

## Meaning of Wilayat

The Word ‘Wilayat’ in the terminology of the Shari’ah when referring to the authority of the Faqih involves the following terms:

- 1) Wali (one who enjoys Wilayat or authority).
- 2) Muwla ‘alayh (those subject to this authority).
- 3) Wilayat, The authority.
- 4) The functions of Wilayat.
- 5) And conditions of Wilayat.

The term Muwla ‘alayh refers to the individuals, groups, or society when Wali’s Wilayat is applied.

‘Wilayat’ is the office, power and authority of the Faqih established on legal grounds.

The functions of Wilayat are authoritative rules on the basis of religious evidence or from reason.

This discussion and the related issues will be dealt with in a number of sections.

### 1. Wali, The Qualified Faqih

In Arabic, the word “Faqih” literally means someone who understands well”. There is a difference between the two following forms of derivatives as ‘Fiqh’, ‘fahm’, “ilm’ and the like and the derivatives as ‘Faqih’, ‘fahim’ ‘ “alim’ and the like. Since in addition to expressing the characteristics of a noun the latter group of words denotes experience, specialty and perpetuity of the related quality and trait, thus, Faqih is one who is an expert in the science of Fiqh. The same is true of Hakim, a philosopher or physician, that refers to someone who is well versed in Hikmah, philosophy, and Tibb, medicine.

In the present study, therefore, the term ‘Faqih’ does not refer to any knowledgeable man or expert, it

only refers to a particular class of experts who specialize in the science of Fiqh. Thus 'Faqih' is one who specializes in Islamic law, Fiqh and jurisprudence and is a Mujtahid, qualified to give expert opinion (Fatwa) in the matters of Shari'ah, the Islamic laws. The purpose of this article is to establish, on the basis of theology and Shari'ah the right and the limits of the authority and the Wilayat of such an individual.

2. The Islamic teachings, and, in fact, the teachings of all heavenly religions consist of three parts. There is the theoretical, the theology and the practical aspect that form the laws and the ethical theories. It is harmonious with human nature, for whose instruction and development prophets and scriptures have been sent. Man from another point of view can also be considered of three aspects: such as body, soul and spirit. Each section of such teachings is meant to purify, guide, and bring about perfection to the related dimensions of human nature.

The section related to man's intellectual dimensions is the section consisting of the basic doctrines of the faith. The section concerned with man's emotional and moral qualities and attitudes is ethics, while the section dealing with man's physical actions consists of the practical laws and commandments of religion. An expert in the first aspect of the teachings is called Mutakallim (theologian); an expert in the second aspect is called akhlaqi (moralist); and one who specializes in the third aspect is called a Faqih, a scholar of Fiqh. This discussion is about the third kind of expert, the individual who specializes in the subject of the practical laws and commandments of Islam.

3. To understand the term 'Faqih' and the requirements thereby (faqahah) properly one must first see what its definition is? One must also consider what qualifications a student of religious studies must acquire to become a recognized Faqih? Secondly, what are the preliminary stages, which a student must go through before qualifying for this designation?

A Faqih may be defined as "an individual who possesses the ability to find most or all of the general rules and legal commandments of Shari'ah from the original sources." In other words, he should have sufficient training in the preliminary requisites to establish proper inference and reasoning. Given all the necessary means, he should be able to establish proper inference and deduce any one of the rules of the Shari'ah through investigating and examining the sources, should he be required to do so. In this aspect, the position of the Faqih is exactly like that of the physician, who can diagnose a disease if he is in possession of the necessary means, or that of the surgeon, who can perform surgery if he has access to the necessary instruments and means. The qualification, which forms the basis of the aforementioned definition of 'Faqih', is indicative of potential abilities to form logical inference and deduce the rules of Shari'ah from the proper sources. It also does not say that one should have actually found all the relevant rules from the original sources and hold them ready in his memory for instant presentation. The expertise of a Faqih is comparable to the kind of expertise required of a physician or an engineer in his own field; the difference being that the tools used by the Faqih are different, just as the job performed and the results obtained are also of a different class.

## **The Prerequisites to Become a Faqih**

### **1. Linguistic skills**

It is necessary to have good command over the Arabic language to correctly understand the meaning of the material constituting the Holy Quran and the traditions of the Ma'sumin (a.s).

