

THE ISLAMIC PERSONALITY

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Opening *ayat*: Surah *An-Nisaa*: *Ayat* 59-65

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Bismillah Ar-Rahmaan Ar-Raheem

STUDYING FIQH

Knowing the *Shari'ah* rules with which a Muslim is compelled/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 so as the address of accountability (*takleef*) with which the Legislator (*Ash-Shar'i*) addressed mankind, and addressed believers, is a decisive address giving to option to anyone whether it was about the creed (*iman*) or human actions. The Supreme's statement: **Believe in Allah and His Messenger** [TMQ] is like His statement: **Allah permitted trade and forbade *riba*** [TMQ 2:] in that they are both 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 the Supreme's statement: **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 of the accountability of every action as the Supreme said: **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 the Supreme said: **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 said: And each soul will be recompensed for all its actions [TMQ 16:111].

Accountability (takleef) came in a decisive manner so a Muslim is accountable in a decisive manner to restrict himself to the *Shar'a* rules when he undertakes any action. As for the subject of accountability i.e. the thing which Allah made him accountable for by command to do (*talab*), to leave or making it optional, this can be obligatory, recommended or allowed, or it can be prohibited or disliked. As for the essence of accountability (*nafs at-takleef*), 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 earthly life. As for knowing what is in excess of the *Shari'ah* rules with which he is bound in this life, this is a collective obligation not an individual duty i.e. if some undertake/fulfil this, then it falls away from the rest. This is strengthened by what was narrated by Anas bin Malik who said: The Messenger of Allah (SAW) said: "*Seeking knowledge is obligatory upon every Muslim.*" Even though what is meant here is every knowledge with which a Muslim is bound in his life, jurisprudence (*fiqh*) is part of it in respect of the rules with which a Muslim is bound in his life such as ritual worships (*ibadat*), social transactions (*mu'amalat*) etc. Hence studying *fiqh* is among the compulsory matters for Muslims; rather it is of the rules that Allah obliged upon them, whether it is an individual or collective duty. There have come noble ahadith encouraging the studying of *fiqh* and verily the Messenger (SAW) encouraged the study of *fiqh*. Al-Bukhari narrated through Mu'awiyya bin Abu Sufyan: The Messenger of Allah (SAW) said: "*The one for whom Allah wills good (khayr), He grants him fiqh in the deen.*" Said bin al-Musayyab narrated from Abu Hurayra who said: The Messenger of Allah (SAW) said: "*The one for whom Allah wills good, He grants him fiqh in the deen*" (narrated by Bin Majah). Hazzam bin Hakeem narrated from his uncle from the Messenger of Allah (SAW) who said: "*You are in a time of many jurisprudents (fuqaha), few speakers/lecturers, many who give and few who ask; so action in this time is better than knowledge. There will soon come a time of few jurisprudents, 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 said: "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."

[NAMADHIJ] OF FIQH

The Sahabah (ra) were Arabs and the Arabic language was their (*saleeqa*), and they were scholars with a precise and comprehensive understanding of the Arabic tongue. They used to accompany the Messenger of Allah (SAW) with the Qur'an being revealed while they were with the Messenger. The Messenger would clarify the rule of Allah in the incident before their eyes and hearing, so they were also scholars of the *Shari'ah* with a comprehensive understanding of it. When an incident/occurrence (*waqi'ah*) occurred before them requiring a clarification (*bayan*) of the rule of Allah, they would elucidate/clarify its *Shari'ah* rule (*hukm shar'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 (*shafi'u*) it with evidence or clarify the legislative reason ('*illah*) for the rule or the evidence for the legislative reason.

This led to the speculation (*eeham*) that this opinion is from the Sahabah and that it is allowed for a person to give his opinion in a matter/issue (*qadhiya*) as long as his mind is full of Islam and knowledgeable in Arabic.

When the periods came in which corruption (*fasad*) happened upon the Arabic tongue, principles of Arabic came to be taught in order to preserve/protect the tongue. And when falsehood (*tassarraba*) in the narrators, and there were ahadith narrated from the Messenger which he (SAW) never said, the hadith became a specific expertise (*fann*) taught with its principles (*usul*). Therefore, deducing rules came to require knowledge of the Arabic language and *Shari'ah* texts such that the *Shari'ah* rule came to be accompanied by evidence and even the way of deduction

(*istidlal*). Fiqh developed a new existence (*takawwan*) in research resulting in a specific type of arrangement in (*tabweeb*). With the different styles of (*tabweeb*) and arrangement, it became necessary to clarify the *Shari'ah* rule together with clarifying the rule as well as clarifying the way of deduction where the rule is one with different opinions. Islamic libraries (*maktaba*) were (*'umira*) with hundred of thousands of fiqh writings in the chapter and (*'urudh*) (*matnu'a*) styles. However, when the *kuffar* succeeded in invading Muslims after the 18th century CE, they began misleading (*ghilt*) 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 (*khur'u*) of flies. Islamic fiqh was placed in a black (*itar*) until 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 (*iqbal*) to study fiqh by offering a model (*namadhij*) of Islamic fiqh to influence/affect the taste (*shuq*) for studying it. It is beneficial to offer people a model of *Shari'ah* rules relating to general/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 (*bayyinat*) such that they become a clear/explicit fiqh model (*Surah*) in order to incite the taste for studying Islamic fiqh in the well-recognised major (*umuhat*) fiqh books.

THE KHILAFAH

The Khilafah is the general/overall leadership (*riyah aammah*) 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 sound (*saheeh*) 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/undertaking of any obligation that Allah obliged upon Muslims, is an inevitable matter without choice/option or (*hawada*) in it. Negligence in performing it is one of the worst sins for which Allah punishes the strictest punishment.

The evidence for establishing the Khilafah upon all Muslims (come from): The Book, Sunnah and Ijma as-Sahabah.

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

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:

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 an evidence which limits the speech to him. In this case there is no such evidence, so the address is to all Muslims to establish the rule (*hukm*). The establishment of the Khaleefah does not mean other than the establishment of the rule and the authority (*sultan*). Moreover, Allah (swt) made it obligatory upon Muslims to obey those in authority (*ulu al-amr*) i.e. the ruler, which indicates that the existence of the one in authority (*waliyy al-amr*) is obligatory upon Muslims. Allah (swt) said:

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 those who do 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 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 him will result in

neglecting the *Shari'ah* rule. Thus his existence is obligatory as the result of the failure to establish him is of the prohibited matters i.e. the neglect of the *Shari'ah* rule.

As for the Sunnah, Nafi'a reported saying: (Abdullah) bin 'Umar said to me that he heard the Prophet (saw) saying: "*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 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 Khaleefah. The Prophet (saw) made it obligatory upon every Muslim to have on his neck a *bay'ah* to a Khaleefah, yet he did not make it an obligation upon every Muslim to give *bay'ah* to a Khaleefah. The duty is the existence of a *bay'ah* on the neck of every eligible Muslim i.e. the existence of a Khaleefah who accordingly deserves a *bay'ah* upon the neck of every Muslim. So it is the presence of the Khaleefah 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 an evidence that the appointment of the Khaleefah 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 from the Prophet (saw) who said: "*Behold, the Imam is but a shield from behind whom the people fight and by whom they protect themselves.*" And Muslim reported from Abu Hazim who said: "*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: "*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 ahadith, the Prophet (saw) informs us that leaders will run the affairs of Muslims, and they include the description of the Khaleefah 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 shar'i* will be neglected, then this command is decisive. In these ahadith 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 Khaleefah and to fight those who dispute his authority as Khaleefah, which indicates an order to appoint a Khaleefah and to protect his Khilafah by fighting against whosoever disputes with him. Muslim reported that the Prophet (saw) said: "*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 an evidence that this command is decisive in maintaining the presence of one Khaleefah.

As for the Ijma of the Sahabah they all agreed upon the necessity to establish a successor or Khaleefah 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 of the Sahabah to establish a Khaleefah 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 were obliged to engage themselves in preparing the burial of the Prophet (saw), instead some of them engaged themselves in appointing a Khaleefah 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 to engage themselves in appointing a Khaleefah rather than to bury the dead. This could not be legitimate unless the appointment of a Khaleefah is more obligatory than the burial of the dead. Also, all the Sahabah agreed throughout their lives upon the obligation of appointing a Khaleefah. Although they disagreed upon the person to elect as a Khaleefah, they never disagreed upon the appointment of a Khaleefah, neither when the Prophet (saw) died, nor when any of the *Khulafaa ar-Rashidun* died. Therefore the Ijma of the Sahabah is a clear and strong evidence that the appointment of a Khaleefah is obligatory.

However, 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 ‘*what is necessary to accomplish a wajib (duty) is itself a wajib*’.. So the establishment of a Khaleefah 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 Khaleefah who takes the charge of the rule and the authority is compulsory upon Muslims in order to implement the *Shari’ah* laws not merely for the sake of rule and authority in themselves. Reflect upon what Muslim narrated of his saying (SAW) via ‘Afw bin Malik: “*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 Khaleefah 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 Khaleefah.

To refrain from establishing a Khaleefah 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 Khaleefah for all Muslims. And if they all agreed to remain without a Khaleefah the sin would befall all Muslims in all inhabited regions (entire world). However, if some of the Muslims embarked on working to establish a Khaleefah and the others did not, the sin will drop from the shoulders of those who started to work to establish the Khaleefah though the *fard* remains upon them until the Khaleefah 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 Khaleefah until the appointment of a new Khaleefah, 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 (*ithm*) and deserve the punishment of Allah (swt) in this life and the hereafter. Their deserving of sin due to their refraining from establishing the Khaleefah, or performing the actions which (according to *Shari'ah*) establish the Khaleefah, 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 case 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 Khaleefah nor removing the sin due to this abstention. Whoever studies these ahadith carefully finds them related to the matter of adhering to the *deen* rather than permission to refrain from establishing a Khaleefah for Muslims. For example, Al-Bukhari narrated about Bisir bin Ubaydullah al-Hadhrami that he heard Abu Idrees al-Khoolani say that he heard Hudhayfah bin al-Yaman saying: *"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) orders 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 abandon/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 Khaleefah, 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 Khaleefah. 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 about Abu Said al-Khudri, who said: “*The Messenger of Allah (saw) said: The best wealth of the Muslim is imminent to be sheep with which he follows the summits of mountains and the rain falls to save his deen from the 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 Khaleefah 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 separating 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 Khaleefah 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 (*hurumat*) 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 Establish a Khaleefah

The time limit given for Muslims to establish a Khaleefah is two nights. So no Muslim is allowed to stay for more than two nights without having a *bay'ah* on his neck. Making the upper limit as two nights is due to the fact that appointment of a Khaleefah is *fard* from the moment the previous Khaleefah 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 Khaleefah, the matter is examined. If the Muslims were busy in establishing a Khaleefah but could not complete it within two nights due to overwhelming matters they cannot resist, then the sin will drop from them because they are engaged in establishing the duty and they are forced to delay it by compelling power. The Prophet (saw) said: “*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 would all be sinful until the Khaleefah is established and at that time the *fard* will drop from them. But the sin they committed in neglecting the establishment of a Khaleefah 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 nights time limit given to Muslims to perform the duty of establishing a Khaleefah, it is the Ijma of the Sahabah. The Sahabah started to meet 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 that they might give the *bay’ah*. This took two nights and three days. In addition, when ‘Umar 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 Khaleefah. He recommended that if after the three days an agreement was not be reached about a Khaleefah then the dissenter should be killed after the aforementioned three days. ‘Umar also empowered fifty Muslims to carry out this action i.e. to kill the dissenter, despite the fact they were of the *shura* people and of the eminent Sahabah. This order was given in front of the Sahabah, and no one was reported to deny or disagree with it, so it becomes Ijma of the Sahabah that Muslims are not permitted to stay without a Khaleefah for more than two nights and three days, and the Ijma of the Sahabah is a legitimate *Shari’ah* evidence (*daleel*) like the Qur’an and Sunnah of the Messenger of Allah (saw).

Contracting the Khilafah

The Khilafah is a contract of consent and selection, 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 Khaleefah 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 Khilafah is a contract of consent and selection 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 a contract *bay'ah* on 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 Khaleefah the *bay'ah* becomes an 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. And in the Khilafah, no person can be a Khaleefah unless he is appointed in this post as a Khilafah.

Thereupon, it is clear that nobody becomes a Khaleefah unless the Muslims appoint him in this post, and he cannot have the authority of Khilafah unless he is contracted to it. And this contract can only be implemented by two parties - the first is the one who asked for the Khilafah and the second is the Muslims who accepted him as their Khaleefah. 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 Khaleefah even if he declared himself a Khaleefah 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 Khaleefah by such *bay'ah*, because the *bay'ah* by force is illegal. And Khilafah cannot be convened with it, since it is a contract of consent and selection 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 Khaleefah the moment he was given the *bay'ah* by consent and choice, though 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 agreed upon. In the *bay'ah* of Abu Bakr it was sufficient from *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 was not sought, they were not even asked. It was the same case in the *bay'ah* of 'Umar. As for the *bay'ah* of 'Uthman, 'Abdurrahman bin 'Auf took the opinion of Muslims in Madinah and did not confine it to the people of influence as Abu Bakr did when he nominated 'Umar. At the time of 'Ali it was sufficed with the *bay'ah* of the majority of the people of Madinah and Kufa, and he was singled with *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 any other person than him, and did not object to his *bay'ah*.. Rather they demanded revenge for the blood of

‘Uthman, so their case was considered as rebels who avenged a matter from the Khaleefah and he had to explain it for them and fight them, but they did not form another Khilafah.

All this happened i.e. giving the *bay’ah* to the Khaleefah from the people of the capital only without the rest of the regions, in front of the Sahabah, 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 Khaleefah 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 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 the whole 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 Khaleefah that is being replaced by another, as was the case at the time of *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 was convened to the Khaleefah, that is a *bay’ah* of submission to the Khaleefah, not a *bay’ah* of contract to establish the Khilafah.

This would be the case if there were a Khaleefah who died or was deposed and it is required to establish a Khaleefah in his place. But if there is no Khaleefah at all, and it became obligatory upon Muslims to appoint for themselves a Khaleefah 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 Khaleefah and thereby establish a Khilafah. So if one country of the Islamic world appointed a Khaleefah, 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 Khaleefah 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 Khaleefah 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 Khaleefah 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 Khaleefah.

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 Khaleefah it becomes a duty upon all Muslims to rally under its banner and to give *bay'ah* to the Khaleefah, otherwise they would be sinful before Allah (swt). The elected Khaleefah must invite them to give him *bay'ah* and if they refused they would be considered as rebels whom the Khaleefah must fight until they submit to his authority. If another Khaleefah in the same or a different country is elected after the first Khaleefah who had the Khilafah convened to him legally by satisfying the four aforementioned conditions, then the Muslims must fight the second Khaleefah until he makes *bay'ah* to the first one. The evidence on this matter is what 'Abdullah bin 'Amr bin al-'As narrated, that he heard the Prophet (saw) saying: *"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) strike the neck of the latter."* And also because the Khaleefah of Muslims is the one who unites the Muslims under the banner of Islam. So if the Khaleefah is found the Muslim community would be found and it becomes obligatory upon Muslims to join this community and *haram* upon them to dissociate themselves from it. Bin 'Abbas reported that the Prophet (saw) said: *"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 handspan and dies, he dies the death of jahiliyyah."* Muslim reported from ibn 'Abbas from the Prophet (saw) who said: *"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 handspan, and dies upon that, dies the death of jahiliyyah."* The indication from these two hadiths 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 and the Sunnah of the Messenger of Allah and it requires belief in Islam, the Book and the Sunnah. Non-Muslims are not allowed to be involved in ruling nor to elect the ruler because they have no authority over Muslims and have no place in the *bay'ah*.

The 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: *"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 Khaleefah, and not by the Khaleefah 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 said: *"We made a bay'ah to the Prophet (saw) to hear and to obey in whatever pleases and displeases us, and we should not dispute the authority of those who have been entrusted with it, and that we stand for or speak the truth wherever we are without fearing the blame of any blamer for the sake*

of Allah.” Al-Bukhari reported from Ayyub from Hafsa from Umm ‘Atiyyah who said: *“We gave a bay’ah to the Prophet (saw) and then he read to us that we should not associate anything to Allah and to prohibited us from weeping, upon which a woman amongst us withdrew her hand and said: A woman pleased me and I want to reward (repay) her. He said nothing, so she went and then returned.”* And in Al-Bukhari from Abu Hurairah who said: The Prophet (saw) said: *“(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: *“When we gave a bay’ah to the Prophet (saw) to hear and obey, he would say to us: As much as you are able..”* Jareer bin ‘Abdullah said: *“I gave a bay’ah to the Prophet (saw) to hear and obey and he instructed me: As much as you are able, and to advise every Muslim.”* Al-Bukhari narrated from Junada bin Abu Umayyah who said: *“We entered the house of ‘Ubadah bin as-Samit while he was ill and we said: May Allah make you a good person, talk to us of a hadith you heard from the Prophet (saw) and with which Allah benefits you. He said: The Prophet (saw) invited us and we gave him our bay’ah. He said in that which he obliged upon us to hear and obey in whatever pleases and displeases us, in our 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 bawah) upon which you have a clear proof from Allah.”*

The bay’ah for the Khaleefah is in the hands of the Muslims, and it is their right; it is they who give bay’ah, and it is their bay’ah which makes the Khilafah established for a Khaleefah. The bay’ah can be by shaking hand or by writing. ‘Abdullah bin Dinar narrated saying: *“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: *“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 and the Sunnah of His Prophet by the Khaleefah, 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 Khaleefah). Whenever the one who pledges has given his bay’ah to the Khaleefah or the Khilafah is contracted to the Khaleefah 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 As for the Khilafah contract until he gave it, and once he gave it he must abide by it. If he wanted to retract from it he would not be allowed to do so. Al-Bukhari narrated about Jabir bin ‘Abdullah 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 refused, and the man left. The Prophet (saw) then said: *Madinah is like the bellow which repels its impurities and purifies its goodness.*” And from Nafi‘a who said: Ibn ‘Umar said to me that he heard the Prophet (saw) saying: “*Whoever withdraws his hand from the obedience will meet Allah on the Day of Resurrection without having any proof for himself.*” To break the *bay'ah* of the Khaleefah is withdrawing of one’s hand from the obedience of Allah. This is the case if his *bay'ah* to the Khaleefah is a *bay'ah* of contract or it is a *bay'ah* of obedience to a Khaleefah whom the Muslims accepted and gave their *bay'ah* to. However, if he gave his *bay'ah* in the beginning to a Khaleefah and it was not completed because the Muslims as a whole did not accept him as Khaleefah, then he has the right to withdraw from that *bay'ah*.. So the prohibition mentioned in the hadith is focused on the withdrawal of a *bay'ah* to a Khaleefah, not to a man for whom the Khilafah was not accomplished.

The Conditions of the Khaleefah

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

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

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 with ‘*Lan*’ (never) which is an indication of permanence is a connotation (*qareenah*) for the decisive prohibition to the disbeliever taking charge of any ruling whatsoever, whether it was the Khilafah or anything less than that.

2. *He must be male.* So the Khaleefah is not permitted to be a female i.e. he must be a man and it is invalid for the Khaleefah 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: “*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 of the forms of request. And since this information included information of a rebuke to 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 the Khilafah and 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 talked 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 Khaleefah is not allowed to be a youth due to what was narrated from ‘Ali bin Abu Talib that the Prophet (saw) said: “*The pen is raised from the sleeping person until he awakes and the youth until he reaches puberty, and the mentally disabled until he recovers sanity.*” So whosoever has the pen lifted from him is not in a position to conduct his affairs and legally he is not charged; so it is not correct (*la yusah*) for him to be a Khaleefah or in any ruling position lower than that, because he does not have the right of disposal. Another evidence for the illegality of the Khaleefah 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 Khaleefah, then it is of greater reason that he is not allowed to be a Khaleefah.

4. *He must be sane*. It is incorrect for him to be insane due to the Messenger of Allah (saw)’s statement: “*The pen is raised from three...*” and he said among them (is) “*...the insane until he regains his sanity.*” The one who has the pen lifted from him is not accountable, this is because the mind is the *manatt* of accountability and a condition for the legality of disposition. The Khaleefah 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*. Thus it is invalid for him to be an evildoer (*fasiq*). Justice is an essential condition for contracting the Khilafah and its continuation, because Allah (swt) made it a condition for the witness to be just. Allah (swt) said:

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 Khaleefah since the Khaleefah is 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 possess the rule over the people.

7. *He must be capable to undertake the burdens of the Khilafah:* This is because this is of the requirements of the *bay'ah* so the *bay'ah* to one incapable (*'ajiz*) to undertake the burdens of the Khilafah is invalid.

These are the conditions of contracting the Khaleefah to the Khaleefah. Anything other than these seven conditions are not suitable to be a contracting condition though it may be a condition 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 Khilafah that the Khaleefah must be a *mujtahid* because there was no sound text on the matter, and also because the duty of the Khaleefah is to rule and he does not necessarily need to make *ijtihad* since he can inquire about the *hukm*, follow a *mujtahid* and adopt laws according to the opinion of that *mutjahid*. It is therefore not necessary for him to be a *mujtahid*, although it is preferable; but if he were not a *mutjahid*, the Khilafah would still be contracted to him. Also it is not a contracting condition to the Khilafah that the Khaleefah 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 Khaleefah be brave and of deep insight and vision.

Also it is not a contracting condition to the Khilafah that the Khaleefah must be of Quraish. As for what reported from Mu'awiya was that he said: I heard the Messenger of Allah (saw) saying: *"This matter is in Quraish. None will dispute with them while they establish the deen except that*

Allah will drag him on his face” (Al-Bukhari). And it was narrated from ibn ‘Umar that he said: The Prophet (saw) said: *“This matter will remain in Quraish as long as there are even two of them existing.”* These ahadith and others which were correctly/soundly ascribed to the Prophet (saw) about making the Khilafah to Quraish came in an informative form, and not a single one of them came in the command form. The informative form, 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 confirmation/emphasis (*tawkeed*) in any sound narration. So these ahadith 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 *“None will dispute with them except that Allah will drag him on his face”* this is another meaning in prohibiting their enmity and not a confirmation to his saying *“this matter is in the Quraish.”* The hadith states that the matter is in the Quraish, and that their enmity 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 (*laqb*). 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/perception (*la mafhum lahu*). Therefore the statement about Quraish does not mean that it cannot be in other than Quraish. So the saying of the Prophet (saw) *“this matter is in Quraish”* and *“this matter will remain in Quraish”* does not mean that it is illegal for the Khaleefah to be from other than Quraish nor (does the saying) that the leadership 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 Khaleefah to be in 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, Zaid bin Haritha, and Usama bin Zaid, and all of them were not from Quraish. Thus the Messenger gave leadership to people other than 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 an evidence that ruling is not restricted to them and not prevented from people other than them. So these ahadith stated some of the people who are eligible for the Khilafah to indicate their preference, not to restrict the Khilafah to them and to prevent its contracting to people other than them. Also, Al-Bukhari narrated that the Messenger of Allah (SAW) said: *“Listen and obey even if an Ethiopian slave whose head is like a raisin (zabeebah) was appointed over you.”* And Muslim narrated from Abu Dharr who said: *“My beloved (SAW) advised me to hear and obey even if he were a slave whose limbs are mutilated”* and in another narration: *“Even if a mutilated black slave who led you by the Book of Allah was appointed over you, listen to him and obey.”* These ahadith 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 Quraysh, rather not even Arabs. So the ahadith have stated upon the preference of some of those who are of the people of the Khilafah, not the restriction of the Khilafah to them nor the impossibility of contracting other than them.

Accordingly, it is not a condition that the Khaleefah must be Hashemite or Alawite (from the family of ‘Ali) because it was confirmed that the Prophet (saw) has given the ruling to people other than Banu Hashim, and Banu ‘Ali. When he left for Tabuk he appointed Muhammad bin

Maslamah as ruler over Madinah, and he was not a Hashemite or Alawite. He also appointed Mu'adh bin Jabal and 'Amr bin al-'As 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 from the Sahabah, including 'Ali and ibn 'Abbas and the rest of the Hashemites, that it is allowed for the Khaleefah to be non-Hashemite or non-Alawite. As for the ahadith 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 Khaleefah 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 Khaleefah is the fulfillment of the conditions of contracting the Khilafah. Other than that, Muslims are informed about the candidates for the Khilafah so as to decide the best of them. But any person chosen whom they chose 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

Seeking the Khilafah and contending for it is allowed to all Muslims, and it is not *makruh*.. No text was reported to prohibit 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 persons 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 of the Sahabah indicates that the contending for 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 *imarah* (leadership) mentioned in the ahadith, this is a prohibition for weak persons who are not fit for it like Abu Dharr. However, those who are fit for the *imarah* are allowed to ask for it. 'Amr bin al-'As asked for it and the Prophet (saw) appointed him as a *wali*. So the

reported ahadith are specific for those who are not qualified for it, whether it was an *imarah* or Khilafah. As for those who are fit for it, the Prophet (saw) did not prohibit them 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 are not up to the task not an absolute prohibition.

The Unity of the Khilafah

It is not allowed to have more than one Khaleefah in the world because ‘Abdullah bin ‘Amru bin al-‘As narrated that he heard the Messenger of Allah (saw) say: *“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 Saïd al-Khudri narrated that the Messenger of Allah (saw) said: *“If a pledge is taken to two Khaleefahs, kill the latter among them.”* And ‘Arfaja said that he heard the Messenger of Allah (saw) say: *“If someone comes to you when you are united over one man and wants to break your strength and divide your unity, kill him.”* Abu Hazim also narrated that he accompanied Abu Hurairah for five years and heard him narrate about the Messenger of Allah (saw) saying: *“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 Khilafah was established for two Khaleefahs in two countries at the same time, it would not be valid for either of them because Muslims are not allowed to have two Khaleefahs. 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 Khaleefah, not to make a race for it. Also it is the right of all Muslims, not the right for the Khaleefah, so the matter must go back again to the Muslims to establish one Khaleefah in case when they had established two Khaleefahs. It is incorrect to suggest a ballot between them because 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) *“fulfill the bay’ah one by one”* because this is the case if a pledge is given to Khulafaa when there exists a Khaleefah; 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 Khaleefahs when the majority of the influential people elected two Khaleefahs 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 Khaleefah 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 Muslims will fight him because the Khilafah is contracted by the pledge of the majority of the Muslims. He thus becomes a Khaleefah 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 lie the affairs of ruling, are usually found in the capital because that is where the highest affairs of ruling are conducted. So if the residents of a province or provinces elected another Khaleefah and the pledge of the one that is in the capital came 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 Khaleefah 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 Khaleefah, even if this leads to fighting against the one who did not have the Khilafah contracted to him.

Succession or Covenant (*Istikhlaf aw Al-‘Ahd*)

The Khilafah is not contracted by appointing a successor or heir, because it is a contract between the Muslims and the Khaleefah. 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 Khaleefah, by the existing Khaleefah, 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 Khaleefah, and they contract it to whom they wish. So the appointment of the next Khaleefah or recommending him by the existing Khaleefah 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 Khaleefah cannot appoint another Khaleefah 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 appointed ‘Umar, and ‘Umar appointed the six persons from the Sahabah, and that the Sahabah have agreed on that and they did not challenge this action and thus it was an Ijma from them; this does not indicate that the appointment of a successor is legal. This is because Abu Bakr did not appoint a Khaleefah, rather he consulted the Muslims about who might be Khaleefah for them and he nominated ‘Ali and ‘Umar. Then the Muslims through three months during the life of Abu Bakr, chose ‘Umar by their majority. Then after the death of Abu Bakr, the people came and gave their pledge to ‘Umar, and hence the Khilafah was contracted to ‘Umar. But before the pledge ‘Umar was not a Khaleefah and the Khilafah was not established to him, neither by the nomination of Abu Bakr nor by the selection of him 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, it was a nomination to them by him upon the request of the Muslims. Then ‘Abdurrahman bin ‘Auf consulted the Muslims about whom they wanted from the six people. The majority wanted ‘Ali if he adhered to the practices of Abu Bakr and ‘Umar, otherwise they wanted ‘Uthman. When ‘Ali rejected to adhere to the practices of Abu Bakr and ‘Umar, ‘Abdurrahman bin ‘Auf gave the pledge to ‘Uthman and the people gave their pledge. So the Khilafah was contracted to ‘Uthman by the pledge given to him by the people, not by the nomination of ‘Umar 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 Khaleefah, and it is not allowed to occur by appointing a successor or a 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 Khaleefah

When the *Shari’ah* made it obligatory upon the Ummah to appoint a Khaleefah, it defined also the method by which the Khaleefah is appointed. This method is proven by the Qur’an, the Sunnah and the Ijma of the Sahabah, and this method is the *bay’ah*.. So the appointment of the

Khaleefah is carried out by the *bay'ah* to him. 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:

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 givea them the bay'ah [TMQ 60:12]

Allah (swt) also said:

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 who said: *“We pledged ourselves to the Messenger of Allah to listen and obey in whatever pleases and displeases us, and that we should not dispute the authority of those who had been entrusted with it, and to stand for or say the truth wherever we are, fearing no blame of anybody for the sake of Allah.”* Al-Bukhari reported: Aly bin Abdullah related to us that Abdullah bin Yazeed related to us that Said (who is bin al-Musayyib) who said: Abu ‘Aqeel Zahrah bin Ma’bad related 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: *“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 who said: The Messenger of Allah (saw) said: *“(There are) three persons to whom Allah will not talk to 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 denies it to the wayfarer; and 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.”* From these three ahadith it is explicit that the *bay‘ah* is the method of appointing the Khaleefah. The hadith of ‘Ubadah states that he gave *bay‘ah* to the Prophet 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 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 ahadith which refer to giving *bay‘ah* to the *Imam*. It is reported in Muslim via Abdullah bin ‘Amru that the Prophet (saw) said: *“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 comes to dispute with him, strike the neck of the other”*. Also Muslim from Abu Said al-Khudri who said: The Prophet (saw) said: *“If a bay‘ah is given to two Khaleefahs kill the latter of them.”* And Muslim narrated that Abu Hazim who said: “I accompanied Abu Hurairah for five years and heard him narrate from the Prophet (saw) 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: 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 Book and the Sunnah are clear that the method of appointing the Khaleefah is the *bay‘ah*. All the Sahabah understood this and followed it. So Abu Bakr was given a special *bay‘ah* in the courtyard of Banu Sa‘ida, and a public *bay‘ah* in the mosque, then 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. ‘Umar was given a *bay‘ah* from the Muslims, ‘Uthman also was given *bay‘ah* from the Muslims and ‘Ali was given a *bay‘ah* from the Muslims as well. So the *bay‘ah* is the only method to appoint a Khaleefah 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, ‘Umar,

‘Uthman and ‘Ali. And all of the Sahabah 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 wellbeing of Muslims and maintaining 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, Abu ‘Ubaydah, ‘Umar and Abu Bakr only, and as a result of the debate Abu Bakr 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 became a Khaleefah for the Muslims. When Abu Bakr felt that his illness was fatal he called upon the Muslims to consult them about who would become the next Khaleefah. The opinion in these consultations focused on ‘Ali and ‘Umar 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 would be the Khaleefah after him. Immediately after his death Muslims came to the mosque and gave the *bay’ah* of Khilafah to ‘Umar so he became Khaleefah by this *bay’ah* from the Muslims not by the consultations nor by the announcement by Abu Bakr. When ‘Umar was stabbed, the Muslims asked him to appoint a successor for him but he refused. They insisted, so he left it among six of the Sahabah. Then after his death, the nominees appointed one of them, ‘Abdurrahman bin ‘Auf, as a representative. He referred to the opinion of the Muslims and consulted them. Then he declared the *bay’ah* to ‘Uthman. The Muslims stood up and gave their pledge to ‘Uthman, and thereby he became a Khaleefah by the pledge of the Muslims and not by the announcement of ‘Abdurrahman. Later on ‘Uthman was killed and the majority of Muslims in Madinah and Kufa gave their *bay’ah* to ‘Ali bin Abu Talib, so he too became a Khaleefah 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 pledge, and the rest of the nominees are also asked to give him their *bay’ah* as well. So in the courtyard of Banu Sa‘idah the debate was about Sa‘d, Abu ‘Ubaydah, ‘Umar and Abu Bakr, then Abu Bakr 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 discussed with the Muslims about ‘Ali and ‘Umar then he declared the name of ‘Umar, who was then given the *bay’ah*. ‘Umar suggested the Khaleefah to be from among the six people. After referring to the Muslims, ‘Abdurrahman bin ‘Auf declared the name of ‘Uthman who was then given the *bay’ah*. And ‘Ali was given the *bay’ah* immediately, as the situation was one of riot, and it was known that no nominee was equivalent to him in the opinion of Muslims when ‘Uthman was killed. Thus the matter of *bay’ah* proceeds after debate to establish suitable candidates then one of them is elected as a Khaleefah, and then the *bay’ah* is taken for him from the people. Although this matter was evident in the consultations made for Abu Bakr, it is very clear in the case of the *bay’ah* given to ‘Uthman. 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 met and consulted. Abdurrahman bin ‘Auf said to them: *“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 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 after the Muslims had asked him to do so. 'Abdurrahman bin 'Auf, after he withdrew himself from the nomination to the Khilafah, took the opinion of the Muslims about who would be the Khaleefah. 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 Khaleefah by this *bay'ah*. Therefore the *hukm shari'* concerning the appointment of the Khaleefah 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 Khaleefah for all. Then it is determined whom the majority of the Muslims have chosen, and the *bay'ah* from all Muslims is taken for him, whether each person had specifically chosen him or not. This is the method because of the Ijma of the Sahabah about 'Umar limiting the nominees for the Khilafah to six specific persons, and the consensus of the Sahabah that 'Abdurrahman takes the opinion of all the Muslims about who will be Khaleefah for them, and consensus to give the *bay'ah* to the one who 'Abdurrahman announced as the person elected by Muslims as a Khaleefah is clear when he said: "*I viewed the matter of the people and did not see them compare anyone with 'Uthman.*" All of these points clarify the *hukm shari'* concerning the appointment of the Khaleefah.

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

As for the first issue, Allah (swt), has given the authority to the Ummah and made the appointment of the Khaleefah a right and duty for all Muslims; and He did not make it a right of 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: "*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 Khaleefah 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 *munafiqeen* (hypocrites), providing 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* (collective duty) and not *fard ain* (individual duty). 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 Khaleefah, regardless of whether they use their right or not. In other words, every Muslim must be able to participate in selecting the Khaleefah. So the issue is to enable the Muslims to carry out the duty of establishing the Khaleefah 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) prescribed is to establish the Khaleefah for 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 Muslims in establishment of the Khaleefah 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 regard to the first matter, no condition is set concerning a specific number required to appoint the Khaleefah. Rather any number of Muslims can give their *bay'ah* to the Khaleefah and in this *bay'ah* the consent of 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 Khaleefah becomes a Khaleefah for all the Muslims. He will legally be the Khaleefah even if only three people appointed him, because collectivity is achieved by carrying out the appointment of the Khaleefah. The consent is achieved by their silence and through obedience or anything similar, on condition that this is accomplished by unfettered choice and wholly enabling the expression of opinions fully. However, if the consent of all the Muslims was not achieved, then the appointment of the Khaleefah 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 Khaleefah 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 Khilafah. Therefore, it is not the pledge of the influential people which establishes the Khaleefah, nor is their pledge a condition for the legality of the appointment of the Khaleefah. Rather the pledge of the influential people is an 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 Khaleefah is fulfilled completes the appointment of the Khaleefah, and the appointment of the Khaleefah by this pledge would be legal.

Accordingly the *Shari'ah* rule is to establish the Khaleefah by any gathering whose appointment of the Khaleefah 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 of only 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 with 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 Khaleefah if the Khilafah exists, or those by whom the Islamic State's establishment is accomplished and the Khilafah contracted, in case the Islamic State was not established. They are the ones who stood to create it (the Khilafah) 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 (*kharijeen*) 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 (*kharaaja*) 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 pledge of contracting and their consent is considered a condition to ensure the legal appointment of the Khaleefah 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 (*manat*) 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 in 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 the Khaleefah by Muslims is the *Shari'ah* rule, and that this appointment should be by consent and selection 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 selection are fulfilled? These (matters) are referred to as the subject of the law i.e. the subject which the law came to treat/solve. The application of the *Shari'ah* rule upon the subject is the achievement of the law. Therefore, it is needed to study the *manat* which the *Shari'ah* rule came to treat by explaining its reality.

