

## Wilayat Al-Faqih

The main part of the subject, the Wilayat of the Faqih, will be discussed on the basis of the following sources of authority, conditions and facts

In the lights of Ahadith that prove the validity and the authority of Wilayat of the faqih.

The qualifications required for this kind of Wilayat

Its scope and limits of the authority of a Faqih.

### 1. The evidence that establish the Wilayat, authority, of the Faqih

#### Some Of The Textual Evidence

Undoubtedly, the Islamic system has established all the necessary rules and guidelines for all of human activities, whether inner and intellectual or outer and physical. The basis for this, in a general expression, is the popular Hadith: "God has a commandment for every eventuality, applicable both to those who know and those who do not know, even the amount of restitution for a scratch."

And the Prophet (a.s) is reported to have said in one of his sermons: "O people, there is nothing that brings you closer to Paradise and moves you further from Hell that I have not told you to do. And there is nothing that brings you closer to Hell and takes you further from Paradise that I have not forbidden you to do."

Muslims do not dispute the fact that the Islamic system is a comprehensive and all-encompassing religion. The sources in the Islamic system are more than enough to substantiate this belief. It is also a fact of life that human communities, big or small, stand in need of a government or a ruling authority, whether elected or nominated. In all the cases involved, the State is a fact of social existence. To believe that such a need has not existed in the period between the occultation of the Twelfth Imam (a.s) up to the present, nor will exist until the time when he is to reappear, is unacceptable. It also is not acceptable

to say that the Islamic system has not established any guidelines or commandments to deal with these issues. Is it conceivable to say that when it has considered everything else and judged it to be either lawful or unlawful, halal or haram, right or wrong except the system of government? In other words, how are we to accept the idea that Islam has given instructions and rules dealing with the smallest of the activities and eventualities, but has ignored an aspect of such great significance as the formation of government for the community.

It is especially so because this vital aspect influences many other smaller and less significant eventualities. Is it not the State that determines the ultimate ideological, moral and practical course of a nation? Is it not the State that may lead, if not properly run, towards deviation and misery? Is it not the State that either brings the righteous into power, expels the unjust and the wicked, or may do the opposite if not properly run? Is it not the State that can either be a means of materializing the aims and ideals of the prophets to implement the Islamic system in real practical life? Can it not, on the contrary, be the means of frustrating such a system?

It is undoubtedly the State that can either enforce all the laws of the system such as judicial and moral discipline to cleanse the society of obscenities and indignities. It may also become the vehicle of propagation of corruption, to suspend the administration of a genuine and Godly government. It is the State that may become the most important means of practicing the Islamic duty of al-Amr bil-ma'ruf wa al-nahy 'an al-munkar (enjoining good and forbidding evil) and enforcing the Divine laws or the greatest obstacle in the path to such ideals. To sum up, what factors other than the State can one think of with greater influence, whether negative or positive, on the course of human life including the State authorities as well as the people subject to their rule?

The comprehensive analysis of all the major and minor matters of the Islamic system of legislation and its vast ranges strike even the learned with wonder. The meticulous consideration in this system to the multifarious aspects of life flabbergasts anyone with even a perfunctory knowledge of Islamic teachings. Some examples of such cases are rules in the case of a scratch caused to one's skin by perpetrator.

The first rule is a prohibition on its infliction to anyone and the second rule specifies the compensation due to the victim. In the Islamic jurisprudence entire chapters are devoted to such minor matters as i'tikaf, (a form of worship in the mosque for three successive days) Nadhr(vows), Yamin (swearing) and 'ahd, (promise) luqatah (articles or things found), and the like. If one were to gather the fragments of teachings about the proper manners of going to the rest room, they would fill a large volume. Given this scrupulous and meticulous attention to all matters of life, would it be consistent that Islam would say nothing about how Muslims should conduct their political affairs during the occultation of the Twelfth Imam (a.s)?

If this were true, it would mean that Islam has either left its followers to live in anarchy or has permitted them to obey the tyrants of the age. It is clear, however, that this, by no means, is the case, because we read the following statements in the Holy Quran:

***“Thus, be pious before God and obey me and do not obey the command of the prodigal, who spread destruction in the land (26: 150–153)***

***Neither obey thou every mean swearer. (68: 10)***

***Therefore, obey not those who deny (the truth of Islam). (68:8)***

***. . .As for those who disbelieve, their patrons are the tyrants (al-taghut) ... (2:257)***

***.... And he who reject the tyrants (al-taghut) and believe in Allah have grasped a firm handhold (2:256)***

Imam Ali (a.s), in the forty–seventh epistle of the Nahj al–Balaghah says:

“It is your duty to be pious before God and manage your affairs in an orderly manner.”

It is thus obvious that Islamic system has not neglected its followers in the matters of the establishment of government organized on the basis of law. The nature of this government, its objectives, the qualifications of the head of such government, and finances are questions that will be discussed later.

## **(b) Independent Judgement of Reason**

Independent judgement of reason and the opinions of the people of wisdom, throughout the history of civilization, have always acknowledged the necessity for the existence of an authority and ruler for the society. In fact, it would be difficult to find any group, nation, society or sect that does not have a guide and leader. The concept of civilized life, to which human nature is inclined, is inconsistent with the absence of a governing authority. In the absence of law and order human beings must live a lawless and barbarian life style, at times looting and killing one another without any impediment, as was their life style in prehistoric times.

