

Selected Essays of Javed Ahmad Ghamidi

Compiled by
Dr Shehzad Saleem



Al-Mawrid

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A Foundation for Islamic Research and Education

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Publisher: Al-Mawrid

Printer: Fine Printers

1st Edition: November 2015

ISBN: 978-969-8799-88-5

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Compiler's Foreword

This book is a translation¹ of some selected essays of Javed Ahmad Ghāmidī. They have been taken from his Urdū treatises *Maqāmāt* and *Burhān*.

These writings reflect the author's views on some very important contemporary as well as age-old issues that have continued to be a cause of debate and controversy in academic circles as well as among ordinary Muslims. They range from nagging social, political, economic and penal issues to some intricate discussions on *jihād* and on the sources of Islam. Each essay is an independent one and there is no particular order that needs to be followed in reading them. Readers may choose to read essays that interest them at their own preference.

It is hoped that these essays will encourage discerning minds to critically evaluate the views presented and to provide their feedback to the author.

I must thank Ms Nikhat Sattar for thoroughly proof reading this book and giving valuable suggestions to improve its presentation and language.

Shehzad Saleem
Al-Mawrid Lahore
2015

1. The translators, besides myself, include Asif Iftikhar, Tariq Mahmood Hashmi and Junaid Hassan.

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Fundamental Principles

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Source of Religion

When God created man, He placed two things within him: firstly, the cognition that he has a Creator who is his Master, and secondly, the awareness of virtue and vice. There are other things as well which are innately found in him. When he is reminded of them, they appear with time in his concepts and actions. These two things have also been similarly placed in him.

These two things are the foundations of religion which were given by God to man when He created him. Then God selected certain personalities from among the Muslims, gave them His message and sent them to human beings for delivering this message to them. It is these personalities who are called prophets and messengers. They came and fully explained to human beings the beliefs and regulations of the religion which God had placed in them.

Prophethood began with Adam (sws), the first human being and ended on Muḥammad (sws). The Almighty has disclosed to us that Muḥammad (sws) was the last of this series. After him no prophet or messenger will come. Hence, religion can now only be obtained from him and true religion is that what he sanctions from his tongue, or through his practice or when he does not stop a person who does something that falls in the ambit of religion.

Thousands of people learnt this religion from Muḥammad (sws) in his lifetime and also practiced it before him. Then millions learnt from these who learnt it from Muḥammad (sws) and this chain has never been broken. His followers among every generation disseminated this religion and passed it on by studying and teaching it and communicating it to others through the oral and written word. It has now reached us and we can say with full certainty that it has reached us the way Muḥammad (sws) had transferred it to those who became his companions in his life after accepting him as a prophet and messenger of God.

The reason for our certainty is that such a large number of people in every generation in so many diverse areas transmitted it through the oral and the written word and by practically following it that it cannot be imagined that together all of them can lie or make a mistake. In parlance, this is called *ijmā'* (consensus) and *tawātur* (concurrence). All sensible people accept that what is transmitted in this manner from one generation to another acquires certitude.

This religion has reached us through two ways:

1. The Qur'ān
2. The Sunnah

The Qur'ān is the Book which the Muslims call the Qur'ān. God revealed it to Muḥammad's heart through His angel, Gabriel. The words in which this Book has been revealed and the way this book has been revealed was read out repeatedly by Muḥammad (sws) in the same way and in the same words before people. His followers memorized it by listening to it from him, and those of them who knew how to write, wrote it out and

kept it with them. These people were in thousands. Some memorized one *sūrah*, some two, some many and some even the whole Qur'ān and some had their own written copies of it. People of the next generation too followed suit. In fact, every generation of Muslims has been following suit. The written copy of the Qur'ān is found today in every house and millions today can recite the whole of it from their memory. As a consequence, in spite of several attempts from people, neither has anyone been able to alter it before nor can this happen now. Hence, it is absolutely certain that the Qur'ān we have in our hands today is the very one word for word that was transferred by Muḥammad (sws) to his followers.

Similar is the case with the Sunnah of Muḥammad (sws). The nation in which he was born was Abraham's progeny. The Almighty directed him to follow the way of Abraham (sws). Some constituent practices of this way were found in their original shape amongst the descendent of Abraham (sws). However, some of them had been forgotten and errors had crept into others. Muḥammad (sws) revived these practices and set right the errors in them, and at the behest of God also added some more practices. He then asked his followers to adhere to them. It is these practices which are called his Sunnah. Most of these practices pre-date the Qur'ān. The Arabs already knew them. That is why when the Qur'ān mentions them, it does so as if they are already known to people. No introduction or details of these practices is needed.

These practices have reached us in the very manner the Qur'ān has reached us. Muslims from every generation received them from their previous generation, practically adhered to them and transferred them to the next

generation. This has been going on since the time of Muḥammad (sw). Hence these practices of the Sunnah also possess certitude. There is no difference between it and the Qur'ān as far as their authenticity is concerned.

(Translated by Dr Shehzad Saleem)

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Fundamentals of Understanding Islam

In the exercise to form a sound understanding of the *dīn*, the Farahi School invokes three fundamentals of central import:

1. The holy Qur'ān is the distinguisher between and the sole criterion to define right and wrong in the realm of religious knowledge in Islam. It is the guardian (*muhaymin*) over all forms of the divine revelation. The primary purpose of its revelation is to judge the religious differences of human beings so that they are able to stand firm on truth. The Qur'ān itself claims this status for it. This principle leads to and entails the following fundamentals about the Book:

Firstly, the text of the Qur'ān is well defined. It is confined to what an overwhelming majority of Muslims all over world, with the only exception of parts of Africa and some other areas, recites the text recorded in their codices. This text is recited in accordance with the way known as *qirā'ah al-'āmmah* (reading of the generality of the believers). Therefore, all other readings are not the Qur'ān and cannot be granted the status of the word of God.

Secondly, the Qur'ān is *qaṭ'ī al-dalālah*. It means that its words are capable of perfectly expressing the intent of the author with consummate certainty. A reader, who approaches it with the intention to follow its guidance

and who tries to understand it on the basis of its language, can, therefore, be led to the intended meanings of the words it uses. It is only the lack of knowledge on the part of the readers and a failure to exert full efforts to understand it that results in his inability to get to the intended meanings of the divine text in some cases. This failure, therefore, cannot be attributed to any flaw in the language of the Qur'ān and the styles of expression adopted in it for the Book does not suffer from any inadequacy in this regard.

Thirdly, all the verses of the Qur'ān upon which guidance and misguidance of humans depends are *muhkam* (clear, completely comprehensible). *Mutashābihāt* (singular *mutashābih*) verses are those which metaphorically express a bounty of the Heaven to be conferred on the successful slaves of God on the Last Day or an infliction to be experienced by the losers in the afterworld couched in the idiom of parables or by way of analogy. These also include the verses which analogously refer to an attribute of God, His acts, or any other transcendent reality. Neither are these verses unidentifiable nor is their signification doubtful. Diction employed in this content of the Book is originally the clear Arabic (*'arabī mubīn*), the meanings and signification of which can be clearly grasped. The only difference between the *muhkam* and *mutashābih* verses is that the reality and essence of the referents of the latter category cannot be grasped and comprehended by human understanding in the present world. However, the failure of human mind to grasp the reality of the referents of the *mutashābih* verses does not impair our understanding of the Book of God, hence the prohibition

of hairsplitting discussion on them.

Fourthly, no *khafī* (indirect) or *jalī* (direct) revelation external to the Qur'ān can validly affect or alter the divine injunctions spelled out in the Book. Even the recipient of the Book, the Messenger of God, cannot alter it in any degree. All that we can take as part of the religion has to be defined in the light of its clear and plain verses. Similarly, it serves as the only judge in the exercise of discarding something which is erroneously taken as a religious reality. Every tenet of '*īmān* (beliefs) and every discussion on '*aqīdah* (theological principles) is to be gleaned from the text put between its two covers. All types of *wahī*, *ilhām*, *ilqā'*, conclusions based on a research and viewpoint of individual scholars should be gauged on its basis. Views and works of towering scholars of the past like Abū Hanīfah, Shāfi'ī, Bukhārī, Muslim, Ash'arī, Māturīdī, Shiblī and Junayd are to be judged in the light of its eternal words. No view, no matter however exalted its source, can be entertained in defiance of its verdicts.

2. The Sunnah, in Islam, is identified as the religious tradition instituted by the Prophet Abraham (sws) which the last Prophet of God (sws) revived, restored in its pure form and enriched with additions and instituted afresh among the believers as part of Islam. For the Qur'ān directed the Prophet (sws) to follow the *millah* (the religion) of Abraham (sws). This tradition (i.e. the Sunnah comprising religious practices) was a part of the religion of Abraham (sws). Therefore, the Prophet Muhammad (sws) was obliged, as entailed by the above mentioned verse of the Qur'ān, to follow it himself and command the believers to adopt it. The authenticity and

historicity of the Sunnah is as compelling as that of the Book of God. The only difference between the two is this. The Book of God was communicated by the Prophet (sws) to the whole body of the Companions who transmitted it to the next generation with consensus as a written and spoken text. Similarly, the Prophet (sws) taught the Sunnah to the entire generation of the Companions who received, adopted and practiced it collectively and transmitted it with consensus to the next generation. During the course of the subsequent history, both of these sources have been transmitted from generality to generality by each layer in the generations of the *ummah*. Just like the Qur'ān, the Sunnah too has always been received and established by the consensus of the believers in a given point of time during the course of Muslim history. Therefore, there is no room for any dispute and contestation regarding its authenticity and epistemological force.

3. *Dīn* is confined to the contents of the Qur'ān and the Sunnah. Nothing external to these two sources is the part of *dīn* in Islam. Nor can one validly introduce any foreign practice or concept as part of the religion. The the Prophetic Ḥadīth, a name given to the reports about the sayings, actions and tacit approvals of the Prophet (sws) transmitted through individual to individual (*akhbār-i ahād*) do not add to the beliefs and practices in the religion. It does not mean that they do not discuss the contents of the religion at all. However, their purely religious content explains and clarifies the religion housed in the Qur'ān and the Sunnah. They can also carry the paradigmatic example set by the Prophet (sws) in the performance of the religious practices and in

carrying out the divine commands. The Ḥadīth plays no role beyond this. Thus a report bearing religious knowledge in ways other than this cannot be a valid Ḥadīth. Nor can such a report incorporated into the religion and accepted as its part merely because it has been attributed to the Prophet (sws).

All the Ḥadīths that explain and clarify the religion and thus play an acceptable role have a binding religious force for a believer who is convinced of the veracity of a Ḥadīth report and believes it to be a valid transmission of a saying, action and tacit approval of the Prophet (sws). He is obliged to follow it and can no more validly contradict it. Rather if the Ḥadīth in question contains a Prophetic command, it becomes necessary for this believer to unquestionably submit and surrender before its verdict.

(Translated by Tariq Mahmood Hashmi)

Subject-Matter of the Holy Qur'ān

An extremely basic fact regarding the Holy Qur'ān – one that can be very easily detected by a more general reader of the book – is that it introduces propositions, believing in which and meeting the requirements demanded by such a belief decide the question of man's success in the afterlife. It is only these propositions the Qur'ān aims at proving through psychological, natural and historical evidence. It is only these facts the Qur'ān calls the human beings to submit to, warns them regarding the consequences of rejecting them and explains what entails professing faith in them. The Book does not deal with anything beyond these points. Though at times it refers to the laws of the physical, world in order to explain these facts without contradicting the reality, yet the discoveries in the realm of physics made thus far and the ones which human intellect is bound to penetrate in future, are not discussed in the Qur'ān at all. Such knowledge is not the subject-matter of the Qur'ān in any way.

But alas, during the course of Muslim history, people have repeatedly failed to acknowledge this true position of the Book. Consequently we see that they first imposed a premise external to the Qur'ān on it proposing that being divine in origin, the Book must moderate all the possible human disciplines. Having imposed such a

condition on the Book they tried to base all the human disciplines in it. Therefore, this endeavour led them discover the illusions of Greek philosophy from its verses at one time and to ground the current scientific knowledge in its text at another. At one time, the prevalent knowledge of medical science and theories of astrology and astronomy were extracted from its verses and the mention of the atomic bomb and man's conquest of Moon at another. In such adventures they opted to ignore grossly all rules of linguistic expression of the Book and the bright light of the context of its verses.

All this trouble owes itself to the erroneous conclusions about the Book. They failed to grasp the fact that the Lord has blessed mankind with intellect before He revealed the Book to them. Just like this Book is a blessing of God bestowed upon them so is the intellect a manifestation of His profound generosity. Therefore, the Book does not concern the matters in which intellect suffices as a guide for them. Similarly in matters the Book deals with, the intellect, when functional, is compelled to submit to its dictates.

The fact also holds true in the case of the teachings of the Prophet (sws). He has explained this reality to his adherents in no unclear terms. The Mother of the Faithful, 'Ā'ishah (rta) narrates that when the Prophet (sws) noticed people engaged in cross fertilizing the date palms trees he said: "It would be better if this exercise is abandoned." Consequently, the people did not cross fertilize the dates palm trees that year. As a consequence the produce dropped considerably. The people mentioned the state of affairs to the Prophet (sws) who responded: "You understand these matters better than

me. I have come to explain to you the religion of God. Therefore, turn to me for guidance only in religious matters.”²

If we really intend to be guided by the Holy Qur’ān we are obligated to turn to it for guidance in nothing except the religious truth and facts. We may not knock at but our intellect in matters such as how to carve a bed out of wood to avail us a comfortable sleep and how to conduct research on the heavenly bodies. It is an unquestioned fact that intellect has never failed us in its own spheres.

The Holy Qur’ān has been revealed to make plain to us what we are expected to believe in and what to practice in order to please God in the life of this world. We should bend our desires to submit to the dictates of the Book rather than basing our cherished concepts and issues in its verses. The Almighty has repeatedly explained in the Holy Qur’ān that making our desires submit before its dictates is crucial to seeking its guidance. It is but possible that one desire to seek the foundation of the worldly disciplines and fields of knowledge in this book alone yet his desire cannot alter the fact to a slight degree that this book deals only and only with the kind of knowledge upon which our afterworldly salvation depends.

(Translated by Tariq Mahmood Hashmi)

2. Abū al-Ḥusayn Muslim ibn al-Ḥajjāj, *Al-Jāmi‘ al-ṣaḥīḥ*, 2nd ed. (Riyāḍ: Dār al-ṣalām, 2000), 1038-1039, (nos. 6127, 6126, 6128).

Variant Readings

I have written in my treatise *Mīzān*³ that the Qur'ān is what is recorded in the *muṣḥaf*, and which, except for some parts of Africa and a few other areas, is recited by a vast majority of the Muslim *ummah* without the slightest variation. A question may arise on this: even if for the sake of discussion it is accepted that the Qur'ān is only what has just been specified and the common masses only read and study it, then why is the attitude of Muslim scholars different from this? How did it happen that the scholars of Tafsīr, Ḥadīth and Fiqh from the very beginning of these disciplines accorded equal status to the multiple readings of the Qur'ān, and would give preference to one over the other on the basis of their own opinion and inclination? So much so, jurists and ḥadīth scholars of the likes of Imām Mālik (d. 179 AH) and Imām Shāfi'ī (d. 204 AH) gave preference to the reading of Nāfi' ibn Abī Nu'aym (d. 169 AH) and 'Abdullāh ibn Kathīr (d. 120 AH) respectively.

The answer to this question is that long before all these scholars, the earliest Muslim authorities had formed the opinion that though it is not essential for the common man to acquire knowledge through the *akhbār-i aḥād*, it is essential for the scholars and the select to accept them and after being satisfied about their *isnād*, there is no

3. English title: *Islam: A Comprehensive Introduction*.

difference in acquiring and adducing the knowledge gained through them and the knowledge that pervades among the common Muslims and which is being transferred from their generations to generations. Imām Shāfi‘ī writes in his celebrated treatise *Al-Risālah*:

وعلم الخاصة سنة من خبر الخاصة يعرفها العلماء ولم يكلفها غيرهم
وهي موجودة فيهم أو في بعضهم بصدق الخاص المخبر عن رَسُولِ اللَّهِ
بها وهذا اللازم لاهل العلم أن يصيروا إليه

And the knowledge of the select is the sunnah which is acquired through their reports, which the scholars know and which is not essential for the common man to know. This sunnah is present with all the scholars or with some of them from God’s Messenger (sws) through the information provided by a reliable informant and this is the knowledge which scholars must necessarily turn to.⁴

Thus after the demise of the Prophet (sws), when trustworthy narrators started to state, for example, that while a companion had read the word مَاْلِك (owner) as مَلِك (king) in verse 2 of Sūrah Fātiḥah, and يَكْدِبُونَ in its intensive form as يُكْدِبُونَ in verse 10 of Sūrah Baqarah and يُؤْمَى in its passive form in verse 12 of Sūrah Nisā’, then this was accepted in scholarly circles in the same way that the reports of his other sayings and deeds were being accepted. The reason for this was evident: if they

4. Abū ‘Abdullāh Muḥammad ibn Idrīs al-Shāfi‘ī, *Al-Risālah*, 1st ed. (Beirut: Dār al-fikr, n.d.), 478.

did not accept these reports regarding the Qur'ān, they would also not have any basis to accept reports which depicted the Prophet's deductions, verdicts, explanations and exemplary character except if they were deemed to be against a Qur'ānic verse. The proliferation of variant readings took place because of this opinion of the *tābi'ūn* (followers of the companions). Not much later, among the experts of readings which were being produced, some became prominent who were not merely adept in various modes of pronunciation of the Arabian dialect like *izhār*, *ikhfā'*, *idghām*, *imālah*, *tafkhīm*, *ishmām* and *itmām* etc but took a step ahead and by giving preference to one reading of the Qur'ān over the other as found in various reports of the knowledge of the select ('*ilm al-khāṣah*) referred to above compiled their specific set of readings that became famous by the names of these experts. This was much like the jurisprudence of Imām Mālik, Imām Shāfi'ī and other leading jurists becoming famous by their names. For this very reason, these experts of Qur'ānic readings are called "Readers invested with Preference" (*aṣḥāb al-ikhtiyār*). The result of this was and should have been that the students turn to them to learn their preference and choice of readings just as they turned to the jurists and Ḥadīth scholars to learn jurisprudence and Ḥadīth respectively. Moreover, many a time, it happened that these readers having preference adopted an intellectual centre of those times like Makkah, Madīnah, Kūfah, Baṣrah and Syria besides others as their abode. The result was that such was the fame that a preferential reading acquired among the scholars and readers of an

area that it came to be said that the people of that area followed his reading. The word “people” here referred to the scholars and readers only and not to the common masses. The masses never accept or reject such things in this way. It is precisely for this reason that the situation changed and men of learning of a particular area after some time adopted the preferential reading of some other reader. And it is for this reason that except for these learning centres, no other reading is found anywhere in the Muslim world nor is there any historical evidence of such acceptance or rejection of a reading. The only exception to this is Qīrwān where Qāḍī ‘Abdullāh ibn Ṭālib who in the later part of the third century hijrah passed the order that people should only be taught the reading of Nāfi‘.⁵ Thus, after this, common Muslims as well were forced to read the Qur’ān on the reading of Nāfi‘ in Qīrawān and in some other areas which were under its influence. The reason for this probably was that these people were the followers of Imām Mālik’s *fiqh* and about Imām Mālik, it has been pointed out above that he would generally prefer the reading of Nāfi‘.

Similar was the case with some small settlements which came under the influence of scholars. These settlements were very few in number and even exist today at some places. All other areas except these were never influenced by these changes nor did the scholars tried to influence them. Both carried on with their own ways. Thus the tradition of benefitting from variant

5. Abū al-Faḍl Qāḍī ‘Iyāḍ ibn Mūsā, *Tartīb al-madārik wa tartīb al-masālik li ma’rifah a’lām madhhab Mālik*, 1st ed., vol. 1 (Beirut: Dār al-kutub al-‘ilmiyyah, 1998), 483.

readings in the disciplines of *tafsīr*, Ḥadīth, *fiqh* and others has been going on without interruption, and is still going on to a greater extent. Scholars discuss these readings in their writings, gatherings and religious seminaries, and professional readers today recite the Qur'ān on seven, ten and even more variant readings. However, everyone can see that among the common masses, there is only one Qur'ān in currency everywhere. They took it from the common companions, and in the terminology of Imām Shāfi'ī transferred it from *'āmmah* to *'āmmah* (common masses to common masses). No doubt, it is also called the *riwāyah* of Ḥafṣ (d. 180 AH) but this should not be a cause of any misconception because mere reading or intonation is one thing and reading or intonation in the accent of the Arabs in a pleasing way by giving due regard to technical subtleties like *imālah*, *tafkhīm*, *ishbā'*, *ikhṭilās-i ṣilah*, *ishmām*, *rawm*, *tarqīq* and *taghlīz* that does not alter the meaning of the discourse in any way is another thing. It is this second aspect which is acquired from the *riwāyah* of Ḥafṣ in this Qur'ān, and ascribed to him on this basis. He was taught this reading from his teacher 'Āṣim ibn Abī al-Najūd (d. 127 AH) who in turn was a student of the celebrated follower Abū 'Abd al-Raḥmān al-Sulamī (d. 74 AH). Al-Sulamī taught its subtleties in Kūfah to various students for almost forty years. About him, Abū Bakr ibn Mujāhid (d. 324 AH), the first person to have selected the seven canonical readings, has specified that he did not teach his own preferential reading but the very one on which 'Uthmān (rta) had striven to gather the *ummah* on. He writes:

أول من أقرأ بالكوفة القراءة التي جمع عثمان رضى الله تعالى عنه
الناس عليها أبو عبد الرحمن السلمي

The first person who taught the reading in Kūfah on which ‘Uthmān had gathered the people was Abū ‘Abd al-Raḥmān al-Sulamī.⁶

He is the same person who upon seeing the proliferation of various readings among people had said:

كانت قراءة أبي بكر وعمر وعثمان وزيد بن ثابت والساجدين والانصار
واحدة كانوا يقرءون القراءة العامة وهي القراءة التي قرأها رسول الله
صلى الله عليه وسلم على جبريل مرتين في العام الذي قبض فيه وكان
زيد قد شهد العرضة الأخيرة وكان يقرئ الناس بها حتى مات

The reading of Abū Bakr, ‘Umar, ‘Uthmān and Zayd ibn Thābit and that of all the Muhājirūn and the Anṣār was the same. They read the Qur’ān according to the *al-qirā’at al-‘āmmah*. This is the same reading which was read out twice by the Prophet (sws) to Gabriel in the year of his death. Zayd ibn Thābit was also present in this reading [called] the *al-‘arḍah al-akhīrah*. It was this reading that he taught the Qur’ān to people till his death.⁷

6. Abū Bakr Aḥmad ibn Mūsā ibn ‘Abbās ibn Mujāhid, *Kitāb al-sab‘ah fī al-qirā’āt*, 2nd ed. (Cairo: Dār al-ma‘ārif, 1400 AH), 67.

7. Abū ‘Abdullāh Badr al-Dīn Muḥammad ibn Bahādur ibn ‘Abdullāh al-Zarkashī, *Al-Burhān fī ‘ulūm al-Qur’ān*, 2nd ed., vol. 1 (Beirut: Dār al-fikr, 1980), 237.

It is this very reading that is written in our codices of the Qur'ān. Not a single bit of evidence can be furnished from history except the endeavours of 'Uthmān (rta) (d. 36 AH) and Ḥajjāj ibn Yūsuf (d. 94 AH) to unite all Muslims on one Qur'ān in which a scholar used his influence or a ruler or a *qāḍī* used political power to impose this Qur'ān among the Muslims, the way it was done is some West African counties with regard to the reading of Nāfi'. It was this Qur'ān which the Prophet (sws) and his successors gave currency to among the Muslims and it has remained in currency ever since. Consequently, when the readers of the Muslims were compiling their preferences in readings and when their Ḥadīth scholars were collecting the reports of '*ilm al-khāṣṣah*' and their jurists and exegetes were solving the difficulties of the Qur'ān through them, Muslims were reading this very Qur'ān in the whole world. At the end of the first century *hijrah* when they entered India, they entered while reading it and when they landed at the shores of Java, Sumatra, Malaya and other islands of the Far East at the end of the eighth century, it was this very Qur'ān which was in their hands and God willing will remain in their hands till the Day of Judgement.

Here a person can pose the question: if despite all these facts, the academic tradition of the Muslims accepted all the reports related to '*ilm al-khāṣṣah*', why has the Farāhī School adopted a different stance in this regard? Our answer is that it is not easy for any person of learning to disregard reports narrated by reliable narrators; this needs an explicit Qur'ānic directive. Thus if the true meaning of the relevant verses of Sūrah

Qiyāmah had become evident at the very beginning, Muslim scholars, jurists and exegetes would probably have adopted the same stance as the scholars of the Farāhī School. Imām Ḥamīd al-Dīn Farāhī (d. 1930 AD) has explained the true meaning of these verses.⁸ Hence, that explicit Qur’ānic directive has become available on the basis of which it can be said that even if all the narratives which depict the variant readings of the Qur’ān are correct, they have been abrogated by the reading of the *arḍah akhīrah* for the universal addressees of the Qur’ān; hence they cannot be accepted in any way whatsoever.⁹ It is a directive of the Qur’ān that after its collection and arrangement, Muslims will be bound till the Day of Judgement to read it on the reading it was read by the Almighty after this collection. No Muslim can dare deviate from this directive of the Qur’ān. It states:

لَا تُحَرِّكْ بِهِ لِسَانَكَ لِتَتَّبِعَ بِهِ. إِنَّ عَلَيْنَا جَمْعَهُ وَقُرْآنَهُ. فَإِذَا قُرِئَهُ
فَاتَّبِعْ. (١٨-١٦: ٧٥)

8. Ḥamīd al-Dīn al-Farāhī, *Tafsīr nizām al-Qur’ān wa ta’wīl al-Furqān bi al-Furqān*, 1st ed. (Azamgarh: Dāi’rah ḥamīdiyyah, 2008), 226-233.

9. If a narrative recorded by al-Bukhārī is correct, then ‘Umar (rta) too on the basis of this reasoning rejected many readings of Ubayy ibn Ka’b (rta) which he would present by saying: لَا أَدْعُ شَيْئًا سَمِعْتُهُ مِنْ رَسُولِ اللَّهِ (I will not give up anything of the Qur’ān I have heard from God’s Messenger (sws)). See: Abū ‘Abdullāh Muḥammad ibn Ismā‘īl al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, 3rd ed., vol. 4 (Beirut: Dār Ibn Kathīr, 1987), 1628, (no. 4211).

[To acquire] this [Qur'ān] swiftly [O Prophet!] do not move your tongue hastily over it. [It will be revealed like this. Rest assured] its collection and recital is Our responsibility. So when We have recited it [at that time], follow this recital. (75:16-18)

(Translated by Dr Shehzad Saleem)

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The General and the Specific

It is not customary in various languages of the world that every word should signify just one meaning or that every linguistic style should have just one denotation. A word or a linguistic style generally signifies multiple meanings. Ascertaining the meaning of a word or a linguistic style depends on the construction of the sentence, diction of the speaker, sequence of the discourse, the context and other similar indicators. The way this is done is that the mind after reflecting on various possibilities and at times almost spontaneously gives its verdict in this regard. It is while pointing to this very aspect of a language on the basis of which Imām Shāfi'ī (d. 204 AH) while commenting on the general and the specific of the Qur'ān has written in his book *al-Risālah* that the components of a language can have more than one meaning. When its general or specific words, styles or constructions form part of a discourse, then it is not necessary that in all circumstances they are used in the same meaning for which they were primarily coined. The Book of God has been revealed such that a word is mentioned in its general sense but implies something specific and that a word occurs in it in a specific sense but implies something general.¹⁰ Thus

10. Al-Shāfi'ī, *Al-Risālah*, 222. It is by not understanding this point that some people have been led to conclude that the

neither can it be said about a specific word that it signifies with certainty what it is used for nor can it be said about a general word that it signifies with certainty all the entities it stands for.

One group of *uṣūl* scholars holds a different view. However, in reality, it is Imām Shāfi'ī who holds the correct view. This is because it is not just a word but the occasion and context in which it is used which makes a reader or listener decisively gauge the meaning implied by it. I have written in my book *Mīzān*:

... There are many places in the Qur'ān where the words are general; however, the context testifies with full certainty that something specific is meant. The Qur'ān uses the word النَّاسُ (people), but it does not refer to all the people of the world; and many a time, it does not even refer to all the people of Arabia: it refers to a group among them. It uses the expression عَلَى الدِّينِ كُلِّهِ (on all the religions), and it does not refer to all religions of the world; it refers to الْمُشْرِكُونَ (polytheists) but they do not refer to all those who are guilty of polytheism. Similarly, the words إِنَّ مِنْ أَهْلِ الْكِتَابِ (and from these People of the Book) do not refer to all the People of Book of the world. It mentions the word الْإِنْسَانُ (man) but it does not refer to

Imām does not regard the intentionality of a text to be univocal. The fact is that he only wants to point out that a word can have more than one meaning and so one must not show haste in assigning a meaning to a word and one should reflect deeply so as to ascertain which meaning is implied by the speaker at a particular instance.

mankind. This then is a common style of the Qur'ān, and if it is not taken into consideration while explaining and interpreting the Qur'ān, a person can end up misunderstanding the whole purport of the Qur'ān. Thus it is of paramount importance that the interpretation of words of the Qur'ān must always remain subservient to its context and usage.¹¹

It is this very nature of a language because of which the scholars and researchers of the Qur'ān demand that if the intent of the speaker or writer needs to be gauged, then this cannot merely be done by what words convey apparently; for this, delving deep into them is necessary. The Prophet (sws) has done this very service to the Book of God and through his sayings has explained the insinuation and implications which would have been difficult to understand for people who are unable to comprehend these subtleties of words and their meanings. Imām Shāfi'ī rightly insists that one must not ignore these explanations and elucidations of the Prophet (sws) on the basis of what is apparently understood by words. The Prophet (sws) has explained the Qur'ān; his explanations cannot be against the Qur'ān. The Prophet of God is subservient to the Book of God. He explains it and does not change or alter its meanings. Imām Shāfi'ī has given many examples of prophetic explanations and has repeatedly emphasized the fact that whatever the Prophet (sws) has said about the directives of the Qur'ān, is merely their explanation and nothing else; if

11. Javed Aḥmad Ghāmīdī, *Mīzān*, 9th ed. (Lahore: Topical Printing Press, 2014), 23-24.

these explanations are not accepted, then this would not be regarded as following the Qur'ān; it would be regarded as deviation from it because the speaker's intention is only what is evident from the explanations and elucidations of the Prophet (sws); this intent is not different from these explanations and elucidations.

What can be more true than what has been said by Imām Shāfi'ī. However, the weakness in the reasoning of the Imām lies in the fact that on most occasions he has not been able to clarify how a particular prophetic statement can be invested with the status of explanation of a Qur'ānic directive. Thus, it is a result of this that he has accepted certain narratives that depict the knowledge and practice of the Prophet (sws) which cannot be regarded as explanations of the Qur'ānic directives in any way even though it could have been debated whether their narrators even properly understood and reported the intent the Prophet (sws). This is the real impediment in the mind of those who have differed with the view of Imām Shāfi'ī.

I have attempted to exemplify the stance of the Imām in my book *Mīzān* because in principle it is the correct stance. Readers can look up these discussions under *Mīzān* and *Furqān* which forms part of the preface "*Uṣūl-o Mabādī*"¹² (Fundamental Principles). It will become evident from reading them that what has been mentioned in the narratives as an explanation of the directives of the Qur'ān is actually the implication of its words which the Prophet (sws) has unveiled through his elucidations. From these explanations, the students of

the Qur'ān should educate themselves in delving deep into the meanings of a word and should dare not reject them or regard them to be abrogation of the Qur'ān.

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Ḥadīth and Sunnah

Muḥammad (sws) has delivered the Qur'ān to the world. Apart from it, whatever he has given to the world in the capacity of religion can be placed in the following three categories:

1. Independent directives and teachings that have not been originated by the Qur'ān.
2. Explanation of independent directives and teachings whether these directives and teachings are in the Qur'ān or extraneous to it.
3. An example of practically following these directives and teachings.

All these three categories constitute religion. It is mandatory upon every Muslim to accept and obey what these categories constitute. Once a person is satisfied that they are correctly ascribed to Muḥammad (sws), no believer can dare deviate from them. It is only befitting for him that if he wants to live and die as a Muslim, he should submit to them without any reluctance.

Our scholars designate all these three categories by a single term: Sunnah. I personally do not regard this to be appropriate. In my view, the first of these should be called Sunnah, the second “explanation and elucidation” (*tafḥīm and tabyīn*) and the third as “the exemplary way” (*uswah-i ḥasanah*). The reason for this classification is to remove the misconceptions that arise by placing the principle and its corollary under the same name and in

the same status.

This is only a difference of terminology. As far as the reality is concerned, there is not the slightest difference between our early authorities and myself. Had my critics carefully read my book *Mīzān*,¹³ they would have understood this fact and would not have remained in any misconception. I do not expect this from them even now. However, serious students of religion do deserve that some aspects of my view be explained to them.

Firstly, a large part of the Sunnah that has been transmitted to us consists of Abrahamic practices that have been revived and reformed. All researchers agree to this. However, this does not mean that Muḥammad (sws) has only made small additions to it. Certainly not. He has added independent directives to it as well. If anyone wants to find its examples, he can look up *Mīzān*. Similar is the matter of the Qur'ān. The directives that originate from it span almost three hundred pages of *Mīzān*. I regard it to be a requisite of faith to accept and follow each one of them. Hence, it is absolutely baseless to accuse me of not granting the Qur'ān or the Prophet (sws) the authority to give any additional directive or add anything to the contents of religion, apart for some previously existing and known directives.

Secondly, I have devoted a complete section to explain the determinants of the Sunnah under *Mabādī Tadabbur-i Sunnat* (Principles of Determining the Sunnah) in the chapter “*Uṣūl-o Mabādī*” (Fundamental Principles) of *Mīzān*.¹⁴ These determinants are seven. On their basis,

13. English title: *Islam: A Comprehensive Introduction*.

14. Ghāmidī, *Mīzān*, 57-61.

every person of learning can decide whether something is a Sunnah or not. I have also made a list of Sunan (plural of Sunnah) on the basis of these determinants. It can be added to or subtracted from. I have continued to revise this list at various instances once I became aware of any mistake in my research. I have never disregarded any possibility of this.

Thirdly, apart from this list, I have categorized some of the sayings of the Prophet (sws) – which in the capacity of religion have been cited in various narratives – as “explanation and elucidation” (*tafhīm and tabyīn*) and some as “the exemplary way” (*uswah-i ḥasanah*). Similar is the case of narratives which elucidate faith and beliefs. Whatever occurs in this category in the narratives can be seen in the chapter of *Īmāniyāt* (Faith and Beliefs) of my book *Mīzān*.¹⁵ They are also of the nature of “explanation and elucidation” (*tafhīm and tabyīn*). In my opinion, this is the right term for whatever has been handed down to us from the Prophet (sws) with regard to these. If their ascription to him is established, then I regard every directive, verdict and explanation of the Prophet (sws) as mandatory to be followed. The slightest deviation from them amounts to rejection of belief in the Prophet (sws).

(Translated by Dr Shehzad Saleem)

15. Ghāmidī, *Mīzān*, 81-196.

A New Anthology of Ḥadīth

(Written in reponse to a query about the project
of re-compilation of Ḥadīth going on in Turkey)

In order to understand any research being conducted on Ḥadīth, it is essential to comprehend the fact that Muḥammad (sws) is the sole source of religion. From him, this religion has reached us in two forms: Qur'ān and Sunnah. Both these sources provide certitude and do not require any research to validate their authenticity. They have been transferred by every generation of Muslims though their concensus (*ijmā'*) and concurrence (*tawātur*). These terms mean that every generation of Muslims acquired these sources from their previous generation and transferred it to the next one without any difference of opinion and this process is continuing till today ever since the time of the Prophet (sws).

The whole of religion is found in these two sources and all its directives are derived from them. At times, we are faced with some difficulty in understanding them. Moreover, guidance is also needed in matters which are left to our discretion. For this we turn to the scholars of this religion. Muḥammad (sws) was a prophet of God. Hence, he was the first and greatest scholar – in fact, the *imām* of all scholars. A distinctive feature of his religious knowledge which makes him stand apart from other scholars is that it is infallible. This was because if

any mistake occurred in it, the Almighty would correct it through divine revelation. If this knowledge exists anywhere, then every Muslim must seek guidance from it the foremost.

We are fortunate enough that this knowledge of the Prophet (sws) is available and a vast part of it has reached us. It was acquired from him by his companions. However, since communicating it to others was a matter of great responsibility, some companions were very cautious and some were bold enough to do so. It contained those things which they heard from the Prophet's tongue or saw him following and those practices also which were followed before him and he would not stop people from continuing to do so. All this knowledge is called Ḥadīth. It is the greatest source of knowing the history of the Prophet (sws). It does not add to any belief or deed in religion. It is only an explanation and elucidation of the religion which is confined in the Qur'ān and Sunnah and also describes the exemplary way in which the Prophet (sws) followed this religion.

How did this knowledge reach us? History tells us that it was the Companions who foremost narrated it before other people in the form of Aḥādīth (plural of Ḥadīth). Then those who heard these Aḥādīth from them narrated them to others. These were narrated orally and at times in the written form as well. This process continued like this for one or two generations. However, it then became evident that some errors were creeping in while reporting them and some people were intentionally mixing lies in them. It was on this occasion that some noble souls took upon themselves to research into these Ḥadīth. These people are called the *muḥaddithūn*

(scholars of Ḥadīth). They were very extra-ordinary people. They looked into each and every narrative and its narrator and as far as was possible for them ascertained the correctly and wrongly ascribed ones and sifted truth from falsehood. Then some among them also compiled books about which one can quite safely say that the Aḥādīth recorded in them is the knowledge of the Prophet (sws) which the narrators have reported mostly in their own words. In religious parlance, they are called *akhbār aḥād*. They refer to reports which are transmitted by a few people. Unlike the Qur'ān and Sunnah, it cannot be said that Aḥādīth have been transmitted through consensus (*ijmā'*) and concurrence (*tawātur*). Thus it is generally accepted that the knowledge gained through them does not give certitude. At best it can be called probable knowledge.

The books of Ḥadīth just referred to are all very important; however, the books of Imām Mālik (d. 179 AH), Imām Bukhārī (d. 256 AH) and Imām Muslim (d. 261 AH) occupy fundamental status and are regarded to be very authentic. This is because they have been compiled after a lot of research. However, this does not mean that their compilers never committed any mistake in recording them. The experts of this field know that they did commit mistakes. For this reason, these experts have continued to evaluate and assess these books. So when they see that the narrators of a Ḥadīth are not reliable with regard to their character and memory, or there is no possibility that they have met one another, or the contents of a Ḥadīth narrated by them have something against the Qur'ān and Sunnah or against established facts derived from knowledge and reason,

they clearly tell people that this Ḥadīth cannot be attributed to the Prophet (sws) and has been erroneously ascribed to him. Similar is the case of understanding Aḥādīth and their explanation. Various scholars have continued to critically evaluate them.

This research work on Aḥādīth has been conducted in every period of time. Not very long ago, in the last century, Nāṣir al-Dīn al-Bānī (d. 1999) has done extraordinary service in this regard: he researched afresh into most books of Ḥadīth and once again tried to sift out the rightly ascribed narratives from the weak ones. The task which the scholars of Turkey have embarked upon is very similar. As yet, their conclusions have not come to the fore; hence, they cannot be commented upon. However, the details that have come to surface show that apparently there is nothing that is objectionable in them. How can it be objected to if while giving due regard to the status of Ḥadīth delineated above it is assessed in the light of its established principles of evaluation or is compiled afresh or if efforts are made to understand it and separate its transient from the eternal? The door to research in this regard can never be closed. Even if some errors are committed in this work, this should not be a cause of worry. Other scholars will point them out through their critique. There is no way for the advancement of knowledge but to leave people to work with freedom. This opens up new frontiers and it also becomes a means to correct any mistake committed by past authorities. The endeavour of the Turkish academics should be viewed in this light and people who for the first time in Muslim history are trying to do such an activity in an institutionalized way should be

encouraged. If their work is of the required of standard nature, then this should be counted as a great service, and if it is substandard, it will not survive in the realm of knowledge and will be consigned to oblivion. The court of knowledge is ruthless. Sooner or later, it delivers its verdict. In such matters, we should wait for its verdict.

(Translated by Dr Shehzad Saleem)

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Contemporary Issues

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Ijtihād

The term *ijtihād* has originated from a Ḥadīth. In the opinion of the authorities, this Ḥadīth is broken (*munqaṭa'*). However, it is one of its sentences which has become a source of this all important term of Islamic jurisprudence. It is reported that when the Prophet (sws) sent forth Mu'ādh (rta) to Yemen as its governor, he asked him: "How will you decide matters?" He replied: "I will revert to the Book of God." The Prophet (sws) then asked: "If you do not find anything in the Book of God?" Mu'ādh replied: "I will look into the Sunnah of the Messenger of God." The Prophet (sws) next asked: "If you do not even find it there?" At this, Mu'ādh responded by saying: "أجتهد برأى ولا ألو جهداً" (I will form an opinion after expending full effort and will not leave any stone unturned).¹⁶

It is the words أجتهد برأى of this Ḥadīth that are the source of this term. Scholars of *uṣūl* have always used it in the limits ascertained by this Ḥadīth. In other words, *ijtihād* shall be done only in those matters in which the Qur'ān and Sunnah are silent. It has no bearing on matters which are explicitly stated in the Qur'ān and Sunnah. The reason for this is that the injunctions of

16. Abū 'Īsā Muḥammad ibn 'Īsā al-Tirmidhī, *Sunan*, vol. 3 (Beirut: Dār iḥyā' al-turāth al-'arabī, n.d.), 616, (no. 1327).

Qur'ān and Sunnah need deliberation and do not warrant *ijtihād*. Scholars can repeatedly revert to them, determine their purport and can also differ from previous authorities in their interpretation but they cannot alter or annul any directive of the Qur'ān and Sunnah through their *ijtihād*.

Thus the ambit of *ijtihād* is matters in which the Qur'ān and Sunnah are silent. If the ascription of this dialogue to Mu'ādh and the Prophet (sws) is correct, then it is this very fact which the Prophet (sws) has explained. Thus the questions asked were: "If it is not found in the Qur'ān?" and "If it is not found in the Sunnah?" If one is able to find anything in the Qur'ān, no Muslim can deviate from it. It is the requisite of his faith to submit to it without any hesitation. The very word "Islam" means to be obedient to God and the Prophet (sws). Some of the illustrious thinkers of current times have wrongly interpreted certain steps taken by the Rightly Guided Caliphs. The fact of the matter is that none of these caliphs could even have imagined to dare alter or annul a directive of God. What people regard as annulment or alteration is actually the implications and insinuations of the directive which the Rightly Guided Caliphs explained with their practice. So instead of deriving annulment or alteration from such a directive, people should develop the ability to reflect on the Qur'ān and Sunnah and to understand their linguistic styles.

However, within the circle in which the Qur'ān and Sunnah are silent, *ijtihād* is as essential as air and water are to the human body. The door to *ijtihād* can never be closed and in fact never was. In spite of the insistence of

some people that this door had been closed after the fourth century, scholars, jurists and experts of various disciplines who did *ijtihād* in every period of time and are doing so even today have continued to grace this world. God has blessed man with knowledge and intellect. He has bestowed these favours on him so that he can decide his affairs under their guidance. These affairs are both indefinite and multifarious. Man has not been created blind and deaf so that he requires divine guidance in every matter. The Almighty has revealed His *sharī'ah* only in those affairs in which man's knowledge and intellect need guidance. For this reason, the directives of the *sharī'ah* are very limited. Thus *ijtihād* is essential. In it lies the secret to development. Life cannot continue without it. One of the significant reasons of the decadence of the Muslims is that in their national capacity they have become devoid of the ability of research in physical sciences and *ijtihād* in social sciences.

Here, it must remain in consideration that there are no conditions for *ijtihād*. People should do *ijtihād*. If one individual makes a mistake in it, the critique of another will correct it. It is through this process that man progresses and highly competent *mujtahids* are born. There is no doubt in the fact that if the principle of *taqlīd* is accepted, then all those conditions which are stated for *ijtihād* will become necessary. The reason for this is that in such a case the real thing would not be *ijtihād* itself but the personality of the *mujtahid* who is being regarded as the source of *taqlīd*. However, if like the Companions of the Prophet (sws) and their followers, the common masses and the scholars also base their

decisions on reasoning, then it will not be the *mujtahid* but the *ijtihad* itself which will be evaluated in congruence with the standards put forth by knowledge and reason. In this situation, even if a non-Muslim – let alone a Muslim – presents a sensible solution to a problem, it cannot be objected to and should be accepted as a “lost treasure of a believer”.

Consequently, it is a reality that in current times many *ijtihad*s pertaining to political, economic and administrative issues as well as those pertaining to the principles of civics and citizenship have in fact been done by non-Muslims and Muslims have generally accepted them. A clear example of this is democracy, democratic values and the regulations of the institutions which have been founded under them. The principle of democracy was given by the Qur’ān but the Muslims could not make any system for it. This system was made by non-Muslims. In spite of this, it can be observed that religious scholars and most religious parties not only accept this system they have also been playing the role of the vanguard of every movement which has been launched for its preservation and promotion. This is the correct attitude in matters in which the Qur’ān and Sunnah are silent, and people should adhere to this attitude.

(Translated by Dr Shehzad Saleem)

The Consensus of Muslims

The blessed person of Muḥammad (sws) is the sole source of religion. From him, this religion has been given to the *ummah* through the consensus of his Companions (rta) and through their perpetual practice and perpetual recitation in two forms: the Qur'ān and the Sunnah. Religion is now derived from these two sources. After these two, if anything of secondary nature can become a source of religion, it is *ijtihād*. Through *ijtihād*, besides many other things, we also try to understand directives which are not directly mentioned in the Qur'ān and Sunnah but by their nature are applications of directives which are left to the discretion of the opinion and understanding of people. Qiyās (analogy or deduction) is a form of *ijtihād*. The Qur'ān has used the word *istinbāt* for it. Its product is called *fiqh* (jurisprudence). Its corpus began with the *ijtihāds* of the Prophet (sws) himself. A substantial part of the anthologies of *akhbār-i aḥād* is constituted by them. After him, the companions and their followers continued this tradition. However, during the period of our jurists, a fourth source was added to the sources of Islam: the consensus of the Muslims (*ijmā'*). After their time till now, it is generally accepted that consensus of the Muslims is also a source of the Islamic *sharī'ah*.

This addition to the sources of Islam is indeed a

religious innovation. It has no basis in the Qur'ān and Sunnah. If a person tries to evaluate its influence, he will come to the conclusion that it has undermined the eternal nature of the Islamic *sharī'ah* and it has become difficult to prove its relevance to modern times. A great scholar and preacher of the sub-continent, Mawlānā Waḥīd al-Dīn Khān (b. 1925 AD), writes:

Our jurists have generally regarded the consensus of the Muslims to be an independent source of the *sharī'ah*. However, this surely is a baseless view. Only a definite text (*naṣṣ qaṭ'ī*) can be an independent source of the *sharī'ah*. Regarding something to be an independent source of the *sharī'ah* in the absence of a definite text is an unfounded premise. Indeed, the consensus of the Muslims has an importance; but that importance merely lies in the fact that in a particular instance it could be the practical solution to a problem that has arisen. This solution most certainly is temporary in nature and is not an eternal source of the *sharī'ah*.¹⁷

If a person wants to study the arguments on the basis of which our jurists prove the validity of consensus of the Muslims, he should consult Imām Shawkānī's *Irshād al-fuḥūl*.¹⁸ It will become evident to him how baseless and unrelated they are. However, arguments drawn from

17. Waḥīd al-Dīn Khān, Maṣādir-i sharī'ah *Al-Risālah* 7 (2011): 5.

18. Muḥammad ibn 'Alī ibn Muḥammad al-Shawkānī, *Irshād al-fuḥūl ilā taḥqīq-i 'ilm al-uṣūl*, 1st ed. (Beirut: Dār al-fikr, 1992), 131-144. (Translator)

one verse of the Qur'ān and one Ḥadīth narrative can raise doubts in the minds of some people. I will try to evaluate both of these here.

The Qur'ān says:

وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ
الْمُؤْمِنِينَ نُؤَلِّهِ مَا تَوَلَّىٰ وَنُصْلِهِ جَهَنَّمَ ۚ وَسَاءَتْ مَصِيرًا (١١٥)

And those who oppose the Prophet even after the path of guidance is fully evident to them, and leaving the path of those who sincerely professed faith [in you] follow some other path, We will put them on the path on which they themselves went and cast them into Hell. It is a very evil abode. (4:115)

The jurists deduce their view from the above verse by saying that if the way of someone other than those of the believers is adopted, then this verse mentions the punishment of Hell for such an attitude. It is evident from this that following the way of the believers is mandatory on every person; hence, if Muslims are united on an opinion or a view, then no one should differ with it; it is incumbent on every believer to follow this consensus.