It is incorrect to say that the *manat* of the law is the '*illah* (reason) of the law so it would necessarily need a *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 *manat* of the law is the subject for which the law came i.e. the question upon which the law applies, not its evidence nor its '*illah*. What is meant by its being the subject with which the law is (*neeta*) 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 (*mu'allil*), and this is an understanding of what is conveyed and it is not the *manat*. The *manat* is other than 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 *wudu* is the absolute/unrestricted (*mutlaq*) water then the *Shari'ah* rule is that the *mutlaq* water is the one which is allowed for *wudu*. So the verification that the water is unrestricted or restricted in order to judge upon it as allowed for *wudu*, 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 *wudu* for the prayer, then the verification that the person is *muhdath* or not *muhdath* 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 *mujtahid* has to be knowledgeable and *mujtahid* 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 said the unrestricted (*mutlaq*) water is that with which *wudu* 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 *muhdath* has to make *wudu*, then the verification that the person is *muhdath* 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 *mujtahid* or a Muslim, but it is enough that s/he 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, separating/distributing (*faraza*) 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 (*'ibad*) nor the subject upon which the *Shari'ah* rule applies. Rather they are the means of the human action to which the *Shari'ah* rule came i.e. the action which the speech of the Lawgiver (Allah) is related to; which in this instance, is the establishment of the Khaleefah 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*.. 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 Khaleefah by consent and selection, then Muslims are allowed to use it unless there came a *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 (*khass*). 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 a 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 Khaleefah by consent and selection. 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 principle: "*Originally 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 SPECIFY/DESIGNATE A SPECIFIC PERSON FOR THE KHILAFAH

The opinion/view that the Messenger (SAW) designated/specified a specific person to be Khaleefah after him contradicts the *Shari'ah* texts. And the statement that the Messenger (AS) designated 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 designated the Khilafah to anyone after him, this is apparent in numerous ways:

First: This contradicts the pledge (*bay'ah*) since designating a person means informing Muslims who will be the Khaleefah over them. Hence the Khaleefah would be known so there would remain no need for legislating (*tashri'*) the pledge as the pledge is the method of appointing the Khaleefah. 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 someone say that the pledge is the giving of obedience to this Khaleefah as the *Shar'a* has stated/enunciated (*nassa*) the obedience to the Khaleefah 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 giving leadership (*riyasa*) to the one who is pledged and preparing to submit (*inqiyad*) to this leadership. So making the pledge a condition for appointing the Khilafah contradicts the Messenger designating a specific person to be Khaleefah after him. Moreover, the words of the pledge which came in the correct (*Saheeh*) ahadith came generally (*'aama*) without specification (*takhsees*), 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: “*He who dies without a pledge on his neck,*” “*Whoever pledges an Imam,*” and “*A man who pledges an Imam.*” The opinion that the Messenger designated a specific person to become Khaleefah after him contradicts and invalidates the generality and unrestricted nature of the pledge. One should not say that this means that the pledge is the very way (*'ayn*) of appointing the Khaleefah while the appointment of the Khaleefah is not the pledge so it is inevitable to first appoint the Khaleefah then pledge him; one should not say this because the pledge being the method of appointing the Khaleefah does not mean that it is exactly the same as his appointment. Nor should one say that it is required (*la budda*) to first appoint the Khaleefah and know his appointment before giving him the pledge as this would mean there is another method for appointing the Khaleefah such that the pledge is merely giving him obedience, whereas the ahadith on the pledge all indicate that it is the method to appoint the Khaleefah and there is no other way. Consider his statement (AS): “*Whoever dies without a pledge on his neck*”; it is quite explicit in meaning that whoever dies without appointing his Imam via the pledge nor does it mean in any way whoever dies without obeying an Imam. This indicates that in this hadith the Prophet means the method of appointing the Khaleefah nor does it mean mere obedience. Also consider his (AS) statement: “*When the pledge is given to two Khaleefahs, kill the latter*”; this is explicit that if two Khaleefahs are appointed, kill the later of them.

Likewise all ahadith of the Prophet are explicit that it is the method of appointing the Khaleefah. The ahadith of the Prophet are explicit in not meaning mere obedience or unrestricted (*mutlaq*)

obedience; rather, they mean submission/following the one appointed as the Khaleefah with their meaning that this is the method of appointing the Khaleefah. Above all this, there has not been authenticated even one hadith, whether in narration or meaning, which demonstrates any method of appointing the Khaleefah other than the pledge.

Second: Ahadith have come from the Messenger (SAW) indicating that there will be disputes and contentions among people about the Khilafah and competition over it. If there were a text from the Messenger upon a (specific) person, there would not arise a dispute in the presence of that text or the Messenger would state that people would dispute with that person. Whereas the texts came saying that people would dispute between themselves and clarifying the method to open (fadh) this dispute and decide/settle the issue of the Khilafah. Muslim narrated in his *Saheeh*: Wahab bin Baqiyyat al-Wasiti narrated to me that Khalid bin Abdullah al-Juzairi told us from Abu Nadhra from Abu Said al-Khudri who said: The Messenger of Allah (SAW) said: *“If the pledge is given to two Khaleefahs, kill the latter of them.”* Muslim also said in his *Saheeh*: 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-‘As 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 collective prayer. So we all gathered before the Messenger of Allah (SAW) who said: *“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 *Saheeh*: Muhammad bin Bashir 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: *“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 *Saheeh*: 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: *“Whoever finds you will all your affair united in 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 each can contend for it. This contradicts the (saying that) the Messenger designated a specific person to be Khaleefah after him.

Third: The ahadith which came with the word Imam by meaning of Khaleefah came with this word in unspecified (*nakira*); and when it came specified (*ma’rifa*), it either came specified with “the” (“al”) of the species (*jins*) or related to a collective noun (*jam’u*). In the (*amkina*) which came specified with “al”, it was the “al” of species by evidence of the sentence. The Messenger said: *“Whoever pledges an Imam”, “...stood against an unjust Imam”, “there will be Imams after me.”* And he said: *“The Imam is the one who is a shepherd/guardian (ra’i) over the people and he is responsible for his citizens”, “Verily the Imam is a shield from behind whom they fight and by whom they are protected”* and he said: *“...to the Imam of the Muslims”, “The best of your*

Imams”, “...*the worst of your Imams.*” All this indicates that the Messenger (SAW) left vague (abham) who would be the Khaleefah after him without specifying him. This is explicit in its indication that the Messenger 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 for a specific person.

Fourth: The Sahabah (RA) differed in their time upon the persons to be the Khaleefah among them. This difference upon persons is an evidence that the Messenger 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 and Ali. Despite their differences, none of them ever argued that there was a text from the Messenger that the Khilafah is for him nor did any of the Sahabah argue that there was a text for certain persons 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 one 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. They are the ones who conveyed the Qur’an, and narrated the hadith, to us. So if there is no text—any text—from the Sahabah, 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 Khaleefah after the Messenger, we find all the Sahabah without exception—including Abu Bakr and Ali—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 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 of the Messenger of Allah.

Fifth: There have come explicit texts that the Messenger (SAW) did not appoint a Khaleefah by the meaning that a specific person will be Khaleefah after him. Al-Bukhari narrated from Abdullah bin Umar (RA) who said: It was said to Umar, will you not appoint a Khaleefah? He said: “*If I appoint a Khilafah, verily one better than me did appoint a Khaleefah 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: “*Verily Allah ‘azza wa jalla will preserve the deen. If I do not appoint a Khaleefah, 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 did not appoint a Khaleefah. Nor should one say that this is Umar’s opinion for when a companion says, ‘The Messenger 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, and Ali (RA) was present and this statement reached him without him opposing it, which indicates their agreement upon what Umar 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 to become Khaleefah after him whereas others are brought to indicate that he appointed Ali as Khaleefah after him. We must present them and explain their contents.

As for the texts brought by those who say the Messenger appointed Abu Bakr, they are divided into two: One portion in which the Messenger (SAW) praises Abu Bakr wherein there is nothing to indicate that the Messenger appointed him. The other portion is one wherein some deduce by deduction (*instinbat*) that the Messenger appointed Abu Bakr while others deduce that he nominated (*rashaha*) Abu Bakr. 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 Said al-Khudri that the Prophet (SAW) said: *“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 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/barricaded 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 as Khaleefah. All that it contains is praise for Abu Bakr from the Messenger, and the Messenger (SAW) praised many companions by name. There have come ahadith with praise for Umar, Uthman, Ali, Sa’d bin Abu Waqqas, Talha, Az-Zubayr, Abu ‘Ubaydah bin al-Jarrah, Al-Hassan and Al-Hussein (RA), Zayd bin Haritha, Usama bin Zayd, Abdullah bin Ja’far, Khadija, Aisha, Fatima daughter of the Prophet (AS), Umm Salamah, Bilal and others. Praise by itself does not in any way whatsoever indicate appointment to be Khaleefah (*istikhlaf*).

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

First: Al-Bukhari narrated from Al-Qasim bin Muhammad who said: *“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 (athkuliya). 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 wished/intended (hamamtu) to send for Abu Bakr and his son so as to give him a pledge/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 in this wording from her: The Messenger of Allah (SAW) said to me in his illness: *“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: *“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 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: *“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, the mother of the believers, *“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: *“I heard Aisha being asked: Whom would the Messenger of Allah (SAW) have appointed as Khaleefah 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 appointing Abu Bakr as Khaleefah. The first hadith is rejected for two reasons: The first is that the Messenger said: *“I wished or intended”* but he did not do so, so this is not an evidence. For the evidence is the Messenger’s saying, action or silent consent; anything other than these is not considered a *Shari’ah* evidence. Secondly, Aisha is Abu Bakr’s daughter so were this hadith present she would have informed Abu Bakr. Then he would have argued with it when he went to the courtyard (*sageefa*) to debate/contend (*yunaqish*) with the Ansar when they gathered to pledge allegiance to a Khaleefah amongst them. Therefore this hadith is rejected (*mardud*) and is unsuitable to be an evidence for the appointment of Abu Bakr as Khaleefah.

As for the second hadith, it does not indicate the appointment of Abu Bakr as Khaleefah because the woman said: *“If I did not find you”*; so it is correct/accurate 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 if she came and did not find him is no proof/indication (*dalalat*) for the appointment of Abu Bakr as Khaleefah after the Messenger. Even if we were compelled to take her as meaning death, these words still would not designate Abu Bakr as Khaleefah after him.

As for the third hadith, this is the appointment over prayer and nothing else. Appointment over prayer does not mean appointment in ruling/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 vast (*shas’i*) 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 (*khususiyya*) of the text.

As for the fourth hadith, it is not considered a hadith as it does not relate anything from the Messenger; rather it is Aisha’s opinion. The Sahaba’s opinion is not a proof nor considered a *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 ahadith presented by those who argue for Abu Bakr’s appointment as Khaleefah. As for the ahadith presented by those who say the Messenger appointed Ali, they are of three categories: A category in which the Messenger praised our master Ali (RA), a category in which some have deduced that the Messenger appointed Ali, and a category in which those

who accept the authenticity of the text (muhtajeen) have a clear text that the Messenger appointed Ali as Khaleefah.

As for the first category in which the Messenger praised Ali, we will present a model of them by mentioning some of the ahadith with the remainder not exceeding the meaning of praise.

Al-Bukhari narrated from Sahl bin S'ad (RA) *“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 (yadukuna) which one of them it would be given to. When people woke up, they all (ghadaw) 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 painning/injured. O Messenger of Allah. He said: Send to him to come to me. When he came, he (basiqa) in his eyes and prayed for him. He was cured as if he had never had (waji'a), and he gave him the flag.”* Muslim narrated this hadith from Abu Hurayra with the words: *“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 longed/wished for leadership except for that day. He said: (fatusawarat) for it hoping they 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 (manaqib) of Ali (RA) that the Messenger of Allah (SAW) said to Ali: *“You are of me and I am of you.”* Muslim narrated from 'Amir bin S'ad bin Abi Waqqas from his father who said: Muawiyah bin Abu Sufyan commanded S'ad saying: What has prevented you from insulting Abu Turab? 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 one of them is more beloved to me than red milch camels (n'um?). The Messenger of Allah (SAW) left him behind in some of his war expeditions, so Ali 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: *“Are you not pleased to be in the same status (manzalat) 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: *‘I will give the flag to a man who loves Allah and His Messenger, and whom Allah and His Messenger love. He said: (fatutwawulina) for it and he said: “Call for me Ali, so he was brought (urmida). He (busiqa) in his eyes and gave him the flag, and Allah conquered through him.’* And when this verse was revealed: Say: **Come and let us call our sons and your sons** [TMQ], the Messenger of Allah (SAW) called Ali, Fatima, Hassan and Husain and said: *‘O Allah, this is my family.’* Muslim narrated from Sahl bin S'ad who said: A man from the family of Marwan was appointed (as ruler) over Madinah. He said: He called Sahl bin S'ad and commanded him to insult Ali. He said: Sahl refused, so it was said to him: If you refuse, then say: Allah curse Abu Turab. Sahl said: Ali has no name more beloved to me than Abu Turab, even though 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, so he said: The Messenger of Allah (SAW) came to Fatima's house and did not find him in the house, so he said: *“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 (yaqila) before me. So the Messenger of Allah said to someone: “Go find out where he is.”* He came back and said: *O Messenger of Allah, he is (raqid) in the mosque. So the Messenger of Allah (SAW) came to him while he was reclining (mudhtaji'u). His cloak had fallen from his (shaqq) and mud/dirt (turab) had touched him, so the Messenger of Allah (SAW) began wiping it off him while saying: “Stand/wake up, O Abu Turab.”* Muslim narrated from 'Adiyy bin Thabit from Dharr who said:

Ali said: *“By the One who cleaves (falaqa) the grain (habbat) and (baraa nismat), it is the pledge of the unlettered (‘umiyy) Prophet (SAW) to me that none will love me except the believer and none will hate me except the hypocrite.”* There is nothing in these ahadith to make someone say that the Messenger appointed Ali to be Khaleefah after him. The hadith of Khayber is praise from the Messenger of Allah. The Messenger’s statement to Ali: *“You are of me and I am of you”* is praise from the Messenger of Allah. As for the hadith of S’ad in which came: *“Are you not pleased to have the status before me of Harun to Musa”*, we will discuss in the second category of this topic (mawdhu’). In it is also the hadith of Khayber which is praise, and in it is that Ali, Fatima, Hassan and Husain are his family which is praise, and the hadith of Sahl bin S’ad is praise. Just like the Messenger of Allah (SAW) praised Ali, he also praised others among his Sahabah. The Messenger’s praise for a person does not in any way indicate his appointment.

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

1- Al-Bukhari narrated from Mus’ab bin S’ad from his father *“that the Messenger of Allah (SAW) left for Tabuk and appointed Ali, so he said: Do you leave me behind together 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 from his father who said: The Messenger of Allah (SAW) said to Ali: *“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: *“Are you not pleased to have the same status before me as Harun before Musa.”* Bin Ishaq narrated by saying: The Messenger of Allah (SAW) left behind Ali bin Abi Talib to look after and supervise his family. They hypocrites (arjif bihi) and said: He did not leave him behind except (istithqal) and to make it easy (takhaffuf) for him. When the hypocrites said that, Ali bin Abi Talib (RA) took his weapons and left/moved out until he met the Messenger of Allah (SAW) who was encamped at Al-Jarf and said: O Prophet of Allah, the hypocrites claimed that you left me behind because (istathqaltanee) and to make it easy for me. He said: *“They lied, rather I left you behind due to what I left behind me so return and supervise on my behalf my family and your family. 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: O Ali, verily it is allowed for you in the mosque what is allowed for me, and your status before me is that of Harun to 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. 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: ‘*As for what follows, verily O people I am but a man who (yuwshakk) that the messenger of my Lord will reach me and I will respond. I leave behind for you two weighty things (thaqalayn), the first of which is the Book of Allah wherein is guidance and light. Take the Book of Allah and restrict yourselves to it. He exhorted upon the Book of Allah and (raghiba) to it, then said: And the people of my house (ahl baitee). I remind you of Allah regarding the people of my house, I remind you of Allah regarding the people of my house, I remind you of Allah regarding the people of my house.*’ Husain said to him: and who are the people of his house, O Zayd? Are his wives not of his house? He said: His wives are of his house, but the people of his house are those to whom *sadaqa* is prohibited after him. He said: Who are they? He said: The family of Ali, the family of ‘Aqeel, the family of Ja’far, and the family of ‘Abbas. He said: Is *sadaqa* prohibited to all of them? He 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 who said: The Messenger of Allah (SAW) spoke at Ghadeer Khum underneath trees and said: “*O people, (yuwshakk) that I am called and I respond. Verily, I am responsible/accountable (mas’ool) 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 (mawla) 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 (faratakum) and you will (warid) me at the Cistern (hawdth), a cistern wider than the distance from Basra to Sana’a. In it is (qidah) of silver the number of stars. Verily I will ask you when you come before me on the two weighty things (thaqalayn), 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), the people of my house (ahl baitee). Verily the (lateef khabeer) has informed me that they will never (yanqadhiya) until they come before me at the cistern” (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 returning to Madinah, together with the mentioned group(s) of people, he reached Ghadeer Khum in Al-Jahfa where (*tatasha’ab*) the roads of the people of Madinah, Egypt and Iraq. This was the 15th day of Dhul-Hijja and Jibril, the trustworthy, descended to him from Allah with His saying: ‘**O Messenger, deliver what was revealed to you from your Lord**’ [TMQ 5:] and He commanded him to cause Ali to stand to let the people know and convey/inform that which was revealed regarding his patronage (*wilayah*) and the obligation of obedience upon every one. The first of the people were close to Al-Jahfa so the Messenger of Allah commanded those who had preceded to return and enclosed those who had delayed at that place, and he prohibited people from encamping beneath the five large close (*samarat dowhat*). When the people took camp and those

underneath them (the trees) stood until the *dhuhr* prayer was announced, he headed for them and prayed beneath them. It was a (*hajira*) 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 in the (*aqtab*) of a camel with everyone hearing (*rafi'a 'aqeeratihi*), and he said: *'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 nor 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 (lateef) All-Knowing has informed me that He does not grant longevity to a Prophet except half the like of the one before him. Verily I (uwshakk) 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 (farata) to the cistern and you will be presented at the cistern, whose breadth is that between Sana'a and Basra, before me. In it is the (aqdah) of silver 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 ('utra). Verily the (lateef) All-Knowing informed me that they will never separate until they reach(?) the cistern and I asked that from my Lord. So do not precede them or neglect them or you will perish. Then he took the hand of Ali and raised it until the armpits was seen such that 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 (dar). Verily, let the witness who is present the (one who is) absent.'"*

3. Those who say that the Messenger clearly announced the Khilafah of Ali narrated ahadith in their books. As for these ahadith, we will not make the place of research in them their narrations, despite the fact that the two shaikhs—Al-Bukhari and Muslim—did not narrate them, nor were they narrated via trustworthy narrators and most of them are among the fabricated ahadith. We will not make their narrations the place of research such that they say that these ahadith 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. Verily we will not make that the place of research; rather we will make the matter of research the texts themselves as they came in their narrations. These are the texts from which they deduced that the Messenger

appointed Ali to be Khaleefah after him—and these ahadith are known as the ahadith of “*wilayah*”—which we will (*nuwrid*) a section of them with the rest being of the same meaning and even of the same wording.

- a) Abu Dawud At-Tayalisi narrated from ‘bin Abbas that the Messenger of Allah (SAW) said to Ali bin Abi Talib: “*You are the waliyy of all believers after me.*”
- b) It came 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 over them. He chose for himself a slave girl from the fifth (*khums*) 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, do you not see that Ali did such and such, and he 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 (*yabsiru*) in his face and said: “*What do you want for me with regard to Ali? Verily Ali is of me and I am of him, and he is the waliyy of every believer after me.*”
- c) And in a long hadith from ‘Amru bin Maymun from ‘bin Abbas who said: The Messenger of Allah (SAW) sent so and so with Surah At-Tawbah. He then sent Ali after him to take it from him and said: “*No one should go with it except a man who is of me and I am of him.*”
- d) In *Kanz al-’Ammal* from Wahhab bin Hamza who said: I travelled with Ali and I saw (*jiffa*) from him, so I said that when I return I will complain about it. So I returned and mentioned Ali to the Messenger of Allah (SAW) (*faniltu minhu*) and he said: “*Do not say this of Ali, as he is your waliyy after me.*”
- e) In *Kanz al-’Ammal* from ‘bin Abbas who said: The Messenger of Allah (SAW) said: “*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 waliyy after me.*”
- f) In *Muntakhab al-Kanz* from Zayyad bin Mutarrif who said: I heard the Messenger of Allah (SAW) saying: “*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: “*I (awsiyy) whoever believes in me and trusts in 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 (*marfu*): “*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 ahadith narrated by those who say that the Messenger openly declared the Khilafah of Ali. These ahadith have not been narrated by any trustworthy person and most of them are fabricated ahadith. 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 ahadith contain the

brotherhood of the Messenger with Ali, and making him the heir (*al-warith*) after him. We present a section of them with the remainder being of the same meaning and even of the same wording.

a) The Prophet (SAW) established a brotherhood (*akha*) between the Muhajirin and chose Ali for himself. In what came of the hadith of the first brotherhood (*muakhat*), “so Ali said: O Messenger of Allah, verily my soul left me and my backbone broke when I saw you do what you did with your companions other than me. So if this is due to anger upon me, then for you is (*‘atba*) and graciousness. The Messenger of Allah (SAW) said: *By the One who sent me with truth, I only left you for myself. Your 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 the Prophets inherited 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 and any of the Ansar; rather he chose him for himself. In what came of the hadith of the second brotherhood “*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 before me of the status of Harun to Musa 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 asked him and he said: “*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 leader of women (*zafata*) her like with the leader of the (*‘utra*), the Prophet (SAW) said: “*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 spoke to him one day regarding a judgement (*qadhiya*) between him, his brother Ja’far and Zayd bin Haritha, saying: “*As for you, O Ali, (you are) my brother, the father of my son, and of me and to me.*”

d) The Messenger (SAW) promised to Ali one day saying: “*You are my brother and my wazeer. You will repay my debts, fulfill my commitments and (tubriu dhimmatee).*”

3) In *Kanz al-’Ammal*, he (SAW) said: “*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 made him (Ali) of the status of Harun to Musa, the text that he left the Book of Allah and His (*‘utra*), the text of *wilayah*, and the text of brotherhood, are the texts from which some Muslims deduced that the Messenger (SAW) appointed Ali i.e. made him the Khaleefah after him. Let us take them text by text:

As for the first text, which is the text which made Ali of the status of Harun to Musa before the Messenger, its meaning is clarified though studying the (*maqam*) in which it was said and studying its wording. As for the (*maqam*), the Messenger said this hadith on the day of the battle of Tabuk. Therein the Messenger (SAW) appointed in Madinah in his place Muhammad bin Maslamah to supervise the Muslims’ affairs and administer the rule (*hukm*), and appointed our master Ali (RA) over his family and commanded him to supervise them. The hypocrites (*arjafa bihi*) and said: He did not leave him behind except (*istithqal lahu*) and to make it easy from him (*takhaffuf minhu*). 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: “*O Prophet of Allah, the hypocrites claimed that you left me behind because you found me a burden and wished to make*

yourself light without me. He 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 before 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 making Ali the same status before the Messenger as Harun before Musa concern appointing him over his (SAW) family by the evidence of Ali's own statement: *"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 (AS) appointed Muhammad bin Maslamah as ruler in his place and specified Ali to supervise over his family when he said to him, *"my family and your family."* Moreover, the Messenger's appointment of one of his companions over the rule when he left for battle does not mean that this appointed person is the Khaleefah 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 over Madinah, in the battle Banu Lahyan he appointed bin Umm Maktum over Madinah, and so on. The appointment by the Messenger 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), *"Are you not pleased to be before me of the status of Harun before Musa?"* the meaning of its words are: Are you not pleased that there is for you, in what you supervise/are appointed over, what Harun supervised for Musa. It is the resemblance (*tashbeeh*) of Ali with Harun with the way of resemblance being the appointment i.e. your similitude in my appointing you (or leaving you behind) is that of Harun when Musa appointed him. This is the meaning of the words of the hadith nor do these words have any other meaning/intention (*murad*). This meaning is specified and becomes the only meaning due to Ali's saying to the Messenger: *"Do you leave me behind with children and women?"* with the Messenger's statement: *"Are you not pleased to be before me of the status of Harun to Musa?"* coming in response to this question of Ali and as a rejoinder to his statement. To understand what is meant by this hadith one must return to the Glorious Qur'an to see within in the (*mawduh*) of Musa's appointing Harun to see what it is. Returning to the Glorious Qur'an, we find that this tale (*qisa*) is mentioned in the Qur'an in the following text: **"We"** [TMQ]. 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 (*khatir*) as he came displeased by this appointment, and at the same time it informs Ali 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: *"Except that there is no Prophet after me"*, this negates the resemblance of Prophethood because Harun was a Prophet so he was a Prophet taking the place of another Prophet when he was absent. So the Messenger excluded Prophethood to remove any fancy/imagination that he is of the same status in Prophethood. Nor should one say that his statement, *"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 (*khalifa*) 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. 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 arise the issue of appointment after death as it did not exist in Harun and Musa, who are those with whom resemblance is made (*mushabbih bihi*), thus in does not exist in the Prophet and Ali who are the resemblers.

This is the hadith’s meaning nore does it contain any indication to appointment over the Khilafah nore can it be understood in any way that the Messenger intended by this hadith to clearly state and make Ali Khaleefah over the Muslims after the Messenger’s death. The hadith (*warid*) relates to the appointment of Ali over the Messenger’s family during his absence due to the battle of Tabuk. As for the remaining narrations which came in this hadith i.e. his saying (AS): “*Are you not please to be before me of the status of Harun to 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 andt 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 words alone separated from the incident which does not mean that it is an incident (*haditha*) 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 (*muhil shahid*). Even if we accept that the hadith was not only over the incident of Tabuk but was said in Tabuk and other times, then this would mean that the Messenger 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 Khilafah after the Messenger’s death. All that the explanation of the hadith’s word and meaning indicate is: Are you not please that I appoint you over my family during my absence and whenever I am absent just like Harun supervised for Musa during his absence, except that Harun is 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: “*Are you not pleased that you become before me of the status of Harun to Musa except that there is no Prophet after me*” i.e. after my Prophethood. This is the similitude with which the Messenger compared Ali 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 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 (*qayd*) in the incident of Tabuk i.e. the family. Rather, they do not mention any restriction at all thus we measure/carry (*tahmilu*) 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 (*mutlaq*) upon the restricted (*muqayyad*). Nor should one say that the other narrations are general as the words of the hadith are not of the general words as the texts of all the narrations whether the narration: “*Are you not pleased?*” or the narration: “*Verily you*” or the naration: “*You*” and the similar which is of the (*mathabat*) 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: **“Give me an assistant (*wazeer*) from my family. My brother Harun...and associate him in my affair”** [TMQ]. There is no place for them in relation to the status of Harun to Musa nor the appointment as it is a prayer from Musa 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 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 that, these matters are not (*mubayyina*) to the status of Musa to Harun; rather (*al-mubayyin*) 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 (*wujud*) for assistance and association in the Prophethood in the statement of the Messenger: *“of the status of Harun to Musa”* rather the meaning is restricted to the appointment over the people nor do the texts 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: **“You and your Lord go and fight”** [TMQ 5:], 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/force and the authority (*sultan*) or that he was a ruler over them. Those who ruled Banu Israil with the *Shari'ah* of Musa was not Musa himself or in his lifetime, rather it was those Prophet who came after him like Dawud, Sulayman and other kings (*muluk*). As for Musa's leadership over the armies, it never occurred. The *ayat* 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 requested his people to enter the Holy Land. They refused and said to him that there are a giant people (*jabbar*) 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 (*tahu*) for forty years in the wilderness (*ardh*). As for the revelation of the *Shari'ah* to Musa with solutions and punishments, this does not mean that Musa ruled with them; 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 (*tahuw*) in the wilderness nor did they (*istiqrar*) in Musa's time until his period ended. After their punishment with (*at-teeh*) 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 *ayat* in which Harun was appointed are explicit that it was an appointment on behalf of Musa in Prophethood when Musa went to (*yultaqa*) from Allah, which is in Surah Al-'Araf from *ayah* 141: **“We...”** to the end of *ayah* 155: **“And Musa chose from his people seventy men”**. All of them are related to the Prophethood and appointment in it, (*tilqa alwah*), Banu Israil taking (*al-'ajl*) and the like; there is nothing within them with the slightest relationship to rule and authority. It is not possible to suspect (*yashtabihu*) that it is related with

the rule and authority, so there is no (*shubha*) that Musa was a ruler and he never appointed Harun in the rule at all.

This is the meaning of all the revealed ahadith whether they came with a cause (*sabab*) like the incident of Tabuk or without any cause, which indicate that the Messenger made Ali 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 appointment of Ali, Ali became before the Messenger of the status of Harun to Musa. There is no indication in these ahadith that the Messenger stated that Ali would become the Khaleefah 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 (*yukarrimuhum*), to honour and not to annoy (*adha*) them. There is no indication within it that the Messenger 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 (*mawla*) by his statement: "*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 the doing of good to his ('*utra*) by saying: "*And my ('utra), the people of my house, for verily the (lateef khabeer) informed me that they will never (qadhiya) until they arrive (yaridaa) at the cistern.*" There is nothing other than these two matters in all these ahadith, despite all their number and differing narrations. As for the first matter, which is the friendship (*muwalat*), we shall discuss it during the discussion upon the ahadith 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 ('*utra*), the people of his house, by being gracious to them, honouring and not annoying/harming them as they will be questioned about them. Also that the family of the house and the Book of Allah will remain linked (*muqtarineen*) until the Day of Judgement. There exists nothing in this ahadith—the ahadith of Ghadeer Khum—more than advising Muslims to do good to his ('*utra*); there is nothing within it indicating the appointment of Ali, 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 statement according to all previous narrations narrated in the hadith of Ghadeer Khum: "*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: "*Verily I have left for you two weighty matters, the Book of Allah ta'ala and my ('utra)*" or "*Verily I leave for you two weighty things, the Book of Allah and my ('utra), the family of my house*" or: "*Be careful how you take my place over the two matters*" or: "*Do not (tuqaddimu) them so that you perish nor neglect them so that you perish.*" Is there more in these texts than reminding the Muslims about his ('*utra*) (AS) 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 meaning? Thus there is no evidence in the hadith of Khum for the appointment of Ali, or the people of his family, over the Khilafah; so deducing through it fails/falls (*tusqat*).

As for the third text, which are the ahadith of (*wilayah*), these ahadith by these words were not narrated by the two Shaikhs Al-Bukhari and Muslim. Moreover, even if these ahadith 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 "the waliyy of every believer after me", "your waliyy after me", "you are the waliyy of every believer after me", "the waliyy of the believers after me", "verily he is your waliyy after me", "let him take Ali as waliyy after me", "let him take Ali and his descendants as waliyy after me", "whoever takes him as waliyy has taken me as waliyy", "verily his wilayah is my wilayah", "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-mawla* 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: "O Allah, be a waliyy for those who take him as waliyy, and be an enemy for those who oppose him/take him as an enemy." The meaning here is their support and that they be with him and bear alliance/friendship (*al-wala*) and love for them. The word "waliyy" and "tawallaa" have come in the Qur'an. Allah ta'ala said: "He **yatawallaa the righteous (as-saliheen)**" [TMQ] and: "And whoever **yatawalla Allah and His Messenger and the believers, verily the party of Allah are the victorious**" [TMQ] and: "Verily your only **waliyy is Allah and His Messenger and those who believe**" [TMQ] and: "His (Satan) only authority is over those who take him as **waliyy**" [TMQ] and: "Allah is the **waliyy of the believers**" [TMQ] and: "They do not have against Him any **waliyy**" [TMQ] and: "And whoever takes Satan as his **waliyy**" [TMQ] and: "Do not take the Jews and Christians as **awliya**" [TMQ] and: "Verily We have ordained for his **waliyy a way**" [TMQ] and: "Verily my **waliyy is Allah**" [TMQ] and: "That is because Allah is the **waliyy of those whose believe and the disbelievers had no waliyy**" [TMQ]. In the (Arabic) language: the friend (*al-waliyy*) is opposite to the enemy (*al-aduww*) so it is said: He took him as a friend (*tawallaahu*). The "mawla" is the supporter (*an-nasir*) and the (*as-sayyid*). Friendship/alliance (*muwalat*) is opposite to enmity (*mu'adat*). And the *waliyy*: One who takes care of affairs of the minor (*as-sagheer*) like the father and grandfather. The *waliyy* of the marriage contract (*nikah*), the properties and the orphan is the one who supervises/takes care of the affair and (*yaqumu bi kifalatihi*). In the *Mu'jam Lisan al-'Arab* (an Arabic dictionary): "*Al-waliyy* is among the names of Allah ta'ala who is the Helper/Supporter (*An-Nasir*) and it is said the One in Charge (*Al-Mutawalli*) of the affairs of the universe and all creatures, the Supervisor (*Al-Qaim*) over them." And it said: "The *waliyy* 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. All of this is not the meaning of the rule (*hukm*) and authority (*sultan*). Even the interpreters of this hadith who say that it is a clear text (*nass*) for the Khilafah of Ali are unable to come with any clear meaning in the language that the word "mawla" means the rule and authority linguistically. For example, Shaikh 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 (*multahid 'an al-bakhui*) that "mawla" came with the meaning of the foremost/more suitable in something even if

we condescend that that is one of its meaning and that linguistically it is a word with several meanings (*mushtarak*)." The word "*mawla*" came with twenty seven meanings without mentioning the rule and authority among them. He said: After we know of the meanings of "*mawla*" which reach up to twenty seven meanings, it is not possible that it means in the hadith except 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 to 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 (*mutassarif*) in the matter 27) The one in charge (*mutawalli*) of the matter." These are the meaning which came and not even one clear meaning came for the word "*mawla*" to denote rule and authority. Thus when he interpreted this meaning in relation the hadith, he reached one of its meanings which he chose and said: "Verily that which we consider (*nartayahu*) in this specific place after researching in the (*ghimar*) of the language, the (*majami' al-'adab*) and the (*jawami'*) of Arabic is that the reality of the meaning of "*al-mawla*" cannot be but the foremost/most suitable in something which collect these meanings collectively and is taken from each one of them with a manner (*naw'*) of attention." So it apparent/clear from this that the word did not come with the meaning of ruler and that "*al-muwalat*" 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 ahadith taken that the "*waliyy*" and "*muwalat*" means giving the Khilafah to Ali and his family? When we follow those who deduced by these ahadith 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 link/relate the word "*waliyy*" with the word "*amr*", then its meaning becomes the ruler and it is said "*waliyy al-amr*". In the ahadith which they call the ahadith 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 from the ahadith.

It is true that the word "*wilayah*" alone—not the words "*mawla*" or "*waliyy*" or "*muwalat*"—is a word with many meanings (*mushtarak*) including help/support (*nusra*) and authority i.e. the rule. In the ahadith 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 one friend (*tawalla*) which is indicated by the hadith's text. Its text, according to what is narrated by those who use it as evidence, is: "*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/help (*nusra*) as the Messenger requested whoever believes in him to support/befriend (*yatawalla*) Ali because whoever supports him supports the Messenger and whoever supports the Messenger supports Allah. This is the meaning of the word "*wilayah*" and that is why it came expressed in "*fa*": "*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 ahadith which came (saying) that Ali is the "*waliyy*" of every believer after the Messenger and their

“*mawla*”, and that they must give him “*muwalat*” and befriend him because his “*wilayah*” is the “*wilayah*”, all these ahadith—according to the language and Qur’anic texts—cannot possibly be taken (as meaning) taking charge of the rule (*tawalla al-hukm*) whether in respect to the meaning of the word or its position in the sentence(s) which came in the aforementioned ahadith. So they are not evidence that the Messenger appointed Ali to the Khilafah after him thus they arguing with them fails.