### **Of Imam Ali's (a.s) Sayings**

“It is Imamah (leadership) which gives order to the affairs of the Ummah (Muslim community). (Ghurar al–hikam, vol. I, p. 36) He also says, “Mankind cannot do without a leader, good or bad. [with law and order] by his rule, the believer performs his acts [of righteousness] and the unbeliever attains his [worldly] enjoyments. In it God eases things to reach their ultimate destinations. Through it tribute is collected, the enemy is halted, the security of the travelers and roads is maintained and the rights of the weak are exacted from the strong ones.” ... (Nahj al–Balaghah, sermon 40)

Al–Imam al–Rida (a.s) has said: “We do not find any community or nation living and surviving without a leader and chief; they cannot deal without him with their religious affairs. God, the Wise, does not leave mankind without a leader; He knows that they cannot do without him and they do not have any support except from him. With his help they can halt their enemy, equitably distribute their gains, establish their

prayer in congregation on Fridays and other days and protect the rights of the weak from being violated by the strong ones.

It is worthwhile to note that the Ahadith cited above repudiate the allegations that Islam has been silent on the question of State and government. Rather they affirm that the Islamic system has specified the identity and qualifications of the ruler in addition to outlining the objectives of his government. More details are available in the texts of the Hadith of the holy Prophet (s.a) and the Imams (a.s) and in case they would not cover certain issues, we must turn to reason to find a solution.

### **(c) Al-Imam al-Husayn (a.s) Says**

“The administration of all affairs of the society is in the hands of men of Divine knowledge, who are faithful custodians of His commandments and instructions about lawful and unlawful matters (Halal) and what is (Haram). (Tuhaf al-‘uqal). The expression al-‘umur, (affairs) that must be administered by the trustworthy scholars, refers to the general affairs of society, which include all aspects, major and minor matters of its management. The above Hadith is only one out of many that speak of the matters of government and its various functions.

### **(d) The Following Hadith**

The following Hadith has been quoted by al-Shaykh al-‘ansari in his works al-Makasib (the chapter on Wilayat al-Faqih):

“The Muslim scholars are trustees of the prophets.”

What is meant here is that the ‘ulama’ are responsible both for the propagation of the Divine laws as well as the administration of the affairs of society.”

### **(e) Another Hadith**

The following Hadith has also been quoted in the above mentioned works of al-Shaykh al-Ansari:

“The scholars of my Ummah are like the prophets of Bani Israel.”

When we say that two things are like each other, our judgement that they are similar must be based on a comparison of apparent and observable characteristics. The prophets of Bani Israel, such as Joseph (a.s), Moses (a.s), Aaron, (a.s) David (a.s), Solomon (a.s) and others, rose up against the tyrants of their times. They opposed them both by words and deeds and most of them established governments and took on themselves the responsibility of managing the affairs of their society. So, when it is said that the scholars of Islam are like the prophets of Bani Israel, it means that they also must fulfil the same duties and functions. Obviously, the Hadith does not intend to compare the Muslim scholars with the Israeli prophets in all conditions. It does not require exactly the same conditions the individuals experienced like

the imprisonment of Joseph (a.s) or Moses' (a.s) being a shepherd, with David (a.s) in his skill in making coats of mail or with Solomon (a.s) in the weaving of baskets and so on.

### **(f) The well-known Hadith**

There is the well-known Hadith reported by 'Amr Ibn Hanzalah considered reliable by most and by some scholars as authentic (Hadith), to the effect that when he asked al-Imam al-Sadiq (a.s) about the permissibility of taking disputes before judges appointed by the tyrannical governments of the time, the Imam replied:

“The two parties to the dispute should look for someone who narrates our Hadith, supports our standpoint regarding the permissible and the forbidden and our views regarding the Divine Commands. (Having found such a person), they should honor his judgements; because I have given him authority over you.”

Although the question asked concerns litigation and taking of disputes before a Muslim judge, however, according to the statement: “I have given him authority over you” such a judge is appointed as the head and ruler of the community. Among his other duties is the enforcement of rules of justice, directly or indirectly through judicial agents. The statement is also indicative of, apparently, the fact that the narrators of Hadith, who should also be an expert in the field of Ijtihad and knowledgeable in Divine laws and the Ahadith of the Ahlul Bayt (a.s). Moreover, the phrase “Ja’altu“, appointed him, uttered by the Imam (a.s) who enjoyed absolute Wilayat or authority, serves to clarify the meaning of al-Wilayat al-‘insha’iyyah (i.e. Wilayat conferred through a decree).

### **(g) The Statement of the Twelfth Imam (a.s)**

There is the following statement of the Twelfth Imam (a.s) which is part of the reply to a query by Ishaq Ibn Ya'qub and has been handed down to us as a Hadith' “... As to the emerging cases, you should refer to those who are narrators of our Ahadith, since they are my authorized representatives among you, and I am God's representative . . .” (al-Shaykh al-Ansari, al-Makasib; al-Shaykh al-Saduq, Ikmal al-Din wa Itmam al-ni'mah).

