as proof (s).

As for dissimulation/double entendre in other than war, if the listener understands it contrary to the reality such as where the word does not indicate the reality and something else linguistically or in technical usage generally with the speaker and listener, it is lying which is not allowed. Such as where a specific group gives a technical definition for a word and then say it to someone who does not know this technical definition or where it is a technical definition for a speaker but the listener does not know it, all of this is lying which is not allowed. Even if it were dissimulation/double entendre by the speaker but the listener understands from the word the opposite to the reality, so it is not considered from the type of double entendre (*tawriyya*) and is not allowed. As for where it is understood from the word is the reality and something else, this is from the species of eloquence (*balagha*). It is truth and not lying like their saying to the squint-eyed: ‘If only both his eyes were equal’, it is suitable as an invocation for or against him. Dissimulation is that the word has two meanings, one which is near and the other remote; the speaker intends the remote meaning while the listener understands (it as) the near meaning. In this situation, even though the listener understands contrary to what the speaker intends nevertheless he does not understand contrary to the reality indicated by the sentence. The Prophet (saw) used dissimulation. In Sahih Al-Bukhari that Anas bin Malik (ra) said:

أقبل النبي صلى الله عليه وسلم إلى المدينة وهو مرهف أبا بكر، وأبو بكر شيخٌ يُعرف، ونبي الله صلى الله عليه وسلم شاب لا يُعرف، قال: فيَ لَمَقَى الرجل أبا بكر فيقول يا أبا بكر من هذا الرجل الذي بين يديك؟ فيقول: هذا رجل يهديني السبيل. فيَ حَسَب الحاسب أنه إِمَّا يعني الطريق، وإمَّا يعني سبيل الخير.

“The Prophet of Allah (saw) headed for Madinah and he was followed by Abu Bakr. Abu Bakr was a well known old man and the Prophet of Allah (saw) was an unknown youth. He said: A man met Abu Bakr saying: O Abu Bakr, who is this man before you? He said: This man is showing me the way. He said: A thinker would think that he meant the road whereas he meant the road to goodness.”

Spying

Spying is investigating information. It is said in the language “spied the news and spying it (is) investigating regarding it” and from it is the spy. If the man investigates information then he has spied it and he is a spy, whether he investigates open or hidden information. It is not a condition in investigating information that it be hidden i.e. secret so that it is spying; rather spying is investigating news whether secret or open i.e. secret and non-secret. Whereas if he sees things naturally without investigation and without his action being investigation of news, or collection of information to publish it or is concerned with news, all this is not spying as long as it is not investigating news and investigating news is not part of his actions. Even if he follows news in these situations, it is not spying because investigating of information which is spying is only where following and scrutinising it is for the objective of examining it. As for the one who follows information to collect it, he does not scrutinize it for the objective of examining it but rather he collects it to publish it to the people. Accordingly it is not said about the one who follows news and collects it like the correspondents of gazettes and news agencies that they are spies, except if their work is spying and they take the correspondence of gazettes and agencies as a tool. In this situation he is a spy not because of his being a correspondent who is following the news but rather because his work is spying and he takes correspondence as a tool for cover as is the situation with many correspondents and particularly the belligerent disbelievers among them. As for the officers of investigative departments and the investigative office and their like who investigate news, they are spies because their work is spying.

This is the reality of spying and the reality of the spy. As for the rule of spying, it differs according to those spied upon. If it is spying upon Muslims or *dhimmis* who are citizens like Muslims, then it is *haram* and not allowed. If it is spying upon belligerent disbelievers, whether they are belligerent in actual fact or by rule, this is allowed for Muslims and obligatory upon the Khalifah. As for spying upon Muslims and citizens of the Islamic State being *haram*, this is established by the Qur’an explicitly. Allah (swt) said:

يا أيها الذين آمنوا اجتنبوا كثيراً من الظن إن بعد الظن إثم ولا تجسسوا

“O you who believe avoid much suspicion (*dhann*) as some suspicion is sin and do not spy” [TMQ 49:12]

So Allah prohibited spying in the *ayah*. This prohibition is general covering all spying whether it is spying for himself or anyone, whether it is for the State or individuals or groups, and whether the one performing it i.e. the spying is the ruler or the ruled. The speech is general covering everything applying upon it that it is spying.

Here a question arises: Is it allowed for the Muslim to work as an officer in an inquiry department or an investigative department or other departments whose work, or some of it, is spying? The response depends. If it is an office to spy upon Muslims or *dhimmis* who are citizens like Muslims, then it is *haram* by the explicit Qur’anic text. It is prevented for the *dhimmi* like it is prevented for the Muslim as the *dhimmi* in Dar al-Islam is addressed to implement the Islamic rules upon himself except what relates to creeds and worships, and this is not part of that. If the office is spying upon belligerent disbelievers who enter our lands from the ones who have been granted security or the ones under covenant, then it is allowed as it is allowed to spy upon belligerent disbelievers whether they are belligerent in practice or by the rule and whether they are in their lands or ours. Accordingly the existence of inquiry or investigative departments and their like is not *haram* but obligatory and what is prohibited (*haram*) in them is spying upon Muslims or *dhimmis* who are citizens of Muslims. It is not allowed for the State to have a department to spy upon Muslims and the rest of the citizens; rather this is forbidden against them. Nor is it said that the State’s interest requires knowing the citizens’ information so as to

expose conspiracies and lead to criminals because the State can know this via the method of police and night patrol not via the method of spying. Just because the mind sees benefit or not in something it is not a reason for forbiddance or allowance; only what the *Shar'a* sees as benefit is benefit. When the Qur'anic *ayat* come explicitly forbidding anything there remains no place for discussion whether there is benefit in it to reason it into making it halal, as there is no value in that in front of the explicit Qur'anic text. The Qur'an says: "Do not spy" meaning prohibition of spying, and there is no way to understand other than what the *ayah* indicates and the clear meaning of its words. There came no evidence specifying the generality of this *ayah* or excluding something from it, so it remains in its generality covering all spying so all spying upon the citizens is *haram*.

This is in relation to spying upon Muslims or *dhimmis* who are citizens like Muslims. As for Muslims and *dhimmis* spying upon belligerent disbelievers, whether they are belligerents in practice or rule, this is excluded from the generality of the *ayah* due to the *ahadith* specifying the forbiddance of spying on non-belligerent disbelievers. As for belligerent disbelievers, spying upon them is allowed for Muslims and obligatory upon the Muslims' Khalifah i.e. upon the State. It came in the Sirah of ibn Hisham that the Prophet (saw) sent Abdullah bin Jahsh and sent with him a company of eight Muhajireen. He wrote for him a book and commanded him not to look into it until he travels two days then looks into it and executes what he was commanded without compelling any of his companions. When Abdullah bin Jahsh travelled two days, he opened the book and looked into it. It said in it:

إذا نظرت في كتابي هذا فامض حتى تنزل نخلة بين مكة والطائف فترصد بما قريشاً وتعلم لنا من أخبارهم

"When you look into this book of mine, go until you descend upon Nakhlah between Makkah and Taif. Lie in wait for Quraysh and find out their news for us."

In this book the Messenger (saw) command Abdullah bin Jahsh to spy for him upon Quraysh and to inform him of their news. However he gave a choice to his companions whether to travel or not; as for him (Abdullah), it was obliged upon him to execute the operation. So the Messenger had requested all to perform spying but obliged Abdullah and gave a choice to the rest. This is evidence that the request in relation to the leader of a group is a decisive request, and in relation to the rest together with him it is an indecisive request. It is also evidence that spying by Muslims upon the enemy is allowed. Spying upon the enemy is from the matters which the Islamic army cannot do without. It is not possible to accomplish the formation of an army for war without there being spies for it upon the enemy, so the presence of spying in the army becomes obligatory upon the State from the category (*min bab*) of

ما لا يتم الواجب إلا به فهو واجب

"That without which an obligation cannot be fulfilled is obligatory."

This is the rule of spying in relation to it being *haram* or allowed or obligatory. As for the rule on punishing the spy who spies for the belligerent disbelievers, this differs in relation to the citizenship of the spy and his deen. As for the belligerent disbeliever when he is a spy, his rule is killing as one decisive word and there is no rule for him other than that. He is killed merely upon knowing he is a spy i.e. upon mere proving that he is a spy. This is due to what Al-Bukhari narrated from Salamah bin Al-Akwa' who said:

أتى النبي صلى الله عليه وسلم عين وهو في سفر، فجلس عند بعض أصحابه يتحدث ثم انسل، فقال النبي صلى الله عليه وسلم: اطلبوه. فاقتلوه فسبقتهم إليه فقتلته فنفلني سلبه

“There came to the Prophet (saw) a spy of the polytheists while he was travelling. He sat with his (saw) Sahabah discussing then he hastened. The Prophet (saw) said: Seek him and kill him. I preceded them to him and killed him, so he gifted me his booty.”

And in Muslim it has been narrated from Ikrimah with the words:

فانتزع طَظًا من حَقْبِهِ فقيده به الجمل ثم تقدم يتغدى مع القوم، وجعل ينظر وفينا ضعفة ورقة في الظهر وبعضنا مشاة إذ خرج يشتد

“He took a strip of leather from its girth and tethered the camel with it and then he began to take food with the people and look (curiously around). We were in a poor condition as some of us were on foot (being without any riding animals). All of a sudden, he left us hurriedly”

And in the narration of Abu Nu’aym in Al-Mustakhraj via the way of Yahya bin Al-Hamani from Abu Al-Umayy

أدركوه فإنه عين

“Overtake him for he is a spy.”

The is explicit in that the Messenger (saw) on the basis of merely being established before him that he is a spy said

اطلبوه فاقتلوه

“Find him and kill him”

This is a connotation that the request is a decisive request. So its rule becomes killing as one decisive word and it is general for all belligerent disbelievers whether he is under a covenant or with a pledge of security or other than a *mu'abid* or *musta'man*. All are belligerent disbelievers whose rule is to be killed if they are spies.

As for the *dhimmi* disbelievers when he is a spy, then it is looked into. If it was made a condition when he entered into the *dhimma* that he should not spy and if he spied he will be killed, then the condition is acted upon. So if he became a spy, he is killed according to the condition. However, if that is not made a condition upon him then it is allowed for the Khalifah to make killing as his punishment so he is killed if he becomes a spy due to what Ahmad narrated from Furrat bin Hayyan

حبان أن النبي صلى الله عليه وسلم أمر بقتله وكان ذمياً وكان عيناً لأبي سفيان وحليفاً لرجل من الأنصار، فمر بحلقة من الأنصار فقال: إني مسلم، فقال رجل من الأنصار: يا رسول الله إنه يقول إنه مسلم، فقال رسول الله صلى الله عليه وسلم: إن منكم رجالاً نكروا لهم إلى إيمانهم منهم فرات بن حبان

“That the Prophet (saw) commanded his killing and he was a *dhimmi*. He was a spy for Abu Sufyan and an ally. So he passed by a circle of the Ansar and said: ‘I am a Muslim.’ They said: ‘He claims he is a Muslim’ so the Messenger of Allah (saw) said: ‘There are men among you whom we trust to their belief. Among them is Furrat bin Hayyan.’”

This is explicit that the Messenger commanded the killing of a *dhimmi* spy. However this is allowed for the *Imam* and not obligatory upon him as is the case when the spy if he is a belligerent disbeliever. The evidence that the killing of a *dhimmi* spy by the State is allowed and not obligatory is that the hadith is not associated with a connotation indicating decisiveness so it is an indecisive request. There is a connotation which indicates the non-decisiveness in the

request which is that the text of the hadith indicates that the Messenger (saw) did not hasten to kill Furrat after the mere knowledge that he is a spy whereas the belligerent disbeliever mentioned in the hadith of Salama bin Al-Akwa', the Prophet had commanded his killing upon it being merely established before him that he is a spy and he said to the Muslims: "Seek him and kill him." The evidence that he did not hasten to kill him is that the Messenger (saw) used to know him, which appears in the saying of the hadith "he was a dhimmi and he was a spy" i.e. he was known, and (also) the saying of the Messenger "of them is Furrat bin Hayyan." In addition to that, the Messenger said in the matter of the belligerent disbeliever: "Seek him and kill him" whereas in the matter of Furrat bin Hayyan he commanded his killing but did not request the Muslims to seek him. It is clear therein the distinction between both of them in that the request to kill the belligerent is a decisive request and the request to kill the *dhimmi* is an indecisive request which indicates the permissibility of killing the *dhimmi* spy and the permissibility of not killing him.

As for the Muslim spy who spies for the enemy upon Muslims and *dhimmis*, he is not killed because the Messenger (saw) commanded the killing of the *dhimmi* but when it was established before him that he had embraced Islam and became a Muslim he abstained from him. Since he had commanded the killing of Furrat bin Hayyan who was a *dhimmi* and a spy but when they said: O Messenger of Allah, he claims he is a Muslim, he said:

إِنَّ مِنْكُمْ رَجَالاً نَزَكِلَهُمْ إِلَى إِيْمَانِهِمْ مِنْهُمْ فِرَاتُ بْنُ حَبَانَ

"Among you are men whom we trust them to their belief, and Furrat bin Hayyan is among them"

So the reason (*illah*) abstaining from killing him is his becoming a Muslim. Al-Bukhari narrated from Ali bin Abu Talib (ra) said:

بعثني رسول الله صلى الله عليه وسلم أنا والزبير والمقداد بن الأسود قال: انطلقوا حتى تأتوا روضة خاخ فإن بها ظعينة ومعها كتاب فخذوه منها، فانطلقنا تتعادي بنا خيلنا حتى انتهينا إلى الروضة فإذا نحن بالظعينة، فقلنا: أخرجي الكتاب. فقالت: ما معي من كتاب. فقلنا: لتُخرجي الكتاب أو لتُلقين الثياب. فأخرجته من عقاصها. فأتينا به رسول الله صلى الله عليه وسلم فإذا فيه: من حاطب بن أبي بلتعة إلى ناس من المشركين من أهل مكة يخبرهم ببعض أمر رسول الله صلى الله عليه وسلم. فقال رسول الله صلى الله عليه وسلم: يا حاطب ما هذا؟ قال: يا رسول الله لا تعجل عليّ إني كنت امرأةً ملصقةً في قريش ولم أكن من أنفسها وكان من معك من المهاجرين لهم قرابات بمكة يحمون بها أهليهم وأموالهم، فأحببت إذ فاتني ذلك من النسب فيهم أن اتخذ عندهم يداً يحمون بها قرابتي وما فعلت ذلك كظراً ولا ارتداداً ولا رضا بالكفر بعد الإسلام. فقال رسول الله صلى الله عليه وسلم: لقد صدقكم. فقال عمر: يا رسول الله دعني أضرب عنق هذا المنافق. فقال: إنه شهد بداراً، وما يدريك لعل الله أن يكون قد اطلع على أهل بدر فقال: اعملوا ما شئتم فقد غفرت لكم

"The Messenger of Allah (saw) sent me, Az-Zubayr bin Al-‘Awwam and Al-Miqdad bin Al-Aswad and said: 'Go forth until you reach the garden of Khakh. There will be a woman's litter and with her is a book, so take it from her.' So we went with our horses in a rapid gait until we ended in the garden where there was a woman's litter. We said: 'Remove the book' and she said: 'There is no book with me.' So we said: 'You will remove the book or we will remove the clothes' so she removed it from her plaits. We brought it to the Messenger of Allah (saw) and therein was: 'From Hatib bin Abu Balta'ah to some people of the people of Makkah informing them with some of the matter of the Messenger of Allah (saw). So the Messenger of Allah (saw)

said: ‘What is this, O Hatib?’ He said: ‘O Messenger of Allah, do not be hasty with me. I was a man allied to Quraysh, and I was not from her body (i.e. tribe). Those with you from the Muhajirin have relatives in Makkah who protect their families and property. So I wished if the relation with them escaped me that I take a hand with which to protect my relatives. Nor did I commit disbelief or apostasy nor was I pleased with disbelief after Islam. So the Messenger of Allah (saw) said: ‘He has spoken the truth to you.’ Umar said: ‘O Messenger of Allah, leave me to strike the neck of this hypocrite.’ He said: “He witnessed Badr, and you do not know but that Allah may have overlooked the people of Badr and said: ‘Do whatever you wish for I have forgiven you.’”

It was established in this hadith about Hatib that he was a spy against the Muslims and the Messenger did not kill him, which indicates that the Muslim spy is not killed. One should not say that the rule is specific to the people of Badr because the hadith is reasoned (*mu'allil*) on his being of the people of Badr. This should not be said because even if the text came with what requires reasoning and its context was in a way that reasoning is understood from it; nevertheless (in) the hadith of Ahmad about Furrat bin Hayyan, killing was lifted from him because he became a Muslim after he was a *dhimmi* which invalidates the reasoning of this hadith and makes it a description of a reality because Furrat bin Hayyan was not from the people of Badr. Nor should one say that the hadith of Furrat bin Hayyan in Abu Dawud has Abu Hammam Ad-Dalal Muhammad bin Muhabbib in its chain and his hadith are not considered as proofs, and he is narrating from Sufyan Ath-Thawri. One should not say this because Ahmad has narrated this hadith from Sufyan bin Bushr bin As-Sirri Al-Basri, and he is from those whom Al-Bukhari and Muslim agreed to consider as proof with his hadith. So the hadith is established and is extrapolated upon, and it is an evidence that the Muslim spy is not killed but is punished with imprisonment or something else according to the view of the judge or Khalifah.

All this is about the spying upon Muslims and *dhimmis* for the belligerent disbeliever enemy. As for spying upon Muslims (but) not for the enemy i.e. not for the belligerent disbeliever, rather for the sake of spying or for Muslims or the State; although it is *haram* the *Shari'a* has not specified a specific punishment for this sin so its punishment becomes a discretionary punishment (*ta'zeer*).

Truce (*Hudna*)

The armistice treaty between Muslims and disbelievers is permitted due to his (saw) truce with Quraysh in the year of Hudaibiyya. However the permissibility of a truce is restricted to the existence of benefit for which the jihad or spreading of the *da'wah* requires it. This is because it reached the Messenger of Allah (saw) before his travelling to Hudaibiyya that an agreement had been made between the people of Khayber and Makkah upon invading the Muslims. He hastened directly upon his return from Hudaibiyya to invade Khayber and similarly hastened to send messengers to the kings and leaders inviting them to Islam which indicates that the truce of Hudaibiyya was for a benefit related to jihad and spreading the *da'wah*. After coming into a truce with Quraysh he was able to free himself for fighting Khayber and for performing the *da'wah* to the kings and leaders. The truce is not allowed in the absence of this benefit since a truce is leaving the obligated fighting which is not allowed except in the situation it occurs as a means to fighting as at this point it becomes fighting metaphorically. Allah (swt) said:

فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلْمِ وَأَنْتُمُ الْأَعْلَىٰ وَاللَّهُ مَعَكُمْ

“Do not become weak and call for peace while you are superior. And Allah is with you and will not neglect your deeds” [TMQ 47:35].

If the benefit in an armistice treaty is verified, it must be measured for a specified and known period. No truce is allowed without measuring a period because it is a fixed period contract so leaving it unrestricted without mentioning the period invalidates it due to its necessitating permanency which is prevented in the armistice treaty so that jihad remains constant as its permanency prevents jihad which is obligatory. Measuring a specific period in the truce is a condition of its validity so if no specific period is measured for it, this invalidates the armistice treaty since the Hudaibiyya armistice had a specific period measured for it.

If the armistice is contracted and it is valid, it is obliged upon us to abstain from them and observe the armistice treaty until its period concludes or they violate it with their nullifying it either by their saying so clearly, fighting us, killing a Muslim or a *dhimmi* in our land or something is done contradicting the armistice's conditions and the rest do not reject this from him by word(s) or action(s). If this occurs, the truce is nullified in all of these. Similarly if the State fears their treachery by something which invalidates their show of the truce such as when a sign of this appears; this would be nullification of the truce. If something like this occurs, a surprise attack against them is allowed any time, night or day, since their breaking the truce allows the Muslims to fight them and to nullify the truce with them. This is because when the Messenger (saw) came to a truce with Quraysh and they broke his truce, all what was forbidden in the truce period became permitted so he fought them and conquered Makkah. Also because the truce is a fixed period contract which ends with its period finishing or its nullification. Allah (swt) said:

فَمَا اسْتَقَامُوا لَكُمْ فَاسْتَقِيمُوا لَهُمْ

“As long as they stand firm upon it in relation to you, then stand firm upon it in relation to them” [TMQ 9:7]

And He (swt) said:

وَأِمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ

“And if you fear treachery from a people, then throw back upon them on equal terms”

[TMQ 8:58]

And He (swt) said:

وإن نكثوا أيمانهم من بعد عهدهم وطعنوا في دينكم فقاتلوا أئمة الكفر إنهم لا أيمان لهم لعلهم ينتهون

“If they break their oaths after their promise and defame your deen, fight the leaders of disbelief. Verily there is no oath for them so that they desist”
[TMQ 9:12].

If the enemy falls short of the truce’s conditions and does not observe their agreement in their transactions with us, then they have absolved us from our covenant. Due to this their blood and property have no sanctity, and fighting them is obligatory upon us. So it is obligatory upon us to fight them since they fought us, and to annul the truce with them since they violated it.

Military Alliances

“*Al-bilf*” in the language is the covenant and friendship. It is said “*halifubi*” from “*abidubi*” (he covenanted with him). Except that the word “*al-bilf*” is used because a technical definition as it is mostly used for military alliance specifically. Military alliances are the alliances contracted between two or more States which make their armies fight together with a common enemy, or make military information or war tools exchangeable between them, or if one of them enters into war they will consult with each other to enter war together or not according to the interests they see. These alliances could be dual treaties contracted between two or three or more States, but they do not consider aggression upon one of the States an aggression against all of them; rather if aggression occurs upon one of the treaty States, the State upon which aggression occurs, the States with which it has a military alliance and in the light of their benefit they would announce war together with the State facing aggression against the aggressor State or not. And these alliances could be collective alliances in which it is considered that aggression against one of the treaty States an aggression against all of them, so that if there occurs war between one of them with any State then all other treaty States will enter into the situation of war with this State. All of these alliances, whether they were dual or collective or other than that, necessitate that the army fights with its ally to protect it and its entity whether there were numerous leaders or a single leader.

These alliances are void from their basis and are not contracted legitimately. So the Ummah is not obliged with them even if the Muslims’ Khalifah contracted them as it contradicts the *Shar’u* since it would make the Muslim fight under a Kafir authority and under a kufr banner, and makes him fight in order to preserve a kufr entity; all this is *haram*. It is not allowed for a Muslim to fight except under Muslim leadership and under the Islamic banner. There came a prohibition in the sahih hadith against fighting under the disbelievers’ banner and their authority, Ahmad and An-Nisa’i narrated from Anas who said: The Messenger of Allah (saw) said:

لا تستضيئوا بنار المشركين

“Do not seek light from the fire of the polytheists”

I.e. do not make the polytheists’ fire a light for you. The fire is an allusion for war; it is said the “fire of war was kindled” i.e. its evil and violent excitement was called into existence. And the fire of fright is a fire the Arabs in *jabiliyyah* would kindle during alliance. The hadith alludes to war with polytheists and adopting their banner, so the prohibition of war together with polytheists is understood from it.

Alliances would also make the disbelievers fight with Muslims while preserving their entity i.e. they would fight as a State and not as individuals. The Messenger (saw) prohibited seeking assistance of the disbelievers as an entity. It came in the hadith of Adh-Dhihak (ra)

أن رسول الله صلى الله عليه وسلم خرج يوم أُحد فإذا كتيبة حسناء قال أو حشناء، فقال: من هؤلاء؟ قال: يهود كذا وكذا. فقال: لا نستعين بالكفار

“That the Messenger of Allah (saw) went out on the day of Uhud when there was a squadron of good or harsh so he said: ‘Who are these?’ They said: ‘The so and so Jews.’ So he said: ‘We do not seek the assistance of disbelievers.’”

Al-Hafidh Abu Abdullah informed and he led his chain to Abu Hamid As-Sa’idi who said:

خرج رسول الله صلى الله عليه وسلم حتى إذا خلف ثنية الوداع إذا كتيبة قال: من هؤلاء؟ قال: بنو قينقاع رهط عبدالله بن سلام. قال: أو تسلموا. قالوا: لا. فأمرهم أن يرجعوا وقال: لا نستعين بالمشركين. فأسلموا

“The Messenger of Allah (saw) went out until he left behind Thaniyya al-Wada’ where there was a squadron. He said: ‘Who are these?’ They said: ‘Banu Qaynuqa and they are the company of Abdullah bin Salam.’ He said: ‘Have they embraced Islam?’ They said: ‘Rather they are on their deen.’ He said: ‘Tell them to return for we do not seek assistance in the polytheists.’”

The Messenger (saw) rejected assistance of the Jews and said in a general fashion:

لا نستعين بالكفار، لا نستعين بالمشركين

“We do not seek assistance of the disbelievers... We do not seek assistance of the polytheists.”

One should not say that we seek assistance from disbelievers upon our enemy and seeking assistance with the disbeliever is allowed since the Messenger (saw) consented to Quzman fighting together with him in Uhud and he was a disbeliever, and accepted assistance from some people of the Jews of Khayber in war; one should not say that because seeking assistance with disbelievers is allowed if they are individuals under the Muslims’ banner. Those whom the Messenger (saw) sought assistance from, he sought assistance from them and they were individuals. Accordingly when Banu Qaynuqa came and they came while they were a tribe with their own leader, and they were like a State who previously made a treaty with the Messenger (saw). They came to fight with the Messenger (saw) and they were upon this situation and it was said to him:

رهط عبدالله بن سلام

“They are the company of Abdullah bin Salam”

So he refused to seek assistance from them due to this. Accordingly it is not allowed to seek assistance from a kafir army and under the banner of their disbelieving States.

Imam As-Sarakhsi said in ‘*Al-Mabsut*’ in the book of ‘*Siyar*’: “From the hadith of Adh-Dhahabi (ra)

أن رسول الله صلى الله عليه وسلم خرج يوم أحد فإذا كتيبة حسناء أو قال خشناء فقال: من هؤلاء؟ قالوا: يهود كذا وكذا. فقال: لا نستعين بالكفار

"That the Messenger of Allah (saw) went out the day of Uhud where there was a *busna* squadron or he said *kbushna*. So he said: Who are these? They said: The Jews so and so. So he said: We do not seek assistance of disbelievers."

Its interpretation is that they were powerful in themselves not fighting under the Muslims’ banner. For us, we only seek assistance from them if they were fighting under the Muslims’ banner whereas if they come isolated with their own banner then we do not seek assistance from them. This is the interpretation of what was narrated from the Prophet (saw) when he said:

لا تستضيئوا بنار المشركين

‘Do not seek light from the fire of the polytheists’

Narrated by Ahmad and An-Nisa’i via the way of Anas and he said:

أنا بريء من كل مسلم قاتل مع مشرك

"I am free from every Muslim who fights together with a polytheist"

This means the Muslim who is under the polytheists' banner. From this it became clear that a military alliance with disbelieving States is *haram* in the *Shar'a* so it is not contracted. It is not allowed for the Messenger (saw) to shed his blood in the way of defending the belligerent disbeliever. Rather the Muslim only fights people so that they enter into Islam from disbelief (*kufr*). As for fighting disbelievers to enter from *kufr* into *kufr* and to shed his blood for that, this is *haram*.

Permissible treaties

The Islamic State may contract treaties of peace, truce, good neighbourliness, cultural treaties, commercial and financial treaties and treaties similar to these which the interests of the Islamic *da'wah* require according to the conditions consented to by Islam. If these treaties include conditions not consented by Islam, those conditions which are not correct in Islam are void and the rest of the treaty remains executed in the remaining conditions. This is because each condition contradicting the *Shar'a* is void even if the Muslims' Khalifah was pleased with and agreed to it. If there was between the Islamic State and her enemy a situation of war, it is allowed for her to contract a truce and peace treaty with her according to what the situation requires at that time and what the interests of the *da'wah* require. If the Islamic State views that she should make peace and friendship with a neighbouring State or a State remote from her for a matter required for the interests of the *da'wah*, it is allowed for her to do this. The State may find in alliances with disbelievers a tool for the *da'wah* to reach them and to create a public opinion about Islam among them. There could also be the repelling of great evil through alliances or being able to reach another enemy. Therefore it is allowed for the Islamic State to contract good neighbourly treaties with neighbouring States just as it is allowed to contract non-aggression treaties with non-neighbouring States for a specific period if it sees in that a way for the Islamic *da'wah*, to protect Muslims or any benefit for Islam or Muslims or to conduct the Islamic *da'wah*. The Messenger (saw) did make a treaty with Banu Mudlij and Banu Dumrah to make safe the roads his army travelled upon and he made a treaty with Yuhanna bin Rub'ah in Tabuk to make safe the boundaries of the State in the direction of Rome in the boundaries of *Bilad AsSham*. If a people of the people of war request friendship for specific years for nothing, the Khalifah looks into that. If he sees it as good for Muslim due to their severe and great strength or for other than that, he can do this due to Allah's statement:

وإن جئحوا للسلام فأجبتهم لها

“If they incline to peace, then you also incline to peace”

[TMQ 8:61].

And also because the Messenger (saw) made peace with the people of Makkah in the year of Hdaybiyya upon leaving war between them and him for a specified period. This was because it reached the Messenger (saw) that there was an accord between the people of Khayber and Makkah to invade Muslims, so he made peace with Quraysh then he went to fight Khayber. In all the allowed alliances, the command of contracting or not contracting them is left to the Khalifah's opinion and *ijtihad* because the Khalifah is appointed as guardian and among guarding is firstly protecting the Muslims' strength. He may view in the alliance benefit for Muslims if there is great strength in the disbelievers or he needs to make effort in the war homeland (*Dar al-Harb*) to reach a people of great strength so he finds it necessary to make peace with those in his way. The issue is delegated to the Khalifah' opinion to measure according to what he sees as good for Muslims, but if there is no good in the alliance for the Muslims then it is not necessary to make peace with them due to Allah's statement:

فلا تهنوا وتدعوا إلى السلم وأنتم الأعدون

“So, be not weak and ask not for peace (from the enemies of Islām) while you are having the upper hand.”

[TMQ 47:35],

And because fighting disbelievers is obligatory and leaving what is obligatory without excuse is not allowed. If a king or a leader or the State of the people of war seek a covenant (*dhimmah*) from Muslims on condition that he be left to rule in his kingdom in what he wills of killing,

crucifying or anything else which is not suitable in Dar al-Islam, he is not responded to upon that as consenting to oppression when it is possible to prevent it is *haram*. And also because the *dhimmi* is the one who is compelled with the rules of Islam in what returns to transactions so this condition which the king or leader or the State presents is contrary to what the contract obliges and therefore it is void. So if peace or the covenant is given upon this, it is void from its conditions as they are contrary to Islam due to his (saw) saying:

كل شرط ليس في كتاب الله فهو باطل

“Any condition not in the Book of Allah is void” (narrated by Al-Bukhari).

If he requested peace or the *dhimmah* and is pleased with the rule of Islam, then the covenant falls to the Muslims so he is ruled by Islam and the land which he used to rule enters into the Islamic land. Defending it becomes defending the Islamic land and their support becomes obligatory like the support of the Muslims.

Emergency treaties

Muslims can fall into severe situations which compel them to matters which are not allowed but the necessity obliges it. The Islamic State can fall into internal or external crises which compel it to contract treaties which do not lead directly to conveying the *da'wah* or fighting in the way of Allah (swt) but they facilitate creating conditions which will enable conveying it in the future or prevent the evil of stopping the *da'wah* or preserve the entity of the Muslims. Necessity compels these types of treaties to be contracted therefore it is allowed for the Khalifah to contract them and they are executed upon Muslims. These treaties occur in two situations which the jurists (*fuqaha*) stated clearly, and they are:

The first situation: If some people of the people of war seek a treaty from the Muslims for specific years on condition that the people of war give kharaj every year for a specified amount and that the Islamic rules are not executed upon them in their lands; this is not done as it is consenting upon disbelief unless the State is not able to prevent oppression and sees in this treaty good for Muslims, then at this point it is allowed to contract it out of necessity. In this situation there is no assistance or support for them from the Islamic State because they are not compelled by this treaty with the Islamic rules and do not depart from being people of war when they do not obey the rules of Islam. So undertaking support for them is not obliged upon the Muslims. The Messenger of Allah (saw) made a treaty with Yuhanna bin Rub'ah while he was at Tabuk in the boundaries of *Bilad AsSham*. He left him in his zone upon his religion, and he did not enter under the banner of Muslims and their rule. This treaty of limited period makes the security of this State guaranteed by the Islamic State. Whoever enters it from the Muslims enters it with the security of the treaty and not an individual security, and it is not allowed for him to oppose its people. Whoever enters the Muslim lands from the citizens of this land enters with the security of the treaty and does not require a new security other than the treaty, nor is anyone from the Muslims allowed to oppose him. Traders are not prevented from carrying merchandise to this State except tools used in war like weapons and war materials and what is similar to this because they are people of war even if the Muslims have a treaty with them.

The second situation: This is opposite to the first situation wherein the Muslims pay money to their enemy in return for their silence regarding them. The *fuqaha* mentioned that if the enemy sieges the Muslims and require a treaty for specified years on condition that the Muslims pay the disbelievers a specific amount every year, it is not correct for the Khalifah to comply to them upon that due to the contemptibility and humiliation therein for Muslims except under necessity. This is (when) the Muslims fear extermination for themselves, and the Khalifah views there is good in this truce. At this point, there is no harm in that due to what was narrated

أن المشركين أحاطوا بالخندق وصار المسلمون في بلاء كما قال الله تعالى: (هنالك ابتلي المؤمنون وزلزلوا زلزلاً شديداً)، بعث رسول الله صلى الله عليه وسلم إلى عبيدة بن حصن وطلب منه أن يرجع بمن معه على أن يعطيه كل سنة ثلث ثمار المدينة، فأبى إلا النصف. فلما حضر رسله ليكتبوا الصلح بين يدي رسول الله، قام سيد الأَنْصار سعد بن معاذ وسعد بن عباد رضي الله عنهما وقالوا: يا رسول الله إن كان هذا عن وحي فامض لما أمرت به، وإن كان رأياً رأيت فقد كنا نحن وهم في الجاهلية لم يكن لنا ولا لهم دين فكانوا لا يطمعون في ثمار الدنيا بشراء أو قرى، فإذا أعزنا الله بالدين وبعث فينا رسوله نعطيهم الدنيا؟ لا نعطيهم إلا السيف. فقال

صلى الله عليه وسلم: إني رأيت العرب ارتكمتكم عن قوس واحدة فأحببت أن أصرفهم عنكم، فإذا أبيتُم ذلك فأنتم وأولئك. اذهبوا فلا نعطيكم إلاّ السيف

“That the polytheists surrounded the trench and Muslims were in trial like Allah (swt) said: ‘*Therein the believers were tested and shaken with a severe shaking*’ [TMQ 33:11]. The Messenger of Allah (saw) sent to ‘Uyaynah bin Hasan and requested that he return with those together with him upon giving him a third of the fruits of Madinah but he refused except a half. When his messengers appeared to write the truce in front of the Messenger of Allah, the two chiefs of the Ansar, S'aad bin ‘Ubadah and S'aad bin Mu'adh (ra) stood and they said: ‘O Messenger of Allah, if this is from revelation then execute what you are commanded with but if it is an opinion which you considered, then they and we were in *jahiliyyah* when neither they nor we had a religion yet they did not eat of the fruits of Madinah except through purchase or hospitality. So when Allah honoured us with the deen and sent His Messenger among us, should we give them this dunya while being contemptible? No, we will not give them except the sword. So he (saw) said: ‘I saw the Arabs shooting from one bow so I liked to divert them from you. If you reject that, then it is you and those. Go away for we will not give you except the sword!’”

This indicates that the Messenger of Allah (saw) initially inclined to the truce due to what he sensed of the Muslims’ weakness. When he saw the strength in them due to what S'aad bin ‘Ubadah and S'aad bin Mu'adh (ra) said, he refrained from that which indicates that there is no harm from contracting a treaty with disbelievers paying them money when there is danger of harm. This is because if they conquered Muslims they would take all the wealth and the families as captives (*sabaya*), so paying some wealth to safeguard Muslims and their families and wealth is less contemptible and more beneficial.

Annuling treaties

All treaties signed by the Islamic State must be limited to a specific period. However, contracting a treaty does not mean compelling Muslims with it in all situations just as it does not mean betrayal and violation of the treaty. Rather it is allowed to annul the treaty in specific situations stated by the *Shar'a*, and it is not allowed to annul it in other than the situations the *Shar'a* stated. The situations for which the *Shar'a* stated the permissibility of annulling the treaty with the enemy are:

Firstly: If the covenanted person(s) assist any enemy of the Muslims and support them against the Muslims. That is like when there is a situation of active war between the Islamic State and another State, so the State with which there is a treaty between her and the Islamic state helps this enemy with weapons, money or men and assists it against us. In this situation it is allowed for the Islamic State to nullify the treaty because Allah (swt) says:

إِلَّا الَّذِينَ عَاهَدْتُمْ مِنَ الْمُشْرِكِينَ ثُمَّ لَمْ يَنْقُصُوكُمْ شَيْئًا وَلَمْ يُظَاهِرُوا عَلَيْكُمْ أَحَدًا

“Except for those with you made a treaty among the polytheists then they did not violate anything or assist anyone against you” [TMQ 9:4].

Its understanding is that if they assist anyone against Muslims, it is allowed for the Muslims to nullify the treaty with them.

Secondly: The covenanted people violate a condition of the treaty's conditions which is like what occurred with the Messenger (saw) in the truce of Hudaibiyya. Khuza'ah entered into the protection of the Messenger (saw) and allied with him. Quraysh violated this condition and incited Banu Bakr upon Khuza'ah. Then they regarded and attempted to preserve the treaty, but the Messenger (saw) considered this violation for him to nullify the treaty, so he nullified it and fought them and conquered Makkah.

