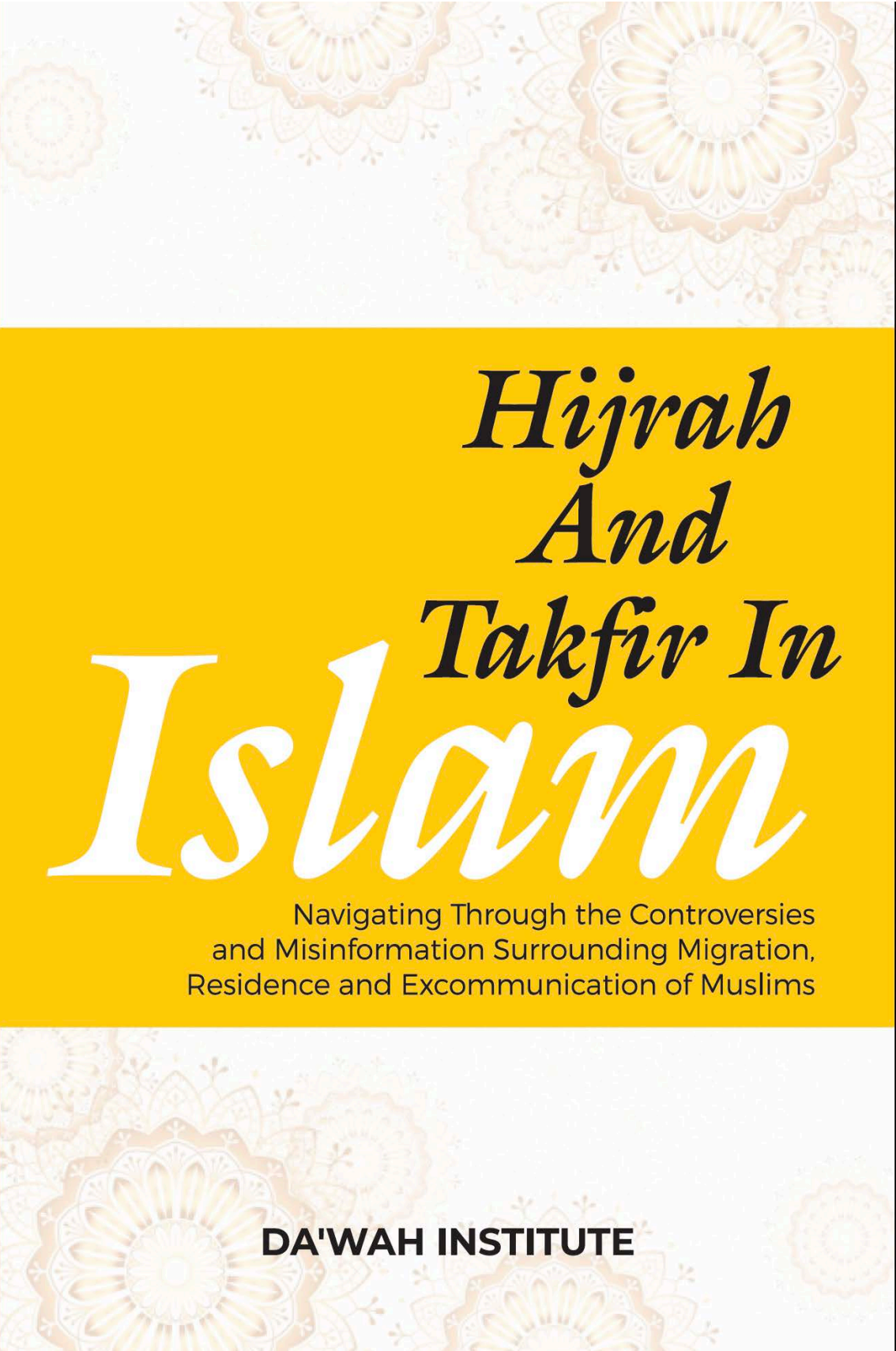




# *Hijrah And Takfir In Islam*

Navigating Through the Controversies  
and Misinformation Surrounding Migration,  
Residence and Excommunication of Muslims

**DA'WAH INSTITUTE**

# *Hijrah And Takfir In Islam*

Navigating Through the Controversies  
and Misinformation Surrounding Migration,  
Residence and Excommunication of Muslims



## Book Information

**Title:** HIJRAH AND TAKFIR IN ISLAM: Navigating Through the Controversies and Misinformation surrounding Migration, Residence and Excommunication of Muslims

*Author:* Da'wah Institute (DIN)

*Publisher:* Islamic Education Trust, Nigeria

**Citation:** *Da'wah Institute (DIN), Hijrah and Takfir in Islam: Navigating Through the Controversies and Misinformation surrounding Migration, Residence and Excommunication of Muslims, Islamic Education Trust, Nigeria, 2023.*

### **Researchers:**

Muhammad Nuruddeen Lemu, OON. (*Director*)

Ismail Abdulkadir (*Deputy Director*)

Haleemah Oladamade Ahmad (*Chief Editor*)

Abdulmalik Abdullahi

Adam Abdulrahman

Idris Abdurrahman

Aliyu Bashir

Hamza Yusuf

Copyright © Islamic Education Trust, 2023/1445 AH.

### **All rights reserved.**

No part of this work may be reproduced in any form, and in any language, without prior written permission from the Da'wah Institute (DIN).

First published in November 2023/Rabiu'-l Thani 1445 AH

**ISBN 978-1-100-22216-5**

*Published by*

**Islamic Education Trust**, PMB 229, Ilmi Avenue,  
Intermediate Housing Estate, Minna, Niger State, Nigeria.

**e-mail:** dawahinstitute@gmail.com

**web:** www.dawahinstitute.org

# Contents

|                 |     |     |     |     |     |      |
|-----------------|-----|-----|-----|-----|-----|------|
| Acknowledgments | ... | ... | ... | ... | ... | viii |
| Introduction    | ... | ... | ... | ... | ... | 1    |

## PART 1

|                                                                                               |     |     |     |     |    |
|-----------------------------------------------------------------------------------------------|-----|-----|-----|-----|----|
| <b>Migration (Hijrah) Vs. Muslim Residence:<br/>Two Sides of the Same Coin</b>                | ... | ... | ... | ... | 17 |
| <b>Beyond Borders: Migration, Residence,<br/>and Identity in Islam</b>                        | ... | ... | ... | ... | 18 |
| The Meanings of “Migration” (Hijrah) in<br>the Qur’an and Hadith...                           | ... | ... | ... | ... | 19 |
| Migration (Hijrah) and Muslim Residence<br>in the Qur’an and Sunnah                           | ... | ... | ... | ... | 23 |
| Migration (Hijrah) And Muslim Residence<br>in Islamic Legal Theory (Usul Al-Fiqh)             | ... | ... | ... | ... | 26 |
| Migration (Hijrah) And Muslim Residence<br>in the Lives of The Prophet (P) And His Companions |     |     |     |     | 29 |
| Some Juristic Commentaries on Migration (Hijrah)<br>And Muslim Residence based on the Sirah   | ... | ... |     |     | 50 |
| Commonly Misinterpreted Text Related to Hijrah                                                | ... |     |     |     | 53 |

|                                                                                                   |           |
|---------------------------------------------------------------------------------------------------|-----------|
| Lessons from the Qur'an, Sunnah and Sirah<br>for Muslim Minorities ... ..                         | 73        |
| The Laws of the Land and Muslim Identity ... ..                                                   | 79        |
| <b>Residence in Non-Muslim Lands: Classical<br/>Opinions and Their Contemporary Relevance ...</b> | <b>87</b> |
| The Traditional Binary or Two-State paradigm ...                                                  | 91        |
| The Traditional Tripartite or Three- State Paradigm ...                                           | 102       |
| Other Independent Paradigms for Domains or States                                                 | 111       |
| Discussion on the Various Domains ... ..                                                          | 118       |
| Reasons for the Obligation of Hijrah ... ..                                                       | 123       |
| Hijrah and Muslims Residence Today ... ..                                                         | 128       |

## PART 2

|                                                                                                 |            |
|-------------------------------------------------------------------------------------------------|------------|
| <b>The Use and Abuse of Takfir<br/>(Excommunication) in Islam ... ..</b>                        | <b>133</b> |
| <b>Overview ... ..</b>                                                                          | <b>134</b> |
| Definition of Kufr and Takfir ... ..                                                            | 153        |
| The Technical and Religious Definition of Kufr ...                                              | 154        |
| The Nature of Evidence and Degree of<br>Certainty Required for Identifying Disbelief (Kufr) ... | 157        |
| Takfir and the "Known Fundamentals of<br>Islam" - Ma'lum min al-din bi al-darurah ... ..        | 160        |
| Secondary and Subsidiary (furu') Matters of Religion                                            | 168        |

|                                                                                             |            |
|---------------------------------------------------------------------------------------------|------------|
| All Kufr is Haram and Sinful. Not all that<br>is Haram or Sinful is Kufr... ..              | 172        |
| Two Main Types of Kufr – “Major Kufr” and<br>“Minor Kufr” ... ..                            | 178        |
| Examining Expressions of “Kufr” or<br>“Major Kufr” in Islamic Texts ... ..                  | 184        |
| <b>Takfir of Things and of People – “Kufr Vs. Kafir”...</b>                                 | <b>187</b> |
| Takfir of Things (al-Takfir al-Mutlaq) –<br>Actions and Statements... ..                    | 191        |
| Takfir of People (al-Takfir al-Mu’ayyan) –<br>Conditions and Hinderances ... ..             | 195        |
| 1. Maturity or attaining the age of puberty<br>is the age of responsibility in Islam ... .. | 198        |
| 2. Sanity and sufficient mental health are<br>another agreed condition of takfir ... ..     | 199        |
| 3. Knowledge, awareness, and<br>understanding right from wrong... ..                        | 200        |
| 4. Intention, Purposefulness, or Premeditation ...                                          | 206        |
| 5. Willingness, Choice and Personal<br>Desire to Contradict the Shari’ah ... ..             | 208        |
| 6. There should be no Esoteric<br>Interpretation (or Al-Ta’wil) ... ..                      | 216        |
| Confirmation and Establishment of<br>proof (Iqamah al-Hujjah) for justifying Takfir ... ..  | 219        |
| Authority for Takfir: Who Can or Should do Takfir?                                          | 226        |
| Takfir of those who Refuse to do Takfir ... ..                                              | 230        |

|                                                                                                    |            |
|----------------------------------------------------------------------------------------------------|------------|
| Criminalising the Abuse of Takfir ... ..                                                           | 233        |
| <b>Terms Related to Kufr – Nifaq, Fisq, Bid’ah, Ta’wil, and Khilaf ... ..</b>                      | <b>236</b> |
| Nifaq or Hypocrisy ... ..                                                                          | 236        |
| Fisq: Disobedience, Wrongdoing, and Transgression                                                  | 242        |
| Bid’ah – Heresy or Blameworthy Innovation ... ..                                                   | 246        |
| Ta’wil – Esoteric Interpretation ... ..                                                            | 249        |
| Khilaf – Scholarly Divergence or Difference of Juristic Opinion ... ..                             | 259        |
| Applied Cases for Further Clarification of Defined Terms ... ..                                    | 264        |
| Possible rulings on someone who drinks alcohol ...                                                 | 264        |
| Possible rulings on someone who is involved in an interest-based transaction (riba) ... ..         | 267        |
| Possible rulings on the prescribed punishment (hadd) for theft ... ..                              | 270        |
| <b>Clarifications on Common Misuses of Takfir ...</b>                                              | <b>275</b> |
| Takfir Implications of Working for Non-Muslim Governments or Leaders ... ..                        | 275        |
| Residing in an “Abode of Disbelief” (Dar al-Kufr) and Its Interpretations as a form of Kufr ... .. | 276        |
| Takfir in the Context of Employment in Riba-based Financial Institutions ... ..                    | 280        |
| Working as Lawyers, Judges, and Legislators using “Man-made Laws” ... ..                           | 284        |

|                                                                                        |     |     |     |     |            |
|----------------------------------------------------------------------------------------|-----|-----|-----|-----|------------|
| Democracy, the Sovereignty of the People,<br>and Sovereignty of God...                 | ... | ... | ... | ... | 288        |
| Saying “Merry Christmas”, etc., as<br>an Endorsement of Kufr?                          | ... | ... | ... | ... | 295        |
| Saluting Flags, Use of Mace, and other<br>National Symbols as Similar to Idol Worship? | ... | ... | ... | ... | 300        |
| Medical Ethics and the Boundaries of Human<br>Knowledge in Islamic Perspective         | ... | ... | ... | ... | 304        |
| The Claim that all the Shi’ah are Disbelievers (Kuffar)                                | ... | ... | ... | ... | 309        |
| The Claim that all Characteristics<br>of Jahiliyyah are Kufr                           | ... | ... | ... | ... | 312        |
| Ruling by Laws Other than What Allah has<br>Revealed, or Not Implementing Allah’s Law  | ... | ... | ... | ... | 313        |
| “Independent Human Reasoning” (Ijtihad)<br>and Its Compatibility with Islamic Doctrine | ... | ... | ... | ... | 322        |
| <b>The Dangers of Takfir</b>                                                           | ... | ... | ... | ... | <b>327</b> |
| <b>Conclusion</b>                                                                      | ... | ... | ... | ... | <b>337</b> |



# Acknowledgment

All praises and gratitude belong to Allah who has made this work possible. We thank Him for all we have and beseech Him to shower His endless mercy and blessings upon the noble soul of Prophet Muhammad (p), his household, companions, and all those who have, and still are following his example.

We are indebted and grateful to the founding trustees of the Islamic Education Trust – late Dr. Sheikh Ahmed Lemu, OFR., late Hajiya Aisha B. Lemu, MON., and late Alhaji Sani Ashafa – for their foresight; and thank all current members of the IET Board of Trustees – Mallam Lawal Maidoki, Prof. Kamaldeen Balogun, Justice Amina Wambai, Hajiya Hajara Adeola, Alhaji Arzika Rimau and Alhaji Muhammad Nurudeen Lemu, OON. - for their unrelenting vision towards the advancement of Islam and Muslims and their continued wise counsel and guidance. May Allah spare your lives and keep your feet firm on His path.

We would also like to thank all members of the Research and Training Department of the Da'wah Institute – Muhammad Nurudeen Lemu, Ismail Abdulkadir,

Abdulmalik Abdullahi, Adam Abdurahman, Aliyu Bashir, Haleemah Oladamade Ahmad, Hamza Yusuf, and Idris Abdurrahman, as well as our network of volunteer facilitators and reviewers. May Allah accept your efforts and add them to your scales of good deeds.

As only the Qur'an is perfect, this material will, by Allah's leave, continue to evolve through revisions and improvements with better contributions from people like you, the reader, *inshaAllah*. Thus, we invite you to kindly send us your observations and suggested improvements.

It is unfortunately practically impossible to cite all who deserve mention - but Allah has counted them all, and we continue to pray Allah blesses them with the best in this life and the hereafter. We pray that the reward of whatever good comes from this effort goes to everyone who contributed to it, mentioned here or not. While several attempts were made at ensuring the correctness of the content of this book, we take full responsibility for whatever mistakes remain therein and pray that Allah forgives us for the oversight.

To everyone, we say *Jazakumullahu khayran* – May Allah reward and bless you!

*Wassalamu alaykum wa rahmatullah wa barakatuh.*

**Muhammad Alhassan**

*Registrar, Da'wah Institute (DIN),  
Minna, Nigeria.*



# Introduction

There are currently over a billion Muslims living in countries on all continents that are predominantly non-Muslim lands, or in Muslim lands that do not have Islamic law as the main legal system of the country. Some of these Muslim communities have been living as minorities since the time of the Prophet's companions.<sup>1</sup> Some Muslims interpret certain verses of the Qur'an and Hadith and statements of particular scholars to imply that it is prohibited for Muslims to reside in non-Muslim lands or even in Muslim countries where Islamic law and governance are not in full practise, or at least, not to their standards.<sup>2</sup> They regard such nations or political-legal jurisdictions as "Lands of War" or "Enemy States" (*Dar al-Harb*) which is

---

<sup>1</sup> <https://www.pewresearch.org/religion/2011/01/27/the-future-of-the-global-muslim-population/>.

<sup>2</sup> Amjad M. Mohammed notes that there seems to be a tacit consensus among contemporary Muslim globally in the recognition of "countries" or "states" as legitimate lands (*diyar*, sing. *dar*) in Islamic political-legal law, and as the new status quo in the twenty-first century. (See, Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.129-131.

seen as synonymous with “Lands of Disbelief” or “Polytheism” (*Dar al-Kufr* or *Dar al-Shirk*).

The concept of “Migration” (*Hijrah*) is understood by them to be related to the concept of “*Al-wala' wa al-bara'*” – which refers to “association with Allah and dissociation from what is sinful”. Migration to or residing in a non-Muslim country is seen as and construed to be a form of showing preference for, love, association, liking and support (*wala'*) for a sinful place and the “man-made” or secular laws and the “unislamic systems” of governance which operate in such countries. Meanwhile, migration away from such a place is seen as a form of dissociation, dislike, or disavowal (*bara'*) for sinfulness and disbelief (*kufr*).

They consider residence and working in such “*Dar al-Kufr* or *Dar al-Shirk*” countries as a form of allegiance (*al-wala'*) to sinfulness and evil, and any migration to, or residence in such lands is regarded as prohibited (*Haram*) in Islam. They therefore consider it a religious obligation (*wajib*) for each and every capable Muslim, including converts to Islam (“reverts”) to migrate (*Hijrah*) from such lands to a “Land of Islam” (*Dar al-Islam*) where Islamic law is predominant.

Some consider Muslims who willingly accept the rule of non-Muslims and live under any rule other than the Shari'ah (Islamic law) as committing acts that will nullify

their faith (*Kufr*), by preferring the ways of disbelief and non-Muslims, to those of Allah and Islam.<sup>3</sup> This is seen as an implication of the fact that loyalty and sovereignty can and should only be given to and by Allah and that Islam is the only way of life for Muslims.

Did the Prophet and his Companions regard non-Muslim lands as prohibited for the early Muslims to live in after they converted to Islam? Were Muslims forbidden by the Qur'an and Sunnah to migrate to, reside in, engage and integrate into the societies of non-Muslim lands if they were afforded the freedom of worship? Must conscientious Muslims who really care about Islamic teachings all migrate (*Hijrah*) from such lands to the "Lands of Islam"? What exactly happened during the time of the Prophet (p) and his Rightly Guided Companions? How did Islam spread if Muslims were not permitted to migrate to and reside in non-Muslim lands? Were all people who embraced Islam in the various parts of the early Muslim nation expected to all migrate to Medina where the Prophet (p) and most of his companions resided? Is that what actually happened? Did the Prophet (p) and his companions live as minorities in predominantly non-Muslim lands under non-Muslim laws? What exactly do the

---

<sup>3</sup> Al-Qahtani, *Al-Wala' wa al-Bara' fi al-Islam*, Daar Tayyibah, al-Riyadh, 6TH Edition, 1413AH, 1992, p. 271-273.

Qur'an and Sunnah, and the example of the Rightly Guided Companions of the Prophet (p) teach regarding migration and residence as minorities among people of other faiths?

This is the subject matter of the first part of this book.<sup>4</sup>

## **Overview of Debates on Muslim Residence in non-Muslim Lands**

Muslims have in various parts of the world, lived as minorities in very diverse contexts. The jurists both past and present, through their “independent juristic reasoning” (*ijtihad*) have consequently equally developed diverse terms and designations for classifying the times and international relations for the world around them. They naturally differed in the terms they used, the definitions of each term, the criteria for each definition, the examples, and the legal implications of each to Muslims.

Although, some scholars often claim that Islamic law divides the world into only two basic categories, *Dar al-Islam* and *Dar al-Harb* (also referred to by some as *Dar al-Kufr* or *Dar al-Shirk*), these two categories do not reflect the true complexity of Islamic juristic thought on this

---

<sup>4</sup> For further readings on how various Muslim minorities are surviving and thriving in various non-Muslim countries and contexts, see: Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999.

issue. Muslim jurists from the earliest periods did attempt to find a way to distinguish between the jurisdiction of Muslims and non-Muslims, but they could not agree on a definition of *Dar al-Islam* or on the number of categories into which the world is divided. Consequently, the classification of territories or lands in Islamic law is laden with ambiguity and diversity of opinion based on historical context of the jurists, their criteria and reasoning (*Ijtihad*).<sup>5</sup>

For example, a classical jurist such as al-Khatib al-Baghdadi discusses the separate terms *Dar al-Islam*, *Dar al-Iman*, *Dar al-Shirk*, *Dar al-Fisq*, and *Dar al-Kufr*.<sup>6</sup> Abu al-Hassan Al-'Ash'ari discusses six different positions on *Dar al-Islam*.<sup>7</sup> In the legal texts of the Hanafi schools, we find no less than six different categorisations of lands with their own nuanced definitions – *Dar al-Islam* (land of Islam, or “Muslim State), *Dar al-Harb* (enemy state), *Dar al-Shirk*<sup>8</sup> (non-monotheistic state), *Dar al-Kufr* (non-

---

<sup>5</sup> Shams al-Din al-Ramli, *Fatwa al-Ramli*, on the margin of Ahmad b. Muhammad Ibn Hajar al-Haytami, *al-Fatwa al-Kubra al-Fiqhiyya*, Dar al-Kutub al-'Ilmiyya, Beirut, n.d.), vol. 4, 52-53; Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p. 161.

<sup>6</sup> Al-Baghdadi, *Kitab Usul al-Din*, Dar al-Hilal, Beirut, 1980, p. 270; Cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p. 161.

<sup>7</sup> Abi al-Hasan al-Ash'ari (d. 324/936), *Maqalat al-Islamiyyin*, ed. Muhammad 'Abd al-Hamid, al-Maktaba al-'Asriyya, Beirut, 1990, vol. 2, 154; Cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p. 161.

<sup>8</sup> See Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p. 141 for a



Muslim state), *Dar al-Sulh* (peace/treaty state), and *Dar al-Muwada'a* (also, peace/treaty state).<sup>9</sup> Al-Makki al-'Alimi mentions *Bilad al-Khilaf* (land over which there is a divergence of opinion).<sup>10</sup> Jurists also disagreed on the status of a particular territory.<sup>11</sup> As will be discussed later on in this material, other classical jurists who faced nuanced socio-political contexts, or who differed in the criteria they used, and their own independent reasoning (Ijtihad), came up with other terms such as (but not limited to) *Dar al-'Ahd* (Land of Treaty), *Dar al-Amn* (Land of Safety), *Dar al-Bid'ah* (Land of Heresy), *Dar al-Muraqaba* (Land of mixed Communities), *Dar al Shahadah/Da'wah* (Land of Witnessing), *Dar al-Ridda* (Land of Apostasy), etc.<sup>12</sup>

---

brief discussion on the nuanced difference in classical Hanafi texts between *Dar al-Shirk* (which would include certain Jewish and Christian sects) and *Dar al-Kufr* (reserved primarily for pagans or polytheists in general).

<sup>9</sup> See Sarakhshi, *Kitab al-Mabsut*, vol.10, p.21, 83 and 111; vol.14, p.56. Cited in Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.141.

<sup>10</sup> Al-Makki al-'Alimi, *al-Lum'a*, vol.2, p.383. Cited in El-Fadl...p.161.

<sup>11</sup> See El-Fadl and Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.231 for further references on the diversity of opinions among classical jurists on this topic.

<sup>12</sup> Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p.96; Wahbah al-Zuhayli, *Athar al-Harb fi al-Islam: Dirasah Muqaranah*, 3rd ed., Dar al-Fikr, Damascus, 3rd Ed., p.194.

As none of these terms which were/are used by these jurists were explicitly defined and used by the Qur'an, the Prophet Muhammad (p) or the consensus of his Rightly Guided Companions, every term used and defined by one group of jurists or School of Law (*Madhhab*) is often challenged by others. Some of these terms were viewed as synonymous or overlapping by some, but not by others. They also did not agree on all the examples they gave for most of the designations. This is to be expected since they each independently addressed diverse and sometimes very different and changing geo-political contexts. They also differed on the criteria and purpose of the designations.

This subject is therefore one of legitimate differences of opinion (*Khilaf*) and in which diversity of opinions is and should be appreciated and respected. It is also by definition, a subject of juristic speculation based on presumptive evidence (*zanni*) and should not therefore be a basis for excommunication (*Takfir*) of any Muslim.

The ethics of disagreement (*Adab al-Ikhtilaf*) is critical in maintaining brotherhood while exploring the various nuanced positions of scholars as they each exercise their juristic tools and methods in arriving at what would be relevant in guiding Muslims closer to the truth of Islamic teachings as these apply to specific contexts. The fact however that Muslims and their scholars today also live in

diverse geo-political contexts with differing forms and degrees of justice and freedom of religion, makes it difficult for all Muslims everywhere to agree on the relevance of what other scholars in other countries may regard as relevant to their own unique context and times.

## **Agreements and Disagreements on the Classification of Lands**

Theoretically, however, scholars seem to generally agree that a land or country governed by non-Muslims which was actively hostile or in a state of war with Muslims was a *Dar al-Harb* (Abode of War). They also agreed that a land or country that was governed by Muslims and in which Islamic law was justly and fully operational was regarded as a *Dar al-Islam* (Land of Islam).<sup>13</sup> Other than these, they differed on almost every other issue.<sup>14</sup>

---

<sup>13</sup> Identifying an example of such a *Dar al-Islam* is usually debatable, as scholars would differ on what exactly constitutes the full implementation of “Islamic law”. This is also because many so-called “unislamic”, “secular”, “customary” or “man-made laws” (such as traffic and environment laws, and policies related to defence, agriculture, education and healthcare, etc.) are actually justified in Islamic jurisprudence under the categories of laws related to social and mundane affairs (*mu’amalat*) that are acceptable in Islamic legal theory (*Usul al-Fiqh*), based on secondary sources of Shari’ah. These sources of Islamic law include “public interest” (*maslahah*), “blocking the means” (*sadd al-dhari’ah*), customary laws and norms (*al-urf wa al-adah*), juristic discretion (*istihsan*), legal presumption (*istishab*), etc. These are in turn all supported by the general implications of various texts of the Qur’an and

What seems obvious also, is that there are many and often contradictory definitions given by jurists and schools of law (*madhhabs*) who used different criteria in different contexts for determining how to designate or label a particular territory or land at their time. What for one jurist was a *Dar al-Kufr* (Abode of Disbelief), was also a *Dar al-Harb* (Abode of War/Hostility) or *Dar al-Shirk* (Abode of Polytheism) for another; what for one jurist was a *Dar al-Kufr* (Abode of Disbelief), was a *Dar al-Sulh* or *Dar al-'Ahd* (Abode of Alliance/Treaty) for another; and what was a *Dar al-Sulh* or *Dar al-'Ahd* (Abode of Alliance/Treaty) for one, was a *Dar al-Islam* (Abode of Islam) for another. In other words, what was a *Dar al-Islam* for one jurist, was a *Dar al-Sulh* for another, or a *Dar al-Kufr* for another, or yet a *Dar al-Harb* (Abode of War/Hostility) for someone else. Some only recognized two types of lands: *Dar al-Harb/Kufr* and *Dar al-Islam*. Everything else fell either under one of these, or was not recognized.

---

Sunnah related to enjoining right and forbidding wrong, promoting justice and compassion, wisdom and welfare, etc.

<sup>14</sup> See discussions in El-Fadl, Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, Moussa, Zuhayli, Qaradawi, Abu Zahra, Kallaf, Auda, Al-'Alwani, etc.

Consider for example the challenge with how to categorise the well-known land of Abyssinia or Ethiopia<sup>15</sup> in the early days of Islam, using the various criteria of different jurists. This was a Christian kingdom which had given refuge, security, and freedom of religion to the early Muslims who were escaping persecution in Mecca. As jurists differed in their criteria for classifying lands, they naturally differed in how they categorized the land.<sup>16</sup> Considering that the governance and law of the land of Abyssinia were not based on the Qur'an or Sunnah, some jurists regarded it as a *Dar al-Kufr* (Abode of Disbelief) and others as *Dar al-Shirk* (Abode of Polytheism), but not necessarily as *Dar al-Harb* (Abode of War/hostility – whether real or potential). This is even though the King is believed by scholars to have ultimately embraced Islam.<sup>17</sup> Others viewed the 3 (*Dar al-Kufr*, *Shirk* and *Harb*) as all synonymous. Considering the justice and safety it gave Muslims, it was considered *Dar al-'Adl* (Abode of Justice) or *Dar al-'Amn* (Abode

---

<sup>15</sup> The area Habasha (Abyssinia) today covers the countries Ethiopia, Eritrea and Somalia.

<sup>16</sup> Ibn Al-Qayyim, *Ahkam Ahl al-Dhimma*, Beirut: Ramady/Ibn Hazm, 1997, vol.2, p.728; Al-Mawardi, *Alawi al-Kabeer fi Fiqh Madhab al-Imam al-Shafie*, Dar al-Kutub, Beirut, 1999, vol.14, p.267; Al-Bayhaqi, *Sunan al-Bayhaqi al-Kubra*, Dar al-Bazz, Mecca, 1994, vol.9, p.16; Ibn Taymiyah, *Al-Nubuwat*, Al-Matba'ah Al-Salafiyah, Cairo, 1386 A.H, vol.1, p.197; : Ibn Taymiyah, *Kutub wa Rasa'il wa Fatawa*, Maktabat Ibn Taymiyah, no date, vol.28, p.146.

<sup>17</sup> Al-Imam Shams al-Deen al-Dhahabi, "*Siyar A'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, P. 428.

of Security) by others. Since there was a tacit agreement to peaceful coexistence and exchange of gifts between Abyssinia and Medina, some regarded it as similar to *Dar al-Sulh/'Ahd* (Abode of Treaties/Truce). Considering the security and safe space it gave for Muslims and Islam to flourish, grow and spread, it was regarded as *Dar al-Islam* (Abode of Islam) by other jurists.

Considering the fact that all these definitions are products of different contextual *ijtihad* (independent reasoning) of various past jurists, some contemporary scholars have either come up with new classifications such as *Dar al-Shahadah* and *Dar al-Da'wah* (Abode of Witnessing Islam) which they regard as being more applicable and sensitive to current realities.<sup>18</sup> These new terms, are also products of *Ijtihad* in response to new contexts, emphasizing the role of Muslims in sharing the message of Islam through words and actions, and the potential opportunities that these lands give to this ever-relevant objective. Some have also regarded most of the old classifications as mostly irrelevant to current international relations and to most modern contexts.<sup>19</sup> This is seen as justified in the

---

<sup>18</sup> Some of these categorisations were also viewed as purely theoretic and academic, with little or no legal implications in the opinion of the scholars who proposed these.

<sup>19</sup> Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd ed., Dar al-Fikr, Beirut, 1998, pp. 192 – 194.

light of the legal maxim, “There is no denying that rulings change with changes in context” (*La yunkar taghayyur al-Ahkam bi taghayyur al-Ahwal*).<sup>20</sup>

Coming to a consensus or an agreed criteria or definition of any of these terms seems so far to only complicate an endless debate for many. Considering the fact however, that the Prophet (p) and his companions actually lived as minorities in numerous contexts, and always in multireligious communities, there should be (as there is) ample evidence from the Sunnah and *Sirah* (biography of the Prophet (p)), to give guidance to Muslim minorities regarding residence and/or migration (*Hijrah*). These sources offer insights for every generation of Muslims for when a Muslim must migrate from a community, land, or country, and when they are permitted or even recommended to remain resident as minorities in non-Muslim lands or to reside in lands headed by Muslims, but which do not operate Islamic law.

Looking carefully at some of the clear teachings of the Qur'an and Sunnah on where the early Muslims (*Salaf*) actually resided (irrespective of the designations given by later scholars) is an easier way of answering the key questions raised earlier regarding migration (*Hijrah*) and residence. By considering when it was regarded obligatory or

---

<sup>20</sup> Muhammad Sidqi, *Kitab al-Wajiz fi Eidhahi Qawaid al-Fiqh al-Kuliyyah*, Muassat al-Risalah, Beirut, 4th Edition, 1996, p. 310.

recommended for Muslims to migrate from a land, during the time of the Prophet (p) and his companions, it should be easy to also know when it was not obligatory or recommended to do so, irrespective of what terms and categorisation various jurists used to refer to the lands in their own particular geographical, political, and historical contexts.

### **Excommunication (takfir) of Muslims**

The second part of the book focuses on an issue of serious concern for Muslims and others today. This has to do with the use and especially the misuse of excommunication of Muslims from Islam (*takfir*) by Muslims. This subject is related to the boundaries of theological tolerance, and defines what is tolerable within, and what is clearly not acceptable in Islam. It defines and gives conditions for what is legally necessary for a Muslim to no longer be recognized as a Muslim. Consequently, as with the concept of *Iman* (faith or belief), a correct understanding of its opposite concept - *Kufr* ("disbelief") - is critical to a precise appreciation and recognition of the "core-and-kernel" or "essential and definitive fundamentals of Islam" - *ma'lum min al-din bi al-darurah* - and those matters of religion upon which there is absolute consensus (*Ijma' qati'*) of all Muslim scholars through the ages. This is also necessary for better protection of these definitive (*qat'i*)



fundamentals from erosion or confusion with other passionately held, though presumptive (*zanni*) issues of “juris-  
tic reasoning” (*Ijtihad*), alternative scholarly interpreta-  
tions (*tafsir/ta'wil*), and the diversity of scholarly opinions  
(*Khilaf*) on various issues. In relation to *Iman* (faith), the  
importance of understanding *Kufr* is similar to the impor-  
tance of studying “dis-ease” in order to better understand  
and protect good health and “ease”.<sup>21</sup>

This is however one of the most abused topics today by  
some Muslims and most especially violent extremist  
groups amongst Muslims. Its misunderstanding and abuse  
have resulted in destroying social cohesion and coopera-  
tion among many Muslims and has contributed to many  
other evils and atrocities in the name of Islam among  
poorly informed Muslims. One of the major causes of the  
rampant and unjustified excommunication (*Takfir*) of  
some Muslims by others and their groups is their inability  
to comprehend and appreciate the difference between  
determining an “act of *Kufr*” committed by a person, and  
the additional stringent conditions required in Islamic law  
for labelling the person or the doer of the act, with the  
word “*Kafir*” or “disbeliever”.

---

<sup>21</sup> Discussions on *Kufr* and *Takfir* are usually found in literature on Islamic  
jurisprudence (*Fiqh*) and matters related to creed (*Aqidah*), and under topics  
related to apostasy (*Riddah*) and the correct creed to Sunni Muslims (*Ahl al-  
Sunnah wa al-Jama'ah*).

Our hope is that this book will help clarify the relevant concepts related to *kufir* and *takfir*, understand the conditions and hindrances of *Takfir*, clear misconceptions, create necessary caution and sensitivity, and help to identify and remove or at least reduce the misuse and disastrous abuse of *Takfir* among Muslims. In view of the tragedies that have resulted from the flippant and frivolous misuse of *Takfir*, we consider the opinions of both classical and contemporary jurists who suggest that only the most competent of scholars and judges be engaged in declaring disbelief (*kufir*) or excommunicating a Muslim who believed to deserve it.

Our prayer is that it will therefore also guide towards greater intellectual humility, restraint, and moderation (*wasatiyyah*), while also giving more assurance in identifying the correct understanding and use of *takfir*. Our hope is that this effort contributes to answering the prayer, “O Allah, shows us truth for what it is, and gives us the will to pursue it; and also, to show us falsehood for what it is, and gives us the resolve to keep away from it”.<sup>22</sup>

---

<sup>22</sup> This supplication has been attributed to Umar bin al-Khattab. See Sheikh Mansur bin Yunus al-Buhuti, *Sharh Muntaha al-Iradat*, Dar Atlas al-Khadra li al-Nashr wa al-Tawzi', Riyadh, 2019, vol.3, p.497; Ibn Shahin, *Madhahib Ahl al-Sunnah*, al-Maktabah al-Shamilah 3.35, vol.1, p.40; Muhammad Abu Zahra, *Zahrah al-Tafasir*, Dar al-Fikr al-Arabi, vo.1, p.671; Al-Mubarakfuri, *al-Misbah al-Munir fi Tahzib Tafsir ibn Kathir*, 2nd edition, Maktabah Darussalam, Lebanon, 2003, vol.1, p.591.



# Part 1

Migration (*Hijrah*)

Vs.

Muslim Residence:

Two Sides of the

Same Coin

## BEYOND BORDERS: MIGRATION, RESIDENCE, AND IDENTITY IN ISLAM

The Arabic word "*Hijra*" or *Hijrah*, comes from the root word "*Ha-ja-ra*", which means literally and more broadly migration, departure, or emigration in general, and the movement of people from one place or context to another. This movement could be for a variety of reasons – safety and security, commerce and economic, political or environmental, educational or social, tourism or exploration, spiritual or moral/ethical, and other personal reasons. These could be voluntary or involuntary.

Hijrah also refers to the historical event of the migration of the Prophet Muhammad (p) and his followers from Mecca to Medina. The first Hijrah however was that of the Prophet's companions from the persecution in Mecca to the safety of Abyssinia in East Africa.

Hijrah also carries significant spiritual and ethical meanings, including the importance of seeking refuge in God from evil and Satan, and turning away in repentance from wrong-doing or sin, or moving from vice to virtue and righteousness. It could also imply physically moving from a community or context of negative influence, persecution, or

war, to one of safety, peace, community support and freedom of religion.

## **The Meanings of “Migration” (Hijrah) in the Qur'an and Hadith**

The Qur'an and Hadith use the word “*Hijrah*” to refer to both physical migration of persons from one place to another, and also to moral or spiritual “migration” from vice, wrongdoing and sin to repentance (*tawbah*) and virtue. The physical (or outward or apparent) migration is meant to enhance or facilitate the spiritual and moral (or inward or hidden) migration.<sup>23</sup>

Allah says, “*Those whom the angels take (in death) **while wronging themselves**, (the angels) will say, 'In what (condition) were you' they will say, “We were oppressed in the land”. They (the angels) will say, “**Was not the earth of Allah spacious (enough) for you to emigrate** (tuhajiru) therein?” For those, their refuge is Hell – and evil it is as a destination. Except for the truly oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For*

---

<sup>23</sup> Ibn Qayyim al-Jawziyya, *Zad al-Muhajir Ila Rabbih*, p.13 cited in, Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyah li al-Aqalliyat al-Muslimah*, 1426AH, p.150; Ibn Hajar al-Asqalani, *Fath al-Bari*, vol. 1, p.54.

*those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving.*"<sup>24</sup>  
(Qur'an 4:97-99).

Hijrah therefore could also be to migrate away from a place, for fear of temptation or the negative influence of others on one's faith or that of one's dependents.

*"O you who believe, save yourselves and your families from a fire,..... (Qur'an 66:6)*

Regarding the moral or spiritual forms of Hijrah, the Prophet (p) is reported to have said, *"A Muslim is the one from whose tongue and hands the Muslims are safe, and a Muhajir (emigrant) is the one who refrains from what Allah has forbidden"*.<sup>25</sup>

In another narration, *"The believer is the one from whom people's wealth and lives are safe, and the Muhajir is the one who forsakes mistakes and sins."*<sup>26</sup>

According to Abdullah bin 'Amr, *"A man said: 'O Messenger of Allah! Which emigration (Hijrah) is best?' He said: 'To leave what your Lord, the Mighty and Sublime, dislikes...'".*<sup>27</sup>

---

<sup>24</sup> Qur'an 4:97-99.

<sup>25</sup> Sahih Al-Bukhari, hadith no. 9.

<sup>26</sup> Musnad Ahmad, Hadith no. 23965

<sup>27</sup> Sunan al-Nas'I, hadith no. 4165.

According to Mu'awiya, the Prophet (p) said, *"Emigration will not come to an end till repentance (from wrongdoing) comes to an end, and repentance will not come to an end till the sun rises in the place where it sets."*<sup>28</sup>

This moral and spiritual form of *Hijrah* is agreed by scholars to be an individual obligation (*fard 'ayn*) upon every Muslim, as every Muslim is expected to refrain from sinful and forbidden acts to the best of their ability. The Prophet (p) says: *"Avoid that which I forbid you to do, and do that which I command you to do, to the best of your capacity..."*<sup>29</sup>

As this discussion intends to focus primarily on legitimacy and conditions surrounding physical migration and residence, it will not dwell on the spiritual forms of *Hijrah*, though the societal context and influences on an individual are often important factors for decisions related to residence and migration.

Understanding the conditions for migration (*Hijrah*), and when it is required (obligation or recommendation) or not, based on how the Prophet Muhammad (p) and his companions actually understood and implemented the relevant texts of the Qur'an and Hadith, allows us to move away

---

<sup>28</sup> *Musna Ahmad*, hadith no. 16906.

<sup>29</sup> *Sahih Muslim*, hadith no. 6259.



from vague and debated terminologies for lands in various contexts, and focus on the key principles of Shari'ah that guided the decision to reside or migrate from a place. In other words, knowing when Hijrah was prescribed by the Prophet (p) gives us a more reliable and accurate reference point for understanding conditions of residence or Hijrah than trying to analyse the implications of various designations given by various jurists who were responding to diverse contexts based on their Ijtihad (independent reasoning).

Allah says in the Qur'an (4:59): *“O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you (truly) believe in Allah and the Last Day. This is the best and fairest resolution.”*

Studying the conditions for Hijrah from the Prophet's time will allow us to understand the relevant texts (Qur'an and Sunnah) better, and to decide more confidently on what to do in our current contexts, and which particular scholarly opinion (and *ijtihad*) is more relevant to us in our own particular community.

## **Migration (Hijrah) And Muslim Residence In The Qur'an And Sunnah**

The Qur'an and Sunnah make it clear that Muslims are not only free to move and live wherever they wish on earth (or in this universe!), but the divine texts actually encourage travel and exploration of the world in search of beneficial knowledge, wisdom, livelihood, trade, refuge, and the resources and the bounties which Allah has provided for humanity and His creation. It is through moving on earth that mankind fulfils his role as a vice-gerent, inheritor, caretaker, steward, custodian, deputy and guardian (Khalifah) on earth, and it is through travel, migration and interactions with others that the message of compassion and guidance of Allah reaches all places and peoples.

The Qur'an describes the Prophet Muhammad (p) as a “*mercy to the worlds*”. (Qur'an 21:107) This mission can only be realised if Muslims are ready to move, migrate and reside in other lands, and live by example. This was well understood and actually done by the Prophet's closest companions soon after his demise.