Here we must take note of two issues. First among the two is that fact that the word is conjugated from a specific article (*mada*) 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 (*wudhi’a*) 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 (*ata*) and the meaning of “*aja’a*” is to give refuge to (*alja’a*). “*An-nadhwa*” with a “*kasra*” on the “*nun*” means emaciated camel, whereas with a “*dhumma*” on the “*nun*” it means (*khalq*) garment. As for the word “*mawla*”, it does not mean that because of its meanings is the agent (*mutassarif*), and the one in charge (*mutawalli*), 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 (*ishtiqaq*). The “*mawla*” differs in meaning from “*waliyy al-amr*” just like the agent and one in charge of the affair differs in meaning from “*waliyy al-amr*.” “*Waliyy 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 (*tawqeefiyya*) according to what the Arabs placed for the word, not what someone may understand from a collection of words or various indications (*madlulat*). 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 that contextual connotations (*qarain*) in general, however they may be, 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 (*mushtarak*) word or (antonym?) for the word, and divert (*tusarrifu*) it from another, but it does not create a new meaning for this word which the Arabs did not place for it. That the word “*mawla*” came in the hadith called the hadith of two weighty matters (*thaqalayn*) or the hadith of Khum, and there came connotations in the sentence(s) indicating encouragement to Muslims to (*itibar*) based upon their (*itibar*) of the Messenger, does not give it a new meaning that Ali becomes the ruler after the Messenger, as long as the language did not place for it this meaning. From this becomes clear that the hadith of Khum and others which came with the words “*mawla*” and “*waliyy*” cannot lead to the deduction that Ali is the Khaleefah 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 its sentence and words will lead to not using it as evidence. The texts which came upon this are: “*You are my brother and inheritor*”, “*my brother and paternal uncle’s son*”, “*my brother and father of my son*”, “*from me and to me*”, “*my brother and assistant (wazeer) who repays my debts, fulfills my promise and (tubria dhimmatee)*”, “*Ali is the brother of the Messenger of*

Allah.” All of these are words and sentences from which one cannot possibly deduce the appointment (*istikhlaf*) 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 expresses the extreme closeness of Ali to him by calling 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 (*amr 'aam*) nor does it relate to the rule or Khilafah. Even if we insist that Ali is the Messenger’s (*shafeeq*) brother or his son, this does not indicate its meaning to be that he is the Khaleefah after him. His statement to Ali that: “*You are my brother or son or assistant*” or other similar things has 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 promised Ali the Khilafah after him, and accordingly they fall down as evidence.

As for the third type in which came clear texts(s) that the Messenger appointed Ali to become Khaleefah 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 (*ad-dar*). 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 (*wasiyy*) and Khaleefah” and then mentioned another later narration which he ascribed to At-Tabari which came with the words “my heir and Khaleefah” explicitly. So he—Shaikh Abd al-Husain Ahmad Al-Amini An-Najafi, the writer of the book “*Al-Ghadeer*”—said in his book in the chapter (*'anwan*) “*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 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 the tents (*duwhat*) which were assembled. He called for the collective prayer so we gathered. He gave a (*baligha*) khutbah and said: “*Verily Allah ta’ala revealed to me: ‘Convey/Deliver what has been revealed to you from your Lord...protect you from the people’* [TMQ 5:]. *Jibril commanded me from my Lord that I stand at this witness point (mashad) and inform all white and black persons (i.e. all people) that Ali bin Abi Talib is my brother, heir, Khaleefah 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 testament/bequest (*wasiyya*), appointment and leadership (*imamah*) after the Messenger is void without any basis for many causes (*wujuh*) 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 openly/clearly (*bisata*) 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 year 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 (*murad*) of the *ayah* **“What was revealed to you”** is the message of Allah and nothing else. Moreover, whenever the word “convey/deliver (*balligh*)” comes in the Qur’an it means conveying the message of Allah nor does it come in any other meaning in the Qur’an. Allah ta’ala said: **“And they conveyed the message of Allah”** [TMQ] and: **“I convey to you the message of my Lord”** [TMQ] and: **“(Uballighoo) the message of their Lord”** [TMQ] and: **“I convey the message of my Lord”** [TMQ] and: **“I conveyed what I was sent with”** [TMQ]. Also, whenever the words **“What was revealed to you”** came in the Qur’an, the intention is the *Shari’ah* nor does it ever come with any other meaning in the Qur’an. Allah ta’ala said: **“And those who believe in what was revealed to you and what was revealed before you”** [TMQ 2:4] and: **“We believe in what was revealed to you”** [TMQ] and: **“We believed in Allah and what was revealed to us and what was revealed to Ibrahim”** [TMQ] and: **“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] and: **“Are you angry with us except that we believed in Allah and what was revealed to us and what was revealed earlier?”** [TMQ] and: **“If only they had established the Torah and Gospel and what was revealed to them from their Lord”** [TMQ] and: **“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] and: **“When they heard what was revealed to the Messenger you see their eyes flowing with tears”** [TMQ] and so all in all *ayat* of the Qur’an. As for the *ayah*: **“Convey what was revealed to you”** [TMQ 5:], in the *ayah* before and in the *ayah* after it was mentioned the words **“what was revealed (*ma unzila*)”** with one meaning i.e. the *Shari’ah* . Even the words in the following *ayah* are the same: **“what was revealed from your Lord”** [TMQ 5:]. All this goes to specify the meaning of **“what was revealed to you”** in His saying: **“Convey what was revealed to you”** [TMQ 5:] to be the Islamic *Shari’ah* . This is clear to all who follow these two words, **“convey (*balligh*)”** and **“what was revealed to you (*ma unzila*)”**, in all the *ayat* of the Qur’an.
3. The word **“revealed”** in His saying: **“what was revealed to you”** is a past participle verb built upon an unknown (*f’il madhi mubni li al-majhul*) 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 of the revelation (*wahiyy*) and revealed to the Messenger; so Allah commands the Messenger 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 (*hasil*) 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 as 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.

The word “**what (ma)**” in His saying: “**what was revealed to you**” is a (*mawsul*) noun or (*nakira maqsud*) 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 revealed to you of various matters and rules. That which would specify either of these two meanings is the contextual connotation (*qareena*) 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 that was revealed to you which is the message of Allah. 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.

4. Verily His statement ta’ala at the end of the *ayah*: “**Allah will protect you from the people. Verily Allah does not guide the disbelieving folk**” [TMQ 5:] is an assurance (*tatmeen*) from Allah to the Messenger and safety/security (*aman*) to him from the harm (*adha*) which will affect touch him as a result of delivering His 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 He will protect you from those envious of Ali in making the Khilafah for him i.e. protect you—according to their view—from Abu Bakr, Umar, Uthman 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*: “**Verily Allah will not guide the disbelieving folk**” [TMQ 5:]. So this promise from Allah to His Messenger 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 hidden/concealed (*katama*) 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 defame/denigrate (*yat’inu*) the Messenger’s 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: “**Then you would not have conveyed His message**” which negates the conveyance which means he has not delivered the message not that he has not conveyed a specific rule (*la siyyama*) the conveyance of one rule is considered conveyance of the message. From the first day, the Messenger would convey the rules according to their revelation (*munajjama*) such that the conveyance of one 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 not to 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 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 after the Treaty of Hudaibiyya. Quraysh used to be the chief enemy whom the Messenger fought with in spreading the da'wah until that time, so the treaty with them would lead one perhaps to understand the stopping of conveyance via *jihad*. So Allah commanded him to continue (*istimrar*) 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 fought the Jews at Khaybar, 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: **"Convey what was revealed to you"** and: **"Then you would not have conveyed His message"** and: **"Allah will protect you from the people"** and: **"Verily Allah will not guide the disbelieving folk"**.

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 **"And warn your nearest kinsfolk [TMQ]"** was revealed, the Messenger called Ali to prepare food and call the family of Abd al-Muttalib so Ali executed these commands. After the people had become satisfied and (*irtawu*), the Messenger (*waqafa*) before them speaking: *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 Khaleefah among you? The people (ahjam) from the da'wah 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 (ahjam) while Ali continued announcing his acceptance. So the Messenger took the (ruqba) of Ali and said to those present: This is my brother, inheritor and my Khaleefah 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 **"And warn your nearest kinsfolk"** was revealed (saying) that the Messenger 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 (*n'uridhu*) these texts first then explain what they contain.

Al-Bukhari narrated from bin ‘Abbas (RA) who said: When “**And warn your nearest kinsfolk** was revealed, the Messenger stood upon Safa and started announcing: *O Banu Fihr, O Banu Adiyy for all the (butun) of Quraysh until they gathered together. Whoever was unable to go would send a messenger to see what was happening. Abu Lahab and Quraysh came and he said: ‘If I told you there were horse(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 “**And warn your nearest kinsfolk**” [TMQ] was revealed.” This indicated that the incident of preparation of food was not on the day in which “**And warn your nearest kinsfolk**” was revealed as it does not (*tultaim*) 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 who said: The Messenger of Allah (SAW) gathered or called Banu Abd al-Muttalib in all their groups (*raht*) to eat (*jadha’a*) and drink (*gharaq*). He prepared for them (*mudd*) 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 (*ghimr*) which they drank until (*rawoo*), and the drink remained as if it had not been touched or drank. Then he (SAW) said: “*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 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.

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 ‘Ibad bin Abdullah al-Asadi from Ali who said: When the *ayah* “**And warn your nearest kinsfolk**” was revealed, the Messenger gathered the family of his house. Thirty people gathered; they ate and drank then he said to them: *‘Which one will guarantee my debts and promises so as to be with me in Paradise, and he will be my Khaleefah 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 Khaleefah does not appear in these two texts in any way at all. Rather it is only the word Khaleefah which appears restricted to his family, and the Khilafah over the family is not the Khilafah in the rank/post (*mansab*) of rule or leadership nor does it have any relationship with that. These are the texts which came in the *Saheeh* 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 (*wasiyy*) or Khilafah. There has never appeared, either via any of the compilers of the *Saheeh* (books of ahadith) or any of the trustworthy narrators, in even one hadith the word(s) inheritor of Khaleefah 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 *Saheeh* 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 through this narration in meaning. The meaning (*dirayah*) of this hadith in respect of meaning and the narration in respect of the chain. So if it is rejected in its chain or meaning then it cannot be considered and falls as evidence. As for rejecting its meaning, this is due to many reasons including:

Firstly: In this hadith it appears that the Messenger sought the assistance of the family of Abd al-Muttalib in his *da'wah* with the condition that the rule (*al-amr*) became theirs after them. This is void from two sides (*wajhayan*): firstly, this contradicts the Messenger's statement and action in the incident in which he refused the request to him of the tribe that the rule becomes theirs after him if they become Muslims so he said: "*The rule (al-amr) is for Allah, and He will place it where He wills/wishes.*" Bin Hisham narrated in his book of the Sirah of the Prophet (SAW): Bin Ishaq said that Az-Zuhri narrated that he met *Amir* bin Sa'sa'ah 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 (*fata*) of the Quraysh, I would eat (i.e. conquer) the Arabs through him. Then he said: What if we were to pledge to support your matter then Allah would grant you victory over those who oppose you. Would 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 (*nuhur*) for you, then when Allah 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 say: "*The matter (al-amr) 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: "*Which one of you will assist me upon this matter so that he may become my brother, inheritor and Khaleefah among you?*" Is this not a clear contradiction? Inevitable, 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 "**Warn your nearest kinsfolk**" [TMQ] was revealed i.e. the third year of the (*bi'tha*) and the hadith: "*The matter belongs to Allah and He places it where He wills*" occurred when the Messenger offered himself to the tribes i.e. in the tenth year after the (*bi'tha*) 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 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'wah* and the *Shari'ah* rules. The Messenger would invite people to Islam because it is the correct *deen* nor has it been narrated from him, even via a weak hadith, that he offered anything—whether small or large—to a kaffir in exchange for his entering into Islam. As for those whose hearts are to be reconciled, they are Muslims 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.

Second: The hadith mentions that the Messenger 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 nor did he prepare food for Ali the Muslim. 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 such that he (*yatasadda*) his acceptance as he is not being invited to Islam as he is a Muslim, so no speech is addressed to him. So there is no place in this gathering such that he says to him: "*This is my*

brother, inheritor and my Khaleefah among you so listen to him and obey” since he is not the (*muhil*) of the address or the negotiation.

Third: 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 say to them in addressing them: “*This is my Khaleefah 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 Khaleefah among them while they are *kuffar*?

Fourth: The narration they narrate says: “*This is my brother, inheritor and my Khaleefah among you so listen to him and obey*” which is an address to the family of Abd al-Muttalib since the words (*sadara*) with his saying “*O Banu Abd al-Muttalib.*” So it is specific to them as he made him a Khaleefah over them i.e. over the family of Abd al-Muttalib not the Khaleefah of the Muslims since he said, “*and my Khaleefah over you.*” Thus he is Khaleefah for the Muslims as is the explicit text. Nor can one say here that the lesson (*‘ibra*) is by the generality of the text not the specificity of the cause since this is a specific incident (*waqi’at ‘ayn*) not a cause (*sabab*) not mentioning that the words are also specific and not general: “*O Banu Abd al-Muttalib*”, “*my Khaleefah 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 (*dirayah*). Therefore it is clarified that the Messenger (SAW) did not explicitly state making Ali the Khaleefah after him. From all this it becomes clear that the ahadith narrated by those who argue that the Messenger (SAW) designated a person for the Khilafah after him are rejected ahadith unsuitable to depend upon as evidence so they fall. There remains no evidence that the Messenger 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 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 Khaleefah.

As for the error of the views that the Messenger designated the persons who would be *Khulafaa* after him, it is clear from the absence of evidence of the ahadith which they claim designated Ali for it. Those who say that the Khilafah is for them only say this because they are the descendants of Ali, so if their evidence falls in respect to Ali it also naturally falls in respect of his descendants due to the proof falling in respect of him. Moreover, the ahadith which they narrate in its consideration as evidence for the Khilafah of the descendants of Ali by a clear text from Allah and His Messenger are the ahadith related to the family of the house which all collect 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 falling in argument/evidence has been demonstrated clearly so the rest of the ahadith follow it.

PUBLIC/GENERAL RESPONSIBILITIES/DUTIES

The Legislator (*Ash-Shari'* i.e. Allah) limited the obligatory public 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/gentleness (*rufuq*), and that he should not be one who causes aversion/frightens away (*munafir*). The Messenger opined that the ruler must be strong, and that the weak person is not suitable to become ruler. Muslim narrated from Abu Dharr that the Messenger of Allah said: "*O Abu Dharr, I see you to be weak and I wish for you what I wish for myself. Do not be a leader over two people nor should you supervise the orphan's wealth.*" Muslim also narrated from Abu Dharr who said: "*I said: O Messenger of Allah, will you not appoint me as a governor/ruler? He said: He struck my shoulder with his hand then said: O Abu Dhari, you are weak and it is a trust (amanah). On the Day of Judgement it will be a disgrace and regret except for the one who took it by its right and fulfilled his duty in it.*" The meaning of strength (*quwwa*) here is strength of personality i.e. intellectual/mental 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 he is a ruler so he (*yusarrifu*) his inclinations (*muyul*) with the (*tasreef*) of an *Amir*. Since the personality strength has within it the potential of domination and (*tahakkum*), there is an obvious need that the ruler has an attribute which protects him from the evil of (*tahakkum*). So it is necessary that he have the attribute of *taqwa* within himself (*khasa nafsihi*) and in his taking care of the Ummah. Muslim and Ahmad from Sulayman bin Buraydah from his father: "*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 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: "**O Allah, whoever is appeared over any matter of my Ummah and is severe/hostile to them, then be severe/hostile to him! And**

whoever is appointed over any matter of my Ummah and is friendly to them, then be friendly to him!" (narrated by Muslim). He also commanded to be one who gives glad tidings (*mubasshir*) not one who repels/turns people away (*munaffir*). 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: **"Give glad tidings and do not repel people, be easy and do not be hard (to the people)"** (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/sincere friendship (*naseeha*), 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 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: **"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: **"No governor (wali) will govern Muslim citizens and is 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: **"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 from Abu Said: The Messenger of Allah (SAW) said: **"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 overall/general leader (Amir 'aam)"** (narrated by Muslim). The Messenger has clearly severely emphasised (*shaddada*) 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 (*'annafa*) to him and spoke to the public about this matter. 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: **"Why then did you not sit in the house of your father and the house of your mother until there came gifts for you if you are truthful?"** Then the Messenger of Allah (SAW) stood and spoke to the people. He praised Allah and extolled Him, then said: **"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 (*ta'wil*) 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. It gave him

the right to perform *ijtihad* in both of them, and forbade him to study/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*. The Supreme said: “*Whoever does not rule by all that Allah revealed is among the disbelievers* [TMQ 5:44] and: “*Whoever does not rule by all that Allah revealed is among the transgressors* [TMQ 5:47] and: “*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, 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 (*istinbat*) rules from both of them. It has been narrated that the Messenger (SAW) sent Mu'adh to Yemen and said to him: “**By what will judge/rule? 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) my opinion. He said: Praise be to Allah who (*wafaqa*) the messenger of the Messenger of Allah to what Allah is pleased with as is His Messenger.**” He gave the ruler a reward if he made a mistake by *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 Amru bin Al-'As that he heard the Messenger of Allah (SAW) saying: “**When the ruler judges/rules and performs *ijtihad* then gets it right (*asaba*) 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. The Supreme said addressing the Messenger: “*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 said: “*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/address to the Messenger is the address to his Ummah so this is an address to every ruler. Messenger narrated from Aisha who said: The Messenger of Allah (SAW) said: “**Whoever innovates in this matter of ours anything not of it, it is rejected**” and in another narration: “**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: “**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 (*ahdath*). You read it pure (*mahdh*) 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 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 Khaleefah 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 Khaleefah's responsibilities. Since they are obligatory upon the leader then they are obligatory upon the one bearing the greater burden (*tab'ah*) by greater reason. Moreover, there are general ahadith covering whoever oversees an affair among the Muslims' affairs, whether Khaleefah or governor. The Messenger's statement: **"There is no slave whom Allah appoints over the citizens"** and his statement: **"the greatest treachery is from the general leader"** and Allah the Supreme's statement: *"Whoever does not rule"*—all these came with general words covering the governor and covering the Khaleefah. And the address to the Messenger is the address to every ruler, whether Khaleefah or governor. Additionally, the Messenger clarified the Khaleefah's responsibility to his citizens textually in the hadith which clarified the general responsibilities (*mujmal*). Al-Bukhari narrated from Abdullah bin Umar that the Messenger of Allah (SAW) said: **"Verily each one of you is a guardian (*ra'i*) and each one of you is accountable (*mas'ul*) over his charge (*ra'iyah*). 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 Khaleefah responsible with a general responsibility over his citizens. Therefore the general responsibilities are imposed upon the Khaleefah as they are over the leader (*Amir*).

The Legislator has completely guaranteed the ruler's performance of burdens of these public responsibilities via (*tawjeeh*) and legislation. As for the (*tawjeeh*), 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 asked from Allah that He be severe to the one who is severe upon the Islamic Ummah and Allah prohibited Paradise 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 reject/denounce him if he fell short/neglected his responsibilities or sinned/went wrong (*asa'a*) 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 (*kufur bawah*), and made the one who dies in the way of denouncing the ruler the prince of martyrs. He (AS) said: **"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 and not safe from His punishment. Muslim narrated from Umm Salamah that the Messenger of Allah (SAW) said: **"There will be leaders. You will recognise and reject (some of what they do). Whoever recognises is innocent and whoever rejects is safe, but the one who is pleased and follows (is neither innocent nor safe). They said: Should we not fight them? He said: No, not as long as they prayed"** and in another narration: **"Whoever dislikes is innocent and whoever rejects is safe, but the one who is pleased and follows (is not)."** This narration explains the first narration. About his statement, **"Whoever recognises is innocent"** An-Nawawi said in his explaining this hadith: "Its meaning, and Allah knows 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 **“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 **“but the one who is pleased and follows”** i.e. pleased by their action and follows them in acting upon it is neither innocent nor safe. In this hadith the Messenger 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 any 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 innocent nor safe from sin. However this rejection is only where they went wrong (*asau*) 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 rather made the method of changing what they did, or them (the rulers), is the sword and fighting. In the hadith of Umm Salamah which was narrated by Muslim, **“They said: Should we not fight them? He said: No, not as long as they prayed”** and in the hadith of A’waf bin Malik which was narrated by Muslim, **“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: **“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: **“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 (*manshatina*) and what we dislike (*makrahina*), 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 bawah*) for which you have from Allah clear proof (*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 (*munabadha*) 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/performance of the public responsibilities.

THE ISLAMIC STATE IS A HUMAN NOT A DIVINE/THEOCRATIC STATE

The Islamic State is the Khilafah as it is the role/position (*mansab*) 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 overall/general leadership over all Muslims in the world to establish/implement all the Islamic *Shar’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 (*‘Imarah*) 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 (*yatalqa*) in it the Prophet or Messenger the *Shar'a* from Allah via the means of revelation to deliver it to the people without paying attention to his implementing it. Allah (SWT) says: **There is nothing upon the Messenger except the clear conveyance (*al-balaagh*)** [TMQ] and: **Verily it is upon you the conveyance** [TMQ] and: **There is nothing upon the Messenger except the conveyance** [TMQ]. This is different from the Khilafah which is the implementing of Allah's *Shar'a* upon human beings. It is not a condition upon the Prophet or Messenger to implement what Allah revealed to him in order to be a Messenger, rather the condition to become a Messenger or Prophet is that Allah reveals a *Shar'a* to him and commands him to convey it. Herein our master Musa, our master Isa and our master Ibrahim (AS) were Prophets and Messengers though they did not the Shariah they came with nor were they rulers. Therefore the post/role 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 commanded him to rule just like He commanded him to convey the message as He said to him: **Rule between them by what Allah revealed** [TMQ 5:47] and: **Verily We revealed the Book to you in Truth so that you rule between the people by what Allah showed you** [TMQ] just like He said to him: **O Messenger, convey what has been revealed to you from your Lord** [TMQ 5:] and: **This Qur'an has been revealed to me so that I warn you and whoever it is conveyed to** [TMQ 5:] and: **O you enshrouded in a cloak. Stand up and warn** [TMQ :]. Except that when he was undertaking/in charge of (*yatawalla*) the conveying of the message by speech like conveying the Supreme's saying: **Allah has permitted trade and forbidden *riba*** [TMQ 2:] 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 the doing of the action he would consult people and act according to the opinion of experts or the majority opinion even where it differed from his opinion, and when he would judge between people he would not (*yajzimu*) that what he judged with conformed with the reality saying he was judging according to what he heard of the proofs/evidence. When Surah *Bara'ah* was revealed, he (AS) (*ardif*) Ali bin Abi Talib to go meet Abu Talib and commanded him to announce "*Bara'ah* to the people to convey to them in the Hajj period. So he read it at Arafah and (*tafa*) the people until he had conveyed it. When he signed the Treaty of Hudaibiyya he rejected the opinion of all the *Sahabah* and compelled his opinion upon them as it was revelation from Allah. 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: "*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 (ughmiya). The Messenger of Allah (SAW) made wudhu then poured some wudhu (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 (*a'aba*) 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 majority opinion 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: "Verily I am only a human being and argument/disputes reach me. It may be that some of you are more eloquent than others, so I consider him truthful and judge accordingly for him. Whoever I have judged for against the due right of a Muslim, verily it is a piece of the hellfire that he may take or leave." Similarly he narrated from him that he (SAW) said: "*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 posts/roles: the post of Prophethood and Messengership, and the post of leading Muslims in this world in establishing the *Shari'ah* of Allah which was revealed to him. He would dispose in undertaking of 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 that it was a pledge upon ruling not upon Prophethood. From here we find we find that Allah ta'ala 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. The Supreme said: **Let not your soul go out in (vainly) sighing for them** [TMQ 35:8] and: **Do not grieve over what they are plotting** [TMQ] and: **The only (duty) upon you is conveying** [TMQ]. However Allah ta'ala censured him (AS) over his undertaking of the burden of ruling in the actions he performed in implementing rules previously revealed to him and already conveyed. Allah censured him over doing something contrary to what was better (*khilaf al-awla*). The Supreme said: **It is not for a Prophet to have captives of war until he (yathkhan) in the world** [TMQ] and: **Allah forgive you! Why did you grant them permission?** [TMQ 9:]. All this is clear that the role of leading Muslims in the rule was different from the role of Prophethood. From this becomes clear that the Khilafah, which is the general leadership over all Muslims in the world, is a human post/role not a divine one. Since it is a role which the Messenger 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 Khaleefah 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, our master Isa and our master Ibrahim 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 attribute/description as a human being ruling over human beings. The Qur'an has come explicitly stating that he is a human being. The Supreme said: **Say: Verily I am only a human similar to you** [TMQ] then clarified (*wajh*) distinguishing him from the rest of humanity (by saying): **It has been revealed to me** [TMQ]. 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 Khaleefah after him would doubtless be a human being like the rest of the people since he is his Khaleefah in the rule not in Prophethood or the Message. Therefore infallibility is not a condition for it since is it 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 presence in the Prophet and Messenger is required for conveyance. So it is infallibility in conveyance and its (*husul*) 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, 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 make a mistake and convey other than what he had been commanded to convey. All this is negated in a message from Allah 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 permitted 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 completing of the conveyance or not. If the fulfilment/completion 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 accomplished/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 all Muslims that the Messenger isn't infallible in committing actions which are contrary to what is better (*khilaf al-awla*) as the completion of the conveyance is not consequent upon them. Thus the infallibility is specific to conveyance and therefore it does not exist except for Prophets and Messengers nor it is ever allowed in anyone other than them.

Verily the evidence for infallibility is rational (*aqliyy*) not textual (*naqliyy*) as there has not come any 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 Prophets, Messengers or others. As for the Supreme's statement: **Verily, Allah only intends to remove filth (*rijs*) from you, the family of the house, and purify you completely** [TMQ 33:], its meaning is that He intends to remove from you any doubt and accusation/suspicion (*tuhma*). This *ayah* is a piece among three *ayat*. The Supreme said: **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 (*jahiliyya*), 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 (*ayat*) of Allah and the Wisdom (*hikmah*). Verily Allah is *lateef* All-Knowing** [TMQ 33:32-4]. 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/filth (*qadhr*) and the meaning here is metaphorical (*ma'nawiyya*) 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 (*rijs*) is material/physical filth, metaphorical filth and even punishment as it has come in the Qur'an with these meanings. The Supreme said: **Avoid the filth of the idols** [TMQ] and: **Similarly does Allah ordain the filth upon those who do not believe** [TMQ]. In these two *ayat*, filth is metaphorical filth. And the Supreme said: **Or the meat of pig for verily it is filth** [TMQ] i.e. ritual impurity (*najasa*) meaning physical filth. And the Supreme said: **And He made/ordained the filth upon those who have no sense** [TMQ]. 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 (*yutahirukum*) 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 (*tahara*) something purification (*tatheera*) means remove impurity from it, and the woman is pure (*tahir*) from menstruation and (*tahira*) from impurity and defects/faults (*'uyub*), and (*tahara*) in the *Shar'a* is removing the (*hadath*). He (AS) said: “*Allah does not accept prayer without purity (tuhur)*” and it has come in the Qur'an with this meaning. The Supreme said: **And clean your garment** [TMQ] and: **Water so that you may be purified by it** [TMQ] and: **Do not approach them until they purify themselves** [TMQ] with the meaning here being purity from ritual impurity and menstruation. The Supreme said: **Chose you and purified you** [TMQ] i.e. from vices/defects/faults (*'uyub*) and also: **And if you are (*junub*) then purify yourselves** [TMQ] i.e. from the (*hadath*). The purification of the believers also came when the Supreme said: **Allah does not wish to make difficulty (*haraj*) for you but rather He wishes to purify you and complete His blessing upon you** [TMQ]. All these texts specify that the meaning of the *ayah* is that Allah cleansed them of doubt and suspicion, and negates that its meaning is infallibility (as) 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 (*yahtamma*) 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 responsibility (*ghayr mukallaf*) to convey a message from Allah is not allowed to be infallible as he is a human being, and his nature (*fitra*) with which Allah created him is that error and forgetfulness occur in him. And as long as he is not given responsibility with a message from Allah, 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 ta'ala said: **But he is the Messenger of Allah and seal of the Prophets** [TMQ 33:]. Claiming infallibility means/requires 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 (*qabiliyya*) of error and misguidance in conveying from Allah, protecting the message of Allah from (*tabdeel*) 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 claimed for anyone other than him—it being known that the only matter requiring it is conveying the message from Allah—then it has been claimed 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. Therefore it is not allowed to require infallibility for the Khaleefah as requiring it means he is responsible to convey a message from Allah thus requiring him to be infallible, whereas this is something not permitted.

From all this it becomes clear that the Khaleefah 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/inattention and forgetfulness, falsehood, treachery, disobediences/sins (*ma'siyah*) as he is a human being 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 the clear disbelief (*kufri bawah*) 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: "*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: "*Verily there will be after me some improper preferences (athar) 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: "*The best of your leaders are those who pray whom you like and they like you, and they pray for you and you pray for them. The worst of your leaders are those whom you hate and they hate you, and you curse them and they curse you. It was said: O Messenger of Allah, should we not fight against them with the sword? No, not as long as they establish the Islamic rule (salat) upon you. If you see something in your leaders which you dislike, dislike his action but do not withdraw (your) hands from 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: “*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 bawah) upon which you have from Allah a clear proof (sultan).*” And from Aisha who said: “The Messenger of Allah (SAW) said: ‘*Remove/lift the mandatory Islamic punishments (hudud) from Muslims as much as you can so that if there is for them a way out (makhraj) then open his way. For the Imam to err in forgiveness is better than to err in punishment.*’” Tirmidhi narrated this hadith which is clear that the Imam can err, forget and sin. Despite that, the Messenger commanded to continue obeying him as long as he rules by Islam and clear disbelief has not occurred from him and has not commanded with sin. After the news of the Messenger (SAW) about the *Khulafaa* that there will be some of that which the Muslims will dislike yet he commanded obedience, is there after that any possibility of saying that the Khaleefah must be infallible and that it is not permitted from him what is permitted from human beings?

This is from the reality of the Khaleefah 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 Khaleefah 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 (*hudud*) 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 (*qabaih*), 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 *ta’ala* 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 protection/preservation (*hifdh*) 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 (*ya’di*) the people to is the rule of Allah *ta’ala* 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

one 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 knews (only) some of the rules, or upon whom sin and error is possible, his appointment would be contrary to the objective of responsibility (*takleef*) 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 (*nuqdh*) of the objective is impossible from the All-Wise (*Al-Hakeem*), then appointing one who is fallible or knowing only some of the rules is impossible.

4. The texts came indicating the obligation that the Khaleefah be infallible. There are Qur'anic ayat which came announcing thist which is clear from three ayat.
 - a) Allah ta'ala says: **“My promise will not include/cover (*yanalu*) the oppressors [TMQ 2:124]** which statement from Allah 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 ta'ala said: **And when Ibrahim was tested by his Lord with certain words (*kalimat*) which he fulfilled. He said: I will make you an Imam for the people/mankind. 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 the Supreme's statement: **Verily I will make you an Imam for the people [TMQ 2:124]** and saw the greatness of this honourable post/rank, he hoped that his descendants would have a share of it. So the Supreme said: **My promise does not reach the oppressors [TMQ 2:124].** Its meaning is that this post will not be given to one who is stained/entangled (*taluthu*) 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 one who does not do any injustice in his life.
 - b) The Supreme said: **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]**. This is an evidence for the obligation of the infallibility of the Imam as he guides to the truth, and the one from whom a mistake/error is possible does not guide to it though it may happen that he achieves/strikes (*yusibu*) the truth.
 - c) The Supreme said: **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 (*ulu al-amr*) i.e. infallibility of the Imam, because the Supreme commanded the obedience of those in authority in an unrestricted manner without specifying the obedience for a specific (*mawrid*) or period. This requires that the obeyed one is infallible as another 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 infalbile. Also, Allah ta'ala linked obedience to those in authority with obedience to the Messenger whose obedience is linked to His (SWT) obedience which requires exaltation (*ta'dheem*). Those meant as those 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 what follows:

Firstly: The Khaleefah takes the place of the Messenger in rule by implementing the *Shari'ah* not conveying it from Allah; he is his (SAW) Khaleefah in rule not in conveying from Allah. This does not require from him that he be infallible as the office (*wadhifa*) of rule does not

require infallibility, whether rationally or by *Shari'ah* .. True, there are some attributes required for the Khaleefah which are: Islam, being a man, being free (not a slave), maturity (i.e. having attained puberty), sanity, justice/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 Khaleefah 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 Khilafah (i.e. is no longer Khaleefah). Requiring these attributes from the Khaleefah is like requiring the justice/uprightness (*adalah*) 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 ever contradicting it. Therefore the Khaleefah's standing in the Prophet's place in rule is not an evidence that he must be infallible. As for conveying the *Shari'ah* by the Muslims, it is not conveying it from Allah. Rather it is performing what Allah commanded of the Muslims to carry the da'wah to mankind, to teach them the thoughts of Islam and its laws nor can it ever mean anything other than that. It is not conveying from Allah; rather one of the responsibility which the Messenger (AS) came with and not like the conveyance of the Messenger from Allah. Therefore it does not require infallible nor does it need this; performing it is like performing the other *Shari'ah* responsibilities. It is not obliged upon the Khaleefah in his capacity as Khaleefah, rather it is obligatory upon every Muslim who knows the *Shari'ah* .. The Khaleefah 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 a condition for them. As for carrying the Islamic da'wah obliged upon the Khaleefah in his capacity as Khaleefah, 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 Khaleefah does not, when he disobeys/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) that 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: "*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 innocent, and whoever denies it will be safe; but whoever is pleased and follows (will not be innocent 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 Shar'a clarified the method to prevent the Khaleefah from committing sins. It is not via the existence of an Imam who prevent him but rather the Ummah. The one who says that the Khaleefah requires another Khaleefah to prevent him from committing sins does not understand what ruling means nor even have a vision of it because the Khaleefah does not prevent another Khaleefah but rather he fights him over for the rule. Or he follows him, thereby becoming a governor or *Wali* not the Khaleefah, and he fights

him for rebellion. So how can one imagine that a Khaleefah prevents another Khaleefah 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 revealed to our master Muhammad (AS). As for protecting the *Shari'ah*, verily Allah guarantees to protect it when He (SWT) to protect the Qur'an. The Supreme said: **Verily We revealed the Remembrance (*dhikr*) and We will be its protector** [TMQ 15:9]. It is not the objective in establishing the Khaleefah that he is established 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, (nor 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/laws of Allah ta'ala in reality without any doubt entering into them which prevents acting upon and following them, this does not come from the Khaleefah 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 not doubt will enter into them in this situation preventing them from acting upon and following it without looking to who the Khaleefah is, even if he himself differs from the rule they deduced. This is because differences of opinion in deduction does not make the rule legitimate (*shar'iyan*) before a mujtahid and illegitimate before another. Rather it is a *Shari'ah* rule before all Muslims as long as there is (even) an 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* knowledges (*ma'arif*) 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 ta'ala, the issue here is one of the rule and the ruler i.e. the rule he rules by and arrives at/performs (*yuaddi*) and the ruler who rules and (*yuaddi*). The trust required/sought is not whether the ruler arrives at Allah's law or whether he rules by it or not. The consideration (*'ibra*) 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 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 Khaleefah from whom they take the rule is infallible or not.