Thirdly: If the treachery and betrayal is feared from the covenanted people, nullifying the treaty is allowed. Allah (swt) said:

وَأَمَّا تَخَافَنَّ مِنْ قَوْمٍ خِيَانَةً فَانْبِذْ إِلَيْهِمْ عَلَى سَوَاءٍ

“If you fear treachery from a people, then throw it upon them upon equality”

[TMQ 8:58].

In this situation it is obliged to inform the enemy and nullify the treaty with him. The occurrence of betrayal practically is not a condition of nullification; rather mere fear from the enemy (of this) is sufficient as a justification to nullify the treaty. Informing (them) is sufficient so that the knowledge of both parties is equal regarding the nullification.

Fourthly: The covenanted people violate the treaty with the Islamic State via a complete nullification. In this situation it is obliged to nullify the treaty with them and strike them with a severe strike so as to give them a lesson and example for others so that they do not become bold to transact with the Muslims with a similar transaction. Allah (swt) said:

إِنَّ شَرَّ الدَّوَابِّ عِنْدَ اللَّهِ الَّذِينَ كَفَرُوا فَهُمْ لَا يُؤْمِنُونَ، الَّذِينَ عَاهَدْتُمْ مِنْهُمْ ثُمَّ يَنْقُضُونَ عَهْدَهُمْ فِي كُلِّ مَرَّةٍ وَهُمْ لَا يَتَّقُونَ، فِيمَا تَتَّقُونَ فِي الْحَرْبِ فَمُضِدِّهِمْ مِنْ خَلْفِهِمْ لَعَلَّهُمْ يَذَّكَّرُونَ

“The worst beast before Allah is those who disbelieve and they do not believe. Those whom you made a treaty with then they violate their treaty every time and they do not fear. If you gain mastery over them in war, then punish them severely in order to disperse those behind them so that they may remember?” [TMQ 8:57].

These are the four situations in which it is allowed for Muslims to nullify the contracted treaties between them and their enemies, and it is allowed for them to fight this enemy. Allah (swt) said:

فإذا انسلخ الأشهر الحرم فاقتلوا المشركين حيث وجدتموهم

“When the sacred months pass, fight the polytheists wherever you find them”

[TMQ 9:5].

This is the period mentioned before this *ayah* which is His (swt) statement:

فسيحوا في الأرض أربعة أشهر

“Travel in the land for four months”

[TMQ 9:2].

And Allah (swt) said:

ألا تقاتلون قوماً نكثوا أيمانهم

“Will you not fight a people who violated their oaths?”

[TMQ 9:13].

However, it is necessary in nullifying the treaty that it is thrown against them equally. Allah (swt) said:

فانبذ إليهم على سواء

“Throw it against them equally”

[TMQ 8:58]

And this is general in all treaties i.e. equally between them and you. Fighting the enemy is not allowed before the annulment of the treaty and before they know this so that they return to what they were upon of Fortification (*tahassun*) which was a protection against their betrayal. All of this is regarding other than those who fulfill their covenant. As for those who fulfill their covenant and are upright with the Islamic State, it is obligated that the Muslims fulfill their covenant with them and be upright with them as they were upright. Allah (swt) said:

إلا الذين عاهدتم من المشركين ثم لم ينصوكم شيئاً ولم يظاهروا عليكم أحداً فأتموا إليهم عهدهم إلى ملتهم

“Except for those among the polytheists with whom you made a covenant then they did not violate (it) against you and did not assist anyone against you, so complete their covenant for them for their period” [TMQ 9:3].

Its understanding is that those who violated the Muslims in anything like the second mentioned situation or they assisted anyone against them like in the first situation then do not complete for them their covenant. However if they do not do that and they accomplish their treaty to the end of its period, then it is obliged upon Muslims to complete their covenant for them to the end of the period of the covenant. Allah (swt) said:

كيف يكون للمشركين عهد عند الله وعند رسوله إلا الذين عاهدتم عند المسجد الحرام فما استقاموا لكم فاستقيموا لهم

“How can there be a covenant for the polytheists before Allah and before His Messenger except those whom you covenanted in front of the Sacred Mosque. As long as they are upright to you in it then you be upright to them”

[TMQ 9:7].

Its understanding is that if they are not upright in it for you then do not be upright to them, but if they are upright then you should be upright and fulfill for them their covenant. It is clarified from this that the fulfilment of treaties is an obligatory matter. If the treaty is for a specific period, it is obligatory to fulfill it until its period; when its period is completed it is allowed not to renew it and end it. Allah (swt) said:

فَأْتَمُوا عَلَيْهِمْ عَهْدَهُمْ إِلَىٰ مَدَّتِهِمْ

“Fulfill for them their covenant to its period”

[TMQ 9:4]

Just as it clarifies that severity against those who nullify their treaties is also obligatory. If the enemy neglects a condition among the treaty conditions, nullifies it completely, or they provide any assistance to the enemy of the Muslims against Muslims or treachery is feared from them, then all this allows Muslims to nullify the treaties with their enemies and this is not betrayal. Accordingly the Legislator (*Shar'i*) has specified the types of international treaties and determined the situations which nullify them or bring acting upon them to an end. It is obliged to be bound with what the Legislator alone clarified in treaties and stopping at the limit of the *Shar'a* in its matter together with leaving the matter of the style and choice to the Khalifah's opinion and his *ijtihad*.

The Belligerent disbeliever (*Kafir Harbi*)

The belligerent disbeliever is any disbeliever who has not entered in the pledge (*dhimma*) of the Muslims, whether he was under a covenant or under security (*must'amin*) or was neither a *mu'abid* nor a *musta'min*. If a treaty is contracted between the Islamic State and any kafir State, the citizens of this State are covenanted persons who are dealt with according to what is stated in the treaty that is between them and us, and all that is included in this is executed. Nevertheless, despite the existence of the treaty the covenanted disbelievers are not excluded from being belligerent disbelievers in the rule (*hukman*) because the mere conclusion of the treaty or its nullification by them or us returns their rule to the rule of the rest of the belligerent disbelievers. Due to this, selling them weapons and war materials is prevented if there is therein a strengthening for them against Muslims; however, if selling them weapons or war materials is not strengthening them against Muslims then their sale to them is not prevented particularly if the Islamic State becomes a manufacturer of weapons and sells like the great States today. If the treaty mentions the permissibility of selling them weapons and war materials, this condition is not fulfilled if it strengthens them against Muslims as it contradicts the *Shar'a*, and all conditions contradicting the *Shar'a* are void and not contracted.

As for where there is no treaty between them and us, they are belligerent disbelievers in reality whether they are at an active war with the Islamic state or no. They are not enabled to enter the Muslim land except by a specific security (for) each time and they are not enabled to reside in the Muslim land except for a specific and limited period. However, the difference between a belligerent disbeliever State which is fought in practice and a belligerent disbeliever State not being fought in practice is that with the belligerent disbeliever State fought in practice no treaty is contracted with her before the peace agreement and security is not given to any of its citizens except if he comes to listen to the speech of Allah or if he comes to become a *dhimmi* living in the Muslim land. This is contrary to the belligerent Disbeliever State not fought in practice as commercial, good neighbourliness and other treaties are contracted with her, and her citizens are given a security to enter the Islamic land for trade, recreation, tourism or other than that.

The Protected Person (*Al-M'ustamin*)

The “*M'ustamin*” with a “*kasra*” in the “*meem*” is the one seeking security. He is the one entering the homeland of another with a security i.e. the one who enters another’s country with a security whether he was a Muslim or belligerent. If the Muslim enters the war homeland (*Dar al-Harb*) with a security, it is forbidden for him to oppose anything from them as Muslims are bound by their conditions. If he leaves with anything of their property which he did not take by force such as he took by guile or theft, his possession of these is a forbidden ownership and he must give them as *sadaqa*. Whereas if he seizes by force, it is returned to them since seizure by force is ensured for the one seized from; it is returned to him whether he was a disbeliever or a Muslim. Just as a Muslim’s entry into the kufr land is allowed with a security, the belligerent is allowed to enter the Muslims’ land with a security. The Messenger of Allah (saw) did give security to the disbelievers on the day of the conquest of Makkah and said:

من أغلق بابه فهو آمن

“Whoever closes his door is safe” (narrated by Muslim).

He guaranteed security to the envoys of the polytheists and forbade betrayal of the one given security. From Abu Said who said: The Messenger of Allah (saw) said:

لكل غادرٍ لوليم القيامة يُرفع له بقدر غدوته، ألا ولا غادر أعظم غدراً من أمير عامة

“There is a flag for each betrayer on the Day of Judgement raised according to his betrayal. And there is no betrayer of greater betrayal than the leader of the masses” (narrated by Muslim).

However the belligerent with a security is not enabled to dwell in the Muslims’ land for years. He is given security for a month or two or more but is not given for more than one year. If he is given an unrestricted security without a determined period, the convention is a year as it is allowed for him to reside in the Islamic State without *jiyyah* so he is given a year. If he exceeds this, he is given a choice between residence and being compelled with the *jiyyah* or leaving *Dar al-Islam*. If he stays after a year, it is considered that he accepted the *jiyyah* and the *dhimmah* is imposed upon him so he becomes a *dhimmi* and *jiyyah* is taken from him because it is not permitted for a disbeliever to remain in the Islamic land without *jiyyah*. The *jiyyah* due falls from him and the *dhimmah* becomes compelled upon him. If he leaves at the end of the year or before it, *jiyyah* does not fall due from him. If he leaves, his previous security is invalidated so if he wishes to enter a second time he requires a new security.

Supporting the *musta'min* is obliged upon the Khalifah as long as he is in *Dar al-Islam*, so his rule is like the rule of the people of *dhimmah*. If the *musta'min* commits what obliges a punishment, all punishments are undertaken against him like the people of *dhimmah* except the obligatory punishment of alcohol as the *Dar al-Islam* is the place for enforcing the *Shari'ah* rules so the *Shari'ah* rules are enforced upon everyone within it among Muslims, *dhimmis* or *musta'mineen*. The Messenger of Allah (saw) wrote to the pledge of Najran and they were Christians:

إن من بايع منكم بالربا فلا ذمة له

“Verily whoever pledges allegiance to you upon *riba*, there is no *dhimmah* for him.”

Riba is from the Islamic rules so the Messenger’s implementation of no pledge upon *riba* from the people of *dhimmah* is an evidence for commanding with the rules, and the *musta'min* is dealt with the dealing of the *dhimmi*.

If the *musta'min* takes a security for himself, this security is (also) a security for his property with him even if he did not take a security for it. So his property is protected as is his body and the Muslim ensures the value of his alcohol and pig if he destroyed them. Blood money is obliged upon him if he kills accidentally and he is killed for him if he kills him deliberately. It is obligatory to abstain from harming the *musta'min* and backbiting behind him is forbidden since he is dealt with like the *dhimmi* is dealt with. If the *musta'min* dies in *Dar al-Islam* and his heirs are in *Dar al-Harb*, his property is preserved and the evidence is taken whether from the Muslims or the people of *dhimmah* as it is protected property so it is handed over to its owners who inherit him.

In short all who request security from Muslims, it is allowed for the Muslims to give them security due to Allah's statement:

وإن أحد من المشركين استجارك فأجره حتى يسمع كلام الله ثم أبلغه مأمنه

“If any one of the polytheists seek protection then protect him until he bears the speech of Allah then lead him to his place of safety” [TMQ 9:6]

And because the security is giving the *dhimmah* and covenant and the Messenger (saw) says:

المسلمون تتكافأ دماءهم وهم يد على من سواهم ويسعى بذمتهم أدناهم

“The blood of every Muslims is equal, they are one hand against others. The asylum offered by the lowest of them in status applies to them (all)”

(Narrated by ibn Majah)

However this security is restricted to their submission to the rules of Islam and by their giving the *jizyah* when it becomes due from them due to Allah's statement:

حتى يعطوا الجزية عن يدهم صاغرون

“Until they pay *jizyah* by their hands while they are humbled” [TMQ 9:29]

I.e. killing is not lifted from them nor is they given security from killing except if they give the *jizyah* and submit to the rules of Islam. Their accepting submission to the rules of Islam while residing in *Dar al-Islam* is sufficient to provide them security. If they dwell a period for which jihad becomes due from them which is a year, they are requested to leave. If they refuse then *jizyah* is imposed upon them and they become *dhimmis*.

The rules of the *Dhimmi*

The *dhimmi* is the one who follows a deen other than Islam and becomes a citizen of the *Dar al-Islam* while remaining in his deen other than Islam. “*Dhimmi*” is taken from the word “*dhimmah*” which means the covenant. They are upon our pledge that we treat them according to what we made truce with them upon, and that we run their transactions and affairs according to the rules of Islam. Islam came with many rules regarding the people of *dhimmah*. Among them is that they are not seduced from their religion, and they are only obliged to pay the *jizyah* so no wealth other than that is taken from them unless it is a condition of the truce conditions. It is narrated from Urwah bin As-Zubayr who said: The Messenger of Allah (saw) wrote to the people of Yemen

أنه من كان على يهوديته أو نصرانيته فإنه لا يُفْتَن عنها وعليه الجزية

“That whoever is upon Judaism or Christianity then they are not seduced from it and upon them is the *jizyah*”

Similar to the Jews and Christians are the polytheists and the rest of the disbelievers other than them. It is narrated from Al-Hasan bin Muhammad bin Ali bin Abu Talib who said:

كتب رسول الله صلى الله عليه وسلم إلى مجوس هجر يدعوهم إلى الإسلام، فمن أسلم قَبِل منه ومن لا ضربت عليه الجزية في أن لا تؤكل له ذبيحة ولا تنكح له امرأة

“The Messenger of Allah (saw) wrote to the Zoroastrians of Hijr inviting them to Islam. Whoever embraced Islam it would be accepted from him, and whoever did not then *jizyah* was imposed over him and no slaughtered animal is eaten from them and no woman is married from them”
(narrated by Abu Ubayd).

This is not specific to the Zoroastrians of Hijr but rather is general. There is no understanding (*mashum*) of the hadith because the understanding of the surname is not a proof nor it is considered. *Jizyah* is not taken except from mature males. It is narrated from Nafi’ from Aslam the freed slave (*mawla*) of Umar:

أن عمر كتب إلى أمراء الأجناد أن يضربوا الجزية ولا يضربوها على النساء والصبيان ولا يضربوها إلا على من جرت عليه الموسيقى

“Umar wrote to the army leaders to impose the *jizyah* but not to impose it upon women and children, and not to impose it except upon the one whom the razor has taken effect upon”
(Narrated by Abu Ubayd)

And no one rejected this from him. Rather Abu Ubayd said: “This hadith is the basis in those upon whom the *jizyah* is obliged and those from whom it is not obliged.” *Jizyah* is not taken except from the one capable of paying it due to Allah’s statement: “*from the hand*” i.e. from the capable ones. So if someone is incapable and is poor, it is not allowed (merely) not to take the *jizyah*. Rather it is obliged to spend upon him from the *Bait al-Mal* as it is spent upon Muslims. Upon taking the *jizyah*, it is obliged to take it with goodness and not with harshness or punishment, and to take it in a measure which they are able to bear. They are not oppressed nor is it taken from them beyond their capability. It is narrated from Hisham bin Hakim bin Hazzam that he passed by a people being punished over the *jizyah* in Palestine, so Hisham said: I heard the Messenger of Allah (saw) saying:

: إن الله يعذب يوم القيامة الذين يعدّون الناس في الدنيا

“Verily Allah will punish on the Day of Judgement those who punish in the world.”

It is narrated from Abdurrahman bin Jubayr bin Nafeer from his father

أن عمر بن الخطاب أتى بمال كثير قال أبو عبيد: أحسبه قال: من الجزية. فقال: إني لأظنكم قد أهلكتم الناس. قالوا: لا والله ما أخذنا عفواً صفوفاً. قال: بلا سوط ولا نوط؟ قالوا: نعم. قال: الحمد لله الذي لم يجعل ذلك على يدي ولا في سلطاني

“That great wealth was brought to Umar bin Al-Khattab (Abu Ubayd said: I think he said ‘of the *jiḥyah*’). He said: Verily I believe that you caused the people to perish. They said: No, by Allah, what we took was the extra portion and the pure. He said: Without whip or additional burden? They said: Yes. He said: Praise be to Allah who did not ordain that upon my hands nor in my authority” (narrated by Abu Ubayd).

It is not allowed to sell the means of the *dhimmi*'s sustenance in order to take the *jiḥyah* no matter what value they reach. It is narrated from Sufyan bin Abu Hamza who said: Umar bin Abdulaziz wrote “*not to sell the tool of the people of dhimmah.*” Abu Ubayd said: ‘It is said due to its *keharaj* since if the farming tool is taken then he is not able to farm so the *keharaj* becomes void’ and other tools of life are analogized upon farming tools. If the *dhimmi* embraces Islam, the *jiḥyah* is omitted from him. It is narrated from Ubaydullah bin Rawaha who said:

كنت مع مسروق بالسلسلة فحدثني أن رجلاً من الشعب أسلم فكانت تؤخذ منه الجزية، فأتى عمر بن الخطاب فقال: يا أمير المؤمنين إني أسلمت والجزية تؤخذ مني، قال: لعلك أسلمت متعوذاً. فقال: أما في الإسلام ما يعيدني؟ قال: بلى. قال: فكتب عمر أن لا تؤخذ منه الجزية

“We were with Masruq in Silsilah and he related to me that a man became a Muslim and *jiḥyah* was taken from him so he came to Umar bin Al-Khattab and said: O Amir al-Mu’mineen, I have become Muslim. He said: Perhaps you became Muslim to seek protection? He said: Is there in Islam what would protect me? He said: Surely. He said: So Umar wrote that *jiḥyah* is not to be taken from him” (narrated by Abu Ubayd).

And it is narrated from Qaboos bin Abu Dhibyan from his father who said: The Messenger of Allah (saw) said:

ليس على مسلم جزية

“There is not *jiḥyah* upon the Muslim” (narrated by Abu Ubayd).

From ibn Abbas (ra) who said: The Messenger of Allah (saw) said:

لا تصلح قبلتان في أرض وليس على مسلم جزية

“Two qiblahs are not suitable in the world, and there is no *jiḥyah* upon the Muslim” (narrated by Ahmad and Abu Dawud).

Umar bin Abdulaziz wrote to his official who considered that jihad was obliged against the Muslim who embraced Islam to flee from *jiḥyah*, and he said in his book:

إن الله بعث محمداً صلى الله عليه وسلم هادياً ولم يبعثه جانياً

“Verily Allah sent Muhammad (saw) as a guide and did not send him as a tax-collector.”

Islam exhorted treating the *dhimmi* with the good treatment. So he is shown gentleness and assisted in his matter(s), and the Muslims are obliged to undertake protecting him, his wealth and honour and to guarantee for him his strength, residence and clothing. It is narrated from Abu Wail from Abu Musa or one of them in his chain that the Messenger of Allah (saw) said:

أطعموا الجائع وعودوا المريض وفكوا العاني

“Feed the hungry, visit the ill and release the one in captivity”

Abu Ubayd said: “The same applies for the people of the *dhimmah* for whose protection they fight. When they are freed, they return to their *dhimmah* and pledge as free persons; this issue is addressed in many *ahadith*.”

It is narrated from Amru bin Maymun from Umar bin Al-Khattab (ra) that he said in his will before his death:

وأوصي الخليفة من بعدي بكذا وكذا وأوصيه بدمة الله ودمة رسوله صلى الله عليه وسلم خيراً، أن يقاتل من ورائهم، وأن لا يكلّفوا فوق طاقتهم

“I recommend the Khalifah after me with such and such, and I recommend to him to be good with the *dhimmah* of Allah and the *dhimmah* of His Messenger, to fight those behind them and not to impose upon them more than their ability.”

The *dhimmis* are left with what they believe and their worships due to the Messenger’s statement:

من كان على يهوديته ونصرانيته فإنه لا يُتمنّ عنها

“Whoever is upon Judaism or Christianity, then he is not tempted from it” (narrated by Abu Ubayd).

The meaning of “*he is not tempted from it*” i.e. he is not forced to leave it but is rather left upon it; and leaving him upon it means leaving him upon his creed and worship. This is not specific to the People of the Book but rather others are analogized upon them in this subject due to the Messenger (saw)’s statement about the Zoroastrians (*majus*):

سُنُّوا بِهِمْ سُنَّةَ أَهْلِ الْكِتَابِ

“Follow with them the practice (*Sunnah*) of the People of the Book”

(Narrated by Malik via the way of Abdurrahman bin Awf).

Similar to the Zoroastrians are the remaining polytheists. As for eating their slaughtered meat and marrying from their women, this is looked into. If they are from the People of the Book i.e. from the Jews and Christians, then it is allowed for Muslims to eat their slaughtered meat and marry from their women due to Allah’s statement:

وطعام الذين أوتوا الكتاب حل لكم وطعامكم حل لهم والمحصنات من المؤمنات والمحصنات من الذين أوتوا الكتاب من قبلكم

“And the food of those given the Book before you is allowed for you and your food is allowed for them. And the chaste women of the believing women and the chaste women of those given the Book before you” [TMQ 5:5].

However, if they are of other than the People of the Book, then it is not allowed to eat their slaughtered meat or marry from their women due to the Messenger’s statement regarding the Zoroastrians of Hijr

فِي أَنْ لَا تَأْكُلَ لَهُ ذَيْبِحَةٌ وَلَا تَنْكِحَ لَهُ امْرَأَةً

“In that not to eat the slaughtered meat from them nor marry from their women.”

As for the disbelievers marrying from the Muslims’ women, this is absolutely not allowed, and is *haram* whether they are from the People of the Book or other than them due to Allah’s statement:

فَإِنْ عَلِمْتُمْ مَوَظِعَهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ

“If you know them as believing women then do not return them to the disbelievers. These women are not allowed for them and they are not allowed for these women”

[TMQ 60:10].

It is allowed to occur between the *dhimmis* and Muslims the transactions of buying, selling, renting, partnership, pledge etc. without distinction between them and the Muslims. The Messenger of Allah (saw) conducted business with the people of Khayber, and they were Jews, upon half of what is produced from the land upon condition that they work it with their wealth and bodies. The Messenger (saw) bought food from a Jew of Madinah and pledged to him his armour, and he sent to a Jew requiring two garments from him until a time of ease. All this is evidence upon the permissibility of all transactions occurring with *dhimmis* except when they are dealt with transaction related to renting, buying, and selling or pledging it is obligatory that the Islamic rules alone be implemented; it is absolutely not allowed to deal with other than them. In this way are the *dhimmi* citizens of the Islamic State like the rest of the citizens. For them is the right of citizenship, protection, guaranteeing their life, treating them well, kindness and softly. Upon them is to participate in the Muslims’ army and fight together with them but fighting is not obligatory upon them. For them is justice as for Muslims, and upon them is what is upon them as equity. They are considered by the *Imam* and judge in taking care of their affairs and when implementing the transactions and punishments just like the Muslims are looked upon without any distinction so justice is obligatory for them as it is obligatory for Muslims.

As for what came about Umar’s pledge with them and his imposing conditions upon them, they made truce upon these pledges and these conditions were inserted in the truce and they were pleased with them. So it was compulsory to execute the covenant as it was. Whereas if the truce pledge with them does not include specific transactions stating specific matters, then it is not allowed to deal with them except as Muslims or deal with except for what the text came regarding treating them differently to what Muslims are dealt with such as the non-permissibility of their marrying Muslim women. The evidence that what Umar did was based upon what his pledge included is what Umar himself did in the tax on trade. He (ra) took quarter-tithe (2.5%) from Muslims and half-tithe from the *dhimmis* even though the *Shari’ah* rule is that nothing is taken from the Muslim or *dhimmi* as tax on his business. From Abu Al-Khayr who said: I heard Ruwayfi bin Thabit saying: I heard the Messenger of Allah (saw) saying:

إِنَّ صَاحِبَ الْمَكْسِ فِي النَّارِ - يَعْنِي الْعَاشِرَ

“Verily the collector of duty is in the Fire i.e. the tithe collector”

(narrated by Abu Ubayd).

From Ibrahim bin Muhajir who said: I heard Ziyad bin Hudayr saying:

أنا أول عاشر عشر في الإسلام. قلت: من كنتم تعشرون؟ قال: ما كنا نعشر مسلماً ولا معاهداً، كنا نعشر
نصارى بني تغلب

“I am the first tithing collector who collected tithing in Islam. I said: Whom did you use to tithing? He said: We did not tithing a Muslim or *mu'abid*. We used to tithing the Christians of Bani Taghlib”
(narrated by Abu Ubayd).

The tax on trade is not taken from the Muslim or the *dhimmi*. What Umar (ra) took from the Muslim was *zakat*, and from the *dhimmi* it was according to the conditions of the treaty to which they submitted and became *dhimmis*. As for what was done to *dhimmis* in the declined ages, this was an error in understanding and imitation of some of what came of the conditions of Umar (ra) in his time. Had they comprehended accurately, they would understand that Umar (ra) did what the treaty conditions which they accepted included and apart from that Umar advised all the good for the *dhimmis*. Therefore the *dhimmis* are treated with the best treatment and what the *Shar'a* came with is implemented upon them except if the pledge of their truce includes conditions which will be executed upon them as they came.

Implementing Islam is obligatory upon the disbelievers

It is obligatory to implement the Islamic rules upon all those in *Dar al-Islam* under the rule of the Islamic State just like they are implemented upon the Muslims equally, whether he is a *dhimmi* or a *mu'abid* or *must'amin*. The ruler is not given a choice in that; rather it is obligatory to implement the Islamic rules upon them without hesitation because Allah (swt) said in relation to the People of the Book:

فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم عما جاءك من الحق

“Judge between them with all that Allah revealed and do not follow their desires after the Truth came to you”
[TMQ 5:48].

He also said in relation to them:

وأن احكم بينهم بما أنزل الله ولا تتبع أهواءهم واحذرهم أن يفتنوك عن بعض ما أنزل الله إليك

“Rule between them with all that Allah revealed and do not follow their desires. And beware that they do not seduce you from just some of what Allah revealed to you”

[TMQ 5:49].

And He (swt) said:

إنا أنزلنا إليك الكتاب بالحق لتحكم بين الناس بما أراك الله

“Verily We revealed to you the Book in truth so that you rule between the people with what Allah revealed”
[TMQ 4:105].

This is a general rule covering the Muslims and non-Muslims since the word “*nas*” (people) is general:

لتحكم بين الناس

“So that you rule between the people”

[TMQ 4:105].

As for Allah’s statement:

سمعون للكذب أكالون للسُّحت فإن جاؤوك فاحكم بينهم أو أعرض عنهم

“Listeners to falsehood, eaters of illicit wealth (subt). If they come to you then rule between them or turn away from them”
[TMQ 5:42]

The meaning is that those who come to the Islamic State from outside it to arbitrate to the Muslims in their dispute with another disbeliever or disbelievers. The Muslims are given a choice between judging between them or turning away from them. The *ayah* was revealed about those whom the Messenger of Allah (saw) made a treaty with the Jews of Madinah and they were tribes considered as other States; accordingly there were treaties between him and them. Whereas if the disbelievers were submitting to the rule of Islam such as when they were *dhimmis* or they came as *musta'min* submitting to the rule of Islam i.e. consenting to enter *Dar al-Islam* together with submitting to the rule of Islam like *mu'abids* or *must'amins*, it is not allowed to rule between them except with Islam. Whoever among them refuses to return to the rule of Islam, the ruler compels him and punishes him because of it since he entered into a pledge with the condition of being bound by the rules of Islam whether it was the pledge of *dhimmah* or treaty or security without distinction between them as long as he is in *Dar al-Islam*.

The Messenger of Allah (saw) wrote to the people of Najran, and they were Christians:

ان من بايع منكم بالربا فلا ذمة له

“Whoever among you contracts with *riba* then there is a no pledge (*dhimmah*) for him.”

Ibn Umar narrated

أن النبي صلى الله عليه وسلم أتى بيهوديين فحجرا بعد إحصائهما فأمر بهما فوجرا

“Two Jews, a man and woman who had committed adultery were brought to the Prophet (SAW) so he (saw) judged about them and they were stoned.”

Anas narrated

أن يهودياً قتل جارية على أوضاع لها بحجر فقتله رسول الله صلى الله عليه وسلم بين حجرين

“A Jew killed a slave-girl for her silver jewellery with stones, so the Messenger of Allah (saw) killed him with two stones.”

These Jews were from the Muslims’ citizens, and what is apparent is that this was after the end of the Jewish entities and their being protected as citizens under the Muslims’ authority.

However if it is an action which enters into the category of creeds for them, even if for us it were not in the category of creeds, we do not oppose them in it but leave them in relation to it and what they believe about it. So if they believed in the permissibility of drinking alcohol, they are not punished over it because they do not believe in its illegality so they are not bound with its punishment like disbelief (*kufr*). We do not implement upon them what relates to creeds because at that point it would be considered compulsion in the deen while Allah (swt) says:

لا إكراه في الدين

“There is no compulsion in the deen”

[TMQ 2:256]

And because the Messenger (saw) said:

إنه من كان على يهوديته أو نصرانيتها فإنه لا يُفْتَن عنها

“Whoever is upon Judaism or Christianity, then he is not tempted from it” (narrated by Al-Bukhari).

Implementing upon them what contradicts their religion by force is temptation from their religion; so accordingly they are not forced upon the creeds and worships. Also because they were consented upon their disbelief (*kufr*) in relation to the creeds when and were not consented upon the rule of *kufr*, so punishing them over what enters into creeds is punishing them upon *kufr* which they believe in which is not allowed. Accordingly it is obligatory to implement the rules of Islam upon the disbelievers in *Dar al-Islam* just as they are implemented upon Muslims.

The Jizyah

The *jizyah* is specific money taken from non-Muslims from the people of the *dhimmah* who are the People of the Book generally and non-Arab polytheists and the rest of the disbelievers. Allah (swt) said:

فَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا
الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

“Fight those who do not believe in Allah and the Last Day nor forbid what Allah and His Messenger forbid nor follow the deen of truth from those given the Book until they pay the *jizyah* by hand and they are humiliated”
[TMQ 9:29].

Qays bin Muslim narrated from Al-Hasn bin Muhammad who said:

كُتِبَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى مَجُوسِ هَجَرَ يَدْعُوهُمْ إِلَى الْإِسْلَامِ، فَمَنْ أَسْلَمَ قَبِلَ مِنْهُ، وَمَنْ لَا، ضُيِّبَتْ
عَلَيْهِ الْجِزْيَةُ فِي أَنْ لَا تُؤْكَلَ لَهُ ذَبِيحَةٌ وَلَا تُنْكَحَ لَهُ امْرَأَةٌ

“The Messenger of Allah (saw) wrote to the Zoroastrians of Hijr calling them to Islam. Whoever embraced Islam, it will be accepted from him and whoever does not then *jizyah* would be imposed upon him in that no slaughtered meat would be eaten from them nor their women married”

(narrated by Abu Ubayd).

It is narrated from Ja'far bin Muhammad from his father who said: Umar said: I do not know what to do with the Zoroastrians who are not People of the Book. So Abdurrahman bin Awf said: I heard the Messenger of Allah (saw) saying:

سَدُّوا بِهَمَّ سُنَّةَ أَهْلِ الْكِتَابِ

“Prescribe for them the way (*sunnah*) of the People of the Book”

(Narrated by Abu Ubayd).

He narrated via the way of ibn Shihab

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ هَجَرَ، وَأَنَّ عُمَرَ أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ فَارِسَ وَلَمْ يَنْكُرْ
عَلَيْهِ أَحَدٌ مِنَ الصَّحَابَةِ، وَأَنَّ عُثْمَانَ أَخَذَ الْجِزْيَةَ مِنَ الْبُرْبَرِ وَلَمْ يَنْكُرْ عَلَيْهِ أَحَدٌ مِنَ الصَّحَابَةِ. أَمَّا مُشْرِكُو الْعَرَبِ فَلَا
يُقْبَلُ مِنْهُمْ الصَّلْحُ وَالذِّمَّةُ وَلَكِنْ يُدْعَوْنَ إِلَى الْإِسْلَامِ، فَإِنْ أَسْلَمُوا تَرَكُوا وَإِلَّا قُوتِلُوا

“That the Messenger of Allah (saw) took the *jizyah* from the Zoroastrians of Hijr, and Umar took the *jizyah* from the Zoroastrians of Persia without any of the Sahabah rejecting from him. Uthman took *jizyah* from the Berbers and none of the Sahabah rejected from him. As for the Arab polytheists, truce and *dhimmah* is not accepted from them but they are called to Islam. If they embrace Islam, they are left; if not, they are fought.”

Allah (swt) said:

سَدُّوا دَعْوَةَ إِلَى قَوْمٍ أُولِي بَأْسٍ شَدِيدٍ تَقَاتُوا لِمَوْتِهِمْ أَوْ يُسَلِّحُوا

“You will be called to a people of great strength. You will fight them or they will become Muslims” [TMQ 48:16]

And its meaning is that until they embrace Islam. The *ayah* is about those whom the Messenger of Allah (saw) was fighting and they were the idol-worshippers among the Arabs which indicated that they will be fought. He also narrated via the way of Al-Hasan who said:

أمر رسول الله صلى الله عليه وسلم أن يقاتل العرب على الإسلام ولا يُقبل منهم غيره، وأمر أن يقاتل أهل الكتاب حتى يعطوا الجزية عن يد وهم صاغرون

“The Messenger of Allah (saw) commanded that the Arabs be fought upon Islam with nothing else accepted from them. And he commanded to fight the People of the Book until they pay the *jizyah* by hand while they are humbled.”

Abu Ubaydah said: ‘We view that Al-Hasan meant by the Arabs here the people of idols among them who were not of the People of the Book. As for those of the People of the Book, the Messenger of Allah (saw) did accept it (*jizyah*) from them and this is clear in the *abadith*.’ It is not established that the Prophet (saw) took *jizyah* from any idol-worshipper from the Arabs, and he did not accept after the revelation of the *ayah* of (Surah) Al-Fath and Surah At-Tawbah other than Islam or war. As for what is narrated of his taking *jizyah* from the Arabs like the people of Yemen and the people of Najran, verily he only took it from the People of the Book, the Christians and Jews. He did not take it from the idol-worshippers among the Arabs. It is necessary to clarify to those from whom the *jizyah* is accepted that they are obliged once a year to pay the *jizyah*. And that what is taken from the rich is this amount, and from the poor is a specific amount. It is not taken from the poor due to Allah’s statement: “*by hand*” i.e. based on ability, and it is not taken from the women and children. *Jizyah* is not taken from them except from the mature man capable of paying it. It is narrated from Nafi from Aslam the slave of Umar

أن عمه كتب إلى أمراء الأجناد أن يقاتلوا في سبيل الله ولا يقاتلوا إلا من قاتلهم ولا يقتلوا النساء ولا الصبيان ولا يقتلوا إلا من جرت عليه الموسى، وكتب إلى أمراء الأجناد أن يضربوا الجزية ولا يضربوها على النساء والصبيان ولا يضربوها إلا على من جرت عليه الموسى

“That Umar wrote to the army leaders that they fight in the way of Allah and not to fight except those who fight them; not to fight women and children, and not to fight except those whom the razor has taken effect. And he wrote to the army leaders to impose the *jizyah* and not to impose it upon the women and children, and not to implement it except upon those whom the razor has taken effect.”

Abu Ubayd said: ‘Meaning the one who has (hair) on his face.’ And he said: ‘This hadith is the basis (*asl*) upon the one upon whom *jizyah* is obliged and the one upon whom it is not obliged. Do you not see that he only ordained it upon the male intelligent ones and not the female or the children?’ No one rejected (this from) Umar so it was a consensus (*Ijma’a*). This is strengthened by what came in the book of the Prophet (saw) to Muadh (ra) in Yemen

أن على كل حالم ديناراً

“That upon every male who has attained puberty (*halim*) is a Dinar”

So he specified the male who has attained puberty not the woman or child. As for the narration

الحالم والحاملة

“The male and female who have attained puberty”

It is not preserved among the *muhadditheen*. The preserved, established from that is the hadith which does not mention the female who has attained puberty. Even upon the obligation of the authenticity of its coming (in this way), then this was at the beginning of Islam when the women of the polytheists and their children fought with their men so this was the case. Then it was abrogated by the Messenger (saw) as not to take from women and children, and Umar executed this after him. The *jizyah* which is taken is obliged together with their submission to Islam. The humiliation mentioned in the *ayah*:

حتى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

“Until they pay the *jizyah* by hand and they are humbled”

[TMQ 9:29]

Is that the rule of Islam is executed upon them and that they do not display anything of their disbelief nor anything which is forbidden in the deen of Islam. Also that Islam remains that which is exalted in the land due to his (saw) statement:

الإسلام يعلو ولا يُعْلَى عَلَيْهِ

“Islam is exalted and there is nothing exalted above it.”

The lands of *Ushr*, *Kharaj* and *Sulh* (Truce)

Abu Ubayd said: 'We find that the traditions from the Messenger of Allah (saw) and the Khulafaa after him came regarding the conquest of lands with three rules: The land where people embraced Islam upon it so their property remains with them, and it is the land of *ushr* and there is nothing else in it upon them. And the land conquered by truce upon a specific *kharaj*, so upon them is what they made truce upon and nothing beyond that is obliged upon them. And the land taken by force which is the one Muslims differed upon. Some of them said that its way is the way of war booty (*ghaneema*) so it is divided into fifths and divided. So four-fifths becomes distributed between those who conquered it specifically and the remaining fifth for those named by Allah (swt). Some said that its rule and the consideration over it is for the *Imam*, if he sees that he divided it into fifths and divides it like the Messenger of Allah (saw) did in Khayber, then he can do that. And if he sees that he makes it booty (*fai*) so that he does not divide it into fifths and not divide it, but it becomes a trust for Muslims generally as long as it remains just as Umar did with the *simad* (land between river Dajla and Euphrates and surrounding it) then he can do that. These are the rules of land which are opened by conquest' (Abu Ubayds reference ends here).

