

‘The Guardianship of the Jurist’ in the words of the Shi'a Jurists throughout history

1. Sheikh al-Mufeed, (d. 413 AH)

Who says in al-Muqni'a, while explaining the obligation of the Friday prayer and the Eid prayers: ‘the jurists of the Shi'a of the Progeny of Muhammad (pbuh) must gather their brethren for Friday prayer and the Eid prayers, as well the prayer of invoking rain, and the prayer of the lunar and solar eclipse if they are able to do this...because the Imams have left this authority for them in the case that they are able to do this. This is indicated by as many narrations as you want me to quote, including narrations which are authentic according to those who have knowledge of narrations.’¹

He also said in his chapter on enjoining good and forbidding evil: ‘one who is performing this obligation cannot kill or wound anyone except by the permission of the ruler (i.e. qualified jurist) of the time who is in charge of running the affairs of the nation’.

He also said in his chapter on wills: ‘...if there is no ruler (i.e. an infallible Imam) to do what we mentioned in these chapters, it is for the just, intelligent, virtuous jurists of the Shi'a to take the authority over that which the ruler took authority over, but if they are unable to do this then they are not liable’.²

He also said in his book on judicial punishment: ‘as for carrying out the judicial punishment, it is the authority of the ruler of Islam, who is appointed by Allah. These rulers are the Imams of guidance from among the Progeny of Muhammad (pbuh), and those rulers and judges whom they have appointed for this purpose. The Imams left the authority of judgment to the jurists of their Shi'a if they are able to do this and are not afraid that the tyrant ruler of the time may harm their children or slaves etc...and the jurists of the Shia of the Imams (pbut) should gather their brethren for the five daily prayers, the Eid prayers, the prayer of invoking rain, the prayer of lunar and solar eclipse...and they must judge between them by truth and bring resolutions in disputes between them in the claims in the absence of any evidence...’³

2. al-Sayyid al-Murtadha (d. 436 AH)

He took charge of the affairs of Hajj and the two Sacred Mosques (in Mecca and Medina), as well as the leadership of the assembly of the Noble Descendents of the Prophet (P), and the position of supreme judge for a period of thirty years during the reign of Buveydis dynasty⁴. The fact that Sayyid al-Muratdha and other scholars like him accepted these posts indicates that they believed in the guardianship of the jurist and that these posts were a way of gaining some of the rights from the tyrant rulers of their time.

3. Abul Salah al-Halabi (d. 447 AH)

He was the student of Sayyid al-Murtadha. He said in his chapter on implementation of the rulings: ‘Implementing the rulings is the task of the brave, insightful, just jurist who is able to implement the rulings.’⁵

4. al-Muhaqqiq al-Hilli (d. 676 AH)

He says at the end of his chapter on Khums: ‘the one who has the power to rule by the right of representation should take charge of using the portion of the Imam for the existing groups (who are eligible recipients of the Khums).’⁶

Also, al-Shahidul Thani says in his book ‘al-Masalik’, in explanation of the above words of al-Hilli: ‘what is meant by this is that the just, Imami jurist who meets all the conditions has the authority to issue rulings (fatawa) because he is the representative of the Imam (as) and the one appointed by him’⁷. Muhaqqiq al-Hilli also said in the chapter on ‘Wills’ in the above-mentioned book: ‘if one has no trustee, then the ruler (i.e. the jurist ruler) is the guardian over what he leaves behind’.

5. Ibn Fahd al-Hilli (d. 841 AH)

He was the student of al-Shahidul Awwal (Muhammad Ibn Makki, martyred in 786 AH). He was one of the most famous believers in the general guardianship of the jurist among the ancient scholars. He said in his book ‘al-Lum’ā al-Jaliyya fi Ma’rifatil Niyya’ in the chapter on enjoining good and forbidding evil:

“(Enjoining good and forbidding evil have stages) the lowest of which is believing that obligatory acts are obligatory, and forbidden acts are forbidden. The next stage is to express dislike (when a sin is committed), then to dissociate and turn away from the person committing the detestable act...one should not move from one stage to the next unless the lower stage does not have an effect.