Some of the relevant texts of the Qur'an and Hadith include:<sup>30</sup>

---

<sup>30</sup> Numerous other texts from the Qur'an encourage people to move and travel to 'read' divine messages and signs (Qur'an 31:31, 12:105, 22:46); for trade and commerce (Qur'an 17:66, 2:164, 62:10); to explore new horizons

- “Do they then not **travel through the Earth**, so that their minds gain wisdom, and their ears thus learn to hear? For surely it is not the eyes that are blind, but blind are the minds which are in the foremost”. (Quran 22:46)
- “He it is who enables you to travel by land and sea; until when you are in the ships, and they sail on with them in a pleasant breeze, and they **rejoice**”. (Quran 10:22)
- “Lawful for you is **all water-game**, and all the catch of the sea, as enjoyment for you and for those who travel”. (Quran 5:96)
- “Once the prayer is over, **disperse through the Earth** and go in quest of some of divine Bounty, and remember God frequently, so that you may succeed”. (Quran 62:10)
- “Was God's Earth not spacious enough that you could **emigrate** in it?” (Quran 4:97)
- “And how many a **Message** in the Heavens and the Earth which they pass by, yet they turn away from it!” (Quran 12:105)
- “Do they not see how God originates creation, then reproduces it: surely that is easy for God”. Say: “**Travel**

---

(Qur'an 16:14, 35:12, 45:12); for recreation (Qur'an 10:22, 5:96, 30:46); to learn from visiting new places (Qur'an 22:46, 31:31); to immigrate (Qur'an 4:97, 16:41); to study creation and science (Qur'an 29:19-20); to study archaeology and history (Qur'an 47:10, 40:82, 35:44, 40:21); and to learn from the past (Qur'an 6:11, 3:137, 16:36, 27:69, 30:41-43). Numerous hadith also encourage travelling in search of knowledge.

*through the Earth and deeply observe how God did originate the creation; then God produces the next creation; surely God has power over all things” (Quran. 29:19-20)*

- *“**Travel** through the Earth and deeply observe how was the end of the rejectors (of faith)”. (Quran 6:11)*
- *“Those who have **emigrated** for God because they were oppressed, We will grant them good in this world, and the reward of the End will be greater, if they knew”. (Quran 16:41)*
- *“Verily We have sent thee in truth, as a bearer of glad tidings, and as a warner: and there never was a people, without a warner having lived among them (in the past).” (Qur'an 35:24)*
- *“We surely sent a messenger to every community, saying, “Worship Allah and shun false gods.” (Qur'an 16:36)*

And from the Hadith, we read:

- Abu Sa'id al-Khudri reported: The Messenger of Allah, peace and blessings be upon him, said, “**The entire earth has been made a place of prayer, except for graveyards and washrooms.**”<sup>31</sup>
- *"Three supplications are answered without a doubt: the supplication of someone who is oppressed, **the sup-***

---

<sup>31</sup> al-Tirmidhi, no. 317.

*plication of someone on a journey, and the supplication of parents for their children".*<sup>32</sup>

- The Prophet (p) said: "I have been given five things which were not given to any amongst the Prophets before me... ***"The earth has been made for me (and for my followers) a place for praying and a thing on which to perform Tayammum (dry ablution). Therefore, my followers can pray wherever the time of a prayer is due..."***<sup>33</sup>

## **Migration (*Hijrah*) And Muslim Residence in Islamic Legal Theory (*Usul Al-Fiqh*)**

As the subject matter of travel, migration and residence is primarily related to the juristic category of mundane or worldly (*dunya*) affairs, and transactional matters (*mu'amalat*), it is governed by the Islamic maxims of legal presumption (*Istishab*) of permissibility of all things – which is that everything is permissible except what is prohibited by evidence. The well-known legal maxim states that, “the legal premise of all things is that of permissibility” (*al-'asl fi al-ashya' al-ibahah*).<sup>34</sup>

---

<sup>32</sup> Al-Adab al-Mufrad, no. 32.

<sup>33</sup> Bukhari, no. 438.

<sup>34</sup> Shihab ad-Din al-Qarafi, *Kitab al-Furuq*, Matha'ah Dar Ihya al-Kutub al-'Arabiyyah, Cairo, vol. IV, p.40; Jamal al Din Atiyyah, *Al-Tanzir al-Fiqhi*, p.

This maxim is stated or rephrased by scholars below in a number of ways so as to make clearer its meaning and implications:

“Everything is *halal* except what is *haram*”.<sup>35</sup>

“Whatever is not *haram* is in fact *halal*.”<sup>36</sup>

---

208; Abdurahman bin Abu Bakr al-Suyuti, *Al-ashbah wa al-Nazair*, vol.1, p.107; Badruddeen Muhammad bin Abdullahi Al-Zarkashi, *Al-Bahr Al-Muheet Fi Usul Al-Fiqh*, Dar al-Kutub al-Ilmiyyah, Beirut, 1421 AH, vol.1, p.126; Ibrahim bin Ali bin Yusuf al-Shirazi, Dar al-Fikr, Damascus, 1403AH, vol.1, p.535; Abu Sulayman, 'Abd al-Wahhab, “*An-Nazariyyah wal-Qawa'id fi al-Fiqh al-Islami*” in *Majallah Jama'i'ah al-Malik 'Abdal-'Aziz*, No.2, May 1978, p.53; Muhammad Amir, *Taysir Al-tahrir*, Dar Nashr, vol.2, p.247; Abdullah bin Yusuf al-Juda'i, *Taysir 'Ilm Usul al Fiqh*, p.34, 69, 71 and 72; Abdullah al-Fauzan, *Khulasah al-Usul*, p.7; al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, p.299; Muhammad bin Hassan al-Dadaw, *Sharh alwaraqaat*, p.76; Abdulkareem al-khudair, *Sharh Matn al Waraqaat*, p.410; Abdulwahab Khallaf, *'Ilm Usul al-Fiqh*, Maktabah al-Da'wah, p.91; Muhammad Amin Ihsan Almujaiddi Albarkati, *Qawa'id al-Fiqh*, Dar al-Nashr, p.14; Zakariyya bin Gulam Qadir Albakistani, *Usul al-Fiqh 'Ala Manhaj Ahl al-Hadith*, Dar al-Kharraz, 1423 AH., p.116; Mashur bin Hasan Al-Salman, *Al-Tahqiqat wa al-Tanqihat al-Salafiyyah 'ala Matn al-Waraqaat*, Dar Imam al-Malik, U.A.E, 1426AH, p.584-589; Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008, Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999, Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, IIFSO, Salimiah, 1992, p. 14-18; Mohammad Hashim Kamali, *Qawa'id Fiqh, The Legal Maxims of Islamic Jurisprudence*. p.2.

<sup>35</sup> Ibn Muflih, (quoting Ibn Taimiyyah), *Al-Adab al-Shar'iyyah wa al-Minah al-Mar'iyyah*, Beirut, 1419 AH, vol.1, p.137.

<sup>36</sup> Tariq Ramadan, *To Be a European Muslim*, The Islamic Foundation, Leicester, 1999, p.64; Zakariyya bin Ghulam Qadir Al-Pakistani, *Usul al-Fiqh ala Manhaj ahl al-Hadith*, p.116.

*“Halal is the original (default) verdict for everything, in social transactions or mu'amalat.”<sup>37</sup>*

In other words, as is clear from the numerous texts or the Qur'an and Sunnah cited earlier, Muslims are free and permitted to travel, migrate, and reside anywhere they want on earth, and for any legitimate reason, unless there is clear evidence (*dalil*) to the contrary. The absence of any prohibition is itself evidence of permissibility for migration, travel, and residence. Conversely, Muslims are not obligated (*Fard/wajib*) to migrate (*Hijrah*) from any land (Muslim or otherwise) to any other land without clear evidence from the sources of Shari'ah to that effect.

While the opinions and “independent reasoning” (Ijtihad) of any scholar while responding to his context is worthy of respect, scholarly opinion and ijtihad are not legitimate sources (*adillah*) of Islamic law. Consequently, one scholar's Ijtihad does not negate that of another. The strength of a religious opinion is based not on the name or number of those who hold that view, but on the strength of the evidence for it from either the primary sources of law (Qur'an and Sunnah), or the secondary sources such as

---

<sup>37</sup> Ibn Taimiyyah, *Al-Qawa'id al-Nuraniyyah al-Fiqhiyyah*, p.112-113, cited in Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, Al-Birr Foundation, London, 2003 p.5-6; see also *What is Islamic Culture?*, Da'wah Institute of Nigeria, Islamic Education Trust, Minna, 2009, p. 4-5.

scholarly consensus (*Ijma'*), analogical deduction (*Qiyas*), consideration of public interest (*Maslahah*), the unchallenged opinion of a Companion (*Ra'yi al-Sahabi*), juristic discretion (*Istihsan*), legal presumption of the status quo (*Istishab*), local custom ('Urf), etc.

### **Migration (*Hijrah*) and Muslim Residence in the Lives of The Prophet (P) and His Companions**

Understanding the realities of when and why the Prophet (p) and his companions decided to reside or migrate (*Hijrah*) from one place to another is critical in providing the context in which the relevant texts of the Qur'an or Hadith on Hijrah can more correctly understood. Text without context is pretext and leads to mistaken assumptions and interpretations of the relevant texts. The biography (*Sirah*) of the Prophet (p) allows us to understand how they understood and implemented the texts relevant to Hijrah, and whether or not they understood, as some do today, that it is not permissible for Muslim to reside in or migrate to non-Muslim lands, or lands where Islamic law does not regulate the judicial system of the society.

The following points from the earliest periods of Islam are worth bearing in mind:



1. The Prophet (p) – as with a number of other prophets (p) – was sent to start his mission among non-Muslims. He was sent first to Mecca, the largest polytheist centre of worship and pilgrimage in Arabia at the time. This was where he was born, and where he and many of his closest companions grew up. It was the society Allah chose for him to reside in and start his mission.

The Qur'an tells us of various prophets who were sent to various polytheists and non-Muslim nations, and who lived and died there.<sup>38</sup> The Qur'an or Sunnah make no hint that these prophets (p) and their followers were not expected to integrate, mix with, live and share the message of Islam in those non-Muslim lands. Some who tried to avoid facing their unresponsive polytheist communities, such as Prophet Yunus (p),<sup>39</sup> were actually sent back to them. Prophet Yusuf (p) in fact offered to work under the non-Muslim king of Egypt at the time, and he played a critical role in safeguarding food security.<sup>40</sup>

Ibn Umar reported that the Messenger of Allah (p) said, *“The believer who mixes with people and is patient with their harm has a greater reward than the believer*

---

<sup>38</sup> See the case of Prophet Yusuf in Qur'an 40: 34.

<sup>39</sup> See the story of Yunus in Qur'an 37:139 – 148.

<sup>40</sup> Qur'an 12:54-55.

*who does not mix with people, nor is patient with their harm.*"<sup>41</sup>

How is the message of guidance expected to reach those non-Muslims who need such guidance if Muslims are not going to travel, meet, and interact with people of other faiths and in their lands? How is Islam expected to spread to the whole world if Muslims are expected to remain in or actually move to Muslim lands?

2. When the Prophet (p) started his mission in Mecca, the society was not initially hostile to his message and the early converts to Islam. In spite of the polytheism in Mecca, the Prophet (p) did not teach his companions that living in a polytheist society was wrong, or that it was better for them to isolate themselves from the rest of society, or move out and camp in the desert, or live elsewhere. Indeed, it was such a society, with all its corruption, immorality, tribalism, disbelief and polytheism, etc. that the early Muslims were expected to positively influence and reform. No one was required to migrate (*Hijrah*) from Mecca to anywhere else simply due to the dominance of polytheism (*Shirk*) or disbelief (*Kufr*) of the people.<sup>42</sup>

---

<sup>41</sup> Sunan Ibn Majah, no. 4032.

<sup>42</sup> Fat'h al-Bar 2/189 cited in Al-Umary, Akram Diya': Al-Sirah al-Nabawiyyah al-Sahihah, Maktabah al-Ulum wa al-Hikam, al-Madinah al-Munawwarah, 1994, 6th Ed. p. 170.

3. Before and during this period, the Prophet (p) was economically and socially engaged with the Meccan community. He was involved in business, partook in mediation and peacebuilding, and was a member of a local human rights advocacy organisation, called the “Alliance of Virtue” (*Hilf al-Fudul*). He integrated into the society without isolation or being assimilated into its wrong ways and customs. Later on in life, after Islam was well established in Medina, the Prophet (p) fondly mentioned to his companions about his involvement with the *Hilf al-Fudul*, and his readiness to join such a group again, if he was invited to do so.<sup>43</sup> This association with concerned polytheist citizens in enjoining right and forbidding wrong, was not understood by the Prophet (p) or his companions as a form of allegiance (*wala'*) to sinful behaviour or beliefs. It was simply (as with many other alliances and treaties) a means of serving common interests.
4. During the later Meccan period when the Meccan leadership and some of their followers started to persecute and torture some of the weaker Muslims of Mecca, the Prophet (p) suggested that they migrate (*Hijrah*) and seek refuge in Abyssinia, which was a Christian King-

---

<sup>43</sup> Al-Baihaqi, hadith no.12114; Sunan Al-Kubra Al-Dala'il Gharib al-Hadith, hadith no.243.

dom ruled by a just king, the Negus or (*Najashi*). This was the first formal Hijrah, and it was done to escape persecution and denial of religious freedom. The fact that Abyssinia was a Christian kingdom and not operating Islamic law did not prevent the Prophet (p) from sending his companions there. Migration (*Hijrah*) to a non-Muslim land was not seen as a form of allegiance (*wala'*) to Christians or to Christianity.<sup>44</sup>

5. The Prophet (p) and a few of his companions were still safe in Mecca and did not yet have major fears for their own safety and security. However, the Prophet (p) still remained in Mecca, in spite of the polytheism, and did not regard remaining there as contrary to Islamic teachings. While there was prejudice, discrimination, and verbal abuse, he felt safe enough to remain there and continue his mission of calling them to Islam. He did not migrate (*Hijrah*) simply because it was an option and he had the means. He had a mission to do his best in his own hometown.
6. When the Prophet (p) lost his wife, Khadija, and his uncle Abu Talib, he lost some of his most important sources of protection in his Clan, Banu Hashim. Mecca was no longer safe, and he decided to migrate when he

---

<sup>44</sup> Al-Imam Shams al-Deen al-Dhahabi, "*Siyar A'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, pp. 430 – 434.

knew that his life was at risk. He was reluctant to leave his hometown, as were his other companions. But he feared for his life and narrowly escaped an assassination attempt, and there was also a bounty on his head, for a hundred camels to whoever could capture him, dead or alive.<sup>45</sup> The context makes it clear that it was not the polytheism of Mecca that instigated his migration (Hijrah) or those of others, but the unbearable persecution and denial of religious freedom.

According to Ibn 'Abbas the Messenger of Allah even said about Mecca: "*How sweet of a land you are and how dear you are to me, and if it were not that my people expelled me from you, I would not have lived in other than you.*"<sup>46</sup> In another Hadith the Prophet (p) made this supplication: "O Allah, make us love Madinah as dearly as we love Mecca, or more than that. O Allah! Make it healthy for us and bless for us it's Sa' and Mudd (Medinan food measurements). **And remove its fever from us...**"<sup>47</sup> This hadith makes it abundantly clear that

---

<sup>45</sup> Sahih Al-Bukhari, hadith no.3419; Sahih Muslim, hadith no.2009; And this is the wording of Ahmad hadith no.17627 this is about which Al-Arna'ut said, "Its chain is authentic according to the criteria of [Imam] Muslim; Al-Imam Shams al-Deen al-Dhahabi, "*SiyarA'lam al-Nubala'*, Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, vol. 1, pp. 430 – 434.

<sup>45</sup> Muhammad Rida, *Muhammad Rasul Allah*, Dar Al-Kotob Al-Ilmiyyah, Lebanon, 3rd Ed. 2006, p. 123.

<sup>46</sup> Sunan al-Tirmidhi, hadith no. 3926

<sup>47</sup> Sahih al-Bukhari, hadith no. 1889.

the reason why the Prophet (p) left Mecca was not because of its laws as a land of polytheism or disbelief (*Dar al-Shirk* or *Dar al-Kufr*), but because he was expelled from it. He makes it clear in his own statement, that if not for the persecution or expulsion by the Meccans, he would not have lived elsewhere.

7. The Prophet (p) escaped the Meccan plot to assassinate him and **migrated (Hijrah) to Medina**. At the time, Medina was predominantly a polytheist and Jewish society. But it was safe and secure, and Muslims were free from persecution, and had the freedom to practice and share their faith with others. The Prophet (p) had a written security and civil contract or charter or pact between the Muslims and the various polytheist and Jewish tribes in Medina. This was the first interfaith charter and constitution for a multireligious society in history. It was called the *Sahifah* or *Wathiqah* (Charter or constitution) of Medina. It recognised the equal citizenship, rights, and responsibilities of all the members of the charter.<sup>48</sup>

Medina, the capital city-state of Islam during the lifetime of the Prophet, remained a multireligious society

---

<sup>48</sup> Adil Salahi, Muhammad, *Man and Prophet: A Complete Study of the Life of the Prophet of Islam*, The Islamic Foundation, UK, 2002, p 242; Muhammad Rida; *'Muhammad Rasul Allah'* Dar Al-Kotob Al-Ilmiyyah, Lebanon, 3rd Ed. 2006, pp 128-129.

right until the demise of the Prophet (p) and his companions. There was no compulsion in religion, and Jews were not forced to accept Islamic law. They were judged by their own religious laws. Respecting the rights of others to govern themselves by their own laws was not understood as a form of alliance (*al-wala'*) with their laws, sin or disbelief.<sup>49</sup>

8. While the Prophet (p) and some others were not safe from the persecution of the Meccans, those who were safe and did not feel threatened were permitted to remain in Mecca. This included **the Prophet's uncle, al-Abbas bin Abdul Muttalib**.<sup>50</sup> He remained in Mecca until after the conquest. Meanwhile, he managed the well of Zamzam as part of his clan's responsibility for the polytheist pilgrims and others in Mecca.<sup>51</sup> His remaining in Mecca was not seen as going against any Islamic teachings of the Qur'an or Sunnah, nor was it

---

<sup>49</sup> Tariq Ramadan, *In the Footsteps of the Prophet*, Oxford University Press, New York, 2007, p.87-91; Muhammad Rida; *'Muhammad Rasul Allah'* Dar Al-Kotob Al-Ilmiyyah, Lebanon, 3rd Ed. 2006, pp 128. In Sahih Muslim no. 1699 there is a case of Jews who committed adultery and were judged in accordance with the Torah.

<sup>50</sup> Al-Imam Shams al-Deen al-Dhahabi, "*SiyarA'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 2, p. 79; Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 952.

<sup>51</sup> Muhammad bin Ishaq; *'Al-Sirah al-Nabawiyyah li Ibn Ishaq'* Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, 2004, p. 120

seen as allegiance (*al-wala'*) to paganism or to the land of disbelief and polytheism.

The case of Al-Abbas makes it clear that it was insecurity, religious persecution and the inability to practice Islam in peace, along with the means to migrate, that was the reason for migration by the Prophet (p) and his other companions. Those companions who did not face such threats or fears were not obliged to migrate, and were not criticized for staying in non-Muslim lands, where they felt safe, even if others did not have the same levels of safety and security.

9. In response to a misconception held by some of the early Muslims who were of the opinion that migration was an obligation on all converts from their native non-Muslim lands, we have the following Hadith: Salih bin Bashir reported that the companion **Fudaik** went to the Prophet (p) and said: 'O Messenger of Allah, people think whoever does not migrate will perish'. The Prophet (p) said: '*O Fudaik! Establish prayers, avoid sins, and live in the land with your people wherever you wish.*'<sup>52</sup>

This hadith clearly shows that the opinion that it is prohibited or even discouraged for Muslims to live in

---

<sup>52</sup> Sahih Ibn Hibban Hadith no. 4969.



non-Muslim lands when such Muslims are free to practice the fundamentals of their faith is wrong. The Prophet (p) in this Hadith did not just permit Fudaik, but actually instructed him to reside anywhere he wished among his people. To claim that all Muslims should migrate from non-Muslim lands, including those who have the same freedom of religion as Fudaik (or even more), is clearly refuted by this Hadith, and that of Al-Abbas.

10. One of those people who came to Mecca was a man by the name **At-Tufayl ibn Amr al-Dawsi**, a leader of the tribe of Daws (Banu Daws), who came from the southern part of Arabia along the coast, called the Tihama area. He came on a visit to Mecca and the Meccan leaders started to make efforts to discourage him from seeing the Prophet (pbuh), which eventually roused his curiosity to meet the Prophet (p). He eventually met him (p), listened to his teachings, and accepted Islam. He then went back to his people and when he tried to preach to them, they rejected it and became hostile to the message. Tufayl went back to the Prophet (p) seeking his permission to migrate (do *Hijrah*) and leave his islamophobic community and stay with the Prophet (p) in Mecca. However, after affirming that the level of hostility he faced at home was not serious enough as to threaten his life or faith, the Prophet (p) told him to go

back to his people and continue to bear their intolerance and hatred with patience, civility and good character, while gradually spreading the message of Islam by whatever means was possible to him. He did as instructed, and over time, the whole community eventually embraced Islam and became an important Muslim stronghold. That was where Abu Hurayrah, the famous Hadith narrator originally come from. He was from Banu Daws, and his becoming Muslim was partly the result of the efforts of Al-Tufayl.<sup>53</sup>

Thus, we learn from the Prophetic example and the Prophet's instruction to Al-Tufayl that it only becomes necessary to do Hijrah (migration) from a place when it is so intolerably hostile that you are denied the right and freedom to live securely and no longer have the freedom to practice your religion. But so long as you are safe, and you have the freedom to practice and share your religion with others, it is actually encouraged for you to stay in such non-Muslim societies. Why? Because that is how Islam spreads! And that was how it spread to the rest of the world!<sup>54</sup>

---

<sup>53</sup> Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al---Kotob al-Ilmiyah, Lebanon, 2006, p.422.

<sup>54</sup> Similar case like that of Tufayl bn Amr occurred to Abu Dharr al-Ghifari cited in Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al---Kotob al-Ilmiyah, Lebanon, 2006, p.46.

11. While Medina had become a safe haven for Muslims, those who remained in Abyssinia were not criticised for remaining in non-Muslim lands that were safe and which respected their freedom to practise and share Islam. The last group of Muslims from Mecca to leave Abyssinia arrived in Medina in the 7th year of Hijrah, just less than 3 years before the Prophet (p) passed away.<sup>55</sup>

The existence of a safe “Islamic state” in Medina was not seen by the Prophet (p) as a reason to prohibit Muslims from residing in a non-Muslim land or make it compulsory to migrate to Muslim lands where Islamic law and governance was in practise. They were never criticised from staying in safe non-Muslim lands for “longer than necessary”.

12. Some of the Muslim refugees in Abyssinia (such as **Zubair bin Awwam**) actually supported the government in gathering military intelligence and in actual fighting in a war, to defend the State against its opposition and rebels. The Muslims there were law-abiding citizens who played their part in successfully defending

---

<sup>55</sup> Al-Imam Shams al-Deen al-Dhahabi, “*Siyar A'lam al-Nubala'*”, Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, p. 437. Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al-Kotob al-Ilmiyah, Lebanon, 2006, p.198.

their just, non-Muslim hosts. This support was recognised and rewarded by the king.<sup>56</sup>

Although the government was not operating Islamic law, yet it was not seen by these respected companions or by the Prophet (p) as a reason to prohibit Muslims from supporting and contributing to their host community of Abyssinian Christians in matters as serious and sensitive as security. Supporting the state was also not seen as alliance (*al-wala'*) with their religion, nor implying a preference for disbelief (*Kufr*) or non-Muslims over Muslims and Islam.

13. During the 2-year period when the Treaty of Hudaibiyya between the Meccans and the Muslims of Medina was in place, there were many Muslims residing in Mecca, some of whom wanted to leave but were not permitted unless with the express permission of the Meccan authorities. Otherwise, the Prophet (p) was obliged by the treaty to send them back to the Meccans.<sup>57</sup> Mecca at this time was what some jurists

---

<sup>56</sup> Al-Imam Shams al-Deen al-Dhahabi, "*Siyar A'lam al-Nubala'*", Mu'assasah al-Risalah, Beirut, Lebanon, 1994, 10th Ed, Vol. 1, p. 434.

<sup>57</sup> Sahih Bukhari, Hadith no. 2581; Sunan al-Kubra, Hadith no. 18587; al-Mujam al-Kabir, Hadith no. 13; Musnad Imam Ahmad bn Hanbal, Hadith no. 18928; Ibn Kathir, al-Bidayah wa al-Nihayah, Maktabah al-Ma'arif, Beirut, vol.4, p.175; Muhammad bin Ishaq; '*Al-Sirah al-Nabawiyyah li Ibn Ishaq*' Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, 2004, pp. 466-467.

would refer to as an “Abode of Peace or Treaty” - *Dar al-'Ahd* or *Dar al-Sulh*.

The Treaty of Hudaibiyyah stipulated the fact that those in Mecca were under Meccan political authority and legal jurisdiction. They were expected to recognise the authority and leadership of the territory of Mecca which they had found themselves in. And the Prophet (p) agreed to and signed this treaty. Muslims living in Medina (Dar al Islam) were also expected to respect and recognise the autonomy, leadership, and sovereignty of the Meccan authorities they had entered into this treaty with.

In recognition of the legal autonomy and political sovereignty of states with whom Muslims have a treaty, Allah says in the Qur'an (8:72), *“Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations to them until they emigrate. But if they seek your help (against persecution) in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do.”*

Consequently, even though most of the Companions of the Prophet (p) were opposed to the unfair and humiliating conditions of the Treaty of Hudaibiyyah

which the Prophet (p) had agreed to, all Muslims of Medina and Mecca were required to respect and honour the signed treaty.

14. While the city-state of Medina was under constant threat from the hostile Meccan polytheists and their allies, the Prophet (p) encouraged some of those tribes that embraced Islam to come to the safety of Medina and also to assist in defending the Muslim capital.<sup>58</sup> So long as there was a threat from a formidable enemy to be fought, such as the Quraysh of Mecca, there would always be the need for migration from such hostile territories and for reinforcements for the Muslim army. In one hadith, the Prophet (p) made this clear when he said, “*emigration will not stop provided the enemy is being fought.*”<sup>59</sup>

After the peaceful occupation or conquest of Mecca, and the neutralization of the threat posed by them to Muslims in the region, there was no longer a need for more people to migrate to Medina since Mecca was now safe and part of Muslim controlled territory.<sup>60</sup> The

---

<sup>58</sup> <https://www.history.com/this-day-in-history/muhammad-completes-hegira>

<sup>59</sup> *Sunan al-Nasa'I al-Sughra*, hadith no. 4102; Musnad Ahmad bn Hanbal, hadith no. 22324.

<sup>60</sup> Abd al-Aziz bn Salih al-Jarbu', *Al-I'lam bi Wujub al-Hijrah min Dar al-Kufr Ila Dar al-Iman*, p.12, al-Maktabah al-Shamilah, 3.13; Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 954.

Prophet (p) according to Ibn Abbas, is then reported to have announced that there was, “No *Hijrah* after the conquest, except for striving (*Jihad*) and good intention...”<sup>61</sup> This Hadith makes it clear that *Hijrah* from non-Muslim lands that were no longer hostile to Muslims, was not necessary.

Additionally, the reason some were asked to move to Medina was not because they lived in multireligious or non-Muslim lands of disbelief (*Dar al-Kufr*), but for strengthening the security and defense of Muslims especially the capital at the time. This migration to Medina stopped after the conquest of Mecca.

Even when the Prophet (p) did encourage some Muslims to come to Medina, it was understood to have only been encouraged not compulsory. On no occasion did the Prophet (p) compel those who embraced Islam from amongst the Arabs to migrate to him in Medina, and he never reproved or blamed them for staying in their own vicinities.<sup>62</sup> Besides, the need to migrate to Medina during the life of the Prophet (p) was seen as a contextual requirement of the time, and which was abrogated or overtaken by the event of the conquest of Mecca.<sup>63</sup>

---

<sup>61</sup> Sunan al-Tirmidhi, hadith no. 1516.

<sup>62</sup> Abd al-Aziz bn Salih al-Jarbu', *Al-I'lam bi Wujub al-Hijrah min Dar al-Kufr Ila Dar al-Iman*, p.10.

<sup>63</sup> Al-Sarakhsi, *al-Mabsut*, vol.6, p.123; n.d, al-Maktabah al-Shamilah (3.13); 'Ala' al-Din al-Kasani, *Bada'i al-Sana'I*, Dar al-Kutub al-'Arabi, Beirut, 1982, vol. 1, p.158.

**15. After the demise of the Prophet (p)** many of his great companions deliberately moved out of Medina and the Muslim cities with their families, to various lands of non-Muslims, in order to share the message of Islam with them and build peace treaties.<sup>64</sup>

Why would these companions and their students and families migrate to non-Muslim lands if it was actually forbidden for a Muslim to reside in such lands or in lands where Islamic law was not operational? How could the generation of those who best understood Islam, do the exact opposite of what is claimed to be an Islamic requirement?

Allah says, “*(But) they are not all alike: among the followers of earlier revelation, there are upright people...*” (Qur'an 3:113), and “*Among the followers of earlier revelation are some who, if entrusted with a hoard of gold, will (readily) pay it back; others, who, if entrusted with a single silver coin, will not repay it unless you constantly stand over them demanding it.*” (Qur'an 3:75)

---

<sup>64</sup> Salman al-Farisi died in Al-Mada'in (ancient Ctesiphon) (Pp. 41-43), Bilal lived and died in Sham (p. 72), Abu Ubaydah bin al-Jarrah died in Jordan (p. 180), Abu Ayyub al-Ansari was buried in Constantinople (now Istanbul) (p.293), etc. all cited in Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al-Kotob al-Ilmiyah, Lebanon, 2006.



Thus, they are not all enemies at war with Muslims and who cannot be trusted.

Regarding people of other faiths who have not been hostile to Muslims, Allah says,

*“As for such (of the unbelievers) who do not fight against you on account of (your) faith, and neither drive you forth from your homelands, Allah does not forbid you to show them kindness and to behave towards them with full equity: for verily, Allah loves those who act equitably. Allah only forbids you to turn in friendship towards those who fight against you because of (your) faith, and drive you forth from your homelands, or aid (others) in driving you forth: and as for those (from among you) who turn toward them in friendship, it is they, they who are truly wrongdoers!”* (Qur'an 60: 8-9)

The Qur'an clearly distinguishes what relations are expected with non-hostile people of other faiths who have not denied Muslims their freedom of religion and right to land, from those who have.

Categorising all non-Muslims therefore as enemies and at war with Muslims is not a position based on the Qur'an or Sunnah, nor was it the practise of those many companions who actually migrated and lived among

such people of other faith, many of whom eventually embraced Islam or entered into peace treaties with Muslims.

16. The Qur'an acknowledges the merits and sacrifices of those who migrated (Hijrah) seeking freedom to be Muslims, after they had been wronged and persecuted on account of their faith, and Allah promises them a reward in this life and the next. The texts make it clear that these Muslims were victims of oppression while seeking Allah and His Messenger.

*“And those who emigrated (hajaru) for [the cause of] Allah **after they had been wronged** – We will surely settle them in this world in a good place, but the reward of the Hereafter is greater, if only they could know.” (Qur'an 16:41).*

Historically this migration was from unbearable hostility and persecution, away from oppression and towards a more supportive and faith-enabling environment, and seeking freedom to practise Islam in peace. Sometimes, this migration (Hijrah) was from Muslim to non-Muslim lands.

Similarly, Allah says, *“And whoever emigrates (yuhajir) for the cause of Allah will find on the earth many [alternative] locations and abundance. And whoever leaves his home as an emigrant to Allah and His Mes-*

*senger and then death overtakes him - his reward has already become incumbent upon Allah. And Allah is ever Forgiving and Merciful.”* (Qur'an 4:100). Both these texts show that the migration (Hijrah) which is praised here is one done in “*the cause of Allah*”.

Various Muslim populations of the past and present, including their scholars, have sometimes had to migrate and escape political and religious persecution from some Muslim leaders and despots. Some of these populations took refuge from their Muslim leaders and caliphs in non-Muslim lands that were more hospitable and accommodating of these Muslims. In the period of Umayyad Caliphate during the reign and tyranny of **Hajjaj bin Yusuf** (41-95 AH),<sup>65</sup> many Muslims fled from Iraq, taking refuge in Malabar, India, where they had to adopt the clothes of the Hindus and limit public display of their Islamic identity.<sup>66</sup> Since the second century of Islam, significant Muslim populations have

---

<sup>65</sup> Muhammad Hamidullah, *The Muslim Conduct of State*, (7th Edition), Muhammad Ashraf, Lahore, 1977, p.123. Cited in Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.128.

<sup>66</sup> Muhammad Hamidullah, *The Muslim Conduct of State*, (7th Edition), Muhammad Ashraf, Lahore, 1977, p.123. Cited in Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.128, and Khaled Abou El Fadl, Islamic law and Muslim minorities.

resided in non-Muslim territories, especially in coastal India and China.<sup>67</sup>

17. In another verse of the Qur'an, Allah blames and promises to punish those who allowed themselves to be pressured into wrongdoing. They had the ability to migrate but refused to, and instead resorted also to wrongdoing and sin. Ibn Kathir in his commentary on this verse, says these people became hypocrites.<sup>68</sup>

*“Those whom the angels take (in death) while wronging themselves, (the angels) will say, ‘In what (condition) were you’ they will say, ‘We were **oppressed in the land**’. They (the angels) will say, ‘Was not the earth of Allah spacious (enough) for you to emigrate (tuhajiru) therein?’ for those, their refuge is Hell – and evil it is a destination. Except for the truly oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For those it is expected that Allah will pardon them, and Allah*

---

<sup>67</sup> Muhammad Hamidullah, *The Muslim Conduct of State*, (7th Edition), Muhammad Ashraf, Lahore, 1977, p.121-129, cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities*.

<sup>68</sup> Ibn Kathir mentions that Al-Dahhak stated that this verse was revealed in reference also to some Muslim hypocrites who did not join the Messenger of Allah (p), but remained in Mecca, and went out with the Polytheists of Mecca to fight against the Muslims in the Battle of Badr, and they were among those who were killed in the fighting. (*Tafsir Ibn Kathir*, Darussalam Publishers, p.559).

*is ever Pardoning and Forgiving.”* (Qur'an 4:97-99).

Those however who had no realistic options out of such toxic environments, negatively influencing contexts, hostile or oppressive communities, who were truly weak (*mustad'afin*) and unable to migrate are those who can expect Allah's pardon and mercy.

This verse reinforces the reasons for migration (*Hijrah*) observed in the life of the Prophet (p) and his companions, that the major reasons why migration would be an obligation on a capable Muslim would be in order to either escape from persecution and oppression, or protect their faith and to move away from a very toxic or negatively influencing environment. In the absence of these, a Muslim was permitted to reside in non-Muslim lands.

### **Some Juristic Commentaries on Migration (*Hijrah*) And Muslim Residence based on the Sirah**

Muhammad al-Shaybani (d. 189 AH) reports that the duty to migrate to the Land of Islam (*'ard al-Islam*) after conversion was abrogated at the time of the Prophet (p). Those who convert but do not migrate to *Dar al Islam* are

like the nomads (*a'rab*) who accepted Islam but refused to join the Prophet (p) in Medina.<sup>69</sup>

Writing many years after al-Shaybani, Abu Bakr al-Sarakhsi explained that although the duty to migrate was abrogated, most jurists recommended that the nomads still migrate to Medina so that they might learn their religion; but if these nomads could learn their religious duties in their tribal residence, there was no reason for them to migrate.<sup>70</sup>

Imam al-Shafi'i argued that even after the establishment of the Islamic state in Medina, Al-'Abbas and others were allowed to reside in Mecca which was then a non-Muslim territory. Additionally, the Prophet (p) allowed various nomadic tribes that converted to Islam to remain outside the domains of the lands of Islam. The Prophet (p), according to Imam al-Shafi'i, would not have given these people a choice of residence if it was sinful for them to retain their independence. Consequently, Muslims who convert to Islam in non-Muslim lands may reside there unless these

---

<sup>69</sup> Abu 'Abdullah al-Shaybani, *The Islamic Law of Nations: Shaybani's Siyar*, trans. Majid Khaduri, The John Hopkins Press, Maryland, 1966, p. 187; Al-Shaybani's view reiterates his view in his *al-Radd 'ala Siyar al-Awza'i*, ed. Abu al-Wafa al-Afghani, Dar al---Kutub al-'Ilmiyyah, Beirut, n.d., p.124.

<sup>70</sup> Al-Sarakhsi, *Al-Masbut*, Dar al---Ma'rifa, Beirut, 1986, vol. 10, p.94-95. Cited in Khaled Abou El Fadl, *Islamic law and Muslim minorities ...* p.146.

Muslims fear enticement away from Islam (*Idha lam yakhafu'l-fitnata fi'l-din*).<sup>71</sup>

Imam al-Baghawi argues that a Muslim is permitted to reside in a non-Muslim land if he or she is able to manifest his or her religion, but *Hijrah* from non-Muslim territory is obligatory if a person fears the loss of religion (*Khashiya an yuftana fi dinihi*).<sup>72</sup>

Al-Ramli was a respected Shafi'i jurist and mufti of Egypt and was given the title of *al-Shafi'i al-Saghir* ("the Little Shafi'i" or "Junior Shafi'i"). He was asked about the Muslims living under the political leadership of a Christian king in one of the Andalusian countries called Aragon. Al-Ramli, citing the precedent of a Companion of the Prophet (p) who was allowed to reside in non-Muslim Mecca, replied that the Muslims of Aragon do not have to migrate because they can manifest their religion. He argues that they are not allowed to leave because their residence might be a mechanism by which Islam could spread. He argues that the area in which they reside is part of *Dar al-Islam*, and that if they left, it would revert to being *Dar al-Kufr*. Also, the long period during which Muslims there have been able to enjoy their religious freedom creates the pre-

---

<sup>71</sup> Abu Abdallah al-Shafi'i, *Al-Umm*, ed. Muhammad al-Najjar, Dar al-Ma'rifa, Beirut, n.d., vol.4, p.161; cited in El-Fadl... p.147.

<sup>72</sup> Cited in Al-Nawawi, *Al-Majmu'*, vol.19, p.264.

sumption that they will be safe from forced conversion or oppression in the future.<sup>73</sup>

## Commonly Misinterpreted Text Related to Hijrah

---

1. Allah says in the Qur'an, *"Indeed, those whom the angels take (in death) while wronging themselves – (the angels) will say, 'In what (condition) were you?' They will say, 'We were oppressed in the land.' They (angels) will say, 'Was not the earth of Allah spacious (enough) for you to emigrate therein?' For those, there refuge is Hell – an evil it is as a destination"*. (Qur'an 4:97)

---

It has been assumed by some that all Muslims living in non-Muslim lands are automatically part of the "oppressed in the land". They have therefore interpreted this verse to mean that all Muslims who have the means are expected by this verse to migrate, as a religious obligation, from such lands to the Abode of Islam (*Dar al-Islam*), and they are prohibited from residing in non-Muslim communities.

---

<sup>73</sup> Shams al-Din al-Ramli, *Fatawa al-Ramli*, on the margin of Ahmad bin Muhammad Ibn Hajar al-Haythami, *al-Fatawa al-Kubra al-Fiqhiyya*, Dar al-Kutub al-Ilmiyya, Beirut, n.d., vol.4, p.52-53.



This understanding is contrary to what has been witnessed in the life of the Prophet (p) and his companions. The companions lived in various non-Muslim communities so long as their safety and religious freedoms were secure. There are also many cases of Companions who after the demise of the prophet (p) migrated to and resided in safe non-Muslim communities. They did not migrate to Medina or “*Dar al-Islam*” but to non-Muslim lands where they established peace treaties and spread the message of Islam. Also, for the many people who embraced Islam in such non-Muslim lands including Egypt, Syria, Turkey, Azerbaijan, Abyssinia, etc., as long as they were not persecuted on account of their faith, they remained in such non-Muslim lands and did not migrate to Medina.

This verse simply warns those whose faith will be compromised by their remaining in communities that deliberately try to force and negatively influence them to abandon their religion, while they have the means to migrate to safer communities. The key concern of the verse is for Muslims to avoid contexts of persecution and negative influence on their faith.

As is clear from the tradition of the Prophet (p) and his companions, this was not understood to apply to all non-Muslim communities, many of which were safe for Muslim to migrate to or reside in.

---

2. *“Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations (wilayah) to them until they emigrate. But if they seek your help (against persecution) in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do”.* (Quran 8:72)

---

This verse has been understood by some to mean that Muslims who are residing in non-Muslim lands are living in a place where the Prophet (p) has no obligations towards them. Such Muslims who put themselves in a situation where the Prophet (p) has dissociated himself from, are living in a sinful context, and consequently have to migrate to where they are under the jurisdiction and responsibility of Allah and His messenger (p).

There has been a diversity of interpretations given to this verse by scholars. The understanding however that this verse prohibits Muslim residence in non-Muslim lands is not supported by the context of the text itself nor what is well-known and established from the life (*sirah*) of the Prophet (p) and his companions. This is because the early Muslims were known to have lived in numerous non-

Muslim lands where they were safe and not persecuted on account of their faith, including Abyssinia, Egypt, Syria, etc., especially after the demise of the Prophet (p).

The phrase “you have no obligations to them (*walayatihim*)” which has been interpreted by some to mean “you are dissociated from them” was understood by some such as Ibn Abbas, Mujahid and Qatadah to refer to having no obligations related to inheritance.<sup>74</sup> In other words, it was understood to mean that those who did not migrate to Medina forfeited their right to inheritance from those who did, and vice-versa.<sup>75</sup> This was in the early Medinan period when the migrants (*muhajirun*) were allowed to inherit from the Medinan Muslims or “Helpers” (Ansar), and vice-versa, as part of a strategy for strengthening their brotherhood, social cohesion, and making migration easier. This strategy was however later superseded by the verse that restricted inheritance (*mirath*) to real family members (Qur'an 8:75 and 33:6).<sup>76</sup> Other means of inheritance via a bequest (*wasiyyah*) remained an option.

---

<sup>74</sup> Al-Tabari, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Mu'assasah al-Risalah, 2003, vol. 13 pp. 78-80.

<sup>75</sup> Al-Tabari, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Mu'assasah al-Risalah, 2003, vol. 13 pp. 78-80.

<sup>76</sup> Al-Tabari, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Mu'assasah al-Risalah, 2003, vol. 13 p. 80.

