

“Behold! His (Allah) is the creation and  
His is the rule.” (7:54)

# Shariah & Politics

By Qazi Fazlullah

# Contents

## Preface

1. The Creator & the creature
2. “Islam” is “Deen”
3. Allah is the law giver
4. “Deen” “Shariah” & “Fiqh”
5. Need for Authority
6. Khalafah
7. Secularism
8. How & Why Secularism was Introduced & Adopted?
9. Islamic System of Government
10. Sources For Islamic Law
11. The Source of Khalafah

12.How to Appoint & Determine Someone as Khaleefah

13.“Ahlul Halli wal Aqd”

14.Required Qualities of a “Khaleefah”

15.Ahlush Shura

16.Is the “Shura’s” Advice Binding On the Khaleefah?

17.Ahlul Ijtihad

18.The Rights & Duties of Khaleefah

19.The Duties of Khaleefah

20.The Rights of Khaleefah

21.The Duties and Responsibilities of the Citizens

22.The Rights of the Citizens

23.More Than One Khaleefah

24.The Characteristics of the Islamic System

25.The Characteristics of the Islamic State

26.Administration

27.The Responsibilities of the Khaleefah's Appointed  
People

28.Judiciary

29.The Qualities of the Judges

30.The Types of Judges

31.The Appointment of Judges

32.“Tahkeem” or Arbitration

33.Wilayatul Mazalim

34.“Hisbah” (ombudsman)

35.The Comparison Between Judiciary, Wilayatul-  
Mazalim, & Hisbah

36.The Resemblance Between Judiciary & Hisbah

37.The Comparison of Hisbah & “Wilayah”

38.Islamic International Law

39.Removal of Khaleefah

# Preface

## **In the name of Allah the Beneficent, the Merciful**

Human by nature is animalistic and social as well. As animals have desires so do humans and also socially humans like to live with other fellow human beings as well. A human neither compromises on his desire nor on his sociology. Human sociology is based upon his intellect, but as he is much more influenced by his desires as he is living in a world of desires, so most of the time he uses his intellect and reason in order to obtain these desires. Animals also have desires and they fulfill those desires. To have their desires fulfilled an animal struggles and even attacks other animals as well. It does the same attack when defending itself or its desires. So having desires and defense both are its nature. Human beings do the same and as humans have intellect, so when he uses his intellect for desires and defense, then mostly he uses his power excessively, and if an authority does not control him than his excessive use brings disaster and turmoil.

### **Allah said:**

**“Fasad” (mischief/disorder/corruption) has appeared (or has overtaken) on land and sea because of what the hands of people have done, in**

**order to cause to taste some of what they have done so they may make a u-turn”(30:41).**

As we know that Allah has appointed mankind as His agent/viceroy, so on one hand he has the ability to utilize this world and exploit it, and on the other hand he is bound to obey Allah’s commandments and to practice accordingly. For the said purpose Allah sent prophets and messengers and gave them books and scriptures and inspired them with his rules and laws.

**Allah said:**

**“ We have enjoined for you people the “Deen” which He (Allah) had enjoined to Noah and that one which we have inspired to you and that one which we had enjoined to Abraham, Moses, and Jesus to establish/implement/ keep straight/ bring it to upright position and do not make “ Tafarruq” (sects/ pick and choose) therein”(42:13).**

So Allah ordered its implementation.

**Also Allah said:**

**“Indeed we had sent our messengers with clear proof (rules and laws) and we had sent down with them the scripture and the balance so humans may keep up justice” (57:25).**

**Allah said:**

**“Verily we did send down the “Torah” in which there was a guidance and light. By which the prophets who submitted themselves, used to judge for the Jews and their rabbis and the priest(also used to judge) as the book of Allah was entrusted to them and they were witness (scholars) to that”(5:44)**

**Then Allah said:**

**“And we have sent down to you (O’ Muhammad!) The book (Quran) in truth confirming the scriptures that came before it and trustworthy over it. So judge between them what Allah has revealed and follow not their vain desires, diverging away from the truth that has come to you. For each among you we have prescribed a law and a clear way” (5:48).**

**Allah said:**

**“Then we have put you (O’ Muhammad) on a plain way (clear system and law) of “Amr” (Deen) so follow this and do not follow the vain desires of those who do not understand” (45:18).**

**Also Allah said:**

**“And whosoever did not judge on (the basis of) what Allah has sent down they are rebellious, wrongdoers, disbelievers”(Surah Ma’idah)**

This is logical that any machine made by a manufacturer is to get operated properly according to the instructions by that very manufacturer. Allah is not only the manufacturer or the inventor, but He the Creator of the whole world and He is the Lord as well. He has subjugated the world to humans and gave them honor.

**Allah said:**

**“And indeed we have honored the children of Adam and we have put them (as authority) in the land and sea” (17:70).**

And they are bound to obey and follow His commandments and to implement His laws and rules, and that is the proper operation of this world and the worldly system.

When a machine is very valuable and complicated to function properly, the very manufacturing company does not only send a leaflet/brochure with it but also sends a representative to install it, to operate it, and also to train and teach others who have to operate it. Similarly, Allah sent the Messengers and the scripture to make human life a fruitful and useful one here and in the hereafter.

It means that Islam, the “Deen” of Allah, is a system of code of life that Allah has sent to be implemented as law of the land. In other words we say that Islam is a complete and perfect political system, but as there is no other “Deen” all over the world known for its political system and the entire world follows a secular system, it does not appeal to their mind that there could be a “Deen” having a political system. And if there is any claim in this regard then it is labeled as fundamentalism and not only that, it must be condemned and countered by any possible mean.

This is not only the case with Non-Muslims but also the case of Muslims who pray and fast as well, but they claim to be liberal, moderate, people of the modern world, educated and learned as well. Why is it so? Because they do not have the knowledge or they might have a little knowledge, but they are impressed by the scientific advancement of the secular world and they are scared of expressing their own view. Yes, not to express is one thing but if they do not believe that Islam is a system or express other way around then they should think of their Iman, whether it still remains intact.

As these people are educated and they are impressed by the most popular language of the developed world which is English, so as a “Naseehah”(thinking, intending, looking for the best for them) we thought that there should be a book in this regard in the English language, because sometimes some people are misguided

due to certain circumstances, otherwise they are good Muslims if they will understand the issue. The Prophet of Allah said “ Mankind is a mine, like the mines of gold and silver, the best one in (the time of) ignorance is the one in (the time of) Islam when they understood”(Muslim).

Some 25 years ago we wrote a book in the Urdu language on the Islamic political system, so now we intend to write it in English but with further details. May Allah (SWT) make it a good effort and a benefit for humans in general and for these afore mentioned Muslims specifically, as they deserve this because they are good people (Amin).

Qazi Fazlullah

USA

In the name of Allah the most Beneficent, the Merciful

## Chapter 1

### Allah The Creator & His Creature

Allah is the sole creator of the world and this is known to those who did not believe in his oneness and lordship when:

**Allah said:**

**“And if you (O’Muhammad) would have asked them (the disbelievers) who has created the heavens and the earth and subjected the sun and the moon? They would have surely said, Allah” (29:61)**

Even the Atheist cannot attribute this creation to anybody from among the creatures. At least they will either say that it came into existence automatically which doesn't make any sense or they will say some power has created it but we do not believe in that power as Allah. Now when Allah has created this world then He is behind the smooth running of this world as well, because it would not make sense that He created it and it is automatically running by itself.

In the world of technology, one must look at the computer system, the satellite system, and the different websites therein, that all its outputs are connected to that control system. And there is a control command, control and operation system, and the computer scientist are looking after that every minute and every second and through that they look after every connection connected to the control system. This is only an example to understand- Allah is Allah. He is looking after His creature every single minute and second.

**Allah said:**

**“ And with Him (Allah) are the keys of “Ghaib” (everything which is not in the knowledge of humans) no one knows them but He alone and He knows whatever is there on the earth and in the sea and not even a leaf falls, but He knows it and not even a (small) grain in the darkness of the earth nor wet (fresh) or dry (old) but that is in a clear record (in his knowledge)” (6:59).**

**Allah said:**

**“And nothing is hidden from your Lord even the weight (or volume) of an atom on the earth or in the heaven. Nor what is less (smaller) than that or bigger but that is in the clear record” (10:61).**

**Allah said:**

**“Not even a small atom can hide from Him (Allah) in the heaven or in the earth and not less than that is bigger but that is in the clear record” (34:3).**

**“And indeed We have created above you seven heavens and we are not unaware of our creature (even for a second but We watch it)” (23:17).**

But as a King and ruler has workers working for him in his name and he needs them, as he cannot take care of everything himself. Allah does not need anyone but still as a Lord and King, He has appointed the angels for certain duties and they have their own webs.

**Allah said:**

**“They (the angels) do not disobey whatever Allah has commanded them, but they do whatever they have been ordered” (66:6).**

Regarding this web Allah said,

**“And by the heavens full of paths (webs)” (51:7).**

Allah has two types of laws:

- (1) “Takweeni” or natural laws- the whole creation is subject to these rules and laws in such a way that they cannot avert it nor can they avoid it.

**Allah said:**

**“And you can never find any aversion for the “Sunnah” (natural law) of Allah” (35:43)**

**“And you cannot find any change for the Sunnah of Allah” (33:62).**

In English we say that “Let nature take its course”.

So day and night come in alternation, sun and moon float on its course.

**Allah said:**

**“And a sign for them is the night, we withdrew there from the day and behold then they are in darkness and the sun runs on its fixed course for (an appointed) term. That is the decree (or controlling authority) of the all mighty, the all knower. And the moon we have measured for its mansion till it returns like the old dried curved date stalk. It is not for the sun to overtake the moon, nor does the night outstep the day, they all flow in an orbit” (36:37-40).**

Human beings like all other creatures are also subject to the same law without having any free will in this regard. They become hungry and thirsty, they need to go to the bathroom; they fall asleep and become sick.

**Allah said:**

**“And among his signs is the creation of the heavens and the earth and the difference of your languages and colors, indeed in that there are signs for people. And among his signs is your sleep at night and day and your seeking of his bounty (as you feel hungry and thirsty and you look for food and water) indeed in that there are signs for people who listen” (30:22-23).**

(2) “Tashree’i” laws: As Allah subjugated the whole world to humans and they exploit it for their good and benefit, so He subjected them to his laws and rule and gave them free will in this regard as a test. If they pass the test they are the successful people and if not they are the losers.

**Allah said:**

**“And by the “Asr” (time) indeed human beings are in a big loss except those who believed and practiced righteous good deeds and enjoined one**

**another with truth and enjoined one another with patience (stability& steadfastness)” (103:1-3).**

Allah has given them the ability to do good or bad.

**Allah said:**

**“And by the nature and its perfect proportion. So he inspired it with its evils and piety” (91:7-8).**

He showed them the path naturally and also through a message.

**Allah said:**

**“Indeed we showed him the path whether to be grateful or ungrateful” (63:3).**

**Allah said:**

**“(We sent) Messengers as givers of glad tidings and as warners so Mankind may not have any plea against Allah after these Messengers. And Allah is almighty and all wise” (4:165).**

Now Allah has the perfect plea.

**Allah said:**

**“Say (O’Muhammad) then only for Allah is the perfect plea and if he would have willed (as a Takween) he would have guided you all (forcefully by Takween)” (6:149).**

Now that is for them to believe or to disbelieve.

**Allah said:**

**“And say (O’Muhammad) (this is) the truth from your Lord, then whoever wills let him believe and who ever wills let him disbelieve” (18:29).**

**Allah said:**

**“If you disbelieve then verily Allah is not in your need. He likes not disbelief for his slaves. And if you are grateful He pleases that for you” (39:7).**

So Allah has made the Whole world subject to humans and He has made them subject to his laws and system to believe in, to follow it, and to implement it as well. That’s the true meaning of “Rabb” and “Abd,” which means Lord and slave.

## Chapter 2

### Islam is “Deen”

“Islam” is (1) The “Deen” of Allah

**Allah said:**

**“Surely to Allah belongs the pure Deen” (39:3)**

(II) The Deen of all the Messengers

**Allah said:**

**“He (Allah) has ordained for you the same “Deen” (Islam) which he  
ordained for Noah, and that one which we have inspired to you (O  
Muhammad) and that one which we ordained for Abraham, Moses, and Jesus,**

**that implement this “Deen” and do not make sects (or don’t do any pick and choose therein)” (42:13)**

(III) The Deen of all humans

**Allah said:**

**“Say (O’ Muhammad) Oh Mankind! I am the messenger of Allah to you all”(7:158)**

Messengers before Prophet Muhammad were sent to their specific people in a specific area and specific time; they used to address their nations and make it clear that he has been sent to them.

**Allah said:**

**“ O my nations worship Allah (alone) there is no any other god for you except him”**

This was the call and message of Noah (7:59), the call of prophet Hud (7:65), also it was of prophet Salih (7:78) and same was that of prophet Shuaib (7:85).

Even though prophet Lot was not from the people of Sodom biologically, but he was sent to them and they were his addressees so they were called his nation

and he addressed them only “And (remember) Lot when he said to his nation....” (7:80)

Abraham the father of the Messengers also addressed his nation.

**Allah said:**

**“When he (Abraham) said to his father and to his nation, what are these images to which you are devoted” (21:52)**

Prophet Moses was sent to Pharaoh and his people, even though he was not from Pharaoh’s nation as Pharaoh was Coptic and Moses was from Bani Israel.

Moses was sent for two things:

- (I) To call both nations towards Allah, but
- (II) First to ask Pharaoh to set Bani Israel free and give them their fundamental rights.

**Allah said:**

**“Go to Pharaoh indeed he has transgressed (the boundaries)” (20:24, 79:17)**

**“So set free with me the children of Israel” (7:105)**

**Also Allah said:**

**“Verily Pharaoh exalted himself in the land (of Misr) and divided its people into groups oppressing a group from them, slaughtering their sons and leaving their women alive. Indeed he was from those who were spreading disorder. And we wished to do a favor to those who were oppressed in the land and to make them rulers and to make them the inheritors and to give them the power to show Pharaoh and Haman and their hosts (to receive) from them which they used to fear of” (28:4-6)**

Later on when Pharaoh was destroyed then Moses used to address the children of Israel.

**Allah said:**

**“And (remember) when Moses said to his people O my people” (61:5, 2:54).**

Jesus also addressed as Bani Israel.

**“O Children of Israel, indeed I am the Messenger of Allah to you”(61:6)**

Their message was one and the same.

**Allah said:**

**“And we have not sent before you any Messenger but we revealed to him that there is no god except me so worship me (alone)” (21:25)**

These prophets fulfilled their obligation in their respective areas and respective time and later when the last and final prophet of Allah, Prophet Muhammad came, so as he was sent to the whole world and to all human beings so he addressed them in general and said “O Mankind”.

Now Islam is not a religion because religion means any system of faith and worship. Islam is beyond faith, which is a set of a few rituals. So Islam is not a set of a few rituals but a complete code and system of life and that’s why **Allah said:**

**“Enter into Islam as a whole” (2:208)**

Literally “Deen” means action, interaction, recompense, submission, domain, system, law etc. and technically the revealed and divine system given by Allah to the Messengers, started with Adam, processed through all the Messengers and completed with Mohammad.

**Allah said:**

**“ This day we perfected for you your “Deen” and completed upon you my favor and chose for you Islam as a “Deen” (system)” (5:3)**

Allah called it his favor after that he mentioned its completion. Which means it will qualify for each and every need of your people.

Food is a favor when one is hungry; water is a favor when one is thirsty, and so on. And then he said I have chosen it as a system for you and I am pleased with this for you as a system.

Now Allah who is the creator and he knows all of our needs, qualities, and short comings in every time, and he calls a system as his favor, then for sure it means that the system will be an answer to each and every question and need of ours.

As we have given a pledge of allegiance to Allah, which is the “Kalimah” or the declaration of Islam, “There is no god except Allah and Muhammad is the messenger of Allah” The first part expresses the purpose of our life that it is to believe in Allah as “ilah,” in every field of our life and to obey, practice, and implement his rules and laws.

While the second part shows us the way of life and how we will obey, practice, and implement. That must be learnt from the “seerah” (teachings) of Prophet Muhammad. This pledge of allegiance and its details is called “Deen” and Islam, Allah said **“verily “Deen” near to Allah is Islam and whoever will seek except Islam anything as “Deen” so it will never be accepted of him and he is in the hereafter from amongst the losers”**

This verse means that Deen is only Islam and only Islam is Deen. Also another meaning is that the system close to Allah is Islam only and whosoever will seek something else as a system is unacceptable.

# Chapter 3

## Allah is the Lawgiver

As we said that the inventor gives the instruction about his invention on how to operate it.

For a lawgiver it is must:

1. To have comprehensive knowledge not only about the present but about the future as well.
2. To have an irresistible power so he can ask each and everyone and he can do everything.
3. To have an inclusive mercy, which includes everyone even the enemy.
4. To be non-biased.

These qualities are the qualities of Allah alone so only he can give the proper laws to humans.

He made the prophet bound to implement these divine laws.

**“He (Allah) is the one who sent his messenger with guidance and (with) the true “Deen” so he may make it prevail/overcome over all the “Deen” (systems)” (9:33,48:28,61:9).**

In chapter 9 and chapter 61 before this verse Allah mentioned that the enemies of this “Deen” try to extinguish the light of Allah, and by this light, Allah means his “Deen”.

**Allah said:**

**“Allah is the friend of those who believed, brings them out of darkness’s to light” (2:257)**

Also He said to his Prophet:

**“The book we have sent down this to you so you may bring the people out of darkness’s to light with the leave of their Lord” (14:1).**

Allah ordered the Prophet to judge according to revelation even though the people will try to deviate you from this.

**Allah said:**

**“And so judge between them by what Allah has revealed and follow not their vain desires and beware of them lest they turn you far away from some of that which Allah has sent down to you?” (5:49).**

And if there are people who do not want to accept this system and judgment then Allah said:

**“Then never by your Lord, they can not be (perfect) believers until they made you a judge regarding whatever is disputed amongst them and then they don’t find any resistance to what you (Muhammad-means your system) has decreed and admit in full”(4:65)**

Here in this verse it is said, “whatever is disputed,” which means in each and every field, so this system must be adopted as a package because its different aspects are connected to one another.

**Allah said:**

**“So will you believe in some parts of the book and will disbelieve in some others, so what is the recompense of one who does so from amongst you except humiliation in the life of this world and on the day of resurrection they would be taken to the severe punishment and Allah is not unaware of what you do” (2:85).**

## Chapter 4

### “Deen” “Shariah” & “Fiqh”

We already discussed the term “Deen,” but what is “Shariah” and what is “Fiqh,” terms which are very frequently used in Islamic sciences.

The word Shariah or Shir’ah means a broad way, which is very clear and open. While Shariah means a known law but this term is used for divine law, so frequently when the moment it is uttered almost everyone thinks about the divine law. This word is also used synonymously to “Deen”.

“Fiqh” literally means to understand but as a term it means the rules and laws of Islam, which is taken from its sources. This term is also used synonymously with “Deen” and “Shariah” both, but for academic purposes the difference between “Shariah” and “Fiqh” is that “Shariah” means the laws mentioned in the Quran and Sunnah, while “Fiqh” means laws derived from Quran and Sunnah by the jurists through analogical deduction. So then “Shariah” is unchangeable while the laws of Fiqh could be changed when the situation has

changed, because “Shariah” means divine laws which is given by Allah whose knowledge is comprehensive and He knows that it is applicable every time, but Fiqh is deduced by the Jurist, according to circumstances and situations.

# Chapter 5

## Authority is needed

As we said that humans are animalistic in nature having desires and he is also social, requiring social life as well. But as humans have desires and have intellect so they will use intellect to fulfill their desires, so they will attack others, that's why they need an authority to keep them within limits and in control and if they did wrong then to bring them to justice. Otherwise turmoil overtakes the whole world and anarchy prevails. We say that humans have the intellect but that is not a sufficient source of knowledge, it needs illumination and it cannot illuminate itself as one thing could never be the cause of the result as well, so it needs something else far ahead in approach that this intellect and that is revelation. Also as a creature, intellect and reason have its own limits, beyond that it cannot go further and approach many things, while there are things needed and required to be human so those things need another source which can exceed the limits of the intellect and that is revelation. Also reason and intellect doesn't know how to fulfill

its spiritual needs and, as we know that living in this material world, it needs material things. That even affects the intellect and then its approach will be terrible and that's why an authority is needed and that authority must be subject to revelation. Otherwise as humans they will be doing the same wrongs as other do but will do even worse things as they have desires as well.

A question arises about whether this authority is recommended thing or a mandatory one?

There is one group called "Faudawiyah" (anarchist) they say all people are equal so no one may have authority over the others. This is a strange idea and doesn't make sense. In reality it is naturally the other way around. The parents have authority over their children and even these people don't deny nor oppose it. Karl Marx at the stage of Communism says the same thing but we say, it could be a concept or theory but it isn't practical at all.

Now there remain only two opinions:

1. That to have an authority is permissible but not a must as if people don't want an authority than that is neither a sin nor a crime, because most of the time authority brings lots of bad and evils. So if people don't want it then that is against the concept of natural freedom, equality, and freedom of expression. But we say that it depends and because of bad people in authority we cannot throw

away the very concept but we get rid of the evil people and then the advantages of having an authority are much more than it's disadvantages. This concept is an extremely negative approach.

2. The 2<sup>nd</sup> opinion is that to have an authority and leadership is must and that is mandatory. The prophet of Allah said "When three people are going on a journey, then they may make one of them their "Ameer" (leader)" (Abu Dawud).

This is "Wajib" and must, but for whom?

1. The Imamiyah Shiites said this is the duty of Allah and of the people to appoint an "Imam" (leader) for the people- this is also the opinion of Ismaili Shiites.

These Shiites said that imam has lot of advantages and benefits for the public and is a protection and defense from disadvantages and harms and this can put people in the right direction to make their life in both worlds a good one, but human beings can not choose their imam as they have desires, anger, and superstitions and they cannot differentiate good from bad, so it is the duty of Allah to give them an imam to lead, defend, and guide them. To them the imam must be a "Masum" i.e. a person who doesn't commit any sins. So they say that an imam is

like a prophet and messenger, he must have the same qualities of a prophet and that's why they say that this is must for a messenger to express clearly, who is and will be the imam and he did for Ali and his offspring after him.

The group of Zaidiyah Shiites said that the prophet mentioned and expressed the required qualities of an imam and these are found in Ali in a perfect manner so he was the more eligible person to be the imam, but as Abu Bakr, Umar, and Uthman got it before Ali so that is ok even though not the best. While Imamiyah Shiites say, the leadership of these three was wrong and that was a form of tyranny and oppression and they even say that Abu Bakr, Umar, and Uthman lost their faith.

1. They said, the prophet said to Ali "you are for me, like Harun was for Moses" and when Moses was going to Mount "Tur" he left Harun as his substitute Khaleefah and said to him, "Replace me among my people act in a right and follow not the path of those who spread mischief"(5:142).
2. Zaid ibn Arqam narrated that the prophet said in "Ghadeeri Khum" "o people! Indeed Allah is my "Maula" and I am the "Maula" of the believers and I am prior to them than their own selves, so whoever

believes I am his “Maula” than Ali is his “Maula”, o Allah!

Befriend of one who befriended him and be enemy of one who has enmity with him, help the one who helped him, and put down the one who put him down”(Ahmad, Hakim, Nisa’e, Tabrani).

3. The Prophet gave him the flag in the battle of Khaibar and he had said about that already, “Tomorrow I will give the flag to one who loves Allah and his Messenger and Allah and his Messenger love him, and he turns to the enemy and does not run away, he will not come back till Allah gives victory on his hand” (Bukhari, Tirmizi, Hakim).
4. They said there is a hadith that “Ali is the best judgment giver” so it means he is the eligible one for “Khalafah”.
5. They say (a) that the knowledge of humans is not comprehensive to appoint an imam as the imam may be a “Masum” so he may be appointed by a “Masum”  
  
(b) Also “Khaleefah” is the representative of Allah and his messenger and not that of the people so how can they choose the representative of Allah and his Messenger?

(c) If this is left to the people then there will be disputes, differences, enmity, hatred and bloodshed, which is against the very wisdom of “Khalafah” as Khaleefah is to maintain peace.

But we say that the prophet left Ali behind when he was going to the expedition of “Tabuk” so the hypocrites said that the Prophet doesn’t like him so he left him behind, so Ali came to the Prophet and he was crying that you are leaving me amongst the women and children, then the Prophet said “ you don’t like to be my Khaleefah as Harun was to Moses”. So this cannot be a base for his Khalafah as the Prophet used to leave behind different people on different occasions as his representative.

Regarding the hadith of “Ghadeeri-Khum”, Allamah Eiji said in his book “Al Mawaqif” that this hadith is not authentic as Ali at that time was in Yemen, he was not with the Prophet in “Ghadeeri Khum” and those who narrated this they have not mentioned the background that how and why the Prophet said it. And even if it is proven still it doesn’t mean that he is Khaleefah after the Prophet because the word “Maula” has so many meanings like helper, protector, friend, master, emancipated slave, cousin, shelter, ally, in law etc. so which one is meant here? Also Imam Abu Dawud and Abu Hatim Ar Razi have reservations about the authenticity of this hadith. Also the Prophet said regarding Juhaimah Mazainah,

Asalam and ghifar tribes that they are my “Mawali” (plural of “Maula”), so does it mean they will be the rulers after the Prophet?

Regarding the hadith of Khaibar that Allah and his Messenger love him, doesn't mean that he is Khaleefah as Allah said: **“Then soon Allah will bring a people he will love them and they will love him, humble towards the believers, stern towards the disbelievers, fighting in the way of Allah having no fear of the blame of those who blame” (5:54).**

The hadith which say that “Ali is the best judgment giver” doesn't mean eligibility for Khalafah because in the same hadith the prophet said before this sentence that “the most kind towards my ummah is Abu Bakr, the strong one in the “Amar” (Deen/rule) of Allah is Umar, the most truthful in decency is Uthman...” then kindness is another quality making one eligible, and strength in the rule of Allah is another eligibility, and decency is one as well like that of judgment is and the Prophet said it in the sequence in which the Khalafah was passed down.

As for the case of disputes is concerned so we say that things could never be dropped because of ifs and buts, and Shariah made it clear that who deserves to be the Khaleefah and who will chose him. Their qualities and requirements are mentioned clearly, yes being the Khaleefah means the viceroy of Allah to

implement his “Deen” over the people and the actual Khalafah of Allah is with the people.

The 2<sup>nd</sup> opinion is that of Ahlus-Sunnah that “Khalafah” is “Wajib” (must) based upon Quran, Sunnah, Ijma, and reason as well.

1. Holy Quran says:

**“O you who believe! Obey Allah and obey the messenger and the people in authority.”**

It means that there may be people in authority and their obedience is a must as long as they are from amongst you, meaning they are not a colonial power nor they order against the Quran and Sunnah, otherwise there is no obedience to the creation which causes disobedience to the Creator.

2. There are several Ahadith in this regard even the “Muhaditheen” have written chapters in this regard. The Prophet said:

“Leadership is must and people can not avoid leaders” (Abu Dawud).

Meaning that they have to have leaders and leadership.

The Prophet of Allah also said: “Imam” (leader) is a shield” (Bukhari, Muslim).

3. This is proven based on “Ijma” (consensus) of Sahabah after the death of the Prophet and even the delayed burial of the prophet till they chose the Khaleefah, shows the importance of this issue in Shariah. That’s why they gathered together in the porch of Banu Sa’idah and after a lengthy process and talk when Umar said about Abu Bakr that the Prophet chose him for our leadership in “Deen” which means to lead the prayer, so shouldn’t we choose him for the leadership of our worldly affairs? And then unanimously they choose Abu Bakr and gave their pledge of allegiance to him, because of the importance of Ijma, Abu Bakr nominated Umar in his last moments, and Umar appointed a Shura (consultative council) to chose a Khaleefah, as we will give the details later on Insha Allah.
4. As the world needs peace, and that is a requirement as well. There is no peace but with justice and justice is to be administered by some authority that can implement it, as Allah said: **“Indeed Allah orders justice and kindness” (16:9).**  
**“Do justice that is very nearer to piety” (5:8).**

If justice isn't there then of course there will be disorder and mischief.