An evaluation of the context of this verse will show how baseless this line of argumentation is. In the previous verses, the conspiracies and connivances of the hypocrites are exposed. Regarding these hypocrites this verse says that those who want to form a separate group to oppose the Prophet (sww) and in this way want to adopt the path of disbelief and hypocrisy instead of the

path of belief, shall be cast into Hell. The verse warns those Muslims who would defend these hypocrites. They are told that the people they are supporting will be led to Hell because of their opposition and hostility to the Prophet (sws). The reason for this is that this is not the way of the believers, and those who adopt the path of disbelief and hypocrisy even after the true path is evident to them can only abide in Hell. This disbelief and hypocrisy are referred to by the words **غَيْرَ سَبِيلِ الْمُؤْمِنِينَ** of the verse cited. In it the word “believers” refer to the Companions of the Prophet (sws) who, after acquiring the truth, never breached their trust with the Prophet (sws) and never opposed and evaded him. On the contrary, they followed him with full sincerity and submitted wholeheartedly to whatever directive they were given by him. It is this attitude of faith and faithfulness, submission and obedience, docility and compliance which is called **سَبِيلِ الْمُؤْمِنِينَ** in this verse. All attitudes other than this are called **غَيْرَ سَبِيلِ الْمُؤْمِنِينَ** and Hell is promised for such attitudes. This certainly does not mean that one cannot differ from the interpretations, opinions and *ijtihad*s nor does it mean that if in the light of the Qur’ān and Sunnah a person criticizes a view on which there is consensus, then he would become worthy of Hell. The fact is that this issue is not even touched upon by this verse. What is merely said in this verse is that after guidance has become fully evident if someone opposes the guide sent by God and is audacious enough to set up his own faction in opposition to him, then this is nothing but disbelief with which belief can have no meaning. The Almighty puts such people on the path

they have chosen for themselves. Consequently, the Qur'ān says that a person who chooses such a path should only wait for Hell.

Similar is the case of Ḥadīth: the Prophet (sws) is reported to have said: *إِنَّ اللَّهَ لَا يَجْمَعُ أُمَّتِي أَوْ قَالَ أُمَّةً مُّحَمَّدٍ عَلَى ضَلَالَةٍ* (indeed, God will never unite my *ummah* or the *ummah* of Muḥammad on some error).¹⁹ It may be noted that it is not a sound Ḥadīth and for this very reason has not been able to find any place in the primary books of Ḥadīth like *al-Jāmi' al-ṣaḥīḥ* of al-Bukharī and *al-Jāmi' al-ṣaḥīḥ* of Muslim and the *Mu'attā'* of Mālik. However, even if it is supposed that the Prophet (sws) has in fact given these glad tidings to his *ummah*, can these words really mean that the *ummah* can never make a mistake? The fact of the matter is that there is a world of difference between a mistake and straying into error and whatever is said in the Ḥadīth relates to straying into error and not committing a mistake. It is impossible that the whole *ummah* be united in straying into some error. The reason for this is that the difference between guidance and error has been made evident to a conclusive degree. Thus it is logically impossible that all the scholars, *mujtahids* and those at the helm of state affairs unite on a polytheistic belief while fully comprehending it to be polytheistic or reject the messengerhood of Muḥammad (sws) or deny the accountability of the Hereafter or deviate from directives such as the prayer, the fast, the *hajj*, the *zakāh* and animal sacrifice. Such things are in the category of self-evident facts for this *ummah*. There can evolve a

19. Tirmidhī, *Sunan*, vol. 4, 466, (no. 2167).

consensus on evasion from them. However, there can be a mistake in understanding things which need deliberation or require *ijtihād* and it is also possible that all people of this *ummah* are unanimous in this mistake. There is nothing in reason or revelation which precludes this possibility. Thus even if this narrative's ascription to the Prophet (sws) is regarded to be correct, it is evident from its words that his glad tidings relate to consensus on straying into error and it can be said with certainty that Muslims cannot unanimously stray. The narrative does not relate in any way to a mistake in understanding a directive or in doing an *ijtihād*.

(Translated by Dr Shehzad Saleem)

Our Message to Humanity

Religion is the guidance which was first instilled by the Almighty in human nature and after that it was given by Him with all essential details to mankind through His prophets. Muḥammad (sww) is the last of these prophets. Consequently, it is now he alone who in this world is the sole source of religion. It is only through him that man can receive divine guidance, and it is only he who, through his words, deeds or tacit approvals, has the authority to regard something as part of Islam until the Day of Judgement.²⁰

We call upon all people of this world to profess faith in this religion and to purify their individual and collective lives in accordance with it. The reward of those who accept this call to profess faith and to purify themselves is Paradise which is as extensive as this universe. It is a place where there is no concept of death with life, pain with pleasure, sorrow with happiness, anxiety with satisfaction, hardship with ease and bane with boon. Its comfort is everlasting, its bliss is endless, its days and nights are abiding; its peace unending, its pleasure eternal, its majesty enduring and its perfection impeccable. In it, God Almighty has provided for His servants what has never been seen by the eyes, never been heard by the ears and never been imagined by the

20. The Qur'ān, 62:2.

hearts.²¹

We invite those who believe in this religion in these times that in order to acquire this Paradise, they should act in accordance with their faith, fulfil the rights of God and His servants with full honesty and sincerity and not commit any excess against the life, wealth and honour of anyone.²²

We invite them to urge people in their surroundings and in their circle of influence to do good and to refrain from evil. This is an obligation imposed on them by their Lord. It should be discharged by a father towards his son and a son towards his father, a husband towards his wife and a wife towards her husband, a brother towards his sister and a sister towards her brother, a friend towards his friend and a neighbour towards his neighbour – in short, a person should discharge it towards every person who has an immediate relation with him. Consequently, wherever they see someone known to them adopting an attitude which is contrary to the truth, they – according to their knowledge, capacity and ability – should try to urge him to mend his ways.²³

If emotions, vested-interests and biases try to divert them from justice in some worldly or religious matter, they should adhere to justice; in fact, if their testimony is required in these matters, they should do so even if it puts their life in danger. They should speak the truth and submit to it; they should adhere to justice and bear witness to it, and hold fast to it in their beliefs and

21. The Qur'ān, 87:14-17.

22. The Qur'ān, 16:90.

23. The Qur'ān, 9:71.

deeds.²⁴

If they face religious persecution, then instead of retaliating with violence, they should show patience,²⁵ and if possible should leave the place where they face such persecution and migrate to a place where they can openly practice their religion.²⁶

In current times, the leading scholars of the Farāhī School with the help and blessing of God have been able to cleanse Islam – the true religion - from every juristic and scholastic intrusion and from every adulteration of philosophy and *taṣawwuf*, and have presented it in its pristine form purely on the basis of the Qur’ān and the Sunnah. The communication and dissemination of this religion, education and instruction of people on its basis and the reconstruction of Muslim religious thought in its light is a great *jihād*. We invite all Muslims to help us in this *jihād* by offering their support, time and resources for it. This is the *nusrah* (help and support) of the true religion of God from which nothing should be dearer to a true believer:²⁷

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا أَنْصَارَ اللَّهِ كَمَا قَالَ عِيسَى ابْنُ مَرْيَمَ لِحَوَارِيِّينَ
مَنْ أَنْصَارِي إِلَى اللَّهِ قَالَ الْحَوَارِيُّونَ نَحْنُ أَنْصَارُ اللَّهِ (١٤ : ٦١)

Believers! Be God’s helpers, the way Jesus, son of Mary, called upon his disciples: “Who will be my helper in the cause of God?” The disciples replied:

24. The Qur’ān, 4:135; 5:8.

25. The Qur’ān, 41:33-35.

26. The Qur’ān, 4:97.

27. The Qur’ān, 9:24.

“We are God’s helpers.” (61:14)

(Translated by Dr Shehzad Saleem)

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Downfall of the Muslims

Muslims remained a great power in this world for almost a thousand years. No nation was able to compete with them with regard to knowledge and wisdom, political acumen and affluence. They reigned over the whole world during this period. This kingdom was given to them by God and it was God who took it away from them. The law of God regarding the rise and fall of nations is that for its rise He selects whichever nation He wants to according to His law of trial; however, once He selects a nation to elevate it, He only changes this state of that nation when that nation itself falls in decadence with regard to scientific knowledge and morality.

Muslims are also faced with another scenario. By origin, most of them have been Arabs. Arabs are mostly the Ishmaelites and about the Ishmaelites it is known that they are the progeny of Abraham (sws). Hence they face the established practice of the Almighty that is mentioned by the Qur'ān for the progeny of Abraham (sws). As per this established practice, if they adhere to the truth they will lead all nations of the world and if they deviate from the truth they will be deposed from this position and will have to face the punishment of humiliation and subjugation.

Hence if Muslims are afflicted with this punishment, then this is neither a haphazard incident nor is it the result of some conspiracy hatched by others, as is

generally alleged by our religious and political leaders. Behind this punishment are specific reasons. The divine law of rise and fall of nations is the cause of this punishment. If this punishment and humiliation is understood in the light of this divine law, three causes for the downfall of the Muslims can be pin-pointed:

Firstly, Muslims were entrusted with the Book of God. It is not merely a book. It is the yardstick of God revealed to decide between truth and falsehood. Muslims should present all their religious differences before it and whatever verdict it gives, they should accept it without any hesitation. It should be the basis of their beliefs and deeds. It should be the source of all matters relating to faith and *sharī'ah*. Every research, every opinion and every viewpoint must be kept subservient to it; so much so, even the words of the prophets of God should not be considered authority over it. On the contrary, it should be regarded as having authority over everything. Unfortunately, since the past many centuries Muslims have not been able to confer this status on the Qur'ān in their beliefs and deeds. Hence, as pointed out by Allāmah Iqbal:

خوار از مجھوري قرآن شدي

(You are in a state of humiliation because of leaving aside the Qur'ān.)

Secondly, this world is a place where harnessing potentials produce results. These potentials can be harnessed mostly by having skill and expertise in scientific disciplines. It is this skill through which man

can access the treasures which God has concealed in the heavens and the earth. History bears witness that the life and death of man is mostly dependent on the competence he has in these disciplines, what to speak of rise and fall of nations. From the discovery of fire to the invention of the wheel to the astounding advancement and developments of the modern era this fact can be read in every page of history. Though Muslims did show interest in these disciplines yet their intelligentsia mostly engaged themselves in the study of philosophy and *taṣawwuf*, though this was not the least required. The Book of God had already been revealed with answers to questions which philosophy and *taṣawwuf* grapple with. Avid interest in these disciplines made Muslims oblivious to both the Book of God and scientific knowledge. Our age old religious seminaries are still teaching various aspects of philosophy and *taṣawwuf* that can be called the best examples of useless knowledge (*'ilmun lā yanfa'u*). Thus we can see how far the world has advanced while Muslims gaze in wonder at these advancements.

Thirdly, Muslims have shown an utter indifference to their moral instruction. It is as a result of this disregard that lying, dishonesty, embezzlement, theft, fraud, adulteration, devouring of interest, deceit in weighing, false accusations, breaking promises, involvement in occult disciplines, labelling one another with disbelief and defiance, worshipping graves, polytheistic rituals, detestable forms of entertainment and other similar crimes are so common in their societies that one is struck with wonder. It was these wrong-doings of the Israelites on the basis of which the prophets of God cursed them

and they were eternally deprived of God's mercy. Muslims too have gone far away from it. If a person wants to take a glimpse at them, he should read the Gospel where Jesus (sws) has stated the charge-sheet of the Israelites, of their scholars, their intellectuals and their rulers. The whole milieu and situation of Muslim societies cries out that they are even worse than the Jews of those times in their wrong-doings.

These are the reasons of the downfall of the Muslims. If they wish to come out of this scenario of decadence and downfall, then this can neither be achieved through warfare nor resistance movements. The past two hundred years of their history from Sarangapattam to Afghanistan bear evidence to this. To come out of this they will have to take remedial measures to circumvent the causes that have become the reason for their downfall; otherwise humiliation, disgrace and subservience will always remain their fate. The law of God is unalterable. Muslims are now in its grasp. When they want to come out of it by fighting others, they are in fact fighting God because it is He Who has actually let loose His strong men on them. This is God's punishment. The line of action to avoid it is not the one their religious and political leaders and self-styled *mujāhidīn* are suggesting to them. By adopting this line of action they can neither thwart the influence of big powers in their countries nor can they oust the Jews and Hindus from Palestine and Kashmir. They should study the preaching of the prophets mentioned in the Qur'ān and the Bible. Whether the prophets of God come in the time of the subjugation of Babylon or in the times of Roman emperors, they never suggested this to their followers.

They always informed their people of their wrongdoings, while our leaders are adept at pointing out the faults of others and censuring them. The Qur'ān is in our hands. We can read it from the beginning to the end. We will not find a single word in it in condemnation of the Babylonian and Roman emperors. At every place, the Israelites are presented with this charge-sheet of their wrongdoings. The need of the hour is to recount the charge-sheet of the wrongdoings of the Muslims because the promise of God with the Israelites also holds for the Muslims. It was: "If you fill My covenant I will fulfil your covenant; My mercy is waiting; however, if you tread on that path, I will take the path I have already adopted and the lash of My punishment will strike you." Men of insight should learn a lesson from this!

(Translated by Dr. Shehzad Saleem)

Religious Extremism

It is apparent to every keen eye that the greatest issue faced by Pakistan in current times is religious extremism. It is our misfortune that today this is not merely limited to an ideology and its communication through the written and the spoken word. It has now crossed these confines and entered the realm of carnage and terrorism. The political, economic and social – in short every sphere of the country is now bearing its brunt. Hundreds of children, adults and old people have fallen prey to it. History bears witness that in such situations a state generally ends up forcibly exterminating religious extremism and it is quite probable that Pakistan too will finally have to take this step. We will also have to seriously repent from using religion for achieving our political ends. If this situation does arise, then the following points may further be kept in consideration to eliminate religious extremism from its roots:

Firstly, the monster of extremism did not descend on us from the heavens; it is in fact the vile product of the religious thought that is taught in our religious seminaries under the topics of implementation of the *sharī'ah* and armed *jihād* and for the eradication of disbelief, polytheism and apostasy. It is from this ideology that extremist individuals and organizations

receive inspiration and after making some changes mould it into a practical strategy to achieve their objectives. The flaw in the interpretation of this religious thought from the Qur'ān and the Hadīth has been pointed out by many illustrious Islamic scholars of these times. If hooliganism, protests and expressions of power and might are desisted from, then the writings of these scholars can change minds. Their writings constitute a counter narrative to the current religious thought. However, it is tragic that in Pakistan these are the ways to protect and preserve religion that are in vogue. Differing with one another in a cultured and polite manner has unfortunately never been established as a tradition here. This situation demands that our intelligentsia and those in authority should show sensitivity in the freedom of expression of religious views as well the way they are sensitive in political views, and they should openly tell those who try to pressurize them regarding this freedom of expression in religious views that this coercion is not acceptable to them. If these people wish to correct the views of those who differ with them, then the sole way to do this is to use the force of reason and argument; there is no room for commotion and protest, coercion and violence in the world of knowledge. Moreover, our intelligentsia and those at the helm of our country's affairs should themselves also try to understand the counter narrative referred to above. In a Muslim society, the promotion of secularism is not the solution to this problem; the solution is to present a counter narrative to the existing narrative on religious thought. It is to this solution that Allama Iqbal had tried to direct our attention in his

Reconstruction of Religious Thought in Islam.

Secondly, we do not allow any person to set up institutions that produce doctors or engineers or any other professional unless these students have gone through a twelve year general education. However, there is no such restriction for becoming a religious scholar. For this purpose, students are admitted from the very beginning in religious seminaries where their future is pre-decided. It may well be that providence wanted to make them doctors, engineers, scientists, poets, artists or professionals belonging to the literary field; yet these seminaries without taking into view the ability and aptitude of their students turn them into religious scholars and close the doors on them to select any other professional field once they reach mental maturity. Moreover, these seminaries mould the personalities of their students in such a way that they become alien to their own society because of being deprived of the twelve year general education. The whole nation is now bearing the consequences of this mistake. Hence, it is necessary that it be made mandatory for religious seminaries to not give admission to any student unless he has passed through a twelve year period of general education as is the case with all other disciplines in which students intend to specialize.

This writer can state with full confidence that this step alone will rectify the situation that has been created by our religious seminaries in current times. However, for this it is essential that our general system of education which caters for specialization in various fields and professions should also cater for the specialization in religious studies to produce competent scholars of Islam.

The suggestion in this regard is that in a few selected institutions of general education a *dīniyāt* (religious studies) group should be introduced the way science and arts groups are introduced in them so that students who want to become religious scholars can select this group in the ninth year of their studies and are able to cultivate in themselves the competence needed to take admission in institutions which provide specialization in religious studies.

Thirdly, in order to curb religious extremism, it is essential that the mini-state which is available to religious scholars in our country in the form of the Friday sermon and running the affairs of mosques be dismembered. Men of learning know that the established practice instituted by the Prophet (sws) regarding the Friday prayer is that it shall be led and addressed by the head of state and his representatives only. If any other person is to take their place, it can only be when because of some compelling need he does so with their permission and as their authorized substitute.

This established practice continued with its full majesty after the Prophet (sws). However, in later times when Muslim rulers because of their misdeeds no longer remained worthy of observing it, they themselves handed the Friday pulpit to religious scholars. It was this singular step that gave real power to anarchy and disorder in the name of religion. This state of affairs needs to be changed and our rulers should decide with full determination and resolve that the Friday prayer shall be organized by the government and shall only be allowed at places that have been prescribed by it for this purpose. Its pulpit will be reserved for the rulers; they

themselves will deliver the Friday sermon and lead the prayer or some authorized representative of theirs will fulfil this obligation on their behalf. No one will have the independent authority to organize this prayer at any place that falls under the jurisdiction of the state.

A similar decision that should be undertaken by the government is that mosques in which prayers other than the Friday prayer are offered should be built by the permission of the government. They will not be classified as mosques of a particular sect or school of thought; on the contrary, they will be mosques of God where only He shall be worshipped. Mosques are collective institutions of the Muslims, and as such cannot be given in the control of people and organizations. Hence it is essential that wherever Muslims form a government, mosques should be under its jurisdiction and control. The government should not allow any person to use the mosque for the promotion of an organization, a movement or a particular point of view, and in this manner convert them into places which create dissensions among Muslims instead of remaining places where God is worshipped.

This step is essential. The benefits it gives can be seen in countries where this method of organizing and administering mosques is employed.

(Translated by Dr Shehzad Saleem)

Organ Transplantation

Amongst the various marvels of science and the facilities it has afforded humankind in the last two centuries one extraordinary discovery is organ transplantation. Through surgery, a defective organ of a person can be replaced with a healthy one belonging to another person. The healthy organ can be taken from either a living or a dead person. The question which arises on this procedure is, whether it is religiously permissible that a person in his life donate any of his organs for transplant, or make a will that after his death, an organ of his be donated?

The answer to this question should be in the affirmative because apparently there is nothing in the Qur'ān and Ḥadīth which prohibits this. However, the ulema of the Indian sub-continent generally regard it to be prohibited, and proffer two arguments in favour of their viewpoint.

The first of these is that a person is not the owner of his body. Hence he does not have the right in his own life to make a will for organ donation. A person has control of his body as long as he is living in that body. Once he departs from his body, he has no right on it that he can make a will in favour of it and this will be considered as implemented.

The second of these is that the sanctity of a dead body should not be violated. The living should not harm it in

any way. It is their obligation that the body of a dead person be buried with full respect. Dissecting a dead body or severing any of its organs or limbs is tantamount to violating its sanctity, and no ethical system of this world can permit this to happen.

In my opinion, both these arguments need to be reconsidered.

No doubt, the real owner of everything is God; however, this too is a reality that a person has the right to use and expend within the limits prescribed by God whatever has been given to him. Thus for one's honour, family, country and religion a person sacrifices his life, generously spends his wealth and while knowing that he can be killed or lose any of his limbs, still fights a war for the above mentioned causes, jumps in the fire and is ready to face the greatest of dangers. The Qur'ān has termed this as the *jihād* of the life and wealth of a person and as spending for the cause of God. In various places, it has urged its followers to spend these things for the causes outlined above. It is evident that the Qur'ān acknowledges this right of a person over his life and wealth.

The right a person has to make a will is a corollary of this right to use his life and wealth. Thus, just as we have the right to make a will about our wealth after our death, similarly, we also have the right to make a will regarding enshrouding our dead body and its burial. Donating one's organ to some other person is also a similar matter. If all these afore-mentioned things are allowed, and can be done while a person has left his body, then how can making a will for organ donation be regarded as forbidden?

Similar is the case of violating the sanctity of a corpse. It relates to one's intentions and motives. Inflicting harm on the limb of a person is a crime. The Qur'ān has given the directives of *qīṣāṣ* and *diyat* for such crimes. However, if with the permission of the patient, a doctor severs his hand or foot, then no one can call him a criminal. So why should not one differentiate between mutilating a dead body through various means and conducting a post-mortem for the purpose of investigation? If a person makes a will to give his wealth to some needy person, then this is counted as a virtue. Similarly, if he makes a will to donate any of his organs or limbs to someone in need, then this should also be seen as a virtue. Why should implementing such a will be regarded as violating the sanctity of a corpse?

(Translated by Dr Shehzad Saleem)

Sighting the Moon

The Almighty has prescribed the month of Ramaḍān for keeping fasts and the month of Dhū al-Ḥajj for offering the *hajj*. Since both these months belong to the lunar calendar, the issue of ascertaining the days of these months has always remained under discussion. Even before the recent advances made in the science of astronomy, people were aware that a lunar month could not exceed thirty days; however, general observation showed that a lunar month could also be of twenty nine days.

When the Qur'ān directed people to keep the fasts of one whole month, it was suspected that people would insist on completing thirty days while complying with this directive. Consequently, the Prophet (sws) cautioned people to begin the month of Ramaḍān when the moon was sighted and to end it too when it was sighted; it was not essential to complete thirty days and in case the sky was not clear, thirty days must necessarily be completed. It is this very directive of the Prophet (sws) which was given an entirely different form by various narrators: as per this changed scenario, it was thought that the Prophet (sws) had bound people to observe the moon for ascertaining the commencement of Ramaḍān. It is our good fortune that in one variant of this narrative, this directive of the Prophet (sws) has been reported in its original form. He is reported to have said:

الشَّهْرُ تِسْعٌ وَعِشْرُونَ فَإِذَا رَأَيْتُمُ الْهَيْلَالَ فَصُومُوا وَإِذَا رَأَيْتُمُوهُ فَأُفْطِرُوا
فَإِنْ غَمَّ عَلَيْكُمْ فَأَقْدِرُوا لَهُ

A month can also be of twenty nine days; so if you sight the moon, begin the fast and if you sight it break the fast; if the sky is not clear complete the days.²⁸

This narrative is reported by ‘Abdullāh ibn ‘Umar (rta). A variant from Abū Hurayrah (rta) is reported precisely in the same words.

It is evident from this discussion that sighting the moon for ascertaining a lunar month was never made incumbent; on the contrary, it was made incumbent to begin a month after sighting the moon so that people should not insist on completing thirty days thinking that one whole month’s fasts have been made mandatory for them. Consequently, the very words reported from the Prophet (sws) begin thus: “a month can also be of twenty nine days.”

The purpose of sighting the moon is to determine a lunar month. If thirty days are completed in a month, moon-sighting is not required since in this matter we are absolutely certain that whether the moon is sighted or not, the previous month has ended and a new month will now begin. With advancement of technology, we are now in a position to determine if a lunar month can be of twenty-nine days. We are now in a position to know with full certainty when the moon is born for this earth

28. Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 2, 759, (no. 1080).

each month. Hence, there is nothing wrong if the lunar calendar is instituted on the basis of the moon's birth with respect to Makkah, and if all religious festivals are celebrated in accordance with it. The purport of religion is ascertaining the lunar month. If it can be ascertained by sighting the moon, it was adopted in the past, and if now it can be determined through some other way, then no objection can be raised against it. After the invention of watches, just as we no longer need to observe sunrise and sunset to ascertain prayer timings, similarly, we are not required to ascertain a lunar month through moon sighting. The issue of sighting the moon has arisen because of misreporting of the narrators. After collating all the variants on this topic, it becomes evident that the Prophet (sws) had an entirely different objective before him.

Should one still insist on sighting the moon after all this? Our scholars need to deliberate on this question.

(Translated by Dr Shehzad Saleem)

Muslims and Non-Muslims

All those who follow any religion other than Islam are called Non-Muslims. This term is also used for those who do not follow any religion. It is not a term of derision. It is only an expression of the reality that they do not believe in Islam. They are generally also called *kāfirs* (infidels). However, I have argued in my books that conclusive communication of the truth (*itmān al-hujjah*) is needed to regard someone as *kāfir*, and it is only God who knows and only He can divulge the information that the truth has been conclusively communicated to a person or a group and therefore now they can be called *kāfirs*. Hence after the departure of God's Messenger (sws), no person or group has the right to regard someone as *kāfir*.

Similar is the case of people who renounce Islam and adopt another religion or who do not follow any religion. What can only be said about them too is that they have become non-Muslims. This is because nothing can be said with full conviction as to how convinced is a person who is a Muslim by birth about the veracity of Islam. This is something which only God can know and only He knows what is in the hearts. We should not dare declare a verdict about something which we do not know. If we have been blessed with knowledge, our duty is to only explain to people the difference between

monotheism and polytheism and between Islam and disbelief. We should also keep elucidating to them the precepts of religion. This is because we are not in a position to go beyond this and decide the faith or disbelief found in a person or whether he deserves Paradise or Hell. Only God has this position and authority and such verdicts are only His prerogative.

After that are people who are Muslims, assert themselves to be Muslims in fact insist on this status but adopt a belief which is generally considered to be against the teachings of Islam or interpret a Qur'ānic verse or a Ḥadīth in a way which is regarded as erroneous by a scholar(s) or by the rest of the Muslims. For example, the belief of Imām Ghazālī (d. 505 AH) and Shāh Walīullāh (d. 1176 AH) that the culmination of *tawḥīd* is *waḥdat al-wujūd* or the belief of Muḥī al-Dīn ibn al-'Arabī (d. 638 AH) that the termination of prophethood does not mean that the status and attributes of prophethood have terminated, it only means that a prophet has to be a follower of the *sharī'ah* of Muḥammad (sws) or the view of the Shiites that the ruler of Muslims who is called *imām* is also appointed by God and that after the Prophet (sws) the Almighty Himself had appointed 'Alī (rta) as the ruler of the Muslims on this very principle but this appointment was not accepted or the opinion of the celebrated thinker Allāmah Muḥammad Iqbāl (d. 1930) that Paradise and Hell are not places but circumstances that will befall a person.

All these opinions and others similar to them can be regarded as wrong views and beliefs and even branded as erroneous and deviant but since their proponents adduce their arguments from the Qur'ān and Sunnah,

they cannot be regarded as non-Muslims or *kāfirs*. What is the verdict of God regarding these views and beliefs? We should wait for the Day of Judgement to hear it. In this world, their proponents are Muslims as per their own assertion, should be considered as Muslims and should be dealt with and treated in a way an individual among Muslims is. It is the right of the scholars to point out their mistake, to invite them to accept what is correct, to regard what they find as constituting polytheism and disbelief in their ideology and also inform people about all this. However, no one has the right to declare them as non-Muslims or to ostracize them from the Muslim community because only God can give this right to someone, and everyone who has knowledge of the Qur'ān and Hadīth knows that God has not given this right to anyone.

(Translated by Dr. Shehzad Saleem)

Characteristic Values of Muslim Culture

The successful prophetic mission of Muḥammad (sws) gave rise to a culture which was based on and dominated by the value of *'ubūdiyyah*.²⁹ It implies that the whole society centred on belief in God and servant-Lord relationship. This centre was the only criterion of validity of all human thought and action. Freedom was no doubt valued, yet dominated by the value of *'ubūdiyyah*. The Muslim culture was not unclear on the question of its moral and ethical foundations. These were authenticated by divine revelations. Poets, litterateurs, philosophers, sages, scientists and rulers, all were clear on this issue and recognized this reality in their views and thoughts. The Muslim culture, founded on this clear and uniform model of thinking, governed the collective body of Muslims for more than a decade. *ḥifẓ-i furūj*, *ḥifẓ-i marātib* and *'amr bi al-ma'rūf and nahī 'an al-munkar* constituted characteristic values of the Muslim culture.

29. The Arabic word *'ubūdiyyah* covers all the stages of man's devotion to God. Internal feeling of submission to the provident and merciful Creator, spontaneous acts of devotion objectified by such a feeling of submission before God, following the divinely ordained rituals of worship and following God's commands in all spheres of life; all are different yet interrelated manifestations of *'ibādah*.

These can be explained as follows:

Hifẓ-i furūj implied that the members of the society would not be allowed to practice and promote sexual promiscuity. Men and women could not openly enter into sexual relations. They could not illicitly live together and were not allowed to reveal their bodies.

Hifẓ-i marātib meant that though all human beings are originally equal in the eyes of God, yet they are not equal in their family and social relations. The younger have to show respect to the older, the children to their parents, the students to their teachers, the wives to their husbands. Socially seniors were given the right to correct and censure the juniors in all social layers. The respect and honour of the elders and the seniors was always preferred over individual liberty.

‘amr bi al-ma’rūf and nahī ‘an al-munkar entailed that the adherents of the Islamic faith would not, at the collective level, show indifference to the values of good and evil. All such values accorded to the human orientation (*fiṭrah*) and acknowledged by entire humanity as virtue and good would be promoted at all scales and all such actions, as abhorred by the human nature and termed evil and bad, would be prohibited in all circumstances.

Such was the Muslim culture, the beauty and crown of humanity. The downfall of this culture is nothing less than the downfall of humanity. Alas for man! If only he craved for re-establishing this great tradition as much as he yearns for democratic ideals and rule of law.

(Translated by Tariq Mahmood Hashmi)

Our Education System

One major problem presently facing the Pakistani nation is the disadvantages of the current education system. Of these, three call for immediate action.

Firstly, the current education system in Pakistan is gradually distancing our nation from its cultural tradition. A short discussion with the members of the young generation makes one realize that it will not take more than a couple of decades before we will have lost our memory as a nation. Our ignorance of and indifference to the Arabic language has already cost us our memory of fourteen hundred years. A similar attitude towards the Persian Language has removed from our minds the record of about twelve hundred years of our history and culture. The same is now happening with Urdu. Three hundred years of our cultural tradition are coded in and, therefore, depend upon Urdu for their presence. Having dissociated ourselves from this language, we will definitely lose each and everything related to our precious cultural tradition. It is only language which guarantees continuity of cultural traditions in a nation's life. It is only language which works as the most effective vehicle of flow of the cultural values and traditions to the next generations. Losing protection of such an unparalleled asset would lead us to a great tragedy. It would mean that our coming

generations would no longer know the names of the major pillars of Muslim scholarship and literature, not to speak of studying and grasping them. Those who appreciate the role of cultural tradition and its effects in a nation's development can well imagine the magnitude of the threat.

Secondly, twelve years of basic general education creates in the students the ability to develop their skills and embark upon specialized studies in all academic disciplines. Whereas, our education system does not apply this proven role of the twelve year basic education for specialization in the religious sciences. Consequently, the education system does not provide any basic and fundamental knowledge to the students to enable them to specialize in the religious sciences and become religious scholars. Madrassas are a product of this shortcoming in the national education system. They will continue to be spawned as long as this shortcoming in the education system remains. There is no denying the fact that the society needs erudite religious scholars just as it needs scientists, litterateurs, doctors and engineers. The society can itself set up private universities to fulfil this need. These universities will welcome students with basic qualification in the discipline for different programs. The question, however, is: where will the pupil get the requisite basic education for this discipline? They have nowhere to look for it.

Thirdly, the state does not allow, and rightfully so, any governmental and non-governmental organization to set up universities of higher education where they can enrol such students as have not completed general education for twelve years. Therefore, no institute can try to make

doctors, engineers or experts in any other discipline of those who have not gone through the basic general education for twelve years. Strangely however, this condition does not apply to those who set up madrassas and produce religious scholars. In these institutions, students are enrolled right from the beginning. Their future role as religious scholars is decided while they have just seen school. Nature may craft a mind to suit to becoming a doctor, engineer, scientist, poet, litterateur or artist. It does not matter to the madrassas. They do not have any regard for what nature decides about a child. They are interested in and intent upon only and only making of him a religious scholar. This they do without giving a least consideration to his ability, disposition, aptitude and inclinations. Thus they rob the pupil from an option to consider these factors after coming of age, think for himself and decide any alternative future role and trade. Those made into religious scholars by these madrassas are so disposed as to behave like aliens in the society in which they were born and to the environment where they grew up. What else can be expected from depriving them of twelve years of general education?

This state of affairs is very grave. It calls for immediate extraordinary measures. To address this, we propose the following steps, if only those on the helm of authority were to take this issue seriously.

1. All the parallel education systems should be abolished or radically reformed. There should be no English or Urdu schools. Nor should there be two different types of schools one offering pure religious education, as in madrassas, and the other secular and purely mundane education, as in most private schools.

All social sciences should be taught in the Urdu language; sciences proper and mathematics should be instructed in English; religious content, however, should be taught in Arabic.

2. As for religious education, in the first five years, the students should be made to memorize the last two groups of the Qur'ānic sūrahs (51-114), supplications made in the Prayers and *talbiyah* said in the *hajj*. Arabic language should be taught from class six onwards. After teaching the pupils basic Arabic grammar, the Holy Qur'ān should be used as a reader. The students should be made to complete its reading with the completion of class twelve. Islāmiyāt and Pakistan Studies should no more be taught as compulsory subjects. These should be replaced by the subject of history. The syllabus of history should include topics on international history and Muslim history, including, of course, that of Pakistan.

3. Persian is very close to Urdu. Basic grammar of this language can be taught in three months at most. This language too should be taught as a part of the Urdu language from class 9 onwards.

4. Like the science and arts groups, Islāmiyāt group should be introduced from class nine. In this group, students should be offered the subjects of the Arabic language and literature, history, philosophy, international literature, different major approaches to and interpretations of the religion and the *sharī'ah*, at least to the level of basic introduction. The purpose is to afford those wishing to become religious scholars an opportunity to equip themselves with the required qualification for the higher education in the discipline.

5. Madrassas should be acknowledged as institutes of

higher educations like institutions of medical and engineering sciences. They should, however, not be allowed to enroll pupils who have not completed twelve years of basic education. The religious madrassas that provide acknowledged and recognized standards of higher education may be allowed to award degrees to their graduates for BA, MA, MPhil and PhD programs.

(Translated by Tariq Mahmood Hashmi)

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Social Issues

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The Beard and *Isbāl-i Izār*

Men have been known to keep beards. The Prophet (sws) too had kept one. If someone among his followers keeps it to express his affiliation to him or merely to follow his ways, then this indeed is a very blessed practice. However, keeping a beard is no directive of religion. Hence if a person does not keep a beard, it cannot be said that he is evading an obligatory directive or has done something *ḥarām* or forbidden.

Whatever the Prophet (sws) has said in this regard are not directives to keep a beard but the manner in which it should be kept if a person decides to keep it. He has said that the beard and the moustache should not be kept in any manner which may give the impression of arrogance or haughtiness. Arrogance is a great sin which manifests in a person's gait and conversation, appearance and clothes, mannerism and etiquette – in short everything. Similar is the case with the beard and the moustache. Some people shave their beards or keep them trimmed but keep a big moustache. The Prophet (sws) has disliked such an appearance, and has directed such people not to adopt the looks of arrogant people. If they want to increase the size, then it should be of the beard and not the moustache, which should be kept trimmed in all circumstances.³⁰ The

30. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 5, 2209, (no. 5553); Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 1, 222, (no. 259).

guidance received by mankind through the prophets of God deals with worship rituals as well as issues related to cleansing and purification of the body, edibles and morals. Whatever the Prophet (sws) has said with regard to keeping the beard relates to the cleansing of morals. It was in this context in which he expressed his views about keeping the beard but people regarded it to be a directive of increasing the size of the beard. In this manner, they incorporated in religion something which can never be related to it.

The issue of *isbāl-i izār* is no different. It was very common among the arrogant in the pre-Islamic Arab society to wear a long shirt, let the loose end of their turban hang below their back and let their legware (*izār*) dangle so far below the ankles that half of it would drag behind on the ground. In Arabic, this is called *isbāl*. The Prophet (sws) showed his great dislike for this, and once remarked that the Almighty would not like to see the person on the Day of Judgement who walked while arrogantly dragging his leg-cloth (*tehband*).³¹ All narratives regarding *izār* relate to this appearance.

It can however be said about the *tehband* that if it is allowed to dangle below the ankles, then it to some extent resembles the appearance of the arrogant just discussed; so care must be exercised even if the purpose to make it dangle is not arrogance. Thus this can be said about the *tehband*. However, it is a fact that this resemblance is only reflected in the *tehband*; it has no similarity with a *shalwār*, a *pajāma* and a trouser.

(Translated by Dr Shehzad Saleem)

31. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 5, 2181, (no. 5446); Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 3, 1652, (no. 2085).

The Right to Punish a Wife

Marriage is a contract in which it is the responsibility of the husband to generously provide for the expenses of his wife and children. He is required to deal with them in a way which is in accordance with the norms of decency and those of sense and reason, and which is based on graciousness and courtesy, and in which the requisites of justice and fairness are fulfilled. Similarly, it is required of a wife that she should adopt an attitude of harmony and obedience towards the husband and protect his secrets as well as his honour and integrity.

Like other contracts, the nature of the contract also requires that if any of the parties violates it and in spite of counsel and advice, rebuke and reproach is not prepared to mend its ways, then it should be punished. This punishment can be meted out by a court and by the elders of the family. The Qur'ān has given this right to the husband also. It says that if a wife becomes rebellious by defying his authority, then he can resort to three options to save the family from dismembering:

First, he should urge his wife to mend her ways. The word used by the Qur'ān is **نَهَى** which means that she can be admonished and also scolded to some extent in this regard.

Second, intimate marital relations with her should be suspended in order to communicate to her that if she does not mend her ways, she might have to face severe

repercussions.

Third, she can be punished physically.

A question arises about this last option: with a change in society and civilization, if exercising the first two options does not bear results and a husband is left with no alternative but to adopt the third option, can a state bind him to not take this step himself and consign this matter to a court of law?

The opinion of this writer is in the affirmative. This is because this alternative is merely another way of following the directive of God and does not annul the directive. It does not make a difference if to reform the wife the punishment is meted out by the husband, the elders of the family or a court of law. It is the will of God that if to save a family, a wife needs to be punished, then she should be punished. It is only a reformatory measure and nothing more.

(Translated by Dr Shehzad Saleem)

Head Covering for Women

The Almighty requires of a Muslim woman to not display her make-up or other embellishments such as jewellery before unknown men except what she has adorned her hands, feet and face with. The Qur'ān has made it mandatory upon Muslim women to follow this directive. It is for this very reason that the tradition of wearing the head-scarf or head covering while going out of the house was established, and now has become a part of Islamic culture. Even if women have not embellished themselves and have not put on make-up, they have continued to be very vigilant in wearing some sort of head covering. This attitude has also sprung forth from the insinuations of the Qur'ān: the Almighty has specified that the directive of covering the chest and neckline with a covering is not related to old women who have passed their marriageable age on the condition that their intention is not to show off their ornaments. The Qur'ān says that they can take off this covering before men and that there is no harm in this; however, it has simultaneously stated that what is more desirable in the sight of the Almighty is that they should be careful in this matter too and not take their coverings off their chests. It is evident from this that regarding the head too it is desirable in the sight of the Almighty that even if women have not adorned it in any way, even then they

should not take off their head coverings. Although covering the head is not mandatory yet when Muslim women live with a concern for religiosity and try to draw near God, they necessarily take this precaution, and never like to come before unknown men bare-headed.

(Translated by Dr Shehzad Saleem)

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Wuḍū and Nail Polish

Women generally colour their nails with some material or the other. In current times, various types of nail polishes are used for this purpose. The question which arises as a result is about the method of doing *wuḍū* in such cases. Generally, three answers have been given to this question:

Firstly, *wuḍū* cannot be done if a lady has put on nail polish, and therefore it must be removed every time before doing *wuḍū*.

Secondly, even after putting on nail polish, the status of a lady's hands do not change, and therefore *wuḍū* would be valid if done in this situation; there is no need to remove the nail polish.

Thirdly, such a situation should be considered analogous to wiping of socks (*mash*). So if nail polish has been put on after doing *wuḍū*, there is no need to remove it; *wuḍū* can be done on it. However, if it has been put on without doing *wuḍū*, then it must be removed and then *wuḍū* should be done.

I prefer the third of these views. It is the view which takes caution into consideration and also does not burden a lady. It is also closer to the objective of self-purification. It is therefore recommended that women adopt this method for coming into the presence of their Lord.

(Translated by Dr Shehzad Saleem)

Women Travelling with a *Mahram*

The Prophet (sws) is reported to have forbidden women from travelling without a *mahram* and has said that they are not allowed to travel alone. The period of this journey is mentioned in some narratives to be one, in some others to be two and still others to be three days and nights respectively. This prohibition, it needs to be appreciated, is not an absolute one. It is a precautionary prohibition meant to protect a person from harm. Its addressees are also the individuals of a society in their personal capacity, and it is not addressed to state authorities. Moreover, it is evident that such directives relate to circumstances. Keeping in view the importance of a lady's chastity and modesty in Islam, it was essential that they be stopped from travelling alone because of the circumstances which prevailed in Arabia in the times of the Prophet (sws). People in those times used to travel on foot or on horses and camels. Destinations which today can be reached in hours were accessed in those days in weeks and at times in months. Passengers would travel alone or in caravans and sometimes would even have to encounter forests and deserts on their way. At night time, they would have to spend the night under the open sky with other members of the caravan or in rest-houses of unknown cities. If in these circumstances, women were asked to travel with a *mahram* in order to protect them and to guard their

reputation, every upright person can easily understand the wisdom behind this directive.

The current times, on the other hand, have revolutionized the means of transport. Distances which were covered in months are now covered in hours. There are extra-ordinary arrangements to protect people in buses, trains and aeroplanes. Great changes have also come about in rest-houses and hotels. A hundred years ago, people were hesitant in sending their sisters and daughters from one village to another. Today, however, one is not even hesitant in sending them to Europe and America. The journey to Makkah for the purpose of *hajj* too has become secure to the ultimate extent and women can safely travel with women of their acquaintance to Arabia to offer the rites of *hajj*. This great change in circumstances entails that this directive should not relate to current forms of travel, and women be allowed to travel alone or in groups in any way they can keeping in view their needs in case there is no danger envisaged in this travelling. However, they must always keep in consideration the fact that their honour must remain protected in all circumstances, and they must not show any negligence in this regard while leaving their houses. If they believe in God and His Prophet (sws), they should not be indifferent in this matter.

(Translated by Dr Shehzad Saleem)

Abortion

When one hundred and twenty days pass after the conception of a foetus, aborting it is prohibited. After this period, the killing of the foetus is actually the killing of a human being which, according to the Qur'ān, amounts to killing the whole of mankind. The Qur'ānic punishment for this is eternal Hell. However, before this time-period, abortion is allowed; but this allowance too is not absolute; there must be a legitimate excuse and a palpable reason for it. In Islamic jurisprudence, this period of one hundred and twenty days has been fixed for abortion because at the end of this period a child is bestowed with human personality. Before this time, however, he is a mere physical being devoid of complete human characteristics and lives in this state. At the end of this one hundred and twenty day period when his physical being culminates, the Almighty bestows human personality to this being. It is this act of God which the Qur'ān has called the transformation of the foetus into a new creation:

وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ سُلَالَةٍ مِّنْ طِينٍ. ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ. ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظًا فَكَسَوْنَا الْعِظَ لَحْمًا^٣ ثُمَّ أَنشَأْنَاهُ خَلْقًا آخَرَ^٤ فَتَبَارَكَ اللَّهُ أَحْسَنُ

الْخُلُقَيْنِ. (٢٣: ١٢-١٤)

We first created man from an essence of clay: then converted it into a drop of fluid at a secure place. Then made the drop into a clot of blood, and the clot to a lump of flesh. Then We fashioned bones in it, then clothed the bones with flesh; then transformed it into another creation. Blessed be God, the best of creators. (23:12-14)

In the beginning, when God created man from the womb of the earth, He adopted this very method. The Qur'ān says that first the physical being of man was created; after that he was given the ability to produce offspring; he was then given perfection. Two of the creatures which were produced as a result were selected and spirit was blown into them. This process created Adam and Eve as human beings equipped with the abilities of cognizant speech and intellectual awareness:

بَدَأَ خَلْقَ الْإِنْسَانِ مِنْ طِينٍ. ثُمَّ جَعَلَ نَسْلَهُ مِنْ سُلَالَةٍ مِّنْ مَّاءٍ مَّهِينٍ.
ثُمَّ سَوَّاهُ وَنَفَخَ فِيهِ مِنْ رُّوحِهِ وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ
قَلِيلًا مَّا تَشْكُرُونَ. (٣٢: ٧-٩)

He began creating man with clay, then made his generation grow through a despicable drop of fluid. He then perfected him and breathed His spirit into him and [in a similar manner] gave you ears and eyes and hearts: yet you are seldom thankful. (32:7-9)

The Prophet (sww) has explained that all the phases of creation of the physical being of a human being take one

hundred and twenty days. After this, spirit is blown into him and the creature called the “Human Being” comes into existence. He is reported to have said:

إِنَّ أَحَدَكُمْ يُجْبَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ فِي ذَلِكَ عَلَقَةً
مِثْلَ ذَلِكَ ثُمَّ يَكُونُ فِي ذَلِكَ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يُرْسَلُ إِلَيْكَ فَيَنْفَخُ
فِيهِ الرُّوحَ

Each of you is formed in the womb of your mother for forty days; then in this same time period he becomes a clot of blood; then becoming a lump of flesh also takes the same number of days; then the angel is sent forth and he breathes the spirit into him.³²

It is because of these stipulations of the Qur’ān and Ḥadīth that the period for abortion has been fixed for one hundred and twenty days.

(Translated by Dr Shehzad Saleem)

32. Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*. vol. 2, 2036, (no. 2643).

Birth Control

Children are born with the directive of God; however, the process adopted by God in this regard is not that He sends down a child directly from the heavens in whatever number He wishes for whichever parent He intends. Children are born through the means of human beings and through their intention, decision and initiative. Regarding human beings it is common knowledge that their Creator has blessed them with intellect and cognizance and also endowed them with the freedom to exercise their will. It is a requirement of both these bestowals of God that before taking any decision a person must evaluate its consequences, understand the matter in the light of knowledge and intellect and then take any step. We may understand this through the example of a gardener.

The Almighty has said: ³³عَأْنْتُمْ تَزْرَعُونَهُ أَمْ نَحْنُ الزَّارِعُونَ (٦٤:٥٦). The implication of this verse is that it is not human beings but God Who makes an orchard bear fruit and a harvested land bear produce. But does this mean that the task of a gardener is only to spew seeds or sow plants? Everyone will answer this question in the negative and say that it is the gardener's responsibility to evaluate whether he can bear the expenses and other needs that

33. Do you nourish the cultivated land or We? (56:64)

involve sowing, looking after trees and taking their fruit to the market? Has he prepared the land? Has he left the requisite space while planting trees? Does he have enough information about the demand of the fruits of these trees in the market? It is after evaluating all these factors that he should decide what and when to plant and whether he should even proceed with planting or not. People debate whether birth control is allowed or prohibited whereas just as assessing all these factors is essential for a farmer, it is similarly essential for the parents to assess them. If a farmer does not take them into consideration, he will end up facing the consequences and if parents also do not give them due importance, they too will face the consequences. Our society is replete with such examples.

Thus before planning for a child, parents should see whether the mother can bear it or not. Does her health allow her to produce and nurture an offspring? Can she spare time from taking care of any previous child to take up this new responsibility? Keeping in view their circumstances, do parents have the time, opportunity and essential means for the upbringing of the child and the essential finances to educate them? If the answer to all these questions is in the negative, then parents should restrain themselves or adopt various means of birth control; however, they should never plan a child.