According to Ibn Kathir however, the phrase “*you have no obligations to them (walayatihim)*” was understood to also apply to the absence of an obligation on the part of the Prophet (p) to give a “share in the spoils of war” to those who did not migrate, and hence did not participate in battles alongside the Muslims of Medina. Such Muslims would only have a share in the booty if they joined the Muslims.<sup>77</sup> He supported this opinion with the Hadith of Buraidah al-Aslami in which the Prophet (p) said: “... *tell them (the new Muslims) to migrate to the Abode of the Emigrants (Dar al-Muhajirin – i.e., Medina). If they comply, they will be treated as equals with the emigrants. But if they choose to stay in their lands, they will be treated as equals with Muslim Bedouins; they will have no share in the booties, except if they join the Muslims in battle...*”<sup>78</sup>

It is clear from these interpretations that the verse does not imply a prohibition of Muslim residence in non-Muslim lands if they were safe and free from religious persecution. It is consequently also not evidence for the obligation of Muslims to migrate (*hijrah*) from safe non-Muslim lands.

---

<sup>77</sup> Ibn Kathir, *Tafsir al-Qur'an al-Azim*, Dar Taibah li al-Nashr wa al-Tawzi', 1999, vol. 4, p. 96.

<sup>78</sup> Musnad Ahmad, no. 23030.

---

**3. Some scholars have tried to justify the prohibition of residing in or migrating to non-Muslim lands with the prophetic Hadith which says: “*I dissociate myself from all Muslims living in the midst of polytheists....*”<sup>79</sup>**

---

The historical context and occasion of this statement in the Hadith (*Sabab al-wurud*), makes it very clear that this statement of the Prophet (p) had nothing to do with the prohibition of Muslims migrating to or living in the midst of non-hostile people of other faith. It is only easy to misinterpret if the context is not considered seriously, since it is well-known and authentically established by the Prophet (p) and especially his companions lived amongst polytheists in Mecca and Medina, and in many other parts of the world especially after the demise of the Prophet (p).

This statement of the Prophet (p) in this hadith however, was actually in response to a very specific situation where some converts to Islam who lived in the midst of a group of polytheists that were hostile to Medina, were unknowingly killed in the battle that ensued. The Prophet (p) was making it clear that he would not be responsible for the payment of the blood money (*diyya*) in such cases of accidental killing or manslaughter, where the Muslims lived in the midst of

---

<sup>79</sup> Sunan Abu Dawud, hadith no. 2274; *Sunan al-Tirmidhi*, hadith no. 1530.

hostile non-Muslims. In this particular case, the Prophet (p) actually paid the equivalent of half the normal value of the *diyya*.<sup>80</sup>

The many well-known cases of Al-Abbas in safety in Mecca, those companions who lived peacefully in Abyssinia, the numerous others who left Medina, travelling to and living in the midst of peaceful polytheists in various parts of the world after the demise of the Prophet (p), all prove that the Prophet (p) and his Companions did not understand this hadith outside its context, and did not interpret it to mean it was prohibited for Muslims to reside in the midst of non-hostile polytheists and other non-Muslim communities.

---

**4. The Prophet (p) is reported to have said: “*Anyone who associates with a polytheist and lives with him is like him*”.**<sup>81</sup>

---

This hadith has been interpreted by some to mean that it is prohibited for a Muslim to associate with a non-Muslim or reside in a non-Muslim country or community.

---

<sup>80</sup> Muhammad Shams al-Haq al-Azim al-Abadiy, *'Awn al-Ma'bud: Sharh Sunan Abu Dawud'*, Dar Al-Kotob Al-Ilmiyyah, Beirut, 1415, vol. 7 p. 218, no. 2645.

<sup>81</sup> Abu Dawud, no.2787.

This claimed interpretation of the implications of this hadith conflicts with what is found in the lived example (sunnah) of the prophet (p) and that of his companions who resided and associated with various non-Muslim communities in Mecca, Abyssinia, Medina and elsewhere. After the Prophet's demise, many of his companions moved permanently to other predominantly non-Muslim communities where they associated and lived with those populations.

It is for example well-established that the Prophet (p) associated with his polytheist community in Mecca and was even nicknamed "The Trustworthy" (Al-Ameen). He also had close relations with his beloved uncle, Abu Talib until his demise. He and his companions only left Mecca when the religious persecution became unbearable, and their lives were threatened.

It is also important to note that the Prophet (p) permitted his uncle, Abbas who had embraced Islam to remain in Mecca, and he was not prohibited from associating with the polytheists there. In fact, Abbas was responsible for the management of water from the well of Zamzam for visitors and pilgrims.<sup>82</sup>

---

<sup>82</sup> Muhammad bin Ishaq; *'Al-Sirah al-Nabawiyyah li Ibn Ishaq'* Dar Al-Kotob Al-Ilmiyyah, Beirut, Lebanon, 2004, p. 120.

Sheikh AbdulMuhsin al-'Abbad when explaining the hadith in question said that this hadith implies that if a person is not able or free to openly practise and express their religious identity and symbols (*Sha'air al-Deen*) then it is necessary for such a person to migrate to another place where he or she is free and able to practice their religion.<sup>83</sup>

On a similar hadith - “*Do not live among the idolaters, and do not assemble with them, for whoever lives among them or assembles with them, is similar to them*”, Imam al-Khattabi cited some of what scholars have said about this hadith, one of which is that “a Muslim should not bear the unique characteristics of a polytheist, nor should he resemble him in his spiritual path and appearance”.<sup>84</sup>

In summary, this hadith and other similar hadiths do not in any way prevent a Muslim from associating and living with non-hostile people of other faith, nor do these hadith prohibit a Muslim from residing in their environment provided he or she is able to practice their religion without any impediments or fear of persecution. This hadith and similar others, simply warn against forming close associations or living arrangements with individuals

---

<sup>83</sup> Abdulmuhsin al-'Abbad, *Sharh sunan Abi Daud*, al-Maktabah al-Shamilah, vol. 1 p.2.

<sup>84</sup> SafiyyurRahman Mubarakfuri, *Tuhfah al-Ahwazi Sharh Sunan al-Tirmidhi*, al-Maktabah al-Shamilah, vol.4, p.276.



or communities that can have a profound negative influence on one's own beliefs and actions, potentially leading them away from the path of Islam.

---

**5. The Messenger of Allah (p) said: “Allah will not accept any good deed from a polytheist who commits polytheism after becoming Muslim, until he leaves the polytheists and joins the Muslim”.<sup>85</sup>**

---

The case presented in this hadith is one where a polytheist becomes a Muslim but remains in his polytheist community and is influenced by them to continue to practice polytheism even after claiming to have embraced Islam. The hadith makes it clear that if such as Muslim was sincere about having embraced Islam, that he would migrate away from what will influence him back to into polytheism. Deliberately choosing to remain in a community which negatively influences him is proof of his insincerity of accepting Islam.

According to Al-Sindi, the apparent meaning of the hadith indicates “that this polytheist who converted to Islam had apostatized, and committed polytheism after his conversion to Islam, then he returned to Islam. At this junc-

---

<sup>85</sup> Ibn Majah no. 2536; Musnad Ahmad no. 20037.

ture, no deed will be accepted from him until he leaves the abode of disbelief.”<sup>86</sup>

This hadith is evidence for weak Muslims to migrate away from communities that negatively influence them towards apostasy, to the safety of Muslim communities. This hadith is not asking all Muslims living in non-Muslim communities to leave their communities. It is also not referring to those who feel safe in their faith within non-Muslim communities, and who do not feel threatened by their communities to leave Islam.

As noted repeatedly, the companions, during and after the time of the Prophet (p), lived in numerous non-Muslim lands that respected their freedom of religion. The Prophet (p) and his companions only migrated away from the polytheist community of Mecca because of religious persecution and fear for their safety.

The hadith therefore is only addressing those who fear the apostatizing influence of their communities and advising them to relocate away from such communities to Muslim communities if they have the means and are sincere. According to Ibn Taimiyyah,<sup>87</sup> it is concerning such indi-

---

<sup>86</sup> Amad bin Hanbal, *Musnad Ahmad*, Muassasah al-Risalah, ed. Shuaib al-Arnaout, vol. 33, p. 238.

<sup>87</sup> Ibn Taymiyyah, *al-Sarim al-Maslul 'ala Shatim al-Rasul*, Dar Ibn Hazm, Beirut, vol. 2, p. 106.

viduals – who persisted in their wrongdoing – that the following verse was revealed as a warning:

*“Those whom the angels take (in death) while wronging themselves, (the angels) will say, ‘In what (condition) were you’ they will say, ‘We were oppressed in the land’. They (the angels) will say, ‘Was not the earth of Allah spacious (enough) for you to emigrate (tuhajiru) therein?’ For such, their refuge is Hell – and evil it is a destination...”*  
(Qur'an 4:97-99).

Scholars such as Ibn Hajar and al-Mubarakfuri, after citing similar hadiths concluded that they are related to those who are not safe concerning their religion (yet refused to migrate).<sup>88</sup>

The claim that this hadith is evidence for the prohibition of migrating to, or residing in non-Muslim lands, is not justified by its text or by the understanding and practices of the Prophet (p) and his companions who resided in various non-Muslim communities outside Medina.

In conclusion, the hadith under discussion is only evidence for the obligation of hijrah from the apostatizing influence of a society. It is not a basis for prohibiting Mus-

---

<sup>88</sup> Ibn hajar, *Fath al-bari*, vol. 8, p. 432; al-Mubarakfuri, *Tuhfah al-Ahwazi*, vol. 4, p. 258; al-Mubarakfuri, *Mir'ah al-Mafatih sharh mishkat al-masabih*, vol. 9, p. 462.

lims from residing in non-Muslims communities that give assurances of safety and freedom of religion.

---

**6. It is narrated by Abdullah bin Waqdan al-Sa'di that the Messenger of Allah (p) said: “Migration will continue as long as an enemy is fought with.”<sup>89</sup>**

---

This hadith is interpreted by some Muslims to justify the obligation of *hijrah* on every Muslim residing in a non-Muslim land, even if they have the freedom of religion there and are free from persecution.

In a more complete narration of this hadith, the narrator, 'Abdullah bin Waqdan al-Sa'di said: "*We came as a delegation to the Messenger of Allah, each of us with a question to ask him. I was the last of them to come in to the Messenger of Allah, and I said: 'O Messenger of Allah, I have left people behind me, and they are saying that emigration (Hijrah) has ceased.' He said: 'Emigration will not cease so long as the disbelievers are being fought.'*"<sup>90</sup>

The hadith simply clears the misconception that there will never be a need for migration again by making the obvious link between enemies or hostile others and the need for migration and movement of people. This hadith reminds

---

<sup>89</sup> *Al-Sunan al-Kubrah*, hadith no. 18235; *Musnad Ahmad*, hadith no. 22324.

<sup>90</sup> *Sunan al-Nasa'i*, hadith no. 4172 and 4183.

the questioner and those with such an opinion of the fact that the existence of conflict situation nearly always necessitates migration. This may be the migration of refugees, asylum seekers, soldiers, etc.

Scholars have therefore understood this hadith to mean that the existence of enemy states (*Dar al-Harb*) and the possible necessity of war against such hostile or persecuting states, automatically implies the need for migration of Muslims away from such hostile environments. It could also mean that the existence of enemies or hostile disbelievers would imply the need for movement or migration of soldiers to the battlefield.<sup>91</sup>

Al-San'ani commented on this hadith saying that it is an indication that the ruling of *hijrah* stands till the Last Day, even though it does not imply an obligation.<sup>92</sup>

Al-Imam Badr al-Din al-'Ayni said that provided the lands of disbelief exists in the world, migration (*hijrah*) will remain obligatory on whoever embraces Islam and fears persecution due his religion.<sup>93</sup> In other words, migration is

---

<sup>91</sup> Al-Sindy, *Hashiyah al-Sindy 'ala Sunan al-Nasa'i*, vol. 5, p.471, al-Maktabah al-Shamilah, 3.35.

<sup>92</sup> Muhammad bin Ismai'il al-San, Vol.6, p.133, al-Maktabah al-Shamilah, 3.13.

<sup>93</sup> Badr al-Din al-'Aini, *Umdah al-Qari Shar Sahih al-Bukhari*, Vol.25, p.107, al-Maktabah al-Shamilah, 3.13.

not a necessity if there is no fear of persecution, as was seen in the life of the Prophet (p) and his companions.

There is therefore nothing in this hadith to justify the obligation of *hijrah* irrespective of the situation a Muslim finds him or herself. Instead, it only proves the legitimacy of *hijra* when the circumstances call for it, and dispels the view held by some that there will never be a need for Hijrah.

---

**7. Another hadith that has been interpreted to justify the obligation of *hijrah* from non-Muslim lands that do not persecute Muslims, is the following: Mu'awiya reported God's messenger (p) as saying, "*Emigration will not come to an end till repentance comes to an end; and repentance will not come to an end till the sun rises in the place where it sets (the West)*".<sup>94</sup>**

---

Some have understood this hadith to justify migration of Muslims from all non-Muslim lands even if they do not face any religious persecution nor fear for their religion.

There is however nothing in the wording of this hadith, or in the tradition of the Prophet (p) or his companions to support this understanding. On the contrary, there is ample evidence to show that Hijrah was only obligatory for those

---

<sup>94</sup> *Musnad Ahmad*, hadith no. 16906; *Sunan Abu Dawud*, hadith no.2481; *Sunan al-Nasa'i al-Kubrah*, hadith no. 8711.

who were able to, when they faced unbearable persecution or fear for their safety.

The hadith does not suggest that the Prophet (p) was even referring purely to physical *hijrah* or the migration of people from one environment to another, or from a safe land of non-Muslims to anywhere else. The clear association in the hadith of *hijrah* with repentance, obviously indicates as some scholars have argued, that the *hijrah* in this hadith refers to the spiritual or moral *hijrah* from wrongdoing, sinfulness and vice to repentance and Allah.

As noted earlier, the physical (or outward) form of migration (*hijrah*) is also meant to also enhance or facilitate the spiritual and moral (or inward or spiritual) form of migration or repentance.<sup>95</sup> The two are therefore not mutually exclusive, but complementary in their purposes. In other words, the moral or spiritual *hijrah* may include the need for physical *hijrah*.

The Prophet (p) is reported to have said, “*Definitely migration (Hijrah) is of two forms. The first of these is the migration from evils (sayyi'at), and the second is to migrate to Allah and His Messenger. And hijrah will not cease so long as repentance is being accepted (by Allah); and it will con-*

---

<sup>95</sup> Ibn Qayyim al-Jawziyya, *Zad al-Muhajir Ila Rabbihi*, p.13 cited in, Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyah li al-Aqalliyat al-Muslimah*, 1426AH, p.150; Ibn Hajar al-Asqalani, *Fath al-Bari*, vol. 1, p.54.

*tinue to be acceptable until the sun rises from the West. And when it rises (from the West), the fate of every heart will be sealed...".*<sup>96</sup>

In the context of spiritual *hijrah*, the Prophet (p) is reported to have said, *"The believer is the one from whom people's wealth and lives are safe, and the Muhajir (migrant) is the one who forsakes mistakes and sins."*<sup>97</sup> According to Abdullah bin 'Amr, *"A man said: 'O Messenger of Allah! Which emigration (Hijrah) is best?' He said: 'To leave what your Lord, the Mighty and Sublime, dislikes...'"*.<sup>98</sup> On another occasion the Prophet (p) said, *"A Muslim is the one from whose tongue and hands the Muslims are safe, and a Muhajir (emigrant) is the one who refrains from what Allah has forbidden"*.<sup>99</sup>

It is in the context of such moral and spiritual *hijrah* from what is forbidden to what is enjoined, that some scholars believe that the Prophet (p) also said, *"Emigration will not come to an end, untill repentance (from wrongdoing) comes to an end; and repentance will not come to an end till the sun rises from the place where it sets."*<sup>100</sup>

---

<sup>96</sup> Al-Tahawi, *Sharh Mushkil al-Athar*, ed. Shu'aib al-Arnaout, Mu'assasah al-Risalah, 1994, vol.7, p.47, hadith no.2635.

<sup>97</sup> *Musnad Ahmad*, Hadith no. 23965

<sup>98</sup> *Sunan al-Nas'I*, hadith no. 4165.

<sup>99</sup> *Sahih Al-Bukhari*, hadith no. 9.

<sup>100</sup> *Musnad Ahmad*, hadith no. 16906.



Accordingly, Imam al-Tahawi said regarding this hadith, the *hijrah* mentioned is the *hijrah* from wrongdoing, and not the other form of (physical) *hijrah*. This is based on the statement in the hadith, “until repentance comes to an end”.<sup>101</sup>

Ibn Abd al-Barr similarly said regarding this hadith, after citing other similar one, that it applies to spiritual migration (*hijrah*) and not the physical form.<sup>102</sup>

While discussing the subject of repentance before the End Times, Sheikh Uthaimeen cites this hadith as evidence. This indicates that he understood the meaning of *hijrah* in this context to be of the spiritual form.<sup>103</sup>

In conclusion, this hadith does not justify the interpretation which tries to consider it as evidence of the obligation for Muslims to migrate (*hijrah*) from safe non-Muslim communities or countries where these Muslim minorities have freedom to practise the most essential teachings of their religion and do not fear persecution on account of their faith. It should be reiterated, that once the early Muslims (*Salaf*) were free from any form of unbearable persecu-

---

<sup>101</sup> Al-Tahawi, *Sharh Mushkil al-Athar*, ed. Shu'aib al-Arnaout, Mu'assasah al-Risalah, 1994, vol.7, p.5, hadith no.2634.

<sup>102</sup> Ibn Abd al-Barr, *Al-Tamhid*, Mu'assasah al-Qurtuba, vol.8, p.389-390.

<sup>103</sup> Muhammad ibn Salih bin Muhammad al-Uthaimeen, *Sharh al-'Arba'iyin al-Nawawiyyah*, Dar al-Tharya li al-Nashr, p.104.

tion in a community, they were also considered free to reside in such non-Muslim communities.

---

**8. Jarir bin Abdullah al-Bajali, who was a leader of his tribe (Bajilah), is reported to have said that: "I came to the Prophet (p) when he was accepting the people's pledge (*bay'ah*), and said: 'O Messenger of Allah, extend your hand so that I may give you my pledge, and state your terms, for you know best.' He said: *'I accept your pledge that you will worship Allah, establish prayers (Salah), pay the Zakah, be sincere toward the Muslims, and desert the polytheists (mushrikin).*"<sup>104</sup>**

---

The last phrase of the Hadith – “and desert the polytheists (*mushrikin*)” – is used by some as evidence for the obligation of migration (*Hijrah*) from non-Muslim lands, including those that are not hostile to Muslims.

There are numerous multiple-chained (*mutawatir*) hadith from Jarir regarding his pledge with the Prophet (p), and they do not contain this last phrase “...and desert the polytheists”.<sup>105</sup> It is only in one isolated (*gharib*) but

---

<sup>104</sup> Sunan al-Nasa'i, Hadith no. 4177; Musnad Ahmad, Hadith no. 19163.

<sup>105</sup> See: Sahih al-Bukhari, Hadith 55,493,1313; Sahih Muslim, Hadith no. 83 & 85; *al-Mu'jam al-Awsat*, Hadith 596; *Sunan al-Darimi*, Hadith 2595; *Musnad Ahmad*, Hadith 19228.

authentic hadith, narrated through Abu Wa'il from Jarir which is cited above that this phrase appears.<sup>106</sup>

While this hadith is authentic, there does not appear to be any evidence that this additional phrase “and desert the polytheists” applied to others or became part of the policy for the companions who embraced Islam. This is especially as this incident of Jarir's embracing Islam occurred after the conquest of Mecca when there was no longer the policy recommending new Muslims and their communities to move to or closer to Medina for security purposes.<sup>107</sup>

It is known from the biography of Jarir that he personally did spend time in Medina after embracing Islam.<sup>108</sup> After a while in Medina where he learnt more about Islam, the Prophet (p) then sent him to Yemen which was a non-Muslim land at the time in order to propagate Islam.<sup>109</sup> Afterwards, and during the period of the Rightly Guided Caliphs, he spent most of his time in what at that time was also predominantly non-Muslim region of the Levant

---

<sup>106</sup> Authenticated by Al-Albani. See Nasiruddeen al-Albani, *Irwah al-Ghalil*, al-Maktab al-Islami, Beirut, 2nd. ed., 1985, vol.5, pp.31-32.

<sup>107</sup> Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.532.

<sup>108</sup> Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.534. See also, *Musnad Ahmad*, no. 19227.

<sup>109</sup> Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.536.

(*Sham*) and Iraq, and was involved in propagating Islam and in battles defending it from hostile others.<sup>110</sup>

It seems clear from the life of the main narrator of the hadith, Jarir, that the additional instruction to “desert the polytheists” was not understood to be a permanent prohibition of residing amongst polytheists, as can be seen from the fact that the Prophet (p) himself sent him to such polytheist communities to propagate Islam. The instruction can also not be generalized to apply to others since they did not have such additional clauses (“and desert the polytheists”) in their pledges with the Prophet (p).

In conclusion, it can safely be said that the additional clause of “deserting the polytheists” was temporary and specific to Jarir while he learnt more about Islam. It was not a new policy prohibiting Muslims from migrating to or residing in safe non-Muslim lands which was the norm during the life of the Prophet (p) and his companions, especially after his demise.

## **Lessons from the Qur'an, Sunnah and Sirah for Muslim Minorities**

There is therefore nothing entirely new or strange about Muslims living as minorities in non-Muslim land and

---

<sup>110</sup> Al-Dhahabi, *Siyar A'lam al-Nubala*, Muassasat al-Risalah, 3rd ed., 1985, vol.2, p.535.

under non-Muslim leadership in Islamic history, and from the time of the Prophet (p) himself and his closest companions.<sup>111</sup> This was true for most of the other prophets sent by Allah to the various communities, nations and tribes of humanity who were predominantly non-Muslims. Those mentioned in the Qur'an include Nuh/Noah, Abraham, Ayub/Job, Yunus/Jonah, Lut/Lot, etc. Thousands of other prophets have not been named in the Qur'an. Allah seems not to have ever had a problem with sending righteous persons to live with and positively influence non-Muslim communities and contribute to their welfare.

Most Muslims who faced tolerable degrees of religious freedoms and justice bore patiently in their host communities, and gradually thrived, not just survived. Where and when persecution was intolerable, they migrated to safer or less hostile non-Muslim communities and made peace treaties with others.

Being in a polytheist society did not prevent the Prophet (p) from cooperating with fellow citizens in promoting jus-

---

<sup>111</sup> What is relatively new is the international peace treaties under the UN along with the changed new norm of peace as the default relationship between nations. The concept of the "nation state" and acceptance of equal citizenship and the United Nations agreements are also new developments in international relations that were not in place during the period of most classical jurists. It is some of these change norms that have resulted in changes in some contemporary rulings related to Islamic political thought. This is in line with the legal maxim, (*La yunkar taghayyur al-Ahkam bi taghayyur al-Ahwal*).

tice and the common good, peacebuilding and being charitable, supporting victims and being hospitable, managing funds and investments, and living a life that earned him the reputation of “*The Trustworthy One*” – Al-Amin – among the polytheists of Mecca.<sup>112</sup>

In some of these non-Muslim states and communities, members of the Muslim minorities have been appointed as leaders. Prophet Yusuf (p) for example, was put in charge of the food security of all Egypt under the leadership of a non-Muslim king, as cited earlier. He did not simply accept a position of leadership, but in fact asked for the appointment, as mentioned in the Qur'an. (Qur'an 12:55)

Some embraced Islam while being heads of state, such as Najashi of Abyssinia, and while still remaining the king of the Christian kingdom of Abyssinia.<sup>113</sup> The Prophet (p) did not even suggest that he should leave the throne of his kingdom. It is reported that Najashi the King of Abyssinia embraced Islam but did so quietly and he was buried by his

---

<sup>112</sup> Abu Abdullah Muhammad bin Ahmad Al-Qurtubi, *al-Jami' li Ahkam al-Qur'an*, vol.16, p.170, & vol.19, p.75, 284, Al-Maktabah al-Shamilah 3.13; Ibn Kathir, *al-Bidayah wa al-Nihayah*, Maktabah al-Ma'arif, Beirut vol.2, p.301-303; Ibn Kathir, *Sirah al-Nabawiyyah*, al-Maktabah al-shamilah, 3.13, vol.1, p.280; Ibn Hisham, *Sirah al-Nabawiyyah*, vol.2, p.19; Safy al-Rahman Mubarakfuri, *Al-Rahiq al-Makhtum*, (The Sealed Nectar: Biography of the Noble Prophet), Dar-Salam Publishers, Riyadh, 1996, p.47.

<sup>113</sup> Al-Imam Shams al-Din al-Dhahabi, *Siyar A'lam al-Nubala'*, 10th Ed., Mu'assasah al-Risalah, Beirut, Lebanon, 1994, Vol. 1, P. 428.

people as a Christian. The Prophet (p) organised a funeral prayer for him in Medina and said of him when addressing his companions as a “righteous man” and “your brother”.<sup>114</sup> This was in spite of the fact that the Muslim king was not once known to have performed the five daily prayers (salat), fasting in Ramadan, given out zakat, etc.<sup>115</sup> It should also be noted, that his inability even as a leader to establish or attempt to implement anything in Islamic law was never a basis for censure or any criticism of him by the Prophet (p) or any of his companions. No one ever accused him of doing wrong by heading a disbelieving nation (*Dar al-Kufr*). On the contrary, he was regarded as a “righteous man” and prayed for by the Prophet (p) himself.<sup>116</sup>

The companion **Tufayl al-Dawsi** was the leader of his tribe Banu al-Daws, when he embraced Islam. The Prophet (p) did not ask him to relinquish his leadership of a non-Muslim society which at the time was actually opposed to Islam. The Prophet (p) in fact asked him to return to his community and bear with them patiently as he gradually

---

<sup>114</sup> Bukhari, 3877.

<sup>115</sup> Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.19, p.217.

<sup>116</sup> Anyone who has a problem with a Muslim leading or holding political office in a non-Muslim state needs to think carefully about the tradition and sunnah of the Prophet (p) and his companions on this question.

shared the message of Islam with them, and they eventually accepted it from him.<sup>117</sup>

Many others became Muslims while still remaining leaders in non-Muslim governments and positively influencing their societies, which gradually became more and more Islamic, such as the Mongols princes who embraced Islam and who gradually spread Islam with their colleagues and families. There are many parts of the Muslim world in the past and present where their leaders became Muslims while still leading their non-Muslim communities, but which gradually and eventually turned to Islam.<sup>118</sup>

Even today, we have various converts to Islam and Muslims who are occupying leadership positions in predominantly non-Muslim countries and are positively influencing those communities. This is not a contemporary issue that needs new and original verdicts. This reality has been with Islam from the beginning, and their continued leadership was not criticised by the Prophet (p) or the Rightly Guided Companions.

---

<sup>117</sup> Al-Asbahani, *Dala'il Nubuwwah*, Maktaba Al-Shamela, 3.35, vol.1, pp.218-219.

<sup>118</sup> Similar examples include that of Munzir ibn Sawa Al-Tamimi, the ruler of Bahrain, who sent his two sons to the Prophet (p) after accepting Islam, for further readings see al-Mubarakfuri, Saif-ur-Rahman, *al-Raheeq al-Makhtoom*, "The Sealed Nectar", Multaqah Ahl al-Hadith, Maktaba al-Shamela, p. 319.



Peaceful Muslim relations with residence and integration in non-Muslim territories automatically imply certain compromises. And this was part of what the Prophet (p) taught and practiced as exemplified during the approximately two-week period of negotiating the terms of the Treaty of Hudaibiyyah.<sup>119</sup> Rejecting all compromises would make Muslim residence in non-Muslim territory impossible, and would undermine the presence, influence and spread of the most essential and fundamental teachings of Islam (the *ma'lum min al-din bi al-darurah*) and its priority objectives related to social justice and human welfare.

Islamic jurisprudence, however, has developed several mechanisms and concepts based on the Qur'an and Sunnah, as practiced by the Prophet (p) and his Rightly Guided Companions, that facilitate and sanction (but also restrict certain) compromises. These mechanisms include the principles and legal maxims related to duress (*ikrah*), hardship (*mashaqqah*), necessity (*darurah*), need (*hajah*), concession (*rukhsa*) and public welfare (*maslahah*).<sup>120</sup>

---

<sup>119</sup> Mahdi Rizqullah Ahmad, *al-Sirah al-Nabawiyah fi Dau'i al-Masadir al-Asliyyah*, Markaz al-Malik Faisal li al-Buhuth wa al-Dirasat al-Islamiyyah, al-Riyadh, 1992, p. 493.

<sup>120</sup> These concepts can be found in any good textbook on Islamic legal theory and principles (*Usul al-Fiqh*), and in classical juristic texts (*fatwa* literature) that addressed the questions and needs of (among others) Muslim living as minorities or of conquered Muslim majorities. There is however special consideration given to these in contemporary literature that focus on Islamic

## The Laws of the Land and Muslim Identity

Every Muslim belongs to the global community of Muslims or Ummah of Islam. This is an exclusive religious or faith community bound by their common essential and fundamental beliefs and practices that are in turn based on definitive textual evidence of the Qur'an and Sunnah regarding which there is no difference of opinion among scholars – *ma'alum min al-deen bi al-darurah*.<sup>121</sup> Only deliberate and conscious rejection of the truthfulness of these essential fundamentals can take a person out of the fold of Islam and into disbelief (*Kufr*).<sup>122</sup> Members of this large global community of Islam meet annually during the

---

Jurisprudence for Muslim Minorities (*Fiqh al-Aqalliyyat*). This is occasioned by the reality today of more than a third of all Muslims living as minorities in non-Muslim lands. (See Mohammed Kettani: *Muslim Minorities in the World Today*, Mansell Publishing Ltd, London, 1986 p. 241). While this genre of literature sounds new, the subject matter and principles are germane to Islamic law from its earliest sources and origins. See also, “*The Simplified Encyclopaedia of Contemporary Issues in Islamic Jurisprudence Fiqh* (Jurisprudence of Muslim minorities) Center of Research Excellence in Contemporary Fiqh Issues; Osoul Global Center, Riyadh, 2018.

<sup>121</sup> Tabari, *Jami' al-Bayan fi Ta'wil al-Quran*, Muassat al-salah, 1st edition, 2000, vol. 6, p.459; Al-Dhahabi, *Siyar a'lam al-Nubala*, Mu'assasat al-Risalah, 3rd edition, 1985, vol. 7, p. 155; Al-Shatibi, *al-Muwafaqat*, Dar ibn 'Affan li al-Nashr wa al-Tawzi' Cairo, 1st edition, 1997, vol. 5, p. 174.

<sup>122</sup> Rabi' al-Madkhali, *Hujiyyat khabr al-Ahad fi al-'Aqaid wa al-Ahkam*, Maktabah Shamilah 3.35, p.61; Abdullah Ibn Baaz, *Bayan al-Tauheed al-Lazi Arsala biyi al-Rusul*, Ri'asat Idarat al-Buhuth al-'Ilmiyyah wa al-Ifta wa al-Da'wah wa al-Irshad, 1st edition, 1996, p.27; Wahbah Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Dar al-Fikr, Damascus, 4th edition, vol. 7, p. 141.

Hajj pilgrimage. All Muslims of all times and places belong to this community of believers, and should be regarded as such, whether they live as a majority or minority, under Islamic law or non-Muslim laws, whether they are good or bad, and even whether they are the oppressors or the oppressed.

Islam as a religion and *Dar al-Islam* as a territory, are not synonymous. While a *Dar al-Islam* status would be desirable, Islam can exist and flourish as it did in the beginning without such a territory. And if Muslims are able to practise their religion in a territory, they may reside in it regardless of the formal juristic categorisation and terminology of that territory.

During the time of the Prophet (p) and his companions, the laws of the land in which Muslims lived was not and has never been what makes a person a Muslim or not. It is also not whether they are sinful or not, whether they honour and respect the laws of Islam, or whether they flaunt and disobey them. So long as they accept as true, and believe in the known essential and fundamental beliefs, laws and practices of Islam, they are Muslims, even if they do not implement these teachings. Muslims who do not implement or obey the laws of Allah, while accepting them to be truly divine, are Muslims even if they are regarded as guilty of wrongdoing (*fisq*) and sinful actions (*ma'asiya*).

There may however be several legitimate reasons based on the sources of Shari'ah such as "consideration of public interests" (*maslahah*), preclusion or "blocking the means" (*sadd al-dhari'a*), juristic discretion (*istihsan*), etc., for not implementing certain normative laws of Islam in particular contexts. This is similar to the case of Caliph Umar suspending the prescribed (*Hadd*) punishment for theft, due to his of "consideration of public interests" (*maslahah*) in a context of social necessity (*darurah*).<sup>123</sup> The "Declaratory Laws" (*ahkam al-wada'iyah*) of Shari'ah determine the appropriateness of a law to its context based on the existence of causes (*sabab*), prerequisite conditions (*shart*) being met, and the absence of hindrances and preventatives (*mani'*).<sup>124</sup> This is very important to the understanding of when general rulings of the Shari'ah apply and when exceptions to those rules are called for by the Shari'ah itself. This is also important in appreciating when strict or normal laws

---

<sup>123</sup> Al-Walid Ibn Rushd, *Al-Bidayah al-Mujtahid wa Nihayah al-Muqtasid*, Dar al-Fikr, Beirut, n.d., vol.1, p.291, and Mohammed Biltaji, *Manhaj 'Umar Ibn al-Khattab fi al-Tashri'*, 1st ed. Dar al-Salam, Cairo, 2002, p. 190. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.10. See also Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. Islamic Research Institute, Islamabad, 1970, p.145; Ibn al-Mulaqqan, *Al-Badr al-Munir fi Takhrij al-Ahadith Wa al-Athar al-Waqi'ah fi al-Sharh al-Kabir*, Saudi Arabia: Dar al-Hijrah, 1425, vol.8, p.679; 'Atiyyah bin Muhammad Salim, *Sharh Bulugh al-Maram*, al-Maktabah al-Shamilah, 3.13, 1420, p.12.

<sup>124</sup> See Shaykh Abdullah bn Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, Abu Dhabi UAE, 2022, pp.106- 107.

('azimah) are to be followed, and when Shari'ah demands that these be replaced by concessionary laws (*rukhsah*).<sup>125</sup>

A Muslim who breaks or does not follow or implement the categorical laws of Allah in the Qur'an or Hadith, which prohibits drinking alcohol, or consuming pork, involved in adultery (*zina*), or dealing in usurious (*riba*) transactions, etc. is still a Muslim, even though he or she may be committing a sin. Such a person may be regarded as a wrongdoer (*fasiq*) and guilty of sin (*ma'asiya*), but not a disbeliever (*kafir*), as long as he or she accepts Allah's judgement (*hukum*) that these actions are wrong and sinful.

Allah describes different levels of believers, but still recognises them as believers. “*And among them are some who sin against themselves; and some who keep half-way [between right and wrong]; and some who, by God's leave, are foremost in deeds of goodness: [and] this, indeed, is a merit most high*”. (Qur'an 35:32).

---

<sup>125</sup> For more discussion on “Declaratory Laws” (*ahkam al-wad'iyyah*) and their effects on primary rulings (*Azimah*) and concessionary rulings (*Rukhsa*), see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, pp. 290-294; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, pp. 139- 140. See also, al-Shawkani, *Irshad al-Fuhul li Tahqiq 'ilm al-Usul*, Dar al-Kitab al-Arabi, 1st ed. 1999, vol.1. pp. 31 – 35. Abdulwahab Khallaf, *Ilm Usul al-Fiqh*, Maktabah al-Dawah, Cairo, 2nd ed, vol.1, pp. 117 – 123. Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, al-Maktabah al-Islami, vol.1, pp. 129 – 131. Maktabah al-Shamela v.3.35.

When a people or a leader is in a position to establish Islamic law in a place or on a particular issue but refuses to out of laxity and weakness in faith, they are still Muslims even if wanting, blameworthy and sinful. But they are not excommunicated (*takfir*) out of the Muslim Ummah. In other words, declaring a land as a land of Disbelief (*Dar al-Kufr*) was never understood by jurists as also implying that those Muslims living there were to be regarded as disbelievers or Kuffar.

The practise of regarding people who do not implement Islamic laws in a place, or on a particular issue, as excommunicated from the fold of Islam and therefore disbelievers (*kuffar*), was historically known to be the critical identifier and the characteristic marker of the violent Muslim extremist sects generally referred to as the Khawarij. This was the group that regarded the fourth of the Rightly Guided Caliphs, Ali bin Abi Talib as a disbeliever (*kafir*) because in their view, he did not implement the law of Allah in the literal text of the Qur'an, and they assassinated him on that account. The Khawarij regarded the breaking or non-implementation of Islamic law as automatically tantamount to, and proof of disbelief (*Kufr*). The ideology behind this Khawariji perspective – that of Muslims who break or do not implement Islamic laws being disbelievers - has been criticised and refuted by all the distinguished scholars of

mainstream Islam – *Ahl al-Sunnah wa al-Jama'ah*. Those who continue to hold on to this “takfiri ideology” have also continued to be referred to as Khawarij by scholars even today.

Disturbingly, some who claim to also be critical of the historical Khawarij sects of the past do not seem to see “the sheep in wolves clothing,” and the new packaging of the same central idea (of sinning equals disbelief) that leads to the excommunication (*takfir*) and killing of wrongdoers and innocent Muslims.

Some have tried to justify their belief by claiming that the establishment of a political state operating Islamic legal law is an obligation on every Muslim, an article of faith and matter of creed (*Aqidah*), and part and parcel of the belief in the Oneness of Allah (*Tawhid*). Consequently, not pursuing efforts to establish such an Islamic state and law is tantamount to rejection of Allah's Oneness (*Tawhid*) and Sovereignty as the Lawgiver, and this implies disbelief (*Kufr*). This ideology which has reappeared in the Twentieth Century under the term “*Tawhid al-Hakimiyyah*” has implications that are too similar to Khawarij in their perspective and judgement of those who do not implement Islamic law in their area of jurisdiction. Instead of the breaking or non-implementation of Islamic laws being regarded as equivalent to a sin (*fisq*) and a form of wrong-

doing (*ma'asiya*), as is the unanimous position of mainstream Islam (*Ahl al-Sunnah wa al-Jama'a*), they regard such sin as proof of rejection of Allah's will and tantamount to disbelief (*Kufr*). This has been used to justify regarding Muslim-majority states that do not implement Islamic law as being part of *Dar al-Kufr* and *Dar al-Harb*, and which can and should be fought against.<sup>126</sup>

This interpretation of Islamic theology and creed (*Aqidah*) has no support in the Qur'an or Sunnah, as understood by the Rightly Guided Companions and scholars of mainstream Islam. Indeed, it is this Khawarij ideology that resulted in the killing of the last of the four Rightly Guided Caliphs. On the contrary, the idea that wrongdoing, breaking or neglecting the law is tantamount to disbelief (*Kufr*) is contrary to numerous teachings and texts of the Qur'an and Sunnah, and what was known about the Oneness of Allah (*Tawhid*) during the time of the Rightly Guided Caliphs and early scholars (*salaf*). It has a characteristic sign of Khawarij narratives and the political ideology which continues to be used by violent extremists to excommunicate, fight, and kill thousands of Muslims.

---

<sup>126</sup> For further reading on the subject See *Tauhid Hakimiyyah Verses in Ibn 'Ashur's Interpretation* by Saifuddin Herlambang Munthe; "*Al-Hakimiyyah Zhahirah al-Ghuluww fi ad-Din*", sumber: <http://www.habous.gov.ma>, accessed on March 22, 2018.



Suffice it to say that the Negus and king of Abyssinia did not implement any known law of Islam in his kingdom, but he was a Muslim, and the Prophet (p) prayed for him and described him as a “*Rajulun Salih*”. No mainstream scholar of Islam has ever regarded him as anything less than what the Prophet (p) said, simply because he did not as a king implement any aspect of Islamic law.

Regardless therefore, of the formal juristic categorisation and terminology of a territory, if the legality of Muslim residence in a non-Muslim territory or country is admitted, then migration (*Hijrah*) away from there is not necessary, and all other issues related to migration are secondary. Similarly, if migration from a place is not necessary, then residence is not just permissible, but may even be recommended, as it was during the lifetime of the Prophet (p) and his companions after him. It is therefore up to Muslim minorities and their scholars in consultation with those experienced in similar contexts, to determine what the best ways are for responding to the various other challenges they face.

## RESIDENCE IN NON-MUSLIM LANDS: CLASSICAL OPINIONS AND THEIR CONTEMPORARY RELEVANCE

Humanity has divided the world into different territories and categories of human beings. Some have distinguished people based on race, tribe, religion, gender, development, and civilization, etc. Some viewed those who shared their chosen identity as part of the civilized world, while others were either uncivilized, less civilized, barbarians, savages, etc. Christendom historically refers to the Christian states, Christian empires, Christian-majority countries and the countries in which Christianity dominates, prevails, or that it is culturally or historically intertwined with. Christendom was historically a term used to describe the Christian world and represented a geopolitical power that was juxtaposed with both the pagan and especially the Muslim world.<sup>127</sup>

As mentioned earlier, some Muslim scholars of the past and present have, based on their *ijtihad* (juristic reasoning) in their contexts given verdicts to the effect that it is prohibited for Muslims to travel to or reside in non-Muslim soci-

---

<sup>127</sup> <https://en.wikipedia.org/wiki/Christendom> Retrieved on 21/06/2023.

eties that have been designated as *Dar al-Kufr* (Land of Disbelief) regardless of the degree of safety, security, justice and freedom of worship and religion Muslims have or can have in such communities.

Others have unfortunately understood these verdicts and rulings (fatwas) as if they are absolute and unchanging religious truths from the Qur'an and Sunnah, and not a part of a variety of rational juristic responses (*Ijtihadi*) to particular societal contexts. Based on this belief, some have concluded that all non-Muslim societies are prohibited for Muslims to reside in.<sup>128</sup> Others conclude that non-Muslim lands are *Dar al-Harb* and are to be fought.

We shall briefly look more systematically at the diversity of past and present scholarly opinions on how lands, “abodes”, territories or countries were classified, and the implications of these to Muslim residence in non-Muslim lands or countries.

Firstly, it is important to understand that scholars have had various criteria for classifying lands. For some scholars, the classification and categorization of a particular land had

---

<sup>128</sup> This is in spite of the fact that many of the Companions of the Prophet (p) lived under non-Muslim rule during and after the time of the Prophet (p). Many actually relocated from the Muslim centre and city-state of Medina (undisputedly a *Dar al-Islam*) after the demise of the Prophet (p) and settled as minorities in non-Muslim lands (*Dar al-Kufr*) and which did not have any knowledge of Islam, let alone implement Islamic law.

direct implications to whether or not Muslims could reside there. For others, it did not. As these criteria and classifications are not directly from the Qur'an or Sunnah, or from the Rightly Guided Caliphs, the scholars have differed on these, and on their implications to Muslim residence in, and relationship with non-Muslim lands.

