

The Fiqh of Minorities— the New Fiqh to Subvert Islam

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About the Author

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His father studied Islamic Law at Lahore University, hence Asif was exposed to—and acquired a great deal of knowledge about—the Islamic culture from a young age. Asif studied many of the classical Islamic texts while he was growing up and has continued to study the Islamic culture deeply. He has studied in some depth the Islamic Ruling System, Social System, Economic System and various Islamic sciences including the Islamic 'aqeedah, *usul ad-deen*, *usul al-fiqh*, *ijtihad* and *taqlid*, *ulum al-hadith*, *mustilah al-hadith*, tafsir and seerah. He is also a member of Hizb ut-Tahrir.

He graduated in Chemistry from Brunel University where he was the president of the Islamic society. He has held the position of Editor of *Khilafah* magazine, a monthly Islamic publication that is produced in the UK and circulated worldwide. He has also written papers dealing with modern political issues, such as transforming the existing judiciary in Muslim countries to an Islamic judiciary, and usooli issues such as understanding *amr* and *qarinah* in the shariah texts. Today he continues to write extensively for *Khilafah Magazine*, Islamic websites and other publications. He is currently authoring a book refuting the origins of Modernist thought in the Islamic and western world, and continues to speak on many Islamic subjects around the country.

Introduction to the Fiqh of Minorities—A Jurisprudence to Assimilation

Life for the Islamic Ummah today is difficult and complex, no matter where they reside. The Islamic world today is riddled with economic, political and security problems. It was such economic and political turmoil, drowning the Muslim world in the twentieth century that drove so many of the elder generation to the West in search of a better life. On their arrival they found many benefits but there were also new problems that they had to come to terms with.

At the forefront of the challenges facing the Muslims in the West are the continuous calls for complete integration, and the abandoning of any overt form of Islamic identity or character. Debates in governments and media on how to integrate the Muslims are frequent and indicative of the prevailing environment in the West. Even the reaction of Muslims to diverse controversial events, such as the publication of "The Satanic Verses", the war in Iraq, and the discrimination of Muslims in society, have been addressed in a way to provide further justification for integration.

There are *many* major issues that need to be addressed for Muslims in the West—indeed, many of these problems are not unique to them only but are also problems for Muslims across the world. However, the attempts to address the situation of the Muslims in the West are almost always guided by the western governments, like the British and the Americans. Regardless of the problem their agenda rotates around

integration; with every new problem comes the opportunity to assimilate the Muslims into the melting pot and make us relinquish, and compromise our 'aqeedah and adopt the ideology of Capitalism.

Many Muslim groups and personalities have been incorporated into this campaign to integrate the Muslims living in western society—when they have refused to support such a cause, others have been found by the governments to replace them. Consequently, so-called representative Muslim organisations and individuals have ended up toeing the government line, even going so far as to support the killing of Muslims in different parts of the world as seen during the war against Afghanistan.

There have been some Muslims, while sincerely looking to resolve the problems of the Muslims in the West, have attempted to base their methodology on assumptions that do not stand up to reality, or to the nature of Islam. As a consequence, they have become pragmatic in their approach to resolving these problems and have tried to reinvent the shariah for those in the West.

The reinventing trend

The Muslims saw the domination of Capitalism after the turn of the 19th century; it had technological advancements and a complete functioning system while the Muslims had nothing but the declining Uthmani Khilafah. Fundamentally the Muslims had lost the understanding of the Islamic thought and the method of its implementation, and also how the thought and its method were inextricably linked together. Some were sent to the West, and were smitten with it. Rifa'a Rafi' al-Tahtawi of Egypt (1801-1873), on his return from Paris, wrote a biographical book called *Takhlis al-ibriz ila talkhis Bariz* (The Extraction of Gold, or an Overview of Paris, 1834), praising their cleanliness, love of work, and above all social morality. He declared that we must mimic what is being done in Paris, advocating changes to the Islamic society from liberalising women, and to the systems of ruling. This thought, and others like it, marked the beginning of the reinventing trend in Islam; and it has

continued into modern times. The original advocates of such thoughts were those like Muhammad Abduh, who was appointed as Sheikh al-Azhar by the British colonialists. However, what we are concerned with primarily are the products of this thought process, rather than its origins.

We will focus on the attempt to reinvent Islam for the minorities, with the aim of resolving their specific problems. This has been called "The Fiqh (jurisprudence) of Minorities" (Fiqh al-Aqaliyaat). We will highlight the foundations of this thought, some key results that emerge from its application, and see whether there is a need for such a jurisprudence to exist.

What is the Fiqh of Minorities?

Dr Taha Jabir al-Alwani, a leading advocate of this innovative methodology, terms Fiqh al-Aqaliyaat or Fiqh of Minorities as: "...the idea that the Muslim Jurist must relate the general Islamic jurisprudence to the specific circumstances of a specific community, living in specific circumstances where what is suitable for them may not be suitable for others."¹ He continues to say that the: "...jurist must not only have a strong background in Islamic sciences, but must also be well versed in the sociology, economics, politics, and international relations relating to that community." He claims that the purpose of Fiqh al-Aqaliyaat was not to: "...recreate Islam, rather it is a set of methodologies that govern how a jurist would work within the flexibility of the religion to best apply it to particular circumstances."

We can see from scrutinising this philosophy and its justifications, that this approach makes the particular situation that is faced, or the environment in general, the source of legislation. It is a wholly pragmatic approach. As a consequence, it has led to the neglect of certain shariah rules to the contradiction of what has been established with certainty from the Qur'an and sunnah.

¹ <http://www.isna.net/library/papers/fiqh/FiqhofMinorities1.asp> (accessed 02/02/2004)

Examining the Fiqh of Minorities

The pillars of the Fiqh of Minorities

There are many claims that are made by those who advocate the philosophy of Minority Fiqh. Amongst the ideas used to justify the existence of minority fiqh are:

- The claim that the shariah has remained silent on new issues, and that the existing methodology of Islam is incapable of dealing with these issues
- The claim that the shariah rules change according to time and place, and citing Imam Shafi'i's fiqh as a proof for this
- The claim that the questions we ask about the shariah rule need to be changed.

With respect to political participation and integrating the Muslims there are a number of justifications that are used to underpin their arguments. Some of these arguments misrepresent the shariah texts, while others are rational justifications. Amongst the ideas they mention are:

- The story of Yusuf (as) and the claim that he participated in ruling in Egypt
- There is a benefit (maslaha) for the Muslims and Islam (in political participation)
- Adherence to the Qur'anic concept of geography

- The idea of citizenship

Refuting the Need for the Fiqh of Minorities

1. THE CLAIM THAT THE SHARIAH HAS STAYED SILENT ON NEW ISSUES

The protagonists of Minority Fiqh claim that the shariah has remained silent on new issues, and that the existing methodology of Islam is incapable of dealing with these issues. The proponents of this viewpoint cite the honourable hadith: On the authority of Jurthum bin Nashir the Messenger of Allah ﷺ said:

إن الله عز وجل فرض فرائض فلا تضيعوها وحرم حرمان فلا
تنتهكوها وحد حدودا فلا تعتدوها وسكت عن أشياء غير
نسيان فلا تبحثوا عنها

"Allah the Almighty has laid down religious duties, so do not neglect them. He has set boundaries, so do not over step them. He has prohibited some things so do not violate them. He was silent about some things out of compassion for you, not forgetfulness, so do not seek after them" [Darqutni, Tirmidhi, Ibn Majah, & Hakim].

Tariq Ramadan, who is trying to formulate a methodology for the Muslims in the West, speaks about the silence mentioned in this hadith in his book, "To be a European Muslim", and says that it indicates a: "basic principle of permissibility..."² He further states that: "The silence, then, is in the sphere of which permits fiqh, within social affairs (muamalat) to be in constant development, evolution, and formation".

² Ramadan, Tariq; *To be a European Muslim*. Leicester, Islamic Foundation, 1998

This understanding holds that where there is no explicit text, then the concept of permissibility (ibaha) exists. This is the area that the scholar should study deeply and find opinions in the interest of the Muslims.