Mulla Ahmad al-Naraqi, after stating the traditional grounds in support of his concept of Wilayat al-Faqih, says: “A prophet at the time of his demise or the moment of leave-taking while leaving on a journey tells his ummah that so and so will perform my functions in my absence. He shall be my vicegerent and trustee, my representative and authority among you. He will be the authority that you should refer to in all events and cases. He would handle all your affairs and will take care of the affairs of my nation and ummah. Would all those who listen to the prophet not realize that the individual thus introduced shall have all the authority and responsibilities that the Prophet has today? Would it not be as such not only in the realm of spiritual and moral leadership, but also in supervising the social life of the community in all its various aspects?”

Indeed, no one would doubt it and very well has al-Naraqī expressed it. May God bestow blessings on him.

## **(h) 'Umur al-Hisbiyyah**

It could be said, as a number of Muslim scholars have said so that the governance and guardianship of society are among the 'umur al-Hisbiyyah. Such tasks need to be carried out; the Prophet (s.a) or any of the infallible Imams (a.s) have appointed no specific individual or individuals for the same. Rather they must be accomplished according to the Islamic laws and regulations. Any Muslim or group of Muslims capable of carrying it out may carry out such task. 'Umur al-Hisbiyyah are those affairs that must be carried out in accordance with the needs of the society. If there is someone specifically in charge of carrying out these tasks, so much the better, otherwise, it is incumbent (Wajib kifa 'i) on all individuals who have the capability to carry them out properly. Some examples of 'umur Hisbiyyah are: protecting the life and property of such people as orphans and presentation of testimony that one happens to bear and it would guard the rights of certain individuals, teaching the guidance of religion when no other qualified individuals would do so. Of such matters is to arrange for the burial of a deceased person etc. Those who subscribe to this view cite a number of Quranic verses and Ahadith. Of such texts are the following:

***" . . . and do good. Allah loves the beneficent." (2:195)***

***There is no way (of blame) against those who do good (voluntarily)." . . . (9:91)***

***... And cooperate with one another in righteousness and pious deeds (5:2)***

"Every good deed is a charity." (Safinat al-Bihar, vol. II, p. 25)

"Helping the weak is the best charity." (Al-Shaykh al-'Ansari, al-Makasib, the chapter on the Wilayat al-Faqih)

"God helps His servant as long as he continues to help his brother." (Al-Shaykh al-'Ansari, al-Makasib)

The purport of the above texts, verses and Ahadith is that any action is considered desirable which helps and benefits either some member of the society or the society as a whole. Of such acts is helping the poor and oppressed, and giving assistance to one's brothers in faith, is considered desirable, appropriate and valid in the sight of God.

## **2. The Qualifications Required for the Wilayat**

In the following the qualifications and capabilities required for the post of the Wali, the leader or guardian of the Islamic system will be mentioned. Without such qualifications it would be unlawful for anyone to occupy the office of the Wilayat and leadership of the Islamic society.

However, before we begin our discussion of the qualifications necessary for the office of the Wilayat this should be noted first. The person whose authority in the Islamic system in his capacity as the successor to the Wali al-‘asr (The Guardian of the time, the Twelfth Imam (a.s) was proved ‘ above, also has the authority for a spiritual and religious leadership. In other words, unlike other societies in which there is separation between religion and State in the Islamic system no such separation exists. The same individual is expected to fulfil both the functions. This was precisely the case with the leadership of the Prophet (s.a) and Imam Ali (a.s).

They not only exercised political leadership over the Ummah, and administered the affairs of the State, but also fulfilled the functions of spiritual, ideological and religious leadership of the society also. The same principle also applies to the successors of the infallible Imam (a.s). It is for this reason that all the qualifications necessary for political leadership are also true for spiritual leadership and all those characteristics necessary for the spiritual guide are also required of the political leader.

The issue at this point, then, is in establishing the evidence of the validity of Wilayat of the Faqih; we simultaneously prove his authority in political sovereignty and his privilege of religious leadership. In fact, religious and political aspects are interwoven and inseparable in the concept of Wilayat, just as they were in the authority of the Prophet (a.s.w) and Imam Ali (a.s). This was not always, however, in real life, the case in the past and even during the lifetimes of most of our Imams (a.s).

The government in most of the times was in the hands of tyrant caliphs, while the spiritual leadership, since the tyrants did not possess, of the people remained with the Imams (a.s). But there is not such separation of functions in the government of the Islamic Republic. The duties and responsibilities of Wali-e Faqih include all the duties and responsibilities of the Islamic State, such as implementation of the Hudud, (judicial decrees), appointment of judges, appointment of Friday-prayer leader’s, and so on.

The qualifications necessary for the post of the Wali al-Faqih (guardian and head of the State), are certain basic obvious conditions. There is no disagreement about such conditions among the scholars of Fiqh

The Wali (head of the State and leader) must be:

- Mature.
- Mentally sound
- He must be a Muslim

He must be a Mu’min (follower of Ahlul Bayt (a.s) Imams from the family of the holy Prophet.