Nevertheless, this does not mean that our decision can impede any decision of God. If His wisdom requires that a child must be born, then it shall be born. This strategy of ours is to follow the law of God and not to impede His decision. Diseases come with God's permission, yet if guidelines that safeguard health are not followed then the

general law and practice is that diseases shall afflict people. Cure is in the hands of God, but if remedies are not sought, then the general law and practice is that sickness will increase. Sustenance is also in the hands of God yet the general law and practice is that it is acquired if one strives for it. This world works on achieving goals through the means provided and man has been given the understanding to use these means to his advantage. In many matters, the fate ordained by God relates to our intentions, decisions and the practical steps we take. ‘Umar (rta) while commenting on running away from a place afflicted with plague is reported to have said: “We are going from the fate of God towards the fate of God.”³⁴ When once the Prophet (sws) was asked about a method of birth control, he directed the attention of the questioner towards this very reality. It is narrated by Abū Sa‘īd al-Khudrī (rta) that the Prophet is reported to have said:

مامن كل الباء يكون الولد، واذا اراد الله خلق شيئ لم يمنعه شيء

Every sperm does not produce a child; but when God decides to give birth to something, no one can stop Him.³⁵

(Translated by Dr Shehzad Saleem)

34. Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*. vol. 4, 1740, (no. 2219).

35. Ibid., vol. 2, 1064, (no. 1438).

Hifẓ al-Furūj **(Guarding the Private Parts)**

The *sharī‘ah* does not allow Muslims to sexually gratify themselves from any other individual but their wives. The Almighty has forbidden it, and categorically stated in Sūrah Mu‘minūn that people who sexually gratify themselves from anyone other than their wives will be guilty of exceeding the limits set by God. The slave-women of the times of the Prophet (sws) who were yet to be liberated from their masters were, however, exempted from this directive: if people wanted, they could also satisfy their sexual urge through them. The Qur’ān says:

وَالَّذِينَ هُمْ لِأُزُوجِهِمْ حَفِظُونَ. إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْسَانُهُمْ فَإِنَّهُمْ
غَيْرُ مَلُومِينَ. فَمَنِ ابْتَغَىٰ وَرَاءَ ذَٰلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ. (٢٣ : ٧-٥)

And who guard their private parts except from their wives and slave-women because for these they have no blame on them. But, those who want something beyond this are indeed transgressors. (23:5-7)

Presented above is the correct interpretation of the verse. However, some of our jurists have also argued on the basis of this verse that except for wives and slave-women other means of sexual-gratification are forbidden. Thus like adultery, homosexuality and bestiality, various forms of masturbation are also

forbidden in their opinion. The only lenience that can be given in this regard is that the extent of this prohibition of masturbation is less than that of adultery, homosexuality and bestiality, and if people in order to protect themselves from these sins indulge in such sexual self-gratification to vent their emotions, then it can be expected that perhaps the Almighty would not punish them.

In my opinion, this argument is very weak, and in fact incorrect as per the linguistic principles of Arabic. The reason for this is that the preposition عَلَى (on/upon) does not collocate with حَافِظُونَ (those who guard) and thus there necessarily exists a *tadmīn* in this expression, and words such as عَنْ الْوُقُوعِ عَلَى أَحَدٍ (from indulging with anyone) are suppressed after حَافِظُونَ. Thus, the object from which the exception is sought in this expression is not the ways of sexual-gratification: it is the individuals with whom a person can establish sexual relations. It is evident from this discussion that this verse does not mean that no way of sexual-gratification is allowed except through wives and slave-women; the correct meaning is that except for wives and slave-women, one cannot appease one's sexual urge with any other *individual*. This is the correct meaning of the verse. Thus, it can be said with full certainty that there is no injunction or general principle in the Qur'ān on the basis of which masturbation can be regarded as prohibited or undesirable. No different is the case of the Ḥadīth. Its whole corpus is devoid of any narrative on this subject which is acceptable to the scholars of Ḥadīth.

Thus, in this regard, the correct opinion is the one which is presented by Imām Ibn Ḥazm in his *al-*

*Muḥallā*³⁶ with all the requisite arguments. He has mentioned through a chain of narration that authorities like Ḥasan al-Baṣrī, ‘Amr ibn Dīnār, Ziyād Abū al-A‘lā and Mujāhid regard masturbation as allowed. These authorities mostly narrate such things from the Companions of the Prophet (sws).

(Translated by Dr Shehzad Saleem)

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36. Abū Muḥammad ‘Alī ibn Aḥmad ibn Sa‘īd ibn Ḥazm, *Al-Muḥallā bi al-āthār*, 1st ed., vol. 11 (Beirut: Dār al-āfāq al-jadīdah, n.d.), 393.

Etiquette of Sexual Intimacy

The objective of religion is purification of the soul. In no way does it regard anal or oral sex as desirable. The Almighty has directed Muslims to come near their wives through the way He has prescribed for it. The words of the Qur'ān are: (فَاتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ (٢٢٢:٢)) (go to them from where God has enjoined you, (2:222)). The norms of copulation are ingrained in human nature, and as such are no less than a directive of God. Thus if anyone disobeys this innate guidance he disobeys an explicit directive – in fact, something more than explicit, and thus shall definitely be punished by the Almighty for this.

Where this verse occurs in the Qur'ān, right after it, the Qur'ān has explained this very directive through the metaphor of cultivated land. While explaining these verses, Imām Amīn Aḥsan Iṣlāḥī writes:

One very apparent reason for using this metaphor is the fact that just as for a cultivated land it is essential on the part of the farmer that seeds be sown in the appropriate season at the right time, and no farmer disregards the principle that they be sown within the fields and not scattered outside them, similarly it is a norm of human instinct that one should not approach a lady for sexual intercourse during the menstrual cycle or in an unnatural way because the period of menses is

a time during which women are frigid and not inclined, while unnatural intercourse is a painful and wasteful activity. Therefore, people who have not perverted their nature cannot indulge in such an activity.³⁷

While explaining the expression فَاتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ (go then, into your lands in any manner you please), Iṣlāḥī goes on to write:

... [This] alludes simultaneously to two things: on the one hand, it refers to the liberty, freedom and free manner with which a farmer approaches his land, and on the other hand refers to the responsibility, caution and care which he must exercise in approaching his land. The word حَرْث refers to the latter and the word أَنَّى شِئْتُمْ to the former. It is both this liberty and caution which ascertain the correct behaviour of a husband with his wife in this regard.

Everyone knows that the real bliss of married life is the freedom a person has in intimate affairs barring a few broad restrictions. The feeling of this freedom has a great amount of euphoria around it. When a person is with his wife in intimate moments, Divine will seems to be that he be overcome with emotions but at the same time it is pointed out to him that he has come into a field and an orchard; it is no wasteland or a forest. He may come to it in whatever manner and in whatever way whenever he pleases,

37. Amīn Aḥsan Iṣlāḥī, *Tadabbur-i Qur'ān*, 2nd ed., 9, vol. 1 (Lahore: Faran Foundation, 1985), 527.

but he must not forget that he has landed in his orchard. The Qur'ān has no objection on the discretion, choice and majesty with which he approaches his field if he knows full well where he is going and in no way is oblivious of this reality.³⁸

The importance of all these directives is pointed to by the Qur'ān in the words **إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ** (God indeed loves those who repent and those who adhere to cleanliness). While explaining the importance of these words in the eyes of the Almighty, Iṣlāhī writes:

... if one deliberates on the essence of *tawbah* and *tatahhur*, one comes to the conclusion that while the former means to cleanse one's inner-self from sins, the latter means to cleanse one's outer-self from filth and dirt. Viewed thus, both are similar in their essence and the Almighty holds both these traits of a believer in great admiration. On the other hand, people who lack these traits are disliked by the Almighty. It is evident from the context of this verse that those who do not refrain from intercourse with their wives during their periods of impurity and violate the limits ingrained in human nature in satisfying their sexual urge are detestable in the eyes of the Almighty.³⁹

(Translated by Dr Shehzad Saleem)

38. Ibid., vol. 1, 527.

39. Ibid., vol. 1, 526.

The Noble Wives of the Prophet (sws)

According to the nature on which man has been created, the real benefit of the institution of the family can be obtained through the marriage of one man and one woman. As a human being, the Prophet (sws) too kept this fact in consideration in his life and never thought of marrying again in the presence of his first wife. His first marriage was with Khadijah (rta) at the age of 25. She had already been married twice before and also had children from her previous marriages. She was a pious lady and was called Tahirah because of this noble trait. The Prophet Muhammad (sws) spent all his youth and middle age in her companionship. This marriage lasted for almost 25 years till Khadijah's (rta) death. At her death, the Prophet (sws) was left alone to discharge his obligations towards his household. It has been reported in narratives that after her death, a lady by the name of Khawlah bint Hakim directed his attention to marry again as this was his need. She is reported to have said:

يَا رَسُولَ اللَّهِ كَأَنِّي أَرَاكَ قَدْ دَخَلْتَ خَلَةً لِفَقْدِ خَدِيجَةٍ... أَفَلَا أُخْطَبُ عَلَيْكَ

O God's Messenger! I see that you have secluded yourself after the loss of Khadijah ... shall I not find a match for you?⁴⁰

40. See: Abū 'Abdullāh Muḥammad ibn Sa'd al-Zuhrī, *Al-*

The Prophet (sws) inquired if a match was available. She replied: "If you want, both an unmarried and a divorced lady are available." The Prophet (sws) asked: "Who is the unmarried one?" Her reply was: " 'Ā'ishah, the daughter of your dearest friend Abū Bakr. The Prophet (sws) inquired: "Who is the divorced lady?" "She replied: "Sawdah bint Zam'ah who has professed faith in you and follows your religion." The Prophet (sws) said: "Proceed to ask them." When she talked to them, both proposals were accepted.⁴¹ Since they were given on behalf of the Prophet (sws), he could not have refused. So, he married both but consummated the marriage with Sawdah (rta) only. She was a divorcee and of the same age as the Prophet (sws), and in a better position to discharge household responsibilities. 'Ā'ishah (rta) remained at her father's house. For four years it was Sawdah (rta) who stayed in the Prophet's house. It was then that he brought 'Ā'ishah (rta) home once Abū Bakr (rta) directed his attention to this. Once she came to his home, the Prophet (sws) decided to divorce Sawdah (rta). At this, she submitted that she had reached an age when she was no longer interested in intimate relations and that she would forego her rights in favour of 'Ā'ishah (rta). She then requested that the Prophet (sws) should not divorce her and that it was her wish that on the Day of Judgement she appear as his wife. At this, the Prophet (sws) revised his decision. So, for all practical purposes, after this it was only 'Ā'ishah (rta) who was his

Tabaqāt al-kubrā, vol. 8 (Beirut: Dār ṣādir, n.d.), 57.

41. Abū 'Abdullāh Aḥmad ibn Ḥanbal al-Shaybānī, *Musnad*, vol. 6, (Egypt: Mu'assasah Qurṭubah, n.d.), 210, (no. 25810).

sole wife in this situation.

In his capacity of a human being, it was only these two ladies who remained his wives. Apart from them, he never married any other woman in this capacity. Thus those who accuse him of polygamy and try to cast aspersions on his pious and abstinent life are devoid of God's fear in their hearts. This is because a person whose character had dared not been criticized in the first 25 years of his life, who even in the prime of his youth married a lady who was a divorcee and also had children, who spent almost 25 years in the companionship of a single wife in a society in which polygamy was a general norm and never thought of marrying a second wife, who undertook his second marriage only when his first wife had died and that too with a widow of 50 years, who married only one virgin in the whole of his life and even delayed bringing her home for many years so that the older wife already in his home who was brought to take care of the household does not complain of any lack of attention – about such a person only someone sick in his mind can think that at the age of 55 the Prophet (sws) suddenly became obsessed with multiple marriages, and to satisfy his lust altered a law he himself had made and began marrying other women one after the other.

There is no doubt that in the last eight years of his life he married eight more women, and a special law too was revealed in this regard. However, neither were these marriages contracted in his capacity of a human being nor because of his own desire or to satisfy lust. All these marriages took place in his capacity of God's Prophet to discharge the responsibilities of this position. All of

them were conducted on God's directive or indication. Any upright person who has tried to understand this whole issue by disregarding all prejudices cannot deny this reality. Following are its details:

1. The care and upbringing of the widows and orphans of many Muslims who were martyred in the battles of Badr and Uhud became a collective issue faced by the small state of Madīnah. The Qur'ān therefore stated that if the relatives and guardians of these orphans thought that they would not be able to befittingly take care of their wealth and since it was no easy a task to be able to do it alone, they should marry the mothers of the orphans lawful to them. This appeal was made by God, the Lord of the worlds. It was but natural that the Prophet (sws) take the lead in responding to it. This is exactly what happened and the Prophet (sws) responded by marrying three widows: Ḥafsaḥ bint 'Umar (rta), Zaynab bint Khuzaymah (rta) and Umm Salamah bint Umayyah (rta).

2. When the Qur'ān directed the Muslims to eradicate slavery and raise the status of slaves in the society, the Prophet (sws) showed exemplary conduct in its compliance: he wedded his paternal cousin Zaynab (rta) with his liberated slave and adopted son Zayd (rta). This was an extra-ordinary measure and had far-reaching consequences. Unfortunately, this marriage did not last and Zayd (rta) decided to divorce her. This was a matter of immense grief for Zaynab (rta). This was because in the first place she had consented to marry a liberated slave to reform a social custom and later became a divorcee. Thus to comfort and solace her and to uproot the prevailing social custom of the prohibition of marrying the wife of an adopted son, the Almighty directed the

Prophet (sws) to marry Zaynab (rta) even though at that time he already had four wives. In order to warn those who may raise an objection on this step, the Almighty stated in the Qur'ān that since he was the final prophet, it was he who had to reform this custom. There was no one after him who could do so. The Prophet (sws) himself thought that perhaps marrying Zaynab (rta) was the only way out because of what had ensued between her and Zayd (rta), but he never expressed these thoughts. The Almighty revealed these inner thoughts and told him that the messengers of God did not care about the reaction of people while discharging their responsibilities. Consequently, the Prophet's marriage with Zaynab (rta) was proclaimed by the Almighty Himself in the Qur'ān:

وَإِذْ تَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ وَتُخْفِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ وَتَخْشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَهُ ۖ فَلَمَّا قُضِيَ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاهَا لَكَ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا ۖ وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا (٣٧:٣٣)

And remember [O Prophet!] When you were repeatedly saying to one who had received the favour of God and your favour: “Retain your wife, [in wedlock] and fear God.” And you were hiding in your heart that which God was about to make manifest: and you were fearing the people, but it is more fitting that you should fear God. So when Zayd broke his relationship with that [lady], We wedded her to you so that there remain no difficulty on the

believers in the matter of marriage with the wives of their adopted sons when the latter have dissolved their relationship with them. And this command of God had to be fulfilled. (33:37)

3. Right after this proclamation, the Almighty revealed detailed directives specifically for the Prophet (sws) regarding marriage and divorce. In these directives, the restrictions of polygamy meant for general Muslims were repealed but certain other restrictions were imposed on him that were not imposed on other Muslims. These detailed directives are stated in verses 50-52 of Sūrah al-Aḥzāb. The statutes on which they are based are as follows:

Firstly, after contracting marriage with Zaynab (rta), the Prophet (sws) could marry further for the following objectives:

i. To honour free women who were caught as captives in some military campaign.

i. To show kind-heartedness to women who wanted to marry him just for the sake of associating themselves to him, and for this they were ready to gift themselves to him.

iii. To console and sympathize with his maternal or paternal cousin sisters who had migrated with him from Makkah and left their houses and relatives merely to support and back him.

Secondly, since these marriages of the Prophet (sws) were to be contracted only to fulfil certain religious obligations, he was not required to deal equally between the wives.

Thirdly, except for the women specified, he was

prohibited to marry any other lady;⁴² he could also not divorce any of his wives nor bring a new one in her place however much he liked her.

It was clearly evident from this that the Almighty wanted that the Prophet (sws) marry women who were afflicted with sorrows as result of accepting his call or were aggrieved as a result of some step taken by him or if any of them merely had a strong desire to be associated to him. This was an expression of great affection on the part of God.

Consequently, the Prophet (sws) while comprehending this divine will married Jawayriyah (rta) and Şafiiyah (rta) for the first objective outlined above, Maymūnah (rta) for the second and Umm-i Ḥabībah (rta) for the third.

It is also pointed out in these verses that the wives of the Prophet (sws) were the mothers of the believers; consequently, marriage was eternally prohibited for them. No Muslim could even think of marrying them after the Prophet's death:

النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ (٦:٣٣)

The Prophet holds priority for the believers over their own selves, and his wives are their mothers.

(33:6)

وَلَا أَنْ تَنْكِحُوا أَزْوَاجَهُ مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَٰلِكُمْ كَانَ عِنْدَ اللَّهِ عَظِيمًا

(٥٣:٣٣)

42. Consequently, because of these restrictions, the Prophet (sws) could not marry Māriyah (rta) and she remained in his house as a slave lady.

Nor is it right for you that you should marry his widows after him at any time. Truly such a thing is abominable in God's sight. (33:53)

It is evident from this discussion that these marriage directives were given to Muhammad (sws) as a religious obligation in his capacity as a Prophet and a Messenger of God. He followed these directives and there was no element of personal desire in these marriages. Consequently, the need arose to make these directives an exception to the general ones given to the Muslims in this regard. The above-mentioned regulations stated in Sūrah al-Aḥzāb cite this very exception.

(Translated by Dr Shehzad Saleem)

Age of ‘Ā’ishah (rta) at her Marriage

It is generally believed that ‘Ā’ishah (rta), mother of the faithful, was six years old when she got married to the Prophet Muḥammad (sws). The *nikāḥ* took place in Makkah after the death of Khadījah (rta). The marriage was consummated three years later in Madīnah. This is what books of Ḥadīth and *sīrah* report about her. The narratives which describe these details are found in Bukhārī and Muslim and some other books of Ḥadīth as well. There is no doubt that such marriages have taken place in the past keeping in view certain needs of tribal and rural societies. Examples can even be presented from our society. It is also true that the social attitudes that spring from basic morality can be different in different societies keeping in view their circumstances and experiences, and the moral status of one society cannot be determined by using another society as a standard. All these things can be accepted; however, the matter of ‘Ā’ishah’s (rta) marriage is different. The question which arises in every discerning mind relates to the need of this marriage: why did it take place when the need which was present at that time could not have been fulfilled even after many subsequent years? Such marriages do take place and one can accept them taking place without any hesitation; however, it is not easy to accept marriages which take place without any reason

and to fulfil a current need many years later.

Had the suggestion to marry her come from the Prophet (sws), we could have said that this was done on divine bidding. The role she would play in the Prophet's life and the treasure of wisdom which would be transmitted to the *ummah* through her noble person was in the foreknowledge of God; thus it was decided that she be singled out for the Prophet (sws) since this early age. We can also say that the Prophet (sws) undertook this marriage for the betterment of his preaching mission. 'Ā'ishah's (rta) father was a very close companion of the Prophet (sws). In tribal life, relationships play a great role in cementing close ties. The Prophet (sws) deemed it appropriate that he engage in this association with his special companion so that ties of friendship and love were strengthened.

Had this suggestion to marry her come from Abū Bakr (rta), it could have been said that he was desirous of respect and honour for his daughter, for his own self and for his own family. He wanted to establish familial ties with the person whom he regarded to be a messenger of God; perhaps he did not get this idea at the time of the marriage of his other daughter Asmā' (rta). After her, it was only through 'Ā'ishah (rta) that he could attain this honour. Thus he suggested for this marriage to take place. The Prophet (sws) accepted this suggestion to honour the wish of his dear friend.

However, we know that none of these suppositions are true. If because of a divinely inspired vision such a thought for 'Ā'ishah's (rta) existed in the heart of the Prophet (sws), he never expressed it. The whole corpus of Ḥadīth and *sīrah* literature is totally devoid of a

mention of any such suggestion, indication or insinuation from him. The same is the case of Abū Bakr (rta). If he wanted the marriage of his daughter to take place with the Prophet (sws), why did he resolve to solemnize her marriage with the son of Muṭ‘im ibn ‘Adī? Narratives mention that he had already done this before this suggestion came to him. Not only this, it is also reported that when he heard this suggestion, he expressed his wonder since he thought that the Prophet (sws) was like a paternal uncle for his children; so how could the suggestion of such a marriage be presented. His words reported are: هل تصدح له انها هي ابنة اخيه (Is she allowed to him? She is the daughter of his brother!)⁴³

The narratives clearly state that it was Khawlah bint Hakīm who suggested that the name of ‘Ā’ishah (rta) for this marriage. It was she who directed the attention of the Prophet (sws) to the fact that after the death of Khadijah (rta), it was his need to marry again. She is reported to have said: يا رسول الله كأنى أدراك قد دخلت خلة لفقد خديجة أفلا أخطب عليك (I see that you have secluded yourself after the loss of Khadijah; shall I find a match for you?).⁴⁴ On inquiry by the Prophet (sws), she told him that both an unmarried and a divorced lady were available. When the Prophet (sws) asked who the unmarried lady she had in mind was, her reply was ‘Ā’ishah bint Abī Bakr (rta).⁴⁵

A wife can be needed to satisfy one’s sexual needs, for companionship and friendship and for looking after

43. Aḥmad ibn Ḥanbal, *Musnad*, vol, 6, 210, (no. 25810).

44. See: Ibn Sa‘d, *Al-Ṭabaqāt al-kubrā*, vol. 8, 57.

45. Ibid.

children and household affairs. If this suggestion was given with sanity prevailing, the question which arises is: which of these needs can be fulfilled by a six year old girl? Could sexual relations be established with her? Could the companionship of a wife be available through her? Could she have been able to look after kids? Could she have looked after household affairs? The issue just raised that a marriage is taking place to fulfil needs which cannot even be fulfilled after many years of marriage is not merely a possible option that should be considered in interpreting these narratives. It is the most fundamental question in this regard. Can it be logically accepted that to fulfil a need of today a suggestion be given as a result of which it is not even fulfilled after several years? Ibn Khaldūn has rightly pointed out that in the matter of historical incidents, the real thing is their possibility of taking place. They cannot merely be accepted on the basis that their chain of narration contains such and such a person and that it has been narrated through several chains.⁴⁶

In current times, men of learning who are presenting their researches on this issue should first of all answer this question. They should explain how this internal contradiction of the narrative can be resolved. If this contradiction cannot be resolved, then why don't the requisites of knowledge and intellect entail that the narrative which depicts 'Ā'shah's age to be six years at the time of marriage should be reconsidered and the

46. 'Abd al-Raḥmān ibn Muḥammad ibn Khaldūn, *Muqaddimah*, 5th ed. (Beirut: Dār al-qalam, 1984), 37.

opinion of those scholars⁴⁷ should also be reflected upon who say that the words to the effect *بعد العشر* (after ten) were understood to be present after the words *بنت ست سنين* (a girl of six) uttered by ‘Ā’ishah (rta) and the narrators never made an effort to understand them? Whatever research is presented without answering this question will never be worthy of any attention for any person of learning.

(Translated by Dr Shehzad Saleem)

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47. See, for example: Shabbīr Aḥmad Aẓhar Mayrathī, *Ṣaḥīḥ Bukhārī kā muṭāla‘ah*, 1st ed. (Lahore: Dār al-tazkīr, 2005), 252-255.

The Right to Divorce

Marriage is not just about bringing the physical relationship between a man and a woman within the bounds of law. It is a contract that lays the foundation of a family. This institution of family is an indispensable human requirement. Without it, many basic physiological, psychological, and social needs remain unfulfilled. The institution is founded on a woman's decision to accept her bond with a man not as his friend but as his wife. The decision implies that she has accepted the man as the head of the institution that their matrimonial bond will create. Just as this institution makes it incumbent upon the man that he take the financial responsibility of his wife and children, it also entails that, in the unfortunate case of the need for divorce, the woman not take any step to end the marriage without first resolving matters with the man. Therefore, in a situation requiring dissolution of marriage, she will not divorce the husband; she will ask for divorce. In usual circumstances, it is expected that a decent husband will not refuse his wife's request in a situation where no reasonable possibility of reconciliation exists. However, if the husband does not accept her request, what should a woman do? The *sharī'ah* does not answer this question; instead, as with many other matters related to life, it leaves this matter also to our discretion (*ijtihād*). Since

the Prophet's (sws) time, the procedure that has been adopted for this purpose is that the woman then approaches the court. In our times, this step is often fraught with innumerable difficulties for the woman. One suggestion to resolve this problem is that the man be asked to delegate his authority of divorce to the woman. However, such a demand is again not easy to make in our society, especially on the occasion of marriage. Furthermore, such stipulation also negates the spirit and the wisdom in not giving a woman the right to divorce her husband. Therefore, in our opinion, a law should be enacted at the level of the state that, after a woman's request for termination of marriage, if the husband refuses to divorce her in the next 90 days, the marriage will stand dissolved; if there are any unresolved matters pertaining to wealth or maintenance, either party may approach the court for resolution. Another possibility is that, in the current marriage form, the section for the option of transferring the right of divorce to the wife be replaced with the following statement:

“This marriage contract takes effect with the proviso that, if the wife ever makes a written request for divorce, the husband shall be obliged to divorce her within 90 days. If he does not do that, it shall be deemed that an irrevocable divorce from his side has taken effect. Thereafter, if the husband demands the return of any property or wealth that she received from him, she shall be obliged to return to him that property or wealth except her *mahr* (bridal gift that the husband gives as a token of his commitment) and

maintenance. In case of any difference of opinion regarding the return of this property or wealth, she shall refer the matter to the court.”

It is expected that this form will save the woman and her family the embarrassment of laying down this condition as a demand from their side on the occasion of the marriage ceremony.

If and when the divorce proceedings are initiated in accordance with this stipulation, the husband will get a 90-day period to convince the woman [and her family] to withdraw her request.

The divorce, nevertheless, will be from the husband's side, and, therefore, the sanctity and the wisdom in the Divine law will be preserved.

(Translated by Asif Iftikhar)

Wrong Methods of giving Divorce

As per the procedure outlined in the Islamic *sharī‘ah* for divorcing a wife, no one has the right to divorce his wife without taking into consideration her *‘iddat*, pronouncing divorce in rage, not calling in witnesses at the time of divorce, declaring divorce during her menstrual cycle or during her period of purity in which he has been intimate with her or utter more than one divorce sentences in one go or send a written divorce to her by writing many divorces at the same time. All these methods are extremely undesirable. The Prophet (sws) showed great anger on whichever of these methods were adopted in his times or emanated from a person in his presence. So much so, at one instance he is reported to have said: “Is the law of God being toyed with even though I am present among you?”⁴⁸

In spite of this, ninety percent of the people in our society are guilty of the above referred to wrongdoings while giving divorce. In the thirty years of my public life, barring one or two, almost all cases of divorce which have come to me are afflicted with one or more of these wrongdoings. This is something very worrisome. However, does this mean: do people intentionally

48. Abū ‘Abd al-Raḥmān Aḥmad ibn Shu‘ayb al-Nasā’ī, *Al-Sunan al-mujtabā*, 2nd ed., vol. 6. (Ḥalab: Maktab al-maṭbū‘āt al-islāmiyyah, 1986), 142, (no. 3401).

disobey the law of God and have no sense of what is lawful and what is not left in them? They no longer fear God in this regard and do not think that one day they will be held accountable before God? In my opinion, none of the above is the case. People indulge in these wrongdoings not because they want to be rebellious before God. On the contrary, they commit these wrongdoings unintentionally. The reason for this is that a vast majority of them in the first place do not even know that these things are prohibited in the *sharī'ah* of God. Secondly, scholars and jurists not only do not inform people of these wrongdoings, they even enforce every divorce that is given while adopting wrong methods. Thirdly, if the person who has given divorce goes to a registered oath commissioner or marriage registrar or some lawyer and asks them to write a divorce document, then they too without taking all these wrongdoings in consideration write three simultaneous divorce sentences. This has become so common that seldom do we see a person divorce his wife according to the *sharī'ah* of God and according to the norms prescribed by it.

The consequences of this approach are very grave. The benefits which the *sharī'ah* methodology of divorce holds are sacrificed. All options of reconciliation and saving the family are dashed to ground. No possibility remains for the children, adults and friends to resolve the situation. A permanent basis of rivalry between families is laid. When people who have divorced their wives turn to scholars to make amends for what they have done, the answer they get is to do *ḥalālāh*. The words of the Prophet (sws) regarding this heinous act is that God

curses the one who undertakes it and the one who has it arranged.⁴⁹ In short, as soon as divorce is uttered from the mouth, it becomes a regret for the whole life.

The following measures are essential to redress this state of affairs.

1. In their Friday sermons, gatherings and lectures, scholars should inform people of these mistakes. They should make them aware of their grave nature. They should continuously place before these people the sayings of the Prophet (sws) related to divorce. They should inform them that the right way to divorce a wife is to always pronounce it once only, and that it should be given in a calm and calculated way in the presence of two witnesses giving due regard to the 'iddat period and it should not be given during her menstrual cycle or in her period of ritual cleanliness when the husband has had intercourse with her.

2. Like the marriage form, the government should also issue a standard divorce form and place it in the custody of marriage registrars. It should be made mandatory on every person who intends to divorce his wife to fill this form. If he does not do so, then he must be necessarily punished.

3. Jurists, scholars and courts of law instead of implementing wrongly given divorces should adopt the way the Prophet (sws) adopted in such cases. Two of these cases are very important:

The first of these is the case of 'Abdullāh ibn 'Umar (rta). When he divorced his wife during her menstrual

49. Abū 'Abdullāh Muḥammad ibn Yazīd ibn Mājāh al-Qazwīnī, 1st ed., vol. 1 (Beirut: Dār al-kutub al-'ilmiyyah, 1998), 623, (no. 1936).

cycle, ‘Umar (rta) presented his case before the Prophet (sws). The Prophet (sws) expressed great anger when he was informed of these details and said: “Ask him to take her back and retain her in wedlock until she enters her period of purity and then again passes through her menstrual cycle and is pure again. Then, if he wants, he can permanently retain her or divorce her without having intercourse with her because this is the beginning of ‘iddat keeping regard of which the Almighty has directed a husband to divorce his wife.”⁵⁰

The second case is that of Rukānah ibn ‘Abdi Yazīd. By gathering all the narratives of this case, the whole situation that comes to light is that he had divorced his wife three times in one go. He then felt ashamed and presented his case before the Prophet (sws). The Prophet (sws) inquired: “How did you divorce her?” He replied: “I divorced her three times in one go.” The Prophet (sws) again inquired: “What was your intention?” He answered that he wanted to divorce her once only. The Prophet (sws) told him to reply on oath which he did and then said: “If this is the matter, then take her back. Only one divorce has been implemented.” Rukānah remarked: “O Prophet of God! I had divorced her three times.” The Prophet said: “I know, take her back and this is not the proper way of divorcing a wife. The Almighty has said that if one must divorce his wife, he should do so keeping in consideration the ‘iddat.”⁵¹

50. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 5, 2011, (no. 4953); Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 2, 1095, (no. 1471).

51. Abū Dā‘ūd Sulymān ibn al-Ash‘ath al-Sajistānī, *Sunan*, vol. 2 (n.p.: Dār al-fikr, n.d.), 267, 270, (nos. 2196, 2206); Ibn

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Mājah, *Sunan*, vol. 2, 521, (no. 2051); Abū ‘Īsā Muḥammad ibn ‘Īsā al-Tirmidhī, *Al-Jāmi‘ al-kabīr*, 2nd ed., vol. 2 (Beirut: Dār al-gharb al-islāmī, 1998), 466, (no. 1177), Aḥmad ibn Ḥanbal, *Musnad*, vol. 1, 438, (no. 2383). These narratives have weak chains of narration; however, if they are collected and collated, this weakness is dispelled

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State and Government

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Implementation of the *Sharī'ah* (Divine Law)

Some people believe that democracy is a concept alien to Islam. The ideal way of setting up an Islamic government in our times is the one that the Taliban adopted for Mullāh 'Umar's government in Afghanistan. The constitution, the parliament, and elections are nothing but modern day shams. For its implementation, Islam does not depend on any of these mechanisms. Whatever interpretations have been accepted in the Ḥanafī law⁵² are final and authoritative. The opinions of its jurists have all been compiled in matters related to individual as well as collective affairs. According to these people, these opinions and verdicts are based on the Qur'ān, the Sunnah (the Prophet's teachings), *ijmā'* (consensus), and *Qiyās* (analogy) and are contained in the manuals of *fiqh* (Islamic law) and in the *fatāwā* (verdicts) of "qualified" Muslim jurists. These laws and verdicts must be implemented. And this implementation does not require the approval of any parliament. The modus operandi recommended by people with these views is that all institutions of the government be under the judiciary and the judiciary itself be under the control of the '*ulamā*' (religious scholars) as it is the '*ulamā*' who

52. Islamic law as understood, interpreted and applied in one of the major Sunni schools of thought. The Ḥanafī school is named after the Iraqi legal expert Abū Ḥanīfah (d. 767 AD).

are the experts in the understanding and interpretation of the *sharī'ah* (Divine law). These people hold that the last 1200 years of Muslim tradition stands in support of their view. In their opinion, after the appointment of Imām Abū Yūsuf as the *qādī al-quḍāt* (chief justice) of the Abbasid Sultanate, the same *modus operandi* was adopted everywhere for the implementation of Islam. It was the Western colonialism that put an end to this tradition. Now, the Muslims are independent; therefore, this approach to running the affairs of the state in accordance with the *sharī'ah* must also be restored.

I can say with full confidence on the basis of my study of Islam that this viewpoint is not acceptable to the Qur'ān. It prescribes democracy as the basis for running the affairs of the State. The Qur'ān (42:38) says: *amruhum shūrā baynahum* (the affairs of the Muslims are run on the basis of their consultation). 'Umar (rta) said: "Whosoever pledges allegiance to anyone without the collective consent of the Muslims presents himself for the death sentence."⁵³ It is true that, in Muslim history, monarchy and dictatorship have often been accepted forms of government. Some people also believe that the head of government should be an appointee of God Himself. However, the principle the Qur'ān spells out is very clear. What this principle entails in terms of its nature and foundation has been explained very aptly by a well-known Muslim scholar of our times, Mawlānā Abū al-A'lā Mawḍūdī. He says:

First of all, people whose interests and rights are

53. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 6, 2505, (no. 6442).

directly affected by collective decisions should have the absolute right to express their opinions. They should be fully informed of how their matters are being dealt with, and they should be granted the full right to criticize those in charge of their matters for any mistakes or flaws. They should also have the right to change their leaders if they do not see any effectiveness in the efforts for their reform. Making people conform to collective decisions by stifling their voice, shackling their hands and keeping them in the dark is downright dishonesty, which no intellectually honest person can consider as compliance with the directive of *amruhum shūrā baynahum*.

The second thing that needs to be understood is that the appointment of the person responsible for the collective affairs of the Muslims should be with the free will of people. Support gained through coercion, intimidation, jobbery, bribery, deception or misrepresentation does not reflect free will. The rightful leader of the people is not someone who attains this position by hook or by crook, but someone whom they choose of their own accord.

The third point is that representatives of people involved in consultation with the head of the state should be appointed on the basis of the genuine trust of people. Obviously, those who have attained this position on the basis of coercion, bribes, lies and deception can never be deemed as worthy of this trust.

The fourth point pertains to freedom of expression for people's representatives to present their opinions correctly and honestly in accordance with their understanding and conscience. If this aspect is missing and the representatives are bound by any fear, greed or group affiliation, the consequence will be dishonesty and betrayal rather than conformity to the principle of *amruhum shūrā baynahum*.

Finally, the unanimous or majority verdict of the consultative body should be accepted. The reason for this principle is that, if any person or group is given the authority to violate the collective decision, the whole process of consultation becomes meaningless. The Almighty does not say: "In their matters, the Muslims are consulted." Instead, He says: "Their matters are based on their consultation." Compliance with this directive does not take effect by mere consultation. Compliance here requires that, in the consultation, whatever is decided by unanimous or majority verdict become binding."⁵⁴

This extract clearly shows that, for the interpretation and application of even a religious directive pertaining to the state affairs, it is consultation that should be the procedure. Experts of Islamic sciences may proffer their opinions. It is their right to express their viewpoints, but their opinions become legally binding on people only

54. Abū al-A'lā Mawdūdī, *Tafhīm al-Qur'ān*, vol. 4, (Lahore: Maktabah-i ta'mīr-i insāniyyat, 1972), 509-510.

when the majority of the elected representatives of people accept them. In the present-day state, the institution of the parliament is constituted for this very purpose. It is the right of the people to disagree with decisions of the parliament and to express their viewpoints to rectify its mistakes. However, no one has the right to violate the laws enacted by the parliament or to defy the system. Neither the '*ulamā*' nor the judiciary is superior to the parliament. Each institution has the obligation to comply with the parliamentary decisions even if it has differences of opinion with it.

If this status of the parliament is accepted, the discussion on an "Islamic state" viz-à-viz a "secular state" also becomes irrelevant. Discussions as these were relevant in situations of autocracy and dictatorship. Now, the objective of our efforts should be a purely democratic state. Once this state is truly formed, Islam will manifest itself in the system in proportion to the degree of people's commitment to this faith. This is the natural way. Any deviation from it will lead only to hypocrisy, which we have been witnessing for the past half-century in Pakistan.

The real task of the '*ulamā*' and reformers is to prepare the minds of the people for Islam through education and communication. They should call people to this message with sagacity and decency; they should face their questions and queries; they should cogently resolve people's intellectual issues and explain to them not only the *sharī'ah* but also the Divine wisdom in its directives. For example, they should be ready to explain what the relationship of the *sharī'ah* is with the collective affairs of the society, what the foundations of its directives are,

and why the modern mind is impeded in understanding the wisdom of the Divine law. They should adopt such means and modes of communication as would bring out the wisdom and the meaningfulness of the *sharī'ah* so that people are able to understand the underlying objectives clearly and become willing to accept these laws with heart, mind and soul. The responsibility that the Qur'ān lays upon the religious scholars is that of calling people to Islam and exhorting them to follow its directives (*da'wat-o indhār*) – they have not been given the role of keepers of morals and, therefore, have no right to use groups of their followers to enforce their conceptions and interpretations of the *sharī'ah* on people in their society through the force of guns. Not even the state itself has been permitted by Islam to use the force of law to coerce people into fulfilling any obligation of purely religious nature except the mandatory prayer and alms (*al-ṣalāh* and *al-zakāh*). The Qur'ān is very clear in this matter: regardless of what the adherents to Islam are responsible for in the Hereafter, the state cannot hold them responsible in religion beyond these imperatives. Beyond them, appeal, exhortation, education and training are the means that may be adopted to make the efforts for reformation of people. If some of the religious scholars are fond of politics as well, they can join political parties to become part of the parliament where they can play their role in legislation in accordance with the parliamentary norms and procedures.

(Translated by Asif Iftikhar)

The Rule of an Islamic Government

Man, by nature, is a being who lives by setting up a government for himself. The first manifestation of this instinct took place when in ancient times people decided that they would select chiefs of their tribes. After that, when these chiefs were able to establish their hegemony by conquering other tribes, they became the owners of the conquered lands and this gradually took the shape of ancestral kingdoms governed by kings. In later periods, these kings, in their capacity as great conquerors, laid the foundations of empires consisting of several countries. This brought into existence governments which included the Sassanid and the Roman empires. These empires have now become extinct but many kingdoms are still extant and have taken the place of constitutional monarchies. Except for some countries, this is the case every where. Among these exceptions is the kingdom of Saudi Arabia. It still exists with its real glory and majesty. The laws of such kingdoms are enacted by the king and his nobles. The Saudi government was established with the reformist movement of Muḥammad ibn ‘Abd al-Wahhāb (d. 1792 AD). Thus on the very first day of its inception it decided that the law of the land would be the Islamic *sharī‘ah*. A great majority of Sunnī scholars does not regard kingdoms to be governments which are against the *sharī‘ah* and also more or less agree to the interpretation of the *sharī‘ah* made by the Saudi government. This is

because they think that it is an Islamic government and on this basis they show allegiance to it.

The ideology of an Islamic revolution that has sprung up in recent times can be summarized as follows: it is only the disciplined minority of the righteous (*ṣāliḥīn*) which has the right to rule; if godless people are rulers, then they are in fact embezzlers; it is the responsibility of the righteous to launch an effort to take back what belongs to them. Among the Shiites, this ideology already existed under the concepts of “government of the infallibles (*ma‘ṣūmīn*)” and “guardianship of the jurist” (*wilāyat-i faqīh*). Consequently, Sunni and Shiite scholars have instituted religious parties at various places to achieve this very objective of bringing about an Islamic revolution. Moreover, the intellectual class is expending its efforts in various countries to realize this objective by trying to bring into existence a disciplined minority of the righteous. At some places, these efforts have been successful. For example, in Iran where religious scholars, under the leadership of Imām Khumīnī (d. 1989), were able to take the reins of political authority in their hands. They have been ruling Iran with full power since a quarter of a century. Another example is Afghanistan where, through the support and help of the Pakistani government, the students of religious scholars were able to set up a government which unfortunately succumbed to the incident of 9/11 and is now trying to revive itself by waging war against the NATO forces.

The question which arises in this context is: what does Islam want? A deep deliberation on the Qur’ān and Ḥadīth shows that the real addressee of Islam is the individual. It wants to rule the heart and mind of a

person. Thus it makes it mandatory upon him to submit his whole self to the sovereignty of God. Just as the God of Islam is the Lord and worshipped deity of people, He is also their king. Hence it is necessary that besides worshipping Him, obedience also be shown to Him and if He has prescribed some law or principle in some matter, then people must totally surrender to it. No doubt, Islam also addresses the society but only when the individuals of a society accept its rule over themselves. At that time, no effort or struggle is needed to achieve the supremacy of Islam at the collective level; Islam automatically manifests itself through the social, cultural and political mannerisms and attitudes of people. Thus if in the *sharī'ah* of God, there is any directive related to the society, they are prepared to implement it without any hesitation.

This is an Islamic government. When it comes into existence in this way, it becomes a manifestation of God's mercy on earth; however, if it does not come into existence, even then one should not be worried because the objective of Islam is not the formation of an Islamic government but the attainment of *tazkiyah* (self-purification). Its call is to the kingdom of God which people will attain on the Day of Judgement as a result of attaining this *tazkiyah*. Islam calls upon people to save themselves from Hell and enter this eternal kingdom of God. It does not call upon people to establish an Islamic government. However, people who are anxious for this – and which in Qur'ānic terms may be called *ukhrā tuḥibbūnahā* (the second thing which you desire, (61:13)) – have seen for themselves the experimentation which has taken place in this regard in the last one and a half

century. In my opinion, they should now accept the reality that an Islamic government is neither established through a royal decree nor through the autocratic rule of religious scholars nor by a self-appointed army of divine soldiers. This is not an objective but emanates or should emanate from the inner conviction of people on Islam and the Islamic *sharī'ah*. If this happens, then the government which is established as a result can be called an Islamic government in every sense of the word. If the objective is to set up such a government, then instead of wasting one's time in frivolous political stratagems and instead of killing oneself and killing innocent people in the name of *jihād*, all force should be directed towards two things.

Firstly, through reminding and exhortation, knowledge and reasoning, education and instruction, efforts should be made to establish the rule of this government on the hearts of people. This effort should continue until the ruling elite of the Muslims have as strong a conviction in Islam and Islamic *sharī'ah* as the one possessed by those who take up the task of calling people towards Islam.

Secondly, at every level democracy and democratic values should be promoted so that if people get prepared to fulfil the requirements of their religion related to the political and economic spheres, no form of despotism causes any hindrance to them. Launching a struggle against despotic forces is in fact a struggle against *fitnah* and *fitnah* according to the Qur'ān is a greater sin than murder. Hence, the institution of monarchy and dictatorship deserve to be sent packing from the stage of this world forever.

(Translated by Dr Shehzad Saleem)

Islam and the State

It is generally understood that the founders of Pakistan wanted to make it an Islamic democratic welfare state. In later times as well, this concept about Pakistan continued. In these times, advocates of revolution and change also say the same. If the common masses are asked, a vast majority will also attest to this concept. There are excellent examples of democratic and western states in the western world; so it is not at all difficult to understand what such states are or should be. However, the question arises: What exactly is implied by an “Islamic State”? One of its models can be seen in the monarchy of Saudi Arabia and another in the theocracy of Iran. However, if Islam is understood directly from its sources, it does not regard either of these models as correct. Therefore it is essential that the requirements of Islam regarding the state system of the Muslims be stated here so that in the light of this people can evaluate the promises and measures of their leaders.

Following are these requirements:

1. Those who call themselves Muslims and regard Muḥammad (sws) to be the last prophet of God, who are diligent in their prayer and are ready to pay *zakāh* to the state, shall be regarded as Muslims and the rights which they specifically enjoy by virtue of the Islāmic *sharī‘ah* shall be given to them in all circumstances.

This means that they will not be subjects of a king but equal citizens. No discrimination shall be made between

them in the state system and the laws of the state. Their life, wealth and honour shall hold sanctity – so much so that without their consent the state shall not impose any tax on them other than *zakāh*. If a dispute arises in their personal affairs like marriage, divorce, distribution of inheritance and other similar matters, then it shall be decided in accordance with the Islamic *sharī‘ah*. They shall be provided with all the essential facilities for their daily prayers, the fasts of Ramaḍān and *hajj* and *‘umrah*. They will not be forced by the law to submit to any directive which reflects a positive injunction of Islam except the prayer and the *zakāh*. They will be governed with justice and fairness on the principle of *amruhum shūrā baynahum* (their system is based on their consultation). Their public wealth and assets shall be reserved for the collective needs of the society and shall not be given in private ownership; in fact, they shall be developed and looked after in such a way that the needs of people who are not able to financially support themselves are fulfilled from their income. If they pass away, they shall be enshrouded and prepared for burial according to Muslim rites; their funeral prayer shall be offered and they shall be buried in the graveyard of the Muslims the way Muslims are buried.

2. It shall be the responsibility of the government to organize the Friday and the *‘īd* prayers. These prayers shall be held only at places which are specified by the state. Their pulpits shall be reserved for the rulers. They themselves will lead and deliver the sermon of these prayers or some representative of theirs will fulfil this responsibility on their behalf. Within the confines of the state, no one will have the authority to organize these prayers independently.

3. Law enforcing departments shall be primarily reserved for *amar bi al-ma'rūf and nahī 'an al-munkar* (enjoining good and forbidding evil). Thus the most pious of people will be selected as workers of these departments. They will urge people to do good and forbid them all what mankind has always regarded as evil.

4. The state shall always adhere to justice (*qā'im bi al-qist*) with regard to its enemies as well. It will speak the truth, bear witness to it and will not take any step contrary to justice and fairness.

5. If the state enters into agreement with someone within its jurisdiction or with some foreign entity, then as long as the agreement exists it shall be honoured both in letter and in spirit with full honesty and sincerity.

6. If a Muslim is guilty of murder, theft, fornication, falsely accusing someone of fornication (*qadhf*) or spreading anarchy and disorder in the land and a court is fully satisfied that he does not deserve any leniency arising from his personal, familial and social circumstances, then those punishments shall be meted out to him which the Almighty has prescribed in His Book for those who have whole-heartedly accepted the call of Islam.

7. Dissemination of Islam to all parts of this world shall be organized at the state level. If any power of the world tries to hinder this effort or persecutes Muslims, then the state, according to its capacity, will try to remove this hindrance and stop this persecution even if it has to lift arms for it.⁵⁵

(Translated by Dr Shehzad Saleem)

55. In order to see the details of these seven requirements in the sources of Islam, my book *Mīzān* can be consulted.

The Basis of Legislation

Man has been created free. He is not subservient to anyone except the Almighty. Hence, neither an individual nor a state has any right to impose any restrictions on his ideology and deeds or take any step against his life, wealth and honour. This freedom is a birth right of a person, and has been granted to him by his Creator. The Global Manifesto of Human Rights is a declaration of this reality. All nations of the world have accepted it and have guaranteed that they will not violate it in their constitutions. This is a testimony to the fact that the awareness of freedom is found in human nature and a person would never want that any individual or government to try to arrest it. The Prophet Muḥammad (sws) in his sermon of ḥajj stressed this very reality in the following words:

إِنَّ وِدْمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ بَيْنَكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ
هَذَا فِي بَلَدِكُمْ هَذَا

Indeed, your lives, your wealth, and your honour are as sacred and inviolable as this day of [sacrifice of] yours in this city of [Makkah of] yours in this month of [Dhū al-Ḥajj of] yours.⁵⁶

56. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol.1, 37, (no. 67).

The question, however, arises: is this freedom of life, wealth and honour absolute in nature? The answer to this question is firmly in the negative. This freedom ends when a person usurps the rights of others or takes a step against the life, wealth and honour of an individual. Man's moral awareness and God's *sharī'ah* both agree that after this every society has the right to terminate this freedom and refrain from acknowledging this sanctity of life, wealth and honour.