This opinion is weak, for a number of reasons. The shariah hasn't left anything without a ruling from the Qur'an or the sunnah. The Islamic shariah encompasses all the actions of man, completely and comprehensively, at every time and place. Allah ﷻ states in an ayah, with definite meaning:

﴿وَوَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ
لِّلْمُسْلِمِينَ﴾

"And We have sent down to you the Book (the Qur'an) as an exposition of everything, a guidance, a mercy, and glad tidings of those who have submitted for those who have submitted themselves to Allah" [TMQ Al-Nahl: 89].

Hence, no Muslim has the right to claim that there are situations devoid of a shariah rule, where the shariah has completely disregarded such a situation and has not established an evidence for it. To hold this view is to say that there was no evidence from the Book or the sunnah, or that the book and the sunnah have not given an indication through a legitimate *illah* (shariah reason)—which the text has mentioned either explicitly or by indication, or which is known through deduction or by analogy—to illustrate what the rule is, whether wajib (compulsory), mandub (recommended), haram (forbidden), makruh (offensive) or mubah (permitted). No Muslim should hold this view because he would be slandering the shariah by claiming that it is imperfect and he would be making it legitimate to refer judgements to other than the shariah, thereby contradicting Allah's ﷻ saying:

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا

يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا ﴿٦٥﴾

"No by your God, they shall not become true believers until they make you judge in matters that are of dispute amongst them and find within themselves no dislike of that which you have decided, and submit with full submission" [TMQ Al-Nisaa: 65].

If the shariah did not come with a rule, and the Muslim adopted a rule that the shariah had not come with, he would have referred a judgement to other than the shariah—and this is forbidden. Because he would be claiming that the shariah has not come with the rules for all situations. So claiming that there is a permission to refer to other than Islam under the pretext that the shariah has not come with a particular rule would be a false and erroneous claim.

Therefore, it is inconceivable to state that whatever the shariah has kept silent over is mubah, since it would be a slander against the shariah to claim that it has kept silent over certain rules and has not established them. This is also contrary to reality, because the shariah has not in fact kept silent over anything at all.

As for the Messenger of Allah's ﷺ saying:

إِنَّ اللَّهَ فَرَضَ فَرَائِضَ فَلَا تَضِعُوهَا

"Truly Allah has decreed certain obligations, hence do not neglect them...", this indicates the prohibition of asking about what hasn't been mentioned by the shariah in the texts. It is similar to his saying ﷺ:

أَعْظَمُ الْمُسْلِمِينَ جُرْمًا مَنْ سَأَلَ عَنْ شَيْءٍ لَمْ يُحَرِّمْ، فَحُرِّمَ مِنْ

أَجَلِ مَسْأَلَتِهِ

"Truly the gravest sinners amongst the Muslims would be those who ask about something that has not been forbidden for them, then it became forbidden because of their asking about it." There are many ahadith to that effect. It has been reported that the Messenger of Allah ﷺ said:

ذروني ما تركتكم هلك من قبلكم بكثرة سؤالهم واختلافهم
على انبيائهم، ما نهيتكم عنه فانتهوا وما أمرتكم منه ما استطعتم

"Spare me the things I have not mentioned to you, for those before you perished because of their constant asking and their arguing with their prophets; so refrain from that which I forbid you and perform to your utmost ability that which I order you."

It has also been reported that he ﷺ once recited Allah's ﷻ saying: "*And Allah commanded people to perform hajj...*"

يا رسول الله أفي كل عام؟ فسكت. فقالوا يا رسول الله في كل
عام؟ قال: لا، ولو قلت نعم لوجبت ولو وجبت ما قمتم بها،
ولو لم تقوموا بها لكفرتم، فذروني وما تركتكم فأنزل الله يا أيها
الذين آمنوا لا تسألوا عن أشياء إن تبد لكم تسؤكم

Upon this a man asked: "O Messenger of Allah! Is it every year?" He ﷺ did not

reply. So the man asked again: "O Messenger of Allah! Is it every year?" Again he ﷺ did not reply. So the man asked him a third time: "O Messenger of Allah! Is it every year?" Upon this the Messenger of Allah ﷺ said: "By He Who owns my soul, if I said it, it will become obligatory, and if it did become obligatory you would not be able to perform it, and if you did not perform it you would be sinful. So spare me that which I have not ordered you"

Hence, the meaning of the Messenger of Allah ﷺ saying:

ان الله تجاوز عن امتي الخطأ والنسيان وما استكرهوا عليه

"Allah has pardoned my ummah for the mistake, forgetfulness and what they were coerced to do..." and,

وسكت عن أشياء غير نسيان رحمة من ربكم فاقبلوها

"...and He kept silent over some things, not out of forgetfulness, rather as a mercy from your Lord, so accept them..." is that He ﷺ has lightened your obligation, so do not ask in case you overburden yourselves.

For instance, the duty of hajj has been decreed in general terms, and someone asked whether it should be performed every year. Allah ﷻ has reduced this obligation and made it once in a lifetime in order to lighten your load and out of mercy upon the people, so He ﷻ has condoned and kept silent over this obligation being every year. Thus one does not look into these things and does not ask about them. Evidence that this was the meaning is the saying of Allah's Messenger ﷺ: "...hence, do not look into them", after he ﷺ had said, "...He has pardoned certain things..." So, the point at issue is prohibiting the Muslims from asking about things whose prohibition has not been revealed. The point at issue is not that He ﷻ has not

stated some of the shariah rules, since the context of the hadith is indicating the mercy of Allah ﷻ and His pardon on certain matters. As for the other narration: "...and that which He kept silent over is a pardon for you..."; it also indicates that the issue is related to the prohibition of searching and asking about that which He ﷻ has lightened for you and has not forbidden for you. So when something is not prohibited it is a pardon from Allah ﷻ i.e. Allah's ﷻ silence about its prohibition denotes a pardon from Allah ﷻ, so do not ask about it. This is reflected in Allah's ﷻ saying:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَسْأَلُوا عَنْ أَشْيَاءٍ إِنْ تُبَدَّ لَكُمْ تَسْؤُكُمْ
وَإِنْ تَسْأَلُوا عَنْهَا حِينَ يُنزَلُ الْقُرْآنُ تُبَدَّ لَكُمْ عَفَا اللَّهُ عَنْهَا وَاللَّهُ
غَفُورٌ حَلِيمٌ﴾

"O you who have believed do not ask about matters which, if made plain to you, may cause you trouble, but if you asked them when the Qur'an is being revealed, they will be made known to you. Allah pardons this, for Allah is forgiving clement" [TMQ Al-Ma'idah: 101].

The result of this type of opinion—coupled with a lethargic mentality that doesn't scrutinise the text to deduce the Allah's ﷻ solutions—has led some Muslims call for a "special" type of fiqh. They aptly name this the "Fiqh al-Aqaliyaat" or the "Fiqh of Minorities".

2. THE CLAIM THAT ISLAM CHANGES FROM TIME-TO-TIME, AND PLACE-TO-PLACE

Some claim that there is a principle stating Islam changes: "...from time to time, and from place to place."³ The proponents of this thought say that because we are

³ al-Alwani, Dr Taha Jabir; *Muqadimah fii Fiqh al-Aqaliyaat*

now living in the modern age, and in the West, a new methodology of extracting ahkam (rules) needs to be derived. Some of the previous ulema did adopt this principle, especially those from the Hanafi madhab, but one needs to understand the concept behind their view; it is not at all similar to the view of those advocating the invention of a new methodology. According to the Hanafi jurist Ibn Abidin, the meaning of "laws changing" is not that the laws of shariah will change in accordance with the time and era. Rather, laws that are based on custom and habit (urf) or the rules of fiqh that are based on juristic opinion (ra'i) have often been formulated in the light of prevailing custom. It is therefore permissible to depart from them if the custom on which they were founded changes in the course of time. Rulings that are based upon texts of the Qur'an and sunnah can never change. The scholars of usul al-fiqh stipulate that a custom or a practice which is contrary to the text of the Qur'an and sunnah is an unacceptable custom (urf al-fasid).⁴

2.1 THE CHANGE OF SHAFI'I'S METHODOLOGY

The basis of this understanding is—amongst other justifications—that the great Imam Shafi'i (ra) changed his methodology as he went from Medina to Baghdad to Cairo.