The land in Islam from the time Allah sent His Messenger (saw) until the day Allah inherits the earth and those upon it is either the land of *ushr* or the land of *kharaj* or the land of truce. As for the land of *ushr*, it is the land from which *ushr* (*tithe*) is taken or half-tithe as zakat from what is produced from it so it is *ushri* land. It is named that in relation to the tithe taken from the produce(r) of the land as zakat upon it.

It includes every land whose inhabitants embraced Islam upon it originally like the land of Al-Madinah Al-Munawwarah or Indonesia. The people of Madinah in the days of the Messenger (saw) and the Khulafaa after him did not except the tithe as zakat from the produce of the land.

Similarly the land of *ushr* covers all the Arabian Peninsula whether its inhabitants embraced Islam upon it like Madinah or it was conquered by force like Makkah. The Messenger of Allah (saw) left the land of Makkah to its inhabitants and he did not take it from them. This was the same for the rest of the peninsula except what was for the Jews. This is because Allah did not accept from the Arab polytheists except Islam or the sword. Allah chose His Messenger (saw) from among them and revealed the Qur'an in their language so therefore they are more capable to understand and comprehend it so He commanded them all with Islam and whoever does not embrace Islam is killed. He did not accept *jizyah* from them along with their remaining upon their religion so He honoured them above this humiliation. He did not accept *jizyah* upon their heads nor implements *kharaj* upon their lands; rather He made the whole Arabian Peninsula *ushri* land whether its inhabitants embraced Islam upon it or it was conquered by force. And He made its residents Muslims and commanded the Messenger (saw) to remove the Jews from it so that there does not remain within it except the deen of Islam. Accordingly there was no zakah taken except the tithe on the produce by the Messenger (saw) until this hour.

All land conquered by Muslims by force of weapons and divided by the *Imam* between the fighters such as the land of Khayber is joined to the land of *ushri* and becomes *ushri* land. Or what the *Imam* confirmed for them upon a part from it as happened with the Muslims' army in Sham and Homs. Al-Ahwas bin Hakeem narrated that the Muslims who conquered Homs did not enter it but rather encamped upon the river Al-Irbid and lived there, so Umar executed it for them and Uthman. As it is narrated that when Allah (swt) gave the Muslims victory over *Bilad As-Sham* and they made peace with the people of Damascus and Homs, they disliked to enter it before completing their victory and inflicted severe massacres over the enemy of Allah. So they encamped in the meadow of Bardi between Al-Mizzah and the meadow of Sha'ban, and the two sides of the meadow of Muruj were permitted for the people of Damascus and its produce not

for anyone of them so they resided therein. This information reached Umar and he executed it for them, and Uthman executed it after him. It never departed from its owners without *kharaj* in it; rather tithe was paid as it was owned by Muslims originally and no *kharaj* was imposed upon it.

Similarly attached to the land of *ushr* so that it because *ushri* land is the allotments allocated by the Khalifah to the people from the land conquered violently and its inhabitants left fleeing from Muslims or was owned by the conquered State, its rulers therein or their family or relatives. As it was narrated from some of the people of Madinah from the preceding sheikhs that it was found in the *diwan* of Umar bin Al-Khattab (ra) selected the properties of Khosroes and the family of Khosroes, everyone who fled from his land or was killed in the battlefield and every bog of water or thickets. Umar would allocate from this land to the one allocated and would take the tithe from it so it became *ushri* land even though it was conquered by the State's power as it did not remain in the hands of its inhabitants. *Kharaj* was not imposed upon it; rather the Muslim owned it originally by its allocation to him by the *Imam*.

Similarly what the *Imam* allocated to someone from the land not yet conquered, after Allah (swt) opens it for the believers then it becomes booty to the one it was allocated to. This is like the Messenger (saw)'s allocating to Tamim Ad-Dari the land of Hibra, Hebron, Al-Martum and 'Ainun in Al-Khalil. When Tamim Ad-Dari was sent as an envoy with his people, he requested from him that he (saw) allocates him these areas if Allah (swt) opened them for the Muslims so he allocated them to him and wrote a book for him regarding that. Umar (ra) was among the witnesses upon that book so when Allah (swt) opened it for Muslims in the days of Umar (ra), he sought them from Umar (ra) and Umar (ra) handed it to him in fulfilment of the grant of the Messenger of Allah (saw). Also similar is what the *Imam* allocates to the people of the lands of *ushr* without owners, like the Messenger of Allah (saw) allocated Bilal bin Harith Al-Muzni the whole of Al-'Ameeq which is the land close to Madinah and it is the land of *ushr*.

All uncultivated land which is revived by people via any type of cultivation is attached to the land of *ushr* so that it similarly becomes *ushri* land, whether it is from the land of *ushr* i.e. from the Arabian peninsula or Indonesia and any land whose inhabitants embraced Islam upon it or it were from the land of *kharaj* like the lands of Iraq, Sham, Egypt and other lands conquered by force. It has been narrated from Jabir bin Abdullah (ra) who said: The Messenger of Allah (saw) said:

من أحيا أرضاً ميتة فهي له

"Whoever revives uncultivated land, then it is for him"

(narrated by Tirmidhi).

He also narrated via the way of Saeed bin Zyad that the Prophet (saw) said:

من أحيا أرضاً ميتة فهي له، وليس لعرق ظالم حق

"Whoever revives uncultivated land then it is for him, and there is no right for the ('*araq*) of the oppressor."

These types of land are all *ushri* lands, and it is not obliged upon them except the tithe of the produce if it is irrigated by water from the sky or half-tithe if irrigated from wells, rivers and (*sawaqi*). This does not change or alter even if the owners change because its attribute remains without change or alteration as it is a land whose people embraced Islam upon it or a Muslim owned it originally or it is in the Arabian Peninsula. These attributes remain perpetually without passing away even if it is transferred from a Muslim to a disbeliever. The attribute remains compulsory upon it so it remains obligatory to pay the tithe as zakat upon the produce. If it does

not produce then there is no zakat upon it. Hence there is no zakat upon the residential land except it is farmed or if it is taken for trade then it becomes merchandise of trade; at this point, the zakat of trading merchandise is obliged upon it.

Usbri land is the (*yameen*) property of its owner who owns its neck and benefits and holds all types of dispositions within it of buying, trade, pledging, gift and trust just like it is inherited from them. It is not taken away from them except with their consent and the State pays them the price of the land's neck and benefit if it takes it away from them. Except the land allocated by the *Imam* to individuals and the land enclosed by individuals by any sign indicating the placing of a hand over it; if three years pass over it without reviving, exploitation or cultivation then it is taken away from the hand of its owner without the State paying anything to them whether the price of the neck or the price of the benefit. This is because they did not undertake to realize the objective for whose sake the allocation or enclosure occurred, which is to make use of the land and cultivating it by planting and cultivation. So they do not deserve it, and that's why their possession of these lands is of no purpose. Hence Umar bin Al-Khattab (ra) removed the land of Al-'Ameeq from Bilal bin Al-Harith Al-Muzni as long as he was not able to cultivate it, after he said to him that the Messenger of Allah (saw) did not allocate it to you to enclose it from the people but rather he only allocated to you to work so take what is your capability to cultivate and return the remainder. Bilal said to him: 'By Allah, I will never do anything. The Messenger of Allah (saw) allocated it. Umar said: By Allah, you will do (it)' and he took what he was incapable of cultivation upon it without compensating him anything at all, and he divided it between the Muslims. Similarly it is narrated of Umar his statement on the *minbar*:

من أحيا أرضاً فهي له وليس لمحتجر حق بعد ثلاث سنين

"Whoever revives a land, then it is for him. And there is no right for the encloser (*muhtajir*) after three years"

And he said:

من عطل أرضاً ثلاث سنين لم يعمرها، فجاء غيره فعمرها فهي له

"Whoever leaves land unemployed for three years without cultivating it, and another comes and cultivates then it is for him."

The *Ijma'a* of the Sahabah was contracted that whoever leaves unemployed his land for three years, it is taken from him and given to someone else.

As for the land of *kharaj*, it is the land conquered by force by the strength of the Muslims and their army, but it is not divided between the fighters. Rather the *Imam* leaves it in the hands of its inhabitants and imposes *kharaj* upon them. The origin in that is that when Iraq, Sham and Egypt were conquered in the days of Umar bin Al-Khattab (ra), the Muslims requested him to divide it between them as the Messenger of Allah (saw) divided Khayber. The head of those requesting the division of the land were Bilal (ra), Abdurrahman bin Awf (ra) and Az-Zubayr (ra). However Ali (ra) and Muadh (ra) requested from Umar (ra) not to divide the land, and Muadh (ra) said to Umar (ra) as Abu Ubayd narrated in '*Al-Ammal*' that Umar (ra) came to Al-Jibaya and he intended to divide the land between the Muslims so Muadh (ra) said to him: By Allah, this will become what you dislike. If you divide it today it will become a great asset (*ra'iy*) in the hands of the people then they will perish until it will lead to be owned by one man and woman. Then there will come after them people who will become an obstacle for Islam and they do not find anything, so look to a matter which will be spacious for their first and last. Bilal (ra) and his companions were severe in seeking from Umar (ra) until Umar (ra) said: 'O Allah! Be sufficient for me against Bilal and his followers.' Umar consulted the *Muhajireen* and *Ansar* in this, and of what he said to them was: 'I viewed that I retain the land and place upon it *kharaj* and upon their

necks *jizyah* to pay so that it becomes booty for the Muslims fighters and families and those coming after them. Do you see these frontiers? It is necessary to have men adhere closely to them. Do you see these great cities like Sham, Al-Jazeera, Kufa, Basra and Egypt? It is necessary to fill them with armies and arrange pay for them. From where would they be paid if I divide the lands and the assets? They all said: The opinion is your opinion. How excellent is what you did and what you considered.’ He deduced for them for his opinion with the *ayat* of booty which came in Surah Al-Hashr and among them:

وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ يَقُولُونَ غُرِبْنَا مَا الْأَخْوَانُ لَنَا إِلَّا حَوَانٌ نُنَادِيكَ يَا اللَّهُ إِنَّا بِأَلْيَابِنَا بِلَاإِيمَانٍ وَلَا تَجْمَعُ لِي فِي قُلُوبِنَا غَلًّا لِلَّذِينَ آمَنُوا
رَبَّنَا إِنَّكَ رَءُوفٌ رَحِيمٌ

“And those who came after them say: O our Lord, forgive us and our brothers who preceded us in iman”
[TMQ 59:10].

He deduced from this *ayah* that those who would come from the sons of the Sahabah, the followers (*tabi'in*) and their followers, and those who would come after them until the Day of Judgement have a right upon this booty.

Accordingly, the consideration of Umar that the necessity calls for creating permanent spending from where expense are paid for the army, salaries are withdrawn, administering the State's interest expended from it and needy persons are paid from it always. These expenses require permanent spending which does not end. So his thinking and understanding of the *ayat* of booty which came in Surah Al-Hashr guided him to prevent the division of a conquered land between the Muslims and to leave it retained in the hands of its inhabitants, and to impose *kharaj* upon them so as to become permanent booty to be expended upon the Muslims' army and their benefit. This is the real meaning which lead Umar (ra) not to divide the land between the Muslims. This meaning is expressed in Umar's statement:

أما والذي نفسي بيده لولا أن أترك آخر الناس ببأنا ليس لهم شيء ما فتحت علي قرية إلا قسمتها كما قسم
النبي ﷺ خيبر ولكني أتركها خزانة لهم يقتسمونها

‘By Him in Whose Hand my soul is, were I not afraid that the other Muslims might be left in poverty, I would divide (the land of) whatever village I may conquer (among the fighters), as the Prophet (saw) divided the land of Khaybar. But I prefer to leave it as a (source of) a common treasury for them to distribute it revenue amongst themselves’

(Narrated by Bukhari)

From here it is understood that the neck of the land of *kharaj* is owned by all Muslims and it is retained for them; its remaining in the hands of its inhabitants is only to cultivate and exploit it on behalf of Muslims on condition of their paying *kharaj* upon it in return for their remaining with their benefits in it and their exploiting it. They are not owners of its neck but they have been consented upon owning its benefit. Accordingly it is the view of some Sahabah and many people of knowledge not to purchase this land; among them are Umar (ra), Ali (ra), Ibn Abbas (ra), Abdullah bin Umar (ra), Al-Awzai' (ra) and Malik (ra). Al-Awzai' said:

لم يزل أئمة المسلمين يَنْهَوْنَ عن شراء أرض الجزية، ويكرهه علماءؤهم

‘The leaders of the Muslims did not cease prohibiting the purchase of the land of *jizyah*, and their scholars disliked it.’

Ash-Sh'abi narrated that Utbah bin Farqad purchased land upon the river-banks of Al-Furrat to took from it a small channel of irrigation. He mentioned this to Umar (ra) and he said:

من اشتريتها قال: من أربابها، فلما اجتمع المهاجرون والأنصار، قال هؤلاء أربابها فهل اشتريت منهم شيئاً. قال: لا، قال: فارددها على من اشتريتها منه وخذ مالك

‘From whom did you purchase it? He said: From its owners. When the Muhajireen and Ansar gathered, he said: These are its owners, so did you purchase anything from them? He said: No. He said: Then return it to the one you purchased it from and take your money.’

They disliked the purchasing of the *kharaji* land from the people of *dhimmah* as its neck is retained for Muslims, and also purchasing it from the people of *dhimmah* will make the Muslim pay *kharaj* and they considered the *kharaj* as humiliation which must be removed from the Muslims until they said: ‘Whoever accepts *kharaj* has consented to humiliation and submissiveness.’ However there are other Sahabah and jurists (*fuqaha*) who saw nothing (wrong) in purchasing just as some of the Sahabah purchased from the land of *jiyyah* so it is narrated that ibn Masoud purchased land from Dahqan. And Ath-Thawri said: ‘If the *Imam* confirms the people of force in their lands, they inherit and buy them.’ Similar to this is narrated from ibn Sireen and Al-Qurtubi, and it is narrated from Ahmad that he said:

إن كان الشراء أسهل، يشتري الرجل ما يكفيه ويغنيه عن الناس

‘If purchase is easier, then the man purchases what is sufficient for him and makes him self-sufficient from the people.’

By careful examination into the reality of the land conquered by force and which its inhabitants reside upon on condition that they pay *kharaj* upon it, it is witnessed that this land has been inherited by sons from the fathers, generation after generation, without (any) rejection from any of the Sahabah or any Muslim. This is definite evidence that *kharaji* land is inhabited like *ushri* land, except that what is inherited in *kharaji* land is its permanent benefit; its neck is not inherited as it is owned by all Muslims. As for the benefit, Umar bin Al-Khattab (ra) consented to its inhabitants owning its permanent benefits to the end of time. The benefit is owned and inhabited, and the owner of the benefit can dispose in it via all types of dispositions of trade, pledge, bequest and other types of dispositions.

This is one aspect. As for the second, humiliation is not definite in *kharaj* but rather it is only in the *jiyyah* on the head of the family because the *kharaj* of land is only paid by the owner of the land in exchange for consenting him in the ownership of the land’s benefit, thereby facilitating him to exploit the land and derive benefit from it. Accordingly it does not appear in it the meaning of humiliation and submissiveness as it is paid in exchange for a benefit. There does not exist humiliation in exchange for a benefit. Do you not see that the salary paid by a person in exchange for his benefiting with the residence of a house or trading in a shop, that there does not exist any humiliation within it? Accordingly the *kharaj* of land is only in exchange for owning the benefit of the land so it is not considered humiliation and hence no humiliation is attached to the one who purchases land of *kharaj*.

Thirdly, the disbeliever who is allowed to remain upon the conquered land who pays *kharaj* in it has the potential to change into a Muslim, either himself or his family, and with his change the ownership of the benefit of the land will have moved from a disbeliever to a Muslim. With this change the paying of *kharaj* will have changed from a disbeliever to a Muslim; and this is what happened in practice. The people of Iraq, Sham, Iran, Egypt etc and other from the conquered lands converted into Muslims and the Muslims became the one paying *kharaj*. And the transfer of *kharaji* land from a Muslim to a Muslim by sale, purchase, gift or inheritance has no difference regarding it as the Muslims are equal since there is no difference between the property of a Muslim and another Muslim. Accordingly this clarifies that there is no sin in the transferring of the land of *kharaj* from a Muslim to a Muslim by inheritance, trade, gift, bequest or other (ways).

The land's attribute and what is obliged upon it remains to the Last Hour whoever the type of owner of the land and however the hands of ownership changes because its attribute in its being conquered by force remains to the Last Hour without change. The transfer of ownership of its benefit from a disbeliever to a Muslim does not change this attribute, just as it does not change what is obliged upon it of *kharaj* since *kharaj* is linked with the conquered land whose inhabitants were allowed to remain upon it and were not linked with ownership.

Whoever owns the benefit of the land can trade this benefit and receive its price because the benefit is sold and its value deserved. No one possesses (the right) to depose it from its owner not even the Muslims' Khalifah. Abu Yusuf said: 'Whichever land was conquered by force by the *Imam* and he did not opine its division, and he saw the benefit in leaving it in the hands of its inhabitants just as Umar bin Al-Khattab (ra) did in the lands of *simad* (land between river Dajla and Euphrates and surrounding it), then he can do this. It is the land of *kharaj*, and it is not for him to depose it from them after this. It is their property to inherit and trade in it, and he will place *kharaj* upon it...all that was allowed by the governors of the land of *simad*, it is not allowed for the Khulafaa coming after them to reject this nor depose it from their hand whether an heir or purchaser. If one governor takes land from the hand of someone and allocates it to another, this is equivalent to one seizing by force where one is seized by force and the other receives it. This is not allowed for the *Imam* nor is it permitted for him to allocate the right of the Muslim or *mu'abid* to any person, nor is anything like that taken from his hand except for a right due to him upon it hence what is due to him is taken from it.' Accordingly if the State needs to take a land from the lands of *kharaj* for a benefit the Muslims cannot do without, it is obligatory upon it to pay the owner of the land the value of his ownership of the land's benefit which it took possession of not the price of its neck, because the owner of *kharaji* land merely owns the land's benefit not its neck since its neck is owned by the Muslims. Accordingly it is upon it to pay him the value of what he owns which is the benefit whether big or small. Nor is it reduced to paying the value of what he established upon it from buildings or trees as this will be considered as a seizure by force of a right he owns for he owns what he established upon it from buildings and trees and he owns what is within it of its ability to produce and its permitted benefits. So it is obligatory to estimate the value of all that, particularly as it often happens that he bought it for tens of thousands whereas what is upon it from buildings and trees does not even equal tens of hundreds. So restricting to paying the value of buildings and trees is oppression upon him and neglecting of his right. If the State does not pay all that is upon his land of benefit, it will be unjust seizure. This is like any benefit when bought; it is obligatory to pay its value fully.

All the preceding rules related to *kharaji* land are only in the land prepared for cultivation. As for residential land in the conquered lands its rule is contrary to the rule of cultivated land. Residential land has no *kharaj* upon it and its neck and benefit is owned. This is according to the *Ijma'a* of the Sahabah. When the Muslims conquered Iraq, they took possession of Kufa and Basra for the first time and divided it between them, so it became private property for them with them owning its neck and benefit in the days of Umar bin Al-Khattab (ra) with his permission. And the Sahabah of the Messenger of Allah (saw) resided therein. Similarly for Sham, Egypt and other conquered lands. They did not pay *kharaj* upon anything from it. It was sold and bought like any private property. Similarly, there is no zakat upon it except if it is taken as merchandise for trade. At that point zakat of trading merchandise is taken.

The land conquered by force is a matter for the *Imam*. If he wishes, he divides as the Messenger of Allah (saw) divided Khayber. And if he wishes, he leaves it to be retained in the hands of its inhabitants and obliges *kharaj* upon it as booty for Muslims as Umar (ra) did in the land of *simad* (land between river Dajla and Euphrates and surrounding it), Sham and Egypt. He does in that what he sees as benefit for Muslims.

As for the land of truce, it is every land whose inhabitants made truce upon with specific conditions. It is obliged upon the Muslims to fulfil the truce's conditions and be bound by them whatever they are in conformity with what came in the Book of Allah and the Sunnah of His Messenger (saw) from the *ayat* and authenticated *abadith* which oblige being bound by and fulfilment of covenants.

The land of truce is of types according to the type of conditions agreed upon during the contradicting of the truce. The land surrendered to the Muslims and its inhabitants expelled from it according to the truce condition like it occurred with the Jews of Banu Nadhir. The Messenger of Allah (saw) made truce with them upon expelling them from Madinah, and for them is what the camels carried of utensils and property except for weapons. So it was of what Allah gave His Messenger (saw) as booty. The matter of this type is left for the *Imam* to dispose in it in the form he sees benefit therein for Muslims.

And the land whose inhabitants made truce upon on condition it remains property for them and we allow them to reside therein upon their paying specific *kharaj*. The neck and benefit of this land remains the property of its inhabitants according to the truce conditions and they exchange it like any good they own. They can trade it, place it in trust, gift it and it is inherited from them. There is nothing upon them except what they made truce upon, and this is not increased. This *kharaj* is of the rank of *jizyah*. Accordingly if their land is transferred to a Muslim he does not pay *kharaj* upon it as the land is not land of *kharaj*. Similarly, if they become Muslim then *kharaj* does not apply to them just as the *jizyah* is exempted from the one who becomes Muslim. This is like the land of Hijr and Bahrain. This is because Hijr and Bahrain were opened by truce just like Ayla Al-'Aqabah, Dumat al-Jundal and Adhrah were opened by truce. These towns paid *jizyah* to the Messenger of Allah (saw). Similarly the cities of *Sham* except for the Caesarian ones, the land of the peninsula (*al-jazirah*) and all the land of *Khurasan* or most of it. Accordingly their rule was the rule of truce.

And the land upon which the disbelievers made truce upon the land which belonged to us and we allow them to reside in it and its buildings for a specific *kharaj*. The rule of all this land is the rule of the land of force (*umra*), and its *kharaj* is the *kharaj* of the land of force.

Dar al-Kufr and Dar al-Islam

The “*dar*” in the language is the halting place, the house and the land. The “*dar*” is used in the language upon the tribe, and the land of war (*dar al-harb*) is the land of the enemy. There is no disagreement that the land of the disbelievers in which the disbelievers reside and rule therein by disbelief is the land of war and the land of disbelief.

Similarly there is no disagreement that the land of the battlefield which the Muslims took as booty wherein they have not yet established the rules of Islam is the land of war and the land of kufr even if it were under the hand of Muslims. This is why the *fuqaha* (jurisprudents) say: ‘If the booty is divided in the land of war, it is allowed for the one who took his portion to dispose it via trade and otherwise.’ The word ‘*dar al-kufr*’ and ‘*dar al-harb*’ have one meaning which is used upon the land of the enemy and the land of the battle. Similarly there is no disagreement that the land of Islam (*Dar al-Islam*) is the land that submits to the rules of Islam and Muslims rule in it, whether its inhabitants are Muslims or *dhimmis*. The *fuqaha* also say that *Dar al-Kufr* becomes *Dar al-Islam* by the appearance of the rules of Islam in it; however they differed as to how *Dar al-Islam* becomes *Dar al-Kufr*. Some *mujtahideen* said that *Dar al-Islam* does not become a *Dar al-Kufr* except by three conditions: **firstly**, the appearance of the rules of kufr in it. **Secondly**, that it comes to border the *Dar al-Kufr*. **Thirdly**, that there does not remain in it any Muslim or *dhimmi* secured by the first security which is the security of Muslims. This statement is not based upon evidence; rather it is merely the description of the reality of the land. The reality (*dhahir*) is that when there occurs fighting between Muslims and disbelievers and the disbelievers take the land of Muslims so the war continues upon it, in this situation it is considered that the *Dar al-Islam* became a *Dar al-Kufr* and has been conquered. Some *mujtahideen* said that the *Dar al-Islam* becomes a *Dar al-Kufr* by the appearance of kufr therein. The reason of this statement is that our saying *Dar al-Islam* and *Dar al-Kufr* is related to Islam and to kufr. The land is only related to Islam or kufr by the appearance of Islam or kufr in it just as Paradise is called the abode of peace (*dar as-salaam*) and the Fire is the abode of destruction (*dar al-bawar*) due to the existence of peace in Paradise and destruction in the Fire. The appearance of Islam or kufr is by the appearance of their rules so if the rules of kufr appear in a land it has become a *Dar al-Kufr* and the relationship is correct. Accordingly the land becomes a *Dar al-Islam* by the appearance of the rules of Islam within it without other conditions, and similarly it becomes *Dar al-Kufr* by the appearance of the rules of kufr within it.

As long as the matter relates to the reality of the land, then the question of the land being bordered to the *Dar al-Kufr* i.e. *Dar al-Harb* or not has no place in its consideration since all the frontiers of the Islamic lands border the *Dar al-Harb* i.e. *Dar al-Kufr*. Despite this, they are *Dar al-Islam* by the *Ijma’u* of the Sahabah. If this was a condition then all the frontiers would become *Dar al-Kufr*. Also, the failure to consider the security, the security of Muslims, in deeming that land a *Dar al-Islam* leads to considering the Islamic lands submitting to the authority of disbelievers and their security when they rule by Islam as a *Dar al-Islam* even though the Muslims are under the security of disbelievers not the security of Muslims. The truth is that in considering the land as *Dar al-Islam* or *Dar al-Kufr*, two matters must be looked into: **firstly**, the rule by Islam and **secondly** the security by the security of Muslims i.e. by their authority. If the land augments these two elements i.e. it rules by Islam and the security is by the security of Muslims i.e. by their authority, then it becomes a *Dar al-Islam* and changes from a *Dar al-Kufr* to a *Dar al-Islam*. Whereas if it loses one of the two, it does not become *Dar al-Islam*. Similarly if the *Dar al-Islam* does not rule by the rule of Islam then it is a *Dar al-Kufr*. The same if it rules by Islam but its security is not by the security of Muslims i.e. their authority as where its security is by the security

of disbelievers i.e. their authority, then it also becomes a *Dar al-Kufr*. Hence all the lands of Muslims today are *Dar al-Kufr* because they do not rule by Islam. Similarly it remains a *Dar al-Kufr* where disbelievers establish therein a Muslim to rule by the rules of Islam but he is under their authority so his security is by their security; it remains a *Dar al-Kufr*. In order to change the Muslims' land to *Dar al-Islam*, the rule of Islam must be established therein and its security should be the security of Muslims i.e. by their authority. Accordingly the reality of the lands indicates that it is described by kufr or Islam in consideration to the rule and in consideration of the security because it is a part of the requirements of the rule. If the *Dar al-Islam* loses the rule by Islam or the authority is not in the hands of Muslims, it becomes a *Dar al-Kufr* by losing any of these two. The condition of the land remaining a *Dar al-Islam* is its rule by Islam and its authority in the hands of the Muslims. As for the *Dar al-Kufr*, it does not become a *Dar al-Islam* except if it is ruled by Islam and its authority is in the hands of the Muslims; if these two matters are not augmented, it remains a *Dar al-Kufr*. The rule by Islam and the authority in the hands of the Muslims are both obligatory in relation to describing the land as being a *Dar al-Islam*.

In conclusion, the land's being a *Dar al-Kufr* or a *Dar al-Islam* is related to the reality of the land. The land in the language is applied upon the tribe, and the *Dar al-Harb* is the land of the enemy. We say *Dar al-Harb* and *Dar al-Islam*, and we say *Dar al-Kufr* and *Dar al-Islam*, both are of one meaning. This is because the Muslims are commanded with war i.e. fighting until the people say 'There is no god but Allah' or until they submit to the rules of Islam. If they submit to the rules of Islam, fighting is lifted from them even if they remain disbelievers. If they do not enter under the rules of Islam then they are fought. The cause of fighting them is their being disbelievers who do not respond to the *da'wah*, and the cause of stopping the fighting is their accepting the rules of Islam. If they are ruled by Islam and they remain disbelievers, the cause of stopping the fighting exists and ending the war is obliged which indicates that their rule by Islam is what changes their land from a *Dar al-Kufr* to a *Dar al-Islam*. So the rule of Islam is what the continuation or stopping of war depends upon which indicates that the description which specifies the land being a *Dar al-Islam* or a *Dar al-Kufr* is the rule by Islam. The meaning of its being a rule i.e. an authority is that the internal and external security is by it i.e. by the authority of Islam or else it has been separated from its description as a rule. Accordingly the rule by Islam and the security is that which is of its necessary (attributes) are the two matters which designate the description of the land as being a *Dar al-Islam* or a *Dar al-Kufr*. The evidence for this is also that if the Khilafah i.e. the head of State does not rule by Islam and rules by the rules of kufr, it becomes obligatory upon the Muslims to fight him until he rules by Islam. Similarly if the Muslims leave the rules of Islam; it becomes obligatory upon the *Imam* to fight them until they return to the rules of Islam. This is also explicit in that the rules of Islam results in war for the one who does not rule by it even if they were Muslims. This indicates the sign by which it is known that the land is a *Dar al-Kufr*, and the *Dar al-Kufr* and the *Dar al-Harb* are of one meaning based upon the relation of the land with a specific relationship and its attribute so the *Dar al-Kufr* is related to kufr and the land (itself) is not described with kufr but the description is from its rule. Similarly the *Dar al-Islam* is not described by Islam but only its rule is (so) described. In addition to (the fact) that the conquered land where all the people are disbelievers but is ruled by Islam definitely becomes a *Dar al-Islam*.

The believer's befriending the disbelievers

Allah (swt) said:

لِيَتَّخِذَ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ وَمَنْ يَفْعَلْ ذَلِكَ فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ إِلَّا أَنْ تَتَّقُوا مِنْهُمْ تُقَاتًا
وَيَحذِّرُكُمْ اللَّهُ نَفْسَهُ وَإِلَى اللَّهِ الْمَصِيرُ

“Let not the believers take the disbelievers as friends instead of believers, and whoever does that is not of Allah in anything except if you fear from them something to be feared. And Allah warns you against Himself and to Allah is the return”

[TMQ 3:28].

Ya'qub and Sahl recite it as (*taqiyyah*) which is the recitation of Al-Hasan and Mujahid, while the rest (recite it) as (*tuqat*). It is said in *Al-Qamus Al-Mubeet*: ‘(*At-tawqiyya*) is (*al-kalan*) and protection. I do (*taqa*) something and I did (*taqa*) it and do (*taqi*) it (*taqa*) and he (*taqi*) it (*tiga*) like (*kisa*) is I feared it.’ This text in the *ayah* specifies its subject and this linguistic meaning of the word (*taqiyyah*) specifies what this word means in this *ayah* in meaning since no *Shari'ah* meaning was established for it. So it specifies interpreting it with its linguistic meaning. Upon this basis alone is the *ayah* understood in its generality and details. As for what came in the *ahadith* of the circumstances of its revelation, if authenticated, guides to the details of what came in the *ayah* but would not change its subject neither the meaning of its sentences according to the language and Shar'a. The subject of the *ayah* is clear in its sentence which is believers befriending the disbelievers i.e. treating them as friends. The text is:

لا يتخذ المؤمنون الكافرين أولياء من دون المؤمنين

“Let not the believers take the disbelievers as friends instead of believers”

[TMQ 3:28].

If the *ayah* or *ahadith* came about a specific subject, then it is specific to this subject and does not include anything else. The issue is the issue of believers befriending disbelievers for which came the *ayah* decisively prohibiting it. Nor is this the only *ayah* upon this subject; there have come numerous *ayahs* like Allah's statement:

بَشِّرِ الْمُنَافِقِينَ بِأَنَّ لَهُمْ عَذَابًا أَلِيمًا. الَّذِينَ يَتَّخِذُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ

“Give tidings to the hypocrites that for them is a painful punishment. Those who take the disbelievers as (*awliya*) instead of believers”

[TMQ 4:138-139].

And Allah's statement:

يا أيها الذين آمنوا لا تتخذوا الكافرين أولياء من دون المؤمنين

“O you who believe, do not take the disbelievers as (*awliya*) instead of disbelievers”

[TMQ 4:144]

And His (swt) statement:

لا تجد قوماً يؤمنون بالله واليوم الآخر يوأون من حاد الله ورسوله

“You will not find a people who believe in Allah and the Day of Judgement loving those who oppose Allah and His Messenger”
[TMQ 58:22]

And His (swt) statement:

لا تتخذوا اليهود والنصارى أولياء

“Do not take the Jews and Christians as (*awliya*)” [TMQ 5:51]

And His statement:

لا تتخذوا عدوي وعدوكم أولياء

“Do not take my enemy and your enemy as (*awliya*)” [TMQ 60:1]

The subject is the subject of believers befriending disbelievers and the rest of the *ayah* is detailing the subject. This is because Allah (swt) prohibited the believers from taking the disbelievers as friends, and linked this prohibition with a definite decisiveness that the one who does that and takes the disbelievers as friends then Allah is absolved from him. The he excluded from this decisive prohibition one situation which is the believer fearing harm from the disbeliever, wherein it is allowed for him to befriend the disbelievers to prevent this harm. This is if the Muslim were under the disbelievers' authority defeated in his affair i.e. the fear of the disbeliever permits his befriending. If the fear disappears then the befriending is forbidden. Accordingly the situation is not displaying befriending and hiding something else, but the issue is excluding the situation of the believer's fear of the disbeliever when the Muslim is defeated in his affair from the generality of forbidding his befriending him. The meaning of the *ayah* is the decisive prohibition for the believers from taking the disbelievers as friends for them, and that they seek their assistance and depend upon them, and that they befriend them and there be love between them. So it forbade the believers from befriending disbelievers instead of believers then excluded one situation from this, which is in the situation where there exists fear from them when they are under their authority. Then it is allowed to display love for them and to befriend them to prevent their evil and harm. That is, it is allowed to take them as i.e. friends in the situation where there exists fear from them when they are under their rule. Apart from that, it is absolutely not allowed. This is for the disbelievers only in relation with the believers as the *ayah* was revealed in the affair of the believers who had relations friendship with the polytheists in Makkah. It prohibited those in Madinah from befriending the polytheists in Makkah and it prohibited all believers but excluded from that the believers who were in Makkah who were defeated in their affair. So it excluded them due to the existence of fear of the harm of the disbelievers near to them. This is the subject of the *ayah* and this is its meaning, and this is the *Shari'ah* rule deduced from it which is the forbidding of the believers befriending the disbelievers in all types of befriending, for support, friendship, assistance etc as the word (*awliya*) came general in the *ayah* covering all its meanings, and the permission of befriending them in the situation of fearing them i.e. fearing their violence and harm when the disbelievers are victorious over Muslims and the Muslims are defeated in their affair exactly like the situation of the Muslims in Makkah with the polytheists. There does not exist any other meaning in the *ayah* nor any rule other than this rule deduced from it. As for what some say that “*taqiyyah*” is that a Muslim displays opposite to what is hidden before any person from whom he fears harm or fears his knowing his reality and what is in his soul whether that person is a disbeliever or believer, this statement is pure error. The *ayah* does not indicate anything of this since the meaning of: “*Except if you fear from them (tuqat)*” i.e. except if you fear from them something to be frightened of as the meaning of “*atqaytu*” something “*taqiyyah*” is I feared it, and (*tuqat*) and (*taqiyyah*) are of one meaning. This is excluded from the prohibition of believers befriending disbelievers instead of believers so it is specific to what is excluded of it.

Accordingly displaying affection for the Muslim ruler due to fearing his harm when he is an oppressor, a transgressor, ruling by disbelief is *haram*. Similarly displaying affection for the Muslim contradicting you in the opinion while hiding hate for him is *haram*, and to show lack in restriction by Islam or not caring for it in front of the disbeliever or transgressor is not permitted. All of that and what is similar to that is hypocrisy which the Shar'a made *haram* upon Muslims since the subject of "*Except if you fear from them something to fear (tuqat)*" is restricted to the reality of Muslims who were in Makkah between polytheists i.e. restricted to the situation of the existence of Muslims under the authority of disbelievers and there is no capability for them to remove their authority i.e. defeated in their affair. Then it is allowed for them to befriend the disbelievers in fear over what is feared from them whether over their lives, wealth, honour or interests. In this situation alone it is allowed to take disbelievers as friends instead of believers. Everything that enters under this situation allows taking disbelievers as friends instead of believers. The issue is clarifying the situation wherein it is allowed for believers to befriend disbelievers which is where Muslims are defeated in their affair before disbelievers like where they are under their authority or rule; it is absolutely nothing else.

Muhammad bin Jareer At-Tabari said in his tafseer: "The view in interpreting His statement: '*Let not the believers take the disbelievers as friends instead of believers*' until His statement '*except if you fear from them something to be feared (tuqat)*.' Abu Ja'far said: This is a prohibition from Allah (swt) for the believers not to take disbelievers as helpers and supporters and assisters. Accordingly He made (*kasr*) for "*yatakebidhu*" (to take) in the position of making the prohibition decisive but He made (*kasr*) for the "*dbal*" together with it due to the "*sakina*" which meets a "*sakina*". The meaning of this is "Do not take, O you believers, the disbelievers as assisters and supporters befriending them, instead of Muslims, upon their religion and assist them against Muslims and direct them to their (Muslims') weaknesses. For whoever does that then he is not from Allah (swt) in anything which means that he has been absolved from Allah (swt) and Allah (swt) is absolved from him by his apostasy from His deen and his entering into kufr '*except if you fear from them something to be feared (tuqat)*' (i.e.) except if you are in their authority and fear them for your lives then show friendship by your tongues and hide your enmity from them but do not be partisans for what they are upon of kufr and do not help them against a Muslim by action" just as:

Al-Muthni narrated to me: Abdullah bin Sahr said: Mu'awiyya bin Salih informed me from Ali (ra) from ibn Abbas (ra) that His (swt) statement: "*Let not the believers take disbelievers as friends instead of believers*" except if the disbelievers become victorious so they shown them kindness but contradict them in their deen and that His (swt) statement: '*except if you fear from them something to be feared (tuqat)*' until he said:

Al-Hasan bin Yahya narrated to me that Abdurraziq informed us that Mu'ammara informed us from His (swt) statement: '*Let not the believers take the disbelievers as friends*' that Qatadah said: It is not allowed for a believer to take a disbeliever as a friend in his deen. And His (swt) statement: '*Except if you fear from them something to be feared*': that there is between you and him kinship so you befriend him for that. Abu Ja'far said: That which was said by Qatadah in his interpretation is for him alone nor is it the direction which the clear apparent meaning of the *ayah* indicates except if you fear from the disbelievers something to be feared. The stronger of the meanings of these words is except if you fear from them something to be feared. The (*taqiyyah*) which Allah (swt) mentioned in this *ayah* is the (*taqiyyah*) from the disbelievers not others and Qatadah took it to mean except if you fear Allah (swt) because of the kinship between you and them something to be feared so you united its blood-relationship which is not stronger in relation to the meaning of the speech. The interpretation in the Qur'an is upon the stronger apparent (meaning) of the known speech of the Arabs as was used among them" (At-Tabari's words ends).