**Allah said:**

**“And seek not mischief in the land verily Allah doesn't like those who spread mischief/disorder” (28:77)**

**“And Allah doesn't like mischief”(2:205)**

Imam Ghazali the great thinker said, that each individual has two basic duties (I) Knowledge (II) worship, and both depend upon health, safety, and availability of needs and necessity (“Al iqtisad fil I'tiqad”).

Safety and availability of needs could not be possible but with a system and that's why some Muslim scholars have defined politics as:

“Correction of the life in this world and the life in the hereafter”, and how is it possible? When someone is safe and satisfied in his life and worships Allah to the best of his ability.

Imam Nasafi has written that to have an Imam is must for Muslims to implement the rules of Allah, to control the miscreants, to resolve the conflicts, to arrange the defense and to collect the taxes and charities (Al Aqa'id).

A similar thing is mentioned by the Imam of sociology and politics, Imam Al Mawardi that this is must to for an authority structure to defend the Deen and the state, to control the miscreants, and to maintain the law and order (Adabud Deen Wad Dunya).

Also Allama Al Eiji in "Al Mawaqif" and "Al Aamidi in "Abkarul Afkar" have both said this as well.

So according to Sunni scholars, Khalafah is a must and this duty goes to the ummah to choose a Khaleefah having the required qualities, and to them this is not a responsibility based on intellect but based on Islamic order and commandments, while according to Mutazilite and Shiites this must based on intellect and reason. Hasan al Basri and some other scholars say it is based on both.

We say this is a Wajibi Shar'ii supported by reason and intellect because Islam doesn't suspend the human intellect but specifies its field and puts it behind Shariah and doesn't allow it to go ahead of Shariah or to exceed and over rule Shariah.

**Allah said:**

**“O you who believe don’t go forward than Allah and his messenger and fear Allah verily Allah is all hearing, all knowing” (49:1).**

Islam has given a principle in every field and still it has left a vast field for intellect but with a condition, which that it’s application may be in accordance with the rules laid down by the authentic scholars of Quran and Sunnah, and these rules are derived from the Quran and Sunnah, which Allah said:

**“Then ask the people of “Zikr” (expertise) if you do not understand”(21:7)**

The fourth source of Islamic Shariah, which is “Qiyas” or analogical deduction, is actually the intellectual approach of a jurist having sufficient knowledge of Quran and Sunnah.

## Chapter 6

### “Khalafah”

Before saying something about this terms meaning and definition we want to talk about another term of the modern world for the said purpose of rule and government they use and that is “politics”. While the subject that deals with politics is called “Political Science”.

“Politic” has more than one meaning such as, prudent, wise, shrewd, advisable, cunning. These words are used for a person having these qualities, although some of these qualities are good while some others like cunning is not good.

“Politics” means the art of government and political affairs so even here they called it an art but as a subject discussing this art is called science or Political Science.

“Politician” means a member of a political party, a statesman, a holder of a political position. Anyone who is dealing diplomatically is called someone who is cunning or the one who doesn’t disclose him or the matters very much. In English there is another word “polite” which has a commonality with the word “politic” in the first five letters, which means a refined and polished person. So to us the politician should be a refined and polished person in order to be a statesman because a statesman is one who puts people and their interest ahead of himself, which nowadays a politician is one who puts himself and his benefits ahead of anything else including his people (this is based on a personal observations and experiences).

Nowadays people use the word “As-Siyasah” as a substitute to politics or to political science, in other languages. Basically this word comes from the Arabic language, so lets see what it means in Arabic. Also Hafiz Ibn Taimiyah has a book on this topic by the name of “As-Siyastush-Shariyah”. “Siyasah” means, “taking the responsibility of a thing to fix it”. Now to fix a car you can call it the Siyasah of cars and fixing an airplane you can call it the Siyasah of the airplane. So for fixing cities, states, and governments we can use the word “As-Siyasatul-

Madania” the Siyasaḥ of societies, cities, and states and also the people that live therein. So then As-Siyasaḥ or politics, means taking the responsibility of a society, state, or government to fix it, which means in other words its reformation, correction and taking it towards perfection, although perfection is nowhere in the world and that is why there is always room for further improvements.

So even in developed countries there is lots of work to be done and it will go on until the last day and that is why the world is called “Ḥadīth” as it came into existence from no existence. Changes are taking place throughout time and there will be no perfection in this world, and more work and striving hard will be needed and this will go on until the big crunch will happen which will cause the world to disappear. The only perfect entity is Allah and the only perfect human being is the Prophet Muhammad and that’s why he has been sent as the last and final Prophet to the entire world until the day of judgment, and we can say that the system given by that perfect entity Allah, to the perfect human being Muhammad, for guidance for the whole world until the last day, is the only perfect system for humans in general and even for those who don’t believe in him and his message.

George Bernard Shaw a philosopher, thinker, and writer wrote that if the whole world will become only one state having different caste, colors, cultures, languages, and even religions and they are in need of a system which can protect them and their rights and in which they can live in peace with one another, that

system can only be the one given by Muhammad. This is what a non-Muslim said about Islam.

But in Islamic Shariah the term used for this is “Khalafah” even though sometimes the scholars use the term “Imamah” or “Imarah” also these terms are also used in the sayings of the Prophet or his companions, but we are sorry to say that Khalafah is not properly understood in the western or in the Non-Muslim world. And whenever it is used they dislike it and sometimes even have hate for it because either they have learnt about some Muslim rulers or heard about them doing wrong practices which has nothing to do with Islam. Rather they did it because of culture or mistakenly or they think that “Khalafah” means to make all other religions perish, which makes Islam seem brutal and discriminative based on faith and religion, and this concept is totally wrong. The history of Muslims is a good evidence of this that Muslims ruled India for almost 1000 years but still it is a non-Muslim majority country and also Muslims ruled Spain for almost 800 years and still till today it is a non-Muslim majority country. Which means the rulers never forced or oppressed them to convert to Islam.

**Allah said:**

**“There is no compulsion in “Deen” (religion)” (2:256)**

The Madinah treaty is also a good proof that the Prophet of Allah provided surety to the Non-Muslims in the city of Madinah about their rights on equal basis (see our book “Islam the Misunderstood Religion in the West”).

“Khalafah” means coming after the other, being a substitute to one who is gone, a successor, a viceroy, a vicegerent, and an agent.

The “Khaleefah” was the successor of the Prophet after him and actually this title was used for Abu Bakr in reality as he was the direct successor of the Prophet, while after him the 2<sup>nd</sup> successor said, Khaleefah of Abu Bakr the Khaleefah of the Prophet, as Abu Bakr was after the Prophet, but I am after Abu Bakr so the case will be the Khaleefah of the Khaleefah and it will keep prolonging later on, so you should call me as “Ameerul Momineen” the leader of the believers. But this term “Khaleefah” later on became the title of the Muslim rulers as they said that every Muslim and ruler is the Khaleefah of Allah in the meaning of his agent or he is the Khaleefah of the Prophet in the system given by the Prophet. That’s why the Muslim scholars have adopted this word for their discussion and their writings as well. So they would write their chapters after the word/term “Khalafah” mostly, while others adopted the term “Al-Ahkam as- Sultania” as they are of the view that the word Khalafah is not that important but the state and the government and those who take care of it.

Then the scholars defined “Khalafah” in different ways, but the meaning is almost one and the same.

1. Allama Abul Hasan Al Mawardi said and he defined “Al Imamah” that the succession of the prophet hood in guarding the “Deen” and in the politics of the world (Al-Ahkam al Sultania).

Analysis: (I) Imamat is the succession of prophet hood.

(II) The purpose of imamat is to guard the “Deen”.

(III) And to make plan of the affairs of this world.

(IV) When it is the succession of the prophet hood so it isn't the personal right of an individual i.e. the Khaleefah and the imam but that is the right of the followers of the Prophet i.e. the “Ummah” so they have to choose someone for this and the person chosen is bound to take care of these two things (a) guarding Deen (b) planning for this world.

2. Allama Iddud Din Al-Eiji said:

“Succession of the Messenger in implementation of “Deen” and in the protection of “Millat” in a way that the entire ummah is bound to follow it” (Al-Mawaqif)

Analysis: (I) Khalafah is the succession of the messenger of Allah.

(II) Its responsibility is to keep the “Millat” (nation) united.

(III) It will implement “Deen”.

(IV) The whole ummah is bound to obey and to follow this authority, again this definition made it clear that actually it is the right and duty of the ummah. Also the definition excluded the authority of the judge and jurist as that is binding on the parties concerned and that his responsibility is not general and inclusive.

3. Imam Fakhrud din Razi defined and said:

“A general authority for someone from amongst them in Deen and worldly affairs as a succession from the Prophet” (Nihayatul Uqul).

Analysis: (I) This is succession of the Messenger.

(II) This is a general authority so it excluded the judge and jurist, as theirs is special authority.

(III) The authority is in both Deen and worldly affairs.

(IV) This belongs genuinely to the ummah but they have to choose one of them for the said responsibility and that one must have the required qualities, and then taking care of Deen and worldly affairs is his responsibility.

4. Allama Taftazani said:

“A general authority in the affairs of Deen and worldly life as a succession from the Prophet” (Sharhul Aqai'id).

This definition is very similar to that of Imam Razi but Taftazani has not mentioned “for someone from amongst them” but that is understood as the whole ummah or a group of people can't be the Khaleefah but only one person that is eligible.

5. Allamah Saifud Din Al-Aamidi mentioned in “Abkarul Afkar”, “Succession of the Messenger is for a person from amongst them in implementing the laws of Shariah and protection of the Millat in a way that the whole ummah may obey and follow”.

Analysis: (I) This is the Succession of the Messenger.

(II) To keep the ummah united and to implement the rule of Islamic Shariah.

(III) The entire ummah is its source but it may be given to one from among them.

(IV) The entire ummah is bound to obey and to follow.

This is a more inclusive definition, but the well-known scholar, philosopher, and thinker Ibn Khaldun said:

To put all of their Islamic thoughts regarding their good in the hereafter and their good here which eventually go towards the hereafter. So to him the Khalafah is “Succession of the bearer of Shariah in guarding of Deen and planning of this world based on it (Deen)”.

In brief all these definitions mean the good of the hereafter and of his world on the basis of Deen and that becomes possible when Deen is followed in each and every walk of life and that is only possible when there will be an authority guarding Deen and implementing that why here two things become clear:

(I) Deen is not a personal thing of an individual but everyone has to push each other in Deen and specially the authority as,

**Allah said:**

**“Those whom we give them power in the land they establish (system of) prayer and give “Zakat” (they establish a system for almsgiving, taking it from rich Muslims and give it to the poor) and they enjoin good and forbid evil and to Allah return the result of all affairs” (22:41)**

- (II)** Deen doesn't only deal with the individual affairs but with social, economical, political, national and international as well and that's why Allah called it “Deen” and ordered to enter into it as a whole.

**Allah said:**

**“Verily Deen near Allah is Islam (only)”(3:19).**

**“And whoever seeks besides Islam any “Deen” would never be accepted of him and he will be of the losers” (3:85).**

**And Allah said:**

**“O you who believe! Enter into Islam as a whole (totally) and do not follow the footsteps of Satan verily he is for you an obvious enemy” (2:208)**

This is not like secularism to take Deen out of worldly life totally, and think that Deen has nothing to do with public life, and that Deen is the personal business of everyone.

This theory destroys the concept of accountability because if someone has the fear of Allah and the fear of the day of Judgment and will believe that for each and every act of theirs in any field or capacity, he would be questioned, then that person will never violate any rule and any right of anyone.

### Types of Governments

The Governments are of two types:

1. Dictatorial Government- The government of a person with absolute power or an autocratic government.

In this type of government the person in power forces others to follow and obey his commands and no one has words against his commands nor anyone is heard.

2. Democratic Government- that is a government of elected people. The people elect their representatives or their leadership in the institutions and mostly with simple majority. In the modern world this is called a constitutional government, in other words it is a form of government for the people by the

will of the majority of the people (based on the conception of the equality of Man).

In the first type the dictator runs the state based on his desires while in the second type it is based on the desires of the elected people and their majority. Desires are desires whether that is of an individual or of a group based on majority even though there is the constitution, which is the fundamental law, but still there is a very vast area for desires and many loop holes. The general public elect this group and they hand themselves over to that group for four or five years to decide their destiny. In such a system the spiritual side of humans, their moral side, and their life in the hereafter is not considered at all, but rather ignored and considered against the very concept of democracy and specifically of secularism and secular democracy. And when this is clubbed together with capitalism, then it becomes harmful as capitalism looks at material gains and benefits only and then makes it decisions.

So lets see in brief what is Secularism and how it was introduced?

# Chapter 7

## Secularism

After Jesus, Christianity got perverted to such an extent that this religion of monotheism changed to a religion of polytheism and a creature is not only considered an associate to God but a part of God or even God and Lord. For sins one has to repent to Allah, but in a perverted concept he has to pay his expiation and atonement to the religious leader and the religious leader will pardon him. The greatness of humans is their socialization, but in this perverted shape of religion one has to go to seclusion and retreat and withdraw from people to really get close to God.

These concepts are against human nature and also against the very spirit of a divine religion. On the other hand the kingship became tyrannical and the church had nothing to do with the worldly affairs. Also scientific research or new theories based upon research was considered an apostasy by the church and they used to

give a religious verdict against that and to get a decree from the king to hang or burn that scholar, scientist, or researcher. They killed thousands of people to stop and discourage new discoveries, research and developments. They put in the minds of the kings that their discoveries are not only against religion but also a threat to the kingship and its majesty.

In such a situation the state used to give grants to the church and the church wouldn't say anything regarding the kings and whatever they were doing. It means that the religious people were a shield for the kings and their wrongdoings and cruelty. And the religious people were considered holy and nobody could have said a single word against them, otherwise there was a severe punishment. This started in 486 A.D. and was at its peak in 540- 640 A.D. at the time of Gregory I; this holiness was called as Theocracy. And it continued until the 18<sup>th</sup> century.

The concept of church and religion created many skeptics and rejecters. These rejecters of religion started in the Middle Ages and some movements in the name of Liberalism, Humanism, and Rationalism started, when these movements stepped into the political field then the secular democracy was introduced, which means the governments for the people by the will of the majority of the people. Now when we say democracy then that is a culture and you have to take it with the secular concept and when secularism, democracy, and material science are clubbed together then the criteria will be what is good for the people in their

material world, legislation has to follow that and to comply to it as religion or ethics may not be given any room or any preference over that. Material science doesn't discuss immaterial things, something which a common human does not sense, nor you can take it to a lab to test it does not make any importance to it, neither does it deny that nor approves it. Since it is not its subject.

Anyhow, lets see when secularism not as a philosophy but rather a system got introduced? The founder of this type of thinking was George Holyoake; he was born in 1817 in Birmingham, England. His parents were artists and photographers, even though he grew up in a religious atmosphere but in 1832 when the bill for reforms came forward, he decided to withdraw from the church and get in touch with some social missionaries. But in 1841 he fell into agnosticism, so he was imprisoned for blasphemous remarks against God even though he wrote in his newspaper clearly that we are not infidels if infidelity means to reject Christian beliefs as we have not rejected that but we have criticized its wrong concepts and wrongdoings. He was not affiliated in anyway to atheist but because of the contradictions in Christianity's concept pushed him to say that religion is not that important, so he was against the disfigured and perverted religion and he died in 1906. His colleague Thomas Cooper also became a reactionary; he established the principles of Chartism Movement and in 1856 he was imprisoned for two years when a Christian leader rejected his political

enthusiasm, and he wrote some papers in Christianity's defense, but he himself was active for a non-religious society even though later on he came back to the fold of Christianity.

Now when we look into the work of these two basic theories of secularism, we know that Holyoake separated secularism from atheism. "Secular" is derived of "Seculam" which means this present age. In the Greek language there is a word "Mundus" which means "world" the substitute for the first world is "Adew" and for the second world is "Cosmos" in the Greek language. But nowadays two terms are very suitable for those who write (I) "materialism" and (II) secularism so they have drawn a line in between religion and politics because the political field is non-religious. Rousseau, Haneck and others made it even more scientific, its very founders gave a philosophical concept that had a specific relation with morality but later on its productivity in the political field gave it a non-religious interpretation. In the last half of the 20<sup>th</sup> century some religious people tried to introduce secular Christianity to pull Christianity into politics and they said that Christianity qualifies our needs in every field, but as the church's concepts practiced in the past had introduced a different picture of Christianity that it supports wrong doings of the authority, protects feudalism and tries to stop research, science, new discoveries and invention, so the western world did not take this concept of secular Christianity and they said religious interference in

social and political life is fundamentalism. Fundamentalism was a defamed term used at the time when the church said that humans by nature are evil but he will do that evil action and that evil requires punishment but Allah is merciful and doesn't have any interest to punish people but there should be some way out, so he sent his son Jesus who was crucified and that crucifixion is an expiation for the sins of all those who believe in him as a savior and his representatives in church can pardon people and their sins get washed away.

This concept of practicing Christianity in every field of life was started by Peter Waldo Vaux, Joh Toler, John Luther and others, they protested against the church and their wrongdoings and making religion an easy way of earning. They spoke against the church and said let's bring actual Christianity back and implement it in our life in every way including our social and political life. These people were called as Protestants and fundamentalist that look at religion which supported and protected the wrongdoings of the authority and kings and which opposed science, knowledge, and research, by following them it was said that it would take you back to the stone-era. Fundamentalism was defined as "interference of religion in social, political, and economical life" or the rule of religion. And keeping in view this historical background of this term, when this term will be said regarding any religion the public will buy into it. But anyhow secularism, which came into existence to counter this concept and movement, is

defined as “ethical doctrine which advocates a moral code independent of all religious considerations or practices or the view or belief that societies values and standards shouldn’t be influenced by religion and church”. And when religion and science are considered opposite to one another then secularism got fame and acceptance because people are influenced by science, because they see its benefits, so how can they reject it. So they accepted secularism and that religion has nothing to do with the public atmosphere and that it is a personal thing for everyone.

Secular people say that if religion interferes in a state then it minimizes the field of legislation as in religious laws are either in the text or derived from the text, humans do not have any power to legislate. While this is not right because Islam in its texts has given the principles but still it has given a vast field to human intellect to make and frame laws for the good of humans and society, but it has neither straitened the situation nor has it totally suspended the human reason nor has it given unbridled power to the intellect, it has bound it to the basic concept and principles of Deen (religion).

## Chapter 8

# How and Why Secularism Was Introduced and Adopted?

Humans by nature do not like so many restrictions, as his nature is free and looking for freedom. They do not like oppression but rather oppose it. Evils are disliked to them by nature, but as we said that evils prevailed and (I) the religion instead of stopping and opposing it use to protect, defend, and pardon it as that religion introduced the concept that human by nature is evil-liking. This secularism was a reaction to that wrong concept of religion, which is why it was accepted.

(II) The selfishness of the feudalist, influential and rich people provided an access to secularism. These people used the religion by giving financial support to the church and the church defended them.

(III) Church was not expressing human's nature but rather it was oppressing it and that was unnatural.

(IV) Church used to oppose the research, knowledge, science and developments.

(V) The church was opposing any religious or political freedom to an irrational level.

This caused a suffocative like situation looking for a relieve and it came in the shape of secularism and in suchlike situations the people accept with excitement what ever relaxation is provided to them. So secularism was not an ideology only but also a reaction to religion as well. Such a thing that comes into existence as a reaction has both pros and cons. The after effects of reactionary emotions, negation of the recognized facts, and limited approach were some of these. Now keeping in view the background we say that those who said that Islam is equal to secularism plus God is wrong because plus means affirmation but in secularism God is not the subject either to believe or disbelieve, yes Horway said that a secular person is a man of this modern age while a religious one is an orthodox person, but secularism has its roots in the Bible so this is not against religion.

So secularism turned out religious aspect from the social, economical, and political fields and confined it to a few beliefs and a few rituals, and that religion is everyone's personal business.

Then after this philosophy, all the modern systems were established on the basis of this. Western capitalism is based upon three pillars humanism, rationalism, and materialism, but the industrial revolution divided the humans into two categories, the industrialists and the workers. Capital is the base and actual axis and the human being is a part of the industry, and what results from this is exploitation. As a reaction socialism and communism were introduced and as we know that sometimes the reaction is worse than the action, and can be more virulent. The base was the same secularism, but it shaped to an even worse form, which is secular capitalism, which does not discuss God and religion neither positively nor negatively but rather it considers it illegal, and in communism they negate God and religion as a whole.

## Chapter 9

### Islamic System of Government

The government based on Quran and Sunnah, where all people are equal regardless of their caste, color, sect and religion and where the people in authority are the agents of God and the servants of the public. This type of government is bound to provide needs and necessities to all without discrimination and to establish justice and peace.

Imam Abu Dawud narrated from Adi that the prophet of Allah told me, O Adi! When Islam will prevail, you will see a lone pretty woman having lots of wealth will be travelling from Basrah (Iraq) to Makkah (Saudi Arabia) without having any fear of any attack, and O Adi! When Islam will prevail you will see the treasury of the Romans and Persians under the feet of the Muslims and O Adi! When Islam will prevail, you will see that in a big gathering someone will offer a bag full of wealth as Zakat, if someone is eligible for it, but there will be no one ready to take it. Adi said, I saw the first thing in the time of Umar, and the second thing in the time of Uthman when the treasury of Hurmuzan was there in the open

field outside the masjid (mosque) of the Prophet and the third one he said to his students, maybe you will see it later on. And that occurred in the time of Umar ibn Abdul Aziz Umawi, who was a pious and God fearing ruler. Once in a gathering nobody was there in the gathering of thousands ready to accept Zakat (alms giving), as everyone's need and necessities were fulfilled and in this regard they were self-sufficient.

# Chapter 10

## The Sources of Islamic Law

There are two types of sources for Islamic law:

1. Fundamental Sources: These sources are four in number:

- (I) The Holy Quran.
- (II) The Sunnah (teachings) of the prophet of Allah.
- (III) “Ijma” or consensus of opinions of the jurists of the ummah.
- (IV) “Qiyas” or analogical deduction or analogy.

Literally “Qiyas” means to examine, approximate or to measure while technically it means comparing “Furoo” a sub-division of Islamic law, to “Asl” to a situation which ruling is in the text of Quran or Sunnah, because of a common cause.

In Qiyas it is important to determine the operative or effective cause of a known ruling, because the rule exists if the operative cause exists. The operative

cause is called “illati Jami’a” or “illati Mushtarakah” it means that Islam has not made things black and white but gave principles and gave rules for further expansion of these principles and its application.

2. Secondary sources: from these sources there a few as listed below:

a) “Urf” or customs, usages, and conventions.

-When the Prophet was sent to the people of the Arabian Peninsula he classified the customs of Arabia into three categories

(I) Totally bad and evil customs like idol worship or the burial of newborn girls alive. The Prophet nullified it from day one and said the first is wrong to Allah and the second is wrong towards humanity and to the closest human to parents, which are the children.

(II) Good customs, like blood in an accidental murder, their custom was to give one hundred camels to the family of the murdered one, so the Prophet kept it as is.

(III) A custom partially good and partially bad, like marriage. The Quraish used to do marriages but without giving any right to the women even regarding consent for marriage, she was forced and even in cases there was no word for the family of the girl when a

strong or wealthy man put his hands on a girl. Also they used to inherit woman like the widow of the brother, uncle, nephew or cousin. Also they had as many wives as they wished and to desire a woman whenever they wanted. The Prophet reformed the custom of marriage, that women are also human beings that have reason, intellect, and equal to men as a human, so her consent is must for marriage, dually approved by her guardian for her further respect and dignity. Then she had her due rights in the light of Quran and Sunnah. Also the Holy Quran limited the number of wives to four only and that is also if one can do justice to them, otherwise he will be suffering for that injustice in the hereafter. Also the Prophet of Allah said that there must be two witnesses at the time of the marriage to bear witness this contract to further dignify it. And there also is bridal money or any valuable thing to be given to the lady as a mask of respect and a gift. And Allah and his messenger said, the husband may provide her a place for residence that he can afford, and provide here the needs and necessities to his scope and may not give her mental torture. So these were the reforms towards this practice and custom. So any custom that does not go against Shariah is not only permissible but based on it laws could be framed.

- b) “Istihsan” or preference to a Qiyas that is a little bit ambiguous over a Qiyas more obvious because the people do a practice which is ok to the first one but not to the later type of Qiyas so that is legalized because of their pre involvement in that, or because of their needs and necessities. This is according to Imam Abu Hanifah.
- c) “Istislah” or public interest. This means to make a law for the good of the general public, which does not violate the basic principles of Islam. This is according to Imam Malik.

This shows that Islam has left a vast field of legislation to the human reason also. Because issues arise and need solutions so if there is no expressed solution, then it is logical to find a solution for it and that is also required by the finality of prophet-hood by the Prophet Muhammad.

# Chapter 11

## The Source of Khalafah

By the source of Khalafah we mean who has the right to give this responsibility to someone?

Basically the kingship, lordship and rule belongs to Allah, as Allah said:

**“Rule is but for Allah” (6:57/12:40&67)**

**“Behold to him (Allah) is the rule” (6:62)**

**“Surely his is the creation and the rule, blessed be Allah the lord of the world” (7:45)**

**“And He (Allah) makes none to hare in his rule” (18:26)**

**“And in whatever you differ, the decision thereof is with Allah” (42:10)**

There are ten's of verses that say that Allah is the Lord, the King, and the Ruler, this is but a matter of faith as Allah said:

**“And whosoever doesn't judge on what Allah has sent down then such like people are the disbelievers” (5:44).**

There is belief and then there is practice. If a Muslim does not believe in the rule of Allah then he is a disbeliever, and if he believes in it, but does not implement the rule of Allah even though he has the power and the authority, then he is a wrongdoer and a rebellious against the command of Allah.

**Allah said:**

**“And whoever doesn't judge on what Allah has sent down then such like people are the wrongdoers” (5:45).**

**“... Then such like people are the rebellious” (5:47).**

So from an Islamic perspective all types of supremacy and sovereignty go to Allah. In the world and throughout its history we see that this supremacy goes to a person who is called either the king or he is a dictator, while in the present world the popular notion is democracy, which means the supremacy goes to the general public even though the general public elects in one way or the other, but if the elected people are not subject to a supreme and sovereign entity then again it will go towards the specific group or class dictatorship and aristocracy, which is defined as the rule of an hereditary upper class/privileged class. Yes here we see if that is hereditary then at least that is a traditionally upper privileged class and the supremacy goes to that class.

Islam does not believe either in the supremacy of the privileged class nor that of the general public, but rather in the supremacy of Allah alone and that's what the "Kalimah", or declaration of Islam says "There is no god but Allah and Muhammad is the messenger of Allah". This pledge of allegiance means that humans are subject to Allah in the ways shown by the Prophet Muhammad. So neither an individual is a source of law, nor the general public, and neither a specific class of people but only Allah. Yes, Allah has given the right to the ummah to appoint their "Khaleefah" who must have the required qualities and who may be the agent of Allah to apply and implement his rules, and who may be the servant of the public. Allah said to the Prophet even:

**“You are not a dictator over them” (88:22)**

**“ You are not the one to compel them by force” (50:45)**

And Umar the second successor of the Prophet said when addressing the public “I swear by Allah, I am not a king to enslave you through kingship or by force, I am not but one like you, my position towards you is like the guardian of an orphan towards him and his belongings”.

So as in Islam the “ummah” has to appoint their ruler according to the revealed and divine Shariah, that’s why the in Islam the divine Shariah along with the ummah is considered as the source of rule, which means that source of law is Shariah and source of practice is the ummah. So the ummah appoints the ruler, then they obey him and advise him whenever it is needed and they impeach him when it is required. This rights of the ummah are mentioned by almost all four schools of thought, as Ibn Khaldun mentioned in “Al Muqaddimah”, Al Mawardi in “Al-Ahkamus Sultania”, Al Baqilani in “At-Tamheed”, and Shah Waliullah in “Hujjatullahil- Baalighah”

## Chapter 12

# How to Appoint and Determine Someone for Khalafah?

Islam and Islamic history hasn't mentioned one specific way for this procedure, in this regard the practice in the time of Sahabah as they were the "Khulafa" (successors) and Khalafah started with them. So lets look into the history.