Azizah Y. al-Hibri, states in one of his articles: "For example, Imam al-Shafi'i, a major scholar and founder of the school bearing his name, revised his jurisprudence when he moved from Iraq to Egypt. The explanation was simply that the new jurisprudence evolved in light of the new conditions. As a consequence of this example of jurisprudential revision, jurists generally recognise the principle that 'laws change with the change in time and place.'" ⁵

The proponents of this principle have failed to bring any legitimate evidence to

⁴ ibn Abidin, Muhammad Amin; *Nashr al-Urf fi bina ba'd al-ahkam ala al-urf*

⁵ al-Hibri, Azizah Y; *Islamic and American Constitutional Law: Borrowing Possibilities or a History of Borrowing?* Journal Of Constitutional Law [University Of Pennsylvania]; Vol. 1:

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justify their position. For example, the justification that Imam Shafi'i changed his fiqh merely because he moved from Iraq to Egypt is a major simplification of what occurred; it is quite wrong to suggest this. The actual reason was that the noble Imam changed his methodology because he was exposed to the different mujtahideen from the different schools from Iraq and Egypt, and to their methodology of extraction and way of viewing texts. This led to the maturing and crystallisation of his thoughts when it came to the process of Ijtihad. Imam Ahmed ibn Hanbal was once asked by Mohammad bin Muslim ar-Razi to tell him which of Shafi'i's books he should choose. Ahmad answered: "Choose the books which were written in Egypt. The books he wrote in Iraq are not well done. Then he went to Egypt where he wrote his books in a more profound way." ⁶

3. REWORKING THE QUESTION

The advocates of Fiqh of Minorities state that the "traditional" answers need not to be given, and that although the realities are known in Islamic Jurisprudence, we need to rework the questions.

An example is mentioned by Taha Jabir al-Alwani: "A questioner asks, 'Is it forbidden (haram) for a Muslim woman to be married to a non Muslim, and what should one do?'"

A Muslim woman's marriage to a disbeliever is clearly unlawful as mentioned in the ayah of the Qur'an:

﴿لَا هُنَّ حَلٰلٌ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ﴾

"They are not lawful for the disbelievers, nor are the disbelievers lawful for them"
[TMQ Al-Mumtahinah: 10].

⁶ Baltaaji, Dr Muhammad; *Manahij ul Tashri al Islaami fil Qarn al Thani al Hijri*. Vol. 1: p.

This ayah holds one single meaning—that such a marriage is considered null and void and holds no value whatsoever.

But according to the Fiqh of Minorities this answer needs to be reworked by reworking the question. So as Taha Jabir al-Alwani mentions in this particular case the circumstances are as follows: "The woman has just converted to Islam and she has a husband and two young kids. The husband is very supportive but is not at this time interested in converting. The woman was told immediately after converting that she had to divorce her husband of 20 years. Within these circumstances the question should have been: Is it worse for a Muslim woman to be married to a non-Muslim husband or for her to leave the religion? The answer is that leaving the religion is much worse, therefore, it is acceptable for her to continue with her marriage and she is responsible before Allah on Judgement Day."⁷

This is a quite unthinkable verdict that comes from the Fiqh of Minorities perspective. This situation such as when a British woman accepts Islam while her husband remains a non-Muslim is not a new issue to Islamic jurisprudence. This problem occurred at the time of The Prophet ﷺ when his daughter Zaynab ؓ accepted Islam while her husband remained a non-Muslim. He ﷺ instructed her to leave and did not go against the definitive command of Allah ﷻ, because going against the explicit command of Allah ﷻ is the greatest evil that can occur here; an evil that the Fiqh of Minorities seems to encourage and agree with. Therefore, in order to solve this problem today we need to go back to the legal texts and study them in order to acquire the Islamic ruling. This applies to all other issues as well.

Reworking the question is something that leads to munkar (evil). It makes the mind and the prevailing reality the *source* of legislation, rather than the *subject* of legislation that the shariah rules come to regulate. This is an action that Allah ﷻ condemned the people of the Book for in the past:

⁷ Alwani, Dr Taha Jabir. *Muqadimah fii Fiqh al-Aqaliyyaat*

﴿لَا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلَالٌ وَهَذَا حَرَامٌ
لِتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ إِنَّ الَّذِينَ يَفْتَرُونَ عَلَى اللَّهِ الْكَذِبَ لَا
يُفْلِحُونَ﴾

"And do not say, concerning the falsehood which your tongues utter, 'This is halal and that is haram,' in order to fabricate a lie against Allah; assuredly those who fabricate a lie against Allah will not prosper" [TMQ Al-Nahl: 116].

The Prophet ﷺ said;

لا تتركبوا ما ارتكب اليهود وتستحلوا محارم الله بأدنى الحيل

"Do not do what the Jews did in order to (technically) legalize Allah's prohibitions by flimsy excuses" [reported by 'Abdullah bin Battah on good authority].⁸

Other points which are derived using this methodology are: the integration of the Muslims into the political system; the permissibility of *riba*; allowing Muslims to join the armies of the *Kuffaar*, and fighting against the Muslims, amongst others.

⁸ al-Jawziyya, Ibn Qayyim; *Ighathat al-lahfan min masayid al-shaytan*. Al-Tirmidhi classifies a similar hadith as sahih

Refuting the pillars of political participation and integration

1. THE DISCUSSION OF SAYIDNAA YUSUF (AS) PARTICIPATING IN THE RULING OF KUFRA

The Qur'an relates the story of Prophet Yusuf (as):

﴿قَالَ اجْعَلْنِي عَلَى خَزَائِنِ الْأَرْضِ إِنِّي حَفِيظٌ عَلِيمٌ وَكَذَلِكَ
مَكَّنَّا لِيُوسُفَ فِي الْأَرْضِ يَتَّبِعُونَ مِنْهَا حَيْثُ يَشَاءُ﴾

"Set me over the store-houses of the land; I will indeed guard them with full knowledge. Thus did we give full authority to Yusuf in the land, to take possession therein, when or where he likes..." [TMQ Yusuf: 55–56].

This ayah is often used in an attempt to prove that Prophet Yusuf (as) was allowed to participate in the un-Islamic system of the King of Egypt. Some claim that the Muslims of today should be allowed to do likewise. They use the following ayah as an evidence:

﴿مَا كَانَ لِيَأْخُذَ أَخَاهُ فِي دِينِ الْمَلِكِ إِلَّا أَنْ يَشَاءَ اللَّهُ﴾

"He could not take his brother by the deen (law) of the king (as a slave) except that Allah willed it" [TMQ Yusuf: 76].

This is used to prove that Prophet Yusuf (as) deceived the king in allowing him to judge his brother by the shariah of Ya'qub (as)—to enslave a thief—rather than using the king's law. Therefore, it is claimed that the opposite understanding

(mafhoom al-mukhalafa) implies here that with other than his brother, Yusuf (as) judged by the king's law.

Using these evidences in an attempt to prove that Prophet Yusuf (as) ruled in an un-Islamic government and judged by other than the shariah is a slander against the infallibility of a prophet; so the argument is clearly flawed. Before further discussion resumes on the flaws of these arguments, we will first prove that Prophet Yusuf (as) never participated in a kufr system.

Let us consider the first ayah, which is used to discredit the Prophet Yusuf (as):

﴿قَالَ اجْعَلْنِي عَلَىٰ خَزَائِنِ الْأَرْضِ إِنِّي حَفِيظٌ عَلِيمٌ وَكَذَلِكَ
مَكَّنَّا لِيُوسُفَ فِي الْأَرْضِ يَتَّبِعُونَ مِنْهَا حَيْثُ يَشَاءُ﴾

"Set me over the store-houses of the land; I will indeed guard them with full knowledge. Thus did we give full authority to Yusuf in the land, to take possession therein, when or where he likes..." [TMQ Yusuf: 55–56].

There are only two possible correct explanations for this ayah. Firstly, it could mean that Prophet Yusuf (as) was simply put in-charge of collecting and storing the harvest of Egypt, which included guarding over the storehouses. This is an administrative post, not a ruling post. Ibn Kathir expresses this opinion in his tafsir of the ayah. Shu'aybah ibn Nu'ama holds this same view. In Ibn Kathir's tafsir it is stated that the Prophet Yusuf (as) was: "...responsible for the harvest storehouses, in which they would collect produce for the years of drought which he told them would come. He wanted to be the guard, so that he could dispense the harvest in the wisest, best and most beneficial way"⁹.