And Abu Ali Al-Fadhil bin Al-Hasn At-Tabarsi said in his '*Majmu Al-Bayan fi tafseer Al-Qur'an*' that Allah's statement: '*Let not the believers take the disbelievers as friends instead of believers, and whoever*

does that is not of Allah in anything except if you fear from them something to be feared (*tuqat*). And Allah warns you against Himself and to Allah is the return' that Yaqub and Sahl recited it as (*taqiyyah*) which is the recitation of Al-Hasan and Mujahid with the rest as (*tuqat*)...When Allah clarifies that He is the King of the world and Hereafter, and All-Capable (*Al-Qadir*) to honour and humble, He prohibited believers from befriending those who have no honour nor humiliation from His enemies so that the eagerness becomes for what is with Him and His friends, the believers, not His enemies i.e the disbelievers. So He said: 'Let not the believers take the disbelievers as friends/supporters (*awliya*)' i.e. it does not suit the believers to take disbelievers as friends for themselves, seek assistance from them, seek refuge with them and show love for them like He (swt) said in numerous places of the Qur'an like His (swt) statement:

لا تجد قوماً يؤمنون بالله واليوم الآخر يوأون من حاد الله ورسوله

'You will not find a people who believe in Allah and the Last Day loving those who oppose Allah and His Messenger'
[TMQ 58:22]

And His (swt) statement:

لا تتخذوا اليهود والنصارى أولياء

'Do not take the Jews and Christians as friends'
[TMQ 5:51]

And His (swt) statement:

لا تتخذوا عدوي وعدوكم أولياء

'Do not take my enemy and your enemy as friends.'
[TMQ 60:1]

His (swt) statement:

من دون المؤمنين

'Instead of believers'
[TMQ 28:53]

Means that friendship is obliged with believers, and this is a prohibition from befriending disbelievers and assisting them against believers. And it is said (that it is) a prohibition of treating the disbelievers with kindness and friendliness. It is narrated from ibn Abbas: "friends" (*awliya*) is the plural of "friend" (*waliyy*) who is the one who commands the one pleased with his action with assistance and support, and it occurs in two ways. Firstly, the designated supporter with support and the other who is the supported. So His (swt) statement:

الله ولي الذين آمنوا

'Allah is the friend of those who believe'
[TMQ 2:257]

Means their helpers and supporters by His support, and it is said that the believer is the friend of Allah i.e. one assisted by His support. His statement: 'whoever does that' means whoever takes disbelievers as friends instead of believers 'then he is not of Allah in anything' i.e. he is not from the friends of Allah (swt) and Allah (swt) is absolved of him, and it is said he is not from the friendship (*wilayah*) of Allah in anything. Then He excluded and said:

إِلَّا أَنْ تَتَّقُوا مِنْهُمْ تُقَاةً

'except if you fear from them something to be feared'

means except that if the disbelievers are victorious and the believers defeated so the believer fears them if he does not show his agreement with them or make good his companionship with

them. At that time, it is allowed for him to show his affection for them with his tongue and compliance to them as a precaution (*taqiyyah*) from them and protection for himself without believing that. In this *ayah* there is an indication that *taqiyyah* is permitted in the deen when there is fear over oneself and our companions say it is permitted in all matter at times of necessity and often it becomes obligatory for the variety of kindness and reconciliation, but it is not permitted from the actions in killing a believer or what is known or he considers most probable that it is spoiling (*istisfad*) in the deen. Al-Mufid said that it is obligatory at times and becomes *fard*, and it is permitted at times and becomes recommended. And it is permitted at time without obligation and it becomes at times better than leaving it; and it could at times be better to leave it even though its performer is excused and forgiven over it by leaving the blame over it. Sheikh Abu Ja'far At-Tusi said that the apparent meaning of the narrations indicate that it is obligatory during fear of one's life, and it has been narrated that a dispensation in allowing speaking clearly the truth thereupon. Al-Hasan narrated

أن مسيلمة الكذاب أخذ رجلين من أصحاب رسول الله صلى الله عليه وآله وسلم فقال لأحدهما: أتشهد بأن محمداً رسول الله؟ قال: نعم. قال: أفتشهد إني رسول الله؟ قال: نعم. ثم دعا بالآخر فقال: أتشهد بأن محمداً رسول الله؟ قال: نعم. قال: أفتشهد إني رسول الله؟ فقال: إني أصم. قالها ثلاثاً كل ذلك يجيبه بمثل الأول، فضرب عنقه. فبلغ ذلك رسول الله فقال: أما ذلك المقتول فمضى على صدقه ويقينه وأخذ بفضله فهنيئاً له، وأما الآخر فقبِل رخصة الله فلا تبعة عليه

‘That Musaylimah the liar took two men of the Sahabah of the Messenger of Allah (saw) and said to one of them: Do you bear witness that Muhammad is a Messenger of Allah? He said: Yes. He said: Then do you bear witness that I am a Messenger of Allah? He said: Yes. Then he called for the other and said: Do you bear witness that Muhammad is a Messenger of Allah? He said: Yes. Then he said: Then do you bear witness that I am a Messenger of Allah? He said: I am deaf (to that). He said it thrice each time answering him like the first so he struck off his neck. This was conveyed to the Messenger of Allah who said: As for the one killed, he executed his truth and conviction, and he took his virtue so may it be good for him. As for the other, he accepted the concession of Allah so there is no liability on him.’

Accordingly *taqiyyah* is a dispensation and speaking clearly the truth is a virtue” (At-Tabarsi’s speech ends).

Accordingly it is shown from the words of the two *mufasireen*, At-Tabari and At-Tabarsi, who are of two different schools of thought, their agreement upon explaining the meaning of the *ayah* as it came in that it is a prohibition for believers befriending disbelievers and excluding the situation of believers fearing the harm of the disbelievers from this prohibition. Look at the words of At-Tabari: “*except if you fear from them something to be feared (tuqat)*” (i.e.) except if you are in their authority and you fear them over your lives so you show them friendship with your tongues.” And look at the words of At-Tabarisi: “Then He excluded and said: ‘*except if you fear from them something to be feared*’ and the meaning is except if the disbelievers are victorious and believers defeated so the believer fears them if he does not show his agreement with them and does not make good his friendship with them. At that time it is allowed for him to show his love for them by his tongue and compliance to them as a precaution and in protection of his soul.” The two *mufasireen* agree that the subject is excluding the prohibition of believers befriending disbelievers and that it is limited to that. Except that At-Tabarisi followed upon that which is outside the subject and made the *ayah* an evidence that *taqiyyah* is permitted in the deen during for one’s life which is not present in the *ayah* since its subject is the prohibition of believers befriending disbelievers and excluding the situation of fear of the disbelievers when they defeat

the Muslims in allowing their friendship in this situation. It is not *taqiyyah* in the deen nor is it specified to fear over life because the exclusion is general “*except if you fear from them something to be feared*” (i.e.) except if you fear from them what is to be feared from. Az-Zamakhshari said in *Al-Kashaf*:

﴿لَا أَنْ تَخَافُوا مِنْهُمْ أَمْرًا يُجِبُّ اتِّقَاؤَهُ﴾ فكل أمر يجب اتقاؤه تجوز الموالاة فيه، أي كل ما يحذر منه وهو عام يشمل الخوف على النفس والمال والعرض والمصالح. ولذلك كان جعل الآية دليلاً على التقية في الدين خروجاً عن الموضوع، وجعلها خاصة في حالة الخوف على النفس تخصيصاً بلامنخصص، فضلاً عن كونه موضوعاً آخر يتعلق بالكفر والإيمان فقط، وهو يتعلق بآية أخرى ولا يتعلق بهذه الآية

“Except if you fear from them a matter which requires protection from” so any matter which must be protected from permits befriending it i.e. all that you fear them which is general covering fear over life, wealth, honour and interests. Accordingly making the *ayah* an evidence for (*taqiyyah*) in the deen outside the subject, and making it specific in the situation of fear over life is specification without a specifying (evidence). This is besides it being another subject relating to kufr and iman only which is related to another *ayah* and it is not related to this *ayah*.

As for the statement of At-Tabarisi: “Our companions said (it is) permitted in all matters during necessity” then what he quotes from Al-Mufid of its being obligatory or not obligatory to the last of what he mentioned is abstract speech of any evidence. The *ayah* does not indicate this in any way even according to At-Tabarisi’s own tafsir, nor did he come with any other evidence neither from the Book or Sunnah or *Ijma’u* of the Sahabah, hence it is rejected and falls from the rank of consideration. Nor is it said that if befriending disbelievers in the situation of fear of them is allowed then compliance with the unjust or transgressor ruler with power is of greater precedent. This is not said because that which is of greater precedent is the sense of the speech and this is not from it nor is their any extension of any connection with it. It is not like Allah’s statement:

ومنهم من إن تأمنه بدينار لا يؤده إليك

“Among them is one whom if you entrust him with a Dinar would not return it to you” [TMQ 3:75]

Nor is it like Allah’s statement:

ومن أهل الكتاب من إن تأمنه بقنطار يؤده إليك

“And of the People of the Book is one whom if you entrusted with a qintar will return it to you” [TMQ 3:75].

This is because the transgressor is not from the category of the disbeliever or from their class, and because the friendship prohibited in this *ayah* is befriending instead of the believers. The unjust and transgressor ruler with power is among the believers injustice occurring from him or the transgression covering him does not negate the description of iman from him. Hence this subject does not enter in the research of greater precedent, so accordingly the greater precedent does not come into it such that it is used as a witness.

Moreover the befriending of the unjust and transgressor ruler with power is allowed in the situation of security and the situation of fear equally because he is a believer and befriending believers is definitely allowed because the word “believers” in His statement: “*instead of believers*” is general covering all believers. There did not come any text prohibiting befriending the unjust or transgressor ruler or befriending transgressors and the wicked (*fujjar*); rather the texts are specific in prohibiting the befriending of disbelievers. More than that, the obedience to the unjust ruler is obliged in other than sin and jihad is obliged under his banner and it is allowed to

pray behind the *Imam* in prayer if he is a transgressor which are of the greatest indication regarding permitting their friendship. What is prohibited is the pleasure with the injustice of the ruler and the transgression of the transgressor. Accordingly *taqiyyah* is rejected when it is a believer showing opposite to what he hides in front of powerful unjust or transgressor ruler or opponent in the opinion or similar, and doing it is *haram* as it is hypocrisy and all hypocrisy is forbidden.

Above all that, the accounting of the unjust ruler over his injustice is obligatory and it is not allowed to leave it for fear of the ruler over money or interests or harm, not is *taqiyyah* allowed therein. Announcing war against him if clear disbelief (*kufr bawab*) is seen from him after he was ruling by Islam is obligatory and it is *haram* to refrain from performing it. And commanding the good and forbidding the evil before the ruler or others from the people of transgression or injustice has been obliged by Allah (swt) upon the Muslims. This negates the view of *taqiyyah* and contradicts it completely as He (swt) decisively forbade keeping silent over the unjust ruler and the transgressor, whereas *taqiyyah* obliges silence over that at certain times and makes it recommended at other times and allows it at other times which contradicts the *ayah* of commanding good and forbidding evil and contradicts the authentic *ahadith* which came about rejecting upon the leaders and rulers if they are unjust or transgressors and the authentic *ahadith* which came regarding the obligation of accounting them over their actions and opposes the obligation of exposing the truth without taking into account, for the sake of Allah (swt), the complaint of a plaintiff. Accordingly, with regard to the *taqiyyah* of the unjust and transgressor ruler, or the strong usurper (*mutasallit*) among the wicked (*fujjar*) or the one opposing you in the opinion, there came *ayat* and authenticated *ahadith* texts contradicting that and encouraging the obligation of acting contrary to that, which emphasizes that it is *haram*, on top of its being hypocrisy which is not allowed for the Muslims.

There remains the question of the *ayah*:

إِلَّا مَنْ أَكْرَهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ

“Except the one who is compelled and his heart is content upon iman”

[TMQ 16:106].

Some mufasireen link it with the *ayah*: “except if you fear from them something to be feared” and deduce from it the entering of showing *kufr* and hiding *iman* in the category of friendship and making it to enter what they call (*taqiyyah*), with some deducing from it that friendship is allowed in the situation of fearing for one’s life only but not in other (situations). This is pure error because the *ayah*: “except the one who is compelled and his heart is content upon iman” has a different situation and a different subject as its subject is apostasy from Islam in the situation where there exists fear of definite, confirmed killing not probable and the subject of the *ayah*: “except if you fear from them something to be feared” is prohibiting befriending disbelievers in all its types and excluding the permissibility of this befriending in the situation of there existing what is feared from whether it was fear over life, wealth, interest or any harm. It distinguishes between the two situations and two subjects such that one does not enter into the other nor are they linked with it due to the difference in situation and subject. When the Muslim is under the authority of disbelievers defeated over his matter before them, it is not permitted for him to apostatise from Islam as a show of compliance to them; rather it is obligatory upon him to emigrate if he is unable to perform the rules of his *deen* contrary to befriending them which is allowed. However if the Muslims fear over his life a confirmed death and he is forced upon *kufr* then it is permitted for him to show *kufr* and hide *iman*, and other than that it is not permitted because of the text of the *ayah*:

من كفر بالله من بعد إيمانه إلا من أكره وقلبه مطمئن بالإيمان

“Whoever disbelieves in Allah after his iman except the one who is compelled and his heart is content upon iman.” [TMQ 16:106].

So the subject is the subject of kufr after iman i.e. the subject of apostasy from Islam, and the situation is the situation of fearing death. This is what the *fujaba* term as *alikhrah almulji* (compulsion of refuge) which is the only compulsion considered by the Shar’a in all situations in which the rule is lifted from the one compelled. The compulsion which the Shar’a excluded is the compulsion by refuge i.e. the situation of fearing definite death. This is strengthened in the *ayah* that was revealed about Muslims who apostatised fearing death. It was narrated that this *ayah* was revealed about Ammar bin Yasir. At-Tabari said: “Muhammad bin S’aad related to me and said: My paternal uncle related to me and said: My father related to me from his father from ibn Abbas that His statement: ‘Whoever disbelieves in Allah after his belief except the one who is compelled and his heart is content upon iman’ to the end of the *ayah*. This was because the polytheists struck Ammar bin Yasir and punished him then left him. So he returned to the Messenger of Allah (saw) and informed him about what he met with from Quraysh and what he said. So Allah (swt) revealed his mention of his excuse: ‘Whoever disbelieves in Allah after his iman’ until His statement ‘great punishment.’ Bashr related to us and said: Yazid related to us and said: Saeed related to us from Qatadah: ‘Whoever disbelieves in Allah after his belief except the one who is compelled and his heart is content upon iman’ and said: It was mentioned to us that it was revealed about Ammar bin Yasir whom Banu Al-Mughira captured and covered him in the well of Maymun and said: Disbelieve in Allah, so he followed them in that and his heart was compelled. So Allah (swt) revealed His statement: ‘except the one who is compelled and his heart is content upon iman.’ And At-Tabari said: Ibn Abd al-‘Ala related to us and said: Muhammad bin Thawr related to us from Mu’ammir from Abdulkareem Al-Juzri from Abu Ubayd bin Muhammad bin Ammar bin Yasir who said:

أخذ المشركون عمار بن ياسر فعذبوه حتى باراهم في بعض ما أرادوا، فذكر ذلك إلى النبي صلى الله عليه وسلم فقال النبي صلى الله عليه وسلم: كيف تجد قلبك؟ قال: مطمئناً بالإيمان. قال النبي صلى الله عليه وسلم: (فإن عادوا فعد).

The polytheists took Ammar bin Yasir and punished him until he said to them in some of what they wished. He mentioned that to the Prophet (saw) and the Prophet (saw) said: How did you find your heart? He said: Secured upon iman. The Prophet (saw) said: If they repeat, then you repeat.”

These *ahadith* indicate that the circumstance of revelation of the *ayah* is the incident of Ammar and its subject is apostasy from Islam. The situation specific to it is the definite fear of killing which alone is sufficient to strengthen that it has no relationship with the *ayah*: “except if you fear from them something to be feared.” The *ayah*: “except the one who is compelled and his heart is content upon iman” was revealed in Makkah on the subject of iman, and the *ayah*: “except if you fear from them something to be feared” is Madinan revealed on the subject of excluding the situation of fearing what is to be feared from the prohibition of believers befriending disbelievers. Accordingly this *ayah* is not applicable on that subject.

There remains the rule regarding the one threatened with confirmed killing: Is it more virtuous to show kufr and hide iman so as to be safe from death or is it better to persevere upon his iman even if it leads to death? The answer is that persevering to iman even if it leads to death is better because the permissibility of showing kufr is a dispensation and lifts difficulty, and preserving the iman is (*azzeemah*) which is the principle therefore it is better. It is narrated

أن مسيلمة أخذ رجلين فقال لأحدهما: ما تقول في محمد؟ قال: رسول الله. قال: فما تقول فيّ؟ قال: أنت أيضاً، فخلّاه. وقال للآخر: ما تقول في محمد؟ قال: رسول الله. قال: فما تقول فيّ؟ قال: أنا أصم، فأعاد عليه ثلاثاً، فأعاد جوابه، فقتله. فبلغ ذلك رسول الله صلى الله عليه وسلم فقال: أما الأول فقد أخذ برخصة الله، وأما الثاني فقد صدع بالحق فهنيئاً له

“That Musaylimah took two men and said to one of them: What do you say about Muhammad? He said: A Messenger of Allah. He said: Then what do you say of me? You as well. So he left him free. He said to the other: What do you say of Muhammad? He said: A Messenger of Allah. He said: Then what do you say of me? He said: I am dumb. He repeated it thrice and he repeated his answer, so he killed him. That reached the Messenger of Allah (saw) so he said: As for the first, he took the dispensation of Allah. As for the second, he exposed the truth so blessed be he.”

This is explicit in preferring the one who was patient and stuck to iman over the one who took the dispensation of Allah (swt) and showed kufr fearing for his life from a confirmed killing.

This is regarding the one from whom *kufr* is demanded. As for the one from whom is sought less than that like leaving the Islamic *da'wah* or performing a sin or something similar; permissibility is not taken from this *ayah*. Accordingly it is not said that if Allah permitted the Muslim to show *kufr*, then what is lesser than *kufr* is of greater precedent. This is not said because disobedience is not from the species of *kufr*, so it does not enter the research by greater precedent. Similarly an analogy between *kufr* and sin is not performed since there does not exist a reason until analogy occurs. However as for the one who fears for his life over confirmed killing and it is sought from him sin or doing less than *kufr*, it is permitted for him to do so to save his life and there is no sin upon him. This is due to his (saw) statement:

رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اسْتُكْرِهُوا عَلَيْهِ

“Lifted from my Ummah is the mistake, forgetfulness and what is compelled upon it”

I.e. the blame and sin is lifted, and the rule is lifted, which means the permissibility of doing it. However (this is) only in one situation which is the situation of definite, confirmed killing which is what the *fuqaha* called *alikerab almulji* (compulsion by refuge) which is the only compulsion considered by the Shar'a in all conditions in which there is lifted from the one compelled like divorce, marriage, trade and other actions and contracts. His statement “*and what is forced upon it*” which is *alikerab almulji* (compulsion by refuge).

The emigration (*Hijrah*) from *Dar al-Kufr* to *Dar al-Islam*

Emigration (*hijrah*) is leaving from *Dar al-Kufr* to *Dar al-Islam*. Allah (swt) said:

إن الذين توفّاهم الملائكة ظالمي أنفسهم قالوا فيم كنتم قالوا كنا مستضعفين في الأرض قالوا ألم تكن أرض الله واسعة فتهاجروا فيها فأولئك هلمم جهنم وساءت مصيراً، إلاّ المستضعفون من الرجال والنساء والولدان لا يستطيعون حيلة ولا يهتدون سبيلاً فأولئك عسى الله أن يعفو عنهم وكان الله عفواً غفوراً

“Verily those whom the angels take in death while they are oppressing themselves. They said: ‘In what (situation) were you?’ They reply: ‘We were weak and oppressed in the earth.’ They say: ‘Was not the earth of Allah spacious enough for you to emigrate therein?’ For them is the abode of Hell, and what an evil destination!”

[TMQ 4:97].

And Abu Dawud narrated via the way of Jareer bin Abdullah from the Prophet (saw) who said:

أنا بريء من كل مسلم يقيم بين مشركين. قالوا: يا رسول الله ولم؟ قال: لا تتراءى نارها

“I am free from every Muslim residing in the midst of the polytheists. They said: Why, O Messenger of Allah? He said: Do not take light from their fire.”

The emigration from *Dar al-Kufr* to *Dar al-Islam* remains without termination. As for what Al-Bukhari narrated of his (saw) statement:

لا هجرة بعد فتح مكة

“No emigration after the conquest of Makkah”

And his (saw) statement:

لا هجرة بعد الفتح

“No emigration after the conquest”

And his (saw) statement:

قد انقطعت الهجرة ولكن جهاد ونية

“The emigration has terminated but (there remains) jihad and intention.”

And what was narrated about Safwan bin Umayya that when he became Muslim, it was said to him there is no deen for the one who does not emigrate so he came to Madinah and the Prophet (saw) said to him:

ما جاء بك أبا وهب؟ قال: قيل إنه لا دين لمن لم يهاجر، قال: ارجع أبا وهب إلى أباطح مكة، فقوا على مسكنكم فقد انقطعت الهجرة ولكن جهاد ونية فإن استنفرتم فانفروا

“What did you come with, O Abu Wahab? He said: It was said there is no deen for the one who does not emigrate. He said: Return, Abu Wahab, to the planes of Makkah. Reside in your residences. Emigration has terminated but (there remains) jihad and intention, and when you are asked to go forth (in jihad) then go forth.”

All this is negating emigration after the conquest of Makkah. However this is reasoned with a *Shari'ah* reason deduced from the hadith itself since his statement: “*after the conquest of Makkah*” came in a way including reasoning similar to his (saw) statement:

لا تتبنوا التمر والزبيب جميعاً

“Do not make into wine (nabidh) by mixing dates and grapes together”

(narrated by Abu Dawud).

His statement “**together**” came in a way including reasoning so the reason was the prohibition of making into wine. This means that the conquest of Makkah is the reason for negating the emigration which means that the reason revolves around the reasoned (matter) in existence and absence, nor is it specified to Makkah but rather conquering any land by the evidence of another narration “*no emigration after conquest.*” This is strengthened by what Al-Bukhari narrated from Aisha (ra) who was questioned about the emigration and said: “There is no emigration. The believer would flee with his deen to Allah (swt) and His Messenger (saw) for fear of being persecuted. As for today, Islam has become dominant and the believer worships his Lord wherever he wishes.” This indicates that the emigration was upon the Muslim before the conquest fleeing with his deen fearing he would be persecuted. It was negated after the conquest as he become able to show his deen and perform the rules of Islam. So the conquest which resulted in that became the reason for negating the emigration; nor is it the conquest of Makkah alone. Therefore that means there is no emigration after conquest from the land which was conquered. His (saw) statement to Safwan “**it has ended**” means from Makkah after it was conquered since emigration is leaving from the land of disbelievers and the *Dar al-Kufr*, so if the land is conquered and becomes *Dar al-Islam* it no longer remains a land of disbelievers or a *Dar al-Kufr* so emigration no longer remains. Similarly there remains no emigration from all conquered lands. This is strengthened by what Ahmad narrated via the way of Muawiya who said: I heard the Messenger of Allah (saw) saying:

لا تنقطع الهجرة حتى تنقطع التوبة حتى تطلع الشمس من مغربها

“Emigration will not end as long as repentance is accepted, and repentance will continue being accepted until the sun rises in the west.”

Ahmad also narrated that the Prophet (saw) said:

لا تنقطع الهجرة ما كان الجهاد

“Emigration will not end as long as there is jihad”

And in another narration:

لا تنقطع الهجرة ما قوتل العدو

“Emigration will not end as long as disbelievers are fought”

This indicates that emigration from *Dar al-Kufr* to *Dar al-Islam* remains and has not ended. As for the rule of emigration, it is in relation to the one capable of it, obligatory in some situations and recommended in other situations. As for the one not capable, verily Allah (swt) forgave him and it is not required from him.

That is due to his inability to emigration either due to illness, compulsion to stay or weakness like women, children and their like as it came at the end of the *ayah* of emigration.

Whoever is capable of emigration and unable to show his deen and neither is he able to perform the Islamic rules required from him, then emigration is obligatory upon him due to what came in the *ayah* of emigration. Allah (swt) said:

إن الذين توفّاهم الملائكة ظالمي أنفسهم قالوا فيم كنتم قالوا كنا مستضعفين في الأرض قالوا ألم تكن أرض الله واسعة فتهاجروا فيها فأولئك مأواهم جهنم وساءت مصيراً

“*Verily those whom the angels take in death while they are oppressing themselves. They said: ‘In what (situation) were you?’ They reply: ‘We were weak and oppressed in the earth.’ They say: ‘Was not the earth of Allah spacious enough for you to emigrate therein?’ For them is the abode of Hell, and what an evil destination!’*”

[TMQ 4:97]

The information here means the command and it is from the language of request as if He (swt) said: Emigrate therein. The request in this *ayah* is linked with emphasis and linked with a severe threat upon leaving emigration. So it is a decisive request which indicates that emigration in this situation is obligatory upon the Muslim and he sins if he does not emigrate. As for the one able to emigrate but is capable to manifest his deen and perform the *Shar’u* rules requested from him, emigration is recommended not obligatory. As for it being recommended, this is because the Messenger (saw) would encourage emigration from Makkah before the conquest when it was *Dar al-Kufr* and there came explicit *ayah* about that. Allah (swt) said:

إن الذين آمنوا والذين هاجروا وجاهدوا في سبيل الله أولئك يرجون رحمة الله

“*Verily those who believe and those who fought in the way of Allah, those are the ones hoping for the mercy of Allah and Allah is forgiving, merciful*”

[TMQ 2:218].

And He (swt) said:

الذين آمنوا وهاجروا وجاهدوا في سبيل الله بأموالهم وأنفسهم أعظم درجة عند الله

“*Those who believe and emigrated and fought in the way of Allah with their lives have greater rank before Allah and those are the successful ones*”

[TMQ 9:20].

And He (swt) said:

والذين آمنوا ولم يهاجروا ما لكم من ولايتهم من شيء حتى يهاجروا وإن استنصروكم في الدين فعليكم النصر إلا على قوم بينكم وبينهم ميثاق

“*As for those who believed and did not emigrate then you have no (wilayah) with them in anything until they emigrate. And if they ask your support in the deen, support is obliged upon you except with a people whom between you and them is a (mithaq)- treaty of mutual alliance*”

[TMQ 8:72].

And He (swt) said:

والذين آمنوا من بعد وهاجروا وجاهدوا معكم فأولئك منكم

“*Those who believed afterwards and emigrated and fought together with you, those are of you*” [TMQ 8:75].

All this is explicit in requesting emigration. As for it not being obligatory, the Messenger (saw) did consent to those who remained in Makkah of the Muslims. It is narrated that when Nu’aim An-Nahham intended to emigrate his people, Banu Adiy, came and said to him:

قومك كانوا خيراً لك من قومي لي. قومي أخرجوني وأرادوا قتلي وقومك حفظوك ومنعوك. فقال: يا رسول الله بل قومك أخرجوك إلى طاعة الله وجهاد عدوه، وقومي ثبّطوني عن الهجرة وطاعة الله

Reside with us and you are upon your *deen*, and we will prevent anyone intending to harm you. And you will suffice us with whatever you used to suffice us in. He used to supervise the orphans of Banu Adiy and their widows. So he delayed emigration then emigrated afterwards. The Prophet (saw) said to him: Your people were better to you than my people to me. My people forced me to leave and wanted to kill me, while your people protected you and prevented (harm from reaching) you. He said: O Messenger of Allah, rather your people forced you to leave to the obedience of Allah and fighting His enemies, but my people hindered me from emigration and the obedience of Allah.”

All this is in relation to *Dar al-Kufr* i.e. a land of war as it is irrespective of its residents being Muslims or disbelievers since the rule of the land does not differ according to the residents but rather differs by the system which it rules with and the security by which its people are secured. Accordingly there is no difference between Indonesia and the Caucasus or between Somalia and Greece. Except for the one able to manifest his *deen* and perform the requested *Shar'a* rules where he is able to change the *Dar al-Kufr* wherein he resides to *Dar al-Islam*, it is forbidden for him in this situation to emigrate from *Dar al-Kufr* to *Dar al-Islam*. This is the same whether he possesses the ability himself or his group structure with the Muslims in his land or by seeking assistance of Muslims outside his land or by cooperation with the Islamic State or any (other) means. It is obligatory upon him to work to make *Dar al-Kufr* into *Dar al-Islam* and at that point it is forbidden for him to emigrate from it. The evidence for this is that if there reside disbelievers in the land within which he lives and is ruled by *kufr*, it is obliged upon Muslims to fight its people until they become Muslims or pay the *jizyah* and be ruled by Islam. This is also obliged upon him in his attribute as a Muslim and in his consideration as one whom the disbelievers are next to and of those who are closer to the enemy. If those residing therein are Muslims and they are ruled by other than Islam i.e. by the system of *kufr*, it is obliged upon Muslims to fight their rulers until they rule by Islam. This is also obliged upon him in his consideration as one of the Muslims who is ruled by *kufr*. So in any case, fighting is obliged upon him and preparing for fighting if he is capable of it. The situation of the Muslim who lives in *Dar al-Kufr* does not go out of one of these two situations, so he is either of those upon whom *jihād* is obliged against the disbelievers near him or of those upon whom fighting the ruler ruling by *kufr* is obliged. In these two situations, it is considered that his leaving the *Dar al-Kufr* which rules by other than Islam i.e. by *kufr* as fleeing from the *jihād* from a place wherein it is obliged upon him or fleeing from fighting the one who rules by *kufr*, both of which are great sins before Allah (swt). Accordingly it is not allowed for the one capable of changing *Dar al-Kufr* into *Dar al-Islam* to emigrate from it as long as he possesses the capability to change it into *Dar al-Islam*; this is the same in Turkey, Spain, Egypt and Albania without difference between them as long as they are ruled by the system of *kufr*.

The position of Islam on slaves and slavery

Islam came while slaves existed in all areas of the world, and slavery was a system common in all areas of the world with all people and nations. It is not known of the existence of any area of the earth except that slaves were traded and free persons were enslaved. It is not related about the existence of any land without slavery. Islam viewed that this problem was related to two aspects. Firstly, it was related to the slaves who had been enslaved in practice and those whose consideration had fallen from the upright consideration of others who were free and were considered as goods like other goods sold and bought and bargained over. So it was necessary to treat with a treatment resulting in freeing these slaves and making them free persons. As for the second aspect, it related to slavery. It is necessary to treat it with a treatment placing a limit on slavery. Hence there came *ayaat* and *abadith* treating these two aspects with a beneficial treatment for mankind based upon the reality of mankind and the reality of the relationships existing between its individuals and nations.

Treating slaves

Islam treated slaves with a treatment resulting in making easier the position of the slavery imposed upon him, and resulting in freeing them compulsorily and voluntarily. It placed many rules in this matter which the *fuqaha* elaborated in complete detail. These rules summarized in the following issues:

1. Islam found people owning slaves so it treated the problems of slaves between the owners with a treatment giving the slaves rights and preserving him his consideration of being a human being like the free person in relation to the natural attributes man was naturally endowed with. Allah (swt) exhorted in the Noble Qur'an as did the Messenger (saw) in the honoured hadith with kindness to slaves and living with them kindly. Allah (swt) said:

واعبدوا الله ولا تشركوا به شيئاً وبالوالدين إحساناً وبذي القربى واليتامى والمساكين والجار ذي القربى والجار الجنب والصاحب بالجنب وابن السبيل وما ملكت أيمانكم

“Worship Allah and do not associate anything with Him and be kind to parents, relatives, orphans, the poor, the neighbour who is a relative and the unrelated neighbour and the unrelated (sahib) and the wayfarer and those whom your hands possess”
[TMQ 4:36].

The meaning of *“those your right hands possess”* is your slaves. And he (saw) said:

اتقوا الله فيما ملكت أيمانكم، أطعموهم مما تأكلون، واكسوهم مما تلبسون، ولا تكلفوهم من العمل ما لا يطيقون

“They are your brothers whom Allah placed under your hands. Feed them with what you eat, clothe them with what you wear and do not impose duties upon them which will overcome them. If you so impose duties, then assist them” (narrated by Muslim).

He also narrated via the way of Abu Hurairah (ra) of his saying: He (saw) said:

لا يقولن أحدكم عبدي وأقبي، كلكم عبيد الله وكل نسائكم إماء الله، ولكن لقل غلامي وجاريتي وفاتاتي وفاتاتي

“One of you should not say: My slave and my slave-girl. All of you are the slaves of Allah and all your women are the slave-girls of Allah. Rather let him say: My boy (ghulam) and my girl (jariyah) and my son (fata) and my daughter (fatati).”

The *Shar'a* lifted the rank of the slave and made him like the free person when it made his blood protected so the free person is killed for it because Allah (swt) says:

يا أيها الذين آمنوا كتب عليكم القصاص في القتلى

“O you who believe, retaliation has been imposed upon you in deliberate murder”

[TMQ 2:178].

Retaliation is similar and punishing the sinner as retaliation is used (linguistically) as recompense for the sinner, and it is used for doing upon the doer similar to what he did. The

meaning of “*retaliation has been imposed upon you*” as recompense for the sin in murder is to kill the killer. This is general covering the male and female, free person and slave. This is strengthened by what ibn Majah narrated via the way of ibn Abbas (ra) of his (saw) saying:

المسلمون تنكافأ دماؤهم

“Muslims are equal in their blood”

This is general. The free person and slave are equal in that the blood of each of them is protected and it is *haram* to kill them, so the killer is killed whoever he is. Hence Islam made the life of the enslaved slave like the life of the free person equally, and his blood is protected like the blood of a free person. He (saw) said:

من قتل عبده قتلناه

“Whoever kills his slave, we will kill him”

(narrated by Ahmad and Abu Dawud via the way of Sumra bin Jundub).

Also Islam gave the slave the right to marry, divorce, study and he is a witness upon others whether a free person or slave. As for what Islam gave as a right to the owner of a slave-girl to enjoy with her, this lifts the status of the slave and result in his freedom because the enjoyment of the owner with his slave-girl is like the enjoyment of the husband with his wife, lifting the status of the slave girl to the status of the free wife and gives her a status before her master. In addition to what results from this enjoyment of pregnancy and childbirth and this prepares this slave-girl to be freed compulsorily after the death of her master.

2. Islam encouraged the freeing of slaves. It made the freeing of the slave as helping the human being to be grateful for the favour of Allah *jalalah* and assists him to climb the (*‘aqabah*). Allah (swt) said:

3. فلا اقتحم العقبة وما أدراك ما العقبة فك رقبة

“He has not climbed the (*‘aqabah*). And what will let you know what is the (*‘aqabah*). Freeing the neck”
[TMQ 90:11].

“*Al-igtibam*” is the entry and cross over with strictness and difficulty, and (*‘aqabah*) is difficulty. It made the righteous deed as (*‘aqabah*) and made its performance as climbing for it due to what is therein of *mu’anat* the difficulty and the struggling with the soul. “*Freeing the neck*” is liberating it from slavery so Allah (swt) encouraged the freeing of slaves in this *ayah*. Similarly did the Messenger (saw) encourage the freeing of slaves. He (saw) said:

أيما رجل أعتق مسلماً استنقذ الله تعالى بكل عضو منه عضواً من النار

“Whoever frees a Muslim man, Allah (swt) will liberate for each of his organ an organ from the Fire”

(narrated by Al-Bukhari and Muslim).

This demonstrates that Islam urged the freeing of slaves and gave it a great reward.

4. Islam legislated practical rules obliging the freeing of slaves. So it legislated rules obliging the freeing when it made the freeing on an enslaved slave to the related *mabrem* as being accomplished upon mere ownership whether the owner consents or not, or frees or not. Each human being who owns a relative *mabrem* by purchase or inheritance, his relative is freed from him completely due to mere ownership without need for his freeing him. Abu Dawud narrated from Al-Hasan from Sumra that the Prophet (saw) said:

من ملك ذا رحم محرم فهو حر

“Whoever owns a relative who is within the prohibited degrees, that person becomes free.”

It made punishing the slave by burning, cutting an organ, spoiling him or striking him with a painful strike as obliging his freedom. So if his owner does not free him, the ruler frees him entirely from his owner. He (saw) said:

من لطم مملوكه أو ضربه فكفارته أن يعتقه

“Whoever slaps his slave or strikes him, his atonement (*kaffara*) is to free him” (narrated by Muslim by the way of ibn Umar).

The meaning of the strike is the painful strike due to the *ahadith* permitting the owner to strike his slave a disciplinary strike. Islam made the freeing of the slave as a compulsory atonement (*kaffara*) for many sins. So whoever kills a believer accidentally, his atonement is freeing a believing slave. Allah (swt) said:

وما كان لمؤمن أن يقتل مؤمناً إلاّ خطأ ومن قتل مؤمناً خطأً فتحرير رقبة مؤمنة ودية مسلمة إلى أهله إلاّ أن يلقوا فإن كان من قوم عدو لكم وهو مؤمن فتحرير رقبة مؤمنة وإن كان من قوم بينكم وبينهم ميثاق فدية مسلمة إلى أهله وتحرير رقبة مؤمنة

“It is not (allowed) for a believer to kill a believer except by mistake. And whoever kills a believer by mistake, then freeing a believing slave and blood money to be delivered to his people except if they give (it as) charity. If he is of a people between them and you is a covenant, then blood money delivered to his people and freeing a believing slave” [TMQ 4:92].