If one needs to move to the stage of legislative punishment and execution, this will be subject to the permission of the Imam (peace be upon him)...and the jurist as his representative. It is also an obligation on people to assist the jurist (in execution of the law).’

He also said regarding the intention of the jurist in paying the Khums to those who deserve it that the

jurist must intend the following:

'I intend to pay this amount to this deserving person because of my power of attorney on behalf of so-and-so and my representation of the Owner of the Affair (as)' or 'I extract this amount in representation of the Owner of the Affair (as)...' [8](#)

This indicates that the jurists take charge of these affairs in representation of the Present Imam (as), even if apparently they are appointed by certain rulers such as in the case of al-Sayyid al-Murtadha.

Ibn Fahd further said: 'Chapter 8 : On Jihad: Jihad is obligatory upon a male, mature, free person who is free from blindness or chronic illness, who has not been forbidden by his parents from participating and not so poor that he cannot afford to pay for his own weaponry and expenses- these latter conditions apply in the case where there are already sufficient soldiers- if the Imam or his general representative; who is the trustworthy jurist, or his specific representative call for a war against: a *Harbi* [9](#), or those who have broken the conditions of a treaty, or the rebels, or in self-defense, whether in the presence of the Imam or during his occultation.' [10](#)

6. Al-Muhaqqiq al-Thani (Nurul Deen al-Karaki, d. 940 AH)

This scholar had a great role in the adoption of the general authority of the jurist. It seems that the establishment of the Safavid dynasty in Iran- which is considered the first Shiite government to control all of Iran- helped Sheikh al-Muhaqqiq to make his political rulings public. He said in his treatise on Friday Prayer: 'Our scholars, may Allah be pleased with them, are in agreement that the just, Imami, jurist who meets all the conditions of issuing rulings, and who is called a Mujtahid in the legislative rulings, is a representative on behalf of the Guiding Imams (as) in anything in which such representation may be involved...therefore it is obligatory to refer to such a jurist in legal disputes and to abide by his rulings...including any authority that may be proven for the appointee from the Imam (as)'. [11](#)

This treatise can be found at the following web address:

<http://www.aqaed.com/shialib/books/all/09-ras-karaki/09-ras-karaki-01.htm> [1]

He also said in another treatise, named 'Qatiatul Lijaaj fi Tahqiq Hallil Kharaj': 'if you say: is it permissible for the one who has the power of representation during the state of occultation to take charge of this (i.e. various types of tax)? I mean: can the qualified jurist take charge of this affair?

We would say: we do not know of any clear expression of this from the scholars. However, whoever considers it permissible for the jurists to take charge of implementing legislative punishments and other tasks of the post of leadership, must also consider this permissible by precedence because this is less dangerous than that. This is especially because the ones deserving (to be paid from these taxes) are present in every age, and this is not a right that is limited to those fighting in military battles only, as will come in future discussions.

If one reflectively and fairly analyses the situation of our great scholars of the past, such as al-Sayyid al-Sharif al-Murtadha, the guided scholar, and the most knowledgeable of scholars from among the earlier and latter ones; the supporter of the truth and religion, Sheikh a-Tusi, as well as the ocean of knowledge, the Mofti of all Muslim sects, who is the adornment of the religion and community, al-Hassan ibn al-Mutahhar (al-Hilli), and others, may Allah be pleased with them, he will have no doubt that they had this view, and made this permissible, and they would not fill their books except with that which they thought was true'.¹²

This treatise can be found at the following web address:

<http://www.aqaed.com/shialib/books/all/18-ras-karakil/18-ras-karaki-03.html> [2]

Muhaqqiq al-Karaki has also said: 'our scholars have said regarding the way that tax should be spent: the Imam should allocate it for the sustenance of soldiers, governors, judges, as well as for other aspects of governance'.¹³

7. al-Muhaddith Faydh al-Kashani (d. 1090AH)

He divided governments into legitimate and illegitimate and said that a legitimate government has three examples:

- the first being the guardianship of the Prophet (pbuh)
- the second the guardianship of the infallible Imam (as)
- the third the guardianship of the jurist

He then proved the guardianship of the jurist using intellectual and textual evidence. Refer to his book: '*Mafatihul Sharai'*¹⁴