It is this which in reality forms the basis of legislation in an Islamic state. All laws are made to stop people from usurping the rights of others and committing excesses against them or to punish their perpetrators. The right to legislate of every institution, every government and every parliament begins and ends here. The directive God has given a Muslim state to punish people who kill, steal, falsely accuse people of fornication and spread anarchy in the land is because fornication is tantamount to usurping rights while killing, stealing, falsely accusing someone of fornication and spreading anarchy in the land are excesses committed against the life, wealth and honour of people. When in the times of the rightly guided caliphs the issue of prescribing a punishment for liquor arose, 'Alī (rta), on this very basis, opined that a drunkard should be given the same punishment as the one prescribed by the Qur'ān for falsely accusing someone of fornication. That is when people drink, they will get intoxicated and once they get intoxicated, they will utter nonsense; and once they start uttering nonsense, they will falsely accuse other people.⁵⁷

57. Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd, *Bidāyah*

Similar is the case of marriage, divorce, distribution of inheritance and other similar matters. All these relate to the state only when a person does not discharge the rights imposed on him by the Almighty, and in this manner is guilty of usurping rights. In the state of Pakistan, laws regarding permission of the first wife for second marriage and prohibition of marriage of minors have been made on this basis.

Every government and every legislative forum of the world is bound to justify the legitimacy of all the laws and statutes they enact on this basis as well. Moreover, it is the right of the people to analyze the laws made by them and if they see that there are some laws which are devoid of this basis, to not accept them. Thus, if a government, for example, has enacted the law that people will not be allowed to wear their religious identifications like the *zunnār*, the cross, the turban or *kirpān*, or they will have to necessarily give a wife a certain amount of their wealth at the time of divorce or will not shave their beards or not wear shorts or not listen to music or women will not go out without wearing the veil or will not put on the scarf then this indeed is exceeding the limits. Similarly, if, on the contrary, it has enacted the law that they cannot go out unless they wear the veil or not go for *hajj* or *‘umrah* without a *maḥram* or will not drive cars, or will not adopt such and such a profession, or will not take part in politics or will not cast votes, then this also is exceeding the limits. Even if any of these is God’s directive, then people are answerable before God if they follow or

violate it. No government of the world has the authority to order a person to obey such matters. The Almighty has made it evident in unequivocal terms that among the positive requirements of religion, a state can only demand two things from its Muslim citizens: the prayer and the *zakāh*. The Qur'ān asserts that after this a state must leave them alone and not try to implement anything else on them through law. It says:

فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ (٥:٩)

So, if they repent, are diligent in the prayer and pay *zakāh*, leave them alone. (9:5)

This directive was given to the Prophet Muḥammad (sws) at the time when God ruled on this earth. Thus, while explaining this, I have written:

... This means that at the state and legal level no additional demand can be made from the Muslims to fulfil the requirements of faith and religion. This is because if God did not allow this under His own rule, how can others be given this permission.⁵⁸

(Translated by Dr Shehzad Saleem)

58. Javed Aḥmad Ghāmidī, *Al-Bayān*, 1st ed., vol. 2 (Lahore: Topical Printing Press, 2014), 325-326.

Islam and the State: A Counter Narrative

The situation which has been created today for Islam and Muslims in the whole world by certain extremist organizations is an evil consequence of the ideology taught in our religious seminaries, and also propagated day and night by Islamic movements and religious political parties. The true understanding of Islam, in contrast to this, has been presented by this writer in his treatise *Mīzān*.⁵⁹ This understanding actually constitutes a counter narrative. It has been repeatedly pointed out by this writer that when in a Muslim society anarchy is created on the basis of religion, the remedy to this situation is not advocacy of secularism. On the contrary, the solution lies in presenting a counter narrative to the existing narrative on religion. Its details can be looked up in the aforementioned treatise. However, the part of it which relates to Islam and the state is summarized below.

1. The message of Islam is primarily addressed to an individual. It wants to rule the hearts and minds of people. The directives it has given to the society are also addressed to individuals who are fulfilling their responsibilities as the rulers of Muslims. Hence, it is baseless to think that a state also has a religion and there is a need to Islamize it through an Objectives Resolution and that it must be constitutionally bound to not make

59. English title: *Islam: A Comprehensive Introduction*.

any law repugnant to the Qur'ān and Sunnah. People who presented this view and were successful in having it implemented actually laid the foundations of a permanent division in the nation states of these times: it gave the message to the non-Muslims that they are in fact second rate citizens who at best occupy the status of a protected minority and that if they want to demand anything from the real owners of the state must do this in this capacity of theirs.

2. It can be the dream of every person that countries in which Muslims are in majority should unite under a single rule and we can also strive to achieve this goal but this is not a directive of the Islamic *sharī'ah* which today Muslims are guilty of disregarding. Certainly not! Neither is *khilāfah* a religious term nor its establishment at the global level a directive of Islam. After the first century *hijrah*, when celebrated jurists of the Muslims were among them, two separate Muslim kingdoms, the Abbasid kingdom in Baghdad and the Umayyad kingdom in Spain had been established and remained so for many centuries. However, none of these jurists regarded this state of affairs to be against the Islamic *sharī'ah*. The reason is that there is not a single directive found on this issue in the Qur'ān and the Ḥadīth. On the contrary, what everyone, including this writer, does say is that if at any place a state is established, rebelling against it is a heinous crime. Such is the horrific nature of this crime that the Prophet (sws) is reported to have said that a person who does so dies the death of *jāhiliyyah*.⁶⁰

60. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 6, 2588, (no. 6645-6646).

3. The basis of nationhood in Islam is not Islam itself, as is generally understood. At no place in the Qur'ān and Ḥadīth has it been said that Muslims must become one nation. On the contrary, what the Qur'ān has said is: (إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ (١٠ : ٤٩) (All Muslims are brothers to one another, (49:10)). Thus the relationship between Muslims is not based on nationhood; rather, it is based on brotherhood. While being divided into several nations, countries and states they are brothers in faith. Hence, what can be demanded from them is that they should keep themselves aware of the circumstances of their brothers, help them in their troubles and tribulations, support those who are oppressed among them, give them preference in economic and social ties and under no circumstances close their doors on them. However, what cannot be demanded from them is that they give up their nation states and national identities and become one nation and one state. Just as they can create separate nation states, in the same way if they have the freedom to follow their religion, they can live in the capacity of citizens of non-Muslim states and adopt their nationality. None of this is forbidden by the Qur'ān and Sunnah.

4. If some Muslims of the world declare themselves as Muslims and, in fact, insist on this and adopt a belief or deed which is not approved by one or more scholars or the rest of the Muslims, then this deed or belief of theirs can be regarded as incorrect and even a deviation and departure from Islam, yet these people cannot be regarded as non-Muslims or disbelievers (*kuffār*) because these people adduce their views from the Qur'ān and Ḥadīth. For the ruling of God on such beliefs and

deeds, we must wait for the Day of Judgement. Their proponents in this world in accordance with their own acknowledgement are Muslims, must be regarded as Muslims and must be dealt with in the way Muslims are. It is the right of the scholars to point out their mistake, to invite them to accept what is correct, to regard what they find as constituting polytheism and disbelief in their ideology and also inform people about all this. However, no one has the right to declare them as non-Muslims or to ostracize them from the Muslim community because only God can give this right to someone, and everyone who has knowledge of the Qur'ān and Ḥadīth knows that God has not given this right to anyone.

5. Polytheism, disbelief and apostasy are indeed grave crimes; however, no human being can punish another human being for these crimes. This is the right of God alone. In the Hereafter too, He will punish them for these crimes and in this world it is He Who does so if He intends. The matter of the Hereafter is not under discussion here. In this world, this punishment takes place in the following manner: when the Almighty decides to reward and punish people in this world on the basis of their deeds, He sends His messenger towards them. This messenger conclusively communicates the truth to these people such that they are left with no excuse before God to deny it. After this, the verdict of God is passed and people who even after the conclusive communication of the truth insist on disbelief and polytheism are punished in this world. This is an established practice of God which the Qur'ān describes in the following words: **وَلِكُلِّ أُمَّةٍ رَسُولٌ فَإِذَا جَاءَ رَسُولُهُمْ قُضِيَ بَيْنَهُمْ** (٤٧:١٠) **بِالْقِسْطِ وَهُمْ لَا يُظْلَمُونَ** (And for each community, there

is a messenger. Then when their messenger comes, their fate is decided with full justice and they are not wronged, (10:47)). Its nature is the same as of the sacrifice of Ishmael (sws) and the incident of Khidr. It is not related to us human beings. Just as we cannot drill a hole in the boat of a poor person to help him and cannot kill a disobedient boy nor embark upon slaughtering any of our sons on the basis of a dream as Abraham (sws) did, similarly, we cannot undertake this task except if a revelation comes from God or if He directly gives an order. Everyone knows that the door to this has permanently been closed.

6. No doubt *jihād* is a directive of Islam. The Qur'ān requires of its followers that if they have the strength, they should wage war against oppression and injustice. The primary reason for this directive is to curb persecution which is the use of oppression and coercion to make people give up their religion. Those having insight know that Muslims are not given this directive of *jihād* in their individual capacity; they are addressed in their collective capacity regarding this directive. They are not individually addressed in the verses of *jihād* which occur in the Qur'ān. Thus in this matter only the collectivity has the right to launch any such armed offensive. No individual or group of Muslims has the right to take this decision on their behalf. It is for this reason that the Prophet (sws) is reported to have said: "A Muslim ruler is a shield; war can only be waged under him."⁶¹

7. The directive of *jihād* given by Islam is war for the

61. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1080, (no. 2797).

cause of God; therefore, it cannot be waged while disregarding moral restrictions. Ethics and morality supersede everything in all circumstances and even in matters of war and armed offensives, the Almighty has not allowed Muslims to deviate from moral principles. Hence, it is absolutely certain that *jihād* can only be waged against combatants. It is the law of Islam that if a person attacks through his tongue, then this attack shall be countered through the tongue and if he financially supports the warriors, then he will be stopped from this support; however, unless a person picks up arms to wage war, his life cannot be taken. So much so, if right in the battle field an enemy throws down arms and surrenders, he shall be taken a prisoner; he cannot be executed after this. The words of the verse which mention the directive of *jihād* are: *وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ* (۱۹۲:۲) (And fight in the way of God with those who fight against you and do not transgress bounds [in this fighting]. Indeed, God does not like the transgressors, (2:190)). The Prophet (sws) forbade the killing of women and children during war.⁶² The reason for this is that if they had embarked upon *jihād* with the army, it was not in the capacity of combatants. At best, they could boost the morale of the combatants and urge them through the tongue to fight.

8. Centuries before the thinkers of the present age, the Qur'ān had declared: *أَمْرُهُمْ شُورَى بَيْنَهُمْ* (۳۸:۴۲) (the affairs of the Muslims are run on the basis of their mutual consultation, (42:38)). This clearly meant that an Islamic

62. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1098, (no. 2851); Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1364, (no. 1744).

government would be established through their consultation, everyone would have equal rights in this consultation, whatever done through consultation could only be undone through consultation and every individual would become part of the consultative process. Moreover, if a decision could be reached through a consensus or total agreement, then the opinion of the majority would be accepted as the decision.

This is precisely what democracy is. Thus dictatorship is not acceptable in any case whether it is of a dynasty or a of a group or of a national institution and not even of religious scholars in the interpretation of issues related to religion and *sharī'ah*. These scholars indeed have the right to present their views and express their opinions; however, their view can only become a law for the people to follow when the majority of the elected representatives accept it. In modern states, the institution of the parliament has been constituted for this very purpose. It holds and should hold the final authority in the system of a state. People do have a right to criticize the decisions of the parliament and point out their mistakes; however, no one has the right to disobey them or rebel against them. Neither scholars nor the judiciary is above the parliament. The principle of (٣٨:٤٢) *أَمْرُهُمْ شُورَى بَيْنَهُمْ* binds every individual and every institution to practically submit to the decisions of the parliament even though they may differ with them.

It is only this approach which is justifiable in setting up the rule of Islam and running it. If any other way is adopted to set up this rule, then it will be illegal even though the forehead of its ruler may glisten with the

signs of prostration or even if he is bestowed the title of *amīr al-mu'minīn*.

9. If at some place a Muslim government exists, it is generally asked to implement the *sharī'ah*. This expression is misleading because it gives the impression that Islam has given the right to a government to forcibly implement all the directives of the *sharī'ah* on people. The fact is that the Qur'ān and Ḥadīth do not give this authority to any government. The Islamic *sharī'ah* contains two categories of directives. The first category comprises directives which are given to individuals and the second category comprises directives which are given to a Muslim society. The first category relates to directives which are between an individual and God. In these directives, a person is not responsible to any government; on the contrary, he is responsible to God. Hence, no government, for example, can force a person to fast or go for *hajj* or *'umrah* or to circumcise himself or to keep his moustaches trimmed or in the case of a woman to cover her chest, refrain from displaying her ornaments or to wear a scarf when going out. In such matters, a government has no authority beyond urging and educating people except if there is a chance of rights being usurped or excesses being committed against the life, wealth and honour of people. The Qur'ān has explicitly said that among the positive directives of religion, a state can only forcibly demand from them to offer the prayer and pay *zakāh*. The Qur'ān (9:5) says that after this, it is incumbent upon the state to leave them alone and not try to enforce anything on them. As for the second category of directives, they are only given to a government because it is a government which represents a society in collective

affairs. If religious scholars demand from those in authority to obey them, then they certainly will be justified. In fact, it is their duty in their capacity as scholars to make such a demand. It should be clear that this demand is the demand to follow the *sharī'ah*. Implementation of the *sharī'ah* is not the right name for this demand. This second category comprises the following directives:

i. Muslims will not be subjects of their rulers but equal citizens. No discrimination shall be made between them in the state system and the laws of the state. Their life, wealth and honour shall hold sanctity – so much so that without their consent the state shall not impose any tax on them other than *zakāh*. If a dispute arises in their personal affairs like marriage, divorce, distribution of inheritance and other similar matters, then it shall be decided in accordance with the Islamic *sharī'ah*. They shall be provided with all the essential facilities for their daily prayers, the fasts of Ramaḍān and *hajj* and *'umrah*. They will not be forced by the law to submit to any directive which reflects a positive injunction of Islam except the prayer and the *zakāh*. They will be governed with justice and fairness on the principle of *أَمْرُهُمْ شُورَى بَيْنَهُمْ* (٣٨:٤٢) (the affairs of the Muslims are run on the basis of their mutual consultation, (42:38)). Their public wealth and assets shall be reserved for the collective needs of the society and shall not be given in private ownership; in fact, they shall be developed and looked after in such a way that the needs of people who are not able to financially support themselves are fulfilled from their income. If they pass away, they shall be enshrouded and

prepared for burial according to Muslim rites; their funeral prayer shall be offered and they shall be buried in the graveyard of the Muslims the way Muslims are buried.

ii. It shall be the responsibility of the government to organize the Friday and the 'īd prayers. These prayers shall be held only at places which are specified by the state. Their pulpits shall be reserved for the rulers. They themselves will lead and deliver the sermon of these prayers or some representative of theirs will fulfil this responsibility on their behalf. Within the confines of the state, no one will have the authority to organize these prayers independently.

iii. Law enforcing departments shall be primarily reserved for *amar bi al-ma'rūf* and *nahī 'an al-munkar* (enjoining good and forbidding evil). Thus the most pious of people will be selected as workers of these departments. They will urge people to do good and forbid them all what mankind has always regarded as evil. However, they will only use the force of law when a person is guilty of usurping rights or goes after the life, wealth and honour of people.

iv. The state shall always adhere to justice (*qā'im bi al-qiṣṭ*) with regard to its enemies as well. It will speak the truth, bear witness to it and will not take any step contrary to justice and fairness.

v. If the state enters into agreement with someone within its jurisdiction or with some foreign entity, then as long as the agreement exists it shall be honoured both in letter and in spirit with full honesty and sincerity.

vi. The death penalty will be given in two cases only: murder and spreading anarchy in the land. If a Muslim is

guilty of murder, theft, fornication, falsely accusing someone of fornication (*qadhf*) or spreading anarchy and disorder in the land and a court is fully satisfied that he does not deserve any leniency arising from his personal, familial and social circumstances, then those punishments shall be meted out to him which the Almighty has prescribed in His Book for those who have whole-heartedly accepted the call of Islam.

vii. Dissemination of Islam to all parts of this world shall be organized at the state level. If any power of the world tries to hinder this effort or persecutes Muslims, then the state, according to its capacity, will try to remove this hindrance and stop this persecution even if it has to use force for it.⁶³

10. These are the directives of the *sharī'ah* which relate to the state and have been given with the warning that those who do not accept the verdict of the Book of God after acknowledging it will be regarded as wrongdoers (*zālim*), defiant (*fāsiq*) and disbelievers (*kāfir*) on the Day of Judgement.⁶⁴ However, if the rulers of the Muslims, in spite of this warning are guilty of some error in this regard or become rebellious, then the only responsibility of religious scholars is to warn them of its consequences in this world and the Hereafter. With wisdom and kindly exhortation, they should call them to mend their ways, face their questions, dispel their doubts and logically reason with them as to why God has given them His *sharī'ah*. They should explain to them its

63. In order to see the details of these seven requirements in the sources of Islam, my book *Mīzān* can be consulted.

64. Qur'ān, 5:44-47.

relevance in the collective sphere of life. They should also elucidate to them the basis of its directives and the difficulty which a person of the modern era faces in understanding it. They should adopt styles and ways to explain and clarify it so that its underlying wisdom and objective becomes evident to them and their hearts and minds are able to adopt it with full satisfaction and they become prepared to follow it. The Qur'ān has stated that the real status of religious scholars is to invite people to the truth and warn them about any deviation from it. God does not want them to force people to follow Islam or to organize their followers in groups that ask people at gun point to follow the *sharī'ah*.

(Translated by Dr Shehzad Saleem)

Supremacy of the Parliament

(Written in response to criticism on the article:
Islam and the State: A Counter Narrative)

It is a requisite of both Islam and democracy that all rulings of the parliament be practically submitted to. This means – and everyone aware of political values will also agree – that no hindrance should be created in the implementation of such a ruling, no hue and cry should be raised against it, the affairs of the government should be allowed to function according to it, through protest gatherings no attempt should be made that impairs law and discipline, picking up arms should not be resorted to against it and people must not be enticed into rebellion against it – so much so, if as a result of this ruling a government takes action against an individual, then such an action should be borne with patience. The person whom I regard as God's prophet has given me this very guidance. He is reported to have said:

It is mandatory upon you to listen to and obey [your rulers] whether you are in difficulty or at ease, whether willingly or unwillingly and even when you do not receive what is your right.⁶⁵

65. Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1467, (no. 1836).

There is only one exception to this and that is if I am ordered to defy a directive of God. In this case, however, I can practically turn down such an order – in fact, it is my obligation to do so.

Every moment of my life bears witness that I have always followed what I have written above and also urged my friends and students to do so. However, I consider myself to be unfortunate to have never known that expressing a difference of opinion on the rulings of a parliament and resorting to democratic means to change them is also a crime. I am equally unfortunate to not know that submitting practically before the rulings of the parliament also means that knowledge and reason must also submit to the parliament, and that one should dare not differ with the parliament if it gives a ruling that is against a directive of God or an established moral principle or natural law or if it exceeds the limits of its right of legislation.

The irony of the situation is that the above-stated inference has been made with great honesty and piety by disregarding the very sentence which is explicitly negating it. I had written:

People have the right to criticize the rulings of the parliament and also try to point out the mistake in them; however, no one has the right to differ with them or rebel against them.

I cannot say whether the intellect be praised of a person who makes this remarkable inference or his honesty be lauded.

Nevertheless I re-iterate here that I submit myself to

every ruling of the parliament but it is my democratic and religious right that if there is something wrong in it or if limits have been exceeded in a certain case or if someone's rights have been infringed upon because of it, I can present my critique on it on the basis of arguments. Forbidding vice and enjoining virtue (*amr bi al-ma'rūf and nahī 'an al-munkar*) is among the basic principles of my religion and cultural tradition, and I have been directed to bear witness to justice for the sake of God even though this testimony is against our ourselves, our parents and our relatives. The only requisite of the principle of *amruhum shūrā baynahum* (their system is based on their mutual consultation, (41:28)) is that in order to settle differences of opinion the opinion of the majority should be practically accepted. It is certainly not a requisite of it to regard this majority opinion to be correct as well and that any error found in it should not be pointed out to people. The right to amend the constitutions of the world and constitutional documents is given because none of them has any divine status. It is the duty of men of learning to continue to evaluate and examine them, and if any mistake is detected, they should make an effort to correct it. Whatever was needed to be done to follow Islam and the Islamic *sharī'ah* in the state of Pakistan at the government level was never done. And whatever was done was meaningless, baseless and against the explicit directives of the Qur'ān and Sunnah. I have been saying this for a long time and even now have only re-iterated it. This is a requisite of what I have been directed to do as a well-wisher of God, His Messenger and all Muslims. It should not be a cause of horror for any Pakistani, as an old and dear friend has

said that my writings have struck horror in the hearts of the whole nation.

(Translated by Dr Shehzad Saleem)

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Islam and Nationhood

(Written in response to criticism on the article:
Islam and the State: A Counter Narrative)

Like colour, ethnicity, language, culture and country, religion is also an important factor in determining nationhood. Muslims, over centuries, have become a nation on the basis of their religion. If they are faced with a challenge, at least in the Indian sub-continent, they fervently express this nationhood. On this very basis, Quaid e Azam had said that the Muslims of this region are a separate nation with regard to all the principles of international law. This is because their culture, social trends, language and literature, disciplines of knowledge, customs and traditions, mental framework, temperament, law, moral principles, style of life and even their calendar and way of naming children is distinct from other nations. This statement of the Quaid was based entirely on truth and an expression of reality from which no one can differ. Accordingly, this writer too did not express any such difference and at no place in my article "Islam and the State: A Counter Narrative" did I say that Muslims are not a nation or cannot become a nation.

All that I had stated in that article was that it is not a requirement of Islam or a directive of its *sharī'ah* that the nationhood of Muslims should be based on religion

and hence all Muslims must become one nation. I never stated what my critics are criticizing and to refute what I have explicit directives of the Qur'ān and Ḥadīth are needed and they are not available in any way. Hence, in order to validate a religious directive people have confined their arguments to the speeches of the Quaid, the poetry of Iqbal and events of the Pakistan movement.

The Muslims of the sub-continent are a nation and this is a self-obvious reality. If someone says that the mosques of Muslims have minarets and towers, then who can deny this? It is a factual statement. However, if a person says that it is the requirement of Islam and a directive of its *sharī'ah* that mosques must have towers and minarets, then it is the duty of every scholar to refute this claim and inform people that this is a totally unfounded view. Whether a mosque is constructed from hut of grass or whether it is built in the form of a four-walled compound with its roof made of stems and branches of palm trees, Islam has no objection to it.

It is this obligation which I have ventured to fulfil and have explained the correct view of Islam for those of our youth who are lured into terrorist activities by being told that the existence of Arab, Iranian, Pakistani or Afghan nations is absolutely unlawful and that the basis of nationhood of Muslims is Islam and their system is *khilāfah*; moreover, since this system can in no way be enforced in the nation-states of modern times, hence such states should be obliterated from the face of the earth. I had sought to explain to them that nation-states are not tantamount to *kufir* (disbelief) and that all natural factors which are regarded to be the foundation of nationhood for other nations are valid for Muslims as

well. According to the Qur'ān, the mutual relationship between Muslims is that of brotherhood and not nationhood. Hence, Muslims who by accepting the notion of a nation-state are living, for example, in the US, the UK, Germany, France, India or even Pakistan are not violating any directive of the *sharī'ah*. The sources of Islam are absolutely devoid of any directive which says that Islam itself is a basis of nationhood. If in the times of the Pakistan movement, Muslims insisted that they were a separate nation from the Indians and on this very basis demanded for themselves a separate homeland, then there was nothing wrong in this. Similarly, if right after the creation of Pakistan they declared themselves to be a Pakistani nation, then this too cannot be objected to. From the context of politics, a person can agree with the views of Mawlānā Abū al-Kalām Āzād and regard Quaid-e-Azam's views to be incorrect and vice versa and we have the right to give preference to either of these views; however, from as far as the context of religion is concerned, neither of these two political views can be objected to. Thus, Quaid-e-Azam too never objected to Abū al-Kalām's view on this basis. This is because his opinion was not that Muslims and Hindus cannot live together as one nation because this would be against Islam and Islamic *sharī'ah* and hence they demanded a separate homeland for themselves. His opinion was that in order to protect the Muslim culture, their economic, political and social spheres as well as religious traditions from the hegemony of the Hindus, he was demanding a separate homeland for them; moreover, he contended that the basis of his demand according to all statutes of international

law was that Muslims were a separate nation, and it is the right of every nation to demand a homeland in areas where it exists in majority.

I have expressed my view on this subject above. Every person has a right to criticize it. However, I respectfully request my readers that they should spend some time in understanding my view before they attempt to do so.

(Translated by Dr Shehzad Saleem)

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Khilāfah

It is an undeniable fact that for the past many centuries, the word *khilāfah* is being used as a term. However, it is certainly not a religious term. It needs to be understood that religious terms cannot be coined by scholars like Rāzī, Ghazālī, Māwardī, Ibn Ḥazm and Ibn Khaldūn. Similarly, not every word which Muslims start using in a particular sense becomes a religious term. On the contrary, religious terms can only be coined by God and His messengers, and are acceptable only when their meaning as a term is validated from the Qur'ān and Ḥadīth or other divine scriptures. Words such as *ṣawm*, *ṣalāh*, *ḥajj* and *'umrah* etc are regarded as religious terms because God and His messengers have accorded them this status, and have used them at various instances as such. On the other hand, the word *khilāfah* is a word of the Arabic language and means "vicegerency," "succession," and "political authority." It is used as a common Arabic word in one of these meanings at all places in the Qur'ān and Ḥadīth. It may be noted that certain verses of the Qur'ān have generally been cited in a way to convince people that they are used as terms. In all such verses, people have actually not translated the words *khilāfah* and *khilāfah* in the translations of the verses and have kept them intact in their original Arabic form. By doing this they want to give the impression that these words have been used as religious terms. If all

these verses are looked up in any authentic translation, one will be at a loss to understand how this inference was made, just as one of my critics seems to be at a loss at the inferences made by me!

Presented below are the Urdu translations of two very competent scholars:

1. Verse 40 of Surah Baqarah

And when your Lord said to the angels: “I have to make a *nā’ib*⁶⁶ in the earth.” (Shāh ‘Abd al-Qādir)

And when your Lord told the angels: “I will make a *nā’ib* in the earth.” (Maḥmūd al-Ḥasan)

2. Verse 26 of Sūrah Ṣu‘ad

O David! We have made you a *nā’ib* in the country; so govern people with justice. (Shāh ‘Abd al-Qādir)

O David! We have made you a *nā’ib* in the country; so govern people with justice. (Maḥmūd al-Ḥasan)

3. Verse 55 of Sūrah Nūr

God has promised that those among you who have accepted faith and have done righteous deeds, in fact He will in the coming times make them *ḥākim*⁶⁷ in the country the way He made *ḥākim* those prior to them. (Shāh ‘Abd al-Qādir)

66. The word *nā’ib* means “deputy” or “vicegerent.”

67. The word *ḥākim* means “ruler(s).”

God has promised those among you who have accepted faith and have done righteous deeds, in fact He will in the coming times make them *ḥākim* in the country the way He made rulers those prior to them. (Maḥmūd al-Ḥasan)

The words *nā'ib* and *ḥākim* used in these verses are translation of the Arabic words *khalīfah* and *istikhlāf*, and it is quite evident that they do not have any religious connotation in them except if a person claims that every word used in the Qur'ān becomes a religious term.

Similar is the case with the Aḥādīth and Āthār. The word *khalīfah* and all its derivatives are used in them in the same meanings as the ones stated earlier. So much so, in one Ḥadīth,⁶⁸ the word *khalīfah* is used for God Himself in the meaning of “successor.” It is for this very reason that when meanings such as “rightly guided government” or “government in accordance with the way of prophethood” need to be expressed, then words such as *rāshidah* and *'alā minhāj al-nubuwwah* have to be appended with the word *khilāfah*. By regarding such appended words to be understood with the word *khilāfah*, our scholars have made *khilāfah* a term. As such, it certainly is a term of political science and sociology of the Muslims just as the words *fiqh*, *kalām*, *ḥadīth* and other similar ones have become terms, but it cannot be regarded as a religious term. No one except God and His Messenger have the authority to coin a religious term. This is solely their prerogative. If some word is regarded as a religious term, then it has to be deduced from the

68. Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 2, 948, (no. 1342).

words of these two authorities. It cannot be adduced from works like the *Muqaddimah* of Ibn Khaldūn.

As far as the view is concerned that according to Islam there should be only one global government in the world, it is evident to every person of learning that the Qur'ān is absolutely devoid of any such directive. Two Aḥādīth are, however, cited in favour of this view. One of them is: God's Messenger (sws) is reported to have said that prophets ruled the Israelites; so, when one of them passed away, another would take his place; but there is no prophet after me; however, there will be rulers and they will be plenty. It was asked: "What is your directive about them O Prophet!" He replied: "Fulfil your oath of allegiance with the first one and then with the one who is the first after him."⁶⁹ The second Ḥadīth is: "When the oath of allegiance is pledged to two rulers, kill the second one."⁷⁰ Though this second narrative is not sound as far as its chain of narration is concerned, yet even if it is regarded to be correct, it is an incontestable reality that none of these Aḥādīth state in any sense what has been derived from them. What is said in these narratives is that if Muslims pledge their oath of allegiance to a ruler and then another person rebels against him and invites people to pledge allegiance to him, then each Muslim should adhere to his first oath of allegiance. Moreover, if the second person claims to be their ruler and some people even pledge their oath of allegiance to him, then he should be

69. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1273, (no. 3268); Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1471, (no. 1842).

70. Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1480, (no. 1853).

executed.

Such is the nature of these directives that their cogency can be made evident to every person. Thus, after the demise of the Prophet Muḥammad (sws) when a member of the Anṣār tribe suggested that a ruler each from the Anṣār and the Muhājirūn should be appointed, ‘Umar (rta) on this very principle opined that two swords cannot exist in one sheathe, and Abū Bakr (rta) also cautioned people at this instance that a state can only have one ruler. This is because such an arrangement will result in severe differences, disorder instead of order will arise and the discipline of the state will be ruined, and instead of [following] the way on which the Prophet (sws) left his people this religious innovation that one state will be governed by two rulers will emerge.⁷¹

If the ascription of these Aḥādīth to the Prophet (sws) is correct, then they imply what has been explained above. No logic or reasoning can deduce from them that Islam has directed its followers to set up a single government in the whole world. Similarly, no reasoning can deduce from these narratives that if the adherents of Islam are able to convert the majority of people of other countries to Islam, then they cannot set up their own government and if they do so, as in the case of today’s fifty odd Muslims countries, they will be regarded as sinners.

Scholars of Islam must bear in mind that the precepts of God’s religion must remain pure and unaltered. No

71. Abū Bakr Aḥmad ibn al-Ḥusayn al-Bayhaqī, *Al-Sunan al-kubrā*, vol. 8 (Makkah: Maktabah dār al-Bāz, 1994), 145, (no. 16326-16327).

scholar, jurist or Ḥadīth doctor has the authority to make people liable for a directive for which the Almighty has not made them liable. Hence I have written and would like to repeat that the establishment of United States of Islam based on the union of countries in which Muslims are in majority can be the desire of every person and we can also strive to fulfil this desire, but this view has no basis that such a union is a directive of the Islamic *sharī'ah*, and if Muslims defy this, they will be guilty of committing a sin.

(Translated by Dr Shehzad Saleem)

State and Government

State and government are two separate entities. In the terminology of political science, a state signifies the political organization of a society, while a government refers to those in authority; they are responsible for running and managing the affairs of the state. Consider first the state. The types of state which have as yet emerged are primarily three:

First, the state founded in the Arabian Peninsula. The Almighty made it specific for His own self after He Himself had ascertained its boundaries. Thus, at His behest the universal centre of His worship and preaching was set up in Arabia, and at the end of the seventh century AD it was declared through Muḥammad (sww): لا يجتمع فيها دينان (no non-Muslim can become its citizen till the Day of Judgement).⁷² Earlier, the same status was enjoyed by Palestine for centuries. The addressees of Islam and the Islamic *sharī'ah* here too are individuals in their various capacities. However, if for such a state it is said that its religion is Islam and only Islam shall reign in it, then this statement is very comprehensible on all grounds. It cannot be objected to.

Second, the states whose boundaries would be determined by their conquerors. They would govern

72. Abū 'Abdullāh Mālik ibn Anas, *Mu'aṭṭā'*, vol. 2 (Cairo: Dār iḥyā' al-turāth al-'arabi, n.d.), 892, (no. 1584).

them by making their inhabitants subservient to them. In such states, the religion of the royal family or of the ruler would be considered as the religion of the state. Disregarding whether their birth was legitimate or illegitimate, if these states are dubbed as Muslim, Christian or Communist states, then this too cannot be regarded as incomprehensible.

Third, the nation-states of the modern era whose boundaries are ascertained by international treaties and which become a source of nationhood themselves for their citizens as soon as they come into existence. Thus in spite of having commonality or diversity in colour, ancestry, language and culture they call themselves Egyptians, Americans, Afghans and Pakistanis and express their nationhood in this respect. No one is superior or subservient here. All, in fact, are regarded as equal citizens in all respects and in this capacity participate in the affairs of the state.

It is about this third type of states that I had written⁷³ that they can have no religion. Pakistan is an example of such a state. Everyone knows that it was not created from a divine decree so that like Arabia it only belongs to Muslims nor did Muslims after conquering it make its non-Muslim inhabitants subservient to them nor did these inhabitants become the citizens of this state by virtue of a pact with the Muslims. They have remained the inhabitants of this land for centuries the way Muslims have been and just as this state belongs to Muslims it also belongs to non-Muslims. India was not

73. Reference is to the article: "Islam and the State: A Counter Narrative."

divided on the basis that one part of it will belong to the Muslims and the other part to Hindus and people of other religions shall be subservient to them. The principle of this division was that areas of British India in which Muslims exist in majority shall be made a separate country and the rulers of the principalities would have the liberty to either remain free or become part of India or Pakistan regardless of whether their public has a majority of Muslims or of Hindus or of any other religious denomination. If, on the authority of the majority, such a state is regarded as a Muslim or a Christian or a Hindu one, then this will be mere coercion and oppression which cannot be endorsed by any person who has been directed by his Lord to adhere to justice at all cost and to bear testimony to the truth, even if this testimony goes against his own people. It is essential that now this testimony in favour of the non-Muslims of Pakistan be penned down in historical records. This is actually an evidence of the same fact which the founder of Pakistan, Quaid i Azam Muhammad Ali Jinnah had explained while addressing the Constituent Assembly on 11 August 1947. He had declared:

You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State. As you know, history shows that in England, conditions, some time ago, were much worse than those prevailing in India today. The Roman Catholics and the Protestants persecuted each other. Even now there are some

States in existence where there are discriminations made and bars imposed against a particular class. Thank God, we are not starting in those days. We are starting in the days where there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens and equal citizens of one State. The people of England in course of time had to face the realities of the situation and had to discharge the responsibilities and burdens placed upon them by the government of their country and they went through that fire step by step. Today, you might say with justice that Roman Catholics and Protestants do not exist; what exists now is that every man is a citizen, an equal citizen of Great Britain and they are all members of the Nation.

Now I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.⁷⁴

A question that can be raised on this is: does Islam acknowledge such a state? I had tried to answer this question by saying that Islam addresses the rulers of a society.⁷⁵ If they are Muslims, then they are the real

74. http://www.pakistani.org/pakistan/legislation/constituent_address_11aug1947.html

75. Reference is to the article: "Islam and the State: A

addressees of Islam's directives related to the collectivity. Islam has not given any directive to Islamize a state. Thus its followers can live as citizens in such nation-states and as a nation on the basis of nationhood the way they currently live in many states. Nothing in this is against Islam and the Islamic *sharī'ah*.

This is my stance regarding the nation-states of these times.

Consider next the government. Only two statements endorsed by knowledge and reason can be given about it: first, the rulers of a state will be chosen by the Almighty, and second, they will be chosen by the inhabitants. After the termination of the institution of prophethood the first of the above options is not possible. Only the second one remains. Its essential consequence is that the majority will have the right to rule. If Muslims have this majority and if on its basis they become the rulers of a state, then it is their democratic and human right that if their religion has given them a directive regarding the collectivity, then they should follow it and also decide all matters of the followers of this religion in accordance with the *sharī'ah* revealed by God through His last prophet. It is precisely this what the Quaid e Azam implied when he would speak of Islam, Islamic civilization and the Islamic *sharī'ah*.

The relationship of the *sharī'ah* with the nation-states of today is of the nature just described. I had endeavoured to put across this very understanding⁷⁶

Counter Narrative.”

76. Ibid.

Thus, in accordance with this understanding, I had also presented a comprehensive list of directives of the *sharī'ah* that relate to the collectivity. I had also written that Muslims have been given these directives with the warning that those who do not accept the verdicts of the Book of God after acknowledging it will be regarded as wrongdoers (*ẓālim*), defiant (*fāsiq*) and disbelievers (*kāfir*) on the Day of Judgment. Men of learning can differ with the list I have compiled and also alter it. However, if even after understanding this difference between state and government and after viewing this list they claim that I have confined the *sharī'ah* to an individual or negated all directives that relate to the spheres of politics, economics and the social set-up and they are also not feigning ignorance, then I dare say that they have not understood my views on this topic at all.

(Translated by Dr Shehzad Saleem)

Mosques

Mosques have a compelling influence in the Muslim society. Considering this extraordinary importance of the Mosque pulpit, the Prophet (sws) set the rule that none other than the heads of the state and their viceroys may lead the Friday Congregation and deliver a sermon on the occasion. The service cannot legitimately be assumed by an individual on his own accord. However, when the ruler is not able to fulfil his duty in this regard, under a valid excuse, individual scholars can take his stead and lead the congregation and deliver the sermon that too with the express will and permission by the authorities.

This norm established by the last Messenger of God indeed indicates that, in the true religion of God, the hub of the authority is the mosque. There is no Pope in Islam. Nor a Brahman. Muslims choose their political leadership and expect from their rulers to lead the worship rites and rituals. This abolishes difference between religion and politics forever.

The caliphate established and run by the pious Companions (rta) of the Prophet (sws) followed this sunnah with all its spirit and in perfect grandeur. The saddest tragedy in the Muslim *ummah* did not, however, wait long. Marred by unworthy deeds, the subsequent rulers were no longer able to face the public in the weekly congregations. They had to relinquish the pulpit of the mosques to the clergy. A direct consequence of

this failure on the part of the rulers has been that the religion was denuded of its grandeur and politics its beauty. The party that merited honour and prosperity has remained subservient for centuries. Contrarily, the party which should have remained subservient to has got out of line to the extent that any effort to bend it down to its original position is feared to face myriad problems. Mosques are now fortresses controlled by the sects. The leaders of such sects occupying the fortresses safely hurl stones at one another. The facility of the pulpit on the Friday Congregation yields great power to the clergy. Our society has reaped a strong faction of the professional clergymen which is literally a black spot on Muslim scholarship. When directed at the opponents the tongues of the clergy spawn poisonous snakes which shower lethal secretion. Every caller to the truth falls victim to them. They spare no one. Research and education are always their most favourite victims. Mosques are open and accommodating for only the preaching of heresies and sectarianism. They are mostly closed to the propagators of the pure message of the religion based on the Qur'ān and the Sunnah. It has been made impossible for a true and honest scholar of Islam to make the mosque a centre of his preaching and fulfil his duty to propagate the religion under the command of God.

This awful misery prevailing in our mosques is appreciated by all possessed of understanding. Correction and reforms are possible. But the only way to achieve this is to adopt the Sunnah of the Prophet (sws) introduced in the beginning of this essay. A positive effort in that front, in my view, requires the following

gradual steps:

1. The headquarters of all the administrative units in the country are shifted to the central congregational mosques in the locality. Administrative units are decided and categorized keeping in consideration the objective that the central congregational mosque in a locality fulfils all the needs and requirements of the local populace.

2. Offices and courts necessary for an administrative unit are set up beside the mosque in every centre.

3. In the central and provincial capitals one particular mosque is declared the central congregational mosque.

4. The head of the state takes the responsibility to deliver the Friday Sermon and lead the congregation in the main mosque of the central capital. Similarly, in the provincial capitals, the governors lead the prayer and deliver the sermon. In the small administrative units, the representatives of the state and government officials discharge this duty.

5. Friday congregations are banned in any other mosque.

6. Government should manage and administer the mosques.

7. Every scholar is given the right to hold classes and gatherings in the mosque with a view to educate and train the masses and deliver sermon of moral and religious teachings according to his understanding and views.

(Translated by Tariq Mahmood Hashmi)

“Their System is based on their Consultation”⁷⁷

According to the Qur’ān, the system of government of an Islamic State is based on the principle: وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ (And their system is based on their consultation, (42:38)). The extensive meaning this short verse encompasses and the guidance obtained from it about the political set-up envisaged by Islam are detailed out below.

The first word that occurs in the verse is *أَمْرٌ* (*amr*). The word *amr* has many meanings in Arabic. Anyone who has a linguistic appreciation knows that for all such words the implied meaning is determined from the context in which they are used. Before we ascertain its implied meaning in the above verse, we shall examine its various connotations in Arabic.

In Yazīd ibn al-Jaham al-Hilālī’s following couplet it means “to urge” or “to advise”.⁷⁸

لقد امرت بالبخل امر محبدا

فقلت لها: حتى على البخل احدا

Laqad amarat bilbukhli ummu muḥammadi

77. The Qur’ān (41:38).

78. Yaḥyā ibn ‘Alī ibn Khaṭīb al-Tabrīzī, *Sharḥ Dīwān al-ḥamāsah li Abī al-Tammām*, vol. 2 (Beirut: Dār al-qalam, n.d.), 340.

Fa qultu lahā: huththī ‘alā al-bukhli ahmadā

(Umm Muḥammad urged me to be stingy; so I said to her: “If you must urge someone to be stingy then let it be your son Ahmad.”)

‘Amr ibn al-Ṣabghah al-Raqqāshī uses it in exactly the same way we use “matters” for our general affairs of life.⁷⁹

الايقل من شاء ما شاء انبا

يلام الفتى فيها استطاع من الامر

alā liyaqul mān shā’a mā shā’a innamā

Yulāmu al-fatā fīmā istaṭā’a min al-amri

(Let anyone say what he likes, for a young man can only be reproached in matters which are under his control.)

In Abū Ṣakhar al-Hudhalī’s following couplet, it denotes “commandments and authority”.⁸⁰

اما والذى ابكى واضحك والذى

امات واحيا والذى امره الامر

Amā wa alladhī abkā wa aḍhaka wa alladhī

Amāta wa aḥyā wa alladhī amruhu al-amru

(Listen! By Him Who made us weep and laugh, Who gave death and life and Whose commandments are the real commandments.)

79. Ibid., vol. 2, 162.

80. Ibid., vol. 2, 66.

Ṣafīyyah bint ‘Abd al-Muṭṭalib uses it in a way in which together with “commandments and authority” it connotes “affairs of state”:⁸¹

الامن مبلدغ عنى قريشاً

فقيم الامر فينا والإمار

‘alā man mublighuḥ ‘annā Qurayshaḥ

Fa fīmā al-amru fīnā wa al-imārū

(Hark ! who will deliver my message to the Quraysh that as they do not accept our social position, so they should tell us that why are the affairs of state in our hands and why are we considered worthy of consultation?)

In the Qur’ān also, it has been used in all these meaning, and at every instance it is the context which determines the meaning that is implied. In the verse of Sūrah Shūra under discussion, it is quite evident from its context and placement that here it means “system.” This meaning has been incorporated in it from the depth found in its general meaning of “directive.” When the word “directive” becomes related to people, it prescribes certain limits for itself and establishes certain rules and regulations. In such cases, it implies both the directives which emanate from political authority and the collective affairs. Thus a little deliberation shows that the English word “system” is used to convey the same meaning.

Since the Qur’ān has not specified it by any other adjective except by appending it to a pronoun, all sub-systems which are part of the political system must be

81. Ibid., vol. 2, 276.

considered included in its connotation. In fact, all affairs of state like the municipal, national and provincial affairs, political and social directives, rules of legislation, delegation and revocation of powers, dismissal and appointment of officials, interpretation of Islam for the collective affairs of life – all of them fall under the principle laid down in this verse. In other words, no area or department under an Islamic government can be beyond the jurisdiction of this principle.

Next comes the word شُورَى (*shūrā*). It is a verbal noun (*maṣḍar*) of the category فَعْلَى (*fu‘lā*) and means “to consult.” Owing to the fact that it occurs as an enunciative (*khavar*) in the given verse, the meaning of the verse is not the same as of the verse: شَاوَرَهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ (Consult them in the affairs of the state and when you reach a decision, put your trust in God, (3:159)), which is often quoted as its parallel. To convey the same meaning as this verse, the words should, perhaps, have been something like وَفِي الْأُمُورِ يُشَاوَرُونَ (And in the affairs [of state] they are consulted). In this case, it would have been necessary that in the whole society the rulers and the ruled be distinct. The ruler in such a case would have to be divinely appointed or nominated by an innocent *Imām* or be someone who had seized power by force. Through whatever means he reached the position of head of state, he would have only been bound to consult people in matters of national interest before forming his own opinion. He would not have been bound to accept a consensus or a majority opinion. Acceptance or rejection of an opinion would have rested on his discretion. He would have all the right to accept a

minority opinion and reject a majority one.

However, the style and pattern of the words **أَمْرُهُمْ شُورَىٰ بَيْنَهُمْ** (their system is based on their consultation) demands that even the head of an Islamic State be appointed through consultation; the system itself be based on consultation; everyone should have an equal right in consultation; whatever is done through consultation should only be undone through consultation; everyone that is part of the system should have a say in its affairs, and in the absence of a consensus, the majority opinion should decide the matter.

The difference in meaning of the two verses can be appreciated if the following example is kept in mind. If it is said: "The ownership of this house shall be decided after consulting these ten brothers," then it means that only the ten brothers have the authority to make decisions and the opinion of any one of them cannot prevail over the others. If all of them do not agree on the matter, a majority opinion would be decisive. But, if the above sentence is changed a little to: "In deciding the ownership of this house, these ten brothers shall be consulted." then this sentence only means that someone else has the final say. It will be his opinion which will be carried out in the end. The only thing he must do is to consult the ten brothers before forming his own opinion. Obviously, he cannot be forced to accept the consensus or majority opinion of the brothers.

Since, in the opinion of this writer, the collective system of the Muslims is based on **أَمْرُهُمْ شُورَىٰ بَيْنَهُمْ** (their system is based on their consultation), the election of their ruler as well as their representatives must take place through consultation. Also, after assuming a position of

authority, they will have no right to overrule a consensus or a majority opinion of the Muslims in all the collective affairs.

Mawlānā Abū al-A‘lā Mawdūdī comments on this verse in the following words:

The words **أَمْرُهُمْ شُورَىٰ بَيْنَهُمْ** (their system is based on their consultation), by their nature and scope entail five things:

First, people whose interests and rights relate to the collective affairs should be given the freedom to express their opinion, and they should be kept totally aware of the actual way in which their affairs are being run; they should also have the right to object and to criticize if they see anything wrong in the way their affairs are being conducted and the right to change those in authority if the faults are not rectified. It is outright dishonesty to forcibly silence people or to run affairs without taking them into confidence. No one can regard this attitude to be in accordance with this verse.

Second, the person who is entrusted to run the collective affairs of the people should be chosen through their absolute free consent. Consent obtained through force and intimidation, greed and gratification, deception and fraud is no consent at all. The ruler of a country is not one who obtains this position by hook or by crook; the real ruler is the person whom people choose freely without any compulsion.

Third, people chosen for consultation should enjoy the confidence of the majority. Consequently, those who are worthy of consultation can in no way be thought to enjoy the confidence of the people in the truest sense if they acquire this position through force, extortion, fraud or by leading people astray.

Fourth, people who are consulted must express their opinions in accordance with their knowledge, faith and conscience and should have complete freedom for such expression. If, because of fear, greed or some prejudice people are led to give opinions which are against their belief and conscience, then this is disloyalty and infidelity, and is a negation of the principle of consultation.

Fifth, a decision which is made through the consensus or majority opinion of the members of the *shūrā* or which has the mandate of the people behind it must always be accepted. Because if one person or group insists on an opinion, then consultation becomes useless. The Almighty has not said: "They are consulted in their affairs;" on the contrary, He has said: "Their system is based on their consultation." Merely consulting people does not fulfil this directive; it is necessary that a consensus or majority opinion be considered as decisive in running the affairs.⁸²

82. Abū al-A'ālā Mawdūdī, *Tafhīm al-Qur'ān*, 3rd ed., vol. 4 (Lahore: Idārah tarjumān al-Qur'ān, 1984), 509-510.

This principle of consultation as laid down by the Qur'ān is also in accordance with the established norms of sense and reason. No Muslim can be free of faults or shortcomings. He can be the most distinguished as far as piety and knowledge are concerned; he can be the most suitable for the position of authority he holds and can even consider himself so. But even with these abilities, he cannot attain the position of head of state without the general opinion of the Muslims. Also, earning this position after being elected through a majority mandate does not suggest that he cannot err or has the prerogative to overrule a consensus or a majority opinion of the authorized people. The Prophet (sws) had this prerogative because he, being divinely guided, could not err. Even so, not one example can be cited from history in which he ignored a majority opinion in favour of his own.