- Must be a male
- Must be free from slavery

- Born out of wedlock
- Must possess the faculty of justice.
- Must possess the faculty of Ijtihad

These conditions are obvious in their meaning and do not need any elaboration. Only the following ones of these conditions will be discussed with some details together with supporting evidence from the Holy Quran and Hadith:

## A. Ijtihad

### Ijtihad, Expertise in Islamic Jurisprudence

This condition means that the leader and ruler of the Muslim Ummah must be a scholar of Fiqh. He must be able to deduce and find the rules of the cases in practical life through proper and standard reasoning principles from the appropriate and relevant basis sources of the Shari'ah; the Holy Quran, the Sunnah and principles of reason. It may also be specified that the level of the Ijtihad, expertise of the Wali al-'amr must be, if not greater than those of other scholars of jurisprudence, at least equal to them.

Of the evidence to support the necessity of this condition are the Ahadith mentioned above. (See items 'c' to 'g' under "Wilayat al-Faqih"). In the above-mentioned text the following phrases and expressions are mentioned. "Those having knowledge of God," "Faqih," "scholars", the "scholars of my Ummah", "those who support our standpoint regarding the Halal and the Haram" and "our views regarding the Divine commands", "the narrators of our Hadith". Such expressions establish that Ijtihad is a necessary qualification for a Faqih. The following texts can also be pointed out as supporting evidence:

***"Allah has chosen him above you and has increased him abundantly in knowledge and physique.... (2:247)***

The Holy Prophet (a.s.) said, "And if the leadership of a community is placed in the hands of one who is not the most learned in its ideology, that community is bound to decline, unless its people return to amend what they have neglected." (Kitab Sulaym Ibn Qays)

Imam Ali (a.s) said: "You know that it is not right for one who has authority over the life and honor of the people to be ignorant (a.s) of the laws of the religion because he will misguide them due to his ignorance." (Nahj al-balaghah, sermon 127)

## B. Justice and Piety (Taqwa)

The leader and the head of the Islamic government must have the faculty of "Justice"

Some of the Ahadith supporting the need for this requirement are the following:

***“Do not trust the unjust (whether he is unjust to himself or to others), because if you do so you shall be touched by the fires of Hell.... (11:113)***

To trust an unjust and corrupt ruler would set the community on the road to evil.

The Holy Prophet (a.s) said: “The leadership of the Ummah is not proper for a man unless he has three characteristics.” One of which is piety (wara’) which would keep him from committing acts that God has forbidden.” al-Kafi, vol. 1, p. 407).

Imam Ali (a.s) said: “And I feared lest the affairs of this Ummah would fall into the hands of its corrupt and ignorant members”. (Nahj al-balaghah, epistle 62)

“The control of government, the implementation of judicial decrees and establishing Friday congregations is not legitimate without a just leader (Imam ‘adil)”. Al-Kafi, vol I, p. 314)

Al-Imam al-Husayn (a.s) said: “The Imam is one who judges according to the

Book of God, upholds justice, follows the religion of God and gives priority to the wishes of God over his own wishes.” al-Shaykh al-Mufid, Kitab al-Irshad, p. 210).

Apart from the above-mentioned Ahadith, it should be pointed out that in Islam to maintain ‘justice’ is the duty of the whole society. It is one of the requirements for witnesses testifying in courts of law. A divorce must take place before just witnesses. The leaders of congregational and Friday-prayers, judges and so on must be just people (‘adil, a ‘just’ person in the specific sense according to Islamic Laws). How is it possible then that it should not be required of the leader and the head of the government and ruler of the society? There are many Ahadith to the effect that the Wali should be one who establishes the practice of the Prophet’s Sunnah and implements all the laws of the Divine Shari’ah, puts an end to innovations in the faith and purges it of heresies.

### **C. Administrative Capabilities and Courage**

The head of the government must have Administrative Capabilities and Courage

The Ahadith to establish this requirement are as follows:

(I)... ***“Is he who leads to the truth more proper to be followed or he who can not find the way unless he (himself) is guided?” (10:35)***

This verse states that he who does not have the ability to manage and to lead has no right to occupy the post of the Wilayat and the people should obey and follow an individual who possesses these two capabilities.

(II) We may again quote what Imam Ali (a.s) has said: “And I feared lest the affairs of this Ummah

should fall into the hands of its corrupt and ignorant members.” (Nahj al-balaghah, epistle 62)

(III) “No one should take on the responsibility of establishing God’s government and rule except he who neither compromises, nor yields to humiliation nor follows his own temptations.” (Nahj al-Balaghah, Saying No. 110)

The qualities described in the above sayings of Imam Ali (a.s) particularly in the word “‘adl” indicate the necessity of courage and strength of character in the ruler.

(iv) The Prophet (a.s) said: “The Imamah (i.e. the leadership of Muslims) is improper for people except one who possesses three qualities... (One of which is) a benevolent ruler who has the authority and act like a kind and compassionate father.” (a.s) Al-Kulayni, al-Kafi, vol. 1, p. 407)

(v) Imam ‘Ali (a.s) said: “O people, the most deserving of persons for this matter (i.e. the caliphate, leadership) is the one who is most competent in discharging its functions and duties and the one who knows best Allah’s commands applicable to it.” (Nahj al-Balaghah, sermon 173)

## **D. Social and Political Insight**

### **The head of the government must have Social and Political Insight**

The necessity of this requirement can be inferred from some of the Ahadith cited in support of the requirement of ‘ilm (knowledge). The social and political insight is only one aspect of the knowledge essential for effective leadership. Thus in all cases when the term ‘knowledge’ is used in a special context and in reference to a specific duty of wide social significance, the specific kind of knowledge relating to social and political awareness is essentially implied. This applies to all such statements where the term ‘ilm is used in relation to leadership.