And whoever perjures his oath, then among what atones his mistake is freeing a slave. Allah (swt) said:

لا يؤاخذكم الله باللغو في أيمانكم ولكن يؤاخذكم بما عقدتم الأيمان فكفارته إطعام عشرة مساكين من أوسط ما تطعمون أهليكم أو كسوتهم أو تحرير رقبة

“Allāh will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths; for its expiation (a deliberate oath) feed ten Masākīn (needy persons), on a scale of the average of that with which you feed your own families, or clothe them or manumit a slave” [TMQ 5:89].

Whoever does *Dhihar* with his wife by saying to her, ‘You are like my mother’ then he returns to her, his atonement is freeing a slave. Allah (swt) said:

والذين يظاهرون من نسائهم ثم يعودون لما قالوا فتحرير رقبة من قبل أن يتماسا

“And those who make unlawful to them (their wives) by *Zihâr* and wish to free themselves from what they uttered, (then penalty in that case is) the freeing of a slave before they touch each other.” [TMQ 58:3].

Whoever invalidates the fast of Ramadhan by sexual intercourse, his atonement is freeing a slave. It is narrated from Abu Hurairah (ra) who said:

جاء رجل إلى النبي صلى الله عليه وسلم فقال: هلكت يا رسول الله، قال: وما أهلكك؟ قال: وقعت على امرأتي في رمضان، قال: هل تجد ما تعتق رقبة؟ قال: لا، قال: فهل تستطيع أن تصوم شهرين متتابعين؟ قال:

لا، قال: فهل تجد ما تطعم ستين مسكيناً؟ قال: لا، قال: ثم جلس فأُتي النبي صلى الله عليه وسلم بعرق (أي زنبيل أو قفّة) فيه تمر، قال: تصدق بهذا، قال: فهل على أفقر مني؟ فما بين لابتئها أهل بيت أحوج إليه منا، فضحك النبي صلى الله عليه وسلم حتى بدت نواجذه وقال: اذهب فأطعمه أهلك

“A man came to the Prophet (saw) and said: I have perished, O Messenger of Allah. He said: And what has caused you to perish? He said: I had sexual intercourse with my wife in Ramadhan. He said: Do you have what would free a slave? He said: No. He said: Are you able to fast two months consecutively? He said: No. He said: Do you possess what would feed sixty poor people? He said: No. So he sat down, then there was brought to the Prophet (saw) an (*urq*) (i.e. basket or panier/dry gourd) within which were dates. He said: Give sadaqa with these. He said: Are there people poorer than us? There is none between these two lave plains (of Madina) more needy of them than us. The Prophet (saw) laughed until there appeared his eye-teeth were visible and said: Go and feed your family with them.”

Firstly the Prophet (saw) commanded him with freeing a slave, and he did not change anything except after his inability of doing so was clear to him. All these rules of atonements oblige the atoner to free the slave.

Nor was Islam satisfied with this, but it also made more the slave a way to work to free himself as it made for the owner a way to be compensated the value of the slave by it. This is in the encouragement of the manumission contract. Islam encouraged this and Allah commanded it by the Qur'an. Allah (swt) said:

والذين يبتغون الكتاب مما ملكت أيمانكم فكاوتهم إن علمتم فيهم خيراً وآتوهم من مال الله الذي آتاكم

“As for those among you whom you possess who seek the manumission contract, then contract them if you know good in them and give them of the wealth of Allah which He gave you” [TMQ 24:33].

If the master contracts his slave by saying to him: If you give me so much in such and such time then you are free, it is obligatory upon the master to free his slave so that he works to attain the money which he contracted upon him. It is obligatory upon him to free him if he brings the money and it is not correct for him to revert from this manumission contract. The *fukah* recognised the manumission contract as the immediate freeing of a slave and his neck in time, and that if the contract is validated then the slave leaves the hands of his master and whenever he pays the substitute he leaves the ownership of his master.

All of these rules are for freeing slaves. It is noted therein that they take the path of directing the encouragement and desire, and the path of legislating rules executed by the State forcefully if the individual does not execute them by the push of piety of Allah (swt). All of these rules lead to creating thinking and action among the owners to free slaves, and lead to creating thinking and action among the slaves themselves to work to free themselves from slavery. This makes the course directed to ending slavery in society.

5. Nor was Islam satisfied with encouraging the freeing of slaves and formulating rules compelling freeing, but rather made in the *Bait al-Mal* of Muslims a specific category for freeing slaves when it made zakat expended to freeing slaves and made this one of the eight categories. Allah (swt) said:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبِهِمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ

“Verily the sadaqat is only for the poor, the indigent, those who work upon it, those whose hearts are to be reconciled, for the freeing of slaves, debtors, for the way of Allah and the wayfarer, an obligation from Allah and Allah is knower wise”

[TMQ 9:60].

His statement: *“and for (riqab)”* means freeing slaves. It did not specify for this category a specific amount, so it is allowed for the State to allocate an amount for freeing slaves. Rather it is allowed for it to make all the zakat money for freeing slaves if at that particular time there is no necessity for other expenditure from the expenses of zakat. This is because the expenditure of zakat is not obliged to be only for the eight categories but rather it is allowed to be specified for one category from these categories according to what the Khalifah of the Muslims views.

Treating slavery

The categories of slavery in the ancient systems that were practiced in the world when Islam came were many. They would judge with slavery for the bankrupt debtor; so the creditor, when his debtor became indigent and bankrupt, could enslave him. They would also judge with slavery of the human being as punishment of what he committed of crimes and mistakes. They also ordained for the free person to accept slavery upon himself so he could sell himself to another upon condition that he frees him after a period they agreed upon. The strong tribes allowed themselves to enslave individuals or weak tribes. Wars and battles would determine, in a general way, the enslaving of captives and allow enslaving all the people of a country if they conquered them. Some of them would limit slavery to whom they took as captives in the war of men, women and children. Whoever was taken as a captive in a legal war and was enslaved therein was considered a slave and was acknowledged in his being a slave.

When Islam came, it imposed for the situations where slavery occurred and existed *Shari'ah* rules other than slavery, and detailed the matter in the situation of war. It clarified in relation to the bankrupt debtor that the creditor should wait to a time of ease. Allah (swt) said:

وإن كان ذو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ

“*And if he is one in difficulty then waiting to a time of ease*” [TMQ 2:280].

It also clarified the punishments upon sins with details particularly the punishment of stealing whose punishment used to be slavery which Allah (swt) indicated in the Qur'an:

قالوا جزاؤه من وجد في رحله فهو جزاؤه

“*They said: His punishment, for the one in whose mount it is found, is his punishment*” [TMQ 12:75].

So Islam clarified its punishment i.e. for stealing the cutting of the hand. Allah (swt) said:

والسارق والسارقة فاقطعوا أيديهما جزاءً بما كسباً

“*The thief, male and female, cut off their hands as punishment for what they acquired*” [TMQ 5:38].

It made the contract between the slave and owner upon freedom, not upon slavery. It forbade the enslaving of free people with a decisive prohibition. He (saw) said:

قال الله عز وجل: ثلاثة أنا خصمهم يوم القيامة: رجل أعطى بي ثم غدر، ورجل باع حراً فأكل ثمنه، ورجل استأجر أجيراً فاستوفى منه ولم يُعْطه

“Allah (swt) said: Three (persons) I will dispute with on the Day of Judgement: A man given in my name then he betrayed, a man who sold a free man and ate his price, and a man who employed an employee who fulfilled for him but he did not give him his wage”

(narrated by Al-Bukhari).

So Allah (swt) will dispute with the seller of the free person. As for the situation of war, Islam detailed therein and prevented the enslaving of captives absolutely. In the second year of the Hijrah, it clarified the rule of the captive in that either they are favoured by releasing them without any exchange or either they are ransomed for money or captives like them from Muslims of *dhimmis*, thereby preventing the enslaving of captives. Allah (swt) said:

فَإِذَا لَقِيتُمْ الَّذِينَ كَفَرُوا فَضَرْبِ الرِّقَابِ حَتَّى إِذَا أَنْخَسْتُمُوهُمْ فَهَرَسُوا أَلْوِثًا فَإِذَا مِنْكُمْ أَوْزَارُهُمْ أَوْزَارُهُمْ

“When you meet those who disbelieve then striking of the neck until when you have inflicted severe slaughter upon them then bind the fetters. Then either release afterwards or either ransom until the war lays down its burdens”

[TMQ 47:4].

The *ayah* is explicit upon this meaning: Release or ransom, and it absolutely does not bear any other meaning. The Arabic language requires restricting the rule of the captive in one of these two matters, release or ransom because “*imma*” is for giving a choice between two matters and for restriction in the two things. Herein it came giving a choice between release and ransom, and restricting the rule to these two, when it came expressing that with “*imma*” which gives sense of the restriction in what is mentioned after it:

إِذَا مِنْكُمْ أَوْزَارُهُمْ

“Then either release afterwards or either ransom”

[TMQ 47:4].

Here a question can be raised which was a position of confusion for some *fuqaha* from whom it was taken that the Khalifah can enslave captives if he so views. This question is that the Prophet (saw) did enslave after this *ayah*. This *ayah* was revealed in the second year after Hijrah at the beginning of the war between the Messenger (saw) and the Quraysh disbelievers, and the Messenger (saw) enslaved in Hunain. And the Messenger’s action is considered legislation as it considered explanation for the *ayah* of Allah (swt). So how could enslaving of captives be prevented by this *ayah* even though the Messenger (saw) enslaved after this revelation in Hunain? The response is that the action of the Messenger (saw) and his speech in relation to the Qur’anic *ayat* is either detailing its *mujmal* (aggregate), restricting its unrestricted or specifying its generality. The action of the Messenger (saw) and his speech cannot be an abrogation to the Qur’an. The *ayah* of prisoners of war is neither (*mujmal*) such that it be detailed, nor are its words the words of generality so that they be specified nor unrestricted so that they be restricted. So if it be authenticated that the Messenger (saw) enslaved after its revelation, his action would be an abrogator for it and this is not permitted. In addition, the Messenger’s enslaving captives is a *khbar abad* which contradicts the *ayah*:

إِذَا مِنْكُمْ أَوْزَارُهُمْ

“Then either release them afterwards or either ransom”

[TMQ 47:4].

And when the (*khbar abad*) contradicts the definite *ayat* and *abadith* the knowledge of the (*khbar abad*) is rejected. Accordingly, there is no consideration to what is narrated about the Messenger (saw) enslaving after the revelation of the *ayah* of captives. Actually what happened in the battle of Hunain is that the women and children accompanied the fighters of the polytheists to increase their numbers and incite their men, so when they were routed in the battlefield the women and children became captives and the Messenger (saw) divided them between the fighters among the Muslims. When this was revised regarding the captives, the Muslims gifted what they had of the right in the captives (*sabaya*) voluntarily and returned their captives (*sabaya*) to their people. This indicated the permissibility of enslaving (*sabaya*) who are the women and children who accompany the men in the battlefield to increase the numbers and for encouragement. Despite that, the Messenger (saw) did not enslave the women and children who accompanied the fighters in Khayber. When he (saw) invaded Khayber and conquered it, he left them as free persons and left the land under their hands to farm it for half its produce. Abu Ubaidah said about the captives (*sabaya*): “The *Imam* is given a choice about them as long as they have not been divided.

Once they are divided there is no way over them except by gift and free will of those for whom they become like the action of the Messenger of Allah (saw) with the people of Hunain. None of the captives (*sabaya*) were returned by anyone of them except by gift and free will since he had divided them. He did not do this with the people of Khayber but rather left them as free persons nor were they gifted by anyone as division had not occurred over them.

As for other than the captives (*sabaya*) who are the fighters when they are captured, the Messenger (saw) never enslaved any of their men. It is not authenticated that he enslaved a prisoner of war of the fighting men from the Arabs or Jews or Christians. The word (*aseer*) when used unrestricted in the language relates to the male fighter. As for the woman and the child, the word used for them in the language is children (*sabiyy*) and not prisoner of war (*usra*). Accordingly this clarifies that Islam prevented enslaving captives from the male fighters, and gave the Khalifah a choice in the children (*sabaya*) between enslaving and liberation and there is no ransom for them. Just as the Messenger (saw) did in the *sabaya* of Hunain; he enslaved them then liberated them. And like he did with the *sabaya* of Khayber; he left them free without enslaving them. This is if women and children accompany the army in war; if they stay at home, however, there is nothing upon them, prisoner of war nor captives. The action of the Khalifah in the question of enslaving the *sabaya* proceeds according to what the war policy requires in dealing with the enemy. Its objective is not enslaving rather it is merely one of the war transactions whose matter is left to the Khalifah who does what he sees and what the position in relation to the enemy requires.

Accordingly this clarifies that Islam treated enslaving and prevented all situation in which enslaving occurred and left for the Khalifah the choice in the situation of *sabaya* in following the position in relation to the enemy. Hence it has finished enslaving particularly when it invalidated the women and children going out with the army to increase the numbers and for encouragement as in the situation in modern warfare for centuries today. There does not remain even one situation in which enslaving occurs at all. Accordingly Islam has prevented enslaving.

Relationships between individuals

The rules which have been explained are a sample of the *Shari'ah* rules related to the Islamic State and its relationship with other states, peoples and nations. Some of the rules were clarified therein as a sample for the rest of the rules until it is clarified for the Muslim thence the basis upon which these general relations stand and the category of rules which treat its problems. There are relations between individuals upon which their benefits stand in their lives. Islam came and treated these relations between individuals with *Shari'ah* rules specific with individual relations, general for human beings in his essence as a human being.

Islam in all its legislation legislates for human beings not for specific individuals but it legislates for the human being represented in individuals. It legislates for these individuals with their human attribute in their consideration as a collection of people who are a community and legislates for these individuals and this community what they need of relationships and of the relationships between individuals by whose existence a community is created. And since the connotation by human beings is the species of human beings irrespective of his being Khalid or Muhammad, the legislation came for this human being not for a specific individual. And since the intention by the individual is a specific person in respect of his being a particular Khalid or Muhammad, Islam made performing the legislated responsibilities requested from the individual in his individualised capacity and intended by it is the treatment of the problems of the individual as an individual, and commanded the restriction with all that Islam came with. The rules, even if legislated for human beings, yet the one requested to undertake its responsibilities is the specific individual as any Khalid or Muhammad. However this is not in his individual capacity specific to him wherein none other can associate with him such as his length, his love of young herbs, his abstention from meat, but rather as an individual in the capacity of his being a human being upon whom applies the innate attributes of the human wherein appears the vital energy which manifest in the actions of this individual in his capacity as a human being. Islam came with rules to organise the relationships between individuals in their public and private lives i.e. it came with rules to organise their relationships between people just as it came with rules legislated to organise relationships between people and the State, and between the State and other states or to organise the community in respect of it being a community. All of these are rules imposed upon a specific individual, Muhammad or Khalid or Hassan but in respect of his being a human being.

From following the *Shari'ah* rules in their generality, we find that when Islam legislated rules it protected the interests of the individual in his specific personality and the interests of the community in which he lives in its capacity as a community composed of individuals in its essence as a community not in the relation to relationships between individuals. When it legislates for the community with the relationships within it, it protects the individual's interests, and when it legislates for the individual in the relationships between him and other(s) it protects the interests of the community. Accordingly we find that when it allowed the State the right to take from the Muslims' wealth to administer the affairs of the citizens where it explicitly stated revenues are not sufficient, it restricted the State not to take more than what Allah (swt) obliged upon the community like taking money for jihad or feeding the hungry. And it restricted it not to take this except from the excess money of the wealthy i.e. what exceeds their basic needs which are food, clothing and shelter, and their basic needs which are considered necessities according to the definition of their society i.e. according to the well-known from their needs like marriage and what they are depend upon to satisfy like their remote needs, servants and similar to this. Within this legislation to preserve the society is the protection for the individual's interests. You will also find that when the *Shari'ah* allows the individual to build a house or plant a garden that it imposes upon him a path for the people and prevents him from building, planting or cultivating in any way that encroaches upon the right of the path of public property. And when it allows the

individual to sell what he owns outside the homelands of Islam in trade, it prevented him from selling weapons and all that strengthens the enemy against Muslims. This legislation for the individual protects the community's interests.

Accordingly the legislation which organises relationships between individuals on top of its being legislation for individual relationships cannot be separated from its being legislation for a human being or its being legislation for the community or its being legislation for the society i.e. for the standing relationships between the individuals of this community. Hence the model (*namadhij*) for the *Shari'ah* rules related to the relationships of individuals are *Shari'ah* rules general for all humanity even if they treat the relationships of individuals and are applied upon specific individuals who directly perform them. For example, trade is *Shari'ah* rules for organising the relationships between individuals who implement the Islamic rules under the banner of the Islamic State. They are the ones who directly perform these rules; however they apply to all individuals of humanity. When Muhammad and Khalid directly undertake trade, both are addressed to execute the rules of trade as they are engaged in trade, and Hassan and Salih are not requested by them as they are not engaged in trade. The rules of trade are legislated to be implemented by individuals but in their capacity of being human beings living in a community and they implement them when a problem arises and they directly perform it. Since the individual Muslim is obliged for the Islamic rules upon his individual actions, then it is an individual obligation upon him to know the *Shar'a* rules in each issue he intends to directly perform. So it is beneficial to offer a model (*namadhij*) of the rules related to the relationships between them so that Muslims know them and return to the books of *Shari'ah* to know what they need.

Trade (*Bai'*)

Trade linguistically is exchange in an unrestricted manner, and it is opposite to purchase. Trade is also used for purchase, just as purchase is used for trade. So it is said he (*ba'u*) purchased it from him meaning he bought it, and they (*shara*) sold to them meaning they sold it so each of them is used for the other and the connotation specifies the meaning. As for trade in the *Shar'a*, it is exchanging property for property in placing in possession and being placed in possession by mutual agreement. Trade is permitted by the Book and Sunnah. Allah (swt) said:

وأحل الله البيع

“Allah permitted trade”

[TMQ 2:275]

And He (swt) said:

وأشهدوا إذا تباعتم

“And take witnesses when you trade”

[TMQ 2:282]

And:

إلا أن تكون تجارة عن تراضٍ منكم

“Except if it is trade of mutual agreement among you”

[TMQ 4:29].

And he (saw) said:

البيعان بالخيار ما لم يتفرقا

“The two traders have an option as long as they do not separate”

(narrated by Al-Bukhari).

And Rufa'ah narrated

رفاعة أنه خرج مع النبي صلى الله عليه وسلم إلى المصلى فرأى الناس يتبايعون فقال: يا معشر التجار. فاستجابوا لرسول الله صلى الله عليه وسلم ورفعوا أعناقهم وأبصارهم إليه، فقال: إن التجار يُبعثون يوم القيامة فجاراً إلا من صلح

“That he left with the Prophet (saw) to the place of prayer and he saw people trading, so he said: O group of traders. So they responded to the Messenger of Allah (saw) and lifted their necks and eyes to him. He said: ‘Verily, traders will be resurrected as wicked persons (*fujjar*) on the Day of Judgement except the one who fears Allah, is righteous and give charity”

[Narrated by At-Tirmidhi].

He also narrated via the way of Abu Said from the Prophet (saw) that he said:

التاجر الصدوق الأمين مع النبيين والصديقين والشهداء

“The sincere trustworthy trader is together with the Prophets, sincere persons (*siddeeq*) and witnesses (*shuhada*).”

It is a condition for the trader that there exists offer and acceptance by words indicating each one of them or what stands in the place of words like the signs of the mute person. Writing is

considered from speech. As for practical trade like where the buyer takes the good and pays its price like buying bread, books, postal stamps and the like, it is looked into. If it is a good with a well-known price in the market without bargaining therein then the action indicates offer and acceptance so it is considered trade and it is what the *fuaqaha* term trade of mutual taking. Whereas if the price of the good is not defined in the market and needs bargaining, then the trade of mutual taking is not valid therein because the action does not indicate offer and acceptance as it is possible for disputes to enter therein. This is opposite to what transactions must be since transactions must be of a form preventing disputes. So this trade of mutual taking is not considered trading due to the absence of the clear statement upon offer and acceptance. Accordingly this clarifies that since offer and acceptance are conditions of the validity of the trade, it is necessary for them to occur by words indicating them or an sign indicating them with a decisive indication not carrying (any possibility) other than the two together with the absence of dispute.

Trade is accomplished in other that what is measured, weighed or counted merely upon finishing the contract, and taking possession is not a condition to conclude the trade therein. If the sold thing spoils before its possession is taken, this is in the responsibility of the buyer and not the responsibility of the seller like the buying of the house, animal, car and what is similar to that which is not measured, weighed or counted. This is because of the Messenger (saw) saying:

الخَرَجَ بِالضَّمَانِ

“The expenditure is with the responsibility” (narrated by Abu Dawud).

The increase in this trade is for the buyer so its surety is upon him. So if he bought an animal and did not take possession of it then it give birth, its child is for the buyer not the seller. And (also) due to what ibn Umar narrated:

هو لك يا عبدالله بن عمر، فاصنع به ما شئت

“That the Prophet said when a cale camel was born belonging to Umar. The Prophet (saw) said to him: Sell it to me so Umar said: It is for you, O Messenger of Allah, and he bought it. Then he said: It is for you, O Abdullah bin Umar, so do with it as you please” [narrated by Al-Bukhari].

Disposition occurred therein before its possession was taken so it is excluded because it is not measured, weighed or counted. However if the trade occurs upon (something) measured, weighed or counted, the trade is not completed except upon taking possession of the sold thing so if the sold thing spoils before its possession is taken, then it is from the property of the seller. This is because the Prophet (saw) prohibited the sale of foodstuff before its possession is taken, and due to his (saw) statement:

من ابتاع طعاماً فلا يبيعه حتى يستوفيه

“Whoever buys foodstuff, let him not sell until its full due is given”

(narrated by Al-Bukhari).

And Muslim narrated from ibn Umar who said:

كنا نشترى الطعام من الركبان جزافاً فنهانا رسول الله صلى الله عليه وسلم أن نبيعه حتى ننقله من مكانه

“We used to purchase foodstuff from mounted riders, buying and selling by guessing, and the Messenger of Allah (saw) prohibited us from selling it until we transferred it from its place.”

This indicates that the sold thing is in the responsibility of the seller. Were it to enter the responsibility of the buyer, it will be permitted for him to sell it and dispose it just like after

taking its possession. So when he prohibited its sale before taking possession, he had prohibited disposal of it meaning that his ownership in it is not completed so it is in the responsibility of the seller, not the buyer. Accordingly even though the prohibition came regarding foodstuff, foodstuff is not free of being measured, weighed or counted. So the prohibition is placed upon measured, weighed and counted foodstuff so the prohibition covers selling everything measured, weighed or counted until its possession is taken whether it is foodstuff or not since it came in some *abadith* stating the measured thing, some stating the merchandise and some stating a thing. Muslim narrated that the Prophet (saw) said:

من اشترى طعاماً فلا يبيعه حتى يكتاله

“Whoever buys foodstuff should not sell it until he measures it.”

And it is narrated from Hakeem bin Hazam who said:

إذا اشتريت شيئاً فلا تبعه حتى تقبضه

“I said: O Messenger of Allah, I purchase goods so what is allowed to me of them and what is forbidden? He said: If you purchase something, do not sell it until you take possession” (narrated by Ahmad).

It is narrated from Zayd bin Thabit:

أن النبي صلى الله عليه وسلم نهى أن تُباع السلع حيث تُبتاع حتى يحوزها التجار إلى رحالمهم

“That the Prophet (saw) prohibited selling goods when they are bought until traders gather them to their mounts” (narrated by Abu Dawud).

And Ahmad narrated that the Prophet (saw) said:

من اشترى طعاماً بكيال أو وزن فلا يبيعه حتى يقبضه

“Whoever buys foodstuff by measure or weight, he should not sell it until he takes possession.”

All these *abadith* indicate the generality of things measured, weighed or counted with the evidence of excluding things not measured, weighed or counted by the hadith of ibn Umar wherein it was mentioned that he i.e. the Messenger of Allah (saw) bought from Umar a camel and his gifting it to Abdullah bin Umar before taking its possession. So taking possession is not a condition therein contrary to measured, weighed and counted things where taking possession by the buyer of the sold thing is a condition for completing the sale. The taking possession considered taking possession by the Shar’a differs according to the difference of things. The taking possession of each thing is by confining it, so if it is measured and weighed then its taking possession is by measuring or weighing it due to what Al-Bukhari narrated that the Messenger of Allah (saw) who said:

إذا بعْت فكلِ وإذا ابتعت فاكتل

“When you buy then measure and when you sell, measure.”

And from Uthman who said:

كنت أبتاع التمر من بطن من اليهود يقال لهم بنو قينقاع وأبيعه بريح، فبلغ ذلك النبي صلى الله عليه وسلم فقال: يا عثمان إذا ابتعفاكتل وإذا بعْت فكل

“I used to buy dates from a tribe of Jews who were called: Banu Qaynuqa. I would buy with profit. This reached the Messenger of Allah (saw) who said: ‘O Uthman, when you buy then measure and when you sell then measure.’”

Whereas if the sold thing was dirhams and dinars, then taking possession is by hand. If it is clothes then it is by moving them. If it were animals then its taking possession is by walking it from its place. And if it is from that which is not moved or transferred like the house and land, then its taking possession is by vacating between it and its buyer without any obstacle between them. This is because the word taking possession is a word with a deduced definition so if there came no Shar'i text upon it then its reality is considered what an indication to the people is. Taking possession is allowed before or after paying the price because delivery is from the contract's requirements so whenever it exists after the contract then its reality has occurred. Similarly, taking possession of the price and taking possession of one of the two does not depend upon the other.

Everything forbidden for man, trading it is also forbidden

There are things which Allah (swt) forbade like eating carrion meat, like drinking alcohol, like owning idols, like acquiring statues, like manufacturing paintings. For all these things, there came *Shari'ah* texts of *ayaat* and *ahadith* forbidding them. Whatever Allah (swt) forbid for his slaves from things for which *Shari'ah* text has been revealed forbidding it, whether He (swt) forbade eating or drinking other than that, then selling these things became *haram* due to forbidding their price. It is narrated from Jabir that he heard the Messenger of Allah (saw) saying:

اللَّهِ حَرَّمَ بَيْعَ الْخَمْرِ وَالْمَيْتَةِ وَالْخَنْزِيرِ وَالْأَصْنَامِ. فَقِيلَ: يَا رَسُولَ اللَّهِ أَرَأَيْتَ شَحُومَ الْمَيْتَةِ فَإِنَّهُ يُطْلَى بِهَا السُّفُنُ وَيُدُهَّنُ بِهَا الْجُلُودُ وَيَسْتَصْبِحُ بِهَا النَّاسُ؟ فَقَالَ: لَا، هُوَ حَرَامٌ. ثُمَّ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عِنْدَ ذَلِكَ: قَاتِلِ اللَّهُ الْيَهُودَ، إِنْ اللَّهُ لَمَّا حَرَّمَ شَحُومَهَا جَمَلُوهَا ثُمَّ بَاعُوه فَأَكَلُوا ثَمَنَهُ

“Verily Allah and His Messenger forbade selling alcohol, carrion, pig and idols. It was said: O Messenger of Allah, what about the grease of carrion because ships are anointed with it, skins are greased and people light themselves a lamp with it? He said: No, it is *haram*. Then the Messenger of Allah (saw) said regarding that: May Allah perish the Jews. When Allah forbade its grease, they embellished then sold it and ate its price. When Allah forbade for a people eating something, He forbade its price for them.”

This *Shari'ah* text in forbidding is not reasoned nor does there exist another text which reasons it. Hence it remains unrestricted without being reasoned. So it is not said the reason in forbidding it is the absence of an allowed benefit, so as to conclude from there that if there was an allowed benefit it would be permitted because the absence of reasoning is clear in the text. Nor is it possible to understand from it that it is reasoned. Therefore selling what is forbidden upon the slaves is forbidden whether there is within it an allowed benefit or not. Accordingly it is forbidden to sell idols and crosses, and it is forbidden to sell statues if they are statues of something with life like the human being or animal. And it is forbidden to sell paintings drawn by hand if it is a painting of something with life like a human being or animal.

It is not allowed to sell what you do not have

It is not allowed to sell a good before completing its ownership so selling it in this situation is a void sale. This is verified in two situations. Firstly, that one sells the good before he owns it. Secondly, he sells it after buying it but before he completes owning it via taking possession in that whose completion of ownership is conditioned upon taking possession. This is because the sale contract only occurs upon owned property so that which is not owned yet or is purchased but its ownership is not yet completed since its possession has not yet been taken, then there cannot occur over it the sale contract because there does not exist a place for the contract to occur over it in the Shar'a. The Messenger of Allah (saw) prohibited the sale of what the seller does not own. It is narrated from Hakeem bin Hazam (ra) who said:

لا تَبِعَ مَا لَيْسَ عِنْدَكَ

“I said: O Messenger of Allah, there comes to me a man asking me to sell what I do not have to sell then I buy if from the market. He said: Do not sell what you do not have” (narrated by Ahmad).

And from Amru bin Shuaib from his father from his grandfather who said: The Messenger of Allah (saw) said:

لَا يَلِ سَلْفٌ وَلَا يَبِيعُ وَلَا شَرْطَانِ فِي بَيْعٍ وَلَا رِبْحَ مَا لَمْ يُضْمَنْ وَلَا يَبِيعُ مَا لَيْسَ عِنْدَكَ

“It is not allowed to borrow and sell, nor two conditions in one sale, nor a profit that is not included nor the sale of what you do not have”

(Narrated by Abu Dawud).

The expression of the Messenger (saw) of “*what you do not have*” is general including your ability to deliver what you don't completely own. This is strengthened by the *abadith* which came with a prohibition of selling that which is not possessed in that whose completion of ownership is conditioned upon taking possession. This indicates that whoever buys that which requires taking possession until his purchase is completed is not permitted to sell until he takes its possession. So its rule became the rule of selling that which he does not own due to the Prophet (saw)'s statement:

مَنْ ابْتِاعَ طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَسْتَوْفِيَهُ

“Whoever sells foodstuff, he should not sell it until he pays its due”

(Narrated by Al-Bukhari).

And due to what Abu Dawud narrated

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ تَبَايعِ السَّلْعِ حَتَّى تُبْتَاعَ حَتَّى يَجُوزَهَا التَّجَارُ إِلَى رِحَالِهِمْ

“That the Prophet (saw) prohibited goods to be sold where they are bought until the trader collects them to their mounts”

And due to what ibn Majah narrated

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ شِرَاءِ الصَّدَقَاتِ حَتَّى تُقْبَضَ

“The Prophet (saw) prohibited the purchase of charity (*sadaqat*) until it is taken possession.”

And due to what was narrated

إني قد بعثتك إلى أهل الله، وأهل مكة، فأنهم عن بيع ما لم يقبضوا

“That when the Prophet (saw) sent Uttab bin Usayd to Makkah, he said: ‘I have been send to the people of Allah and the people of Makkah, Prohibit them from selling that which they have not taken possession of.’”

These *abadith* are explicit in prohibiting that which they have not taken possession of since the seller has not completed his ownership over it. This is because that which requires taking possession of, then its ownership is not completed until the buyer possesses it and also because it is in the guarantee of its seller.

Hence it is clarified that it is a condition of the validity of sale that the seller owns the good and has completed his possession therein. If however he does not own it or he owns it but has not completed his own ownership therein then it is absolutely not allowed to sell it. This includes what he owns but has not taken possession in what taking possession is a condition to complete the sale which is what is measured, weighed and counted. As for those for which taking possession is not a condition of completing ownership which is other than that which is measured, weighed or counted such as the animal, house and land and what is similar then it is permitted for the seller to sell it before taking possession. This is because the mere occurrence of the sale contract by offer and acceptance completes the sale whether he takes possession of it or not, so he would have sold that which his ownership over it is accomplished. The issue of the sale being void is not related to taking possession or not; rather it is related to the ownership of the sale and the completion of ownership therein. As for permitting the sale of something that has not been possessed in other than what is weighed or counted, this is established by the sahih hadith.

And Al-Bukhari narrated from ibn Umar (ra) that he was riding troublesome camel which belonged to Umar

أنه كان على بكر صعب – يعني لعمر فقال رسول الله صلى الله عليه وسلم لعمر: بعني به. فقال: هو لك يا رسول الله. فقال النبي صلى الله عليه وسلم: هو لك يا عبدالله بن عمر، فاصنع به ما شئت

“So the Prophet (saw) said to him to sell it to him. So he bought it then said: It is for you, O Abdullah ibn Umar, so do with it as you wish.”

This is disposal in the sale by gift before taking possession of it which indicates the completion of ownership in the sold good before taking possession of it. It indicates the permissibility of selling it because the seller’s ownership therein has been completed. Accordingly whatever the seller owns and his ownership is completed over it then it is permitted for him to sell it. And whatever (good) whose ownership is not completed is not permitted to be sold. Hence what is done by small traders of bargaining with the buyers of the good then agreeing with him over the price and selling it to him, then going to another trader to buy it for the one whom he sold it to and then presenting it and delivering it to the buyer is not permitted because it is selling that which is not owned. When the trader is asked about the good, it is not before him nor does he own it but he knows it exists in the market with others. So he lies and tells the buyer that it is present and sells it to him, then he goes to buy it after selling it. This is *haram* and not permitted as it is selling that which is not owned. Similarly what is done by the owners of shops in the vegetable and grain market when they sell vegetables and wheat before their ownership therein is completed. Some traders buy vegetables or wheat from farmers and sell it before they have taken possession of it. This is not permitted as it is from the foodstuff wherein ownership is not

completed except by taking possession of it. Similar is what importers from other countries do. Some of them sell the goods and make the delivery in the country a condition therein, then sell them before they arrive i.e. before their ownership over them is completed. This sale is forbidden as it is selling before the ownership over it is completed.

The selling of advance credit (*As-salam*)

Selling that which one does not own and that whose ownership has not been accomplished is forbidden due to the *abadith* concerning that. The *abadith* came generally including all sales of that which is not owned or whose ownership is not completed. He (saw) said:

لا تَبِيعَ مَا لَيْسَ عِنْدَكَ

“Do not sell that which you do not have” (narrated by Ahmad).

And he said to Uthab bin Usayd:

إِنَّهُمْ عَنْ بَيْعِ مَا لَمْ يَقْبِضُوهُ

“Prohibit them from selling that which they have not taken possession of.”

However these general evidences have been specified in other than the sale of advance credit. As for advance credit sale, the Shar'a has excluded it from the prohibition and permitted it. He (saw) said:

مَنْ أَسْلَفَ فِي شَيْءٍ فَفِي كَيْلٍ مَعْلُومٍ وَوِزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ

“Whoever pays in advance for something, then he should for a specific measure and a specific weight and for a specific period” (narrated by Al-Bukhari).

The “*salam*” is the “*salaf*” with two “*fatha*” in weight and meaning. It is the one who delivers present compensation for a described compensation as surety for a period i.e. advance money as price for a good he will possess after a time for a specific period. The advance credit sale is a category of sale which is contracted according to what a sale is contracted, and by the word “*salam*” and “*salaf*”. And it is (also) said “*aslami*” and “*aslaf*”. The same conditions are considered as in a sale.

The transaction of people in *salam* and *tasleef* takes place because they are in need of it particularly the farmers and traders. The owners of crops and fruits need expenditure for themselves and upon it to complete what these crops and fruits require of work. Money could become scarce such that they do not have it, so they sell their produce before it emerges for an advance price which he takes possession of immediately in the contract session (*majlis al-'aqd*) upon the condition of delivering the good to the buyer when the imposed period falls due. The trader would sell the goods not with them for a specific period which they would determine, and they take possession of the price immediately in the contract session upon condition of delivering the good when the imposed period becomes due.

The permissibility of advance credit sale is established by the Sunnah. It is narrated from ibn Abbas (ra) who said:

قدم النبي المدينة وهم يسلفون في الثمار السنة والستين فقال: من أسلف في تمر فليسلف في كيل معلوم ووزن معلوم إلى أجل معلوم

“The Prophet (saw) came to Madinah and they would pay in advance for fruits for one or two years so he said: Whoever pays in advance, let him pay in advance for a specific measure and specific weight for a specific period” (narrated by Muslim).

From Abdurahman bin Abza and Abdullah bin Abi Awfa who both said:

كنا نصيب المغامم مع رسول الله صلى الله عليه وسلم وكان يأتينا أنباط من أنباط الشام فنسلفهم في الحنطة والشعير والزبيب إلى أجل مسمى، قيل: أكان لهم زرع أو لم يكن؟ قال: ما كنا نسألهم عن ذلك

“We used to acquire booties with the Messenger of Allah (saw) and there would come to us the Nabatheans of the Nabatheans of *Sham*. So we would pay them in advance for wheat, barley and raisins for a specific period. He said: I said: Did they have crops with them or did they not have crops with them? They both said: We would not ask them about that” (narrated by Al-Bukhari).

And in a narration:

كنا نسلف على عهد النبي صلى الله عليه وسلم وأبي بكر وعمر في الحنطة والشعير والزبيب والتمر وما نراه عندهم

“We would pay in advance at the time of the Messenger of Allah (saw), Abu Bakr (ra) and Umar (ra) in wheat, barley, dates and raisins to a people who did not have it with them” (narrated by Abu Dawud).

All these are clear evidences for permitting advance credit sale. As for what are the things in which *salam* is allowed, and what are the things in which it is not permitted, this is clear in the hadith and *Ijma'a*. This is because the *salam* is buying that which is not owned and buying something over which ownership has not been completed, and they are both prohibited. *Salam* was excluded for them by a clear text so it specified the prohibition in other than that. Accordingly it is necessary that the thing in which *salam* is valid be clearly stated. Upon returning to the texts we find that *Salam* is permitted in everything that is measured and weighed just as it is permitted in everything counted. As for permitting it in what is measured and weighed, this is due to what is established in the hadith of ibn Abbas. The Messenger of Allah (saw) said:

من أسلف في تمر فليسلف في ثمن معلوم ووزن معلوم إلى أجل معلوم

“Whoever pays in advance in dates let him pay in advance for a known price and a known weight for a specified period.”