A Muslim ruler is indeed only one individual and everyone will acknowledge that the opinion of a group of people has more chances of being correct than that of a single person. A God-fearing Muslim ruler should regard his own opinion in the way a great jurist has expressed: "We consider our opinion as correct but concede the possibility of an error, and consider the opinion of others as incorrect but concede the possibility of its correctness."

Moreover, if the people consulted know that even their consensus and majority opinion have the possibility of being rejected, they would not agree to offer their opinion in the first place. Even if forced to do so, they would never take serious interest in it. They would never deeply reflect on the issue under discussion. They would

reluctantly come to sessions conducted for consultation only to leave disappointed. They would never have mental and emotional involvement with the political system or the various institutions of the state. While delineating on this psychological aspect, Abū Bakr al-Jaṣṣās writes:

وغير جائز أن يكون الامر بالمشاورة على جهة تطييب نفوسهم ورفع
أقدارهم ولتقتدى الامة به في مثله لانه لو كان معلوما عندهم في
استنباط ما شوروا فيه و صواب الرأي فيبأسوا عنه ثم لم يكن في
ذلك معمولاً عليه ولا متلقى منه بالقبول بوجه لم يكن في ذلك تطييب
نفوسهم ولا رفع لأقدارهم بل فيه إيحاشهم وأعلامهم بأن أراءهم غير
مقبولة ولا معمول عليها فهذا تأويل ساقط لا معنى له فكيف يسوغ
تأويل من تأوله لتقتدى به الامة مع علم الامة عند هذا القائل بأن
هذه المشورة لم تفد شيئاً ولم يعمل فيها بشيء أشاروا به

It is not proper to consider that this directive of consultation is merely to please and honour the Companions of the Prophet nor is it proper to think that it has been given so that the *ummah* should follow the Prophet in this regard in such matters. On the other hand, if the Companions knew that their opinion would neither be followed nor held in any regard after they had used all their intellectual abilities to form it, this would not have pleased or honoured them; instead they would have been totally discouraged, considering that their opinions were neither good enough to be accepted nor fit enough to be followed. Therefore, such an interpretation of this

directive of consultation is baseless and cannot be accepted. Furthermore, how can we regard as correct the interpretation that this directive was merely given to teach the Prophet's way to the *ummah*, when actually the person who says this himself knows that the *ummah* is aware of the fact that giving such an opinion was neither of any use nor was it followed in a particular matter?⁸³

Here, there is the possibility that someone might quote the offensive launched by the caliph Abū Bakr (rta) against those who in his times had desisted from paying *zakāh* and his attitude about the departure of the army led by Usāmah ibn Zayd as testimony against what has been said above. Consequently, it is necessary that the true nature of these two incidents be explained. Imām Amīn Aḥsan Iṣlāhī comments on these in the following words:

Deliberation on the action taken against those who were evading *zakāh* reveals a few facts:

First, this matter had nothing to do with the caliph or the members of the *shūrā*. Abū Bakr (rta) had never presented this issue in the *shūrā*. Matters in which there is no direct guidance provided by the Qur'ān and Sunnah or those which relate to the general well-being of the public are generally presented in the *shūrā*. The matter of *zakāh* evasion has been explicitly dealt with in the Qur'ān. In an Islamic

83. Abū Bakr Aḥmad ibn 'Alī al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, vol. 2, (Beirut: Dār al-kitāb al-'arabī, 1997), 41.

state, people lose their rights of Muslim citizenship if they refuse to pay *zakāh* to the public treasury. This is categorically laid down in the Islamic *sharī'ah*. Therefore, Abū Bakr (rta) was not required to present this matter before the *shūrā*. On the contrary, it was his responsibility as a caliph to implement a directive of the Qur'ān. Consequently, this is precisely what he did. An example to illustrate this even further is that if a group of people creates a law and order situation in an Islamic state by going on a rampage of killing people, then the caliph is not required to ask the permission of the *shūrā* to deal with this nuisance; it is indeed his duty to freely use his authority to implement the punishment prescribed by the Qur'ān for such criminals.

Second, those who had expressed their reservations on this action of the caliph Abū Bakr (rta) did so because they had misunderstood a Ḥadīth of the Prophet (sws). Abū Bakr (rta) himself explained this Ḥadīth in conjunction with another detailed Ḥadīth, which he himself had heard from the Prophet (sws). This satisfied the people [and they never insisted on calling a meeting of the *shūrā*]. It is obvious that a Ḥadīth which is narrated by Abū Bakr (rta) himself is extremely reliable and therefore has great importance.

Third, the declaration of the caliph Abū Bakr (rta) that he would fight alone with these evaders of *zakāh* if he finds no one to fight with them is not an

expression of veto from him; it is on the contrary an expression of the responsibility imposed on a caliph by Islam in implementing a definite and explicit directive. In Islam, the real responsibility of a caliph in implementing the directives of God and His Prophet (sws) is that he should try his utmost in their implementation even if no one supports him. He is not required to be bound by the opinion of the people in categorical matters of the *sharī'ah*. Only matters in which there is no direct guidance provided by the Qur'ān and Sunnah or those which relate to the general well being of the public need the approval of the people eligible for consultation.

Similar is the case of dispatching the army led by Usāmah (rta). All arrangements for this had already been completed in the life of the Prophet (sws) himself. It is he who had selected the people who would constitute this army. The Prophet (sws) himself had hoisted the flag of the army. If the Prophet (sws) had not fallen severely sick, the army would have been on its way. The Prophet (sws) could not recover from his sickness and died. Abū Bakr (rta) then assumed charge as caliph. He quite naturally thought that his greatest responsibility as a caliph was to send the army which had been prepared by the Prophet (sws) and about whose early departure the Prophet (sws) was very anxious. As the caliph, it was his great honour as well as his primary responsibility to execute a prior directive of the Prophet (sws). He was not required to consult his people for this because all matters concerning

the army had already been settled by the Prophet (sws). As the successor to the Prophet (sws), it was his duty to enforce these directives instead of amending them. So, when some people, because of the peculiar circumstances which had arisen, regarded this campaign to be against the call of the day, Abū Bakr (rta) asserted unequivocally that he would not furl the flag which had been unfurled by the Prophet (sws).

Consequently, these two incidents can in no way be presented as evidence to the fact that a ruler can veto the decision of his *shūrā* members. The only thing to which they bear testimony is that in the enforcement of explicit directives of God and His Prophet (sws), no ruler is required to consult his *shūrā* members. In fact, his real duty is to implement them.⁸⁴

According to the Qur'ānic directive of *أَمْرُهُمْ شُورَىٰ بَيْنَهُمْ* (their system is based on their consultation), the details of the methodology adopted by the Prophet (sws) and his Companions (rta) for the participation of the Muslims in the affairs of the state in their own times, keeping in view their social conditions, are based on the following two points:

I. Muslims shall be consulted in the affairs of state through their leaders in whom they profess confidence. It is recorded:

84. Amīn Aḥsan Iṣlāḥī, *Islāmī Riyāsat*, 1st ed., (Lahore: Makatbah markazī anjuman-i khuddām al-Qur'ān, 1977), 37-37.

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ حِينَ أَذِنَ لَهُمُ الْمُسْلِمُونَ فِي
عَثَقِ سَبْيِ هَوَازِنَ إِنِّي لَا أَدْرِي مَنْ أَذِنَ مِنْكُمْ مِمَّنْ لَمْ يَأْذَنْ فَأَرْجِعُوا حَتَّى
يَرْفَعَ إِلَيْنَا عَمَّاؤُكُمْ أَمْرَكُمْ

When Muslims at the Prophet's behest consented to free the prisoners of Hawāzin, the Prophet said: "I could not know who among you has shown his consent and who among you has not. Therefore, go back, and send your leaders that they may inform us."⁸⁵

It is narrated about Abū Bakr (rta):

فَإِنْ أَعْيَاهُ أَنْ يَجِدَ فِيهِ سُنَّةً مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ جَمَعَ
رُؤَسَ النَّاسِ وَخِيَارَهُمْ فَاسْتَشَارَهُمْ فَإِذَا أَجْتَمَعَ رَأْيُهُمْ عَلَى أَمْرٍ قَضَى بِهِ

Then if he could not find a practice of the Prophet in this matter, he would gather the influential among his people and consult them, and when they would reach a conclusion, he would decide according to it.⁸⁶

During the time of the Prophet (sws), the tribal chiefs held this position of trust. The people of the tribes of Aws, Khazraj and Quraysh professed confidence in every sense of the word in their respective leaders. Indeed, these leaders were neither elected to this position

85. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 5, 2625, (no. 6755).

86. Abū Muḥammad 'Abdullāh ibn 'Abd al-Raḥmān al-Dārimī, *Sunan*, 1st ed., vol. 1 (Beirut: Dār al-kitāb al-'arabī, 1407 AH), 69, (no. 65).

nor was an election needed in the social conditions which existed at that time. It was, because of their social status, intellect and experience that their people turned to these chiefs in all their political and collective affairs. Before the advent of Islam, it was their tribes' complete faith in them which conferred this position on them and this state continued even after they accepted Islam. However, before accepting Islam, a person could say that his tribal chief had seized power by force and that he was not in a position to show his mistrust in him, but after accepting faith every person from among the Muslim public could express his lack of confidence in his chief in front of the Prophet (sws). If the majority in a tribe had expressed their lack of confidence in their leader, he could certainly not have retained his position.

The Prophet (sws) in his own times made all the important decisions after consulting these tribal chiefs and during the time of the Rightly Guided Caliphate also, the position of trust commanded by them continued.

While narrating the proceedings of a *shūrā* called to session in the time of the caliph Umar's (rta) rule to decide the fate of the conquered lands of Syria and Iraq, Qāḍī Abū Yūsuf writes:

قالوا: فاستشر قال: فاستشار المهاجرين الاولين فاختلفوا فأما عبد الرحمن بن عوف رضى الله عنه فكان رأيہ إن تقسم لهم حقوقهم ورأى عثمان وعلی وطلحة وابن عمر رضى الله عنهم رأى عبر فارسل إلى عشرة من الانصار: خسة من الاوس وخسة من الخزرج من كبارائهم وأشرفهم

The people said: you should now seek formal

consultation. At this, he consulted the early Muhājirūn and there existed a difference in their opinions. ‘Abd al-Raḥmān ibn ‘Awf maintained that the land should be rightfully distributed among them, while ‘Uthmān, ‘Alī, Ṭalhah and Ibn ‘Umar were in agreement with ‘Umar’s view. Then he called ten people from the Anṣār: five from the leading people of the Aws and five from those of the Khazraj.⁸⁷

‘Umar (rta) while explaining his own position in relation to the members of the *shūrā* said:

أنى لم أزعجكم ألا لان تشتركونا فى أمانتى فيما حلت من أموركم فأنى
واحد كأحدكم ... ولست أريد أن تتبعوا هذا الذى هوأى

I have bothered you with the burden of coming here so that you can help me in my responsibilities owing to this position you have entrusted me with. I am a human being just like you ... and do not want that you follow my desires in these affairs.⁸⁸

The manner in which such sessions would be held was that first a person would loudly announce: *الصلوة جامعة* (*al-ṣalāh jāmi‘ah*); which meant that people should gather for prayer. When people would gather, ‘Umar (rta) would pray two *rak‘āt*. He would then deliver a brief speech and would table the agenda on which he wanted to consult the people. The issues of the

87. Abū Yūsuf Ya‘qūb ibn Ibrāhīm ibn Ḥabīb ibn Sa‘d, *Kitāb al-khirāj*, 1st ed (Cairo: Al-Maktabah al-azhariyyah li al-turāth, n.d.), 35.

88. Ibid., 35-36.

conquered lands of Syria and Iraq and the participation of the caliph himself in the battle of Nihāwand were discussed and settled in these meetings. Similarly, the issues of the salaries of soldiers, appointment of representatives, organization of offices, freedom of trade for other nations and their taxes were all decided in these meetings. Balādhurī writes that there was another group of the leaders of the Muhājirūn (the ruling party) who would see to the day to day affairs of the country and would regularly assemble at the Masjid-i Nabawī for this purpose:

كان للمهاجرين مجلس في المسجد فكان عمر يجلس معهم فيه و
يحدثهم عما ينتهي إليه من أمور الافاق

In the mosque [of the Prophet], sessions of the Muhājirūn would be convened in which ‘Umar would sit and present to them all the happenings and events reported to him from the various parts of his empire.⁸⁹

II. The tradition was established that among the various groups present in an Islamic State, only that group assumed political authority which enjoyed the confidence of the majority of Muslims.

Before his death, the Prophet (sws) clarified that the Quraysh would be his successors and not the Anṣār:

إِنَّ هَذَا الْأَمْرَ فِي قُرَيْشٍ لَا يُعَادِيهِمْ أَحَدٌ إِلَّا كَبَّهُ اللَّهُ فِي النَّارِ عَلَى وَجْهِهِ

89. Aḥmad ibn Yaḥyā ibn Jābir Balādhurī, *Futūḥ al-Buldān*, (Qum: Manshūrāt al-Arummiyyah, 1404 AH), 266.

مَا أَقَامُوا الدِّينَ.

Our political authority shall remain with the Quraysh. In this matter, whoever opposes them as long as they follow Islam, God shall cast him face down in Hell.⁹⁰

Consequently, he told the Anṣār:⁹¹ قَدِّمُوا قُرَيْشًا وَلَا تَقْدِّمُوها (In this matter, bring forward the Quraysh and do not try to supersede them). The Prophet (sws) stated thus the reason for the decision he had declared:

النَّاسُ تَتَّبِعُ لِقُرَيْشٍ فِي هَذَا الشَّأْنِ مُسْلِمُهُمْ يُسْلِمُهُمْ وَكَافِرُهُمْ يَكْفِرُهُمْ

People in this matter follow the Quraysh. The believers of Arabia are the followers of their believers and the disbelievers of Arabia are the followers of their disbelievers.⁹²

Thus, the Prophet (sws) made it very clear that since the majority of the Arabian Muslims professed confidence in the Quraysh, they were solely entitled to take charge as the rulers of Arabia in the light of the Qur'ānic directive أَمْرُهُمْ شُورَى بَيْنَهُمْ (their system is based on their consultation), and that they would be passed on the political authority after the Prophet (sws) not because of

90. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 6, 2611, (no. 6720).

91. Abū al-Faḍl Aḥmad ibn 'Alī ibn Ḥajar al-'Asqalānī, *Al-Talkhīṣ al-Ḥabīr fī takhrīj aḥādith al-rāfi'ī al-kabīr*, vol. 2 (Beirut: Dār al-kutub al-'ilmiyyah, 1989), 96.

92. Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1451, (no. 1818).

any racial precedence or superiority, but only by virtue of this position.

Those who have studied the history of the Arabs know that before the advent of the Prophet (sws), the Quraysh were at the helm of the state's affairs and their leaders were considered as the leaders of the Arabs. After the battles of Badr and Uḥud, though several of their leaders had been killed, yet in the capacity of a party they enjoyed the confidence of all the Arabs. All their prominent people who had accepted faith were present in Madīnah and many of them had distinguished themselves in the service of Islam. It was these people who were called the Muhājirūn and after the general acceptance of faith by the Arabs their leaders enjoyed the same confidence as the influential Arabs in the pre-Islamic era. Hence, elections were not needed to confirm this reality. There was no room for a difference of opinion in the fact that the Quraysh had the popular support of the masses behind them and that no tribe could challenge this position of theirs.

There is no doubt that as far as Madīnah was concerned, the Anṣār under Sa'd ibn 'Ubādah (rta) and Sa'd ibn Mu'ādh (rta), the respective leaders of Aws and Khazraj, had more influence among the local population. They were no less than the Muhājirūn as regards the services they had rendered for the cause of Islam. They had offered their unconditional support and help to the Muhājirūn when the latter had migrated to Madīnah. Together with them, they had fought gallantly in the battles of Badr, Uḥud, Aḥzāb and Ḥunayn. The relationship of brotherhood and fraternity they had established with them was an exceptional one.

Particularly, the way they had offered them monetary assistance – to please the Almighty – bears no parallel in history. Had the Islamic State been confined only to Madīnah, it can be said with certainty that after the Prophet (sws), they would have assumed political authority. But after the conquest of Makkah, when a large number of Arabs of other territories accepted Islam, the political scene changed drastically. The extent of confidence commanded by the Muhājirūn of the Quraysh out-proportioned that of the Anṣār.

However, there was still a chance that owing to the perfectly natural emotions of tribal affiliation and owing to the spirit of outdoing each other in serving Islam, the Anṣār might have come forward and challenged the Quraysh. Particularly, the fact that they commanded more influence locally in Madīnah could have caused them to put undue trust in their strength. If such a situation, God forbid, had arisen the Munāfiqūn (Hypocrites) would have certainly tried to benefit from it, and keeping in view the social conditions which prevailed at that time, only a war could have settled their dissension.

Therefore, the Prophet (sws), sensing that this untoward situation might arise, decided once and for all the fate of this matter in his own life in the presence of Sa‘d ibn ‘Ubādah (rta), the supreme leader of the Anṣār. He is reported to have said: ⁹³ أَلَا نَسْأَلُ مِنْ قُرَيْشٍ ([After me], the political leaders should be from the Quraysh). Consequently, in the Thaqīfah of Banū Sā‘idah, when the leaders of the Anṣār were delivering stirring speeches to

93. Aḥmad ibn Ḥanbal, *Musnad*, vol. 3, 129, (no. 12329).

prove their entitlement to the leadership of the Arabs, Abū Bakr (rta) reminded them of the Prophet's above mentioned decision in the following words:

وَلَقَدْ عَلِمْتُمْ يَا سَعْدُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ وَأَنْتُمْ قَاعِدُ قُرَيْشٍ وَلَا هَذَا الْأَمْرُ فَبَرَّ النَّاسُ تَبِعُوا لِبَرِّهِمْ وَفَاجِرُهُمْ تَبِعُوا لِفَاجِرِهِمْ قَالَ فَقَالَ لَهُ سَعْدٌ صَدَقْتَ نَحْنُ الْوُزَرَاءُ وَأَنْتُمْ الْأَمْرَاءُ

O Sa'd! You know very well that the Prophet (sws) had said in your presence that the Quraysh shall be given the *khilāfah* because the nobles among the Arabs follow their nobles and their commoners follow their commoners. Sa'd replied: "What you say is correct, we are your advisers and you are our rulers."⁹⁴

In another report, the words are:

لَمْ تَعْرِفِ الْعَرَبُ هَذَا الْأَمْرَ إِلَّا لِهَذَا الْحَيِّ مِنَ قُرَيْشٍ

The people of Arabia do not acknowledge anyone's political leadership except that of the Quraysh.⁹⁵

After this verification by Sa'd ibn 'Ubādah (rta), the chief of the Anṣār, it became clear to those present that they had strayed from the right course in the heat of discussion and that the right course was to elect their ruler from the group which held majority in the public; that whoever would be elected would be the *khalīfah* of

94. Ibid., vol. 1, 5, (no. 18).

95. Ibid., vol. 1, 55, (no. 391).

the Muslims and it would be obligatory to obey him; that this course had been outlined by the Prophet (sws) himself and they should not adopt a different one.

The Rightly Guided Caliphate was also founded on the basis of this decision declared by the Prophet (sws). When the leaders of the Anṣār submitted to it, ‘Umar (rta), considering the delicacy of the situation which had arisen in the Thaqīfah, proclaimed the rule of Abū Bakr (rta) being sure of the fact that the leaders of the Quraysh would not differ with him and would, in fact, endorse his step. Later, he himself stated this reason for his step and warned that no one should dare present it as a violation of the Qur’ānic principle **أَمْرُهُمْ شُورَى بَيْنَهُمْ** (their system is based on their consultation):

فَلَا يَغْتَرَّنَ أَمْرُو أَنْ يَقُولَ إِنَّمَا كَانَتْ بَيْعَةُ أَبِي بَكْرٍ فَلْتَةً وَتَبَّتْ أَلَا وَإِنَّهَا
قَدْ كَانَتْ كَذَلِكَ وَلَكِنَّ اللَّهَ وَفَى شَرَّهَا وَلَيْسَ مِنْكُمْ مَنْ تَقْطَعُ الْأَعْنَاقُ
إِلَيْهِ مِثْلُ أَبِي بَكْرٍ مَنْ بَايَعَ رَجُلًا عَنْ غَيْرِ مَشُورَةٍ مِنَ الْمُسْلِمِينَ فَلَا
بُيَايَعُ هُوَ وَلَا الَّذِي بَايَعَهُ تَعَرَّةٌ أَنْ يُقْتَلَ

No one among you should have the misconception that the oath of allegiance to Abū Bakr took place suddenly. No doubt, the oath was pledged in this way, but the Almighty protected the Muslims from its evil consequences [which might have arisen] and remember! There is none among you like Abū Bakr, whose greatness cannot be surpassed. Now, if a person pledges an oath of allegiance to someone, without the opinion of the believers, no one should pledge allegiance to him as well as to whom he

[himself] pledged allegiance because by doing this both of them shall present themselves for execution.⁹⁶

At the time of the death of Abū Bakr (rta) also, the Muhājirūn of the Quraysh enjoyed the people's confidence. Since no other tribe of the Arabs including the Anṣār had challenged this position, they continued to hold their position of authority, and there was no need to turn to the general public in this regard. Therefore, the leaders of the Muhājirūn of the Quraysh nominated 'Umar (rta) as the new ruler and both the Anṣār and the Muhājirūn – the two big tribes of the Muslims – accepted the appointment. Consequently, without any difference of opinion, 'Umar (rta), in direct accordance with the Islamic constitution, assumed the position of *khilāfah*. Ibn Sa'd reports:

أن ابا بكر الصديق لما استعز به دعا عبد الرحمن ابن عوف فقال: أخبرني عن عمر الخطاب فقال عبد الرحمن ما تسألني عن أمر ألا وأنت اعلم به مني فقال أبو بكر: وان فقال عبد الرحمن: هو والله افضل من رأيك فيه ثم دعا عثمان بن عفان فقال: اخبرني عن عمر فقال: أنت اخبرنا به فقال عثمان: اللهم على به أن سيرته خير من علانيته وانه ليس فينا مثله

When ill-health overtook Abū Bakr and the time of his death approached, he summoned 'Abd al-Raḥmān ibn 'Awf and said: "Tell me about 'Umar ibn al-Khaṭṭāb." 'Abd al-Raḥmān replied: "You are asking me about something of which you know better." Abū Bakr said: "Although [this is correct

96. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 6, 2505, (no. 6442).

yet I want your opinion].” ‘Abd al-Raḥmān answered: “By God! He is even better than the opinion you hold about him.” Then he [Abū Bakr] called ‘Uthmān ibn ‘Affān and asked him: “Tell me about ‘Umar ibn al-Khaṭṭāb. ‘Uthmān replied: “You know him better than us.” Abū Bakr said: “Still! O Abū ‘Abdullāh! [I want your opinion].” [At this], ‘Uthmān answered: “Indeed, in my opinion, his inner-self is better than his outer-self and no one among us can parallel him.”⁹⁷

Ibn Sa‘d mentions that Abū Bakr (rta), besides these two, consulted all the prominent leaders of the Anṣār and the Muhājirūn:

وشاور معها سعيد بن زيد أبا العور وأسيد بن الحضير وغيرهما من
 المهاجرين والانصار فقال أسيد: اللهم اعلمه الخيرة بعدك يرضى للرضى
 ويسخط للسخط الذي يسر خير من الذي يعلن ولم يل هذا الامر أحد
 أقوى عليه منه

And he, besides these two, consulted Abū al-A‘war Sa‘īd ibn Zayd and Usayd ibn al-Ḥuḍayr as well as other prominent leaders of the Anṣār and the Muhājirūn, so Usayd said: “Indeed after you O Abū Bakr! I consider him the best. He is happy on happy occasions and sad on sad occasions. His inner-self is better than his outer-self. No one is more suited to bear the burden of this *khilāfah*.”⁹⁸

97. Ibn Sa‘d, *Al-Ṭabaqāt al-kubrā*, vol. 3, 199.

98. Ibid.

After this, Ibn Sa‘d reports that some people differed from Abū Bakr’s (rta) opinion but he satisfied them. He then called ‘Uthmān (rta) and said:

اكتب: بسم الله الرحمن الرحيم هذا ما عهد ابوبكر بن أبي قحافة في آخر
عهده بالدنيا خارجاً منها وعند أول عهده بالآخرة داخلها حيث
يؤمن الكافر و يوقن الفاجر و يصدق الكاذب انى استخلفت عليكم
بعدي عمر بن الخطاب فاسمعوا له وأطيعوا

Write: “In the name of God the Most Gracious, the Ever Merciful. This is the will of Abū Bakr ibn Abī Quhāfah which he made at the end of his worldly life, when he is about to leave it and at the beginning of his next life when he is about to enter it, at a time when disbelievers accept faith, the defiant express belief and liars speak the truth. I make ‘Umar ibn al-Khaṭṭāb your *khalīfah*. Therefore, listen to him and obey him.”⁹⁹

This letter was sealed. According to Abū Bakr’s (rta) directive, ‘Umar ibn al-Khaṭṭāb (rta) and Usayd ibn Sa‘īd (rta) accompanied ‘Uthmān (rta), who took the letter out to the people and said:

أتبايعون لمن في هذا الكتاب؟ فقالوا نعم

Will you pledge allegiance to the person in whose favor a will has been made in this letter. The people

99. Ibid., vol. 3, 200.

said: "Yes."¹⁰⁰

Ibn Sa'd reports:

فاقرؤا بذلك جميعاً ورضوا به وبايعوا ثم دعا ابوبكر عمر خالياً فأوصاه
ببأوصاء به

All accepted and agreed to pledge allegiance to 'Umar. Then Abū Bakr called 'Umar in solitude and gave him whatever advice he wanted to.¹⁰¹

When 'Umar ibn al-Khaṭṭāb (rta) was severely wounded and his death looked imminent, the political situation was still unchanged. The Muhājirūn of the Quraysh still enjoyed the majority mandate of the Muslims. Therefore, according to the Islamic constitution, only an election of a leader by the majority group was required. The people who held responsible positions asked 'Umar ibn al-Khaṭṭāb (rta), as reported by Ibn Sa'd:¹⁰² *أَلَا تَعْهَدُ إِلَيْنَا أَلَا تُؤَمِّرُ عَلَيْنَا* (Will you not leave a will for us? Will you not appoint a ruler for us?). 'Umar ibn al-Khaṭṭāb (rta), however, adopted another way: instead of appointing a *khalīfah* by consulting the *shūrā* members, as had been done by Abū Bakr (rta), he entrusted the matter to six prominent leaders:

أني قد نظرت لكم في أمر الناس فلم أجد عند الناس شقاقاً ألا إن

100. Ibid.

101. Ibid.

102. Ibid. vol. 3, 343.

يكون فيكم فان كان شقاق فهو فيكم وانما الامر الى ستة : الى عبد
الرحمن وعثمان وعلى والزبير وطلحة وسعد

I have deliberated on the matter of *khilāfah* and have reached the conclusion that there is no difference among the people in this affair as long as it is one of you. If there is any difference, it is within you. Therefore, this matter is entrusted to the six of you: ‘Abd al-Raḥmān, ‘Uthmān, ‘Alī, Zubayr, Ṭalḥah and Sa‘d.¹⁰³

What he meant was that since the people only looked to them for *khilāfah* and if they agreed to accept anyone among them as *khalīfah*, the people would not differ with their decision.

He further said:¹⁰⁴ قَوْمُوا فَتَشَاوِرُوا فَأَمْرُكُمْ عَلَيْكُمْ (rise, consult and make anyone amongst yourselves as the ruler). However, since there was a chance that some miscreants might create disorder or that these six might prolong matters, ‘Umar ibn al-Khaṭṭāb (rta) appointed the Anṣār as the custodians over the six because, being a minority group, they were not a party to the whole affair. Ibn Sa‘d narrates through Anas ibn Mālīk:

أرسل عمر بن الخطاب إلى أبي طلحة الأنصاري قبل أن يموت بساعة فقال:
يا أبا طلحة كن في خسين من قومك من الأنصار مع هؤلاء نفر:
أصحاب الشورى فانهم فيما احسب سيجتمعون في بيت أحدهم فقم على

103. Ibid., vol. 3, 344.

104. Ibid.

ذلك الباب بأصحابك فلا تترك أحدا يدخل عليهم ولا تتركهم يبضى
اليوم الثالث حتى يومروا أحدهم

‘Umar ibn al-Khaṭṭāb just before his death summoned ‘Abū Ṭalḥah Anṣārī. When he arrived, ‘Umar said: “Abū Ṭalḥah take fifty men from your tribe Anṣār and go to these people of the *shūrā*. I reckon they will be present at the house of someone amongst themselves. Stand at their door with your comrades and let no one go inside and do not give them more than three days for electing a leader.”¹⁰⁵

‘Umar ibn al-Khaṭṭāb (rta) instructed them in the following words about the leaders of the Anṣār:

احضروا معكم من شيوخ الانصار وليس لهم من أمركم من شيء
Call the leaders of the Anṣār to you, but they have no share in political authority.¹⁰⁶

Ibn Sa‘d reports that when all of them had assembled, ‘Abd al-Raḥmān ibn ‘Awf (rta) opined that three of them should withdraw themselves in favour of three others. Consequently, Zubayr (rta) withdrew in favour of ‘Alī (rta), and Ṭalḥah (rta) and Sa‘d (rta) withdrew in favour of ‘Uthmān (rta) and ‘Abd al-Raḥmān ibn ‘Awf (rta) respectively. Then he asked ‘Uthmān (rta) and ‘Alī (rta) to give him the right to decide, if he withdraws. When

105. Ibid., vol. 3, 346.

106. Abū Muḥammad ‘Abdullāh ibn Muslim in Qutaybah, *Al-Imāmah wa al-siyāsah*, vol. 1 (Beirut: Dār al-ma‘rifah, n.d.), 28.

both agreed, he said to ‘Alī (rta):

أَنْ لَكَ مِنَ الْقَرَابَةِ مَنْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالْقَدَمُ وَاللَّهُ عَلَيْكَ
لَنْ اسْتَخْلَفْتَ لَتَعْدِلَنَّ وَلَنْ اسْتَخْلَفَ عِثْمَانُ لَتَسْعَنَ وَلَتَطِيعَنَّ .

You have the honour of being among the earliest who accepted Islam as well as being a relation of the Prophet of God. By God! If you are entrusted with *khilāfah*, promise that you will rule with justice and if ‘Uthmān (rta) is made the *khalīfah*, you shall listen to him and obey him.¹⁰⁷

After ‘Alī (rta) agreed, he turned to ‘Uthmān (rta) and repeated what he had said; when both showed their approval, he said: “O ‘Uthmān! Extend your hand! When he did so, ‘Alī and others pledged their oath of allegiance to him.”¹⁰⁸

There can be two opinions about the *khilāfah* of ‘Alī (rta). This difference however, is not about any basic principle, but about whether the Muhājirūn of the Quraysh elected their leader with freedom or under coercion. This discussion is not relevant to our topic. Therefore, even if it is left out, the fact remains that throughout the period of the Rightly Guided Caliphate, power remained with those who commanded the majority support of the Muslims ie. the Muhājirūn of the Quraysh and that their prominent leaders elected the ruler. This is also a reality that all the four caliphs were elected basically by the same principle. They were

107. Ibn Sa‘d, *Al-Ṭabaqāt al-kubrā*, vol. 3, 339.

108. Ibid.

elected from the leaders of the majority group and all the leaders of the other groups were also consulted in this election. The only difference is that when they agreed on ‘Umar (rta), Abū Bakr (rta) himself enforced this decision, and ‘Umar (rta), when he found that their difference was between six eminent leaders, entrusted the responsibility of electing one from among the six on the six persons themselves.

(Translated by Dr Shehzad Saleem)

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Economic Issues

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The Question of Interest

If a person lends money to someone and then demands profit on it, then this is called “interest”. At first sight, there does not seem to be any difference between it and rent. However, a deep deliberation reveals the stark difference between the two: rented out items can be used while keeping them intact. However, money cannot be used in this way; it is in fact used up and after spending it, it is needed to be produced again. Therefore, if something in addition is demanded over the original amount, this in fact becomes an oppression. Since this difference between interest and rent is subtle, and human intellect can falter in understanding this difference, the Almighty has delineated the truth in this matter. In the *sharī‘ah* He has given mankind through his prophets, He has informed them that demanding an increase over the lent amount is unjust and hence not allowed. It is for this very reason that interest has remained prohibited at all times and in all the *sharī‘ahs* revealed by the Almighty. The Qur’ān has explicitly forbidden it. There is no difference of opinion in this matter.

However, the religious legality of the system of banking which prevails in our societies has recently come under discussion. It is contended that since the bank only receives a portion from the profit of a commercial venture it had financed on the basis of a loan

hence the very reason for which interest was regarded as prohibited does not exist in the banking system. This view has been put forth by some scholars of Egypt and Syria. Mawlānā Wahīd al-Dīn Khān (b. 1926 AD), a celebrated scholar and preacher from India too, has corroborated it to some extent in his book *Fikr-i Islāmī*. In my opinion, this view of the scholars can be considered intellectually convincing; however, it is essential for this that the following remedial measures be introduced in the banking system.

Firstly, if a commercial venture financed by a bank loan runs into losses or needs to be discontinued for some reason, the demand for profit by the bank should cease that very day. It should only demand the principal amount.

Secondly, if things are being sold on installments, then until these installments are complete, the bank should remain a partner in the ownership of the sold item, fulfil the rights of ownership and receive rent on it.

Thirdly, in a loan given for non-commercial purposes except for inflationary adjustments, no interest should be demanded on it.

If these measures are taken, then the banking system becomes just to a great extent. However, there are two more questions which arise.

Firstly, what is the ruling on people who do not charge interest but procure an interest-bearing loan to meet their personal and business needs?

Secondly, should saving schemes through which governments acquire loans for their needs from people and also give them profit be regarded as prohibited?

The answer to the first question is that no objection can

be raised on paying interest because the prohibition of interest is based on the Qur'ānic principle of *akl al-amwāl al-bāṭil* (devouring wealth through unfair means), and a person who pays interest does not devour the wealth of some other person through unfair means. In fact, he pays a part of his legitimately earned wealth to the borrower in lieu of the loan he provides. The issue of interest is mentioned at more than one instance in the Qur'ān. Not at one place has the Qur'an condemned those who pay interest. In fact, it calls them oppressed and asked the lender to give them time if they are facing financial constraints. Those who regard paying of interest as prohibited do not base their view on any verse of the Qur'ān or any implicit or explicit deduction from any of its verses. They base their view on a Ḥadīth narrative which says that the Prophet (swws) has cursed the person who consumes interest and makes others consume it. The words of the narrative are: ¹⁰⁹ لَعَنَ النَّبِيُّ... أَكَلَ الرِّبَا وَمُؤْكَلَهُ. In this narrative, the word *مُؤْكَل* is used for a person who makes others consume interest. Linguistically, it can refer to a person who pays interest and also to people who are the agents of professional lenders and in this capacity hunt for potential customers for their masters. If lending on interest becomes a business, then such agents are its essential need; without them, the business of lending interest bearing loans cannot be run. If the narrative relates to such people, then there is no complexity in the narrative because this is blatant co-operation with evil (*ta'āwun 'ala al-ithm*). As agents of interest-lenders, those who prepare agreements and documents for them

109. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 5, 2045, (no. 5032).

and act as witnesses, their matter too is no different. The service provided by bank staff of these times is of similar nature. However, people who acquire interest-based loans cannot in any way be regarded as guilty of co-operation with evil (*ta'āwun 'ala al-ithm*). This expression can only be used for an act done by perpetrators of a sin and for those who reap the benefits of this sin. Those who acquire interest-based loans do not acquire it to help the devourers of interest, they obtain loans for their personal and business needs. If this is co-operation, then it is not more than the co-operation done by our scholars and righteous individuals when they deposit their own wealth and that of their institutions in banks. If interest is prohibited at the state level and all forms of interest transactions are brought to an end, then such people who still pay interest can be regarded as criminals who have breached a law. If the Hadīth narrative cited above refers to them, then the directive should relate to the scenario just stated – when interest transactions had been prohibited in the time of the Prophet (sws).

The answer to the second is that the referred to saving schemes are not like general interest transactions. The reason for this is that through these schemes, a government borrows money from the lenders not on their conditions but on its own conditions. Not only this, it ascertains the rate of profit itself as well and also keeps increasing or decreasing it on its own discretion. Although this is not exactly the same as returning a loan taken from someone with some addition to the principal amount without the lender demanding this addition, yet this arrangement is something close to it. It is known that interest has been forbidden because it can result in

oppression and exploitation. However the intensity of this oppression and exploitation is greatly reduced in this arrangement. For the pious, it is befitting that they do not benefit from such schemes. However, if the general masses especially the orphans, widows and retired personnel who are apprehensive in investing their wealth in business ventures benefit from these schemes for their essential expenses, it is hoped that they will not be held accountable for this by their God.

(Translated by Dr Shehzad Saleem)

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Insurance

Insurance is a sort of contract for mutual help in which people pay a fixed amount in installments. The purpose is that if any of them is inflicted with losses relating to their persons or their wealth they are compensated from this pooled money in a prescribed manner. The money given is never returned and all the people or institutes which provide this service are granted this right by people who enter into this contract of mutual help with them that in return for this service they can spend the accumulated money in whatever way they want.

This is an extraordinary scheme which has been chalked out to compensate losses and to help people in difficult circumstances. Its benefits are now acknowledged everywhere. After the termination of the institutions of tribes, fraternities and '*āqilah*', this is the best substitute for them which contemporary economic systems have provided to this world. There seems to be no objection against it; however, Islamic scholars generally regard it to be prohibited. Following are the objections they have raised against insurance:

1. The amounts which insurance companies pay to their clients are generally more than the installments their clients have paid them; this is interest and interest is forbidden in Islam. Moreover, insurance companies further invest this money in interest-based schemes.

Some part of the interest earned by them is also used in paying off their clients who had bought their insurance policies.

2. Insurance policy holders repeatedly receive large sums of money against death, accidents or losses. This is gambling which is prohibited in the Islamic *sharī'ah*.

3. The entity for which an insurance policy is purchased does not typically exist; the locus of the contract is also not ascertained and the policy holders do not even know the number of installments and the time until which they will have to pay them. In the terminology of the jurists these are called *gharar* (deception), *jahālah* (ignorance) and *ghaban* (embezzlement) respectively in the presence of which no contract is allowable. The Prophet (sws) has forbidden such deals.

A little deliberation will show that all these three objections are baseless.

The first of these is not tenable because the installments paid by an insurance policy holder are not loans. They are given by him for the help and support of others on the condition that he too could be the recipient. Thus they are never returned. If insurance institutions invest the amounts in interest-bearing transactions, it is because they have been given the right by the policy holders to use them. No responsibility of the nature of this use rests on the policy holders. If a person is to receive insurance money for the purpose he had bought a policy, then as per the contract, he receives it from the accumulated amount. This is the real nature of insurance, and it must be viewed on its basis.

The second of these objections is not tenable because

gambling is a game and a matter of purely chancing one's luck. People who buy insurance policies do so to become part of a system which caters to helping one another in case of losses. The nature of the two is entirely different, and the basis of religious directives is not marginal similarity between two things; it is and should be based on the actual nature of the two.

The third of these objections is not tenable because the directives of the Prophet (sws) related to *gharar* (deception), *jahālah* (ignorance) and *ghaban* (embezzlement) are not of the nature of an absolute prohibition: they are meant to resolve disputes and to close the door to ways which may result in these evils in cases of financial transactions. Insurance, however, is not a financial transaction. It is a scheme which relates to mutual help. It is executed and managed by individuals and institutions that are given the right to use the accumulated money in return for the service they provide. It is not appropriate at all to judge it by ignoring the nature of this scheme.

(Translated by Dr Shehzad Saleem)

Distribution of Inheritance

The Islamic law of inheritance is mentioned in the eleventh and twelfth verses of Sūrah Nisā'. In these verses, the Almighty has promised eternal punishment for those who have the audacity to change this law or intentionally disobey it. Though this promise relates to violating all the bounds and limits which the Almighty has clearly stated in His Book, yet its mention right after the law of inheritance shows how people who would in particular disobey it would face grave consequences. The Qur'ān says:

تِلْكَ حُدُودُ اللَّهِ ۖ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا
الْأَنْهَارُ خَالِدِينَ فِيهَا ۚ وَذَٰلِكَ الْفَوْزُ الْعَظِيمُ ۖ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ
يَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ (٤: ١٣-١٤)

These are the bounds set by God; [do not exceed them] and [remember that] those who obey God and His Messenger, God shall admit them in gardens watered by running streams. They shall abide in them forever and this is the supreme success. And those who defy God and His Messenger and transgress His bounds shall be cast into a Fire wherein they will abide forever. And for them is a shameful punishment. (4:13-14)

So stern is this promise that a person who has faith in the Hereafter shudders on reading it; however, with great sorrow one has to say that following the footsteps of the Jews, Muslims are reckless enough not only to change this law but also to violate it practically. It is a fact that the breaches which take place in this regard are tantamount to rebelling against God. Men deprive women from inheritance. If in some place this law has been implemented at the state level, they sign documents to illegally evade courts of law by putting unlawful pressure on them; in cases where the shares of men and women are not equal, they are bold enough to make them equal; they only regard the eldest son to be worthy of their legacy. In villages, in particular, they insist on common ancestral property; they try to adopt ways and means to usurp the share of the orphans. In short, they try to do everything which can be called open rebellion against this divine law.

This situation entails that Muslims be warned from mosques and from the pulpits, their attention be directed again and again through radio, television and newspapers, and institutions of education and instruction teach them that the life of this world and its wealth and riches are mere deception and illusion. Instead of a share in the eternal kingdom of God on the Day of Judgement, what is it that these people are choosing for themselves? In the words of the Qur'ān, it is as if they are filling their bellies with fire. Muslims should, moreover, be told that eternal Hell is no ordinary torment. They should shield themselves from it and distribute all their inheritance with full honesty in the very manner prescribed by God in this regard. The Prophet (sws) is reported to have said

that if a person illegally takes possession of a piece of land even the size of a hand, then on the Day of Judgement that piece of land will be made his neck-brace.¹¹⁰

What exactly is this law of inheritance? I have presented it in detail in my book *Mizān*.¹¹¹ Here, just as a reminder, I am providing a short summary of it:

1. If the deceased has outstanding debts to his name, then first of all they should be paid off from the wealth he has left behind. After this, any will he may have bequeathed should be carried out. The distribution of his inheritance should then follow.

2. No will can be made in favour of an heir ordained by the Almighty except if his circumstances, or the services rendered by him or his needs in certain situations call for it.

3. After giving the parents and the spouses their shares, the children are the heirs of the remaining inheritance. If the deceased does not have any male offspring and there are only two or more girls among the children, then they shall receive two-thirds of the inheritance left over, and if there is only one girl, then her share is one-half. If the deceased has only male children, then all his wealth shall be distributed among them. If he leaves behind both boys and girls, then the share of each boy shall be equal to the share of two girls and, in this case also, all his wealth shall be distributed among them.

4. In the absence of children, the deceased's brothers

110. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1168, (no. 3026); Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1230, (no. 1610).

111. Ghāmidī, *Mizān*, 499-500.

and sisters shall take their place. After giving the parents and spouses their shares, the brothers and sisters shall be his heirs. The proportion of their shares and the mode of distribution shall be the same as that of the children stated above.

5. If the deceased has children or if he does not have children and has brothers and sisters, then the parents shall receive a sixth each. If he does not even have brothers and sisters and the parents are the sole heirs, then one-third of his wealth shall be given to the mother and two-thirds to the father.

6. If the deceased is a man and he has children, then his wife shall receive one-eighth of what he leaves, and if he does not have any children, then his wife's share shall be one-fourth. If the deceased is a woman and does not have any children, then her husband shall receive one-half of what she leaves and if she has children, then the husband's share is one-fourth.

7. In the absence of these heirs, the deceased can make someone an heir. If the person who is made an heir is a relative and has one brother or one sister, then they shall be given a sixth of his share and he himself shall receive the remaining five-sixth. However, if he has more than one brother or sister, then they shall be given a third of his share and he himself shall receive the remaining two-thirds.

(Translated by Dr Shehzad Saleem)

The Right to make a Will

It is repeatedly stated in the law of inheritance mentioned in the Qur'ān that the inheritance should be distributed after disbursing any will made by the deceased. Two questions arise on this.

First, is there a limit imposed on the amount a person can will in favour of someone or does he have the discretion to will any amount he wants to?

Second, can a will be made in favour of people who have been made the heirs of the deceased by the Almighty?

The answer to the first question is that the words of the Qur'ān impose no limit on the amount that is to be willed. The Almighty has unconditionally mentioned that this distribution of inheritance shall take place once the will of the deceased has been executed. No limit can be imposed on this willed amount as per the dictates of language and style of the relevant verses. The narrative which is attributed to the Prophet (sws) in this regard has an entirely different connotation: one of his companions expressed his wish before him that after his death he wanted to donate all his wealth for the cause of God. The Prophet (sws) replied that this would be too big an amount given for this purpose and that if a person has wealth, he should not leave his heirs empty-handed. The companion then asked if he could donate two thirds and later asked if he could reserve half of his wealth for this

purpose. At this, the Prophet (sws) gave him the same reply. The companion further asked if he could give one-third of his wealth. The Prophet (sws) responded by saying that this was quite enough.¹¹² Everyone can see that this was a comment of the Prophet (sws) in a particular case. It cannot be regarded as a legal limit imposed by the Prophet (sws).

The answer to the second question is that the Almighty Himself has made a will in favour the heirs of a deceased. So no Muslim can dare make a will in this regard. Thus, on the basis of familial relationship, no will can be made in their favour; however, a will can certainly be made in favour of these very heirs because of some need they may have or because of some service they may have rendered for the deceased or because of any similar matter. Thus if one of the children of a person is school going and as such is not earning while others are, or if one of the children has served his parents more than the others, or if a person fears that after his demise there will be no one to look after and provide for his wife, then a will can be made in favour of each of these. Just as a will can be made in favour of friends or for the purpose of charity, it can similarly be made in favour of these heirs. There is nothing in the *sharī'ah* which hinders it.

(Translated by Dr Shehzad Saleem)

112. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1006, (no. 2591); *Muslim, Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1253, (no. 1628).

Inheritance of an Orphaned Grandchild

The Qur'ān has not explicitly mentioned the share of a grandfather in the legacy of his grandchild or that of a grandchild in the legacy of his grandfather. However, since the words **أولاد** (*awlād*) and **آباء** (*ābā*) can refer both on the basis of meaning and usage to grandparents and grandchildren, there has remained a consensus among Muslim jurists that if none of the direct parents or direct children are present, then the shares which have been fixed for them will be given to indirect parents and indirect children respectively.¹¹³ However, one situation which can arise is that one or more children die in the lifetime of a parent and one or more children are alive after his death. The *ijtihād* of the jurists in this case is that the offspring of the deceased children will not be given any inheritance from the grandfather and in the presence of their paternal uncles they will be deprived of it except if the grandfather has made a will in their favour. In current times, some scholars are of the opinion that this *ijtihād* of the jurists seems incorrect. A grandson is like a son and hence in the event of a son's death, he should get the share that his father would have

113. The words “direct parents” and “direct children” refer to the parents and children while the word “indirect parents” and “indirect children” refers to grandparents and grandchildren. (Translator)

got had he been alive. In my opinion, this opinion is correct. Consequently, in the following paragraphs I will try to answer the objections raised on this view by Mawlānā Sayyid Abū al-A‘lā Mawdūdī a revered and respected scholar of Islam. Following are these objections:¹¹⁴

1. As per the Qur’ān, whoever gets a share in the inheritance of a deceased is entitled to it because he is near in kin (*aqrab*) to him and not because he is a substitute of some other kin. Thus the suggestion of granting a share to the grandchild from the inheritance of his grandfather introduces the very wrong notion of substitution in the Islamic law of inheritance of which there is no evidence found in the Qur’ān. Moreover, after accepting the principle of substitution this inheritance is confined to the children of the children and no sound reasoning can be presented in favour of this either.

2. As per the Qur’ān, only those who are alive have a share in the legacy of a person at the time of his death. Contrary to this, this view also grants a share to people who have died in the lifetime of that person.

3. The Qur’ān has explicitly allocated the shares of some relatives and no addition or reduction can be made to them. However, if this view is adopted, then an addition is made in some shares fixed by the Qur’ān and a reduction is made in some others.