In addition, to entrust the post of Wilayat to an incompetent individual lacking political insight or awareness would be contrary to the statement of Imam Ali (a.s) that said: “It is your duty to be pious before God and manage your affairs in an orderly manner.”

From the Ahadith cited above in support of Wilayat al-Faqih and others like them, one may also infer the necessity for certain other conditions. Of such conditions are acting according to the commands of the Divine Scripture; having command over one’s self and freedom from such vices as stinginess, indifference towards people, tendencies toward seclusion, misappropriation of public property, taking of bribes and so on. Some of these traits are part of the quality of justice, while others are desirable merits and characteristic of perfection.

The existence of a quality and trait whose absence may cause disruption in the process of carrying out the duties and tasks of the leadership of the community is necessary and essential.

### 3. The Scope and Limits of Wilayat, authority of al-Faqih

As said earlier, the important factor in Wilayat al-faqih is the scope of this particular form of Wilayat. It is smaller in scope than the Wilayat of an infallible Imam but it has a wider scope than the other forms of Wilayat previously mentioned.

The domain of the Wilayat of the faqih can be divided into two levels. The domain of one level of this Wilayat is mainly accepted by all Muslim scholars of Fiqh including the Shi'ah Muslims. This level involve such powers as the authority to take into custody the property of individuals who are incapable of managing and safeguarding their assets such as minors, people with mental conditions, or those who are absent. Other examples are the authority over property as laqit (property found), the awqaf (endowments) and wa sa' ya'(bequests) without trustees. The authority to arrange the funeral of those who die without an heir; the authority and duty to make reluctant individuals yield to other people's legitimate claims; and such other cases and instances, which are abundant in Islamic jurisprudence. All these instances posit a relatively extensive authority for the faqih.

The second level of the domain of the Wilayat of the Faqih, scholar of Fiqh, is far more extensive and universal. It involves the establishment and organization of an Islamic State and government to administer the Muslim community or a society including Muslims and non-Muslims, undertaking all the duties of the functions of the State and guardianship of a society, with a population exceeding tens of millions of individuals as members.

The Authority or the Wilayat of the faqih of this level is to exercise control over the lives and the property of the members of society in all essential aspects of social life. This takes place through the establishment and organization of a State to meet the present and future needs of the society. Of such needs are the cultural, political, judicial, military and other such needs that according to the society's changing conditions and transitions in national and international relations may arise. The appointment and dismissal of the Friday-prayer leaders, the enforcement of al-'amr bil-Ma'ruf wa al-Nahy 'an al-Munkar at the highest level, and other such issues may also fall within the scope of such authority.

In this discussion on the Wilayat al-faqih the task is to prove that this Wilayat comes with the second level of authority. There are two reasons to substantiate such authority as legitimate part of it. Firstly, it comes from the position of the faqih as the deputy (na'ib) of the Twelfth, Imam (a.s). This inference is based on the seven aforementioned Ahadith as well as independent reason.

Secondly, a careful examination of the decree contained in the letter of Imam 'Ali (a.s) to Malik al-Ashtar (whom he had appointed as governor of Egypt) clearly indicates that Malik al-'Ashtar was given all the powers and privileges normally reserved for the head of an independent government. This is very much like the case of members of a federation, although legally affiliated with a central government, are still somewhat independent. It must be admitted that more than a thousand years ago, the Islamic State gave a capable provincial governor such powers, organizational means and budget, for which few

parallels can be found in political history.

Alongside defining the scope and limits of the Wilayat of the faqih, it would be helpful to examine the nature of powers given to Malik al-‘Ash as a deputy of the Imam of his time. In the case of Wilayat of the faqih, however, different circumstances, needs, and relationships of that age and the present must be taken into consideration.

## **A Glance at Imam Ali’s Decree**

This decree was in a letter of Imam Ali (a.s) to his governor in Egypt, Malik al-Ashtar.

In his letter to Malik al-Ashtar, Amirul-Mu‘minin ‘Ali (a.s) has pointed out, explicitly or implicitly, a number of issues. Some of these issues concern the governor himself, and others concern the State officials. Still a third group deals with the issue of his government’s budget, and finally the fourth group is related to the people and society under his sovereignty. The following points are worthwhile to note:

### **1. The Wilayat and governance of society belongs to the infallible Imam or his appointed representatives:**

“O Malik, you are guardian over the people and the Wali al-‘amr is guardian over you, and God is over the Wali al-‘amr who has appointed you to the post of Wilayat (governor over the people), considering you competent to administer their affairs properly.

### **2. Concerning the selection of ministers and the formation of ministries:**

The worst and the most incompetent of your (would be) ministers are those who have served as ministers to the previous evil political system.

It is clear from this statement that the Wali al-‘amr must have a number of ministers and implicitly a number of ministries along with their related departments.

After this Amir al-Mu‘minin (a.s) has described the qualifications necessary for every minister.

### **3. Concerning formation of the army:**

“And know that the army constitutes one of the social classes. It is the fortification, by God’s permission, for the defense of the people, an ornament for the administration and the glory of the Islamic system. It is the instrument of security of the country. No society survives without an army.

