Wilayat al-Faqih: its Meaning and Scope

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Introduction

The following article is about the “Authority and Qualifications of the Head of an Islamic Government.” It is a two part exposition of this subject in Arabic called “Wilayat al-Faqih“. The writer is Ayatollah ‘Ali Mishkini, an eminent contemporary scholar of Fiqh in Iran. The present Islamic system of government in Iran is based on “Wilayat al-Faqih“. On this basis the office of Wali al-’amr, the Leader or the Leadership Council with its powers and duties as stated in the Constitution, are established. The author presently heads the existing Experts’ Assembly (Majlis-e Khubregan), a body elected by popular vote. This Assembly has the authority to select the future Leader or Leadership Council of the Islamic Republic. The article was published 1985 in Al-Tawhid, Quarterly, translated from Persian by Mr. Shahryar Sa’adat, and this is the second edited edition with a small introduction.

The article uses some of the terminology in Arabic and they may seem unfamiliar to some of the readers. These few words of introduction, we hope, will help the readers to have a general idea about the subject so they may enjoy the meticulous detailed presentation that follows in the article.

In general, with some knowledge of the position and functions of the head of governments such as kings or presidents or prime ministers, the following questions are associated with such people.

1. Who gives them the authority that they exercise?

2. What kinds of qualifications they should have?

3. What such people gain in return in the Islamic system?

Such question may also be formed from the causal point of view.

1. What is the effective cause of leading a government?

2. What is the formal cause of leading a government?

3. What is the material cause of leading a government?

4. What is the end cause of leading a government?

Question 2 and 3 here are combined in question 2 above.

The author has elaborated in scholarly fashion question 1and 2 of the above 3 part questions but has not mentioned anything about question 3.

On the basis of the universal principle in the Islamic system that requires to base every opinion and concept on proofs from the holy Quran, the Sunnah of the infallible personalities and independent human reason this question can also be answered along the same lines. Some of the texts related to this matter will be quoted after a few words about questions 1 and 2.

In considering the answer to question 1 and 2 one should bear in mind that the fact therein is anchored on two main issues. 1. Comprehensive knowledge of the Islamic system and 2 a through and strict following of the rules of the system.

As a system the Islamic system has its limits and rules. It would be best to compare the Islamic system with the natural systems because it is almost as perfect and strict in its rules as any other system such as biological, chemical, physical or any such systems that works properly only when the rules of the system are strictly followed.

The Islamic system although deals with the ideological, ethical, political and social issues but it is different from all the other ideological, political and social systems because it leaves no single case related to human activities without a rule. The other ideological, political and social systems either do not have any rules for every single human act or does not find it necessary to have any rules for them but instead leave to the individuals to decide.

There are two ways to properly work with a system. With a biological system one may only work properly by the help of a full knowledge of the system and following strictly all the rules therein. The other way to work with a system is by the help of an instructor who knows well all about the system and follows the rules therein without missing a single one. For example in working with an electrical system one must know all the rules and follow them thoroughly. Ignorance of any of the rules of the system or ignoring one would obviously end in zero result or perhaps a fatal one.

In the Islamic system one may work in either of the two ways just mentioned. However, in the case of the head of the Islamic government there is only one way to work with. The head of the Islamic government must have full knowledge of the system and follow strictly all the rules therein.

One who acquires a full knowledge of the system is called a Faqih, a Mufti or a Mujtahid. If the same

person would follow strictly all the rules of the system while working with it is called a “just” scholar of Fiqh or one who has established in himself the noble faculty of “justice.”

In the Islamic system Justice, which is a special mode of behavior plays a very vital role. What is very beautiful about it is that it is very clearly defined in this system. The Islamic system has a rule for every single case in human activities and when working with this system if one follows strictly all the rules without miss such person is called a “just” person or a person who possesses the noble quality of “justice.”

On this basis, one would face no difficulty to find out who is “just” and who is “otherwise” according to the Islamic system.