Moreover as for the post of the Khaleefah, the Lord of the Worlds does not appoint a Khaleefah for His Messenger nor does the Messenger appoint a Khaleefah for himself. Rather, the Muslims appoint a Khaleefah over them whom they pledge upon the Book of Allah and the Sunnah of His Messenger. The evidence for this is the ahadith of the pledge, and their coming in general texts and their ascription (*isnad*) to an unrestricted (*mutlaq*) Imam not a specific one. Similarly the evidence for that is the general responsibilities upon the Khaleefah in his relation with the Ummah. Therefore the post of Khaleefah 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 the ayah: **My promise does not cover the oppressors** [TMQ 2:], the word Imam therein does not mean the Khilafah nor the rule. The word Imam came in the Glorious Qur'n in many ayat. The Supreme said: **And before him the book of Musa (as an) Imam and mercy** [TMQ] and: **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]. The meaning of the word Imam in these two ayat is a guide/example (*qudwah*). Imam Al-Bukhari said: "The statement of the Supreme: **And make us Imams for the pious** [TMQ]. He said: Leaders (*aimmah*) who follow those before us and are followed by those after us." The word Imam in the Supreme's statement: **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:]. The meaning here is Prophethood and model 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 ta'ala said to him that this post which is the model and Prophethood is not for oppressors when he requested from Him to ordain for his descendants what He ordained for him. So there is no evidence in the ayah for the infallibility of the Khaleefah. Moreover, the contrary meaning (*mafhum al-mukhalafah*) for the word oppressors (*dhalimeen*) is trustworthy/just persons (*'adileen*) not infallible persons (*ma'sumeen*). So those who are not oppressors does not mean infallible; rather it means those who are characterised with the absence of oppression which is justice (*'adl*). As for the second text which is the ayah: **Is the one guided to the Truth** [TMQ], its meaning and Allah knows best is: Is the one who is following the guidance—i.e. the Messenger—more worthy to be followed or the one who is misguided nor guides 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 fight the disbelievers. The word guide (*hadi*) is not used here except for the Messenger. The meaning does not apply upon the Khaleefah, and there is no relationship between this ayah and Khaleefah's infallibility. Is the rule guidance or the implementation of the *Shari'ah* ?

As for the third text which is the ayah: **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 and obedience to the Messenger. It is an evidence that its rule is like the rule of obeying Him and obeying the Messenger, 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; nor did it stop there but rather commanded fighting the Imam. The specifying ayat and ahadith are explicit upon this. The Supreme said: **Do not obey the one whose heart We have made forget our remembrance (dhikr)** [TMQ] and: **Do not obey the disbelievers** [TMQ] and: **Do not obey the liars** [TMQ] and: **Do not obey each despicable (maheen) swearer** [TMQ] and: **Do not obey among them the sinful (atheem) or the disbeliever** [TMQ]. The speech to the Messenger is the

speech to his Ummah as long as there came no evidence that it is specific for him and among his (*khususiyya*); 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: *“To hear and to obey is obligatory upon the Muslim man/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 Khaleefahs and leaders according to what Muslim narrated: *“They said: Should we not fight them? He said: Not as long as they prayed.”* He also narrated: *“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: *“Whoever dislikes (then he) is innocent and whoever rejects (then he) is safe, but whoever follows (is neither innocent nor safe)”* as related by Muslim. These ayat and ahadith specify the obedience to the Khaleefah to 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 had commanded the joining between two contradictory matters by commanding obedience to the Khaleefah 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 an 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 is clarified that it is not required from the Khaleefah that he be infallible—rather it is not allowed to require this—and that the Khilafah is a human post not a divine one. Thus the Islamic State is a human state not a divine one (theocratic state).

Deposition/Removal of the Khaleefah

A Khaleefah is deposed immediately if his personal situation has changed in a way that necessitates his removal; alternatively the Khaleefah must be deposed in certain situations where he is not allowed legally to continue as a Khaleefah. The difference between the two situations is that in the first case which removes him from the position of Khaleefah, 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 Khaleefah 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, cannot escape from them and his rescue from captivity is impossible.

In these three cases he is removed as Khaleefah 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 Khaleefah and judges on his deposition so that the Muslims can appoint another Khaleefah.

What changes his situation in a way that does not immediately remove him from the Khilafah, but he cannot remain as a Khaleefah, are five matters:

Firstly: His justice was challenged, by becoming openly *fasiq*.

Secondly: He changed to a female or became bisexual.

Thirdly: He became 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 deputy to him.

Fourthly: Incompetence to accomplish the duties of the Khilafah for any reason, whether a 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 Khaleefah, the affairs of the *deen* and the interests of the Muslims are neglected. This is *munkar* that must be removed, and it cannot be removed except by disposing the Khaleefah in order to facilitate establishing a Khaleefah 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 (*yastabduna*) to execute the affairs (*umur*) 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 (*masalih*) 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 himself, and to salvage himself of the enemy's control, then the objection disappears and the incompetence is removed. Otherwise he must be deposed.

In these five cases, the Khaleefah must be deposed once any one of them occurs. However their occurrence needs a proof that it has occurred, and such proof should be before the court of *madhalim*.. It judges the cancellation of the Khilafah contract and deposes the Khaleefah, so he is deposed and Muslims contract the Khilafah for another person within three days.

[Start typing July 2000]

THE LEADERSHIP (*Al-Imarah*)

The *imarah* or *riyasah* or *qiyadah* are of one meaning, and *rais* and *qaid* and *Amir* are of one meaning. As for the Khilafah, it is the leadership of all Muslims in the world and it is of the leadership and *tandariju* under the leadership. The Khaleefah 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 Khaleefah, because the *imarah* is of the types of rule which is the authority of 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 Muslims in the world, so this is specific in 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 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 of 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 (*sultan*) and for them a decisive (*fasl*) word. The reality of the existence of a collective matter between any group inevitably compels them to establish an *Amir* over them or else this matter will be cause trouble/agitation between them and discord/mischief (*fasad*) will result

(page 132 in Arabic text)

between them. As for the establishment of a leader for the group which performs a collective matter between them being obligatory upon Muslims, this is due to what Abdullah bin ‘Amru narrated that the Prophet (SAW) said: *“It is not allowed for three people (nafr) who are in the desert/open space (fulat) 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: *“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 said: *“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 via a correct chain that the Messenger of Allah (SAW) said: *“If they are three on a voyage, let them appoint one of them as Amir”* and the hadith of Abu Said al-Khudri: *“If three go out on a voyage, let them appoint one of them as Amir”* (narrated by Abu Dawud).

These ahadith 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 ahadith: *“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/associated matter which includes war, (*al-jumu’iyya*), expedition, army, tribe, city and region etc. So if this is prescribed for three who are in an open space in the land are are travelling, then its legitimacy for a greater number or a bigger job is of more precedent and more worthy. The ahadith 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 (*mafhum muwafaqah*) 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 (*mantuq*) 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 the Supreme’s statement: **Do not say (uff) to either of them** [TMQ 17:23] and the prohibition of spoiling/destroying the orphans’ property/weath from the indication of the Supreme’s statement:

Verily those who eat the orphans' wealth unjustly [TMQ 4:10]. And his paying/discharging/returning what is less than the (*qintar*) or not paying what is more than a *dinar* from the Supreme's statement: **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 commanded the appointment of one *Amir* in a voyage and open space. Accordingly, this command is (*munsahab*) upon what is more dangerous, and important, than being present in open space, and it includes such matters by greater reason (*min bab uwla*). This clear conforming understanding in the preceding ahadith 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, *batter* and in the regions of the State (*wilayah*).

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 nor is he permitted to be more than one. Islam does not know collective leadership (*qiyadah*) or collective presidency (*riyasa*). Leadership in Islam is purely/strictly (*mahdh*) singular so it is obliged for the *Rais* or *Amir* or *Qaid* to be one, nor is he allowed to be more than one. The evidence for this is clear from the text of the preceding ahadith and the actions of the Messenger (SAW). All the ahadith state: **"one of them"**, **"one of you"** and the word (*ahad*) is the word **one** (*wahid*) which indicates the number i.e. one and not more. This is understood from the contrary understanding (*mafhum mukhalafah*). The contrary understanding of the number, description/attribute (*sifat*) and objective/aim (*ghayat*) is acted upon without a text; and the contrary understanding is not invalidated/negated except in one situation which is where there comes a text annulling it like the Supreme's statement: **"Do not compel your women slaves into prostitution if they prefer chastity"** [TMQ]. The contrary understanding is that if they do not wish/prefer chastity (*tahasun*) then they are compelled (into prostitution). However this contrary understanding is annulled by the Supreme's statement: **"Do not come near to fornication. Verily it is a foul deed (*fahisha*) and an evil way"** [TMQ]. If there does not come any text annulling the contrary understanding, then in this case it is acted upon like the Supreme's statement: **"(As for) the fornicator, female and male, lash each one of them"** [TMQ 24:2].

And like his (SAW) statement: **“When the water reaches two (*qullat*), then it does not carry filth (*khabath*).”** The rule in these two texts run 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: **“Let them appoint one of them”, “except that they appoint one of them”, “appoint one of you”** indicate by contrary understanding that it is not allowed to appoint more than one. Thus leadership is for one, nor is it ever permitted to be for more than one by the text of the ahadith in their stated text (*mantuq*) and understanding (*mafhum*). 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: **“Be easy and not difficult, give glad tidings and do not repel (people) and obey (*tatawa’a*),”** this does not indicate that he appointed two in one place. The hadith came in Al-Bukhari with the text: **“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: ‘Be easy and not difficult, give glad tidings and do not repel (people) and obey (*tatawa’a*).’”** The same hadith came in the book of war expeditions (*Al-Maghazi*) saying: **“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 (*mikhlaf*) and Yemen has two (*mikhlaf*)—and said: ‘Be easy and not difficult, give glad tidings and do not repel (people). So each one of them went to his work (*amal*).’”** 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 onther 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 (*zi'amah*) as the honorary authority requires following the chief (*za'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 (*tanfeedh*) 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 (*majlis*) or committee or administrative apparatus (*ha'iyah*), and what is similar to these, to whom is given 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 performing the consultation (*shura*), this is allowed and it is from Islam since the Muslims are praised in that their matters are consultation between them. In that case, their opinion is considered obligatory by majority in what relates to performing actions and mere advice/consultation in relation to rules and opinions which lead to thoughts and technical opinions and definitions. When the *Amir* decides 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 it in Islam. This is because Islam has specified leadership to be individualistic by text and action, and the *Ijma as-Sahabah* has occurred (*jarra*) over it and the Ummah has bound itself (*iltzamat*) upon this during all eras.

OBEDIENCE (*At-Ta'ah*)

Obedience is a basic/fundamental (*asasiyy*) matter for the existence of correctness (*indhibit*) in the State, and of the most important manifestation to indicate the general (*indhibit*) in the State and Ummah. Due to this, the Qur'an came emphasising (*hatha*) obedience in many *ayat* despite the presence/existence of revelation, miracles, the message and the Messenger (SAW)'s personality which by themselves are enough to create (*iyjad*) obedience. The *ayat* came commanding obedience i.e. when it is obligatory to exist, a command which obliges its performance/fulfillment (*amr yalzimu biha*), 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 etiquette/manners as something that the Muslim must put himself far away from. We find that the Qur'an, when it (*yujid sajiyya*) of obedience, saying: "*Obey Allah and the Messenger*" [TMQ] (and): "*Follow me and obey my command*"[TMQ] (and): "*Hear and obey*" [TMQ] (and): "*Whoever obeys Allah and His Messenger, He will admit him into gardens underneath which rivers flow*" [TMQ] (and): "*Whoever obeys the Messenger has obeyed Allah*" [TMQ 4:80] (and): "*Whoever obeys Allah and the Messenger, they are among those whom Allah has granted favour*" [TMQ]. So Allah has commanded an unrestricted obedience in this *ayat*; obedience came without restriction. We find that the Messenger (SAW) commands obedience to the rulers and governors in all conditions/situations except if what was commanded was a sin. From ibn Abbas from the Prophet (SAW) who said: "**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 handspan and die upon that except that he dies a death of ignorance (*jahiliyya*).” The Messenger considered the failure to obey the Amir as separation (*mufaraqah*) from the community (*jama’ah*). Abu Rija Al-‘Attardi related and said: “I heard ibn Abbas (RA) (narrating) from the Prophet (SAW) who said: **“Whoever sees in his Amir something he dislikes, let him be patient. For, verily, whoever separated from the community by (even a) handspan 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 you (*aslahaka*). Relate (to us) a hadith for which Allah will benefit you from what you heard from the Prophet (SAW). He said: **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 energetic/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 upon 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, so there came other ahadith prohibiting obedience in (matters of) disobedience to Allah. He (SAW) said: **“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: **“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 commanded with this obedience when it is for the general (*indhibit*). As for when this obedience is contrary to Islam or in a way opposite to the way of Allah, then Islam came prohibiting it. Due to this, Allah ta’ala explicitly forbade us from some (types of) obedience when He said: *“O you who believe, if you obey a party (*fareeqa*) of those given the Book they will turn you disbelievers after your belief”* [TMQ] (and): *“Do not obey the one whose heart/mind We have made neglectful of Our Remembrance so he followed his desire and his affair was (*furata*)”* [TMQ] (and): *“If you obey most of those in the earth, they will misguide you from the*

way of Allah” [TMQ] (and): “*Do not obey the disbelievers*” [TMQ] (and): “*Do not obey those who give lie (to the Truth)*” [TMQ] (and): “*Do not obey the sinful or disbeliever among them*” [TMQ] (and): “*Do not obey each swearing (maheen)*” [TMQ]. All these ayat prohibit obeying specific 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 ta’ala has clarified them to us such that developing (*takween*) the obedience in ourselves is (*munsarif*) to developing the general (*indhibit*) and so as to keep this (*indhibit*) 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 command of obedience, to also avoid obeying those whom Allah has prohibited (us from) obeying them.

THE KHALEEFAH'S ADOPTION OF RULES AND STYLES i.e. ADOPTING CANONS (SINN AL-QAWANIN)

The meaning of the word “canons” (*al-qawanin*) in the Arabic language is roots/basics (*usul*) with the singular being “canon” (*qanun*). It is a foreign word which has been Arabicised. The canon in the foreigner’s terminology/definition (*istilah*) means the command published by the ruler (*sultan*) 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, which 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/branch (*far’iyyah*) actions which do not have a rule specific to them but whose origin/root/basis (*asl*) has a general rule. Or it organises the means i.e. the styles by which the original/basic actions, which have a general rule but whose branch has no specific rule for it, are performed. Or it organises the tools (*adwat*). They are termed administrative canons or administrative systems or something similar. Since the speech of the Legislator (*Ash-Shari’*) actions came related to the actions of the slaves and obliging the restricting of oneself to them, therefore their organization comes from Allah. The Islamic Shari’ah 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 (*sinn qawanin*) to organise the systems as they are restricted by the Shari’ah. The Supreme said: “*Whoever exceeds the limits of Allah, they are the oppressors*” [TMQ]

(and): “*Whatever the Messenger gave you, take. And whatever he forbids for you, abstain*”[TMQ 59:7] (and): “*It is not for the believer, male or female, when Allah and His Messenger have decreed/judged in a matter to have choice in their matter*”[TMQ 33:36]. Muslim narrated from Aisha that the Messenger of Allah (SAW) said: “**Whoever performs an action not in accordance with our matter, then it is rejected.**” Allah is the One who legislates rules/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 down by human beings organising their relationships. However the Shari’ah 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 which carry (potentially) various 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 (*ikhtilaf*) in understanding leads to the limit of separation/variation (*tabayan*) and differences (*taghayar*) 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 (*Al-Ahzab*): “**No one should pray Asr except in (the camp of) Banu Quraydha**”, some persons 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, he consented to the two groups each (according to) their understanding. When the Messenger said: “**(There is) no prayer for the one who did not recite the opening of the Book (Fatihat al-Kitab)**”, people understood that he meant no correct (*saheeh*) prayer so they said that reciting the *Fatiha* 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 *Fatiha* is not a pillar of the prayer; rather, reciting the Qur’an is the pillar such that if one doesn’t recite the *Fatiha* but recites any ayah of the Qur’an

then his prayer is correct/acceptable. Similarly, they differed over his (AS) statement: **“The believer is not killed for a disbeliever, nor the one with a covenant/pledge (*dhu ‘ahd*) 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 statement **“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/covenanted disbeliever (*kaffir dhimmi*) so the Muslim is killed for the covenanted disbeliever if he kills, and likewise the disbeliever under treaty (*kaffir mu’ahid*) and the protected disbeliever (*kaffir must’aman*) since the Messenger’s statement in the same hadith indicated this in his saying: **“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 (*dhu ‘ahd*) 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 brought a Muslim to the Messenger of Allah who had killed a Jew so he killed him. With this variation (*tabayan*) 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 (*manas*) 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*), Khaleefah 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, nor is it allowed for him to leave it except in three (cases): Firstly, if the weakness of the evidence becomes clear to him and there appears a stronger evidence than its evidence which (*yata'ayyan*) 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 (*fi haqqihi*). Secondly: If he begins to think that the new opinion was adopted by one more knowledgeable than him in (*istinbat*) and more precise in deduction (*istidlal*) 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 adopted Ali's opinion and left his opinion, and Umar adopted Ali's opinion and left his own. Thirdly: If the intention is to unify the Muslims' standpoint (*kalima*) 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/intends 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 Shaikhs 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 and Umar 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 ijihad 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 Khaleefah, 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 (*kharaj*), foreign relationships and all that relate to the unity of the State and rule. Adoption in these situations by the Khaleefah 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 (*asliyya*) 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 Khaleefah 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 did adopt Shari'ah rules which he obliged upon the people, and Umar, Uthman and Ali 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 with any rejection to adopting of rules, obliging them upon them upon the people and not acting upon rules they had adopted; even though it is of what is rejected since it is obliging people to leave the rules they adopted which the rules of Allah upon them. Thus, it is an Ijma of the Sahabah that the Khaleefah can adopt specific rules and oblige people to act upon them. Therefore if the Khaleefah 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 Khaleefah adopted became the rule upon 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 a weak evidence in his view. This is due to what the Ijma of the Sahabah concluded (*in'aqada*) 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 ijtiḥad. The famous Shari'ah principles about this are: “*The ruler can (yuhaddithu) in judgements (aqdhiyya) according to how the problems occur (yahduthu)*” and “*The Imam's command resolves the dispute*” and “*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 is that what the Imam adopts becomes the rule of Allah upon him in respect of action. However, the obedience (*khudhu'*) 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 Imama adopted. It is rather obedience to his (the Khaleefah'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 of the Sahabah is upon the obligation to act according to the Khaleefah's adoption not teaching or invitation (*da'wah*); it is specific to action. Thus we find that whereas Abu Bakr would divide money/wealth between Muslims equally without looking into who embraced Islam early or not, Umar had a different opinion which is (considering) a man and his precedence (in embracing) Islam and another man and his lateness (*balau*). He debated Abu Bakr in this, but he obeyed what Abu Bakr adopted and remained adopting his opinion. When he was appointed Khaleefah, he invalidated acting upon Abu Bakr's opinion and acted upon his opinion. Therefore there is a distinction between the Muslim adopting of the opinion and his obedience to what the Khaleefah adopted. Obedience to the Khaleefah's adoption obliges acting upon it

only not calling to 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 Khaleefah, but they are all—like the rest of the Muslims—obliged in respect of action to act according to what the Khaleefah adopted and nothing else.

However, when the Khaleefah adopts Shari'ah rules he chooses a specific rule in its capacity as a Shari'ah rule deduced by Shari'ah ijtiḥād. He does not legislate from his own self; verily Allah 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 Khaleefah—is restricted by the commands and prohibitions of Allah, 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 statement is clear: **“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 Khaleefah 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/defined the Muslims' benefit by specific rules; if the Khaleefah 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 ijtiḥād 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) ijtiḥād within their limits. He does ijtiḥād in the branch/secondary (*far'iyya*) actions which have no explicit text (*nass*) but whose origins (*usul*) came with an explicit text (*nass*) which is general; he does ijtiḥād to choose what he sees as more suitable and beneficial. As for what came with the rule of Allah upon it, there is no place for the Khaleefah's ijtiḥād in this affair; rather he is obliged to execute the Shari'ah rules as they are without any

substitution (*tahreef*) or change. Yes, he could view an action as allowed but it leads to a haram which the Shar'a forbade such as viewing that the exchange (*tadawal*) of a specific book would inevitably lead to corruption (*fitnah*) of the people in their deen or would inevitably lead to spreading debauchery (*al-fusq*) among the people so he prevents it. He could 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 (*makhazin*) would prevent people passing by the road in the road or annoy bypassers so in this case he prevents the allowed and punish whoever does it. However this is not forbidden halal but rather executing a Shari'ah rule he deduced from the principle: "*The means to haram is forbidden*" and the principle "*Each specific thing would leads to a definite harm is forbidden.*" Or someone else deduced it and he (the Khaleefah) 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 not what is allowed. Similarly, if there is a matter or a rule which can potentially be performed via numerous branch/secondary actions for whose origin came a general evidence, then in this case all the actions through which means it is possible to perform the rule or matter are of the permissible actions (*mubahat*). This is like the Khaleefah reaching knowledge of the people's opinion, or their opinion of who should represent them in the *Majlis Ash-Shura* which is similar to what is known as the electoral canon (*qanun intikhabiyya*). All these secondary actions are of the permissible actions, so it is permitted for the Khaleefah 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 perform 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. Of this (*qabeel*) are all the organizational and administrative canons as they are compelling (*ilzam*) a permissible action as it is compelling what follows a rule adopted by the Khaleefah and compelling it requires leaving anything other than it i.e. preventing it. It is just like adopting rules nor does it

(*yakhruj*) 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 Khaleefah has not left the Shari'ah rules or his competency from adoption and there is an evidence for each one of them.

[AUGUST TYPING]

There is nothing here to legitimise and permit/allow (*masughu yujiz*) the Khaleefah to change any Shari'ah rule under the pretext/justification of benefit; rather he must completely restrict (himself) to all the Shari'ah rules in everything.

As for what is said that the Messenger 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 is a legislator on behalf of Allah (*musharri'*) 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, never for anyone other than the Messenger. 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, not of the (*qabeel*) of 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 benefit. Whoever reviews (*isti'radh*) some of the Messenger's 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: **“Do not drink any of its wather 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 nor an allowed thing. This specific thing would inevitably lead to a harm (*dharar*) for which a text came forbidding its occurrence. The Messenger knew that drinking water from this well would result in a definite harm such that what the Messenger 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 lead definitely to a harm forbidden by the Shar'a. The evidence for this is that those people whom the Messenger commanded did what they were commanded except two men from Banu Sa'ida. One went out (to fulfill) his (natural) need whereas the other went out seeking his camel. As for the one who went out for his need, he choked/suffocated (*khanāqa*) upon his (*madhab*). As for the one who went out seeking his camel, the wind carried him until it dropped him upon Mount Tai. The Messenger of Allah was informed about this and said: **“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 was hurt upon his (*madhab*) and he was cured; as for the one who fell upon Mount Tai, Tai (*ahdathu*) to the Messenger of Allah when he came to Madinah. The evidence for this is also that when the Messenger of Allah (SAW) passed by Al-Hijr, covered his face with his cloth (*thawb*) and spurred his camel and said: **“Do not enter the houses of those who wronged their souls (*dhalamu*) 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 importation

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/remove the harm. For instance, the ruler considers that importing sugar lead 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 (*dharurat*) and its the lack of sufficiency (*'adam tawfeeruhu laha*). In this case, it is allowed to prevent this allowed matter nor is it forbidding an allowed thing; rather, the allowed thing i.e. importation remains allowed. It is rather the forbidding of an allowed matter which is importing sugar. This is like the Messenger 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 came and found that those who preceded had drank 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 of the allowed things, but this thing leads/results to harm which is preferring a group with the water exclusively among the rest of the army despite the great need for it in the desert. Accordingly, it 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: There was in the delegation of Tha'qif a man suffering from leprosy so the Prophet (SAW) sent to him: **“We have (taken) your pledge so return”** and 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: **“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 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 an evidence that the Imam can prevent specific things of the allowed things, and specific actions of the allowed actions, if it leads to a harm which the Shar'a came to prevent. As for what is narrated of 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 preventing, and some of them are compelling an allowed action (in order) to perform a Shari'ah rule or a matter the Shar'a command and prevented others of the type (*qabeel*) of adopting styles. This is allowed for the Imam, This is like the of the writing of the registers (*tadween ad-dawawin*) by Umar, and obliging one mushaf and burning all (other) mushafs by Uthman. Of this type (*qabeel*) is Umar obliging the Sahabah 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 (*'ujaan*) to placing their turbans on their forehead so that their sweat does not fall in his dough, and to place a piece of (*qumash*) 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 principle **“The means to *haram* is forbidden”** and the principle **“Each specific thing which leads to**

a definite *haram* is *haram*". There is nothing here which indicates that it is allowed for the Khaleefah 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 (*mafhum*) i.e. that they are the ruler's commands in an unrestricted (manner) are not obligatory to be obeyed/followed as long as the Khaleefah's command is not in adopting a Shari'ah rule and obliging this rule. The canons are what the Khaleefah adopted from the Shari'ah rules. However, the Khaleefah may command what he considered of the (*qawa'id*) 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 Khaleefah adopted them and because they are within the statement of the Glorified: "*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/ability in fighting in the way of Allah directly (*mubashira*) 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 opinion in the way of Allah, this is jihad is the opinion relates directly to fighting in the way of Allah. If it does not relate directly to this, it is not Shar'a jihad even if it involves difficulty (*mashaqqa*) and even if there results benefits in raising the word of Allah. 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 like the speech to the army to encourage it to fight directly or words inciting fighting the enemies. If not, they are not (jihad). Neither political struggle nor rebuking (*muqari'a*) the rulers is termed jihad though their reward is high and their benefit to the Muslims great. The question/issue is not difficulty nor the benefit, but rather it is the Shar'a meaning with which it came for this word. The Shari'ah meaning is fighting and all that it related to it of opinion, speech, writing, strategy (*makeeda*) and other (similar) 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. The Supreme said: "*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 (due to) their attribute of disbelief (*kufr*) i.e. fight them because they do not believe in Allah and the Last Day etc...so this description/attribute is a restriction (*qayd*) and at this point it becomes a cause (*sabab*). So the cause of fighting is disbelief. It came in another ayah: “*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:] so the command to fight them is due to the attribute of disbelief. There are many similar ayat such as: “*Fight the allies of Satan*” [TMQ] (and) “*Fight the leaders of disbelief*” [TMQ 9:] (and) “*Fight the polytheists altogether*” [TMQ] (which) all 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 made it together with humiliation as the cause of stopping the fighting not the cause of fighting. From here it came 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 (*mu’ahadat idhtirariyya*) in which the Khaleefah accepts from them the jizyah while leaving them to rule themselves by the system of disbelief, due to the absence of (*muwataat*) of the external and internal circumstances for it, the Shar’a gave concession (*rakhasa*) 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 the Supreme's statement: "*You will fight them or they will become Muslims*" [TMQ].

Jihad is obligatory by the explicit text (*nass*) of the Qur'an and Hadith. The Supreme said: "*Fight them so that there remains no (fitnah) and the deen becomes wholly/only for Allah*" [TMQ 2:] and He said: "*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:] and the Supreme said: "*If you do not go out (for jihad), He will punish you with a painful punishment*" [TMQ 9:] and He said: "*O you who believe, fight those who encircle you of the disbelievers and let them find harshness in you*" [TMQ 9:]. From Anas who said: "The Messenger of Allah (SAW) said: **Fight the polytheists with your wealth, your hands and your tongues**" (narrated by An-Nisai). Also from Anas that the Prophet (SAW) said: **A morning in the way of Allah, or an evening, are better than the world and what is within it**" (narrated by Al-Bukhari). He also narrated that he (SAW) said: **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: **...Jihad (madhi) from when Allah sent me until the last of my Ummah fights the Dajjal. It will not be invalidated by the tyranny of the tyrant or the justice of the just (leader).**"

[START TYPING, WEEK 1, SEPTEMBER 2000]

From Zayd bin Khalid who said: The Messenger of Allah (SAW) said: **Whoever prepares a warrior (ghazi) 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). From 'Ata bin Yazid al-Laithi that Abud Said al-Khudri (RA) related to him: **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 (AS) said: **Whoever dies without fighting or his soul thinking of fighting has died upon a branch of hypocrisy.**" From Abi Awfa that the Messenger of Allah (SAW) said: **Know that paradise is beneath the shade of swords**" (narrated by Al-Bukhari). From Abu

Hurayra who said: **“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 a collective obligation (*fard kifayah*) offensively (*ibtida'a*), and an individual obligation (*fard 'ayn*) against the enemy who attacks them while being a collective obligation 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 a collective obligation 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 existed practically fighting by Muslims against belligerent disbelievers so the obligation of jihad has occurred. However if fighting (*nashaba*) between Muslims and disbelievers but the sufficiency (*kifayah*) 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 conquered/subdued. The (*muhil*) of jihad being a collective obligation is if the Khaleefah has not told him to advance (*jastanfiruhu*); as for the one whom the Khaleefah has told him to advance, then jihad has become obligatory upon him due to the Supreme's statement: *“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:] and his (SAW) statement: **“And if you are asked to advance, then advance.”** The meaning of the sufficiency of jihad in the Islamic State is that there rises for jihad a people whose fighting is sufficient; whether they are an army for whom there are books of accounts (*dawawin*) for this as was the case in the time of

Umar, or they had prepared themselves for jihad freely as was the case in the time of Abu Bakr. It is the same whether these ones or these ones or

both of them together such that if the enemy targets them (*al-mana'ah*) occurs by them so it is a collective obligation upon them. If (*al-mana'ah*) does not occur through them, then the Khaleefah prepares other 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 the jizyah; and if they reject, we fight them. Muslim narrated from Sulayman bin Buraydah from his father: **“When the Messenger of Allah (SAW) appointed an Amir over an army or expedition, he would exhort him to fear Allah in his soul and to be good to those Muslims with him. Then he would say: Fight in the name of Allah, in the way of Allah. Fight those who disbelieve in Allah. Fight but do not betray, commit treachery, mutilate nor kill a child. When you meet your enemy among the polytheists then call them to three (*khisal*) or (*khilal*) such that whichever of them they respond to, accept from them and do not fight them. Then call them to Islam; if they are respond to you, accept from them and do not fight them. Then call them to move (*tahawwal*) from their land to the land of the emigrants (*Muhajireen*) and inform them that if they do this then for them is what is due to the Muhajireen and against them is what is due from the Muhajireen. If they refuse to move from it, then tell them that they are like the bedouin Muslims upon whom does not run what rule of Allah which runs over the believers and there is no booty or spoils for them unless they fight jihad with the Muslims. If they refuse, ask them the jizyah; if they respond to you, accept from them and do not fight them. If they refuse, seek help from Allah against them and fight them.”** And from ibn Abbas: **“The Messenger of Allah (SAW) never fought except that he invited them”** (narrated by Ahmad). And from Furwat bin Maseek who said: **“I said to 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 KHALEEFAH AND JIHAD

Jihad is an absolute (*mutlaq*) obligation, and it is not restricted or conditional upon anything. The ayah upon it is absolute: “*Fighting is prescribed upon you*” [TMQ 2:]. The presence of the Khaleefah has no (*dakhala*) upon the obligation of jihad; rather jihad is obligatory whether there is a Khaleefah or not. However, when there is a Khaleefah whose Khilafah has been contracted legally and who has not left it for any reason, the matter of jihad is delegated to the Khaleefah and his ijtihad as long as he is Khaleefah even if he were wicked/immoral (*fajir*) as long as he remains in the headquarters (*markaz*) of the Khilafah. 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 Hurayrah: The Messenger of Allah (SAW): “**Jihad is obligatory upon you together with every Amir, whether he is righteous or wicked.**”

It is obliged upon the Muslims’ Khaleefah to expend his effort at every time to go out personally or send Muslim armies or expeditions, then be confident in the (*jameel*) promise of Allah ta’ala to support him in the Supreme’s statement: “*O you who believe, if you support Allah then He will support you*” [TMQ]. He is obliged to begin organizing the army in the country’s extremities so as to be sufficient against those who (*bazahum*). It is not allowed for the Khaleefah 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 (*mashkhuna*) with the Islamic army at all times/perpetually.

It is obliged that he established all that would defend 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 power/strength (*quwwa*) to protect the Islamic State and Islamic land from the disbelievers and their conspiracies (*kayda*).

It is obliged that the Khaleefah 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 Khaleefah is not only the supreme 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 army leader. Umar would send detailed information (*ta'alimat*) to his leaders in Persia and Sham which indicates that the Khaleefah 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 via the way (*tareeq*) of Abu Hurayrah that the Prophet (SAW) said: **“Whoever obeyed me has verily obeyed Allah, and whoever disobeys me verily disobeys Allah. Whoever obeys the Amir has verily obeyed me, and whoever disobeys the Amir has verily disobeyed me.”** And Muslim also narrated via the way of Abu Hurayrah the statement of the Prophet (SAW): **“Verily the Imam is but a shield behind whom they (the Muslims) fight and by whom they are protected.”** The meaning of the Imam being a shield (*junnah*) is (that he) is a (*sutrah*) because he prevents the enemy from harming Muslims. However the Khaleefah should not command a decisive command that has no (*taraddud*) except within the people's capability; he knows that they are not able 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 Khaleefah; if the Khaleefah is absent, jihad is not delayed in any way whatsoever since its benefit disappears with its delay. If the Khaleefah 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 consented for them. 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 the Supreme's statement: "*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:]. What applies here to the Prophet applies to the Khaleefah, and the Amir is measured by analogy (*yuqas*) upon the Khaleefah and (also) due to his (AS) statement: "**Whoever obeys the Amir has verily obeyed me, and whoever disobeys the Amir has verily disobeyed me.**"

THE MEANING OF THE KHALEEFAH SUPERVISING THE ARMY'S LEADERSHIP

The Khaleefah is the general leadership 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 whose sake the post of the Khilafah exists; so both of them are the work of the post of the Khilafah. It is not correct for anyone to supervise them other than the Khaleefah nor is it allowed for the Khaleefah to establish someone who would supervise both of them instead of him because they are the two matters upon which the bay'ah was given and the bay'ah contract took 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 is not permitted for him to delegate someone else to perform the work over which the contract took place. When the Khilafah contract occurred upon a specific person, it is not allowed for this person to delegate someone else to stand in his place in what the Khilafah 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 Khilafah was established for its sake i.e. what the existence of the Khilafah, as it is, exists in order to perform. It is not permitted for other than the Khaleefah to supervise it even though it is valid/correct 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 Khaleefah. The Khaleefah'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 Khaleefah 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—these are all styles and means. The Khaleefah, even though he supervises its affairs with a general supervision, does not perform this. Rather supervising the army is supervising its creation/formation, preparation/equipping and supervising the matter of undertaking its work. This is because the soldier who is attached (*yanqati'u*) to jihad (i.e.) the mujahid, the strength/power prepared to terrorise the enemy and the fighting are considered of the actions of jihad so accordingly Allah 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 Khaleefah and no one else. So the meaning of the Khaleefah'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 (*ishraf*) of the execution of this policy. Therefore it is the Khaleefah 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 Khaleefah's supervision of the army's leadership. It is not allowed for other than the Khaleefah 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 Khaleefah's supervision of the carrying of the da'wah, and in respect of its 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 its being the power with which jihad is performed in its capacity as the method supervised by the Khaleefah in the carrying of the da'wah, 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 of the da'wah to the world, and since the method of the Khaleefah's supervision of the carrying of the da'wah 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'wah 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 capturing attention; and that is based upon preparation to enter into war at any moment if the carrying of the da'wah requires this. Creating the situation which enable conveying the Islamic thoughts and rules in a manner capturing attention is an inevitable matter, as it is one rule of jihad and the basic condition to initiate fighting practically. Therefore it is obligatory upon the Khaleefah 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/risk (*makhatir*) in order to conquer, defend the (*baydha*)

of Islam or protect the sacred charge (*dhimar*) of Muslims. Accordingly increasing the military strength, attention to military preparation and complete attention to military evaluations (*taqdeerat*) are essential elements in creating this situation and preserving it since the military strength is the sole shield against the (*qawa*) of disbelief and the disbelieving states. This is what gives the army or military power an effect/influence in the Khaleefah's supervision in carrying the da'wah; this means that the army and beweaponed (*muslihat*) power have an influence in foreign policy as they are its pillars (*'imad*) from where comes a danger to the foreign policy i.e. upon the Khaleefah's supervision over the carrying of the da'wah. Accordingly it is obligatory to understand the reality of the issue in respect of the army's influence in the Khaleefah's supervision of the carrying of the da'wah 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'wah 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 Khaleefah to undertake what the Muslims pledged him upon i.e. for the State to undertake what Allah obliged upon it which is the carrying of the da'wah. Or, in other words, for the State to undertake its foreign policy in the way Allah 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 (*muhtarifeen*) 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 (*muhtarifa*) 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/taken in its (*fann*) only, so it is taken when it is its (*fann*) and what is taken within it in its place in the foreign policy; it is advice and not consultation (*shura*). That is, the Khaleefah 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 points of the foreign policy. Nor is it allowed to give it more (regard) than that. This is because if he does not do this, and gives it greater measure than it being advice, there will without doubt occur danger to the foreign policy; either confusion or tumbling down in foreign policy or the halting of the carrying of the da'wah. Rather there could result more than that as there could result tumbling down of the State and (*inhisar*) from the (*raq'ah*) 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 benefitting from world public opinion nor 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 (*haila*) possibilities in the spiritual and metaphorical/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 nor the great influencing value of political actions. Due to this, military thinking is subject thought not comprehensive political thinking. If their advice is taken it is valuable advice in its subject, but if they are given the competence/authority (*salahiyya*) of action and resolution, and if their advice has any type of compulsion this will without doubt cause harm to political steadiness (*qirarat*) and conduct. Therefore it is not allowed to permit the military apparatus to have an influence in foreign policy nor that military opinions occupy a place exceeding their being no more than mere technical (*faniyya*) advice, not being general (*mutlaq*) 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 Khaleefah must make his evaluations dominant over military evaluations. It is upon him, when he plans the final plan to (*musta'id*) 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'winin*), governors, people of influence and scholars as more (worthy) than military evaluations; nevertheless the Khaleefah 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 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 would they enter into war if it occurs and when this occurs how quickly and when. It is obligatory upon the Khaleefah to always make the military power a subservient/following (*tabi'*) department and not to allow the military apparatus, or any individual, to exceed the role of following policy not the role of planning it.

