

Part 2 Chapter 8: Laws Pertaining To Authority Over Muslims And The Muslim Community

365. It is strictly obligatory upon the well-qualified to take charge of the position of authority and leadership over the Muslim community during the Occultation Age (*'asr al-ghaybah*; the period between the disappearance and the reappearance of Imam al-Mahdi). If there is only one person qualified enough to hold this position, it is then individually obligatory upon him to assume it; otherwise, it is collectively obligatory to do so.

366. It is obligatory upon the consultants (*ahl al-'aqd wa'l-hall*; the specialists in Islamic sciences who are experienced enough to recognize jurists, mujtahids—scholars competent to practice independent reasoning in legal judgment—and authoritative leaders) to appoint the qualified person as the supreme authority of the Muslim community if he alone is qualified for this position, or to choose the most preferred and the most virtuous among the qualified scholars and to introduce him to the people. It is then obligatory upon people to accept the person chosen by the consultants to assume this position.

367. It is obligatory to obey the orders and commands of the authoritative leaders, be they infallible, like the Holy Prophet and Imams; directly appointed by the Holy Infallibles, like Salman and Malik al-Ashtar in the reign of Imam 'Ali ('a); indirectly appointed by the Holy Infallibles, like the qualified supreme authorities during the Occultation Age; appointed by virtue of the office, like those who hold such leading positions like military commanders, judges, leaders of Friday prayers, and the like offices; or appointed to issue such decisive orders like waging wars, entering into peace treaty, sentencing to imprisonment, amnesty, and the like.

368. It is obligatory upon those resting upon the verdicts of a qualified jurisprudent other than the supreme religious authority to obey and follow the latter's verdicts when they are contradictory to the verdicts of the qualified jurisprudent they follow. Such being the case, the verdicts of the qualified jurisprudent are regarded as inoperative.

369. It is forbidden for unqualified persons to assume the position of supreme religious authority.

370. It is obligatory upon the supreme religious authority to accept peoples' oath of allegiance to him. If a number of Muslim men and women want to take an oath of allegiance to the supreme religious authority that they will ascribe no thing as partner to God or that they will neither violate the prohibitions nor forego the obligations of the religion, it is then obligatory upon the supreme religious authority to accept their oath of allegiance and implore God's forgiveness for them. However, this oath of allegiance is not a condition for the acceptance of their Islam and faith; rather, it reinforces their beliefs and strengthens their commitment to the branches of religion.

371. Defensive war is obligatory. If the enemy attacks an Islamic country, threatening the principles and fundamentals of the religion, even if in a specific region, or threatening Muslim lands with occupation, it is then obligatory upon every Muslim to defend the religion, the community, and the lands of Muslims and to sacrifice his/her property and life for this cause. Such defensive war is not contingent upon any permission and it applies to both men and women.

372. It is forbidden to flee the battlefronts in offensive or defensive wars unless the retreat is planned to find a better position for fighting or to join other soldiers.

373. It is forbidden to strengthen disbelief and hypocrisy, to sow disunion among Muslims, and to collide with the conspirators against a Muslim government in any way, even if it takes the form of building mosques, religious centers, and charitable establishments.

374. It is forbidden to prevent and discourage people to go to war, whether defensive or offensive.

It is forbidden to prevent from carrying out the religious obligations through such means like speech, writings, threatening, or allurements.

It is also forbidden to encourage, advance, or force people to violate the religious prohibitions.

375. In order to face the enemies of Islam, it is emphatically obligatory to prepare armed forces, troops, equipment of war, and transportation means that are suitable to the forces and war conditions of the enemy. It is obligatory to build and provide all necessary equipments for resistance, defense, and victory over the anti-Muslim armies. This obligation is collective; it pertains to the community and then to the supreme religious authority who must meet the expenses of these preparations from his own treasury or from the public treasury.

376. It is obligatory to wage war and fight against the rebels who revolt against an Imam or a religious authority appointed by the Imam. This is part of the offensive jihad and it has its own conditions.