Texts From the holy Quran about the Question 3, the Purpose

Noah replied, “My people do you think . . . we can force you to believe when you do not want to? (***11:28***)***. My people I do not ask any payment for what I preach to you. . . .*** (***11:29***)***”***

“I (***Noah***) ***ask no payment from you for my preaching. The Lord of the Universe will give me my reward*** (***26:109***)***.”***

“I (***prophet Hud***) ***do not ask for any payment for my preaching. I shall receive my reward from the Lord of the Universe.*** (***26:127***)***”***

“I (***prophet Salih***) ***do not ask for any payment for my preaching. I shall receive my reward from the Lord of the Universe.*** (***26:145***)***”***

(***Muhammad***)***, say, “I do not ask you for any payment for my preaching to you except*** (***your***) ***love of*** (***my near***) ***relatives.” Whoever achieves virtue will have its merit increased. God is All-forgiving and Appreciating*** (***42:23***)***.”***

“There is the life hereafter, which We have prepared for those who do not want to impose their superiority over the others in the land or commit evil therein. The happy end certainly belongs to the pious ones (***28:83***)***”***

The holy Prophet and the Imams (a.s) did not work as head of the government for worldly gains. Their actions, the Sunnah, is law and the source of law in the Islamic system.

Quotations from the Sermons of Imam Ali (a.s)

Part of Sermon 7

Had He (God) not made it incumbent upon them to secure back the usurped rights of the weak from the

mighty and powerful, I would even now have left the ruler–ship of this State. I would have allowed it to sink into anarchy and chaos as I did during the early days. The pomp and glory of the worldly life is to me worth less even than the mucus in the sneezing of a goat."

Sermon 9

After the death of the Holy Prophet (a.s.) when Abbas (Uncle of the Holy Prophet (a.s) and Abus'ufyan came to Imam Ali (a.s) to swear allegiance Imam advised them in the following words.

"O people, when you see revolt and anarchism raging like storms try to find a way out of their injurious effects. Avoid the ways of hatred and malice and do not let superiority complex drive you towards a class war. Remember only those who have followers and helpers, can achieve success and those who lack supporters should not try to balance on billow illusions and should not vie for power and supremacy, it is the safest course for them.

This ruler–ship is like dirty water, not fit for consumption; it is like a morsel, which suffocates the person, trying to swallow it. Any struggle at this stage is as foolish as picking raw fruits or trying to harvest uncultivable land.

My present position had been placed on the horns of a dilemma. If I put forward my just claims people will start saying that I have become avaricious and greedy for power and wealth, and if I sit quiet they say that I have grown nervous and timid and that fear of death is restraining me from asserting my just rights.

Alas! Do they not realize that I have never been afraid of death, I have faced it so often and have passed through so many phases of dangers and perils? I swear by God that Abu Talib's son (Imam himself) is as fond of death as a suckling baby is fond of its mother's breast. Death does not frighten me from claiming my rights, but such deep secrets and such hidden knowledge has been revealed and entrusted to me that if you know you will tremble like a long rope hanging in a deep well."

Sermon 228

In this sermon Imam Ali (a.s) says that he shall willingly suffer any pain or anguish than to harm or injure any man or commit a sin against God or religion. Then he cites two examples, showing how on two occasions he was persuaded to go against the orders of God and how he spurned at the temptations.

"I bear God as my witness that I prefer to pass sleepless nights over the sharp thorns of prickly plants or to suffer from the worst form of injury and insult than to meet my Lord and the holy Prophet (a.s) on the Day of Judgment as a tyrant. A tyrant who has persecuted any person or as a usurper who has wrongfully seized property of somebody else. Why should I tyrannize or exploit somebody to provide comfort and ease for my body, which will shortly be destroyed and decayed, and which will lie in grave for long periods.

The Case of ‘Aqil

I swear by God that I saw my own brother, ‘Aqil suffering from extreme poverty and need. He requested me to spare him (31/2 about a kilogram) of wheat out of the public granary. Starvation had turned his children into living skeletons and had changed their color to blue. ‘Aqil was persistent in his desire to acquire out of his turn something from the public treasury. He tried to coax me and to appeal to my brotherly love. I wanted to help him out of my personal property, but his desire to get something from the public property was hateful to me, it was against all the canons of honesty and integrity and against the teachings of Islam. When he felt that I was listening to him attentively. He thought that I would forego my principles and my religion for his sake and for his children’s sake I wanted him to realize that by acceding to his wish I was placing myself in the position of a sinner before my God which I would never do.

I then heated a piece of iron and when it was very hot I took it near his body pretending to give him a burn. He shouted with horror and wanted to know what I meant by giving him a burn. I replied, “O my brother you cry out when you fear that the fire kindled by a man as a practical demonstration will burn you and you wanted me to accept with contentment and pleasure the fire of the Hell kindled by God.”