Five major criteria seem to have been used by scholars to determine if a territory is a "Land of Islam" (*Dar al-Islam*). Some use a combination of these criteria. Some scholars agree on the validity of some of these criteria, while others disagree.<sup>129</sup> They include:

1. A land where Islamic rules and laws (*Ahkam al-Islam*) apply.<sup>130</sup>
2. A land of a Muslim ruler, and where he has control (*Isti'la*) over its affairs.<sup>131</sup>
3. A land of security for Muslims.<sup>132</sup>

---

<sup>129</sup> Jasser Auda, *What is the Land of Islam?*, [www.jasserauda.net](http://www.jasserauda.net), n.d., p.8-17.

<sup>130</sup> For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, [www.jasserauda.net](http://www.jasserauda.net), n.d., p.8-10.

<sup>131</sup> For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, [www.jasserauda.net](http://www.jasserauda.net), n.d., p.8, 10-11.

<sup>132</sup> For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, [www.jasserauda.net](http://www.jasserauda.net), n.d., p.8, 11-12.

4. A land where the practicing of public acts of worship (*Sha'a'ir al-Islam*) is allowed.<sup>133</sup>
5. A land of Justice” (*Dar al-'Adl*).<sup>134</sup>

Based on these criteria, classical scholars have classified lands (communities or countries) very differently, and into numerous categories based on their *ijtihad* and in response to their historical contexts and geo-political realities.

For the purpose of understanding juristic positions related to Muslim residence (and migration) some classified lands into two, others into three, and others differed from the rest in their definitions and terms, reflecting their independent assessment, criteria and reasoning (*Ijtihad*).

Within the diversity of views in determining the classification of territories, it will be noticed that some of the jurists distinguished between ***a place of safety and justice where Islam as a religion is free to flourish***, and ***a place where Islamic law had jurisdiction over physical territory***. In other words, while some of these jurists concerned themselves more with the security of Muslims and the freedom to spread of ***Islam as a universal moral imperative***, others

---

<sup>133</sup> For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.9, 12-15.

<sup>134</sup> For further references to classical scholars who depend on this criterion, see Jasser Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p.9, 15-17.

focused primarily on *Islam as a territorially based political identity*.<sup>135</sup> One perspective therefore focused more on *the potential of the religion of Islam to grow in influence in a territory*, while the other on *the kinetic or actual influence and presence of Islamic law in a territory*.<sup>136</sup> One considered the future potentials and opportunity for Islam (*da'wah* opportunity) of a location, while the other focused on the present reality and area under control (jurisdiction and legal possession of real estate and territory).

We shall for the purpose of simplifying this diversity and relating it to the subject of Muslim residence in non-Muslim lands, categorise the major perspectives into three slightly overlapping groups.<sup>137</sup>

## **The Traditional Binary or Two-State Paradigm**

Some Muslim scholars of the past and present have based on their juristic reasoning (Ijtihad) in response to their contexts, classified the entire world into only two major domains based primarily upon the criteria of whether or not Islamic law and governance system is being

---

<sup>135</sup> Khaled Abou El Fadl, *Islamic law and Muslim minorities*, p.164.

<sup>136</sup> i.e., the “future potential for Islam” instead of “the current status quo”.

<sup>137</sup> Similar to, but different for Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.137-147.

applied.<sup>138</sup> Those countries governed by Islamic law are termed *Dar al-Islam* (Land of Islam) while the rest of the world is regarded as *Dar al-Kufr* (“Land of Disbelief”) or *Dar al-Shirk* (roughly “Land of Polytheism”).<sup>139</sup> The rest of the world (*Dar al-Kufr/Shirk*) is also regarded as *Dar al-Harb* (Land of War or enemy states) whether or not these were lands with security or asylum for Muslims or were accommodating of Muslim freedom of worship. The presence or absence of temporary peace treaties does not change the designation of a land. All non-Muslim countries were viewed as actively or potentially hostile to *Dar al-Islam* and hence regarded as “enemy states” or *Dar al-Harb*.

Also, it has been noted that this view is held mainly by scholars from those schools of law (such as the Hanbali and especially the Maliki) that spread and interacted more with western Christendom, mainly European Christians in the western parts of the Muslim world – the Middle East and North Africa. These 2 schools in particular seem to have shared similar contexts and experiences, and often very negative ones from the Inquisition in Spain, the invasions

---

<sup>138</sup> There are many nuances among those who hold this paradigm that cannot be presented here. Focus will primarily be on the majority's view as it relates to Muslim residence in non-Muslim lands.

<sup>139</sup> *Dar al-Harb* is also referred to by some scholars as *Dar al-Bid'ah* (Land of Heresy) or *Dar al-Ma'asiya* (Land of Sin) and *Dar al-Dhulm* (Land of Injustice).

by the Crusaders, etc., in the hands of their Western Christian conquerors and colonialists. These developed similar approaches and perspectives regarding international relations and the question of Muslim residence in non-Muslim lands.<sup>140</sup> For most Christians at the time, the world was also divided into two, Christendom and the Pagan World, which for many included Muslims.<sup>141</sup>

In addition to Imam Malik bin Anas, as cited by Sahnun (d.248 AH),<sup>142</sup> Al-Wansharisi (d.914) citing Ibn Rushd,<sup>143</sup> and the Maliki Shaykh al-Azhar, 'Ilish (d. 1299 AH), and others, held the view that the implementation of Islamic law was the determinant of whether a country was to be regarded as *Dar al-Islam* or *Dar al-Harb*.<sup>144</sup>

The Hanbali jurist, Ibn Qayyim for example states that for the majority of jurists, *Dar al-Islam* is a territory where

---

<sup>140</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, 146.

<sup>141</sup> wikipedia.org/wiki/Christendom retrieved 19th June 2023.

<sup>142</sup> Sahnun, *Al-Mudawwana al-Kubra*, Matba'a al-Sa'ada, Cairo, 1905, vol. 3, p. 22.

<sup>143</sup> Al-Wansharisi, *Ansa al-Matajir*, Maktaba al-Thaqafa al-Diniya, Al-Zahir, 1996, p.30; Ibn Rushd, *al-Muqaddimat al-Mumahidat*, vol. 2, p.151 - cited in Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p. 154.

<sup>144</sup> Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.226



Muslims live, and where Islamic laws (*ahkam al-Islam*) are implemented. If Islamic laws are not applied, it cannot be said to be a Muslim territory, even if it is close to *Dar al-Islam*.<sup>145</sup> This is similar to the opinion held by Ibn Muflih al-Maqdisi.<sup>146</sup>

Hijrah consequently means migration in the cause of Allah from the land of disbelief and sin to the land of Islam and obedience.<sup>147</sup> According to Ibn Al-Arabi, *Hijrah* means departure from the abode of war (*dar al-Harb*) to the abode of Islam (*dar al-Islam*).<sup>148</sup> Ibn Qudama defines *Hijrah* as setting out from the land of disbelief to the land of Islam.<sup>149</sup> The Zahiri School of law is also of the view that a Muslim must not live in a non-Muslim land even if he or she has the freedom to practice their religion.<sup>150</sup>

For some of those who hold this binary paradigm, *Dar al-Harb/Kufr* included Muslim lands conquered and colo-

---

<sup>145</sup> Ibn Qayyim al-Jawziyyah, *Ahkam Ahl al-Dhimma*, Ramli lil-Nashr, Dammam, 1997, vol.2, p.728.

<sup>146</sup> Ibn Muflih al-Maqdisi, *Al-Adab al-Shar'iya*, Muassasat al-Risala, 1999, vol.1, p.211-212.

<sup>147</sup> Muhammad al-Thani Abd al-Mumin, Muhammad al-Haj Abu Bakar, et al. *Al-Wasatiyyah fi al-I'tiqad*, Wisdom Publishers, Abuja - Nigeria, 2019, p. 55.

<sup>148</sup> Ibn al-Arabi, *Ahkam al-Qur'an*, vol, 2, p. 453, al-Maktabah al-Shamilah, 3.35.

<sup>149</sup> Ibn Qudamah, *al-Mughni*, Dar al-Fikr, Beirut, 1405 AH. vol.10, p.505.

<sup>150</sup> Ibn Hazm, *al-Muhallah bi al-Athar*, vol.5, p.419 cited in Fallah Zardumi, *Fiqh al-Siyasah al-Shar'iyyah li al-Aqalliyat al-Muslimah*, 1426AH, p.154.

nised by non-Muslims. It also included Muslim lands where Islamic law was not the dominant law of the land, since the law of the land was the main criteria for classifying lands.

In other words, the presence or absence of the dominance of Islamic law for Muslims was the most important criteria and condition for categorising a land as *Dar al-Islam* or *Dar al-Kufr/Harb* and not the religious identity of the citizens. Some who held this position, narrowed down the meaning of “application of Islamic law” to imply mainly the criminal law, and others narrowed it down even further to the application of the “prescribed punishments” (*hudud*) in particular.<sup>151</sup>

Non-Muslims who accept to live with treaties under the protection (*dhimma*) of *Dar al-Islam* and under its sovereign ruler or caliph, are regarded as living in *Dar al-Islam* and do not belong to the political-legal jurisdiction of *Dar al-Harb*.

Based on this two-state paradigm, most Muslim and non-Muslim countries in the world today (East and West) are viewed as *Dar al-Harb* (enemy states). Consequently, the scholars of this persuasion regard it as prohibited for Muslims to reside in the West or anywhere other than in Muslim lands where Islamic law (of varying degrees) is

---

<sup>151</sup> Jasser Auda, *What is the Land of Islam?*, [www.jasserauda.net](http://www.jasserauda.net), n.d., p.8.

recognised. Hijrah from non-Muslim lands – irrespective of the degree of security, justice and freedom from religious persecution – is regarded as an obligation for those with the means and opportunity.

This binary perspective was probably the most politically pragmatic and realistic for the international relations in its context. It was the equal and opposite of the Christendom binary approach. A challenge today is that some regard this categorisation as a divine prescription of the Shari'ah based on the Qur'an and Sunnah, and not as a juristic opinion in response to its historical and changing context, which may not be universal for all Muslims and times. Some who hold this view today, do not recognise the existence of peace treaties (such as those of the UN, AU, EU, etc.) as changing the context of this dichotomy. While recognising the legitimacy and even desirability of peace treaties for the purpose of peace and security in international relations, these do not change the fact that non-Muslim lands are *Dar al-Kufr* and therefore *Dar al-Harb*, and hence prohibited for Muslim residence. *Hijrah* is therefore still seen as an obligation on such Muslim minorities within these places.

For some of these jurists, the justifications for this binary paradigm of the world comes mainly from the historical realities on the ground and the lived experiences of

many of the scholars who held this perspective.<sup>152</sup> Residing in such enemy states was regarded by some as supporting the economy of an enemy state (*Dar al-Harb*) that is hostile to or instead of that of *Dar al-Islam*.<sup>153</sup> It was also seen by some as liking and preferring the culture and morals of the Other over that of Islam and Muslims.<sup>154</sup>

Some lend support for this binary paradigm with evidence from the early period of Islam, when most nations outside the city-state of Medina were viewed as a threat and enemy. Most relationships were those of either friend or foe.<sup>155</sup> The unwritten policy in international relations for most of the world at the time, and for most of human his-

---

<sup>152</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, pp.141-142.

<sup>153</sup> Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.157.

<sup>154</sup> Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.155.

<sup>155</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities From the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.163.

tory was “conquer or be conquered”; “colonise or be colonised”.<sup>156</sup> The dichotomy of territories and lands into two - those of Islam and peace (*Dar al-Islam*) as opposed to Disbelief and War (*Dar al-Kufr/Harb*) was also a reflection of the historical context and geopolitical realities of the relevant jurists.<sup>157</sup>

In addition, some present texts in support of this paradigm are also cited from the period before the conquest or occupation of Mecca, when the Prophet (p) initially encouraged the early Muslims and communities who embraced Islam before the conquest of Mecca to migrate and unite in and around Medina against hostile neighbours, and especially Meccan Quraish and their allies. Support for this perspective therefore comes from Hadith where the Prophet (p) made it clear that he would not be responsible for protection of those Muslims who chose to reside outside his political-legal jurisdiction and among hostile others.<sup>158</sup>

Some scholars also justified the prohibition of residing in or moving to non-Muslim lands with the prophetic Hadith cited earlier which says: “*I dissociate myself from*

---

<sup>156</sup> Jeffrey Lang, *Struggling to Surrender: Some Impressions of an American Convert to Islam*, Amana Publications, USA, 1994, p. 190.

<sup>157</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.137.

<sup>158</sup> See earlier discussion under “Commonly misinterpreted Hadith related to Hijrah and Residence”

*all Muslims living in the midst of polytheists....*".<sup>159</sup> As discussed earlier in this material under "Commonly Misinterpreted Texts Related To Hijrah", this statement of the Prophet (p) was actually in response to a very specific situation where some converts to Islam who lived in the midst of a group of polytheists that were hostile to Medina, were unknowingly killed in the battle that ensued. The Prophet (p) was making it clear that he was dissociating himself from the responsibility of the payment of the blood money (*diyya*) in such cases of accidental killing or manslaughter, where the Muslims lived in the midst of hostile non-Muslims.<sup>160</sup> The historical context and occasion (*Sabab al-wurud*) of this hadith, makes it clear that this statement had nothing to do with the prohibition of Muslims migrating to or living in the midst of non-hostile people of other faith which was done by the Prophet (p) himself, and by his companions.

Some have also tried to justify this paradigm from the texts of the Qur'an and Hadith by claiming that verses prescribing peaceful coexistence and treaties with non-hostile others (discussed in Qur'an 60:8, etc.) have been abrogated by the "Verse of the Sword" (Qur'an 9:5). Some scholars

---

<sup>159</sup> Sunan Abu Dawud, hadith no. 2274; *Sunan al-Tirmidhi*, hadith no. 1530.

<sup>160</sup> Muhammad Shams al-Haq al-Azim al-Abadiy, *'Awn al-Ma'bud: Sharh Sunan Abu Dawud'*, Dar Al-Kotob Al-Ilmiyyah, Beirut, 1415, vol. 7 p. 218, no. 2645.

have interpreted this verse to imply that there are to be no more peace treaties with people of other faiths – especially polytheists.<sup>161</sup> Some others consider Qur'an 9:5 is giving the last word on international relations with polytheists, while Qur'an 9:28 as giving the last word on international relations with People of the Book – Jews and Christians.<sup>162</sup>

For these scholars therefore, it is prohibited for Muslims who have the means, and are not driven by necessity, to live outside *Dar al-Islam*. All those who embrace Islam in non-Muslim lands are obligated to migrate (*Hijrah*) from all parts of the world to *Dar al-Islam*, which is understood to be where Islamic law governs the land.<sup>163</sup> And if for any legitimate reason, they are unable to migrate, they should as much as possible socially isolate themselves from their host communities so as to prevent assimilation into the religion, norms and morals of *Dar al-Kufr/Harb*.<sup>164</sup> Experience from

---

<sup>161</sup> Ibn Kathir, *Tafsir al-Quran al-'zim*, Dar Tayyibah li al-Nashr wa al-Tawzi', 2nd edition, 1999, vol.4 pp112-114; Abu Abdulillah al-Qurtubi, *al-Jami' li ahkam al-Quran*, Dar al-Kutub al-Misriyyah, Cairo, 2nd edition, 1964, vol.8, p.73; cited Auda, *what is the land of Islam?*, p.18.

<sup>162</sup> Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, p.64.

<sup>163</sup> See Shaykh Muhammad Naasiruddeen al-Albaanee, *The Obligation of Hijrah from the Lands of Shirk and Kufr*, SalafiManhaj, 2004; Shaykh Abdur Rahmaan al-Adanee, *Questions and answers concerning al-Hijrah: Emigrating to the land of Islam*, masjiduthaymeen.org, 2005.

<sup>164</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Khaled Abou El

various contexts has shown that this was a real fear for not only, but especially oppressed Muslim minorities in different parts of the world.<sup>165</sup> Temporary visits by traders, emissaries, scholars and preachers were permitted if safe, but permanent residence was regarded as impermissible.<sup>166</sup>

Yusuf al-Qaradawi commented on Ibn Qudama's explanation<sup>167</sup> of the need for Muslims to migrate from non-Muslim lands to *Dar al-Islam*. He says that this is on the assumption that the person who is encouraged to migrate does not have the role of teaching or preaching Islam to non-Muslims. As for a person who plays those roles, his stay in the land of non-Muslims will be better as that would be regarded as a form of Jihad.<sup>168</sup>

It should however be noted, that the designation of a place by these jurists as *Dar al-Harb* does not in any way

---

Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.163.

<sup>165</sup> Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994, p.156.

<sup>166</sup> Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Century, *Islamic Law and Society* 1,2, E.J. Brill, Leiden, 1994 pp.147-150.

<sup>167</sup> Ibn Qudamah, *al-Mughni*, Dar al-Fikr, Beirut, 1405 AH. vol.10, p.505.

<sup>168</sup> Ibid. Yusuf al-Qaradawi, *Fiqh al-Jihad*, Maktabah Wahbah, Cairo, 2009, vol.2, p. 952.



imply that they condoned extrajudicial acts of violence against *Dar al-Harb* without clear permission from the caliph of *Dar al-Islam*, or Muslim head of state. All texts of the Qur'an and Hadith that are related to legal punishments or warfare are applied only through the proper legal authorities of the state, and never through personal discretion, which would be as a criminal act. Declaring a place as *Dar al-Harb* was not a permission for anyone to commence hostilities against others. It was simply a theoretical juristic categorization among other categorisations proposed by the reasoning (Ijtihad) of other jurists. It is only the head of state that can decide to make it law, and to act upon it.<sup>169</sup>

For most of these jurists, even when war was regarded as justified against enemy combatants, it was to be managed by the state authorities of *Dar al-Islam* and not anyone else among the Muslim citizens.

## **The Traditional Tripartite or Three- State Paradigm**

Some Muslim jurists of the past and present have based on their juristic reasoning (*Ijtihad*) in response to their con-

---

<sup>169</sup> Qur'an 4:89 and 8:72, were used as evidence for the obligation of Hijra before migration. See Abu Hayyan, *Tafsir al-Bahr al-Muhit*, vol. 4, p. 219, al-Maktabah al-Shamilah, 3.35; 'Muhammad Rashid Rida, *Tafsir al-Manar*, vol. 6, p. 354, al-haiha al-Misriyyah, 1990.

texts, classified the world into three major domains or lands based primarily on the criteria of the safety from religious persecution and security for Muslims which was usually indicated by the existence of peace treaties. These three states are:

1. *Dar al-Islam* (Land of Islam)
2. *Dar al-Harb* (Land of War, or enemy territory), and
3. *Dar al-Sulh/ Dar al-'Ahd* (Land of Treaty, or Peace-treaty State). *Dar al-Sulh* was also referred to by some scholars as *Dar al-'Ahd* or *Dar al-Muwada'a*.<sup>170</sup>

Imam al-Shafi'i is credited as introducing the term "*Dar al-Ahd*" ("Abode of Treaty") to juridical discussion, referring to nations that were not politically Islamic, but which held political alliances or were at peace with one or more Muslim states.<sup>171</sup>

The Qur'an and Sunnah are clear on the need for Muslims to support peace treaties (*Sulh*) with even former enemies, and the obligation to respect such treaties.

---

<sup>170</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, p.141.

<sup>171</sup> Ibn Abu Ya'la, *Tabaqat al-Hanabilah*, vol.2, p. 193. Cited in Ismail Lutfi Fattani, *Ikhtilaf al-Darain wa Atharuhu fi al-Kam al-Munkahat wa al-Mu'amalat*, p.43.

*“And if they (your enemy) incline to peace, incline you also to it, and trust in Allah”. (Qur'an 8:61)*

*“...but if they cease, let there be no hostility except to those who practice oppression”. (Qur'an 2:193)*

*“(Fight them) except those who join a people between whom and you there is a treaty, or those who come to you because their hearts restrain them from fighting you or their own people...” (Qur'an 4:90).*

Here, the Qur'an is also prohibiting Muslims from fighting those non-Muslim nations or communities that are protected by other non-Muslim nations who have peace treaties with Muslims. The rest of the verse reads:

*“... If Allah had willed, He would have given the unbelievers power over you, and they would have fought you. Therefore, if they withdraw from you and fight you not, and instead send you guarantees of peace, know that Allah has not given you a license (to fight them).” (Qur'an 4:90)*

*“If one amongst the (combatant) polytheists asks you for asylum grant it to him so that he may hear the word of Allah and then escort him to where he can be secure, ...” (Qur'an 9:6)*

“...As long as they stand true to you, stand you true to them: For Allah does love the righteous”.  
(Qur'an 9:7)

Based on these and other clear texts of the Qur'an and Hadith, some scholars regard any classification of lands that does not clearly provide for *Dar al-Sulh/'Ahd* - lands with peace treaties and alliances with Muslims – as incomplete or over-simplistic.

It has been noted by some that those schools of law such as the Hanafi and Shafi'i which spread further into the eastern parts of the Muslim world (towards Turkey, India and Indonesia) interacted more significantly with Byzantine or Orthodox Christians and various non-Christian communities such as Zoroastrians, Hindus, Buddhists and many others.<sup>172</sup> These appear to have had more diverse religious contexts and experiences than those who faced Christendom in the West, and probably resulted in their more nuanced approaches to international relations and a greater accommodation of Muslim residence in non-Muslim lands.<sup>173</sup>

From the perspective of this paradigm, *Dar al-Islam* was the land of Islam dominated by Muslims and Islamic law.

---

<sup>172</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 145-148.

<sup>173</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 141 – 142.

*Dar al-Sulh* was a land of non-Muslims where their laws dominated, but who had peace treaties and alliances directly or indirectly with *Dar al-Islam*. *Dar al-Sulh* was a term used to refer to a land that was *Dar al-Kufr* (Land of Disbelief) or *Dar al-Shirk* (Polytheist State) in its religious identity, but which was at peace with Muslims, and therefore not an enemy state or *Dar al-Harb* (Land of War).

So, for example, Medina after the migration (*Hijrah*) there by the Prophet (p) was *Dar al-Islam*. Abyssinia and Mecca during the period of the Treaty of Hudaibiyya were both *Dar al-Sulh/ 'Ahd* or *Dar al-Muwada'a*. Mecca was a *Dar al-Harb* or enemy state before the Treaty of Hudaibiyya and after they broke that treaty. It later became a *Dar al-Islam* after its threat was neutralised with the conquest or occupation of Mecca.

Some of those who hold this three-state paradigm therefore agree that the world can theoretically be classified into 2 domains based on the criteria of the religion of those who dominate the land – *Dar al-Islam* (Land of Islam) and *Dar al-Kufr/Shirk* (Land of Disbelief/ Polytheism). However, they subdivide *Dar al-Kufr/Shirk* into 2 further domains – *Dar al-Sulh* and *Dar al-Harb*. *Dar al-Sulh* (Land of Treaty) are non-Muslim lands where Muslims can reside without fear of persecution on account of their faith, while *Dar al-Harb* (Land of War) are hostile or enemy states where Mus-

lims are not safe, and do not have the freedom to practise their faith.<sup>174</sup>

Muslims residing in safe non-Muslim countries – similar to those Muslims residing in Mecca during the period of the Treaty of Hudaibiyyah, etc. – are expected to recognise the leadership of the territory they have chosen to reside in. Muslims living in *Dar al-Islam* are also expected to respect and recognise the autonomy, leadership, and sovereignty of the *Dar al-Sulh* country they have entered into treaties with. It is for this reason, that even though most of the Companions of the Prophet (p) were opposed to the unfair and humiliating conditions of the Treaty of Hudaibiyyah which the Prophet (p) had agreed to, all Muslims of Medina and Mecca were required to respect and honour the signed treaty, and those Muslims in Mecca were expected to recognise the leadership of Mecca as their political leaders under whose political-legal jurisdiction they resided in.

Regarding this non-interference in the domestic affairs of other nations, and the recognition of the legal autonomy and political sovereignty of states with whom Muslims have a treaty, Allah says in the Qur'an, "*Those who believed, emigrated, and strived with their wealth and lives in the cause of Allah, as well as those who gave them shelter and*

---

<sup>174</sup> Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013, pp. 142 – 143.

*help—they are truly guardians of one another. As for those who believed but did not emigrate, you have no obligations to them until they emigrate. But if they seek your help (against persecution) in faith, it is your obligation to help them, except against people bound with you in a treaty. Allah is All-Seeing of what you do.”* (Qur'an 8:72)

Regarding Muslim residence in non-Muslim land, those who hold this paradigm are of the opinion that Muslims are permitted to live in any non-Muslim country anywhere in the world which has peace treaties with *Dar al-Islam* or Muslim nations, and for as long as these treaties are in place. Today, nearly every nation has direct or indirect treaties with Muslims through the United Nations (UN) or other regional treaties and international alliances.<sup>175</sup> The countries that have treaties with Muslim nations therefore include nearly all countries on all continents in the modern world. Some distinguished contemporary jurists regard all countries and member states of these treaties in the world today as *Dar al-Sulh* or *Dar al-'Ahd* (Lands with Treaties) and not *Dar al-Harb*.<sup>176</sup>

---

<sup>175</sup> Examples include the Commonwealth, Organization of Islamic Cooperation, International peace/security treaties.

<sup>176</sup> Zuhayli, Al-Qaradawi, Abu Zahra – Cited in Moussa, Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p. 231.

In the opinion of a distinguished contemporary jurist, Abdul Wahab al-Khallaf (d.1956), *Dar al-Harb* is a territory where Muslims, the propagation of their faith, or those who propagate it are attacked. He also acknowledges the existence of a territory of non-Muslim people, who do not attack Muslims and do not prevent the peaceful propagation of Islam. It is, in his opinion forbidden to fight against such a people because, according to him, there is a current principle of peaceful coexistence, and there is no justification to deviate from that status quo.<sup>177</sup>

Another distinguished contemporary jurist, Yusuf al-Qaradawi (d. 2022), disagrees with the respected contemporary jurist, Wahba al-Zuhayli who claims that the juristic division of the world has no direct basis in the Qur'an or Sunnah and is purely a product of juristic reasoning (Ijtihad)<sup>178</sup> in response to historical contexts.<sup>179</sup>

---

<sup>177</sup> Abdul Wahab Khalaf, *al-Siyasa al-Shar'iyyah wa Nizam al-Dawla al-Islamiya*, Al-Matba'a al-Salafiya wa Maktabatuhu, Cairo, 1931, p.72-75. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.231

<sup>178</sup> *Ijtihad* by its very nature depends on presumptive (*zanni*) evidence. Its basis in Shari'ah sources are either presumptive texts – i.e., texts from the Qur'an or Hadith with no definitive meanings or agreed implications (*zanni al-dilalah*) - or the many secondary sources of Shari'ah such as juristic consensus (*Ijma'*), reasoning by analogy (*Qiyas*), public interest (*Maslahah*), customary practice (*al-'Urf*), juristic discretion (*Istihsan*), legal presumption (*Istishab*), etc. depending on the school of law (Madhhab). For a more thorough analysis of



Al-Qaradawi regards *Dar al-Islam* as a single territory where the majority of inhabitants recognise the oneness of Allah, and that Muhammad is His Prophet and Messenger, even if some of them do not formally operate an Islamic governance system nor establish Islamic law, as is the case with the ex-Soviet Muslim states in Asia, such as Azerbaijan, Uzbekistan, Tajikistan, etc.<sup>180</sup> He therefore classifies Egypt and Turkey as part of *Dar al-Islam*.<sup>181</sup> As for the rest of the world, al-Qaradawi regards them as territory of

---

the arguments used by Zuhayli to justify his conclusion, see Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd ed., Dar al-Fikr, Beirut, 1998, pp. 192 - 196.

<sup>179</sup> Al-Qaradawi for example cites texts such Qur'an 4:92 that mentions "hostile people" as evidence in support of the traditional division into two. Others regard this a descriptive of a historical reality, and not a prescription or recommendation. Earlier jurists did not cite this verse in support of their divisions. The interpretation of this and similar texts or the Qur'an and hadith to support a particular political division of the whole world is itself evidence of the effort of independent juristic reasoning (*Ijtihad*), which has naturally created a diversity of legitimate opinions among jurists of various historical contexts. See Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.234.

<sup>180</sup> Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, p.890.

<sup>181</sup> Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, pp.879-910. Cited in Moussa Abou Ramadan, "Muslim Jurists' Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*", in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.234.

treaties (*Dar al-'Ahd*)<sup>182</sup> and is ready to abandon the terms “*Dar al-Harb*” and “***Dhimmi***” when they are irrelevant to the realities of nation-states today.<sup>183</sup> He stresses that Muslims are obliged to honour their commitments to treaties such as those of the UN.

In conclusion, those jurists and schools of law that hold this tripartite or 3-state perspective or paradigm, regard it permissible for Muslims to reside in safe non-Muslim lands that have alliances and treaties with Muslim nations. This implies the permissibility of Muslims today to live anywhere in the modern world where they can live in adequate peace, and practise or propagate Islam.

## **Other Independent Paradigms for Domains or States**

This third category is a collection of those numerous juristic positions that have nuanced interpretations of territories that significantly differ from the categorization of the majority. The uniqueness of the opinions of these jurists makes it difficult (and unfair) to categorise them under any

---

<sup>182</sup> This is with the exception of the State of Israel. Though he accepts the observance of treaties signed between Israel and Muslim states. (Yusuf Al-Qaradawi, *Fiqh al-Jihad*, p.907).

<sup>183</sup> Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009, p. 909.

of the earlier two (binary and tripartite) paradigms discussed. The perspectives presented in this category come from all the major schools of law and demonstrate not just the internal diversity of views within each school (*madhhab*), but also the dynamic and intellectual independence of jurists in their approaches and reasoning (*Ijtihad*). It often also demonstrates their acute perceptivity and sensitivity to their diverse political realities, and their interest in realising the higher intents and objectives (*Maqasid*) of Shari'ah as related to Muslim residence, migration (*Hijrah*), international relations, and the Islamic law of war and peace. While some of these jurists seem to agree with some of the earlier classifications, they would differ significantly in their definitions of similar terms.

The Shafi'i Hadith scholar, Ibn Hajar al-Asqalani for example cites the view of another prominent Shafi'i jurist and political theorist, Imam al-Mawardi, who was of the opinion that if a Muslim is able to practice Islam openly in a non-Muslim land, then that land becomes *Dar al-Islam* (the Abode of Islam) by virtue of his settling there, and living there is preferable to moving away from it as other people may be attracted to Islam merely by their interaction with him.<sup>184</sup> According to al-Mawardi, "The public acts of

---

<sup>184</sup> Ibn Hajar al-Asqalani, *Fath al-Bari*, Dar al-Fikr, Beirut, vol.7, p.230. See also, Al-Nawawi, *Al-Majmu'*, vol.49, p.264.

worship (*sha`a'ir*) of Islam such as group prayers in mosques and call for prayers are the criteria by which the Prophet (pbuh) differentiated between the Land of Islam and the Land of Disbelief.”<sup>185</sup>

Fakhr al-Din al-Razi, another Shafi'i jurist writes that "If the Islamic acts of worship are evident in streets and public places, this certainly entails that Islam is dominant."<sup>186</sup>

A distinguished Hanbali jurist, Ibn Taymiyyah equally wrote that, “The public acts of worship (*sha`a'ir*) of Islam are the true signs that a certain land is a Land of Islam.”<sup>187</sup> In a *fatwa* given by Ibn Taymiyyah regarding a unique context (at the time), he described the territory of Mardin (a city in today's Turkey) in which Muslims lived as minorities, but which was neither *Dar al-Islam* where Islamic law is applied, although its soldiers are Muslims, nor is it *Dar al-Harb*, but “something in-between” - *Dar al-Murakkabah* (or “composite territory”).<sup>188</sup>

Imam Abu Hanifa states: “The purpose (*maqsud*) of calling a certain land a 'Land of Islam' or a 'Land of Disbelief

---

<sup>185</sup> Al-Mawardi, *Al-Ahkam al-Sultaniyah*, vol.1, p.275. Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p. 13.

<sup>186</sup> Al-Razi, *Al-Mahsul fi 'Ilm Usul al-Fiqh*, vol.4, p.43. Cited in Auda, *What is the Land of Islam?*, www.jasserauda.net, n.d., p. 13.

<sup>187</sup> Ibn Taymiyyah, *Al-Nubuwwat*, vol.1, p.197.

<sup>188</sup> Ibn Taymiyyah, *Al-Majmu' al-Fatawa*, Dar al-Wafa, 2005, vol.28, p.240-241.

(*kufr*)' is not Islam versus *kufr*. It is security versus insecurity.”<sup>189</sup>

According to the Hanafi jurist, Al-Kasani, the classification of *Dar al-Islam* or *Dar al-Kufr* is not a function of Islam or *Kufr* as such. For him, *Dar al-Islam* means absolute safety for Muslims and absolute fear for disbelievers, while *Dar al-Kufr* implies absolute safety for disbelievers and absolute fear for Muslims. What seems to have been more important for al-Kasani was safety and fear.<sup>190</sup>

According to one of the last great Hanafi jurists, Ibn 'Abidin (d.1252), if Islamic law is enforced in a territory as well as the law of polytheists (*Ahl al-Shirk*), then that territory is not *Dar al-Harb*.<sup>191</sup>

The Andalusian Maliki jurist, Ibn Abd al-Barr (d.463 AH) regarded the call for prayer (*adhan*) as a criterion for distinguishing between *Dar al-Islam* and *Dar al Harb*.<sup>192</sup>

---

<sup>189</sup> Al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i*, Al-Maktabah Al-Shamela 3.35, vol.15, pp. 406 – 407.

<sup>190</sup> Al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i*, Dar al---Kutub al-'Ilmiyya, Beirut, 2003, vol.9, pp.518-520.

<sup>191</sup> Ibn 'Abidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar Sharh Tanwir al-Absar*, Dar al-'Alim al-Kitab, Al-Riyad, 2003, p.288. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into *Dar al-Harb* and *Dar al-Islam*”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.224.

<sup>192</sup> Ibn Abd al-Barr, *Al-Istidhkar*, Dar al-Wa', Cairo, 1993, p.18. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the

This is also reported to be the opinion of the Maliki jurist, Qadi 'Iyad that was mentioned by al-Mawwaq al-Maliki.<sup>193</sup>

According to another Maliki, Imam al-Qarafi (d.684 AH), the Maliki jurist, Imam al-Mazari (d.536 AH) says that the call to prayer has two implications. Firstly, it is ceremonial and announces that the territory in which it is called is *Dar al-Islam*, and that the prayer is a collective obligation, which means that if a part of the community does fulfil the obligation, the others are exempt, but if the population does not fulfil this obligation, then it will be fought. The second implication of the call for prayer, is that it tells the time.<sup>194</sup> While discussing the benefits of the call to prayer (*adhan*), the Maliki jurist, Al-Nafrawi mentions that it tells the time for prayer and announces that this is *Dar al-Islam*.<sup>195</sup>

---

World into Dar al-Harb and Dar al-Islam”, in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, ...p.225

<sup>193</sup> Al-Mawwaq, *Al-Taj wa al-Iklil li Mukhtasar Khalil*, Dar al---Kutub al-'Ilmiyya, Beirut, 1994, p.110. cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225.

<sup>194</sup> Al-Qarafi, *Al-Dhakhira*, Dar al-Garb al-Islami, Beirut, 1994, vol.2, p.58. cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in International Law and Religion: Historical and Contemporary Perspectives, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225

<sup>195</sup> Al-Nafrawi, *Al-Fawakih al-Dawani 'ala Risalah al-Qayrawan*, Dar al---Kutub al-'Ilmiyya, Beirut, 1997, vol.1, p.265. Cited in Moussa Abou Ramadan,

According to another Maliki jurist, Al-Dasuqi (d.1230 AH), *Dar al-Islam* does not turn into *Dar al-Harb* simply by conquest, but only when there are no Muslim ceremonies anymore. For him, as long as the Muslim ceremonies and festivities are held, or at least some of them, then the territory does not become *Dar al-Harb*. The same opinion is held by Imam al-Sawi.<sup>196</sup>

Some Maliki jurists such as Al-Khurashi (d. 1090 AH) defines *Dar al-Harb* as a place where the army of the enemy is camped, and there is no safety for Muslims there, even if it is within the political-legal jurisdiction of *Dar al-Islam*.<sup>197</sup> This also the position of Salih al-Azhari (d. 1335 AH).<sup>198</sup>

The distinguished contemporary Syrian jurist, Wahba al-Zuhayli, holds an opinion similar to that of Imam Shafi'i which is that the world is one entity. To him, the division into *Dar al-Harb* and *Dar al-Islam* is not relevant if there is

---

“Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.225.

<sup>196</sup> Al-Sawi, *Bulghat al-Salik li Aqrab al-Masalik*, Dar al---Kutub al-'Ilmiyya, Beirut, n.d., vol.2, p.187.

<sup>197</sup> Al-Khurashi, *Sharh al-Khurashi*, Al-Matba'a al-Kubra al-Amiriyah, Bulaq, 1899/1900, p. 62.

<sup>198</sup> Salih al-Azhari, *Al-Thamar al-Dani*, (n.p., n. pub., n.d.), p.190. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.226.

no war. He says, “(contemporary) international law is in accordance with the Islamic Shari'ah in holding that the world is one and that war is a transient phenomenon that exists due to animosity between two states, and that this situation will disappear with the disappearance of war”.<sup>199</sup>

According to another distinguished contemporary Egyptian jurist, Muhammad Abu Zahra (d. 1974), the world today is organised through the United Nations. The member states which include Muslim states, are obliged and committed to the UN regulations and statutes. He says the Qur'an makes it obligatory to meet one's commitments. Thus, the entire world has turned into *Dar al-'Ahd*, and there is, in reality, no longer a division into *Dar al-Harb* and *Dar al-Islam*.<sup>200</sup>

---

<sup>199</sup> Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd edn., Dar al-Fikr, Beirut, 1998, p.196. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.233.

<sup>200</sup> Muhammad Abu Zahra, *Al-Tlaqat al-Duwaliya fi al-Islam*, Dar al-Fikr al-'Arabi, Nasr City, 1995, p.56-60. Cited in Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017, p.232



## Discussion on the Various Domains

El-Fadl and others suggest that the positions of the different schools and scholars should be viewed as historical responses to historical challenges. Islamic legal solutions imply ethical choices and responsibility. While the rulings and decisions of pre-modern Muslim jurists will not necessarily resolve the various dilemmas facing modern Muslim minorities, they do however, provide examples of pragmatic and ethical choices made by earlier jurists in response to particular historical challenges.<sup>201</sup>

The dichotomous or binary paradigm (of *Dar al-Islam* vs. *Dar al-Harb*) discussed earlier becomes potentially dangerous for all Muslims once it is taken literally as dogma or divine teachings of Islam, and beyond the theoretical discussions of jurists exercising their reasoning (*Ijtihad*) in their own diverse contexts. It is the most abused and misused of the 3 paradigms. It is the one most often used by Muslim extremists to justify the excommunication (*takfir*) of fellow Muslims and Muslim states that do not implement Islamic law to their satisfaction. They regard these Muslims as living in *Dar al-Harb*, and consequently try to justify migrating away from, and fighting them in the name of Jihad.

---

<sup>201</sup> Khaled Abou El Fadl, Islamic law and Muslim minorities, p.187.

This understanding and justification of war against others, purely because a community is not Muslim and thus designated as “*Dar al-Harb*”, implies fighting a community simply because they profess another religion, and not because they have fought or been hostile towards Muslims. This is an erroneous and deviant understanding of Jihad and international relation of the Prophet Muhammad (p), that is not supported by any evidence from the Qur'an and Sunnah, and from the practices of the Rightly Guided Companions of the Prophet (p). In fact, the attempt to justify fighting peaceful non-Muslim nations simply due to difference in religion (and not due to unacceptable hostility or aggression), is a clear violation of numerous explicitly clear texts of the Qur'an and Sunnah as understood and implemented in the lives of the Prophet (p) and his companions. This opinion has been effectively refuted by numerous classical and contemporary jurists including Ibn Taymiyyah and many others.<sup>202</sup>

As reiterated throughout this discussion, all the political-legal classifications of domains, lands, territories or

---

<sup>202</sup> Ibn Taymiyyah in *Risalah al-Qitaal* (p.123-125); Qaradawi in *Fiqh al-Jihad*; Ibn Taymiyyah in *al-Siyasat al-Shar'iyyah* (p. 123); Ramadan al-Buti in *Jihad in Islam: how to understand and practice it*; Ahmed al-Dawoody in *Islamic Law of War: Justification and regulation*; Wahba al-Zuhayli in *Athar al-Harb fi Fiqh al-Islami*; Zakariyyah al-Bardisi, *al-Iqraa baina al-Shari'ah wa al-Qanun* (415); Da'wah Institute in *The Use, Misuse and Abuse of Jihad*; Khaduri, *al-Harb wa al-Silam fi al-Sharia'ah al-Islamiyyah*

countries (into *Dar al-Islam*, *Dar al-Sulh*, *Dar al-Kufr*, etc.) and the various preferred criteria and definitions adopted by particular schools of law or scholars are based primarily on independent juristic reasoning (*Ijtihad*) in response to their own geo-political contexts.

The inconsistency among scholars with diverse criteria and categorization of lands is therefore only evidence of the dynamism of their juristic reasoning (*ijtihad*) and independent juristic assessment of their contexts and realities. Scholars clearly differed in their decisions regarding how to define and classify lands and international relations based on their multiple priorities, interests, and concerns. Sometimes the same scholar would have more than one opinion based on his own learning, exposure, changing context, or the specific case he was dealing with. Sometimes the scholars are forced to formulate new terminology and categorizations through original *Ijtihad* for dealing with his nuanced reality. They would often use the same terms as earlier scholars, but with radically different definitions and legal implications.

The geo-political context of each domain's scholarly position is not static. They are diverse, dynamic, and ever-changing, and so are the scholarly opinions and responses to these changing realities. The scholarly rulings on these are not doctrinal or dogmatic and fixed (*thawabit*) rulings

(*hukm*) of Shari'ah based on any clear and explicit texts of the Qur'an and Sunnah. While some scholars have tried to link their interpretations to the texts of the Qur'an and Hadith, most of the distinguished scholars and commentators of the Qur'an and Hadith have not understood the interpretations of these texts as necessarily supporting only these juristic positions and political implication.