The answer to the first question is that the grandson is not being given a share as a substitute for his father in the capacity of an heir: it is being given to him because

114. Sayyid Abū al-A‘lā Mawdūdī, *Tafhīmāt*, 9th ed., vol 3 (Lahore: Islamic Publications, 1983), 173-190.

after the death of his father he has become *aqrab* to his grandfather the way his father was. Thus he is a substitute for his father in this regard. When his father was alive, his father was *aqrab* of his own father with regard to being his offspring. After his death, his son has become *aqrab* to his father and on this basis has become entitled to inheritance. During the lifetime of the father, a person is like a son to his grandfather and after his father's death also he is like a son to his grandfather. The only difference which death has caused is that in becoming the *aqrab* of his grandfather he has become a substitute for his father. This substitution does not refer to the one understood by Sayyid Mawdūdī; it is a substitution in being *aqrab* to the deceased which according to his own opinion is the basis of the Islamic law of inheritance. If a deceased does not have children all the way down, then it is in this very capacity that brothers and sisters become substitutes of children, and as per the Qur'ān in the same manner receive their share in exactly the same proportion as prescribed for the children. For this substitution, the last verse of Sūrah Nisā' is an explicit source. The reason to deny it to the children of children is that after the death of the wife or the husband no heir can become a wife or husband to any extent so that he or she be regarded as the substitute of the deceased with regard to being their *aqrab*.

The answer to the second objection is that the share being given to the grandson is not the share of the father given to the son as his heir; the share is being given to him because it is, in fact, his own share because after the death of the father he is his substitute to his grandfather and an *aqrab* to the grandfather in the same capacity.

This does not in any way affect the Qur'ānic principle that inheritance only belongs to the heirs who are alive at the time of the death of the person whose inheritance is to be distributed. The suggestion of giving a share to an orphaned grandchild is to make someone an heir who is alive at the time of death of the person whose inheritance is to be distributed.

The third objection has arisen because of the misunderstanding that this methodology of distribution of inheritance among the grandsons shall also be employed when no one from the children is present. The Mawlānā has explained this objection with an example. He writes:

... Suppose that a person had only two sons and both died during his lifetime; one of them had four sons and the other only one. As per the Qur'ān, all these grandchildren are equal with regard to being sons to their grandfather and hence each of them should receive an equal share from the inheritance of their grandfather. However, on the basis of this principle of substitution half of his inheritance will be received by one grandson and the remaining half shall be divided equally between the other four grandsons.¹¹⁵

The answer to this objection is that this may not be the case. In this scenario, the same method of distribution can be adopted: each grandson be given an equal share. The Qur'ān itself guides us to this. It has adopted one

115. Mawdūdī, *Tafhīmāt*, vol 3, 182.

method in distributing the share to an heir in the presence of other heirs and another in their absence. Thus in the presence of children, the parents shall receive one sixth each; if the deceased does not have children but has brothers and sisters, then the shares of the brothers and sisters shall remain the same; however, if the parents are the only heirs of the deceased, then the mother's share shall be one-third and the father's share shall be two-thirds. Same is the case with *kalālah* relatives. If someone among them is made an heir and he or she has one brother or one sister, then they shall be given a sixth of his or her share; however, if he or she has more than one brother or sister, then they shall be given a third of his or her share. Thus it is not necessary that in case of grandsons, one of the two options be insisted upon. This is purely an issue in which *ijtihād* can be exercised. In this regard, whatever the method adopted, it should be in accordance with the principles prescribed by the Qur'ān, and in all cases be based on justice.

(Translated by Dr Shehzad Saleem)

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***Jihād* and War in Islam**

Jihād means to exert oneself fully in an endeavour. Just as this term appears in the Qur'ān for a general struggle in the way of God, it also appears as a term for waging war in His way (*qitāl fī sabīl-Allāh*). Two forms of this war have been described:

1. War against the denial of Islam
2. War against oppression and injustice

The first kind of war does not concern the *sharī'ah* (Divine law); instead, it relates to the Divine principle of conclusive argument from God, which principle manifests itself in this world on the basis of God's direct decree and through those personalities whom He grants the status of *risālat*.¹¹⁶ In human history, this status was given for the last time to the Prophet Muḥammad (sws). The battles that the Prophet (sws) and his companions fought under this principle against the defiance of Islam were not just battles; instead, they were Divine punishment which, exactly in accordance with God's ways and His Judgement, visited first the polytheists of

116. Translator's note: When used as a specific term in the Qur'ān, *Risālat* in Ghāmidī's interpretation refers to the special position of a messenger and prophet of God sent to a people as His final judgement for or against them.

Arabia and the Israelites and the Nazarenes there and then, after them, some peoples outside the Arabian Peninsula. The Divine scheme of sending prophets and messengers ended with Prophet Muḥammad (sws). Therefore, with the passing away of the Prophet (sws) and his companions, that Divine process has ended in which a certain people could be declared as infidels, battles and wars could be waged against them, and the vanquished in such fighting could be killed or subjugated and made subservient through *jizyah* (a tribute). No one until the Judgement Day has any right now to wage a war against any nation for this purpose or to subjugate a vanquished people by making them subservient through *jizyah*.

The second form of war, however, does relate to the *sharī'ah*. Therefore, the only possibility for Muslims to wage a war as *jihād* is in a fight against oppression and injustice. In the *sharī'ah*, this is the only reason for an armed *jihād*. This *jihād* is not done for self-interest, wealth, conquest, rule, fame, honour, affiliation, partisanship, or animosity. It is God's war that His servants fight in His way on His command and in accordance with His directives. They are only His instruments in this war. They have no personal objective; just the objectives of God, which they intend to achieve. Therefore, they are not supposed to deviate from this position to the slightest extent.

Important sections of the law given by the Qur'ān for this form of war are summarized below:

1. The directive of war and *jihād* has been given to the Muslims as a collectivity. None of the pertinent verses in

the Qur'ān addresses the Muslims in their individual capacity. As in the case of the verses related to *hudūd-o ta'zīrāt* (legal punishments in the *sharī'ah* and Islamic law), the Muslims become addressees of these verses too as a collectivity. Therefore, in these matters also, only their collectivity has the right to take any steps. No individual or group from amongst their collectivity has the right to take any steps in this regard on their behalf.

2. In the Qur'ān, this directive is actually for ending religious persecution. Religious persecution means that, through oppression or torture, a person is coerced into renouncing his or her faith. All other violations of people's rights in relation to life, wealth, intellect and opinion fall under the same category. Therefore, this kind of *jihād* can be done against any form of oppression and injustice.

3. *Jihād* does not become obligatory for the Muslims until their military strength against their enemy reaches a certain level. Therefore, it is imperative that, to fulfil this responsibility, they should strive for consolidation of their moral and ethical fabric and also do their best in the endeavour to augment their military strength to the extent that the Qur'ān requires in the directive that it gave when, in view of the situation the Muslims were facing in the times of the Prophet, it specified 1:2 as the proportion between them and their enemies.

4. Shirking from *jihād* becomes a crime only when a Muslim chooses to sit back even after the general call has been made. In this situation, aversion is indeed a crime similar to a great transgression. If such call has not been made, this *jihād* is still a great privilege that every Muslim should try to have. However, in this case, it is

just a privilege in its import. It is not the kind of obligation which, if left unfulfilled, makes a person a transgressor.

5. *jihād* cannot be waged in disregard of ethical bounds. Basic ethical and moral imperatives remain effective in all situations and precede every directive. God has not permitted any person to violate these ethical and moral principles even in battle or war. In this regard, the most important guideline that the Qur'ān has given pertains to the sanctity of treaties and pacts. God has placed violation or breach of pact amongst the worst of sins. Therefore, help, in violation of a treaty, cannot be provided to Muslims even if they are persecuted by another nation with whom the treaty has been made. Similarly, no steps can be taken against people who are not involved in war or choose to remain neutral in that situation. This *jihād* can be done only against the combatants.

(Translated by Asif Iftikhar)

The Taliban's Line of Reasoning

The self-appointed “warriors of God” known to the world as the Taliban have taken countless innocent lives in the last ten years. They insist that they are doing all this for God and in submission to His directives. Even after their cowardly attack on They have restated this stance even after their cowardly attack on Malālah Yūsufza’ī. In support of this stance, they present the Qur’ān and Ḥadīth and certain incidents from the lifetime of the Prophet Muhammad (sws). Since people are generally unaware of religion and religious disciplines, they may be influenced by such argumentation. For this reason, we would like to present some facts in the following paragraphs.

1. No doubt *jihād* is a directive of Islam. The Qur’ān requires of its followers that, if they have the strength, they should wage war against oppression and injustice. The primary purpose of this directive is to curb persecution, ie. to oppress and coerce people to give up their religion. Those having insight know that Muslims are given this directive of *jihād* in their collective capacity; individuals are not the addressees of the Qur’ānic verses of *jihād*. Thus, only the collectivity (state) has the right to launch such an armed offensive. No individual or group of Muslims has the right to decide for any such action on the collectivity’s behalf. It is for this reason that the Prophet (sws) is reported to

have said: “A Muslim ruler is a shield; war can only be waged under him.”¹¹⁷ Everyone can readily see whether the Taliban are following this principle or blatantly violating it.

2. The *jihād* directed by Islam is the war for the cause of God; therefore, it cannot be waged while disregarding moral obligation. Ethics and morality supersede everything in all circumstances; in war also, the Almighty has not allowed anyone to deviate from moral principles. Hence, it is absolutely certain that *jihād* can only be waged against combatants. The law of Islam is that if a person attacks through his tongue, he shall be countered through the tongue, and if he financially supports the warriors, he will be stopped from that, but unless he picks up arms, his life cannot be taken. So much so, if right in the battle field the enemy surrenders, he shall be taken a prisoner, but cannot be executed. The words of the verse which mentions the directive of *jihād* are: “And fight in the way of Allah with those who fight against you, and do not transgress bounds [in this fighting]. Indeed, God does not like the transgressors.” (2:190) The Prophet (sws) forbade the killing of women and children during war.¹¹⁸ The reason for this is also that even if they come out with their army, they are not generally combatants. At best, they can boost the morale of the combatants and urge them through the tongue to fight.

This is the *sharī‘ah* of God. But what are the Taliban doing? Men of learning like Mawlānā Ḥasan Jān,

117. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 3, 1080, (no. 2797).

118. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 3, 1098, (no. 2851); Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 3, 1364, (no. 1744).

Mawlānā Sarfarāz Na‘īmī and Dr Muḥammad Fārūq Khān never undertook to wage war against them. Malālah Yūsufza’ī is an innocent girl. She never took up arms against them. In spite of this, the Taliban insist that all these people deserve death. Merely because they had dared to differ with them? There is no doubt that a political authority of Muslims has the right to punish criminals; it also is correct that in the penal *sharī‘ah* there is no difference between a man and a woman. The Qur’ān clearly states that whether a woman or a man is guilty of theft, both will be punished, and both have the same punishment. The same is true for an adulterer and an adulteress. But when did the Taliban have political authority on the persons just mentioned? And when did these persons commit crimes punishable by death as per the *sharī‘ah*? The Qur’ān (5:32) explicitly states that the death punishment cannot be meted out for any crime except murder or spreading anarchy in the land. Who among the aforementioned is guilty of murder or spreading anarchy by threatening the life, wealth or honour of someone? In reality, the Taliban themselves are guilty of these crimes and their daily confessions corroborate the charge-sheet that will be presented against them on the Day of Judgment.

3. Polytheism, disbelief and apostasy are indeed grave crimes; however, no human being can punish another for them. That is the right of God alone. In the Hereafter, He will punish such criminals, and in this world also, it is He Who does so if He wills. Hereafter is not under discussion here. In this world when the Almighty decides to reward and punish people on the basis of their deeds, He sends His messenger towards them. The

messenger conclusively communicates the truth to his people such that they are left with no excuse before God to deny it. After that, the verdict of God is passed and those who, even after the conclusive communication of the truth, insist on disbelief and polytheism are punished. This is an established practice of God, described in the Qur'ān in the following words: "And for each community, there is a messenger. Then, when their messenger comes, their fate is decided with full justice, and they are not wronged." (10:47)

This punishment is generally given in the manner it was meted out to the people of Noah (sws), Hūd (sws), Šālīh (sws), Lot (sws), those of Shu'ayb (sws) and to some other nations. However, if a messenger has a substantial number of companions and, after migrating from his people, he is also able to gain political authority at some place, then this punishment is implemented through his and his companions' swords. This second situation arose in the case of Muhammad (sws). Thus the active adversaries among the deniers were first killed; after that, a general order of slaying the ordinary deniers was given. For the latter, the declaration of the punishment was made in the 9 AH on the day of *hajj-i akbar*: "Then when the sacred months [after the *hajj-i akbar*] have passed, kill these Idolaters wherever you find them, and [for this objective] capture them and besiege them, and lie in wait for them in each and every ambush. But if they repent and are diligent in the prayer and give *zakāh*, then let them alone." (9:5)

This is the punishment of God that was meted out to the Idolaters of Arabia. When such a punishment descends on the perpetrators, no exception is given to

women and children, and they are destroyed the way the nations of Noah (sws), Hūd (sws), Šāliḥ (sws), Lot (sws) and that of Shu‘ayb (sws) were destroyed. It is thus mentioned in the narratives that when troops were sent to implement this punishment, the Prophet (sws) was asked about the women and children of the Idolaters; at this, he replied that they were also from among them.¹¹⁹ It was these people about whom he had directed that if they would embrace faith at that time but later become apostates, they would deserve the same punishment of death.¹²⁰

In spite of the conclusive communication of the truth, the punishment of these people was deferred till 9 AH because they were not active adversaries, and there was a chance that they might repent and, hence, be saved from the punishment. On the other hand, those who, besides their rejection of the truth, became open and active adversaries were not given this respite. They were killed whenever it became possible. Abū Rāfi‘, Ka‘b ibn Ashraf, ‘Abdullāh ibn Khaṭal and his slave-girls and from among the prisoners of the battles of Badr and Uhūd ‘Uqbah ibn Abī Mu‘īt, Naḍr ibn al-Ḥārith and Abū ‘Izzah et al. were killed for this very reason. Blood money for the murder of some deniers was also not paid for the same reason.

This was the verdict of God that is necessarily implemented after the conclusive communication of the truth by His messengers. It is about this verdict that the

119. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, 3, 1097, (no. 2850); Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, 3, 1364, (no. 1745).

120. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, 3, 1098, (no. 2854).

Qur'ān has said: "You shall never see any change in this practice of God." (17:77) Its nature is the same as of the sacrifice of Ishmael (sws) and the incident of Khidr. It is not related to us, ordinary human beings. Just as we cannot, for the sake of help, drill a hole in the boat of a poor person against his will or kill a disobedient boy or, like Abraham (sws), embark upon slaughtering any of our sons on the basis of a dream, similarly, we cannot undertake the task of punishing people for polytheism, disbelief or apostasy, except if a revelation comes from God and He directly gives such an order. Everyone knows that the door to this has permanently been closed.

The incidents which the Taliban are presenting to support their measures are of the nature just described. This is nothing but audacity to generalize for themselves what specifically rests in the hands of God. There can be no greater a crime than this on God's earth; Every believer should seek God's refuge from this.

(Translated by Dr Shehzad Saleem)

*Itmām al-Hujjah*¹²¹ of the Messengers

This world has been made as a place of a trial for mankind. Its essential consequence is reward and punishment for which the Day of Judgement has been fixed. In order to prove to it to mankind in the same manner as scientific facts are proven in a laboratory, the Almighty on several occasions brought about lesser days of judgement in this very world. The way which was adopted for this was that the Almighty would send His messenger to any nation He intended. That messenger would conclusively convey the truth to it, after which its fate would be decided with full justice in this world. The way this would happen is that those who would accept the truth would be salvaged and those who would reject it would face the wrath and torment of God and would either be eternally wiped out from the face of the earth or would face the eternal punishment of subjugation and live in eternal humiliation. The accounts of the nations of Noah (sws), the ‘Ād, the Thamūd, the people of Lot (sws) and other similar nations related in the Qur’ān are the accounts of such punishments.

The Qur’ān states that no nation faces this punishment unless a messenger of God conclusively delivers the truth to them. Thus it is said: وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولًا (١٧: ١٥)

121. The term *itmām al-hujjah* refers to the conclusive communication of the truth.

(We never punish unless We send a messenger, (17:15)). A question arises on this: how exactly is the truth conclusively communicated? It is evident from the Qur'ān that three things are required for this:

Firstly, the presence of a messenger of God and he invites a nation to profess faith in him.

Secondly, the nation is given enough time so that if its people want they come to see the messenger and directly hear the message of God from his tongue because the person of a messenger itself is a sign of God.

Thirdly, God's help and close relationship with the messenger and his companions manifests itself in such a grand way before the eyes of their addressees that no one can form another opinion about it.

God says that after this no one is left with an excuse for disbelief to present before God: لَيْلًا يَكُونُ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ (١٦٥:٤) (so that after the messengers people are left with no excuse which they can present before God, (4:165)).

Thus if it is possible for the believers to punish the rejecters, they are directed to do so. Otherwise the angels carry out this task.

Muḥammad (sws) was also a messenger of God and was sent to his people to bring about this lesser day of judgement for the last time on the face of the earth. Thus after he had done *itmām al-ḥujjah*, his companions were also directed to implement divine punishment on the rejecters.

Thus about the Idolaters of Arabia, it is stated:

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُواهُمْ

وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ^٥ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا
الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ^٦ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ (٥:٩)

Then when the sacred months [after the *hajj*] have passed, kill these Idolaters wherever you find them, and [for this purpose] capture them and besiege them, and lie in wait for them in each and every ambush. But if they repent and are diligent in the prayer, and give *zakāh*, then leave them alone. Indeed, God is Forgiving, Most Merciful. (9:5)

Similarly, about the People of the Book of Arabia, the words are:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ
اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا
الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ (٩:٢٩)

Fight with those from among the People of the Book who believe neither in God or the Last Day, nor hold that forbidden which has been forbidden by God and His Messenger, nor adopt the Religion of Truth as their own religion until they pay the *jizyah* after being subdued and live a life of submission. (9:29)

It is evident from the context of these verses that their directive was specific to the Idolaters and People of the Book of Arabia. However, we see that those of the companions who succeeded him dealt with certain nations outside Arabia in the very manner mentioned in these verses for the People of the Book of Arabia. This

obviously was a decision that was based on their opinion and can be regarded as correct or otherwise. In our opinion, this decision taken by them was absolutely correct. The reason is that the essential components needed for the *itmām al-ḥujjah* of a messenger existed for all these nations as well. Its details follow.

1. The Prophet (sws) was still living in this world when he sent his envoys to these nations and invited them to profess faith in him. Everyone aware of the history of his times knows that he had written letters to heads of state of these nations and warned them that since he is the messenger of God and since he has invited them to accept Islam, the only way left for them to succeed in this world and in the next was to respond positively to this invitation. These letters were written to the following heads of state: Negus of Abyssinia, Maqawqas of Egypt, Khusro Parvez of Persia, Heraclius of Rome, Mundhir ibn Sāwī of Bahrain, Hūdhah ibn ‘Alī of Yamāmah, Ḥārith ibn Abī Shamr of Damascus and Jayfar of Amman. There is not much difference between the content of these letters. Following is the letter written to Heraclius, the Caesar of Rome. The style, majesty and authority with which these letters were written will become evident from it:

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ مِنْ مُحَمَّدٍ عَبْدَ اللَّهِ وَرَسُولِهِ إِلَى هِرَقْلَ عَظِيمِ
الرُّومِ سَلَامٌ عَلَى مَنْ اتَّبَعَ الْهُدَى أَمَّا بَعْدُ فَإِنِّي أَدْعُوكَ بِدَعَايَةِ الْإِسْلَامِ
أَسْلِمْتُ تَسْلِمُ يُؤْتِكَ اللَّهُ أَجْرَكَ مَرَّتَيْنِ فَإِن تَوَلَّيْتَ فَإِن عَلَيْكَ إِثْمُ
الْأَرِيسِيِّينَ قُلْ يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ أَلَّا
نَعْبُدَ إِلَّا اللَّهَ وَلَا نُشْرِكَ بِهِ شَيْئًا وَلَا يَتَّخِذَ بَعْضُنَا بَعْضًا أَرْبَابًا مِنْ دُونِ

اللَّهُ فَإِنْ تَوَلَّوْا فَقُولُوا اشْهَدُوا بِأَنَّا مُسْلِمُونَ

In the name of God, the Most Gracious, the Ever Merciful. From Muḥammad, the servant and messenger of God, to Heraclius, the ruler of Rome. Peace to him who follows the guidance. After this I invite you to accept Islam. If you become Muslims you will live in peace. God will give you a double reward for this. If you turn away, then you will also be responsible for the sin of your subjects. People of the Book! Come to what is common between us: we shall not worship anyone except God and nor associate anyone with him and none of us will make anyone except God his Lord. Then if they turn away, tell them: "Bear witness that we are Muslims."¹²²

2. These letters were written in Muḥarram 7th hijrah after the Prophet (sws) had returned from Ḥudaybiyyah. He lived for about four years after this. During this time, he even journeyed to Tabūk which was undertaken in anticipation of any attack from the Romans. The people of these nations as well as their ruling nobles could have come to meet him if they wanted, and could have seen the last Messenger of God from their very eyes.

3. God's help and the close relationship that manifested itself in the battles of Badr, Uḥud, Aḥzāb and Khaybar between the Idolaters and the People of the Book of Arabia, and as a consequence of which punishment they were declared worthy of punishment, also manifested itself before all those nations when, in accordance with the explicit predictions of the Qur'ān,

122. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol 1, 8-9, (no. 7).

the Quraysh of Makkah were subdued in spite of all their might and majesty, all their leadership was killed, Makkah was conquered, the Quraysh were stripped of the custodianship of the foremost House of God, people in multitudes entered in the folds of Islam, the *sharī'ah* was implemented and no other religion could politically and religiously dominate Arabia. Not only this, the empires of all these nations crumbled to dust when onslaughts were launched against them – nations whose rulers had been told that they will necessarily be subdued after *itmām al-ḥujjah* by the Messenger of God. Without accepting faith their kingdoms could not flourish on the face of the earth.

All these are established facts which manifested themselves before people of those times. Whatever the companions of the Prophet (sws) did was on these very grounds. They would have necessarily directed the attention of people to these facts when they would have delivered their message. There is no reason to make this evil estimation about them that without communicating these facts to people they would have punished an individual or a nation in this manner.

(Translated by Dr Shehzad Saleem)

Islamic Punishments

Among the directives of the *sharī'ah* which relate to the government are punishments prescribed by the Almighty for certain specific crimes. What are these punishments? I have detailed them out in my treatise *Mīzān*¹²³ in its chapter "*Ḥudūd-o Ta'zīrāt*" (The Penal Sharī'ah).¹²⁴ What needed further elucidation in this regard has been presented in my treatises *Maqāmāt* and *Burhān*. In the following paragraphs, I summarize below all the important aspects of this discussion covered in both these books.

1. Punishments for only five crimes have been prescribed by the *sharī'ah*. They are: fornication, falsely accusing someone of fornication, theft, murder and injury and creating disorder in the land. It is generally understood that the *sharī'ah* has also prescribed the punishments for drinking, apostasy and blasphemy against the Prophet (sws). I have argued that this is totally baseless. There is no punishment of these crimes in the *sharī'ah*. All these issues relate to *ijtihād* and whatever opinion is formed about them will be on this very basis.

2. Our jurists generally opine that if a criminal who has committed intentional murder is forgiven by the heirs of the slain person, then the government is also bound to

123. English title: *Islam: A Comprehensive Introduction*.

124. Ghāmidī, *Mīzān*, 608-628.

forgive him. This view is not correct in the opinion of this writer. Thus, in my article “Punishment for Intentional Murder,”¹²⁵ I have analyzed all the pertinent verses and shown that in such cases *qiṣāṣ* does not become mandatory; however, as an option, it is not ruled out. Thus, keeping in view the nature of the crime and the circumstances of the criminal, the government and the society have the full right to insist in exacting *qiṣāṣ* and reject the lenience given by the heirs of the slain person.

3. The punishments of waging war against God and the Prophet (sws) and spreading anarchy in the land mentioned in verses 33-34 of Sūrah Mā'idah are not specific to robbery only. They are meant for all criminals who rebel against the law and attack the life, wealth, honour and freedom of expression of people. Consequently, when murder becomes terrorism, fornication becomes rape and theft assumes the form of robbery or people take to prostitution, become notorious for their ill-ways and vulgarity, become a threat to honourable people because of their immoral and dissolute practices, or rise against the government in rebellion, or create a law and order situation for the government by indulging in hijacking, vandalism and intimidation and by committing other similar crimes, then such people are criminals of spreading anarchy in the society. In such cases, a court of law can give any of the prescribed punishments keeping in view the nature of the crime and the circumstances of the criminal.

4. The death penalty can only be given for murder and for spreading anarchy in the land. The Almighty has

125. The article appears in this book. (*Translator*).

explicitly stated that apart from these two crimes, neither an individual nor a government has the right to take the life of a person.

5. Though *diyat* is an everlasting law which must be obeyed in all times by all Muslim societies, yet its amount, nature and other related affairs have been left upon the *ma'rūf* (custom) of a society. According to this directive, each society is bound to follow its own *ma'rūf*. Since no law about *diyat* exists in our society, our rulers can adopt the custom of the Arab society or can legislate afresh keeping in view the circumstances and expediencies of our society. No objection whatsoever can be raised against this as per the Islamic *sharī'ah*.

6. The punishment of fornication prescribed by the *sharī'ah* for both married men and women and unmarried ones is a hundred lashes as stated in verse 24 of Sūrah Nūr. No doubt, the Prophet (sws) did stone to death some criminals of his times who were guilty of fornication. However, this was administered to criminals guilty of rape and profligacy and in accordance with verses 33-34 of Sūrah Mā'idah. It has no connection with the punishment mentioned in Sūrah Nūr for common criminals of fornication.

7. The punishments for fornication and theft mentioned in the Qur'ān are extreme punishments of these crimes, and shall be administered to the criminals when the crime has been committed in its complete form and a criminal does not deserve any lenience viz a viz the circumstances in which he committed the crime. The most important thing in this regard is his religious awareness. These punishments cannot be given to those who are non-Muslims or are Muslims by birth but

because of a lack of awareness of their religion are akin to non-Muslims. The reason for this is that the purpose of these punishments is not merely to root out the crime but also to inflict the scourge of God on these criminals and make them an example before others. These were the people who had submitted themselves to God and His Messenger with full awareness, pledged obedience to them, accepted their religion as their religion. Despite this, they were incriminated with crimes such as theft and fornication to the extent that God exposed them and matters reached the courts of law.

8. The condition of four witness stated in the Qur'ān for the punishment of fornication relates to consensual sex. It cannot be applied to rape. Hence a woman who complains of rape is a petitioner and not someone who is accusing someone of fornication. The law is bound to hear out her complaint and punish the person found guilty of this heinous crime through any means except if investigation proves that the woman had falsely accused an innocent person of fornication.

9. Except for fornication, crimes whose punishment is prescribed by the *sharī'ah* are proven through all means that are universally accepted by legal ethics. Consequently, circumstantial evidence, medical examinations, post mortem reports, finger prints, DNA tests, testimony of witnesses, confession of criminals, oaths and various other similar means form permissible evidence in the matter of these crimes just as they are in the matter of other common crimes. There is nothing in the Qur'ān and Sunnah contrary to this.

(Translated by Dr Shehzad Saleem)

Punishment for Blasphemy against the Prophet (sws)

I

The law for punishing blasphemy against the Prophet (sws) that is invoked in Pakistan has no foundation in the Qur'ān or Ḥadīth. Therefore, a pertinent question is: what exactly is the justification for this law? Some scholars have proffered Q. 5: 33-34 as a possible basis. In their opinion, God, in these verses of Sūrah Mā'idah, has prescribed the punishment for *muḥārabah* (rebellion) and *fasād fi al-arḍ* (disorder), and they believe that blasphemy against the Prophet (sws) is also a form of this offence of *muḥārabah*:

The text of the verse with its translation is:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ۚ ذَٰلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ. إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ ۖ فَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ رَحِيمٌ. (٣٤-٣٣: ٥)

The punishment of those who fight against God and

His Prophet or create disorder in territory is that they be executed in an exemplary manner or be crucified or have their hands and feet cut off from opposite sides or be banished. This disgrace is theirs in the world, and in the Hereafter a severe retribution shall they have, except those who repent before you overpower them. So [do not exceed in severity with them and] know well that God is Oft-Forgiving, Ever-Merciful. (5:33-34)

As other viewpoints on foundations for blasphemy laws, this opinion too needs to be reviewed for the following reasons:

Firstly, the word used in the verse is *yuhāribūn* (they fight/rebel against). This word entails that the sentences of punishment mentioned in the verse be given only if the offender persists in blasphemy defiantly, resorts to disruption or disorder, refuses to desist even after repeated exhortation and admonition and, in contrast to an attitude of consequent submission, actually takes a stance of retaliation. On the other hand, if the accused pleads that he's not guilty or gives an excuse to explain his attitude and shows no volition for persistence, he cannot, in any sense of the word, be indicted for *muhārabah* or *fasād fi al-arḍ*.

Secondly, the Qur'ān says that the sentence will not be applicable to those offenders who, despite their prior proclamation and persistence, submit and repent before the law apprehends them. Therefore, the directive is that those who have repented shall not be given these sentences. This aspect also entails that, before any action is taken against such offenders, they be called to repent

and reform and be repeatedly warned that, if they are believers, they should not destroy their own future in the Hereafter by their wrong attitude or notions and, if they do not believe in God or the Prophet (sww), they should show regard for the feelings and sentiments of Muslims and abstain from this grave violation any further.

Thirdly, the verse does not make capital punishment obligatory. It gives the court room for a lenient sentence in consideration of the nature of offence and the state of the offender. The recommendation of banishment in the verse is for such offenders as deserve leniency.

In the present law, none of the aspects mentioned above has been considered. For sentencing, this law depends solely on testimony. There is no consideration whatsoever for confession or denial, which consideration the verse entails; there is no room for clemency on the repentance and reform shown in response to exhortation and admonition; and, as such, there is no other option except capital punishment. It would indeed be commendable even if the 'ulamā were to accept the *muḥārabah* verse as the foundation for blasphemy punishment and, consequently, show willingness to have amendments made to the existing law. Even that would end all criticisms on the present law. It is obvious from the Qur'ān that capital punishment can only be given in two cases: first, if a person murders another and, second, if he disrupts law and order in a country and, as such, becomes a threat to the life, property and honour of people. If the law is amended in accordance with the requirements of the *muḥārabah* verse, the requirement of confining capital punishment to these two cases will be fulfilled. Furthermore, the law will also be closer to the

views of the highly venerated scholar of Islamic law, Imām Abū Ḥanīfah and to those of the great Ḥadīth compiler, Imām Bukhārī. In this regard, it is this opinion that seems more advisable. The Ḥanafīs have a majority in Pakistan, but, incongruously, their viewpoint has been completely ignored in enacting this law. Therefore, it is a fact that the blasphemy law in its present state is against not only the Qur’ān and Ḥadīth but also the opinion of Ḥanafī jurists. It should most certainly be changed for it has blemished the name of Islam and Muslims throughout the world.

II

Narratives related to punishment for blasphemy that are often cited also need to be understood correctly. Abū Rāfi‘ was one of those people who were guilty of bringing out the tribes against Madīnah in Ghazwah-e-Khandaq (Battle of the Ditch). In Ibn Ishāq’s words: *فَبَيْنَ حَرْبِ الْأَحْزَابِ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ*. About Ka‘b ibn Ashraf, the historians write that after Ghazwah-e-Badr (Battle of Badr), he went to Makkah and recited vengeance inspiring elegies for those of the Quraysh who had fallen in battle, wrote odes (*tashbīb*) that prefaced the names of some Muslim women and caused much distress to Muslims, and, while residing in the domain of the Prophet’s government, endeavoured to incite people against him. Some narratives describe that he even went to the extent of devising deception to assassinate the Prophet (sws). ‘Abdullāh ibn Khaṭal was sent for *zakāh* (obligatory alms) collection by the

Prophet (sws). He was accompanied by a person from amongst the Anṣār and a servant. On the way, Ibn Khaṭal killed the servant on the pretext of insubordination, became an apostate, and ran away to Makkah.¹²⁶ Not only this; all three people mentioned here persisted in their denial of the Prophet (sws) even after the truth of his message had become conclusively evident to them. And, God Almighty has mentioned repeatedly in the Qur’ān that, as a Divine principle, the direct addressees of a *rasūl*¹²⁷ are within the range of Divine punishment. For that reason, if they go on to the extent of hostility, they can also be killed.

These details show that the wrongdoers in question were not merely guilty of blasphemy but had also committed all the other crimes mentioned above. Therefore, they were killed in response to these offences. ‘Abdullāh ibn Khaṭal was a murderous fugitive. It was decreed on these grounds that he be killed even if he was hiding behind the covers of the Ka’bah.

It was indeed offenders of this kind to whom Sūrah Aḥzāb refers. In order to sow the seeds of doubt in Muslims, to turn them away from the Prophet (sws), and to damage their reputation and the moral credibility of their religion badly, these wrongdoers would engage in

126. ‘Abd al-Malik ibn Hishām, *Al-Sīrah al-nabawiyyah*, 2nd ed., vol. 3 (Beirut: Al-Maktabah al-‘uḍwiyyah, 1999), 47, 248; Ibid., vol. 4, 44; Shiblī Nu‘mānī, *Sīrat al-nabī*, vol. 1 (Lahore: Idārah islāmiyyāt, n.d.), 253.

127. As a specific term in the Qur’ān, a messenger of God sent as Divine judgment for or against his people and direct addressees; plural: *rusul*.

many activities as cooking up stories about personal lives of Muslims, slandering them and carrying on scandal-mongering, sometimes expressing desire to marry ladies from amongst the Prophet's holy wives, and spreading rumours of all kinds to unnerve and demoralize Muslims. They would sometimes tease Muslim ladies who went out to the fields at night or before daylight to pay heed to the call of nature. When reprimanded for this behaviour, these evildoers would come up with lame excuses as having approached a woman only because they mistook her for the slave-girl of such and such person and because they needed to ask her about such and such matter. The Qur'ān alludes to these aspects of their mischief, and narratives in Muslim tradition record many of the related instances in quite some detail.¹²⁸ Muslim ladies, therefore, were told to put their cloaks over themselves to appear different from slave-girls so that the mischievous miscreants would not have pretexts to tease them. Furthermore, the troublemakers were also warned that if they would not stop and would persist in their evil, they would be executed in an exemplary manner:

لَيْسَ لَكُمْ يَنْتَهِي السَّافِقُونَ وَالَّذِينَ فِي قُلُوبِهِمْ مَرَضٌ وَالْمُرْجِفُونَ فِي الْبَدِينَةِ
لَنُغْرِيَنَّكَ بِهِمْ ثُمَّ لَا يُجَاوِرُونَكَ فِيهَا إِلَّا قَلِيلًا مَلْعُونِينَ أَيْنَمَا ثَقِفُوا أَخْدُوا

128. Muḥammad ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān*, 4th ed., vol. 10 (Beirut: Dār al-kutub al-'ilmiyyah, 2005), 332; Ismā'īl ibn 'Umar ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, 5th ed., vol. 3 (Beirut: Mu'assasah al-rayyān, 1999), 518; Muḥammad ibn 'Umar al-Zamakhsharī, *Al-Kashshāf*, vol. 3 (Beirut: Dār iḥyā' al-turāth al-'arabī), 569.

وَقُتِلُوا تَقْتِيلًا (٣٣: ٦٠-٦١)

[Even after this measure] If these hypocrites do not desist and also those with a disease in their hearts and those too who spread lies in Medina, we shall make you rise against them; then they shall not be able to stay amongst you but with difficulty; cursed shall they be; wherever found, they shall be killed in an exemplary manner. (33: 60-61).

Other narratives of similar nature that are often related are usually not credible enough in terms of historical authenticity of the *sanad* (chain of narrators). However, even if they were to be assumed reliable enough, the nature of events described would still fall within the scope of same context: after full manifestation of hostility in their blasphemy and sacrilege, these people were within the purview of the same law that the Qur'an has described as a Divine custom pertaining to the denial of a *rasūl* by his people and direct addressees. Some murders were also vindicated on these grounds. لَا يُقْتَلُ ¹²⁹ is a description of the same principle. The 'ulamā are aware of these aspects, yet they insist on deriving the law for punishment of blasphemy from these narratives.

Here, someone might also refer to oft-related incident in which 'Umar (rta) is reported to have struck off the head of a man who refused to accept the Prophet's legal verdict on a certain occasion. Our 'ulamā relate this

129. "No Muslim shall be sentenced to death in retaliation for these deniers." Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 6, 2534, (no. 6517).

incident from the pulpits and directly encourage people to show the same attitude as reflected in the narrative towards those whom they perceive as blasphemers of the Prophet (sws). However, the fact is that not just the first and second degree of Ḥadīth collections (in terms of authenticity) but also the third degree works are devoid of this narrative. Even Ibn Jarīr al-Ṭabarī, who often relates narratives in all categories, has not regarded it worthy of consideration. This narrative comes from a *gharīb* (with isolated chain of narrators) and *mursal* (with omissions in the chain) Ḥadīth that has been cited by some exegetes in their commentaries; however, those acquainted to some extent with Ḥadīth sciences have clarified that, in the chain, its attribution to Ibn ‘Abbās (rta) is absolutely implausible. Moreover, in the *sanads* of Ibn Mardawayh and Ibn Abī Ḥātim, the narrator Ibn Lahī‘ah is *ḍa‘īf* (“weak”).¹³⁰ The view that exegetes relate this very narrative also as *shān-e nuzūl* (an occasion for the revelation) of Q. 4:65 is also ill-founded. Although this verse of Sūrah Nisā’ is not in want of description of any reason of revelation, yet, quite contrary to this one, the narrative that Imām Bukhārī and other leading scholars of Ḥadīth have related as the occasion of revelation for this verse and which narrative is often cited by exegetes is one that pertains to a water dispute between the Prophet’s paternal cousin, Zubayr, and a person from the Anṣār. When the matter was presented to the Prophet (sws), he told Zubayr to irrigate his field and leave the remaining water for the Anṣārī. The Anṣārī immediately retorted by

130. Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, vol.1, 681.

saying: “O Prophet of Allāh, is this because Zubayr is your cousin?” This highly impudent remark was clearly an imputation of injustice and nepotism. Therefore, it is related that the Prophet’s face changed colour, but he did not say anything save repeating his statement with more clarity and decreed that the water be retained up to the edges of the field and the rest be left for the Anṣārī.¹³¹

One must “commend” the ‘ulamā on their choice in selection for ignoring this highly credible narrative reported by Bukhārī and Muslim that reflects the Prophet’s forbearance, forgiveness, compassion and kindness; instead, they are enthusiastically and zealously relating everywhere a weak and improbable narrative related to how ‘Umar (rta) struck off someone’s neck.

III

On the issue of blasphemy against the Prophet (sws), is the opinion of majority of jurists based on any directive in the Qur’ān or Ḥadīth related specifically to this punishment? The answer to this question is clearly in the negative. The basis of jurists’ opinion on punishment to a Muslim is apostasy and, to a *dhimmī*,¹³² it is violation of pact. The jurists say that a Muslim who blasphemes against the Prophet (sws) becomes an apostate, and the punishment for apostasy is death. Similarly, if a non-Muslim *dhimmī* is guilty of this offence, he loses protection of the pact with him, and,

131. Ibid., 680.

132. Non-Muslims (of conquered lands) who were granted protection and rights under pact in a Muslim government.

therefore, he too deserves capital punishment. According to the jurists, the reason for this inference is that the directive about non-Muslim *Ahl al-Kitāb* (People of the Book¹³³) in verse 29 of Sūrah Tawbah (9th Sūrah of the Qur'ān) entails they be killed if they refuse to remain subjugated and subservient under Muslim rule. Therefore, infer the jurists, if a *dhimmī* shows an attitude of sacrilege and disrespect to the Prophet (sws), it means that he has rebelled against Muslim sovereignty and does not accept his subjugation under Muslim rule.¹³⁴ In Islamic law, this argumentation probably began with this statement of ‘Abdullah ibn ‘Abbās (rta):

أَيُّهَا مُسْلِمُ سَبِّ اللَّهِ وَرَسُولِهِ أَوْ سَبِّ أَحَدٍ مِنَ الْأَنْبِيَاءِ فَقَدْ كَذَبَ بِرَسُولِ
اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهِيَ رَدَّةٌ يَسْتَتَابُ فِيهَا رَجْعٌ وَإِلَّا قَتَلَ وَأَيُّهَا
مُعَاهِدٌ عَانَدٌ فَسَبِّ اللَّهِ أَوْ سَبِّ أَحَدٍ مِنَ الْأَنْبِيَاءِ أَوْ جَهْرٌ بِهِ فَقَدْ نَقَضَ
الْعَهْدَ فَاقْتُلُوهُ

A Muslim who blasphemes against God or the Prophet or any of God's messengers is guilty of denying the Prophet (sws). This is apostasy, which entails that repentance be demanded of the offender. If he repents, he shall be released; if not, he shall be killed. Similarly, if anyone from amongst non-Muslims protected under pact becomes hostile by openly blaspheming against God or the Prophet (sws) or any of God's messengers, he is guilty of

133. In the Prophet's time, the Israelites and the Nazarenes.

134. For details, see for example: Abū Muḥammad ‘Alī ibn Aḥmad ibn Sa‘īd ibn Ḥazm, *Al-Muḥallā bi al-āthār*, 1st ed., vol.13 (Beruit: Dār iḥyā’ al-turāth al-‘arabī, 1999), 234.

violating the pact; you shall kill him too.¹³⁵

It is this argumentation which, according to the jurists, is the foundation of the punishment for blasphemy. However, deliberation on the Qur'ān and the Ḥadīth clearly shows that, after the age of the Prophet's Companions, this basis has become ineffective forever. In my works, *Mīzān* and *Burhān*, I have argued at length that the punishment for apostasy was specific to the peoples who had been afforded conclusive evidence of truth by the Prophet (sws) himself but reverted to their denial after having accepted faith. The Prophet's statement: *مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ* (kill the one who changes his religion¹³⁶) relates to the same peoples. The decree of the punishment for them was in accordance with the *sunnat-e ilāhī* (the Divine way and principle) that has been described in the Qur'ān in relation to the direct addressees of the *rusul*. It has no relation to Muslims in times after the Prophetic age.

The issue of violation of pact is also similar in nature. No one now is *dhimmi* in the world and no one can be subjugated as such now. Verse 29 of Sūrah Tawbah is an offshoot of the same Divine principle mentioned above. Therefore, the right to wage war against any peoples perceived as deniers of the truth has ended forever the right to keep them subjugated and subservient by imposing *jizyah* (tribute) on them. Until the end of the

135. Abū 'Abdullāh Muḥammad ibn Abī Bakr ibn Qayyim, *Zād al-ma'ād fī hadyi khayr al-'ibād*, 1st ed., vol. 4 (Beirut: Dār al-kutub al-'ilmiyyah, 1998), 379.

136. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, 3, 1098, (no. 2854).

world, no one now has any right whatsoever to wage a war against any people for this particular purpose or any right to impose *jizyah* to keep the vanquished subjugated.¹³⁷ Non-Muslim citizens of Muslim States are not *dhimmīs* or condemned to death in any principle or living under any grant of “protection” lifting which would entail their death. This diction and these notions belong to the past. They cannot, in any way, form the foundation for argumentation now.

Now, therefore, only two possibilities remain: first, that, in consideration of Islam and the interests of Muslims, laws [based without foundational religious texts] be enacted and a punishment be prescribed as *ta‘zīr*.¹³⁸ Second, verses 33-34 of Sūrah Mā’idah be used as foundation for the enactment. It is this second possibility about which this article has already emphasized that, if these verses of Sūrah Mā’idah are used as a foundation, three aspects must be kept in mind as the words of the Qur’ān necessitate their inclusion:

1. A person regarded as guilty of blasphemy be invited to repent and reform and be repeatedly warned that, if he is a believer, he should not destroy his own fate in the Hereafter and should submit to God and the Prophet (sws), and, if he does not believe in God or the Prophet (sws), he should show regard for the feelings and sentiments of Muslims and abstain from persisting in

137. For details of the argumentation for these views, see my book chapter “*Qānūn-e Jihād*” in: Ghāmidī, *Mīzān*, 579-609.

138. A non-textual (not directly emanating from any foundational religious text) punishment decided on the basis of reasoning.

this grave offence.

2. His case be filed in the court only if he refuses to change or repent, persists in his blasphemy with defiance, causes disruption, pushes away all efforts to convince him and, instead of showing remorse, actually resorts to belligerence and hostility.

3. Instead of having the option of capital punishment only, room for lighter sentences be left in consideration of any extenuating circumstances related to the actual nature and circumstance of offence and the capacity and state of the offender.

(Translated by Asif Iftikhar)

The Punishment of Intentional Murder

Religion and ethics have always accorded sanctity to human life. The Almighty has explicitly stated in His Book that no one should kill another person; it is the greatest sin after polytheism. The Qur'ān insists that the Israelites were given this directive with the emphasis that the killing of one human being is equivalent to the killing of the whole mankind. This directive is found in the Talmud even today in almost the same words. The Qur'ān has referred to it in Sūrah Mā'idah. Consequently, it is said:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَءِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ
أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا. (٣٢:٥)

It is this [rebelliousness of man] because of which We laid it down [in the Mosaic *sharī'ah*] for the Israelites that he who killed a human being without the latter being guilty of killing another or because of spreading anarchy in the land should be looked upon as if he killed all mankind. (5:32)

It is evident from the above mentioned directive that the life of a human being can only be taken in two instances: when a person has killed someone or when a person while rebelling against the collective system attacks the life, wealth or honour of others. The words

“spreading anarchy in the land” refer to this latter practice. Apart from these two instances, every killing is an unjustified act. According to Islam and the Islamic *sharī‘ah*, such a killing is a crime not only against God but also against the heirs of the murdered person as well as against the society and the government. The Almighty has specified that such criminals will not deserve any lenience from Him in the Hereafter; their faith and deeds will bear no fruit and they will be consigned to the eternal punishment of Hell:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَبِدًا فَبِجْزِ آوْهُ جَهَنَّمَ خُلِدًا فِيْهَا وَغَضِبَ اللَّهُ عَلَيْهِ
وَلَعْنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا. (٩٣:٤)

And he who intentionally kills a believer, his reward is Hell. He shall abide therein forever, and the wrath and the curse of God are upon him. And He has prepared for him a dreadful doom. (4:93)

The second party to a murder is the heirs of the victim. The Qur’ān has stated that the Almighty has given them full authority on the life of the murderer. Hence no court of law or government can treat the murderer with any lenience without the consent of the heirs. It is the responsibility of the court and the government that if the heirs insist on *qisās*, they should help them and implement their will in this regard with full force in a just manner. It is said:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۖ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيِّهِ سُلْطٰنًا فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا. (٣٣:١٧)

Do not wrongfully kill any person whose life has been held sacred by God. And [remember that] whoever is killed wrongfully, We have given his heir an authority. So he should not exceed the bounds in taking a life because he has been helped. (17:33)

The third party to a murder is the Muslim society which is represented by its government. In this regard, the directive of God is that exacting the *qisās* of a murdered person is mandatory upon the government. Hence a government is bound by the *shari'ah* to trace the murderer of a person killed in the area that lies in its jurisdiction, arrest him and exact *qisās* from him according to the law. The government has been directed that complete equality must be observed in this regard and the social status of a person should not be given any preference in any way in this matter. The low in status and the high, the rich and the poor, the noble and the ignoble, the master and the slave – all are equal in the eyes of the law in this regard; no discrimination can be made between them. The Qur'ān states:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۖ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ
بِالْعَبْدِ ۖ وَالْأُنثَىٰ بِالْأُنثَىٰ ۖ وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ
لَعَلَّكُمْ يَتَّقُونَ (٢: ١٧٨-١٧٩)

Believers! *Qisās* of those [among you] who are killed has been made mandatory upon you. If such a murderer is a free-man, then this free-man should be killed in his place and if he is a slave, then this slave should be killed in his place and if the murderer is a

woman, then this woman should be killed in her place ... And there is life for you in *qiṣāṣ* O men of insight that you may follow the limits set by God. (2:178-179)

The mandatory nature of exacting *qiṣāṣ* is only revoked when the heirs of the murdered person do not insist on taking life for life and want to treat the criminal with lenience. After this, it is left to the discretion of the court and the government to either insist on exacting *qiṣāṣ* and to not accept this relief given by the heirs of the murdered person or to accept this relief keeping in view the nature of the crime and the circumstances in which it was committed and direct the murder to pay *diyat* to these heirs according to the custom of the society. The succeeding words of the above quoted verse of Sūrah Baqarah (2:178) read:

فَمَنْ عَنِ لَهُ مِنْ أَحْيَوْ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَّاءُ إِلَيْهِ بِإِحْسَانٍ
ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۖ (٢: ١٧٨)

Then for whom there has been some relief from his brother, then this should be followed according to the custom and *diyat* should be paid with kindness. This is a kind of concession and a mercy from your Lord. (2:178)

A little deliberation will show that the relief mentioned in this verse has precisely the same style in which relief is mentioned in the verse that states the obligation of fasting. It is mentioned in this verse that fasting is obligatory for the believers; however, if a person is sick

or is traveling, he can opt not to fast in which case he will have to make up for the missed fasts later. If both verses are placed parallel to one another, one can see the similarity. At one place, it is said: "Believers! Fasts have been made mandatory upon you." At the other, the words are: "Believers! *Qiṣās* has been made mandatory upon you." At one place, it is stated: "Then he who is sick or is a traveler." The words at the other are: "Then for whom there has been some relief from his brother." At one place, it is said: "He should complete the count in other days." At the other, the words are: "The relief should be followed according to the custom." Students of the Qur'ān can see that the construction of both verses is exactly the same and in both verses permission has been given to benefit from the relief granted; however, accepting the relief has not been made mandatory. Hence just as in the case of fasting Muslims are not bound to necessarily give up fasting if they are sick or are traveling, similarly in the *qiṣās* verse, the government and the society on whom *qiṣās* has been made mandatory have not been bound to necessarily accept the decision of the heirs of the murdered person in case they have decided to show relief. After this relief shown by them, *qiṣās* has only lost its mandatory status and become optional; the right to take *qiṣās* has not been abrogated in any way. Thus the government and the society have all the right to insist on taking *qiṣās* keeping in view the nature of the crime and the circumstances of the criminal and not accept this relief granted.