### **4. Concerning the establishment of the judiciary with the needed personnel, and the appointment and dismissal of judges:**

” . . . And choose those whom you think are best qualified as judges from among the people.”

Imam 'Ali (a.s) then has described thirteen requirements and qualifications relating to the selection of judges. These requirements are comprehensively treated in the sections of the Islamic laws dealing with the judges. In the Islamic system certain conditions and qualifications for judges are essential while others are desirable, the like of which are found in none of other systems.

#### **5. Concerning the organization of the law enforcing personnel or the security forces to maintaining internal law and order:**

Imam 'Ali (a.s) has commanded that whenever petitioners come for an audience with the governor, he should not allow his guards, companions, or police, to interfere with them. The word "shurtah " refers to the police forces that maintain internal law and order. It is also sometimes used to refer to soldiers stationed at frontiers.

#### **6. Intelligence Agency:**

"O Malik, only those of your scribes and secretaries who are the most pious, must handle those letters which contain secret instructions, or deal with critical security matters..

And about overseeing the functioning of all governmental departments the Imam (a.s) has said,

"Inspect the activities of the offices of government through setting up intelligent agents, who must be loyal men of honesty and integrity.... Because secret supervision over the work of the different departments causes them to be diligent and faithful in carrying out their duties.

About the treachery of some of the governmental personnel, the Imam (a.s) has said,

"Whenever any official of your government commits an act of treason and his having done so is testified to by a number of your intelligent agents, consider their testimony to be sufficient evidence and enforce the law in his case (for his treason)."

It should be kept in mind that the duties of the Islamic government's intelligence organization are not limited to the supervision of the activities of judges, or officials of the different governmental departments. The activities referred to in the above instructions or in similar Ahadith are of a more general nature.

#### **7. Organizing consultative bodies or councils of different kinds on various levels in accordance with the needs of the society:**

"... And do not include misers, cowards, or greedy persons in your council...."

Imam 'Ali (a.s) has set the rules in decision-making about social and political affairs through a process of consultation and for this reason he has mentioned the qualifications necessary for members of such councils. He has advised the Islamic ruler against miserly, cowardly, greedy and ambitious individuals

who may find ways into such councils. Validity of consultation as a principle is based on such verses as the following:

... *“Their affairs is by counsel among them (42: 38)*

...*And (O Prophet) consult them in affairs” (3: 159).*

There are also a number of Ahadith that encourage the faithful to consult with one another and describe the necessary requirements of one who consults and the consulted. Councils must be formed to decide about all-important matters that require consultation. This covers all kinds of councils whose formation has been approved by the Constitution (of the Islamic Republic) and indeed embraces a wider range of issues.

## **8. Publications:**

The writers play an effective role in leading it towards either felicity or wretchedness or any other path relevant in the context of the particular conditions and circumstances in which a society finds itself. Moreover, the reference is not to writers and books alone, but includes all those who influence public opinion on important social issues and control the communication media in a society.

The important fact, from the Islamic viewpoint, is the criteria and norms on which the press and media of communication should be based. The Islamic system requires their use in the service of true religion and the good of the society. It is necessary for the press also to follow the rules that apply to the following matters. The press must observe the criteria for educating the public, the duty of enjoining good and forbidding evil, the duty of guiding the ignorant and disseminating knowledge and science. It is necessary for the press to restrain from such activities as spreading lies, obscenities, engaging in slandering, defamation, disclosing people’s secrets, insulting the believers, and in effect enjoining evil and forbidding good, also apply to the press and the media of communication with the masses.

## **9. About the selection of personnel for government offices, Malik al-Ashtar received the following advice:**

“. . .Then look into the affairs of your officials. Appoint them to their posts after a thorough test and do not appoint them arbitrarily and on account of your personal preferences.

Your selection of them (i.e. secretarial personnel) should not be based on your personal impressions, confidence and favorable opinion alone, You should rather test them by taking into consideration the record of their past service under virtuous people before you”.

Regarding the judges, Imam ‘Ali (a.s) says:

“Check as often as possible his judgements (to ensure that the judge fulfils his judicial duties properly)”

In most of the duties and responsibilities set forth for the Wali al-‘amr, it is neither necessary nor possible for him to carry them out personally ; their nature being such that they must be performed by lower ranking officials. The process of selection of officials by a single individual would be both difficult and unreliable, it is necessary that a group or committee should be set up to oversee the process of selection, and make sure that it is carried out properly.

Other committees and councils must also be set up to oversee other functions of the government. All this is in tune with the general principle that whatever one does, must be done correctly and properly. The Holy Prophet (s.a) says, “God loves a man whom when handling a job does it with precision and firmness. And whenever any of you does something, whatever it may be, he should make sure that it is done perfectly and precisely.” (Safinat al-Bihar, see under ‘ummal).

Imam Ali (a.s) says, “I advise you to be pious before God and to manage your affairs in an orderly manner.”

The councils and administrative bodies are necessary mechanisms for the existence and continuity of the Islamic government. It is based on the Ahadith from both the Shia Muslim and Sunni Muslim sources.