Consequently, distinguished jurists throughout Islamic history are critical of any particular juristic method of classification, that is itself a product of *Ijtihad*, being imposed on or regarded as the one and only correct method for all Muslims everywhere and for all time. The *Ijtihad* by some jurists in one context cannot and should never be regarded as binding on other jurists of the same or of different contexts. It is well-known among jurists also that the *Ijtihad* of one or some jurists on an issue does not invalidate the *ijtihad* of others. Hence, one of the Islamic legal maxims accepted by all schools of law (*madhhabs*) states that "One *ijtihad* is not invalidated by another *Ijtihad*" (*Al-ijtihad la yanqudhu bi al-ijtihad*).<sup>203</sup>

No legal (fiqhi) opinion that is the product of human and juristic reasoning (*Ijtihad*) in any context should be

---

<sup>203</sup> Suyuti, *Al-Ashba wa al-Naza'ir fi Qawa'id wa furu' fiqh al-Shafi'iyyah*, p. 101, Dar al-Kutub Ilmiyyah, Beirut, Lebanon; al-Zarkashi, *al-Manthur fi al-Qawa'id*, p. 32, al-Maktabah al-Shamilah, 3.35; Zain al-Din al-Sunuki, *Gayah al-Wusul fi Sharh lub al-Usul*, p. 167, al-Maktabah al-Shamilah, 3.35.

treated as if it was Divine injunction, and it should never be imposed on others. Sufyan At-Thawri was reported to have said, "If you see a man doing something over which there is difference of opinion among scholars, and which you believe to be forbidden, you should not forbid him from doing it".<sup>204</sup>

Some jurists therefore question the relevance of many of the categorisations that are based on the reasoning (*Ijtihad*) of any past scholars to all current and multiple evolving global realities. These scholars call for more independent critical assessment of current realities and policies in international relations based on analysis of original texts and a consideration what is relevant to the best interests of specific Muslims' communities in their own contexts.

Each community of Muslims or country should therefore have the freedom to decide what criteria best meet their needs and interests (*Maslahah*) when considering their realities and the consequences of rulings. Each Muslim community, leadership and their scholars are the ones to determine for themselves how best to describe their unique realities and relations with others.

Being oblivious to our realities and dogmatically following the opinions and classifications of past scholars, espe-

---

<sup>204</sup> Quoted in Abdal Hakim Murad, *Understanding the Four Madhhabs*, Cambridge: Muslim Academic Trust, 1999, p.13).

cially on socio-political issues can be retrogressive and has very often prevented Muslims from being united on key issues related to their security and political stability. Various distinguished jurists have criticised such blind imitation of the rulings of earlier jurists.<sup>205</sup>

## **Reasons for the Obligation of Hijrah**

Muslim jurists, both past and present, have differed regarding various issues surrounding migration (*Hijrah*) and residence in non-Muslim lands. In spite of this diversity, a closer examination of the primary textual evidence from the Qur'an and Sunnah, in light of the *Sirah* and practise of the Prophet's Companions to determine when it was required (recommended or obligatory) for a Muslim to migrate (*Hijrah*) from a non-Muslim land, reveals greater consensus around at least 2 major factors that make migration an obligation:

**1. Seeking freedom from the threat of religious persecution, oppression and insecurity.** This is the freedom

---

<sup>205</sup> Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.4, p.197; Ibn Taimiyyah, *Majmoo' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.7, pp.71-72; Al-Shawkani, *Irshad al-Fuhul li Tahqiq al-Haqq min 'ilm al-Usul*, Dar al-Kitab al-'Arabi, 1st edition, 1999, vol 1, p.216; Ibn al-Qayyim, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, Maktabah al-Kulliyat al-Azhariyyah, Cairo, 1968, vol 1, p.7, p.39 see also al-Shawkani, *al-Qawl al-Mufid fi adillah al-Ijtihad wa al-Taqlid*, Dar al-Kitab al-Misry, Cairo.

to practise the essentials of Islam. This was understood to mean that Muslims (such as those in Abyssinia) did not have to hide their Muslim identity in public out of fear of persecution. They were relatively free to display the basic “symbols of Islam” and could perform the compulsory prayers (*salat*) - including Friday and 'Eid prayers, call *adhan*, fast in Ramadan, give zakat and charity, go for Hajj pilgrimage, etc. without threat or intimidation.

Being in a non-Muslim land, there were some compromises as this freedom did not automatically mean they could apply all of the provisions of the Islamic legal, economic, political or social system. Escaping religious persecution and insecurity appear to be the main reasons for forced or involuntary migration (*Hijrah*) in the life of the Prophet (p) and his companions. This was a migration from communities that were hostile and at war with Islam and Muslims.

The freedom from a toxic environment or social context which forces a person into wrong-doing, immorality and a life of sin is another related reason for migration (*Hijrah*). This consideration is very subjective, and its assessment varies from one person to another, and from one environment or community to another, even within the same family, social group, city or country. This could apply to any country of any religious community. Some feel that while

this consideration is important, it is easily subsumed under this first consideration as “religious persecution and moral oppression by a society or cultural context” instead of just religious persecution by a state and its laws. It is viewed by some as a moral consideration and a function of individuals which depends on their personal strength, social network, faith, wisdom, and resilience. Once the first condition of freedom from religious persecution is met, it is then up to individuals and communities to find ways of dealing with temptations and morally toxic contexts, and to pursue the spiritual or moral Hijrah needed to change and deal with such temptations and social challenges. Consequently, some scholars describe Hijrah as also meaning “a departure from the abode of heresy (or religious innovation – *bid'ah*) or that an abode that is overwhelmed by sins to a better land is also considered to be *Hijrah*”.<sup>206</sup>

Every society, land or nation has its ethical challenges and its unique toxic or high-risk locations, or social contexts of higher levels of crime, corruption, immorality and sinful behaviour. Non-Muslims and their lands are not all the same.<sup>207</sup> Some are more hospitable and accommodating of Muslims than others, and vice-versa. Some Muslims are

---

<sup>206</sup> Muhammad bin Abdullah al-Andalusi, *Ahkam al-Qur'an*, Dar al--Kutub ak-Ilmiyyah, n.d, vol.2, p.413.

<sup>207</sup> Qur'an 3:113, “Not all of them are alike: Among the People of the Book there are those communities who are upright ...”



able to cope better than other Muslims, while others have to move (*Hijrah*) to better working environments, neighbourhoods or towns, within the same country or elsewhere. Some Muslim minorities and their communities are able to thrive very well in non-Muslim lands and positively influence the understanding and practise of Islam in their families and communities, better than in even some predominantly Muslim communities and countries.

Forsaking a spiritually corrupting and sinful environment was seen by some as similar to, and a part and parcel of forsaking a morally hostile environment of religious persecution and oppression.<sup>208</sup> As with the other conditions for migration/residence, it is the individual concerned who is usually in a better position to consult and assess themselves, their own social context and its impact on them and their family, and vice-versa, and decide what best to do.<sup>209</sup>

---

<sup>208</sup> While growing spiritually and contributing to society, Muslims are not expected to search for or migrate to utopian “sin-free” environments. While this may be desirable, that was not what the community of Medina was like at the time of the Prophet (p) or that of the Rightly Guided Caliphs. Every country and community comes with its challenges to believers. Muslims are expected to, as with all the Prophet and their companions, be a source of guidance and mercy to the worlds, enjoining right and forbidding wrong, and promoting peace, compassion and justice wherever these are missing or insufficient.

<sup>209</sup> To be fair to the efforts of various religious communities and nations around the world, and to avoid the arrogance of stereotyping any particular community, it should be noted, that some communities in Muslim lands, and “Islamic States” are for some people more morally and spiritually corrupting

**2. The ability and means to migrate.** This is the capacity to travel or migrate from the place of residence and persecution to a place where he/she will have the desired freedom from religious or other persecution.

In this regard, some have greater ability and opportunities than others, and each is expected to do their best. *“Allah does not charge a soul except (with that which) it is capable of...”* - and therefore responsible for. (Qur'an 2:286). The Prophet (p) said: *“Avoid that which I forbid you to do and do that which I command you to do, to the best of your capacity....”*<sup>210</sup>

Those who should but are genuinely weak (*mustad'afin*) and do not have the ability to migrate are exempted from the obligation to migrate from such societal contexts, so long as that excuse exists.

*“...Except for the oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving.”* (Qur'an 4:98-99)

---

than some in non-Muslim lands, and vice-versa. So also, there are some communities in Muslim lands that some people find more morally and spiritually uplifting and supportive than some non-Muslim lands, and vice-versa. And Allah knows best.

<sup>210</sup> Sahih Muslim, hadith no. 6259.

The inability to migrate is not confined to only physical or mental weakness, health, age and financial incapability. It also includes safety and security considerations, family obligations, legal restrictions, and the ability to legally migrate (without facing deportation) to the new preferred country of residence. Modern requisites of traveling such as passport, visas, residence permits, conditions and rights of citizenship, etc., and the short and long-term consequences of such migration are also to be considered. These are among the greatest juristic hindrances (*mani'*) to migration (*Hijrah*) in modern contexts which many writers on this subject do not pay adequate attention to.

### **Hijrah and Muslims Residence Today**

During the time of the Prophet (p) and his companions, the absence of any one of the 2 conditions discussed above – religious persecution or corrupting environment, and the ability to migrate - implied that the Muslims were free from the religious obligation to migrate (*Hijrah*) from non-Muslim lands. This also means that a Muslim is free to reside in any non-Muslim community, neighbourhood, or country – as in the case of Abyssinia and those various non-Muslim nations where Companions lived in or migrated to, during and after the demise of the Prophet (p) – which gives Muslims adequate security, justice, and freedom from religious persecution.

The same conditions, by extension apply to Muslim lands that may be governed by unethical or corrupt Muslim leaders, or where Islamic law and governance is not at all or sufficiently in place, but where the basic human rights and religious freedoms are respected. In these Muslim countries and communities, some Muslims may find greater religious freedom, or find less morally corrupting social environments than in those communities where they are a minority. Sometimes, Muslims might also be more able to significantly influence positive changes and reforms in societies where they are already a majority.

With the adoption by almost all nations of the various peace treaties of the United Nations, including the UN's Universal Declaration of Human Rights and other charters that respect individual and communal Freedom of Religion and Beliefs (FoRB), most countries in the modern world have Muslims and other religious minorities whose basic rights are protected by international conventions and treaties. This is true especially in countries that score high on the Human Development Index<sup>211</sup> or the “Islamicity Index” (or I2).<sup>212</sup>

---

<sup>211</sup> [https://en.wikipedia.org/wiki/Human\\_Development\\_Index](https://en.wikipedia.org/wiki/Human_Development_Index) and [https://en.wikipedia.org/wiki/Mahbub\\_ul\\_Haq](https://en.wikipedia.org/wiki/Mahbub_ul_Haq) The “Human Development” approach tries to measure the “richness of human life” by focusing on the quality and quantity of “knowledge”, “decent standard of living”, “promoting equality and social justice”, “human security and rights”, “environmental sustainability”, “participation in politics and community life”, “long and

There is nothing explicitly clear in the Qur'an or the tradition (Sunnah) of the Prophet (p) or his companions, to suggest that it is a religious obligation or even a recommendation for Muslims today, and in most parts of the modern world, to migrate to "*Dar al-Islam*" (land of Islam). Similarly, there is no evidence prohibiting Muslims from residing as minorities in a country governed by non-Muslims, or in Muslim lands that do not operate Islamic law. The UN Human Rights Declaration, and other international security charters and peace treaties make most of the modern world a *Dar al-'Adl* or *Dar al-Sulh* at worst, or even *Dar al-Islam* (from Al-Mawardi's definition) at best.

For someone who is in a situation or land where he or she cannot profess their faith or practice their religion, or is facing unbearable persecution, and is capable of migration (*Hijrah*), all Muslim scholars are of the view that migration

---

healthy life", "engagement in productive work", etc. See [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf).

212 Scheherazade S. Rehman and Hossein Askari, "How Islamic are Islamic Countries?" in *Global Economy Journal*, Vol. 10, Issue 2, Article 2, Berkeley Electronic Press, USA, 2010. The first 5 top ranking countries in the world according to the Islamicity Index are New Zealand, Luxemburg, Ireland, Iceland and Finland. The first OIC country on the list is Malaysia, which ranks number 38. This study concludes by saying, "It is difficult at this time to draw more concrete conclusions other than to say that it is our belief that most self-declared and labelled Islamic countries are not conducting their affairs in accordance with Islamic teachings – at least when it comes to economic, financial, political, legal, social and governance policies." (p.20-21).

in such a life or faith-threatening situation is either compulsory<sup>213</sup> or according to some, only recommended.<sup>214</sup>

Some jurists for example were of the opinion that based on Qur'an 4:97, migration (*Hijrah*) was compulsory for whoever knows that he or she does not have security for his/her faith, as the verse only exempts those who are not capable of migration due to their weaknesses or illness.<sup>215</sup> Others however, emphasize that in spite of this, the Prophet (p) was never known to have compelled anyone to do Hijrah, nor did he blame anyone who did not migrate.<sup>216</sup> This is therefore seen as an individual and private decision for those concerned. Some classical jurists actually forbid or at least discourage *Hijrah* from non-Muslim lands, if the

---

<sup>213</sup> Ibn Hajar al-Asqalani, *Fath al-Bari*, Cairo, Al-Matba'ah al-Salafiyyahm, 1380 AH, vol.7 p.229 - 230; al-Baghawi, *Sharh al-Sunnah*, al-Maktab al-Islami, 1394 AH, vol.10, p. 373; Abubakar bn Abdullah, *Sharh Sahih al-Tirmidhi*, Cairo, al-Matba'ah al-Misriyyah, 1st Edition, 1350 AH, vol.7, p.88; Abd al-Rahman al-Mubarkafuri, *Tuhfah al-AHwazi Sharh al-Jami' al-Tirmidhi*, al-Maktabah al-Salafiyyah, 2nd Edition, 1384 AH, vol.5, p.215.

<sup>214</sup> Abd al-Aziz bn Salih al-Jarbu', *Al-I'lam bi Wujub al-Hijrah min Dar al---Kufr Ila Dar al---Iman*, p.10, n.d, (al-Maktabah al-Shamilah 3.13). For the view of Hanafis on non-Obligation of *hijrah*, see: 'Al-Sarakhsi, *al-Mabsut*, vol.6, p.123; n.d, al-Maktabah al-Shamilah (3.13); 'Ala' al-Din al-Kasani, *Bada' al-Sana'I*, Dar al---Kutub al-'Arabi, Beirut, 1982, vol. 1, p.158.

<sup>215</sup> Muhammad bn Idris al-Shafi'I, *Al-Umm*, Vol.4, p.169; Ibn Qudamah, *al-Mughni*, Dar al---Fikr, Beirut, 1405 AH. vol.10, p.505.

<sup>216</sup> Abd al-Aziz bn Salih al-Jarbu', *Al-I'lam bi Wujub al-Hijrah min Dar al---Kufr Ila Dar al---Iman*, p.10.

person concerned has the security of his faith and is also capable of inviting others to Islam.<sup>217</sup>

It is again the individual concerned, or their guardian, who understands their context best, that can determine what threats or opportunities he or she faces, and whether their migration (*Hijrah*) or residence would be obligatory, recommended, discouraged, or forbidden. The decision therefore to reside or migrate (*Hijrah*) is a moral choice and responsibility of the individual concerned. Those who refuse to migrate for whatever reason, cannot and should not be regarded as disbelievers (*kuffar*) on account of their choice of where to reside or migrate to.

In conclusion, the attitude expected of Muslims towards friend or foe is summarized in Qur'an 60:8-9 where Allah says; *"As for such (of the unbelievers) as do not fight against you on account of (your) faith, and neither drive you forth from your homelands, Allah does not forbid you to show them kindness and to behave towards them with full equity: for verily, Allah loves those who act equitably. Allah only forbids you to turn in friendship towards such as fight against you because of (your) faith, and drive you forth from your homelands, or aid (others) in driving you forth: and as for those (from among you) who turn towards them in friendship, it is they, they who are truly wrongdoers!"*

---

<sup>217</sup> Abd al-Aziz bn Salih al-Jarbu', *Al-I'lam bi Wujub al-Hijrah min Dar al---Kufr Ila Dar al---Iman*, p.19.

# Part 2

## The Use and Abuse of *Takfir* (Excommunication) in Islam



## OVERVIEW

*Kufr* is an Arabic word from the trilateral root “k-f-r” which means to cover or conceal. In the technical or religious sense, and depending on the precise context in the Qur'an, the term *Kufr* could mean an act or statement of deliberate **ingratitude** such as in “(Recall the time) when your Lord declared, If you express gratitude, I shall certainly give you more, and if you are **ungrateful**, then My punishment is severe...” (Qur'an 14:7); **denial** or “**determined denial**” such as in “Surely for those who have **disbelieved**, it is all the same whether you warn them or you warn them not: they do not believe” (Qur'an 2:6), “And when there came to them a Book from Allah, which confirms what was with them, while earlier, they used to seek help against those who **disbelieved**, yet when there came to them that which they did recognize, they denied it. So, the curse of Allah is upon the **disbelievers**” (Qur'an 2:89); **disavowal, rejection and repudiation** such as in “The Satan will say when the matter will have been decided, Allah promised you a truthful promise while I gave you a promise and did not fulfill it. I had no authority over you, except that I invited you and you accepted my call. So, do not blame me, but blame yourselves. Neither I can come to your help, nor can you come to my help. I **disown**

*your associating me with Allah in the past. Surely, there is a painful punishment for the unjust...*” (Qur'an 14:22); or **turning away** from Allah and His definitive guidance such as in “*Allah, the One to whom belongs what is in the heavens and what is in the earth. Woe be to those who deny the truth. For a severe punishment awaits those who prefer the worldly life to the Hereafter and **prevent** (people) from the way of Allah, and seek to make it crooked. Those have gone too far in straying*” (Qur'an 14:3). All these meanings however are associated with concealment, or the cognitive act of denial and covering up of Divine truths, favours or guidance.<sup>218</sup>

*Kufr* refers to something that is clearly contrary to or opposed to the established will of God or the known essential fundamentals of the definitive teachings of the Qur'an and Sunnah and is confirmed by juristic consensus (*Ijma'*). *Kufr* is what contravenes God's declared will, and blasphemy against God. It is whatever implies the opposite of *Iman* (faith) and definitive Divine guidance, and which is serious enough to take a person outside the fold of Islam. *Kufr*, when applied to a person (*Kafir*) – the doer of *kufr* – however implies “**bent denial** of a divine truth”, “**conscious rejection** of faith” and expresses a **desire to oppose** defini-

---

<sup>218</sup> Balil Abd Al-Karim, *Qur'anic Terminology: A Linguistic and Semantic Analysis*, International Institute of Islamic Thought, Herndon, VA, USA, 2017, pp.17-18.

tive proof of divine guidance. When *kafir* is applied to a Muslim therefore, it implies an accusation that means more than just disbelief, unbelief, polytheism, or associating partners with Allah (*shirk*), but also an attitude of pride and arrogance towards divine truth and the authority of Allah.<sup>219</sup> Hence the various stringent conditions/hinderances prescribed by jurists in order to establish its reality with certainty.

In Islamic theology, “*takfir* of things” – expressed in words or deeds – implies the declaration that a thing (such as *shirk* or polytheism) is in and of itself contrary to categorical divine guidance and is a form of “absolute disbelief” or *Kufr Mutlaq*. Determining the disbelief (*Kufr*) of a thing – any action or statement – requires that the thing in question is an expression of a belief that is in direct rejection or incompatible opposition with a definitive divine truth. Any concept, belief, statement or action whose meaning and implications imply a rejection of a definitive divine truth is

---

<sup>219</sup> For a detailed discussion on the spiritual implications of *Kufr* and *Takfir* to people of other faiths and their salvation in the hereafter, and the differing opinions of various classical scholars, see Hamza Yusuf, “Who are the Disbelievers?”, *Seasons*, Semiannual journal of Zaytuna Institute, USA, Spring 2008. For both classical and contemporary Muslim scholars, see Mohammad Hassan Khalil, *Islam and the Fate of Others: The Salvation Question*, Oxford University Press, New York, 2012; See also, with contributions and discussion by various contemporary scholars, Mohammad Hassan Khalil (ed.), *Between Heaven and Hell: Islam, Salvation and the Fate of Others*, Oxford University Press, New York, 2013.

described as one of disbelief (*kufr*). *Kufr* therefore, includes any statement or act of devotion or worship that is dedicated to other than Allah.

Evidence of *Kufr* things or “*takfir* of things” (as opposed to “*Kufr/takfir* of persons”), simply requires that the action or statement is one that is an expression of a belief that is in an irreconcilable conflict with a “known and essential fundamental religious truth” (*ma'lum min al-din bi al-darurah*), or in opposition to a belief regarding which there is absolute consensus (*al-ijma' al-qat'i*) of all Muslim jurists and scholars. Fortune-telling, insulting Allah, idol worship are some examples of *kufr* of things – actions or statements.

The distinguished jurist, Ibn Taimiyyah says regarding this: “It does not necessary follow that if a statement is such that it amounts to one of disbelief (*kufr*), that all those who said it – perhaps out of ignorance or misinterpretation – are disbelievers (*kuffar*). Affirming that a specific Muslim has become a disbeliever (*kafir*) is like affirming that the textual threat in the Hereafter will be applied to him. And this has conditions that need fulfilling and impediments that need removing before it can be justified”.<sup>220</sup>

In Islamic jurisprudence, *Takfir* or declaring disbelief (*kufr*) on a person is an accusation that implies that the per-

---

<sup>220</sup> Ibn Taymiyyah, *Minhaj al-Sunnah al-Nabawiyyah*, Muhammad bin Su'ud University, Riyadh, 1986, vol.5, p.240.

son is a disbeliever (*Kafir*) and excommunicated out of the religion of Islam. It is a judgment of the person's heart and state of belief and asserts that the person has lost or changed his or her faith (*Iman*) as a result of their attitude towards Allah's Sovereignty and authority.

Determining the disbelief (*Kufr*) of a person typically requires clear and explicit evidence that demonstrates their actual rejection or denial of fundamental Islamic beliefs or tenets (*ma'lum min al-din bi al-darurah*) and those teachings on which there is complete consensus (*ijma'*) of scholars. In addition however, it must also be firmly established with absolute certainty that the person to be excommunicated was a mature adult, of sound mind and full mental capacity, knowledgeable about the meaning and implications of their words or actions, was intent on and desirous of apostasy or excommunication (*kufir*), and did not intend by their action or statement a meaning that was esoteric (*ta'wil*) and arrived at by sincere but faulty interpretation.

If the evidence and certainty required to consider some action, statement, or belief as a form of *Kufr* is lacking or insufficient, then it is prohibited (*haram*) to regard it as *Kufr*. Also, if the conditions (*shurut*) and hinderances (*mawani'*) of excommunication (*Takfir*) are not satisfactorily considered in the establishment of proof (*Iqamat al-hujjah*) by a competent authority, then it is absolutely pro-

hibited (*haram*) to regard such a Muslim as a disbeliever or Kafir.

As with all legal judgements or “defining laws” of Shari'ah (*al-ahkam al-taklifiyyah*) that apply to a responsible adult Muslim (*mukallaf*), it is assumed by scholars that adequate consideration is given to those factors – reasons/causes (*sabab*), conditions (*shurut*) and hindrances (*mawani'*) – declared by the Lawgiver that are attached to them. This category of factors is referred to as the “Declaratory law” (*Al-hukm al-wad'i*).<sup>221</sup> When any of these factors and considerations change, so also do the Shari'ah rulings related to them. Consequently, a legal maxim which distinguished jurists have always respected states that, “It may not be denied that laws will change with the change of times and circumstances” (*la yunkar taghayyur al-ahkam bi taghayyar al-zaman wa al-ahwal*).<sup>222</sup> A religious verdict of *Takfir* that is justified for a person in one context may not in justified another when conditions and/or hinderances change.

---

<sup>221</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, pp.290-294; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, pp.139-140.

<sup>222</sup> Muhammad Sidqi bin Ahmad al-Burnu Abu al-Harith al-Ghazzi, *Mausu'at al-Qawa'id al-Fiqhiyyah*, 1:33; Ali Ahmad Nadhwi, *Al-Qawa'id al-Fiqhiyyah*, pp.27, 65, 158; Ahmad bin Muhammad al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, p.227-229; Mahmasani, *Falsafat al-Tashri'*, p.200-202 - Cited in Khaled Abou El-Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, Oneworld Publications, Oxford, 2001, p.34.

It is important to always bear in mind, that in spite of the various scholarly definitions of a disbeliever (*Kafir*) or apostate (*Murtad*), all distinguished jurists and scholars agree that it is only when these conditions/hinderances of *takfir* are considered that a Muslim may be regarded as a *Kafir*. In other words, the isolated definitions of what constitutes a *Kafir* in the statements and texts of scholars, must not be taken out of the context of the terms and conditions or hinderances to *Takfir* that are recognised by the same scholars. Text without context leads to pretext and misinterpretation.

To insist on considering a Muslim as a disbeliever (*kafir*) and excommunicated from Islam, without considering these or the required establishment of proof is itself a major sin, and considered an act of disbelief (*kufr*), or at the least, one of heresy or blameworthy innovation (*bid'ah*).

### **The following points summarise the major facts and arguments presented in this work**

#### **1. Key terms:**

**a. *Kufr*** or “**major *kufr***” refers to any belief that denies or rejects a definitive fundamental truth of Islam. Such truths are established by definitive texts and absolute juristic consensus (*al-ijma' al-qat'i*).

- b. “**Minor kufr**” refers to a sin described either in the Qur'an or hadith as a “*kufr*”, but which does not excommunicate the Muslim from Islam. This description is simply intended to emphasise the certainty of its enormity and seriousness of its prohibition. It is synonymous with disobedience (*fisq*) and wrongdoing or sinful actions (*ma'asiya*). It does not imply apostasy and disbelief.
- c. “**Major sin**” refers to anything that is prohibited by categorical and definitive evidence. This is wrongdoing that is associated with specific texts threatening punishment in this world and/or the next. It is undisputedly prohibited.
- d. “**Minor sin**” refers to all other forms of wrongdoing and disobedience that do not meet the criteria for “major sins”.<sup>223</sup>

2. *Haram* refers to what is prohibited in Islamic law, and regarded as sinful if committed. Various types and qualities of evidence – **both definitive (*qat'i*) and presumptive (*zanni*)** – **are used by jurists and the schools of law to establish prohibitions (*Haram*)** in Islamic law.

---

<sup>223</sup> The distinction between some “major” and “minor” sins is debated among some scholars. For further discussion on this, see *Tafsir Ibn Kathir*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1419AH, vol.2, pp.285-286.



The evidence for a prohibition (*haram*) could come from the definitive and categorical (*Qat'i*) texts of the Qur'an and Sunnah, and with no diversity of juristic opinion nor alternative interpretations of the texts. These definitive prohibitions would include the prohibition of murder, corruption, idol worship, fortune telling, apostasy, disbelief (*kufr*), eating pork, drinking alcohol, adultery, oppression, theft, etc.

Alternatively, the evidence for a prohibition could be presumptive (*zanni*), with a degree of speculation and uncertainty and dependent on “juristic reasoning” (*Ijtihad*). In this case there would often be some diversity of opinion (*khilaf*) amongst jurists. Examples of this include the prohibition of eating carnivorous animals, the ruling on the purity of dog saliva, use of certain musical instruments, the punishment for apostasy, the prohibition of smoking, shaking hands with non-*mahram*, etc.

Notably, it is prohibited and a form of polytheism (*shirk*) to regard as prohibited (*Haram*) what is not actually *Haram* according to clear evidence. It is just as bad, or even worse to regard as *Kufr* (disbelief) what is not actually *Kufr* according to clear evidence.

**3. Disbelief (*Kufr*) is a kind of prohibition (*haram*) that is based on two major types of evidence:**

- a. Either definitive and categorical textual evidence which no scholar doubts, or**
- b. other evidence that is a product of “absolute consensus” (*al-ijma' al-qat'i*). This is that on which there is complete scholarly consensus and unanimity of all jurists – i.e., with no dissenting opinions.**

*Kufr* that is established by definitive and categorical textual evidence implies that the text is unambiguous in its meaning and implications (*qati' al-dilalah*) and definitive or undisputed in its authenticity (*qati' al-thubut*), such as with the Qur'an and multiple-chained (*mutawatir*) hadith. The teachings from these definitive divine sources are traditionally referred to as the “known and essential fundamentals of the religion” - *ma'lum min al-din bi al-darurah*.

Any belief that implies a denial or rejection of any of these fundamental teachings is the reason for describing that belief, or its expression in words or actions as one of disbelief (*Kufr*). **All forms or expressions of disbelief (*kufr*) are prohibited (*haram*), but not all prohibitions (*haram*) are forms of disbelief (*kufr*).**

Such expressions of *kufr* are regarded as wrong in and of themselves. They are wrong irrespective of the possible

excuses or pardonable reasons for them. For example, idol worship, *shirk*, insulting any of the prophets of Allah, etc. are all forms of *kufur*, even if the doer may be pardoned because the offense was accidental or committed due to insanity or coercion, etc. These are also referred to as “unrestricted” or “absolute forms of *kufur*” (*kufur mutlaq*). Their wrongness is not tied to, or “restricted” to particular contexts, but to their conflict with definitive divine text and evidence.

**4. Disbelief (*Kufur*) of any form is not established by probabilistic “juristic reasoning” (*Ijtihad*) that is based on presumptive (*zanni*) evidence, or evidence that has a degree of uncertainty.** Presumptive evidence is either speculative in its meaning and implications (*zanni al-dilalah*), or in its authenticity and authority (*zanni al-thubut*) such as when it is based solely on solitary (*ahad*) hadith, reasoning by analogy (*Qiyas*), the opinion of a companion (*Ra'yi al-sahabi*), consideration of public interest or welfare (*Maslahah*), preclusion (*Sadd al-dhari'ah*), and the other presumptive “secondary sources” of Shari'ah or tools of “juristic reasoning” or *Ijtihad*.

Disbelief (*Kufur*) is therefore a subset within the category of prohibitions (*Haram*), but regarding which there is absolute certainty. The mere existence of juristic debate on whether something is a form of disbelief (*kufur*) or not, is an

indication that the evidence is presumptive (*zanni*) and therefore not a form of *Kufr*, even if it is *haram*. The claim of disbelief (*Takfir*) on a thing or person must be certain, and cannot accommodate doubt.

**5. All expressions of *kufir* are “major sins”, but not all major sins are forms of disbelief (*kufir*).** “Major sins” include prohibitions such as polytheism (*shirk*), desertion from the battlefield, usurping the property of an orphan, murder, sorcery, false accusation of unchastity (*qazf*), and denying parents of their rights. A “major sin” is regarded as wrong and blameworthy (*ma'asiya*), and a form of disobedience, corruption, and wrongdoing (*fisq*). It is however not automatically a form of disbelief (*kufir*).

**6. The judgement of the act is not a judgement on the actor.** The judgement of the action or statement is not a judgement of the doer. Establishing that something is “*kufir*” or a “major sin”, does not inevitably imply that it is justified to regard the doer as automatically corrupt and disobedient person (*fasiq*), or a disbeliever (*kafir*). Judging the actor or doer requires further evidence and establishment of proof of intent, sanity, desire, maturity, knowledge, etc.

This is probably the most common oversight and mistake made by some in their *Takfir* and accusation of disbelief to persons. **The evidence of wrongdoing is necessary, but this is not sufficient for judgement of wrongdoing**

**and guilt on the part of the doer.** Actions of persons are always judged by their intentions and motives. According to the jurist Ibn Taimiyyah, “It does not necessarily follow that if a statement is such that it amounts to one of disbelief (*kufr*), that all those who said it – perhaps out of ignorance or misinterpretation – are disbelievers (*kuffar*). Affirming that a specific Muslim has become a disbeliever (*kafir*) is like affirming that the textual threat in the Hereafter will be applied to him. And this, as we explained elsewhere, has conditions that need fulfilling and impediments that need removing (before it can be justified)”.<sup>224</sup>

7. The accusation of a Muslim with disbelief or “*Takfir* of a person” is a very serious allegation with major consequences. It implies that they are guilty of “Major *Kufr*” – a conscious “*kufr* in the heart” or deliberate rejection or denial of a definitive divine truth. ***Takfir* of a person – i.e., accusation of “major *kufr*” – implies that in the assessment and judgement of the heart and mind of accused Muslim, there is evidence with certainty that he or she is a rejector of Islam, a deliberate disbeliever (or *Kafir*), and is now an apostate (*murtad*).**

No minor or major sinful action or statement is sufficient as independent proof that the doer is guilty of “major

---

<sup>224</sup> Ibn Taymiyyah, *Minhaj al-Sunnah al-Nabawiyyah*, Muhammad bn Su'ud University, Riyadh, 1986, vol.5, p.240.

*kufr*”, and is now a disbeliever (*Kafir*), and not just a disobedient Muslim (*fasiq*) or something else.

Ibn Taimiyyah also says: “The textual threats which occur in the Book and the *Sunnah*, or the statements which the scholars (*Imams*) make to imply excommunication (*takfir*), or to declare a person to be a wrongdoer or sinner (*tafsiq*), or the like, do not necessarily mean that it applies to a specific individual; except if the conditions justifying such terms are satisfied, and the impediments are absent”.<sup>225</sup>

8. Consequently, **additional evidence is required to establish proof (*Iqamat al-hujjah*) that there has certainly also been a deliberate rejection or denial of a fundamental divine truth**, or opposition to it in the heart of the doer or person (i.e., “major *kufr*”). There has to be evidence with certainty of conscious “*kufr* in the heart” or deliberate rejection or “denial of known divine truth” in order to confirm “major *kufr*” in order to justify *Takfir* of persons. Evidence is needed for proof of a change in belief which is irreconcilably opposed to a known fundamental tenet of Islam.

**“Major Kufr” or disbelief in the heart is the type of *kufr* which when proven with absolute certainty, justifies**

---

<sup>225</sup> Ibn Taymiyyah, *Majmu' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol. 10, p. 372.

**the excommunication (*Takfir*) of the person (*Kufr mu'ayyan*).** In other words, it is the establishment of proof for this disbelief - in the heart and mind of a person who committed an act or statement that was an expression of disbelief (*kufr*) - that qualifies him or her to be regarded as a disbeliever or *Kafir*, and excommunicated out of the fold of Islam. Conditions (*shurut*) and hinderances (*mawani'*) of *Takfir* must therefore be considered in order to confirm major *kufr*, and that a Muslim is now a disbeliever or *Kafir*.

Ibn Taymiyyah also said: “The truth is that a declaration could be a statement of disbelief (*kufr*) and it will be said that whoever does so is a disbeliever (*kafir*). However, a particular person who does such a thing will not be called a disbeliever (*kafir*) until proof that will make him deserve the title is sufficiently established....”<sup>226</sup>

**9. Proof that a Muslim is no longer a Muslim, but a denier of divine truth (i.e., a *Kafir*) needs to meet certain agreed terms and conditions in order to ensure absolute certainty.** This is also to preserve a Muslim's innocence and dignity, prevent false accusations and injustice from mistakes, misuse or abuse of excommunication (*Takfir*). These are conditions (*shurut*) for *Takfir* that have to be met and/or hinderances (*mawani'*) to it that must be absent. These are

---

<sup>226</sup> Ibn Taimiyyah, *Majmu' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.23, p.345.

necessary in order to also avoid excommunicating persons that might have pardonable excuses in Shari'ah for their actions or statements of “absolute *kufr*” (*Kufr Mutlaq*).

These conditions and/or hinderances are traditionally six in number:

1. The person must be a **mature adult** and **not a child**.
2. They must also be of **sound mind** and full mental capacity and **not insane**.
3. They understand and are **knowledgeable** about the meaning and implications of their words or actions and **not ignorant** of their offence.
4. They are intent and **deliberate** on their action and **not mistaken** or confused.
5. They are **desirous** of apostasy or excommunication (*kufr*) and **not forced** or coerced into it by duress or necessity.
6. They did not intend by their action or statement a meaning or implication that was **esoteric** (*ta'wil*) and arrived at by sincere but faulty interpretation.

It is important to reiterate, that in spite of the various definitions of a *Kafir* or apostate (*Murtad*) given by scholars, all distinguished jurists and scholars agree that it is only when these 6 conditions/hinderances are satisfied that a Muslim may be regarded as a *Kafir*.



**10. The “establishment of proof” (*Iqamat al-hujjah*) requires that each and every one of these terms and conditions for excommunication (*Takfir*) of a Muslim have been met with absolute certainty and beyond a shadow of doubt.** This is critical to the protection of Islam and Muslims from the misuse and abuse of *Takfir*.

This “establishment of proof” implies the need for ensuring that those to judge and decide on cases of disbelief, blasphemy and apostasy, be specialised and competent in the relevant Islamic interpretive and juristic sciences (*Ulum al-din*). This is best done by a Muslim jurisconsult (*Mufti*), a distinguished jurist (*Mujtahid*) or preferably a shariah court judge (Qadi) of competent jurisdiction.

**11. Some Muslims confuse the terms *Kufr* and *Kafir* with several other terms** used to describe Muslims who have also done wrong, or made various mistakes related to compliance or interpretation of religious texts and teachings. A list of these usually includes disobedience (*fisq*), hypocrisy (*nifaq*), heresy or blameworthy innovation (*bid'ah*), esoteric interpretations (*ta'wil*), and diversity of scholarly opinion (*khilaf*). With the exception of some forms of hypocrisy (such as “major *nifaq*”), all other forms of wrongdoing, mistaken interpretations and incorrect analyses of religious texts and evidence may not involve an intentional or desirable denial of faith or rejection of belief

in the known essential fundamentals of the religion - *ma'lum min al-din bi al-darurah*, and those teachings agreed upon by absolute consensus (*al-ijma' al-qat'i*).

“Major hypocrisy” (*nifaq al-akbar*) involves denial of definitive fundamental truths and disbelief (*kufr*) in the heart, while deceptively pretending to be a Muslim and believing in the opposite. In this case, however, the evidence for establishing proof of disbelief (*kufr*) is hidden by the pretence and duplicity of the hypocrite and cannot therefore be established.

Only the establishment of proof (*Iqamat al-hujjah*) with the certainty that each and every one of the conditions (*shurut*) and/or hinderances (*mawani'*) to excommunication (*takfir*) have been carefully and satisfactorily considered by a competent authority, can justify the correctness of excommunicating a Muslim. Consequently, the disobedient (*fasiq*), along with the heretic (*mubtadi'*), hypocrite (*munafiq*), and esoteric interpreter (*mu'awwil*), etc. are all regarded as legally Muslim, as they are innocent of disbelief (“major *kufr*”) until proven guilty, and only Allah can judge what truly is in their hearts and minds regarding their real faith and beliefs.

12. The consequences of not knowing or respecting the nuanced definitions of related terms, the distinctions, and the conditions/hinderances related to the “unrestricted”

*takfir* of things (*Kufr mutlaq*) and the very restricted *takfir* of persons (*Kufr mu'ayyan*), have resulted in numerous tragedies for the lives, security and peace of Muslims and their communities. Some of these are too costly to quantify and their dangers cannot be over-estimated.

**Not regarding these terms and conditions makes the reckless and irresponsible accuser of disbelief (*Takfiri*) a victim of his or her own accusation** in the eyes of Allah as promised by the Prophet Muhammad (p) as narrated in authentic hadith on this. Muslim scholars all agree that these hadiths are proof that calling another Muslim a “*Kafir*” without the prerequisite justifications and unequivocal evidence is a grave or major sin in Islam.<sup>227</sup>

---

<sup>227</sup> See: Ibn Hajar, *Fath al-Bari*, vol.17, p. 199 (al-Maktabah al-Shamilah, 3.13); al-Nawawi, *Shar al-Nawawi 'Ala Muslim*, vol.1, p.153 (al-Maktabah al-Shamilah, 3.13).

## DEFINITION OF *KUFR* AND *TAKFIR*

*Kufr* is an Arabic word from the triliteral root “*k-f-r*” which means to cover or conceal. In the Arabic language, a dark night is described as having “concealed” or “covered” (*kafara*) the earth and what was visible, with darkness. Similarly, a person who is covered in body armour is called a *Mukaffar*. The Qur'an 57:20 describes farmers who cover their seeds with soil as *kuffar*. One of the prayers of believers (from Qur'an 3:193) is for Allah to “*kaffir anna sayyi'atina*” – “cover our evil deeds” (with mercy) or “blot out our inequities”. The term for “expiation of sins” is *Kaffaarah*, which indicates Allah's covering wrong done with mercy due to an act of atonement, penance, or charitable compensation. It could therefore also connote denying a blessing or concealing a favour, and acting as if there is nothing to be grateful for. In this context, *kafara* or *kufr* here implies ingratitude or being ungrateful as in “*wa la in kafartum...*” meaning, “and if you are ungrateful...” (Qur'an 14:7).

In its abstract sense, *kufr*, which is popularly translated as disbelief or unbelief, actually carry the deeper spiritual connotation of concealing something that exists, denying something that is true, or a deliberate refusal to acknowledge a Divine truth or guidance.

## The Technical and Religious Definition of Kufr

For our purpose, we shall focus on the form of *Kufr* that implies a negation of faith in Islam, apostasy (*ridda*) or leaving the fold of the religion of Islam. This is what scholars and jurists refer to when they use the term *Kufr* or *Kafir* for a person.

In the technical or religious sense, and depending on the precise context, *Kufr* could therefore mean an act or statement of deliberate **ingratitude** - “(Recall the time) when your Lord declared, If you express gratitude, I shall certainly give you more, and if you are **ungrateful**, then My punishment is severe...” (Qur'an 14:7); **denial or “bent denial”** - “Surely for those who have **disbelieved**, it is all the same whether you warn them or you warn them not: they do not believe” (Qur'an 2:6), “And when there came to them a Book from Allah, which confirms what was with them, while earlier, they used to seek help against those who **disbelieved**, yet when there came to them that which they did recognize, they denied it. So, the curse of Allah is upon the **disbelievers**” (Qur'an 2:89); **disavowal, rejection and repudiation** - “The Satan will say when the matter will have been decided, Allah promised you a truthful promise while I gave you a promise and did not fulfill it. I had no authority over you, except that I invited you and you accepted my call. So, do not blame me, but blame yourselves. Neither I can come to your help, nor

can you come to my help. I **disown** your associating me with Allah in the past. Surely, there is a painful punishment for the unjust...” (Qur'an 14:22); or **turning away** from Allah and His definitive guidance - “Allah, the One to whom belongs what is in the heavens and what is in the earth. Woe be to those who deny the truth. For a severe punishment awaits those who prefer the worldly life to the Hereafter and **prevent** (people) from the way of Allah, and seek to make it crooked. Those have gone too far in straying” (Qur'an 14:3). All meanings however are associated with concealment or the cognitive act of covering up of Divine truths, favours or guidance.<sup>228</sup>

Muslim scholars have classified *Kufr* based on various criteria into different types with differing implications (“major *kufr*” and “minor *kufr*”), whether it applies to things or to persons (“*kufr Mutlaq*” and “*kufr mu'ayyan*” respectively), and the various ways in which disbelief or *kufr* is expressed in different contexts of the Qur'an and Hadith (*kufr al-Takdhib*, *Kufr al-Juhud*, *kufr al-Shakk*, *kufr al-Irad*, and *kufr al-Nifaq*), etc. Some of these will be discussed in some detail later in this book.