### **2. Some logical rules and philosophy of language**

It is necessary to have sufficient understanding of the various usage of Arabic words and the structure of sentences to have a clear idea of the meaning of the texts of the holy Quran and other original sources.

### **3. 'Usul al-Fiqh**

To know this discipline is the most important requirement to become a Faqih. It consists of a number of general principles, which guide the Mujtahid in the formation of logical inference and deductions of proper results from the original sources of law. This discipline, therefore, has a direct bearing on the process of deduction of the rules ('Ahkam) of the Shari'ah on grounds of the principles of reason, the holy Quran and the Sunnah.

### **4. 'Ilm al-Hadith (The Science of Hadith)**

From this discipline one learns to investigate Hadith, to distinguish the weak (da'if), the unreliable from the authentic (Sahih) and reliable Hadith. The authentic and reliable ones are accepted and what is otherwise is rejected.

### **5. 'Ilm al-Rijal**

This discipline investigates the reporters of Hadith and all those who form a link in the chain of transmission from the time of publication of the four main texts of Hadith (al-kutub al-'arba'ah) and other books dealing with textual evidence to find through a scholarly manner the rules, 'Ahkam. The reporters and narrators of Hadith are investigated all the way up to the Ma'sumin, the holy Prophet or the Imam (a.s) from whom a particular Hadith has been reported. What is investigated is the character of the reporters, their veracity, honesty, justice ('adalah), and reliability. The aim, of course, is to determine the degree of authenticity of the reported Hadith. However, since there is no ambiguity about the authorship of the popularly known collections of Hadith, there is no need to investigate the transmitters who lived after their compilation.

### **6. Full Knowledge of the Relevant Quranic Verses**

It is necessary for a student to have thorough knowledge of the meaning of the verses of the holy Quran that contain 'Ahkam of the Shari'ah, as original sources of the practical laws of Islam. The number of such verses is about five hundred.

It takes from twenty to forty years to gain full knowledge of these disciplines, depending on one's natural aptitude and degree of diligence. Moreover, there is the supreme condition, though not mentioned independently, the heart of all the other prerequisites. That no one may become a Mujtahid without the blessing and approval of God Almighty.

## **2. Muwala 'Alayh**

'Muwala 'alayh' literally means something, which needs to be looked after, or someone under guardianship and is incapable of continuing or managing his life by himself. Thus 'Muwala 'alayh' may refer to:

- (1) Assets, such as land or property; or
- (2) People, such as the minor, people with mental conditions, or the society as a whole.

### **Assets and Property**

The assets in need of a Wali's protection are of five kinds:

1. Private property, the Wali of which is its owner.
2. Semi-public property; such as charities and endowments (Mawqufat), the property gifted by the owner to be used for the benefit of the general public and the property of unknown owner such as lost-found objects, etc. The guardianship of such assets and properties rest either with designated trustees, or with the Muslim judge (Hakim al-Shar'i).
3. The properties of the Imam (a.s) include the following properties:

Of such properties are Khums, the twenty per cent tax that is levied on seven categories of properties, and Anfal that consists of all lands, forests, mines and surface water resources either have never been utilized or have been used in violation of the law. Detailed accounts of this can be found in the relevant works of Fiqh.

4. National property; such as conquered lands, Zakat (the tax due for nine categories of properties) The guardianship of these two items rests with the qualified Faqih and sometimes may be delegated to private persons. All the above-mentioned assets need protection, be they funds, minerals, plants or animal resources except for the animals living in the wild that are capable of taking care of themselves without any outside assistance.
5. Public property; which does not belong to any particular individual and stands in need of guardianship, such as: mosques, shrines, holy places, streets, highways, roads, and bridges.

In the following the five categories of properties will be explained more elaborately.

## 1. The endowments (Mawqufat)

Such properties are of many kinds. They primarily fall into four categories:

An endowment to benefit individuals such as a house for the benefit of one's male descendants.

(b) An endowment for the benefit of a general category of individuals; such as students, the needy, and the veterans

(c) Endowments for particular purposes; such as for commemorating the martyrs, for marriages arrangements and writing religious books etc

(d) Endowments for public use such as building a mosque schools, inns, bridge and roads etc.