This opinion does not suggest in any way that Yusuf (as) ruled by kufr or even

took part in any ruling. Rather, it means that he (as) simply participated in an administrative post and this is not haram even in today's times. So this is far away from ruling and participating in a kufr system like those of today, where an oath is taken and Islam is subjected to partial implementation and the whims of man.

The second view is that Prophet Yusuf (as) was placed in charge of the entire land, symbolised by the authority over the region's most important financial commodity. This opinion was proposed by Imam an-Nasafi who says that the king was placed subordinate to Yusuf (as) and could not issue any judgement without his authorisation. Ibn Jarir at-Tabari reports As-Suddi and Abdur-Rahmaan ibn Zayd ibn Aslam as saying that Yusuf (as) was given authority, "to do whatever he wants therein"¹⁰. This is supported by the view of some scholars that the king actually embraced Islam; Ibn Kathir quotes Mujahid as holding this view.

Again, no analogy can be drawn with the tactics of those who participate in elections in kufr systems. Imam an-Nasafi states that this ayah simply proves that it is allowed for one to request that a tyrant ruler to hand over authority to one who is just. This would mean that no partial implementation occurred, as the full authority would be transferred.

It is actually impossible, and unthinkable, that these ayat could mean that participating in a kufr system, or partial implementation of Islam, is allowed. To interpret the Qur'an in such a way would contradict the many decisive ayat that clearly prohibit this. They describe the one who does so as a kafir, fasiq, or Dhaalim¹¹. It is impossible to associate such attributes with regards to our beloved infallible Prophet Yusuf (as).

⁹ ibn Kathir, Imad al-Din Abi al-Fida' Isma'il; *Tafsir al Qur'an al-Azim*. (See also English edition; *Tafsir Ibn Kathir*, Darussalam, Riyadh, Vol. 5)

¹⁰ al-Tabari, Abu Jafar Muhammad ibn Jarir; *Jami al-bayan an tawil al-Qur'an*

¹¹ Qur'an; Al-Ma'idah: 44–45, 47

Such a concept contradicts the Prophet Yusuf's (as) own statement to his two companions in prison which is recorded in the Qur'an:

﴿إِنَّ الْحُكْمَ إِلَّا لِلَّهِ أَمَرَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ ذَلِكَ الدِّينُ الْقَيِّمُ
وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ﴾

"The rule (hukm) is for none but Allah, he has commanded that you worship none but Him, that is the straight deen, but most men know not" [TMQ Yusuf: 40].

In this ayah it is evident that Yusuf (as) actually believed that anyone who does not rule by Allah's ﷻ shariah has invented their own deen (religion). This is illustrated by his (as) words, "that is the straight deen". Clearly, according to Yusuf (as), ruling by Allah's ﷻ shariah was a matter of 'aqedah (Creed), Tawheed (belief in Allah's unity) and conforming to Allah's ﷻ judgement. This is how Ibn Kathir interprets Yusuf's (as) words, describing the one who does not follow this straight deen as a mushrik (idolater). Ibn Kathir's interpretation is that: *"That is the straight deen', means this Tawheed of Allah and directing all acts of worship at Him alone ... is the right, straight deen that Allah has ordained and for which He has revealed what He wills of proofs and evidences. 'But most men know not...' is why most of them are mushrikeen"*¹².

In narrating that Yusuf (as) did not judge his brother by the law of the king, the Qur'an makes reference to the word 'deen' when referring to the king's law. In other words, the king had a deen, and Yusuf (as) had another deen.

﴿مَا كَانَ لِيَأْخُذَ أَخَاهُ فِي دِينِ الْمَلِكِ إِلَّا أَنْ يَشَاءَ اللَّهُ﴾

¹² ibn Kathir, Imad al-Din Abi al-Fida' Isma'il; *Tafsir al Qur'an al-Azim*. (See also English edition; *Tafsir Ibn Kathir*, Darussalam, Riyadh, Vol. 5)

"He could not take his brother by the deen (law) of the king (as a slave) except that Allah willed it" [TMQ Yusuf: 76].

How can it be, oh Muslims, that our Prophet Yusuf (as) would tell his companions in prison that to rule by Allah's ﷻ shariah is the straight deen one moment but adopt the deen of the king the next moment? We seek refuge in Allah ﷻ from such a slander.

Imam Nasafi, Ibn Kathir and Imam as-Shawkani relate that this ayah means that Yusuf (as) judged his brother by the shariah of Ya'qub (as). This ayah is used by some to claim that the mafhoom al-mukhalafa here implies that with others he (as) used to judge by the law of the king. Mafhoom al-mukhalafa is valid on numbers ('adad) and descriptions (wasf), as long as it does not contradict clear texts, but it is not valid in this case. This particular type of mafhoom is known as mafhoom al-laqab, an opposite meaning taken from a noun or a name, i.e. Yusuf's (as) brother. However, as will be demonstrated, the usage of this weak type of mafhoom, which is accepted by Abu Bakr al-Daqaq and Ibn Farooq, is not valid in this scenario.

A simple example can be given to demonstrate this type of reasoning. If the statement; "I saw Zayd" is understood by using this type of mafhoom, then its meaning is; "I didn't see anyone else other than Zayd". In this example, Allah's ﷻ saying that Yusuf (as) judged upon his brother by the shariah of Ya'qub is purported to mean that he (as) judged others by the king's law. This is actually one of the weakest types of mafhoom al-mukhalafa possible. In fact, Imam as-Shawkani states that those who use this type of reasoning have no excuse, whether it is linguistic, legal or rational. The Imam continued by saying, "It is known from the tongue of the Arabs that whoever says: I saw Zayd, will not be implying that he did not see other than Zayd, but if there is indication in the text that this meaning is correct then the evidence is by the indication"¹³.

¹³ al-Shawkani, Muhammad ibn 'Ali; *Irshad al-fuhul ila tahqiq al-haqq min 'ilm al-usul*

Even if this type of mafhoom was valid, it still cannot be used in the example at hand. That is because even the proponents of mafhoom al-laqaab believed that its usage must not contradict certain conditions such as explicit texts. Therefore, any usage of this type of mafhoom upon the ayah in question would contradict the many clear ayat of the Qur'an that forbid ruling by kufr, including Yusuf's (as) own words regarding the rule being for none but Allah ﷻ¹⁴. Such a meaning would result in the heinous slander against a noble Prophet of Allah (as). Even al-Daqaq and Ibn Farooq would have rejected the mafhoom al-laqaab here, as it can only render an absurd meaning. So in this case we must absolutely reject it.

1.1 THE ROOT FLAW IN THE ARGUMENT: SHARIAH FROM OUR PAST

The above was just to defend the honour of Prophet Yusuf (as) from slander. The actual flaw of the argument is that they say he (as) participated in an un-Islamic system and, consequently, that it is allowed for us. This claim is based upon the assumption that the shariah of Yusuf (as) is valid for us to follow. This is a weak principle, so even if Yusuf (as) had participated in ruling by the deen of the king (something unthinkable), this in no way sets a precedent for Muslims. This is because Muslims are bound by the shariah of the last of the prophets, Muhammad ﷺ.

Some scholars, however, did accept this principle, but even they stipulated the following condition: the shariah of our past is a shariah for as long as it does not contradict the shariah brought by Muhammad ﷺ¹⁵. These are the only two views on the matter; no scholar had any other. It is ridiculous to suggest that a ruling of a past prophet can over-ride the shariah brought by Muhammad ﷺ. The same goes for any other weak, but valid, principle which they may try and use to justify their actions, such as Maqasid us-shariah (objectives of the shariah), the spirit of the text, masalih al-mursala (public interest) or the lesser of two evils. None of them can be used to contradict clear shariah texts. Imam al-Ghazaali, Aamidi and Ibn Haajib

¹⁴ Qur'an; Yusuf: 40

¹⁵ See Al-Sarakhsi, Abu Bakr Muhammad ibn Abi Sahl Ahmed, *Usul al Sarakhsi*

have reported an Ijma' (scholarly consensus) that no general evidence can be used for a specific issue without first looking for a specific evidence. Therefore, before resorting to secondary legislative sources, like the weak yet valid principle "shariah from our past", the specific evidence brought by The Prophet ﷺ must be referred to.