As we said that Khalafah and Khaleefah are must to rule the affairs of the state as a vacuum brings unsolvable problems and that is why right after the death of the Prophet, the "Ansar" (natural inhabitants of Madinah) gathered together in the porch of Banu Saa'idah to choose a Khaleefah. They were of the view that the messenger of Allah was the messenger and he was our ruler as well, but now, as he is not there anymore, then we the natural inhabitants have the right to be the Khaleefah, and they wanted Saab ibn Obadah, the chief of the Khazraj tribe to become the Khaleefah. Some "Muhajireen" (the immigrants) were also present. When Umar heard about the meeting, he took Abu Bakr with him and came to the porch, Umar told them that the Prophet said that the "Ameers" after me will be from Quraish so they sat down and became quiet. Then Umar gave his "Bai'at" or pledge of allegiance by placing his hand in the hand of Abu Bakr and said that the Prophet had chosen him for our leading in Deen (prayers), so can we not choose him for our leadership in worldly affairs? After Umar pledge allegiance, many other people followed him and gave their pledge as well including those

“Ansar” (imam Nawawi narrated similar narration from Ali as well). Before this saying of Abu Bakr and referring to the Prophet, the situation got so aggravated that it was close to a fight and a suggestion was given that there may be one ameer from the “Ansar” and one from the “Muhajireen”. So basically those who were there gave their pledge right there and then and later on the general public gave their pledge on the second day in the masjid. The general public realized that those who were considered “Ahlul Halli wal Aqd” chose Abu Bakr. We will talk about them and their qualities insha Allah.

When Abu Bakr was in last days he had experienced the dispute on who was going to become the khaleefah after the Prophet, so he decided to choose one from amongst the major Sahabah. He wanted Umar or Ali to become the khaleefah but later on he got inspired to choose Umar, whom he thought was the best choice. Abu Bakr was asking everyone that came to inquire about his health about Umar. He asked Abdur Rahman ibn Auf, and he said by Allah he is the best choice but he a little hard. Abu Bakr said, he was hard because I was very soft. Uthman said you know him better than us. Ali said his inner self is much better than his outer and nobody is like him. Osaid ibn Hudam said the same thing about Umar as Ali said. Saeed ibn Zaid and others also praised Umar and spoke very highly of him.

Then Umar asked Uthman to write the document that said:

In the name of Allah, the Beneficent, the Merciful

This is what Abu Bakr the Khaleefah of the Messenger of Allah promised with at the time of his departing from this world and entering to the other one and in a situation in which the disbeliever is becoming a believer and a wicked one fears, verily I have appointed upon you Umar the son of Khattab so if he does kindness and justice so that is what I know of him and that is my opinion in him. But if he did injustice and changed so I do not have any knowledge of “ghaib” (unknown/unseen) and the best I have intended and for everyone is what he has done.

**“And soon the unjust will come to know which side they are going to turn (or laying down/folding down)” (26:227)**

So Umar became the Khaleefah as Abu Bakr appointed him and the people assented that.

When Abu Lulu hit Umar at dawn prayer and was seriously injured, the Sahabah asked him if he could appoint someone? Umar said whom shall I appoint? If Abu Ubaidah was alive, I would have appointed him and when Allah would have asked me, I would have said that your messenger said, Abu Ubaidah is the trustee (trustworthy person) of the ummah. And if Saalim the liberated slave of Abu Huzaifah would have been alive, I would have appointed him and when Allah would have asked me, I would have said that your Messenger said that Saalim is in a great love with Allah (in some narrations it is said that his a man that loves Allah and Allah loves him). One of them said let me show you a person that is eligible if you would appoint him. Umar said whom? The man said Abdullah ibn Umar (son of Umar). Umar said, “May Allah punish you (this was term used is a disliked occasion)! We have nothing to do with your affairs. It is enough for the family of Umar that only one man is put to accountability for this duty. I strived hard and deprived my family and if I escape from this accountability having no reward for it, and having no sin also, then for sure I am a lucky person”. Then he said “If I would have appointed someone the indeed one who was more better then me (Abu Bakr) he had done it and if I did not, then the one who was more better than me (Prophet of Allah) had not done it”- which means both ways we have the procedure of choosing a Khaleefah.

Once again the Sahabah came to him asking to appoint someone but he said, I am leaving this to that group whom from the messenger of Allah was happy when he was leaving this world and said they are from the people of paradise. They are Uthman, Ali, Sad ibn Abi Waqqas, Abdur Rahman ibn Auf, Zubair ibn Awwam, Talhah ibn Ubaidullah and with them Abdullah ibn Umar but he will not be a candidate for Khalafah. So the Khalafah will be from the six afore mentioned Sahabah, but if there is a tie in the vote, as in 3:3, then the vote of Abdullah ibn Umar will be the decisive vote and if they did not agree to it, then they should be with the group of Abdur Rahman ibn Auf. Then Umar ordered Suhaib to lead the prayers after his death. And ordered Uthman, Ali, Zubair, Sa'd, Abdur Rahman, and Talha if he arrived (as he was outside Madinah) and bring with Ibn Umar with them to figure out who should be the next Khaleefah. They were told to choose a Khaleefah before the fourth day of his death.

Then Abdur Rahman mentioned to not consider him for this responsibility and they agreed, then they gave the authority to Abdur Rahman to help complete the process. So he asked Ali, if he is not chosen then who should be the Khaleefah? Ali said Uthman, and then he asked everyone separately so each one except for Uthman, wanted Uthman to be the Khaleefah, while Uthman wanted Ali to be the Khaleefah. Also Abdur Rahman asked the chiefs, elders, and others whose opinion was very important. So after dawn prayer, he addressed the people in the masjid as

people were waiting for the decision on who will be the Ameer, Ammar ibn Yasir said it should go to Ali and Miqdad ibnul Aswad supported him while Abdullah ibn Abi Sarah said it should go to Uthman and Abdullah ibn Abi Rabee'a supported him and the arguments began. So Sa'd ibn Abi Waqqas told Abdur Rahman to go ahead and finish the job, so the dispute would not be extended. Abdur Rahman asked Ali to come forward, and was asked, I give you an oath by Allah that you shall follow the book of Allah, the Sunnah of his Prophet, and the practices of the two successors before you. Ali said I would do the best to my knowledge and power, Then Abdur Rahman asked Uthman and repeated to him the same oath. Uthman replied yes, and after he was given the pledge.

Then Uthman addressed the people and gave them religious advices, telling them about the temporary life of the world and the permanent life of the coming world and also told them about justice and kindness to others and specially he mentioned the "Zimmies" non-Muslim citizens in the state.

It is said that the reason why Abdur Rahman gave the pledge to Uthman over Ali is because Ali didn't give his response with surety, but to us that was not the only reason. Another reason is that the majority of the council selected by Umar

voted in favor of Uthman and also the majority of the chiefs and elders that Abdur Rahman asked were in favor of Uthman as well.

Later on when rebels killed Uthman, people rushed to Ali and asked him to take over but Ali said thus is yours, This is a case of the people of Badr, then he said where are Talhah, Sa'd and Zubair. So they came and gave their pledge to Ali and then others followed soon after. This was the only way at that time because they were facing a situation with great turmoil due to the killing of Uthman.

While Ali was the Khaleefah he deposed a few of those who were appointed by Uthman such as Muawiyah ibn Abi Sufyan who was the governor of Sham. Muawiyah refused the Khalafah of Ali by taking a plea for the retribution of Uthman first, while Ali was of the view to wait and let the situation calm down. The reason why Ali wanted the situation to calm down was because the actual killers are not known, so he may inquire to fend out the wrong possibilities. This caused disputes and battles between the two parties, and when Ibn Muljam killed Ali, the Muslims gave their pledge to Ali's son Hassan. Battles continued between Hassan and Muawiyah until Hassan's forces were defeated and he saw that the

situation of bloodshed is proceeding, so in order to stop the bloodshed Hassan withdrew from Khalafah and gave his pledge to Muawiyah.

Now keeping in view the historical context of the Sahabah, the ummah said that for the appointment of a Khaleefah there are four ways.

1. The “Bai’at” of “Ahlul Halli Wal Aqd” as it was done in the case of the Khalafah of Abu Bakr.
2. Appointment by the Khaleefah as Abu Bakr did it in the case of Umar.
3. Appointment of a Shura (council) to choose one from amongst them as it was in the case of the Khalafah of Uthman. Which was supported by the general public or to a great extent it was also in the Khalafah of Ali as well because he was sitting in the masjid for the general public to give him the pledge of allegiance.
4. To take over by force as we can see an example of it in the case of Muawiyah. In the Hanafi school of jurisprudence the jurists say that the Khaleefah could be appointed either through “Bai’at” or be appointed by the previous Khaleefah or to become Khaleefah by force (Radd-ul- Muhtar). Ibn Humam said, one could become a

Khaleefah either by the “Bai’at” of people of opinion (Ahlul Halli wal Aqd) or by force (Al Musayarah).

Ibn Nujaim mentioned Bai’at only but implicitly he indicated to force as well, as he said if someone gets into power by force and he is doing wrong but has the control of the state, so his deposition doesn’t take place itself and as he has power so if he doesn’t listen to those who have the right to depose the ruler, he still remains in power. And if he has lost the power then his Bai’at means nothing because for the Khaleefah, two things that are must:

- (I) Ahlul Halli wal Aqd have given him the pledge.
- (II) He got the power and authority over the people to make them submissive to his order and rule.

In Maliki fiqh they also mentioned these three ways (I) The Bai’at (II) the appointment by the previous Khaleefah (III) taking it by force (Ad Dusuqi with Ash Sharhul Kabeer)

In Shafi’i fiqh books these three ways are also mentioned (Nihayatul Muhtaj & Tuhfatul Muhtaj). The Hanbali School also has the same view (Al Mughni, Kashshaful Qana).

Allamah Aamidi and Imam Ash'ari both mentioned only two ways (I) The Bai'at (II) the appointment by the predecessor (Abkarul Afkar).

Allamah Eiji in "Al Mawaqif" also said these two ways. But Allamah Qurtubi in his "Tafseer" mentioned all those ways that we have mentioned before.

Hafiz ibn Hazm said that the best way is the appointment by the predecessor. According to Ibn Hazm putting Abu Bakr on the prayer rug in his lifetime by the Prophet was appointment for Khalafah and Abu Bakr did it in the case of Umar. This is a good way to avoid feuds and turmoil.

While some other scholars said that the case of Abu Bakr was not the case of appointment for Khalafah but he became Khaleefah based on Bai'at, while Umar also became Khaleefah with the Bai'at of the general public, but on appointment by the predecessor, Ibn Hazm claimed an "Ijma" (consensus of Jurists).

Allamah Jawaini said that for the legitimacy of Khalafah it is not must that all people in the state approved it because Umar was proclaiming orders and yet the news was not received by the people in the far flung areas (Al Irshad). So to him the Bai'at of Ahlul Halli wal Aqd is enough.

Shah Waliullah also mentions the four ways we mentioned but he said there are (I) Bai'at of Ahlul Halli wal Aqd (II) appointment by the predecessor (III) appointment of a Shura to elect one from amongst them (IV) taking it by force.

Now we say that in today's world the best practical way is the Bai'at of Ahlul Halli wal Aqd and assented by the people after that. Yes in cases the appointment by the predecessor could be recommended but,

- (I) The appointee must have the required qualities for Khalafah.
- (II) May be assented by the people
- (III) The appointee shouldn't be from the close family of the predecessor.

As later on the procedure could be abused, and that is why Umar refused to put his son even in the candidature even though he was eligible. So in abnormal circumstances this appointment can take place as well.

Khalafah by force gets its legitimacy as a necessity and situation because when he dethroned the Khaleefah then it means that the Khaleefah lost control of power, which is an requirement for Khalafah. But this new candidate must have the qualities for a Khaleefah and that Ahlul Halli wal Aqd gave him the pledge and the people assented it as well. Because people

cannot dethrone this new leader by force, as he is the prevailing force and also he can implement the laws very well due to having power over the country.

Allamah Sharbeeni said that if someone grabbed power by force then it is ok if he has done it after the death of the Khaleefah or got it from a Khaleefah who was also a Khaleefah by force, but if the first one was a Khaleefah by appointment by his predecessor or by Bai'at then this type of Khalafah is not legitimate (Mughinil Muhtaj).

Jalaluddin Al Muhalli and Allamah Ramali agreed with this view.

Ibn Qudamah a Hanbali scholar said that Abdul Malik ibn Marwan killed Abdullah ibn Zubair and then got Bai'at from the people of Makkah and from the areas of ibn Zubair, and then a movement against him wasn't ok because of the fear of bloodshed (Al Mughni).

So in the life of the deposed one by force, the rule of the new one became ok because of the circumstances.

Hafiz ibn Hazm said that at the time of the death of the death of the Khaleefah if someone got it by force, then that is ok if there is no one else to contest (Al Fas'l). But the example he gave at the death of Uthman, Ali took over by force does not make sense to us. This was not the case at all, Ali was

a contestant with Uthman and he also was the runner up while Uthman was the winner and now since Uthman died it was left for Ali to be the leader. Ali still wanted the general public to come and approve of his Khalafah, so he sat in the masjid and people came and assented to it.

Abu Yala related that the time of the tragedy of “Harrah” when Madinah was attacked, Imam Ahmad led the prayer and said; we are with the one who overtakes (Al Ahkam As Sultania).

The reason is that the first Khaleefah lost power of the state and now he can't protect and defend the people and their rights any longer.

Allamah Dusuqi said that when someone took over by force, then that is ok even though he lacks some of the required qualities because to save the lives, defend the rights, and maintain order are must (Hashiyatul Dusuqi).

Also Allamah Sharbeeni said that in case of taking by force, the Khalafah of an ignorant and of a Fasiq is also ok.

Now another issue arises, is that is it ok to take power by force? Not at all but the proper procedure may be followed. In this regard the best way is the Bai'at of Ahlul Halli wal Aqd.

Some Ulama say that a Khaleefah can appoint his father or his son as well and other Ulama have said he can appoint his father but not the son as

the fathers case will happen very rarely, but in the case of the son the disadvantages are more than the advantages, because the father is inclined to him by nature and not because of the qualities. But Jumhoor (majority of scholars) said that it is not ok for immediate family like father, son, or brother to become the rulers. They say this is like testimony in favor of ones kin and that is not accepted in Shariah.

Allamah Aamidi said that the proper way is the Bai'at of Ahlul Halli wal Aqd according to Sunnis, Zaidis, and Mu'tazilah (Abkarul Afkar).

But as in case of appointment or grabbing it by force, the people give the pledge anyway so actually It becomes legitimate by that Bai'at, it becomes so because of the situation and under the doctrine of necessity.

The appointment of the "Shura" (Council) of six people to appoint one from amongst them by Umar was also a type of appointment according to Allamah Mawardi, we say that was a combination of a type of appointment and Bai'at of Ahlul Halli wal Aqd. Imam Ghazali said that Abu Bakr by appointing Umar had given him a pledge but that was a pledge of one person while Bai'at means to get the opinions together, so when other major Sahabah also did the same then it became approved. Umar himself said, who ever gave Bai'at to anyone without the Muslims that means nothing and regarding the appointment of the Shura of six by Umar, Abbas said to Ali that

you shouldn't have accepted the membership of that Shura (he meant that he should have appointed you) but Ali said that it was a matter of due importance (Al Muqaddimah, Mughinil Muhtaj).

So "Istikhlaf" or appointing someone for Khalafah without taking a Bai'at does not become legitimate, and that is why when Banu Ummayyah started this trend of "Istikhlaf", with all their good and bad still they were in need of the Bai'at and they use to take it even though in most cases the people did not have their word to say but gave the pledge. Umar bin Abdul Aziz openly said on the pulpit that I have been appointed without my consent and without your consultation, so I leave you free to choose your Khaleefah but as a known pious, just and trustworthy man the people forced him to be the Khaleefah.

In case of appointment as long as the appointing imam is alive he can take it back like a will, the testator can take it back as long as he is alive.

Even though this is not a recommended way to appoint his son for example, but if he did it and the people later on gave their pledge to him then it becomes legitimate, because that appointment by the Khaleefah is only a promise by him, maybe it is for a strange person or for his own kin, but he must have the qualities at the time of that promise and at the time of Bai'at.

Also the one to whom it is promised may not have refused it expressly until the death of the promising one (the previous Khaleefah).

If the promised one was not present at the time of the death of the Khaleefah then someone should be put in charge because of necessity not to have a vacuum. If the Khaleefah had promised it to more than one without sequence and priority then whosoever is given the pledge by the people first, then he is the Khaleefah and if he put a sequence then it should be followed.

Imam Bukhari and other narrated the story of battle of “Mu’tah” that the Prophet appointed Zaid ibn Haarith as “Ameer” (leading General) of that expedition and said if he got martyred then Jafar will lead and if he is also Martyred then Abdullah ibn Rawahah and when he is martyred then Thabit ibn Arqam grabbed the flag and said with a loud voice to the Muslims, to agree on someone to lead them, they said you should lead us, but he refused then they agreed upon Khalid ibn Waleed.

This story gives us the concept of three leads one after the other, even though this was an appointment for a specific duty, but still as the practice of the Prophet and being a source of law gave us the basic concept. Also that story gave us the way to choose the leader as well.

Regarding Khalafah's appointment, witnesses are not must to legitimize it. But as it may be the case that people will deny and say that no nomination has taken place so to counter that there should be witnesses to testify that the previous Khaleefah has nominated this person.

For the battle of Nehawand, Umar also appointed Huzaifa ibn Yaman and after him Numan ibn Muqrin and in the battle of Jaser, Abu Ubaidah the leading commander said, if I get killed then Jubair and in case of his martyrdom, Murr will lead the mission.

So the nomination of someone for Khalafah by the previous Khaleefah is a just candidate for Khalafah as Umar became a legitimate Khaleefah with Bai'at and Uthman was elected and given Bai'at by the Shura first. Hafiz ibn Taymiyyah said so in his book "Minhajus Sunnah". And when the appointee/nominated one has the required qualities then this is preferred way according to Hafiz ibn Hazm.

In brief we can say that like prophet-hood, the Khalafah does not have any room to be inherited. As inheritance goes to the heir anyway whether he is a good person or an evil one and whether the dead individual said it or kept quiet on the matter.

**Allah said:**

**“And (remember) when Abraham got tested by his Lord with a few “kalimat” (tests) so he did it perfectly. He (Allah) said, verily I am going to make you an imam for people (humanity). He (Abraham) said and (make imams) from my offspring. He (Allah) said, my promise will not include the wrongdoers” (2:124).**

## Chapter 13

### “Ahlul Halli wal Aqd”

Literally it means the people of “Halli” and “Aqd”. Literally “Hall” means untie, solution, analyze, or to resolve, while “Aqd” means to tie, to contrast, conclude, ratify, determine, bond, obscenity, complexity.

Keeping in view these aforesaid meanings of these two words, these people and their qualities in one way or the other. They can put knots and tie and they can untie and resolve complicated issues and determine and ratify.

This term of Ahlul Halli wal Aqd is very frequently used in Shariah and is defined as the people who select or elect an imam and give him the “Bai’at” (pledge). Jalaludeen Muhalli said in his footnote in his book “Minhaj” that these people may have the qualities of a witness in Shariah to be a just, honest, integrated, knowing the required qualities for Khaleefah and to know that the one we are going to elect has these qualities.

Allamah Bahuti from the Hanbalis also mentioned this (Kash' Shaful Qina). Al Mawardi gives them the title "Arbabul Ikhtiyar" or people who have the right to choose.

But how are these Ahlul Halli wal Aqd going to be determined? It all depends upon circumstances, situation, and culture. In Islamic Shariah there are terms "Ijma" or "Olul Amr", so for Ijma they said that in Fiqhi issues it is the consensus of opinion of the jurists, while for different fields there are different experts or leaders, and for the Khalafah it has two sides, (I) its religious side, (II) its worldly side. So in Ahlul Halli wal Aqd both of these side maybe taken into consideration. So the scholars said, that Ahlul Halli wal Aqd are the religious scholars, the chief of tribes, the social leaders, the people in authority, and the commanders. So when such people agree on someone and that is not against the Quran and Sunnah then it is binding to follow.

Regarding the numbers of Ahlul Halli wal Aqd there is no specific text, but it depends on the situation. When Ahlul Halli wal Aqd ask an eligible person for the responsibility, but the person denies it, then they cant force him because this is a contract that requires mutual consent. Yes for the said purpose they must look for a person who qualifies for the responsibility

in the best way, and in this regard they also have to look into the facts so they can decide which person should be given priority in such circumstances.

## Chapter 14

### The Required Qualities of a Khaleefah

As we mentioned before that the Khaleefah will be chosen but how will he be chosen? So we said that the decision goes to Ahlul Halli wal Aqd and they will choose and give him a pledge then after that the general public will comply. But the important thing is who is actually eligible for Khalafah. As it is a known fact that in every field the qualified one is given the responsibility. Also various departments inquire about his record, otherwise they reject him for the post even though he is of a high-ranking post and responsibility. On one hand the Khaleefah is the agent of Allah to implement his rules, while on the other hand he is the custodian and guardian of the general public. How sensitive is this post? So the Khaleefah must have the following qualities:

1. Must be a Muslim because he is the guardian of the Deen of Allah and he has to implement it so if he doesn't believe in Islam, then how can he show sincerity to that Deen. This is just like the condition in the modern age that the head of the state must be a citizen of that state by birth and for other responsible posts to be a citizen by naturalization at least.

2. Must be "Adl"- which means he is an adult, sane, and just person. He needs to be sane and a mature adult because he will command, judge, and guard the state, people and their rights as well. And for the said purpose justice is must as,

**Allah said:**

**"Do justice, that is closer/nearest to piety"(5:8)**

**"Verily Allah commands for justice and kindness"(16:90)**

This justice by the people in authority is must even in case of an enemy.

**Allah said:**

**“And let not the hatred of a people take you towards transgression because of that they have stopped you from Masjid Al Haram (to perform your worship)” (5:2).**

Because that is the duty of a Muslim for Allah.

**Allah said:**

**“O you who believe! Stand out firmly (be rulers) for Allah and be just witness. And let not hatred of a people take you towards injustice. Do justice, that is nearest to piety and fear Allah, indeed Allah is all aware of what you do” (5:8)**

**“O you who believe! Stand out firmly (be rulers) for justice, witness to Allah even though it be against yourselves or your parents or your kin, be he rich or poor Allah is prior to them both, so follow not the lusts so you may do justice and if you distort or turn your face, then Allah is all aware of what you do” (4:135)**

It became clear that in testimony and in rule two things are must

- (I) To be just to All.
- (II) To be for Allah.

So injustice or discrimination is not permissible. “Adl” or being just is known with qualities like truth, trustworthiness, avoiding forbidden and disliked things and practices, and sins of every type, self control in anger, avoiding any doubtful thing, having dignity in his movements.

3. To be a jurist - as he has to implement the rules of Shariah and sometimes situations come up which need immediate response so if the Khaleefah doesn't have the qualities of a “Mujtahid” (Jurist) then how will he deduce and respond. So he must know the political, economical, cultural and social changes as well because issues which do not exist in Quran and Sunnah, but needs deduction. So even though these rules are deduced but in a different situation, so when the situation changes a new deduction is needed. That's why Khalafah requires knowledge of Shariah and Fiqh.

Note: By Shariah we mean the rules clearly mentioned in the text of the Quran and Sunnah or when Ijma has taken place, in this regard these rules are unchangeable. While Fiqh here means the deduced laws and these are changeable but only by the authentic jurists. So the Khaleefah has to be a jurist because sometimes there is no time to consult a jurist and to seek his advice and opinion.

4. To be a man of strong will- so whenever he found something good for the state and the people, then he neither feels fear nor fears any reaction from the general public. And without any fear he declares what he thinks is best for the state and the people.

**Allah said:**

**“O you who believe! Whoever from among you turn back from his Deen, then soon Allah will bring a people, he will love them and they will love him, humble towards the believers, stern towards the disbelievers, striving hard in the cause of Allah and never afraid of the blame of a blamer” (5:54)**

Because rule will never take place with fear and even with reservations. In other words it means he must be a brave and courageous person.

5. He knows military defense tactics, because he is the supreme commander so he must know these affairs to a considerable level, otherwise he will not be able to make a decision of war and peace.
6. To be a good political planner in a sense that he knows how to tackle different issues and resolve, and that the people have trust in him in this regard.

7. Must be a man- when the daughter of the Persian emperor took over the kingdom, the Prophet of Allah said “Never will a people get into success that turned over their affairs (state and government) to a woman (Bukhari).

Allah has given different qualities to different individuals and all over the world different responsibilities are given to different individuals and no one makes an objection to it as that is either given to them because of their natural ability or because of their earned qualifications. In the same way Allah the Creator has given different qualities to different genders, you can observe that from their structure. Now observe how men usually have a commanding voice, while female have a soft one. Their structure also has similar differences.

**Allah said:**

**“And do not cover that by which Allah has made some of you excel others, men shall have the benefit of what they have availed and women shall have the benefit of what they availed and ask Allah of his grace. Surely Allah is the all knower of everything” (4:32)**

This verse expressed that both male and female genders have their own natural achievements and based on that Allah has given them their specific

responsibilities and that is why Allah said that ask Allah for his grace means to empower you to fulfill your obligations and why is the case so? The answer is that the male and female genders are Allah's creation and his decision and he is the all knower of everything.

There are rules and laws equal for each and everyone, whether it be male or female, rich or poor, rulers or the average person like prayer or fasting, but there are rules and laws which differ from person to person, like Zakat and charity is due on the rich but not on the poor. For example when travelling a person prays two Rakat instead of four, while when a person isn't travelling they pray four Rakat. A Muslim ruler has been made bound to implement the penalties of Shariah but that is not the duty of the general public. These differences come about because they don't have the capability to do it or because it will cause a person hardship, the differences are not meant to deprive someone but to drop some responsibility from them. A man as long as he is sane, he is bound to pray even though he cannot pray standing due to some illness, so he must pray sitting. But a woman when she is on her menstrual cycle, she is not bound to pray neither at that time nor later on and she is not bound to fast at that time but she must make up the fast later on. Same is the case of Khalafah and Khaleefah's duties in Islam, it is not a right but a duty and that's why the Prophet said that to be the ruler is a big test. So if Khalafah is considered a right, then not to have a woman as a Khaleefah has to be a

deprivation, but when it is considered a duty in Shariah then the one who has been dropped from this huge responsibility should be happy. And that is why a God fearing person whenever he is put into such a responsibility, which is to worldly people is considered a high status, but these God fearing people are never congratulated for that, rather they have been consoled or even condoled. They even ask their well-wishers to make “Dua” (supplication) for them so they aren’t held accountable for that on the day of judgment.

An important point to note is that throughout the world there is a vote by the general public and there is parliament and the laws and rules are coming to the parliament and debated on. And then a due process takes place and after that the head of state signs the law and it becomes an act, which means that the head of state doesn’t have absolute power. So if such a system exists then can a woman be Head of the State or not? Also in a parliamentary form of government the head of the state is a symbolic leader, while the chief executive is the prime minister, or in a Constitutional Monarchy the king and queen are a symbolic head of the state, in this form of government the prime minister is also the chief executive. While in Khalafah the Khaleefah is the head of the state and chief executive and he is not subject to the parliament, but he is only subject to Allah and his Deen. So if a Khaleefah is not of that perfect Islamic form, but of this democratic form of government in which he doesn’t have that status of head of the state and chief

executive then what will be the fatwa (Islamic ruling) about the rule of woman?

This is a question that must be answered, because a woman to be in power and position other than the Khaleefah, the Fuqaha haven't put any restrictions on that.

The case is only that of a Khaleefah. While in a democratic form of government he/she will be just like a spokesperson of the state and government, but still it depends on what type of power he/she has. As we know that in executive branch of the government the president has the veto power regarding any act or law so still there is some type of absolute power with him/her as a president. But Islam is a system and that system must be taken into consideration as a whole, that the Khaleefah is the agent of Allah, dually elected by Ahlul Halli wal Aqd and approved, verified, and asserted by the general public. The Khaleefah must be their guardian, custodian, and servant and being the head of the state and chief executive and subject to Allah and his Deen, then for such a person it is must to be a man as such a huge burden may not be put on the shoulders of a woman. That will over burden her, and that will be against the softness of her nature, and also against her dignity and natural decency.