#### **10. The budget, which shall be discussed later:**

With a view to the established authority of Faqih, according to the above evidence, during the occultation, of the Wali al-‘Asr (may our souls be taken into service for his cause) the following points should also be examined:

If at any particular time during the occultation of the Wali al-‘Asr there is only one fully qualified Faqih, it is obvious that he should occupy the post of Wilayat. If this Faqih would have shortcomings in some of the necessary requirements, it must be compensated by the selection of appropriate aids, to continue with the Islamic government. Proof of the necessity of the Islamic government can be inferred from such evidence that directly support it as well as from laws that could only be implemented with the existence of a government.

If, on the other hand, there are a number of qualified Faqih, it is obvious either one of such Fuqaha’ would lead if there is no conflict or the one with greater degrees of priorities would become the leader. Such was the practice of the holy prophets and the Imams (a.s). Whenever a Ma’sum occupied the post of Wilayat, the other Ma’sum (s) of his time obeyed his authority. Such was the case of Abraham (a.s) and Lot (a.s) Moses (a.s) and Aaron (a.s) Jesus (a.s) and John (a.s) the Prophet of Islam (a.s.w) and Imam Ali (a.s) al-Imam al-Hassan (a.s) and al-Imam al-Hussayn (a.s) and similarly every Imam and his succeeding Imam.

One Hadith says, “There can be no two Imams at the same time unless one of them is silence.” The rule banning the multiplicity of rulers at the same time begins with Divine Sovereignty itself, as indicated by

the following verses,

***“Were in them (i.e. the earth and the heavens) any gods besides Allah, verily both would have been destroyed in disorder.” (21:22)***

***... nor is there any god along with Him; otherwise, each god would have taken away that which he created and some of them would have risen up over others, glory be to God, He is beyond that they describe”.... (23:91)***

It is also not acceptable to maintain that each of the qualified Faqih should govern a separate city or province, or that a country should be divided into separate States under each, because this is against the teachings of Islam and contradicts the unity of the Ummah. The only solution is to gather together in councils and decide through consultation such as accepting the vote of the majority or drawing lottery etc. ‘This is due to the Ahadith in favor of Wilayat al-faqih and consultation (shura), reason and experience.

The authority of Faqih is to enforce certain laws and this may also be accomplished through a council. As if when a matter involves different fatawa and ‘opinions of qualified Fuqaha, the problem can still be solved through consultation; but the council referred to would be a fatwa council and not a leadership or Wilayat council.

2. In the constitution of the Islamic Republic of Iran, approved by the overwhelming majority of the of people of Iran in 1980, the Leader or the Leadership Council who has the authority over the office of Wilayat al-faqih, consisting of a single faqih or a council offuqaha’ – are entrusted with ten duties as follows:

- (i) The appointment of the scholar of Fiqh of the Guardian Council, whose duty is to supervise the legislation approved by the Islamic Consultative Assembly;
- (ii) The appointment of the members of the Supreme Judicial Council, which is the highest judicial authority of the country;
- (iii) The appointment and dismissal of the commander of the joint staff of the army
- (iv) The appointment and removal of the commander of the Islamic Revolution Guards Corps;
- (v) The formation of the Supreme Defense Council;
- (vi) The appointment of the commanders of the Army, Navy and. Airforce
- (vii) The declaration of war and peace and the mobilization of the forces
- (viii) Signature of a decree officially appointing the President after he has been elected by the people

(ix) The dismissal of the president after a declaration of his incompetence either by the chief of the Supreme Court or the Islamic Consultative Assembly

(x) Pardoning of convicts or reducing of their sentences on the recommendation of the Supreme Court.

Some of the above-mentioned duties are based on the category of *mawdu'at*, matters to which *al-'ahkam al-wad'iyyah* relate). Such rules and or entities come into existence as a result of a contract or decree, like the authorities and duties of the officials of government.

In other words, they are of the same category as ownership, which is created by acts of buying, selling, or donating and marriage, which owes its existence to the conclusion of a marriage contract between two parties, which comes under *'ahkam al-Wad'iyyah* but are subject to a series of *'ahkam al-Taklifiyyah*.

The duties such as in (i) and (v) set forth for the Faqih are fulfilled as he considers to be in the best interest of the people. Other duties of the Wali, *al-Faqih* come under *al-'ahkam al-Shar'iyyah* of a particular kind called *insha'iyyah*; i.e., compliance with the, decrees of *al-Wali al-Faqih* in the course of fulfilling these duties is obligatory and binding. The items in (ii) and (x) fall within this category, because the appointment of judges and pardoning of convicts are among the specific duties of the wali *al-'amr*.

"... When he (i.e. the qualified Faqih) rules according to our ruling and is not accepted, then he (who rejects such judgments) has scorned the judgement of God and he who refutes our authority resists the purposes of God. (*Wasa'il al-Shiah*, vol. 11, *Sifat al-qadi*).

There is yet a third category of duties. Of such duties are appointments and dismissals of officials, which may give rise to *'ahkam al-Shar'iyyah* of binding nature, such as when the wali *al-'amr*, on the basis of his judgement for the best interests of Islamic system would issue an order or *hukm*.

Such cases are similar to decrees dealing with the sighting of the new moon or dealing with and cessation of hostilities, etc. They may also be indicative of a priority but not of a binding nature. An example of this category is the appointment of suitable individuals to posts other than those already mentioned.