The Case of Ash’ath

A more astonishing thing happened to me the other day. A person (history says that he was Ash’ath Ibn qays) brought to me one night a very well cooked and delicious sweet in a basin, it was cooked in honey and it had well fragrant. I hated and abhorred that sweet as if it was cooked in the saliva of a serpent or in its poison.

I asked him, “Is it Zaka’t (income tax) or a reward or charity or remuneration for any work which I have done for you because you know that all these things are illegal and unlawful for us, Ahlul Bayt, and we are forbidden by God to accept them. He replied that it was none. It was merely a gift. (He had never presented Imam Ali anything when Imam Ali was not a ruler, and as they were not on such friendly terms as of mutually offering and accepting presents, it was clear that this offering had some ungodly ulterior motive and Imam knew this).

The Imam replied, “May friends lament for you. Do you want to seduce me? Have you gone mad? What is this nonsense? I swear by God, if all the seven continents with all that they contain are offered to me as a remuneration or bribe to deprive an ant of the husk of a grain of barley it carried I will never do it. This world to me is even more worthless than the small bit of a leaf a locust would have chewed up. Ali has no interest in mortal luxuries, wealth, ease and comforts of this world. I seek His protection and help from negligence to my duty and from being wicked and vicious.”

According to the above texts the answer to question 3 is that the purpose of leading the Islamic government is not any kind of worldly gains. The only gains are basic necessities of life in this world and

the reward of the next life if the task of leading the government is fulfilled in accordance with the law. This should, however, be distinguished from the purpose of the government. Why a person would seek to become the head of a government is different from why there should be a government.

The above few lines, we hope, will help the readers to have an introductory idea of the contents of the article on “Sources of Authority and Qualifications of the Head of an Islamic Government” as discussed by Ayatullah Mishkini in the following pages.

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 theFaqih 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 aFaqih 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. Muwla ‘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 Zakathimself or herself. In spite of the private nature of these two categories, however, theWilayat 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 Ahadithof 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 Wilayatdoes 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***)

The Meaning of Wilayat and Its Corollaries

In Arabic the word Wilayat means authority, dominion, guardianship and supervision.

Wilayat is of two kinds: Takwiniyyah (natural), and Tashri'iyyah (legal).

The first kind of Wilayat is usually discussed in Kalam (theology), philosophy and occasionally in 'ilm 'usul al-Fiqh (the principles of Islamic jurisprudence) with reference to the authority of God and, sometimes, that of the holy Prophet (s.w.a) and the infallible Imams (a.s). A discussion of this concept is relevant to clarify the subject at hand. However, the following points should be considered first.

Divinely appointed prophets were given various titles and names each of which signified a different meaning and content to emphasize a certain aspect of their mission. Some of these titles were Rasul (messenger), Nabi (prophet), Imam (leader), Hakim (ruler) and Wali, (guardian). They were given the title of "Rusul" (plural for Rasul) because they were the messengers of the Creator to His creatures and the word Rasul, means "one who carries a message." They are called "Anbiya' (plural for Nabi) because they were informed about Divine decrees and religious programs and informed others about them. The wordNabi means one who communicates and informs. And they are called 'a'immah (plural for Imam) because their primary duty was to provide ideological and intellectual leadership and guidance to the community in word and deeds and to be a model for the faithful to follow in their spiritual life and moral conduct. This is the sense in which we find it used most often in the Holy Quran. For example, regarding Abraham (a.s) and his sons it says:

This is the second and concluding part of the article on Wilayat al-Faqih. The main topics discussed are: Wilayat and its corollaries; the Wilayat of prophets and the Imams; Wilayat al-faqih, its scope and limits according to the constitution of the Islamic Republic of Iran and in the light of Imam Ali's epistle to Malik al-Ashtar.

"And We made them leaders (***'a'immah***) ***who guide by Our command and We inspired them the doing of good deeds, establishment of prayers and the giving of alms and they were Our worshippers."*** (***21:73***)

Concerning Moses and the Children of Israel it says:

"And when they became steadfast believing firmly in Our revelations, We appointed from among them leaders who guided by Our command. (***32:24***)***. I have appointed thee a leader*** (***Imam***) ***for mankind."*** (***2:124***)

It is about the Wilayat of Abraham. Some times after he had been appointed as a prophet, God established him as Imam and leader of the people. Before God bestowed this position on him, his duty, both when he was in Mesopotamia and later, when he had moved to Syria, was confined to inviting the people to monotheism and fighting polytheism, kufr, and idolatry.