And in another narration of ibn Abbas who said: The Messenger of Allah (saw) said:

من أسلف في شيء ففي كيل معلوم ووزن معلوم إلى أجل معلوم

“Whoever pays in advance in something then he should pay for a known measure and a known weight for a known period” (narrated by Al-Bukhari).

This indicates that the money which is delivered is in what is measured and weighted. As for its permissibility in the counted (things), the *Ijma'a* has contracted upon the *Salam* in foodstuff being allowed. This *Ijma'a* has been transmitted by ibn Mundhir. Al-Bukhari narrated and said: Shu'bah related to us and said: Muhammad or Abdullah bin Abi Al-Majalid informed and said:

اختلف عبد الله بن شداد بن الهاد وأبو بردة في السلف فبعثوني إلى ابن أبي أوفى رضي الله عنه فسألته فقال: إنا كنا نسلف على عهد رسول الله وأبي بكر وعمر في الحنطة والشعير والزبيب والتمر

“Abdullah bin Shaddad bin Al-Hadi and Abu Burdah differed over advance credit sale so they sent me to ibn Abi Awfa (ra) so I asked him and said: ‘We would perform advance credit sale (*salaf*) in the time of the Messenger of Allah, Abu Bakr and Umar in wheat, barely and dates.’”

This indicates that foodstuff is permitted. Foodstuff is not devoid of being measured, weighed or counted so the rule is related to all that foodstuff which is measured, weighed or counted just

like taking possession is related to it in its being of that which needs taking possession of and just as it is related to *riba* of excess (*riba al-fadhhl*) in its being *riba* if there is excess in the measure or weight or count. So *salam* is also related to it in its being foodstuff which is measured, weighed and counted. In the hadith is a text upon the permissibility of the measured and the counted but it did not mention the counted (thing). The *Ijma'u* over the permissibility of foodstuff makes the counted (thing) included in the *Salam*.

However it is necessary that the things paid for in advance are exact in description like *Jurani* wheat, *Birmi* dates, Egyptian cotton, Indian silk, Turkish figs and exact in measurement or weight like a Syrian *sa'a*, an Iraqi pound and the kilo and litre i.e. it is necessary that the measure or weight be known and described.

Just as it is obligatory for the category for which the advance is paid be known, similarly the sale must be for a period and it must be a known period. *Salam* is not valid immediately, but rather it is necessary that the period be made a condition due to the Prophet (saw)'s statement:

من أسلف في شيء ففي كيل معلوم، ووزن معلوم إلى أجل معلوم

“Whoever pays in advance for something, then for a known measure and a known weight for a known period.”

This indicates that the period is a condition for the validity of *salam*. However where it is immediate and no period is determined then it is not called advance credit sale because that which makes it *Salam* and *salaf* is the bringing forward of one of the compensations and delaying the other. It is necessary that the period be known due to the Prophet (saw)'s statement: “for a known period.” Specifying the period is only for a period which in itself does not differ such as a month, year, six months or to such and such date in a way that there is no great difference over it like Eid al-Adha or to Ramadhan. Similarly it is valid that the *salam* be for the Easter of the Christians and their fasting as this is known and does not differ. A minor difference is forgiven. Every period is allowed to be delayed until without difference between a nearby or a remote period. However the word “period” (*ajal*) has an indication which is acted upon according to the terminology of the people over its indication. If they consider that an hour is not considered therein but rather it is from the type of immediate (sale), and if they consider it a period thereupon the hour is considered a period like the year is considered a period.

Similarly it is necessary that the price be known due to his (saw) statement: “Then let him pay in advance for a known price.” It is not permitted except that the price be handed over immediately in the contract session, so if the contractors separate before the entire price is taken possession, then the whole contract is invalidated. This is because advance sale in the Arabic language with which the Messenger of Allah (saw) addressed us is something being given for something i.e.. Money is given in advance for a good taken afterwards. So if one does not pay for what he ordered in advance (*aslaf*) then he has not paid in advance for anything; he has merely promised that he will pay in advance. Were he to pay some of the price, whether a little or most of it, then the advance sale is valid in what he gave possession of and void in what he did not give possession of. The seller taking possession of the price from the buyer is a condition for the validity of *Salam*. As for the existence of the sold good during the sale, it is not a condition. *Salam* is permitted in what is present and what is not present when the *Salam* is contracted, and with the one who has something with him and the one without anything. This is because the Prophet came to Madinah; they would pay in advance for fruits for a year or two. It is known that fruits do not remain for this period and the Messenger did not prohibit them from one year or two but rather consented upon that for them. Hence it is permitted to pay the price of the good to be delivered after a specific period considered a period, whether the good exists or not. However it is a condition that there should not be in the price excessive fraud; rather it is obligatory that the price be according to the market during the sale contract similar to the deferred period, not the

delivery of the good. This is because the *Salam* is a sale and excessive fraud is forbidden in all sales so the *Salam* is included within it. Just as it is *haram* for a good to be taken possession of immediately for a deferred price via excessive fraud, similarly it is not permitted to sell a good to be taken possession of in the future for a price to be taken possession of immediately via excessive fraud, therefore fraud in *salam* is *haram*. If fraud appears in the *Salam* then its rule is the rule of fraud in sale; for the deceived, there is an option. If he wishes, he can annul the sale and if he wishes he can execute it. It is not for him to take the difference between the price of the real good and the price with which it is bought. However this option is established upon two conditions. Firstly, the absence of knowledge at the time of the contract. Secondly, the deceitful surplus or deficit which the people are not deceived with. Clear fraud is evaluated by the evaluation of the trader so what they consider is fraud develops into and what they do not, is not.

Buying Fruits while they are still on the tree

Among the transactions which people became accustomed to transacting with is the guarantee of fruits which are upon their trees like the guarantee of lemons, olives, cucumbers, grapes and palm trees and the like. Among the people are those who guarantee grapes and olives for a year or two or three or more. They till and sow it, nurture it and care for it for each year and eat from its fruit. Among the reasons for this guarantee for more than one year is that the olive for example does not produce well every year; rather it often produces well one year and a little another year. This is because its branches grown in one year and produces in the other. It requires, in order to produce well, to pay attention to tilling, nurturing and trimming. So the one who guarantees it will take it for a certain number of years so that he makes it easy to take care of it and working upon it sufficiently such that it gives good and bountiful fruit. Just as this occurs in olives, it occurs in lemons and other similar trees. Among the people are those who guarantee olives and grapes just as they guarantee the cucumber for one year. So they evaluate its guarantee by evaluating what is upon the tree of fruit irrespective of this produce being a little or a lot, good or bad. The guarantee in its essence is buying the fruit while it is on the tree without buying the tree, or buying the produce of the tree for two or three or more years. As for the guarantee of the tree for two or three or more years, it is buying non-existent produce since they do not exist yet. The buying of the non-existent (thing) is not permitted and it is from the category of the sale of risk (*gharar*). The sale of risk is *haram* due to what Muslim narrated from Abu Hurairah who said:

نهى عن بيع الحصاة وعن بيع الغرر

“The Messenger of Allah (saw) prohibited the sale of *hasab* (sale by throwing a pebble) and the sale of ambiguity (*gharar*).”

The sale of risk is the sale of ignorance due to what Ahmad narrated from ibn Mas’ud that the Prophet (saw) said:

لا تشتروا السمك في الماء فإنه غرر

“Do not buy fish in the water as it is ambiguous (*gharar*)”

So the sale of a tree produce for two or three or more years is not permitted as it is a category of *gharar* (ambiguity). Also the sale of a tree produce for two or three or more years is the sale of what one does not have which is not permitted. On top of that, this type of sale which is the sale of tree produce for two or three or more years is prohibited against so it is not permitted. As for the permitted *Salam*, it is the sale of unspecified produce whereas this is the sale of the produce of a specified tree and the Messenger of Allah (saw) prohibited the *Salam* in the produce of a specified tree. When the Prophet (saw) arrived in Madinah, they were performing *Salam* in the produce of specific palm trees, so he prohibited that. Hence what those who guarantee the olives and lemons of buying tree produce for a period of two or three years is *haram*, and it is from the sales which the Shar’a came explicitly prohibiting against.

As for the guarantee of tree produce which is clear in produce and the guarantee of cucumbers and the like, this is the sale of produce existing on the tree so it does not enter into the sale of what you do not have as it exists with its seller. Nor does it enter into the sale of the produce of the palm tree specifically. Therefore its rule differs from the rule of the guarantee for two or three or more years. The Shar’i rule in this guarantee i.e. buying the produce existing upon the tree while it is upon its tree has some explanation. That is it is looked into the produce; if its goodness has appeared i.e. it becomes possible to eat from it, then the guarantee is permitted i.e.

the sale of produce in this situation is permitted. If the goodness of the produce has not appeared yet meaning that it has not yet commenced as a food then it is not allowed to sell it. This is due to what Muslim narrated from Jabir (ra) who said:

نهي النبي صلى الله عليه وسلم عن بيع الثمر حتى يطيب

“The Messenger of Allah (saw) prohibited the sale of produce until they become good.”

And due to what is also narrated from him:

أن النبي صلى الله عليه وسلم نهى عن بيع الثمر حتى يبدو صلاحه

“The Messenger of Allah (saw) prohibited...and the sale of produce until their goodness has appeared.”

And due to what Al-Bukhari narrated also from him:

نهي النبي صلى الله عليه وسلم أن تباع الثمرة حتى تشقق، قيل: ما تشقق؟ قال: تحمار وتصفار ويؤكل منها

“The Prophet (saw) prohibited from buying fruit until they have ripened. He said: They become red and yellow and they are eaten from.”

And due to what Al-Bukhari narrated from Anas bin Malik from the Prophet (saw)

أنه نهى عن بيع الثمرة حتى يبدو صلاحها وعن النخل حتى يزهو. قيل: وما يزهو؟ قال: يحمار ويصفار

“The Prophet (saw) forbade the sale of fruits till their benefit is evident; and the sale of date palms till the dates are almost ripe. He was asked what 'are almost ripe' meant. He replied, "Got red and yellow.”

And due to what he narrated also from him

نهى عن بيع الثمار حتى تزهى. قيل: وما تزهى؟ قال: حتى تحمر، فقال رسول الله صلى الله عليه وسلم: رأيت إذا منع الله الثمر بم يأخذ أحدكم مال أخيه؟

“The Messenger of Allah forbade selling fruits before they ripen. It was said: "O Messenger of Allah what does ripen mean?" he said: 'when they turn red.' And the Messenger of Allah said: "What do you think if Allah withholds the fruits (causes it not to ripen), why would any one of you take his brother's wealth?"

And due to what Al-Bukhari narrated from Abdullah bin Umar that the Messenger of Allah (saw)

نهى عن بيع الثمار حتى يبدو صلاحها، نهى البائع والمبتاع

“forbade the sale of fruits until they were clearly in good condition, he forbade it both to the seller and to the buyer”

And in the narration of Muslim with the words:

نهى عن بيع النخل حتى يزهو، وغلبنبل حتى يبيض ويأمن العاهة

“He prohibited the sale of palm tree until it blossom an ear of corn until it whitens and is safe from calamity.”

All these *abadith* are explicit in prohibiting the sale of produce before ripening. The impermissibility of the sale of produce before its goodness appears is deduced from the stated

text of the *abadith*. The permissibility of the sale of produce once their ripeness appears is deduced by its understanding (*mafhum*). Accordingly the guarantee of the tree whose produce appears like olives, lemons, palm-tree and others is permitted if edibility appears and it is not permitted if the maturity does not appear.

The appearance of goodness of the produce being its maturity is understood from the *abadith* which came about that. From scrutinising the *abadith* which came in prohibiting the sale of produce before their ripeness appears, we find that they came with several translations. In the hadith of Jabir it came “*until its ripeness appears*” and it came “*until it becomes good.*” And in the hadith of Anas “*prohibited the sale of grapes until they blacken, and the sale of grain until it becomes hard*” (narrated by Abu Dawud). And in the other hadith of Jabir “*until it ripens*” and in the hadith of ibn Abbas “*until it matures.*” Accordingly all the *abadith* are combined upon one meaning which is, until maturity appears. Looking into the reality of the fruit we will see that the appearance of maturity therein differs with the difference of produce. Some of them mature by the visible change of colour so it appears in them what indicate the ripening like dates, figs, grapes, pears and the like. From them are those in which ripeness appears by its changing or by its sight by the inspectors like the water-melon due to the difficulty of realising the change of its colour in ripening. Also from them are those for which maturity becomes clear by the beginning of the change of the flower to produce like the cucumber and the like. Hence the meaning of the appearance of its goodness in each fruit is the appearance of its goodness for eating. This is indicated by the hadith of ibn Abbas in which he said:

نهى رسول الله صلى الله عليه وسلم عن بيع النخل حتى يأكل منه أو يؤكل

“The Messenger of Allah (saw) prohibited the sale of palm-tree until he eats from it or it is eaten”

Just as this is indicated in the hadith agreed upon in the narration of Jabir “*until it becomes good.*” Herein is clarified the permissibility of the sale of the produce of cucumber and the like i.e. the permissibility of guarantying the cucumber upon the mere appearance of its beginning to show its produce i.e. upon the mere beginning of the flower changing the blossom to its cucumber so the produce is bought while it blossoms and before it becomes visible i.e. the fruit is bought in this situation before it exists by merely something beginning being produced of it. This is not from the category of buying something non-existent because its fruit comes in succession one after another without interruption and does not exist at one time since there is no difference between the goodness of the produce beginning with its redness like dates or blackness like grapes, or by changing its colour like pears, or between its goodness beginning by the appearance of some and the succession of blossoming of other and their producing fruit. Except that this is not permitted in the produce whose beginning of changing of its blossom into produce is not considered like water-melons, so it is not permitted to sell the almond when it is white or to sell the fig while it is unripe before there appears ripeness therein. The meaning is selling it while it is on the tree i.e. the guarantee of the tree because selling produce while on the tree is restricted to its goodness appearing i.e. by appearing what indicates the beginning of the produce ripening.

It is not meant by the appearing of the goodness of the produce the beginning of goodness of each fruit as this is impossible since the produce can ripen a seed at a time or seeds at a time then they succeed one another. Nor is it meant by the appearance of goodness in each garden equally or the appearance of goodness in all gardens. Rather the meaning of appearance of goodness is the beginning of goodness of the species of produce where types do not differ in ripeness like the olive, or the goodness appearing in its type where its types differ in ripeness like the figs and grapes. For example, if there appears goodness in some of the produce of the palm-tree in the garden, it is permitted to sell all the produce of the palm-trees in all gardens. If the goodness appears in a type of apple in some trees, it is permitted to sell this type of apple in all gardens. If

the goodness appears in the olives in the trees of the garden, then it is allowed to guarantee all olives in all gardens because the hadith states:

نَهَى عَنْ بَيْعِ النَّخْلِ حَتَّى يَزْهَوْ وَعَنْ بَيْعِ السَّنْبَلِ حَتَّى يَبْيَضَ وَيَأْمَنَ الْعَاهَةُ

“He prohibited the sale of palm-trees until they blossom, and the ear of corn until it whitens and they are safe from blight”

And it says:

نَهَى عَنْ بَيْعِ الْعَنْبِ حَتَّى يَسْوَدَّ وَعَنْ بَيْعِ الْحَبِّ حَتَّى يَشْتَدَّ

“He prohibited the sale of grapes until they blacken, and from selling grain until they became hard”

He clarified the rule of produce of each species in its essence and each type in its essence. He said about the grain, until it became hard and in the black grape until it blackens. The rule is related to the appearance of goodness in each species without considering into the remaining species and each type without considering the remaining types. The word “goodness appearing” which came in the hadith in one species and one type is verified in some produce however little it is. In addition, the reality of the produce indicates that they come in succession one after another.

Hence this clarifies that it is not permitted to guarantee any tree i.e. sell the produce of any tree before its goodness i.e. the goodness of its produce. As for the statement of Allah (swt):

وَأَحَلَّ اللَّهُ الْبَيْعَ

“Allah allowed trade”

[TMQ 2:275]

This is general but these *ahadith* specify it that it is allowed in other than those sales in which came a prohibition therein. The forbidding of the sale of produce on the tree before its goodness appears came in an absolute manner. Hence it is not restricted whether cutting is a condition or not. However if the seller imposes cutting as a condition upon the buyer before the produce ripens, the condition is invalid as it negates the contractual requirements. If the buyer delays the cutting from the time of ripening, this is looked into. If it is of those in which delay harms the seller like oranges which affects the blossoming in the second year's season, in this situation the buyer is compelled to cut during the ripening. If the tree is not harmed like figs and olives, he is not compelled upon that. All this where only the produce is sold, not the tree. However if the tree and produce are bought together, it differs between the palm-tree and others. As for the palm-tree, it is allowed to buy it and the produce upon it and the produce is including following the palm-tree without any need to mention it where the palm-tree has not yet pollinated. Whereas if the pollinations of the palm-tree has occurred, if the tree of the palm-tree is sold then the produce does not enter into the sale with the palm-tree unless it is mentioned in the sale contract. If it is not mentioned, the produce remains for the seller and the palm-tree for the buyer, and the seller can leave the produce until it ripens then he cuts it or sells it after its goodness appears because it is his property. This is according to what Muslim narrated from ibn Umar that the Prophet (saw) said:

مَنْ ابْتاعَ نَخْلًا بَعْدَ أَنْ يُؤْبَرَ فَثَمَرُهَا لِلَّذِي بَاعَهَا إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ

“Whoever buys palm-trees after it has pollinated, its produce is for the one who sold it unless the buyer makes it a condition.”

And also due to that Ahmad narrated from Ubadah bin As-Samit

أن النبي صلى الله عليه وسلم قضى أن ثمرة النخل لمن أبرها إلا أن يشترط المبتاع

“That the Prophet (saw) decreed that the dates of the palm-tree are for the one who pollinated it unless the buyer stipulated a condition.”

So it is deduced from the clear statement of the hadith that whoever buys palm-trees upon where there are pollinated produce, the produce is not included in the sale but rather remains the seller's property. And it is deduced from its understanding (*majbūm*) that if they are not then they are included in the sale and are for the buyer. The meaning of the understanding is the opposite understanding (*majbūm mukhalafā*) which is the understanding of the condition. It is inevitable to adopt this understanding because if the rule of the non-pollinated is the rule of the pollinated then its restriction with the condition is useless speech without any benefit therein. Hence the produce of the palm-tree before follows the palm-tree, and afterwards it does not follow it. However, it is not allowed to sell it until its goodness appears. This is specific to the palm-tree and nothing else is analogised upon it because the pollination is a specific action. The word, even though it is a description, however it is not an understood description for the reason of the rule: so it does not include reasoning. Thus it is not analogised upon due to the absence of the reason, nor is anything joined to it because there is nothing branching from it nor is it something to be analogised upon. Hence the pollination is specific to the palm-tree and it is not in anything else. The palm-tree does not bear it if it is not pollinated. The pollination is fission and fertilization and its meaning is to split the blossom of the female palm-tree to reveal therein the blossom of the male palm-tree. It is not said herein that the rule is related to the appearance of produce so that remaining produce is analogised upon that and they are annexed, with the argument that the objective is not the presence of pollination but rather what results thereof which is the appearance of produce. This is not said because the reality in the palm-tree is that the pollination occurs then after the passing of about a month the appearance of produce occurs. If the palm-trees are bought after fecundation, even after one day for example, the contract is valid even if the produce has not appeared. Thus the rule is related to pollination not the appearance of produce so there is no place for analogy due to the absence of the unifying matter. Therefore it is specific to the palm-tree so it is not analogised upon nor is it annexed to.

As for the rule of the remaining trees, it is taken from the understanding of the impermissibility of selling produce before their goodness appears, and the permissibility after their goodness appears. The impermissibility of selling produce before their goodness appears is based upon the meaning that, at that point, the produce follows the tree and it is not isolated from it, so it follows it. The follower is included in the sale together with what it follows even if it is not mentioned in the contract. Accordingly, in other than the palm-tree among all trees, the produce is included in the sale of the tree and follows it if its goodness has not appeared. However, if its goodness appears then it is not included except by mentioning it due to the coming of *ahadith* indicating the permissibility of selling the produce after its goodness appears which means that it does not follow; so it is not included except by mentioning it. At this point it is allowed to sell it alone or tree only. However if the tree is bought then a wind comes and uproots it or breaks it i.e. if some misfortune happens, there is nothing upon the seller since the sale is completed. Nor has any text come for the reduction of anything from the buyer in this situation. Contrary to the produce if it is sold upon the tree then a misfortune strikes it i.e. blight, then it is obliged upon the seller to reduce the price of the produce of what struck it from the blight. This is due to what ibn Majah narrated from Jabir that the Messenger of Allah (saw) said:

من باع ثمراً فأصابته جائحة فلا يأخذ من أخيه شيئاً، على ماذا يأخذ أحدكم مال أخيه

“Whoever sells a produce then it is struck by a misfortune, let him not take anything from the property of his brother. On what basis one of you wants to take the wealth of his Muslim brother.”

The meaning of the misfortune is the calamity which struck the produce and destroyed them. The meaning of the calamity is the heavenly calamity like cold, dryness, winds and drought. However if the misfortune is not heavenly like dryness or the destruction of the tools of irrigation, or theft and robbery and what is similar to that. This is not considered a misfortune nor does the seller reduce anything from the buyer as it is not included in the indication of the hadith.

Sale on Credit And Instalments (*taqseet*)

The Messenger of Allah (saw) said:

إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ

“Verily trade is only upon mutual consent”

(narrated by Ahmad and ibn Majah).

The owner of the good can sell it at the price he is pleased with, and he can refuse to sell it at the price he is not pleased with. Therefore it is permitted for the good's owner to set two prices for the good, a price for immediate (sale), and a specific price for one specific period or an instalment price for numerous periods. Hence it is permitted for the seller to bargain with the buyer for any of the two prices he will accept to sell. All this is bargaining over the price and not a sale. If they both agree over a specific price and the seller sells to the buyer for the immediate price and the buyer accepts, or he sells for the deferred price and the buyer accepts, then this is valid as it is bargaining over the sale and not the sale. Bargaining is permitted because the Messenger (saw) bargained. Ahmad narrated from Anas bin Malik

أَنَّ النَّبِيَّ بَاعَ قَدْحًا وَحُلْسًا فِي مَنْ يَزِيدُ

“The Messenger of Allah sold a drinking bowl and a blanket (for a horse of camel) to the highest bidder”

And the sale of an auction is bargaining.

It has been established that the prophet (saw) bargained. It is narrated by Ibn Majah from Suwayd bin Qays who said:

جَلَبْتُ أَنَا وَمَخْرَفَةُ الْعَبْدِيِّ بَرَاءً مِنْ هَجْرٍ، فَجَاءَنَا رَسُولُ اللَّهِ يَمْشِي فَسَاوَمْنَا سِرَاوِيلَ فَبِعْنَاهَا

“I and Makhrafah Al abdi imported some garments from Hajar and brought them to Makkah. The Prophet (saw) came to us walking, and after he had bargained with us for some trousers, we sold them to him.”

As for the end of the bargaining, the sale has is contracted by the mutual consent of the two contractors upon one specific price for the sale so the sale is valid. This is if there was bargaining over the price of the good whether immediately or deferred then the contract occurred over one of the two specifically and individually. Similarly it is permitted for the seller to sell his good for two prices, the first for cash and the other for credit. So if one person said to another, ‘I sold you this good for fifty in cash and sixty in credit’ so he said to him, ‘I bought it for sixty in credit.’ Or he said, ‘I bought it in cash for fifty’ the sale is valid. Similarly if he said to him, ‘I sold you this good for sixty in credit with an increase of ten over its original price in cash due to the delay in paying the price’ and the buyer said, ‘I accepted’ the sale is also valid. And of greater precedent if he said to him: ‘The price of his good is thirty in cash and forty in credit’ and he said, ‘I bought it for thirty in cash’ or he said, ‘I bought it for forty in credit’ so the seller said, ‘I sold it’ or ‘Take it’ or ‘It is for you’ then the sale is valid because in this last example the bargaining occurred over two prices and the sale over one price. As for the first examples, the sale occurred over two prices. It is permitted in the sale contract to set two prices for one good, an immediate price and a deferred price i.e. a cash price and a credit price as a debt due to the generality of the evidences that came in permitting trade. Allah (swt) said:

وأحل الله البيع

“Allah allowed trade”

[TMQ 2:275]

And this is general. As for that for which there came no *Shari'ah* text forbidding a specific type of sale like the sale of risk for which there came a text forbidding it, then it is an allowed sale. The generality of Allah's statement: “Allah allowed trade” covers all types of trade as allowed except the types for which a text came forbidding them so they became *haram* by the text excluding from the generality. There did not come any clear text against setting two prices for any good, an immediate price and a deferred price so it became allowed by taking the generality of the *ayah*. Also he (saw) has said:

إنما البيع عن تراض

“Verily trade is only by mutual consent”

And the two contractors here have an option and the sale was completed with both their consent. The majority of the *fuqaha* have stated that it is allowed to sell something for greater than its daily price due to deferment i.e. due to delaying the payment of the price. It is narrated from Tawus, Al-Hukm and Hammad that they said there is no harm if it is said: ‘I sell to you in cash for so much and in credit for so much’ so he goes for one of the two. Ali (ra) has said:

من ساوم بثمانين أحدهما عاجل، والآخر نظرة، فليسم أحدهما قبل الصفقة

‘whoever bargains for two prices, the first immediate and the other delayed then let him name one of the two before the contract.’

Hence this demonstrates the bargaining over two prices for one good then the contract takes effect over one of them by the consent of both and this is permitted, and the sale in this form is valid. Similarly it is clarified that contract's offer takes effect over two prices and the buyer's acceptance of one of the two prices in an explicit clear way with complete specifications, this is similarly permitted due to the generality of the evidences and because there is no clear text forbidding this type of sale. As for what Ahmad narrated

نهى النبي صلى الله عليه وسلم عن صفقتين في صفقة

“The Prophet (saw) prohibited two contracts in one contract”

Its meaning is that in a situation when there are two contracts in one contract like one says: ‘I sell to you this house of mine on condition that I sell you another house of mine for so much’ or ‘on condition that you sell me your house’ or ‘on condition that you marry your daughter to me.’ This is not valid because his saying, ‘I sold you my house’ is a contract and his saying ‘on condition that you sell me your house’ is a second contract and they have gathered in one contract and this is not permitted. It is not meant to prohibit increasing the price due to delayed payment nor the making of an offer on two payments and the acceptance over one of them specifically.

As for what Abu Dawud narrated that the Messenger of Allah (saw) said:

من باع بيعتين في بيعة واحدة فله أوكسهما أو الربا

“Whoever makes two transactions in one bargain, he should have the lesser of the two or (it will) involve riba”

Its meaning is where there occurs two sales in one good like where one sells a good for a price for a period, then when the period arrives with non-payment of the price seller defers the price

for another period increasing the named price i.e. considering the good's price as a bargaining price for another period so he would have sold two sales in one good. Or he sold him the good for a specific price so the buyer buys the good then he seeks delaying paying the price to a specific period. So the buyer accepts, then he sells him the good another sale for a higher price for a named period i.e. the price is increased and the period deferred. This and its like are two sales in one sale so for him is the lesser of the two i.e. the lesser of the two which is the first price. It came in the *Sharh Sunan* of ibn Rusulan in the explanation of this hadith: 'This is that he pays in advance in dinars for a *qafiz* of wheat for one month then when the period arrives and he seeks the wheat from him, he says: Sell me the *qafiz* in two months so this becomes two sales in one sale because the second sale entered into the first, so it is restricted to the lesser of the two which is the first.' Whatever is said in explaining the hadith, its stated text and understanding, the occurrence of two sales in a sale i.e. the occurrence of two sale contracts in one sale contract it is not regarding two prices in a contract or one contract upon two prices, so it does not apply upon the instalment sale or upon credit sale. What is prohibited is the occurrence of two contracts in one contract which applies upon all two-contract sales occurring in one contract or one agreement, nor does it apply upon other than this situation no matter how its forms increase.

In conclusion, if one of the contractors said to the other, 'I sold you my house for one thousand upon your selling me your house for one thousand' and he says, 'I have accepted' in this one sale contract there occurred two sales which is not permitted since the Prophet (saw) prohibited two sales in a sale and two agreements in one agreement. If he said to him, 'I sold you this house for one thousand' and he said, 'I have accepted'; then he said to him, 'Give me one month to pay the price' and he said 'I increase the price for you' then sells the same house for a period with a price increased on the original price nominated for the sale. This is not permitted because two sales occurred in one sale or in one good or in one contract with one of the two being increased over the other. In this situation the sale is valid but that which is obliged is the lesser price, and if he took the greater price it would be *riba* because the Messenger (saw) said:

من باع بيعتين في بيعة فله أوكسهما أو الربا

"Whoever sells two sales in one sale, for him is the (*awks*) of the two or *riba*"

I.e. the lesser of the two or it becomes *riba*. His statement "*the lesser of the two*" indicates the validity of the sale and the obligation of the lesser price, so the rule of the lesser obligates the validity of the sale.

Hence it is clarified that what traders do of selling a good with two prices, a specific price if he pays cash and greater price if he pays in instalments, then this sale is permitted. The *Shari'ah* rule in it is that it is permitted. And what some peasants and owners of gardens do in buying wheat, clothes, animals or tools upon the condition of paying its price at a fixed period until the end of the harvest, and the price is increased for them over its immediate price in exchange for deferring payment to the harvest, this is also permitted even if it were setting two prices for a good, a cash price and a deferred price i.e. a debt. However it is a condition of increasing the deferred price over the immediate price of one good that there should not be clear fraud therein like what is done by usurers who dominate over the people. If there is fraud in this sale, the fraud is forbidden and there applies upon it the rule of fraud in sale and advance credit sale. The forbidden is not a deferred sale for a price increased over the price which would be paid immediately.

Brokerage (*Samsara*)

It is narrated from Hakeem bin Hazam from his father who said: The Messenger of Allah (saw) said:

دعوا الناس يرزق الله بعضهم من بعض، فإذا استنصح الرجل أخاه فلينصح له

“Leave the people so that Allah gives sustenance to some of them through others. If the man seeks advice from his brother, let him advise him.”

In scrutinising trade and the situations of sale and purchase, we find therein that Allah provides sustenance for people through each other whether it is large trade or small trade. We often find the large traders undertaking the sale of small goods to traders on condition that they take a specific percentage of the profit upon what they sold to them for example one percent. This occurs in all goods. It occurs in what is measured and weighed and what is analogised and other than that. It occurs between large companies in manufacturing cloth-material, sweets, paper or machines and between wholesalers and they are called agents or selling agents. These people promise to sell what these companies produce and they take from them a specific profit which is a specific percentage of what they sell. There occurs between the large traders or manufacturers, and between the small traders, sales through the medium of persons working for the trader or manufacturer, and they are assigned exclusively to a specific trader or manufacturer. These people offer goods to people and sell them to them. Their sale is executed, and for them is a specific wage for the work of offering the goods from the large trader or manufacturer for whom they work whether they sold or did not sell and for them is a specific wage for each agreement of sale which they sold which is a specific percentage of the price for which they sold them. In this way the medium occurs between the seller and buyer in the factories, companies, and the traders and customers in everything. It occurs in vegetables in fruits just as it occurs in cloth-material, sweets and other things. In the vegetable market, the trader sells vegetables for the account of the peasants for a specific commission which he takes from the peasant.

All these actions, whether they are large actions between companies and manufacturers, or between large and small traders, or between traders and customers, all of them are brokerage and those undertaking them are brokers. This is because brokerage is to undertake the affair and its preserver, then it is used for the one charged with the power of selling and buying. The *fuqaha* knew brokerage as the name for the one who works for someone else for a wage in selling and buying. And it is applied upon the auctioneer because he works for someone else for a wage in selling and buying. The brokerage and auctioneering is allowed in *Shar'a*, and it is considered from the practices of trading and it is a type of work by which wealth is owned according to the *Shar'a*. Ahmad narrated from Qays bin Abi Ghurza Al-Kanani who said: We used to buy the camel loads in Madinah and we used to be called brokers. He said: So the Messenger of Allah (saw) came to us and called us by a name which was better than what we used to call ourselves so he said:

يا معشر التجار، إن البيع يحضره اللغو والحلف، فشوبوه بالصدقة

“O company of merchants, unprofitable speech and swearing takes place in business dealings, so mix it with sadaqah (alms)”

Its meaning is that he could exaggerate in describing his good until he talks which is useless talk i.e. more than what is obliged upon him of speech but it does not, however, which may reach the status of falsehood. He could also guess in swearing to market his good so he is recommended to give charity to efface that. The Messenger (saw)’s consent to the brokers upon their work, and

his saying to them: “*O group of traders*” clarifies the permissibility of brokerage and that it is from trade. And it is the evidence that brokerage is allowed by Shar’*a*, and it is from the transactions permitted in the *Shar’*a**.

However it is necessary that the action upon which he is hired to sell and buy be known either in the goods or by the time period, and that the profit or hire or wage be known. If a trader hires someone to sell for him or buy for him a specific house or specific utensils, the selling and buying is valid. Similarly if he hires him to sell or buy for him for a daily or monthly wage, it is valid. Similarly if he hires him to sell for him or buy for him for a daily or monthly wage to a specific level, and at the same time he hires him to sell for him or buy for him goods for a specific hire for each agreement. This is valid because the work upon which he was hired to sell or buy is known and the wage is known.

Accordingly brokerage, with its well-known meaning among traders and people from the time of the Messenger (saw) until today, is allowed. As for the brokerage for which the *sahib* hadith came prohibiting, it is specific to the deceitful brokerage which deceives people due to their ignorance of the price due to their lack of knowledge of the market or their lack of information regarding the good or what is similar to that. The Messenger (saw) consented to the the brokerage in a general form in considering it one of the trade practices. He prohibited the types of brokerage he clarified in their essence due to the reason (*illah*) therein which is deceit. Just like he permitted trade in a general form and prohibited specific types of trade for the reason therein. If the following of the *ahadith* coming therein and the scrutiny of their legislative meaning is performed, then this is clarified explicitly. In the *ahadith* which came with a prohibition of practices related to sale and purchase, brokerage is neither mentioned nor prohibited but some Sahabah and some narrators explained them as brokerage and translated the prohibition as being that he prohibited (someone) being a broker. If they are considered in their reality, it is clarified that they are types of brokerage. Al-Bukhari narrated from Abdullah bin Tawus from his father from ibn Abbas (ra) who said: The Messenger of Allah (saw) said:

لا تَلْمَقُوا الرِّكْبَانَ وَلَا يَبِيعُ حَاضِرٌ لِبَادٍ

“Do not meet riders, nor the sale of inhabitant for the Bedouin.”

He said: I said to ibn Abbas: What is his saying:

لا يَبِيعُ حَاضِرٌ لِبَادٍ

“Nor the sale of the inhabitant for the Bedouin.”

He said: Do not be a broker for him. And in the narration from Tawus that he said: I asked ibn Abbas (ra) what is the meaning of his statement: “*The inhabitant should not be a trader for the Bedouin.*” He said: He should not be a broker for him. And Al-Bukhari said: “*The inhabitant should not sell for the Bedouin by brokerage*” and he used the ‘no’ (*la*) of prohibition. Then he mentioned two hadiths in the chapter, the first of the two from Saïd bin Al-Musayyab that he heard Abu Hurairah (ra) saying: The Messenger of Allah (saw) said:

لا يَبِيعُ الْمَرْءُ عَلَى بَيْعِ أَخِيهِ، وَلَا تَنَاجَشُوا، وَلَا يَبِيعُ حَاضِرٌ لِبَادٍ

“No man should enter into a transaction in which his brother has already entered, and no dweller of the town should sell on behalf of the villager”

And the second hadith from Anas bin Malik (ra) who said:

تُحِينَا أَنْ نَبِيعَ حَاضِرٌ لِبَادٍ

“We were forbidden that a townsman should sell for a man of the desert.”

And Al-Bukhari said: in the ‘The Chapter of (*najash*): And the one who says that this sale is not permitted.’ And ibn Abi Awfa said: ‘The (*najash*) is the consumer of treacherous interest (*riba*) and it is the void deceit which is not permitted, and the Prophet (saw) said:

الخدیعة فی النار ومن عمل عملاً لیس علیه أمرنا فهو ردّ

“Deceit is in the Hellfire. And whoever performs any action not in accordance with our command, it is rejected.”

And there came several *abadith* mentioning several types of practices that the Messenger (saw) prohibited. It has been narrated from Abu Hurairah (ra) that the Messenger of Allah (saw) said:

لا تَلْمَقُوا الرِّكَبَانَ وَلَا يَبِعْ بَعْضُكُمْ عَلَى بَعْضٍ وَلَا تَتَّجِسُوا وَلَا يَبِعْ حَاضِرٌ لِبَادٍ

“Do not meet riders nor should some of you buy upon the sale of others. Do not artificially inflate prices, nor should the inhabitant trader sell on behalf of the Bedouin” (narrated by Al-Bukhari).

And it was narrated that the Prophet (saw) said:

لا تَلْمَقُوا الْجَلْبَ فَمَنْ تَلَقَى مِنْهُ شَيْئاً فَاشْتَرَاهُ فَصَاحِبُهُ بِالْخِيَارِ إِذَا أَتَى السُّوقَ

“Do not convene up with the imported goods. And whoever receives anything from them, its owner has the option when he reaches the market” (narrated by Ahmad).