In the case at hand, whichever opinion is adopted, strong or weak, no analogy can be drawn between the action of Yusuf (as) and participating in the kufr systems of today. Such an action would contradict the shariah brought by Muhammad ﷺ, in many ayat of the Qur'an, such as in the following ayah:

﴿وَأَنْ أَحْكَمَ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

"So rule between them by all that Allah has revealed, do not follow their vain desires, and beware of them in case they seduce you from any part of what Allah has revealed to you" [TMQ Al-Ma'idah: 49].

In summarising the story of Yusuf (as), no plausible opinion, whether it be that he (as) participated in the system as an administrator and not a ruler; or he took charge of the whole system; or that the shariah he brought is not valid today; or even that it is valid except if it contradicts the shariah brought by Muhammad ﷺ; indeed, none of these stances can be used to justify participating in a kufr system today. Such an action is one of the biggest transgressions against Allah ﷻ, as it means ruling by kufr. If believed in, it makes the ruler a Kafir, and even if he doesn't believe in it he will still be a Dhaalim or Faasiq.

2. THE ASSUMPTION THAT THE PURPOSE (MAQAASID) OF THE SHARIAH IS BENEFIT Al-Alwani—one of the protagonists of this idea—states: "It is permissible and an obligation on the part of the Muslim community to get involved as long as they are

not forced to sacrifice their integrity. For the community it would be considered a type of jihad. If a particular member of the community feels him/her self to be too weak in religion then there is no harm if that person does not directly participate, but supports financially or in other ways instead. So any post or ruling position gained by Muslims themselves or if they are able to influence those in such posts, all of this is a gain for them; because they can improve their situation, alter the systems and laws which effect their presence or they are not in harmony with the moral philosophy of Islam. It is also in terms of having an effect on political decisions related to the Muslim peoples. Anything of the legal means that helps in realising these noble aims will take the same hukm. This includes the Muslim presenting himself for certain political posts and choosing a non-Muslim candidate, if he is more beneficial for the Muslims or less harmful, and supporting him with money. Allah ﷻ has permitted us to treat them with honour and maintain good links with them without getting something in return; so what about when supporting such a person brings us clear returns and benefits."

What is meant by benefit—by those who advocate its use—is: a benefit that The Legislator hasn't acknowledged or rejected by a shari evidence, and for whose realisation he hasn't given a hukm. Some of them defined it as: a description of an action through which one attains good i.e. a benefit, which is either permanent or general, for the masses or individuals.

The advocates of participation in the political life of the West say that their deduction is based on benefit for the Muslims and on: "outweighing the best of two good actions, acquiring the greatest of the two interests by rejecting the least important of the two, and repulsing the worst of the two evils by accepting the least of the two evils." The fallacy of this view is clear because of the following points.

- Defining the benefit or evil is the right of Allah the Lord of the Worlds. Whatever the shariah has requested is a benefit and interest. And whatever the shariah has

forbidden is an evil. This is what is meant by the saying of Allah ﷻ:

﴿كُتِبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهُ لَكُمْ وَعَسَى أَنْ تَكْرَهُوا شَيْئًا
وَهُوَ خَيْرٌ لَكُمْ وَعَسَى أَنْ تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَكُمْ وَاللَّهُ يَعْلَمُ
وَأَنْتُمْ لَا تَعْلَمُونَ﴾

"Fighting (Jihad) is ordained for you (Muslims) though you dislike it, and it may be that you dislike a thing, which is good for you. And it may be you like something, which is bad for you. Allah knows but you do not know" [TMQ Al-Baqarah: 216].

■ If it is left to the mind to decide then the people will find it difficult to determine the true benefit because the mind is limited. The mind is not able to encompass the essence of man and his reality. It is not able to decide what is beneficial for him because it does not grasp its reality such that it can know that something is a benefit or harm. Nothing comprehends the reality of man except his creator. Nothing can decide its benefit in a precise manner except his creator who is Allah ﷻ. Yes, it is possible for man to think a thing is beneficial or harmful but he cannot be definite. That is why leaving the mind to decide what is beneficial based on assumption will lead to danger and peril. For it may think something is harmful and then it appears to him that it is of benefit. Then he has removed the good from himself. Allah forbids, that we should claim there is a benefit in that which has been forbidden to us.

■ Moreover, who is going to define the interest while there are still a multitude of disputes between Muslims that are open for all to see? One look at the reality shows us the struggle over running the masajid and the desire to have control over them and their finances. This is something very few masajid in the West are free of, and everyone is aware of this fact. So after that, how can we speak of

benefit, and who defines the benefit? For example, has there been any election in which the Muslims did not disagree, such as the local elections in the UK, where some Muslims joined or voted for the Liberal Democrats; the party that was in power when the Khilafah was destroyed. Some advocated the joining of the Conservative party, and some even were proud to display the fact that they were members of the Labour party.

- The condition of benefit for those who advocate this is that the benefit must be real and not based on whim. However, the benefits that are claimed by these same people who wish to realise them through participation in kufr rule are mostly fantasy and not real at all. Rather there is no real benefit except that which is achieved by the West.

- They claim that without participation, things such as masjid, schools, and other rights will not be achieved. But the fact is that for the past thirty years Muslims have been living in the West without "political participation" and have built masjid, and schools from amongst themselves.

- We have a lesson to learn from the example of George W Bush who won the American presidential elections with the votes of Muslims. A large number of Muslims thought that this man would achieve an Islamic interest by allowing them to build institutions and help them improve their image, and win support for many issues such as Palestine. As soon as he was elected and assumed power, he began to light the fire of a new crusader war and began to kill, banish and expel the Muslims of the world under the pretext of terrorism. The same can be said about the current Labour Party, where many Muslims voted for this party expecting the lives of Muslims to be easier, but instead it has been full of misery.

The tangible, perceptible reality shows us that the benefit of participating in the political life of the West is imaginary and not real. Rather they use our votes for their own benefit. They do not change their benefit driven policies and neither do

they abandon their vital interests because we have participated with them in kufr rule or because we have elected them.

They say: "the benefit which they discuss and adduce as proof is something which the Legislator has not given a hukm for its realisation and nor has the shariah evidence indicated its acknowledgement or rejection"¹⁶. But participation in kufr rule for benefit is amongst the things that the definite evidences have maligned, and the definite evidences have rejected and invalidated the seeking of benefit through this.

The principle of: "outweighing the best of two good actions, and rejecting the lesser of the two evils"—for the one who adopts it—only applies to the Muslim who has no other option but to perform one of the actions. An example for that is when one had to save a woman from death while her 'awrah had become exposed. If a man who finds her in this situation and he is compelled to help her, then he should do so even if he has to look at her 'awrah. In those things that can be avoided it is not allowed to use such principles, and in these cases there is no lesser of two evils. Sheikh Abdullah Bayya, stated; "I feel it is important that people are concerned with political candidates in this country. If we support the candidates who are known to have positive attitudes towards the Muslims and who are supportive of Muslim causes and even those who are just better people than the opposing candidates, in the usuli knowledge, this would be considered taking the lesser of two evils"¹⁷. But participating in kufr systems is something that *can* be avoided, so as we have mentioned the application of the principle here is invalid and is not based upon sound knowledge at all.

As for the one who defines the best of two good actions and the lesser of two

¹⁶ See Ar-Razi, Fakhr ad Din ibn Muhammad; *Al Mahsul fi Ilm Usul al Fiqh*, and Al-Ghazali, Abu Hamid ibn Muhammad; *Al Mustasfa min Ilm al-Usul*

¹⁷ Talk given on July 31, 1999 Santa Clara, California, US. See

<http://www.themodernreligion.com/world/muslims-living.html> (accessed 03/02/04)

evils, it is the shariah and not the mind. Since the Muslims gave their human minds the right to define and outweigh, which they are not able to do because of the disparity in their minds and views, they elected Tony Blair and rejected the Conservatives in the general election on the basis of this principle. What was the result? Did they prevent the worst of the two evils or did they bring it about?