This is in relation to the role of the military apparatus and its opinions. As for how the Khaleefah evaluates military evaluations, it is not sufficient to adopt them as no more than mere technical advice then give military evaluations an influence in his resolution of foreign policy. Rather military evaluations must be mere advice in its adoption, and he must (*yuh'al*) between it and giving it an influence in foreign policy i.e. it is not allowed for him to base foreign policy upon it or that it has an effective effect (*'amil*) over it. It is forbidden that military evaluations dominate over foreign policy; rather it is obligatory to leave military evaluations at the margin (*muakkhaar*) 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 Khaleefah when he plans foreign policy.

Military matter take a distinct tangible form/shape. If you are able to see cannons, military ships, planes, bases, nuclear bombs (*qanabil*) and missiles; and you are able to be convinced easily and without difficulty about their influence in success or defeat in conquest or (*inhisar*), advance or retreat. These are material things which are possible to measure their remoteness (*ib'aad*); they have a material influence whose results are possible to be sensed/touched. This is opposite to spiritual and morale (*ma'anawiyy*) strength, and to 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/primacy (*hayawiyya*) in foreign policy and evening war and conquest. Therefore military evaluations must remain at the margin of foreign policy so as to remain secondary therein whereas spiritual strength remains first then morale strength is dominant. Political manoeuvrings and subtleties/cunning (*daha*) must have a prominent place in evaluation, and that all these be collected together in one political strength which is not subjected to separation/division supervised by one Khaleefah. From this we can understand the meaning of the Khaleefah's supervision of the army leadership solely and practically, and the danger of given him formal leadership or supreme command as has come according to some expressions.

Making military evaluations dominant over foreign policy 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 Sham, 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 (*'iraqah*) 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 (*al-qirar al-iqtisar*) 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, AlBanua and Yugoslavia so that the authority of Islam spread over all this (*rubu'*).

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 so far as the army is the power with which jihad is performed. As for its being the power which stands to preserve the authority internally and externally, this relates to the material power in respect of its being the authority's life i.e. the rule. It is the one which preserves/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 (*musliha*) 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 that military evaluations 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 in so far as his being a soldier. This is because the authority, even if it is preserved by the military apparatus, but there is no presence for soldiers within it. The authority is not a tangible material power nor 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; it (the gun) has absolutely no will nor its own opinion regarding that. It is dangerous for the rule 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'a 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 (*yamut lahu busla*) of 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 (*siyadah*). 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—and 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/descent 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 Kufir or war homeland. Therefore the Islamic State is surrounded by enemies at all times waiting for the opportunity to attack. If soldiers are left 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 that it is material military work so it is difficult for them to understand remote (*ba'idah*) manoeuvres and hidden political ramifications. Therefore they could be incited to seize the rule or change the rulers in exchange for some gains (*makasib*) for the country according to their opinion or personal gains for them. Herein occurs 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/competence (*salahiyya*) to rule with the collection of measurements, concepts and convictions. If the soldiers seize the rule due to foreign incitement, there would enter (*tasarrabat*) into them, i.e. the soldiers, concepts, measurements and convictions other than those in the State. Therein defects would enter into the State's entity; there could even enter the influence of Kafir states which would result in dissipation and decline/passing away. Accordingly, tolerance for any presence for the military presence or soldiers in the authority i.e. rule is an abominable danger.

It befell the Islamic Ummah the danger of the presence of a role soldiers in authority via what befell of entering defects to the entity of the State and Ummah, then the passing away of the entity of the Islamic State and the entity of the Islamic Ummah from existence. At the end of the Ottomans, the embassies of the Kafir states in Istanbul influence the soldiers until there entered in to 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 Khaleefah and the coup that (*atah*) Abdulhamid from the Khilafah and brought Muhammad Rashad as Khaleefah. 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 for the Ottoman State in World War One, in conspiring with the English in destroying the Khilafah in exchange for (*insihab*) the Khulafaa from Istanbul and helping him in the peace conference. These roles undertaken by soldiers shook the entity of the Islamic State then removed it, and 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 WITNESS (*ASH-SHAHEED*)

Witnesses (*shuhadaa*) are of three types; the *shaheed* of the Akhirah but not the rules of the world; the *shaheed* of the world only and the *shaheed* of the world and Akhirah. As for the *shaheed* of the Akhirah only not of this world, they are mentioned in the ahadith. 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 world of Allah outside the battlefield. Muslim narrated from Abu Hurayra that the Messenger of Allah (SAW) said: **“A man was walking along the road, found a thorn-branch in the road and removed it. Allah was grateful to him and forgave him. He said: The witness (*shuhadaa*) are five: (*al-mat'un*), (*al-mabtun*), the drowned one, the one who died in a collapsed (building) and the *shaheed* in the way of Allah ‘azza wa jalla.”** Muslim narrated from Abu Hurayra who said: The Messenger of Allah (SAW) said: **“Whom do you consider a *shaheed* among you? They said: O Messenger of Allah, the one killed in the way of Allah is a *shaheed*. 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 *shaheed*, the one who dies in the way of Allah is a *shaheed*, the one killed in pestilence is a *shaheed*, the one killed due to the stomach is a *shaheed* (ibn Muqsim said: I testify that upon your father in this hadith that he**

said) and the drowned person is a *shaheed*.” 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 “*shaheed*” is said in the (*mi’radh*) of reward and the hadith about that, it is correct to generalize it to these (persons). However, if the word “*shaheed*” is used in an unrestricted manner (*itlaq*) 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 *shaheed* of the world not the Akhirah, he is the one who takes the rules of the *shaheed* 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 *shaheed* 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 ahadith specified the *shaheed*’s reward for the *shaheed* who fights in the way of Allah, and the one fighting advancing not retreating. Muslim narrated from Abu Musa al-Ash’ari “**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: “**The Messenger of Allah (SAW) was asked about the man who fights (to show his) courage, one who fights out of anger, and one who fights to show off (hypocritically). The Messenger of Allah (SAW) said: The one who fights so that the word of Allah be highest is in the way of Allah.**” The Messenger made a condition of the *shaheed* 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 “**that he stood among them and remind them that jihad in the way of Allah and decisive belief in Allah are 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/sins (*khataya*) would be wiped out/forgiven? The Messenger of Allah (SAW) said to him:**

Yes, if you fought in the way of Allah and you are patient, expectant/hopeful (*muhtasib*), 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 *shaheed*. As for the one fighting for fame, the Messenger (SAW) clarified that he would be punished and (yet) called him *shaheed*.. Muslim narrated from Sulayman bin Yasar who said: People dispersed about Abu Hurayra and the refuse (*nathil*) of the people of Sham said to him: O Shaykh, related to us a hadith you heard from the Messenger of Allah (SAW). He said: Yes, I heard the Messenger of Allah (SAW) saying: **“Verily the first person(s) to be judged on the Day of Judgement is a man who was killed as a *shaheed*.. He is brought to Him (Allah) and He informs his of the favours/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 *shaheed*. 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”** to the end of the hadith. This indicates that one killed for fame, even if he takes the rules of the *shaheed* in this world, will not gain the reward of the *shaheed* on the Day of Judgement but would be punished.

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As for the *shaheed* 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. The Supreme said: *“Do not think that those killed in the way of Allah are dead. Rather they are alive and receiving sustenance before their Lord”* [TMQ]. This *shaheed* is the one upon whose rights came the Shari’ah rules. He is specified as the one killed in the war with disbelievers; similarly the one 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 *shaheed*. Accordingly the one killed in fighting with rebels (*bughat*) is not considered *shaheed* nor the one wounded in the battlefield then recovered from the wound then died because of it. The *shaheed* 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 *shaheed* is that he is neither washed nor shrouded in burial shrouds; rather he is buried in his blood and clothes because the *shaheed* is resurrected on the Day of Judgement with the smell of his blood like the sweetest-smelling musk. As for not washing the *shaheed*, this is due to what Al-Bukhari narrated from Jabir who said: **“The Messenger of Allah (SAW) would collect two men of those killed in Uhud in one cloth, then would say: Which one of them took/knew more of the Qur’an? If one of the two was indicated to him, he brought him forward in the grave-niche (*lihd*) 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: **“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 of those killed in Uhud: **“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.”** From Anas **“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 Khaybar. So it became clear that the *shaheed* is not washed. Similarly the *shaheed* 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: **“Cover them in their wounds and blood”** (narrated by Ahmad). And also due to what ibn Abbas narrated **“that the Messenger of Allah (SAW) commanded about those killed in Uhud that the iron (*hadeed*) and skins be removed from them and that they be buried with their blood and clothes”** (narrated by Abu Dawud). As for prayer over the *shaheed*, 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 from Uqbah bin ‘Amir **“he (SAW) prayed over those killed in Uhud after eight years the prayer over the dead like a farewell to those alive and those dead.”** And from Abu Dawud from Malik al-Ghiffari **“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: **“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 *shaheed*? He said: Yes, and I am a witness for him.”** These are three established ahadith, and they are explicit in indicating that the *shaheed* is prayed over.

As for the permission not to pray over the *shaheed*, this is because there came other ahadith that the Messenger (SAW) did not pray over the *shaheed*. Abu Dawud and At-Tirmidhi narrated from Anas **“that the Prophet (SAW) did not pray over those killed in Uhud or wash them.”** And Ahmad narrated from Anas **“the *shuhadaa* 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: **“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 ahadith are established and of explicit indication that the *shaheed* is not prayed over. Ash-Shafi’ responded to the hadith of ibn Abbas 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 (‘uyun) in the faces of mutawatirah that the Messenger did not pray over those killed in Uhud.”* All these ahadith are established whether those narrated that the Messenger prayed over the *shuhadaa* 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 the occurrence of prayer over those *shuhadaa*, just as it is also remote to leave (*waq'i*) on the 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 ahadith which established the prayer over the *shaheed* is the du'a so that his saying "prayed" means made du'a. One cannot say this since the Shari'ah realities/facts 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 ahadith of praying over the dead abrogates the ahadith 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 ahadith since it came in the narration of ibn Hibban "**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 (*mu'tabara*) and are (*tuhmal*) that not praying over the *shaheed* is allowed. It is not narrated that the Messenger (SAW) prayed over those killed in Badr, Khandaq or Khaybar. They are also (*tuhmal*) that if one prays over the *shaheed* there is nothing (wrong) in that and people are not prevented from praying over them. The *shaheed* is named *shaheed* (witness) as Paradise is witnessed/testified for him by the explicit text (*nass*) of the Qur'an. Allah the Supreme said: "*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:]. Muslim narrated from Jabir who said: "**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.**" From Anas bin Malik 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:

“Let none of you precede to anything without my being (*dunahu*). 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 ta’ala and the Messenger of Allah (SAW) have witnessed the Paradise for the *shaheed*. As for the life of the *shaheed*, it is established by the explicit text of the Qur’an. The Supreme said: “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]. This life for the *shuhadaa* is an unseen/hidden (*ghayb*) 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 inevitable matter as it is established/proven by a definite Qur’anic text. The Supreme said: “Do not say of those killed in the way of Allah (are) ‘dead’.. Rather they are alive but you do not know” [TMQ]. The life of the *shuhadaa* is of the unseen (matters) in which iman is obliged. As for the virtue of the *shuhadaa*, it is a great virtue without equal and he (SAW) clarified it in numerous ahadith. Al-Bukhari narrated from Qatadah who said: I heard Anas bin Malik (RA) from the Prophet (SAW) who said: “No one who enters Paradise would like to return to the world to obtain all that is upon the world except the *shuhadaa* 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:

“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-‘As that the Messenger of Allah (SAW) said: **“All the *shaheed*’s sins are forgiven except the debt”** (narrated by Muslim). He also narrated that the Prophet (SAW) said: **“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 Hurayrah from the Prophet (SAW) who said: **“Allah guarantess/stands 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 sould 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 staying (*iqamah*) at the frontiers to strengthen the Muslims. The frontier is every place at the limits/borders (*hudud*) 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 (*khayl*) in the Supreme's statement: "*Prepare for them as much as you can of ribat of horses so as to terrorise the enemy of Allah and your enemy*" [TMQ] because these (people) tether their horses and those (also) tether, each one preparing for his (*sahib*); so the established residence (*maqam*) 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 (*murabit*) whether it is the place of his residence (*watan*) i.e. his home where he normally resides or not, as the (*'ibra*) is not whether the place is his residence or not but rather the intention 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 a strength to the people of the frontier and those fighting. *Ribat* is the origin/basis 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): "**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 (*jara*) for him,**

and his sustenance would flow upon him and he would be safe from afflictions.” At-Tabarani narrated with a chain of trustworthy people (*thuqqat*) a *marfu'* hadith: **“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: **“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.”** From Fudhala bin ‘Ubayd who said: I heard the Messenger of Allah (SAW) saying: **“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 way the Prophet (SAW) said: **“*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 (*salaf*) 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 frighten them is achieved, and they are considered *murabit*.

Similar to the (*murabatah*) in the way of Allah is the guarding in the way of Allah for which there is great virtue. From ibn Abbas who said: I heard the Messenger of Allah (SAW) saying: **“Two eyes which the Fire will not touch (are): An eye which wept for fear of Allah, and an eye which passed the night guarding in the way of Allah.”** From Uthman (RA) who said: I heard the Messenger of Allah (SAW) saying: **“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 (*taqiyy*) and the impious (*fajir*), or the sincere in belief and the hypocrite. When the ayat of jihad came, they came general (*aam*). When the texts come 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 is allowed to enroll hypocrites, the impious and the one who fights due to anger in the Islamic army. As for the permission for these to be present with the sincere believers in fighting the enemies, and the Islamic army, this is due to the generality of the ayat of jihad. This is also because the Messenger (SAW) took the assistance 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 reproved (*‘ataba*) the Messenger when he permitted the hypocrites to stay behind the fighting in Tabu. The Supreme said: “*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:]. As for the impious, this is due to the generality of the ayat and due to what Said bin Musayyab narrated from Abu Hurayrah who said: “**The Messenger of Allah (SAW) commanded Bilal who announced to the people that none will enter Paradise except the Muslim sould, and that Allah will strengthen this deen through a dissolute/reprobate (*fajir*) man**” (narrated by Al-Bukhari). This is also because jihad is one of the obligations implemented by the Khaleefah. 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 which is *haram* and not permitted. Accordingly it is obliged to implement the jihad upon the impious as it is implemented upon the pious equally.

SEEKING THE ASSISTANCE OF DISBELIVERS 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 (*taifa*) 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 **“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 polytheists until the Messenger of Allah (SAW) said to them: **“O people of Khuza’ah, raise your hands from fighting. Verily the fighting has exceeded (limits) if it occurs. You have killed a (*la adinahu*) 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 of 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 not feared from him. As for what came from Aisha when she said: **“The Prophet (SAW) left for Badr. When he was in the (*hurra*) of the nomads, a man of whom was 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: **“I came to follow you and achieve (booty) together with you.”** Booty is not given except to Muslims, so the Prophet's refusal to seek assistance from him (*yuhmal*) that is carried that seeking of assistance from individual disbelievers is delegated to the Khaleefah's command. If he wills, he seeks assistance; and if he so wills, he refuses.

As for what came from Khubayb bin Abdurrahman from his father from his grandfather: **“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 (*mashad*) 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 (*yuhmal*) that seeking of assistance of disbelievers is delegated to the Khaleefah's opinion; if he wills, he seeks assistance and if he so wills, he refuses. The Messenger 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 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 is an evidence that seeking assistance of individual disbelievers in fighting is allowed and that it is delegated to the opinion of the Khaleefah. 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 verified his belief/opinion (*dhann*).

[END OF WEEK 2, SEPTEMBER: pages 175-186, 9hr55min, 4,243 words]

As for the evidence that it is not allowed to seek assistance from the disbelievers in their description/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: **“Do not seek light from the fire of the polytheists.”** The fire (*nar*) of a people is a metaphoric expression (*kinaya*) for their entity in war as an independent tribe or State. Al-Bayhaqi said: The authentic (*sahih*) is what Al-Hafidh Abu Abdullah informed us via a chain leading (*saq*) to Abu Hameed as-Sa'idi who said: **“The Messenger of Allah (SAW) went out until (*khallaf*) Thaniyya al-Wida' when there appeared a squadron (*kateeba*) and said: Who are these? They said: Banu Qaynuqa and they are the company (*raht*) 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 assistance of the polytheists.”** The Messenger (SAW) returned the company of Abdullah bin Salam of Banu Qaynuqa since they came as a nation (*taifa*) united in a Kafir squadron, and they came under their flag in their capacity as being from Banu Qaynuqa between whom and the Messenger 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 Khaybar 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: **“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 of the

rank of a State between whom and the Messenger 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: **“Do not seek light by the fire of polytheists”** since it is (*mutasallit*) over the entity just as it is strengthened by the Messenger’s accepting assistance from Quzman in the same place of the event of Uhud although he is 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 Hudaibiyya when the peace treaty between the Quraysh and the Muslims were written. When it came in the text of the treaty: **“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 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, 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 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: **“You will make a**

treaty of peace with the Romans, and you and them will fight enemies beyond them,” his saying **“You and them will fight enemies beyond them”** is taken to mean individual Romans not their State. This is because he said: **“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: **“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 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 text are upon 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 individual or State based on this being a guaranteed loan (*a’ara madhmuna*). 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: **“O Abu 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 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 (*mutlaq*) 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 Bait al-Mal since the wealth of Bait al-Mal is disposed (*mu'idd*) for the interests of Muslims. So among that which it is disposed for is preparing fighters. Accordingly it is obliged to organise (*tandheem*) the fighters in one Islamic

army under the leadership of the Khaleefah however numerous the divisions (*taqseemat*) of the army and (*nawahi*) of its organisation. They must all be under one flag however numerous its banners. The preparation of the whole army is from Bait al-Mal not from elsewhere; if anyone wishes to prepare any of the fighters, despite the presence of Bait al-Mal, this is paid to 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 Khaleefah 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 Khaleefah takes it from the Ummah to undertake its expenses upon the army and its preparation. What is spent in preparing the army is of the money spent in the way of Allah whether the army was in a state of war or not, as jihad is continuous (*madhi*) to the Day of Judgement and preparing the army with all that is necessary for fighting is continuous until the Day of Judgement.

FLAGS (*AL-ALWIYYA*) AND BANNERS (*AR-RAYAT*)

It is necessary to have the flags and banners. The difference between the flag and banner is that the flag (*liwa*) is what is tied in the edge of a spear and bent around it, and it is said of it "*al-alam*" (the sign/standard). It is said it is called "*liwa*" because it is bent due to its largeness so it

is not spread/extended except when necessary. It is a large sign/standard and a sign for the Amir of the army, so it follows him wherever he is. As for the banner (*rayah*), it is a sign given to the army and is metaphorically called “mother of war” (*umm al-harb*) and its plural is “*rayat*”. It, the banner, is tied on a spear or mast (*sariya*) and is left until the wind shakes 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, Ja’far and ibn Rawaha to the people before their news reached the people and said: **“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 called Usamah. Then he said: **“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 upon the people of Ibni in the morning and burn them. Hurry in a travel which precedes information. If Allah grants you victory then reduce your staying with them.”** The disease of the Messenger of Allah (SAW) began on the third day and he tied a flag for Usamah by his own hand. Usamah took it and gave it to Buraydah, and he encamped at Al-Jurf. From Al-Harith bin Hasan Al-Bakri who said: **“We came to Madinah**

and at that time the Messenger of Allah (SAW) was upon the *minbar* with Bilal standing in front of him (*mutaqallid*) with a sword. There were black banners and I asked: For are these banners? They said: ‘Amru bin al-‘As who has come from some battles.’” It came in the two Sahih (books of ahadith) **“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.” From Anas in An-Nisai **“that ibn Umm Maktum used to have black banners with him in some of the (*mashahid*) of the Prophet (SAW).”**

It is clear from the aforementioned 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/squadrons (*kataib*) and expeditions, and with different army units. The army has many banners for it whereas it has 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. From ibn Abbas who said: **“The banner of the Messenger of Allah (SAW) was black and his flag was white.”** From Jabir: **“The Prophet (SAW) entered Makkah and his flag was white.”** In the aforementioned hadith of Al-Harith bin Hasan came **“and there were black banners.”** These ahadith 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 (*arkan*) and is from wool. From Al-Bara bin Azib who was asked how was the Messenger (SAW)’s banner? He said: **“It was black, four-cornered from (*namirah*).”** The meaning of “*numrah*” i.e. a “*hibarah*” i.e. “*baradah*” from wool. It is written upon it *“La ilaha illa Allah, Muhammad Rasul-Allah.”* Ibn Abbas narrated in Abu Shaykh the words:

“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 (*arkan*), and is of wool and *“La ilaha illa Allah, Muhammad Rasul-Allah”* is written upon it,

except that it is bigger than the banner with black letters whereas it is written upon the banner with white letters.

According to the form which came in the texts and in conformity to the reality of the standards/signs (*'ilam*), it is noted that for each banner and flag are four clear (*arkan*) extended in its length and breadth. The measurement of its breadth is two-thirds its length. The length of the flag is 120 centimeters and its breadth 80 centimeters, and the banner's length is 90 centimeters and its breadth is 60 centimeters. It is allowed to use flags and banners of greater or lesser measurement. It is preferred (*mustahsan*) 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 (*ajhiza*), departments and utilities (*masalih*). The flag is raised in the office of the Khaleefah above the residence of the Khaleefah, 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 (*AL-USRA*)

When the Muslims capture captives from their enemy, the matter of the captives is delegated to the Khaleefah's direct command nor is their any opinion for those who captured them, the battlefield commander or army leader. This is because once the fighter becomes a captive, the command regarding him is the Khaleefah's opinion and the Khaleefah follows in this Shari'ah rule on captives. The rule of the captives is established by a definite Qur'anic text is that the Khaleefah is given a choice between release or ransom due to the Supreme's statement: "*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]. This is explicit in the rule of the captives and it is a specified (*muta’ayyan*) 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 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 captives before any battle had occurred or any captives (*yuhdath*). If added to this is that this is the one ayah which clarifies explicitly what is done to captives, it becomes clear that it is the text of the rule of captives and the basis of this to which returns all other texts upon captives. And of these ways which specify this rule on captives 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 specified due to specifying the choice in “*imma*” the impermissibility of there being either than what the Qur’an gave a choice in the rule of captives. This is strengthened in that 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 of the captives of Badr: “**If Mut’im bin Adiyy were alive then talked to me about these (*nutna*), I would release them to him.**” He ransomed the captives of Badr and they were seventy three men, and ransomed the day of Badr two men for one man. It is narrated from Aisha who said: “**When the**

people of Makkah sent about ransoming their captives, Zaynab sent money to ransom Abu Al-‘As. She sent in it a necklace that was for Khadijah which she (*adkhalat*) 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.” From Imran bin Husain “that the Prophet (SAW) ransomed two men of the Muslims for one man of the polytheists from Banu ‘Aqeel.” From ibn Abbas who said: “There were people of the captives of 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 captives is release or ransom. It is ascribed to Al-Hasan, ‘Ata and Said bin Jubayr that they disliked the killing of captives and said: If only he released or ransomed him as was done with the captives of Badr, and because Allah ta’ala said: “*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 Khaleefah chooses in the captives between two matters nothing else, which are 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 (*tahkeem*) not that they were captives of war. As for what is narrated that he (AS) killed An-Nadhr bin Al-Harith and ‘Uqbah bin Abu Mu’ayt in custody (*sabra*) on the day of Badr, and Abu ‘Uzzah on the day of Uhud, this does not indicate that this is the rule of captives 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 captives in all battles. What caused the killing of these persons specifically is that the Messenger 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 captives. Ahmad and Al-Bukhari narrated from Abu Hurayrah who said: The Messenger of Allah (SAW) sent us on an expedition and said: “**If you find so and so (*fulan*) and 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 jalla so if you find them, then kill both of them.” Accordingly it is clarified that killing is not of the Shar’a rules on captives; rather killing is a Shar’a rule on specific persons from whom the Khaleefah views there is danger so he commands their killing even if they are captives. As for what is narrated for the Messenger of Allah (SAW) enslaving after the revelation of this ayah, this was the enslaving of (*sabayai*) *not of captives* 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 did not come anything upon its occurrence despite the numerous capturing of Arabs in his (SAW) time. As for what some books of history narrated of the Messenger (SAW) enslaving Banu Najiyah 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 there were to be authentic, the narration states the words: **“He enslaved Banu Najiyah, their males and females”** so it mentioned males (*dhukur*) and females (*inath*). 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 is allowed. Accordingly the Messenger did not enslave any man; rather he enslaved the *sabaya*, male and female. The established reality in the ahadith that are

considered proofs (*hujja*) strengthen this. The one who follows the actions of the Messenger finds that he did not enslave a captive man, not of the Arabs or other than them. Rather what is narrated from him is that he enslaved the *sabaya*.. In the battle of Bard, there were no women with the enemy so that is why no *sabaya* occurred in it. Rather what occurred was captivity so the

Messenger ruled upon them with ransom. In the battle of Hunayn, Hawazin came out to fight the Messenger and their women came out with them. When the Muslims vanquished the Hawazin fled, they left the women behind them so *sabaya* occurred and they were placed with the properties (*amwal*) of the booties. In Banu Mustaliq, the enemy left behind their women so *sabaya* occurred. In Khaybar they were fought and their forts conquered. The women who were together with the fighters were taken as *sabaya* while the remaining people were left just like the men were left. These incidents all indicate that the Messenger used to capture men fighters and *sabaya* the women who were with the fighters, as well as the children. As for other men and women who were not in the battle, neither captivity or *sabaya* occurred upon them. This indicates that the Messenger did not enslave captives. This clarifies that the Messenger (SAW)'s action in relation to captives occurred (*jarra*) according to the stated text (*mantuq*) of the ayah. Verily he released at certain times and he took ransom at other times. He did not enslave the captives nor kill them; rather he only *sabaya* the women and children, and killed specific persons due to their particularity due to the danger they posed to Muslims.

As for the question of *sabaya* which became similar to people with the captives, people at that time considered the women who went out with fighters, and children, like the consideration of properties in the technical definition (*istilah*) of war without (any) difference in that between the Arabs and others. The war technical definition used to consider booties as properties and *sabaya*. The Messenger 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 rule of booty run over them

not the rule of captives. The rule of captives remains, giving the Khaleefah the choice between release or ransom and nothing else. This rule remains until the Day of Judgement. If the Islamic State fights its enemies, the captives are (*tu'amil*) between release and ransom; and if women go

out with them to the battles, after (*injila*) from the battle the women are taken *sabaya* and they are like the properties of the booties.

This rule on captives and *sabaya* is general for people without distinction between Arabs and others; it is not specific to Arabs. This is because the ayah and ahadith are general, nor there come 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-Bayhaqi that the Messenger (SAW) said on Uhud: **“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 (*dhaif*). At-Tabarani narrated it via another way and within it is Yazid bin 'Iyadh who is more seriously weak than Al-Waqidi. This type of hadith does not stand as proof so it is not allowed to be a Shari'ah evidence. As for what is narrated of the Messenger 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 covering Arabs and others. As for the incident occurring with Arabs, this is a reality of a situation (*waqi'ah hal*) with no understanding (*mafhum*) 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 (*'ibra*) 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, is not specified with this person or group. Rather its rule is a general rule.

[END OF WEEK 3: 6hr10min with 2 days sick leave equals 10hr10min; pages 186 to 198; 4,580 words]

Similarly the absence of enslaving men occurred with

Arabs since the reality was that the Messenger 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 *sabaya* is general over all people except Arab polytheists. The polytheist Arabs are excluded (*istathna*) from it starting four months from the ninth day of Dhul-Hijja, ninth year of Hijra until the Day of Judgement. It is not accepted from them except Islam or fighting, and captives and *sabaya* 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 from the revelation of the ayah to the Day of Judgement since the exclusion is specific to Arab polytheists (*mushrikeen*) from the day of conveying these ayat to the polytheists among the Arabs which the ninth of Dhul-Hijja and after it four months. 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 (*ibtida*) from this mentioned date, this is established by an explicit text of the Qur'an. The Supreme said: "*You will be called to a people of great boldness (ba'as). You will fight them or they will embrace Islam*" [TMQ 48:] and He said: "*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:] and He said: "*Travel in the land for four months, and know that you do not defeat Allah!*" [TMQ 9:]. This is explicit in excluding Arab polytheists from the generality of ayat. So it is not accepted Arab polytheists, after the revelation of these ayat and finishing the new moon (*muhilla*) of four months, except Islam or war. As for what is narrated of the Messenger 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 (*AS-SIYASA AL-HARBIYYA*)

War policy is taking care of the affairs of war upon the position of its matter (*sha'an*) so as to make the victory for Muslims and (*khudlan*) for their enemies. The immediate practical aspect is apparent in it. The Shar'a allowed within it 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. Of these considerations are those related 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 Khaleefah and Muslims to do with the enemy similar to the matters which the enemy did to them and allow upon (*yastabeeh*) the enemy similar to what the enemy allowed upon the Muslims, even if it were of the forbidden things. The Supreme said: "*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]. It is narrated that the reason/cause (*sabab*) for the revelation of this ayah is that the polytheists mutilated Muslims on the day of Uhud; (*qarru*) of their stomachs, cutting their private parts and slitting the tips (*sharamu*) 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 (*shaqqa*)

and his nose (*istalama*) so he said: “*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 (*ziyada*) 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 mutilating 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 then came news (*akhbar*) regarding that. However, the Muslims can do it if disbelievers mutilated those killed among the Muslims. Similar to this is deceit (*ghadar*) and breaking the covenant/promise 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 came 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. The Supreme said: “*If you fear treachery from a people, then throw it against them equally (ala siwa)*” [TMQ]. 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 (*ihyaa*) humanity with Islam not to exterminate humanity.

Of what is related to actions of war is that Muslims can burn the trees of disbelievers, their food, farms, homes and destroy them. Allah the Supreme said: “*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]. 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: “**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 (*‘amir*) or cutting trees. However, if the Khaleefah 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 were forbidden. Allah ta’ala said: *“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]. This speech is general in everything nor did there come what would specify this ayah in its essence (*dhat*), 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. From ibn Umar: **“Verily the Messenger of Allah (SAW) cut and burnt the palm-trees of Banu Nadhir.”** Upon this did Hasan say:

wa hana ala surat bani luayy hareeq bilbuwaybira mustatir

And upon this was revealed the ayah: *“You did not cut any palm-tree or leave it standing upon its roots”* [TMQ]. From Jareer bin Abdullah who said: The Messenger of Allah (SAW) said: **“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 Yemem 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 (*kunya*) was Abu Art’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 (*ajrab*) camels. He said: ‘So the Prophet (SAW) blessed (*barraka*) 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: **“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 (*wasiyya*) of Umar narrated by Malik in Al-Muwatta and its (*muqarana*) 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 the Supreme’s statement: “*But Allah disliked their going out so He hindered (thabata) them and it was said ‘Stay behind with those who stay behind.’ Had they gone out with you, they would not have increased in you except corruption (khabala) and they would have (awdha’u) your gaps seeking sedition (fitnah) for you*” [TMQ] even though the Imam does not prevent the hypocrite or transgressor 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 Khaleefah and army leader to do this.

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 in his return from the battle of Banu Mustaliq. He returned with the Muslims in surpassing (*faiqah*) haste. He would walk during the night and day to his utmost effort/ability until he reached Madinah. He exhausted (*anhak*) weakness for the Islamic army even though the rule is being easy with the army. From Jabir who said: “**The Messenger of Allah (SAW) would lag behind in travel, gently urge the weak and put him behind him and pray du’a for them**” (narrated by Abu Dawud). However the war policy in relation to what Abdullah bin ‘Ubayy bin Salul was doing of (*iyqa*) sedition/strife between Muslims, the Muhajireen and Ansar, necessitated not traveling according to the travel of the weakest of the army but traveling the travel of their strongest so as not to leave a place for discussion or debate.

In such manner does the war policy require that the Iman undertake the actions required

to take care of the affairs of war so as to gain the battle or war and (*khudhlan*) for the enemy and defeating them. However, this is restricted to where no text came upon a specific action; if there came 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 setting in which it came. If the text came definite without reason (*illah*), then it is not allowed to undertake the action; if the text came with a reason, then the text is followed according to the reason. If the text came with a prevention (*man'i*), and it came that the Messenger 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: **“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: **“A woman was found killed in some 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: **“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: **“Go forth in the name of Allah, with Allah and in the creed (*millah*) of the Messenger of Allah. Do not kill a perishing (*fani*) old man (*shaykh*), a child or a woman and do not betray. Gather together your booties and be righteous as Allah loves the righteous.”** These ahadith 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 it is allowed to do 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 **“that the Messenger of Allah (SAW) was asked about the people (*yubeetuna*) among the polytheists and their women and children are struck. He said: They are of them.”** In the Sahih of ibn Hibban from S'ab who said: **“I asked the Messenger of Allah (SAW) about the children of polytheists whom we kill together with them. He said: Yes, for they are of them.”** At-Tabarani extracted from Thawr bin Yazid **“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 indicated 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 (*tafseel*) 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/hireling (*'aseef*) i.e. the employee who is with a people through compulsion as he is among the weak people. This is due to there coming the prohibition of killing either of them in a definite way without being reasoned (*mu'allil*) 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 her. The Messenger of Allah (SAW) stopped over her and said: **“This is not one to fight. Go meet Khalid and say to him: Do not**

kill children nor 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) **“passed by a woman killed on the day of Hunayn 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 was the 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 reject (this) from him.”** 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 (*fani*) 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: **“Kill the old men of the polytheists and leave their (*shurugh*)”** and also due to what Al-Bukhari narrated from the hadith of Abu Musa that when the Prophet (SAW) finished from Hunayn, he sent Abu Amir over the army of Awtas. He met Dureed As-Sama, and he was one hundred (years) and something, and they brought him before them to plan for them the war. Abu Amir killed him and the Prophet (SAW) did not reject that from him. Accordingly the hadith of Anas 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 matter for which came prohibition about doing 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 came 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 (*bata*) without reasoning. The Supreme said: “*Verily those who forge/fabricate lies are those who disbelieve in the ayat of Allah*” [TMQ] and the Supreme said: “*Then let us invoke (nabtahil) and make the curse of Allah upon the liar*” [TMQ]. This (*bitta*), absoluteness and generality cannot be reasoned, restricted or specified except by another text, and there is no entry for the mind except to under the text and nothing else. There did not come in the Sahih any text which (*yufeed*) 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 ahadith namely: the situation of war, to the woman and reconciling (*dhat al-bayyin*) due to the text about them. Ahmad, Muslim and Abu Dawud narrated from Umm Kulthum bint ‘Uqbah who said: “**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: “**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 (*khisal*): 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 (*fi’liyya*) war in the matter (*sha’an*) of war, so lying is absolutely not allowed except in the situation of war. As for what is authenticated of the Prophet (SAW) “**that when he intended war, he would conceal/dissimulate (*warra*) 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 (*ikhbar*) contrary to the reality but was rather of the (*qabeel*) of dissimulation (*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 of the deceit which came in his (AS) statement: “**War is deceit**” (narrated by Muslim).