The duties of *al-wali al-Faqih* mentioned in the Constitution are only a part of his duties; there are others, which have not been mentioned for example:

- The appointment of Friday-prayer leaders
- Implementation of Hudud and Tazirat
- Exercising control over the persons and properties of the disabled, the minors, people with mental conditions and the absent

- Performing the higher degrees of al-‘amr bil-Maruf wa al-Nahy ‘an al-Munkar
- Exercising control over the Anfal
- Control over Khums (20 percent tax)
- Control over conquered lands
- The collection of taxes in addition to those established by the Shari’ah
- The collection of the Jizyah from those to whom it applies
- Appointing trustees for endowments and donated properties
- Appointing trustees for properties left by their owners for public use (wasaya )
- The collection of Zakat and appointment of personnel for its collection
- Making arrangements for the funeral of individuals who die without a heir
- Prevention of hoarding and setting prices for commodities
- The utilization of found properties (luqatah)
- Issuing the verdict of bankruptcy for the bankrupt which suspends his authority over his own assets
- Divorcing the wife of a lost or one with mental conditions
- Hearing the pronouncement of li’an in cases of Mula’anah
- Issuing a decree about sighting of the new moon and the beginning of a-month, in cases of doubts.

Although the Wali al-‘amr may delegate some of the above duties to others, he can also carry them out personally or appoint an individual or a group to see that they are carried out properly. He may also establish separate ministries to fulfil some of his duties, such as forming ministries for awqaf, for al-‘amr bil-Ma’ruf wa al-Nahy ‘an al-Munkar, for overseeing Friday prayers, for controlling the Anfal and for Zakat collection, etc. The important point is that the duties of the Wali al-‘amr are not limited to those mentioned in the constitution of the Islamic Republic of Iran.

The duties of Wali al-‘amr mentioned may, according to the opinions of some of the ‘ulama,’ fall within the range of the duties of other fuqaha’ who are not Wali al-‘amr. It would therefore be appropriate to briefly mention the various religious functions fulfilled by the Wali al-‘amr and the characteristics peculiar to each of them.

A Mujtahid, one who is capable of finding ‘ahkam, rules of Shari’ah from the three valid sources (the

Holy Quran, the Sunnah, and reason), may fulfil three distinct religious duties.

(a) The function of a mufti, he has the right to issue a fatwa in the matters of law;

(b) the function of Wilayat; and

(c) the function of a judge.

All of these posts are independently established for the Mujtahid on the basis of distinct and specific Ahadith, and each is subject to specific regulations and covers specific functions and responsibilities which may occasionally be common to the three. Are the conditions and qualifications for filling the three posts the same?

When one has the capability of Ijtihad and has come to possess all the qualifications usually discussed in legal texts in the section dealing with Taqlid, can he occupy all the three of these Positions? Some are of the view that the requirements for a judge are less than those for the other two and most of the conditions necessary for the other two offices – even existence of Ijtihad and ‘adalah (justice) are not considered necessary for a judge. It is said that if one has a reasonable degree of knowledge and capability to handle judicial cases, even if he is a muqallid, following a Mujtahid, he may sit as a judge, even though ideally he should be a fully qualified Mujtahid.

The qualifications necessary for a judge are discussed in most of the books on fiqh, in the sections “the requirements for a judge.” For a fuller discussion of this topic one may refer to such books like al-Masalik, Jami’almaqasid, al-Tadhkirah, al-Jawahir and al-Riyaz and so on. In addition, Ahadith dealing with this topic can be found in the four books: kutub al-‘arba’ah) and in Wasa’il al-Shi’ah (in kitab al-qada).

The requirements for a Mufti can also be considered as less than those required for the office of Wilayat. All that it requires is Ijtihad and ‘adalah. The office that requires the existence of all the relevant conditions is that of Wilayat and leadership. In other words the requirements for a judge (qadi) are less stringent than those for a Mufti and the requirements for a Mufti are less stringent than those necessary for the Wilayat.

Therefore, Wali al-‘amr can act as a Mufti and a qadi (judge), but all Mufti and judges do not qualify for the office of Wali al-‘amr. A Mufti can be a judge (qadi) but not every judge can be a Mufti. What distinguishes the Wali al-‘amr from the Faqih or Mujtahid and give him superiority over the latter are administrative capabilities, courage, political and social insight and any other quality which is required of him depending on particular conditions of time and place.

This was for clarification of the requirements for Ijtihad and Wilayat; as far as the difference in their duties is concerned it is clear that the qualified Faqih can perform most of the duties and functions of Wilayat. The controversy is mainly about such functions as formation of the government, supervision

over and the implementation of Hudud and Ta'zirat, selection of governors and judges, Friday prayer leaders, and so on. The concept of the Wilayat of the Faqih is accepted in essence by all the Shi'i 'ulama'. The difference of opinion concerns its scope and limits.

The discourse above concerns the qualifications and duties of the Wali al-'amr, the Faqih and the qadi. However, as far as the duties and obligations of the people towards those who hold these offices are concerned, those relating to the faqih are dealt with in detail in those sections of the law, which deal with Taqlid, following in matters of the a scholar of Fiqh. Those dealing with the Wali al- amr can be found in various chapters of the law and those dealing with the qadi in those sections of the law dealing with qadi. I have stated most of the other issues relating to these three offices in my works on wajib and haram, at the beginning of the second part but without going into elaborate arguments.

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