377. It is obligatory to hand over the properties of *fay'* (spoils given by God exclusively to the Holy Prophet) to the supreme religious authority. Properties of *fay'* include lands that have been seized from non-Muslims without fighting and bloodshed.

378. It is forbidden to make disposition of the *anfal* properties before obtaining the permission of the

supreme religious authority who has control over the Muslim community. Properties of *anfal* stand for the public properties that are under the control of the head of the Islamic government, according to the Islamic law. They are as follows:

1. The derelict lands and the lands the descendants of whose owner have died out.
2. Public seashores and riversides of which no one has made disposition.
3. Mountaintops, jungles, and canyons.
4. The lands, properties, and precious objects of a ruler that have been seized by the Muslim army, on the condition that they have not been usurped from a particular person.
5. Precious and valuable booties.
6. Booties seized by the Muslim army from the disbelievers without the permission of the supreme religious authority.
7. Inheritances and legacies of the heirless.
8. Ownerless mines.

379. It is obligatory to give protection to any group of disbelievers who want to enter an Islamic country in order to learn about the religion, to hear God's words, and to understand its meanings. It is necessary to guarantee their return to their positions safely. This must be under the supervision of the supreme religious authority and the Islamic government.

380. It is emphatically obligatory to execute the divine penal laws that are sentenced to those who have committed punishable sins. This is one of the most important individual or collective duties. It is the duty of the supreme religious authority as well as the just rulers and the judges they appoint. If there is only one person to carry out this law, it is then that person's individual duty to do so. If there are numerous persons who can carry out this law, it is their collective duty; i.e. if one of them carries out the law, the others will be exempted from liability.

381. It is obligatory to respect the sanctity of the Sacred Months; namely, Rajab, Dhu'l-Hijjah, Dhu'l-Qa'dah, and Muharram. In these months, the Muslim government should not wage war. If a war has started before these months and continued, the Muslim government must suggest a truce and, if accepted, cease fighting, even temporarily.

382. It is individually obligatory upon all persons who are experienced in judgeship to assume this position when it is necessitated by the supreme religious authority. If there is only one person qualified for assuming this position, it is then individually obligatory upon that person, upon request, to accept this position. In any case other than these two, to assume the position of judgeship is collectively obligatory.

383. It is forbidden for an unqualified person to take charge of the position of judgeship even if the plaintiffs accept the person as judge, except in special cases.

384. It is obligatory upon judges to judge fairly between the two parties of a case, since it is strictly forbidden to issue unjust verdicts. It is obligatory upon any person to judge rightfully and to give a fair opinion in any case, be it rational, religious, or customary. It is forbidden for any person to give an incorrect opinion about any case, deliberately and without valid reason.

385. It is obligatory upon the judge to treat the two parties equally. The judge is thus required to behave with the two or more parties of a case in the same way, in greeting, speech, and etiquette of entrance and egress. The judge is also required to respect them equally and finally observe justice in judgment.

386. It is obligatory to accept an invitation for observing an incident in order to be a witness in the future. This is called witnessing. It is also obligatory to be present for bearing witness. If the witness is only one person, it is his/her individual duty to testify to or against an incident and if there is more than one witness, it is sufficient for one of them to testify. It is strictly forbidden to conceal testimony unless there is reasonable justification.

387. It is obligatory upon all duty-bound persons to testify justly to the truth and to refrain from deviating from the truth for any reason, except in cases of emergency. It is forbidden to give false testimony unless in cases of necessity.

388. It is obligatory to reveal false testimonies. If the testimony of a witness causes a person to be sentenced to death penalty, retaliation, or undergoing blood money, and after the execution of the judgment the falsehood of the testimony is discovered, it is obligatory upon the judge to sentence the testifier to retaliation or undergoing the blood money and to expose him/her before the people in any possible way.