---

<sup>228</sup> Balil Abd Al-Karim, *Qur'anic Terminology: A Linguistic and Semantic Analysis*, International Institute of Islamic Thought, Herndon, VA, USA, 2017, pp.17-18.

*Kufr* from this perspective means “denial of truth”, “rejection of faith” and therefore more than just disbelief or unbelief. *Kufr* refers to a belief (expressed in words or deeds) that is clearly contrary or opposed to the established will of God as found in the known essential fundamentals of the Qur'an and Sunnah, and those teachings of Islam confirmed by juristic consensus (*Ijma'*). *Kufr* is a belief that contravenes God's declared will and blasphemes against God. It is whatever implies a belief in the opposite of *Iman* (faith) and Divine guidance, which is regarded as serious enough to take a person outside the fold of Islam.

A very common source of confusion for many who are new to the subject of *Kufr* and *Takfir*, is the fact that the criteria for determining that a thing is a form of *kufr* or an expression of disbelief, is very different from the criteria for determining that a person is a *Kafir* (disbeliever). The evidence and justification for a thing (action or statement) to be regarded as a form or expression of *kufr*, does not stand as evidence to justify describing the performer, actor or doer as a *Kafir*. Doing so was a classical identity marker and characteristic of the Khawarij ideology.<sup>229</sup>

---

<sup>229</sup> The Khawarij were a group of secessionists who broke away from the leadership of the 4th Caliph, Ali bin Abi Talib. They justified the *Takfir* and assassination of the Caliph based on their misinterpretation of his actions and misinterpretation of the Qur'anic concept of “sovereignty belonging to Allah” (Qur'an 6:57, 18:26). A major characteristic of the Khawarij ideology

## The Nature of Evidence and Degree of Certainty Required for Identifying Disbelief (*Kufr*)

Due to the seriousness attached to the charge of *kufr* (*takfir*) and its possible implications on the Muslim who is accused of it, and to also protect the accuser, the evidence required for declaring something as *Kufr* or declaring a Muslim as a *Kafir* has to be established with certainty. This implies that the disbelief (*Kufr*) has to be established by the known fundamentals of Islam (*ma'lum min al-din bi al-darurah*), or evidence upon which there is a clear and absolute consensus of all distinguished jurists (Ijma').

The first source of certainty or “absolute truth” (*Ilm al-yaqin*) and on which all the distinguished jurists agree upon, are teachings that meet the following two criteria:

1. Definitive textual evidence (*qati' al-thubut*) which is from only the Qur'an and/or undisputedly authentic multiple-chained (*mutawatir*) hadith,<sup>230</sup> and at the same time,

---

is the belief that wrong actions can suffice to justify the accusation of disbelief (*Takfir*). See <https://en.wikipedia.org/wiki/Kharijites>. See also, Al-Shaharsatani, *Al-Milal wa al-Nihal*, Dar al-Kutub al-'Ilmiyyah, 2013; Ibrahim ibn Salih al-Muhaymidi, *Al-Qissah al-Kamilah li Khawarij 'Asrina*, (*The Complete History of the Kharijites of our Time*), Dar al-Furqan al-Misriyyah.

<sup>230</sup> These multiple-chained (*mutawatir*) hadith are regarded as second only to the Qur'an in their authenticity and historical integrity. See Muhyiddin Al-Nawawi, *Al-Taqrif wa al-Taysir*, p.19 (Maktabah al-Shamila); Abdulrahman



2. Text that is explicitly clear and categorical in its meaning and implication (*qati' al-dilalah*), such that there are no valid alternative interpretations.

These are the only two textual sources of definitive truths and knowledge of absolute certainty (*'ilm al-yaqin*) that all scholars and jurists agree upon, and the rejection of which is *Kufr*.<sup>231</sup> These two criteria, together ensure that that the “absolute truths” they impart are not products of “juristic reasoning” (*ijtihad*) which is dependent on evidence of presumptive (*zanni*) authority and integrity, and/or with presumptive (*zanni*) meanings and implications.

These two definitive sources of Divine truths are also the only two accepted sources of the “known, essential and fundamental teachings of the religion (of Islam)” or the “necessarily known and definite part of the religion” – referred to as the “*ma'lum min al-din bi al-darurah*”. These are the

---

bin Abubakr al-Suyuti, *Tadrib al-Rawi*, Maktabat al-Riyadh al-Hadithah, Riyadh, vol.2, p.176; Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008, p.84; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p.93-95.

<sup>231</sup> Al-Suyuti, *Miftah al-Jannah*, Madina, 1399 AH, p.5; See also Gibril Fouad Haddad, *Sunna Notes: Studies in Hadith and Doctrine*, vol. 1, AQSA Publications, UK, 2006, p.116-119; Jonathan A. C. Brown, *Hadith: Muhammad's Legacy in the Medieval and Modern World*, Oneworld Publications, Oxford, 2009, p.153-155, 173-183.

indisputably established facts of the religion of Islam from its primary sources – the Qur'an and Sunnah – and agreed upon by complete consensus of jurists and scholars.

Another source of such “absolute truth”, is that which is based on unanimous juristic agreement and consensus (*Ijma'*). This is a teaching that is established by an interpretation of the text or evidence upon which there is a complete and confirmed consensus (*ijma'*)<sup>232</sup> held by all distinguished jurists (*Mujtahids*) of all schools of law and theology, and with no known divergence of opinion.<sup>233</sup> Going against this kind of consensus that is established by text (*nass*) is regarded as an act of *Kufr*.<sup>234</sup> The claim of this

---

<sup>232</sup> There are other definitions of “*Ijma'*” (consensus) discussed by the different jurists and schools of law with varying implications. For further discussion on this “complex term”, see Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, London, 2008, p.109-112; Mohammad Omar Farooq, *Towards Our Reformation: From Legalism to Value Oriented Islamic Law and Jurisprudence*, IIIT, London, 2011, p.141-167; Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.130; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, UK, 2001, pp.168; Da'wah Institute, *Shari'ah Intelligence: The Basic Principles and Objectives of Islamic Jurisprudence*, Islamic Education Trust, Minna, Nigeria, 2019, pp.40-49.

<sup>233</sup> Ibn Taymiyyah, *Majmu' al-Fatawa*, (3rd Edition.), Dar al-Wafa, 2005, vol.7, p.39.

<sup>234</sup> See, Ibn Taymiyyah, *Majmu' al-Fatawa*, (3rd Edition.), Dar al-Wafa, 2005, vol.7, p.39; Abu Hamid al-Ghazali, *Faisal al-Tafriqah bayna al-Islam wa al-Zanadiqah*, Dar al-Beirut, 1993, p.62. See also, al-Haj, *Al-Taqrir*, Vol. 3, p.158, Jalal al-Din al-Suyuti, *Al-Dur Al-Manthur* (Beirut: Dar al-Fikr, 1993),

consensus has to itself be established by sufficient numbers of jurists, and not just the claim of one or a few.<sup>235</sup>

According to Imam Al-Amidi, "...Scholars all agree that the rejection of a ruling that is established by "presumptive consensus" (*Ijma' al-zanni*) does not imply disbelief (*kufr*)...".<sup>236</sup>

Every other source of Islamic teachings, is regarded by jurists as presumptive, not accepted by complete consensus (*Ijma'*), and having a degree of uncertainty in its authority (*zanni al-thubut*).

### ***Takfir and the "Known Fundamentals of Islam" - Ma'lum min al-din bi al-darurah***

The known essentials, necessities and fundamentals of Islamic teachings include those basic (*Usul al-din*) teachings of the religion agreed upon by all Muslims, that are related to those conclusive, straightforward, fundamental and essential matters of creed and beliefs (*aqidah*), devo-

---

vol. 3, p.86. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.193.

<sup>235</sup> See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p.21.

<sup>236</sup> Abu al-Hassan Ali Ibn Abi Ali Muhammad Al-Amidi, *Al-Ihkam fi Usul al-Ahkam*, Al-Maktab al-Islami, vol.1, p.282.

tional worship (*ibadah*), moral behaviour and character (*akhlaq*), and mundane interpersonal affairs (*mu'amalat*).

The “*ma'lum min al-din bi al-darurah*” include those explicitly clear matters of primary importance in **beliefs and creed (*Aqidah*)** such as the known fundamental articles of faith – belief in Allah and His attributes, the Day of Judgement, Angels, revelation, prophethood, etc. These essential fundamentals also include the basic teachings related to **devotional worship (*ibadah*)** such as the known “five pillars of Islam” – five daily prayers, fasting in Ramadan, zakat, etc. They also include the explicit prohibitions and obligations related to **behaviour (*akhlaq*)** such as the prohibition of vices such as injustice, envy, arrogance, lies, pride, hypocrisy, etc. and the obligation (or encouragement) of various virtues such as faith, fairness, compassion, honesty, truthfulness, rudeness to parents, bearing false testimony, etc.; and those definitive teachings related to **mundane and interpersonal issues (*mu'amalat*)** related to the lawful (*halal*) and the prohibited (*haram*), such as the prohibition of murder, theft, adultery, eating pork, drinking alcohol, etc.

These essential fundamental teachings form the core and kernel of Islam. Accepting them with nothing else, makes a person a Muslim, even if with some deficiencies. They establish the “minimum Islam” required of a Muslim.

Rejecting any of them can take a person out of Islam. The concept of *Kufr* and the role of *Takfir* therefore serves as a boundary marker for the minimum degree of theological tolerance in determining what constitutes being in or out of the religion of Islam. Accepting the essential fundamentals implies being a Muslim, a member of the Muslim Ummah, and in the religion (at least in principle). Rejecting or denying any of them implies being outside the fold of Islam.

It is therefore the categorical rejection or denial of any of these essential fundamental teachings that gives the level of certainty required by scholars for describing an act as a form or expression of disbelief or *Kufr*. When the denial or rejection of any of these teachings is done knowingly and deliberately, then by scholarly consensus, it could make the doer a disbeliever or *Kafir*. This however is still subject to the “establishment of proof” where all conditions have been met and all the agreed hinderances to *takfir* being absent.<sup>237</sup>

Both classical and contemporary scholars regard the denying of any of the essential fundamentals of Islam (*ma'lum min al-din bi al-darurah*) as an expression of *Kufr* and could justify *Takfir* once evidence for this has been established.

---

<sup>237</sup> This is the subject of the “Declaratory Laws” (*Ahkam al-Wad'iyyah*) in the Principles of Islamic jurisprudence (*Usul al-Fiqh*), which regulate the terms and conditions of all *Shari'ah* rulings (*Ahkam al-Taklifiyyah*). Those that apply to the subject of *Takfir* will be discussed later on in this book.

According to Imam al-Tabari: “One who denies (any of the) known and essential fundamentals of the religion (*ma'lum min al-din bi al-darurah*) is not a believer.”<sup>238</sup>

Imam al-Dhahabi said, “Every distinguished jurist (*Mujtahid*) is rewarded even if he made a mistake. However, if he rejects what is a known and essential fundamental of the religion (*ma'lum min al-din bi al-darurah*), and he believes in its opposite, he without any doubt becomes a disbeliever (*Kafir*), because that is not an area of juristic reasoning (*ijtihad*)...”<sup>239</sup>

► According to Imam Abu Ishaq al-Shatibi, “Muslims have agreed that Kharijites are a group of Muslims despite their misguided acts, except those of them who reject Surah Yusuf or claim there would be a prophet after Muhammad (p). Any of them who has reached the level of rejecting what is a known and essential fundamental of the religion (*ma'lum min al-din bi al-darurah*) is a disbeliever (*kafir*) with certainty (*yaqiniyyan*).”<sup>240</sup>

► The contemporary scholar, Sheikh Rabi' al-Madkhali said, “A person who rejects any of known and essential

---

<sup>238</sup> Tabari, *Jami' al-bayan fi ta'wil al-Quran*, Muassat al-Salah, 1st edition, 2000, vol.6, p.459.

<sup>239</sup> Al-Dhahabi, *Siyar a'lam al-Nubala*, Mu'assasat al-Risalah, 3rd edition, 1985, vol. 7 p.155.

<sup>240</sup> Al-Shatibi, *al-Muwafaqat*, Dar ibn 'Affan li al-Nashr wa al-Tawzi' Cairo, 1st edition, 1997, vol.5 p.174.

fundamentals of the religion (*ma'lum min al-din bi al-darurah*) is a disbeliever (*Kafir*); provided he is not a new convert to Islam, and he was raised in a place far away from scholars.”<sup>241</sup>

- Another scholar, Abdullah Ibn Baaz said: “A person who makes permissible what is prohibited among the things that are known and essential fundamentals of the religion (*ma'lum min al-din bi al-darurah*), such as adultery (*zina*), or drinking of alcohol, becomes a disbeliever (*Kafir*).”<sup>242</sup>
- The jurist, Wahbah al-Zuhayli said: “Anyone who deliberately rejects the known and essential fundamentals of the religion (*ma'lum min al-din bi al-darurah*) shall have the ruling of becoming a disbeliever (*Kafir*) applied to him, and this is according to the consensus of the Muslims.”<sup>243</sup>

The definitive and categorical evidence for these essential fundamentals ensures that there is no diversity of opinion, presumption or doubt on these issues among any

---

<sup>241</sup> Rabi' al-Madkhali, *Hujjiyyat khabr al-Ahad fi al-'aqaid wa al-ahkam*, Maktabah al-Shamilah 3.35, p.61.

<sup>242</sup> Abdullah Ibn Baaz, *Bayan al-Tauheed al-lazi arsala biyi al-Rusul*, Ri'asat Idarat al-Buhuth al-'Ilmiyyah wa al-Ifta wa al-Da'wah wa al-Irshad, 1st edition, 1996, p.27.

<sup>243</sup> Wahbah Zuhayli, *al-Fiqh al-Islami wa adillatuhu*, Dar al-Fikr, Damascus, 4th edition, vol.7, p.141.

of the scholars of any school of theology or law, or recognized sect of Islam.<sup>244</sup> These known and essential fundamentals are topics of unanimity of interpretation from definitive (*qat'i*) texts, and consequently of complete consensus (*ijma'*) among all Muslims.

As mentioned earlier, due to the absence of any presumption or speculation (*zanni*) in the meaning or authenticity of these categorical textual sources (Qur'an and Hadith *Mutawatir*) regarding these essential fundamentals of Islam, scholars see no legitimate need or space for “juris-  
tic reasoning” or *Ijtihad*, and hence no divergence views under normal circumstances.<sup>245</sup>

As a rule, divergence of opinion among scholars or schools of law or theology, is a hinderance to *takfir*, and generally implies that the subject matter **does not belong** to the category of the “known, essential and fundamental sources of the religion of Islam” – “*ma'lum min al-din bi al-darurah*”, and not to the category of issues on “absolute consensus” (*al-ijma' al-qat'i*) – and therefore not subject to legitimate *Takfir* and accusations of *Kufr*.

---

244 See more on the recognized sects of Islam in the discussion under “The Claim that all the Shi'ah are Disbelievers (Kuffar)”.

245 These are the normal and “comfortable” (*tahsini*) circumstances that validate the full normative weight ('*azima*) of laws in Shari'ah. They do not include changed contexts of need (*hajah*) or necessity (*darurah*) when the “declaratory laws” (*Ahkam al-wad'iyyah*) of Shari'ah would validate changes in the law due to the need for concessions (*rukhsa*).



Sheikh Abd al-Aziz al-Rees said: “If it is established that the issue (at hand) is a matter of juristic reasoning (*ijtihad*), then it should be clear that excommunication (*takfir*) of individuals would not apply to such issues that are disputed among the Sunni scholars. The disagreement (*khilaf*) among the scholars is a hindrance to the excommunication of specific individuals”.<sup>246</sup>

Commenting on the debate surrounding one who abandons his or her daily prayers (*salat*), Shaykh Muhammad Abdulwahab said: “The scholars differed regarding the declaration of disbelief (*takfir*) on one who abandons the compulsory *Salah* (prayers) due to laziness while not denying the belief in their obligatory status. However, we do not excommunicate on anything except on matters which all scholars unanimously agreed upon by consensus.”<sup>247</sup>

Imam Abu Hamid al-Ghazali said: “What is relied upon regarding ex-communication (*takfir*) is clear evidence (*al-nas al-sarih*) or consensus (*al-ijma'*), and correct and clear analogy (*qiyas*) based on explicit text (*mansus 'alayhi*)”.<sup>248</sup>

---

<sup>246</sup> Abdul-aziz al-Rees, *Al-Burhan al-Munir fi Dahd Shubuhat ahl al-Takfir wa al-Taffir*, Mashru' Tab'a'at al-Kutub al-Salafiyyah, Kuwait, 2nd edition, p.8-9.

<sup>247</sup> Muhammad bn Abdulwahhab, *al-Durar al-Saniyyah*, Maktabah al-Madinah al-Raqmiyyah, 1996, 6th edition, vol. 1, p.102.

<sup>248</sup> Al-Ghazali, *Faisal al-Tafriqah bayna al-Islam wa al-Zandiqah*, Dar al-Beirut, 1993, p. 128.

He goes on to say elsewhere, “And it has not been proven for us that an error in interpretation (*ta'wil*) justifies *takfir*. There must be evidence established for it (*takfir*). It is established that inviolability (or immunity) is secured from the statement that, “There is absolutely no deity but Allah”, and this immunity is not repealed except by categorical evidence. This fact should be sufficient to warn against the excessive use of *takfir*, as this is not established with evidence.”<sup>249</sup>

Ibn Abd al-Barr said: “... The correct perspective, which cannot be refuted, is the following: Whoever is regarded by consensus to be a Muslim at a particular moment, but then commits a sin or makes an esoteric interpretation (*ta'wil*) of the text (remain a Muslim). If scholars were to differ regarding his excommunication from Islam, their disagreement regarding his status would be inconsequential due to the initial confirmed consensus regarding the status of his Islam. He does not exit from Islam which was earlier agreed upon, unless there is a new consensus (that he has rejected Islam) ...”<sup>250</sup> In other words, certainty and consensus on Iman or Islam of someone cannot be overruled by diversity of opinion.

---

<sup>249</sup> Al-Ghazali, *Al-Iqtisad fi al-I'tiqad*, Dar Kotaiba, 2003, p.223.

<sup>250</sup> Ibn Abd al-Barr, *Al-Tamhid*, al-Maktabah al-Shamilah 3.35, vol. 17, p. 21.

## Secondary and Subsidiary (*furu'*) Matters of Religion

Some teachings of Islam are important but not fundamental. They are considered under matters that are related to the “secondary issues”, “subsidiaries” or “branches” (*furu'*) of knowledge and not the fundamental (*usul*) of the religion such as those teachings established by “absolute consensus” (*Ijma' qati'*) or which belong to the “known essential fundamentals tenets of Islam” - “*ma'lum min al-din bi al-darurah*.” These secondary matters (*furu'*) are also found in areas of creed ('*Aqidah*), devotional worship (*ibadah*), and mundane transactions (*mu'amalat*), etc.

As stated earlier, some matters of creed and beliefs ('*Aqidah*) are “primary” (*usul al-'aqidah*) and part of the fundamentals of Islam on which there is “absolute consensus” (*Ijma' qat'i*) and which are established by definitive evidence that is both definitive in authenticity (*qati' al-thubut*) and also categorical in meaning and implication (*qati' al-dilalah*). These include belief in Allah, the angels, Last Day, prophets, etc.

Some other matters of creed ('*Aqidah*) are not established by this quality or strength of evidence. These “secondary” matters of creed (*furu' al-'aqidah*) are established by evidence that is either presumptive (*zanni*) in its authenticity (*zanni al-thubut*) or presumptive in its meaning and

implications (*zanni al-dilalah*). Consequently, on such secondary matters (*furu'*) of creed (*'Aqidah*), there is diversity of scholarly opinion (*khilaf*) and differences in interpretation among the various schools of theology. Some of the diversity of opinions in these secondary matters of creed existed among some of the respected companions of the Prophet (p). These secondary matters of creed (*'Aqidah*) that scholars have differed on do not justify excommunication (*Takfir*).

Examples of such secondary matters of creed include the differences among schools and scholars regarding the interpretation of “Hand” or “Throne” as it applies to Allah, the differences over whether prophets can be female or not, the return of prophet Isa (p), whether Allah can be “seen” or not, whether the “Night journey” (*Isra'*) or “ascension” (*Mi'raj*) were physical journeys or spiritual visions in nature, whether the duration of any of those going to Hell Fire will be temporary or for all eternity, the existence and nature of punishment in the grave, etc.<sup>251</sup>

---

251 For further readings on diversity of scholarly opinions related to secondary matters of creed (*furu' al-'aqidah*), see Muhammad bin Salih al-Uthaimeen, *Sharh al-'Aqidah al-Safariniyyah*, Dar al-Wadan li al-Nashr, Riyadh, 1426 AH, vol.1, p.307; Muhammad Hassan Abdulghaffar, *Sharh Lum'ah al-I'tiqad*, al-Maktabah al-Shamilah, vol.18, p.3, and vol.17, p.5; Ibn Qayyim al-Jawziyyah, *al-Ruh*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1975, vol.1, p.34; etc. See also, an in-depth discussion in an online article on “Issues of Creed (*Aqidah*) on which Ahl al-Sunnah have Differences of Opinion” by Shaikh Hamd bn Abd al-Muhsin al-Tuwaijiri, source:

After giving some examples of secondary matters of creed ('*aqidah*) on which distinguished scholars have differed, Sheikh Muhammad al-Uthaimeen says, “The statement that there is no difference of opinion on matters related to creed ('*Aqidah*) is incorrect; for there are matters related to creed that are based on presumptive (*zanni*) evidence.”<sup>252</sup>

Disbelief in secondary matters of creed (*furu' al-'aqidah*) on which there are various scholarly differences (*Khilaf*) and diverse interpretations (*Ta'wil*) among Muslim groups and schools of thought, does not constitute adequate certainty for the purpose of establishing disbelief (*kufr*) or excommunication (*Takfir*).

Secondary matters also apply to matters of **devotional worship** (*ibadah*) such as most recommended (*mustahab*) acts including the number of units (*raka'ahs*) for the *Tarawih* prayers in Ramadan, where to place the hands during prayers (*salah*), recitation of *basmalah* in Surah al-Fatiha during prayers (*salah*), using cash equivalent for *Zakat al-Fitr* (after Ramadan), the expiation (*kaffarah*) for

---

<https://www.alukah.net/sharia/0/36/>. Accessed 18.08.2023; and another by Yusuf Ibrahim bin Ali al-Humri al-Athari, *Aqwal al-Ulama' fi Dhikr Ikhtilaf al-Sahabah fi Ba'd Masa'il al-Aqidah wa al-Radd 'Ala Man Ankaraha*.

<sup>252</sup> Muhammad bin Salih al-Uthaimeen, *Sharh al-'Aqidah al-Safariniyyah*, Dar al-Wadan li al-Nashr, Riyadh, 1426 AH, vol.1, p.308.

missing fasting in Ramadan due to pregnancy, the legitimacy of collective supplication (*du'a*) after prayers (*salah*), whether more than one obligatory prayer (*salah*) can be done with one dry ablution (*tayammum*), charging *zakat* on root crops and tubers such as yam and cassava, etc.<sup>253</sup>

Some secondary matters related to the lawful (*halal*) and the prohibited (*haram*) on **mundane and interpersonal issues (*mu'amalat*)** include eating carnivorous animals, use of certain musical instruments, eating animals slaughtered for Christmas by Christians, consuming pig gelatine, the legitimacy of conventional insurance, the punishment for apostasy, women leadership, etc.<sup>254</sup>

---

<sup>253</sup> For more examples on diversity of opinion related to secondary matter of devotional worship (*ibadah*), see Ibn Rushd, *Bidayat al-Mujtahid, The Distinguished Jurist's Primer*, (translated by Imran Ahsan Khan Nyazee), Garnet Publishing Limited, Reading, U.K., 1994, vol.1; Osoul Global Center, *The Simplified Encyclopedia of Contemporary Issues in Islamic Jurisprudence (Fiqh)*, Centre of Research Excellence in Contemporary Fiqh Issues, The Islamic University of Imam Muhammad ibn Saud, Riyadh, 2018; As-Sayyid Sabiq, *Fiqh us-Sunnah*, American Trust Publications, USA, 1991.

<sup>254</sup> Ibn Rushd, *Bidayat al-Mujtahid, The Distinguished Jurist's Primer*, (translated by Imran Ahsan Khan Nyazee), Garnet Publishing Limited, Reading, U.K., 1994, vol.2; Osoul Global Center, *The Simplified Encyclopedia of Contemporary Issues in Islamic Jurisprudence (Fiqh)*, Centre of Research Excellence in Contemporary Fiqh Issues, The Islamic University of Imam Muhammad ibn Saud, Riyadh, 2018.

## **All *Kufr* is *Haram* and Sinful. Not all that is *Haram* or Sinful is *Kufr***

The field that regulates “juristic reasoning” (*Ijtihad*) and the management of evidence (*adillah*) for the purpose of developing Islamic rulings appropriate for each context, is *Usul al-Fiqh* – often described in English as “Islamic Legal Theory” or the “Principles of Islamic Jurisprudence”.

The various forms of evidence (*adillah*) used in *Usul al-Fiqh* for the purposes of discovering or defining the Shari'ah rulings (*al-Ahkam al-Taklifiyyah*) for things are categories into the “Primary” and “Secondary sources” of Shari'ah.

The Primary sources are the Qur'an and Hadith. For the purpose of rulings, the schools of law (*Madhhabs*) distinguish multiple-chained (*mutawatir*) hadith from solitary (*ahad*) hadith based on the degree of certainty.<sup>255</sup> Solitary (*ahad*) hadith for example, are not used as independent sources of evidence for “known essential fundamental

---

<sup>255</sup> Abdullah bin Yusuf al-Judayy, *Taysir Usul al-Fiqh*, p.34; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, the Islamic Text Society, Cambridge, 2003, p.421; Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008 p.13; Ahmad Hasan, *The Principles of Islamic Jurisprudence: The Command of the Sharia and Juridical Norm*, Adam Publishers, New Delhi, 2005, p.38, 40-77, 130-133. See also, Al-Shawkani, *Irshad*, p. 47; Badran, *Usul*, p. 53; Hitu, *Wajiz*, p. 305 - cited in Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2001, p.21.

truths of Islam” – *ma’lum min al-din bi al-darurah*. They are not definitive (*qat’i*) in their authenticity and do not give certainty (*‘Ilm al-Yaqin*) for important matters such as primary or fundamental beliefs (*usul al-‘Aqidah*), etc. in any of the major Sunni Schools of Law (*Madhhabs*). Other supporting evidence (*adillah*) such as *Ijma’* (consensus) is required.<sup>256</sup> It is only the Qur’an and multiple-chained (*mutawatir*) hadith give definitive levels of certainty regarding of authenticity of the text (*qati’ al-thubut*), by the consensus of all schools of Islamic law.<sup>257</sup>

The “Secondary sources” and evidence for law-making are also described as the sources or tools of “juristic reasoning” used when the Primary sources are either “silent” or ambiguous on an issue. These secondary sources include “presumptive consensus” (*Ijma’ al-zanni*), Reasoning by Analogy (*Qiyas*), Legal Presumption of the Status Quo (*Istishab*), Consideration of Public Interest (*Maslahah*),

---

<sup>256</sup> Though the Zahiri School regard Hadith *Ahad* as being *qat’i al-thubut* once it is reliably authentic (*sahih*). In this regard, see the detailed discussion by Gibril Fouad Haddad, *Sunna Notes: Studies in Hadith and Doctrine*, vol. 1, AQSA Publications, UK 2006, p.131-133; See also Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p.96-108 for conditions scholars placed for the acceptance of solitary traditions (*hadith ahad*).

<sup>257</sup> Abu Muhammad Abdullahi bin Ahmad al-Maqdisi Ibn Qudama, *Raudat al-Nazir wa junta al-Munazir*, Muhammad bin Saud University, Riyadh, 1399AH, p.94; Ibn Najar, Abulbaqai, Muhammad bn Ahmad, *Sharh al-Kaukab al-Munir*, Maktabat al-Ubaikan, 1418AH, Vol.2, p.217.



Juristic Discretion (*Istihsan*), Preclusion (*Sadd al-Dhari'ah*), the Opinion of a Companion (*Ra'yi al-Shahabi*), the praxis of the People of Medina (*'Amal ahl al-Medina*), Laws of Previous Prophets (*Shar'u man Qablana*), etc.

Of the “Primary sources” only the Qur'an and multiple-chained (*Mutawatir*) Hadith are regarded as undisputedly authentic and definitive sources (*Qati' al-Thubut*) of Divine truths. The solitary (*Ahad*) hadith and all secondary sources of evidence are categorized as presumptive sources (*Zanni al-Thubut*).

Some of the earliest jurists and schools of Islamic jurisprudence – Hanafi and Maliki – were more cautious of the authority of solitary (*ahad*) hadith than some of the later schools and jurists. The Hanafi School of Law for example reserved the terms *Haram* and *Fard* for only those categorical prohibitions that are established with certainty by the Qur'an or multiple-chained (*mutawatir*) hadith only. In the Hanafi School these definitive sources would establish rulings of less certainty (such as *Wajib* and *Makruh Tahrimi*, etc.), if their meaning and implications are presumptive (*zanni al-dilalah*) and not categorical.<sup>258</sup>

---

<sup>258</sup> See Abdullah bin Yusuf al-Judayy, *Taysir Usul al-Fiqh*, p.34; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, the Islamic Text Society, Cambridge, 2003, p.421; Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008 p.13; Ahmad Hasan, *The Principles of Islamic Jurisprudence: The Command of the Sharia and Juridical Norm*, Adam Publishers, New Delhi, 2005, p.38, 40-77, 130-133.

Traditionally, the Maliki School would not establish a ruling of *Haram* or *Fard/Wajib* based independently on solitary (*Ahad*) if it is not supported by the “Praxis of the People of Medina” (*Amal Ahl al-Medina*) or other evidence.<sup>259</sup>

In principle, both primary and most of the secondary sources of evidence can be a basis for declaring something as prohibited in law and sinful to commit (*Haram*), or obligatory and sinful to omit (*Wajib*).<sup>260</sup> In other words, the evidence for establishing a prohibition (*Haram*) can be found in both primary and secondary sources of law. The evidence for establishing Disbelief (*Kufr*) is only from the definitive sources (*Qati' al-Thubut*) which are the Qur'an and multiple-chained (*mutawatir*) Hadith or issues of “absolute consensus” (*Ijma' qati'*).

---

<sup>259</sup> See Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.126; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p.103; Yasin Dutton, *Original Islam: Malik and the Madhhab of Madina*, Routledge, London, 2007, p.69.

<sup>260</sup> The justifications for these earliest positions and the nuanced diversity of opinions within each school are beyond the scope of this presentation. Those interested may consult some of the intermediate level or advanced books on traditional *Usul al-Fiqh* in English such as some of those cited above. For the Maliki School, see also, Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta' and Madianan 'Amal*, Routledge, 1999; and, Ibn Taimiyyah, *The Madinan Way: The Soundness of the Basic Premises of the School of the People of Madina*, Bookwork, Norwich, 2000. See also, Da'wah Institute, *Shari'ah Intelligence: The Basic Principles and Objectives of Islamic Jurisprudence*, Islamic Education Trust, Minna, Nigeria, 2019.

Any Islamic teaching or ruling established by presumptive (*zanni*) evidence such as a solitary (*ahad*) hadith, “collective juristic reasoning” (*Ijtihad jama’i*) or “presumptive consensus” (*al-ijma’ al-zanni*), reasoning by analogy (*qiyas*), the opinion (*ra’yi*), consideration of public interest (*maslahah*), and any other secondary source of Islamic jurisprudence can be used to establish the sinfulness (*ma’asiya*) of something that is prohibited (*Haram*). These are the tools and evidence (*adillah*) used in juristic reasoning (*Ijtihad*) and regarding which there are many differences of opinion (*Khilaf*) between and amongst the distinguished jurists (*mujtahids*) and their schools of law (Madhhabs) concerning the authority and legitimacy of each evidence (*dalil*).

The legitimate differences amongst the jurists and schools of law over authority of solitary (*ahad*) hadith and the secondary sources of law, and how they use these sources in guiding their *Ijtihad* when deriving rulings, has resulted in the diversity of opinions and rulings (*Khilaf*) on various issues. These differences (*Khilaf*) which are a product of “juristic reasoning” (*Ijtihad*) are respected and tolerated, and not a basis for *Kufr* or *Takfir*, or even of declaring another distinguished jurist (*Mujtahid*) as *Fasiq* (sinful wrongdoer). To this effect, and in order to ensure mutual respect, the jurists have a universal maxim which

states that “an opinion based on Ijtihad is not invalidated by another *Ijtihad*” – *al-Ijtihad la yunqadu bi al-Ijtihad*.<sup>261</sup>

The presumptive (*zanni*) sources of Islamic law – solitary (*ahad*) hadith and the secondary sources (*adillah*) – are not used as independent evidence to establish any of the “essential fundamentals of the religion” (*ma'alum min al-din bi al-darurah*), and cannot or should not be used for *Takfir* - to declare something as form of Disbelief or *Kufr* – because these sources lack the degree of certainty required to justify *Takfir*. Anyone who denies an opinion that is based solely on such presumptive (*zanni*) evidence may be described as involved in *Fisq* (disobedience) or *Ma'asiah* (sinful action) if justified, but not *Kufr*. He or she cannot on the basis of such presumptive evidence be described as a disbeliever (*Kafir*).

In other words, a rejection of any truth or Islamic teaching that is based on evidence other than the certain, explicitly clear and unambiguous implications (*qat'i al-dilalah*) of definitively authentic texts (*qat'i al-thubut* or *qat'i al-wurud*) of the Qur'an and multiple-chained (*mutawatir*) hadith, may be regarded as prohibited (*Haram*) and sinful

---

<sup>261</sup> Al-Suyuti, *Al-Ashabah wa al-Nazair*, Dar al-Kutub al-'Ilmiyyah, Beirut, p. 101; al-Zarkashi, *al-Manthub fi al-Qawaid*, al-Maktabah al-Shamilah, 3.35, vol. 1, p. 32; Najm al-Deen al-Tufi, *Sharh Mukhtasar al-Raudah*, al-Maktabah al-Shamilah 3.35, vol. 3, p. 647.

wrongdoing (*Fisq*), but it cannot and should not be regarded as Disbelief (*Kufr*), nor a basis for excommunication (*Takfir*) of a Muslim.

### **Two Main Types of *Kufr* – “Major *Kufr*” and “Minor *Kufr*”**

One of the ways *Kufr* has been classified is according to its gravity. *Kufr* according to this criterion is broadly classified into two, namely, “major *kufr*” and “minor *kufr*”. “Major *Kufr*” or simply “*Kufr*” can excommunicate and justify apostasy once the proof for it is established, while “minor *kufr*” does not excommunicate a person out of the fold of Islam even after proof for it is established with certainty. “Minor *Kufr*” is used to describe those acts of disobedience and wrongdoing that have been described as “*kufr*” in the texts of mostly the Hadith, but which do not amount to disbelief or a rejection of faith. There is significant evidence in the Qur'an and hadith that points to this “minor” type of *kufr*. Ignorance of this nuanced meanings of *kufr* has led some Muslims take certain texts too literally, and to understand the words *Kufr*, *Kafir* or *Kafirun* as always implying major disbelief that excommunicates.

For example, the Qur'an says: “*Verily, We have shown him the way: (and it rests with him to prove himself) either grateful or ungrateful (kufr).*” (Qur'an 76:3). In another

verse it reads, “...However, he who is grateful (to God) is but grateful for his own good; and he who is ungrateful (*kuf*r) [should know that], verily, my Sustainer is Self-sufficient, Most Generous in giving!” (Qur'an 27:40)

Muslim scholars understand the word *kuf*r used in the above verses to mean ingratitude and not disbelief. Being ungrateful to God by committing a sinful act is wrong, but it does not lead to excommunication. The same meaning can also be found in many *hadiths*. For example, the Prophet (p) said, “Do not detest your fathers; he who detested his father has committed *kuf*r.”<sup>262</sup> In this *hadith*, the Prophet (p) used the word *kuf*r to refer to ungratefulness, which does not cause a person to be excommunicated from the religion; it is only considered a sinful act (*ma'asiyah*).

In another *hadith*, the Prophet (p) said, “Abusing a Muslim is *fusuq* (wrongdoing) and killing him is *kuf*r (disbelief).”<sup>263</sup> The word “*Kuf*r” in this *hadith* does not mean falling out of the fold of Islam. This is because it is also stated in the Qur'an, “Hence, if two groups of believers fall to fighting, make peace between them...” (Qur'an 49:9). In this verse, the two groups of Muslims that are fighting with one another are still regarded and referred to as believers (*mu'minun*) and not disbelievers (*kuffar*). As such, *kuf*r in the *hadith* de-

---

<sup>262</sup> Bukhari 6768; Muslim 62.

<sup>263</sup> Sahih Bukhari 48.

notes sin or wrongdoing (*ma'siyah*) and not falling out of the religion or disbelief (major *kufr*).

In another verse of the Qur'an (5:44), it reads, “*And whoever does not judge by what Allah has revealed, they are the disbelievers.*” While classical Qur'anic commentators (*mufasssirun*) have interpreted this verse in various ways, none of them understood it to imply that a Muslim who judges with laws other than the Qur'an and Sunnah, or who implements judgements that are unjust and contrary to Islamic law, is excommunicated and guilty of disbelief (major *kufr*). According to the distinguished Companion and commentator of the Qur'an, Abdullah bin Abbas and others such as Tawus (from among the *tabi'in*), the disbelief in this verse does not refer to the form of “disbelief (*kufr*) that expels one from the religion”.<sup>264</sup> According to 'Ataa ibn Abi Rabah (another scholar from the *tabi'un*), the *kufr* referred to in the verse (5:44) is “disbelief that does not amount to disbelief” (or “*kufrun duna kufr*”).<sup>265</sup> According to their commentary on the verse, “*kufur*” refers to sinfulness or wrongdoing (*fisq*) and oppression (*dhulm*) and not disbelief

---

<sup>264</sup> Al-Tabari, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Mu'assasah al-Risalah, 2000, vol. 10, p. 355-357; Al-Shinqity, *Adwa' al-Bayan*, Dar al-Fikr, Beirut, Lebanon, 1995, vol. 1, p.406-407; Shamsuddeen al-Qurtubi, *al-Jami' li Ahkam al-Qur'an*, Dar al-Kutub al-Misriyyah, Cairo, 2nd edition, 1964, vol. 6, p.190.

<sup>265</sup> Al-Tabari, *Jami' al-Bayan fi Ta'wil al-Quran*, Muassasat al-Risalah, 2000, vol. 10, p. 355; Ibn al-Qayyim, *Madarij al-Salikin*, Muassasat al-Risalah, vol.1, p.336.

that excommunicates. In other words, it refers to a “minor *kufr*” or “major sin”. It would only be interpreted as amounting to major *kufr* if it was read to also imply not just judging by other than what Allah revealed, but to also imply a conscious denial, rejection or disbelief in what Allah revealed,<sup>266</sup> or according to Ibn Abbas and Mujahid, “rejecting the Qur'an and denying the words of the Messenger (p)”.<sup>267</sup>

“Major *kufr*” or “*Kufr*” is used to describe any belief or expression of disbelief which if done, uttered or professed, implies that the person will be regarded as a disbeliever (*kafir*) once the conditions (*shurut*) and hindrances (*mawani'*) to *takfir* are satisfied, or proof of it is established (*Iqamah al-hujjah*).

Examples of “Minor *kufr*” include those sinful acts that the Prophet (p) referred to as “*kufr*”, but which in principle are not sufficient to make those who commit them disbelievers (*Kuffar*). “Minor *kufr*” is not technically an expression of disbelief or “*Kufr*”. It is not a form of disbelief in Divine truth nor a denial of any of the known fundamentals of Islam (*ma'lum min al-din bi al-darurah*). It is a synonym

---

<sup>266</sup> Ibn Kathir, *Tafsir al-Quran al-'Azeem*, vol. 2, p. 62; al-Albani, *Silsilat Ahadith al-sahihat*, vol. 6, p. 114

<sup>267</sup> Al-Shinqity, *Adwa' al-Bayan*, Dar al-Fikr, Beirut, Lebanon, 1995, vol. 1, p.406; Shamsuddeen al-Qurtubi, *al-Jami' li Ahkam al-Quran*, Dar al-Kutub al-Misriyyah, Cairo, 2nd edition, 1964, vol. 6, p.190.



for specific forms of disobedience (*fisq*) or sinful wrongdoing (*ma'asiah*). It includes, abusing and fighting believers, wailing due to death, ingratitude for Allah's favours, swearing by other than Allah, etc.<sup>268</sup> These are wrong, but not sufficient reasons for excommunication (*takfir*). Confirming that “minor *kufir*” was done intentionally by a sane person, does not imply a denial of the authority and sovereignty of Allah.

According to Shaikh Abd al-Aziz bn Abdullah al-Rajihi, the use of the word “*Kufr*” (in the term “minor *kufir*”) for those actions that do not turn Muslims into disbelievers is for the purpose of dissuasion and deterrence (*al-Zajr*).<sup>269</sup> They do not imply actual disbelief (*Kufr*) in the sense of excommunication or apostasy.

The most important point to note here is that “minor *kufir*” is a violation of Allah's injunction which may attract Allah's punishment. However, it does not take one out of Islam on its own, except if it is accompanied by legalizing it and making permissible what is definitively prohibited (*Istihlal*).<sup>270</sup>

---

<sup>268</sup> See: Ma'had al-Imam al-Bukhari, *al-Shirk al-Nifaq, al-Kufr al-Bid'ah*, p.5-6 (al-Maktabah al-Shamilah, 3.13)

<sup>269</sup> Abd al-Aziz bin Abdullah al-Rajihi, *As'ilah wa Ajwibah fi al-Iman wa al-Kufr*, vol.1, p.50.

<sup>270</sup> 'Alawi bin Abd al-Qadir al-Saqqar, *Al-Tawassut wa al-Iqtisad fi Anna al-Kufr Yakun bi al-Qawl aw al-Fi'l aw al-I'tiqad*, pp. 25, 30 &49, al-Maktabah

For example, committing adultery is a sinful act (*fisq*) based on definitive texts, but it does not amount to disbelief (*kufr*) nor justify excommunication (*Takfir*). If, however, a Muslim approves of adultery, and considers it as permissible and legitimate in Islam, while knowingly denying the fact that it is categorically prohibited, then such “conscious permitting of what is categorically prohibited” (*Istihlal*) with no justified excuse, is considered “major *kufr*” once proof for *takfir* (*Iqamah al-hujjah*) has been established.