As for what was narrated by Jabir that the Messenger of Allah (SAW) said: “**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 say (lies). He said: I have done so. He said: So he reached him and said: Verily this one—i.e. the Prophet (SW)—has (*annana*) and has asked us for sadaqah. He said: By Allah, the same (for us). He said: Verily we have followed him and we dislike to leave him until we see where his matter will reach: He said: He did not stop talking to him until he had power over 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 (*ta’ridh*)

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 story/tale (*qisa*) of Al-Hajjaj bin ‘Ilat in his seeking permission to say about him whatever he wished for his benefit in rescuing/extracting (*istikhlas*) his property from the people of Makkah. The Prophet (SAW) gave him permission and he informed the people of Makkah that Khaybar 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 of 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 battlefied nor to fighters; rather it is allowed for 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-Awsat*: “**All lying is sinful except that by which a Muslim benefits or by which he defends his deen**” which is in Al-Bazzar with the words: “**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 an 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 forbidding 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: “**All lying from the son of Adam is haram except in three (*khisal*)**” and “**I did not hear the Prophet giving permission in anything**

of what the people say except in three: war...” etc. This restriction means all else is haram. All the ahadith which came are in the situation of active war; all ahadith other than them are weak and not used as proof (s).

As for dissimulation (*tawriyyah*) in other than war, if the listener understands it contrary to the reality such as where the word does not indicated the reality and something else linguistically or in technical usage (*istilah*) 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 by the speaker but the listener understands from the word the opposite to the reality, so it is not considered of the (*qabeel*) of dissimulation and is not allowed. As for where it is understood from the word the reality and something else, this is of 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: **“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 surmise/think that he meant the road whereas he meant the road to goodness (*khayr*).”**

SPYING (*AT-TAJASSUS*)

Spying is investigating/examining news/information. It is said in the language “spied the news and spying it (is) investigating regarding it” and from it is the spy (*jasus*). 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 be spying; rather spying is investigating news whether secret or open i.e. secrets and non-secrets. Whereas if he sees things naturally without investigation and without his action being investigating of news, or collection information to publish it or is concerned (*ahtamma*) 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 situation, it is not spying because investigating of information which is spying is only where following and scrutinising it is for the objective of examining/disclosing (*itla'*) 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 of the one who follows news and collects it like the correspondents of gazettes/journals (*jaraid*) 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 following 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 (*harbi*) disbelievers among them. As for the officers of (*taharriyy*) departments and (*maktab thani*) 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 (*fi'lan*) or by rule (*hukman*), this is allowed for Muslims and obligatory upon the Khaleefah. As for spying upon Muslims and citizens of the Islamic State being haram, this is established by the Qur'an explicitly. The Supreme said: "*O you who believe, avoid much suspicion (dhann) as some suspicion is sin and do not spy*" [TMQ 49:] 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 a (*taharriyy*) department or an investigative/research (*mubahith*) department (*dairah*) 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'an. It is prevented from the dhimmi like it is prevented from 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 post /office is spying upon belligerent disbelievers who enter our lands

of the one granted security (*musta'man*) or the one under covenant (*mu'ahid*), 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 our lands or ours. Accordingly the existence of (*taharriyy*) or investigative departments and their like is not haram but obligatory and the 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/news so as to expose conspiracies and guide/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 there is benefit or not in something is not a reason for forbidding or allowing; 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 over whether there is benefit in it to reason (*ta'leel*) 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 not 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.

[End of Week 4: pages 198 to 213; 5,636 words; 6hr1min] [September 2000: pages 155 to 213; 37hours; 21,509 words]

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 (*harbi*) in practice (*fi'lan*) or rule (*hukman*), this is excluded from the generality of the ayah due to the coming of ahadith specifying the forbidding (*tahreem*) of spying on non-belligerent disbelievers. As for belligerent disbelievers, spying upon them is allowed for Muslims and obligatory upon the Muslims' Khaleefah 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 (*raht*) 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 traveled two days, he opened the book and looked into it. It said in it: **“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 determined/obliged upon him to execute. So the Messenger had requested all to perform spying but obliged Abdullah and gave a choice to the rest. This is an evidence that the request in relation to the leader of a group (*jama'ah*) is a decisive request, and in relation to the rest together with him it is an indecisive (*ghayr jazim*) request. It is also an evidence that spying by Muslims upon the enemy is allowed. Spying upon the enemy is of 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 of the class/category (*min bab*) of *“that without which an obligation cannot be fulfilled is obligatory.”*

This is the rule of spying in relation to its 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: **“There came to the Prophet (SAW) a spy of the polytheists while he was traveling. He sat with his (SAW) Sahabah discussing then hastened (*ansala*).**

The Prophet (SAW) said: Seek him and kill him. I preceded them to him and killed him, so he gifted me his booty (*salaba*).” And in Muslim from the narration of Ikrimah with the words **“he removed a (*talaqa*) from around its breast (*haqaba*) and tied the camel with it. Then he came forward to eat breakfast with the people and began looking. There was some weakness in us and thinness in our back, and some of us were (*mashat*) so if he left (*yashtaddu*).**” And in the narration of Abu Nu’aym in Al-Mustakhraj via the way of Yahya bin Al-Hamani from Abu Al-‘Umays **“overtake him for he is a spy.”** The is explicit in that the Messenger upon it merely being established before him that he is a spy said **“Find him and kill him”** which 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 (*mu’ahid*) or with a pledge of security (*musta’man*) or other than a *mu’ahid* 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 dhimmah 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 Khaleefah to make killing as his punishment so he is killed if he becomes a spy due to what Ahmad narrated from Furrat bin Hayyan **“that the Prophet (SAW) commanded his killing and he was a dhimmi. He was a spy for Abu Sufyan and an ally (*haleef*).** 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 when 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 in the request which is that the text of the hadith indicates that the Messenger did not hasten (*badara*) to kill this 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 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: **"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: **"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 (*dha'inah*) 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 (*unas*) of the people of Makkah informing them with some of the matter (*amr*) 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 (*mulsaq*) to Quraysh, nor was I of her body (i.e. tribe). Those with you

of the Muhajireen have relatives in Makkah who protect their families and property. So I wished if the relation (*nasb*) with them escaped me that I take a hand with which to protect my relatives. Nor did I commit disbelief nor 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 (*atla’a*) over 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 (*yureed*) reasoning (*ta’lil*) and (*seeqa*) 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 (*wasf waqi’ah*) because Furrat bin Hayyan was not of 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 of those whom Al-Bukhari and Muslim agreed to consider as proof with his hadith. So the hadith is established (*thabit*) and is (*yuhtaj*) 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 Khaleefah.

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 Shar’a has not (*rataba*) a specific punishment for this sin so its punishment becomes a discretionary punishment (*ta’zeer*).

ARMISTICE/TRUCE (*AL-HUDNA*)

The armistice treaty between Muslims and disbelievers is permitted due to his (SAW) armistice/truce (*muhadana*) 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 traveling to Hudaibiyya that an agreement/accord between the people of Khaybar and Makkah upon invading the Muslims. He hastened directly upon his return from Hudaibiyya to invade Khaybar 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. For he was able after (*muwada'ah*) Quraysh to free himself to fight Khaybar and for 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 (*yaq'a*) as a means to fighting as at this point it becomes fighting metaphorically (*ma'ana*). The Supreme said: *“Do not become weak and call for peace while you are superior. And Allah is with you and will not neglect your deeds”* [TMQ].

If the benefit in an armistice treaty is verified, it must be measured (*taqdeer*) for a specified and known period. No truce is allowed without measuring a period because it is a fixed period (*muaqqat*) contract so leaving it unrestricted without mentioning the period invalidates it due to its necessitating permanency (*ta'beed*) 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 is invalidated since the Hudaybiyya 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 concluded or they violate it with their nullifying it either by their saying so clearly, fighting us, killing a Muslim or 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 them. Similarly if the State fears their treachery in something which nullifies their (*idhar*) of the truce such as where a sign of this appears; this would be nullification of the truce. If anything of his occurs, a surprise attack against them is allowed any time, night or day, since their breaking the truce allows Muslims to fight them and to nullify the truce with the. This is because when the Messenger (SAW) came to a truce with Quraysh and they broke his truce his truce, it became allowed to him regarding them what used to be forbidden so he fought them and conquered Makkah. And because the truce is a fixed period contract which ends with its period finishing or its nullification. The Supreme said: *“As long as they stand firm upon it in relation to you, then stand firm upon it in relation to them”* [TMQ] and He said: *“And if you fear treachery from a people, then throw back upon them on equal terms”* [TMQ] and He said: *“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:]. If the enemy falls short of the truce's conditions and do not observe their agreement in their transactions (*tasrifat*) with us, then they have absolved us from our covenant. Due to this their blood and property have become permitted to us, 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 ALLIACNES (*AL-AHLAF AL-'ASKARIYYA*)

“*Al-hilf*” in the language is the covenant (*'ahd*) and friendship. It is said “*halifuhu*” from “*ahiduhu*” (he covenanted with him). Except that the word “*al-hilf*” 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 for the other to enter war together with it or not according to the interests they see. These alliances could be dual treaties (*mu'ahadat thinaiyya*) 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 whom aggression occurred with the States with which it has a military alliance and in the light of their benefit it 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 was 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 legitimate (*shar'an*). So the Ummah is not obliged with them even if the Muslims' Khalifah contracted them as it contradicts the Shar'a since it would make the Muslim fight under a Kafir authority/leadership 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/leadership. Ahmad and An-Nisa'i narrated from Anas who said: The Messenger of Allah (SAW) said: "*Do not seek light with the fire of polytheists*" i.e. do not make the polytheists' fire a light for you. The fire is an allusion (*kinaya*) for war; it is said the "fire of war was kindled" (*awqada nar*) i.e. its evil and violent passion/excitement was called into existence. And the fire of fright (*tahweel*) is a fire the Arabs in jahiliyyah 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 individuals. The Messenger prohibited seeking assistance of the disbelievers as an entity. It came in the hadith of Adh-Dhahak (RA) "**that the Messenger of Allah (SAW) went out on the day of Uhud when there was a squadron (*kateeba*) of good (*husna*) or harsh (*khushna*) so he said: 'Who are these?' They said: 'The Jews so and so.' So he said: 'We do not seek the assistance of disbelievers.'**" Al-Hafidh Abu Abdullah informed and he (*saqa*) his chain to Abu Hamid As-Sa'idi who said: "**The Messenger of Allah (SAW) went out until he left behind Thaniyya al-Wada' when 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 rejected assistance of the Jews and said in general fashion: "**We do not seek assistance of the disbelievers...We do not seek assistance of the polytheists.**" One should not say that we seek assistance with disbelievers upon

our enemy and seeking assistance with the disbeliever is allowed since the Messenger consented to Quzman fighting together with him in Uhud and he was a disbeliever, and accepted assistance from some people of the Jews of Khaybar 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 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. They came to fight with the Messenger and they were upon this situation and it was said to him: **"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) **'that the Messenger of Allah (SAW) went out the day of Uhud where there was a *husna* squadron or he said *khushna*. 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 (*ta'weel*) is that they were powerful (*mu'tazizeen*) 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 (*munfarid*) with their own banner then we do not seek assistance from them. This is the interpretation of what was narrated of the Prophet (SAW) said: **'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: **"I am free (*bariu*) from every Muslim who fights together with a polytheist'** meaning if the Messenger is under the polytheists' banner."

From this it became clear that military alliances with disbelieving States is haram in the Shar'a so it is not contracted. It is not allowed for the Messenger 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 (*kufir*). As for fighting disbelievers to enter from *kufir* into *kufir* and to shed his blood for that, this is haram.

ALLOWED TREATIES

The Islamic State may contract treaties of peace, truce, good neighbourliness, cultural (*thiqafiyya*) 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 to by Islam, those conditions which are not correct in Islam are voided (*yubtal*) 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' Khaleefah 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 an armistice/truce and peace treaty with her according to what the (*mawqif*) 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? (*tasadaqa*) with a neighbouring State or a State remote from her for a matter required by the interests of the da'wah, it is allowed for her to do this. The State may find in (*muwada'at*) 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 in (*muwada'at*) or being able to reach another enemy. Therefore it is allowed for the Islamic State to contract good neighbourly treaties with neighbouring States just like 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 (*sayr*) the Islamic da'wah. The Messenger (SAW) did make a treaty with Banu Mudlij and Banu Dumrah to make safe the roads his army traveled upon and he made a treaty with Yuhanna bin Rub'ah in Tabuk to make safe the boundaries (*hudud*) of the State in the direction of Rome in the boundaries of Bilad Sham. If a people of the people of war (*ahl al-harb*) request friendship (*muwada'ah*) for specific years for nothing, the Khaleefah looks into that. If he sees it as good for Muslim due to their severe and great strength (*shawkah*) or for other than that, he can do this due to the Supreme's statement: "*If they incline to peace, then you also incline to peace*" [TMQ]. And also because the Messenger (SAW) made peace with the people of Makkah in the year of Hudaibiyya upon leaving war between them and him for a specified period. This was because it reached the Messenger that there was an accord between the people of Khaybar and Makkah to invade Muslims, so he made peace (*wada'ah*) with Quraysh then he went to fight Khaybar.

In all allowed (*muwada'at*), the command of contracting or not contracting them is left to the Khaleefah's opinion and ijtihaad because the Khaleefah is appointed as guardian (*nathir*) and among guarding is firstly protecting the Muslims' strength. He may view in the (*muwada'ah*) 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 Khaleefah' opinion to measure according to what he sees as good for Muslims, but if there is no good in the (*muwada'ah*) for Muslims then it is not correct (*la yanbaghee*) to make peace with them due to the Supreme's statement: "*Do not become weak and call to peace when you are superior*" [TMQ], and because fighting disbelievers is obligatory and leaving what is obligatory without excuse is not allowed. If a king or leader or State of the people of war seek a covenant (*dhimmah*) from Muslims on condition 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 where 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 State request is contrary to what the contract obliges

so it is a void condition. So if peace or the covenant is given upon this, it is voided from its conditions what is not suitable in Islam due to his (SAW) saying: “**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 Islamic land and their support becomes obligatory like the support of Muslims.

EMERGENCY (*IDHTIRARIYYA*) TREATIES

Muslims could fall into severe situations which compel them to matters which are not allowed but the necessity (*dharura*) obliges it. The Islamic State could 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 but they facilitate creating conditions which would 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 Khaleefah to contract it 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 (*muwada'ah*) 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 do not execute (*tajree*) 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 (*muwada'ah*) 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 (*muwada'ah*) 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 Sham. He left him in his zone (*mintaqa*) upon his religion, and he did not enter under the banner of Muslims and their rule. This treaty of limited period makes the security (*aman*) of this State guaranteed by the Islamic State. Whoever enters it of the Muslims enters it with the security of the treaty 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 (*muwada'ah*), nor is anyone of 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 (*mawad*) and what is similar to this because they are people of war even if they are people of a treaty.

The second situation: This is opposite to the first situation wherein the Muslims pay money to their enemy in return for their silence (*sukut*) regarding them. The *fuqaha* mentioned that if the enemy surrounded/blockaded (*hasara*) the Muslims and require a (*muwada'ah*) for specified years on condition that the Muslims pay the disbelievers a specific amount every year, it is not correct for the Khaleefah to comply to them upon that due to the contemptibility and humiliation therein for Muslims except under necessity. This is (where) the Muslims fear extermination (*halak*) for themselves, and the Khaleefah views there is good in this truce. At this point, there is no harm in that due to what was narrated **“that the polytheists surrounded the trench and Muslims were in calamity/trial like Allah ta’ala said: ‘Therein the believers were tested and shaken with a severe shaking’ [TMQ 33:]. 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’ad bin ‘Ubadah and S’ad 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 while being contemptible (*ad-dunya*)? 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’ad bin ‘Ubadah and S’ad 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 (*dharar*). This is because if they conquered Muslims they would take all the wealth and the families as *sabaya*, so paying some wealth to safeguard Muslims in their families and wealth is less contemptible and more beneficial.

ANNULLING (*NAQDH*) 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) (*mu'ahid*) assist any enemy of the Muslims and supports him against the Muslims. That is like where 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 us helped (*madda*) 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 says: "*Except for those with you made a treaty among the polytheists then they did not violate anything or assist anyone against you*"[TMQ]. Its understanding is that if they assist anyone against Muslims, it is allowed for Muslims to nullify the treaty with them.

Secondly: The *mu'ahid* violates a condition of the treaty's conditions which is like what occurred to the Messenger (SAW) in the truce of Hudaibiyya. Khuza'ah entered into the protection of the Messenger and allied with him. Quraysh violated this condition and incited Banu Bakr upon

Khuza'ah. Then they regarded and attempted to preserve (*ibqa*) the treaty, but the Messenger considered this violation (*mubeeh*) 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 *mu'ahid*, nullifying the treaty is allowed. Allah ta'ala said: "*If you fear treachery from a people, then throw it upon them upon equality*" [TMQ]. 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 *mu'ahid* nullifies/violates 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 hard/severe (*qasiyya*) strike so as to be a lesson and (*'ibra*) for others so that they do not become bold (*qaddamu*) to transact with the Muslims with a similar transaction. The Supreme said: "*The worst beast before Allah are 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 (tathqifanna) 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. The Supreme said: "*When the sacred months pass, fight the polytheists wherever you find them*" [TMQ]. This is the period mentioned before this ayah which is His statement: "*Travel in the land for four months*" [TMQ 9:]. And the Supreme said: "*Will you not fight a people who violated their oaths?*" [TMQ]. However, it is necessary in nullifying the treaty that it is thrown against them equally. The Supreme said: "*Throw it against them equally*" [TMQ] and this is general in all treaties i.e. upon equally between them and you in knowledge about that. Fighting the enemy is not allowed before the throwing (*nabdh*) and before they know this so that they return to what they were upon of

Fortification (*tahassun*) which was a protection against betrayal. All of this is regarding other than those who fulfill their pledge/covenant (*'ahd*). As for those who fulfill their covenant and are upright (*yastaqimun*) with the Islamic State, it is obligated that the Muslims fulfill their covenant with them and be upright with them as they were upright. The Supreme said: “*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]. Its understanding is that those who violated the Muslims in anything like the second mentioned situation or they assisted anyone against them anyone like 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. The Supreme said: “*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]. 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 be upright and fulfill for them their covenant. It is clarified from this that the fulfillment 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 (*inha*) it. The Supreme said: “*Fulfill for them their covenant to its period*” [TMQ] 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 it occurs from them 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 narration is not betrayal. Accordingly the Legislator (*Shar'i*) has determined/specified (*haddada*) 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 (*iltizam*) with what the Legislator alone clarified in treaties and stopping (*wuquf*) at the limit of the Shar'a in its matter together with leaving the matter of the style (*uslub*) and choice to the Khaleefah's opinion and his ijtiḥad.

THE BELLIGERENT DISBELIEVER (*KAFIR HARBI*)

The belligerent disbeliever is any disbeliever who has not entered in the pledge (*dhimmah*) of the Muslims, whether he were under a covenant (*mu'ahid*) or under a security (*must'amin*) or here were neither a *mu'ahid* or a *musta'min*. If a treaty is contracted between the Islamic State and any kafir State, the citizens of this State are covenanted persons (*mu'ahideen*) who are dealt with (*yu'amiluna*) 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 prevent 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 to them weapons and war materials, this condition is not fulfilled if this were strengthening 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 (*haqeeqa*) whether or not active war is established between them and us or not. They are not enabled (*yumakkinun*) 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 (*sulh*) 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 ONE GRANTED SECURITY (*AL-MUST'AMIN*)

The “*musta'min*” with a “*kasra*” in the “*meem*” is the one seeking security (*aman*). He is the one entering the homeland (*dar*) of another with a security i.e. the one who enters another's country with a security where he were 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 (*khulsat*) or theft, his possession of them is a forbidden ownership so he must give it as sadaqa. Whereas if he seizes by force (*ghasb*), it is returned to them since seizure by force is ensured (*madhmun*) for the one seized from; it returns to him whether he were 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 the day of the conquest of Makkah and said: **“Whoever closes his door is safe”** (narrated by Muslim). He gave 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: **“There is a flag for each betrayer (*ghadir*) 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 abide/dwell (*makatha*) 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/specified period, the (*mu'tabar*) is the year (*hawl*) as it is allowed for him to reside in the Islamic State without jizyah so he is given a year. If he exceeds this,

he is given a choice between residence and being compelled with the jizyah or leaving Dar al-Islam. If he stays after a year, it is considered that he accepted the jizyah and the dhimmah is imposed upon him so he becomes a dhimmi and jizyah is taken from him because it is not permitted for a disbeliever to remain in the Islamic land without jizyah. The jizyah falls due from him and the dhimmah becomes compelled upon him. If he leaves at the end of the year or before it, jizyah 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 Khaleefah 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 (*hadd*) of alcohol as 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: **“Verily whoever pledges allegiance to you upon *riba*, there is no dhimmah for him.”** *Riba* is of the Islamic rules so the Messenger's implementation of no pledge upon *riba* from the people of dhimmah is an evidence for (*mutalaba*) with the rules, and the *musta'min* is dealt with (*yu'amil*) 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 in following him even if he did not take a security for it. So his property is protected as is his soul/body (*nafs*) and the Muslim ensures (*dhamana*) the value of his alcohol and pig if he destroyed them. Blood money (*diyya*) 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 him is forbidden since he is dealt with like the dhimmi is death 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 (*yusallam*) its owners who inherit him.

In short (*al-hasil*) all who request security from Muslims, it is allowed for Muslims to give them security due to the Supreme's statement: "*If any one of the polytheists seek protection then protect him until he hears the speech of Alalh then lead him to his place of safety*" [TMQ 9:]. And because the security is giving the dhimmah and covenant and the Messenger (SAW) says: "**The Muslims are equal in their blood and they are one hand against other than them. Their dhimmah is performed (yas'a) by the least of them**" (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 a due from them due to the Supreme's statement: "*Until they pay jizyah by their hands while they are humbled*" [TMQ 9:29] i.e. killing is not lifted from them nor are 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 give them the 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 (*AHKAM ADH-DHIMMI*)

The dhimmi is the one who follows a deen other than Islam and becomes one of the citizens of Dar al-Islam while remaining in his deen other than Islam. “*Dhimmi*” is taken from the “*dhimmah*” which is the pledge/covenant (*‘ahd*). 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 (*fatana*) from their religion, and upon them is only the jizyah so no wealth other than that is taken from them unless it is a condition of the truce conditions. From Urwah bin As-Zubayr who said: The Messenger of Allah (SAW) wrote to the people of Yemen **“that whoever is upon Judaism or Christianity then they are not tempted/seduced from it and upon them is the jizyah”** (narrated by ibn—should be Abu—Ubayd). Similar to the Jews and Christians are the polytheists and the rest of the disbelievers other than them. From Al-Hasan bin Muhammad bin Ali bin Abu Talib who said: **“The Messenger of Allah (SAW) wrote to the Zoroastrians (*Majus*) of Hijr inviting them to Islam. Whoever embraced Islam it would be accepted from him, and whoever does not then jizyah is imposed over them and no slaughtered animal (*dhabeeha*) 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 (*mafhum*) of the hadith because the understanding of the surname/nickname (*laqb*) is not a proof nor it is considered. Jizyah is not taken except from mature males. From Nafi’ from Aslam the freed slave (*mawla*) of Umar: **“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 rejector 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 the Supreme’s statement: “*from the hand*” i.e. from capability. So if one is incapable from acquiring and becomes poor, it is not sufficient (merely) not to take the jizyah. Rather it is obliged to spend upon him from Bait al-Mal as it is spent upon Muslims. Upon taking the jizyah, it is obliged to take it excellently/with goodness (*husna*) and not with harshness nor punishment, and to take it by the measure which they are able to bear. They are not oppressed nor is it taken from them beyond their capability. 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: “**Verily Allah will punish on the Day of Judgement those who punish in the world.**” From Abdurrahman bin Jubayr bin Nafeer from his father “**that great wealth was brought to Umar bin Al-Khattab (Abu Ubayd said: I think he said ‘of the jizyah’). He said: Verily I believe that you caused the people to perish. They said: No, by Allah, what we took was the extra portion (‘*afwu*’) and the pure. He said: Without whip or additional burden (*nawt*)? 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 life/sustenance in order to take the jizyah no matter what value they reach. 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 kharaj since if the farming tool is taken then he is not able to farm so the kharaj becomes void’, and other tools of life are analogized upon farming tools. If the *dhimmi* embraces Islam, the jizyah is omitted from him. From Ubaydullah bin Rawaha who said: “**We were with Masruq in Silsilah and he related to me that a man of the people became Muslim and jizyah 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 (*yu’idhu*) me? He said: Surely. He said: So Umar wrote that jizyah is not to be taken from him**” (narrated by Abu Ubayd). And from

Qaboos bin Abu Dhibyan from his father who said: The Messenger of Allah (SAW) said: **“There is not jizyah upon the Muslim”** (narrated by Abu Ubayd). From ibn Abbas who said: The Messenger of Allah (SAW) said: **“Two qiblahs are not suitable in the world, and there is no jizyah upon the Muslim”** (narrated by Ahmad and Abu Dawud). Umar bin Abdulaziz wrote to his official (*amil*) who considered that jihad remained upon the Muslim who embraced Islam to flee from jizyah, and he said in his book: **“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 (*quwwah*), residence and clothing. From Abu Wail from Abu Musa or one of them in his chain that the Messenger of Allah (SAW) said: **“Feed the hungry, visit the ill and redeem (*fakku*) the (*aani*).”** Abu Ubayd said: ‘The same for the people of the dhimmah for whose protection it is fought and their people in difficulty (*innaat*) (*yuftak*). When they are freed, they return to their dhimmah and pledge as free persons; and upon this are the ahadith.’ From Amru bin Maymun from Umar bin Al-Khattab that he said in his testament (*wasiyyah*) during his death: **“I recommend the Khaleefah 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: **“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 (*yuqas*) upon them in this subject due to the Messenger (SAW)’s statement about the Zoroastrians (*majus*): **“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 the Supreme's statement: "*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 (muhsanat) of the believing women and the chaste women of those given the Book before you*" [TMQ 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 "**in that not to eat the slaughtered meat from them nor marry from their women.**" As for the disbelievers marrying of 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 the Supreme's statement: "*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 48:]. It is allowed to occur between the dhimmis and Muslims the transactions of buying, selling, renting, partnership, pledge (*rahn*) etc. without distinction between them and Muslims. The Messenger of Allah (SAW) conducted business with the people of Khaybar, 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 (AS) bought food from a Jew of Madinah and pledged to him his armour, and he sent to a Jew requiring two garments (*thawb*) from him until a time of ease/affluence. All this is an evidence upon the permissibility of all transactions occurring with dhimmis except when they are dealt with upon renting, buying, 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 dhimmis 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 is fighting is not obligatory upon them. For them is justice as for Muslims, and upon them is what is upon them as equity (*intisaf*). 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 of Umar's pledge with them and his imposing conditions upon them, they made truce upon these pledges (*'uhud*) and these conditions were inserted in the truce and they were pleased with them. So it was compulsory to executed 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 dealt 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: **“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: **“I am the first tithe-collector who collected tithe in Islam. I said: Whom did you use to tithe? He said: We did not tithe a Muslim or *mu'ahid*. We used to tithe the Christians of Bani Taghlib”** (narrated by Abu Ubayd). The tax on trade is not taken from the Muslim or the dhimmi. What Umar 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 in his time. Had they comprehended accurately, they would understand that Umar 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 would be executed upon them as they came.

IMPLEMENTING ISLAM IS OBLIGATORY UPON THE DISBELIEVERS (*KUFFAR*)

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 Muslims equally, whether he is a dhimmi or mu'ahid 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 ta'ala said in relation to the People of the Book: *“Rule/Judge between them with all that Allah revealed and do not follow their desires after the Truth came to you”* [TMQ 5:]. He also said in relation to them: *“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:]. And He said: *“Verily We revealed to you the Book in truth so that you rule between the people with what Allah revealed”* [TMQ 4:]. This is general covering Muslims and non-Muslims since the word *“nas”* (people) is general: *“so that you rule between the people”* [TMQ 4:]. As for the Supreme's statement: *“Listeners to falsehood, eaters of illicit wealth (suht). If they come to you then rule between them or turn away from them”* [TMQ 5:] the meaning is those who come to the Islamic State from outside it to arbitrate to the Muslims in his dispute with another disbeliever or disbelievers. The Muslims are given a choice between ruling/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 must'amin submitting to the rule of Islam i.e. consenting to

to enter Dar al-Islam together with submitting to the rule of Islam like *mu'ahids* 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: **“Whoever among you contracts with *riba* then there is a no pledge (*dhimmah*) for him.”** Ibn Umar narrated **“two Jews (*faheera*) after their marriage (*ihsan*) were brought to the Prophet (SAW) so he commanded about them and they were stoned.”** Anas narrated **“a Jew killed a slave-girl for her silver jewellery with stones, so the Messenger of Allah (SAW) killed between two stones.”** These Jews were of 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 (*bab*) of creeds (*'aqaid*) 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 (*kufir*). We do not implement upon them what relates to creeds because at that point it would be considered compulsion (*ikraha*) in the deen while Allah ta'ala says: *“There is no compulsion in the deen”* [TMQ 2:256] and because the Messenger (SAW) said: **“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 (*fitnah*) from their religion; so accordingly they are not forced upon the creeds and worships. Also because they were consented upon their disbelief (*kufir*) in relation to the creeds when and were not consented upon the rule of *kufir*, so punishing them over what enters into creeds is punishing them upon *kufir* 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 ta'ala said: *“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: **“The Messenger of Allah (SAW) wrote to the Zoroastrians of Hijr calling them to Islam. Whoever embraced Islam, it would be accepted from him and whoever did not jizyah would be imposed upon him in that no slaughtered meat would be eaten from them nor their women married”** (narrated by Abu Ubayd). 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 A'waf said: I heard the Messenger of Allah (SAW) saying: **“Prescribe for them the way (*sunnah*) of the People of the Book”** (narrated by Abu Ubayd). He narrated via the way of ibn Shihab **“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.”** The Supreme said: *“You will be called to a people of great strength. You will fight them or they will become Muslims”* [TMQ 48:] and its meaning is 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 would be fought. He also narrated via the way of Al-Hasan who said: **“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 ahadith.’ It is not established that the Prophet (SAW) took the jizyah from any idol-worshipper of 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 accepted the amount of jizyah, the time of its obligation and to inform them that he will only take it from them once every year. And that what is taken from the rich is so much, and from the less than rich so much. It is not taken from the poor due to the Supreme’s statement: *“by hand”* i.e. from ability, and it is not taken from women and children. Jizyah is not taken from them except from the mature man capable of paying it. From Nafi from Aslam the slave of Umar **“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 produces (hair).’ 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 (*mudrikeen*) not the female or children.’ No one rejected (this from) Umar so it was a consensus (*ijma*). This is strengthened by what came in the book of the Prophet (AS) to Muadh in Yemen **“that upon every**

male who has attained puberty (*halim*) is a dinar” so he specified the male who has attained puberty (*halim*) not the woman or child. As for the narration “**the male (*halim*) and female (*halima*) who has attained puberty**” it is not preserved (*mahfudh*) among the muhadditheen. The preserved, established of that is the hadith which does not mention the female who has attained puberty (*halima*). Even upon the obligation (*'ala fard*) 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 not taking 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 (*sighar*) mentioned in the ayah: “*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/highest (*ya'lu*) in the land due to his (AS) statement: “**Islam is exalted and there is nothing exalted above it.**”

THE LANDS OF USHR, KHARAJ AND TRUCE (*SULH*)

Abu Ubaydah said: ‘We find that the traditions (*athar*) 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 it is for them the property of their hands, and it is the land of ushr and there is nothing else in it upon them. And the land conquered by truce (*sulh*) 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 (*‘unwa*) 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 (*khatata*) between those who conquered it specifically and the remaining fifth for those name by Allah tabaraka wa ta’ala. 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 Khaybar, 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 (*mawquf*) for Muslims generally as long as it remains just as Umar did with the (*siwad*) then he can do that. These are the rules of land which are opened by conquest’ (here concludes the words of Abu Ubaydah).

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) (*natiġ*) 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/selected (*istafa*) 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 does not accept jizyah from them along with their remaining upon their religion so He honoured (*akrama*) them above this humiliation. He doesn't accept jizyah upon their heads nor place 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 to remove the Jews from it so that there does not remain within it except the deen of Islam. Accordingly there was not taken from it except the tithe as zakat 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 Khaybar is joined to the land of ushri and becomes ushri land. Or what the Imam confirmed (*aqarra*) for them upon a part (*juz'u*) 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 (*'askaru*) upon the river Al-Irbid and lived there, so Umar executed it for them

and Uthman. As it is narrated that when Allah gave the Muslims victory over Bilad Sham and they made with the people of Damascus and Homs, they disliked to enter it before completing their victory and inflicted severe slaughter over the enemy of Allah. So they encamped in the meadow/pasture (*marj*) of Bardi between Al-Mizzah to the meadow of Sha'ban, and the two sides of the meadow of Muruj were (*mubaha*) between the people of Damascus and its (*qurra*) not for anyone of them so they resided therein. This 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 nor was 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 came from some of the people of Madinah from the old/preceding (*qudama*) 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 that fled from his land or was killed in the battlefield and everything (*mughidh*) 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 him of the land not yet conquered, after Allah opened it for the believers so it became 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 opened them for the Muslims so he allocated them to him and wrote a book for him regarding that. Umar was among the witnesses upon that

book so when Allah opened it for Muslims in the days of Umar, he sought them from Umar and Umar handed it to him in fulfillment 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 land of ushr.

Attached to the land of ushr so that it similarly becomes ushri land is all uncultivated land (*mayta*) which is revived by people via any type of cultivation, whether it were of the land of ushr i.e. of the Arabian peninsula or Indonesia and any land whose inhabitants embraced Islam upon it or it were of the land of kharaj like the lands of Iraq, Sham, Egypt and other lands conquered by force. From Jabir bin Abdullah who said: **“The Messenger of Allah (SAW) said: ‘Whoever revives uncultivated land, then it is for him’”** (narrated by At-Tirmidhi). He also narrated via the way of Saeed bin Zyad that the Prophet (SAW) said: **“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 of 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.

Ushri land is the (*yameen*) property of its owner who owns its neck (*ruqbah*) and benefits and all types of dispositions within it of buying, trade, pledging, gift and trust (*waqf*) 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/value 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 there passes three years 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 proper the land and cultivating it by planting and cultivation. So they did not return as deserving of it, so its remaining in their hands is of no purpose (*'abatha*). Hence Umar bin Al-Khattab 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*: **"Whoever revives a land, then it is for him. And there is no right for the encloser (*muhtajir*) after three years"** and he said: **"Whoever leaves land unemployed for three years without cultivating it, and another comes and cultivates then it is for him."** The Ijma 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 was not divided between the fighters. Rather the Imam left it in the hands of its inhabitants and imposed kharaj upon them. The origin in that is that when

Iraq, Sham and Egypt were conquered in the days of Umar bin Al-Khattab, the Muslims requested him to divide it between them as the Messenger of Allah (SAW) divided Khaybar. The head of those requesting the division of the land were Bilal, Abdurrahman bin A'waf and Az-Zubayr. However Ali and Muadh requested from Umar not to divide the land, and Muadh said to Umar as Abu Ubayd narrated in '*Al-Amwal*' that Umar came to Al-Jibaya and he intended to divide the land between the Muslims so Muadh said to him: By Allah, this will become what you dislike. If you divide it today it will become a great (*ra'iy*) in the hands of the people then they will (*yubiduna*) so it will lead to one man and woman. Then there will come after them people who will barricade (*yusidduna*) for Islam (*masadda*) and they do not find anything, so look to a matter which will be spacious for their first and last. Bilal and his companions were severe in seeking from Umar until Umar said: 'O Allah! Be sufficient for me against Bilal and his (*dhaway*).' 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 (*idrar*) pay for them. From where would they be paid if I divide the lands and (*'uluj*). 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 (*fai*) which came in Surah Al-Hashr and among them: "*And those who came after them say: O our Lord, forgive us and our brothers who preceded us in iman*" [TMQ 59:]. He deduced from this ayah that those who would come of 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 (*haja*) calls for creating permanent spending

to be spent from upon the army, salary is paid from it, administering the State's (*masalih*) expended from it and needy persons are paid from it until the last days. 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 (*hadda*) Umar not to divide the land between the Muslims. This meaning is expressed in Umar's statement: 'Were it not for the last of the people, I would divide the land just as the Prophet (SAW) divided Khaybar.'

