



Matters of *Hijrah* (Emigration) and *Harb* (Warfare)

Installment #4

Is a Caliph or Sultan Required For the Enforcement of the Islamic Determined Punishments (Hudood)?

And Does Being Able to Openly Practice Your Religion in Non-Muslim Lands Mean that One be Able to Implement the Determined Punishments?

Scholarly Quotes

Imam An-Nasafi says in his ‘Aqaaid,

“The Muslims must have an Imam (i.e. caliph) in order to implement their legal judgments, to enforce the determined punishments (hudood), to secure their inlets (thugoor), to prepare their armed forces, to take their (obligatory) alms (sadaqaat), to suppress the rebels (mutaghalibah), thieves (mutalassisah), and the brigands (quttaa at-tareeq), to implement the Friday prayers (juma’) and holiday prayers (‘ayaad), to resolve the disputes occurring between the servants (of Allah), to accept the testimonies related to the rights (of people), to marry off the young boys and girls who have no legal guardians, to divide the booty, and other than that.”ⁱ

Imam At-Taftaazani says in Sharh Al-‘Aqaaid in commenting on the Caliphate,

“(It is) Among the affairs that the commoners of the Ummah do not undertake. So if it is said, “Why is it not sufficient to have one possessing might in ever region? And from where is it compulsory to erect one who has universal superintendence (ar-riaasat al-‘aammah)?

We'd say: "Because it leads to disputes and controversies that lead to the rupture of the affair of the religion and secular world as we see in this age of ours."

He also says,

"Then if it is said: "Then let it be sufficient to have one possessing might (shaukah) who has universal superintendence – be he an Imam or other than an Imam. For surely the arrangement of security occurs with that as in the era of the Turks."

We'd say: "Indeed! Some order in the matter of the secular world (dunyaa) occurs. However, the matter of the religion is disturbed. And it is the most important goal and the most important issue."ⁱⁱ

Sheikh Nuh 'Ali Sulaimaan Al-Qudaatⁱⁱⁱ says in his Sharh of Jauharat at-Tauheed,

"Of what it is known is that the Noble Qur'an and the Prophetic Sunnah both contain judgments pertaining to the entire society, and that no one is able to apply except for the governing authority (daulah). And that is like adjudication (qadaa) in the various areas like requital (qisaas), the determined penalties (hudood), contracts, and like guarding the religion and society by (waging) jihad, fulfilling social justice, propagating Islam in all regions of the world, and judgments other than these that individual persons are not capable of carrying out.

And Allah's Messenger – may Allah bless and grant him peace – established the Islamic state with his emigration to Medinah, The Enlightened. And because of this, the emigration was a beginning for Islamic history, since it is the beginning of the establishment of the Islamic state. And Allah's Messenger – may Allah bless and grant him peace – was the head of the Islamic state, the orator of the Friday prayer, the judge in disputes, the commander in chief of war, etc. And he wasn't able to do that prior to the emigration and the establishment of the state. So the establishment of the Islamic state was essential (daroori) so that the Islamic judgments that Allah meant for people to adhere to could be applied. Allah – High is He – has said,

((And whoever doesn't judge by what Allah has revealed, then those are the unbelievers)) [Maaidah: 44].

And after the death of the Prophet – may Allah bless and grant him peace – the noble Companions made haste to appoint a head of the Islamic state. And were distracted by this matter from (the matter of)

preparing the Prophet – may Allah bless and grant him peace – and his burial in spite of their ardent love for him, because they understood from him that this matter is not to be delayed.

By this, the People of the Sunnah find proof for the obligation of appointing a leader for the Muslims who happens to be a substitute for the Prophet – may Allah bless and grant him peace – in universal superintendence of the affairs of the religion and the secular world. And they called him the *Khaleefah* of Allah’s Messenger, *Ameer al-Mu’mineen* (Commander of the Faithful), and the *Imam* of the Muslims (*Imam al-Muslimeen*). And all of them are names for one designee. He is the leader of the Islamic nation.

And appointing the Caliph (khaleefah) is a communal obligation (fard kifaayah) upon all of the Muslims since the demise of the Prophet – may Allah bless and grant him peace – until the coming of the Hour. So when the People of Influence (ahl al-hall wa al-‘aqd) – i.e. The Notables of the people (wujahaa an-naas) – carry it out, the sin falls from others...”^{iv}

Imam Al-Baijoori^v says in his commentary on the Jauharah,

“And among the proofs indicating the obligation of it (i.e. the caliphate) by way of scripture (shar’): is that the Divine Lawgiver (Shaari’) has ordered the implementation of the determined penalties (hudood), the securing of the inlets, and the preparation of the armed forces. And that is only completed with an Imam that they return to in their affairs...”^{vi}

Imam Ibn Taimiyah says,

“As for His saying – High is He – ((And when you judge between people that you judge fairly)) [Nisaa: 58], verily the judging between people is in the determined penalties (hudood) and the rights (huqooq). And they are two divisions: The first division is the determined penalties and rights that are not due to specific people. Rather, their benefit is for the generality of the Muslims or a category of them while all of them are in need of them. And they are called the determined penalties of Allah and the rights of Allah such as the penalty (hadd) for the brigands, the thieves, those guilty of illicit sexual intercourse, and the like of them.