The prohibition of excommunicating a Muslim who commits an act of disbelief (*kufr* action or statement) which is “minor *kufr*” or a “major sin” (*al-Kaba'ir*), is an established part of the creed (*aqidah*) of *Ahl al-Sunnah wa al-Jama'ah* (the Sunni Muslims, or “Adherents of the Prophet's path and that of the early Muslims”). This is provided the violator of such a prohibition does not believe in its legitimacy or lawfulness of definitive prohibitions - *Istihlal*.<sup>271</sup>

This doctrine or principle is phrased by al-Imam al-Tahawi as, “We will not excommunicate anyone who faces our direction in prayer (Qiblah) (i.e., a Muslim) for a sin he

---

al-Shamilah, 3.13; Al-Mulla 'Ali al-Qary, *Mirqat al-Mafaatih Sharh Mishkat al-Masabih*, vol.12, p.420, al-Maktabah al-Shamilah, 3.13.

<sup>271</sup> 'Alawi bin Abd al-Qadir al-Saqqa, *Al-Tawassut wa al-Iqtisad fi Anna al-Kufr Yakun bi al-Qawl aw al-Fi'l aw al-I'tiqad*, pp. 25, 30 &49, al-Maktabah al-Shamilah, 3.13; Al-Mulla 'Ali al-Qary, *Mirqat al-Mafaatih Sharh Mishkat al-Masabih*, vol.12, p.420, al-Maktabah al-Shamilah, 3.13.

commits provided he did not legalize it” - “*Wala nukaffir ahadan min ahl al-qiblah bi dhambin ma lam yastahillah*”.<sup>272</sup>

## **Examining Expressions of “*Kufr*” or “Major *Kufr*” in Islamic Texts**

Muslim scholars have classified “major *Kufr*” or disbelief (“*Kufr* of faith”) which excommunicates from the fold of Islam, into 5 or more different forms based on their nature and how they are expressed. Some scholars use differing terms from each of these major forms of expressing *Kufr*. The basis for this classification is through an induction (*al-Istiqra’ wa al-Tatabbu’*) and a thorough study of the various ways in which major *Kufr* is presented in different contexts in the verses of the Qur'an and Sunnah of the Prophet (p).

As all these various forms of expressing disbelief (*Kufr*) could result in excommunication (*Takfir*) when all the conditions that confirm disbelief (*Kufr*) are met, they will only be presented here very briefly.

Below are five forms of expressions of major *Kufr*:

---

<sup>272</sup> Abdullah bn Abd al-Rahman bn Jubrain, *Sharh al-Aqidah al-Tahawiyya* (al-Maktabah al-Shamillah, 3.13).

1. Disbelief in the form of inventing falsehood against God, giving the lie to the truth, imputing incredulity, putting down and effectively rejection of Divine truth (*kufr al-Takdhib*). See Qur'an 6:33, 29:68, 26:105-192, etc.
2. Disbelief in the form of denial, disavowal, rebellion, opposition, or resistance to Divine truth (*Kufr al-Juhud*): See Qur'an 2:30, 6:33, 17:102, etc.
3. Disbelief in the form of suspicion and doubting a definitive Divine truth (*kufr al-Shakk*). See for example, Qur'an 14:9, 9:45, 18:35, etc.
4. Disbelief in the form of neglect, dereliction, disregard, "slothful indifference" and "turning away" from God and a definitive Divine truth (*kufr al-I'rad*), See for example 46:3, 32:22, etc.
5. Disbelief in the form of hypocrisy, pretence, deception and duplicity (*kufr al-Nifaq*). See for example, Qur'an 2:10, 63:3, etc.

These various forms or expressions of *Kufr* are all useful towards better understanding the phenomenon of major *Kufr* in the Qur'an.<sup>273</sup> What is in common with all the

---

<sup>273</sup> See also, Ma'had al-Imam al-Bukhari li al-Shari'ah al-Islamiyyah, *Al-Shirk al-Nifaq al-Kurf al-Bid'ah*, n.d, p.3, al-Maktabah al-Shamilah, 3.13; Majmu'ah min al-Muallifin, *al-Durar al-Saniyyah*, vol.6, p.252; Abd al-Rahman bin Mullah, ed. *Mausu'at nadrat al-na'im*, Jeddah, Dar al-Wasila, 1999, Vol. 2, 5, pp. 5, 445.

forms of “major *kufur*” is that they are all forms of conscious and deliberate rejection of belief or denial and opposition to faith in the definitive Divine truths which are the categorically “known essential fundamentals of Islam” - *ma'lum min al-din bi al-darurah*, or established by “absolute consensus” of all scholars (*Ijma' qati'*).

## ***TAKFIR OF THINGS AND OF PEOPLE – “KUFR VS. KAFIR”***

The unauthorized taking of someone else's property is a wrong and unacceptable action. Evidence and proof that the property was taken without permission of the owner only proves that the action was wrong or not proper. It does not automatically make the person who took the property a thief or criminal who should be punished by anyone. Further investigation is required to ascertain the age, sanity, motive, willingness and understanding of the person, before they can be confirmed as a thief or not. It is possible that the person was an immature child or insane adult, and not a thief to be punished. It is possible that the person was confused and mistakenly thought it was his own property. It is possible that he took it for safekeeping because he felt it was not secure enough and had no way of contacting the owner. It is possible that he took it because he believed that he was entitled to it, since the owner had refused to refund this man a large loan he had taken. It is possible that he was threatened and forced to take it, and that he did not willingly take it. There may be other reasons why this person took the property without the permission of the owner. Simply taking the property without the permission of the

owner does not automatically make him a thief deserving of a particular punishment.

Similarly, an action, such as seeing a fortune teller, may be described as an act of *kufir* or expression of disbelief, because it clearly goes against definitive divine texts. But that does not automatically make the person involved a disbeliever or *Kafir*. Other conditions need to be considered before the person can be regarded as a *Kafir*. The conditions to justify the *Takfir* of a thing, action, or statement, are not sufficient to justify the *Takfir* of the person involved.

There are some very significant differences between excommunication of things or *Takfir* of an action or statement, and the excommunication of individuals, or *Takfir* of a person.

To use another example, an honest and truthful man may unintentionally make a statement that is a lie, be forced to say something that is not true, or absentmindedly or ignorantly make a statement that is completely false. He may sincerely believe that the statement is very true and even argue to defend it because he believed his source of information, and is yet to realize that he is wrong. The statement however is still false and wrong, irrespective of his intent, sincerity, and state of mind. However, in spite of the statement being definitely one of falsehood, the man will not be described or judged as a falsifier, liar, deceiver, and no lon-

ger an honest and truthful person. This is also because it is possible that the man did not mean his statement in the same way as others understood it, and his statement was not really false, but only assumed to be, until he gave further clarification, or others gave his statement more thought in order to understand him better.

Similarly, and as with actions, a statement may be described as one of *Kufr* because it is clearly one that is in direct and irreconcilable conflict with a definitive Divine truth. However, the person who makes a statement of *Kufr* is not described as a *Kafir* or disbeliever unless he or she means it as an expression of their disbelief and intends to deliberately deny the Divine truth in question. Even so, all the other conditions/hinderances for the *takfir* of a person have to be satisfactorily considered by a competent authority. According to the distinguished scholar of Hadith, Muhammad Naisr al-Deen al-Albany, “Not everyone who falls in disbelief (*kufr*), becomes a disbeliever (*kafir*) [because of it]” - *laysa kullu man waqa'a fi'l-kufr sara kafir*.<sup>274</sup>

Muslim scholars therefore distinguish “*takfir* of things” – whether actions or statements, from the “*takfir* of persons” or actor (*al-Takfir al-Mu'ayyan*) – whether individu-

---

<sup>274</sup> Albany, *Silsilat al-Huda wa al-Noor*, cassette 219, <https://www.al-albany.com/audios/content/11247>.



als or groups; as the conditions/hinderances that apply to each of these two categories are different.

In other words, and this needs to be repeated, the conditions and evidence for **judging an action (as *Kufr*)** are very different from those for **judging the actor (as *Kafir*)**. “Takfir of things” only requires that the thing, statement or action is an expression of disbelief that irreconcilably opposes the known fundamentals of Islam, or matters of “absolute consensus” (*Ijma' qati'*). This is unlike “Takfir of people” (*al-Takfir al-Mu'ayyan*) which requires at least six conditions/hinderances to be considered before there is adequate evidence for its justification and the establishment of proof.

According to Ibn Taimiyyah: “The textual threats which occur in the Book and the *Sunnah*, or the statements which the scholars (*Imams*) make to imply excommunication (*takfir*), or to declare a person to be a wrongdoer or sinner (*tafsiq*), or the like, do not necessarily mean that it applies to a specific individual; except if the conditions justifying such terms are satisfied, and the impediments are absent”.<sup>275</sup>

Ibn Taimiyyah also said: “The truth is that a declaration could be a statement of disbelief (*kufr*) and it will be said

---

<sup>275</sup> Ibn Taymiyyah, *Majmu' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol. 10, p. 372.

that whoever does so is a disbeliever (*kafir*). However, a particular person who does such a thing will not be called a disbeliever (*kafir*) until proof that will make him deserve the title is sufficiently established. This is similar to the Qur'anic verses on punishment. For instance, Allah says: “indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire; and they will be burned in a Blaze (i.e., Hellfire)” (Qur'an 4:10). This severe punishment and its similitude are true, however, a particular person who is found committing such sin cannot be labelled with this punishment (unless other conditions are met, and proof is established).<sup>276</sup>

In other words, identifying disbelief (*Kufr*) expressed in the words or actions of someone is not sufficient to justify the excommunication (*Takfir*) of the doer.

### **Takfir of Things (*al-Takfir al-Mutlaq*) – Actions and Statements**

The “*Takfir* of things” is a form of absolute judgement or unrestricted *takfir* (*al-Takfir al-Mutlaq*)<sup>277</sup> on things (concepts, actions or statements) and justifies calling something

---

<sup>276</sup> Ibn Taimiyyah, *Majmu' al-Fatawa*, Dar al-Wafaa, 3rd edition, 2005, vol.23, p.345.

<sup>277</sup> The concept of “*Kufr Mutlaq*” is however broader than that discussed here.

such as polytheism (*shirk*) or blasphemy, a form or expression of disbelief (*Kufr*). It is “unrestricted” or “absolute” in that the judgement of the thing depends only on the certainty of its conflict with clear definitive texts and evidence. It is not a judgement of the doer, and does not depend on, and is not “restricted” by the doer’s situation or intent, or any of the other conditions that necessarily apply to “*Takfir* of Persons” (*al-Takfir al-Mu’ayyan*).

In the case of such “absolute” or “unrestricted *Takfir*” (*al-Takfir al-Mutlaq*), there is no hesitance among scholars in referring to the thing - action or statement of disbelief - as being one that expresses disbelief (*kufr*) once it is proven beyond a shadow of doubt to clearly oppose and irreconcilably contradict the known fundamentals of Islam (*ma’lum min al-din bi al-darurah*) that are based on definitive and unequivocal textual evidence (*qati’ al-thubut* and *qati’ al-dilalah*) and “absolute consensus” of the Muslim scholars.<sup>278</sup>

This form of *takfir* (of things), as mentioned repeatedly, does not apply to issues of “juristic reasoning” (*Ijtihad*) and

---

<sup>278</sup> See: Ibn Taymiyyah, edited: Abdul Rahman bn Muhammad al-Qasim, *Majmu’ al-Fatawah*, Majma’ al-Malk Fahd, Saudi Arabia, 1416AH, vol.12, p.184; see also, Abu al-'Ula Rashid bn Abu al-'Ula, *Dawabit Takfir al-Mu’ayyan 'Inda Shaykahi al-Islam Ibn Tamiyah wa bn Abd al-Wahab Wa 'Ulama' al-Da'wah al-Islahiyyah*, Maktabah al-Rush, Riyadh, 1427AH, p.44-45.

diverse scholarly opinion (*Khilaf*) which by their very nature are based on speculative or presumptive (*zanni*) evidence, and on which there is no “absolute consensus” (*Ijma' qati'*).

An act of “major *kufr*” (such as idol worship or fortune telling) that has the potential to take a person out of the fold of Islam, remain actions of *kufr* irrespective of the age, sanity, intention, the knowledge of the doer. All the other conditions and hindrances which must be observed before the doer or person is labelled as a disbeliever (*Kafir*), do not affect the fact that the thing done or action in and of itself is an expression of disbelief (*Kufr*). *Takfir* of things therefore is justified once the action or statement is proven to be an expression of disbelief that is in conflict with the clear and categorical textual evidence for Divine truth.

A thing, statement or action has to first be proven to be a form of disbelief (*Kufr*), before proceeding to the next step of establishing proof and considering the actor or person as possibly being a disbeliever or *Kafir*. “*Takfir* of things” and proof that an action or statement is a form of “major *kufr*” therefore precedes over “*Takfir* of individuals”. The reason for claiming that a person has acted in a way that amounts to disbelief or “major *kufr*” and he has a belief that clearly contradicts definitive Divine truths, has to first be established, before the further investigation tries to consider whether the doer is excusable or culpable in Islamic law.

It is categorically prohibited in Islamic law for a Muslim to call another a disbeliever (*Kafir*) without first establishing that the action or statement claimed to be an expression of *Kufr* is in fact one that amounts to “major *Kufr*”. After establishing *Kufr* of an action or statement, additional evidence is required for establishing “*Takfir* of the actor or person” (*Kafir*).

According to Ibn Taimiyyah, “It does not necessarily follow that if a statement is such that it amounts to one of disbelief (*kufr*), that all those who said it – perhaps out of ignorance or misinterpretation – are disbelievers (*kuffar*). Affirming that a specific Muslim has become a disbeliever (*kafir*) is like affirming that the textual threat in the Hereafter will be applied to him. And this, as we explained elsewhere, has conditions that need fulfilling and impediments that need removing (before it can be justified).”<sup>279</sup>

It needs to be reiterated, that one of the major causes of the rampant and unjustified excommunication (*Takfir*) of some Muslims by others and their groups, is their inability to comprehend and appreciate the difference between the conditions for determining an “act of *Kufr*” committed by a person, and the additional and pre-requisite conditions

---

<sup>279</sup> Ibn Taymiyyah, *Minhaj al-Sunnah al-Nabawiyyah*, Muhammad bn Su'ud University, Riyadh, 1986, vol.5, p.240.

required in Islamic law for labelling the person or the doer of the act, with the word “*Kafir*” or “disbeliever”.

### ***Takfir* of People (*al-Takfir al-Mu'ayyan*) – Conditions and Hinderances**

The excommunication or *takfir* of a Muslim who commits any confirmed act of “major *kufir*” is not regarded as a justified and legitimate, until and unless the **conditions** and **hinderances** have been duly considered and established with **clear proof** by a **competent authority**. This is one of the very fundamental principles in the topic of *takfir*.<sup>280</sup> This is to prevent the misuse and abuse of the concept of *Takfir*, while protecting its correct use and purpose by competent scholars and authorities. This also ensures protection of the life, faith and honour of the innocent believer. Without such agreed and stringent conditions and hinderances, lives and properties of many innocents will continue to be claimed unjustly by some ignorant and extremist Muslims.

In order to correctly justify the excommunication (*Takfir*) of a Muslim who commits a confirmed act of major *kufir*, the following three major things **must** first be ascertained:

---

<sup>280</sup> Ali bn Abdul Azeen Ali, *Shurut wa mawani' Takfir al-Mu'ayyan*, p.22.

1. The **conditions** (*Shurut*) for *Takfir* must be complete and satisfied;
2. The **hindrances** (*Mawani'*) and pardonable excuses that would prevent *Takfir* should be absent, and;
3. There should be clear evidence and **establishment of proofs** (*Iqamatul Hujjah*) that the offence of "major kufr" (denial of belief) was actually done based on an accurate consideration of conditions/hinderances, which has to be determined before *Takfir* of the person concerned can be established with certainty, and justified by a qualified **authority of competent jurisdiction**.

The **Conditions** (*Shurut*) of *takfir* refer to those things that must be ascertained before *takfir* is done and the Muslim concerned is regarded as a disbeliever (*Kafir*) and excommunicated. **Hindrances** (*Mawani'*) are those things that will make *takfir* unjustified and impermissible if they are ascertained.

Hindrances are basically the opposite of the conditions. The absence of a particular condition produces a hindrance. For example, knowledge and awareness of the prohibition and gravity of the *kufr* act that was committed by a Muslim is a condition that must be ascertained before the *takfir* is justified and permissible. The opposite of that knowledge

and understanding would be ignorance, which is a hindrance that would also prevent *takfir* from been applied.

The *Takfir* of a person (or actor) therefore, depends on the following six conditions/hinderances in order to be justified.

1. Maturity or attainment of the age of puberty and intellectual responsibility.
2. Sanity and absence of any relevant mental disorders.
3. Knowledge, awareness and understanding of the prohibition (major *kufir*) and its consequence.
4. Deliberate, conscious, and intentional commission of the prohibited action (major *kufir*).
5. Desire, willingness and absence of any coercion or duress in committing major *kufir*.
6. Deliberate misinterpretation of definitive religious texts, and absence of esoteric interpretations (*ta'wil*).

Unless it is confirmed beyond a shadow of doubt that the statement or act of disbelief (*Kufr*) was done with each one of these conditions having been met, and none of these hinderances present, it is absolutely prohibited (*Haram*) to regard such as person as a disbeliever (*Kafir*). These 6 classical and agreed conditions/hindrances to *Takfir* will each be discussed concurrently below:



## 1. Maturity or attaining the age of puberty is the age of responsibility in Islam.

While scholars disagree on whether the reward of good deeds or acts of worship done before the age of puberty will be recorded or not,<sup>281</sup> all agree that no sin of bad deeds shall be recorded on a person until he or she is mature and responsible.<sup>282</sup> This is to say that falling below the age of puberty is a hindrance to *takfir*. In other words, if a child, immature adolescent, or person who has not attained the age of puberty commits an act of major *Kufr* or *shirk*, he will not be excommunicated even if such an act is done deliberately and claimed to be with knowledge and understanding. Both his acceptance of Islam and retraction from it are regarded as invalid, with no legal consequences.<sup>283</sup> No weight or consideration is given to what he claims to say or belief in this regard.<sup>284</sup>

---

<sup>281</sup> Abu Zakariyah Yahya bn Sharaf al-Nawawi, *Al-Minhaj Shar Sahih Muslim bn al-Hajjaj*, Dar Ihya' al-Turath al-Arabi, Beirut, 2nd edition, 1392, vol8, p.161. All Schools of Islamic jurisprudence except the Hanafis are of the view that a child will be rewarded for his good deeds.

<sup>282</sup> Abu Zakariyah Yahya bn Sharaf al-Nawawi, *al-Majmu'*, vol.7, p.42, al-Maktabah al-Shamilah, 3.13.

<sup>283</sup> Muhammad Salih Farfur, *The Beneficial Knowledge and the Definitive Proofs in the Study of Theology*, tr. Wesam Charkawi, Azhar Academy Ltd., London, 2010, p.314.

<sup>284</sup> Muhammad Salih Farfur, *The Beneficial Knowledge and the Definitive Proofs in the Study of Theology*, tr. Wesam Charkawi, Azhar Academy Ltd., London, 2010, p. 313.

Ali ibn Abi Talib reported that the Messenger of Allah (p) said, “***The pen (recording deeds) is lifted from three people: a sleeping person until he awakens, a child until he becomes an adult, and an insane person until he regains his sanity.***”<sup>285</sup> By extension or analogical deduction (*qiyas*), insanity has also been included under this hindrance, as the major consideration is intellectual discernment, the capacity to understand and distinguish right from wrong, and reliability for responsible decision-making.<sup>286</sup>

Unless it is also confirmed beyond a shadow of doubt that the statement or act of disbelief (*Kufr*) was done by a responsible adult, and not a child, it is absolutely prohibited (*Haram*) to regard such a person as a disbeliever (*Kafir*).

## **2. Sanity and sufficient mental health are another agreed condition of *takfir*.**

Its opposite is insanity, which is a hindrance to excommunication. Sanity is key to accountability and a condition for responsibility regarding intents, understanding, resolve, beliefs and actions. Consequently, the retraction of faith by

---

<sup>285</sup> Muhammad bn Isa, *Sunan al-Tirmidhi*, hadith no. 1423; Musnad Ahmad, vol.4, p.144; Abu Dawud, 4398; Ibn Majah, 2041; Sunan al-Darimi Hadith 2342; Sunan al-Nasai Hadith 3432; Sunan al-Tirmidhi Hadith 1423. Cited in Muhammad Salih Farfur, *The Beneficial Knowledge and the Definitive Proofs in the Study of Theology*, tr. Wesam Charkawi, Azhar Academy Ltd., London, 2010, p.314.

<sup>286</sup> Ali bn Abdul Azeen Ali, *Shurut wa mawani' Takfir al-Mu'ayyan*, p.27.

an insane person is disregarded. This is also supported by the same hadith cited earlier regarding non-liability of immature persons.

Allah says in the Qur'an (2:286), "*Allah does not require of any soul more than what it can afford*".

This is also similar to the case of the mental state of an intoxicated person whose testimony or witness regarding himself or others is not accepted while in a state of intoxication.

Unless it is also confirmed beyond a shadow of doubt that the statement or act of disbelief (*Kufr*) was done with full sanity, and not out of deep depression or mental disorder, it is absolutely prohibited (*Haram*) to regard such a person as a disbeliever (*Kafir*).

### **3. Knowledge, awareness, and understanding right from wrong**

This means that a person who commits an act of major *Kufr* should know before hand, that such an act is categorically prohibited and that it makes one a disbeliever. The opposite of knowledge of Divine truth is ignorance of such truths.

Generally, ignorance of Divine guidance is regarded as a hindrance that prevents a person who commits an act of

*Kufr* from being excommunicated (*Takfir*). Allah says regarding Himself: “*And We would never punish a people until We have sent a messenger (to warn them).*” (Qur'an 17:15).

He also says, “[*We sent*] *messengers as bringers of good tidings and warners so that mankind will have no argument against Allah after the messengers. And ever is Allah Exalted in Might and Wise*”. (Qur'an 4:165)

Likewise, “*Your Lord would never destroy a society until He had sent to its capital a messenger, reciting Our revelations to them. Nor would We ever destroy a society unless its people persisted in wrongdoing*”. (Qur'an 28:59)

This means that one of the principles and ways of Allah (*sunnat Allah*), is that He does not punish an ignorant person or community until they have received revealed knowledge or divine guidance of what they are expected to do and avoid, by means of His prophets and messengers.

Allah also says, “*And whoever opposes the Messenger after guidance has become clear to him and follows other than the way of the believers - We will give him what he has taken and drive him into Hell, and evil it is as a destination.*” (Qur'an 4:115) This verse makes it clear that moral responsibility comes with knowledge and clarity of understanding, - “*after guidance has become clear to him*”.

It is from this type of evidence, and others cited below, that scholars conclude that knowledge of the divine truth of a particular prohibition or act of disbelief (*kufr*), is a prerequisite for excommunication (*takfir*) of one who then denies such truth. Meanwhile, innocent ignorance about such truths is a hindrance to *Takfir*.

Another proof of this comes from the case of the Disciples of Jesus (p) as narrated in Qur'an 5:112 where Allah says: “(Remember) when the disciples asked, “O Jesus, son of Mary! Would your Lord be able to send down to us a table spread with food from heaven?” Jesus answered, “Fear Allah if you are truly believers.”

An eminent scholar Abu Muhammad ibn Hazm commented on this verse, saying: “those disciples whom Allah praised have asked Jesus – out of ignorance – ‘Would your Lord be able to send down to us a table spread with food from heaven?’ In spite of that, they did not nullify their faith (*iman*), because their faith (*iman*) would only become nullified if they had said that after proof had been established and explanation was made”.<sup>287</sup> In other words, in the opinion of Ibn Hazm, the questioning or doubt as to whether Allah would be able to do something – “Would your Lord be able to...” – would ordinarily have constituted as statement

---

<sup>287</sup> Ibn Hazm, *Al-Fasl fi al-Milal wa al-Ahwa' wa al-Nihal*, vol.3, p.142.

of disbelief (*kufr*). However, due to their ignorance or insufficient awareness of Allah, they were excused, and this ignorance was a hinderance to their disbelief (*Kufr*).

Examples of ignorance as a hindrance or an acceptable excuse from the Sunnah of the Prophet (p) include the following:

Abu Sa'id narrated that the Prophet (p) said,

*“Amongst the people preceding your age, there was a man whom Allah had given a lot of money. While he was on his deathbed, he called his sons and said, 'What type of father have I been to you? They replied, 'You have been a good father.' He said, 'I have never done a single good deed; so, when I die, burn me, crush my body, and scatter the resulting ashes on a windy day.' His sons did accordingly, but Allah gathered his particles and asked (him), 'What made you do so?' He replied, 'Fear of you.' So, Allah bestowed His Mercy upon him. (Forgave him)”*.<sup>288</sup>

On this hadith, Ibn Hajar (in his *Fath'al-Bari*) narrated al-Khattabi saying: “This may sound confusing to some people by wondering how the man can be forgiven after he had denied Resurrection and Allah's power on giving life to

---

<sup>288</sup> Al-Tabarani, *Al-Mu'jam al-Kabir*, Hadith no. 10467

death. The response is that: he (the man) did not deny Resurrection deliberately or intentionally but out of ignorance for which he thought that if such was done to him, he will not be resurrected and punished. His faith is proven clearly in the fact that he acknowledged that he did that out of fear of Allah. Ibn Qutaibah said: Some people among Muslims may err in their understanding and interpretation of some Attributes of Allah, but in spite of that they will not be excommunicated”.<sup>289</sup>

Furthermore, the consensus of Muslim scholars as mentioned by Ibn Hazm is another proof of this matter.

He said: “Unequivocal evidence that is not disputable is that the entire *Ummah* has agreed with no exception that whosoever deliberately changes a verse of the Qur'an while he knows that it is the contrary of what is in the *Mushaf* (pages of the Qur'an), or he dropped or added a word deliberately, that such a person is a disbeliever (*kafir*) by consensus of the scholars. But some people have recited Qur'an wrongly by adding or missing a word, as they have also changed some words, but out of ignorance and with the belief that they were right, until they later realized that they were wrong. Such people are never considered by

---

<sup>289</sup> Abu Abdullah Al-Khatib, *At-Takfir Akhtaru'u wa dawabituhu*, p. 100

scholars as disbelievers (*kuffar*), wrongdoers (*fussaq*), or sinners. If, however, a man deliberately continues with his mistake after he had known about it, he is regarded a disbeliever (*kafir*) by all scholars”.<sup>290</sup>

According to Ibn Taymiyyah, “excommunicating a particular person and his execution are dependent on him having understood the message of the Prophet (p), (the proof of) which implies that its rejecter deserves to be excommunicated. Otherwise, a person who is ignorant of something cannot be excommunicated in Islam”.<sup>291</sup>

Ibn al-'Arabi al-Maliki also said, “an ignorant person and a person who makes a mistake from among this nation (Ummah) cannot be considered an idolater (*mushrik*) or disbeliever (*kafir*) when he does an act of *Shirk* or *Kufr*. He is instead excused until proof is firmly established...”.<sup>292</sup>

Many similar statements and quotations are found in the texts of classical Muslim jurists when discussing this issue.<sup>293</sup>

---

<sup>290</sup> Ibn Hazm, *Al-Fasl Fi al-Milal wa al-Ahwa' wa al-Nihal*, vol. 3, p. 142.

<sup>291</sup> Ibn Taymiyyah, *Al-Istigathah*, vol.1, p.381

<sup>292</sup> Ibn al-Arabi, *Ahkam al-Qur'an*, vol.2, p. 317.

<sup>293</sup> See more examples in Hamza Yusuf, *Who are the Disbelievers?*, Seasons, USA, Spring 2008, p.37-40.



Unless it is also confirmed beyond a shadow of doubt that the statement or act of disbelief (*Kufr*) was done with full understanding of the meaning and implications of the act, and not out of ignorance or confusion, it is absolutely prohibited (*Haram*) to regard such a person as a disbeliever (*Kafir*).

#### **4. Intention, Purposefulness, or Premeditation**

This is called (*al-'Amd*). Hence, for a person who committed an act of *Kufr* to be excommunicated, he or she must have done that deliberately, wilfully, premeditatedly, intentionally, by design, or purposefully. The opposite of this is a hindrance of excommunication (*takfir*) which is when it is done by mistake, accident, or forgetfulness. This means that an act of *kufr* committed by mistake or out of forgetfulness does not amount to *kufr* or excommunication of the doer.

The evidence for this includes the following texts:

Allah says in the Qur'an: "...There is *no blame on you for an unintentional mistake, but you will be held responsible for what you do with the intention of your hearts*; Allah is Forgiving, Merciful".  
(Qur'an 33:5)

On the authority of Ibn Abbas, that the Messenger of Allah (pbuh) said: "Verily Allah has *pardoned for me [or been lenient with] my ummah*: their mistakes, their forget-

fulness, and that which they have been forced to do under duress”.<sup>294</sup>

The Prophet (p) said, “*Actions are (judged) by intentions (niyyah), so each man will have what he intended. Thus, he whose migration (hijrah) was to Allah and His Messenger, his migration is to Allah and His Messenger; but he whose migration was for some worldly thing he might gain, or for a wife he might marry, his migration is to that for which he migrated.*”<sup>295</sup>

Another hadith is that of a man who upon finding his lost camel while in the desert said as a result of extreme joy, “Oh Allah! You are my servant and I am Your Lord”. Anas reported God's Messenger as saying, “*God is more pleased with the repentance of His servant when he turns penitently towards Him than one of you would be if his riding-beast which was carrying his food and drink escaped from him in a waterless desert and he, despairing of ever recovering it, went and lay down in the shade of a tree, and then suddenly saw the camel standing beside him, and seizing its halter, exclaimed in excessive joy, 'O Allah, You are my servant and I am Your lord!', thereby making a mistake but from excessive joy.*”<sup>296</sup>

---

<sup>294</sup> Sunan Ibn Maja', Hadith no. 2045

<sup>295</sup> Bukhari hadith no. 54; Muslim hadith no. 1907

<sup>296</sup> Sahih Muslim, hadith no.7136

An act or statement of *Kufr* – which is calling God his servant and vice-versa – was made by this person who had found his camel. But the person was not considered a disbeliever (*kafir*) or an apostate because the statement was not intentional or deliberate.

These texts all make it clear that the actions or statements of disbelief (*kufr*) must also be the same as the motives and intent of a person who takes those actions or makes such statements. The person cannot make a statement with no intent of disbelief, and still be accused of being a disbeliever. It is the intent and motive of the person that matters and not the meaning or implication assumed or given to it by others. Consequently, what the accused intended by their action or statement of disbelief must be ascertained in order to determine “major *kufr*” of the heart.

Unless it is therefore confirmed beyond a shadow of doubt that the statement or act of disbelief (*Kufr*) was done intentionally to imply disbelief, and not something else, and also not one made by mistake, it is absolutely prohibited (*Haram*) to regard such a person as a disbeliever (*Kafir*).

## **5. Willingness, Choice and Personal Desire to Contradict the Shari'ah**

This is another condition that must be observed before a person who commits an act of disbelief (*kufr*) is excommu-

nicated. The Muslim to be excommunicated must desire wholeheartedly to be excommunicated from the religion and not forced or coerced in any way to do so. Coercion (*al-Ikra'*) which is the opposite of willingness (*al-Ikhtiyar*) is a hindrance to *Takfir*.

Allah says in the Qur'an: "*Whoever disbelieves in Allah after their belief, not those who are forced while their hearts are firm in faith, but those who embrace disbelief wholeheartedly, they will be condemned by Allah and suffer a tremendous punishment.*" (Qur'an 16:106). In other words, so long as their hearts remain firm with faith (*Iman*), the contrary actions they carried out or said under duress are not used to judge them.

There is the case of Ammar bin Yasir who as a result of severe torture by the polytheist of Mecca was forced to deny and abuse the prophet Muhammad (p) and to praise some of their idols. After his release why his persecutors he came to the Prophet (p) and explained what had happened. The Prophet (p) made it clear that he had not committed any sin under that state of duress since it did not come from his heart and choice. In fact, the Prophet (p) asked him to repeat the same statements of disbelief (*kufir*) which he was forced to do, if the situation arose again.<sup>297</sup> This case proves

---

<sup>297</sup> See the story in Safiy al-Rahman al-Mubarkafuri, *al-Rahiq al-Makhtum*, vol.1, p.65, al-Maktabah al-Shamilah, 3.13.

very clearly that a Muslim will not be punished for an act done unwillingly or under coercion. It may even be encouraged to do such an act or make a statement of disbelief (*kufr*) if it is not from done willingly from the heart, and it is to avoid serious harm (*darurah*). In fact, some exegetes and scholars assert that the above-cited verse (Qur'an 16:106) was revealed in respect to the case of 'Amar bin Yasir.<sup>298</sup>

In the context of sinfulness and wrongdoing by the truly oppressed who are unable to migrate away from contexts of temptation and negative societal pressure, Allah makes it clear that they are to expect Allah's forgiveness due to their situation which forces them into wrongdoing against their will and free choice:

*"...Except for the truly oppressed among men, women, and children who cannot devise a plan nor are they directed to a way. For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving."* (Qur'an 4:97-99).

From these verses, it is clear that an action done under coercion, duress or compulsion, against ones will is not blameworthy.

---

<sup>298</sup> Muhammad bn Jarir al-Tabari, edited: Ahmad Muhammad al-Shakir, *Jami' al-Bayan fi Ta'wil al-Qur'an*, Mu'asasah al-Risalah, 1420AH, vol. 17, p. 306.

Duress and coercion can therefore affect individuals as it can affect a group, community or society. These can put people into contexts of need (*hajah*) or dire necessity (*darurah*) where the essential (*daruriyyat*) objectives (*maqasid*) of Shari'ah are threatened. These situations include those that pose as threats to religion, life, wealth, dignity, and family. These include starvation or famine and extreme poverty, war/conflict or insecurity, illness or epidemics, states of emergency and natural disasters, etc. An Islamic legal maxim states that, “necessity permits what is prohibited”.<sup>299</sup>

**Situations of necessity (*darurah*)** are those where circumstances (man-made or otherwise) force people against their will and desires to do what is clearly prohibited by the definitive texts, or prohibit what is otherwise permissible or even an obligation in Shari'ah law. Under normal circumstances such changes in the law and policy would be clearly prohibited and regarded as acts of disbelief (*kufir*). Actions such as eating pork, drinking alcohol, eating in the daytime during Ramadan, etc. which clearly conflict with definitive and categorical text, are regarded as “major sins”. However, when done out of necessity or forced by circumstances, these actions are regarded as permissible or even encouraged, but definitely not sinful or blameworthy.

---

<sup>299</sup> Ali Haidar, *Sharh Majallah al-Ahkam*, Dar 'Alim al-Kutub, vol.21, p.33; al-Suyuti, *al-Ashabah wa al-Nazair*, Dar al-Kutub al-'Ilmiyyah, 1991, p. 83.

Allah says, “*But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit] - then indeed, Allah is Forgiving and Merciful*”. (Qur'an 16:115) Elsewhere, the Qur'an says, “*But if someone is compelled by necessity—neither driven by desire nor exceeding immediate need—then surely your Lord is All-Forgiving, Most Merciful*.” (Qur'an 6:145)

In line with these and other texts, various dispensations and concessions (*rukhsa*) are given in the Shari'ah which temporarily permit what is under normal circumstances clearly prohibited by categorical texts, and which also temporarily prohibit what is clearly permissible by categorical texts, and for as long as the context of necessity persists.<sup>300</sup>

Societal needs (*hajah al-'ammah*) were treated as necessities (*darurah*) during the time of the Prophet (p) and his companions. The societal context of insecurity and hardship, such as before or during battle, was treated as a situation of necessity (*darurah*) for which the Prophet (p) suspended the categorically prescribed punishment (*hudud*) of amputation of the hand for the crime of theft.<sup>301</sup> Due to the

---

<sup>300</sup> Muhammad Suleiman al-Ashqar, *Al-Wadih fi Usul al-Fiqh*, Dar al-Nafa'is, Jordan, 2004, pp.59-60; Abdulssalam Wahid Bali, *Ghayah al-Ma'mul fi Sharh al-Bidayah fi 'Ilm al-Usul*, Dar Ibn Rajab, Cairo, 2012, pp.174-181.

<sup>301</sup> Abu Zahrah, *Usul al-Fiqh*, p.229; Shalabi, *Fiqh*, p.187; Isma'il, *Adillah*, p. 200; cited in Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p.400.

context of societal insecurity and his desire for peace and public welfare (*maslahah*) during the negotiations of the peace treaty of Hudaibiyyah with the pagan Quraysh, the Prophet (p) also made concessions and accepted unfair policies that would otherwise have been prohibited under normal circumstances.<sup>302</sup> Similarly, the society need during a period of famine and acute food shortage was the reason why the second Caliph Umar bin al-Khattab suspended the same categorically prescribed punishment (*hudud*) of amputation of the hand for the crime of theft.<sup>303</sup>

The existence of various forms of duress (*Ikrah*) and necessity (*darurah*), and the consideration of public welfare (*maslahah*) are regarded by all jurists of all schools of law (*madhhabs*) as pardonable excuses and justifications to suspend certain categorical textual obligations, or permit specific prohibitions, which under normal circumstances would be regarded as impermissible acts of disbelief (*kufr*) that were opposed to divine laws.<sup>304</sup>

---

<sup>302</sup> Ibn al-Qayyim, *kitab Zad al-Ma'ad fi Hady khair al-'Tbad*, Dar Ibn Hazm, Beirut, 3rd ed., 2019, vol.3, p.348; Ibn Kathir, *Kitab al-Sirah al-Nabawiyyah*, Dar al-Ma'rifah li al-Taba'ah wa al-Nashr wa al-Tawzi', Beirut, 1976, vol.3, pp.333-334; Umar Faruq Abd-Allah, *Living Islam with Purpose*, Nawawi Foundation, 2007, p.25.

<sup>303</sup> Ibn al-Mulaqqan, *Al-Badr al-Munir fi Takhrij al-Ahadith Wa al-Athar al-Waqi'ah fi al-Sharh al-Kabir*, Saudi Arabia: Dar al-Hijrah, 1425, vol.8, p.679; 'Atiyyah bin Muhammad Salim, *Sharh Bulugh al-Maram, al-Maktabah al-Shamilah*, 3.13, 1420, p.12.

<sup>304</sup> See Mansour Z. Al-Mutairi, *Necessity in Islamic Law*, Ph.D. Thesis, University of Edinburgh, UK, 1997 (unpublished); Fazli Dayan, *The*



A deep understanding of the juristic instruments and secondary sources of Islamic law and evidence (*adillah*) in Islamic Legal Theory (*Usul al-Fiqh*) such as *maslahah* (consideration of public interest and welfare), *sadd al-dari'ah* (preclusion or blocking the means to harm) or *taqyid al-mubah* (restricting the permissible), *Istihsan* (equity or juristic discretion) and *qiyas* (reasoning by analogy), are critical in understanding how jurists develop new Shari'ah-compliant laws in changing contexts.<sup>305</sup> In the field of *Usul al-Fiqh* (Islamic legal theory), the subject matter of especially *Ahkam al-wad'iyyah* (Declaratory laws) is primarily to sensitively regulate normative laws (*azima*) and concessions (*rukhsa*) whenever their causes/reasons (*sabab*), conditions (*shurut*) and hinderances (*mani'*) change and necessity new rulings.

Knowledge of these fields of specialization and scholarship is also essential to understanding how jurists develop new and different Shari'ah rulings for responding to various forms of coercion, duress, need or necessity that affect

---

*Application of Doctrine of Necessity in Shariah and Contemporary Medical Issues with Special Reference to Family Matters and Pakistani Law*, Ph.D. Thesis, In the International Islamic University Islamabad, 2018 (unpublished).

<sup>305</sup> For further reading, consult any intermediate book on the Principles of Islamic Jurisprudence (*Usul al-Fiqh*) and Islamic legal maxims (*Qawa'id al-Fiqhiyyah*).

individuals and communities, while protecting the higher intents, priorities and objectives (*Maqasid*) of Shari'ah.<sup>306</sup> Otherwise, it is easy for some to misunderstand the scholarly justifications for new laws in different contexts for individuals and societies, and for some to ignorantly accuse scholars of heretical innovations (*bid'ah*), inconsistent and esoteric interpretations (*ta'wil*), and even disbelief (*kufur*). An agreed universal maxim of Shari'ah related to this states that, “there is no denying the fact that rulings change as contexts change” – *la yunkar taghayyur al-ahkam bi taghayyur al-ahwal*.<sup>307</sup>

Therefore, unless it is also confirmed beyond a shadow of doubt that the statement or act of disbelief (*Kufur*) was done with the desire to oppose and contradict the divine law, and not as a result of coercion, necessity or duress by persons or circumstances, it is absolutely prohibited (*Haram*) to regard such as person as a disbeliever (*Kafir*).

---

<sup>306</sup> Mansour Z. Al-Mutairi, *Necessity in Islamic Law*, Ph.D. Thesis, University of Edinburgh, UK, 1997 (unpublished); Fazli Dayan, *The Application of Doctrine of Necessity in Shariah and Contemporary Medical Issues with Special Reference to Family Matters and Pakistani Law*, Ph.D. Thesis, In the International Islamic University Islamabad, 2018 (unpublished).

<sup>307</sup> Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, Maktabat Kuliyah al-Azhariyyah, Cairo, 1968, vol. 3. p.47.

## **6. There should be no Esoteric Interpretation (or *Al-Ta'wil*).**

In this context, *ta'wil* refers to an inconsistent, unreliable or esoteric interpretation of the Divine text of the Qur'an or a statement of the Prophet (p). It is an unintentionally wrong interpretation of the texts. It is very much related to the condition of intent and hinderance of mistake discussed earlier. This esoteric interpretation is considered a hindrance to excommunication (*takfir*).

It is an interpretation that was done in good faith but regarded as wrong and misguided by almost all other scholars of the field. In a sense, it is a form of innocent ignorance with no intention to deny the Divine truth. It is when the scholar is wrong but is honestly not convinced that he or her is wrong in their interpretation of the text or evidence. In this situation, the person interpreting the text in question is regarded as having some confusion and misperceptions in their interpretations of proofs and evidence. He however holds strongly onto his opinions and misunderstanding of the text while honestly believing that he is right. He is sincere but wrong. He does not consciously reject any Divine truth; he only misunderstands or misinterprets their meaning or implication. The person or scholar who does this type of *ta'wil* is referred to as a *Mu'awwil*.