In Mesopotamia, the environment was not suitable for any role of leadership. All he could do was to put up a one-man resistance against idolatry, which was also not very fruitful. Having survived Nebuchadnezzar's fire, he was forced to take the Syrian journey, and from there moved on to the deserts around Mecca.

Imam Ali (a.s), speaking about the role of leadership, says:

"Be aware that the followers of every school of thought and sect, throughout all human societies have had a leader and Imam whom they followed and from the light of whose knowledge they enlightened their minds.

The ideological and intellectual leadership is inseparable from prophethood, messengership, judgeship and dispensation of justice. It is necessary for sovereignty, leadership and legal guardianship. It is, moreover, one of the pillars of the Wilayat of theFaqih.

So much for 'legal Wilayat and guardianship'.

As for 'natural guardianship' (al-Walayat al-Takwiniyyah), it refers to the sovereign will and power of One Supreme Being over the world of creation. In other words, it means sovereignty over the natural order. To elaborate, firstly, the universe extending from all that is on earth to the farthest corners of the universe and the whole world of existence was created by the sovereign all pervasive Will and design of the Almighty God. Secondly, the continuity of its existence is also dependent on the sacred Will of God:

"His throne encompasses the heavens and the earth and the task of preserving them all is not a burden on Him. He is the Sublime, the Great." (***2:255***)

Thirdly, all the affairs of the universe are managed according to His Will. All events, movements, pauses, and changes, from the movements of galaxies and planets to the invisible growth of seeds underground,

the crawling of insects and the revolving of the electrons around the protons all take place according to His Will and design. He is the absolute and ultimate cause of all things, effecting some of the things through His angels and invisible agents and other things through direct exercise of His own Will. Clear and unambiguous verses of the Holy Quran dealing with this subject are many, some of which are the following:

"Your Lord is Allah Who created the heavens and the earth in six days, then established His Throne. He directs the affairs. There is no intercessor (***with Him***) ***except by His permission"*** (***10:3***)

Then He established His Throne. You do not have, besides Him, any protecting friend or mediator. He directs the ordinance from the heaven unto the earth; then it ascends unto Him in a day long as a thousand years that you enumerate (***32:4-5***)

. . . And those who distribute blessings by His command. (***51:4***)

. . .And those who govern the affair." (***79:5***)

These verses indicate the following points:

1. The universe was created by His Power.

2. He is the Maintainer and Guardian of the whole world.

3. He is responsible for governing His dominion and managing the affairs of the universe.

4. The angels have the duty of carrying out the Will of God and serving as His agents in the creation.

5. The activities of His angels and agents are also in accordance with His Will and take place because He so wills.

6. He determines the division of tasks amongst the different angels and their power of discretion in the process of carrying out their duties.

Accordingly, all phenomena taking place in the world do so either through the agency of the angels working under the direction of God and in accordance with His Will, or are direct manifestations of God's Will without the mediation of anyone else. The only exception to this general order is the voluntary activities of the human beings and other creatures possessing an independent will. They act and carry out certain tasks in relation to their vital needs and their environment.

We may compare the control God exercises over the entirety of existence with that exercised by the human soul over the body and its members. Just as the parts of the body are normally subservient to the will of man that obey him and move to accomplish defined purposes, so is the universe subservient to the Will of God. The will in relation to the body motivates the muscles, there being a necessary connection between the will and the movement of the muscles. In regard to the relation between God's

Will and the world of being, the Holy Quran says:

***"Indeed His command, when He intends* [*to create*] *a thing, is that He says to it, "Be", and it comes into existence."* (*36:82*)**

If God were to bestow this kind of power and authority on someone, which empowers him to bring about changes of a miraculous and extraordinary nature in the world, such changes are either brought about by the angels, or are caused directly by the Divine Will. This would be what is called "al-Wilayat al-takwiniyyah", a sovereignty of a miraculous nature which is different from the sovereignty by legislative decree or "al-Wilayat al-Tashri'iyyah." This power existed, in various degrees. In most of the prophets, its extent and scope depending on the rank of each prophet or Ma'sum who is in contact with the supernatural world.

Al-Wilayat al-Takwiniyyah

Examples of this kind of Wilayat

The following are some examples of this kind of Wilayat.

1. When Abraham (a.s) asked God to show him how He brings people to life, God said to him.... "Take four of the birds and cut them into pieces, then place a part of them on every hill, then call them, they (the dismembered birds) will come to thee in haste." ... (2:260)

Here God has given Abraham (a.s) the same power that He has bestowed on the life-giving angels. By this means, Abraham (a.s) commands the dismembered body of a bird to come to life and to fly towards him. This incident illustrates the meaning of al-Walayatal-Takwiniyyah over the creatures.