And (it is also) like the judgments in the wealth supervised by the Sultan (amwaal sultaaneeyah), endowments (auqaaf), and the wills (wasaayaa) that are not for a specific person.

These are among the most important affairs of governments (wilaayah). And because of this, ‘Ali ibn Abi Taalib – may Allah be pleased with him – said:

“The people must have a governing authority (imaarah) – be it righteous or unrighteous.” Then it was said,
“O Commander of the Faithful! This righteous one, we have known. But what is the case of the unrighteous one?” He said: “The determined penalties are enforced by it. The roads are kept secure by it. The enemy is fought by it. And the spoils are divided by it.”^{vii}

Then Imam Al-Maawardi states in *Al-Ahkaam As-Sultaaneyah* 10 duties of the caliph. Among them he mentions,

“...the implementation of the determined penalties (hudood), so that Allah’s inviolable acts – High is He – are guarded from being violated, and so that the rights of His slaves are protected from loss and consumption.”^{viii}

All of these quotes clearly indicate that the implementation of the *hudood* is the duty left on the shoulders of the *khaleefah*, not the common Muslim. The duty of the common Muslim is to work toward appointing a *khaleefah* through the People of Influence (Ahl al-Hall wa al-‘Aqd) that represent them and their concerns. If no one appoints the *khaleefah* – according to the conditions for appointing a *khaleefah* outlined in the Shariah, the sin is on all Muslims until they do.

But in the absence of that *khaleefah*, no Muslim or group of Muslims may take it upon themselves to implement the *hudood* on others, because this is tantamount to one performing the job of another who has contracted with his employer that only he is to carry out the task.

Now, what this means for Muslims living in non-Muslim lands is that to be able to carry out the *hudood* is not a condition for our residence in such countries. And what further supports this is the following hadith:

- Imam Nasaai reports on the authority of Abu Sa’id that a nomad asked Allah’s Messenger – may Allah bless and grant him peace – about hijrah. And he said: “Mercy be on you! Verily the matter of hijrah is severe. So do you have any camels?” He said: “Yes.” He (the Prophet) said: “So do you pay its due alms (Zakat)?”^{ix} He said: “Yes.” He (the Prophet) said: “Then work beyond the sea. For verily Allah – Mighty and Majestic – will never abandon anything of your work.”

And notice in this hadith, the Prophet – may Allah bless and grant him peace – allowed this man to remain outside of the Muslim lands in spite of the fact that those lands didn’t implement the *hudood*.

ⁱ Al-Mataalib al-Wafeeyah Sharh Al-‘Aqaaid An-Nasafeeyah Ta-leef Sheikh Abdullah Al-Harari, Daar al-Mashaaree’ lit-tabaa’ati wan-nashri wat-tauzee’, 1418/1998, pp. 144-145.

ⁱⁱ Taken from Sharh al-'Aqaaid: pp. 181-182.

ⁱⁱⁱ He is the former Chief Justice and Mufti of the Jordanian armed forces, and a Doctor in Shariah (Islamic Law).

^{iv} This quote is from Al-Mukhtasar Al-Mufeed fee Sharh Jauharat at-Tauheed, Daar Ar-Raazi, 'Ammaan, Jordan, 1420/1999, pp. 220-221.

^v He is Ibraaheem ibn Muhammad ibn Ahmad, the Shaafi'i scholar who died in the year 1277 a.h.

^{vi} Tuhfat al-mureed sharh jauharat at-tauheed, Daar al-kutub al-'ilmeeyah 1422-2001, p. 220.

^{vii} Taken from As-Siyaasah Ash-Shar'eeyah Islaah ar-Raa'i war-Ra'eeyah of Ibn Taimiyah, Daar al-kutub al-'ilmeeyah, p. 65.

^{viii} Al-Ahkaam as-Sultaaneyah, Daar al-kutub al-'ilmeeyah, 1405/1985, p. 18.

^{ix} This is an important reference to for a later installment we plan to write related to the matter of Zakat and whether or not a khaleefah is required before one is obliged to pay Zakat.