From hence 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 confirmed/consented (*aqarra*) 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, Ali, bin Abbas, Abdullah bin Umar, Al-Awzai' and Malik. Al-Awzai' said: '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 take from it a small channel of irrigation (*qasb*). He mentioned this to Umar and he said: '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 jurisprudents (*fuqaha*) who saw nothing (wrong) in purchasing just as some of the Sahabah purchased from the land of jizyah 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: ‘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 resided upon it 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 a 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 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 an aspect (*nahiya*). As for the second, humiliation is not definite (*mutahaqqiq*) in kharaj but rather it is only in the jizyah on the head 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 benefitting

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 attaches to the one who purchases land of kharaj.

[OCTOBER 2000: 20hr9min; pp. 213-255 Arabic (159-201 word document); 14,997 words]

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 of the conquered lands changed into Muslims to the Muslim 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 blame/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 was not linked with ownership.

Whoever owns the benefit of the land can trade this benefit and its value exchanged? (*yataqadha*) because the benefit is sold and its value deserved. No one possesses (the right) to depose it from its owner not even the Muslims' Khaleefah. 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 Iraq and Iran (*siwad*), 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 (*wulat*) of the land of (*siwad*), 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 of the degree of one seizing by force (*ghasib*) where one seized by force and the other took. This is not allowed for the Imam nor is it permitted for him to allocate the right of the Muslim or *mu'ahid* 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 of 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 of buildings or trees as this would be considered seizing by force of a right he owns for he owns what he established upon it of 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 of 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 would 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 is 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 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 their owning its neck and benefit in the days of Umar bin Al-Khatab 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 of 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 Khaybar. 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 did in the land of *siwad*, Sham and Egypt. He does in that what he sees as benefit for Muslims.

As for the land of truce (*sulh*), it is every land whose inhabitants made truce upon it with specific conditions. It is obliged upon the Muslims to fulfil the truce's conditions and be bound (*iltizam*) with them whatever they are in conformity with what came in the Book of Allah and the Sunnah of His Messenger of ayat and authenticated ahadith which oblige being bound by and fulfillment of covenants (*'uhud*).

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 occurred with the Jews of Banu Nadhir. The Messenger of Allah (SAW) made truce with upon his expelling them from Madinah, and for them is what the camels carried of utensils/effects (*amti'ah*) and property except for weapons. So it was of what Allah gave His Messenger 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 fall from them just as the jizyah falls from the one who becomes Muslim. This is like the land of Hijr and Bahrain. Ibn Majah narrated from Al-‘Ala Al-Hadhramy who said: **“The Messenger of Allah (SAW) sent me to Bahrain and to Hijr. I would reach a garden between brothers and one would become Muslim. So I took tithe from the Muslim and kharaj from the polytheist.”** This is because Hijr and Bahrain were opened by truce as 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 being ours 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 (*‘unwa*), and its kharaj is the kharaj of the land of force.

The “*dar*” in the language is the halting place (*mahallu*), the house and the country/land (*balad*). 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 (*khilaf*) that the land of the disbelievers in which the disbelievers reside and rule therein by disbelief (*kufir*) 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 *kufir* 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-kufir*’ and ‘*dar al-harb*’ are of one meaning being 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-Kufir* becomes *Dar al-Islam* by the appearance (*dhuhur*) of the rules of Islam in it; however they differed as to how *Dar al-Islam* becomes *Dar al-Kufir*. Some *mujtahideen* said that *Dar al-Islam* does not become a *Dar al-Kufir* except by three conditions: firstly, the appearance of the rules of *kufir* in it. Secondly, that it becomes adjoined/bordering upon the *Dar al-Kufir*. Thirdly, that there does not remain in it any Muslim or dhimmi secured by the first security (*aman*) which is the security of Muslims. This statement is not based upon an evidence; rather it is merely the description of the reality of the land. The (*dhahir*) is that when there occurs fighting between Muslims and disbelievers and the disbelievers take

the land of Muslims so the war continues (*dhalla*) upon it, in this situation it is considered that the *Dar al-Islam* became a *Dar al-Kufr* and (*iqtasar*) upon it. Some *mujtahideen* said that the *Dar al-Islam* becomes a *Dar al-Kufr* by the appearance of kufr therein. The reason (*wajh*) 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/perdition (*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 (*shareeta*), 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* of the Sahabah. If this were a condition then all the frontiers would become *Dar al-Kufr*. Also, the failure to consider the security (*aman*), 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 (*sultan*). 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 a *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 becomes by 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 of 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 security by the security of Muslims, it becomes a *Dar al-Kufr* by losing any of the two. The condition of the land remaining a *Dar al-Islam* is its rule by Islam and its security by the security of Muslims. As for the *Dar al-Kufr*, it does not become a *Dar al-Islam* except if it is ruled by Islam and its security is by the security of Muslims; if these two matters are not augmented, it remains a *Dar al-Kufr*. The rule by Islam and the security by the security of 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* relates to the reality of the land. The land in the language is used upon the tribe, and the *Dar al-Harb* is the land of the enemy. We say a *Dar al-Harb* and a *Dar al-Islam*, and we say a *Dar al-Kufr* and a *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 (*mayizat*) 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 upon relating of the land to a specific relationship is its attribute so the *Dar al-Kufr* is related to kufr and the land (itself) is not described with kufr but the description is of 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 of the remain disbelievers but is ruled by Islam definitely becomes a *Dar al-Islam*.

THE BELIEVERS' BEFRIENDING THE DISBELIEVERS

The Supreme said: “*Let not the believers take the disbelievers as friends/supporters (awliya) 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*” [TMQ 3:28]. Ya’qub and Sahl recite it as (*taqiyya*) which is the recitation of Al-Hasan and Mujahid, while the rest (recite it) as (*tuqat*). It is said in *Al-Qamus Al-Muheet*: ‘(*At-tawqiyya*) is (*al-kalau*) and protection. I do (*taqa*) something and I did (*taqa*) it and do (*taqi*) it (*taqa*) and he (*taqi*) it (*tiqa*) like (*kisa*) is I feared it.’ This text in the ayah specifies its subject and this linguistic meaning of the word (*taqiyya*) 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 nor 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 (*muwalat*) the disbelievers i.e. treating them as friends (*musadaqa*). The text is: “*Let not the believers take the disbelievers as friends/supporters (awliya) 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 ayahlike the Supreme’s statement: “*Give tidings to the hypocrites that for them is a painful punishment.*”

Those who take the disbelievers as (awliya) instead of believers” [TMQ 4:138-9]. And the Supreme’s statement: “*O you who believe, do not take the disbelievers as (awliya) instead of disbelievers*” [TMQ] and His statement: “*You will not find a people who believe in Allah and the Day of Judgement loving those who oppose Allah and His Messenger*” [TMQ] and His statement: “*Do not take the Jews and Christians as (awliya)*” [TMQ] and His statement: “*Do not take My enemy and your enemy as (awliya)*” [TMQ] and other ayat. The subject is the subject of believers befriending disbelievers and the rest of the ayah is detailing (*tafseel*) the subject. This is because Allah ta’ala prohibited the believers from taking the disbelievers as friends for them, and linked this prohibition with a definite decisiveness (*jazm*) that the one who does that and takes the disbelievers as friends then Allah is absolved (*bariu*) 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 (*idhar*) 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 to 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 of them when they are under their authority. Then it is allowed to display love for them and to befriend them to prevent their evil (*sharr*) and harm. That is, it is allowed to take them as (*awliya*) i.e. friends (*asdiqa*) in the situation where there exists fear of them when they are under their rule. Apart from that, it is absolutely not allowed. This is for disbelievers only in relation with the believers as the ayah was revealed in the affair (*sh’an*) of the believers who had relations friendship (*sillat*) 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 of 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 assault/violence (*batsh*) 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 deducted 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/love for the Muslim ruler due to fearing his harm when he is an oppressor (*dhalim*) transgressor (*fasiq*) 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 forth the lack of restricting/abiding by Islam or not caring for it before 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 is it allowed to take disbelievers as (*awliya*) instead of believers. Everything that enters under this situation allows taking disbelievers as (*awliya*) instead of believers. The issue is clarifying the situation wherein it is allowed for believers to befriend disbelievers which is were 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/supporters (awliya) 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 ‘azza wa jalla to the believers not to take disbelievers as helpers and supporters and assisters (*dhuhur*). Accordingly He made (*kasr*) for “*yatakhidhu*” (to take) in the position of making the prohibition decisive but He made (*kasr*) for the “*dhal*” together with it due to the “*sakina*” which meets a “*sakina*”. The meaning of that is that do not take, O you believers, the disbelievers as assisters and supporters befriending them, instead of Muslims, upon their religion (*deen*) and assist them against Muslims and directing them to their (Muslims’) weaknesses. For whoever does that then he is not of Allah in anything meaning by that that he has been absolved from Allah and Allah 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 secret your enmity to 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:

6825: Al-Muthni narrated to me: Abdullah bin Sahr said: Mu’awiyya bin Salih informed me from Ali from ibn Abbas that His 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 is His statement: *‘except if you fear from them something to be feared (tuqat)’* until he said:

6837: Al-Hasan bin Yahya narrated to me that Abdurraziq informed us that Mu’ammam informed us from His 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 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 (*makhafa*). The (*taqiyyah*) which Allah mentioned in this ayah is the (*taqiyyah*) from the disbelievers not others and Qatadah took it to mean except if you fear Allah because of the kinship between you and them something to be feared so you united its blood-relationship (*rahm*) 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 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 the Supreme’s statement: *‘Let not the believers take the disbelievers as friends/supporters (awliya) 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 the Supreme 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 His and His friends, the believers, not His enemies, the disbelievers. So He said: *‘Let not the believers take the disbelievers as friends/supporters (awliya)’* i.e. it does not behove believers to take disbelievers as friends for themselves, seek assistance from them, seek refuge in them and show love for them like He said in numerous places of the Qur’an like His statement: *‘You will not find a people who believe in Allah and the Last Day loving those who*

oppose Allah and His Messenger’ (the verse) and His statement: ‘Do not take the Jews and Christians as friends’ (the verse) and His statement: ‘Do not take My enemy and your enemy as friends.’ His statement: ‘instead of believers’ means that friendship is obliged to be 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. From ibn Abbas: “*awliya*” is the plural of “*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 (*mu’ayyin*) with support and the other who is the supported (*mu’an*). So His statement: ‘Allah is the friend of those who believe’ [TMQ 2:257] means their helpers and supporter 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 of the friends of Allah and Allah is absolved of him, and it is said he is not of the (*wilayah*) of Allah in anything. Then He excluded and said: ‘except if you fear from them something to be feared’ means except 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 (*‘ushra*) with them. At that time, it is allowed for him to show his love/affection for them with his tongue and (*mudarat*) of them as a precaution (*taqiyyah*) of them and protection for himself without believing that. In this ayah there is an indication (*dalalah*) 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 (*dharura*) and oftentimes (*rubbama*) becomes obligatory for the variety (*dharab*) of kindness and reconciliation (*istislah*), but it is not permitted of actions in killing a believer or what is known or he considers most probable that it is spoiling (*istifsad*) in the deen. Al-Mufid said that it is obligatory at time and becomes *fard*, and it is permitted at times and becomes *fard*.. 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 (*fa’il*) is excused and forgiven over it (*mutafadhil ‘alaihi*) by leaving the blame (*lawm*) over it. Shaikh Abu Ja’far At-Tusi said that the apparent meaning (*dhahir*) of the narrations indicated that it is obligatory during fear of one’s life, and it has been narrated that a dispensation (*rukhsa*) in allowing speaking clearly (*ifsah*) the truth thereupon. Al-

Hasan narrated ‘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 (*madha ‘ala*) his truth and conviction, and he took his virtue so may it be good (*hania*) for him. As for the other, he accepted the dispensation of Allah so there is no (*tab’a*) for 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-Tabarsi: “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 (*mudarat*) 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-Tabarsi followed upon that with is outside of 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*: “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 of 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-Tabarsi: “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 (*mujarrad*) speech of any evidence. The ayah does not indicate this in any way even according to At-Tabarsi’s own tafsir, nor did he come with any other evidence neither from the Book or Sunnah or Ijma 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 (*mudarat*) 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 (*fahwa al-khitab*) and this is not from it not is (*yamut*) any connection (*sillat*) with it. It is not of the (*qabeel*) of the Supreme’s statement: “Among them is one whom if you entrust him with a dinar would not return it to you” [TMQ] nor is it of the (*qabeel*) of the Supreme’s statement: “And of the People of the Book is one whom if you entrusted with a qintar will return it to you” [TMQ]. This is because the transgressor is not of the category of the disbeliever nor of their species, and because the friendship prohibited in this ayah is befriending instead of believers. The unjust and transgressor ruler with power is among the believers nor does the injustice occurring from him or the transgression covering him 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 be 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 of befriending transgressors and 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/disobedience (*ma’siyah*) 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 which 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 bawah*) 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 of the people of transgression or injustice has been obliged by Allah upon the Muslims. This negates the view of (*taqiyyah*) and contradicts it completely as He decisively forbade keeping silent over the unjust ruler and the transgressor, whereas (*taqiyyah*) obliges silence over that at certain times and makes it recommends it 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 (*sad’a*) the truth without taking into account, for the sake of Allah, the blame/complaint of a blamer. Accordingly, with regard to the (*taqiyyah*) of the unjust and transgressor ruler, or the strong (*mutasallit*) among the wicked (*fujjar*) or the one opposing you in the opinion, there came

ayat and authenticated ahadith texts contradicting that and encouraging (*haththa*) the obligation of acting contrary to that which emphasizes that it is haram, on top of its being hypocrisy not allowed for the Muslim to perform it.

There remains the question of the ayah: “*except the one who is compelled and his heart is content upon iman*”. Some mufasireen link it with the ayah: “*except if you fear from them something to be feared*” and make it of its category deducing from it the entering (*idkhal*) 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 (*muhaqqaq*) killing not probable (*dhanna*) 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 (*mudara*) 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 hid iman, and other than that it is not permitted because the text of the ayah: “*Whoever disbelieves in Allah after his iman except the one who is compelled and his heart is content upon iman.*” 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 fuqaha term as (*muljiu*) 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 (*muljiu*) compulsion which is the situation of fearing definite death. This is strengthened in that the ayah was revealed about Muslims who apostatised fearing death. It was narrated that this ayah was revealed about Ammar bin Yasir. At-Tabari said: "Muhamd bin S'ad 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 ta'ala revealed his mention of his excuse: '*Whoever disbelieves in Allah after his iman*' until His statement '*great punishment.*' Bushr related to us and said: Yazid related to us and said: Said 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 took him 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 ta'ala revealed His mention: '*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'ammarr from Abdulkareem Al-Juzri from Abu Ubayd bin Muhammad bin Ammar bin Yasir who said: **The polytheists took Ammar bin Yasir and punished him until he (*bara*) 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*" is Makkah revealed 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 is not that.

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 (*rukhsa*) and lifts difficulty, and persevering upon iman is the (*'azeemah*) which is the principle/origin (*asl*) therefore it is better. It is narrated **“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 (*hania*) to him.”** This is explicit in preferring the one who was patient and stuck to iman over the one who took the dispensation of Allah and showed kufr fearing for his life from a confirmed killing.

This is requiring the one from whom kufr is required. 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 the show kufr, then what is lesser than kufr is of greater precedent. This is not said because disobedience/sin is not of 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 (*'illah*) until analogy (*qiyas*) 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 (AS) statement: *“Lifted from my Ummah is the mistake,*

forgetfulness and what is compelled upon it” i.e. the blame (*haraj*) 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 (*muljiu*) compulsion 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**” that is (*muljiu*) compulsion.

THE EMIGRATION (HIJRAH) FROM DAR AL-KUFR TO DAR AL-ISLAM

Emigration (*hijrah*) is leaving from Dar al-Kufr to Dar al-Islam. The Supreme said: “*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: “**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 (*inqat’a*). As for what Al-Bukhari narrated of his (AS) statement: “**No emigration after the conquest of Makkah**” and his statement: “**No emigration after the conquest**” and his statement: “**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 said to him: “**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 (*abatih*) 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 (AS) statement: **“Do not make into wine (*tanbadhu*) dates and raisins together”** (narrated by Abu Dawud). His statement **“together”** came in a way including reasoning so the reason was the prohibition on making into wine (*intibadh*). This means that the conquest of Muslim 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 who was questioned about the emigration and said: “There is no emigration. The believer would flee with his deen to Allah and His Messenger 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 (AS) statement to Safwan **“it has teminated/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: **“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: **“Emigration will not end as long as there is jihad”** and in another narration: **“Emigration will not end as long as disbelievers are fought”** which indicate 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 situation and recommended in other situations. As for the one not capable, verily Allah 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 came at the end of the ayah of emigration.

Whoever is capable to emigration and unable to show/display his deen nor perform the Islamic rules required of him, then emigration is obligatory upon him due to what came in the ayah of emigration. The Supreme said: *“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!”* The information here means the command and it is of the language of request as if He said: Emigrate therein. The request in this ayah is linked with emphasis (*ta’keed*) 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 emigration. As for the one able to emigration but is capable to manifest his deen and perform the Shar’a rules requested from him, emigration is recommended not obligatory. As for its being recommended, this is because the Messenger (SAW) would encourage the emigration from Makkah before the conquest when it was Dar al-Kufr and there came ayah explicit about that. The Supreme said: *“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]. And He said: *“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]. And He said: *“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)”* [TMQ 7:]. And He said: *“Those who believed afterwards and emigrated and fought together with you, those are of you”* [TMQ]. All this is explicit in requesting emigration. As for its 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:

Reside/Stay 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 (*Qafqas*), 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 Dar al-Kufr wherein he resided 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 by himself or his group structure (*takattul*) 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 resides disbelievers in the land within which he live 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 jihad 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 jihad 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. 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 kuf.

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 peoples 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 of the existence of any land without slavery. Islam viewed that this problem related to two aspects. Firstly, it 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 ayah and ahadith treating these two aspect 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 slave imposed upon him, and resulting in freeing him compulsorily and voluntarily. It placed many rules in this matter which the fuqaha detailed 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 ta'ala exhorted in the Noble Qur'an as did the Messenger (SAW) in the honoured hadith with kindness to slaves and living with them kindly. The Supreme said: *“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]. The meaning of *“those your right hands possess”* is your slaves (*arqa*). And he (SAW) said: **“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 Hurayra of his saying: He (ASS) said: **“One of you should not say: My slave (*abd*) and my slave-girl (*amati*). All of you are the slaves of Allah and all your women are the slave-girls of**

women are the slave-girls of Allah. Rather let him say: My boy (*ghulam*) and my girl (*jariyah*) and my (*fata*) and my (*fatati*)." The Shar'a lifted the rank of the slave and made him like the free person when it made his blood protected (*ma'sum*) so the free person is killed for it because Allah ta'ala says: "*O you who believe, retaliation has been imposed upon you in deliberate murder*" [TMQ 2:]. Retaliation is (*mumathala*) and punishing the sinner as retaliation is used (linguistically) for 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 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 of his (SAW) saying: "**Muslims are equal in their blood**" which 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 him, 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: "**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 (*istimta'*) with her, this lifts the rank/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 which 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 *al-jalalah* and assists him to climb (*iqtiham*) the (*'aqabah*). The Supreme said: "*He has not climbed the ('aqabah). And what will let you know what is the ('aqabah). Freeing the (raqabah)*" [TMQ]. "*Al-iqtiham*" is the entry and cross over (*mujawaza*) 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 encouraged the freeing of slaves in this ayah. Similarly did the Messenger (SAW) encourage the freeing of slaves. He (SAW) said: “*Whichever man frees a Muslim man, Allah ta’ala 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.

3. 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 *mahrem* as being accomplished (*aliy*) upon mere ownership whether the owner consents or not, or frees or not. Each human being who owns a relative (*dhu rahm*) *mahrem* 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-Hasn from Sumra that the Prophet (SAW) said: “*Whoever owns a (dhu rahm) mahrem, then he is 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 completely from his owner. He said: “*Whoever slaps his slave or strikes him, his atonement (kaffara) is to free him*” (narrated by Muslim by the way of ibn Umar).

[November 2000: 18 hr 54 min; pp. 201-230 (document)/pp. 255-284 (Arabic book); 11,277 words]

The meaning of the strike is the painful (*mubrih*) strike due to their coming of 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. The Supreme said: “*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 (diyya) 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]. And whoever perjures his oath, then among what atones his mistake is freeing a slave. The Supreme said: “*Allah does not punish you for the (laghw) of your oaths but He will punish you over what your oaths (‘aqada). Its atonement is feeding ten poor persons of the average that you feed your family or*

clothing them or freeing a slave” [TMQ]. Whoever (*dhahara*) his wife by saying to her, ‘You are like my mother’ then he returns to her, his atonement is freeing a slave. The Supreme said: “*Those who (yudhahiruna) their women/wives then return over what they said, then freeing a slave before they touch*” [TMQ]. Whoever invalidates the fast of Ramadhan by sexual intercourse, his atonement is freeing a slave. From Abu Hurayra who said: “**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 (waqa’a) 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 more poor than us? There is none between these two (labt) more needy of them than us. The Prophet (SAW) laughed until there appeared his canine teeth and said: Go and feed your family with them.**” The first the Prophet (SAW) commanded with was freeing the slave, and he did not change to anything else except after the 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 (*mukatab*). Islam encouraged this and Allah commanded it by the Qur’an. The Supreme said: “*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]. 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 nor is it correct for him to revert from this manumission contract. The fuqaha recognised the manumission contract as the immediate freeing of a slave and his neck in time (*ma’alan*), 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. 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 (*sayr*) directed to ending slavery in society.

4. 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 (*bab*) for freeing slaves when it made zakat expended to freeing slaves and made this one of the eight categories. The Supreme said: “*Verily the sadaqat is only for the poor, the indigent, those who work upon it, those whose hearts are to be reconciled, for (riqab), 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 make an amount of money for freeing slaves. Rather it is allowed for it to make all the zakat money for freeing slaves if there is not at that time a necessity for other expenditure of the expenses of zakat. This is because the expenditure of zakat is not obliged to be for the eight categories but rather it is allowed to be specified for one category of these categories according to what the Khaleefah 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 some he committed of crimes and mistakes. They also ordained for the free person to accept slavery upon himself so he sells 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 those 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 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. The Supreme said: "*And if he is one in difficulty then waiting to a time of ease*" [TMQ]. It also clarified the punishments upon sins with detail particularly the punishment of stealing whose punishment used to be slavery which Allah indicated in the Qur'an: "*They said: His punishment, for the one in whose mount it is found, is his recompense/punishment*" [TMQ 12:] . So Islam clarified

its punishment i.e. stealing as cutting the hand. The Supreme said: “*The thief, male and female, cut off their hands as recompense/punishment for what they acquired*” [TMQ 5:]. 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 (ASS) said: “**Allah ‘azza wa jalla 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 ta’ala 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 their (*sirah*) without any exchange or either they are ransomed for money or captives like them of Muslims of dhimmis, thereby preventing the enslaving of captives. The Supreme said: “*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]. The ayah is explicit upon this meaning: Release/favour (*manaa*) 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 (*mufid*) of the restriction in what is mentioned after it: “*then either release afterwards or either ransom*” [TMQ]. Here a question can be offered/raised which was a position of confusion for some fuqaha from whom it was taken that the Khaleefah 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 and the Quraysh disbelievers, and the Messenger enslaved in Hunayn. And the Messenger’s action is considered legislation as it considered explanation for the ayah of Allah. So how could enslaving of captives be prevented by this ayah even though the Messenger enslaved after is revelation in

Hunayn? The response is that the action of the Messenger and his speech in relation to the Qur'anic ayat is either detailing (*tafseel*) its (*mujmal*), restricting its unrestricted or specifying its generality. The action of the Messenger and his speech cannot be an abrogation to the Qur'an. The ayah of captives 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 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 individually narrated news (*khabr ahad*) which contradicts the ayah: “*Then either(manna) afterwards or either ransom*”; and when the (*khabr ahad*) contradicts the definite ayat and ahadith the knowledge (*diraya*) of the (*khabr ahad*) is rejected. Accordingly, there is not consideration to what is narrated of the Messenger enslaving after the revelation of the ayah of captives. Actually what happened from the Messenger in the battle of Hunain was that 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 (*sabaya*) and the Messenger divided them between the fighters among the Muslims. When they (*ruji'a*) in this (*sabaya*) the Muslims gifted what they had of the right in this (*sabaya*) voluntarily and returned their (*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 did not enslave the (*sabaya*) in Khaybar. When he (SAW) invaded Khaybar and conquered over its residents, he left them as free persons and left the land under their hands to farm it for half its (*ghilt*). Abu Ubaidah said about (*sabaya*): ‘The Imam is given a choice in 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 (*sabaya*) was 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 Khaybar 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 (*sabaya*) who are the fighters when they are taken as captives, the Messenger (SAW) never enslaved any of their men. It is not authenticated that he enslaved a captive of the fighting men from the Arabs or Jews or Christians. The word (*aseer*) when used unrestricted in the language (*tansarifu*) to the male fighter. As for the woman and child, the word used for them in the language is (*sabiyy*) not (*usra*). Accordingly this clarifies that Islam prevented enslaving captives of the male fighters, and gave the Khaleefah a choice in the (*sabaya*) between enslaving and liberation and there is no ransom in them. Just as the Messenger did in the (*sabaya*) of Hunain; he enslaved them then liberated them. And like he did with the (*sabaya*) of Khaybar; 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, neither captivity nor (*sabaya*). The action of the Khaleefah in the question of enslaving (*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 Khaleefah 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 Khaleefah the choice in the situation of (*sabaya*) in following the position in relation to the enemy. Hence it has forbidden enslaving particularly when it invalidated the going out of women and children 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

There previous rules which have been explained are a (*namadhij*) 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 (*namadhij*) 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 and 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 in 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 (*maqsud*) 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 (*maqsud*) 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 (*maqsud*) 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/natural 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 of the Muslims' wealth to administer the affairs of the citizens where the explicitly stated revenues are not sufficient, it restricted the State not to take more than what Allah 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 (*kimaliyya*) needs which

are considered necessities according to the definition of their society i.e. according to the well-known (*ma'rouf*) of the needs of their like like marriage and what they are carried upon to satisfy their remote needs, servants and similar to this. Within this legislation to preserve the society is protection for the individual's interests. You also find that when the Shar'a allows the individual to build a house or plant a garden that it imposed upon him a path for the people and prevented him from building, planting or cultivating in any way that encroaches upon the right of the path of public property. And when it allowed 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 (*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 their 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

to 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 (*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.

[December 2000: 4hr plus (3 Eid days=) 6hr plus (1 day sick leave=) 2hr=12hr total; pp. 230-240 (document)/pp. 284-294 (Arabic book); 3,488 words]

TRADE (*AL-BAY'*)

Trade linguistically is exchange in an unrestricted manner, and it is opposite to purchase (*shira*). Trade is also used for purchase, just as purchase is used for trade. So it is said he (*ba'a*) from him meaning he bought it, and they (*shara*) to them meaning they sold it so each of them is used for the other and the connotation (*qareena*) specifies the meaning. As for trade in the Shar'a, it is exchanging property for property in putting in possession and being put in possession via the way of mutual agreement. Trade is permitted by the Book and Sunnah. Allah ta'ala said: "*Allah permitted trade*" [TMQ 2:] and He said: "*And take witnesses when you trade*" [TMQ] and: "*Except if it is trade of mutual agreement among you*" [TMQ]. And he (SAW) said: "**The two traders have an option as long as they do not separate**" (narrated by Al-Bukhari). And Rufa'ah narrated "**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: "**The sincere trustworthy trader is together with the Prophets, sincere persons (*siddeeq*) and witnesses (*shuhada*).**" It is a condition of trader that there exist 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 of speech/words. 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 fuqaha term trade of mutual taking (*mu'atat*). 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 trader 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 indication/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 surety/responsibility (*dhaman*) of the buyer 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: **“The expenditure (*kharaj*) is with the responsibility (*dhaman*)”** (narrated by Abu Dawud). The increase (*nima*) 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 gave birth, its child is for the buyer not the seller. And (also) due to what ibn Umar narrated **“that the Prophet over a first born (*bikra*) male camel 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 (*tasarruf*) 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 of 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 (AS) statement: **“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: **“We used to purchase foodstuff from mounted riders, buying and selling by guessing (*jazaf*), 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 would be permitted for him to sell it and dispose it just like after taking 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 (*mansab*) 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 ahadith stating the measured thing, some stating the merchandise/good and some stating a thing. Muslim narrated that the Prophet (SAW) said: **“Whoever buys foodstuff should not sell it until he measures it.”** And from Hakeem bin Hazam who said: **“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). From Zayd bin Thabit **“that the Prophet (SAW) prohibited selling goods when they are bought until traders gather/collect (*haza*) them to their mounts”** (narrated by Abu Dawud). And Ahmad narrated that the Prophet (SAW) said: **“Whoever buys foodstuff by measure or weight, he should not sell it until he takes possession.”** All these ahadith 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 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 (*habasa*) 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: **“When you buy then measure and when you sell, measure.”** And from Uthman who said: **“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 of that which is not moved or transferred like the house and land, then its taking possession is by vacating (*takhliyya*) between it and its buyer without any obstacle between them. This is because the word taking possession (*qabdh*) is a word with a deduced definition so if there came no Shar’i text upon it then its reality is considered what it indicates to the people. Taking possession is allowed before or after paying the price because delivery (*tasleem*) is of the contract’s requirements so whenever it exists after the contract then its reality has occurred. Similarly, taking possession of the price so taking possession of one of the two does not depend upon the other.

EVERYTHING FORBIDDEN UPON THE SLAVES, THEN BUYING IT IS FORBIDDEN

There are things which Allah forbade eating like carrion meat, things which Allah forbade drinking like alcohol, things which Allah forbade taking like idols, things which Allah forbade acquiring like statues, and things which Allah forbade manufacturing like paintings. For all these things, there came Shari'ah texts of ayat and ahadith forbidding them. Whatever Allah for the slaves of things for which came a Shari'ah text forbidding it, whether He forbade eating or drinking it other than that, then selling these things which Allah forbade for the slaves became haram due to forbidding their price. From Jabir that he heard the Messenger of Allah (SAW) saying: **“Verily Allah and His Messenger forbade selling alcohol, carrion, pig and idols. It was said: O Messenger of Allah, what of the grease/lard of carrion for ships are smeared/anointed with it, skins are greased and people light themselves a lamp/wick 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 reach from there that if there were 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 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 (*mulk*) 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 in the Shar'a. The Messenger of Allah (SAW) did prohibit the sale of what the seller does not own. From Hakeem bin Hazam who said: **“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 it 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: **“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 of **“what you do not have”** is general included within it your ability to deliver and that which your ownership of has not been completed. This is strengthened by the ahadith 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: **“Whoever**

sells foodstuff, he should not sell it until he pays its due (*yastawfih*)” (narrated by Al-Bukhari). And due to what Abu Dawud narrated **“that the Prophet (SAW) prohibited that goods be sold where they are bought until the trader collects them to their mounts”** and due to what ibn Majah narrated **“the Prophet (SAW) prohibited the purchase of charity (*sadaqat*) until it is taken possession.”** And due to what was narrated **“that when the Prophet (SAW) sent Utab bin Usayd to Makkah, he said: ‘Prohibit them from buying that which they have not taken possession of.’”** These ahadith 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 surety/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 that 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 absence of sale 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. Abu Dawud narrated from ibn Umar **“that he said: I used to sell camels at Baqi’.. I would sell in dinars and take in dirhams, and I would sell in dirhams and take in dinars. I took this for that, and this would be given for that. I came to the Messenger of Allah (SAW) while he was at the house of Hafsa and said: O Messenger of Allah, slowly (*ruwaydak*) let me ask you. I sell camels at Baqi. I sell for dinars and take in dirhams, and sell in dirhams and take in dinars. I take this for that and**

this is given for that. The Messenger of Allah (SAW) said: There is no harm if you take it for the daily price as long as you have not departed while between you is something (left)."

This is transacting/disposal (*tasarruf*) of the price before taking possession of it, which is one of the things given in exchange like sale. And Al-Bukhari narrated from ibn Umar that he was at a (*s'ab*) camel of Umar "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 completed is not permitted to be sold. Hence what is done by small traders of bargaining with the buyer 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 then (*ihdhar*) 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 peasants/farmers (*fallah*) and sell it before they have taken possession of it. This is not permitted as it is of foodstuff wherein ownership is not completed except by taking possession of it. Similarly 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 SALE 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 coming of ahadith about that. The ahadith came generally including all sales of that which is not owned or whose ownership is not completed. He (AS) said: “**Do not sell that which you do not have**” (narrated by Ahmad). And he said to Uttab bin Usayd: “**Prohibit them from selling that which they do not have 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: “**Whoever pays in advance for something, then 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 that one delivers present compensation (‘*awdh*) for a described compensation as surety/guarantee (*dhimma*) for a period i.e. that one advances 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 “*aslam*” and “*aslaf*”. The same conditions as considered in a sale are considered therein.

There has passed the transaction of people in *salam* and *tasleef* because they are in need of it particularly farmers and traders. The owners (*arbab*) of crops and fruits need expenditure for themselves and upon it to complete what those 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 condition of delivering the good to the buyer when the imposed period falls due. The trader would sell

the good not with them for a specific period which they 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. From ibn Abbas who said: **“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: **“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: **“We would pay in advance at the time of the Messenger of Allah (SAW), Abu Bakr and Umar 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. 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: **“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: **“Whoever pays in advance in something then in 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 has contracted upon the *salam* in foodstuff being

allowed. This ijma 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: **“Abdullah bin Shaddad bin Al-Hadi and Abu Burdah differed over advance credit sale so they sent me to ibn Abi Awfa (RS) 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 is measured of a measure, weight or number 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-fadh*) 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 counted but it did not mention the counted (thing). The ijma 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, *Birni* 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 liter 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 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: **“Whoever pays in advance for something, then for a known measure and a known weight for a known period.’** This indicated 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 is *salam* and *salaf* is the bringing forward (*ta’jeel*) 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 to the (*fash*) 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/meaning (*madlul*). If they consider that an hour is not considered therein that it becomes but rather it is of 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 of then the whole contract (*safqah*) 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 (*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 took 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 (*ghubn fahish*); rather it is obligatory that the price be according to the market during the sale contract similar to the deferred (*muajjal*) 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. So 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 do not (*taghabun*) over its like. Clear fraud is evaluated by the evaluation of trader so what they consider is fraud becomes and what they do not, is not.

BUYING FRUITS/PRODUCE (*THIMAR*) WHICH ARE UPON THEIR ROOTS

Among the transactions which people became accustomed to transacting with is the guarantee (*dhaman*) of produce/fruits (*thimar*) which are upon their trees like the guarantee of (*hamdhiyat*), olives, cucumbers, grapes/vines (*kurum*) 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 (*harth*) it, (*thaqifa*) it and specify for it for each year and eat of 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 grow in one year and produce in the other. It requires, in order to produce well, to pay attention to tilling, (*tathqeef*) and stripping. So the one who guarantees it will take it for a certain number of years so that he makes it easy (*yatamakkan*) 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 lemon and 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 produce/fruit irrespective of this produce being a little or a lot, good or inferior. The *dhaman* in its essence is buying of fruit while they are on the tree without buying the tree, or buying the produce of the tree for two or three or more years. As for *dhaman* 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 of the category of the sale of risk (*gharar*). The sale of risk is haram due to what Muslim narrated from Abu Huyayra who said: “**The Messenger of Allah (SAW) prohibited the sale of**

(husat) and the sale of risk (gharar).” The sale of risk is the sale of ignorance due to what Ahmad narrated from ibn Mas’ud that the Prophet (SAW) said: **“Do not buy fish in the water as it is gharar.”** So the sale of tree produce for two or three or more years is not permitted as it is a category of *gharar*.. Also the sale of 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 of 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 *dhaman* the olives and lemons of buying tree produce for a period of two or three years is haram, and it is of the sales which the Shar’a came explicitly prohibiting against.