2. God gave Moses (a.s) the power to turn a staff into a serpent, seawater into solid walls and a dry rock into a fountain and water source.

3. God gave Jesus (a.s) the power to give sight to the blind, life to a corpse or a figure made of clay.

4. And finally, He gave the Prophet of Islam (s.w.a) the power to ascend to heavens, and thus defy the Earth's power of gravitation.

There are also numerous other examples of such powers both the Prophet (s.w.a) and the Imams (a.s) demonstrated to which Mutawatir (unanimously narrated) reports testify. The four examples mentioned above are examples of al-Wilayat al-takwiniyyah. The presentation of a fuller picture of this form of Wilayat would require an entire book to explain and discuss the Imamat of the prophets (a.s) and the Imams (a.s).

Al-Wilayat al-Tashri'iyyah

Examples of this kind of Wilayat:

The following are examples of this kind of Wilayat (also called al-Wilayat al-'insha'iyyah)

To understand it one must first consider the following points.

Al-Wilayat al-Tashri'iyyah is a form of authority bestowed on individuals through spoken or written decree or some specific act. Some examples of such authority are military ranks, governmental positions and administrative posts, to which individuals are appointed through the orders of superior officers.

The reason for calling such authority Tashri'iyyah or insha''iyyah is that it is granted by issuing a simple decree or order and does not require acts bringing about changes in the natural world. For example, it is not acquired in the same way as a man attains the physical ability to become a wrestler. It is not possible to become a wrestler by being appointed as one. Nevertheless, the recipient of such an office must meet certain conditions.

2. The important factor in al-Walayat al-Tashri'iyyah is the scope or limits of its jurisdiction. Actually, there is a general limit for all forms of al-Walayat al-Tashri'iyyah in that such authority is applicable to either persons or assets, or both. Its applicability does not lie outside these three categories. Within this general limitation the limits must be exactly specified. For instance, in the armed forces or the police, the domain of authority of every officer is specified.

The same is true of other government officials: the jurisdiction of a minister, mayor, or governor of a city or province is clearly defined. In each of these cases, the scope and range of their jurisdiction define the meaning and scope of the Wilayat of each of such officials. The various forms of al-Walayat al-Tashri'iyyah, as recognized in Islamic system for some or all members of society can be understood by looking into the limits of each ones jurisdiction.

3. With this in mind one may look at some particular forms of al-Walayat al-Tashri'iyyah recognized in the Islamic system. Some forms of it, in different degrees and in various forms proper to their particular environment, beliefs and customs, have been recognized in all societies. The Islamic system has approved most of such widely accepted forms of Wilayat and has independently legislated other forms. We shall briefly discuss some of these forms here as follows.

(a) Wilayat of the Father

The father has Wilayat over his children under the age of maturity and the paternal grandfather has Wilayat over his grandchildren, individually or collectively (except in cases of disagreement). It is a kind of Wilayat al-Tashri'iyyah.

Since the explanation of this kind of Wilayat has a direct bearing on the discussion which is to follow, it must be understood properly. In the Islamic Law, a father has full authority over the person and property of his underage children. He may compel them to do certain things appropriate and good for them and restrain them from doing other things otherwise. He may ask them to attend school or to enter into apprenticeship, select spouses for them, conclude for them marriage contracts, ask them to change their jobs, call them to task for their behavior or discipline them.

As to their belongings, he may, sometimes, withhold them from his minor children, or dispose them according to his own discretion. He may sell them off and purchase something else instead or exchange them in commercial or non-commercial transactions. He may accept gifts on their behalf; he may, when necessary, lend their property to himself or others and, finally, may use it to meet the expenses of his household. All these powers are part of the Wilayat of the father or the paternal grandfather over the property and persons of his minor children or grandchildren. It is an authority God has decreed, as if He has said: "I have made fathers and grandfathers the awliya' ('guardians) of their children).

Under discuss here is the meaning and limits of al-Walayat al-Tashri'iyyah, not the conditions and provisions thereof, such as the condition that the handling of the children's assets under the father's Wilayat must be for the benefit of their underage owner or owners.

(b) The Master's Wilayat

The master enjoys Wilayat over his slave. In case of exigency, the Shari'ah sanctions slavery subject to limitations of place and time. In other words, when Muslims take enemy soldiers captive during war with infidels, the system under certain specific conditions, subjects them to the authority of Muslim soldier as slaves.