The purpose for detailing the above four types of (Mawqufat) endowments is to point out that the last three categories, with only minor differences, are of a public nature, while the first category is of a private nature.

2. Wasiyah, or property bequeathed by its owner through a will for the benefit of the general public, can also be divided in the same way as endowments (awqaf) with only minor differences. Some examples of Wasiyah are property bequeathed for the benefit of religious students, providing housing for the needy, providing subsistence for the poor, etc.

### 3. The Property of Unknown Owner and Lost-found Property

The property of unknown owner must be used to benefit the poor and the needy with the permission of the Islamic authorities. The same applies to lost found property, when there is no hope of finding its owner, or after one has performed the duty of announcing its finding publicly for a period of one year. Thus, both of these two kinds of properties are considered public property.

### 4. Government and National Property

From the Islamic point of view there are numerous forms of ownership of property and assets, each subject to different kinds of regulations. For example, Khums and Anfal are considered as government property in the sense that the head of State and the Imam (a.s) of the Muslim Ummah controls them. The head of State is the Imam (a.s) himself when he is present, and his deputy in his absence. This property must be used, first of all, to provide for the expenditure and needs of the officials and employees of the State, and secondly, if anything left over, for the welfare of society, according to the discretion of the Imam (a.s).

However, the income from conquered lands and the Zakat belongs to the people and giving of the Zakat to the poor is therefore left to the discretion of the payer of Zakat himself or herself. In spite of the private nature of these two categories, however, the Wilayat of the head of the Muslim Ummah (nation) applies

to them also, and, if necessary, he may put them to some other use, as stated in the holy Quran,

“And know that whatever Ghanimah (gain) you acquire, a fifth thereof is for Allah, and for the Messenger and for the relatives, the orphans, the needy and the wayfarer.”. (8:41)

The above verse clearly indicates that the Khums of Ghanimah belongs to the head of the Islamic State. It also states the uses to which it must be put. According numerous Ahadith of the Ahlul Bayt (a.s) it is clear that whatever belongs to God belongs also to His Prophet (s.a) and, after him, to the Imams (a.s). And the three groups mentioned in the verse: the orphans, the needy and the wayfarer, receive their subsistence from the Imam (a.s). Thus, all kinds of Khums are the property of the head of the State, for the purpose of managing the affairs of the country. In the verse:

***“They ask thee (O Muhammad) of the Anfal. Say: ‘The Anfal belongs to Allah and His Messenger’.... (8: 1)***

All the nine categories of Anfal are considered the property of God and His Messenger, and God has entrusted His property to the head of the Islamic State. Thus, we can conclude that all the above mentioned forms of income and assets belong to the State.

In the verse:

***“The alms (Sadaqat) are only for the poor and the needy, and those who collect them, and those whose hearts inclined to the faith and to free the captives and the debtors and for the cause of Allah, and [for] the wayfarers.”... (9:60)***

Zakat is considered as belonging to the people and particularly the poor, to be used for their needs; it is therefore to be considered as national property.

## **2. Persons**

The persons who are Muwla ‘alayh are of four categories

1. minors and orphans
2. People with mental conditions
3. The slaves
4. And the society as a whole.

All the four categories are of Muwla ‘alayh, and incapable of managing their affairs properly and living in accordance with the real purpose of creation and guidance of God for man. To leave them without guardian would cause confusion and chaos in the society. It is quite obvious in the case of minors and people with mental conditions. In the case of slaves with a view to the fact that most of them are actually

prisoners of war, it becomes clear that to let them roam in the society that has captured them it would lead to all kinds of corruption and irregularity. It is therefore necessary that the slaves must have a guardian who supervises them and manages their affairs. Slavery is only one example of Muwala 'alayh, and it is not related here with Islamic attitude towards slaves and slavery, or the ways and means by which Islamic system has struggled to abolish this undesirable element from the society.

The fourth kind of Mawla 'alayh, that is, society as a whole, requires some careful study to see whether it, indeed, is in need of guardianship or not. It is a step, which must be taken, however, if we are to understand the nature of the Wilayat al-Faqih. This is so because most people have the notion that only those who are incapable of managing their own affairs are in need of a guardian. They do not see society as a whole as being such, and so deny that society is a Mawla 'alayh.