8. He may be bodily fit- Allamah Mawardi said, that defect in this regard is of three types:

(I) Defect in senses.

(II) Defect in organs parts of body.

(III) Defect in power and freedom of action.

As for defect in senses is concerned, that is also of three types:

(A) That defect which obstruct and prevent someone to be an Imam.

(B) That defect which doesn't prevent one to be an Imam.

(C) That defect regarding which there is a difference of opinion amongst the scholars.

The first one is insanity and blindness, the second is the loss of smell, or loss of taste, these two defects don't have anything to do with being an Imam and Khaleefah, as they don't affect intellect and opinion. While the third one is being deaf or dumb, these two prevent one to become a Khaleefah, but if an Imam lost it after he became Khaleefah, so one group says, it causes him to be deposed from his duty like in the case of blindness as these both affect planning and action, while another group says that he can do his job with indication and sign language. There is a third group that is of the view that if he knows writing then he is ok because writing is a clear method of expression, while indication and signs still have some ambiguity. But the first opinion is the preferred one, that becoming dumb and blind takes him out of his post.

As for the defect in organs is concerned, that is of four types:

- (A) That defect which neither makes him look bad nor affects his intellect and opinion, for example the person's penis is cut or he is castrated or his ears are cut. In this case he could be chosen as Khaleefah and he can carry on his duty as Khaleefah if these are cut during Khalafah.
- (B) Defect in hands and legs, if both hands are cut then he cannot do anything and if both his legs are cut then he cannot stand, in such a circumstance he cannot be chosen, nor can he carry on his business as imam if these body parts were cut when he was a Khaleefah, so he may be deposed.
- (C) That defect with which he could not be chosen, but if he was a Khaleefah and it happened to him then this becomes a disputed issue amongst the jurists, one group says he can carry on with his duty, while another group says, no he cannot and that is if one of his hands is cut or one of his legs are cut.
- (D) That defect which doesn't affect the Khaleefah to carry on as being the Imam, but regarding candidature as Imam there are two opinions, one group says he can be chosen as Imam, while another opinion is that he cannot be chosen as imam. And the example is if his nose is cut or if he has one eye.

And as for defect in power and action is concerned, that is of two types:

(A) “Hijr” as in if some of his ministers took control from him in which he has the defacto power to do or undo a thing, so now if that is in accordance with Shariah, then those actions are ok and if that is against Shariah, then those actions may not stand and in such a case the minister concerned must be deposed.

(B) “Qahr” like he is confined and imprisoned illegally by his enemy in such a way that he cannot set himself free, in such a case he cannot be a candidate for Khalafah but if he was Khaleefah and then he got confined, then the entire ummah is bound to help release him and if they became disappointed and gave up their hope in his release then he is deposed.

These are the details according to the Sunni school.

There is another quality and that is:

9. Lineage: That the Khaleefah must be from Quraish as Abu Bakr narrated the Hadith that the Prophet said the Imams after me will be/may be from Quraish (Ahmad/Abu Yala/ Tabarani/ from Bukair ibn Wahab). But we say that this hadith is interpreted as the Prophet given news but still we say no, but when Abu Bakr said it, they took it as a rule and order. So then we say that the Prophet said that this “Amr” (Khalafah) would be in

Quraish as long as they keep straight or as long as they implement the Deen. Also the Prophet said be straight with Quraish as long as they are straight with you (Tabarani). Also Bukhari and Muslim narrated that people are the followers of Quraish, the Muslim for the Muslim and the disbelievers for the disbelievers. So these Ahadith make it clear that as long as they are sincere to Deen they should be the rulers but if it is otherwise then this leadership will go to others. Or the Prophet means that they have the power, so people follow them and that's why he said the Muslim for the Muslim and the disbeliever for the disbeliever. And that's why Ibn Khaldun said that Quraish was mentioned because of their power, strength, and support at that time and majority of the people used to follow and obey them. So now this following and obedience has to be taken into consideration. And now there is not only one Islamic state but more than fifty. Maybe Quraish are neither available everywhere nor every person from Quraish is eligible for the post. Hafiz Ibn Taimiyyah said Quraish at that time were powerful people and that's why the Prophet mentioned them (Iqtidaa Us Siratil Mustaqeem). And as we mentioned that Shiites say that the Imam is mentioned by name by the Prophet and it is must for the Imam to be holy and having miracles as well. Also they say that if the best one amongst the ummah hasn't been

appointed as Imam that the Khalafah is void and doesn't have any legitimacy.

## Chapter 15

### “Ahlush Shura”

In the Holy Quran Allah praised those who believed firmly and put their trust in Allah and mentioned their qualities as well. One of these qualities that have been mentioned is,

**“And their “Amr” is by mutual consultation (Shura)” (42:38)**

The word “Amr” has many meanings like affair, government etc. In the battle of Uhud when the Prophet achieved victory and those who were appointed on a strategic mountain were told not to leave that spot no matter what happens (victory or defeat), but forty out of fifty said as the battle is finished and our colleagues who fought the war and defeated the enemy are very tired, but they still

are collecting the booty so we should join them to help. Even though their “Ameer” (leader) Abdullah ibn Jubair told them we should wait till we receive a new order from the Prophet but they said there is no need of standing here anymore. So they came down from that mountain and from their back the people of Makkah attacked them and not only was victory changed to defeat for the Muslims but seventy Sahabah were martyred and their bodies were amputated. And even the Prophet of Allah was injured severely. Allah blamed them for what they did but the Prophet never said a single word of blame even implicitly.

**Allah said:**

**“ So with what (a great) mercy from Allah you have become lenient towards them and had you been rough hard hearted they would have dispersed from about you, so pass over (their faults) and implore in the affairs and when you have done “Azm” then put trust in Allah. Certainly Allah loves those who put their trust (in him)” (3:159)**

What is “Azm”? Let’s first see what is the position of Shura then we will come to know the meaning of this term.

First of all we will say that every individual who is an adult and sane person having no legal and judicial restriction on his actions, has freedom to act and to deal his own affairs the way he likes, provided he doesn't violate the laws and rules nor that he harms anyone. Yes if he wants to ask the advice of some one expert in the field concerned that is appreciated, as that is good for him, but if he doesn't then nobody can force him to consult anyone because that is his personal issue and affair. But if that is a matter of collective nature then we will see if there is a clear rule from the Quran and Sunnah, then there is no room for advice and consultation as there is no reasoning against the Quran and Sunnah, while advice and consultation is nothing but reason and intellectual approach and opinion. And wherever there are no clear instructions in the Quran and Sunnah and the issue concerned is of social and collective nature then Shura is the order of Allah and his messenger.

Khateeb Baghdadi narrated from Abu Hurairah that the Prophet said "Ask a clever one for advice and don't disobey him otherwise you will feel ashamed. Imam Mawardi quoted a Hadith "Seek help for your affairs with consultation" (Adabu Deeni Wad Dunya), The Prophet said "Whose advice is sought, he is the trustee" (Abu Dawud & Tirmidhi). It means that whoever advice

is sought he must give the right advice with full sincerity otherwise it would be considered as a breach of trust.

The Prophet himself used to consult his companions. He did the same in the battle of Badr, Uhud, Ahzab etc. After the Prophet, his successors used to do the same as Abu Bakr did in case of the compilation of Holy Quran and Umar did with regards to the land of Iraq.

The question arises that who should be consulted?

Those people who have opinions based on their knowledge, experience etc. Allamah Qurtubi said that in religious affairs the scholar of religion should be consulted and he has to be an intellectual person and in worldly affairs an intellectual experienced person who is affectionate to the person who is looking for his advice because sincere advice needs love and affection.

Ibn Atiyah said that “Shura” is from the basic rules of law and Shariah and one who doesn’t consult the learned religious people then it is must to depose him (Al Bahrul Muheet).

Ibn Adi and Bayhaqi narrated that the Prophet said, “Allah and his Messenger do not need it but Allah made it a mercy for my ummah”. So the Prophet also used to consult in affairs having no divine rule therein.

Allamah Thanauallah Panipatti said Shura means to bring out the knowledge about the best practice after their consideration and thinking (Al Wajeez).

Allamah Shaukani said that Shura is the normal practice of the ummah ( Fathul Qadeer).

In Makkah even the Prophet used to consult with his Sahabah in Darul Arqam. The Khalafah of Abu Bakr was based upon a Shura held in the porch of Banu Sa’idah. Umar’s Khalafah became final in the house of Abu Bakr after that Abu Bakr nominated him. Uthman’s Khalafah was decided after consultation in

“Darul Miswar” and Ali’s case was decided based on Shura in the masjid of the Prophet.

Allamah Panipatti said that Umar in certain cases used to consult women as well (Tafseer Mazhari).

And Umar said “There is no Khalafah but with Shura” (Kanzul Ummal).

Then Allamah Mawardi mentioned five qualities of Ahlulsh Shura (Adabud Deen Wad Dunya):

1. He must be an intellectual and reasonable person by nature and have practical experience, also reason without experience and experience without intellect are not beneficial.
2. He must be firm in faith and righteous in deeds. Umar said “Seek in Deen the advice of those who have the fear of Allah (Seerat Umar by Ibnul Jawzi). And for sure he has to be a scholar of Deen otherwise how

will he give an opinion or advice. The fear of such like people is because they know Allah's power and accountability.

Allah said:

**“Indeed those who fear Allah from amongst his servants are only those who are knowledge”(35:28)**

3. They must be free of worries and grief because it disturbs proper thinking. So at least economically he should be in good condition.
4. Must be a man of opinion, he loves people and people love him.
5. Regarding the issues he is giving his opinion in, he may not have his own personal agenda. As that will be a conflict of interests and humans are weak by nature so he will be looking towards his personal benefit.

## Chapter 16

# Is the “Shura’s” Advice Binding On the Khaleefah?

It is the Khaleefah who chooses his own Shura. Now this is another issue that how will he select his Shura? It depends, when the Shura gave its opinion what about its acceptance and implementation? Expressly there is nothing in the Quran and Sunnah that says that the Ameer is bound to follow the Shura or avoid it. Hafiz ibn Kathir related from Ali that the Prophet was asked about the word “Azm” in the verse

**“When you did “Azm” then put your trust in Allah” (3:159)**

So he said that it is consultation with the people of opinion and to follow that, but we say, it depends, if the Ameer thinks that the opinion of the majority is good for the ummah, then he will go for that and if the opinion of minority is good for

them then he will choose that opinion and even if he has a third opinion of his own that is better to his knowledge, thinking, experience, and situation then that way should be preferred. This is because in Islam priority is not for quantity but rather for quality.

**Allah said:**

**“ And if you obey most of those on earth, they will mislead you far away from the path of Allah. They follow nothing but conjecture and they do nothing but estimation” (6:116).**

Yes, we can say that the people within the Shura are not a certain way or should be some other way, but they are human, so we say that Shura is a discussion and debate so they can make different sides of that issue clear for the Ameer to decide. It is very similar to the debate, discussion, and arguments of the two opposing attorneys who make the issue clear for the judge and court to make a proper decree. It does not mean that the judge puts his knowledge and experience on a side but rather he takes all these into consideration and then decides and decrees, while for a Khaleefah to decide based on his own opinion, which he thinks is more suitable is like a veto by the president or head of the state, or we can say

like an executive order. In the verse 3:159 Allah said after consulting “so when you did “Azm”, the word “Azm” is in the singular form and not in a plural one which means that this “Azm” (strong will) comes from an individual. Also Allah said “then put your trust in Allah” which embodies that, yes sometimes there will be reservations because a majority or sometimes even all of the Shura will agree on an issue but the Khaleefah decided otherwise. That’s why Allah said, do not look at that but go ahead and put your trust in Allah. And strong will means that even if the majority is against you, it still does not cause you to shiver. Umar sometimes used to give priority to the opinion of Ibn Abbas only, even though majority of Sahabah said otherwise. Even the Prophet often times used to give priority to the opinions of Abu Bakr and Umar against the majority of Sahabah, even some of the Sahabah were of the view that verse number 3:159 “And consult them in the affair, meant to consult Abu Bakr and Umar only, and that was according to Ibn Abbas (Hakim).

Imam Ahmad narrated a hadith that the Prophet said to them “If you both would have got together on an opinion, I would not have differed that”. Ibn Sad narrated from Umar, that people asked him if something is not there in the Quran and Sunnah, what should they do then? Umar said, get opinions and decide it based on majority. But we say, it depends because if we will make the Khaleefah subject to the Shura then that is a contradiction.

One point to mention is that nowadays when democracy is introduced by the well off, developed, and powerful countries and people are influenced by it, then undoubtedly the Muslims will have some reservations about this Islamic system in the light of Quran and Sunnah about that but this is not democracy.

Actually each and every man made system in human history has its own background and mostly that come into existence as a reaction to another thing like communism came as a reaction to capitalism, and that's why the thinkers said that communism is the virulent form of western capitalism.

Likewise the whole world was in the grip of cruel kingship and aristocracy, and democracy came into existence as a reaction to that. So there may not be the rule of an individual but rather of the public, just like communism said no property of an individual but rather of the community. So the general public has been given such a freedom that they have no time to think of the Creator, His lordship and even His rules. But Islam has given the right of government to the public but as agents of Allah, subject to his supremacy and sovereignty and even the Khaleefah is going to represent the public in one way and Allah in the other. Which makes the

Khaleefah job very sensitive and very careful that as an agent, he is not the ruler but Allah is, and he is not a ruler but an agent and servant of the general public. That's why God fearing people would run away from the responsibility of being Khaleefah and those that became Khaleefah used to feel sorry for themselves, like Abu Bakr when he saw a bird singing, he started crying and said "what a lucky creature you are, flying freely from one branch to another eating where ever you wish singing and enjoying, you will die and that is the end. No accountability, no judgment, no punishment- but I would be put to accountability and Allah knows better what will happen as a Khaleefah as I would be questioned about everyone". And Umar said "even if a dog died hungry on the shore of the Euphrates River, Umar would be asked about that also". At the time of his death when he was asked by the major Sahabah to nominate his son, he became upset and said for the family of Umar it is more than enough that only one person would be questioned about the due rights of the people and if I am rescued even without a reward for that then I am the luckiest person.

So as we said that each and every system is like a culture to be taken as a whole, for example like a combination of medicines, it will show its effect when the sick person will take it as a package otherwise that will be counter productive. And even democracies in different parts of the world are in different forms because

of the prevailing cultures and the circumstances people are living in, but it is based upon secularism and the rule of the general public, while in Islam the government is based upon the sovereignty of Allah, supremacy of the Quran and Sunnah, and the rule of the general public as agents of Allah and the role of the Khaleefah as an agent of Allah and the general public.

# Chapter 17

## Ahlul Ijtihad

By the term Ahlul Ijtihad we don't mean the jurists and Fuqaha but rather we mean the technocrats. Especially nowadays when each and every subject and technology has become a specialty and issues arise so an expert opinion is must. There are two basic qualities needed for the person (I) He is an expert technocrat of that field and subject (II) he is a trustworthy person and will give his expert opinion with full sincerity.

**Allah said:**

**“Then ask “Ahlul Zikr” (Experts) if you do not know” (21:7)**

Now there are three types of people:

- (I) “Ahlul Halli wal Aqd” and they will select, nominate, and elect the Khaleefah.
- (II) “Ahlulsh Shura” they would be consulted.
- (III) “Ahlul Ijtihad” or the expert and technocrats for expert opinion.

These three altogether constitute the parliament/assembly/ consultative council and legislative. How to appoint them? It depends on circumstance and situations.

## Chapter 18

### Rights and Duties of the Khaleefah

As we know Deen itself is rights and duties because Deen is for humans as they are social by nature, living with one another and that's why everyone has his rights and his duties as well. Mostly the rights of one person are the duties of the others and vice-versa, when it comes to interactions, it is the case of the Khaleefah and the general public. Both have duties and both have rights as well. But as Khaleefah has a big responsibility so we will mention his duties first and then his rights.

# Chapter 19

## Duties of Khaleefah

The duties of the Khaleefah are as follows:

1. Protection of Deen- this is the first one and most important duty of the Khaleefah as we mentioned in the definition of Khalafah that it is the protection of Deen and planning of this world.
2. To establish a justice system- as we mentioned before that justice is the commandment of Allah.

**Allah said:**

**“Indeed Allah commands “Adl” (Justice)” (4:58).**

**“Indeed we sent our messenger with the scripture and scale in order that people may stand with justice” (57:25).**

It means that the purpose of the message of all the messengers was balance and justice takes a person close to piety.

**Allah said:**

**“Administer justice, that is nearer to piety” (5:8)**

**“O you who believe! If you fear Allah, he will give you “Furqan” interior (to distinct right from wrong)” (8:29)**

To establish justice is the purpose of the state, government, and authority and that is what Abu Bakr said in his first address as Khaleefah “Truth is just/trust, while a lie is a type of fraud. And the weak one is strong near me, I take his right if Allah wills and the strong one is weak near me till take the right (of others) from him if Allah wills”.

This is justice that nobody may be deprived of his right.

3. To protect the state and to provide and establish peace- Khalafah is based upon a state, so that base must be protected and defended, and the general public must be provided with such peace that they can contribute to the social, economical, and political life of the state and society which will further strengthen the state. It means that integrity of the state and peace for the people both depend upon one another. In other words, we can say that his duty is to make the state a welfare one and a welfare state is based upon two things (I) availability of needs and necessities (II) no fear of any type (peace). These two also depend upon one another as wherever the basic needs and necessities are not easily available to people, there can be no peace and where every there is no peace, for sure there will be no availability of basic needs and necessities as people will not move or work freely. That's why the Holy Quran mentioned these two things jointly in three places.

**Allah said:**

**A. “And we will put you to test with a little but fear and hunger” (2:155)**

**B. “And Allah put forward the example of a township that dwelt secure and well content, its provision was coming to it in abundance from every place but it denied the favors of Allah, so Allah made it taste the extremes of hunger and fear because of that which they used to do” (16:112).**

**C. So they (Quraish) may worship the Lord of the house (Kabaa) who has fed them against hunger and has made them safe from fear” (3:106)**

In a state, hunger will go away if agriculture, business, and manufacturing are running smoothly and successfully and that will be possible if there is peace and peace will come when justice is not only administered but that is clearly seen and everyone believe that injustice would never be done to me. If peace is not there then the state will be a security state and not a secure state. A secure state is a welfare state.

4. To implement the punishment on criminals- Human beings have desires and they are living in a world of desires. They have wishes, lusts, and anger as well and because of that sometimes they attack the life, property, and honor of others and if it is not controlled it will spread disorder, mischief, turmoil and bloodshed and soon the state will lose its control. The government will not have its grip over the country anymore, in other words the Khalafah will

not remain anymore, so Islam has fixed some punishment and regarding these punishments Allah said that it is a prevention for these crimes.

**Allah said:**

**“ And for you in “Qisas” (retribution) there is life, O people of understanding so you may avoid (killing)” (2:179).**

**“And a man who committed theft and a woman who committed theft cut off their hands (the right hand from the wrist) as a recompense for what they have done, as a chastisement (warning) from Allah and Allah is all-mighty, all-wise” (5:38).**

The purpose of punishment and the wisdom therein is the protection of the society, as Islam is not eager to punish people but to implement such a thing, which is better for the public in general. All these crimes are not only harmful to people but that is an insult of the sacred orders of Allah as well, who is the supreme and sovereign Lord of the universe.

5. To protect the boundaries of the state- As two individuals when living together, sometimes they get into dispute for some reason and sometimes one of them wants to grab the property of the other or attack him because of their ego, the same thing happens to two states as well and may be one of them will try to grab a part of the state, so the Khaleefah is bound to defend and protect the boundaries. To strengthen the boundaries means to protect the citizens. The Prophet said “To guard the boundaries (of the state) for one day and night is better than the (whole) world and whatever therein”

**Allah said:**

**“O you who believe, fear Allah, be stable and enjoin one another to be stable and do “Ribat” (means guarding the boundaries) in order to get into success” (3:200)**

6. Striving hard against those who do conspiracy against Islam- As we said man by nature has some enmity with one another for some known or unknown reasons and there also will be conspiracies coming from outside and sometimes from within, so the Khaleefah must be alert to counter these

conspiracies. In the Holy Quran it is called “Fitnah” which is a conspiracy, sedition, treason, or plot or even an attack.

**Allah said:**

**“And fight them till there is no “Fitnah” (remaining)” (2:193 & 8:39).**

“Jihad” is a binding duty of Muslims for the said reason and as “Fitnah” will happen until the last day, that’s why the Prophet said “Jihad will be going on till the day of judgment”. Yes, Jihad has it’s own prerequisites and in brief, we can say that Jihad is against “Harabah” which means an actual fight broke out or a plot for attack is being planned so the state is bound to counter and to defuse that.

7. To establish exchequer (Baitul Mal)- The state has expenses and needs revenue. For the said purpose it has to have a system in order to get that from legitimate sources.

Basically “Baitul Mal” has four branches:

(I) Collecting 1/5<sup>th</sup> of mines and booties.

**Allah said:**

**“And know that whatever of war booty that you have gained, verily 1/5<sup>th</sup> of it is assigned to Allah and to the messenger, the relatives of the Messenger, to orphans, the poor who beg, and to the way-farer” (8:41)**

Mines are naturally found in the earth and according to the Hanafiyyah that is of three types:

- A. A melting one like gold, silver, copper etc.
- B. Not getting melted like precious stones.
- C. Liquids like petrol, diesel, and kerosene oil.

The melting mines if needed for government and the general public, then it may not be allotted to anyone but rather it goes to exchequer. But if that is found by the citizen in a land and doesn't belong to anybody then 1/5<sup>th</sup> of the booty will go to the national revenue, while the soiled one will go to the person concerned as that is considered like stone and dirt, also the liquid type is like water, that will go the person that found it except mercury as that is a melted type so 1/5<sup>th</sup> of it will go to the national

revenue. If the melting mine is found on a land that has an owner then it belongs to him as a whole but if found by other than the owner then  $\frac{4}{5}$ <sup>th</sup> will go to the owner and  $\frac{1}{5}$ <sup>th</sup> to the finder. While according to Abu Yusuf and Mohammad in all these mines  $\frac{1}{5}$ <sup>th</sup> will go to the revenue.

There is another thing called “Kanz” and that is something buried by humans or buried underneath due to a disaster. That will be either Islamic or not according to Islam, which depends on the circumstance. The first one is like the found property, it must be announced and if the owner is found he will take it otherwise it will go to the poor who are eligible for zakat and if that is from the time of non-Muslims then its  $\frac{1}{5}$ <sup>th</sup> will go to Baitul Mal and the remaining  $\frac{4}{5}$ <sup>th</sup> to the very finder. But Abu Yusuf said if that is found in an un-owned land then the whole thing goes to the finder, while according to Abu Hanifah and Muhammad  $\frac{1}{5}$ <sup>th</sup> of that will go to Baitul Mal.

Things coming out of the sea and ocean will go to the finder, as a whole which is the view of Abu Hanifah and Muhammad, while the view of Abu Yusuf is that  $\frac{1}{5}$ <sup>th</sup> goes to Baitul Mal.

According to Imam Malik the minerals like gold and silver go to Baitul Mal if found in an un-owned land, while if found in an owned land that still goes to the Baitul Mal.

Imam Shafi'i and Imam Ahmad said mines like oil would go to the state but a mine that needs labor to separate it from the earth like gold and silver go to the finder.

- (II) "Sadaqat" like the zakat of cattle's 1/10<sup>th</sup> or 1/20<sup>th</sup> of the crops as the case maybe and the business tax being taken from Muslim business people.
- (III) "Kharaj" and "Jizyah"- Kharaj is the revenue tax of agricultural land from a non-Muslim and "Jizyah" is an annual tax that is taken from a non-Muslim for his property's protection. The tax is also taken from non-Muslim citizens or foreign businessman, likewise are the gifts given by the non-Muslims that are not citizens and the "Fay" (booty that came to Muslims without any war but as a peace treaty, and that in totality will go to Baitul Mal).
- (IV) Lost and found or the property of who did not have anyone to inherit it. Now the first two types will go to the people that are eligible for zakat as,

**Allah said:**

**"Verily "Sadaqat" are only for the poor (who do not beg) and poor (who beg) and those employed to collect (these funds)**

**and for the people that are inclined to Islam in order to attract them, and to free the captures and for those in debts and in the path of Allah and the wayfarer” (9:60)**

The collection of the third category is for public structure and welfare like roads, bridges, schools, and hospitals etc. And for the salaries of the state and government’s servants, even the needs of their families and children would be given from this, while the fourth category is to pay the debts and duties of those in need.

Yes the state can put other taxes according to its needs and necessities but on a reasonable and affordable basis otherwise heavy taxes not only destroys the business and agricultural industry but it also creates a hatred towards those in power and eventually the state and the Khaleefah as well.

8. To fix the salaries and allowances- as we know the Khaleefah is the shadow and shield of the state and people, but he alone cannot rule over all the affairs. He needs others, to whom he will delegate certain powers and duties as well, and everyone has his needs and necessities and he is confined to the

duties and services of the state and public and working for them so that he may be given his wages on a reasonable basis. It depends, Imam Abu Dawud related a Hadith that the Prophet said, “whosoever is our “Aamil” (worker/collector) so he may have a wife (for him, means marriage expenses, then family expenses) and if he has no servant he may have a servant, and if he doesn’t have a residence, so he may arrange a house”.

This means all his needs and necessities may be in his range and approach.

Shah Waliullah said that to appoint officials depends upon the situation, circumstance, and needs. For example population increases, resources are getting enriched and discovered, relations are getting extended that’s why more and more departments and workers are needed but the less amount of workers and officials will mean the expense will be a lot less as well. Otherwise that will overburden the national exchequer, for no work people will be getting their salaries, which will cause an economical disaster. According to Shah Waliullah this disaster has two causes: (I): Taking from the national exchequer in one name or the other

(II): Imposing heavy taxes on those who are working: this second one discourages them from working and they eventually desert their

job and profession, so income of the state is decreasing day by day while by taking from the exchequer it is getting empty.

Later on for sometime the state may be taking loans and soon it will become a defaulter state.

But still Shah Waliullah said that five types of people are the bases of the system:

- (I) Executive- because human by nature will be attacking one another, taking the properties or even the lives of one another, so an executive body must be there to have an eye on it and to control the people and if they have done any wrong, they may be taken into custody to bring them to law and justice. This department will try to maintain peace and order. They must be alert, strict, and diplomatic as well as all these strategies are needed.
- (II) Judiciary- As we mentioned before that justice is the commandment of Allah and his Messenger and naturally that is needed. And when wrong is down and there is no one to put the wrongdoer to accountability then there will be no end to

injustices. For the said purpose the judges and judiciary is a must. we will discuss this in a special chapter Inshallah.

- (III) Revenue and Finance- As we know, the state has lots of expenses and those expense are supposed to be paid for by the general public and from the state's resources. As we mentioned before in the topic of Baitul Mal.
- (IV) Army- the state needs protection and defense and that is possible with an army and the Khaleefah is the supreme commander of the state and it's forces. So he will appoint the chief of the army and that chief must have the required qualities and qualifications.
- (V) Shah Waliullah has mentioned a fifth person to be appointed to take care of the family affairs of the Khaleefah as he may be provided with an atmosphere free of any worries and engagement, so he may have time to think freely about the state and the general public. In other words some one may take care of his immediate family so he may think of the extended family i.e. the general public, but anyhow with the passage of time further more departments could be needed.

9. He must keep himself updated and acquainted with state affairs and the public as whatever the officers or the general public do, will have its effects on the state, whether good or bad and eventually upon the Khaleefah himself, so he may not have his blind faith in the officials, but he himself must be aware of what they do and how they do things. This is what we mean by the wording that the Khaleefah must be the best planner and he must protect Deen and discipline the worldly affairs and not only this but one who did wrong must be punished and one who did good may be rewarded, so they may be very alert not to do any wrong and anxious to do more and more good.