The Muslims who own the slaves are obliged to pay for all their expenses and endeavor to educate them. In this connection the Shari'ah has legislated certain rules which result in the ultimate freedom of the slaves under reasonable conditions. Such laws were set down in an environment in which the Muslims found no better way of dealing with the problem of prisoners of war.

The other alternatives-killing those prisoners, handing them back to the enemy, or setting them free to do as they please in the Islamic society were not only against the interests of Islam but it was also against reason. Neither was it within the means of the Islamic government of the time to confine them within a prison. Therefore, there was no other option than to distribute these captives and put them under the guardianship of individual Muslims, so that they could gradually become acquainted with Islamic system of ethics and customs and finally attain their liberty.

When we note the Islamic instructions concerning their treatment and the various ways legislated for their freedom, the issue of sanction of slavery in Islam and the baseless accusations made in this regard become clear. What is relevant here is that the Wilayat of the master over his slave is similar to that of a

father over his underage children and we are not concerned here with the reason and justification for the legislation of such a Wilayat or with criticism raised in this regard

(c) The Wilayat of the Executor of a Will

The Wilayat of the executor of a will (wasi) or the non-parental guardian (qayyim), who is appointed, to supervise over the persons and property of the minors, by either the father or paternal grandfather, is a form of al-Walayat al-Tashri'iyyah. It is derived from theWilayat of the father and the paternal grandfather and is sanctioned subject to specific conditions and limitations.

(d) The Wilayat of 'adil believers

The Wilayat of 'adil, one who maintains justice in his dealings all the time, believers is a limited form of Wilayat. It pertains to the property and assets of those who due to immaturity, mental conditions or absence are incapable of managing their own property when the property is in danger of being ruined or wasted. In such cases, when the father or the paternal grandfather or the religious judge (Hakim al-Shar') are absent or inaccessible, every believer has the authority to handle such property and to protect it through sale, transport, exchange, etc., until it can be placed at the disposal of its owner. This kind ofWilayat is subject to specific conditions and, as can be observed, its limits are very restricted.

(e) The Wilayat of Every Muslim

The Wilayat of every Muslim believer in regard to other Muslims in relation to his duty to the principle of al-arm bil-ma'ruf wa al-Nahy 'an al-Munkar (enjoining good and forbidding evil) is yet another form of Wilayat. This means that God has given every Muslim the authority and made it his/her duty to stop his fellow Muslim brother or sister from committing a sin, be it negligence of an obligatory (wajib) act or committing an act forbidden by the Law. This is similar to the duty of a kind father to guide his children to perform their obligatory duties and stop them from committing forbidden acts. And just as a father has the right to resort to more forceful means if his kindly advice is not heeded, the Muslim believer also has the duty to resort to gradually more severe methods if his sincere and kind advice is not listened to. The means used, in the order of severity, are:

- Advice and guidance
- Order and command
- Reproof, threat, and ultimate manners of disciplining

The person advised or censured has no right to question the authority of his Muslim brother or consider his behavior as interference in his private affairs. This is true regardless of who the two parties may be, whether they are men or women, older or younger, black or white. The Holy Quran states:

***"And the believers, men and women, areawliya'* (*plural of Wali*) *of one another; they enjoin the right and forbid the wrong".* (*9:71*)**

This form of Wilayat is both general and specific. It is general and universal in the sense that it includes all Muslims, men and women, who are duty bound to stop unlawful conducts. It is specific in that it applies only to the matters of al-Amr bi al-ma'ruf wa al-nahy 'an al-munkar. 'Aside from it, no one has any right to interfere in the affairs of other people and tell them what to do and what not to do. It is only with regard to the obligatory duties of a Muslim (wajibat) and acts considered unlawful by the Shari'ah (Muharramat) that such an authority has been licensed. This is evident from the above-mentioned Quranic verse.

(f) The Wilayat of the Trustees

The Wilayat of the trustees of public and personal endowments (awqaf) is also another form of Wilayat. Their authority is bestowed upon them by the donors, and in cases where the donor has not nominated any trustee it is the duty of the judge (Hakim al-Shar'i) to appoint a trustee if needed. In this kind of Wilayat, the authority applies to property alone and the legal custodian is called a "Mutawalli." He has the responsibility of seeing to it that the endowed property (waqf) is used in the way intended by the donor (waqif), and is empowered to take whatever measures are necessary to protect the property or to ensure that it is used for its intended purpose. This kind of Wilayat is confined to assets and is obviously quite limited in scope.