Although one must agree that there is some truth in this popular notion of society in certain aspects, it should be brought to the attention of the general public that in certain other aspects society cannot be left to itself in the management of its affairs. In fact, the society is even in greater need of guardianship and protection than minors, people with mental conditions and slaves. A more chaotic society is in a greater need for guardianship.

The case of society is similar to that of minors and people with mental conditions who are, in general, considered incapable, by the Shari'ah, of handling their own affairs. None the less, there are legal verdicts and Hadith to the effect that minors and people with mental conditions may make wills and set their slaves free. It means that they are considered competent as far as these matters are concerned, and the guardianship of the Wali either does not apply at all to them in these two matters, or if it does, the grounds for its doing so are weak.

This shows that society must also be viewed as an individual entity, and a judgement must be made as to in what aspects it is capable of self-management and in what aspects it lacks such competence and is in need of a Wali. Members of society are left free to conduct their affairs in various walks of life and to manage their own finances, because their competence is evident in their affairs; therefore, there is no need for a Wali for these matters are concerned. There are certain aspects of social life, however, to which Wilayat does apply. Some of the most important of these concern the social, political, legal, and economy of the society.

To determine exactly what aspects and parts of society do or do not need a Wali should carefully be considered. A fuller account of this can be found in the Islamic teachings. An examination of the laws the holy Prophet (s.a) and the Imams (a.s) preached would clearly reveal the nature and limits of Wilayat. It also would reveal the obligations and rights of the Wali and Imam (a.s) and the cases in which the Wali has authority to exercise control over the people's property or their persons. As it will be explained more elaborately, it would also prove that every society needs a sovereign state, properly organized with solidly grounded comprehensive programs and sufficient financial means to carry them out.

It is in this context that the necessity of the existence of the Wali and Imam is clearly realized.

Society needs an Imam with authority to exercise control over public property and at certain times, if needed, levy taxes to meet the dire needs of the society and protect it against present or potential threats to its existence and sovereignty. It may even be necessary at times for the people to be mobilized for certain tasks against their will. Long-term interests of the community may demand it. Is it not the case that the guardian of a minor sometimes needs to let him undergo surgery, be amputated, an organ removed, or a portion of the minor's property be disposed to save the rest?

Some of the scholars who do not acknowledge the validity of the Wilayat al-Faqih, is the Wilayat in the matters in which they consider the people to be competent and capable of proper management such as normal individual's decisions about his own person and property.

## **The Evidence**

The evidence proving Wilayat al-Faqih, the Authority of Faqih may come from three distinct sources:

- a. The judgement of reason
- b. The examples and traditions of the people of wisdom and their accumulated experiences
- c. The texts of the Holy Quran and the Sunnah.

### **A. The Judgement of Reason**

The judgement of reason is based on the following considerations:

1. Man by nature is a social creature, driven to cooperation and social life.
2. Great differences and disputes may emerge among individuals due to different ideas, psychological characteristics, physical conditions and capabilities.
3. A great deal of conflicts take place among people because of differences of views, interests, aims, and ambitions, which may lead at times to violent confrontation.

In the light of the above, it is obvious that if people were to be left to themselves, the outcome would lead to corruption, discord, violence, chaos, and destruction of life and property. The only way, therefore, is to save the society through an authority, which can exercise effective control over the people's ambitions and runaway-uncontrolled desires. The Holy Quran relates the story how the angels expressed their doubts about the wisdom of the creation of Adam:

“And when thy Lord said unto the angels: ‘ I am about to appoint a deputy on earth,’ they said: Wilt Thou place therein one who will cause corruption therein and bloodshed?”. . (2:30)

Such reaction of the angels was, of course, justified in the light of what they knew about human nature. However, what they were ignorant of was God's plan to appoint spiritual leaders and guides to save human society from corruption and chaos and to establish justice. God answered them: ". . . I certainly know that which you do not know not." (2:30)

## **B. The Practice and Traditions of the People of Wisdom (Sirat al-'uqala')**

Since the dawn of civilization there has never been any human society without rulers and administrators. Whether voluntary or imposed, subjecting the society to the authority of a guardian or ruler has continued until the present age and will do so as long as civilized society continues to exist. All this we owe to precedents established by the people of wisdom, based on long and hard to achieve experience. In other words, experience, as well as reason; have taught us that every society needs a government and a governor. And having been convinced of its necessity the people of wisdom have practically confirmed the necessity of the existence of State. It is solid evidence the 'practice of the people of wisdom' (Sirat al-'uqald') has provided, which distinguishes it from purely rational evidence (dalil al-'aqli).