From these *abadith* and others and their scrutiny, it becomes clear that he prohibited therein the inhabitant trading for the Bedouin and similar to them are the towns-people, and a person from buying upon the sale of his brother if he had completed the sale i.e. that the man comes to the good which has been bought by another so he increases the price for which it was bought and buys it to invalidate the first sale. And he prohibited the artificial inflation of prices (*najash*) which is to increase upon the good while he is not a buyer for it i.e. that one who does not intend to buy increases the good to lead by it one who bargains for it, so that he will not increase on this amount except that he will bring the equivalent so impressed by that and increases in order to buy it. He prohibited the meeting of riders which is the inhabitant who goes out to the Bedouin who has imported goods and he informs him the price, and he says to him: ‘I will sell it for you.’ Or he deceives the Bedouin about the price of the land and he buys from them for less than the comparable price. Or he informs him of the little demand of what is with them or the little demand in the market. He (saw) prohibited meeting the imports which is like meeting the riders.

These are the actions which are prohibited, some of which are related to brokerage directly and of them are those which relate to trade. By scrutinising the *abadith* which came in prohibition, it becomes clear that the prohibition therein is completely based upon an understood description i.e. a description which is understood as being that for whose sake the prohibition occurs. The understood description, where the command or prohibition overcomes it, then the command and prohibition are reasoned; so the meaning which is included by the understood description is the reason of the command or prohibition. So the obligation or forbiddance therein is linked to the reason suspended upon it. If the reason exists, the rule exists and if the reason is absent, the rule is absent; so it revolves with the reason in existence and absence. If the reason exists in other than it, the rule applies upon that other (thing) via the method of analogy. The inhabitant and the Bedouin, buying upon the sale of the brother, the artificial inflation of prices (*najash*), meeting the riders and meeting imports, are all understood descriptions. They are, therefore, the thing for whose sake the prohibition exists i.e. its meaning is that it is that for whose sake the rule exists. The rule is suspended upon the Bedouin due to the reason of lack of knowledge of

the price with the Bedouin, and suspended with buying upon the sale of his brother due to what has occurred therein with the price being determined and the reliance of one upon the other, and suspended upon the artificial inflations of prices (*najash*) because he does not intend to buy it but only increases the price to harm the buyer, and suspended upon meeting the riders and meeting imports due to what there is therein of elevating the price upon the city-dwellers or cheapening it for the importer. If these meanings exist in these sales, the sale is forbidden therein and brokerage is forbidden therein; and if they do not exist, neither sale nor brokerage is forbidden therein. Umar bin Al-Khattab (ra) understood in prohibition of the sale of the inhabitant for the Bedouin that the reason is not knowing the price, so he said:

دَلُّوْهُمْ عَلَى السُّوقِ وَدَلُّوْهُمْ عَلَى الطَّرِيقِ، أَخْبِرُوهُمْ بِالسَّعْرِ

“Direct them to the market, and direct them to the path. And inform them of the price.”

Accordingly, brokerage is allowed due to the manifestation of the evidence. If brokerage occurs in the types wherein a prohibition exists or there is a reason with in the brokerage for whose sake the prohibition exists, these types become *haram* but brokerage in its essence does not become *haram*. Rather brokerage remains allowed and the acquisition of brokerage remains an allowed acquisition.

Hiring

Hiring is a contract for a benefit in return for compensation, and it is of three types:

The first type—where the contract came upon the benefit of things like hiring houses, animals, vehicles and the like.

The second type—where the contract came upon the benefit of work like the owners of industries and factories for specific work. That which is contracted upon the benefit resulting from the work such as hiring painters, ironmongers, carpenters and the like.

The third type—where the contract came upon the benefit of the person like hiring servants and workmen and the like.

Hiring in all its types is permitted by the Shar'a. Allah (swt) said:

ورفعنا بعضهم فوق بعض درجات ليتخذ بعضهم بعضاً سخرياً

“*And we raised some of them above others in rank so that some may employ others in their work*” [TMQ 43:32].

And He (swt) said:

فإن أرضعن لكم فآتوهن أجورهن

“*If they suckle for you, give them their wages*” [TMQ 65:6].

And Al-Baihaqi narrated via the way of Abu Hurairah (ra) that the Prophet (saw) said:

من استأجر أجيراً فليعلمه أجره

“Whoever hires an employee, he should let him know his wage.”

And Al-Bukhari narrated

أن النبي والصدِّيق استأجرا رجلاً من بني الدَّيْل هادياً خريئاً

“That the Prophet (saw) and As-Siddeeq hired a man from Banu Ad-Deel as a guide through the country.”

The Employee

The contract of hiring or employment which came upon the benefit of work and the benefit of the person is the one which relates to the employee. The employee is one who hires himself. The Shar'a has permitted the hiring of the human being for a benefit resulting from him like service and the like or the benefit resulting from his work like painting, dyeing, engineering and the like. In order to contract the hiring, the fitness of the two contractors is a condition for its contracting such that each of the two should be sane and possessing discretion. The hiring of the insane is not contracted, nor the hiring of an immature child. If the hiring contracts, the consent of the two contractors is a condition of its validity, and that which is contracted upon—which is the benefit—be known in a way that prevents dispute. This knowledge of the service, in relation to the employee, at times is by explaining the period, at times by limiting the benefit or describing the required work in a detailed description and specifying what the employee will do or specifying how he will work. Accordingly, hiring the compelled person is not valid nor is the hiring of an unknown benefit valid.

The Wage

It is a condition that the money of the hiring be known via mutual sight or description which removes ignorance. He (saw) said:

من كان يؤمن بالله واليوم الآخر فلا يستعملن أجيراً حتى يعلمه أجره

“Whoever believes in Allah and the Last Day should not employ an employee until he informs him his wage.”

Value, however, is not a condition in the wage just as value is not a condition in the price of a sold good. The distinction between the value and the price is that the value is what conforms to the monetary value of the thing, and is equal to it according to the measurement of those who measure. As for the price, this is that over which mutual consent occurs or greater or less (than that). It is not a condition that the wage of the employee be the value of the work because the value is not an alternative in the hiring so it is permitted for the wage to be more than the work's value, and it is permitted to be less than the value of the work. If a person were to hire an employee for a known wage so as to mould for him a piece of gold or silver in a specific fashion, then it is permitted as he is hired for specific work and equivalence is not a condition between the wage and what he works within it from silver and gold in the weight. This is because the condition of the wage is the exchange of work, not the exchange of the domain of work which he performs. Whatever is suitable to be an alternative in sale like cash and the like is suitable to be an exchange (*badal*) in hiring i.e. whatever is suitable to be a price is suitable to be a wage. As for that which is not suitable to be a price in sale, it is permitted to be an exchange in hiring. For example, it is not permitted to buy an animal in return for residing in a house for a year, but it is valid to hire a garden (in exchange) for residing in a house because sale is exchanging property for property so exchanging wealth for benefit is not considered a sale. Contrary to hiring which is a contract upon a benefit for compensation, and this compensation need not necessarily be wealth but can rather be a benefit.

Estimating the Wage

Hiring is known as being a contract upon benefit for compensation. This contract comes in three types:

Firstly: A type coming upon the benefits of things like hiring houses, animals, vehicles and the like. The contract is performed upon the benefit of the thing.

Secondly: A type coming upon the benefits of work like painting, engineering, building and the like. What is contracted upon is the benefit of the work.

Thirdly: A type coming upon the benefits of persons like servants, labourers and the like. What is contracted upon is the benefit of the effort of the person.

In these three types, what was contracted upon was the benefit in each one of them. So the thing upon which the contract occurred is the benefit. The money mentioned is the exchange for this benefit. Hence the basis upon which estimating the wage is based is the benefit given by this thing or this work or that person. It is not in relation to the value of the thing worked upon or its price nor his productivity in relation to the employee just as is not paying for the needs of the employee. Thus there does not enter the elevation of the living standard, or its lowering, in estimating it. It is not valid to return estimating the wage to the value of the thing or its price or the worker's productivity or fulfilment of his needs; nor does raising or lowering the living standard enter into its estimation. Its estimation returns to only one thing which is the benefit since it is a benefit upon benefit for compensation. The wage is estimated according to the measure of benefit upon which the hiring contract occurred. During difference (of opinion) over the amount of wage, it is not estimated by evidence and proof as there is no role for evidence therein since it does not require proving the wage. Rather, knowing its amount and its estimation is by the estimation of two experts in the benefit over which the benefit occurs, and two experts in the estimation of its compensation.

This is in relation to the aspect of the basis of the wage, or in other words the unit upon which estimating the wage occurs. As for the aspect of its difference, it differs according to difference of the benefit in persons and in one job and different jobs, and in the time and place, The wage of workers over whom the contract came over the benefits of their persons will differ according to the effort which they expend, so the wage is estimated as so much for the strong and so much for the weak; and so much wage for so many hours of work. For more hours a higher pay and for lesser hours, lesser pay and so on. The estimation of wage for one job over which the contract of hiring was formed based on the the benefit of work by a specific amount, and it will differ between the persons who perform this work according to the difference of their expertise therein like engineers for example. So the engineer will be given a particular wage, and it will differ between engineers by the difference of the expertise. Similarly is the estimation of the wage for different jobs according to the benefit intended therein during the hiring of those working therein i.e. the producers. The wage for these jobs will differ by the difference of their benefit in the society so the engineer's wage will be a particular amount, the builder's wage a particular amount and so on. The estimation of the wage of the people in one job or different jobs at different times is estimated differently at different times. For example, the worker at night is given more than the worker working during daytime in the same job. Similarly the estimation of the wage for people takes place, for one job and for different jobs differently on one place than in another place. For example the worker in the desert is given more than the worker doing the same job in the city and so on. And it is permitted to estimate the wage temporarily by a specific time like hourly, daily, monthly and annually.

The amount of the wage

The wage of the employee can be a mentioned wage, and it can be a comparable wage. As for the mentioned wage, it is the wage mentioned and specified at the time of the contract. It is considered as the mentioned wage, the workers who each know their wage like officials in a specific grade or labourers in a specific factory where the wage of its labourer is well known. Hence if labourers or officials are used and their wage is named, so that which is named is their wage. If their wage is not named, it is considered whether it is known so it is given to them and is considered a named wage; if it is not known, they are given the comparable wage.

The comparable wage is the wage of comparable work and the comparable worker, or the wage of the comparable worker only. The estimation of the comparable wage must be by those with experience, and the people of experience must specify the wage by looking into the personality of the employee. While evaluating the comparable wage, three matters must be looked into:-

One: If the wage came upon benefit, to look into the thing whose benefit is equivalent to the benefit of the hired (thing).

Two: If the benefit came upon work, to look into the person similar to the employee in that work i.e. to look into the work and worker.

Third: To look at the time and place of the lease because the wage differs according to the difference of benefit, work, time and place.

The knowledge of the comparable wage depends upon the place of experience, so it is not permitted for the claimant to establish evidence upon it. Rather it is obligatory for experienced people to evaluate it free of self-interest, so the two disputing parties choose them by consent. If the two do not agree upon some one, then the judge chooses them.

Paying the Wage

It is permitted to pay the wage immediately, and it is permitted to delay it. If the two contractors stipulated paying the wage immediately or delaying it, the condition is observed. He (saw) said:

المسلمون عند شروطهم

“Muslims are bound by their conditions” (narrated by Al-Bukhari).

Everything the two contractors stipulated in paying the wage immediately or delaying it is considered and observed. However, if the two contractors do not stipulate anything regarding paying the wage immediately or delaying it, it is looked into. If the wage is periodic at a specific time like monthly or yearly, it is obliged to pay it at the end of that time. If it is monthly it is paid at the end of the month, and if it is yearly then at the end of the year. However if the hiring is upon work liked sewing clothes, digging a well, repairing a car or something similar, it must be paid at the end of the work. It is allowed to reiterate the wage in two forms or three in the work, the worker, distance, time and place; it is obliged to pay the wage according to the obliged forms that actually appear. For example if he says to the tailor, ‘If you sew in a minute, then for you is so much’ or ‘Sew thickly, then for you is so much’, he is paid for whichever of the two forms he performs for him.

Types of employees

The employee is divided into the specific (*khaas*) and the common (*aam*). The specific employee is the one who works for some one specifically or more in periodic work with specification i.e. he is the one assigned exclusively to the employer alone and is prevented from working for anyone else throughout the period of hiring. For example if one person or more hires a cook to cook for him specifically together with specifying the period, this cook is a specific employee.

The common employee is the one who does not work constantly or works temporarily without stipulating specification upon himself i.e. he is the one not assigned exclusively to the employer. Rather it is permitted for him to work for other than the employer. If he were to hire a carpenter of house furniture without stipulating upon him that he should not upholster for another, then he is a common employee whether he was in your house or in his place and whether a time for upholstery was specified for him or not.

The specific employee deserves the wage by delivering himself in the period to discharge what he is charged with together with his capability in the work, whether he performed the work or not. His deservance of the wage is according to the period not according to the work. Therefore it is required from him not to work in the period of the hiring for other than his employer. If he worked for someone else, his wage is reduced in proportion to his work. The common employee deserves the wage upon the exact work like sewing, carpentry, painting; sailor etc. His deserving the wage is according to the work not according to the period.

The difference between the specific employee and the common employee in relation to the guarantee is that the specific employee is guaranteed so if something is destroyed in his hands accidentally and without his fault and negligence, there is no responsibility upon him. As for the common employee, either he destroys something by his action or not. If something is destroyed by his action he guarantees it whether he destroyed it deliberately or not. If something is destroyed without his action, it is considered. If it is something which is not possible to safeguard against, he is not responsible. Whereas if it is possible to safeguard against and he was not safeguarding, he is responsible. This is because the thing, in which the specific employee works, even if it is under his hand, is under the disposal of the employer not under the employee's disposal. Accordingly his hand is the hand of the trustee contrary to the common employee where the thing he is working with is under his disposal i.e. under the employee's disposal not under the employer's disposal. Accordingly his hand is not the hand of the trustee but rather the hand of a disposer.

The difference between the two in relation to deserving the wage is that the specific employee deserves the wage if it is the hiring period and he is present for work, and his actual work is not a condition. The common employee does not deserve the wage except by work. The hiring period for the specific employee is either specified in the contract or unspecified. If it is not specified, the contract is invalid due to its ignorance. Each one of the two contractors may invalidate it at any time they wish, and for the employee is the comparable wage for the period of his service. If it is specified in the contract, and the employer invalidates the hiring before the end of the period and there is no excuse or defect in the employee obliging the invalidation like his illness or weakness in work, it is obliged upon the employer to pay the employee his wage to the completion of the period whether the employee was a servant or a farm worker or other than that. However if he invalidated the hiring due to an excuse or defect appearing in the employee obliging the invalidation, there is nothing upon him in paying the wage except till the time when the hiring was invalid.

There is no Labour problem in Islam

The capitalist system in economics was implemented upon the western world, and upon Russia before the communist party ruled it. Among the principles of the capitalist ideology is freedom of ownership from which resulted the owners of work enslaving the employees i.e. the labourers as long as there existed mutual consent and as long as the *nadhariyya al-iltizam* (law of obligations) is the one dominating over them. Labourers met with the employer's evil, injustice and exploitation of their hardwork and labour. When the socialist thought appeared and announced justice for the employee, it appeared as the basis of solving the hiring contract. Accordingly socialism came with the solution of giving justice to the worker by limiting the time of work, the wage of work, guaranteeing him leisure etc. So it destroyed the *nadhariyya al-iltizam* (law of obligations) and its incompetence to solve the problems became clear so the scholars of western canons and they were forced to change their *nadhariyya al-iltizam* (law of obligations) until the *nadhariyya al-iltizam* (law of obligations) was able to be fortified before the problems; hence they inserted reforms to patch up their viewpoint. Principles and rules were inserted into the work contract aiming to protect workers and to give them rights which they did not previously have, like the right to gather together, the right to form representatives, the right to strike, giving them retirement and benefits or compensation etc. Even though the text of the *nadhariyya al-iltizam* (law of obligations) does not permit these types of rights. However there occurred the interpretation of these viewpoints to solve the problems of workers which Socialist thought initiated among workers. Then came the socialist viewpoint to prevent ownership of wealth and giving the worker everything he needs. Due to the contradiction between the two ideologies, socialism from which emanates communism and capitalism, in respect of ownership and in respect of the employee, a labour problem was created between them. Each of them came with a specific method of solving this problem which was created by their two different viewpoints with respect to life.

As for Islam, there does not exist a problem known as a labour problem nor is the Islamic Ummah divided into classes of workers and capitalists, or peasants and landlords etc. The whole issue is related to the employee whether he was hired for the profession like specialists or technical experts or he was hired for his labour alone like the remaining employees, and whether he was an employee for persons or an employee of groups or a State employee, and whether he is a specific employee or a common employee; they are all employees. The rules for this employee have been clearly manifested and explained. At the employees' consent upon the named wage, for them is the named wage for the hiring period and they can leave their employer after their hiring period ends. And if they differ with him then comes the role of experts to estimate the comparable wage. These experts are chosen by the two parties but if they cannot agree upon them, the judge chooses them and the two sides are obliged by what the experts say compulsorily. As for the judge determining a specific wage, it is not permitted by analogy upon the impermissibility of price-fixing for goods since the wage is the price of the benefit and the price is the price for the good. Just as the market for goods establishes the price of the good with a natural evaluation, similarly the market for the benefits of workers is established by the need for workers. However it is upon the State to prepare work for workers:

الإمام راعٍ وهو مسؤول عن رعيته

“The *Imam* is a shepherd and he is responsible for his subjects”

(Narrated by Al-Bukhari).

It is upon the State to remove the injustice of the owners of work upon workers for silence upon injustice with the ability to remove it is forbidden and there is great sin in that. If the State is

negligent in lifting injustice or it oppresses employees, it is upon the whole Ummah to account the State over this injustice and to hasten to remove it. And it is upon the Court of Unjust Acts (*mahkamat al-madhalim*) to look into this injustice and lift it from the oppressed person, and its command in this is executed upon the ruler and the State. This is not upon the employees who were oppressed alone as is the situation today in solving the problems of workers with strikes and protests because the injustice of any individual of the citizens and the State's negligence in taking care of the affairs of any individual citizen is a matter related to taking care of the Ummah as a whole even if it were specific to a person or persons. This is because it is execution of the *Shari'ah* rule and it is not related to a specific party even if it occurs upon a specific group.

As for what workers require in guaranteeing their health and that of their families, and guaranteeing their expenses in the situation of their leaving work and guaranteeing the education of their sons and what is similar to these guarantees researched therein to secure the labourers, Islam does not research it in the research of the employee and employer because this is not upon the employer but rather upon the State. Nor is it for the workers but rather for each weak person among the citizens because the State guarantees health and education freely for all, and guarantees for the weak person his expenditure whether he is a worker or not since this is obligatory upon the *Bait al-Mal* and obligatory upon all Muslims.

Accordingly there does not exist a labour problem nor a problem specific for a group or party of the Ummah, so in every problem related to taking care of the affairs of citizens the State is responsible to solve it. And the whole Ummah accounts the State to solve this problem and remove the injustice, nor is the person with the problem, or the one upon whom the injustice occurred, the only responsible person.

Hiring Assets

If the contract comes upon the benefits of things like hiring houses, animals, cars and the like, then that which is contracted upon is the benefit of the thing and estimating the comparable wage inevitably comes by looking to the thing whose benefit equals the benefit of the hired thing. Whenever the hiring of the thing is completed, then the hirer can take the benefit of the thing which he hired; so if he hired a house, he can reside therein or if it was an animal or car, then he can ride it. The hirer can hire the hired thing once he possesses it at the same (amount) he hired it or for more or less. This is because taking possession of the hired thing stands in the place of taking possession of the benefit with the evidence that he is allowed to dispose in it, thus the contract over it is permitted. And also because it is a contract permitted with the capital. However, when he hires the thing for the benefit he can take similar to that benefit or less, but he cannot take more than this same benefit. This is because it is not permitted for him to take more than his right or other than what he deserves. If he hires an animal to ride it, it is not permitted for him to load a burden upon it because riding is lighter than loading. If he hires a car for such a distance, it is not permitted for him to ride it for a greater distance than that which he hired it for. If he hired a house to reside therein, it is not for him to make a storehouse for wood, iron or the like which is of greater harm to the house than residing. In short, if the contract came upon the thing for compensation it is a sale, and if it came upon the benefit of the thing for compensation it is hiring. Accordingly the contract can come upon the thing alone like selling a tree with produce whose goodness has appeared without selling its produce and it can come upon the thing with its benefit like selling a house. And it can come upon the produce alone like selling a produce whose goodness has appeared, and it can come upon non-corporeal benefit itself like residing in a house. If it came upon a benefit which is not considered a thing, it is hiring not a sale. Just as the buyer of the thing owns the thing and disposes therein in all disposals, similarly the hirer of the thing owns the hired thing which he possesses by hiring and he can dispose in it in all disposals once he takes possession of it. This is because taking possession of the thing when it is hired stands the place of taking possession of the benefits with the evidence that he is permitted to dispose therein so the contract over it is permitted like selling the produce upon its tree. Whenever the hiring of the thing is completed and he takes possession of its benefit, the hirer possesses all of the *Shari'ah* disposals in the thing's benefit which he hired because it is his ownership. So he can hire it at the wage he considers, whatever (amount) it reaches. So if he hired it for 50 and then hired it (to someone) for 500, it is permitted because he owns the benefit so he owns (the right to) hire it (to someone) according to what he considers not according to what he hired it for. Hence what is termed as Premium/Lease Premium for storehouses, houses and others—which is paying a specific amount of money on top of the decreed wage for the house or storehouse to the first tenant from those who hire from him—is permitted and there is nothing (wrong) in it because the tenant can hire the house or storehouse which is in his hire to another for the decreed wage and for a greater amount than for that which it was hired for.. This is a permitted matter because it is permitted for him to hire out what he hired for more or less than he hired it since it is a contract permitted with the capital so it is permitted for an increase like selling the sold good after he takes possession of it for more than he bought it for.

Herein is a question of delivering the hired thing to the owner after the end of the contract: Is it obligatory or not?

The response upon that is that returning the hired thing is obligatory upon him if the hired thing is in his possession due to what Ahmad narrated from Sumra from the Prophet (saw) who said:

على اليد ما أخذت حتى تؤديه

“Upon the hand (possessor) is what he took until he restores it.”

Whereas if the hired thing is not in his possession, then it is looked into. If it was seized forcefully from him, it is upon the one who seized by force to return the hired thing to its owner not upon the one who hired it since the one who seized is the one commanded to return the thing. Ahmad has narrated from As-Saib bin Yazid from his father who said:

قال رسول الله صلى الله عليه وسلم: لا يأخذن أحدكم متاع أخيه جاداً ولا لاعباً، وإذا أخذ أحدكم عصا أخيه فليها عليه

“The Messenger of Allah (saw) said: One of you should not take the utensils of its owner whether seriously or playfully. If one of you takes the stick of its owner, he should return it to him.”

This is general whether he took it from its owner or from someone else. However, if the hirer lends it to someone else or hires it to him, then after the end of the contract between him and the owner of the property it is obliged upon him to deliver the hired thing to its owner. That is due to the generality of the hadith:

على اليد ما أخذت حتى تؤديه

“Upon the hand is what it took until it restores it”

And there does not exist another text in hiring or otherwise excluding it as came in seizing by force. Therefore it remains in the generality of his statement “*until he restores it.*” It is not said that the hadith also covers the second hirer because his hand took so it is obliged upon him to restore it so restoring becomes due upon him. This is not said because the hadith, even if it applies upon the second hirer, does not annul the first hirer from restoring the hired thing. So it is upon the first hirer to restore the hired thing to its owner, and it is upon the second hirer to restore the hired thing to the first hirer. The obligation of restoring it upon the first hirer does not annul restoring it upon the second hirer. Similarly the obligation of restoring it upon the second hirer does not annul restoring it upon the first hirer, except that the owner is adds from his wage and delivered the thing to him i.e. the first hirer. Accordingly if a person rents a house to another then he rented it to someone else for a greater rent i.e. he took what they call the *kehalwu rajul* (premium/Lease premium) then if the renting period for the first tenant ends the contract ends. It becomes obligatory upon him to deliver the house to its owner except if its owner renews the contract with him so it remains under his authority even if not under his possession. Or its owner continues the contract with the second tenant so it is considered that he himself has taken over the house. At that point the first tenant is acquitted from delivering the house and it is considered that he delivered it to its owner and the owner’s relationship became with the second hirer.

Renting houses for residence

Whoever rents immovable property for residence, then he himself can reside therein and he can accommodate anyone else he wants therein if he stands in his place because he can execute that which is contracted over by himself or his representative. Whoever resides therein is his representative in executing what was contracted upon so it is permitted just as if he delegated an attorney in taking possession of the sold thing. He can build in the house of what is the custom of the resident of flooring, furniture, goods etc. Except that the tenant cannot accommodate in the house which he rented because of which wear and tear could be greater than his own wear and tear upon the house. So he should not accommodate therein one who would damage the house such as washers or blacksmiths if the tenant is not a washer or blacksmith because that is harmful to it, which is more harmful than the benefit upon which contract occur over. The contract occurred upon the benefit which is well known or this house even if by mutual acquaintance, so it is not permitted for him to take a benefit greater than the benefit over which the rent contract occurred.

It is not required in renting the house for accommodation to explicitly state the residence. Rather it is permitted to make the contract unrestricted without being necessary to mention the residence nor its description because the house is not rented except for accommodation so there is no need to mention it. And because the difference in accommodation is small so it does not to be recorded. So he can rent the house to another for the period of his (own) renting. If the renting occurs upon each month for a known thing, it is not for either of them to invalidate (it) except after the passing of each month. Except that the first month requires the rent therein due to the unrestricted nature of the contract because it is known to follow the contract and for it is a known wage. Whichever month is after it is required by the contract by becoming involved therein i.e. residence in the house. Once it becomes involved therein, the entry therein is determined so it is valid in the first contract. If it is not involved in or the contract is annulled at the end of the first month, then it is annulled. Whenever involvement is left in a month, then the renting is not established therein due to the absence of the contract. And if he said, 'I rented to you my house for twenty months for so much for each month' it is permitted because the period is known and its wage is known. It is not allowed for either of them to annul the contract in any situation because it is one period. If he rents a house for the period of a year then it appeared to him to annul it before the passing of the year, full rent is obliged upon him.

If someone rents his house, it is upon the landlord to complete what would facilitate the benefit for the tenant like delivering the keys to the house, paving the bathroom, the fixing of the doors, running of water and all that is required to make good or facilitating the benefiting from the house. As for what is fulfilling the benefits like delivering the movables, rope, bucket, electricity meter, water meter, this is upon the tenant. As for what is obliged in beautifying and adornment, they are not obliged on either of them because benefiting is possible without them. As for whitening the house, bleaching the sink and the bathroom, if it requires this at the time of renting then it is upon the landlord since this is among what facilitates the benefiting. And if it is filled by the tenant's action, then it is upon him to empty it. As for transporting the garbage, then it is upon the tenant. If the landlord stipulates upon the tenant in the rent contract to pay the expenses of what the *Shar'a* obliged upon him of what facilitates benefiting, the condition is invalid for contradicting the requirement of the contract. Similarly if the tenant were to stipulate upon the landlord to pay the expenses obliged upon the tenant, the condition is invalid for contradicting the contract's requirement. If the landlord and tenant die, or either of them, the hiring remains in its situation because hiring is an obligatory contract which is not annulled by death during the well-being of that which is contracted upon.

All bribery is forbidden

Whoever possesses an authority which obliges upon him to fulfil a benefit among the people's benefits, then the money which he takes in order to execute the benefit is bribery nor is it a wage in any way whatsoever. The distinction between the wage and bribery is that the wage is taken in exchange for undertaking an action which is not obliged upon him; as for bribery, it is taken in exchange for performing an action he is obliged to perform without exchange from the one for whose sake the action is performed or in exchange for not performing an action obliged upon him to perform. Accordingly bribery is the money given in order to carry out a benefit obliged upon the receiver to execute or to execute a benefit by the receiver not doing that which he is obliged to do, whether the benefit is right or something void. The payer of the bribe is called the (*rashi*), its receiver is the (*murtashi*) and the mediator between them is the (*raishi*).

Bribery is forbidden by the explicit texts. Ahmad and Abu Dawud and Tirmidhi and ibn Majah narrated from Abdullah bin Amur who said: The Messenger of Allah (saw) said:

لعنة الله على الراشي والمرتشي

“Allah cursed the briber (*rashi*) and bribe-taker (*murtashi*).”

Ahmad narrated from Tawban who said:

لعن رسول الله صلى الله عليه وسلم الراشي والمرتشي والرائش يعني الذي يمشي بينهما

“The Messenger of Allah (saw) cursed the briber, bribe-taker and the mediator meaning the one who walks between the two.”

These *ahadith* are general covering all bribery whether it is seeking a right or something null whether it is seeking to repel a harm or gain a benefit, to remove imposing injustice; all are forbidden. It is not said that bribery is forbidden because it is seeking something void or neglecting the truth, so if it like this then it is forbidden. Whereas if it is in seeking the truth of lifting injustice, then it is allowed. This is not said because this means that forbidding bribery came reasoned so if it exists the rule (*'illah*) exists and when it departs the rule departs. This is not correct because all the texts which came forbidding bribery are not reasoned in their forbiddance by any reason. There does not exist therein or in any text what could be deduced there from as a reason. Accordingly its forbiddance is by the unreasoned explicit text so there is absolutely no reason for it. Nor is it said that when bribery is taken from the owner of a right to fulfil the right, it is permitted as it is taking money to perform an allowed action which is fulfilling the right. This is not said because the texts which forbade bribery came general so they remain in their generality covering all types of bribery. So if one wants to specify and exclude some types of bribery, this matter requires another text to specify them because the text is not specified except by a text of the Book or Sunnah. No text came so it remains general without specification. Hence all types of bribery are forbidden without distinction between its being in seeking a right or seeking something void, lifting or imposing injustice, repelling harm or achieving a benefit, all these enter under the generality of the text.

Similarly there is no distinction in forbidding bribery between it being to the judge or official or leader or other than these; all are forbidden. Nor is it said that Ahmad narrated from Abu Hurairah (ra) who said: The Messenger of Allah (saw) said:

لعنة الله على الراشي والمرتشي في الحكم

“Allah cursed the briber and bribe-taker in judgement”

So this is restricted in judgement so the absolute is applied on the restricted. This is not said because the word whose description is considered a description is the absolute/unrestricted not the general word. As for the general word, specification occurs therein not restriction; so if there comes a restriction with it then it is from the type of stating clearly (*tansees*) one of its units (*afraad*) not from the type of restriction. Hence the word briber, bribe-taker and mediator are general words and not unrestricted words, thus his statement “*in judgement*” is not a restriction for it such that the remaining *abadith* are carried upon it. Rather it is stating clearly a unit among its units and this is the rule, so all the *abadith* remain general and they remain in their generality. So all bribery is forbidden whether to the judge or official or others. Bribing the policeman to repel harm is like bribing the judge and the bribery of the director of a company so as to be employed therein or so that he is not dismissed is like bribing the collector of taxes or conveyor of propaganda so as not to convey it. Bribing the head of workers so as to lighten the work for them or other than that like bribing the worker of the trader given to him by the customer in exchange for selecting for him new goods among the goods, or the worker of the printing press by the writer of a book to perfect his work without the owner of the printing press. All these are bribery and all are forbidden because it is money taken in exchange for performing an action he is obliged to perform without exchange from the one on whose behalf he is performing the action. It enters into bribery what some of them pay to someone with authority before an official to use his influence before him to fulfil his need, but it is not the official who takes the money but rather the one taking the money is the one who talks to the official so money is paid to him in exchange for his talking to him. This is also bribery because this money is given in exchange for executing a benefit from the one upon whom it is obligatory to fulfil it so it is bribery whether the one who executed the benefit took it or not. It is not a condition in verifying the money being bribery that the one who directly performs the execution of the benefit; rather the condition in the money being bribery is that this money be given in exchange for executing the action whether the person who takes it or his friend or the one with authority before him or his relative or boss or other than these since the value in verifying the money being bribery is that it is taken in exchange for executing a benefit to be executed without exchange from the one executing it.

Similar to bribery in forbiddance is the gift gifted to the judges, governors and their like until some of them counted it as being from bribery because it resembles it in its being money taken in order to execute an action obliged to be executed without exchange from the one for whose sake he is executing the action. The difference between bribery and the gift presented to judges, governors and their like is that in bribery money is given in exchange for fulfilling the benefit whereas in the gifts to judges, governors and their like, property is given therein from the owner of the benefit not in exchange for the benefit but because the one being gifted practically supervises the executing of benefits by himself or his mediators whether he is gifted desiring the execution of specific benefit or after executing a specific benefit or desiring the execution of benefits when they occur. Hence bribery and gifts presented to the judge and his like are similar and one is analogised upon the other. However their reality is that there is something of a difference. The forbidding of gifts to the judge, governor and their like came explicitly in the *abadith*. Al-Bukhari narrated Abu Hamid As- Saidi

أن النبي صلى الله عليه وسلم استعمل ابن الأتبية على صدقات بني سليم فلما جاء إلى رسول الله صلى الله عليه وسلم قال: هذا الذي لكم وهذه هدية أهديت لي. فقال رسول الله صلى الله عليه وسلم: فهلا جلست في بيت أهلك وبيت أمك حتى تأتيك هديتك إن كنت صادقاً. ثم قام رسول الله صلى الله عليه وسلم فخطب الناس وحمد الله وأثنى عليه ثم قال: أما بعد فيأني أستعمل رجالاً منكم على أمور مما ولائني الله فيأتي أحدكم فيقول: هذا

لكم وهذه هدية أُهديت لي . ففلا جلس في بيت أبيه وبيت أمه حتى تأتيه هديته إن كان صادقاً . فوالله لا يأخذ أحدكم منها شيئاً بغير حقه إلا جاء الله يحملة يوم القيامة

“That the Prophet (saw) appointed ibn al-Lutaybiyya upon the *sadaqat* of Banu Sulaym. When he came to the Messenger of Allah (saw) and he accounted him, he said: This is what is for you and this is a gift gifted to me. So the Messenger of Allah (saw) said: ‘Why did you not sit in the house of your father and the house of your mother until your gifts came to you if you are truthful?’ then the Messenger of Allah (saw) stood and gave a khutbah to the people. He praised Allah and extolled Him then said: ‘As for what follows, verily I appointed men from among you upon matter over which Allah appointed me. Then one of you comes to me saying: ‘This is for you and this is a gift presented to me.’ Why did he not sit in the house of his father and the house of his mother until his gifts came to him if he is truthful? For by Allah, none of you will take anything from it without due right except that he will come carrying it on the Day of Judgement.”

From Buraydah from the Prophet (saw) who said:

من استعملناه على عمل فرزقناه رزقاً فما أخذه بعد ذلك فهو غلول

“Whoever we appointed upon work and provided sustenance (*rizq*) for him, then whatever he takes after that is illicit wealth”

Or the Messenger (saw) had called it *subt* (illegal) which is forbidden money. Al-Khateeb extracted in Talkhis Al-Mutashabbih from Anas that the Prophet (saw) said:

هدايا العمال سُحت

“The gift of governors is *subt* (illegal).”

It is related about Masruq from ibn Masoud that he was asked about *subt* (illegal), is it bribery? He said: ‘No, but *subt* (illegal) is that a man seeks assistance upon an injustice so he gives you a gift. Do not accept it.’ Abu Wail Shaqeeq bin Salamah, one of the *Imams* of the *Tabi’in*, said: “If the judge takes the gift, then he has eaten *subt* (illegal wealth). And if he takes bribery, then he has reached thereby.’ All these *abadith*—the hadith of Abu Hamid and the hadith of Buraydah and the hadith of Anas—all of them are explicit in that the gifts presented to the one supervising the general actions are forbidden whether it is presided after performing a specific action or before performing it, or it is presented to him because he is the one in authority in any matter, or it is presented to him because he has authority with the one in whose hands are executing the benefits; all these are forbidden. The word gifts came in the hadith of:

هدايا العمال سُحت

“The gifts to the governors is (*subt*) (illegal)”

Is general covering all gifts to governors. Analogised upon all the governors who are supervising the execution of the people’s benefit who are obliged to execute them without exchange taken from the one for whom it is executed; it is forbidden for them to take a gift or a gift be taken from those for whom this benefit is being executed. The policeman, head of a company, leader of workers, and whoever is like them; it is forbidden for them to take gifts and the gifts for them are (*subt*) (illegal).

However, the gift to these people is forbidden if it is not the custom of the one giving the gift to present it to them. However, if it was of his custom to gift to them whether they were

supervising the execution of benefits or not, then the gift is permitted for them without any blame in it. This is because the Messenger (saw) says in the hadith:

فَهَلَا جَلَسْتَ فِي بَيْتِ أَبِيكَ وَأُمِّكَ حَتَّى تَأْتِيكَ هَدِيَّتُكَ إِنْ كُنْتَ صَادِقًا

“Why did you not sit in the house of your father and the house of your mother until your gifts came to you if you are truthful?”

Its understanding is that the gift which is gifted to him while he sits in the house of his father and his mother without being a governor is permitted. This means that this gift, whose affair is that its presenter would gift it to the person if he were not supervising, is permitted in the situation of his supervising the execution of benefits as it is permitted in the situation of his not supervising the execution of benefits. So the *ahadith* of prohibition do not apply upon it and it is excluded by the understanding of the hadith.

Mortgage/ Pledging security

The pledge in the language means certainty and persistence, and some also referred it to mean confinement. Allah (swt) said:

كل امرئ بما كسب رهين

“Each person is a pledge over what he acquired (*kasaba*)” [TMQ 52:21]

And:

كل نفس بما كسبت رهينة

“Each soul is a pledge over what he acquired (*kasaba*)” [TMQ 74:38]

i.e. restricted. The pledge in *Shar'a* is the property which is given as security for the debt so as to pay from its price if the one upon whom it is due finds it impossible to pay it. It is permitted and among the transactions which the *Shar'a* permitted. Its evidence is the Book and Sunnah. Allah (swt) said:

وإن كنتم على سفر ولم تجدوا كاتباً فرهاناً مقبوضة

“And if you are travelling and cannot find a writer, then let there be a pledge taken (*mortgaging*)” [TMQ 2:283].