(g) The Wilayat of the Heirs

The heirs have Wilayat over a deceased person in regard to his funeral arrangements and burial ceremonies (such as Ghusl, Takfin, Sala and burial, etc.) This duty falls on the heirs according to the legal order of priority and no one has the right to interfere in this matter without their permission, unless the deceased has left no heir, or the heirs are absent. This is also one kind of Wilayat enacted in the Islamic Shari'ah.

Summary

The above-mentioned examples were presented here to clarifying the meaning of al-Walayat al-Tashri'iyyah. These allow us to draw the four following conclusions:

(1) Al-Walayat al-Tashri'iyyah must be authorized by a legitimate authority and bestowed on an individual to fulfil certain conditions.

(2) This form of Wilayat sometimes applies to the person or individual subject to the authority of the Wali such as the Wilayat over minors, people with mental conditions or slaves, when they possess no property. At other times it may apply to property alone- such as the Wilayat of the trustees of

endowments and executors of wills. And finally, it may apply to both such cases as the Wilayat of parents over their underage or mentally disabled children when they possess property as well.

(3) All the above-mentioned forms of Wilayat are inherently limited, although the nature of the limits varies from one to another.

(4) Since the Wilayat of the Faqih is derived from the Wilayat of the Ma'suimin (i.e. the Prophet (s.a.w) and the Imams (a.s) and is directly based upon it, it is necessary to explain, albeit briefly, al-Walayat al-Tashri'iyyah of the Ma'sumin (a.s).

Al-Walayat al-Tashri'iyyah of the Prophets and the Imams (a.s)

Even a superficial study of the basic teachings of Islam will reveal that its teachings are not limited to the system of beliefs and acts of worship. It has a complete moral, government, and political, social, judicial and economical system. In other words, it provides comprehensive instructions for all the affairs of man's worldly existence as well as about the matters relating to the Hereafter. The Islamic system has requires the establishment of a State and provided the fundamental principles necessary for its establishment, for the protection and security of all of its followers and to organize and manage a society in harmony with man's nature. Such a vast system, vital for the needs of man both spiritual and material, was in fact established by the Prophet (s.a.w) and worked for years under the leadership of his successors.

The Wilayat of the Ma'sumim, refers to his authority in such a system as mentioned above. God, the Absolute Sovereign through His Providence has granted this Wilayat to the prophets and the Imams, so that they may govern the human society according to the needs and requirements of the times. This form of government, the 'Islamic government,' consists of three elements:

- The Wali and the characteristics of his Wilayat, authority.
- The form of his government and its organs
- The resources at its disposal.

This form of government is unique in all the three aspects mentioned above; it differs from other forms of governments, past or present, in each of these aspects. However, our discussion here is confined to the first aspect, that is, the role of the al-Walayat al-Tashri'iyyah of the Wali in the context of the Islamic government. We leave the discussion of the other two aspects to some future occasion.

In the original Islamic Law, the guardianship of society during the lifetime of a Ma'sum, whether a prophet or an Imam, belongs to him. The following Quranic verse and Hadith indicate this fact:

"The Prophet has a greater right over the believers than themselves and his wives are their mothers. And some of the relatives have priority over the others in the Book of Allah than (***other***)

believers and the Emigrants".... (***33:6***)

Three issues are stated in this verse:

● The authority of the Prophet (s.a) over all others

● The fact that marrying any of his wives is Haram, unlawful, for other Muslims

That compared to others, the relatives of an individual have priority rights to his inheritance. The third point is related to the first Point, as illustrated in the following example. if you say, "Ahmad is a better calligrapher than Hassan," you are stating three things

● Ahmad is a calligrapher

● Hassan also is a calligraphist

● Ahmad is a better calligrapher than Hassan is.

Now consider this statement of the Prophet (s.a.w): "Whoever is under my Wilayat and authority is also under the Wilayat and authority of Ali Ibn abi-Talib."

The evidence in this Hadith about the Wilayat of the Prophet (s.a.w) and of Ali Ibn abi-Talib (a.s) and for that matter the Wilayat of all the other Imams has abundant supporting evidence exceeding the requirements of Tawatur (unanimously reported). The discussion of details is beyond the limits of this discourse. The three main points in the aforementioned Quranic verse were:

● the believer's Wilayat over his own self

● The Wilayat of the Ma'sum (infallible) over the believers

● Supremacy of the second form of Wilayat over the first.