10. He may listen to sincere advice- First he has to recognize who the sincere one is. Unfortunately the ruler and rulers have the mentality that they like those who praise them a lot and flatter them and they do not like those who tell them their faults. Imam Bukhari narrated a Hadith that the Prophet said, “Deen is ‘Naseehah’ (sincerity). They said to whom? The Prophet said, to Allah, to his Messenger, to the Muslims in general, and to their Imams (leaders)”. For the said purpose he should appoint truthful and sincere people.

Now all these duties which Imam Mawardi has mentioned are a must to have the objects of Khalafah achieved, but these are not limited to these ten as nature is evolutionary, changes are taking place, so what ever is must for the good of the state and public becomes the duties of the Khaleefah.

Ibn Khaldun has mentioned that all the rules and laws of Shariah are the responsibility of the Khaleefah to take care of, to implement it, and to convince the people to follow it whenever and wherever it is needed (Al Muqaddimah).

Shah Waliullah has classified these duties into two categories

- (I) “Deen” (religious) affairs.
- (II) Political affairs.

Religious affairs are to keep an eye on the public not to violate the laws and rules of Shariah and to follow it, while political affairs are to defend the state, to control the wrong doings and to judge the disputes. In Islam all these are:

- (I) Chapter of “Mazalim” (violations and crimes)

(II) Penalties and Punishments

(III) Judiciary

(IV) Jihad

Then the basic principles are mentioned in the Quran and Sunnah, while the interpretation and deduction is left to the jurists. Because dispute and differences in principles is disastrous but in interpretation and deduction is ease and a mercy of Allah. So politics is a part of “Deen” as in Islam, “Deen” is not the personal business of someone, but that is a complete system.

**Allah said:**

**“Verily this Quran guides towards that (path of life) which is perfectly straight (and balanced) and gives glad tidings to the believers who practice righteous deeds that for them there is a big reward” (17:9).**

It means that Quranic guidance will give a balanced peaceful life here in this world and a prosperous one in the hereafter. And that’s what a Muslim is looking for and they invoke Allah and say **“O our Lord, give us in this world good, and in the other world good” (2:201)**. The Prophet of Allah said “That Bani Israel got led by their Prophets whenever one Prophet

passed away another succeeded him (till this came to me) and there is no Prophet after me but will be the successors” (Bukhari).

Shah Waliullah said that the purpose of the message of Islam was to stop the wrongs towards others and these wrongs could be either on the lives of others or on their properties or on their body parts and organs. Also for its protection and punishment came the retribution and penalties. So the responsibility of the Khaleefah is the protection and defense of the state. And when the state is Islamic, people are Muslims and the rulers is Muslim as well, then within that state there will not be any law other than Islam, and that is his basic responsibility. Umar said the purpose of all these officials that have been appointed is to teach you this Deen and to implement it.

Some scholars have mentioned some other duties of the Khaleefah and these are the basic needs and necessities to be provided to the public. These are listed under:

(I) Food, dress, and shelter- these are the basic needs of each and every living entity and every living entity by nature is looking for it and that is called struggle for existence. They move in order to have these necessities, as they can't remain alive without this. The birds, animals, and even the insects are looking for their food and shelter. They have their nests and holes as their shelter- Islam is

natural and a natural system, so it doesn't press natural needs, but rather it polishes the commands to make it easy to the approach of people as we said that anyone who works for the state has the right to have his house and manage it as well. Even in the Islamic state within the basic needs there is no distinction and difference for anyone.

**Allah said:**

**“He is the one who created all that is in the earth for you all” (2:29).**

Which means that everyone has this right to live.

(II) To provide medical treatment- The Prophet of Allah said, “Allah has not sent down any disease but he has sent down for that disease a healing” (Bukhari). The Prophet himself not only used to take medicine but sometimes he used to treat others. Ahmad, Tirmizi and Abu Dawud related that they asked the Prophet regarding a type of treatment so the Prophet said, do the treatment.

Sickness and diseases are part of the natural system and so is the case with the treatment and that is a basic need of every individual.

(III) Education- Allah has given animals senses and they find and know things by using these senses, but Allah has given “Aql” (intellect and reason) to the human being as a mean and source for further knowledge and through this sense the human being is utilizing the world and the resources within the earth which is subjugated to him. Also based on intellect Allah has made him bound to follow and obey his orders and commandments and these orders and commandments came to him through the messengers and revelation, which is the third source of gaining knowledge.

Allah made it clear to the angels that the Prophet Adam was the Khaleefah of Allah through the knowledge and findings of Adam, as the angels said **“Do you appoint there in this (earth) on who will spread disorder therein and will shed blood while we do glorify you along with your praise and sanctify you. Allah said verily I know what you do not know. He (Allah) taught Adam the names of all that (put it in his nature) then he**

**presented these to the angels and said tell me about the names of these (along with its use) if you are but truthful. They said, glory be to you. There is no knowledge with us but only that which you have taught us-verity you are the all-knower, all-wise. He said O Adam! Inform them about the names of these and when he told them about the names of these (along with its use as that was his natural requirements and necessity is the mother of invention-and that's why humans are eager for research and invention and furthermore knowledge). He said, have I not told you that indeed I know what you reveal and what you used to conceal” (2:30-33).**

Then Allah insisted upon seeking knowledge regarding worldly gains and Deen as well. The word “Taskheer” which means subjugation is used very frequently in the Holy Quran, that Allah has subjugated to you whatever is in the world, which is an implicit order to use it.

**Allah said:**

**“ And He (Allah) has subjugated to you the ships that they may sail in the sea by his command and he has subjugated the river to you. And he has made the sun and the moon both constantly pursuing their courses to be of service to you and he has subjugated the night and the day and he gave you what you asked for (needed) and if you want to count the blessings of Allah you can not count it (as that is countless) verily man is an extremely wrong doer, extremely ungrateful (13:32-34).**

**“O Assemble of Jinn and Human! If you can pierce (penetrate) therein the diameters of the heavens and the earth, then pierce (penetrate) can only be done with power” (55:33).**

Allah did not put restrictions rather he ordered us to do so, but he made it clear that his could only be possible if you have power.

**Allah said:**

**“He is the one who made the earth subservient to you, so go there in its shoulders and to him is the resurrection” (67:15).**

All these depend upon further knowledge, research, science, and technology. This further research will make things easier to understand even regarding Deen as,

**Allah said:**

**“Soon we will show them our signs in the universe and in their own selves until it becomes manifest to them that this (Quran) is the truth, was it not sufficient in regard to your Lord that he is a witness (all-knower) of everything” (41:53).**

Even though the Quran is not a book of science but certain scientific things are mentioned in it, the world is approaching these facts now and finding it through their research and they will say oh, the Quran mentioned that already. So if now they believe

in these facts based on their own research and knowledge then why did they not believe in that based on revelation which was revealed by Allah the all-knower.

The first revelation revealed to the Prophet said:

**“Read in the name of your Lord who created. Who created the human from a clot. Read and your Lord is the “Akram” (more generous and respect giver). The one who taught with the pen. Who taught human that which he did not know” (96:1-5).**

Here Allah did not mention what to read. Of course the first and most important is the Quran and the matters of Deen but it also means read whatever is of benefit for you and for humans in general. Also he ordered humans to read twice in those passages and mentioned that he is the generous and respect giver. His generosity is that he will give you whatever knowledge you want and respect is based on the pen which the mean and source of knowledge and education.

**Allah said:**

**“Say (O Muhammad) are those who know and those who do not know equal? None can understand this but people of understanding” (39:9).**

Again in this verse Allah didn't mention what to know. So of course Deen and its sciences is the first but still other sciences are meant as well. The only thing, which Allah ordered in the Quran to ask for, is an increase in knowledge **“And be not in haste (O Muhammad) with the Quran before its revelation is completed to you, and say my Lord! Increase me in knowledge” (20:114).**

The Prophet ordered Zaid ibn Thabit to study Hebrew and not only that, but among the captives of Badr those who had knowledge like writing, the Prophet ordered them to teach that to the youth of Madinah and in exchange they will be released. So this is the state's and Khaleefah's responsibility to make

education easy to the approach of the people. In Islam education is not a privilege but a right, as education makes humans bring respect and dignity not only to the individuals themselves but also to the society at large.

(IV)Employment and Jobs- This is another duty of the state and

Khaleefah to establish and provide such an atmosphere where everyone can earn his livelihood in a respectable way. The Khaleefah has to encourage agriculture, livestock, business, and industry. The Prophet when receiving the first Wahi (revelation) came home shivering, his wife Khadijah consoled him and said, “I swear by Allah, Allah will never put you down. Verily you take care of your kin, carry the burden (with patience or carrying the burden of others) and you provide work to the jobless, you show hospitality to the guests, and you help in the right cause” (Bukhari).

So the Prophet even before the message of Islam used to arrange jobs for others. Also Islam doesn't encourage begging but

rather giving. Imam Bukhari narrated a hadith that the Prophet said that some one who takes his rope and brings a bunch of wood on his back and sells it, and Allah protects his face with that, is better for him than asking people that sometimes they are giving him something and other times they are not giving anything.

Also the Prophet said, “The upper hand is better than the lower hand. The upper hand is the spending one while the lower hand is the begging one” (Bukhari and Muslim).

Anas said, “that one Ansari came to the Prophet asking for help, The Prophet asked him if he has anything at home, the man said a cloak and a (wooden) cup. The Prophet told him to bring it. The man brought it and the Prophet auctioned that for two dirhams and gave it to him and said give one to your family and by an axe with the second dirham and bring it to me. The Prophet put a wood in the axe and told him to go cut the wood and sell it, and that I don't want to see you for fifteen days. The man went and

after those fifteen days he came back having ten dirhams, so he bought food and clothes. The Prophet said, this is better for you than having a dot (bad sign of begging) in your face on the day of resurrection” (Abu Dawud).

Shah Waliullah has mentioned that the state is bound to look into the scope of different fields and to arrange for jobs even, otherwise the system will get disturbed as if all the people or majority of them go for business and leaving the agriculture and livestock which provides for the business and industry, which will leads to starvation of the population. He said that agriculture, which is the base, might be like the flour and the industry and business are like the salt in it. All these must be organized and disciplined by the state. And if everyone is not provided with opportunity to earn then the state is bound to give him welfare and allowance, otherwise he will go to some unhealthy practice for earnings, which will harm the society at large and spread mischief and disorder.

Umar saw a non-Muslim begging and asked him what is this self-humiliation? The man said, “I have to pay the “Zimmah” (a tax imposed on a non Muslim citizen) and as an old man I cannot work”. Umar therefore ordered after sixty years of age the Zimmah is dropped and he must be provided sufficient welfare for him and his family and Umar said, “we have not done justice to him if we have eaten his youth and then we put him down in his old age”.

So one who does not have some source of income, even though he is looking for one or he cannot do a job anymore must be provided with sufficient income by the state. Umar was the first one to introduce this system in human history. Some Scandinavian countries still refer to this law of welfare as the “Umar Law”.

(V) To establish and provide means of travelling and transportation- it means that the state is bound to develop roads, bridges, and methods of transportation to make travelling easy. As the larger

the movement of people is the stronger the society becomes and the economy is more stable with the increase in movement. Also free movement is one of the fundamental rights of the citizen, so it must not only be secured but provided as well in order to make it much easier.

(VI) To make marriage easier- the distinction of Muslims and the Muslim state is noble character and a high level of morality. Islam after faith and beliefs insist upon noble character because character controls people not to violate the limits set by Allah and not harm the individuals and the society as a whole. The causes for immorality are two (I) Lust (II) Libido, in other words the stomach and the private parts. The Prophet of Allah said “Whoever married a pious woman, he has arranged the protection for half of the Deen, so he may fear Allah for the remaining half” (Bayhaqi). Also the Prophet said, “This world is sweet and green and verily Allah is making you an agent of his so he may see how you act, so fear the world (wealth) and fear women” (Muslim).

This Hadith means two things are dangerous, the lust and the libido. Like hunger and thirst, libido is a natural demand and as Allah and his Messenger never said, not to address your hunger and thirst, but they said to fulfill it in a legitimate way and to provide a legitimate way of doing that process is the duty of the state. Same is the case of this need i.e. marriage, that the state is bound to keep an eye on it and to have a check and balance because in different cultures it has been made too difficult sometimes from one side and sometimes from the side. Which has made it very difficult for people and they cannot fulfill those standards, due to not being able to fulfill those standards of getting married in the proper way it's hard to keep their chastity, morality, and peace. The Prophet said "O assembly of youth! Whoever can afford to marry so he may get married as this will lower the gaze and guard the private parts, and whoever cannot get married so he may fast as that is a shield (for his protection and chastity) (Bukhari and Muslim).

And the Prophet said

“Sultan” (ruler) is a guardian of one who does not have a guardian (Ahmad, Tirmizi)”.

Also the Prophet said

“I am prior to the believers than their own selves so whoever passed away and left a loan (due on him) so upon me is the payment and whoever left wealth, that is for his heirs (Bukhari and Muslim)”.

This hadith means that the Khaleefah is the guardian and one of the duties of the guardian is to arrange marriage for the people he is responsible for.

The reason is very logical, that humans want their desires to be fulfilled and for a Muslim that must be in a legitimate way and if people will start fulfilling that in a illegitimate way it will bring turmoil to the society ethically, socially, and politically because it proceeds towards conflicts, disputes, and bloodshed, while to

maintain order and peace is the first every duty of the state so it must think of the reasons and causes.

# Chapter 20

## The Rights of the Khaleefah

As we have said that Islam as a perfect system describes the duties and rights of individuals, as well as institutions. Regarding the Khaleefah, Ibn Jama'ah has mentioned ten basic rights of the Khaleefah, as listed under:

1. Obedience to the Khaleefah with sincerity

**As Allah said:**

**“Obey Allah and obey the Messenger and people in authority from amongst you” (4:59)**

“People in authority from amongst you” means (I) they may not be outsiders implicitly it embodies that in Islam there is no room for

colonialism. (II) They may be Muslims (III) they are mentioned after obedience to Allah and to the Messenger, which means as long as they do not order something against the Quran and Sunnah, as there is no room for the obedience of any creature against Allah and his Messenger.

**Allah said:**

**“And if you disputed in any thing then take it back to Allah and the Messenger if you but believe in Allah and the last day- that is best and best as an interpretation (solution or as a result)” (4:59).**

2. Sincerity, looking towards good for the Khaleefah- The Prophet said, “Deen is sincerity, they said for whom? The Prophet said, For Allah, his Messenger, for Muslims in general and their leaders (Bukhari).
3. To help him wholeheartedly- so he may be able to protect the state and the public, to implement Deen, to control the miscreants, and to counter invaders.

4. To respect him well and willingly- As Khaleefah is the agent of Allah, so he deserves respect. After the battle of the Trench when Sad ibn Muaaz came riding on his donkey to decide and judge the case of Banu Quraizah the Prophet said, “Stand up for you chief”.
5. To alert him if he shows any carelessness or negligence- The Prophet at the time of Hajj said in his sermon at Mina said “Three practices are there (if done) the heart of a believer will never get any malice (rust), sincere deeds for Allah, sincere advice to people in authority, and to be with the Jama’ah (of Muslims)”.
6. To inform and warn him of internal and external enemies-because the miscreants can do conspiracies, so that must be countered, otherwise if he is not informed then there will be bloodshed or these bad people will get into control or maybe even the state will disintegrate. Shah Waliullah said that to weaken and break the power of such people is must.
7. To help the Khaleefah with any possible mean- because the Khaleefah is looking after the state and public on behalf of the ummah, so they are bound to help and support him to the best of their ability, so he may fulfill his duties with ease.

8. To inform him about the officials of the state and government- in order to be aware of their good or bad so he may encourage the good one and warn or even depose the bad ones. It depends, as in the long run it can hurt the state and the public.
9. To convince his opponents and to make them inclined to the Khaleefah, so the ummah may be united and unified.

**Allah said:**

**“And obey Allah and his Messenger and dispute not lest you lose courage verily Allah is with the patient people”**

10. To defend him with words, actions, wealth etc.- because his disgrace is a disgrace to the state and to the public and even to Deen.

As the Khaleefah is devoted to this duty, so he may be given his needs and necessities in a reasonable way.

When Abu Bakr became Khaleefah the very next day he was taking the cloaks he made to the bazaar. Umar brought him to the masjid and told the Muslims that now he will be working for us so

we have to fulfill his needs. Abu Bakr said you people know my business and manufacturing, which suffices me and my family, but now I will not be able to do that so give me as much as a guardian and custodian of an orphan is given from the property of the orphans, even though in his last moments, Abu Bakr ordered his son to sell his property and pay back the whole amount he was given as salary to the exchequer.

These rights are the basic rights, and they depend on situation, and on what is needed for him as the fulfillment of his duties are concerned.

We want to mention here a few Ahadith of the Prophet

1. The Prophet said: “Whoever obeyed me he obeyed Allah, and whoever disobeyed me, he has disobeyed Allah and whoever obeyed the Ameer he obeyed me and whoever disobeyed the Ameer he disobeyed me” (Bukhari and Muslim).

2. “If a mutilated person has been made an Ameer upon you and he leads you in accordance with the book of Allah then listen (to him) and obey” (Muslim).
3. “Listening and obedience is (must) for a man in what he liked and what he disliked as long as he has not been ordered for disobedience (to Allah and his Messenger) and who he has been ordered for a disobedience then there is no listening and no obedience” (Bukhari and Muslim).

## Chapter 21

### The Duties & Responsibilities of the Citizen

The general public in their individual and collective capacity have duties that are binding, as they are citizens of the state. In this regard we would like to say that the state must give the public a feeling that the state and government is their guardian, custodian, and servant. It will protect them and their rights. Then for sure everyone will be in love with the state and will be fulfilling their duties towards the state willingly. These duties are as follow:

1. To establish Khalafah- it means that people are in need of someone to lead them, guide them, and shelter them and that person is called the Khaleefah, and as we said that the Khaleefah represents Allah as his agent so the actual source is Allah, but as a procedure he has to be appointed by the ummah in one way or the other. Islam has given the basic principles but it has not given a specific framework, as Islam is a universal and everlasting religion. So keeping in view the basic principles they have to appoint their own Khaleefah. Basically that is the duty of “Ahlul Halli wal Aqd” to elect a Khaleefah and then the general public gives their pledge of allegiance to him. In certain countries, even in the light of western democracies, the public elects their MP’s and then the MP’s elect the prime minister or the president, but in Islam the Ahlul Halli wal Aqd elect the Khaleefah and the general public approve and verify this election. Ahlul Halli wal Aqd are the learned, educated, experienced, and sincere leaders of the community, therefore their selection, election, or nomination will be the best way because the general people neither know the qualities nor do they know the individual they are going to elect as a Khaleefah. But in conclusion we can say that the people elect their leader because Ahlul Halli wal

Aqd represent them and then the people approve their election by giving Bai'at to the Khaleefah.

2. To obey the rules and laws- the pledge of allegiance means subjecting oneself to the laws of the land and these laws are the laws of Allah, and Allah said, **“Then nay they can not be (considered) believers till they make you (O Muhammad!) A judge regarding what is disputed amongst them and then they do not find any resistance for what you have decreed and submit to it perfectly”**.

**Allah said:**

**“The saying of the believers when they are called to Allah and his Messenger to judge between them is that they say we heard and we obeyed and such are the successful people” (24:51).**

So no one is allowed to take laws in to their own hands as this creates turmoil and disorder. For the said purpose there must be a judicial system free of any influence and which has the executive power for the decree they have issued. Umar wrote to Abu Musa Al-Ash'ari that the judicial process is an established and mandatory practice and must be followed and when you have been appointed to it then know that to say a good word without its execution is meaningless.

3. To enjoin good and forbid evil- as it is both the duty of the ummah and the authority to enjoin good and forbid evil.

**Allah said:**

**“ Let there be from amongst you a group calling towards good, enjoining good, forbidding evil and these are the successful people” (3:104).**

**“You are the best of people ever raised up for mankind, you promote good, prevent vice, and believe in Allah” (3:110).**

**“And for sure Allah will help one who helps him, indeed Allah is all strong, all-mighty. Those whom if we give them power in the land they will order for prayer and giving “Zakat”, enjoin good, forbid evil, and with Allah rest the end of matters” (22:40,41).**

The state has the machinery to do this but the common people will do that as much as they are able to. This is the duty of each and every Muslim to the best of their ability.

To enjoin good does not have so many conditions, but to prevent evil has certain conditions, which will be listed under:

- A. Practical existence of evil- so one may not say to people not to do such and such thing that they do not do at that time.
- B. That evil is done openly- because for a common person it is not allowed to chase and find out who is doing something wrong.

**Allah said:**

**“And do not chase” (49:12).**

Also it can lead to suspicion about someone, which can be counter productive.

**Allah said:**

**“Avoid most of suspicion verily some suspicion is a (major) sin” (49:12).**

C. To stop it with the easiest possible mean- so one may not go to extremes, so he may educate people about a certain thing, letting them know that you might not know but this action is a forbidden act in Shariah. By doing so with kindness may be he will stop his wrongdoing.

Imam Ghazali in his book “Keemya Sa’aadat” mentioned these following ways:

(I) To educate the person concerned about that evil-may be the person doesn’t know that it is wrong and that’s why he is doing it.

(II) To convince him to stop it- Allah said, **“Call to the path of your Lord with wisdom and with a nice advisory way” (16:125).**

“Hikmah”, or wisdom means to speak in a suitable way, at a suitable time, in a suitable place.

(III) To use strong words to stop him.

(IV) To change the environment with his hands- the Prophet said, “

Whoever saw from amongst you evil, he may change it with his hand, if he couldn't do that then with his tongue, and if he couldn't do that then he should hate it in his heart and that is the weakest of Iman (faith)” (Muslim).

The hadith means to change the evil with his hand in any possible way, then by tongue, and then by heart. The scholars say, it depends on the situation and the power of the individual, while other scholars said that the first one is the duty of the people in authority, the second one is that of the scholars, and the third one is of the general public. But we say that the Prophet used the word “whoever” which includes everyone but it depends on the circumstances.

(V) To warn with punishment or killing even- this is a strategy, which is allowed for a broad based good for the society.

(VI) To punish or even to kill-but this should be done with due process otherwise it will cause a broad form of trouble immediately and the after affects could be worst than that act which the person is being punished for.

(VII) To ask help of others- in this regard social boycott will be a good way.

To us the best way is the department of “Hisbah” or ombudsman, who has some power of executive branch and some power of judiciary branch as well, especially for something of urgency and an emergency. All this means that the ummah is bound to help and support the Khaleefah in his duties and keep an eye on wrong doers and stop them as much as they can, provided that their way of stopping is not counter productive.

D. To get knowledge in different fields-as societies are advancing through education and especially nowadays when the entire world is like one global village and that is because of science and technology and those who are superior in that field are the ones that are successful and the rest are subject to them. And we know how much importance Islam has given to knowledge and education. That knowledge is of two types:

(I) Regarding the good life of this world, and Allah said: **“did you not see that Allah has subjugated to you all that is in the heaven and all that is in the earth and perfected on you his blessing (favours) open and hidden both”**

This word or term “Taskheer” used in the Holy Quran in tens of places means that you have the talent to exploit it and all these creatures have the ability to be exploited.

(II) Regarding the prosperous life in the hereafter-as humans have their physical side and spiritual as well or they have to have a relation with their creator and a relation with the creation. That is the characteristic of this special creature i.e. the human.

**Allah said:**

**“Then we originated him a different creature” (23:14).**

**“Indeed we have created humans in a beautiful stature” (95:4)**

And the Prophet said: “Indeed Allah created Adam in his shape”

“His shape” means a special type that no other creature has such a beautiful shape. While some scholars said that “his shape” means the shape of Allah but

Allah doesn't have any shape as he is not a physical body, so again it means the shape which was his, meaning his most beloved shape.

So anyhow Shah Waliullah said if a nation will have their "Deeni" (religious) side upright as far as the case of the hereafter is concerned, so may be they will have a it good there, but in this world they will be subject to others and would be enslaved, which is against the very nature of "Tawheed" (belief in Allah and oneness) as it does not allow a human to be the slave of another in anyway. That is against the persons self respect and dignity, and if they are devoted to the good of this world only and do not think of Allah and the hereafter then they will face the punishment in the hereafter. While the true Muslim has to think of his good here in this world and in the hereafter, so in each and every field they must have education to support the state and the Khaleefah. Such a society will be a balanced society.

E. To work for their livelihood- that is the duty of every individual to not be a burden on others and on the society as well.

**Allah said:**

**“Allah puts forward the example of an owned slave having no power over anything and a man whom we have given good provision, so he spent therefrom secretly and openly (with free will), can they be equal? All praises be to Allah but of them know not.**

**And Allah puts forward an example of two men one of them is dumb (and deaf) having no power over anything and he is a burden to his master wherever he directs him he can bring no good, is such a man equal to one who orders justice (and he can implement it) and he is on the straight path” (16:75-76).**

So one who earns his livelihood is not a burden to the society, rather he contributes in one way or the other. And where there is no hunger, and where basic needs are fulfilled, for sure there will be peace and justice within that society. As we mentioned before that the two basic pillars of a welfare state are:

- (I) Fulfillment of basic needs and necessities.
- (II) Peace and no fear.

And as we mentioned before that these two are inter-connected.

Shah Waliullah said that the state has to encourage the earning of physical labor like the agricultural people, the industrial people, and the business people as

this provides jobs and produces revenue. Economical stability of a state provides a field for further good.

Shah Abdul Qadir said, “Character is because of the situation not because of education only”

Even Adam Smith said that mankind is influenced by their faith and economical conditions, and whenever there is a conflict of both of these, economical conditions prevail and overtakes, and the people go for that.

Qazi Abu Yusuf also wrote in his book “Kitabul Kharaj” that people may be given incentives so they may work whole-heartedly.

Shah Waliullah said that farmers should be given such a support that no piece of land remains barren and uncultivated, and the traders may be given incentives so they may bring beneficial things from all around and they will compete for quality and price also.

F. Social Responsibility- as a state is one entity and people and institutions are its part and organs and they depend upon one another, so they have to cooperate, help, and support each other. They also have to help those who are in need. The Prophet said, “The Muslims in their relation to one another, their leniency towards one another, is like one body, when a part of it feels sick, the whole body feels sick”.

For the said purpose Islam has imposed Zakat on those who have the equal of “Nisab” i.e. a specific amount of savings in the end of the year, in order to give 2.5% of that to the poor. Also there are certain other responsibilities, even though these are ethical and moral but Islam gives priority to ethics over laws and rules.

Imam Bukhari narrated a Hadith from Abu Saeed that the Prophet said whoever has any extra food, he should give it to one who does not have it, whoever has an extra ride he should give it to one who does not have it, then he mentioned a few types of belongings that we thought that on one has any (undisputed) right in extra.

Now if the rich do not give from the wealth they have on their own, then the general public may convince them and even the state under the doctrine of necessity can make some law in this regard.

In a Hadith Qudsi, Allah said, “Rich people are my agents and the poor are my family, so when my agents will become miser towards my family, I will cause them to taste my punishment, and I don’t care

Hafiz Ibn Hazm said, the rich are bound to take care of the poor, and he said, this is unanimously agreed upon issue amongst the scholars (Al Muhalla).

Imam Mawardi said when the Khaleefah fulfilled his duties to Allah then the ummah is bound to do two things toward him, obedience and help.

That's why Ibn Khaldun said; that the characteristic of Khalafah is that it takes care of the good of the people in this world and the hereafter.

As an objective, the hereafter is the first and most important thing but as we are existing in this world, this world comes first and this is the way toward the hereafter, so it is must to be better in this world as well.

That's why Allah said:

**“Indeed we sent our messengers with clear rules and we sent down with them the scriptures and the scale (balanced system) so that mankind may stand with justice” (57:25).**

G. Jihad- this is another duty of the ummah towards the state to do

“Jihad”.

“Jihad” comes from the root word “Jah’d” or Juh’d” which means striving hard.

Literally we can apply this word to any effort, which is for some good cause in any way or which is a duty even, and he fulfills that. Even the Holy Quran has used this for other than fighting as well, because fighting was ordered after migration, but

still the order of Jihad is found there in Makki Surahs while there was no fight ordered, but instead of retaliation the Muslims were ordered to be patience and have stability.

