

The Role of the Jurist in Different Areas of Jurisprudence

In this chapter we will conduct a quick survey in different areas of jurisprudence. As you will see, the survey shows:

- 1) The necessity of the existence of a legislative ruler (al-Hakim al-Shar') in order to implement the divine laws, and that:
- 2) Governance is part of the system of Islamic jurisprudence.

1) Prayer

a- Congregational prayers: Islam has emphasised on congregational prayers even in the battle lines, in which case it is called the prayer of fear or prayer of pursuit. 1

b- Prayer for the deceased: it is narrated from Abu Abdullah (as): *“if the Imam is present at the burial of the corpse then he is the most worthy to pray over it”* 2. It is also narrated from the Commander of the Faithful (as): *“if a ruler from among the rulers of Allah is present at the burial of the corpse then he is more worthy of praying over it”* 3. The meaning of ‘ruler’ and ‘Imam’ in these and similar narrations is more general than the infallible Imam (as) and the just jurist, as will come later. This is why Sheikh al-Tusi says in ‘al-Mabsoot’: ‘if **the just** Imam attends he would be more worthy of leading and it would be obligatory upon the guardian (of the deceased) to ask him to go forward to lead’4. Therefore, the specification of the word ‘Imam’ to the infallible Imam by the author of al-Jawahir is out of place.

c- Burying the deceased Muslim who has no guardian, trustee or heir is the obligation of the legislative ruler.

d- Friday prayer: the one who should take up its establishment is the leader of the community or his representative. Al-Fadhli ibn Shathan narrated from al-Ridha (as): *“if it is said: ‘why was the sermon put in place?’ It would be said: ‘the congregational prayer is a general gathering and so He wanted to make*

a way for the leader to advise the people and to encourage them towards obedience and frighten them from disobedience, and to help them towards that which is beneficial for their worldly and religious affairs, and to inform of all the harmful or beneficial events that are taking place across the globe.” 5

e- The Eid Prayers: it is narrated in the authenticated narration of Suma’a from Abu Abdullah (as): *“there is no prayer on the day of Eid except with the Imam”*⁶. This narration is relevant based on the possibility that ‘Imam’ in this narration is not referring to the leader of the congregational prayers but to the leader of the community.

2) Fasting and Ritual Self-Isolation (i’tikaf)

It is narrated in the authentic narration of Muhammad ibn Qays from Abu Ja’far (as): *“if two witnesses witness in the presence of **the Imam** that they saw the crescent moon thirty nights ago the Imam would command the people to break their fast (the next day)”* (Wasailul Shia) our jurists are in agreement that the term ‘Imam’ in this context means the (just) ruler.

3) Zakat

It can be understood from the Glorious Book and numerous narrations that Zakat is among the taxes of the Islamic government and that the one who is in charge of collecting and distributing the Zakat is the Legislative Ruler, through his workers. The following two narrations will be sufficient to prove the point:

a- The authentic narration of Zurarah and Muhammad ibn Muslim, in which they narrate from Abu Abdullah (as) regarding the interpretation of the Qur’anic ayah: *“surely, charity is for the poor and the indigent...”* that he (as) said: *“the Imam shall give all of these people”*⁷

b- It is narrated from al-Ridha (as): *“if a person who is overwhelmed with debt borrows money or seeks to borrow money rightfully, he would be given one year respite. After this year, if his situation does not improve, the Imam shall fulfil his debt from the public treasury.”*⁸

4) Khums, Anfal and Kharaj

There is no disagreement about the fact that Khums and Anfal belong to the Imam due to his leadership, and this is why they are passed on from the Imam to the next Imam and not to the heirs of the Imam. Abi Ali ibn Rashid narrated from Imam al-Hadi (as): *“whatever belonged to my father because of his position of Imamat belongs to me, and whatever belonged to him for other reasons is inheritance.”*⁹

It is narrated from Imam al-Kadhim (as) that he said: *“Khums applies to five things: war booty, treasures found while diving, treasures under the earth, the mines, and Salina. From each of these five things Khums should be extracted and allocated to those whom Allah (swt) allocated it to...”*

It should be divided among them according to the Holy Book and the Sunna such that it will suffice them for that year...and the earth which was taken by force with men and horses, it is given to those who work on that land, cultivate and maintain it, according to what the Ruler agrees with them as per their share; being a half, or a third, or two thirds, and according to what will be beneficial for them and will not harm them...

The rest of the Khums will go towards the sustenance of the assistants of the Ruler in establishing the religion of Allah, as well as what he sees fit to strengthen Islam and strengthen the religion, such as Jihad and other things which have a general benefit. None of it, whether a large or small amount, is for himself. Besides Khums, the Anfal belongs to him.