2.1 AN EXPLANATION OF THE MAQAASID OF THE SHARIAH

Some people claim that the shariah has come with the legal reason (*illah*) of benefiting the people. From this view it is understood there are five benefits that are aims (maqaasid) sought by the shariah, and these are: the protection of deen, life, mind, lineage and property. According to this view these aims are taken as the *illah* for the rules (ahkam) as a whole.

Following on from this it is concluded that if the shariah as a whole seeks these aims—and consequently they are the *illah* for the rules as a whole—then they must also be the aims of, and the *illah* for, the individual rules. This is further established from a scrutiny (*istiqraa*) of the rules themselves, which shows that they seek these aims. So after scrutinising the text it can be seen from the (divine wisdom) and *illah* contained within the text, and also from the results of the rules themselves, that these aims are sought. So it is concluded that the aims or benefits that are sought by the shariah are the *illah* of the ahkaam.

Those who followed this method as a way to ascribe an *illah* to the rules put conditions for this process. They gave an *illah* to the ahkam because they either contained a or a benefit that was consistent with the maqaasid. They also said the shariah must either acknowledge the maslaha and that there shouldn't be a text explicitly cancelling it or preventing us from considering its benefit. So they divided the benefits (masalih) into three types:

1. Maslaha mulgha
2. Maslaha mu'tabarah

3. Maslaha mursalah

The first category is where the maslaha is cancelled by the text itself. So for example, when the text ordered jihad this naturally involved the loss of life. This contradicts the aim or maslaha of preserving life, but this maslaha is cancelled because of the text in this instance.

However actions that have ahkam that do not explicitly cancel the maslaha fall under the second category of mu'tabarah where, it is claimed, their benefit is acknowledged by the shariah. So for example, it is taken that the aim (or maslaha) of prohibiting the consumption of alcohol is acknowledged (mu'tabar) by the text because its prohibition has a daleel in the text. One of the aims of the shariah is the preservation of the mind, so that is taken as the aim (or maslaha) of prohibiting alcohol; intoxication becomes the *illah* for prohibiting alcohol because it realises the aim of preserving the mind. Naturally, this *illah* is extended to prohibit things other than alcohol that also intoxicate the mind.

As for masalih mursala, this is where there is no specific daleel for the action so we cannot say its benefit has been cancelled or that it has been acknowledged. However, this action will come under the comprehensive daleel (daleel kulli). Since the five maqaasid have been arrived at through scrutiny of the texts (istiqraa) then they serve as the comprehensive evidence (daleel kulli) for actions that lack a specific daleel. So if the action realises one of the aims of the shariah then that aim is taken as the maslaha of the action. Because the aims are treated as *illaal*¹⁸, if an action fulfils the aim then it is legitimate by virtue of having fulfilled the *illah*. The advocates of this view cite the example of when the Sahabah compiled the Qur'an. Here they say there is no specific daleel for that action but the action fulfils the maslaha of preserving the deen and hence the action is obligatory. This is because the action fulfils the *illah*, which is the preservation of the deen.

¹⁸ Plural of *illah*

The method detailed above is treated by some scholars as one of the ways (maslak) of identifying the *illah*. However if we examine the arguments we find their understanding is flawed for the following reasons:

2.1.1 THE MAQAASID ARE AIMS OF THE SHARIAH AS A WHOLE AND NOT THE AIMS OF THE INDIVIDUAL AHKAM

The premise that the aims (maqaasid) are the aims of individual ahkam is not correct. This is because the benefit of man is the aim of the shariah not the *illah*. For example, Allah ﷻ says:

﴿وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ﴾

"We have not sent you except as a mercy for mankind" [TMQ Al-Anbiyah: 107].

Here the mercy is a description of the message as a whole or in other words the shariah as a whole has come for the maslaha, or good, of man. However this does not mean the individual ahkam have come for maslaha, because there is no indication in the text which gave any consideration to the subject of benefit in harm. Rather, the ahkam have come regardless of what the benefit or harm is. So man has to fight jihad even though he may lose his life and the hand of the thief is cut even though he may not be able earn his own living.

2.1.2 THE MAQAASID ARE RESULTS OF AHKAM AND NOT THE *ILLAAL* FOR THE AHKAM

As for the five maqaasid they are the results of certain ahkam and not the *illah* of these ahkam. For example Islam permitted polygyny without providing an *illah*. However the reality of applying the hukm of polygyny is that certain problems are solved. For example if the wife cannot bear children or the number of women in society is greater than men; these problems can be solved as a result of applying the rule of polygyny. Hence the hukm of polygyny brings certain results, but these are not the *illah* of the hukm. The same goes for the rest of the ahkam from which the

maqaasid are extracted.

2.1.3 THE *HAKAAM*¹⁹ ARE AIMS SOUGHT BY THE LAWGIVER AND NOT *ILLAAL* FOR THE AHKAM

This is because the is a result desired by the Lawgiver and not the Lawgiver's reason for legislation of the rule. So when Allah ﷻ said:

﴿لِيَشْهَدُوا مَنَافِعَ لَهُمْ﴾

"That they may witness things that are of benefit to them" [TMQ Al-Hajj: 28].

The benefits here are the results sought from the legislation of the rules of hajj. They are not the reason why hajj has been legislated otherwise hajj would not be necessary if these benefits have already been acquired, which is absurd.

It is worth pointing out that the results and of ahkaam have nothing to do with the process of legislation and extraction of ahkaam as they come after the legislation of the rule. Only the *illah* is of significance in regards to the legislation itself. This is because it is what causes the legislation to come into existence. So the *hikaam* and maqaasid are irrelevant when it comes to legislating rules.

2.1.4 THE MAQAASID ARE NOT DALEEL KULLI THAT CAN SERVE AS *ILLAAL* FOR ACTIONS THAT LACK A SPECIFIC DALEEL

The idea that the maqaasid have been understood after scrutinising the texts and, therefore, serve as a daleel kulli (comprehensive evidence) to cover actions which do not have a specific daleel is wrong from two perspectives. Firstly, the maqaasid are merely a description of the reality of the ahkam and not the daleel kulli. Secondly, the daleel kulli is not a description of the reality of ahkam, but rather it is a

¹⁹ Plural of *hikmah*

principle contained in a single daleel or collection of adilla²⁰. So the principle of hiring is taken from the ayah about suckling.²¹ This is not the same for the maqaasid. They are the results and aims of the specific ahkam from which they have been deduced, these results and aims cannot be used as evidences for other actions because the hukm shar'i is taken from a single daleel or collection of adilla, but not from the results and aims of specific ahkam. So the fact that drugs like cocaine and heroin are haram is taken from the saying of Muhammad ﷺ:

كُلُّ مُسَكَّرٍ خَمْرٌ ، وَ كُلُّ خَمْرٍ حَرَامٌ

"Every intoxicant is khamr and every khamr is haram."

The daleel for their prohibition is not the aim of protecting the mind, which is merely a result of certain ahkaam and hence cannot serve as a daleel.

3. ADHERENCE TO THE "ISLAMIC CONCEPT OF GEOGRAPHY"—THE EARTH BELONGS TO ALLAH AND THERE IS NO NEED FOR THE OLD TERMS OF DAR AL-ISLAM OR DAR AL-KUFR

The earth belongs to Allah and Islam is His deen and *dar al-Islam* is any land in which the Muslim is secure in his deen even if he lives among a non-Muslim majority. And *dar al-kufr* is any land where the Muslim is not secure in his deen even if the majority of its inhabitants profess the Islamic 'aqeedah and culture. Al-Alwani states that: "Some modern scholars, and certain groups of people have thrown a significant monkey wrench in the Muslims' ability to live and interact with western countries...They pose the argument that we should all move back to Darul-Islam (land of Islam), and if we are forced to live in Darul-Kufur (land of infidels) we should consider it a temporary stay and should either not participate or

²⁰ Plural of *daleel*

²¹ Qur'an; At-Talaq: 6

fight the "Kufur" government...Darul-Kufr and Darul-Islam are not concepts that existed at the time of the prophet. They were introduced later to describe the war-torn oppressive world outside the borders of the Islamic state, and the peace and justice that existed within. We should drop concepts like Darul-Islam and Darul-Kufr and consider all land to be for Allah."²²

In our age, some people think the concept of *dar* is subject to change according to the change of time and place. They say that: the sons of Muslim minorities should not restrict themselves to fiqhi historical definitions which are not mentioned in the wayh such as *dar al-Islam* and *dar al-kufr*. They should proceed from the Qur'anic viewpoint that:

﴿إِنَّ الْأَرْضَ لِلَّهِ يُورِثُهَا مَنْ يَشَاءُ مِنْ عِبَادِهِ وَالْعَاقِبَةُ لِلْمُتَّقِينَ﴾

"Verily, the earth is Allah's. He gives it as a heritage to whom He will of His slaves, and the (blessed) end is for the Muttaqoon (pious)" [TMQ Al-A'raf: 128].