**Allah said:**

**“So obey not the disbelievers and do Jihad with them by this (Quran) the great Jihad” (25:52).**

It means to call them and convince them with this Quran.

Abu Zar relates that the Prophet said, “The best Jihad is to strive hard against oneself and one’s own desires”.

In Hajj someone asked the Prophet about the best Jihad, and he said the best Jihad is to speak out the truth to a tyrant ruler.

But Jihad in the meaning of fighting is the hump of Islam. Hump increases the beauty and the price of a camel or a bull and that is the highest part of their body and clearly seen. The Prophet said to Muaz, that Jihad is the hump of Islam (Tirmizi).

But each and every order of Allah either have a time fixed for it like prayer and fasting, or the situation is mentioned. For Jihad there is a necessary situation, the

Prophet said, “don’t wish for facing the enemy but when you face them, then be stable”. So Jihad has its prerequisites and when these occur then Jihad becomes incumbent upon Muslims.

Reasons for Jihad- as the name of Allah is “Momin” and belief in Allah and his message is called Iman, while one who accepted his message is called Muslim and the religion is called Islam. Now Islam means to avail peace and to provide it. A Muslim is the one who avails and provides it.

Iman means to avail and provide security and “Momin” means the one who provided security. Now all these term roam around peace and security, so a Deen which concepts starts with peace and security, then how can it encourage something completely opposite to that? But when it does go for that it means that the situation has gone to adverse. And that’s why all the four schools of jurisprudence said that the cause of Jihad in the meaning of fight is to bring the situation back to the original way, which is peace but peace is at stake and a big and disastrous situation is on the door step and there is a fear of bloodshed so it must be averted. This concept is clearly mentioned in the Holy Quran.

**Allah said:**

**“And fight them until there is no “Fitnah” (remained)” (2:193).**

**Then Allah said:**

**“And if they cease then there is no transgression (retaliation) but against the wrong doers”**

While in chapter 8:38 after a similar order Allah said:

**“Then if they cease then for sure Allah is the watcher of what they do” (8:38).**

It means that if they cease and you felt it in one way or the other, then go ahead and accept their seizure and if they cheat then Allah is watching them. This is just like the verse of “Silm” (reconciliation and peace treaty).

**Allah said:**

**“ And if they (the enemies in the battlefield) are inclined to peace, then you may incline to it (as well) and put trust in Allah- verily he is the all-hearer, the all-knower” (8:61).**

It means after having enmity and fighting with each other then when they ask for peace, for sure you will be having reservations that may be they are doing so as a strategy and preparing themselves once again. But this is the life of this world where things do not stand still and the same forever, so neither peace nor war go on forever, rather things come and go. You are bound to be alert, well prepared, and aware of the situation and making correct decisions. While war is inevitable and

the idea of peace can be accepted, and if they are inclined to it whole-heartedly then accept it and put your trust in Allah because as humans we are living in this world with others and we are social by nature, who need each other, Muslims and non-Muslims alike, so we need to think of that and judge and decide accordingly.

So basically the Muslim state has to be well prepared for any situation that it might face, and that's why Allah said before the previous verse mentioned above:

**“And make ready against them all you can of power including steeds of war to threaten the enemy of Allah and your enemy and others beside them who you do not know” (8:60).**

Allah did not say to kill them or even to fight them; rather He said to threaten them with weapons and preparations. Which in other words means to control their conspiracies and threats of going for war, so we can say that there must be deterrence available to have peace. But if the war started and then they inclined to peace, so the Muslims may incline to that as well. It means that they started the war and you retaliated but still when they inclined to peace than that is the original concept, so you may incline to it also. But when is war inevitable and unavoidable?

When we look into the Holy Quran and teachings of the Prophet, we do not find that people may be fought because they are non-Muslims or disbelievers in Islam or the Muslims when they are fighting Muslims may never be fought. It does not matter how dangerous they are for the public safety. The case might be the other way around, that sometimes the Muslims are fought and other times the non-Muslims are safe and protected. It means that the cause and reason for fighting is not disbelief or being non-Muslim, but rather the cause is “Harabah” which means that they either imposed a war, so the Muslims have a duty to defend, counter, and retaliate or they are plotting against Islam and Muslims or the Muslim state so again they are duty bound to counter that and to defuse it, and this not only a right but a duty as we know that the army and its soldiers who are bound to fight and defend but they did not so they might be charged and punished accordingly. This rule is a universally known rule, in army codes that is called court marshal.

The Holy Quran said:

- (I) “Indeed Allah defends those who believed and Allah doesn’t like any treachery, ungratefulness. Permission to fight is given to those (believers) who are being fought (war is imposed on them) because they have been wronged and Allah is able to help them. Those (believers) who have been expelled from their homes**

**unjustly (without any just reason) but only that they say, “our Lord is Allah” (22:38).**

In these verses Allah has mentioned that (I) war has been imposed on them and many injustices have been done to them. (II) They have been turned out of their homes only because of their belief, and belief is a matter of free will and not a crime, so one may not be extradited or driven out and nor should his property be taken.

**(II) “And what is wrong with you who fight not in the cause of Allah and for those oppressed among men, women, and children, who cry our Lord! Take us out of this city of oppressive people and provide us from your side a protector and provide us from your side a helper” (4:75)**

**(III) “And fight in the path of Allah those who fight you, and transgress not the limits. Verily Allah doesn’t like the transgressors” (2:19).**

In this verse Allah said fight those who fight you, meaning they have imposed the fight and now you are bound to counter that if you do not then that is a sin, but still the rule is not to transgress the limits and not to exceed in retaliation. While in the verse we mentioned before, that oppression is being done to the helpless and weak people and they are crying for help and you can help them, then why do you not do that?

**(IV) “And fight them until there is no “fitnah” (remaining)” (2:193).**

“Fitnah” is a word or term used for different meanings. It depends on the situation, so conspiracy is a fitnah, weakening the Islamic state is a fitnah. Grabbing the Islamic state’s property or rights is a fitnah. All these are wrong and are a form of cruelty, and any wrong or cruelty must be countered. If not it will engulf the state and at that time it will not be easy to defend the state, its sovereignty, or its resources. But as soon as the “Fitnah” ceases then you may not proceed further.

**(V) “Then whoever has assaulted you, assault him the way he assaulted you and fear Allah and know that Allah is with the “Muttaqeen” (2:194).**

The word “Muttaqeen” literally means those who avoid and they are very careful regarding their actions. They do not lose their temper and self control even in abnormal circumstances, and they do not exceed when they retaliate either.

Keeping in view all these verses we come to know that the cause of fighting is (A) the other side has imposed war, so they have to address the issue. (B) “Fitnah” is going on, so they have to take precautions and to control it before a big tragedy occurs.

(C) People have been turned out of their homes because of their faith and belief, so they have the right but rather the duty to recapture their own property.

(D) People are oppressed unjustly and the weak people are even asking and crying for help. So you may help them with the easiest possible means. Even though that verse is applied to the case of the Muslims primarily, but if the non-Muslims are being oppressed unjustly and they ask for help and it is possible to help, it is ok to do so, and especially when the state has a treaty with them.

The Prophet helped his non-Muslim allies when they came to the Prophet and cried for help. The case of the “Khuza’ah” tribe is a good example. They were the allies of Abdul-Muttalib from the times of ignorance and the Prophet used to honor that treaty, but when Khuza’ah and Banu-Bakr fought and Quraish helped Banu-

Bakr against Khuza'ah while they were subject to the treaty of Hudaibiyah, so they broke the treaty and Khuza'ah asked for help from the Prophet and that became the base and reason for the conquest of Makkah.

Now all these reasons mentioned in these verses are when fighting is inevitable and becomes incumbent upon Muslims, it could be confined to "Harabah", oppression, and "Fitnah" and nobody can make any reservation or have an objection because this is a logical and reasonable method and the whole world has done that in their respectable times and still they do so. Even regarding Muslims if they do injustice, fighting them is a must.

**Allah said:**

**"And if two groups amongst the believers fall into fight, then make peace between them both, but if one of them rebels against the other then fight you (all) against that one which rebels till it complies with the command of Allah, then if it complies then make reconciliation between them justly" (49:9)**

Now here both groups are Muslims but the other Muslims may fight the rebellious group. So in brief we say that Islam believes in "Dawat" and to promote good and forbid evil and to establish peace, but when a situation occurs and fighting becomes inevitable then no excuse can be brought forward. When it

started then it may be taken to its natural good end which is either to cut off the power from the miscreants or to make them surrender and submit or at least to incline to peace.

## Chapter 22

### Rights of the Citizens

As we said that rights and duties are interlinked, so we mentioned the duties of the Khaleefah and then his rights. Then we mentioned the duties of the citizen and now we have to mention the rights of the citizen. Purposely we mentioned the duties first in both cases because of the covetousness, most people are always talking of rights so much but never mention the duties. While duties on one side safeguard the rights of the other, as the duties of one side are the rights for the other side directly or indirectly. Here we will mention the rights of the citizens and these are called fundamental rights, basic rights, and human rights as well and when these rights are violated then it creates turmoil within in the state. “Haqq” or right is not because of nature, but in Islam the source of every “Haqq” is the entity of Allah, and as He has given the same right so no one can take it from anyone for no specific reason. One can exercise his right as long as it does not harm others. So it brings two bonds (I) everyone must respect and honor the rights of others. (II) One who exercises his right may not harm another.

Then there are (A) the rights of Allah and these are the duties of humans and it includes belief in Allah and His Deen and obedience to the commandments of his Deen.

(B) The rights of humans- this type of rights can be of a person or of humans in general. In the case of personal rights, the person concerned can forgive, pardon, and drop it.

(C) Rights which contain both concepts, i.e. the right of Allah and the rights of men, but if the concept of the right of Allah is prevailing in it then it is annexed to the first type and if the concept is the right of a human then it could be pardoned, by the very human.

Our topic here is human rights, so lets see what human rights are? Life exists because it survives. It survives the ravages of transgression by homologous and heterologous competitors (not like Darwinism but a close resemblance). We the humans live on a high sociopolitical organization, so that society must honor the rights of one another.

Human rights are of two types:

- (I) Public rights: like to maintain peace and not to harm things related to the public.
- (II) Private rights: these are the personal rights of an individual. These rights can not be abolished nor taken away.

Some important rights are listed under:

1. In Islam five things are very valuable and precious and these are:

- (A) Life- No one can take the life of another, as that is sacred and secured by the laws of Allah. For the said protection Islam has the law of retribution. **Allah said: “and for you in retribution there is life, O people of understanding, so you may be protected (or you may avoid killing)”**. This is the case of an intentional murder while in the case of an accidental murder there is blood money to be paid to the family.
- (B) Property- No one can take or damage the property of another and if someone did, then he will be liable for damages.
- (C) Faith and religion- whatever the faith of someone is, no one can harm him because of his belief. In Islam there is the concept of “Zimmah”

and a “Zimmi”, the non-Muslim citizens of an Islamic state have full protection like that of a Muslim. As Islam says leave them along with their religion. Also it says for them is what is for us and upon them is what is on us.

(D) Honor- **Allah said: “And indeed we have honored the children of Adam” (17:70)**. So Allah gives this honor to all humans so no one can harm anyone in his honor.

(E) Mind, brain, and intellect- this is another valuable and protected right of an individual. No one can either harm it physically like making him addicted to drugs, nor can anyone poison the thinking of someone. Even to force someone to change his belief is not permissible, inform the person about the truth and let him think.

2. Right of freedom- the basic motto of Islam is “there is no god but Allah”, meaning there is no slavery to anybody except to the creator and real Lord. That’s why Umar said to his governor “people were delivered by their mothers as free people, since when did you think they are slaves”. And Ribai ibn Aamar said to the Persian authority “Allah has appointed us to bring humans out of the slavery of humans and make them the slaves of the Lord of humans”.

3. The right to acquire basic needs- as we said that Islam did not prevent acquiring natural needs but it only said, it should be in a legitimate way. Also Islam persuades and encourages people to work and earn and never to be a burden on others. The person must try to earn and give to others and not to beg, take, or expect from others.
4. The Right of ownership and possession- when earning is allowed or rather encouraged even, then it is logical to keep it, own it, and possess it. And as we mentioned that property is one of the five valuable things and no one can harm another in his property. So many rights arise from this concept of property ownership and possession. The Prophet of Allah said, “Whoever is killed defending his property is martyred”. This right goes to man and woman both and even applies to a baby and also the baby in the womb, now in certain cases like will or inheritance,

**Allah said:**

**“Eat up not the properties of each other unjustly” (2:188).**

**Also Allah said:**

**“But if that is a trade by mutual consent” (4:28)**

5. The right of education- human has the ability to reason and intellect, he needs education and has the ability to acquire it and he has too, so nobody can be deprived of this right as well because education is not a privilege but a right. Allah has commanded to read and learn, even the revelation to the Prophet started with this order.

“Read in the name of your Lord who created. Who created mankind from the clot. Read and your Lord is the respect giver. The one who taught with the pen. Who taught mankind what he did not know (before)”

So Allah mentioned,

(I) To read, (II) to read in his name, (III) he has created the whole world, (IV) He created human from clot, (V) read, (VI) your Lord is the respect giver, (VII) He taught with the pen, (VIII) He taught what humans did not know.

It means that a person may study Deen and the world as well, as Allah mentioned reading in his name, then mentioned the creation of the whole

world, and then the creation of the human. He repeated the order to show the importance of education and knowledge. He mentioned the method of getting education i.e. the pen, how small a pen is and look how much greatness can one achieve with it because mankind has reason and intellect and he can utilize small things for a big purpose. Also Allah said, he taught them what humans did not know before, which means this is a continuous process until the day of judgment and as humans have two aspects of their life, so they are in needs of two types of education (I) the religious type, (II) the worldly knowledge and how to use the things in this world.

6. The right of expression/freedom of thought and freedom of speech-speaking and expression is also natural for humans as Allah said:

**“The most Beneficent, he taught the Holy Quran, He created human beings and taught him how to speak and express” (55:1-4).**

**“Then by the Lord of the heaven and the earth, this (message/ Quran/ life after death) is as true as you speak” (51:23).**

Implicitly this verse says that speech is a reality. So everyone has the right to speak his mind, but with only one condition that is it may not be harmful to others and not to corrupt social values and ethics. Some exceptions can be there.

**Allah said:**

**“Allah doesn’t like to speak evil loud but one who has been wronged” (4:148).**

Sometimes in retaliation someone says a similar harsh word, which can be an excuse for him.

7. The right of consciousness/ right of religious conviction- humans in one-way or the other believe in something. Sometimes that is in a divine concept while other times it is a created concept and that is called a religion. The relation of everyone to his Deen and religion is in such a way that he cannot tolerate any type of challenge or criticism to it, he becomes

angry, loses temper, and retaliates. That's why even if a religion is based upon a wrong concept; still it may not be condemned in a challenging way as it is counter productive.

**Allah said:**

**“And do not revile (insult/vilify) those who invoke others beside Allah otherwise they will revile Allah spitefully in ignorance. Thus we have made the actions of all men seem pleasing” (6:108).**

This verse means neither revile the worshippers nor their gods.

**Also Allah said:**

**For every nation we have appointed rituals which they observe so let them, not dispute with you on the matter” (22:69).**

Yes, debate with arguments to educate people about Deen, and to distinguish the right from wrong is the duty of the Messenger and his

followers. But it may be in a nice and proper way to convince others to accept the truth.

**Allah said:**

**“Requite evil with good” (41:34)**

**“And have disputes with them in the best manner” (16:125)**

It means that Deen is a matter of free will. That’s why Islam does not allow converting someone by force.

**Allah said:**

**“There is no coercion in the matter of faith, indeed guidance has become clear from misguidance, so whoever believes in “Taghut” (wrong concept of god and religion) and believes in Allah then he has firmly held the strong hand hold (of the rope of Allah)” (2:256).**

**“And whoever wills let him disbelieve and whoever wills let him believe” (18:29)**

Yes, the ultimate end is with Allah and everyone would be put to accountability on the Day of Judgment for his faith and character.

8. The right of free movements and migration- human is a living and mobile entity and he is bound to look and think for his benefit. For the said purpose he needs movement

**Allah said:**

**“Have they not travelled in the land” (12:109,22:46,40:82)**

**“So travel in the land” (3:137,16:36).**

There are so many other verses as well that explicitly and implicitly call for free movement.

Yes, the purpose could be different; some of them will travel for seeking knowledge while some others for jobs, businesses, and others for entertainment even. Yes their travel and movement may not be in an illegal way or for some illegal things, but putting restrictions to that does not mean that one has no right of free movement. Even Allah has mentioned free

movement for trade as a favor for the people of Makkah, i.e. the Quraish as he said,

**“Because of taming the Quraish, their taming of the trips of winter and summer, they may worship the Lord of the house” (106:1-3).**

9. The rights of association- as humans are social by nature, they cannot live in isolation and that's why solitary confinement is not legal anywhere in usual circumstances. So they should live in society to take part in social activities and to make a party or to take part in the concept of “Jama’ah” that's why it is so important in Islam.

Humans are considered as Khaleefah, and Khalafah is of two types (I) the obvious one, (II) the non obvious. And this second one is to be in a bond, subject to some authority and rule and to preserve and protect his due rights as well. This party could be a social one or a political one. That is logical, reasonable, and needed. Because certain things are not known to everyone, he needs to consult someone and to seek advice and this creates a link in one way or the other. The concept of “Shura” is very important in Islam, and that produces the concept of groups.

10. The right of justice- as a known fact there is no peace without justice, as peace is needed, so justice is needed as well.

**Allah said:**

**“Say (O Muhammad) my Lord has commanded justice” (7:29).**

**“Indeed Allah commands justice and kindness” (16:9).**

**“O you who believe! Be firm in establishing justice” (4:135).**

**“ O you who believe! Stand out firmly for Allah and be a just witness, and let not the enmity to others make you avoid justice, be just that is nearer to piety” (5:8).**

It means that justice is must, even in the case of an enemy but even if your enemies have done wrong to you in Deen, like they prevented and

stopped you from the house of Allah to perform worship still you are bound to do justice and it may not be taken towards injustice.

**Allah said:**

**“And let not your enmity to a nation that they have stopped you from “Al Masjidul Haram” (holy Kaabah) may not lead you to transgression” (5:2).**

11. The right of protest- if some form of wrong is done to someone so even though forgiveness and not to retaliate is appreciated and welcomed, but sometimes it does not work, so retaliation is allowed. Allah said when he praises those who have a strong and firm belief and trust in Allah and he mentioned some of their qualities, there Allah mentioned,

**“And those who when an oppressive wrong is done to them they take revenge, the recompense for an evil is an evil like there of....” (42:39).**

So if revenge is allowed then for sure to speak against an evil being done to one is also not only allowed but rather it is his right. Abu Bakr the first successor of the Prophet said in his first address that “co-operate as long as I am on the right direction and correct me when I make a mistake”. While the second successor said, “If I am deviated from the right path, what will you people do?” Then one Bedouin jumped and said that “we will correct/straighten your crookedness with the edge of our swords”, after that Umar came to him and hugged him and thanked Allah that he has created such people who will straighten him if he deviated. All these rights are the duties of the state so it may preserve and protect this for each and every citizen.

## Chapter 23

### More than One Khaleefah

Islam in its very motto of tawheed insisted upon unity and unification as Allah said:

**“And hold fast all of you together to the rope of Allah and be not divided among yourselves” (3:103).**

**“And obey Allah and his Messenger and do not dispute lest you lose courage and your strength depart and be patient (stable and steadfast)” (8:46).**

**“Indeed those who divided their “Deen” and they were in sects you (O Muhammad) are not from them in any way” (6:159).**

It means that you have nothing to do with them as they are divided and you are for unity, Tawheed asks for unity and division goes towards “Shirk” (polytheism).

**“And be not from the polytheists, those who split up then religion and became sects” (30:31-32).**

It means implicitly that the Muslims may have only one Khaleefah and they are united under his Khalafah because division produces hatred jealousy, greed, and enmity and that is not only harmful to their power but to their Deen as well.

Now as long as Deen was strong and people were pious then the entire ummah had only one Khaleefah but as much as Deen is becoming weak in people they are getting divided and the result is loss of their power,

authority, honor, and dignity. Now basically the whole ummah agrees that the Muslims must have only one Khaleefah but according to Karamiyyah, it is ok to have two Khaleefahs or more in different parts. He said that Ali was a Khaleefah and Muawiyyah was another Khaleefah at the same time and none of Ahlul Sunnah ever said that either of them was a sinner or a criminal. Yes at most one can say that Muawiyyah was in an analogical error, which is not a sin. Both of them had companions of the Prophet and major followers with them.

Khateeb also said the same in his book “Al Mawaqif” that if one Khaleefah can take care of the whole area then the concept of two is wrong and if not because the area is too vast then that is ok to have two Khaleefahs according to some scholars.

Imam Nawawi said in his commentary on Saheeh Muslim that having two imams is wrong and this is an issue agreed upon by the ummah.

Allamah Mawardi said, if both got Bai’at at the same time then both are void.

Yes if they got it one after the other then the first one is valid and the second is void, but if it is not known who got it first then some scholars said both are void while others said there should be a draw between them and if both are done in the same time but with one Bai'at then both are void as well (Abu Yala).

Shafi'ites say that to have two imams is not allowed as this is against the very spirit of unity, which is the order of Allah (Mughnil Muhtaj). While to them if the second imam got the Bai'at and it was known to him that already a Khaleefah has been appointed for the ummah then this second imam may be punished.

Arfajah al Ash'jal said that the Prophet said whosoever came to you and you were united upon one and he (the comer) was trying to split your stick or to break your unity then kill him" (Muslim).

But now when the Muslims have different areas in their control, and this is difficult for one Khaleefah to take care of it, so it should be permissible to have more than one Khaleefah. We say in different areas they should have their own ruler but in some way they should be united over a central leadership of a Khaleefah, as it was the case in “Khalafah Uthmaniyyah”.

## Chapter 24

### The Characteristics of the Islamic System

As we said that Allah is the sole creator of the whole world and of humans as well, he is the Lord and he has given basic principles to humans on how to act and practice to make their life a good one here and a prosperous one in the hereafter. This system is given by the very creator and Lord who knows all about the past, present, and future and he knows the qualities and capabilities of humans and their faults and shortcomings also, so only his system can qualify their needs and necessities and can give them

the good here in this world and in the hereafter. Allah has comprehensive knowledge, inclusive mercy, irresistible power, and never gets affected by anything, situation, power, or person. And he sent the Prophet Muhammad as the last Prophet to the whole world so for sure the system he has given will be the perfect one qualifying each and every time and for each and every situation. So this system gave us principles and it has left a vast field of deduction for the jurists according to different circumstances. So this system has one part known as “Shariah” where the laws are clearly mentioned in the text of Quran and Sunnah and there is no room for use of reason, or intellect and no room for deduction, but another part is known as “Fiqh” and these are the laws deduced by the authentic jurists in accordance with the situations they faced. These are changeable if needed but may be replaced with similar laws deduced by the authentic jurists in the framework of the well-known rules of deduction.

Regarding the first category Allah said:

**“It is not for a believing man or a believing woman when Allah and his Messenger have decreed a matter that they should have any**

**option in their (own) affair (even) and whoever will disobey Allah and his Messenger he has indeed strayed in a plain error” (33:36).**

Regarding the second one Allah said:

**“And if you differ in anything amongst yourselves then refer it to Allah and his Messenger if you believe in Allah and in the last day. That is better and more suitable for final determination” (4:59)**

Also Allah said:

**“And if they would have referred it to the Messenger or to those in charge of authority (knowledge) among them then those who could deduce from amongst them would have understood it” (4:83).**

(I) The relation of individuals amongst them and with the state and society: In a society based on an Islamic system the line is

drawn and clearly mentioned that to what extent an individual can go for his own good and when the state or society can interfere in the matters of individuals. Islam has given the right of work, ownership, and possession, which inspires individual to make effort and strive hard, but not to harm the society and its public and social rights but rather to support it as both depend upon each other. Human is social by nature so a healthy society can assure his safety, honor, and dignity so he has to give to the society and the society will give back to him as well.

**Allah said:**

**“And seek in that which Allah has given you the hereafter and do not forget your portion from the world” (28:77).**

In Islam the society is one unit and like one body, while individuals are its parts and if a part of the body suffers, it

causes pain to the whole body and if it becomes chronic and untreatable then it will eventually cause death to the body.

- (II) The rulers are from the ummah: As Allah said: **“O you who believe! Obey Allah and obey the Messenger and those in authority from amongst you” (4:59).**

This ayah means Islam doesn't allow colonialism because that is a type of slavery and that is against the very honor and dignity of the individual and nation as well, while the pledge of allegiance in Islam means no to slavery of all except Allah alone.

- (III) Ethical and moral education of the nation: As we know that man made laws deal with worldly and physical affairs. These laws have nothing to do with spirituality, ethics, and morality, while human by nature has animal characteristics. He has lust and anger and when lust and anger get together and is supported by intellect the result is disorder, mischief, and bloodshed. This

lust and anger both are natural and life is based upon it, so if it has not been polished, civilized, and cultured then the result is disastrous and dangerous. That's why its correction and polishing is must and that could be possible through education and nourishment. An ethical society can never be corrupt neither in its political process nor in its economical and financial one. These three are connected to each other and depend on one another. For thirteen years the Prophet made people ethically correct and when they migrated to Madinah then the state that was ran by these people was an exemplary state. The Prophet said, "I have been sent to perfect noble character".

A man of character doesn't do wrong and if it happened, he repents and admits that he has done wrong and makes a U-turn. He apologizes, asks for forgiveness, pays the damages down and presents himself to accountability.

(IV) Government by the will of people but with conditions: In today's democracies the government is that of the will of the general public and those who are elected by the public have every freedom to make or remove any law. But in Islam those who nominate or elect the Khaleefah are people of known qualities, the Khaleefah must have the required qualities, the "Ahlul Shura" must have the right qualities that we have mentioned already. Yes in the west and east there are qualities and conditions as well for the voters, the nominees for parliament, and for various posts as well, which means this concept of conditions, qualities, and restrictions are common but these conditions, qualities, and restrictions differ from country to country, region to region, and culture to culture. Democracy doesn't have a universal form, now one who is not a citizen can not contest the election for the parliament, one who has a felony on his record doesn't have the right to vote and one who is not a born citizen of the United States cannot contest for presidency. In such a way Islam has its own conditions, requirements, and restrictions. So the parliament with all its supremacy cannot make any law against the Quran and Sunnah, because the actual sovereignty and rule belongs to

Allah, so the parliament or the Khaleefah is sovereign but to some limits and bounds.

## Chapter 25

### “The Characteristics of the Islamic State”

An Islamic state is a specific form of a state; it has its own characteristics, which will be listed under:

1. In an Islamic state the supremacy and sovereignty belongs to Allah and Allah is the Lord and the ruler as Allah said:

**(I) “Rule is but for Allah (alone)” (6:57, 12:40&67)**

**(II) “Beware to him (Allah) belongs the rule” (6:62)**

**(III) “Beware to him belongs the creation and the rule” (7:54).**

This last verse actually mentioned the reason also that when Allah is the creator then he is to be the ruler as well.

**Allah said:**

**“And he doesn’t make anyone as his partner in his rule” (18:26).**

The rulers in an Islamic state are his agents only as Allah said:

**“And He (Allah) is the one who made you agents on the earth” (6:165).**

**“Then we made you agents on earth so we may see how you would work” (10:14).**

So the Khaleefah or the ruler does not have real supremacy. That is for Allah alone. All his acts must be in accordance with the Quran and Sunnah otherwise that will be null and void if it goes against the Quran and Sunnah.

2. Quran and Sunnah is the supreme law of the state so the parliament can not make any law against it and even where any law is going to be made, that must be by the authentic jurist in accordance to the known procedure of deduction, Allah said in many verses “Obey Allah and obey the Messenger”.

3. The Khalafah and the structure of the state and authority may be in accordance with the consent of the people as the Khaleefah is to be nominated and elected by their elders, which are called Ahlul Halli wal Aqd dually consented to by the general public in one way or the other as we mentioned before and if the whole ummah or the majority go against Shariah, it doesn't have any legitimacy.
4. The whole ummah may be united on the basis of Deen as the fundamental law of that state: because in such a state the status of tribe, clan, color, culture, and geography is secondary.