Anfal is any ruined land whose inhabitants have abandoned it, as well as any land that was not attacked by horses and horsemen but whose inhabitants reached an agreement and surrendered without fighting. To him also belongs the peaks of the mountains and the insides of the valleys, as well as the woods and any barren land with no caretaker...and he is the heir of the one with no heir”¹⁰

5) Hajj

In the narration of Abdullah ibn Sinan from Abu Abdullah (as): *“if people stopped making the pilgrimage of Hajj, it would be obligatory upon the Imam to force them to perform Hajj”¹¹ (Wasailul Shia)*

In another narration from Abu Abdullah (as): *“if people did not perform Hajj, it would be obligatory upon the ruler to force them to do this, and to stay there. Also, if they stopped visiting the Prophet (pbuh), it would be for the ruler to force them to do this and to stay there. If they did not have the financial means, he would have to spend on them from the public treasury of the Muslims”.*

6) Jihad

The obligation of Jihad in general is one of the necessities of the religion of Islam. The ayat regarding this obligation are numerous. Is it possible to imagine Jihad– whether it be defensive or pre–emptive– without a ruler or governor or army? Sheikh al–Tusi said regarding fighting those who oppose the Imam: ‘whoever rebels against a just Imam and breaks his allegiance to him and opposes him in his rulings, then he is a rebel and it is permissible for the Imam to fight him and battle against him’.¹²

7) al–Hijr (to limit someone’s legal competence)

The necessity of a government in dealing with the affair of a *Mahjour* (the one who is restricted in accessing his wealth) is clear. In the narration of Safwan it is narrated: *“I asked Abul Hassan (as) about a man who owed another man some money. The one to whom the money was owed died and left two trustees. Is it permissible to pay that debt back to one of the two trustees and not the other trustee? He (as) said: ‘this is not proper, unless the ruler had divided the wealth between them and placed half of it in*

*the possession of one and half in the possession of the other, or they reached an agreement under the auspices of the ruler.”*¹³

8) Marriage and Divorce

In the authentic narration of Abu Basir it is narrated: *“I heard Abu Ja’far (as) saying: ‘if one had a wife and did not clothe her with that which would cover her ‘awra (the parts of the body which should be covered) and did not feed her with that which would give her strength, the Imam has the authority to separate them.”*¹⁴

In another narration from Abu Ja’far (as) by Abu Basir: *“if I had authority over people, I would teach them how to divorce, then I would not come across a man who went against this except that I would strike him painfully on his back.”*¹⁵

9) Judgment and Sentencing

There is no doubt that the task of judgment and implementation of punishments is one of the tasks of the government. In the narration of Hafs ibn Ghiyath it is narrated: *“I asked Abu Abdullah (as): ‘who implements the punishments, the ruler or the judge?’ He (as) said: ‘the implementation of punishments is the task of the one who rules”*¹⁶

10) Judicial Punishment and Blood–Money

Jurists have defined judgment to be a legislative authority on behalf of the Imam (as) to look after the laws and benefits of the general public. The author of al–Jawahir says: ‘perhaps what is meant by their mentioning guardianship– since we know that the judges are not an example of it– is clarification that the role of making true judgments is a status and a role just like that of leadership and that it is one of the branches of the tree of general leadership of the Prophet (pbuh) and his successors (as)’.¹⁷

Therefore, there is no doubt that implementing the judicial punishment and the rules of blood–money needs an Islamic government and a legislative ruler. One option is to say that these laws should be suspended during the period of occultation.

This is both impermissible legislatively and would mean that the greater part has been excluded, because the time of occultation is far longer than the time when the Infallibles (as) were present.

It is narrated from Abu Ja’far (as): *“a legislative punishment implemented on earth purifies it more than it would be purified by forty days and nights of rain”*¹⁸

In another narration from the Commander of the Faithful (as): *“O Allah, You have said to your Prophet, may Your blessings be upon Him and His Progeny, in among that which he informed about: ‘whoever*

suspends a punishment from among My punishments then he has become stubborn against Me and asked through this My enmity.”¹⁹

Therefore, the rules of judicial punishment and blood–money in Islamic jurisprudence indicate the necessity of an Islamic government more clearly than the sun in the middle of the day.

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1. Refer to ayah 4: 102.
 2. al–Kafi, 3: 177
 3. al–Tahtheeb, 3: 206
 4. Jawahirul Kalam, 12: 22
 5. Wasailul Shia
 6. Wasailul Shia
 7. Wasailul Shia
 8. al–Kafi, 1: 407
 9. Wasailul Shia
 10. al–Kafi, 1: 539
 11. Wasailul Shia
 12. al–Nihaya: 296
 13. Wasailul Shia
 14. Wasailul Shia
 15. Wasailul Shia
 16. Wasailul Shia
 17. Jawahirul Kalam, 40: 9
 18. Wasailul Shia 28: 12.
 19. Wasailul Shia

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