Based on this understanding, they say the Muslims can have the western lands as their homeland and live there. They also say that the Muslims should participate in building and developing the western lands that they live in. They have permitted participation in different aspects of political and social life, and said that it does not bring any burden of sin. The protagonists of this view are confusing two matters:

3.1 CONFUSION BETWEEN A PERSONAL OPINION AND A SHARIAH OPINION

Those who call for participation in the political life of the West deliberately try to give the impression that definitions regarding land (such as *dar al-Islam* and *dar al-kufr* etc.) are only personal opinions. They say that they are only the definitions of Ulamaa', and have not been mentioned in the revelation. Such statements are

²² <http://www.isna.net/library/papers/fiqh/FiqhofMinorities3.asp> (accessed 03/02/04)

dangerous because they assume that the great and distinguished classical scholars like Abu Haneefah, ash-Shafi'i, Abu Yusuf, Ibn al-Qasim, al-Muzani and others besides them, invented the definition without precedent. They hide the fact that shariah definitions such as *ijaarah* (hiring), and *ghaneemah* (the war booty) etc. are related to shariah rules, because they are deduced from the shariah da'eel.

Dar al-Islam is the land in which the rules of Islam are applied and its security is through the Islamic army. *Dar al-kufr* is the land in which the systems of kufr are applied or where its security is through other than the security of Islam. The definition of the *dar* (land) is taken from a number of shariah texts such as the saying of the Messenger ﷺ:

ادعهم إلى التحول من دارهم إلى دار المهاجرين، وأخبرهم أنهم
إن فعلوا ذلك فلهم ما للمهاجرين، وعليهم ما على المهاجرين

"Then ask them to move from their land to the land of the Muhajireen, and inform them that if they did so they would enjoy the same rights as the Muhajireen and would be subject to the same duties" [reported by Muslim on the authority of Buraydah]. So the discussion about these definitions is actually a discussion about the evidences that have indicated it. To bring a new definition contrary to the first existent definition should rely upon bringing evidences that are contrary to the first definition. Those who reject the definitions of *dar* have failed to do this.

Moreover, it is agreed that what is important and needs to be given consideration is the *meaning* that the definition has. It is accepted that there is no dispute regarding definitions as long as they don't contradict the shariah. So the consideration is for the meaning of the definition of *dar* and not the expressions. Scrutiny of the shariah texts reveals that they distinguish between lands that are

ruled by Islam and given security by the Muslims, and the lands that are not ruled by Islam and whose security is with the kuffar. The rejection of these definitions' meanings, facilitates the call for integration by those who want to assimilate the Muslims into the western societies, and permits a multitude of invalid actions such as participation in kufr ruling and parliaments etc.

3.2 CONFUSION BETWEEN THE CONCEPT OF LAND AND DAR

Any Muslim who believes in the Creator of the heavens and the earth does not dispute the fact that the land belongs to Allah. This issue is separate from the study of a land in which Islam is implemented; a land that is ruled by its system and is safe because of its security. If we were to proceed from the perspective of the people who confuse the subjects of land and *dar*, and followed their logic, then we would allow the Jews to remain in Palestine because the land belongs to Allah. So the Jews would have the right to live there, participate in ruling and remain there as an entity. This would invalidate the concept of dawah and the dissemination of Islam.

All the land belongs to Allah, but it is viewed as being divided into the land where the rule of Allah exists and the land where there is the rule of taghut. Allah ﷻ has ordered His rule to be established on His land and the purification of the land from kufr and shirk.

He ﷻ said:

﴿الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ
وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ﴾

"They are those who, if we establish them in the land, establish regular prayers and give Zakat, enjoin the right and forbid the wrong" [TMQ Al-Hajj: 41].

In origin it is not allowed for kufr to rule over the land of Allah, because the sovereignty belongs to Him ﷻ. It is also not allowed for any word to be given legal legitimacy in His land except His Word. That is why Allah ﷻ has legislated Jihad to make His word the highest on His ﷻ land, and to reclaim the rule from those kuffar who transgressed over His sovereignty and limits. And He made those who are killed in this path shuhadaa' (martyrs); and they have the highest rank in the sight of Allah ﷻ. Therefore, the original principle we carry is that the Islamic rule should have supremacy over the whole earth. The principle should not be the acceptance of kufr rule and subjugation to it.

4. THE IDEA OF CITIZENSHIP AND JOINING THE INSTITUTIONS OF THE INDIGENOUS NATION

The advocates of this methodology claim that the concept of citizenship, duties of a citizen, international law, and diplomatic relations didn't used to exist in the form that they do today. In ancient times, the language of military power was supreme. A country's borders were only established because the military found it difficult to move forwards. Globalisation didn't exist. People in ancient times lived on a planet of islands.

They say, therefore, we should not fight each other over the literal rulings of the past. Rather we should study the methodology, wisdom, and intent of the prior rulings to best understand how they should apply to the modern world.

They say: "The idea of citizenship as we understand it today did not exist in the world in which our classical jurists (fuqahaa') lived. Rather what existed was a type of cultural affiliation to a certain civilisation or political affiliation to a certain empire, which relies on a creedal measure. Such type of affiliation deals with those having different belief with caution beside variation in the level of tolerance: from the Spanish inquisition to the Islamic rule of Zimmis."

"Staying in a country outside the country of origin based on fixed measures such as

being born in the host country, length of stay or marriage did not give the resident, in the past, the right of citizenship. Rather, the one who arrived to stay used to, automatically, become a citizen when he participated in the beliefs and culture of the people in that country. Otherwise he would remain a stranger—no matter how long he was a resident in the country—if he was different to the people in these things."

"The old world did not know what is now known as international law or diplomatic relations, which oblige every state to protect the citizens of other states residing in its lands and to treat them the same as their own citizens are treated, except in certain rights which are afforded only to their own citizens."²³

So under the guise of being a citizen, we hear that certain individuals claim that we are citizens in the UK, and that the British Queen is our Sovereign and our leader is Tony Blair, and the British Troops are "our boys". We heard statements that the Muslims can fight with the British army. So as an example, when Mr. Muhammad Abdur-Rashid, the most senior Muslim chaplain in the American Armed forces asked a question to certain scholars, who follow this specific methodology, about the issue of Muslims within the American army fighting against the Muslims in Afghanistan, the answer was given:

"To sum up, it's acceptable—God willing—for the Muslim American military personnel to partake in the fighting in the upcoming battles, against whomever, their country decides, has perpetrated terrorism against them. Keeping in mind to have the proper intention as explained earlier, so no doubts would be cast about their loyalty to their country, or to prevent harm to befall them as might be expected."²⁴

Later, seeing the stark contradiction with the divine text, some of those who issued this fatwa retracted it. The point to highlight here is the corrupted thinking process

²³ al-Alwani, Dr Taha Jabir; *Muqadimah fii Fiqh al-Aqaliyaat*

employed by this methodology. It is wrong from a number of perspectives:

Citizenship is an expression similar in meaning to what we call *tabi'iyah*. Anyone who carries the *tabi'iyah* of the Islamic state and chooses to live in *dar al-Islam* will enjoy the right to have their affairs looked after regardless of gender, colour or religion. Islam has made Muslims and non-Muslims equal in the eyes of the ruling system in respect of looking after their affairs, application of rules, rights and duties. Only in those things that are religion specific is there a difference. The following was mentioned in the constitution of Madinah:

وإن اليهود ينفقون مع المؤمنين ما داموا محاربين، وإن يهود بني
عوف أمة مع المؤمنين، لليهود دينهم، وللمسلمين دينهم،
ومواليهم وأنفسهم

"And the Jews spend with the believers as long as they were fighting. And that whoever, of the Jews, followed us has the right of help and the good example (of treatment)... And the Jews of Banu 'Awf are a community with the believers; the Jews have their own deen and the Muslims have their own deen, their followers and themselves..." [Ibn Hisham]. Therefore, one cannot say the idea of citizenship is a new concept, which did not exist before in the way it does now.