**Allah said:**

**“And hold the rope of Allah together (as a whole) and be not divided” (3:103).**

Yes the Non-Muslim citizens in such a state are considered Non-Muslim faith wise, but they are Constitutional Muslims as they submitted to Islam as the law of the land and as the constitution. This concept does

not give any room to any discrimination and the Prophet made it clear in his sermon, but even the Holy Quran itself when it said,

**“O Mankind! Indeed We created you from one male and one female” (49:13).**

**“O Mankind! Be dutiful to your Lord the one who created you (all) from one soul (Adam) and who created from that (soul) his wife (Eve) and he created from them both many men and women” (4:1).**

This means that all are equal.

5. The virtue in such a state is to have piety, honesty, truthfulness, and noble character. So this state is a welfare state, taking care of everyone, provides justice and treats people kindly, fulfill its obligations, even towards the visitors and even other Non-Muslims.

**Allah said:**

**“Fear Allah and be with the truthful people” (9:119).**

**“Fear Allah and speak the truth (to the point and accordance to the situation) (33:70).**

**“O you who believe, fulfill the obligations” (5:1).**

**“Indeed Allah commands you to render back the trusts to whom they are due and when you judge then judge with justice” (4:58).**

These verses did not differentiate between person and person or nation and nation or even Muslim and Non-Muslim.

6. The state’s affairs should be resolved in accordance with Quran and Sunnah, the rules of Shariah, and when there are no such instructions then

it may be resolved on the basis of “Shura” as we mentioned, even though the Khaleefah is not bound to accept it as a whole but he should not throw it away as a whole either. It depends in brief we can say that its characteristics are:

- (I) The sovereignty of Allah and the supremacy of the Quran and Sunnah.
- (II) Obedience to Allah and his Messenger.
- (III) Following the footsteps of the Messenger of Allah and his “Khulafah” (successors).
- (IV) The concept of Khalafah.
- (V) The “Shura” (consultation) is the visible principle.
- (VI) Implementation of Shariah to provide a good life here in this world, so it may give them all a good one in the hereafter.

## Chapter 26

### Administration

As we know that the Khaleefah is the head of the state, the supreme commander of the forces, and the chief executive, so he is the one responsible, but he needs different people to help and support him to be able to run the state affairs smoothly. These supporters, helpers, and workers are needed in different fields and all of them are subject to the state, its laws, and rules, and to its policies from time to time and all these come through or from the Khaleefah, so they are subject to the Khaleefah. The Khaleefah or in his name can delegate the power to them in a specific field and to a specific limit, so no one should step in a field other than his nor should he cross the limits in the field concerned, as Shariah puts and prescribes limits and bounds as well. Even for the Khaleefah, so the Khaleefah will describe the same for others, otherwise they will create a mess and dispute then nothing can be done properly. This administrating, giving duties to others and delegating powers to the “Waalis” (governors and collectors) was done by the Prophet

himself. Then his successors Abu Bakr followed the same. Umar the second successor disciplined this in an organized way and so was the case of Uthman and Ali as well and they are the predecessors of the ummah.

Allamah Mawardi mentioned a few important departments listed under:

- (I) Those who have the general power of attorney in all the affairs so they handle all these as agents of the Khaleefah, in today's politics we call him prime minister for example.
- (II) The power of an inclusive authority but in specific affairs like the governors of different states.
- (III) Specific authority in all affairs like the chief justice in judicial affairs, chief of the army in defense, auditor general in auditing affairs, etc.
- (IV) Specific authority in specific affairs like the judge in a specific jurisdiction power wise, or territorial, or the collector of a specific area.



## Chapter 27

# Responsibilities of the People Appointed By the Khaleefah

Allamah Mawardi said, these responsibilities are of two types:

- (I) “Al Wazarah” or Ministry
- (II) “Al Imarah”

The first one is for those who were appointed by the Khaleefah for the whole state. And there are two types, (a) “Wazeerut Tafweed” who has been given the authority to look into all the affairs of the state and to resolve these to the best of

his knowledge, planning, and ability and we can call it premiership in today's terminology. This appointee can do everything on behalf of the Khaleefah except three things.

(A) He cannot appoint someone for this post after him, while the Khaleefah can nominate a Khaleefah after him and he can also appoint another "Wazeerut Tafweed".

(B) The Khaleefah can suspend the right to elect a Khaleefah but the Wazeerut Tafweed cannot do that.

(C) The Khaleefah can remove one who has been appointed by this wazeer (minister) but this wazeer cannot remove one who has been appointed by the Khaleefah.

If they both differed in an issue then (I) if that is in financial affairs, the Khaleefah cannot nullify what the wazeer has done as long as that is not a big blunder.

(II) If the wazeer appointed someone as a Waali (governor) for example and the Khaleefah does not like him then he can reject him.

(III) If they both appointed two different people to one post then the first appointment is the one that is accepted.

In order to not have conflict, the wazeer must study the day-to-day business of the Khaleefah so he may not do such a thing that contradicts something already done by the imam. Also the Khaleefah may look into the day-to-day business of the wazeer and approve what is ok and to revoke what is not right because these affairs were according to his deduction and approach and it could be wrong, so the Khaleefah has the right to withdraw what is incorrect.

Then for such a wazeer all the required qualities of a Khaleefah is required except the quality of being from Quraish according to those who said that it is must for the Khaleefah to be from Quraish. Because Abu Bakr said to the “Ansar” we are “Ameer” and you are “wazeer” also it is must for “wazeer” to be from those who can deduce laws and to know the tax and army systems as well, basically it means that he has some knowledge of revenue collection, finance and economics, and also of defense.

This responsibility may be given based on a contract between him and the Khaleefah, in other words the Khaleefah has to take an oath from him, in this regard this “wazeer” must be only one individual just like the Khaleefah.

And as for the “Wazeerut Taufeez” is concerned, he is a link between the Khaleefah and the general public and the Ameers of different provinces or departments for example. He has two duties:

(A) To take the issues to the Khaleefah which are important whatever they maybe.

(B) To take the orders of the Khaleefah or his wishes to the people concerned.

It means that this wazeer cannot practice based on his personal deduction, approach, and planning but only a sometimes when it is needed urgently. This wazeer needs to be (I) trustworthy, (II) truthful, (III) not having greed, (IV) non-biased towards the people concerned, (V) having strong memory, (VI) clever, (VII) not to be from people who follow their whims and desires. He also can be from amongst the non-Muslims (Zimmi) also, but could the wazeer be a woman? There are two views in this regard; that because of extra exposure is needed for such a job a woman may not be given this responsibility. Can the wazeer be more than one person? It depends on the circumstance.

Then “Wazeerut Tafweed” has a lot of power so it is must for him (I) to be a non slave, (II) to be a Muslim, (III) having the talent to deduce laws, (IV) to know economics and defense, but these qualities are not required for the “Wazeerut

Taufeez”, to be a man is must in the first one but in “Wazeerut Taufeez” there are two point of views.

(V)The first one can decide a matter himself but the second one cannot.

(VI) The first one can appoint a “Waali” himself but the second one cannot.

(VII)“Wazeerut Tafweed” can make war and peace plans but “Wazeerut Taufeez” cannot.

(VIII)“Wazeerut Tafweed” can carry out the revenue and finance affairs but the “Wazeerut Taufeez” cannot.

2.“Al-Imarah” the second responsibility of the appointed people is “Al Imarah”.

The appointment of Ameer in different areas was started in the time of

Umar when the Islamic state was expanded to Sham, Persia, and Africa. He made Sham in two parts, Persia in three, and Africa in three parts as well.

Each part had an appointed Ameer or Waali leading them in prayer, judging

their disputes, collecting the revenue, and leading the army. The same

procedure was adopted by the Umayyad and Abbasids and later on the jurists

classified this Imarah to two categories:

(I) “Al Imaratul Aammah”: This type includes all the affairs in the relevant zone like to maintain peace, defense, revenue, and the judicial procedure. This type is further classified in two sub categories:

(A) Imaratul-Istikfa: the Khaleefah appoints someone well qualified, in a specific zone, but this is up to the Khaleefah to hand him over all the affairs to specify and mention the affairs he will be taking care of. Then the one whose responsibilities are specified, he has the authority to that extent, while the one who has been appointed by the Khaleefah in a zone and he did not specify his fields of responsibility then that Imarah is general and inclusive to all affairs of that zone. This Ameer has to take care of the following:

1. To look into the army and armed forces affairs, their planning and salaries, if the Khaleefah has not fixed it already.
2. To appoint the judges and officers for the specified zone.
3. To collect taxes, to appoint collectors and to arrange how and where it should be spent.
4. The protection of Deen and its rules.

5. To implement the laws and rules may be there related to the rights of Allah or the rights of mankind.
6. To lead the Friday and Eid prayer either himself or appoint someone on his behalf.
7. To ease the performance of Hajj.

And if that zone is adjacent to another country to the ocean then that Ameer is bound to safeguard the boundaries and to counter any attack therefrom. The required qualities for such an Ameer are the qualities of “Wazeeut Tafweed”, the only difference is that the jurisdiction of this Ameer is in a specific zone while the jurisdiction of “Wazeerut Tafweed” is in the whole country. Also this “Wazeerut Tafweed” has the right to look into the performance of zones, he can even depose an Ameer if he has appointed him but if the Khaleefah has done it then his deposition should be with the permission of the Khaleefah or his later approval.

This Ameer or Waali can appoint Wazeerut Taufeez for his zone, and it can be one or more people, but he cannot appoint a

Wazeerut Tafweed except with the permission of the  
Khaleefah.

(B) “Imaratul Isteela”: “Isteela” means taking power and control by force. In such a case when someone got into power by force in a specific zone, then the Khaleefah should approve him and hand him over the affairs of that zone, but the religious authority may remain with the Khaleefah. This approval is because of necessity and the facts on the ground, otherwise he must be deposed. This approval is because of:

- (I) To defend the Khalafah and not to get involved in a fight with his own people as it takes away the respect and honor of the Khalafah and disturbs the system.
- (II) To keep the rule of “Deen” intact.
- (III) To remain united.
- (IV) To have the religious authorities and their decree and judgments enforced and implemented.

- (V) To have the “Zakat” and other financial rituals revenue distributed according to Shariah.
- (VI) To get religious punishments for crimes implemented and executed.
- (VII) To have that “Ameer” submissive to Islam and its rules.

The difference between these two i.e. Imaratul Istikfa and Imaratul Isteela is:

1. Imaratul Istikfa is done by the selection of the Khaleefah and acceptance of the Ameer concerned, while Imaratul Isteela is by force and necessity.
2. Imaratul Istikfa includes the zone the Khaleefah has mentioned in the contract, while Imaratul Isteela is for that area which he controlled by force.
3. Imaratul Istikfa includes the affairs mentioned by the Khaleefah while Imaratul Isteela includes all the affairs of the zone concerned.

4. Imaratul Istikfa can appoint Wazeerut Taufeez by himself, but Wazeerut Tafweed, he can only appoint with the permission of the Khaleefah, while Imaratul Isteela ca appoint both types himself.

(II) Al Imaratul Khassah- Originally in Islam the concept of “Imarat” was general and included all the affairs like executive, judiciary, defense, revenue etc. That was the case of Amr ibn Aas who conquered Misr (Egypt), and he was the governor, the collector, the judge, and the general as well, then Umar appointed Abdullah ibn Abi Sarah as collector and then Kab ibn Soor as the judge and the governor remained the imam and the general.

This gave us the concept of three branches of government, the legislative branch, which is the duty of the jurists, the enforcement of law and to maintain order and peace, which is the responsibility of the executive, and the judicial procedure, which is the jurisdiction of the judiciary system. While the army is totally a separate entity, the Khaleefah is the supreme commander for that.

All these details are given from the Islamic state's history on how they used to manage these affairs but nowadays there are written constitutions, rules, laws, and policies and known laws which are called rules of business. The zones, provinces, counties, federation, union, federating units and states in the union are clearly mentioned. The administration for the center, and the states or provinces, their various departments, its heads, officers and workers their jurisdiction and duties, the common things controlled by the center and the powers of the different zones, states, and provinces in a country, everything is mentioned. All the people, especially those in authority and others are bound to follow that. If the people in authority do not follow that, then the higher authority should take action in this regard, or even the public can go against them to the judiciary court. These various concepts have been adopted by people from time to time and when ever they feel that such and such thing is not practical anymore then they either replace it or modify it. So as we said Islam has given principles and left a vast field for intellect and intellectuals to think, deduce, and implement what is best for the state and public to meet the needs of the time, provided it is not against the supreme and fundamental law of Islam, i.e. the Holy Quran and the Sunnah.

# Chapter 28

## Judiciary

As we mentioned before that there are three important branches in a government, one important branch is the legislative branch and in Islam that is the duty of the jurists to deduce and frame the laws for issues that do not have any expressed or deduced solution from Quran and Sunnah. As the Prophet asked Muaz ibn Jabal when he was sending him as an ameer and “Qazi” (judge) to Yemen, “how will you judge?” Muaz said, based on the Quran, The Prophet said and if you could not find it (there)? Muaz said, based on the Sunnah of the Prophet. The Prophet said and if you could not find it (there also)? He said then I would deduce (and apply) my (juristic) opinion (analogical deduction). The Prophet said praise be to Allah who empowered the messenger of his own messenger towards what he likes.

Issues and disputes will be there, so authority and judgment is needed. This is reasonable and logical. One of the main purposes of “Deen” is to provide peace and justice and that is to be provided by an authority having control and an upper hand. For judgment, the judge and a judiciary system are needed, justice is the order of Allah and being “Just” is Allah’s attribute. To be a judge and to administer the justice based upon Quran and Sunnah, Ibn Masud said, that is more liked to me than worship for seventy years if someone will do that between two parties.

The Prophet of Allah was the head of the state, the chief executive, the supreme commander, the legislator and the judge. His noble personality gathered the executive, legislative, and judiciary together. Yes he sent Ali and Muaz ibn Jabal to Yemen as judges, and when he conquered Makkah then he appointed Atab ibn Aseed as Ameer and judge in Makkah.

Umar was a judge in the time of Abu Bakr, then in the time of Umar as we said he separated judiciary from executive to some extent and appointed judges in different parts of the country. Umar wrote a letter to Abu Musa, which is considered a rule and regulation for judiciary, judicial procedure, and judges. He also established different departments and also prisons. The judges used to deal with civil suits, financial, and property

disputes, while the criminal side i.e. “Qisas” and “Hudood” were the jurisdiction of the Khaleefah and the Waalies of the states. But Uthman established a specific judiciary and judicial premises.

The judiciary is based upon two things:

- (I) The Judge
- (II) No compilation of the decrees of the judge as it was to be executed at the same time under the supervision of the “Qazi” (judge).

Umar also fixed salaries for these judges so they may have free time and a clear mind to only worry about their job and duty.

In their decree they used to go to the Quran, Sunnah, Ijma, and Qiyas. The Umayyad and Abbasids adopted the same procedure in the proceeding times, so the judges were free for their jobs, duties, and power. Also the Umayyads started recording the procedure, and there

were different types of judges based on power and specialties. The Abbasids introduced the post of chief justice and the first chief justice was Qazi Abu Yusuf, the student of Imam Abu Hanifah. His status was also like the justice minister, who used to appoint the judges and watched them as well.

## Chapter 29

### The Qualities of the Judges

As the Khaleefah is the center of power and authority so basically he has the right to appoint judges or the “Wazeerut Tafweed” can do that as we mentioned. The Ameer of a specific state can also appoint judges in his particular region.

The judges must have the following qualities:

(I) Islam, (II) to be an adult, (III) to be a sane person, (IV) to have sound senses, so he may not be blind, deaf, or dumb. (V) To have authentic knowledge of Shariah in detail.

These are qualities required in a judge in all four schools of jurisprudence while there are some other requirements like;

- (I) To be “Adl” and just- This is a condition according to three schools, so a “Fasiq” who committed sin or one whose testimony is rejected because of false charges he put against someone and he was charged for that may not be appointed as a judge, because he is not trustworthy.

**Allah said:**

**“O you who believe! If a “Fasiq” brought you a news then inquire it” (49:6).**

So one whose testimony is not accepted, he may not be appointed as a judge but the Hanafis say, that it is not good that a “Fasiq” is appointed to the post but if that is done then that is ok. This is like his testimony, that the judge should not accept

it, but if he did and judged an issue based on that then that is legal even though it is a sin on the part of the judge, but the one who is charged for “Qazaf” and false charges may not be given the post nor his testimony is accepted according to the Hanafis.

- (II) The judge has to be a male- This is also a condition for three schools of jurisprudence, so a woman may not be appointed as a judge because judges have a type of “Walayat” (authority like Khaleefah) and as she could not be a Khaleefah, so she cannot be a judge as well. But the Hanafis say, that as the woman can be a witness in social and civil cases, so she can be a judge in this field also, but in “Qisas” and “Hudood” she can not testify so she cannot be a judge in that field, as (I) Allah has mentioned her testimony in civil cases and said,

**“And get two witnesses out of your own men, and if there are no two men (available) then (get) one man and two women from those whom you like as witnesses, so that if one**

**of them errs (forget) then the other one will remind her” (2:282).**

Ibn Rushd relates from Ibn Jarir At-Tabari that according to him, she can be a judge on both civil and criminal cases, because she can give Fatwa in either field. To us what the Hanafis say seems to be more just because human nature is that they do not forgive and forget the person that is a witness against them specially in a criminal procedure, so to protect her from the after effects of that, Allah has dropped her from that side of testimony as a mercy and protection for her. It is the same case with “Qada”. Also a woman has a very soft nature and because of that she shows mercy more frequently than men, but on the other side emotion is also there and in a criminal procedure that is not good to have.

- (III) The talent and capability of Ijtihad is another requirement of a “Qadi” according to three schools of thought and some Hanafis also, so a “Muqallid” even though he is an Aalim (scholar) may

not be appointed as a judge, because the judgment may be on the basis of Quran and Sunnah. But the madhab of the Hanafis is that to be a Mujtahid is recommended but that is not a requirement so an Aalim who is qualified in Fiqh and Shariah is eligible for this job. Especially when the entire body of Fiqh is compiled and clarified, so a Muqallid is ok to be a judge. And in today's world a Mujtahid Mutlaq isn't found anywhere. That's why the later scholars of the other three schools of thought said what the Hanafis said. The only thing is that an over qualified scholar who is known for character, honesty, and piety may be given priority.

The judge is bound to look into the rules of Shariah regarding the issue, and he must implement that. And as we said that Fiqh is compiled and classified nowadays so there is no difficulty for a qualified jurist. The only thing for him is only to look into the specific rule whether that is applicable to this case and issue or not and if that is, then he may apply that without any reservation or hesitation.

There can be an issue where the opinion of his own imam cannot be applied properly in the specific circumstances they are in, so then he may look for the opinion of any other authentic jurist of the same Fiqh

or even for the opinion of another recognized Fiqh (Madhab) or even for the opinion of a jurist of the best three generations or later on if there are any, because the duty of a judge is to provide justice and safeguard rights, and if there is no solution for that issue, then if he has the ability he may deduce a solution for the issue through analogical deduction following the known procedures and rules for that. Or he may ask another capable jurist for his opinion in this regard.

For the procedure and judgment he must be committed to the evidence, proof, testimony, documents, admission, supportive proofs, customs, denial, and oath etc.

All jurists have said that the judge must avoid blame from any side and any type, so he may not judge in a case in which he has any personal interest therein or any enmity of the individuals that are involved. Also he may not hear a case of those whose testimony is not accepted for him in a court of law because of close relation like parentage, child or grandchild, or spouse for example.

There are certain other things as well, which should be taken into consideration like:

(I) He should consult other qualified jurists if the case is very complicated.

(II) He should not be inclined to one party in anyway.

(III) He should not accept gifts especially from the parties as this is considered a bribe.

(IV) He should not accept invitations but only from those who were his friends before and especially the invitation of either party to the case.

The judiciary is bound to make the procedure easy and to provide facilities to those who come to them. Also if anytime the Qazi feels any tension then he should not hear the case.

He may try to convince the parties to reconcile if the case is compoundable. Also he may try his best to find out what type of person the witness to the case is, because “Tazkiyatush- Shuhud” is important for the proper procedure.

The state may provide good sources and facilities to the judge, so they may not think of corruption and to give them and their decrees proper respect, protection, and to execute their decrees otherwise the procedure will lose its place.

Also their job may neither be interrupted nor they may be deposed for no reason or petty things even though the appointing authority can depose him.

## Chapter 30

### The Types of Judges

Allamah Al Mawardi said that judges are of four types:

- (1) A judge in general: which means he can judge in any issue relating to anyone, anywhere in the country, and anytime. This includes ten things;

- (I) To judge the disputes and conflicts as a settlement or as a trial and judgment.
- (II) To take the rights of someone when that is proven in the court with due process.
- (III) Guardianship of one who doesn't have the capability like an insane person, a minor, or one who lost his wealth because of being extravagant or insolvency to put bans on their transactions for example (but this second type is according to the three schools and also according to Abu Yusuf and Muhammad while Abu Hanifah said, a human as long as he is an adult and sane then there is no ban or restrictions may be put on his financial actions and transactions, because that is against his dignity and freedom and a disgrace for him. Yes, if those people whom he owes went to court and wanted their money returned then after due process, the court will order him to sell his belongings and to pay them).
- (IV) To look into the endowments to protect it and its output and to put and spend it in its proper place.
- (V) To execute the wills and testaments in what the testator said.

- (VI) To marry the widows to the proper people if they do not have guardians, this is the view of three imams, while according to Abu Hanifah an adult woman cannot be forced for “nikah”.
- (VII) To execute the “Hudood” (fixed punishment in Quran and Sunnah) but if that is the right of Allah then the judge himself is responsible for that, but if that is the right of a human then after his complaint he may do that.
- (VIII) To look into the good of general public so anything, which is harmful to the public, he may stop it like encroachment in the streets, roads, and bazaars. But the view of Abu Hanifah is that he should look into it if someone brought it to his notice, so he should not take preemptive action.
- (IX) To keep oneself up to date about his subordinate judges and to select his subordinates as well.
- (X) To deal with equity, equality of rich and poor, powerful and weak and not to follow his desires in anyway as Allah said:

**“O you who believe! Stand out firmly for justice as witness to Allah, even though it be against yourselves or**

**your parents or your kin if he (the party to a case) in rich or poor, Allah is prior to them both so follow not the desire so you may do justice and if you distant or turn about then Allah is all acquainted with what you do” (4:135).**

This verse made it clear that you may go with the law and legal procedure and not to incline to a rich individual because of his wealth nor to a poor person out of sympathy, because you represent Allah and you are subject to him so follow what He and His laws say, otherwise you do not follow Deen but your own desires and for that either you will turn your face from the laws of Allah or you will distort it and that is a form of cheating to Allah and to your own self.

2. Judge in specific field and jurisdiction: So he may confine himself to his jurisdiction and field (like the judge of a county, district, or as state or the judge for the cases of income tax or custom etc).

3. A judge whose jurisdiction is limited to an area even though he is looking into all the aforesaid ten things we mentioned.

4. A judge for a specific day for example Friday so he can look into these matters and judge only on Friday.

# Chapter 31

## The Appointment of Judges

As the authority in general lies with the Khaleefah, so basically he has the authority to appoint a judge, but if he has delegated the powers to someone else like “Wazeerut Tafweed” or the Ameer in a specific state then they also can appoint the judges. There are four required conditions:

- (I) The one who appoint the judge has this authority and the judge knows that.
- (II) The required qualities of a judge are found in the appointee and the appointing authority knows that.
- (III) The power jurisdiction and field of his job as was mentioned.
- (IV) The territorial jurisdiction is also mentioned.

Then principally the appointing authority can depose a judge, but he should not do that unless with solid reasons. If he has been deposed then this may be conveyed to him because the view of the Hanafis is that this deposition is not a one-sided case so after his deposition but before getting informed all his decrees are legal and may be executed. He himself can resign also but he should not do that except if he has a reasonable excuse, as this is the best type of worship because it is for the good of the general public.

He does not get deposed with the death of the appointing authority, because he does not work for the Khaleefah in person but as a representative of the general public and they are there. It is the same case if the appointing authority is deposed.

The Hanafis and some Shafi'is and Hanbalis said that the hearing of a case by a group of judges is also allowed and if they did not agree on the decision then the majority's decision may be taken and executed.

The basic concept is that there may be one decree and decision but as the fear of injustice is there in these later times, due to people not having exemplary piety and fear of Allah, that's why Islam did not put a restriction to take the decree of a lower judge to a higher one. Even though there might be legal access to the same upper judge for review or revision, in this regard we can present two stories one is that of Ali when he judged between two

people and told them that if you are not happy with this ruling then you can take it to the Prophet of Allah, and so they did it and the Prophet approved the decree of Ali. Also Umar wrote his famous letter to Abu Musa al Ash'ari, which could be considered as a basic document for judiciary and judges. He wrote to him and informed him that when you decreed in a case and later on you thought of that and you found it otherwise, then that decree of yours may not cease you to follow the right concept you found later on. But here we will say that if the decree is based upon a text from the Quran or Sunnah or from Ijma then the alter concept is wrong and if that first decree is against the Quran and Sunnah then it is void and must be nullified, but if that decree was based on his opinion and deduction and then his deduction and opinion changed, then as both are based upon deduction so the first decree may not be changed, but for a similar case the decision may be according to the new deduction. As Umar said in such an issue, that the first was as we decreed then, and this later one is as we decreed now. But now when there are upper level courts or appellate courts, so one can take any decision of the lower court to the upper one and they will look into it. But when that ultimate court decreed a case then that is final even though their deduction changed later on because deduction could not be nullified by the like of that, while the first deduction already has judicial support, but that cannot be a precedence in the future if the opinion of the same judge was changed later on.

Also the decree of a judge cannot make a lawful thing unlawful or vice-versa. Also it does not produce rights, rather it clears and disclose it if there is any ambiguity therein, as the Prophet of Allah said after a decree that may be one of you is more soft spoken, and proved his case but if I have decreed with something in his favor from the rights of his brother, he should not take it, because I cut for him nothing but a piece of the fire.

But Imam Abu Hanifah said that the decree of a judge is executed in contracts and annulments of contracts, so if someone claimed a woman that she is his wife and he proved that in the court and the judge decreed it accordingly, now if in reality, there was no Nikah and marriage done, but based on this decree she became his wife. It is the same with the case of divorce if the wife proved it and the judge decreed it then they are divorced.

These types of cases have two conditions:

- (I) The judge does not know for sure that the witnesses are lying.
- (II) The issue concerned may be of a nature that at the time of this decree he was capable of doing that himself like Nikah or divorce.

## Chapter 32

### “Tahkeem” (Arbitration)

When two parties agree upon someone to judge between them, this is called “Tahkeem”. This is a legal concept in Islam. Allah said regarding disputes of husband and wife:

**“And if you fear a breach between them, then appoint an arbitrator from her family and another one from his family, if they both intend a peace (reconciliation) Allah will make a patch up between them” (4:35)**

The Prophet himself agreed to the arbitration of Sad ibn Muaaz with the Jews of Bani Quraizah when they cheated the state and the Prophet accepted and executed his decision.

The arbitrator should have the qualities of a Qazi (judge) but as we said that if a “Fasiq” was appointed as a judge then that is ok according to the Hanafis. It is the same if a non-scholar is appointed because he can ask

and consult a scholar. The arbitration could be only in financial and family matters. There is no arbitration in Hudood and Qisas even in case of Qatli-Khata (unintentional murder). Reconciliation can take place either for free or from something less than the blood money.

There can be more than one arbitrator like the case of more than one judge. The verse we quoted before has mentioned two, one from the husband's side and one from the wife's side.

As long as the arbitrator has not given his verdict either party can withdraw its consent because it was based on mutual consent and that may remain until the verdict, but Imam Malik said that as they started it with mutual consent, so the withdrawal should be in the same way.

When the arbitrator gave his decision than that is binding on them ethically and socially to follow it, and if that is taken to a court later on so if that is in accordance with the law then the judge should endorse the ruling of the arbitrator because there is no benefit to undo it.