Wilayat Of Man Over His Own Self

According to the above verse and other Islamic texts, every man is by nature created free, with authority over his own person, just as, according to a Mutawatir Hadith the holy Prophet (s.a.w) says, "The people have authority over their property "), he has Wilayat and authority over his own property. The Wilayat and sovereignty of the individual over his own self means that he has the right to choose his way of life, his occupation or any of the other particular activities in any aspects of his life. He can also use his wealth and property as he chooses in his pursuit of worldly or spiritual aims.

However, it is obvious that in Islam no general principle or law (with only few exceptions) has absolute and universal applicability. Therefore, man's Wilayat over his own self and property is valid only to the extent that it does not violate the basic laws of the Shari'ah or the dictates of reason. No one, therefore,

has the right to commit suicide, mutilate his body, paralyze his mental or physical faculties, or take up illegal occupations. No individual is free to use his property for illegitimate ends, to waste or squander it, or to earn, produce, consume or bequeath it in ways contradictory to the established Islamic criteria.

To sum up, although the principle of the individual's Wilayat over his own person and property is a valid one, it is subject to ethical, legal, and rational restrictions. Such limits are not confined to Islamic laws alone. In no religion or school of thought man is absolutely free to do as he pleases with himself and his property. However, the nature of the limits on freedom differs from one school to another in accordance with each ones doctrines and viewpoints.

Without enumerating all the limits incumbent upon man's Wilayat over his own person and property, it is limited and conditional and that it should not violate the Divinely ordained limits of individual or social welfare or transgress against what reason considers as beneficial and appropriate. A careful study of Islamic laws and practical experiences of day-to-day life can reveal how the above mentioned principle works in individual cases. We may recall that when enumerating the various forms of Wilayat it was pointed out that none of the different kinds mentioned is absolute, unlimited and unconditional.

An explanatory Note

The Wilayat of the Prophet (s.a) and the Imams (a.s) in their times was a comprehensive one. They had the authority to establish and administer a fully organized government with all its necessary branches and departments. The Ma'sum (infallible leader) is the basis of the system of the Islamic government. He is the ruler par excellence, has absolute sovereignty over every member of the society and has the right to interfere in all affairs of the people; as abundant textual evidence prove it, he possesses all the qualities required for a leader and guide of a nation.

His knowledge, especially in social and political issues, is comprehensive and complete. His genius for administering justice is such that he never intentionally violates the Divine laws and never neglects his duties. And his infallibility is such that he does not make any mistake in any aspect of any of his duties.

Basically, the Wilayat and sovereignty of such leaders as described above is implicit in the very essence of Islamic government. However, in the history of Islam, this form of government has never been realized except during the latter years of the Prophet's life in the region of al-Madinah and Hijaz, and during the brief caliphate of Imam Ali (a.s) within limited geographical boundaries.

Islamic government is, in essence, the rule of God over human society; or, in other words, it is the rule of Divine Law. And according to the testimony of the Holy Quran and historical evidence, this was the kind of government established whenever any of the prophets of God succeeded in establishing a government.

The accounts of lives of such figures as Joseph (a.s), Moses (a.s), Joshua (a.s), David (a.s), Solomon (a.s) and, preeminently, that of the Prophet of Islam (a.s) and his rightful successors confirm it very

clearly whenever they succeeded in setting up a government. Although historical accounts show that the governments of those infallible leaders lacked the complexities of modern governments' elaborate divisions and departments, the general principles they practiced could be applied and extended to cover all aspects of modern States.

However, the general principles of the primary and secondary nature in the Islamic laws would quite adequately show how to establish a government in the modern world, no matter how complex, elaborate and vast its organization may be. When the Prophet (a.s) formed his government, he established most of the organizational machinery to meet his society's needs. The Sunnah clearly outlines the financial aspects and issues of the budget and personnel of the Islamic government, which are of vital significance for all governments. Two examples of the financial resources are Anfal that include the under and above ground of the earth and such taxes as Khums and Zakat

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 thefaqih.

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 theHadith 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-'anrsari 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 theAhadith 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 ofal-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 ofWilayat 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-Naraqi 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 suchtexts 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 posses the faculty of justice.

● Must posses 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 thisFaqih 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 aMa’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 calledinsha'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 who 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 (Iuqatah)

● 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–‘arnr. 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 aMufti. 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 andTa'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 Faqihand 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 ofFiqh. 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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