The fact that the West considers the criteria of birth and marriage for granting

²⁴ Fatwa signed by Sheikh Yusuf al-Qaradawi [Grand Islamic Scholar and Chairman of the Sunna and Sira Council, Qatar]; Judge Tariq al-Bishri [First Deputy President of the Council d'etat, Ret., Egypt]; Dr Muhammad S. al-Awa [Professor of Comparative Law and Shari'a, Egypt]; Dr Haytham al-Khayyat [Islamic Scholar, Syria]; Mr. Fahmi Houaydi [Islamic Author and Columnist, Egypt]; Sheikh Taha Jabir al-Alwani [Chairman of the North America Fiqh Council, Sterling, Va.] Fatwa issued Rajab 10, 1422 AH/September 27, 2001.

citizenship does not change the reality of citizenship, because it is a result of residing in the country or a particular land (*dar*). It is acquired by the way mentioned and by other means. But residence is the basis of citizenship. That is why such criteria have no consideration or effect on the reality of citizenship, and nor do they have an effect on the *ahkam* that result from citizenship.

Their saying: "The old world did not know something called international law or diplomatic relations, which oblige every state to protect the citizens of other states residing in its lands and treating them the same was as the original citizens are treated", is a statement that contradicts with the facts and history of Islam. This is because the principle of: "compliance with the covenant and observance of (good) neighbourhood"²⁵ dominated the 'Old World', as they call it. This principle was known and used by the Arabs in Jahiliyyah and others like the Abyssinians. The best illustration of this is the example of interaction of the Najashi with the Muhajireen.

As for Islam, it has legislated the principle of *al-'ahd wal-jiwaar*. It has explained this principle in a manner that befits its position and legislated rules for citizenship and *tabi'iyah*. It has laid down its details and rules. The proof for this is many of texts in the Qur'an and the sunnah and the practical examples of its implementation in the Islamic society throughout history. It was narrated from the Messenger of Allah ﷺ that he said:

أَلَا مَنْ ظَلَمَ مَعَاهِدًا وَانْتَقَصَهُ وَكَلَفَهُ فَوْقَ طَاقَتِهِ أَوْ أَخَذَ مِنْهُ
شَيْئًا بغير طيب نفس منه فأنا حجيجه يوم القيامة

"The one who oppresses a person under (our) covenant or degrades him, gives him work beyond his ability or takes something from him without right, I shall

²⁵ al-Alwani, Dr Taha Jabir; *Muqadimah fii Fiqh al-Aqaliyaat*

be a complainant against him on the Day of Judgement" [reported by Abu Dawud and al-Bayhaqi]. And the following was mentioned in the constitution of Madinah:

وإن اليهود ينفقون مع المؤمنين ما داموا محاربين، وإن يهود بني
عوف أمة مع المؤمنين

"And the Jews spend with the believers as long as they were fighting. And the Jews of Banu 'Awf are a community with the believers" [Ibn Hisham]. Ibn Janjawayh reported in Kitab al-Amwal that "Umar saw an old man begging from the people of Zimmah so he said: what is the matter? The man said: I have no money and the Jizya is taken from me. Umar replied: we have not treated you fairly. We have eaten your shaybah (old age) and then we take Jizya from you. Umar then wrote to his Amileen (governors) instructing them not to take Jizya from the elderly."

The view regarding the right of citizenship cannot serve as a justification for participation in the political life or for anything else. This is because citizenship is, in reality, an attribute of the one who shares a place of residence with others. Even though it requires that the Muslim naturally submits to the rules and laws of that place, it can not judge over the shariah or restrict its absolute (*mutlaq*) text, specify its general (*'amm*) text, or clarify its ambivalent (*mujmal*) text etc. If participation in kufr were allowed, for example, because of the right of citizenship, then it would be allowed to fight the Muslim based on the same right, which is false.

Making citizenship a justification means making citizenship a source of legislation, which permits the haram and forbids the halal. This contradicts Islam completely.

Conclusion

It is clear to see from this brief discussion about the Fiqh of Minorities, that it is a symptom of a corrupted thought process, which looks to the dominant West for its solution. It is a thought process that has been infatuated with Capitalism and cannot think beyond the limits that the decadent ideology has set.

The aim of participating in the political life of the West—for those who advocate this—is to achieve a set of benefits, such as supporting Muslims and their issues and providing the best opportunities for dawah to Islam, and enabling Muslims to adhere to the shariah rules without difficulty or hindrance, such as in the rules of marriage, halal food, dress code for women and other such rules.

However, contrary to what is said by them, these aims can be achieved by following the shariah path permitted by Islam, without the need to commit haram or trying to legitimise it by the deviant use of the rules of necessity (daruraat), benefit (masalih) and repelling the evils (mafaasid). Allah ﷻ has provided us with what is sufficient to stop us falling into His muharramaat, and he has permitted alternatives and styles that are sufficient for us to realise our demands.

Bibliography

- Ibn Abidin, Muhammad Amin; *Nashr al-Urf fi bina ba'd al-ahkam ala al-urf*
Al-Alwani, Dr Taha Jabir; *Muqadimah fii Fiqh al-Aqaliyaat*. Arabic paper
Baltaaji, Dr Muhammad; *Manahij ul Tashri al Islaami fil Qarn al Thani al Hijri* (The Methodologies of Islamic Legislation During the Second Century Hijri)
Al-Ghazali, Abu Hamid ibn Muhammad; *Al Mustasfa min Ilm al-Usul*. Cairo, 1937
Hizb-ut-Tahrir Europe; *The ruling on the participation of Muslims in the political life of the West*. 2002
Hourani, Albert; *Arabic Thought in the Liberal Age 1798-1939*. Cambridge, Cambridge University Press, 1983
al-Jawziyya, Ibn Qayyim; *Ighathat al-lahfan min masayid al-shaytan*. Edited by Muhammad Hamid al-Fiqi, Cairo, 1358/1939 in 2 volumes.
Ibn Kathir, Imad al-Din Abi al-Fida' Isma'il; *Tafsir Ibn Kathir* (English edition). Riyadh, Darussalam, 2000
Ibn Kathir, Imad al-Din Abi al-Fida' Isma'il; *Tafsir al Qur'an al-Azim*. Beirut, Dar al-Qalam, 2nd Edition
Khilafah magazine—June 2001, London, Khilafah Publications
Nabahani, Taqi ud Deen; *As-Shaksia Islamia Volume 3, 2nd Edition*. Hizb-ut-Tahir, 1954
Ramadan, Tariq; *Islam, the West and the Challenges of the Modernity*. Leicester, Islamic Foundation, 2000
Ramadan, Tariq; *To be a European Muslim*. Leicester, Islamic Foundation, 1998
Al-Tabari, Abu Jafar Muhammad ibn Jarir; *Jami al-bayan an tawil ay al-Qur'an*.

Cairo, Dar al-Ma'arif, 1954

Al-Tahtawi, Rifa`a Rafi; *Takhlis al-ibriz ila talkhis Bariz* (The Extraction of Gold, or an Overview of Paris). Cairo, 1834

Ar-Razi, Fahkr ad Din ibn Muhammad; *Al Mahsul fi Ilm Usul al Fiqh*. Riyadh, 1979

Al-Sarakhsi, Abu Bakr Muhammad ibn Abi Sahl Ahmed; *Usul al Sarakhsi*. Cairo, 1953

Al-Shawkani, Muhammad ibn 'Ali, *Irshad al-fuhul ila tahqiq al-haqq min 'ilm al-usul 1st Edition*. Cairo, Dar al Outb 1992

Zalloom, Abdul Qadeem; *How the Khilafah was Destroyed*

Zalloom, Abdul Qadeem & Nabahani, Taqi ud Deen; *Ruling System of Islam, 5th Edition*. (English Translation) London, Khilafah Publications, 2003