Al-Bukhari narrated from Aisha, the mother of the believers,

أن رسول الله صلى الله عليه وسلم اشترى من يهودي طعاماً إلى أجل ووهده درعه

“That the Prophet (saw) bought food from a Jew for a (deferred) period and pledged an iron coat of armour to him.”

And At-Tirmidhi narrated from ibn Abbas who said:

والله لقد مات رسول الله صلى الله عليه وسلم وإن درعه لمرهونة عند رجل من اليهود بعشرين صاعاً من شعير أخذها طعاماً لأهله

“The Prophet (saw) died and his coat of armour was pledged for twenty (*sa'a*) of food which he took for his family.”

And Al-Bukhari narrated from ibn Abbas (ra) who said:

أن النبي صلى الله عليه وسلم أخذ شعيراً من يهودي بالمدينة ووهده درعه

“The Prophet (saw) pledged a coat of armour of his in Madinah to a Jew and he took barley from him for his family.”

The pledge is permitted in travel and when resident because the words “and if you are travelling” is explaining a situational reality and is not a restriction by the evidence

أن النبي صلى الله عليه وسلم اشترى من يهودي طعاماً ووهده درعه

“That the Prophet (saw) bought food from a Jew to a (deferred) period and pledged him an iron coat of armour”

While the Prophet was in Madinah and not travelling. The pledge is not permitted except when delivered during the same contract “*a (maqbudha) pledge*”. The description of the possession in the pledge is that he places his hand over it, so that which is moveable is transported to him. As for what is immovable like houses and land, his hand is upon it i.e. its possession is by its pledger withdrawing between it and the pledgee without any obstacle in front of him. It is permitted to delegate in taking possession of the pledge so the delegate’s taking possession stands in his place in his taking possession and the rest of its rules. The pledge is permitted in all that is allowed to sell. Everything permitted to sell is permitted to pledge because the objective of the pledge is to secure the debt to reach its payment from the pledge’s price if it becomes impossible to pay it from the capability of the pledger. The pledge is not permitted in that which is not permitted to sell like alcohol, idols, land on trust, the pledged thing and similar things which are not permitted to be sold.

The pledgee benefiting from the pledge

Once the pledge is completed the thing falls under the possession of the pledgee after its possession is taken. However this does not mean that the pledgee benefits from the pledge; rather the presence of the pledged good in the possession of the pledgee is only to secure him over his debt only. The pledge remains for his owner even if the pledgee deserves the debt upon the pledger. The pledgee in the days of ignorance would own the pledge if the pledger did not pay him what he owed him at the imposed time. Islam came and invalidated this. He (saw) said:

لا يعلق الرهن من صاحبه إذا رهنه، له غنمه وعليه غرمه

“He should not unredeem the pledge from its owner who pledged it. For him is its booty and against his is its fine”

(Narrated by Ash-Shafi'i from Said bin Al-Musayyab).

The Messenger's statement “he should not unredeem the pledge from its owner” i.e. the pledgee does not deserve the pledge if the pledger does not release it in the stipulated time. So the pledged thing remains the property of the pledger and the benefit remains his property because it is his booty and it enters into his (saw) statement “for him is his booty (*gharam*).” Additionally the benefit is the increase in value of the pledged thing so it has resulted therefrom, whether this increase is a benefit like residing in the house or it is a thing like the produce of the tree and the cow's child. It is the property of the pledger and the pledge contract did not take place over it, so it is not pledged since the contract is over the thing not its benefit. So long as the benefit is the pledger's property, it is for him to take it so he can rent the pledged house, and to take its wage whether he hired it to the pledgee or another. Nor is this wage a pledge but rather it becomes the property of the pledger nor does it follow the pledge because it is not among the follower of the house which enters into the sale without mentioning like the house keys. Hence the pledgee cannot benefit from the pledged thing with the proof that it is pledged to him or it is under his possession; rather its benefit is for its owner.

Since the thing's benefit is for its owner, he can gift the benefit just like he can gift the thing and he can permit whoever he wishes to benefit from the thing. Except that the pledger's permission to the pledge to benefit from the thing which he pledged differs from the permission to someone else. It is permitted for the pledger to permit any human being other than the pledgee to benefit from the pledged thing. As for his permission to the pledgee, it has some details. If the pledge is for the sale price or house rent or any debt other than the loan, it is permitted for the pledgee to benefit from the pledged thing with the permission of the pledger. This is because it is his property so he can permit whoever he wishes to benefit from it including the pledger and others. There does not exist any text preventing that as there did not come any text excluding the pledgee, so the rule remains general. And because it is permitted for the seller to increase the price and the landlord to increase the rent if it deferred for a period, it is permitted for him to permit the benefit of the thing as an increase on the price of the sold thing or an increase on the rent of the hired thing. This is not considered *riba* as the definition of *riba* does not apply upon it or its reality, nor does it enter into the usurious things limited by the text. Rather it is the deferred price higher than the immediate price and hiring for a deferred wage higher than the wage in cash, and these are all of the transactions permitted by the Shar'a.

Whereas if the debt is a loan such as one person loaning another one thousand for a year, and he pledges to him his house and permits him to benefit of the pledge, it is not permitted for the pledgee in this case to benefit from the pledged thing even if the pledger permitted. This is due to the text coming prohibiting this. It has been narrated from Anas (ra)

وسئل: الرجل منا يُقرض أخاه المال فيُهدي إليه. فقال: قال رسول الله صلى الله عليه وسلم: إذا أقرض أحدكم قرضاً فأهدي إليه أو حملة على الدابة فلا يركبها ولا يقبله إلا أن يكون جرى بينه وبينه قبل ذلك

“A man among us was asked to lend to his brother money and a gift was presented to him. He said: The Messenger of Allah (saw) said: ‘If one of you lends a loan then something is gifted to him or he is carried upon the animal, let him not mount it or accept it that it occurred between him and the other before that’” (narrated by Al-Bukhari).

And it is narrated from Anas (ra) from the Prophet (saw) who said:

إذا أقرض فلا يأخذ هدية

“If he lends, let him not take a gift.”

Al-Bukhari narrated in his Sahih from Abu Burdah bin Abu Musa who said:

قَدِمْتُ الْمَدِينَةَ فَلَقَيْتُ عَبْدَ اللَّهِ بْنَ سَلَامٍ فَقَالَ لِي: إِنَّكَ بِأَرْضٍ فِيهَا الرِّبَا فَاشْرِبْ، فَإِذَا كَانَ لَكَ عَلَى رَجُلٍ حَقٌّ فَأُهْدِي إِلَيْكَ حِمْلَ تَبْنٍ أَوْ حِمْلَ شَعِيرٍ أَوْ حِمْلَ قَتٍ فَلَا تَأْخُذْهُ فَإِنَّهُ رِبَا

“I reached Madinah and met Abdullah bin Salam, and he said to me: You are in a land where *riba* is widespread. If you have a right over a man and he gifts you a load of chopped straw, load of barley or a load of provender, then do not take it for it is *riba*.”

Al-Baihaqi extracted in *Al-Ma'rifah* from Fudhala bin Ubayd:

كل قرض جر منفعة فهو وجه من وجوه الربا

“Each debt whose benefit runs (*jar*) is a face of *riba*.”

Al-Harith bin Abu Usamah narrated from the hadith of Ali (ra) with the words

أن النبي صلى الله عليه وسلم نهى عن قرضٍ جر منفعة

“That the Prophet (saw) prohibited the debt in which the benefit runs”

And in the narration:

كل قرضٍ جر منفعة فهو ربا

“Each debt whose benefit is achieved is *riba*.”

And due to the consensus (*Ijma'a*) contracted that each debt wherein an increase is stipulated is forbidden. Ibn Mundhir said: “They had an *Ijma'a* that where the one lending stipulates an increase or gift upon the one seeking a loan, and he lends upon that then taking the increase upon that is *riba*.” It is narrated from Ubayy bin K'ab and ibn Abbas and ibn Masoud that they prohibited the loan with a benefit running. From these *abadith* and *athbar* it is clarified that the loan whose benefit runs, if the increase is stipulated, it is forbidden as one opinion without difference of opinion. If the person lent anything without condition and he repaid it with increase upon what he borrowed of cash, it is also forbidden. However if he gifts him a gift extra upon what he borrowed, it is considered. If it were his custom to gift him, there is no harm in that and it is permitted for him to accept the gift. If it were not of his custom to give him a gift, then it is not permitted for him to accept it due to the hadith of Anas (ra). As for what Al-Bukhari narrated in his *Sahih* from Abu Hurairah (ra)

ان رجلاً تقاضى رسول الله صلى الله عليه وسلم فأغلظ له فهمم به أصحابه فقال: دعوه فإن لصاحب الحق مقللاً، واشتروا له بغيراً فأعطوه إياه. قالوا: لا نجد أفضل من سنه. قال: اشتروه فأعطوه إياه، فإن خيركم أحسنكم قضاء

“That a man lent to the Messenger of Allah (saw) and he was harsh to him. So his companions were about to harm him and he said: ‘Leave him for the owner of a right has a right to speak. Then he (saw) said: Buy him a camel and give it to him.’ They said: ‘we do not find except better than the age of his camel. So he said: ‘Buy it and give it to him for the best of you are the best in repayment.’”

And as for what Abu Dawud narrated from Abu Rafi’ who said:

استلف النبي صلى الله عليه وسلم بكرةً فجاءته إبل الصدقة فأمرني أن أقضي الرجل بكرة. فقلت: إني لم أجد في الإبل إلاّ جملاً خياراً رباعياً. فقال: أعطه إياه فإن من خير الناس أحسنهم قضاء

“The Messenger of Allah (saw) borrowed a camel, and there came to him a camel of *sadaqat*. He commanded me to repay the man and I said: ‘I do not find in the camels except a preferred four-year old.’ He said: ‘Give it to him for the best of the people are the best in repayment.’”

This is not from the category of stipulating an increase in the loan or from the category of increase upon the amount or borrowed thing. Rather he merely paid him similar to what he borrowed but greater than it in age or body. This is an animal for an animal so it is from the type of good repayment not from the type of increase. Hence the Messenger (saw) came with the reason of increase with an expression indicating reasoning and said:

فإن خيركم أحسنكم قضاء, فإن من خير الناس أحسنهم قضاء

“Verily the best of you are the best in repayment”, “Verily the best people are the best in repayment”.

The reasoning is explicit and it is the good repayment not the payment increased over what was borrowed. Hence only in the pledge in the situation of the loan forbids the people from benefiting from the pledged thing as it is not from the good repayment i.e. the good but rather from the type of increase over the amount or the borrowed thing whether he stipulated it or not. It is not from the type of the gift of which it is his nature to gift him.

However all this is if the benefiting by the pledged thing is without compensation. Whereas if the benefiting with the pledged thing is with compensation such as where the pledger rents the pledgee the house for compensation, it is permitted to benefit from the pledged thing in the loan and otherwise. This is because he does not benefit from the loan but by renting on condition that it be by a rent without any bias. If he has bias with him in this, its rule is the rule of benefiting without compensation; it is not permitted in the loan but permitted in other things.

The bankrupt

The bankrupt in the language is the one without money and the one without that which he would pay for his needs. It is meant by this that he reached a situation in which it is said about him, "There is no money with him" so he is *muflis*. Muslim narrated via the way of Abu Hurairah (ra)

أتدرون من المفلس؟ قالوا: يا رسول الله، المفلس فينا من لا درهم له ولا متاع. قال: ليس ذلك المفلس، ولكن المفلس من يأتي يوم القيامة بحسنات أمثال الجبال ويأتي وقد ظلم هذا ولطم هذا وأخذ من عوض هذا، فيأخذ هذا من حسناته وهذا من حسناته فإن بقي عليه شيء أخذ من سيئه مما تم فُرد عليه ثم صُكَّ له صُكٌّ إلى النار

"That the Messenger of Allah (saw) said: 'Do you know who the *muflis* is?' They said: 'The *muflis* among us is the one without a dirham or utensils.' He said: 'The *muflis* in my Ummah is the one who comes on the Day of Judgement with prayers, fasting and zakat. He comes and has insulted this one, falsely accused this one, eaten this one's wealth, spilt this one's blood and struck this one. This one is given from his good deeds and this one from his good deeds. If his good deeds finish before that which is upon him is judged, it is taken from their sins and they are thrown upon him. Then he is thrown in the Fire.'

This statement of theirs is information about the reality of the *muflis* and the Prophet (saw)'s statement,

ليس ذلك المفلس

"That is not the *muflis*"

It is allowed not to negate the reality but rather he intended that the bankrupt of the Hereafter is more severe and enormous such that the worldly bankrupt becomes like the rich man in relation to him. The bankrupt in the convention of the *fuqaha* is the one whose debts are greater than his wealth, and his expenditure greater than his income. They called him bankrupt even though he has money because his wealth deserves to be spent in the way of his debts so it is as if it is absent.

Whenever the debts of the person are obliged immediately and his money does not pay them so his creditors ask the judge to *hijr* him, it is obliged upon him to respond to them. It is recommended to announce the *hijr* upon him so that people avoid transacting with him. If *hajara* is sentenced upon him, four rules are established by that:-

The first of them is rights of the creditors relating to his designated wealth. The second preventing the disposal of his wealth. The third is that whoever finds his designated wealth with him has more right to it than the remaining creditors if the conditions exist. Fourth, the judge sells his wealth and pays the creditors. The evidence for the *hijr* over the bankrupt is what K'aab bin Malik narrated

أن رسول الله صلى الله عليه وسلم حجّر على معاذ بن جبل وباع ماله

"That the Messenger of Allah (saw) *hajara* the wealth of Muadh bin Jabal and sold it for the debt upon him" (narrated by Al-Hakim).

And it has been narrated from Abdurrahman bin K'aab:

كان معاذ بن جبل من أفضل شباب قومه ولم يكن يمسك شيئاً، فلم يزل يُدَان حتى أغرق ماله في الدين، فكلم النبي صلى الله عليه وسلم غرماءه، فلو تَزَك أحد من أجل أحد لتركوا معاذاً من أجل رسول الله صلى الله عليه وسلم، فباع لهم رسول الله صلى الله عليه وسلم ماله حتى قام معاذ بغير شيء

“Muadh bin Jabal was of the best youth of his people and he would not hold onto anything. He would not stop borrowing until his wealth was engrossed in debt and his creditors spoke to the Prophet (saw). Were anyone left for the sake of anyone, they would have left Muadh for the sake of the Messenger of Allah (saw). So the Messenger of Allah (saw) sold to them his wealth until Muadh stood without anything.”

When there is established over the bankrupt the rights of people or that which obliges a money fine via trustworthy testimony or a correct confession from him, in this case all what he has is sold and the creditors treated equitably. Nor is it in principle allowed that he be imprisoned just as it is absolutely not allowed to imprison a debtor in difficulty due to the statement of Allah (swt):

وإن كان ذو عُسرة فنظرة إلى ميسرة

“And if he is in difficulty, then consideration delay till a time of ease” [TMQ 2:280].

And due to what Muslim and Abu Dawud narrated from Abu Said Al-Khudri who said:

أصيب رجل في ثمار ابتاعها في عهد رسول الله صلى الله عليه وسلم فكثُر دِيْنُه فقال رسول الله صلى الله عليه وسلم لغرمائه: خذوا ما وجدتم وليس لكم إلا ذلك

“A man was afflicted at the time of the Messenger of Allah (saw) in produce he had bought and his debts increased. So the Messenger of Allah (saw) said: ‘Give charity to him’ and the people gave charity to him but that did not reach the payment of his debts so the Messenger of Allah (saw) said: ‘Take what you find, and there is nothing for you except that.’”

And it is narrated that he divided the money of the bankrupt between the creditors but never imprisoned the debtor. It is narrated from Muhammad bin Ali bin Al-Husain who said: Ali bin Abi Talib (ra) said: ‘Imprisoning the man in prison after what is upon him of debts is injustice.’ As for what was narrated from Umar via the way of Said bin Al-Musayyab

أن عمر حبس عصبة منفوس يُنفقون عليه الرجال دون النساء

“That Umar imprisoned the relatives on the father’s side, the men without the women of the children who is to be provided for”,

This does not indicate imprisoning the debtor but rather only indicates imprisoning the one upon whom maintenance is obliged, if he does not maintain the young child. Maintenance is from the money which is obliged upon the one capable to provide maintenance. This indicates the imprisonment of the one who does not provide for the young child alone.

The rule regarding the bankrupt is that the judge sells to the creditors the debtor’s wealth and divides it among them in portions as there is no way to do them justice other than this. It has been narrated from Umar bin Abdurrahman bin Dalaf that a man from Juhayna would buy camels to a deferred period so they became high in price. He became bankrupt and raised it with Umar bin Al-Khattab (ra): ‘As for what follows, O people. Verily Al-Asfa Asfa Bani Juhaynah is pleased with his debt and trustworthiness that it be said the debts overtook him. So whoever has something over him, let him come early in the morning for we will divide it in lots.’ It has been

narrated about Umar bin Abdulaziz that he judged the bankrupt that his wealth be divided between the creditors and then he is left until Allah (swt) provides sustenance for him.

The bankrupt's wealth which is found with him is divided between the creditors by shares by value between those claimants present and seeking where time of their rights has fallen due only. There does enter among them the one present but not claiming or the absent who did not delegate or the absent whose time of his right has not fallen due whether he claims or not. This is because the one where the time of his right has not fallen due has no right yet while the one not claiming is not obliged to be given as long as he is not claiming.

This is where the bankrupt is alive. As for the deceased bankrupt, it is judged for everyone, present or absent, claiming or not, and each one with a debt whether immediate or to a named period. This is because all periods fall due by the death of the one with the right or the one against whom there was a right. If there combines upon the bankrupt the rights of Allah (swt) and the rights of the slaves (*'ibad*), the rights of Allah (swt) precede the rights of the slaves. So it is commenced with what he missed of zakat or expiation; if it does not cover everything, this is divided upon all these rights by lots without altering anything with another. Similarly the debt of people; if his wealth does not pay all of them then each one takes up to the level of his money of what exists. The evidence that the rights of Allah (swt) precede the rights of the slaves is what is established by the Messenger of Allah (saw) that he said:

دين الله أحق أن يُقضى

“...the debt of Allah has more right that it be paid”

And his (swt) statement:

واقضوا الله فهو أحق بالقضاء

“...repay Allah as He has more right to be repaid”

(Al-Bukhari narrated the two from ibn Abbas).

When the wealth of the bankrupt is sold, his maintenance and the maintenance of the one whose maintenance is obliged upon him is considered so his house which he has need of residing therein is not sold. Whereas if he has two houses and has no need of one against the other, the one which he does not need is sold. If the bankrupt earns what furnishes provisions for him and furnishes provisions of those whom he must maintain or he is able to earn that practically by hiring himself, in this situation all his wealth is sold except his house which is a must that he reside therein. If he is unable to perform with out any of that, it is left for him that which suffices him and maintains him and those whom it is obliged upon him to furnish provisions for according to what is reasonable from wealth until he finishes from its division between his creditors.

Transfer of a right (*Al-hawala*)

(*Al-hawala*) is taken from transferring the right from one covenant of protection to another. It is transferring by the one upon whom is the right of the one seeking the right from him to another over whom he has a right. The transfer is established by the Sunnah. Al-Bukhari narrated via the way of Abu Hurairah (ra) that the Messenger of Allah (saw) said:

طَلُّ الْغَنِيِّ ظَلْمٌ وَإِذَا تَبِعَ أَحَدَكُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ

“Delay in payment by a rich man is injustice, but when one of you is referred for payment to a wealthy man, let him be referred.”

And in other words:

مَنْ أَحْيَلَ بِحَقِّهِ عَلَى مَحْيَلٍ فَلْيَحْتَلْ

“Whoever retired his right while rich, then let him wait”

(Narrated by Ahmad).

It is permitted in the debt and the thing i.e. immediately and deferred because it is the transfer of a right of one to another which is general covering all rights. Also because the words of the hadith: “If one of you is followed while rich” is general including that there is (*al-abad*) and the rich man with an immediate right over him, and it includes that there is over him a deferred right so it remains upon its generality. The rich man is the one capable to pay. It came in the hadith from the Prophet (saw) that he said:

إِنَّ اللَّهَ تَعَالَى يَقُولُ: مَنْ قَرَضَ الْمَلِيَّ غَيْرَ الْمَعْلَمِ

“Verily Allah (swt) says: ‘Whoever lends the rich man who is not poor’”

However the command of the Messenger (saw) to follow the rich man if it falls due upon him requires that he is not denying or a procrastinator. This is understood from compelling the assignee to follow the rich man; so the rich man becomes the one capable of paying, not the denier or procrastinator. The reality of the transfer and the stated text of the hadith indicates that there is necessary in the transfer assignor (*mubeel*), the assignee (*muftal*) and the assigned upon (*mubal ‘alaihi*). The one followed is the assignor (*mubeel*), and the word “**one of you**” who is the one commanded to follow his debt is the assignee (*muftal*) person. And the rich man, whom the person is commanded to follow him, is the assigned upon (*mubal ‘alaihi*).

Four conditions are stipulated for the validity of the transfer:-

Firstly: The similarity of the two rights in species and in immediacy or deferred period because it is a transfer of the right and its transport so it is transported in its description. Hence it is valid for the one upon whom it is due to transfer gold for gold, or silver for silver, but it is not valid to transfer silver for the one upon whom gold is due or gold for silver. It is valid for the one upon whom there is a debt for (a period of) a month for a debt for a month, and the one upon whom there is a debt due for a due debt. It is valid to transfer an immediate (right) for immediate (right), and a deferred (right) for a deferred (right). However if one of the two debts is immediate and the other deferred, or the period of one of the two for a month and the other for two months, then the transfer is invalid.

Secondly: That the transfer be upon an established debt. So if the woman transfers her dowry upon her husband before consummation, it is invalid as it is not established. Were an employee

to transfer his wage before the end of his work or before the end of the period of his wage, it is invalid. Were someone who had no debt upon him due to some one else to transfer him to another who owes him a debt, this is not a transfer but a delegation upon which is established the rules of delegation not the rules of transfer. If he assigned the one upon him is a debt to someone who has no debt upon him, this is also not a transfer so payment is not obliged upon the one transferred upon the assigned upon (*mubal 'alaihi*) nor is the assignee (*muhtal*) obliged to accept that because the transfer is mutual compensation whereas there is no mutual compensation here. If the assignee (*muhtal*) with held the debt from the assigned upon (*mubal 'alaihi*), he returns to the assignor (*mubeel*).

Thirdly: It should be for a known amount of money and is invalid for unknown amount of money.

Fourthly: That the assignor (*mubeel*) transfers with his consent nor is he compelled upon the transfer because the right is upon him. So he is not obliged to pay it in a specific manner since he is not obliged to pay it in the manner which is upon the assigned upon (*mubal 'alaihi*). Rather it is for him to pay it in any manner he wishes. Nor is the consent of the assignor (*muhtal*) and assigned upon (*mubal 'alaihi*) a condition; rather their consent is not considered at all. The assignee (*muhtal*) is obliged to accept the transfer, and the assigned upon (*mubal 'alaihi*) is compelled to accept the transfer. As for compelling the assignee (*muhtal*), this is due to the statement of the Prophet (Saw):

إذا أتبع أحدكم على مليء فليتبّع

“If one of you is followed while rich, let him (*yatba*)”

And because the assignor (*mubeel*) can fulfil the right due upon him by himself or his delegate and the assigned upon (*mubal 'alaihi*) has stood in his place in receiving so the assignee (*muhtal*) is compelled to accept. As for the assigned upon's (*mubal 'alaihi*) non-consent, this is because the creditors made the assignee (*muhtal*) stand in his place in receiving so it does not need the consent of the one upon whom the right is due like delegation.

Accordingly the transfer in deed notes (*sanadat*) which comprise sums like checks or deferred sums whose period falls due—which are known as the transfer of things (*hawalat al-'ain*), is permitted with the consent of the assignee (*mubeel*) alone, nor is the consent of the assignor (*muhtal*) or assigned upon (*mubal 'alaihi*) stipulated. Similarly the transfer of deed notes which include sums whose period has not fallen due like promissory notes—which are known as the transfer of debts—whether the assignee (*muhtal*) consented or not, and whether the assigned upon (*mubal 'alaihi*) consented or not. The transfer is not a contract until consent be stipulated therein. So there is no offer and acceptance therein. Rather it is only the disposal of a person himself like the guarantee, standing security, bequest and similar disposals which are not considered contracts.

Drawing & Painting

Drawing is to draw the picture of something, and also from drawing is the making of statues and it includes sculpting. The drawing itself or the sculpture is the picture and pictures (*sumar*) is its plural. It is also called drawing (*tasaweer*) in the language and it includes sculpting, and it is said linguistically that drawing is sculpting. The *Shar'a* forbade the drawing of anything with a soul in it among humans, animals and birds whether it is drawn upon paper, skin, clothes, vessels, jewellery, cash etc so all of this is forbidden since the mere drawing of something in which there is a soul is forbidden whatever the thing being drawn. Drawing that which has no soul in it is permitted without any sin therein. The *Shar'a* allowed the drawing of trees, mountains, and flowers etc which do not have a soul. As for forbidding that which has a soul, this is established by the *Shari'ah* texts. Al-Bukhari extracted from the hadith of ibn Abbas (ra) who said:

لما رأى النبي صلى الله عليه وسلم الصور التي في البيت لم يدخل حتى أمر بما فُحيت

“When the Prophet (saw) saw the drawings in the House (*Ka'aba*), he did not enter until he commanded their effacement.”

It has been narrated

أنها نصبت ستراً وفيه تصاوير، فدخل رسول الله صلى الله عليه وسلم فنزعه. قالت: فقطعته وسادتين فكان يرتفق عليهما

“From Aisha that she raised a curtain which had drawings. The Messenger of Allah (saw) entered and removed it. She said: ‘So I cut it into two pillows. I saw him leaning upon one of them and upon it was a drawing.’”

And in the words of Ahmad

فطرحت فقطعته مرفقين فقد رأته متكماً على إحداهما وفيها صورة

“So I cut it into two pillows and I saw him resting on one of them and it had a picture on it”

And Muslim and Al-Bukhari extracted from the hadith of Aisha that she said:

دخل علي رسول الله ﷺ وقد سترت سهوة لي بقرام فيه تماثيل، فلما رآه هتكه وتلون وجهه وقال: يا عائشة أشد الناس عذاباً يوم القيامة الذين يضاهون بخلق الله

“The Messenger of Allah (saw) came to me and saw a curtain (*qiram*) which I had hung along a platform with some pictures on it. The colour of his face changed. He tore it up and said, "O 'Aishah, the most tormented people on the Day of Resurrection are those who contend with Allah in terms of creation”

The *qiram* is a thin curtain in which there are colours or a curtain in which there are drawings and engravings. In the hadith of Muslim:

أن النبي صلى الله عليه وسلم هتك درنوكة لعائشة كان فيه صور الخيل ذوات الأجنحة حتى اتخذت منه وسادتين

“Aisha (ra) narrated that “The Messenger of Allah (saw) came back from the journey and I had screened my door with a curtain having portraits of winged horses upon it. He commanded me and I pulled it away.”

The (*durmuka*) is a type of clothing. Al-Bukhari extracted from the hadith of ibn Abbas (ra): The Messenger of Allah (saw) said:

من صور صورة عذبه الله بما يوم القيامة حتى ينفخ فيها الروح وما هو بنافخ

“Whoever draws a drawing, Allah will punish him for it on the Day of Judgement until he breathes a soul into it whereas it cannot breathe.”

And he extracted via the way of ibn Umar

الذين يصنعون هذه الصور يعذبون يوم القيامة، يقال لهم: أحيوا ما خلقتهم

“That the Messenger of Allah (saw) said: ‘Verily those who make these drawings will be punished on the Day of Judgement. It is said to them: Give life to that which you created.’”

It has been narrated from ibn Abbas (ra) to whom came a man and said: I draw these drawings and make these statues so give me a fatwa about them. He said: Come close to me. So he came closer until he placed his hand upon his head and said: I inform you from the Messenger of Allah (saw) what I heard the Messenger of Allah (saw) saying:

كل مصور في النار يُجعل له بكل صورة صورها نفساً تعذبه في جهنم، فإن كنت لا بد فاعلاً فاجعل الشجر وما لا نفس له

“Every painter is in the Fire. For every drawing he drew, there will be created a soul to punish him in the Hellfire. So if you must do so, then make trees and that which has no soul (*nafs*).”

Ahmad narrated from Abu Hurairah (ra) who said:

أتاني جبريل عليه السلام فقال: إني كنت أتيتك الليلة فلم يمضي أن أدخل عليك البيت الذي أنت فيه إلا أنه كان في البيت تمثال رجل وكان في البيت قِرامٌ ستر فيه تماثيل، وكان في البيت كلب. فمر برأس التمثال يقطع فيصير كهيئة الشجرة، ومر بالستر يقطع فيجعل منه وسادتان توطآن، ومر بالكلب فيخرج، ففعل رسول الله

“The Messenger of Allah (saw) said: ‘Jibril (as) came to me and said: ‘I would come to you in the night and nothing prevented me from entering the house you were in except that there was a stature of a man in the house, there was a (*qiram*) curtain in the house and there was a dog in the house. So he commanded to lop off the head of the statue so it becomes like the form of a tree, he commanded to cut the curtain to make of it two pillows and commanded the dog to be removed. The Messenger of Allah (saw) did so.’”

The (*qiram*) is the thin curtain of wool with colours. And Al-Bukhari narrated via the way of Abu Juhayfah that he bought a youth who was a cupper so he said:

إن النبي نهي عن ثمن الدم، وثمان الكلب، وكسب البغي ولعن آكل الربا وموكله والواشمة والمستوشمة والمصور

“Verily the Prophet (saw) prohibited the price of blood, the price of the dog, the earnings of the prostitute and he cursed the taker of riba and its giver, the tattooer, the one tattooed and the drawer.”

These *ahadith* in their generality request the leaving of drawing decisively, and this is the evidence that drawing is forbidden. It is general including every picture whether it has a shadow or not, whether it is complete or incomplete. So there is no difference in forbidding drawings between what does or does not have a shadow, and between the complete picture which is able to live and the incomplete picture which is not able to live. All are forbidden due to the generality of the

abadith. And due to the hadith of ibn Abbas (ra) about the House (*Ka'aba*) that the pictures that were in the *Ka'aba* were drawn in traces without any shadow but the Messenger did not enter until they were effaced. And the hadith of Aisha (ra) indicated that the curtain had drawings traced upon it without any shadow. It is narrated that the Prophet (saw) sent Ali in an expedition and said to him:

لا تذر تمثالاً إلا هدمته، ولا صورة إلا طمسها، ولا قبراً مشرفاً إلا سويته

“Do not leave a statue except that you destroy it, nor a drawing except that you efface it nor an elevated grave except that you level it.”

He mentioned both types, the one which has a shadow which is the statue and the one without a shadow which is the drawing that is effaced. The distinction between that which has a shadow and that which has no shadow is not correct nor does it have a basis, and its being living or non-living is not a reason in its forbiddance nor does there exist an evidence excluding it from the forbiddance. As for permitting the drawing of that which has no soul among trees, mountains etc this is because the *abadith* which came forbidding drawing restricted the forbidding in the picture which has a soul. This restriction is recognised and has an understanding that is acted upon. Its understanding is that the picture which has no soul inside is not forbidden. Indeed, some *abadith* came unrestricted but some of them came restricted, and the *usuli* principle is carrying the unrestricted upon the restricted. The forbidding is only upon the picture which has a soul in it, which is the human being, animal and bird. As for other than these, it is not forbidden to draw them; rather it is permitted. Also the allowance of drawing that which has no soul of trees etc, this came explicitly in the *abadith*. In the hadith of Abu Hurairah (ra):

فُمر برأس التمثال الذي في باب البيت فليُقطع ليصير كهيئة الشجرة

“He commanded to lop off the head of the statue so that it becomes like the form of a tree”

This means that there is nothing wrong with the statue of a tree. And in the hadith of ibn Abbas (ra):

فإن كنت لا بد فاعلاً فاجعل الشجر وما لا نفس له

“If you must do so, then make a tree and that which has no soul (*nafs*).”

The *abadith* which came forbidding drawing are not reasoned and there did not come the reasoning of drawing by any reason, hence no reason is sought. As for what ibn Umar narrated of the statement of the Messenger (saw):

يقال لهم أحيوا ما خلقتهم

“It will be said to them: ‘Give life to that which you created’”

And what came in the hadith of Aisha(ra) about drawing:

أشد الناس عذاباً يوم القيامة الذي يضاھون بخلق الله

“The people most severely punished on the Day of Judgement are those who imitate the creation of Allah”,

All this did not come in the form of reasoning. No reason is understood from the words and sentences in these *abadith*. All that is in the matter is that the Messenger equates drawing with creation and the sculptors & painter with the Creator. The resemblance does not mean reasoning nor does it become a reason since resemblance of something with something does not make that which is likened to the reason for that which resembles; rather it is possible to be a description

for it, and the description of the thing is not a reason for it. Accordingly it is not said that drawing is forbidden because there is an imitation of the creation of Allah therein. Allah (swt) created mankind, animals and birds and He created trees, mountains and flowers. So if drawing human beings, animals and birds is forbidden for the reason of imitating the creation of Allah (swt) then this reason exists in trees, mountains, flowers etc since they are also created by Allah (swt) so, at that point, drawing them is forbidden due to the existence of the reason in their drawing. The reason revolves around that which is reasoned in presence and absence even though the texts came permitting the drawing of trees and everything that has no soul. Accordingly drawing human beings, animals and birds is forbidden due to the text which came forbidding them and not for any reason. Drawing trees, mountains and everything without a soul is permitted without any sin therein due to the texts which came to allow it.

The drawing which Allah (swt) forbade is only the drawing or engraving etc which a human performs directly by himself. As for drawing via the way of photographic equipment, it is not included nor is it of the forbidden drawing but rather it is allowed. This is because its reality is that it is not drawing, but is only the transporting the shadow from the reality to the film nor is it drawing a person by the drawer. The drawer by photographic equipment does not draw the person but only prints the shadow of the person upon the film by means of the equipment so it is transporting of the shadow not drawing and via the means of equipment not by the drawer. So it does not enter into the prohibition which came in the *abadith*. The *abadith* say:

الذين يصنعون هذه الصور، إني أصور هذه التصاوير، كل مصور، المصورين.

“Those who make these drawings”, “Verily I drew these drawings”, “Every drawer”, “the drawers.”

The one who takes the picture of the person or an animal with photographic equipment does not make these pictures nor does he perform this drawing nor is he a drawer. Rather it is the photographic equipment which transports the shadow to the film and he does not do anything other than moving the equipment. Therefore he is not a drawer nor is it possible for him to be a drawer by any means whatsoever; thus the prohibition does not include him at all. Also the drawing whose forbidding came in the *abadith* has been described and its type limited, and this is the one which imitates the creation of Allah (swt) and the one in which the drawer resembles the Creator in relation to how he creates a thing. So he creates a picture either by drawing it from his mind or drawing it from its origin present in front of him; in both these cases he created the picture because he is the one in whom there is creativity. As for the photographic picture, it is not of this type since it is not creating the picture nor does creativity exist therein; it is merely printing the shadow of something existing upon film. Hence it is not considered from the types of drawing whose forbiddance came in the *abadith*, and the *abadith* do not apply upon it nor is it included under it in forbidding. The technical reality of the picture by hand and the photographic picture completely strengthens that; they are two types which differ completely. The technical picture drawn by hand and it is not the photographic picture (whether) technically or in creativity. From here, additionally, the photographic picture is allowed without blame in it.

This is in relation to drawing as it is. As for possessing the picture which is drawn, if it was in a place prepared for worship like a mosque, *musalla* and their like, this is definitely forbidden due to what came in the hadith of ibn Abbas (ra) that the Messenger (saw) refused to enter the *Ka'aba* until the pictures were effaced. This is a decisive request to leave so it becomes an evidence of forbidding. As for possessing it in a place not prepared for worship like houses, offices, schools etc there is detail and explanation therein. If the picture were possessed in a place where it is treated with respect, it is disliked (*makruh*) and not forbidden. If it is a place where it is not treated with respect, it is permitted without blame therein. As for its being disliked in the place where the picture is treated with respect, it is due to the hadith of A'isha (ra) that the Messenger

(saw) removed the curtain which had a picture and the hadith of Abu Hurairah (ra) that Jibril refused to enter the house because there was a statue, picture and a dog therein. As for this dislike being specific to the picture placed in a place of respect and there being no blame if it exists in a place where it is not treated with respect, this is because of the hadith of Aisha (ra) that the Messenger (saw) removed the curtain in which there was a picture when it was elevated, and he leaned upon the elbow while there was a picture therein. And due to the hadith of Abu Hurairah (ra) in which Jibril said to the Messenger (saw):

"وأمر بالستر يُقَطَّعُ فيهُ يجعلُ وسادتينِ منتبذتينِ توطآن

“And command the curtain to be cut off to be made two pillows of it”

This indicates that the prohibition is based upon placing the picture in a place of respect for it and it is not based upon possessing it.

As for placing the picture in a place wherein it is treated with respect being disliked not forbidden, this is because the prohibition which came in the *abadith* was not linked to any connotation indicating decisiveness like a threat against the possessor of the picture or censuring him or the like as came in drawing; rather it came merely requesting to leave (it). There came other hadith prohibiting possessing statues and permitting possessing the embroidered picture i.e. traced, which is considered a connotation that the prohibition is not decisive. In the hadith of Abu Talha in Muslim with the words:

لا تدخل الملائكة بيتاً فيه كلب أو تمثال

“I heard the Messenger of Allah (saw) saying: “The angels do not enter a house in which there is a dog or picture”

And it came in the narration narrated by Muslim that he (saw) said:

إلا رقماً في ثوب

“...except embroidery upon a garment.”

This indicates the exclusion of the embroidered picture in the garment and its understanding is that the angels enter the house in which there is a carving embroidered upon a garment i.e. a picture traced/drawn in sketching. If this hadith is joined to the other prohibiting *abadith*, it is a connotation that the request to leave is not decisive so possessing the picture in a place where it is treated with respect is disliked not forbidden.

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