8. al-Wahid al-Bahbahani (d. 1206AH)

He is the first jurist of those we know that dedicated an independent chapter to a discussion about the guardianship of the jurist. He specified the thirty third section of his book 'al-Fawa'id al-Hairiya' for a discussion on the guardianship of the jurist and said that the jurist is called a 'mufti' because he gives 'fatwa' (rulings) and is called a 'qadhi' (judge) because he settles disputes, and is called 'hakimul shari' (the legislative ruler) because he has authority over the political affairs of people.¹⁵

9. Mulla Ahmad al-Naraqi (d. 1245 AH)

The teacher of Sheikh Murtadha al-Ansari and the author of 'al-Jawahir'. He is perhaps the first who dedicated a chapter to specifically discuss the general guardianship of the jurist in his book '*Awaidul Ayyam*'.¹⁶

This can be found at the following web address.

<http://www.naraqi.com/lara/g/g03/g03.htm> [3]

In this section, he says: ‘whatever the Prophet (pbuh) and the Imam (as)–who were the rulers over the people and the fortresses of Islam– had authority over and whatever right belong to them also belongs to the jurist, except that which specific evidence– be it textual, consensual or otherwise– has excluded’.

10. al-Sheikh Murtadha al-Ansari (d. 1281)

In his book ‘al-Makasib’, he limited the guardianship of the jurist to the functions of giving rulings and settling legal disputes. He objected to the authority to take charge of the affairs of people and said that ‘it would be easier to prove that pigs fly than to prove the general guardianship of the jurist!’

11. Akhund Muhammad Kadhim al-Khurasani (d. 1329, after being poisoned).

He was the author of ‘Kifayatul Usool’. He commented on the ‘Makasib’ of Sheikh al-Ansari and agreed with him about the insufficiency of the textual evidence in proving the general guardianship of the jurist. However, he proved it through intellectual evidence.¹⁷

12. Mirza Muhammad Husayn al-Na’ini (d. 1355)

He authored a book in the Farsi language regarding Islamic government and called it ‘Tanbeehul Umma and Tanzeehul Milla’. He completed it in 1327 AH, that is, 28 years before his death. He authored this book at the time of the ‘uprising of Mashroota’ in Iran and proved in it that the general guardianship of the jurist is one of the clearest examples of ‘hisbi’¹⁸ issues.

13. Sayyid Abul Qasim al-Khu’i (d. 1413)

His theory on the guardianship of the jurist is similar to Sheikh al-Ansari’s one. He limited it to the authority to give rulings and to judge in legal disputes. (Refer to ‘al-Tanqeeh fi Sharhil Makasib, 2: 156–176)

This book can be found at the following web address:

<http://www.al-khoei.us/books/index.php?id=5096> [4]

14. Imam al-Khomeini (d. 1409)

He clarified the theory of the general guardianship of the jurist in twenty lectures of his ‘Bahthul Kharij’ (higher Islamic studies) lectures in Najaf in 1348 AH. He said that the general guardianship of the jurist is among the propositions whose proof lies within themselves.

^{1.} al-Muqni'a: 81

^{2.} al-Muqni'a: 675

- [3.](#) Ibid. p. 811
- [4.](#) The Buveyhids (Bûye Booye) reigned between 320 to 440 AH. The time of their rule is known as ‘the Renaissance of Islam’.
- [5.](#) al-Kafi fil Fiqh, p.442
- [6.](#) Sharaiul Islam, 1:213
- [7.](#) Masalikul Afham, 1:476
- [8.](#) Ibid.
- [9.](#) Harbi; is the one who has waged a war on Muslims.
- [10.](#) Ibid
- [11.](#) Rasailul Muhaqqi al-Karaki, p. 142
- [12.](#) Qatiatul Lijaj, p.60–61
- [13.](#) Ibid
- [14.](#) Mafatihul Sharai vol.2, p.50
- [15.](#) Refer to ‘al-Fawa’id al-Hairiya, p.501–502
- [16.](#) Awaidul Ayyam section 54
- [17.](#) Commentary on al-Makasib, p.93
- [18.](#) Any affair in the Muslim community for which there is no specific guardian. On all such issues a just jurist is the guardian

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