389. It is obligatory on a person who has committed a crime against others to yield to retaliation in the case of intentional offences, whether the retaliation takes the form of death penalty in cases of intentional homicide, cutting off an organ or body part in cases of intentional cutting of a part of someone's body, or destruction of faculty in cases of disabling of physical ability, such as blinding or deafening someone. It is obligatory to pay blood money if the offence is unintentional. It is forbidden for the criminal to avoid retaliation or refrain from giving blood money.

390. It is obligatory upon the Muslim ruler to pay the stated blood money to the heir of a victim who has been killed in a crowd making it impossible to recognize the killer. The Muslim ruler is also required to pay the stated blood money to the heir of any victim whose killer is unknown. These blood moneys are paid from the public treasury so that the blood of the deceased believer does not go to waste.

391. It is forbidden to spy to the detriment of the Muslim government or to the loss of Islam and Muslims.

392. It is forbidden to make mischief in the lands through such acts like distorting the faith, morals, social order, and public financial and social security, promoting anti-Islamic behaviors, traditions, and customs, changing Islamic manners and rules, and other actions that the tyrannical ruling authorities disseminate in the society, such as seizing, jailing, beating, killing, etc.

393. Forbidden is *qadhf*, which is to accuse a married man of adultery or sodomy or a married woman of adultery while they are innocent or do not openly display such actions. If the maker of such an accusation neither has sure knowledge nor can prove it, in addition to the act being haram, she/he must be sentenced to a punishment. Of course, such an accusation is permissible in cases where the accuser has sure knowledge of the perpetration of the act by the accused and can prove it by either the testimony of four witnesses before the judge or the confession of the accused, four times, to committing the offense intended.

394. Waging war is forbidden; that is to carry a weapon with the intention of terrifying people and perpetrating corruption through hitting, injuring, killing, seizing property, etc.

395. It is forbidden to fight and battle inside the Secure Precinct of God unless it is intended for self-defense. The Secure Precinct of God is a limited oval-shaped area that surrounds the holy city of Mecca and its borders, about ten kilometers wide and about twenty kilometers long.

396. It is forbidden to sell weapons, war instruments, transportation means, fuel, and other things used in warfare for an enemy who is engaged in warfare against Islam. Moreover, it is forbidden to sell anything that may strengthen the enemy and weaken Muslims in such a situation. However, the latter issue is controversial.

397. It is strictly forbidden for the parties of a claim to refer to unqualified judges or judges appointed by the tyrannical ruling authorities. It is also forbidden for the parties of a case to take possession of anything that is judged as belonging to them by the verdict of such judges, even if it is their due, except in cases of necessity.

398. It is strictly forbidden to bribe a judge and it is forbidden for a judge to take bribe if the bribery is intended for wrongful judgment or in favor of the briber, be he/she the rightful party or not. Excepted from this law is the situation when the briber is the rightful party and there is no other way to gain her/his due. In this case, it is allowed to give but it is forbidden to take the bribe. Regarding the prohibition of bribery, there is no difference whether a bribe is given as a bribe or under such other pretenses like gift, present, or dealing in which a commodity is sold to the judge at a lower price in order to win the case.

399. It is forbidden for the judge to teach one of the two parties in a case how to defeat the other if the judge knows that that party is wrong. People other than judges are also forbidden to do such a thing if they know the person is in the wrong.

400. It is forbidden for a judge to judge against an absentee in cases regarding the rights of God. For

example, if four just persons testify against an absent person in a case of adultery, the judge has no right to issue a verdict. This rule does not apply to cases regarding the rights of people.

401. It is forbidden for the owner of a right to exceed her/his right, such as torturing a killer or cutting his/her body parts before retaliation, or causing more physical or material loss to the condemned than is due.

402. It is forbidden to conceal or keep hidden a truth when the validity or falsity of an accusation depend upon it, such as proving a murder or other crime, the validity of a marriage, the nursing of a child, the owning of a property, the arresting of an offender, or the acquittal of an innocent.

Source URL:

<https://www.al-islam.org/obligations-and-prohibitions-islamic-divine-law-ali-akbar-fayd-mishkini/part-2-chapter-8-laws#comment-0>