## Chapter 33

### Wilayatul Mazalim

This is the case of the Khaleefah, the “Wazeerut Tafweed”, “Wazeerut Tafweez” and the Ameers of different zones to look into the wrong doings of people in authority or in power where the common judicial system does not take an action. Basically this is the responsibility of the Khaleefah and then the aforesaid people mentioned, but the Khaleefah or Wazeerut Tafweed or the Ameer of a state can appoint specific person/persons for the said purpose. This person/persons must have the qualities of a Khaleefah, or Wazeerut Tafweed or the Ameer, which is almost the same. The Prophet of Allah himself used to look into the “Mazalim” as he sent Ali to pay the blood money to the people killed by Khalid as a mistake, from the tribe of Bani Juzaimah. Umar was strict regarding “Mazalim”. He stuck up for a Coptic, when his governor Amr ibnul Aas had insulted him. Ali also looked

into it when his taking charge of Khaleefah was delayed for a few days and some “Mazalim” happened there.

Abdul Malik from the Umayyad Dynasty had determined a specific day to hear these cases. Umar ibn Abdul Aziz returned the properties to the people that were taken wrongfully by his predecessors. This procedure was also adopted by the Abbasids Khaleefahs like Al Mahdi, Al Hadi, Al Rashid, Al Mamoon, and Al Muhtadi. They gave the rights back to the people.

For the said purpose even a department could be established and that could consist of judges, officers, police, and jurists. The duties of such a person/persons are:

To look into the performance of those in authority whether they follow Shariah or not and whether they have done any wrong to the public in general or to individuals physically or financially and also to look into the records of different department if needed. For the said purpose they can take action because this is either a matter of the interest of the general public or a violation of fundamental rights.

Also he/they can look into the salaries of those in services whether that is reasonable or not and whether they receive it at the same time or is it getting delayed. If the authorities have usurped the property of someone or

people in authority have taken it then he/they can take action. For such an action the complaint of the usurped one is not must. He/they can do that whether they have taken it for their own selves or for the state and government. He/they do not need the owner to bring the proofs forward, but the estate's documents are enough, but if that has been usurped by individuals who are powerful and the case is brought to them, then they have to look into it properly if they filed an application to them, then they can decide the case accordingly either based on the confession of the usurper or based on their personal knowledge that this wrong has been done to the applicant, or based on the testimony, or that the general public say it and there is no doubt in it.

Also their responsibility is to look into the “Auqaf” for public affairs whether the production or benefits of that endowment is spent in its mentioned ways or not. He can find it through the record and documents, or other sources and supports. In case of endowment for some specific individuals or specific group, he can look into it if the complaint by these individuals or group came to him but in the first one a complaint is not must, instead they can take a so motto action.

Another duty of theirs is to execute the decrees of other courts where that could not be executed normally, as the person/persons are powerful

against whom the decree is issued. Also they may look into those things, the “Hisbah” or ombudsmen cannot look into. Their other responsibility is to look into open types of worship like Friday prayer, Eid prayer, Hajj, and Jihad if they are not done properly. They may look into the performance of the judges and the way they heard a case, whether they followed the due process or not, but they can only do it if the party or parties brought a similar complaint to them.

The differences between the judges and “Wali ul Mazalim”:

Allamah Mawardi mentioned a few differences:

- (I) The judges cannot use hard language about either party but Wali ul Mazalim can do so.
- (II) The judge’s field is limited along with his words but the Wali ul Mazalim has a vast one.
- (III) Wali ul Mazalim can use other sources and means of proving other than the known methods for a judge.
- (IV) The Wali ul Mazalim can discipline a wrongdoer and straighten him but a judge cannot do so.

- (V) The Wali ul Mazalim can delay when he feels some ambiguity, while judges have to decide the case when the party or parties request it. So the judge cannot delay the case.
- (VI) The Wali ul Mazalim can push the parties towards reconciliation but a judge cannot except if the parties asked for it.
- (VII) The Wali ul Mazalim can limit the party's movement so they may agree to mutual justice between them.
- (VIII) The judges can only take the testimony of an "Adl" and just witness while the Wali ul Mazalim can accept the testimony of one whose status of "Adl" and "non-Adl" is not known to him.
- (IX) If he wants he can ask the witness to give his statement under oath but that is not for a normal authority to ask for an oath.
- (X) The judges make the plaintiffs bound to bring forth witnesses if he has any, while the Wali ul Mazalim can ask

for witnesses himself to hear from them if they have any information about the properties.

These are the basic and golden ideas given by the jurists and scholars. But in today's world all these concepts and ideas are in written and codified form duly approved by the authority, so there are the lower courts, the superior courts, the high courts, and the Supreme Court. Also there are appellate courts as well.

The important thing is that the Wali ul Mazalim has the judicial and executive powers both because the common people submit to courts and his decrees but the people in authority and the influential people very rarely submit to it, so they need a court with special power of execution as well.

## Chapter 34

### “Al Hisbah”

This word is actually from the three root letters Ha Seen Baa, and in the Arabic language “Hasiba” means he thought or he counted but another word that can be derived from those same radical letters is “ihtisab”, which means accountability. So “Hisbah” means putting to accountability, but as a term in Shariah it means to enjoin good when that is deserted in totality and to prevent vice when that is done openly. The purpose of Hisbah is to protect and defend the society and to help it so this is related to the social system, norms, values, and sometimes in harms and injuries, which needs an immediate decision. As we know that to enjoin good and to prevent vice is the duty of the government and the general public as well.

**Allah said:**

**“Those who if we give them power in the land, they order for prayer, and to pay zakat, they enjoin good and prevent vice and with Allah is the end of (all) matters” (22:41).**

**“You are the best “Ummah” raised up for mankind to enjoin good and to prevent vice and to believe in Allah” (3:110).**

Imam Tirmizi narrated that the Prophet was passing by many bags of wheat in a bazaar, so he put his hand inside that bag and he found the wet wheat covered by dry wheat and he said, “Whoever deceived us, he is not from us”. This is the proof that the Prophet did Hisbah, but Umar adopted this as a system and department, and this name Hisbah was introduced in the time of Al Mahdi from the Abbasid Dynasty.

As we said that to promote virtues and enjoin it and to forbid and prevent vice and evil is the duty of every Muslim.

**Allah said:**

**“Why do not the Rabbis and the learned scholars forbid them from uttering sinful words and from eating illegal things? How bad is what they used to perform” (5:63).**

**“They used not to forbid one another from the Munkar (wrong doings) which they did vile indeed was what they used to do” (5:79).**

Also the Prophet said, “Whoever from amongst you saw an evil he may change it with his hands, if he could not then with his tongue and if he couldn’t then with his heart and that is the weakest iman (Muslim).

But for someone enjoining good and forbidding evil by himself this is a matter of reward and he is called “Mutatawwi”, while someone appointed for the purpose of enjoining good and forbidding vice is called “Al Muhtasib”.

Allamah Mawardi mentioned some differences between the two:

1. This is a personal responsibility of the Muhtasib, as he is appointed for that job so he must do that, but it is also a collective responsibility of the Ummah, so if one from the community did it, he gets the reward and the rest of the community are free from that responsibility.
2. Muhtasib must respond positively if he is called for duty, but that is not the case with others.
3. The Muhtasib must investigate if any wrong is going on or any good is deserted in totality and then carry on his duty in this regard, but a “Mutatawwi” is not bound to inquire and investigate, but if he found such a thing then he may go ahead and stop it if that is wrong.

4. The Muhtasib can take some subordinates with him, but the Mutatawwi cannot as this will be counter productive.
5. The Muhtasib can use his intellect in customs like sale and purchase in the bazaars or encroachments for example but the others cannot do so.

The qualities of a Muhtasib is to be just, having opinion, strong in matters of Deen, and knows different types of vices. But to be from those who can deduce is not required according to the majority of jurists. While some others have said that it is must for him to be able to deduce. Their plea is that the judge can consult other and ask for their advice, but the Muhtasib in certain cases has to decide the case immediately so he needs to be a judge.

The characteristics of Muhtasib are that his responsibility has the shape of judiciary, Mazalim, and executive, and police at the same time. So he looks into the issues of fraud in goods when it is getting sold and the cheating in scales and weighing. In this regard he is like a judge. Also he will give a chastisement to one who is committing open sins or if he is doing things against the etiquettes of Islam, then in this regard he is like Wali ul Mazalim, and he will also look into the general system of the society and its discipline and the peace in streets and bazaars, so in this circumstance he is just like the police and public safety department. Allamah Mawardi said his duty is to enjoin good and forbid evil and this is related to (A) the rights of Allah, which includes “Ibaadaat” (worships) and

the rights of the society and general public. (B) The rights of individuals like ownership. (C) The rights that are common between Allah and the individual, but in this regard the good of the society or the individual are given priority.

Regarding “Al Amr Bil Maruf” or to enjoin in good, (A) it will be either related to the rights of Allah alone but will be relating to groups or and considered as symbols of Deen like Aazaan for prayer or not praying Friday prayer in the masjid. Or even if that is not a symbol but that is must like prayer and fasting or that will be related to individuals so he may show attitude to the person if one is delaying prayer from its own time without any just cause.

(B) It will also be related to the rights of people and that will either be, (I) general like if the public needs and interests are being suspended, for example drinking water or the masjid is being damaged, so he may order for its repair either from the public exchequer or he will ask the rich to do it. (II) Or it can be specific rights like if someone is not giving the loans to those who lent him or not fulfilling his duties to those he is responsible for, like the food and sheltering of his children, parents or wife, but for this the deserving one may ask for it. (III) Or the common rights of Allah and the people, so he will order the guardians to marry their girls, and he will order the divorce or separated women to fulfill their “Iddat”, and if they do not then he may give them chastisement but not to the

guardians if they do not marry their daughters, sisters, or nieces for example. Also he may order the people to feed their cattle's and not to overburden them.

Regarding forbidding of evils it will either be (I) relating to the rights of Allah and these are of three types:

(a) Worship- he will give chastisement to one who does not take care of their prayer or they do not fast without any just cause. Also he will take "Zakat" and if someone is begging as a profession he may stop it and if some unqualified person is giving "Fatwa" he will stop him or one who is spreading unIslamic things in the society.

(b) Prohibited things- So he may stop people from places which create some doubts like mingling of men and women in streets and public places, but if the prohibited things are not open he may not spy on them as Allah said "and do not do any spying".

(c) Prohibited transactions- like usury or voidable contracts like cheating, fraud, or selling fake things as genuine items. He may also give a chastisement.

(II) In the rights of humans, like harming the neighbors by passing the limits of the property, or putting something on his walls, or that the branches of his

trees are causing trouble to the neighbors. But in these cases a complaint is must.

(III) Related to common rights like stopping people from standing upon the houses of others and to stop the imam from lengthy prayers causing harm to the old, sick, and weak people. Also to stop people from overloading their buses, trucks, carriages. Another thing is stop them from driving in dangerous weather or situations. Also he will check the streets, bazaars, and public places if someone is creating any hurdle within it.

## Chapter 35

### The Comparison Between Judiciary, Wilayatul

### Mazalim & Hisbah

All three are a type of the judiciary system in its general sense, but Wilayatul Mazalim is at the top level, then following that is the judiciary, and later on the Hisbah.

## Chapter 36

# The Resemblance Between Judiciary & Hisbah

Allamah Mawardi said:

- (I) The complaint could be taken to both a judge and to a Muhtasib regarding cheating in weight and measurement, or cheating in goods and money and its quality, and regarding delay in payments of loans and giving of rights. Muhtasib's confinement to these three types is because his jurisdiction to help people to get their rights.
- (II) In cases where he has the right of hearing, he is just like a judge so he can make one bound to pay the right he decree, but (A) the Muhtasib (ombudsman) can not hear the cases of other than the aforesaid wrongs as that is the jurisdiction of the judges. (B) He can hear those rights and order where the defendant admitted and if he denied the claim then that is the case of the judges. (C) The Muhtasib can take an action in his jurisdiction without a complainant and plaintiff, but a judge cannot as a dispute between two people is concerned. (D) The

Muhtasib should be hard in dealing and showing authority but a judge should have compassion and seriousness.

So in the first two the position of a Muhtasib is lower than a judge but in the last two he is higher than the judge.

## Chapter 37

# The Comparison Between Hisbah & Wilayatul Mazalim

The resemblance of both is:

- (I) Both should have strictness in dealings and showing authority.
- (II) In their own jurisdiction they both can take an action without a complainant.

While they differ in:

- (I) Hisbah is for those issues that do not need to be taken to the judges, while Wilayatul Mazalim is in issues that the judiciary system cannot tackle.
- (II) The Wali ul Mazalim can order things but the Muhtasib cannot.

In other words we can say that all three are related and helping each other with doing their jobs in the proper manner.

But in today's world different countries have different systems, so sometimes the judiciary system has the power of Wilayah and they look into those issues that could not be dealt with easily.

## Chapter 38

### International Relations

Islam is Deen and a complete system for everyone, every time, and every place. It qualifies the needs as Allah said:

**“This day I perfected for you your Deen and completed upon you my favor and chosen for you Islam as Deen (system)” (5:3).**

Also He said:

**“Enter into Islam in totality” (2:208)**

This Deen, as we have said is:

- (I) The Deen of Allah.
- (II) The Deen of all the Prophets.

(III) The Deen of humans in general.

This Deen has four branches:

(I) Faith and beliefs.

(II) Ethics and character.

(III) Deeds and action.

(IV) Duties and responsibilities.

1. The pillars of faith are known and that is:

(I) Belief in Allah.

(II) Belief in His angels.

(III) Belief in His books.

(IV) Belief in His prophets.

(V) Belief in the last day.

(VI) Belief in pre-ordained divine law.

(VII) Belief in life after death.

2. Character is:

(I) Justice to all (social justice).

(II) Kindness to the creation.

(III) Forgiveness if someone has done wrong to you as a mistake and he is willfully ashamed of what he has done.

(IV) Not to get involved with a stubborn hard headed person.

3. Deeds are of two types:

(I) In relation to Allah and that is “Ibaadaat” and mandatory worship, which is called the five pillars of Islam, that consist of, the prayer, fasting, Zakat, Hajj and of course the Kalimah or declaration of Islam.

(II) In relation to fellow humans and these are:

(a) Marriage and all its attachments.

(b) Business, contracts, trade, and transactions.

(c) State and government.

(d) International relations, the duties are (I) Dawah and (II) Jihad.

Humans by nature are very animalistic and have strong desires. They are also figuring out ways to fulfill those desires, and when they become angry because of those desires, they tend to retaliate and defend them as well. All these are in their nature and Islam does not press or kill that innate nature, but rather it polishes it

and civilizes it and if it goes off the limits than Islam controls it. For this control Islam gave us the concept of a state as we mentioned before, but a state just like an individual cannot exist in isolation and loneliness but it has to be in touch with other states by having relations even with those states that are Non-Islamic.

The basic principal in this regard are:

(I) The verse of Surah Mumtahinah:

**“Allah does not forbid you of those who didn’t fight against you on account of Deen and did not drive you out of your homes to do kindness to them and to do justice to them, verily Allah likes those who do justice. Indeed He forbids you of those who fought against you on account of Deen, drove you out of your homes and helped to drive you out, to befriend them and whosoever will befriend them, they are the wrongdoers” (60:8-9).**

These are the principles, that no enmity should be done with non-enemies, rather they should be dealt with kindness and justice as that will be an access to convince them to accept Islam and that is the basic duty of the ummah of Muhammad, to call towards Islam, yes there is no room for friendship with those who have shown their enmity to Muslims because of their Deen.

**Allah said:**

**1. “O you who believe! Take not my enemy and your enemies as friends” (60:1)**

This verse made it clear that the enemy of Allah must be dealt as an enemy of Islam and Muslim so the Muslims may not befriend them.

**Allah said:**

**2. Let not the believers take the disbelievers as friends (or protectors) besides/against the believers and whosoever will do that has nothing (considerable relation) with Allah except if you protect (yourselves) from them as a protection and Allah warns you of himself and to Allah is the final return” (3:28).**

**3. “O you who believe! Take not “Bitanah” (or as “Bitanah”) besides you (or against yourselves) as they will not fall short of inflicting insanity in you. They wish to harm you severely. Hatred is already appeased from their mouths and what their breasts (hearts) conceal is much worse” (3:118).**

**“O you who believe! Take not the disbelievers as friends besides (against) the believers” (4:144).**

**4. “O you who believe! Take not the Jews and Christians as friends. They are friends of one another” (5:51).**

**5. “O you who believe! Take not as friends those who take your Deen as a mockery and fun among those who received the scripture before you” (5:57).**

In verse number 2 and 3 the statement “besides or against you” means that any friendship with them which goes against Islam and Muslims is prohibited, while in verse number 5 it mentions that those who take your Deen as fun and a mockery, so you may not befriend them because Deen is a very sensitive issue and if someone will make fun of it, it harms your sentiments and feelings, and a reaction is expected. The reaction towards you friend will be harsher than against one who is not your friend, so it is best to not befriend such people to avoid that terrible situation.

Then another verse made it even clearer:

**“Verily those who believed and emigrated and strove hard (fought) with their wealth and their lives in the cause of Allah as well as those who gave them asylum and help they (all) are friends (allies) to one another. And as to those who believed but did not emigrate (to the Islamic state of Madinah) you owe on duty of protection to them until they emigrate. But if they asked your help in Deen then you owe the duty to help but not against people with whom you have a treaty (bond), and Allah is all-seer of what you do” (8:72)**

This verse said:

- (I) The Muslim must protect and befriend one another and the Islamic state must protect their Muslim citizens (or even Non-Muslim citizens) with every possible mean.
- (II) The Islamic state does not owe any duty to those Muslims who live in a non-Muslim state, as they are neither citizens nor subjects of the Islamic state.
- (III) Yes in Deen if they seek any help then the Islamic state may help them like the building of a masjid, religious institution, literature etc., but if that help is sought for another thing like fighting, then if there is any treaty with that Non-Muslim state, then the Islamic state may not step into war, but it may take tackle the issue with them directly or through a common forum they have. Because direct action is a breach to the treaty and if the issue of those Muslims has nothing to do with Deen directly or indirectly but a mere worldly thing then, if they even ask for help, the Islamic state does not owe them any Islamic duty. Yes, humanitarian duty is another thing; if their human rights are being violated, which is something that is not directly related to Deen.

Then in another verse Allah said:

**“And those who disbelieved, they are the friends (Allies) of one another. If you (people) will not do that there will be a (big) “fitnah” (oppression) in the earth and a big “Fasad” (disorder, mischief)” (8:73).**

The indication “that” is towards the whole concept mentioned in the aforesaid verse as a whole, the way it is mentioned, the relation with a Non-Muslim state is allowed, but rather a must as the whole world is one human community and nowadays that has become a global village, but this relation must be:

- (I) On equal bases because a state is a state whether it be big or small, poor or rich, advanced or backwards, this is law and a legal concept, like a human being is a human being, whether he is normal or abnormal, tall or short, black or white.
- (II) This relation may be based upon truthfulness and justice, as truth is a must in Islam and justice to all is required as Allah said: **“Then we pray for the curse of Allah upon those who lie” (3:61).**

**Also Allah said:**

**“Be just that is nearer to piety” (5:8).**

(III) This relation may not be against the Quran and Sunnah as Allah said:

**“It is not for a believing man or woman when Allah and his Messenger have decreed (or revealed) a matter that they will have any option in their own matter and whoever disobeys Allah and his Messenger, he has indeed strayed in a plain error” (33:36).**

**“Say, if your fathers, your sons, your brothers, your spouses, your kindred; the wealth you have earned, the commerce you fear a decline, the houses in which you delight are dearer to you than Allah and his Messenger and than Jihad in the causes of Allah, then wait until Allah brings about his decision” (9:24).**

These eight things are the ultimate priorities for a human being, but Allah and his Messenger and Jihad are prior to all these, so nothing could be given priority against Allah and his Messenger i.e. his Deen.

(IV) Fulfillments of promises and honoring the treaties.

**Allah said:**

**“O you who believe! Fulfill your obligations” (5:1).**

**“And fulfill the covenant. Verily the covenant will be questioned about” (17:34).**

Yes, if there are enough signs that they are going to cheat us in the covenant then make it clear to them and if there is sufficient proof that they want to do that, then inform them and give them time that from such and such date that the covenant is gone.

**“And if you fear treachery from a people then throw back to them (their covenant) on equal basis” (8:58).**

**“But those of the idolaters with whom you have a treaty and who have not subsequently failed in aught, nor have**

**supported anyone against you so fulfill their treaty to them to the end of their term” (9:4).**

So when their treaty of peace with them is binding like this, what about other treaties.

- (V) To live in peace with all as long as they have not shown aggression, sedition, or conspiracy and even if the war with them started, but they inclined to a peace treaty, then the Muslims may incline to it in the same way.

**“And if they inclined to peace, then you may incline to that and put your trust in Allah” (8:61).**

There was a treaty between Muawiyyah and the Romans, but once Muawiyyah started his march towards the Romans, that when the time of the treaty will be over, he will launch a fight against them, suddenly an old man on a horse was coming and

shouting “keep the promise and no cheating”. The Prophet said, “whoever has a treaty with a people so he should not untie a knot nor he should tie it until the term is completed or he may throw it to them, but on equal basis”. This message came to Muawiyyah, so he came back from attacking them. That old man was Amr ibn Anbasah (Ahmad, Abu Dawud, Tirmizi).

(VI) Not to break a trust with them.

**Allah said:**

**“O you who believe! Betray not Allah and his Messenger nor betray knowingly your (trusts you are entrusted to)” (8:27).**

The jurists of Islam have written not only chapters about this subject but they even have written books on this topic by the title “As Siyar” like Imam Muhammad the student of Abu Hanifah has written two books on the same topic, one in a concise way and the other one as a detailed one, even a Non-Muslim from Europe while studying that book, he said O my God! This is the work of the junior Mohammad, what about the senior Muhammad, so he accepted Islam.

## Chapter 39

### Removal of Khaleefah

The rule of a Khaleefah can end:

- (I) With his death: basically there is no time limit for a Khaleefah in Islam, yes if the Ahlul Halli wal Aqd and the Ahlul Shura agreed upon some rule in this regard to put a time limit to it then we think Islam has not prohibited and forbidden that, but that may be done as a constitutional law.

(II) With his resignation: as this is not his personal duty, so he could not be forced for it, from the very beginning if he does not want to, nor he could be forced for its continuity, but there must be someone to become Khaleefah in the proper procedure or as a necessity. For the said purpose the Ahlul Halli wal Aqd may have someone from before that if something happens then Mr. so and so (by name) or the Wazeerut Tafweed (if there is any) will be the Khaleefah temporarily or permanently, so there may not be any vacuum or even the Khaleefah himself can do this, but nowadays there are already laws made in every country that such and such person (by rank) will take over as acting Khaleefah.

(III) With removal: the Khaleefah could be removed because of two things as Imam Mawardi mentioned (I) “Fisq” that he has becomes a “Fasiq” (not a just person which is required in a Khaleefah) but “Fisq of two types;

(A) Where he started following his whims and desires and doing unlawful things. If he does those than he is not qualified anymore for the post and if he changed himself again in the proper way and became just and Adl then according to some scholars he can remain as Khaleefah,

while according to some other scholars he needs a new “Bai’at” of “Ahlul Halli wal Aqd”. And according to Imam Abu Yala if a “Fasiq” has been selected by Ahlul Halli wal Aqd to the post in the proper way, his rule is lawful (Al Ahkam). This is similar to what the Hanafis said, that a judge might be just and Adl, but if the Khaleefah or the ruler appointed a “Fasiq” as a judge then that is also ok.

(B) “Bid’at” in belief- if he has a specific belief, but has his own interpretation in this regard, but the very belief of his in that issue is similar to the majority of Ahlul Sunnah, then there are two opinions (a) removal, (b) no removal and deposition.

(IV) Defect in body: This is of three types, (a) defect in senses, this is also of three types: someone, (I) if he lost his inner sense and intellect or he lost his eye (sight totally). Such a person does not qualify for Khalafah and can not remain as Khaleefah. (II) If someone has lost his smell or taste, this is not a hurdle for Khalafah neither from the very beginning of it nor if it carries on. (III) If he has lost his speech or hearing, for this there are two opinions, but the preferred opinion is

that he may not be nominated for Khalafah, but if he lost it when he was a Khaleefah then this case of Khalafah may be studied thoroughly, because it will be difficult for him to understand due to being deaf and it will be difficult for others to understand due to him being dumb. Yes, he can use writing to communicate, and things may be given in writing, but if people do not take him seriously nor they are afraid of him, then he should be removed.

(B) Loss of organs and this is of four types:

(I) The loss of such an organ that is not a hurdle for Khalafah neither in nomination nor in continuation, for example if his ear is cut. (II) That one which is a hurdle for both nomination and continuation, because he cannot carry on his duties easily, like if both his hands are cut. (III) Such a loss of an organ that is a hurdle for nomination, but not in continuation like if one of his hands are cut. (IV) That loss which is a hurdle for continuation but not in nomination, there are two point of views as that is not a hurdle to his performance but that is disgraceful to his appearance, as if his nose is cut. Some

scholars said he should not be nominated for the post while some others said he could be nominated.

(V) Defect in performance: (I) it means that some of his subordinates have control over him to such an extent that they implement and execute what they want to, but not the wrong doings, violations, and illegal things then this is not a hurdle for him being Khaleefah.

(II) If the enemy overtook and imprisoned him in such a way that there is no way of release and acquitting him, then that is the end to his Khalafah, and if he is not imprisoned or he can get out very easily then he still remains as the Khaleefah, but someone may take care of the state affairs on his behalf. In the last two cases the first one can not appoint his successor because he has lost the authority while the second one can do that and remains as the Khaleefah.

In brief we can say that to nominate and elect a Khaleefah is a difficult job but to depose and remove him is even more difficult as most of the time it leads to vast blood shed, disorder, and anarchy, while peace and order is the first aim of the government so his deposition and removal will be legal:

- (I) When he goes against the Quran and Sunnah openly.
- (II) When the advantages of his removal are greater than his Khalafah or the disadvantages of his Khalafah are greater than his removal

because Islam originally orders for a certain thing to have advantages greater than disadvantages or at least allow it.

Imam Abu Yala in his book *Al Ahkamus- Sultaniyyah* said that “Fisq” of both types (as we have mentioned) is not a hurdle either to nomination or to continuation. Loss of his mind (insanity), if that is temporary than that is also not a hurdle for both. But permanent insanity is a sufficient hurdle for both.

Being deaf or dumb or being both deaf and dumb is a hurdle for nomination, but not for continuity of Khalafah, but to some scholars that is a hurdle for continuation as well.

Hafiz ibn Hazm said, if he is doing wrong to his fellow citizens, so he may be advised not to do that and if he stopped, than he can remain as the Khaleefah otherwise he must be removed. (*Al Fasl*).

Imam Shafi’i said, he may be removed because of Fisq and injustice to the public. (*Sharul Aqa’id*).

Imam Baqilani also said that because of suspending the Islamic punishments, Fisq, injustices to people, oppression, destroying people’s lives and properties, not praying and calling towards not praying is sufficient reason for his removal (*Al Tamheed*).

Allamah Qurtubi in his “Tafseer” said that disbelief, not praying, and calling to it is enough of a reason for his deposition.

Ubadah narrated from the Prophet not to dispute with the Khaleefah in the matters (of Khalafah) unless you see an open disbelief of his (Bukhari, Muslim).

Also Imam Muslim narrated from Auf Ibn Malik that the Prophet said, your best imams are those that you like them and they like you, you pray for them and they pray for you, while your worst imams are those that you dislike them and they dislike you, you curse them and they curse you. Auf said we asked him should we depose them? He said no! As long as they establish the prayer amongst you.

Allamah Aamidi in his book “Abkarul Afkar” said that basically to appoint a Khaleefah is the right of the ummah, so to remove him is also their right, but if the struggle for his removal bring something much worse and they know that they should not try to depose him, because when ever there are two evil so one should choose the lesser of them.

So the Islamic system is a natural system given by the sole creator and Lord of the entire world, who knows the qualities, needs, and shortcomings of his creature in every time. So only this system can bring peace to the world and provide people their rights.

May Allah guide the whole world and us to the right path. Aamin.