As for the *dhaman* of tree produce which is clear in produce and *dhaman* 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 palm tree specifically. Therefore its rule differs from the rule of *dhaman* of two or three or more years. The Shar’i rule in this *dhaman* 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 (*salah*) has appeared i.e. it becomes possible to eat from it, then the *dhaman* is permitted i.e. the sale of produce in this situation is permitted. If the goodness of the produce has not appeared yet as when it has not yet commenced as food then it is not allowed to sell it. This is due to what Muslim narrated from Jabir (RA) who said: **“The Messenger of Allah (SAW) prohibited the sale of produce until they become good (yatib).”** And due to what is also narrated from him: **“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: **“The**

Prophet (SAW) prohibited from buying fruit until they (*tashqah*). He said: They become red and yellow and are eaten from.” And due to what Al-Bukhari narrated from Anas bin Malik from the Prophet (SAW) **“that he prohibited from the sale of produce until their goodness appears and from the palm tree until it blossoms (*yazhu*). He said: And what is (*yazhu*)? He said: It becomes red or yellow.”** And due to what he narrated also from him **“that the Messenger of Allah (SAW) prohibited the sale of produce until it blossoms (*tuzha*). It was said to him: And what is (*tuzha*)? He said: Until it becomes red. So the Messenger of Allah (SAW) said: Do you see that if Allah prevents the produce, then for what did one of you take his brother’s money?”** And due to what Al-Bukhari narrated from Abdullah bin Umar that the Messenger of Allah (SAW) **“prohibited the sale of produce until their goodness appears, prohibiting the seller and what is bought (*mubta’*)”** and in the narration of Muslim with the words: **“he prohibited the sale of palm tree until it blossom an ear of corn (*sunbul*) until it whitens and is safe from blight/calamity (*’aha*).”** All these ahadith 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 (*mantuq*) of the ahadith. The permissibility of the sale of produce once their ripeness appears is deduced by its understanding (*mafhum*). Accordingly the *dhaman* of the tree whose produce appears like olives, lemons, palm-tree and others is permitted if edibility/maturity (*yat’am*) 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 ahadith which came about that. From scrutinising the ahadith 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 (*yashtadda*)”** (narrated by Abu Dawud). And in the other hadith of Jabir **“until it (*tashqah*)”** and in the hadith of ibn Abbas **“until it matures.”** Accordingly all the ahadith are (*mutadhafara*) upon one meaning which is until maturity (*tat’amu*) appears. Looking into the reality of fruit 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 indicates the ripening like dates, figs, grapes, pears and the like. Of them is that in which ripeness appears by its changing (*taqleeb*) or by its sight by the inspectors (*'arifeen*) like the water-melon due to the difficulty of realising the change of its colour in ripening. Of them are those whose maturity becomes clear by the beginning of the change of the flower to produce like (*khiyar*), cucumbers 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: **“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 Jaabir **“until it becomes good.”** Herein is clarified the permissibility of the sale of the produce of cucumber, (*khiyar*) and the like i.e. the permissibility of *dhaman* 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 (*khiyara*) so the produce is bought while it blossoms and before it (*tazhar*) i.e. the fruit is bought in this situation before it exists by merely something beginning being produced of it. This is not of the category of buying something non-existent because its fruit comes in succession one after another without interruption (*mutalahaqa*) 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 (*zahar*) nor to sell the fig while it is (*'ajar*) before there appears ripeness therein. The meaning (*murad*) is selling it while it is on the tree i.e. *dhaman* 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 nor the appearance of goodness in all

gardens. Rather the meaning of appearance of goodness is the beginning of goodness of the species (*jins*) 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 appears 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 *dhaman* all olives in all gardens because the hadith states: **“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: **“He prohibited the sale of grapes until they blacken, and from selling grain until they (*yashtadda*).”** He clarified the rule of produce of each species in its essence and each type in its essence. He said in the grain/seed until it (*yashtadda*) 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. 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 *dhaman* 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 the Supreme: *“Allah allowed trade”* [TMQ 2:] 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 absolute (*mutlaqa*). Hence it is not restricted whether cutting (*qat’a*) 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 the produce alone 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 (*yu'bar*). Whereas if the (*ta'beer*) 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 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: **“Whoever buys palm-trees after it (*yu'bar*), 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 **“that the Prophet (SAW) decreed that the dates of the palm-tree are for the one who (*abara*) them unless the buyer makes them a condition.”** So it is deduced from the clear statement (*mantuq*) of the hadith that whoever buys palm-trees upon where there are (*mu'bira*) produce, the produce is not included in the sale but rather remains the seller's property. And it is deduced from its understanding (*mafhum*) that if they are not (*mu'bira*) then they are included in the sale and are for the buyer. The meaning of the understanding is opposite understanding (*mafhum mukhalafa*) which is the understanding of the condition (*shart*). It is inevitable to adopt this understanding because if the rule of the non- (*mu'bira*) is the rule of the (*mu'bira*) then its restriction with the condition is vain/useless speech (*laghwu*) without any benefit therein. Hence the produce of the palm-tree before (*ta'beer*) 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 (*yuqas*) upon it because the (*ta'beer*) is a specific action. The word, even though it is a description, however it is not an understood description for the reason (*'illah*) 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/annexed (*yulhiq*) to it because there is nothing branching (*yatafar'a*) from it nor is it something to be analogised upon. Hence the (*ta'beer*) is specific to the palm-tree and it is not in anything else.

The palm-tree does not bear if it is not (*yu'bar*). The (*ta'beer*) is (*tashfeeq*) and fecundation/pollination (*talqeeh*) and its meaning is to divide/split the blossom of the female palm-tree to (*yadhiru*) 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 fecundation 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 fecundation occurs then after the passing of about a month the appearance of produce occurs. If the palm-trees are bought after fecundation, even by one day for example, the contract is valid even if the produce has not appeared. Thus the rule is related to (*ta'beer*) not the appearance of produce so there is no place for analogy due to the absence of the unifying matter (*jami'*). 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 (*mansab*) upon the meaning that, at that point, the produce follows the tree nor is it 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 produce after its goodness appears which means that it does not follow; so it is not included except by mentioning it. As this point it is allowed to sell it alone and to sell the tree alone. However if the tree is bought then a wind comes to it and uproots it or breaks it i.e. if there comes to it a misfortune (*jaiha*), there is nothing upon the seller since the sale is completed. Nor did there come any text 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. a blight, then it is obliged upon the seller to reduce the price of the produce of what struck it of the blight. This is due to what ibn Majah narrated from Jabir that the Messenger of Allah (SAW) said: “**Whoever sells**

produce then it is struck by a misfortune, let him not take anything from the property of his brother. ('alam) one of you to take the wealth of his Muslim brother.” The meaning of the misfortune is the (*afa*) which struck the produce and destroyed them. The meaning of the (*afat*) is the heavenly (*afat*) like cold, thirst, winds and drought. However if the misfortune is not heavenly like thirst of the destruction of the tools of irrigation, and like 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 BY DEBT OR INSTALMENTS (TAQSEET)

The Messenger of Allah (SAW) said: “**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 “**that the Prophet (SAW) sold drinking cup (*qadh*) and saddle-cloth for a (*yazeed*) price**” and the sale of (*muzayada*) is bargaining. It is proven that the Prophet (SAW) bargained for ibn Majah narrated from Suwaid bin Qays who said: “**Makhrama Al-Abdi and I imported (*bizz*) from Hijr, and the Messenger of Allah (SAW) came to us walking and bargained with us with trousers and we sold to him.**” As for the end of the bargaining, the sale has been 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 (*nasia*). 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. The Supreme said: “*Allah allowed trade*” [TMQ 2:] and this is general. So 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 the Supreme’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 fighting setting two prices for the good, an immediate price and a deferred price so it became allowed by taking the generality of the ayah. Also he (SAW) has said: “**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: ‘Whoever bargains for two prices, the first immediate and the other for delay (*nadhra*) let him name

one of the two before the contract.’ Hence this demonstrates that bargaining over two prices for one good then the contract takes effect over one of them by the consent of both 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 and with a specified completely, this is similarly permitted due to the generality of the evidences and due to there not coming any clear text forbidding this type of sale. As for what Ahmad narrated “**the Prophet (SAW) prohibited two contracts (*safqah*) in one contract**” its meaning is there being two contracts in one contract like one says: ‘I sell to you this house of mine on condition 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: “**Whoever sells two sales in a sale, for him is the lesser (*awkis*) of the two or (it is) *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 (*azeed*) 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 (*awkis*) 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 (*unclear word in Arabic text*), 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, none 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: “**Whoever sells two sales in one sale, for him is the (*awkis*) 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 of buying wheat, clothes, animals or tools upon the condition of paying its price at a fixed period until the (*khuruj*) 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)

From Hakeem bin Hazam from his father who said: The Messenger of Allah (SAW) said: **“Leave 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 trader 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 (*makinat*), and between wholesalers and they are called (*muta'ahidin*) or selling agents (*wukala*). These persons promise (*yata'ahada*) 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 persons 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 sale 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 clothe-material, sweets and other things. In the vegetable market, the trader sells vegetables for the account of the peasants (*liqa*) of the specific hire (‘*umula*) which he takes from the peasant.

All these actions (*a‘mal*), 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 (*hafidh*), then it was used for the one charged with the power of selling and buying. The fuqaha knew (‘*arrafa*) brokerage as the name for the one who works for someone else for a wage in selling and buying. And it is verified upon auctioneer (*dalal*) because he works for someone else for a wage in selling and buying. The brokerage and auctioneering (*dalalah*) is allowed in Shar’a, and it is considered of the practices of trader and it is a type of work by which wealth is owned in the Shar’a. Ahmad narrated from Qays bin Abi Ghurza Al-Kanani who said: We used to buy the camel loads (*awsaq*) 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: **“O group of traders, verily there is present in this trade useless talk (*laghwu*) it with charity.”** Its meaning is that he could exaggerate in describing his good until he talks what is useless talk i.e. more than what is obliged upon him of speech buti t does not, however, reach the status of falsehood. He could also guess in swearing to market (*tarweej*) his good so he is recommended to 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 of trader. And it is the evidence that brokerage is allowed by Shar’a, and it is of 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 (*mata'*), 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.

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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 sahih 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 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 occurs, 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: “**Do not meet riders, nor the sale of inhabitant for the bedouin.**” He said: I said to ibn Abbas: What is his saying: “**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 trader for the bedouin.**” He said: He should not be a broker for him. And Al-Bukhari said: ‘*Chapter: 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 Said bin Al-Musayyab that he heard Abu Hurayra saying: The Messenger of Allah (SAW) said: “**The man should not buy upon the sale of his brother. Do not (*najashu*), nor the sale of the inhabitant for the Bedouin.**” And the second hadith from Anas bin Malik (RA) who said: “**He prohibited us from the sale of the inhabitant for the bedouin.**” And Al-Bukhari said: ‘*The Chapter of (*najash*) and the one who says that that sale is not permitted.*’ And ibn Abi Awfa said: ‘The (*najash*) is the consumer of treacherous (*riba*) and it is the void deceit which is not permitted, and the Prophet (SAW) said: “**Deceit is in the Hellfire. And whoever performs any action not in accordance with our command, it is rejected.**”’ And there came several ahadith mentioning several types of practices that the Messenger (SAW) prohibited. It came from Abu Hurayra (RA) that the Messenger of Allah (SAW) said: “**Do not meet riders nor should some of you buy upon the sale of others. Do not (*tanajashu*), nore should the inhabitant trader on behalf of the Bedouin**” (narrated by Al-Bukhari). And it was narrated that the Prophet (SAW) said: “**Do not meet imported goods. And whoever receives anything of them, its owner has the option when he reaches the market**” (narrated by Ahmad). From these ahadith and others and their scrutiny, it becomes clear that he prohibited therein the inhabitant trading for the Bedouin and similar tot hem are the towns-people, and the 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 (*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 he that he will not increase on this amount except that he will bring the equivalent so he (*yaghtarr*) by that and increases in order to buy it. He prohibited the meeting of riders which is

the inhabitant 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 (*thaman mithl*). Or he informs him of the little demand of what is with them or the little demand in the market. He prohibited meeting the imports which is like meeting the riders.

These are the actions prohibited against, some of which relate to brokerage directly and of them are those which relate to trade. By scrutinising the ahadith which came in prohibiting, it became clear that the prohibition therein is wholly erected (*mansab*) upon an understood description (*wasf*) 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 hanging/suspended (*manut*) 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 Bedouin, buying upon the sale of the brother, the (*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 present in him of lack of knowledge of the price, and suspended with buying upon the sale of his brother due to what has occurred therein of the price being determined and the reliance of one upon the other, and suspended upon the (*najash*) because he does not intend to buy it but only increases 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; if they do not exist, neither sale nor brokerage is forbidden therein. Umar bin Al-Khattab understood in prohibition of the sale of the inhabitant

for the bedouin that the reason is not knowing the price, so he said: “**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 upon the types wherein came a prohibition or there exists in the brokerage the reason 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.

EMPLOYMENT/HIRING (*AL-IJARA*)

Hiring is a contract for benefit in return for compensation, and there enters under it three types:

The first type—Where the contract came upon the benefit of things (*'ayan*) 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/professions 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 ta'ala said: *“And We raised some of them above others in rank so that some of them take others as (sukhriyy)”* [TMQ]. And He said: *“If they give suck for you, give them their wages”* [TMQ]. And Al-Bayhaqi narrated via the way of Abu Hurayra that the Prophet (SAW) said: **“Whoever hires an employee, he should let him know his wage.”** And Al-Bukhari narrated **“that the Prophet (SAW) and As-Siddeeq hired a man from Banu Ad-Deel as a guide through the country.”**

THE EMPLOYEE (*AL-AJEER*)

The contract of hiring/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 (*khidma*) and the like or the benefit resulting from his work like painting, (*qisara*), engineering and the like. In order for the hiring to be contracted, the fitness (*ahliyya*) of the two contractors is a condition for its contracting such that each of the two should be sane and possessing discretion (*mumayyiz*). The hiring of the insane is not contracted, nor the hiring of a non-*(mumayyiz)* 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 (*AJRA*)

It is a condition that the money of the hiring be known via mutual sight or description which removes ignorance. He (SAW) said: **“Whoever believes 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 with the money measure 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 of silver and gold in the weight. This is because that which is a condition of the wage is the exchange of work, not the exchange of the (*mahal*) of work which he performs. Whatever is suitable (*sulh*) 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 (*mal*) 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. What is contracted upon is 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 in (*sidad*) the need of the employee. Thus there does not enter the elevating 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 (*sidad*) 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 (*bayyinah*) and proof (*hujja*) as there is no role for evidence therein since it does not (*yurad*) proving the wage. Rather, knowing its amount and its estimation is by the estimation of two experts (*khabeer*) 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 (*wahda*) 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 higher pay and for lesser hours, lesser pay and so on.....The estimation of wage for one job over which came the contract of hiring upon 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 (*itqan*) therein like engineers for example. So the engineer will be given so much as a wage, and it will differ between engineers by the difference of the (*itqan*). Similarly occurs the estimation of the wage for different jobs according to the benefit intended therein during the hiring to those working therein i.e. the makers (*suna* '). The wage for these jobs will differ by the difference of their benefit in the society so the engineer's wage will be so much, the builder's wage so much and so on.....The estimation of the wage of the persons, 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

occurs the estimation of wage for persons, for one job and for different jobs in a place differently than in another place. For example the worker in the desert is given more than 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 could be named/mentioned (*musma*), and it could be a comparable/similar wage (*ajr al-mithl*). As for the mentioned wage, it is the wage mentioned and specified at the time of the contract. It is considered of 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/knowledge, 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 (*eejar*) 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, 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: **“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 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 (*tardeed*) 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 specific/private (*khas*) and common (*mushtarak*). The specific employee is the one who works for 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 them specifically together with specifying the period, that cook is a specific employee.

The common employee is the one who works for one in work not constantly or temporary work without stipulating specification upon him 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 an upholsterer 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 (*tamakkan*) in the work, whether he performed the work or not. His deserving the wage is according to the period not according to the work. (*ladha*) it is not performed for him 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 security/guarantee (*dhaman*) is that the specific employee is guaranteed so if something is destroyed in his hands accidentally and without his laziness/fault (*taqseer*) and negligence (*ihmal*), there is no guarantee 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 does not guarantee. Whereas if it is possible to safeguard against and he was not safeguarding, he does guarantee. This is because the thing in which the specific employee works, even if it is under his hand, is under the disposal (*tasarruf*) 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 (*fasada*) due to its ignorance. Each one of the two contractors may invalidate it at any time he wishes, 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 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 to the time when the hiring was invalid.

THERE DOES NOT EXIST A 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 workers/labourers as long as there existed mutual consent and as long as the (*nadhariyya al-iltizam*) is the one dominating over them. Labourers met from the employers evil (*irhaq*), injustice and exploitation of their sweat and labour. When the socialist thought appeared and announced justice for the employee, it appeared upon the basis of solving/treating 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 his leisure etc....So it destroyed the (*nadhariyya al-iltizam*) and its incompetence to solve the problems became clear so the scholars of western canons were forced to change their (*nadhariyya al-iltizam*) until the (*nadhariyya al-iltizam*) was able to be fortified (*tathabbata*) 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*) does not permits this type of rights. However there occurred the interpretation of these

viewpoint (*nadhariyya*) 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, there was created between them the labour problem (*mushkilat al-'ummal*). There came for each one of the two 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 (*mutakhasiseen*) or technical experts (*faniyyeen*) 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 his 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 there 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: **“The Imam is a shepherd (*ra'i*) and he is responsible (*mas'ul*) for his subjects (*ra'iyah*)”** (narrated by Al-Bukhari). It is upon the State to remove the injustice (*dhulm*) 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 at 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 (*tadhaharat*) 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 workers but rather for each weak person (*'ajiz*) 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 *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 THINGS

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 (*yastawfa*) the benefit of the thing which he hired; so if he hired a house, he can reside therein or if it were 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 stand 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 (*r'as al-mal*). However, when he hires the thing for the benefit he can (*yastawfa*) similar to that benefit or less, but he cannot (*yastawfa*) more than this same benefit. This is because it is not permitted for him to (*yastawfa*) 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 produce whose goodness has appeared, and it can come upon non-corporeal (*mujassam*) 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 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 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 (*khalwu*) for storehouses, houses and others—which is paying a specific amount of money on top of the decreed (*muqaddar*) 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 (*r'as al-mal*) 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: **“Upon the hand (possessor) is what he took until he restores (adda) it.”** Whereas if the hired thing is not in his possession, then it is looked into. If it were seized forcefully (*ightasaba*) 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 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: **“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: **“Upon the hand is what it took until it restores it”** and there did not come 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 (*yulhiq*) 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 (*khalwu rajul*) 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 (*yajree*) 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/DWELLING (*SUKNA*)

Whoever rents immovable property/house (*'uqar*) for residence/dwelling, 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/delegate (*wakeel*) in taking possession of the sold thing. He can (*yasna* ') in the house of what is the custom of the resident of (*farash*), furniture, good etc. Except that the tenant cannot accommodate in the house which he rented one whose harm would be worse than his own harm upon the house. So he should not accommodate therein one who would harm 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 (*ta'aruf*), so it is not permitted for him to fulfil (*yastawfa*) 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 (*itlaq*) without being necessary to mention 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 (*yaliya*) 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 (*talabbas*) 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 (*hammam*), the (*'amal*) of the doors, running of water and all that is required to make good or (*eejad*) to facilitate the benefiting with the house. As for what is fulfilling the benefits like delivering the movables (*muntaqil*), rope, bucket, the hour of water and the hour of electricity, 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 (*tabyeedh*) the sink and the wash-house, if it requires this during the 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 dirt/sweepings, 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 (*HARAM*)

Whoever possesses an authority/competence (*salahiyya*) 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 fulfil/execute/carry out (*qadha*) a benefit obliged upon the taker to execute or to execute a benefit by the taker not doing that which he is obliged to do, whether the benefit is a right or something null/void (*batil*). The payer of the bribe is called the (*rashi*), its taker is the (*murtashi*) and the mediator between them is the (*raish*).

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: “**Allah cursed the briber (*rashi*) and bribe-taker (*murtashi*).**” Ahmad narrated from Tawban who said: “**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 nor in any text what could be deduced therefrom as a reason. Accordingly its forbiddance is by the unreasoned explicit text so here 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 its being to the judge (*hakim*) or official or leader or other than these; all are forbidden. Nor is it said that Ahmad narrated from Abu Hurayrah who said: The Messenger of Allah (SAW) said: “**Allah cursed the briber and bribe-taker in judgement (*hukm*)**” so this is restricted in judgement so the absolute is carried 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 of the type of stating clearly (*tansees*) one of its units (*afrad*) not of the type of restriction. Hence the word briber, bribe-taker and mediator are general words not

Unrestricted words, thus his statement “**in judgement**” is not a restriction for it such that the remaining ahadith are carried upon it. Rather it is stating clearly a unit among its units and this is the rule, so all the ahadith 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 (*yantaqi*) for him new goods among the goods, or the worker of the printing press given to him by the writer of the 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 (*ibra*) 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 of 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 ahadith. Al-Bukhari narrated Abu Hamid As- Saidi **“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: **“Whoever we appointed upon work and provided sustenance (*rizq*) for him, then whatever he takes after that is illicit wealth (*ghulul*)”** or the Messenger (SAW) had called it (*suht*) which is forbidden money. Al-Khateeb extracted in Talkhis Al-Mutashabbih from Anas that the Prophet (SAW) said: **“The gifts of governors is (*suht*).”** It is related about Masruq from ibn Masoud that he was asked about (*suht*), is it bribery? He said: ‘No, but (*suht*) is that a man seeks assistance

upon an injustice (*madhlama*) so he gives you a gift. Do not accept.’ Abu Wail Shaqeeq bin Salamah, one of the Imams of the Tabi’in, said: “If the judge takes the gift, then he has eaten (*suht*). And if he takes bribery, then he has reached thereby.’ All these ahadith—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/public 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 (*hidaya*) came in the hadith of: “**The gifts (*hidaya*) of the governors is (*suht*)**” is general covering all gifts to governors. Analogised upon the governors all those supervising the execution of the people’s benefit who is obliged to execute them without exchange taken from the one for whom it is executed; it is forbidden for him to take a gift or a gift be taken from those for whom is this benefit desiring its execution. The policeman, head of a company, leader of workers, and whoever is like them; it is forbidden upon them to take gifts and the gifts for them are (*suht*). 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: “**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 (*AR-RAHN*)

The pledge (*rahn*) in the language is to be established (*thubut*) and (*dawam*), and it is said it is of the imprisonment (*habasa*). The Supreme said: “Each person is a pledge over what he acquired (*kasaba*)” [TMQ] and: “Each soul is a pledge over what he acquired (*kasaba*)” [TMQ] i.e. restricted (*muqayyada*). The pledge in Shar’a is the property which is given as security (*watheeqa*) for the debt so as to pay (*yastawfa*) from its price if the one upon whom it is due finds it impossible/difficult (*ta’addhara*) to pay it. It is permitted and among the transactions which the Shar’a permitted. Its evidence is the Book and Sunnah. The Supreme said: “And if you are travelling and cannot find a writer (*katib*), then a (*maqbudha*) pledge” [TMQ 2:]. Al-Bukhari narrated from Aisha, the mother of the believers, “**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: “**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 who said: “**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 (*waqi’at al-hal*) and is not a restriction by the evidence “**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 (*qabdh*) in the pledge is that he (*yatliq*) 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 (*atlaqat*) upon his (*dhabit*) 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 (*dhimma*) of the pledger. The pledge is not permitted in

that which is not permitted to sell like alcohol, idols, land on trust (*waqf*), the pledged thing and similar things which are not permitted to be sold.

THE PLEDGEE BENEFITTING 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 (ASS) said: **“He should not unredeem/straiten (*yaghlaqu*) the pledge from its owner who pledged it. For him is its booty/free gift (*ghanam*) and against him is its fine/obligation (*gharam*)”** (narrated by Ash-Shafi’I via the way of Said bin Al-Musayyab). The Messenger’s statement **“he should not straiten the pledge from its owner”** i.e. the pledgee does not deserve the pledge if the pledger does not (*yaftak*) 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 (*ghanam*) and it enters into his (AS) statement **“for him is his booty (*gharam*).”** Additionally the benefit is the increase (*nima*) 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 (*yastawfa*) it so he can rent the pledged house, and to (*yastawfa*) 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 (*tawabi*) of the house (*‘uqar*) which enters into

the sale without mention like house keys. Hence the pledgee cannot benefit from the pledged thing with the proof/argument (*hujja*) 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 pledgee 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. From Anas **“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 from Anas from the Prophet (SAW) who said: **“If he lends, let him not take a gift.”** Al-Bukhari narrated in his Sahih from Abu Burdah bin Abu Musa who said: **“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 to you a load of straw, barley or (*qitt*), do not take it for it is *riba*.”** Al-Bayhaqi extracted in *Al-Ma’rifah* from Fudhala bin Ubayd: **“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 **“that the Prophet (SAW) prohibited the debt in which the benefit runs”** and in the narration: **“Each debt whose benefit runs is *riba*.”** And due to the consensus (*ijma*) contracted that each debt wherein an increase is stipulated is forbidden. Ibn Mundhir said: ‘They had an *ijma* that where the one lending (*aslaf*) 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 ahadith and *athar* is clarified that the loan whose benefit runs, if the increase is stipulated, 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. As for what Al-Bukhari narrated in his *Sahih* from Abu Hurayra **“that a man lent to the Messenger of Allah (SAW) and he was harsh to him. So his companions (*hamma*) upon him and he said: ‘Leave him for the owner of a right has (*maqal*). Buy him a camel and give it to him.’ They said: ‘We do not find except better than (*sanat*).’ 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: **“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 (*riba'iyya*).' He said: 'Give it to him for the best of the people are the best in repayment.'" This is not of the category of stipulating an increase in the loan nor of 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 of the type of good repayment not of the type of increase. Hence the Messenger came with the reason of increase with an expression indicating (*yufeed*) reasoning and said: **"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 (*sidad*) not the (*sidad*) 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 of the good repayment i.e. the good (*sided*) but rather of the type of increase over the amount or the borrowed thing whether he stipulated it or not. It is not of the type of the gift of which it is his nature to gift to 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 that be by a rent without (*muhabat*). If he (*haba*) 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 (*MUFLIS*)

The bankrupt in the language is the one without money and without that which he would pay for his needs. It is meant by that that he reached a situation in which it is said about him, ‘There is no (*fals*) with him’ so he is *muflis*. Muslim narrated via the way of Abu Hurayra “**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 utensil/effects.’ 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, “**That is not the *muflis***” (*tajuz*) 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 (*urf*) 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 (*hala*) 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 done upon him, four rules are established by that:-

The first of them is rights of the creditors relating to the (*'ayn*) of his wealth. The second preventing his disposal with the (*'ayn*) of his wealth. The third is that whoever finds the (*'ayn*) of his 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'ab bin Malik narrated **“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 from Abdurrahman bin K'ab: **“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 submerged/engrossed (*aghraqa*) 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 rights for people or that which obliges a money fine via trustworthy testimony or a correct confession from him, it is sold from him all that he has 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 ta'ala: *“And if he is in difficulty, then consideration delay (*nadhra*) to a time of ease”* [TMQ]. And due to what Muslim and Abu Dawud narrated from Abu Said Al-Khudri who said: **“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. From Muhammad bin Ali bin Al-Husain who said: Ali bin Abi Talib 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 **“that Umar imprisoned the relatives on the father’s side (*asaba*)—the men not the women--of the baby (*manfus*) 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/small child. Maintenance (*nafaqah*) is

of the money which is obliged upon the one capable to provide maintenance. That indicates the imprisonment of the one who does not provide for the young child alone who is the (*manfus*).

The rule regarding the bankrupt is that the judge sells to the creditors the debtor's wealth and divides it among them in lots/portions (*hasas*) as there is no way to do them justice other than this. 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 to Umar bin Al-Khattab: '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. He (*iddan*) (*mu'ridh*) and woke up with a debt therein. So whoever has something over him, let him come early in the morning for we will divide it in lots.' And from Umar bin Abdulazia that he judged in the bankrupt that his wealth be divided between the creditors and then he is left until Allah 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 whose 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 whose 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 and the rights of the slaves (*'ibad*), the rights of Allah ta'ala precede the rights of the slaves. So it is commenced with what he missed of zakat or expiation (*kaffara*); if it does not cover everything, this is divided upon all these rights by lots without (*yubaddi*) anything over anything. Similarly the debts 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 precede the rights of the slaves is what is established of the Messenger of Allah (SAW) that he said: “**...the debt of Allah has more right that it be paid**” and his statement: “**...repay Allah as He has more right to be repaid**” (Al-Bukhari narrated the two via the way of 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 has not need of 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 upon anything of that, it is left for him that which suffices him and maintains him and those whom it is obliged for him to furnish provisions for according to what is reasonable (*ma'rouf*) of his wealth until (*yafraghu*) from its division between his creditors.

TRANSFER OF A RIGHT (*AL-HAWALA*)

(*Al-hawala*) is taken from transferring the right from a (*dhimma*) to a (*dhimma*). 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 Hurayra that the Messenger of Allah (SAW) said: **“The delay of the rich man is injustice. And if one of you is pursued/followed (*utbi’a*) while rich (*muliu*) then let him (*yatba’u*)”** and in other words: **“Whoever (*uheel*) his right while rich, then let him (*yahtal*)”** (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 another 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-ahad*) and the rich man (*muliu*) 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: **“Verily Allah ta’ala says: ‘Whoever lends the rich man who is (*ghayr al-‘adam*).”** However the command of the Messenger to follow the rich man if it falls due upon him requires that he is not denying (*jahid*) or a procrastinator (*mumatil*). This is understood from compelling the (*muhtal*) 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 a (*muheel*), the (*muhtal*) and the (*muhal ‘alaihi*). The one followed is the (*muheel*), and the word **“one of you”** who is the one commanded to follow his debt is the (*muhtal*) person. And the rich man, whom the person is commanded to follow him, is the (*muhal ‘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 (*mustaqarr*) debt. So if the woman transfer 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 another 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 (*ahal*) 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 (*muhal 'alaihi*) nor is the (*muhtal*) obliged to accept that because the transfer is mutual compensation whereas there is no mutual compensation here. If the (*muhtal*) (*qabadha*) the debt from the (*muhal 'alaihi*), he returns to the (*muheel*).

Thirdly: It should be for known money and is invalid for unknown money.

Fourthly: That the (*muheel*) 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 (*jihat*) since he is not obliged to pay it in the manner which is upon the (*muhal 'alaihi*). Rather it is for him to pay it in any manner he wishes. Nor

is the consent of the (*muhtal*) and (*muhal 'alaihi*) a condition; rather their consent is not considered at all. The (*muhtal*) is obliged to accept the transfer, and the (*muhal 'alaihi*) is compelled to accept the transfer. As for compelling the (*muhtal*), this is due to the statement of the Prophet (SAW): “**If one of you is followed while rich, let him (*yatba*)**” and because the (*muheel*) can fulfil the right due upon him by himself or his delegate and the (*muhal 'alaihi*) has stood the in his place in receiving so the (*muhtal*) is compelled to accept. As for the (*muhal 'alaihi*) non-consent, this is because the creditors made the (*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 (*muheel*) alone, nor is the consent of the (*muhtal*) or (*muhal '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 (*muhtal*) consented or not, and whether the (*muhal '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 (*dhaman*), standing security (*kafala*), bequest (*wasiyya*) and their like of the disposals not considered contracts.

DRAWING/PAINTING (*AT-TASWEER*)

Drawing is to trace/draw (*rasama*) the picture of something, and of drawing is the making of statues (*tamathil*) and it includes carving/sculpting (*naht*). The drawing itself or the carving/sculpture is the picture/image (*sura*) and (*suwar*) is its plural. It is also called (*tasaweer*) in the language and it includes sculpting, and it is said linguistically that drawing (*tasaweer*) is sculpting (*tamathil*). The Shar'a forbade the drawing of anything with a soul (*ruh*) in it among humans, animals and birds whether it is drawn upon paper, skin, clothes, vessels/receptacles (*awani*), 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 not soul in it is permitted without any sin therein. The Shar'a allowed the drawing of trees, mountains, 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 who said: **“When the Prophet (SAW) saw the drawings in the House (Ka'aba), he did not enter until he commanded their effacement (*maha*).”** **“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 Muslim and Al-Bukhari extracted from the hadith of Aisha that she said: **“The Messenger of Allah (SAW) entered upon me and I had covered my (*sahwa*) by a (*qiram*) in which there were drawings. When he saw it, he tore it. His face changed colour and he said: ‘O Aisha, the people most severely punished on the Day of Judgement are those who imitate the creation of Allah.”** 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: **“From Aisha who said: ‘The Messenger of Allah came from a voyage and I had covered my door with a curtain with a (*durnuka*) with horses in it with wings. He commanded me and I removed it.’”** The (*durnuka*) is a type of clothing. Al-Bukhari extracted from the hadith of ibn

Abbas: The Messenger of Allah (SAW) said: **“Whoever draws a drawing, Allah will punish him for it on the Day of Judgement until he breathes a soul/life (*ruh*) into it whereas he cannot so breathe.”** And he extracted via the way of ibn Umar **“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.’”** From ibn Abbas 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: **“Every drawer 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 Hurayra who said: **“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 (*tawtian*) pillows and commanded with 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 (*hajjam*) so he said: **“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 (*sura*) 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 ahadith. And due to the hadith of ibn Abbas 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 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: **“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 ahadith 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. Yes, some ahadith 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 ahadith. In the hadith of Abu Hurayra: **“He commanded to lop off the had of the statue so that it becomes like the form of a tree”** which means that there is nothing wrong with the statue of a tree. And in the hadith of ibn Abbas: **“If you must do so, then make a tree and that which has no soul (*nafs*).”**

The ahadith which came forbidding drawing are not reasoned nor did there 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: **“It will be said to them: ‘Give life to that which you created’”** and what came in the hadith of Aisha about drawing: **“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 ahadith. All that is in the matter is that the Messenger likens (*yushabbihu*) drawing with creation and the drawers with the Creator. The resemblance (*tashbeeh*) 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 ta’ala 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 then this reason exists in trees, mountains, flowers etc since they are also created by Allah 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 forbade is only the tracing/drawing (*rasm*) or engraving etc which a human performs directly by himself. As for drawing (*tasweer*) 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 (*nuql*) the shadow (*dhill*) 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 (*intaba’a*) 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 ahadith. The ahadith say: **“Those who make these drawings”**, **“Verily I drew these**

drawings”, “**Every drawer**”, “**the drawers.**” The one who takes the picture of the person or 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 nor does he 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 ahadith has been described and its type limited, and this is the one which imitates the creation of Allah 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 tracing/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 (*ibda*’). 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 of the type of drawing whose forbiddance came in the ahadith, and the ahadith 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 whodiffer completely. The technical (*faniyya*) pictured 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 (*iqatina*) 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 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 (*ta'dhim*), it is disliked (*makruh*) 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 Aisha that the Messenger removed the curtain which had a picture and the hadith of Abu Hurayra 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 that the Messenger 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 Hurayra in which Jibril said to the Messenger: “**And command the curtain to be cut off to be made two pillows of it (*tawtian*)**” which indicates that the prohibition is (*musallat*) upon placing the picture in a place of respect for it nor is it (*musallat*) 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 ahadith 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 (*marquma*) picture i.e. traced (*marsum*), which is considered a connotation that the prohibition is not decisive. In the hadith of Abu Talha in Muslim with the words: “**I heard the Messenger of Allah (SAW) saying: ‘The angels do not enter a house in which there is a dog or picture’**” and in the narration via a way narrated by Muslim that he said: “**...except (*raqm*) upon a garment (*thawb*).**” This indicates the exclusion of the embroidered (*marquma*) picture in the garment and its understanding is that the angels enter the house in which there is a carving (*timthal*) embroidered upon a garment i.e. a picture traced/drawn in sketching (*rasm*). If this hadith is joined to the other prohibiting ahadith, 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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