## **C. The Textual Evidence (Adillah al-Naqliyyah)**

Textual or canonical evidence to the effect that society stands in need of a Wali, guide and leader, are found in abundance. What follows is just a small sample of the verses and Ahadith that provide such evidence.

1. Consider the following verse of the holy Quran:

***"Mankind were one community, and Allah sent (unto them) prophets as bearers of good tidings and as Warner and revealed therewith the Scripture with the truth that it might judge between mankind concerning that wherein they differed".... (2:213)***

It is indicative of the fact that there was a time when human beings had not yet formed complex communities. At that time, they had not yet been given any divine law (Shari'ah), and were left to conduct their affairs on their own judgement and commonsense. This state of affairs continued until men formed small communities. Then conflict between communities developed due to conflicting aims and objectives. There was the need for guardianship to remove these conflicts.

Allah appointed His messengers and gave man the Scriptures, which contained comprehensive programs and laws for social life to solve their differences and to resolve their conflicts. There is no contradiction between what has just been said and the belief that man has never been without religion since his creation, because Shari'ah is part of religion not all of it. Religion consists of beliefs and certain forms of worship, and has been much the same since the time of Adam (a.s). Shari'ah is a collection of all the rules and regulations governing man's personal, social, economic, political and other affairs.

According to the holy Quran and the traditions of the Ahlul Bayt (a.s) religion or Din has remained the same during all phases of human history. Islam, submission to God has always been the religion.

***“Indeed the (only) religion with God is al-Islam.” ... (3: 19).***

There are, on the other hand, five different Shari’ah’s, beginning with that of Noah (a.s) and ending with that of the Prophet of Islam (s.a.w).

2. Consider another verse, which is similar to the one quoted above:

***“We certainly sent Our messengers with clear proofs and revealed with them the Scripture and the Balance that mankind may uphold justice”.... (57:25)***

3. Also consider the following verse:

***“There were... Messengers with good tidings and warning, in order that mankind might have no argument against Allah after the messengers.”... (4: 165)***

4. Al-Imam al-Sadiq (a.s) has said: “God is greater in majesty than that He should leave the world and its inhabitants without a leader and guide to uphold justice.”

5. Al-Imam al-Sadiq (a.s) was asked, “Is it possible for God to leave a society without a guardian?” He answered: “He never did so.”

6. Al-Imam al-Rida (a.s) has said, “The leader, the guardian, and the Wali of the Ummah is the means for protection of the faith and the guarantee for the integrity of the social structure, the development of the economy and the implementation of the Divine Laws. His existence ensures the security of the frontiers and enforcement of the laws of God; it procures the Divine rights, maintains the integrity of the faith, and safeguards the honor of Muslims. He may, however, cause sorrow and anger for the hypocrites and disappointments for the unbelievers. The Imam of the Ummah is the untiring shepherd of the people, a capable statesman and administrator of their affairs, whose will and determination are impervious to exhaustion and weakness.”

7. Of the verses of the holy Quran dealing with the prophets and their authority over human society, there is the following verse dealing with God’s appointment of Abraham al-Khalil (a.s) as the Imam and leader of mankind:

***“He said: ‘ I have appointed thee a leader for mankind.”.... (2: 124)***

And God, we are told, made David (a.s) His Khalifah, steward and bestowed upon him the authority over society:

***“David, We have set thee as a deputy on earth; therefore judge aright among people”.... (38:26)***

Solomon (a.s) asked God to grant him authority and dominion unsurpassed by any other man:

... ***“Bestow on me authority such as will not belong to any after me.” 38:35***)

He gave Moses the mission of forming a State extending over the eastern and the western parts of Palestine: “

***We made the nation who was oppressed to inherit the eastern parts of the land and the western parts thereof which We had blessed.” ... (7:137)***

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