It is evident from these details that the Qur'ān definitely insists that without the consent of the heirs no lenience can be shown to the murderer; however, it does

not insist in any way that if the heirs intend to show lenience, then it is essential to not exact *qiṣāṣ* from him. This difference has much wisdom in it. If the second of these options is insisted upon, then the right of the society is breeched and the same deplorable situation will arise as the one that arose in the cases of Raymond Davis and Shah Rukh Jatoi. If the first of these options is not insisted upon, then the right of the heirs is violated and the whole wisdom underlying the directive is rendered null and void. This wisdom was to extinguish the fire of revenge ignited in the hearts of the victim's heirs and to heal the wound caused by his death so that if they adopt a soft attitude, this would be a direct favour to the murderer and his family from which very useful results can be expected.

The cardinal mistake committed by our jurists is that they have not taken into consideration this difference and in this way by severing the link of such a heinous crime as murder from the society have made it a dispute between the murderer and the heirs of the victim. The ordinance of *qiṣāṣ* and *diyat* is based on this very opinion of our jurists. It needs to be amended as soon as possible and brought in line with the Book of God in all respects. As per the dictates of our faith and beliefs, we are bound by the Qur'ān and Sunnah and not to a particular interpretation of these sources. We request our scholars to deliberate on our recommendations. This matter relates to God's religion and should be viewed while rising above all prejudices.

(Translated by Dr Shehzad Saleemr)

The Law of Evidence

Since the Qur'ān has in no way bound the Muslims to adopt a particular method in proving a crime, it is absolutely certain that a crime stands proven in Islamic law just as it is in accordance with the universally acceptable methods of legal ethics endorsed by sense and reason. Consequently, if circumstantial evidence, medical check-ups, post mortem reports, finger prints, testimony of witnesses, confession of criminals, oaths and various other methods are employed to ascertain a crime, then this would be perfectly acceptable by Islamic law.

It is to this fact that the following words of the Prophet (sws) allude to:

الْبَيِّنَةُ عَلَى الْبُذِّعَى وَالْيَمِينُ عَلَى الْبُذِّعَى عَلَيْهِ

To substantiate a crime is the claimant's responsibility, and the person who refutes it will have to swear an oath.¹³⁹

In the words of Ibn Qayyim:

البينة في كلام الله ورسوله و كلام الصحابة اسم لكل ما يبين الحق
فهو اعم من البينة في اصطلاح الفقهاء حيث خصوها بالشاهدين أو

139. Al-Tirmidhī, *Sunan*, vol. 3, 626, (no. 1341).

The word *bayyinah* in the language of the Qur'ān, the Prophet (sws) and his Companions is the name of everything by which the truth becomes evident. Hence contrary to its connotations in the terminology of the jurists, it has a wider meaning because they only use it for two witnesses or an oath and a witness.¹⁴⁰

However, there are two exceptions to this:

Firstly, if a person accuses a chaste and righteous man or woman having a sound reputation of fornication. In this case, the Qur'ān stresses that the accuser shall have to produce four eye-witnesses. Anything less than this will not prove his accusation. Circumstantial evidence or medical examination in this case is absolutely of no importance. If a person is of lewd character, such things have a very important role, but if he has a morally sound reputation, Islam wants that even if he has faltered, his crime should be concealed and he should not be disgraced in the society. Consequently, in this case, it wants four eye-witnesses to testify and if the accuser fails to produce them, it regards him as guilty of *qadhf*. The Qur'ān says:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ
جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ. إِلَّا الَّذِينَ

140. Abū 'Abdullāh Shams al-Dīn Muḥammad ibn Abī Bakr ibn Ayyūb ibn Sa'd ibn Qayyim, *I'lām al-muwaqqi'īn 'an rabb al-'ālamīn*, vol. 1 (Beirut: Dār al-jīl, 1973), 90.

تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ. (٢٤: ٤-٥)

Upon those who accuse honourable women [of fornication] and bring not four witnesses as evidence [for their accusation], inflict eighty lashes, and never accept their testimony in future. They indeed are transgressors. But those who repent and mend their ways, God is Most-Forgiving and Ever-Merciful. (24:4-5)

Secondly, to purge an Islamic state from prostitutes who, in spite of being Muslims, do not give up their life of sin, the only thing required, according to the Qur'ān, is that four witnesses who are in a position to testify that a particular woman is a prostitute by profession should be called forth. In this case, it is not necessary at all that they be eye-witnesses. If they testify with full responsibility that she is known as a prostitute in the society and the court is satisfied with their testimony, then they can be given any of the punishments fixed by the Qur'ān for habitual criminals. The Qur'ān says:

وَالَّتِي يَأْتِيَنَّ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّيَهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا. (١٥: ٤)

And upon those of your women¹⁴¹ who commit fornication, call in four people from among yourselves to testify over them; if they testify [to

141. Ie., those among Muslim women who habitually commit fornication.

their ill-ways], confine them to their homes till death overtakes them or God formulates another way for them. (4:15)

Barring these two exceptions, the *sharī'ah* does not in any way bind the court to follow any prescribed procedure to ascertain a crime. Consequently, in cases of *ḥudūd* punishments or in those of evidence in any other crime, in the view of this writer, it has been left to the discretion of the judge whether he accepts someone as witness or not. In this regard, there is to be no discrimination between men and women. If a woman testifies in a clear and definite manner, her testimony cannot be turned down simply on the basis that there is not another woman and a man to testify alongside her. Likewise, if a man records an ambiguous and vague statement, it cannot be accepted merely on the grounds that he is a man. If a court is satisfied by the statements of witnesses and by any circumstantial evidence, it has all the authority to pronounce a case as proven and if it is not satisfied, it has all the authority to reject it even if ten men have testified.

Except in cases where the Qur'ān has used the words *منكم* (*minkum*: from among you) as in 4:15 above, similar is the case with the testimony of non-Muslims: it is left to the discretion of a judge.

Here it should remain clear that our jurists hold a different view in this matter. Ibn Rushd has summed up the opinions of the jurists on this issue in his celebrated treatise *Bidāyah al-Mujtahid* in the following words:

واتفقوا على انه تثبت الاموال بشاهد عدل ذكر وامرأتين لقوله تعالى:

فرجل وامرأتان ممن ترضون من الشهداء واختلفوا في قبولهما في الحدود فالنذى عليه الجمهور انه لا تقبل شهادة النساء في الحدود لامر رجل ولا مفردات وقال أهل الظاهر: تقبل إذا كان معهن رجل وكان النساء أكثر من واحدة في كل شيء على ظاهر الآية وقال ابو حنيفة: تقبل في الاموال وفيما عدا الحدود من أحكام الابدان مثل الطلاق والرجعة والنكاح والعتق ولا تقبل عند مالك في حكم من أحكام البدن واختلف أصحاب مالك في قبولهن في حقوق الابدان المتعلقة بالبال مثل الوكالات والوصية التي لا تتعلق بالبال فقط فقال مالك وابن القاسم وابن وهب: يقبل فيه شاهد وامرأتان وقال أشهب وابن الماجشون: لا يقبل فيه الا رجلا واما شهادة النساء مفردات اعنى النساء دون الرجال فهي مقبولة عند الجمهور في حقوق الابدان التي لا يطدع عليها الرجال غالباً مثل الولادة والاستهلال وعيوب النساء

There is a general consensus among the jurists that in financial transactions a case stands proven by the testimony of a just man and two women on the basis of the verse: "If two men cannot be found, then one man and two women from among those whom you deem appropriate as witnesses." However; in cases of *hudūd*, there is a difference of opinion among our jurists. The majority say that in these affairs the testimony of women is in no way acceptable whether they testify alongside a male witness or do so alone. The *Zāhīrīs* on the contrary maintain that if they are more than one and are accompanied by a male witness, then owing to the apparent meaning of the verse their testimony will be acceptable in all affairs.

Imām Abū Ḥanīfah is of the opinion that except in cases of *ḥudūd* and in financial transactions their testimony is acceptable in bodily affairs like divorce, marriage, slave-emancipation and *rajū'* [restitution of conjugal rights]. Imām Mālik is of the view that their testimony is not acceptable in bodily affairs. There is however a difference of opinion among the companions of Imām Mālik regarding bodily affairs which relate to wealth like advocacy and will-testaments which do not specifically relate to wealth. Consequently, Ash-hab and Ibn Mājishūn accept two male witnesses only in these affairs, while to Mālik Ibn Qāsim and Ibn Wahab two female and a male witness are acceptable. As far as the matter of women as sole witnesses is concerned, the majority accept it only in bodily affairs, about which men can have no information in ordinary circumstances like the physical handicaps of women and the crying of a baby at birth.¹⁴²

The jurists have based their view upon the following verse of the Qur'ān:

وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ^٤ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَ
 امْرَأَتَيْنِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ
 إِحْدَاهُمَا الْأُخْرَى^٥ (٢٨٢:٢)

And call in two male witnesses from among your

142. Abū al-Walīd Muḥammad ibn Aḥmad ibn Muḥammad ibn Rushd al-Qurṭubī, *Bidāyah al-mujtahid wa nihāyah al-muqtaṣid*, vol. 2 (Beirut: Dār al-fikr, n.d.), 648.

men [over the document of loan]. And if two men cannot be found, then one man and two women from among those whom you deem appropriate as witnesses so that if either of them gets confused the other reminds her. (2:282)

In the opinion of this writer, this view of our jurists concerning the testimony of a woman is not correct owing to the following two reasons.

Firstly, the verse has nothing to do with the bearing of witness over an incident. It explicitly relates to testifying over a document. It is very evident that in the second case witnesses are selected by an external agency, while in the first case the presence of a witness at the site of an incidence is an accidental affair. If we have written a document or signed an agreement, then the selection of witnesses rests upon our discretion, while in the case of adultery, theft, robbery and other similar crimes whoever is present at the site must be regarded as a witness. The difference between the two cases is so pronounced that no law about one can be deduced on the basis of the other.

Secondly, the context and style of the verse is such that it cannot relate to law or the judicial forums of a state. It is not as if after addressing a court of law it has been said that if such a law-suit is presented before them by a claimant, then they should call in witnesses in this prescribed manner. On the contrary, this verse directly addresses people who borrow and lend money over a fixed period. It urges them that if they are involved in such dealings, then an agreement between the two parties must be written down, and to avoid disputes and financial losses only witnesses who are honest, reliable

and morally sound should be appointed. At the same time, their personal involvement and occupations should be suited to fulfil this responsibility in a befitting manner. The verse should not be taken to mean that a law-suit will only stand proven in court if at least two men or one man and two women bear witness to it. It is reiterated that the verse is merely a guidance for the general masses in their social affairs and counsels them to abide by it so that any dispute can be avoided. It is for their own benefit and welfare that this procedure should be undertaken.

Consequently, about all such directives the Qur'ān says:

ذٰلِكُمْ اَقْسَطُ عِنْدَ اللّٰهِ وَاَقْوَمُ لِشَهَادَةٍ وَّ اَدْنٰى اَلَّا تَرْتَابُوْا (٢:٢٨٢)

This is more just in the sight of God; it ensures accuracy in testifying and is the most appropriate way for you to safeguard against all doubts. (2:282)

Ibn Qayyim comments on this verse in the following manner:

فهذا في التحمل والوثيقة التي يحفظ بها صاحب المال حقه لاني طريق الحكم وما يحكم به الحاكم فان هذا شيء وهذا شيء

It relates to the heavy responsibility of testifying by which a person of wealth protects his rights. It has no concern with the decision of a court. The two are absolutely different from each other.¹⁴³

In recent times, two new arguments have been

143. Ibn Qayyim, *I'lām al-muwaqqi'īn*, vol. 1, 90.

advanced by various quarters to lend support to the view of the jurists concerning the testimony of women.

The first of these arguments is based on the words *اربعة شهداء* (*arba'atah shuhadā*: four witnesses) of 24:4 and *اربعة منكم* (*arba'ataḥ minkum*: four [witnesses] among you) of 4:15. It is held that since *اربعة* (*arba'atah*) is in the feminine gender and according to the established principle of Arabic grammar the *معدود* (*ma'dūd*: the counted object) this *عدد* (*'adad*: the numeral) qualifies should be masculine. Consequently, by the words *اربعة شهداء* (*arba'atah shuhadā*: four witnesses) four men are necessarily implied; women cannot be included.

On a first look, this argument seems to be based on strong grounds since it is in accordance with the rules of Arabic grammar. However, a closer look reveals how baseless it actually is. Any one who has some knowledge of Arabic knows that this rule not only states that from three to ten if the *معدود* (*ma'dūd*: the counted object) is masculine the *عدد* (*'adad*: the numeral) is feminine but also says that if the *معدود* (*ma'dūd*: the counted object) is a noun that is used both for masculine and feminine entities, then also its *عدد* (*'adad*: the numeral) shall necessarily be feminine.

Consequently, in the following verses the *عدد* (*'adad*: the numeral) of *ازواج* (*azwāj*: pairs), which is the counted object is *ثمانية* (*thamāniyah*) which is in the feminine gender:

ثَمَانِيَّةَ أَزْوَاجٍ مِّنَ الضَّأْنِ اثْنَيْنِ وَمِنَ الْمَعْزِ اثْنَيْنِ ۖ قُلْ آلَذْكَرَيْنِ
حَرَامٌ أَمْ الْإُنْثَىٰ ۚ (١٤٣:٦)

[Take] eight pairs: of sheep a pair, and of goats a

pair; say, has He forbidden the two males or the two females. (6:143)

Consider also the following verses:

مَا يَكُونُ مِنْ ثَلَاثَةٍ إِلَّا هُوَ رَابِعُهُمْ وَلَا خَمْسَةٍ إِلَّا هُوَ سَادِسُهُمْ (٧:٥٨)

There is not a secret consultation between three, but He makes the fourth among them, – nor between five but He makes the sixth. (58:7)

As in the case of اربعة منكم (*arba'atan minkum*), the معدود (*ma'dūd*: the counted object) of ثلاثة (*thalāthah*: three) and that of خمسة (*khamisah*: five) has been suppressed because it is so obvious. The suppressed معدود (*ma'dūd*: the counted object) is something to the effect of نفر (*nafr*: group). Since *nafr* is a word that can be spoken both for masculine and feminine genders, its عدد (*'adad*: the numeral) in the verse is also feminine.

Similar examples can be found in the following Aḥadīth also:

وَطَعَامُ الْاِثْنَيْنِ يَكْفِي الْاَرْبَعَةَ

The food of two suffices for four.¹⁴⁴

اِذَا كَانَ ثَلَاثَةٌ فَلَا يَتَنَاجَى اِثْنَانِ دُونَ وَاحِدٍ

If there are three people [present] two [of them] should not whisper.¹⁴⁵

144. Al-Dārimī, *Sunan*, vol. 2, 136, (no. 2044).

145. Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 4, 1717, (no. 2183).

مَا مِنْ مُسْلِمٍ يَشْهَدُ لَهُ ثَلَاثَةٌ إِلَّا وَجِبَتْ لَهُ الْجَنَّةُ

If three bear witness for a Muslim, he shall definitely enter paradise.¹⁴⁶

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ

Three people cannot be held liable: [one among them is] a person who is sleeping until he awakens.¹⁴⁷

In these Aḥādīth also, the numerals اربعة (*arba'atah*) and ثلاثة (*thalāthah*) are feminine and any one who knows the language can in no way insist that the معدود (*ma'dūd*: the counted object) of these numerals are only men and that women cannot be implied.

The second of these arguments is that since 2:282 (quoted above) mentions that a woman might get confused thereby casting a doubt in her testimony, so in accordance with the following words attributed to the Prophet (sws) whereas a *ḥadd* punishment can in no case be given in cases in which they have testified, a *ta'zīr* punishment can be given in such cases:

ادْرُؤُوا الْحُدُودَ بِالشُّبُهَاتِ

Do not enforce a *ḥadd* punishment if there is a doubt.¹⁴⁸

The following Aḥādīth are of similar meaning also:

146. Al-Tirmidhī, *Sunan*, vol. 3, 373, (no. 1059).

147. Abū Dā'ūd, *Sunan*, vol. 4, 139, (no. 4398).

148. Ibn Ḥajar, *Al-Talkhīṣ al-Ḥabīr*, vol. 4, 56.

ادْرءُوا الْحُدُودَ عَنِ السُّلَّيْنِ مَا اسْتَطَعْتُمْ

Refrain from enforcing *hudūd* as much as is possible for you.¹⁴⁹

ادْفَعُوا الْحُدُودَ مَا وَجَدْتُمْ لَهُ مَدْفَعًا

Withdraw *hudūd* wherever you can find a plea.¹⁵⁰

A little deliberation shows that this argument also is baseless.

Firstly, if in a particular case a woman does in fact get puzzled while giving her testimony and the court reaches the conclusion that her testimony has become ambiguous as a result, it certainly has the right to disregard her testimony. However how can this be made a general principle of law and on its basis a woman's testimony be forsaken forever? Just as there is a chance that she might get puzzled while giving her testimony, there is an equal if not a stronger one that she may testify in a clear and unambiguous manner. The Qur'ān has mentioned her testifying in a state of confusion as a chance occurrence and not as a general or a certain one. A chance is just a chance and on what grounds can it be made a general principle?

Secondly, the Ḥadīth in no way means that if there is some doubt, a *ḥadd* punishment shall not be given; it only means that in case of doubt *no* punishment at all can be given. The word *ḥadd* has not been used as a term

149. Al-Tirmidhī, *Sunan*, vol. 4, 33, (no. 1424).

150. Ibn Mājah, *Sunan*, vol. 2, 850, (no. 2545).

here; it is used in its literal sense for the term came into existence much after the Prophet (sws). What he has reported to have said is based on the universal principal of the ethics of law that since in case of doubt a crime does not stand proven, the criminal cannot be punished. Consequently, if these people say that a *ta'zīr* punishment can be given on the basis of a woman's testimony, then this only means that the crime stands proven in their eyes. But then the question arises: if the crime stands proven, then why can a *ḥadd* punishment not be given? And if they contend that if a woman's testimony always leaves room for doubt then a crime cannot be considered to be proven; so on what basis should the *ta'zīr* punishment be administered?

A crime, obviously, cannot be regarded to be proven ten, twenty, ninety or ninety nine percent. It is either proven one hundred percent or not proven at all. Consequently, it is absolutely baseless to accept a state between proof and lack of proof in a crime and in no way can it be accepted that a *ḥadd* punishment will be administered on certain grounds and *ta'zīr* punishment on certain other grounds. No doubt that the nature of the crime and the circumstances of the criminal do have a bearing on the extent of punishment that is to be given. However, to imply that the "extent" of proof forms a basis for punishment is something common sense totally rejects and human nature completely discards.

(Translated by Dr Shehzad Saleem)

Islamic Punishments: Some Important Issues

The *sharī'ah* ordained by the Almighty regarding punishments has already been elaborated upon by me in my book *Mīzān*.¹⁵¹ It is shown in this book that the *sharī'ah* has specified the punishments of only five crimes.¹⁵² The punishments of all other crimes have been left to the rulers of a state to legislate.

However, in this regard, as far as the prevailing concepts are concerned, four questions may arise:

(1) Has not the *sharī'ah* fixed the punishment of drinking liquor as eighty lashes?

(2) Is death not the punishment for apostasy according to the *sharī'ah*?

(3) Can a state award death penalty in crimes whose punishments have not been ordained by the *sharī'ah*?

(4) Can the jail punishment be given to criminals for the crimes mentioned in (3)?

I now present my viewpoint in detail on these questions.

1. The Punishment of Drinking Liquor

The answer to the first question is that the punishment of drinking liquor was fixed at eighty lashes by 'Umar

151. English title: *Islam: A Comprehensive Introduction*.

152. ie, *Muḥārabah*, Murder, Fornication, Theft and *Qadhf*.

(rta) after he in his capacity of a caliph had consulted the members of his *shūrā*. In the time of the Prophet (sws), this offence was punished by punching and kicking the offender, and by beating him with twisted sheets of cloth or with twisted pieces of date-palms. The caliph Abū Bakr (rta) had decreed that this crime be punishable by forty lashes, and then the caliph ‘Umar (rta) in his own times increased it to eighty lashes when he saw that people were not desisting from it. In the words of Ibn Rushd:¹⁵³

فعبدة الجهور تشاور عمر والصحابه لما كثرت في زمانه شرب الخمر و اشارت
على عليه بان يجعل الحد ثمانين قياساً على حد الغرية فانه كما قيل
عنه رضى الله عنه إذا شرب سكر وإذا سكر هذى وإذا هذى افتري

The general opinion in this regard is based on the consultation of ‘Umar (rta) with the members of his *shūrā*. The session of this *shūrā* took place during his period when people started indulging in this habit more frequently. ‘Alī (rta) opined that, by analogy with the punishment of *qadhif*, its punishment should also be fixed at eighty lashes. It is said that while presenting his arguments, he had remarked: “When he [– the criminal –] drinks, he will get intoxicated and once he gets intoxicated, he will utter nonsense; and once he starts uttering nonsense, he will falsely accuse other people.”

It is evident from this, that the punishment of drinking is not part of the *sharī‘ah*. It is only the prerogative of

153. Ibn Rushd, *Bidāyah al-Mujtahid*, vol. 2, 332.

the Prophet (sws) to regard anything as part of the *sharī'ah*, and if he has done so in a particular case, Abū Bakr (rta) or 'Umar (rta) can in no way alter it. Had this punishment been part of the *sharī'ah*, neither would have Abū Bakr (rta) replaced it with forty lashes, nor would 'Umar (rta) have increased it to eighty lashes. It is clear that if the Prophet (sws) punished such criminals by beating them, he did so not in the capacity of a law-giver but in the capacity of a Muslim ruler. His successors punished such criminals by whipping them with forty and eighty lashes respectively in their capacity as rulers. Consequently, it can be safely said that the punishment of drinking is not a *ḥadd*,¹⁵⁴ it is a *ta'zīr*¹⁵⁵ which the parliament of an Islamic State can adopt and if needed legislate afresh in this regard.

2. The Punishment of Apostasy

The answer to the second question is that the punishment of apostasy has arisen by misunderstanding a Ḥadīth. This Ḥadīth has been narrated by Ibn Abbās (rta) in the following way:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

Execute the person who changes his faith.¹⁵⁶

Our jurists regard this verdict to have a general

154. Punishments ordained by God.

155. Punishments legislated by the rulers of an Islamic State.

156. Al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1098, (no. 2854).

application for all times upon every Muslim who renounces his faith from the times of the Prophet (sws) to the Day of Judgement. In their opinion, this Ḥadīth warrants the death penalty for every Muslim who, out of his own free will, becomes a disbeliever. In this matter, the only point in which there is a disagreement among the jurists is whether an apostate should be granted time for repentance before executing him, and if so what should be the extent of this period. The Hanafite jurists however, exempt women from this punishment. Apart from them, there is a general consensus among the jurists that every apostate, man or woman, should be punished by death.

In my opinion, this view of our jurists is not correct. The verdict pronounced in this Ḥadīth has a specific application and not a general one; it is only confined to the people towards whom the Prophet (sws) had been directly sent to do *itmām al-hujjah* (conclusive communication of the truth). The Qur'ān uses the words *mushrikīn* for these people.

I now elaborate upon this view.

In this world, we are well aware of the fact that life has been endowed to us not because it is our right but because it is a trial and a test for us. Death puts an end to it whenever the duration of this test is over, as deemed by the Almighty. Commonly, He fixes the length of this period on the basis of His knowledge and wisdom. However, in case of the direct and foremost addressees of a *rasūl* (Messenger of God), once the truth is unveiled to them in its ultimate form after which they have no excuse but stubbornness and enmity to deny it, they lose their right to live. The Almighty had blessed them with life to

try and test them, and since after *tmām al-hujjah* this trial becomes totally complete, therefore the law of the Almighty in this regard is that generally such people are not given any further right to live and the death sentence is imposed upon them.

This punishment is enforced upon the direct addressees of a *rasūl* in one of the two ways depending upon the situation which arises. In the first case, after doing *itmām al-hujjah* upon his nation, a *rasūl* and his Companions (rta) are not able to achieve political ascendancy in their territory and migrate from their people. In this case, divine punishment descends upon their nation in the form of raging storms, cyclones and other calamities, which completely destroy them. The nations of the ‘Ād and the Thamūd and the people of Noah (sws) and Lot (sws) besides many other nations met with this dreadful fate, as is mentioned in the Qur’ān. In the second case, a *rasūl* and his companions are able to acquire political ascendancy in a land where after doing *itmām al-hujjah* upon their people they migrate. In this case, a *rasūl* and his Companions subdue their nation by force, and execute them if they do not accept faith. It was this situation which had arisen in the case of the *rasūl* Muhammad (sws). On account of this, the Almighty bade him declare that those people among the *mushrikīn* who had not accepted faith until the day of *hajj al-akbar* (9th *hijrah*) should be given a final extension by a proclamation made in the field of ‘Arafāt on that day. According to the proclamation, this final extension would end with the last day of the month of Muḥarram, during which they had to accept faith, or face execution at the end of that period. The Qur’ān says:

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرْمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَ
خُذُواهُمْ وَاحْصِرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ^٥ فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ
وَاتُوا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ^٦ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ. (٥:٩)

When the forbidden months are over, slay the Idolaters wherever you find them. Seize them, besiege them and every where lie in ambush for them. But if they repent from their ill beliefs and establish the prayer and pay *zakāh*, then spare their lives. God is Most-Forgiving and Ever-Merciful. (9:5)

A Ḥadīth illustrates this law in the following manner:

أَمَرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا
رَسُولُ اللَّهِ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ فَتَبَدَّلَ اللَّهُ وَجْهَهُمْ
دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ وَحِسَابُهُمْ عَلَى اللَّهِ

I have been directed to wage war against these people until they testify to the oneness of God and to the prophethood of Muhammad, establish the prayer and pay *zakāh*. If they accept these terms, their lives will be spared except if they commit some violation that makes them lose this protection from Islamic law and [in the Hereafter] their account rests with God.¹⁵⁷

This law, as has been stated before, is specifically meant for the *mushrikīn* on whom Muhammad (sws) had

157. Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 1, 53, (no. 22).

directly done *itmām al-ḥujjah*. Apart from them, it has no bearing upon any other person or nation. So much so, that even the people of the Book who were present in his times were exempted from this law by the Qur’ān. Consequently, where the death penalty for the *mushrikīn* is mentioned in the Qur’ān, adjacent to it has also been stated in unequivocal terms that the People of the Book shall be spared and granted citizenship if they pay *jizyah*. The Qur’ān says:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ
اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى
يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ. (٢٩:٩)

Fight against those among the people of the Book who neither believe in God nor in the Last Day, and who do not forbid what God and His Prophet have forbidden and do not accept the religion of truth as their own religion, until they pay *jizyah* out of subjugation and lead a life of submission. (9:29)

The foregoing discussion outlines a law of the Almighty. There is a natural corollary to this divine law as obvious as the law itself. As stated earlier, the death penalty had been imposed upon these *mushrikīn* if they did not accept faith after a certain period. Hence, it follows that if a person among the *mushrikīn* after accepting faith reverted to his original state of disbelief, he had to face the same penalty. Indeed, it is this reversion about which the Prophet (sww) is reported to have said: “Execute the person who changes his faith.”

The relative pronoun “who” in the above quoted Ḥadīth qualifies the *mushrikīn* of the times of the Prophet (sws) just as the words “the people” (*al-nās*) in the Ḥadīth quoted earlier are specifically meant for the *mushrikīn*. When the basis of this law as narrated in these Aḥādīth has been specified in the Qur’ān, then quite naturally this specification should also be sustained in the corollary of the law. Our jurists have committed the cardinal mistake of not relating the relative pronoun “who” in the Ḥadīth “Execute the person *who* changes his faith” with its basis in the Qur’ān as they have done in the case of “the people” (*al-nās*) of the Ḥadīth quoted above. Instead of interpreting the Ḥadīth in the light of the relationship between the Qur’ān and Ḥadīth, they have interpreted it in the absolute sense, totally against the context of the Qur’ān. Consequently, in their opinion the verdict pronounced in the Ḥadīth has a general and an unconditional application. They have thereby incorporated in the Islamic Penal Code a punishment which has no basis in the *sharī‘ah*.

3. The Capital Punishment

The answer to the third question is that the death sentence can only be given to a person who has killed someone or to someone who is guilty of spreading disorder in a society. No other person can be punished by death. The Qur’ān says:

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا (٣٢:٥)

He who killed a human being without the latter being guilty of killing another or of spreading disorder in the land should be looked upon as if he had killed all of mankind. (5:32)

This is the verdict of the Qur'ān. Hence, except for these two offences, neither a person nor an Islamic government has any right to administer the death sentence to a person.

4. The Jail Punishment

The answer to the fourth question is that the jail punishment is not merely a punishment; it is in fact a barbarity that man has invented for himself. It is therefore not expected from an Islamic government to include it in its penal code. No doubt, dark cells, underground dungeons and castle turrets have always existed in the known history of mankind. The Prophet Joseph's tale of imprisonment has been narrated both in the Qur'ān and in the Bible. The historian's pen also bears witness to the tragic deaths of two great scholars of Islam, Imām Abū Ḥanīfah (d. 767 AD) and Imām Ibn Taymiyyah (d. 1327 AD), both of whom died in captivity. But it must be borne in mind, that before the eighteenth century jails were only used as temporary lock ups. Criminals were usually detained in them during the course of their inquiry and investigation, or when they awaited the infliction of punishments like whipping, execution and other similar sentences. The concept of confining an offender behind bars for two, four or ten years as a penalty for a crime has

originated and gained acceptance only in the past three centuries. It is now a fairly common practice to punish most criminals in this manner.

Although various institutions akin to the prison existed in Europe in the fourteenth century like the *Delle Stinche* in Florence, it is generally believed that "The Walnut Street Jail" set up in Philadelphia in 1790 was the first modern prison. Its antecedents are to be found in the reformatories and houses of correction established in London (1557), Amsterdam (1596), Rome (1704) and in Ghent (1773), an old city of Belgium. Subsequently, as the Western civilization acquired ascendancy, prisons were established all over the world. Within the precincts of these inhuman institutions, man is made to starve the personality within him for months and years; while his offspring, unaware about the concepts of crime and punishment, spend their childhood helplessly watching him bear the agony of life.

The whipping sentence is over in a while, hands are cut once and for all, crucifixion ends a criminal's life after an extreme physical torture, and execution severs irrevocably every string of his relation with this world; but it is this punishment in which the inner personality of a person is continually tormented. Some of his daily routines, in which everyone has an unconditional freedom, become totally dependent on others. He sleeps and awakes upon the will of others. He sits and stands at the direction of others. His eating and drinking habits are governed by others, and even in a matter as personal as relieving one's self, he has to seek permission from others. He is made to beg for a glass of water, a loaf of bread and even a puff of a cigarette, and on many

occasions he is made to lose his self-respect to obtain them. He is deprived from the love and affection of his parents, wife and children, and is made to suppress some of his desires upon which the Almighty has posed no restriction even in the holy month of Ramaḍān, during which restraint and control are the keywords. In short, he faces a Hell on earth, in which he neither lives nor perishes.

Also, it is not the criminal alone who has to endure this punishment. His entire family is made to suffer with him as well. The most affected among them is his wife. The extent of moral, psychological, social and economic problems she has to bear if her husband is jailed for nine or ten years can only be estimated by the faithful wives who themselves have undergone this traumatic experience. The children also suffer an ordeal no less. Everyone knows how adversely they are affected psychologically, when they observe their father being tortured and tormented for years and years. Whipping, cutting off hands, crucifixion and execution all are punishments which either mete out extreme physical suffering for a while or decide the fate of a criminal once and for all. But in case of imprisonment, every time the children visit their father confined in the clutches of a murky cell, intense sentiments build up and strengthen in their minds, after which how can they be expected to have poised and balanced personalities? They can rightly question the society about the ethical grounds on which they were deprived of paternal care and affection when the Almighty had blessed them with it.

Consider also, that every society wishes that after being punished and chastised, a criminal should mend his ways

and correct himself. It is quite evident that the most effective way to achieve this purpose is to keep him in healthy company and in a conducive environment. Oddly enough, through this punishment he is kept isolated from people who might have a good influence upon him. His family, clan and even the society are in no way given the opportunity to reform and rehabilitate him. He is put away for years in the company of criminals in such a manner that even if he desires to reform himself, he is not given any chance to do so. Quite expectedly, during the period of confinement, his association with other criminals becomes a perfect source for stimulating his evil instincts. His criminal tendencies develop further, as he begins to view everything on their basis. This companionship also provides him with an almost unlimited opportunity of discussing, planning and perfecting the art of breaching the law. An omnipresent mafia is a source of perpetual inspiration for him to emulate the records set by the masterminds of the trade. With such a set up what good a society expects from such a highly qualified law breaker once he is injected back in the society, is something quite beyond imagination.

It should also be kept in mind that after flogging a criminal, amputating his hands and inflicting other similar punishments upon him, we have no means to know when he decides to change his ill-ways – an event that might occur anytime during his life. Common sense demands that if a criminal intends to correct himself he should be readily provided with the opportunities to change himself and to lead a life of a responsible citizen. But of all the punishments, it is this punishment in which the law fixes for him the time when he should actually

change, even though it has no means of ascertaining it.

Owing to all these evils and ill-effects, the Islamic Penal Code though understandably contains a provision for house arresting a criminal or exiling him with his family if needed, it does not sanction in any way the confining of a criminal in a prison for years.

(Translated by Dr Shehzad Saleem)

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What is *Diyat*?

The law of *diyat* mentioned in the Qur'ān has given rise to some questions that they have remained a hot subject of debate in present times. They are:

1. Has the *shari'ah* fixed the quantity of *diyat*, and in accordance with this, is the *diyat* of a woman half that of a man?

2. What is the nature of *diyat*? Is it a financial compensation for the loss suffered by the heirs of the slain or by the wounded person himself, or is it the price of life or a limb, or something besides these two?

As an answer to the first question, consider the following verses of the Qur'ān that have been revealed regarding law of *diyat*:

وَمَا كَانَ لِلْمُؤْمِنِ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً ۚ وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً
فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَّدَّقُوا ۚ فَإِنْ كَانَ
مِنْ قَوْمِ عَدُوِّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ ۚ وَإِنْ كَانَ مِنْ قَوْمٍ
بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ
فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ ۚ وَكَانَ اللَّهُ
عَلِيمًا حَكِيمًا. (٤: ٩٢-٩٣)

It is unlawful for a believer to kill a believer except if it happens by accident. And he who kills a

believer accidentally must free one Muslim slave and pay *diyat* to the heirs of the victim except if they forgive him. If the victim be a Muslim belonging to a people at enmity with you, the freeing of a Muslim slave is enough. But if the victim belongs to an ally, *diyat* shall also be given to his heirs and you will also set free a Muslim slave. Then he who does not have a slave, must fast two consecutive months. This is from God a way to repent from this sin: He is Wise, all-Knowing. (4:92-93)

The actual words of the verse are دية مسلبة الى اهله (paying *diyat* to his heirs). Their most appropriate grammatical analysis in the opinion of this writer is to regard them as the inchoative (*mubtadā'*) of a suppressed enunciative (*khavar*) ie. عليه تحرير رقبة مؤمنة ودية مسلبة (it is incumbent upon him to pay *diyat* to his heirs). The word *diyat* in these verses occurs as a common noun, about which we all know that its meaning is determined by the context in which it is used and by its linguistic and customary usage. For example, consider the Qur'ānic verse: إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تَذْبَحُوا بَقَرَةً (Indeed, God ordains you to sacrifice a cow, (2:67)). The word بَقَرَةٌ is a common noun. Therefore, it is absolutely certain that the Jews were directed to sacrifice an animal whose name in the linguistic and customary usage of the Arabs was بَقَرَةٌ. If they had sacrificed any cow, they would have, no doubt, fulfilled this divine directive. In other words, if someone obligates us about something and mentions the obligated thing as a common noun, it simply means that he has directed us to obey the معروف (custom) in this regard. Also, since a common noun

denotes generality, every meaning associated with it shall be considered as implied, without any specification, lest something within the context poses a hindrance. Therefore, in the above verse *diyat* means something which in the general custom and usage is called *diyat*. And the Arabic words *دية مسلبة الى اهله* simply mean that the family of the murdered person should be given what the general custom and tradition terms as *diyat*.

In Sūrah Baqarah, where the directive of *diyat* in case of intentional murder has been given, it has been qualified by the word *معروف* (custom):

فَمَنْ عَفَىٰ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْهُ بِالْمَعْرُوفِ ۚ وَادَّاءُ إِلَيْهِ بِإِحْسَانٍ
(١٧٨:٢)

Then for whom there has been some remission from his brother, then it should be followed according to the *ma'rūf* and *diyat* should be paid with goodness.
(2:178)

It is evident from the above mentioned verses of Sūrah Nisā' and Sūrah Baqarah that in case of intentional as well as un-intentional murder, *diyat* should be paid according to the custom and tradition of the society. In his own period, the Prophet (sws) obeyed this Qur'ānic injunction by following the prevailing *معروف* (custom) of the Arab Society. Whatever has been stated in the Aḥādīth is just an explanation of this *معروف* (custom) during that period. It should be clear that no directive of the Prophet (sws) obligates Muslims to follow it.

An important question that needs explanation concerns

the actual Arab custom about *diyat*. A study of pre-Islamic Arabic poetry and the recorded account of battles between various Arab tribes shows that the *diyat* of every person whose blood relation with his tribe was *صريح* (a person whose blood relation with some tribe is definite), was fixed at ten camels. The *diyat* of an ally or a maid was half of the *صريح* and the *diyat* of a woman was also half that of a man. The author of *Āghānī* while describing the events of a battle between the tribes of Aws and Khazraj writes:

وكانت دية المولى فيهم وهو الحليف خسيًا من الإبل ودية الصريح عشرين
And in their custom, the *diyat* of a *mawlā* ie ally was
five camels and that of a *صريح* was fixed at ten
camels.¹⁵⁸

According to Dr Jawwād ‘Alī:

واما إذا كان القتيل هجينًا فتكون ديته نصف دية الصريح وتكون
دية المرأة نصف دية الرجل

If the slain person was a maid's son, his *diyat* was
half that of a *ṣarīh* and the *diyat* of a woman was
half that of a man.¹⁵⁹

158. Abū al-Faraj ‘Alī ibn al-Ḥusayn al-Aṣbahānī, *Kitāb al-aghānī*, vol. 3 (Lebanon: Dār al-fikr li al-ṭabā‘ah wa al-nashr, n.d.), 41.

159. Dr Jawwād ‘Alī, *Al-Mufaṣṣal fī tārikh al-‘arab qabl al-islām*, 2nd ed., vol. 5 (Beirut: Dār al-‘ilm li al-malāyīn, 1986), 592.

Some tribes because of their high social status accepted twice the actual amount of *diyat*, while some paid twice the actual amount as a favour and blessing upon the other tribe. Dr Jawwād ‘Alī writes:

روى إن الغطارييف وهم قوم الحارث بن عبد الله بن بكر بن يشكر كانوا يأخذون للمقتول منهم ديتين ويعطون غيرهم دية واحدة إذا وجبت عليهم وكان لبني عامر بن بكر بن يشكر وهم من الغطارييف أيضا وقد عرف عامر المذكور بالغطارييف ديتان ولسائر قومه دية وورد إن بني الاسود بن رزن كانوا يودون في الجاهلية ديتين ديتين

It is said that Ghaṭārīf or the people of the tribe Ḥārith ibn ‘Abdullāh ibn Bakr ibn Yashkur used to accept two *diyats* for their slain, and if it became obligatory for them to pay *diyat*, they used to pay a single *diyat*. Likewise, for Banī ‘Āmir ibn Bakr ibn Yashkur, whose ancestor ‘Āmir was, in fact, called Ghaṭārīf, two *diyats* were fixed, while for the rest of the nation it was single. Similarly, according to most traditions, the tribe of Banī Aswad ibn Razan in pre-Islamic times used to pay double *diyat* to others.¹⁶⁰

He goes on to say:

ولم يكن هذا التحديد عن ضعف وانها هو رغبة منهم في الافضال على ذوى القتيل

This regularity in paying two *diyats* was not because

160. Ibid., 593.

of some weakness but as a favour to the family of the slain.¹⁶¹

The *diyat* of kings, called the *Diyat al-Mulūk*, was fixed at a thousand camels. Qarād ibn Ḥansh al-Ṣāridī while eulogizing Banī Fazārah says:¹⁶²

ونحن رهنا القوس ثبت فوديت

بألف على ظهر الفزاري اقرعا

Wa naḥnu raḥana al-qawsa thummut fūdiyat

Bi alfiṇ 'alā zahr al-fazāriyyi aqra'ā

(And we pledged a bow, and from the wealth of *Fazāriyyi* a thousand camels were given as remittance for this.)

بعش مئتين للملوك سعى بها

ليؤتي سيارب بن عمرو فاسرا

Bi 'ashri mi'īna li al-mulūki sa'ā bihā

Liyūfiya Sayyār ubnu 'Amriṇ fa asra'ā

(Ten hundred camels which is the *diyat* of kings. Sayyār Ibn 'Amr strove to carry out this promise and fulfilled the responsibility without delay.)

A few years before the birth of the Prophet (sws), this custom underwent a drastic change. It is said that 'Abd al-Muṭṭalib, the grandfather of the Prophet (sws) vowed

161. Ibid.

162. 'Abd al-Qādir ibn 'Umar al-Baghdādī, *Khazānah al-adab wa lubb lubāb lisān al-'arab*, 1st ed., vol. 7 (Beirut: Dār al-kutub al-'ilmiyyah, 1998), 349.

that if God would bless him with ten sons, he would slaughter one of them as a sacrifice. And when God fulfilled his wish, he set out to fulfil his own pledge. A lot was cast to select which among the ten sons should be sacrificed. It fell upon ‘Abdullāh. So when ‘Abd al-Muṭṭalib was on his way to sacrifice him, some people stopped him and suggested to sacrifice a camel instead. It has been indicated before that during that time the quantity of *diyat* was fixed at ten camels. Hence, once again, a lot was cast, this time in the name of ‘Abdullāh and ten camels. Again, it fell upon ‘Abdullāh and the process was repeated until the number of camels reached one hundred. According to the traditions, after this event the quantity of *diyat* among the Arabs, particularly the Quraysh was re-fixed at a hundred camels. In the words of Ibn Abbās (rta):

كانت الدية يومئذ عشراً من الإبل وعبد الطلب أول من سن دية
النفس مائة من الإبل فجرت في قريش والعرب مائة من الإبل

During that period, *diyat* was ten camels. It was ‘Abd al-Muṭṭalib who first of all fixed it at one hundred camels. As a result, this quantity was adopted by the Quraysh and the Arabs.¹⁶³

Zuhayr has mentioned the same amount of *diyat* in his poetry. While eulogizing two Arab chiefs, Haram ibn Sanān and Ḥārith ibn ‘Awf, because the two had paid three thousand camels as *diyat* to stop a war between

163. Abū ‘Abdullāh Muḥammad ibn Sa‘d al-Zuhrī, *Al-Ṭabaqāt al-kubrā*, vol. 1, (Beirut: Dār Ṣādir, n.d.), 89.

‘Abas and Fazārah, he says.¹⁶⁴

تعفى الكلام بالبئيين فأصبحت

ينجها من ليس فيها بجرم

Tu ‘affa al-kulumu bi al-mi’īna fa aṣbahat

Yunajjimuhā man laysa fīhā bi mujrimī

(By means of hundreds of camels the wounds shall be healed. So, those who were just innocent began to pay these camels in small lots.)

It is evident from this couplet that after this war the *diyat* of the slain was paid in installments. According to Aghānī:

وكانت ثلاثة آلاف بعير في ثلاث سنين

Hence it was three thousand camels which were given in three years.¹⁶⁵

Zuhayr has pointed out that افال (young camels) were given as *diyat*:¹⁶⁶

فاصبح يحدى فيهم من تلادكم

مغانم شتى من افال مزنم

Fa aṣbaḥa yuḥda fīhimu min tilādikum

Maghānimu shattā min ifālīn muzannamī

(From your inherited wealth, camels of various ages

164. Al-Baghdādī, *Khazānah al-adab* vol. 3, 9.

165. Abū al-Faraj al-Aṣbahānī, *Kitāb aghānī*, vol 10, 297.

166. Al-Baghdādī, *Khazānah al-adab* vol. 3, 9.

which are *ifāl* ie, well bred young camels are sent to the families of the slain.)

About this specification of افال (*ifāl*), al-Zawzanī, a commentator of the Sab‘ah Mu‘allaqāt writes:

خص الصغار لان الديات تعطى من بنات اللبون والحقاق والاجذاع

The poet has particularly mentioned young camels because only two-year olds, three-year olds and four-year olds were given as *diyat*.¹⁶⁷

The *diyat* of wounds also existed in Arabia. A study of pre-Islamic Arabic reveals that the words ارش (*arsh*) and نذر (*nadhr*) were used in this meaning besides others. According to the *Lisān al-‘Arab*:

اصل الارش الخدش ثم قيل لها يؤخذية لها ارش واهل الحجاز
يسمونه النذر

The word ارش (*arsh*) is, in fact, خدش (*khadsh*) ie, bruise or wound. Then it began to be used for the money which was exacted as *diyat* for wounds. The people of Hījāz used the word نذر (*nadhr*) for this.¹⁶⁸

We have mentioned above that it was this Arabic custom which the Prophet (sws) while obeying the

167. Abū ‘Abdullāh al-Ḥusayn ibn Aḥmad al-Zawzanī, *Sharḥ al-mu‘allaqāt al-sab‘*, 1st ed. (Lahore: Dār al-nashr al-kutub al-islamiyyah, n.d.), 80.

168. Muḥammad ibn Mukarram ibn Manẓūr, *Lisān al-‘Arab*, 1st ed., vol. 1 (Beirut: Dār ṣādir, n.d.), 246.

Qur'ān, enforced during his own time. Consequently, in some Āḥādīth it has been mentioned that the Prophet (sws) continued with the Arabic custom in the matters of *diyat*, which had existed before his own prophethood. To further quote Ibn Abbās (rta):

فَجَرَتْ فِي قُرَيْشٍ وَالْعَرَبِ مِائَةٌ مِنَ الْإِبِلِ فَاقْرَاهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى مَا كَانَتْ عَلَيْهِ

Among the Quraysh and in Arabia, the quantity of *diyat* adopted was one hundred camels. Consequently, later on the Prophet continued with it.¹⁶⁹

In another Ḥadīth, which linguists present in support of the word *معقلة* (*ma'qulah*) and which has also been reported in slightly different words in the *Musnad* of Aḥmad ibn Ḥanbal, this matter has been stated in the following way:

كُتِبَ بَيْنَ قُرَيْشٍ وَالْأَنْصَارِ كِتَاباً فِيهِ الْبَهَاجِرُونَ مِنْ قُرَيْشٍ عَلَى رِبَاعَتِهِمْ يَتَعَاقِلُونَ بَيْنَهُمْ مَعَاقِلَهُمُ الْأُولَى

A treaty between the Anṣār and the Quraysh was documented by the Prophet in which it was written down that the Muhājirūn of the Quraysh would continue according to their previous state and the matter of *diyat* would be conducted between them as before.¹⁷⁰

169. Ibn Sa'd, *Al-Ṭabaqāt al-kubrā*, vol. 1, 89.

170. Ibn Manẓūr, *Lisān al-ʿarab*, vol. 11, 462.

On the contrary, in Yemen (southern Arabia), the custom was that in various forms of murder and in various types of wounds, the amount of *diyat* was fixed by the ruler. But when Yemen became a part of the Islamic State during the Prophet's time, a letter was sent by him to the chiefs of Yemen in which he fixed the same quantity of *diyat* for them which was enforced in his own territory. Dr Jawwād 'Alī, while writing about this Arabic custom, says:

وقد عرفت الدية عند العرب الجنوبيين كذلك ولم تحدد في القوانين
وانما ترك أمر مقدارها إلى الملك

Diyat was paid according to the custom in southern Arabia also, but no regular legislation had been done in this regard; instead, the determination of its amount had been left upon the discretion of the ruler.¹⁷¹

The epistle of the Prophet (sws) which he wrote to the people of Yemen¹⁷² is reproduced here:

أَنَّ مَنْ اعْتَبَطَ مُؤْمِنًا قَتَلًا عَنْ بَيِّنَةٍ فَإِنَّهُ قَوْدٌ إِلَّا أَنْ يَرْضَى أَوْلِيَاءُ
الْمَقْتُولِ وَأَنَّ فِي النَّفْسِ الدِّيَّةَ مِائَةً مِنَ الْإِبِلِ وَفِي الْأَنْفِ إِذَا أُوعِبَ
جَدْعُهُ الدِّيَّةُ وَفِي اللِّسَانِ الدِّيَّةُ وَفِي الشَّفَتَيْنِ الدِّيَّةُ وَفِي الْبَيْضَتَيْنِ
الدِّيَّةُ وَفِي الذَّكْرِ الدِّيَّةُ وَفِي الصُّلْبِ الدِّيَّةُ وَفِي الْعَيْنَيْنِ الدِّيَّةُ وَفِي

171. Dr Jawwād 'Alī, *Al-Mufaṣṣal*, vol. 5, 593.

172. A little deliberation shows that the ratios of *diyyats* which have been stated in this epistle are the last word as far as justice and fairness are concerned. Our rulers while legislating in this regard should take them into consideration.

الرَّجُلِ الْوَاحِدَةِ نِصْفُ الدِّيَةِ [وَفِي الْيَدِ نِصْفُ الدِّيَةِ] وَفِي الْمَأْمُومَةِ
ثُلُثُ الدِّيَةِ وَفِي الْجَائِفَةِ ثُلُثُ الدِّيَةِ وَفِي الْمُنْقَلَةِ خَمْسُ عَشْرَةَ مِنْ
الْإِبِلِ وَفِي كُلِّ أَضْبَعٍ مِنْ أَصَابِعِ الْيَدِ وَالرَّجْلِ عَشْرٌ مِنَ الْإِبِلِ وَفِي السِّنِّ
خَمْسٌ مِنَ الْإِبِلِ وَفِي الْمَوْضِعَةِ خَمْسٌ مِنَ الْإِبِلِ وَأَنَّ الرَّجُلَ يُقْتَلُ
بِالْمَرْأَةِ وَعَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ

He who wrongfully kills a Muslim and his crime is legally proven shall be taken revenge from, except if the heirs of the murdered person agree to accept *diyat*. In this case, the *diyat* of life is one hundred camels and that of a nose also when it is completely cut off. The *diyat* of a tongue or lips or testicles or the male reproductive organ or the back or both eyes is one hundred camels as well. The *diyat* of a single foot [and a hand],¹⁷³ however, is half. A wound which reaches the stomach and one which reaches the brain shall have one-third *diyat*. The *diyat* of an injury because of which a bone is displaced is fifteen camels. For each of the fingers of the hand and feet, the *diyat* is ten camels, for the teeth it is five and for an injury because of which a bone is exposed, it is five as well. A man shall be executed in place of a woman and those who can pay *diyat* only in the form of gold, the *diyat* is one thousand *dinārs*.¹⁷⁴
(*Nasā'ī*: no. 4853)

173. These words have been taken from another text of a Ḥadīth recorded in *Sunan Nasā'ī* in which this epistle has been recorded. See: *Al-Nasā'ī, Al-Sunan al-mujtabā*, vol. 8, 58, (no. 4854).

174. *al-Nasā'ī, Al-Sunan al-mujtabā*, vol. 8, 57, (no. 4853).

After this explanation about the law of *diyat*, it becomes evident that Islam has neither prescribed any specific amount for *diyat* nor has it obligated us to discriminate in this matter between a man or a woman, a slave or a free man and a Muslim or a non-Muslim. The law of *diyat* was in force in Arabia before the advent of Islam. The Qur'ān has directed us to pay *diyat* just according to this law both in case of intentional as well as un-intentional murder. By this Qur'ānic directive, *diyat*, became an eternal law of the *sharī'ah* for all times and for every society; however its quantity, nature and other related affairs have been left by the Qur'ān upon the customs and traditions of a society. The Prophet (sws) and his Rightly Guided Caliphs (rta) decided all the cases of *diyat* according to the customs and traditions of the Arabian society during their own times. The quantities of *diyat* which are mentioned in our books of Hadīth and Fiqh are in accordance with this custom and tradition, which itself has its roots in the social conditions and cultural traditions of the Arabs. However, since then, the wheel of fortune has revolved through fourteen more centuries and the tide of time has sped past innumerable crests and falls. Social conditions and cultural traditions have undergone a drastic change. In present times, it is not possible to pay *diyat* in the form of camels nor is it a very wise step to fix the amount of *diyat* on this basis. The nature of عاقلة (*Āqilah*: community/tribe) has completely changed and various forms of un-intentional murder have come into existence which could never have been imagined before. We know that the guidance provided by the Qur'ān is for all times

and for every society. Hence, in this regard, it has directed us to follow the معروف (custom) which may change with time. As per this Qur'ānic directive, every society is to obey its custom, and since in our own society no law about *diyat* previously exists, those at the helm of affairs of our state can either continue with the above mentioned Arab custom or re-legislate in this regard; whatever they do, if the society accepts this legislation, it will assume the status of our معروف (custom). It is obvious that those in authority in any society can revise and re-structure the laws which are based on the معروف (custom), keeping in view the collective good of the masses. Ibn 'Ābidīn, a celebrated Hanifite scholar, writes:

اعلم أن لمسائل الفقهية أما إن تكون ثابتة بصريح النص وهي الفصل الاول وأما إن تكون ثابتة بضرب اجتهاد ورأى وكثير منها ما يبينه المجتهد على ما كان في عرف زمانه بحيث لو كان في زمان العرف الحادث لقال بخلاف ما قاله أولاً ولهذا قالوا في شروط الاجتهاد انه لا بد فيه من معرفة عادات الناس فكثير من الاحكام تختلف باختلاف الزمان لتغير عرف أهله أو لحدوث ضرورة أو فساد أهل الزمان بحيث لو بقي الحكم على ما كان عليه أولاً للزم منه البشقة والضرر بالناس ولخالف قواعد الشريعة البنينة على التخفيف والتيسير ودفع الضرر والفساد

It should be noted that juristic issues either stand proven by a categorical injunction which is the first type, or stand proven by *ijtihād* and opinion [which is the second type]. Most issues of the second category are based by the Mujtahids upon the

customs and traditions of a particular period in such a way that if they would have been present in this age which has a certain custom and tradition, they would have given a different opinion. Hence, about the conditions of *ijtihād*, they also state the condition that it is necessary to have a clear understanding of the habits and common practices of the people because with the change in times a lot of the directives change. This may be due to a number of reasons. For example, a change in the general custom, requirement of a situation or fear of disorder in the general condition of the people in case a directive is continued in its original state it might create difficulties for them or inflict a loss upon them. This would be against the principles of the *sharī‘ah* which are based upon facility, comfort, and prevention of damage and disorder.¹⁷⁵

Consider now the second question: what is the nature of *diyat*? In this matter, there are generally two views. One group of scholars regards it as the monetary value of human life, while another group considers it to be the monetary compensation of the financial loss inflicted by the murderer upon the family of the murdered person.

In the opinion of this writer, both these views are incorrect. The first one is merely based upon a misconception. In the pre-Islamic Arab society, cases of murder were usually settled by *thār* (ثَار: revenge), *qisās* (قِصَاص) and *diyat* respectively. As is evident from the order, *thār* (ثَار) was the foremost objective of the Arabs.

175. Ibn ‘Ābidīn, *Rasā’il*, 1st ed. (Damascus: *Al-Maktabah al-hāshimiyyah*, 1325 AH), 125.

They used to believe that the soul of the deceased is transformed into a bird which flies away, and unless revenge is taken, it wanders about in the wilderness crying out اسقوني اسقوني (*isqūnī! isqūnī*: quench my thirst! quench my thirst!). Some of them believed that only that slain person remains alive in his grave whose death had been avenged, and if his murder is not avenged, his soul dies and darkness descends upon his grave. Due to these beliefs, they always preferred ثار (*thār*) and accepted قصاص (*qīṣāṣ*) only when they could not help it, let alone *diyat*. Umm Shamlah says:¹⁷⁶

فيا شمل شبر واطلب القوم بالذی

أصبت ولا تقبل قصاصاً ولا عقلاً

Fa yā shamlu shammir waṭlubi al-qawma billadhī

Uṣibta wa lā taqbal qīṣāṣan wa lā ‘aqlā.

(Therefore, O Shamlah! rise and get ready to avenge the harm inflicted upon you by your enemies and listen! Do not accept *qīṣāṣ* or *diyat* at any cost.)

‘Abbās ibn Mirdās, while inciting ‘Āmir, a tribesman of the Khuḍā‘ah tribe to revenge says:¹⁷⁷

ولا تطعن ما يعلفونك انهم

أتوك على قرباهم بالمثيل

176. Al-Tabrīzī, *Sharḥ Dīwān al-ḥamāsah li Abī al-Tammām*, vol. 1, 292.

177. Abū al-Ḥasan ‘Alī ibn Sayyidah, *Al-Muḥkam wa al-muḥīṭ al-a‘zam* 1st ed., vol. 10 (Beirut: Dār al-kutub al-‘ilmiyyah, 2000), 347.

*Wa lā taṭma‘an mā ya‘lifūnaka innahum
Atawka ‘alā qurbāhumu bi al-muthammalī*

(And don't even think about the *diyat* they are tempting you with, for, in spite of having a blood relationship, they have brought a deadly poison for you.)

In this matter, the severity of their emotions, even after accepting Islam can be seen from the following verses of Miswar ibn Ziyādah, when he was offered seven *diyats* upon the murder of his father by the governor of Madīnah, Sa‘īd ibn al-‘Āṣ. He says:¹⁷⁸

أبعد الذى بالنعف نغف كويكب

رهينة رمس دثى تراب وجندل

A ba‘ad alladhī bi al-na‘afī na‘afī kuwaykibiḥ

Rahīnati ramsiḥ dhī turābiḥ wa jandalī

(What! after the person who was buried at the foot of Mount Kuwaykab in a grave of mud and stone.)

اذكر بالبقيا على من أصابنى

وبقياى انى جاهد غير مؤتل

Udhakkaru bi al-buqyā ‘alā man aṣābanī

Wa buqyāya annī jāhiduḥ ghayru mu’tilī

(I am being advised to show mercy upon a cruel person who has inflicted me with this grief. The only mercy I can show is to take revenge at all costs.)

178. Al-Tabrīzī, *Sharḥ Dīwān al-ḥamāsah li Abī al-Tammām*, vol. 1, 83-84.

فان لم أنل ثأرى من اليوم أو غد

بنى عننا فالدهر ذو ومتطول

Fa in lam anal tha'rī min al-yawmi aw ghadiḥ

Banī 'amminā fa al-dahru dhū mutaṭawwalī

(O you, the sons of my paternal uncle, it does not matter if, today or tomorrow, I am not able to take revenge, for this world has a long life.)

فلا يدعنى قومي ليوم كراهية

لئن لم اعجل ضربة أو اعجل

Fa lā yad'unī qawmī liyawmi karīḥatiḥ

la in lam u'ajjil ḍarbataḥ aw u'ajjalī

(If, without any hesitation, I do not attack my enemies or become a target of their attack, my nation should never call me for any battle.)

انختم علينا كل كل الحرب مرة

فنحن منيخوها عليكم بكل كل

Anakhtamu 'alaynā kalkal al-ḥarbi marratan

Fa naḥnu manīkhuhā 'alaykum bikalkalī

(You have placed the chest of war upon us; so listen! we have also decided that unless we place it upon you, we would not remain at ease.)

يقول رجال ما أصيب لهم أب

ولا من أخ اقبل على المال تعقل

Yaqūlu rijālun mā usība lahum abun

Wa lā min akhiḥ aqbil 'ala al-mālī tu'qalī

(Those people are offering me *diyat* and urging me to accept money, whose fathers and brothers never fell prey to the sword of a killer.)

Hence, it was a result of these emotions that they considered the acceptance of *diyat* as shameful, and regarded it to be equivalent to selling the blood of the murdered person. Rabī‘ah ibn ‘Ubayd, a poet of the tribe Banī Naṣr says:¹⁷⁹

أذواب انى لم أهبك ولم أقم
للبيع عند تحض الجلاب

A dhuwābu innī lam ahabka wa lam aqum
Li al-bay‘i ‘inda taḥadhdhuri al-ajlābī

(O Dhuwāb! I have not forgiven your murder; nor in the midst of business in the market of Ukāz am I selling your blood (ie, accepting your *diyat*),)

However, it is evident that such emotional utterances have got nothing to do with the actual nature of *diyat*. They can only be regarded as sentimental statements over the loss of dear ones, and one often comes across such instances in one’s life. People who have tried to ascertain the nature of *diyat* from these utterances can only be regarded as those who are devoid of any linguistic appreciation. They probably did not realize that human life or human limbs are priceless. No mother, father, brother or son, at any rate, can ever be willing to accept

179. Al-Tabrīzī, *Sharḥ Dīwān al-ḥamāsah li Abī al-Tammām*, vol. 1, 349.

diyat on the pretext that the monetary worth of the deceased son, brother or father is what is actually being received. Hence, if this opinion is accepted, the result, obviously, would be that a society would never benefit from the expediency upon which the law itself is based. On these grounds, this opinion, regrettably, stands rejected.

As far as those people are concerned who regard it to be a monetary compensation of the inflicted economic loss, they must realize that the basic nature of a thing must exist in every small or large part it constitutes. Even a cursory look at the law of *diyat* reveals that *diyat* is not given solely in cases of murder, but in case of loss of a human organ or limb like a nose, ear, eye and tooth as well. It is quite evident that the loss of such limbs does not result in any economic loss for the affected person or family. After all, if a toe or a finger, or even a tooth is lost, what financial damage is incurred? Apart from other reasons, this internal contradiction in the premises of the view is enough to prove it a fallacy.

Since both the views about the nature of *diyat* are not correct, what then is the correct view point? To answer this question, it is necessary to have recourse to ancient Arabic traditions for a solution.

We find a lot of instances, in which the subject of *diyat* has been discussed in pre-Islamic Arabic poetry. Episodes of homicide and murder were so rampant in the ancient Arab society that the subjects of *ثَار* (*thār*), *قصاص* (*qiṣāṣ*) and *ديت* (*diyat*) were often versified in their poetical compositions. No doubt, they often used to challenge the sense of honour of those who accepted *diyat*, and provoked them to revenge, but apart from

these sentimental utterances, we find many instances where a more serious treatment of the topic reveals very clearly their own concepts about the actual nature of *diyat*.

A careful study shows that in such instances they used the words غرامة (*gharāmah*) or مغرم (*maghram*) which literally means “penalty.” Just as in English, these words imply the exaction of fine from an offender as a punishment for a crime, the word غرامة (*gharāmah*) denotes this meaning in Arabic. It has been indicated before that the Arab poets used this word in instances when they talked about the nature of *diyat*. To quote Zuhayr:¹⁸⁰

ينجبها قوم لقوم غرامة

ولم يهريقوا بينهم مل محجم

Yunajjimuhā qawmun liqawmin gharāmataḥ

Wa lam yuharīqū baynahum mil’ a miḥjamī

(In small lots those camels began to be given by one nation to the other, as a fine; though the givers did not even shed a drop of blood among those who were receiving it.)

This same concept about *diyat* continued to persist in later times as well. ‘Ujayr al-Salūlī, a poet of the Umayyad period has said:¹⁸¹

180. Al-Baghdādī, *Khazānah al-adab* vol. 3, 10.

181. Abū ‘Uthmān ‘Amr ibn Baḥār al-Jāḥiẓ, *Al-Bayān wa al-tabyīn* (Beirut: Dār muṣ‘ab, n.d.), 121.

يسرك مظلوماً ويرضيك ظالماً

ويكفيك ما حصلتته عند مغرم

Yasurruka mazlūman wa yurḍika zālīman

Wa yakfika mā ḥammaltahu ‘inda maghramī

(If you are oppressed he makes you happy by taking revenge, and if you are the oppressor, he pleases you by taking your side; and as a result of this oppression, when you are paying a fine (*diyat*), whatever amount you burden him with, he alone pays it.)

Hence, it is quite evident from this discussion that *diyat* is neither a monetary compensation for an economic loss nor a monetary worth of human life. By nature, it is غرامة (*gharāmah*) ie, a fine or penalty imposed on the criminal in lieu of قصاص (*qiṣāṣ*) in case of intentional murder and, indeed, in all cases of unintentional murder.

(Translated by Dr Shehzad Saleem)

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Miscellaneous Issues

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Verdicts of God

If, after the truth is conclusively conveyed by messengers of God, they and their companions are able to acquire political authority in some place, it is the verdict of God that there are only two situations which will be faced by their rejecters. If there are polytheists among them, they shall be put to death and if there are people among them who are monotheists to any extent, they shall be subjugated. It was in order to implement this verdict that the Almighty directed Muslims to wage war and to carry out mass killings of the polytheists of Arabia in Sūrahs Baqarah, Anfāl and Tawbah. This directive has nothing to do with the *shari'ah* and its injunctions. In my book, *Mīzān*, I have written:

It is evident from these details that all these armed campaigns and offensives were not merely *qitāl* (war), they were in reality a divine punishment. This punishment, which is meted out to those to whom the truth is communicated to such an extent that they are left with no excuse to deny it, is an established practice of God. As a divine scheme, it descended first upon the Idolaters and the People of the Book of Arabia and then to certain other nations outside it. Consequently, it is absolutely certain that fighting those who have deliberately rejected the truth and forcing the vanquished to lead a life of subjugation

by imposing *jizyah* on them is no longer allowed. Till the Day of Judgement, neither can any one attack any nation of the world for this purpose, nor does he have the authority to subjugate the vanquished by imposing *jizyah* on them. For Muslims, the only ground for war is injustice and oppression. This is the sole reason for warfare which they can now justify. They cannot wage war in the name of religion on any other ground.¹⁸²

About the progeny of Abraham (sws) also, the verdict of God is that if they adhere to the truth and present it to other peoples of this world with full certainty and while maintaining full integrity of its contents, the Almighty will grant them dominance over their addressees who reject them. However, if the progeny of Abraham (sws) do not adhere to the truth, then the Almighty will mete out the punishment of humiliation and subjugation to them through these very addressees. This promise is both to the Israelites and the Ishmaelites. The Qur'ān (22:78) has specifically pointed out that the Ishmaelites were chosen to bear witness to religion in the same way that the Israelites were chosen for this task before them. So, the promises which are mentioned in the Old Testament (Deuteronomy, 28:1-25) for the Israelites, and the Qur'ān has referred to them at various places, (eg. 2:40; 17:8), will be understood to also exist for the Ishmaelites. However, this does not mean that the Ishmaelites can take the initiative with regard to themselves and attack various nations of the world. They have been given this right neither in the Old Testament,

182. Ghāmidī, *Mizān*, 599.

nor in the Qur'ān. The promise of dominance manifests itself at the behest of God and it is brought about by God Himself through various circumstances that He Himself creates. The only obligation of the Ishmaelites is to follow all the directives of God, and to discharge, as much as they can, the responsibility of bearing witness to religion with sincerity and honesty – the responsibility for which God has chosen them.

One corollary of this verdict is that the Almighty has specifically allocated the area of Palestine and its surrounding land of Kanan to the Israelites and the area of the Arabian peninsula to the Ishmaelites so that all the nations of the world are able to observe God's close link with these nations and receive guidance. Thus, for this very reason, He directed the Israelites to expel the inhabitants of this area of their inheritance, leave no polytheist or disbeliever alive in that area and leave no territory adjacent to this area in the political control of the polytheists or disbelievers except if they agreed to live in subservience by paying tribute. If these nations did not agree to this, then the Israelites were directed to execute their men and enslave their women and children. In the twentieth chapter of the book of Deuteronomy, this directive is mentioned in full detail. It is on the basis of this directive that the Prophet Solomon (sws) forced the queen of Sheba to submit to his rule. After the conquest of Makkah, all contracts with the Idolaters of the Arabian peninsula were revoked on its basis as well. The injunction of لا يجتمع دينان في جزيرة العرب (two religions cannot exist together in the land of Arabia)¹⁸³ should

183. Mālik ibn Anas, *Mu'attā'*, vol. 2, 892, (no. 1584).

also be seen in the light of this directive. Consequently, on this very basis, in the land of Arabia, neither can a place of worship be built to worship someone other than God nor can a polytheist or a disbeliever be allowed to live. All these directives are related to this centre of monotheism – the land of Arabia and do not relate to any other part of the world.

These are the verdicts of God which are mentioned very clearly in divine scriptures. The Torah also elucidates them with all their details and so does the Qur'ān. Muslims are unfortunate that in recent times some of their celebrated thinkers have been unable to understand the true nature of these verdicts. The political interpretation of Islam has been born from the womb of these verdicts. It is under the influence of this interpretation that a number of militant and *jihādī* movements have sprung up all over the globe and as a result the entire Muslim *ummah* is suffering its consequences. In order to redress this state of affairs, it is essential that an awareness be created about these verdicts at the global level and people be educated about them so that no extremist is left with a possibility of creating nuisance by wrongly generalizing the scope of these verdicts.

(Translated by Dr Shehzad Saleem)

The Lawful and the Unlawful

The Arabic word *zīnat* refers to an object which a person uses to embellish something to satisfy his aesthetic taste. Thus, dress and jewellery are the *zīnat* of the body; curtains, sofas, carpets, rugs, sculptures, portraits and paintings are the *zīnat* of the house; orchards, gardens and buildings and other similar things are the *zīnat* of the city; music is the *zīnat* of the voice and poetry is the *zīnat* of words. The sufistic interpretation of religion and sufistic religions consider these things to be an optical illusion, and generally regard them to be prohibited, undesirable, worthy of being forsaken and impediments to spiritual advancement. However, the Qur'ān does not subscribe to this view. It refutes all these religions, and vehemently says that all these things are lawful; in fact, it chidingly inquires of the person who dares regard as unlawful what God has created for man:

قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ (٧: ٣٢)

Tell [them]: “Who has forbidden you the *zīnat* which the Almighty has created for His servants, and who has forbidden the wholesome among the edibles?” (7:32)

Not only this, the Qur'ān goes on to declare that the

wholesome among edibles, and all these objects of *zīnat* have been created in this world solely for the believers, and as such only belong to them. The rejecters of God receive these through them as a by-product and because of the period of trial which they have to endure in this world. Thus, in the Hereafter, they shall solely be reserved for the believers; the rejecters will have no share in them; they shall be deprived of them forever:

قُلْ هِيَ لِلَّذِينَ آمَنُوا فِي الْحَيَاةِ الدُّنْيَا خَالِصَةً يَوْمَ الْقِيَمَةِ ۗ كَذَلِكَ
نُفَصِّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ (٧: ٣٢)

Tell [them]: “They are for the believers in this world [though shared by others]; but on the Day of Judgement, they shall be theirs alone.” Thus do We explain Our revelations for those who want to know. (7:32)

This is an amazing declaration of the Qur’ān. Contrary to general religious concepts and teachings of sufistic religions, it presents a completely different aspect of religious life. Instead of urging people to forego the pleasures of this world in order to attain the nearness of God and union with Him, it urges the believers to abstain from being spendthrifts but to benefit without any hesitation from all the objects of *zīnat* within the limits prescribed by God and to show gratitude on His favours.

يَبْنَىٰ أَدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا ۚ
إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ (٧: ٣١)

Children of Adam! Embellish yourselves with *zīnat* whenever you attend your mosques and eat and drink, but avoid excess. He does not love those who commit excesses. (7:31)

After this, the question arises: what exactly are the things regarded prohibited or unlawful by the *sharī'ah*? The Qur'ān has answered this question in the succeeding verses of Sūrah A'rāf quoted above: besides some edibles, only five things are unlawful: lewd acts, usurping the rights of others, wrongful oppression, polytheism and religious innovations.

Only these things are unlawful and prohibited in the *sharī'ah* of God. Nothing else is unlawful in it. This verse, in fact, is a divine declaration on what is unlawful; thus, no one has the right to declare anything as unlawful besides these. Consequently, now something can only be regarded as unlawful if it contains traces of any of the unlawful things mentioned above. Narratives of the Prophet (sws) and of the Companions (rta), historical reports and the statements of previous scriptures will be understood in the light of this verdict of the Qur'ān. Anything which deviates from it or is against it shall not be accepted. The Qur'ānic words are:

قُلْ إِنَّمَا حَرَّمَ رَبِّي الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَالْإِثْمَ وَالْبَغْيَ بِغَيْرِ
الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزَّلْ بِهِ سُلْطَانٌ وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا
تَعْلَمُونَ (٧: ٣٣)

Tell [them]: “My Lord has only forbidden all lewd acts, whether overt or disguised and usurping the

rights of others and wrongful oppression and that you worship with Him what He did not sanction and that you tell of God what you know not.” (7:33)

(Translated by Dr Shehzad Saleem)

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Forbidding Wrong

One of the necessary requirements of faith is that people be exhorted to do good and to abstain from wrong. Both the exhortation and admonition should be done with sagacity and benevolence in the manner of suggestion and advice. The righteousness or deviation of people is a matter that is in God's hands. He is aware of those who have deviated from His path as well as of those who will be guided. Therefore, in calling people to truth and justice, no one should play the keeper of morals or decree Heaven or Hell for any of his or her addressees. It is obvious from the Qur'ān that, in his role of calling people to the truth, none of the messengers of God was allowed to go beyond effective and clear communication or exhortation and reminding. God Almighty says:

إِنَّمَا أَنْتَ مُذَكِّرٌ كُنتَ عَلَيْهِمْ بِبُشَيْرٍ (٨٨: ٢١-٢٢)

Your task is to admonish; you are not responsible for their supervision. (88:21-22)

However, matters are different in the domain of authority. For example, on attaining maturity, a man may become a husband to a wife and, as a consequence of this relationship, a father to his children. Nature and religion entail that a certain degree of authority be

granted to him in both these roles. Similar is the role of institutions and governments. When they are formed, their heads are also granted a certain degree of authority. It is regarding the ambit of this authority that the Prophet (sws) is reported to have said:

مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ
يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ

He amongst you who sees a wrong should redress it by hand; if he does not find in himself the strength to do it, then by his tongue; and, if even that is not possible, he should despise the wrong in his heart -- and this is the lowest level of faith.¹⁸⁴

The Arabic word used here for “wrong” is *munkar*. It does not refer to sins of purely religious nature; instead, it refers to those wrongs that all humankind, regardless of religion or creed, regards as evil. Theft, perjury, dishonesty, misappropriation, embezzlement, fraud, adulteration, violation of others’ rights, indecency, causing injury to life or damage to property or honour, and other violations of these kinds fall within the category of *munkar*. This statement attributed to the Prophet (sws) also relates to these wrongs. It is an offshoot of the Qur’ānic directive of *amr bi’l-ma’rūf* (commanding right) and *nahī ‘an al-munkar* (forbidding wrong). The Prophet (sws) has warned that, if, in the realm of one’s authority, one does not even regard these wrongs as evil, one falls below the lowest level of faith.

184. Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 1, 69, (no. 45).

The words *in lam yastaṭī‘* also need to be properly understood. They do not refer to the kind of ability that entails responsibility. The reason is that in the absence of this kind of ability, a person does not remain accountable and therefore does not fall in the levels of faith. In this reported statement, the words connote “strength” and “courage” that may increase or decrease with the level of one's faith. It is therefore only in the sphere of one's authority that one might be considered as having fallen to lower levels of faith if one does not remedy a wrong by hand. The reason for this difference is that, in this latter case, the person does not make the required endeavour to eradicate evil despite having the right and the authority to do so. The moral imperative here does not at all mean that, for achieving a higher level of faith, people have the right to gather their followers on their own and go out as vigilantes to end wrong. Such steps, if taken, translate into the worst kind of disorder, which has no sanction at all in religion. All directives in religion are given in relation to one's ability and authority. لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ([in His directives,] God does not burden any soul with what is beyond it, (2:286)) is an unequivocal principle that is kept in consideration in all the directives of religion and the divine law. It is this principle that should be kept in mind to understand the Prophet's statement regarding the prohibition of wrong.

(Translated by Asif Iftikhar)

Transfer of Reward to the Dead

As a principle, the Almighty has made it clear in the Qur'ān that each person is responsible for his deeds. No one else can be held accountable for what a person does; nor can a person himself take responsibility of some other person's deeds. Similarly, the Qur'ān has also made it clear that on the Day of Judgement whatever a person will earn will be as a result of his own deeds:

أَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ. وَأَنْ لَّيْسَ لِلْإِنْسَانِ إِلَّا مَا سَعَىٰ. وَأَنَّ سَعْيَهُ سَوْفَ يُرَىٰ. ثُمَّ يُجْزَاهُ الْجَزَاءُ الْأَوْفَىٰ. (٥٣: ٣٨-٤١)

That no soul shall bear another's burden and that [in the Hereafter] a man shall only receive that which he strove [for in this world] and that what he has earned shall soon be shown to him; he shall then be fully rewarded. (53:38-41)

It is also a fact that it is not the form of a person's deeds which reaches the Almighty and makes that person eligible to reward; on the contrary, it is the piety of the heart which makes him eligible to this reward. This piety obviously is not something transferable. It resides in the heart of a person. It cannot be acquired from there and transferred to some other place so that a person is able to benefit from its blessings. Animal

sacrifice is a great worship ritual. While sacrificing an animal, we offer it to God by placing it in the direction of the Baytullāh and by turning our own selves in its direction with the sentiment that it is in fact we who are offering ourselves to God. The Qur'ān states:

لَنْ يَنَالَ اللَّهُ لُحُومَهَا وَلَا دِمَاؤها وَلَكِنْ يَنَالُهُ التَّقْوَىٰ مِنْكُمْ^ط (٣٧:٢٢)

The flesh and blood [of] these [sacrificed animals] does not reach God; it is only your piety that reaches Him. (22:37)

If both these verses of the Qur'ān are considered, then only one option remains: viz a viz a person benefiting or being penalized for a good or evil deed done by someone else: his intention or efforts directly or indirectly affect the other person's good or evil deeds. This can have many forms. For example, he instructed and educated someone in goodness and piety or set a practical example of some virtuous act or played a role in providing resources for the virtuous deed. On this very basis, the Prophet (sws) is reported to have said:

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ إِلَّا مَنْ صَدَقَ جَارِيَةٌ
أَوْ عِلْمٌ يُنْتَفَعُ بِهِ أَوْ وَلَدٌ صَالِحٌ يَدْعُو لَهُ

When a person dies his deeds too end with his death. However, three things are an exception to this: *ṣadaqah-i jāriyah*, knowledge which is beneficial and pious children who pray for their parents.¹⁸⁵

185. Muslim, *Al-Jāmi' al-ṣaḥīḥ*, vol. 3, 1255, (no. 1631).

The mention of children in this narrative should not be a cause for surprise. The fact is that children are nothing but the effort of their parents. This is because if the parents are true believers, then they will be the first ones to teach and instruct their children about praying to God, keeping fasts, offering the *hajj*, paying *zakāh* as well as other virtuous deeds. Thus if because of some reason they are unable to do a virtuous deed, then there is no harm if their children complete their good intention about a virtuous deed by practically carrying it out. In fact, it is evident from various sayings of the Prophet Muḥammad (sws) that it is in accordance with obedience and decency that children should do so. By having an intention to do such a virtuous deed the parents will also be rewarded for its practical completion by their children. It is reported that a lady from the tribe of Kath‘am asked: “O Messenger of God! The *hajj* is obligatory upon my father but he is so old that he cannot even sit on an animal of conveyance; can I offer the *hajj* for him.” The Prophet (sws) replied: “Yes.”¹⁸⁶ Similarly, a lady from the tribe of Juhaynah inquired from the Prophet (sws): “My mother had vowed to offer the *hajj*; now she has died; can I offer it for her.” He replied: “You should certainly offer it; would you not have paid back a loan she had borrowed? This is a loan taken from God; so pay it back and the obligation to pay back the loan to God is more [than any other].”¹⁸⁷

186. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 2, 657, (no. 1756); Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 2, 973, (no. 3251).

187. Al-Bukhārī, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 2, 656, (no. 1334).

In the life of a person, this status of the parents can also be held by some other individual. For example, his teacher or some elderly person. Thus such individuals too must be included in the sphere of application of this issue. All narratives on this topic must be interpreted in the light of this principle. Without its existence, if a person does a deed for someone, then he alone will receive its reward because it is he who did it. It is reported about the Prophet (sws) that a lady raised her child towards him and said: “Can he also offer the *hajj*?” The Prophet (sws) replied: “Yes, but the reward of this *hajj* shall go to you.”¹⁸⁸ What at best can be inferred from this narrative of the Prophet (sws) is that even if there is no possibility of transferring the reward of a virtuous deed to the individual for whom it is done, there is no harm in doing such a deed; its reward shall be reaped by its doer at all cost. However, this does not mean that this saying in any way provides a basis to allow gatherings which are so rampant among the Muslims today by the name of *iṣāl-i thawāb* (transfer of reward to the dead). All such gatherings indeed come under the label of religious innovation (*bid‘ah*). No basis can be found for them in the Qur’ān and Sunnah.

However, this much should remain clear in this issue that the style adopted in كَيْسٌ لِلنَّاسِ إِلَّا مَا سَعَى (٣٩:٥٣) is meant to negate entitlement to reward and the principle

188. Muslim, *Al-Jāmi‘ al-ṣaḥīḥ*, vol. 2, 974, (no. 1336). It is this principle which the Prophet (sws) explained regarding doing some virtuous deed on behalf of someone viz. the reward is for the person who does that particular deed. All narratives which discuss this subject should be understood in the light of this principle.

stated in it relates to the occasion when the decision of Paradise or Hell is to be made for a person. This principle does not relate to the situation in which a person has already become entitled to Paradise on the basis of his faith and deeds. In such cases, a person can receive many favours and gifts of God. Thus the Qur'ān has specified that if children become worthy of the lowest level of Paradise because of the extent of their faith, then the Almighty in order to complete His favour on their parents will increase the level of the children and unite them with their parents residing at a higher level. The Qur'ān states:

وَالَّذِينَ آمَنُوا وَاتَّبَعَتْهُمْ ذُرِّيَّتُهُمْ بِإِيمَانٍ أَلْحَقْنَا بِهِمْ ذُرِّيَّتَهُمْ وَمَا
أَلْتَنَاهُمْ مِنْ عَمَلِهِمْ مِنْ شَيْءٍ (٢١:٩٢)

And those who had accepted faith, and their children had followed them in their faith, We shall unite their children with them [with the status they are in] and not even slightly diminish their deeds. (52:21)

It emanates from this verse that same should be the case when parents reside at a lower level in Paradise. The reason for this is that the affection which is becoming the cause for lifting the children to the level of parents is present in this case as well.

(Translated by Dr Shehzad Saleemr)

Compulsive Knowledge

Knowledge is categorised into *badīhī* (self-evident) and *naẓarī* (acquired).¹⁸⁹ *Badīhī* is said to be spontaneously acquired without thought and deliberation, whereas *naẓarī* is considered to be derived, through thought and deliberation, from *badīhī*. As a result of this categorisation, *badīhī* stands as fundamental and every other form of knowledge its corollary. Philosophy began with discussion and analysis of the external world. Afterwards, when the reality of the sensory perception came to the forefront of philosophical discussion and *badīhī* was regarded as fundamental, it was understood to be that knowledge which no one disagrees with. But as man has a tendency to disagree with anything, this tendency finally took over, and doubts and speculations started to emerge. Now the situation is that (out of the four major schools of sceptics),¹⁹⁰ one school insists that we only know what is perceptible to us, and that is foundational, since all thoughts and ideas originate from what we perceive through our senses. The brain is a *tabula rasa*, i.e., a clean slate with nothing registered in there prior to our

189. *Badīhī* and *naẓarī* are also referred to as immediate and mediate knowledge, respectively (See Aristotelian logic). – Junaid Hassan (J. H.)

190. All parenthetical additions are mine. – J. H.

sensory perceptions. The second school claims that knowledge is a function of the self and, except our conscious self, we do not certainly know of anything else that exists. The third school claims that nothing is certain except for the perceptible effects. The fourth school has declared that both the sensory data and thought cannot be trusted; therefore, nothing in this world can be referred to as absolute and certain.

What is the outcome of these schools? The first school has negated the intellect, the soul within man, God, and the resurrection; the second does not accept the existence of the external world; the third disagrees with both of them and does not recognize anything except for '*ilm-e-mahd*' (sheer knowledge),¹⁹¹ whereas, the fourth completely denies knowledge and certainty and is not ready to accept any of the aforesaid entities. When Descartes (d. 1650) professed: "I think; therefore, I exist" he, after Socrates and Aristotle, once again attempted to free knowledge and philosophy from such scepticism.¹⁹² However, in the post-modernist era, the

191. '*Ilm-e mahd*' implies that, though, it is a fact that something is in our knowledge but what it is, we do not know; we have no means to analyze it. It is just a state of knowledge that we find ourselves in. Neither do we know who the perceiver is, nor do we know what it is that is being perceived, nor do we know of anything (if at all) in the external world. (Information in this footnote was provided by the author in a personal phone conversation, Apr. 14, 2012).

192. *Cogito ergo sum*. This attempt of Descartes, like that of his predecessors, could not be decisive because he, too, did not base his argument on the foundation on which *badīhī* concepts stand within the human nature. Thus, Jacques Derrida (d.

same “sophist” mind-set wants to prove its point through dissolution of language. It claims that no symbol or word (signifier) of a language defines the meaning of any particular entity (signified), since no particular entity has any absolute existence. The meaning of each word is determined on the basis of other words present within a sentence. If you add or subtract one word, the meaning of the whole sentence would alter. Thus, meaning is neither in words nor sentences; it does not exist. No word in a sentence carries meaning completely on its own; therefore, it defers the meaning to some other word or words of the sentence. Thus using a collection of words, meanings indicate their direction; context of a passage continuously keeps changing them; they can never be certain and final. Therefore, the values associated with words are also meaningless; they too cannot be absolute.¹⁹³ This is the account of those who

2004), first and foremost, criticizes this very tradition based on the metaphysical status of existence and insists that even “my own self” has no reality because it also has no absolute meaning.

193. Proponents of this view do not realize that this argument of theirs itself manifests their belief in the soundness of reason and intellect. Negation of a belief cannot be accomplished but by another higher belief; this is man’s compulsion. Thus, the result of every attempt of negation (of one concept) is affirmation (of another concept), but man’s tragedy is that he ignores facts in the heat of emotions. Individual freedom and individualism, for which these people strive hard, is also a value, so insisting on negating all values eventually leads to nothing but to the affirmation of yet another value. The situation is thus: نہ جائے ماندن نہ پائے رفتن (neither a

tried to pursue truth without divine guidance. Iqbal (d. 1938) was not wrong when he remarked:

ہے دانش برہانی حیرت کی فراوانی¹⁹⁴

In contrast to this, the Qur'ān places its argumentation and reasoning on that *fiṭrī* (natural) knowledge which is revealed within the human mind. All human knowledge and action, thought and reasoning is, in fact, based on *fiṭrī* knowledge. No doubt, what catches the eye in the first place is *badīhī* (self-evident) knowledge; therefore, on its basis man starts his intellectual quest. He does not realize that it is, in fact, his *fiṭrī* knowledge that leads him to *badīhī* concepts and further to higher ideas and theories. If *fiṭrī* knowledge were not there, neither *badīhī* nor thought and reason would be possible. This is because what we receive from the external world are merely subjects. We do not receive any verdict (predicate or copula) associated with them from the external world; the verdicts to be associated are already present within our minds.¹⁹⁵ It is the mind that passes

place to stay, nor a foot to go).

194. Discursive reasoning is an ocean of confusion.

195. Appreciation of shapes (square, rectangle, or triangle) and colours, fragrance, music, or taste (sour, sweet, or bitter) etc. are already present within our minds as *jadhrī* (foundational) knowledge. Whenever we encounter, for example, an apple in the external world, our mind applies its foundational (inherent) conception of colour and shape on it, which enables us to recognize the apple as a round, colourful object – a manifestation of foundational knowledge, which we refer to as *fiṭrī* (natural) knowledge. (Information in this

verdicts on subjects and continuously transforms them into new subjects to pass new verdicts on them.¹⁹⁶ This (*fiṭrī* knowledge innate within the mind) manifests as human relish and perception, where the relish is the source of action and the perception the source of knowledge. It is this knowledge which is the source of discrimination we make between the self and its attributes, possessor and possession, action and reaction, good and bad, wisdom and foolishness, and personality and its disorders. On the basis of the effects that reach our mind through our senses, the very knowledge enables us to argue for the effectors – this is what gives us conviction in the existence of the external world. As long as one is a human being, one cannot deny the conclusions and verdicts of *fiṭrī* knowledge, for it reigns over the human mind. Therefore, submission to the verdicts of this knowledge is not optional but man is as bound to accept them as he is to accept his instincts. You may ask when man can deny anything, why can he not deny *fiṭrī* knowledge? Of course, he can do so in words but as soon as he utters this denial, his actions and state of affairs negate him. Thus, it becomes evident on every humble man that this denial is obviously stubbornness. This is why Imām Hamīd al-Dīn Farāhī (d. 1930) referred to *fiṭrī* knowledge as *iḍṭararī* (compulsive) and

footnote is based on a telephonic conversation with the author, Apr. 14, 2012).

196. For example, our mind may pass the following verdict on crows: Crows are black, where “crows” are a subject, “are” a copula, and “black” is a predicate. After this, it may take “black” as a subject and pass a new verdict on it, such as: Black is a colour. – J. H.

rightly claimed that the human mind possesses a place which is divinely guided – the place that should be called the centre. This centre yields the knowledge that we would call *fiṭrī*. After this come *badīhī* (self-evident) and *naẓarī* (acquired). Therefore, knowledge should not only be classified into these two but into *jadhrī* (foundational),¹⁹⁷ *fiṭrī* (natural), *badīhī* and then *naẓarī*, respectively, as this is what the facts demand. Let us proceed in the light of the above discussion.

The Qur’ān (See 7:172-174) tells that it is within the nature of creatures to acknowledge their Creator; their being is such that it obligates a creator. If we need to affirm the existence of our Creator, we need not to indulge in any logical argument about it but simply mention it and, thus, remind each other. Therefore, it is a fact that no (cognizant) creature denies its Creator; instead, when reminded, it approaches Him with the similar zeal with which a famished approaches food. The Qur’ān informs that when God asked mankind if He is not their Lord, all unequivocally replied that indeed He is. Nonetheless, we know that in this worldly life, man sometimes denies. This is merely haughtiness because the moment he is denying God, within his scope of knowledge, at the same time he is still looking for an actor for every action, a planner for every plan, a character for every characteristic, an agent for every outcome, and a knowledgeable and wise organizer for

197. *Fiṭrī* knowledge is placed somewhere in the mind. Its sheer presence, before its manifestation, is referred to as *jadhrī* knowledge. (Information in this footnote was provided by the author in a personal phone conversation, Apr. 14, 2012).

every organization.¹⁹⁸ His entire knowledge is the account of this contradiction. This is how the actions of such a person defy him and completely unveils the haughtiness behind his denial of God.

Similar is the case of the sense of good and evil. The Qur'ān (91:7-8) states that the distinction between good and evil and the acknowledgment of good as good and evil as evil are revealed within man at the time of his creation. Nonetheless, man sometimes denies but this denial is, again, nothing but haughtiness. That is because, while denying, if man himself becomes a victim of evil, he without any hesitation refers to evil as evil and launches a strong protest against it. Not only that but if he receives something good, he shows respect and gratitude for it. Furthermore, whenever he forms a society, he certainly sets up a system of justice within it. His laws, courts, and international institutions, all bear witness to his inner sense of good and evil.

Similar is the case of meanings that words of a language communicate. The Qur'ān claims that it is sent down as a criterion to distinguish between right and

198. Here one may argue that this is not always the case. For example, Atheist Darwinists do not look for a knowledgeable and wise organizer for the organization present within a living cell; rather they attribute that to “blind, random, purposeless, and unguided” processes (mutation and natural selection) working over long periods of time. Actually, this is the very contradiction that the author intends to highlight here. Nowhere else in their lives would they accept to recognize an organized system without an organizer – such recognitions only show up when their faith in naturalism compels them to defy the supernatural. – J. H.

wrong (17:42) and as a judge to settle disputes (in religious matters) within mankind (5:48). It goes on to say that it has communicated its message with so much of certainty that, on its basis, mankind will be held answerable on the Day of Judgement, and people will either be destined to Paradise or Hell (See, for example, 26:193-195 and 39:28). This claim of the Qur'ān is established on the innate faith that man has always had on the certainty and accuracy of his lingual ability and what he communicates through it. Thus, scholars of Hadīth and Islamic jurisprudence state the following as an established principle: *ما ثبت بالكتاب قطعي موجب للعلم والعمل* (what is mentioned in the Qur'ān is definitive; it necessitates the beliefs and deeds.) Nonetheless, the Kalamists – inspired by the labyrinths of philosophy – do not accept this principle. They insist that the meanings that words of a language communicate are speculative; therefore, instead of the words of the Qur'ān, rational arguments are the criterion for distinguishing right from wrong.¹⁹⁹ If critically analyzed, this also turns out to be outright haughtiness because the moment they are claiming this, precisely at the same time they are communicating their viewpoint in words without showing any hesitation whatsoever that their viewpoint will not reach their audience with full certainty. More so, while listening to others and reading

199. Post-modernist thinkers are striving to snatch this pillar of faith as well from man. After this, nothing would remain in man's hands except meaninglessness and extreme faithlessness. How far its painful consequences would reach, no one can estimate.

their texts, they also never show any hesitation. When arguing and debating, their each and every word bears witness to their faith in words. This is the testimony of the human soul against itself; no other testimony could be greater than this. The Qur'ān states:

بَلِ الْإِنْسَانُ عَلَى نَفْسِهِ بَصِيرَةٌ، وَلَوْ أَلْقَى مَعَاذِيرَهُ (٧٥: ١٤-١٥)

Man himself is a witness against his own soul, no matter how many lame-excuses he may invent.' (75:14-15)

Ibn Qayyim (d. 1350 AH) writes:

من ادعى انه لا طريق لنا الى اليقين بمراد المتكلم، لان العلم بمراده موقوف على العلم بانتفاء عشرة اشياء فهو ملبوس عليه ملبس على الناس؛ فان هذا لو صح لم يحصل لاحد العلم بكلام المتكلم قط، وبطلت فائدة الخطاب، وانتفت خاصية الانسان، وصار الناس كالبهائم، بل اسوأ حالاً، ولها علم غرض هذا المصنف من تصنيفه، وهذا باطل بضرورة الحس والعقل، وبطلانه من اكثر من ثلاثين وجهاً مذكورة في غير هذا الموضع. (اعلام الموقعين ٣/ ١٠٩)

Those who claim that we have no means to acquire the message of a speaker with full certainty – arguing for this on the basis that the knowledge of what he intends to say is only possible if we first deny ten facts²⁰⁰ – are not only muddled themselves

200. That is the denial of homonymy of words, figurative use of words, alteration (evolution) in the meaning of a word

but want to muddle others too. If what they claim were true, then the information within the speech of a speaker could never be acquired; talking would have been meaningless; man would have lost his distinctive asset that makes him a human being, and people would have become worse than animals. Even what this writer intends to achieve from this writing could not be identified. Therefore, intellect and sense both suggest that this claim is utterly wrong. There are more than thirty reasons why it is wrong, which I have listed elsewhere.²⁰¹

(Translated by Junaid Hassan)

over time, specific and general connotations of words (according to the “universe of discourse” of the speaker), and such use of a word that makes the text contradictory to some logical premise (and, hence, forces the reader to take the word in some other or figurative meaning to avoid the contradiction) etc. (According to the sceptics, each of these contributes to muddle the meaning of what is said. – J. H.) For details, see ‘Alī ibn Muhammad al-Jurjānī, *Sharh al-Mawāqif*, 1st ed., vol. 2 (Cairo:1325 AH), 51.

201. Ibn Qayyim, *I‘lām al-muwaqqi‘īn*, vol. 3, 109.