Ibn Taimiyyah said that Imam Ahmad bin Hanbal was considerate and even sought for Allah's forgiveness for those scholars who were influenced by the creed of the *Jahmiyyah*<sup>308</sup> related to the “creation of the Quran”.<sup>309</sup> While he completely rejected their view as a form of disbelief, he also knew that in trying to understand the truth of the issue, they misinterpreted the relevant proofs and made mistakes.<sup>310</sup>

Allah says in the Qur'an: “...*There is no blame on you for an unintentional mistake, but you will be held responsible for*

---

<sup>308</sup> *Jahmiyyah*: was a pejorative term used by early Islamic scholars to refer to the followers of Al-Jahm ibn Safwaan who propagated the heretical belief that “the Qur'an is a created thing” and who openly proclaimed the negation of the names of Allah and His attributes, and he had the claim of *al-Irja'* (taking actions out of Iman). For further reading see: Mani' bn Hammad al-Juhani, *al-Mawsu'ah al-Muyassarah fi al-Adyan wa al-Madhahib wa al-Ahزاب al-Mu'asirah*, Dar al-Nadwah al-'Alamiyyah, WAMY, Supervised and Edited., Riyadh, 1417AH; Muhammad bn Abd al-Karim al-Shahristani, *al-Milal wa al-Nihal*, edited by Muhammad Sayyid Kaylani, Dar al-Ma'rifah, Beirut, 1404AH.

<sup>309</sup> The belief of the Jahmiyyah group is that the Qur'an was a set of meanings created by Allah and sent to prophet Muhammad (pbuh). This stemmed from the assumption that the attribute of speech (*al-Kalam*) does not befit Allah, hence, they reject the belief of the Sunni scholars which states that Qur'an is word or speech of Allah, as this by implication would mean that Allah speaks. Among the evidence relied on by the Sunni school to justify the attribute of speech (*Kalam*) is the verse: “...*And to Musa Allah spoke directly*” (Q5:164). For further reading see: Mani' bn Hammad al-Juhani, *al-Mawsu'ah al-Muyassarah fi al-Adyan wa al-Madhahib wa al-Ahزاب al-Mu'asirah*, WAMY, Supervised and Edited, Dar al-Nadwah al-'Alamiyyah, Riyadh, 1417AH; Muhammad bn Abd al-Karim al-Shahristani, *al-Milal wa al-Nihal*, edited by Muhammad Sayyid Kaylani, Dar al-Ma'rifah, Beirut, 1404AH.

<sup>310</sup> Ibn Taymiyyah, *Majmu' al-Fatawah*, vol.23, p.349.

*what you do with the intention of your hearts; Allah is Forgiving, Merciful*". (Qur'an 33:5)

Ibn Hajar says in *Fath al-Bari*: "The scholars assert that anyone who misinterprets (*Muta'awwil*) the text, is excused for his misinterpretation. He is not a sinner provided his misinterpretation is accommodated in (the rules of) Arabic language and it has consideration in the science (of interpretations)".<sup>311</sup> Ibn Taymiyyah also said that: "an inconsistent or esoteric interpretation by a person who intends to follow the path of the Prophet (p) will not be excommunicated, nor will he be considered a wrongdoer (*Fasiq*) if he had exerted effort (*Ijtihad*) but then made a mistake. This stand is famous among people in jurisprudence (*fiqh*) and mundane issues. But as for issues of creed, a lot of people (unfortunately) excommunicated those who erred in them. This stand however cannot be traced to the companions and their disciples, nor can it be traced to any of the Muslim Imams. It is rather just a stand of the deviants (or heretics)".<sup>312</sup>

---

<sup>311</sup> Ibn Hajar al-Asqalani, *Fath al-Bari*, Vol.19, p. 393, al-Maktabah al-Shamilah, 3.13.

<sup>312</sup> Ibn Taymiyyah, edited: Muhammad Rashad Salim, *Minhaj al-Sunnah al-Nabawiyyah*, Mu'asasah al-Qurtubah, 1406AH, vol5, p.239.

## **Confirmation and Establishment of proof (*Iqamah al-Hujjah*) for justifying *Takfir***

"*Iqamah al-Hujjah*" refers to the establishment or presentation of clear and undeniable evidence against an individual before declaring them as a non-Muslim (making *Takfir* on them). In Islamic jurisprudence, *Takfir* is the act of declaring a Muslim as a disbeliever (*kafir*) due to their rejection or denial of essential Islamic beliefs. "*Iqamah al-Hujjah*" is a critical principle that underscores the gravity and seriousness of making *Takfir*. It serves as a safeguard to prevent hasty judgments and ensures that a comprehensive and thorough examination of the evidence is conducted before pronouncing someone outside the fold of Islam. This principle is derived from various Quranic verses and hadiths that emphasize the importance of presenting clear and compelling evidence when making serious accusations against others.

For example, in Sahih Bukhari, it is reported that the Prophet said, "*Whoever says to his brother, 'O disbeliever', then it has returned upon one of them. If it is as he said, then (the disbelief) has returned upon him (the accused), and if it is not as he said, then it is upon him (the accuser).*"<sup>313</sup>

---

<sup>313</sup> Sahih al-Bukhari, 6104; Sahih Muslim, 60.

In another narration, the Prophet (p), said, “*none accuses another of disobedience (fusuq) or with disbelief (kufr), except that it returns (to the accuser), if it happened that the accused is not guilty of such.*”<sup>314</sup>

The principle of "*Iqamah al-Hujjah*" highlights that declaring *Takfir* on a fellow Muslim is a matter of great responsibility and should not be taken lightly. It is crucial to consider the context, intentions, and understandings of the individual before making such judgments. Rushing to label someone as a disbeliever without fulfilling the conditions of "*Iqamah al-Hujjah*" can lead to division and harm within the Muslim community. Therefore, *Iqamah al-Hujjah* is a crucial step in the process of *takfir*, ensuring that accusations of disbelief are not made lightly or without clear, incontrovertible evidence.

Distinguished scholars emphasize the need for caution and wisdom when dealing with matters related to faith and the beliefs of others. It is advised to approach differences in beliefs with compassion, empathy, and a willingness to engage in dialogue to foster mutual understanding and unity within the Muslim ummah (community).

The rationale in establishing proof before a person is excommunicated (*Takfir*) is to establish with certainty that

---

<sup>314</sup> *Sahih al-Bukhari*, 6045.

the excommunication of a Muslim is true and justified, and that all conditions have been met and all hindrances are absent. It is also to ensure that the person who committed an act of disbelief (*kufir*) is fully aware of the matter he violated, and that his excommunication is not based on or surrounded by any iota of doubt. This also implies that the decision for a Muslim to be excommunicated is established by a qualified scholar or Shari'ah court of competent jurisdiction.

In Islamic jurisprudence, *takfir* of things implies the declaration that a thing is in and of itself a form of disbelief (*Kufr Mutlaq*). Determining the disbelief (*Kufr*) of a thing – any action or statement – requires that the thing in question is in direct rejection or incompatible opposition with a definitive divine truth. *Kufr* of things (as opposed to *Kufr* of persons), simply requires that the action or statement is in an irreconcilable conflict with or a certain denial of a “known and essential fundamental religious truth” (*ma'lum min al-din bi al-darurah*) or regarding matters of “absolute consensus” (*al-ijma' al-qat'i*) of all Muslim jurists and scholars.

In Islamic jurisprudence, determining the disbelief (*Kufr*) of a person typically requires clear and explicit evidence that demonstrates their rejection or denial of fundamental Islamic beliefs or tenets (*ma'lum min al-din bi al-*



*darurah*) or evidence on which there is complete or absolute consensus (*ijma'*) of scholars. In addition, it must be firmly established with absolute certainty that the person to be excommunicated was a mature adult, of sound mind and full mental capacity, knowledgeable about the meaning and implications of their words or actions, was intent on and desirous of apostasy or excommunication (*kufr*), and did not intend by their action or statement a meaning that was esoteric (*ta'wil*) and arrived at by sincere but faulty interpretation. If any one of these conditions (*shurut*) and hinderances (*mawani'*) of excommunication (*Takfir*) are not satisfactorily considered in the establishment of proof (*Iqamah al-hujjah*) by a competent authority, then it is absolutely prohibited (*haram*) to regard such a Muslim as a disbeliever or *Kafir*.

To insist on regarding a Muslim as a disbeliever (*kafir*) without the establishment of proof is itself considered a major sin or at the least, one of heresy or blameworthy innovation in the religion (*bid'ah*). Ibn Taimiyyah said: "No one has the right to excommunicate anyone among the Muslims who makes a mistake until proof is established and he is clear and convinced about it. The Islam of any Muslim is established with certainty and cannot be nullified with doubt. In fact, it cannot be nullified except after the estab-

lishment of proof and clearing of all ambiguity”.<sup>315</sup>

This statement is in consonance with the universal Islamic maxim, “certainty is not overruled by doubt” (*al-yaqin la yuzalu bi al-shakk*), and another important one, “what matters is the reality of things not the words used” (*al-'ibra bi al-haqa'iq la bi al-alfadh*).<sup>316</sup>

Ibn Taimiyyah also said: “not everyone who pronounces statement of disbelief (*kufr*) will be considered a disbeliever (*kafir*) until a proof that will confirm his disbelief is established. Once the proof is established, he becomes a *kafir*”.<sup>317</sup>

The bases for this precondition – of establishing proof (*Iqamah al-Hujjah*) – are several texts from the Qur'an and the Sunnah of the Prophet (p) stating that Allah does not punish a people until they are sent guardians or messengers.

---

<sup>315</sup> Ibn Taymiyyah, *Majmu' al-Fatawa*, edited: Abdul Rahman bn Muhammad bn Qasim, Majma' al-Malik Fahd, Saudi Arabia, 1995, vol.12, p.149.

<sup>316</sup> Other versions of this maxims include; *Al-ibra bi al-haqa'iq la bi al-musammayat* (“what matters is the reality of things not the terms used”); *al-ibrah fi al-uqud bil maqasid wa al-ma'ani la bi al-al-fadh wa al-mabani* (what matters in contract is the intent and meaning not the words and phrases used). See, Muhammad bin Abdullah Bajsir, *Al-Qawa'id fi Taohid al-'Ibadah*, Dar al-Amajid, Riyadh, 2017, vol.2, p.1003; Al-Sarakhsi, *Al-Mabsut*, Matba'at Sa'adah, Egypt, vol.22, p.23; , Ibn Abidin, *Hashiyah Radd al-Muhtar*, Dar al-Fikr, Beirut, 2nd.edt, 1966, vol. 3, p.16.

<sup>317</sup> Ibn Taymiyyah, *Majmu' al-Fatawa*, edited: Abdul Rahman bn Muhammad bn Qasim, Majma' al-Malik Fahd, Saudi Arabia, 1995, vol.5, p.41.

Allah says:

*“And We would never punish a people until We have sent a messenger (to warn them).”* (Qur'an 17:15)

*“[We sent] messengers as bringers of good tidings and warners so that mankind will have no argument against Allah after the messengers. And ever is Allah Exalted in Might and Wise”.* (Qur'an 4:165)

*“Your Lord would never destroy a society until He had sent to its capital a messenger, reciting Our revelations to them. Nor would We ever destroy a society unless its people persisted in wrongdoing”.* (Qur'an 28:59)

To ensure that the proof is well established for the accused, it must also be presented to him in clear and well understood language. According to Ibn Hazm, the evidence should be presented to him in such a way that he will not have anything strong (in the form of an argument) to resist it.<sup>318</sup> This is done either by debunking any arguments the person might have relied on, or by establishing the kind of proof or evidence that the person cannot contradict. It could also include giving the person some time to rethink

---

<sup>318</sup> Ibn Hazm, *Al-Ihkam fi Usul al-Ahkam*, vol.1, p.67.

or reflect on the definitive divine law that he violated before he is labelled a *kafir*. The issue at hand, the type of person who violated the categorical law and his or her level of knowledge, as well as the type of person who wants to establish the proof are some of the determining factors for the duration and way in which the “establishment of proof” (*Iqamah al-Hujjah*) will be carried out.<sup>319</sup>

Regarding the form or protocols of establishing proof, Safar al-Hawali said: “Every person has his own peculiarities, as there is no specification for how the proof should be established and the duration which it should take. This is because amongst people are those for whom a short admonition, or word would be sufficient for establishing proof to convince them. Meanwhile there are some others who will require years or months of enlightenment, due to their weakness in knowledge and understanding. So also, regarding the competence of the person who is establishing the proof; some are capable of establishing convincing proof at a sitting, while some may require more sittings...”<sup>320</sup>

These factors, protocols and considerations, necessary for the correct establishment of proof (*Iqamah al-Hujjah*)

---

<sup>319</sup> Safar al-Hawali, *al-Takfir wa Dawabituhu min Sharh al-Aqidah al-Tahawiyyah*, al-Maktaba al-Shamela 3.13, p.200

<sup>320</sup> Safar al-Hawali, *al-Takfir wa Dawabituhu min Sharh al-Aqidah al-Tahawiyyah*, al-Maktaba al-Shamela 3.13, p.۲۰۰.

emphasise the precaution and caution tht Islam and classical Muslim scholars have taken – based on the clear teachings of Qur'an and Sunnah – in order to protect the fundamentals of Islam from disbelief, and also protect Muslims and their faith (*Iman*) from baseless and unsubstantiated accusations and falsehood that result from the misuse and abuse of excommunication (*Takfir*) by Muslims.

### **Authority for *Takfir*: Who Can or Should do *Takfir*?**

While Muslim scholars warn against *takfir*, they admit that *takfir* should be made by the competent authority on whoever or whatever truly deserves it, provided the conditions and hindrances are justly observed.

Having affirmed the need to observe conditions and hindrances to *takfir*, it should be noted that declaration of *takfir* to deserving individuals is not the responsibility of every Muslim. In view of the enormity of the legal and social implications of *takfir*, it is instead regarded as the responsibility of two main categories of knowledgeable Muslims namely: the qualified shariah court judges and the learned scholars in the field of Islamic juristic sciences - those who understand the texts, jurisprudence and also understand when, where and how to apply these in various

contexts.<sup>321</sup>

In an attempt to curtail the abuse of *Takfir*, some contemporary scholars are of the opinion that the “*takfir* of things” – actions and statements that are expressions of disbelief (*kufir*) – is an area of specialization and responsibility of scholars and jurists, while “*takfir* of the individual” – regarding a Muslim as a disbeliever (*Kafir*) – should be the responsibility of the those with formal authority (jurisdiction) and judges, and not the responsibility of common and ordinary people or preachers.<sup>322</sup>

According to al-Bahnasawi, declaring a specific Muslim as a *kafir* by name is “a matter only for a competent judge. It is therefore impermissible for a layman to declare another as a disbeliever (*kafir*)”. This is supported by the fact that during the reign of the second caliph, Umar bin al-Khattab, a person known as Ibn Maz'um was reported to have made a statement that wine-drinking was permissible in Islam. This statement is one of disbelief (*kufir*) as it clearly contradicts definitive divine texts. However, the caliph did not declare him to be a *kafir*, saying that this required evidence

---

<sup>321</sup> Ali bn Abdul Aziz Ali, *Shurut wa Mawani' Takfir al-Mu'ayyan*, P. 23; Abdilkarim Bellil Mafahim, *al-Kufr wa al-Takfir*, p.29; Abdullah al-Khatib, *al-Takfir Akhtaruhu wa Dawabituh*, al-Kulliyat al-Urubiyyah li al-Dirasat al-Islamiyyah, France, 2003, p.97.

<sup>322</sup> Mu'adh al-Khan, *al-Takfir wa Dawabituhu*, Syrian Islamic Council, Syria, p. 1-2.

and the establishment of proof in order to ascertain and establish the facts of the case before any judgement could be passed on the case.<sup>323</sup>

Owing to the dangers of *takfir*, precaution on charging a specific individual with disbelief (*kufir*) is the best and safest practice. According to Farfur, the superior thing to do in such cases of suspicion is to refer the case to a judicial panel so that they may investigate and uncover the truth. This course of action will prevent people from entering into this matter and judging others merely by what they hear and what is spread within the community.<sup>324</sup> Allah warns, “*do not pursue what you have no knowledge of. Hearing, sight and hearts will all be questioned*”. (Qur'an 17:36)

In view of the seriousness, but also the complexity of the subject matter and the diversity of views and rulings held by jurists and theologians that have recorded on the subject of disbelief (*kufir*) and excommunication (*takfir*), some jurists have proposed the creation of a separate judicial post within the ranks of the regular Shari'ah judicial system in Muslim

---

<sup>323</sup> Salim al-Bahnasawi, *Al-Hukm wa al-Qadiyyat Takfir al-Muslim*, 3rd edn., Dar al-Buhuth al-'Ilmiyyah, Kuwait, 1405/1985, p.128. Cited in Muhammad Hashim Kamali, *Freedom of Expression in Islam*, Islamic Text Society, Cambridge, UK, 1997, p.187.

<sup>324</sup> Muhammad Salih Farfur, *The Beneficial Knowledge and the Definitive Proofs in the Study of Theology*, tr. Wesam Charkawi, Azhar Academy Ltd., London, 2010, p.308.

majority lands, with specialized jurisdiction to adjudicate on issues related to blasphemy, apostasy, and disbelief. The court or office so created would be entrusted with the task of, among other things, of determining exactly what utterances and conduct amounts to disbelief, blasphemy, hate speech, or apostasy in various contexts, as the case may be. Individuals must in such a context avoid passing hasty judgements in matters involving the attribution of disbelief (*kufr*) to others.<sup>325</sup>

All that a person may do when he suspects heresy, disbelief, blasphemy or apostasy is being committed by someone else is to give him good advice in the true spirit of the Qur'anic principle of *hisbah*. A person who witnesses the incidence of heresy, disbelief or blasphemy would have fulfilled his duty if he provided the necessary evidence to establish truth, and then left it in the hands of the authorities.<sup>326</sup>

According to Al-Bahnasawi, “no one may be subjected to adversity and harm on the basis of mere suspicion or alle-

---

<sup>325</sup> Abu Zahra, *Al-Jarimah wa al-'Uqubah fi al-Fiqh al-Islami*, Dar al-Fikr al-Arabi, Cairo, n.d., p.176. Cited in Muhammad Hashim Kamali, *Freedom of Expression in Islam*, Islamic Text Society, Cambridge, UK, 1997, p.189.

<sup>326</sup> Muhammad Hashim Kamali, *Freedom of Expression in Islam*, Islamic Text Society, Cambridge, UK, 1997, p.189.



gation of disbelief, blasphemy or apostasy without the necessary proof and adjudication of competent authorities”.<sup>327</sup>

We are reminded again the Prophet's warnings about the consequences of calling another Muslim a disbeliever (*kafir*) or sinner (*fasiq*) without certainty and the establishment of proof. He (p) said, “*When a person calls his brother (in Islam) a disbeliever, one of them will certainly deserve the title. If the addressee is so as he has asserted, the disbelief of the man is confirmed, but if it is untrue, then it will revert to him*”. (Al-Bukhari and Muslim).<sup>328</sup> In other words, once someone charges another Muslim as a *Kafir*, then one of them is definitely going to be regarded as such by Allah.

### ***Takfir of those who Refuse to do Takfir***

Some Muslims who consider other Muslims as disbelievers (*kuffar*), also regard whoever disagrees with them on

---

<sup>327</sup> Salim al-Bahnasawi, *Al-Hukm wa al-Qadiyyat Takfir al-Muslim*, 3rd edn., Dar al-Buhuth al-'Ilmiyyah, Kuwait, 1405/1985, p.148. Cited in Muhammad Hashim Kamali, *Freedom of Expression in Islam*, Islamic Text Society, Cambridge, UK, 1997, p.190.

<sup>328</sup> Muhammad Haniff Hassan, “*The Danger of Takfir (Excommunication): Exposing IS' Takfiri Ideology*”, 2017, pp. 1-3. Originally published in *Counter Terrorist Trends and Analysis (CTTA)*, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore, vol.9, Issue 4, April 2017. Source: <https://css.ethz.ch/en/services/digital-library/articles/article.html/316b8048-d26a-44cb-b4ce-48d8167f1c7c> Accessed on 18.08.2023.

this, to be a disbeliever (*kafir*). In other words, to not regard someone they regard to be a *kafir* as a *kafir*, is itself alleged to be *kufir*.

Declaring someone as a non-believer (*kafir*) solely due to their refusal to accept another individual labelled as such by an unauthorized person or group is not permissible. As previously stated, determining apostasy or disbelief (*kufir*) is not the prerogative of any individual or faction, but rather that of an official Islamic judicial body. The accused person has to be tried in court and accorded the right to defend himself; and the judgment regarding the person is based not just on evidence presented by the accuser but other considerations as well.<sup>329</sup>

---

<sup>329</sup> Abdul Rahman b. Mualaa Al-Luwaihiq Al-Mutairi (transl. by Jamal Al-Din M. Zarabozo), *Religious Extremism in the Life of Contemporary Muslims*, Denver: Al-Basheer Publications, 2001, pp. 334-6; Muhammad Khayr Haykal (1996), *Al-Jihad Wa Al-Qital Fi Al-Siyasah Al-Shar'iyah (Jihad and War in Islamic Public Policy)*, Beirut: Dar Al-Bayariq, pp. 133-4, 307-8; Mahmud bin 'Abd Al-Rahman (2012), *Shubuhah Hawl 'Ahdath Misr 25 Yanayar (Confusion Around Egypt's 25 January Incidents)*, Qahirah: Dar Al-Istiqam, pp. 419-20, 425; Nasir Al-Din Al-Albaniy (2011), *Min Juhud Al-'Allamah Al-Albaniy Fi Nush Jama'at Al-Takfir (Al-Albaniy's Efforts to Advice Excommunication Society)*, Beirut: Muassasat Al-Rayyan, pp. 97-102; "Man Yahiqa Lah Al-Takfir (Who Has the Power of Excommunication)" (2010), *assakina.com*, 20 July, available at <http://www.assakina.com/taseel/5261.html> (23 March 2017); Muhammad bin Husayn Al-Qahtaniy (2003), *Fatawa Al-A'imma Fi Al-Nawazil Al-Mudhalimah (Scholars' Fatwas on Various Issues)*, Riyadh: Maktabat Al-Malik Fahd, pp. 233-8; Ra'id Al Tahir (2008), "Man Lah Haq Al-Takfir?! (Who Has the Power of Excommunication)", *ajurriy.com*, June, available at <http://www.ajurriy.com/vb/showthread.php?t=4706> (23 March 2017); 'Abd Al-Hakim Al-Khuwaylidiy Balhaj, et. al. (2010), *Dirasat Tashihiyah Fi*

In the absence of such a body to oversee trials of those accused of apostasy, this authority cannot be delegated to just any other entity, as it would lead to societal chaos (*fitnah*). This becomes especially problematic considering the various interpretations that accusations of apostasy or disbelief (*kufr*) can entail. Consequently, if someone declines to level charges of disbelief (*kufr*) against another, they cannot themselves be branded as a non-believer for their decision.

On this, Ibn Taimiyyah said:

“...declaring another person a disbeliever is a right of Allah. Hence, one cannot declare a person an unbeliever except for that person whom Allah and His Messenger have declared a disbeliever (that is), by having a clear proof from the Quran and Sunnah that such a person is a disbeliever.”<sup>330</sup>

---

*Mafahim Al-Jihad Wa Al-Hisbah Wa Al-Hukm 'Ala Al-Nas (Corrective Study on Jihad, Hisbah and Issue Ruling on People)*, Beirut: Lubnan, pp. 413-8. Cited in Muhammad Haniff Hassan, “*The Danger of Takfir (Excommunication): Exposing IS' Takfiri Ideology*”, 2017, [https://www.academia.edu/33917562/Danger\\_of\\_Takfir\\_Exposing\\_IS\\_Takfiri\\_Ideology](https://www.academia.edu/33917562/Danger_of_Takfir_Exposing_IS_Takfiri_Ideology). Accessed 18.08.2023.

<sup>330</sup> `Abd Al-Hakim Al-Khuwaylidiy Balhaj et. al. (2010), *Dirasat Tashihyah Fi Mafahim Al-Jihad Wa Al-Hisbah Wa Al-Hukm 'Ala Al-Nas (Corrective Study on Jihad, Hisbah and Issue Ruling on People)*, Beirut: Lubnan, p. 338. Cited in Muhammad Haniff Hassan, “*The Danger of Takfir (Excommunication): Exposing IS' Takfiri Ideology*”, 2017, [https://www.academia.edu/33917562/Danger\\_of\\_Takfir\\_Exposing\\_IS\\_Takfiri\\_Ideology](https://www.academia.edu/33917562/Danger_of_Takfir_Exposing_IS_Takfiri_Ideology) Accessed 18.08.2023.

## Criminalising the Abuse of *Takfir*

According to the distinguished contemporary jurist, Sheikh Abdullah bin Bayyah, whatever has been said concerning the gravity of excommunication applies just as equally to the issuing of *fatwas* declaring unbelief (*Takfir*) on others. He argues that the scholars of sacred law have advised that the sovereign ruler (caliph) or head of state, has the legitimate authority to overrule people who have no knowledge of a topic from giving *fatwas* on it, as a means of protecting Muslims from the known devastating harms of its abuse by incompetent Muslims.<sup>331</sup>

In his book, *The Pursuit of Peace*, Shaykh Bin Bayyah cites Abu al-Faraj ibn Jawzi, who said:

“It behoves the sovereign ruler to overrule would-be *Muftis* just as the Umayyads did; for such people are like someone who gives directions without knowing the way, or a blind man who points people in the direction of the Ka'aba in Mecca; or someone who has no knowledge of medicine, offering medical assistance. Nay, such people are worse by far than them all, and if it is incumbent on a ruler to prevent someone who has no proficiency in medicine from treating the sick, then how should the matter be con-

---

<sup>331</sup> Shaykh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.82-83.

cerning someone who has no real knowledge of the Book and Sunnah, and no understanding of the finer points of the religion?”<sup>332</sup>

According to Bin Bayyah, “when those pronouncements of unbelief (*takfir*) themselves result in people's lives being put at risk, it becomes even more important for rulers to overrule them and put a stop to them! In this modern era, they can accomplish this by enacting laws that make excommunication a criminal offence, on the basis that not only is it unlawful in the sacred law – as evidenced in the Hadith cited above, but it also leads to the legitimization of bloodshed”.<sup>333</sup> In other words, unjustified *Takfir* by Muslims should be regarded as similar to the crime of hate speech, which can lead to atrocities.

In Islamic Legal Theory or the Principles of Islamic Jurisprudence (*Usul al-Fiqh*) the prevention of such misuse and abuse of *Takfir* by the unqualified, or new forms of hate speech can be realised through juristic tools of *Ijtihad* such as “Blocking the means” or “Preclusion” (*Sadd al-Dhari'ah*) or “Restricting the Permissible” (*Taqyid al-Mubah*), which is legitimate evidence and a source of law (*dalil*) for protect-

---

<sup>332</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.82.

<sup>333</sup> Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.82-83.

ing communities from the harm of what would otherwise have been permissible under normal circumstances.<sup>334</sup>

Other forms of evidence (*adillah*) of Islamic law used for this purpose of protecting communities from harmful speech that are known to lead to atrocities include sources of law such as the “consideration of public interest” (*Maslahah*) and “Juristic discretion” (*Istihsan*).<sup>335</sup>

---

<sup>334</sup> Further references on these secondary sources of Islamic law include, Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, Maktabat Kuliyah al-Azhariyyah, Cairo, 1968, vol.3, p.14-50; Al-Shatibi, *Muwafaqat*, vol.4, p.62; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p.400-401; Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.162-172; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, London, 2008, p.241, 125-127; Gamal Eldin Attia, *Towards Realization of the Higher Intents of Islamic Law: Maqasid al-Shari'ah, A Functional Approach*, IIIT, London, 2007, p.291.

<sup>335</sup> Wan Azhar Wan Ahmad, *Public Interests (Al-Masalih Al-Mursalah) in Islamic Jurisprudence: An Analysis of the Concept in the Shafi'i School*, ISTAC & IIUM, Kuala Lumpur, Malaysia, 2003, p. p.17-56, 135; Gamal Eldin Attia, *Towards Realization of the Higher Intents of Islamic Law: Maqasid al-Shari'ah, A Functional Approach*, IIIT, London, 2007, p.288; See also, Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, London, 2008, p.122-125; Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008, p.102-107; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p. 324-325; Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.174-175; Hussein Hamid Hassan, *Fiqh al-Maslahah wa Tatbiqatuhu al-Mu'asirah*, Jeddah, IDB, 1993, p. 55; Muhammad al-Amin bn Muhammad bn al-Mukhtar al-Shinqiti, *al-Masalih al-Mursalah*, Madinah: Al-Jami'ah al-Islamiyyah, 1410, p.10 & 12; Al-Shatibi, *Al-Muwafaqat*, vol.3, p.60-76; vol.4, p.233-243; Abdul Wahab Khallaf, *Masadir al-Tashri' al-Islami Fima la Nass Fihi*, Kuwait, Dar al-Qalam, 1414, 6th edition.

## TERMS RELATED TO KUFR – NIFAQ, FISQ, BID'AH, TA'WIL, AND KHILAF

There are a number of terms related to the word '*Kufr*' that need to be fully understood in order to ensure proper conception of *Kufr* and *Takfir*, and what may resemble these but which are not *kufr*, and consequently do not justify *Takfir*. Clarifying these is also important so as to know the differences and similarities between these terms in order to better distinguish them from each other, while appreciating their nuanced meaning and implications.

### *Nifaq* or Hypocrisy

Hypocrisy is primarily about being two-faced and duplicitous. It is showing virtue on the outside, while hiding vice on the inside. It is when a person's immorality and vice are dressed-up in the clothing of virtue. Such a person is described by the proverbial description of “the wolf in sheep's clothing” or “the enemy within”. A Muslim with such character is theoretically described as a *Munafiq*, even though this is an identity that is nearly impossible to confirm with certainty by anyone other than the Prophet (p), as seen during the time of the Prophet (p) and his companions.

As with the classification of Kufr into “major” and “minor”, *Nifaq* is also of two major forms or types.

1. The “major hypocrisy” (*Nifaq al-Akbar*) also referred to as “hypocrisy of belief” (*Nifaq al-I'tiqadi*) which is more serious in that it involves disbelief (*kufr*) in the heart, and denying definitive and fundamental Divine truths, while pretending to be faithful in actions and statements.
2. “Minor hypocrisy” (*Nifaq al-Asghar*), which is also referred to as “hypocrisy of action” (*Nifaq al-Amali*) which is only in deceptive actions and statements and does not involve denial of any categorical divine truth and disbelief (*kufr*).

**“Hypocrisy of Belief”** (*al-Nifaq al-I'tiqadi*), or *al-Nifaq al-Akbar* (“Major *Nifaq*”) is that which is exhibited by belief and the rejections of any of the essential fundamentals of the religion – *ma'lum min al-din bi al-darurah* or matters accepted by “absolute consensus” (*Ijma' qati'*). This form takes a person out of the fold of Islam. Example of this is when a person shows through words or deeds, his belief in Allah, and His messenger, His prophets, His revelations, etc, but in reality, disbelieves in these. It is also defined as the display of faith (*Iman*) with the tongue and concealment of disbelief (*kufr*) in the heart.



This hypocrisy is when Muslim identity markers are used as a cover-up for internal disbelief (*kufr*) and rejection in faith in Allah's authority and guidance. Here, the hypocrite is pretending on the outside to be a Muslim and demonstrating the external identity, signs, symbols of faith and compliance to Islam, while in reality they deny the essential fundamentals of Islam. Such a hypocrite may actually be an agnostic, polytheist, Christian or Atheist in his/her belief system, and reject one or some of the “known essential fundamentals of faith or Islamic teachings” (*ma'lum min al-din bi al-darurah*), but behaves like a Muslim in the presence of people. Such a person is what the name *Munafiq* actually refers to.

**“Hypocrisy of Actions” (al-Nifaq al-'Amali),** or *al-Nifaq al-Asghar* (“Minor *Nifaq*”), is that which is exhibited by actions and deeds. This does not make a believer a non-Muslim although it is a great sin. Examples of these include when a believing person does such acts that are described as “signs”, “indicators” or acts of hypocrisy, e.g., betraying trust, failure to fulfil promises, telling lies, being duplicitous or two-faced, and being ethically unpredictable, etc.<sup>336</sup>

---

<sup>336</sup> Ibn Rajab al-Hanbali, *Jami' al-'Ulum wa al-Hikam*, Dar al-Ma'rifah, Beirut, 1408 AH, p. 431; Ali Ramadan Abu Al-'Izz, *Haqiqah al-Nifaq wa Anwa'uh fi Daoi al-Kitab wa al-Sunnah wa fahm Salaf al-Ummah*; Ma'had al-Imam al-Bukhari, *al-Shirk, al-Nifaq, al-Kufr al-Bid'ah*, p. 8-9 (al-Maktabah al-Shamilah, 3.13)

This is similar to a wrongdoer (*fasiq*) who is guilty of wrongdoing, but in the case of a hypocrite, s/he also tries to deceive others into believing they are what they really are not.

Such as hypocritical Muslim is a wrongdoer (*fasiq*) and sinner ('*asiy*'), but not the one who scholars refer to as *Munafiq*. The “signs of a *Munafiq*” mentioned in the Hadith literature are specific actions and statements, and only serve as indicators of the possibility of *Nifaq*, but they do not constitute confirmed evidence or categorical proof of disbelief (“hidden *kufr*”) in the heart.

The term *Munafiq* (hypocrite) is not used by jurists and scholars to charge someone who displays something good and conceals the contrary in a matter that is not connected to fundamental beliefs and articles of faith or Creed (*aqidah*).<sup>337</sup>

Consequently, if a Muslim has faith in the “known essential fundamentals of Islam” and does not reject any of these, but only pretends to be an honest, good or truthful person to others, then such a Muslim, while blameworthy of the wrongdoings, pretence and deception, is not a disbeliever (*kafir*) in his heart, and is therefore not in the same

---

<sup>337</sup> Wizarah al-Awqaf wa al-Shu'un al-Islamiyyah, *Al-Mawsu'ah al-Fiqhiyyah al-Kukaitiyyah*, Wizarah al-Awqaf, 1427 AH, 3rd edition, vol.6, p.178.

category as the “hypocrite of belief” who rejects the essential fundamental of faith in his heart.

This deviousness and deceptiveness make it easy for the hypocrite (*Munafiq*) to harm others, and Muslims in particular, as many are usually caught off-guard and unaware of the extent of the threat and danger posed by such hypocrites. They are also most difficult to identify and confirm, as they habitually and deliberately conceal their true nature and identity. Consequently, Allah promises the greatest punishments in the hereafter for the *Munafiq*.<sup>338</sup>

As their disbelief or mischief cannot be ascertained with certainty and clear evidence, they remain innocent until and unless proven guilty of disbelief. They are therefore regarded as Muslims with a Muslim identity which is certain, and not judged as disbelievers. While the conditions for determining “major hypocrisy” and confirming their hidden disbelief (*kufr*) would be similar to that of a normal apostate or Muslim who leaves Islam, the intentional hiding of their true faith makes the conditions for identifying a hypocrite almost impossible.

They have all the rights and privileges of other Muslims related to marriage, inheritance, leadership in prayers,

---

<sup>338</sup> Qur'an 4:145 describes the hypocrites as being “*in the lowest depths of Hellfire*”.

burial, etc. The Prophet (p) and his companions therefore treated those they had evidence to suspect of hypocrisy with caution when it came to matters of trust, but they were otherwise regarded in all other respects as Muslims in the community.

Ultimately, only Allah can decide on the final fate of the hypocrite in this world or the hereafter. Our responsibility and capability to judge and punish others can only be based on explicitly clear evidence and confirmed proof of breaking the law. Based on this, and the absence of such evidence in the case of a *Munafiq*, it is concluded that the fate of the Munafiq for his or her “internal *kufṛ*” or “hidden disbelief” is entirely in the hands of Allah, and there are no legal implications or punishments that can be applied to them based on even strong suspicion.

In numerous verses of the Qur'an, Allah mentions the existence of some hypocrites (*Munafiqun*) among the Muslims in Medina with the Prophet (p) but did not expose their identities to everyone.

Allah says in Qur'an 9:101, “*And among those Bedouins who are around you there are hypocrites, and among the people of Madinah as well. They are adamant on hypocrisy. You do not know them. We know them. We will chastise them twice, then they shall be driven to a terrible punishment (in the Hereafter).*”

These hypocrites were regarded as Muslims based purely on their outward behaviour, and suspicion was never used as a basis for identifying them. Even those identified for the Prophet (p) though Allah's guidance were not publicly exposed by him to the community, and they were all regarded and buried as Muslims like everyone else in Medina.<sup>339</sup>

In conclusion, as terrible as the *Munafiq* is in the eyes of Allah, he is judged in this world by Islamic law as a Muslim based on clear proof of that, and not as a disbeliever (*kafir*) since there is no presentable evidence against his Islam that meets the 6 conditions for justifying “*takfir* of a person” (or major *kufir*) in his heart.

### ***Fisq*: Disobedience, Wrongdoing, and Transgression**

*Fisq* is an Arabic word which simply means disobedience, departure from guidance, or not following an instruction.<sup>340</sup> In the context of Shari'ah, it means to disobey or

---

<sup>339</sup> The Prophet (p) mentioned in confidence the names of some of the hypocrites to just two of his companions, Ammar bin Yasir and Hudhaifah bin al-Yaman. He did not disclose their identities to others, nor were these two companions permitted to do so. See Ibn Kathir, *al-Bidaya wa al-Nihayah*, Dar al-Ma'arifa, Beirut, 1988, 6th ed., vol.5, p.19.

<sup>340</sup> In the Qur'an, Allah says about the disobedience of *Iblis* which was a form of departure from Allah's command: “*Fa fasaqa 'an Amri Rabihi...*” - “he rebelled against the command of his Lord.” (Qur'an 18:50).

abandon the laws or commands of Allah.<sup>341</sup> The term *fasiq* is often used to describe a Muslim who holds onto his beliefs, but violates Allah's command either by committing acts of *kufir*, or sinful acts, or by abandoning some obligation. The disobedient Muslim who is guilty of *fisq* is described as a *Fasiq* (disobedient, wrongdoer). The *Fasiq* accepts the Sovereignty of Allah but does not submit to some of His laws and guidance.

Consider the case of an adult who agrees that he is not the owner of a car, and also agrees that the owner knows better how to drive and care for the car, but still disobeys instructions and guidance given by the owner. He is not challenging the authority of the owner. He acknowledges his authority but is just stubborn and disobedient in areas of compliance. His fault is in not complying or following instructions and guidance. It is not about denying the authority from which the instructions emanate.

*Fisq* is therefore a deliberate disobedience of Allah's guidance and law, but which does not involve conscious denial or rejection of belief in the Divinity, Sovereignty or Authority of Allah. It is consequently not regarded as a form of *kufir* nor a basis for *Takfir* or excommunication of a Muslim from Islam.

---

<sup>341</sup> Ali Ibn Mukram Ibn Mandhur, *Lisanu Arab*, Dar Sadir, Beirut, vol.10, p.308; Muhammad bn Ali al-Shawkani, *Fath al-Qadir*, vol.1, p.89.

A *Fasiq* could include one who, knowing it is wrong, still willingly drinks alcohol, eats pork, insults his parents, commits crime and corruption, does not respect religious obligations (*fard*) or prohibition (*Haram*), and breaks moral or legal laws with no pardonable excuse or justification. These wrongdoings could include “*kuf*r of things” - actions and statements - where the evidence for their prohibition is certain and categorical. *Fisq* includes major and minor sins. All “minor *kuf*r” are forms of *fisq*, but not all forms of *fisq* are “minor *kuf*r” or “Major sins” (*Kaba'ir*).

*Fisq* is therefore a general term used to describe any misguided and sinful statement or action of disobedience against Allah's guidance. The actions of a *Fasiq* may be identical with that of a *Kafir*. **The *Fasiq* however, is regarded as a Muslim since his disobedience does not involve denial of the belief nor disbelief (*kuf*r) in the Authority of Allah.** If it also involves a deliberate denial of belief in any of the known and essential fundamentals (*ma'alum min al-din bi al-darurah*), then the person is a *Kafir*, and not just a *Fasiq*.

*Fisq* involves a theoretical acceptance and belief in the known essential fundamentals of the religion, but blame-worthy defiance or non-compliance in practice, and with no justification or pardonable excuse. This disobedience (*fisq*) could be due to laxity, spiritual laziness, anger, greed,

lust, arrogance, envy, heedlessness, seeking acceptance of others, timidity or cowardice, defensiveness, weak faith, low trust in Allah, or stubbornness in matters of compliance with Allah's laws and guidance.

The **evidence for declaring something as disobedience (*fisq*)** is not as stringent as that for determining disbelief (*Kufr*). Determining *Kufr* requires that the action or statement is an expression of disbelief that is in a clear and irreconcilable opposition with the known essential fundamentals of Islam (*ma'lum min al-din bi al-darurah*) or a matter of “absolute consensus”. This implies that the evidence be based on the definitive texts of the Qur'an or multiple-chained (*mutawatir*) Hadith or on confirmed complete consensus of jurists (Ijma'), and nothing else. Evidence (*adillah*) for determining what is *Fisq* can be established by the same strong evidence for establishing disbelief (*Kufr*). In addition however, and in the view of most scholars, evidence for disobedience (*Fisq*) can also be established by presumptive (*zanni*) sources of law such as solitary (*Ahad*) hadith, reasoning by analogy or deduction (*Qiyas*), consideration of public interest (*Maslahah*), legal presumption (*Istishab*), preclusion or 'blocking ways to harm' (*Sadd al-Dhari'ah*), and other secondary sources of evidence of Shari'ah.



Where disobedience is not intentional, and there is an excuse due to coercion, need or necessity, mistake or misjudgement, ignorance or confusion, unwillingness, immaturity or insanity, esoteric interpretation (*ta'wil*) etc., then it is not deliberate disobedience, and the doer is not a *Fasiq* nor considered a sinful person (*'asiy*), even if though the action is disliked and unfortunate. The same 6 conditions for not declaring *Takfir* on a person, would also apply to a wrongdoer (*Fasiq*). While the doer or actor of *fisq* may in this case still be legally liable for the damage or wrong done, he is not regarded as sinful.

### ***Bid'ah* – Heresy or Blameworthy Innovation**

*Bid'ah* in Arabic literally means innovation, novelty, heresy.<sup>342</sup> It is used to refer to a newly created or invented thing that has no precedent. It is used with this meaning in some verses of the glorious Qur'an.<sup>343</sup> Technically however, according to Imam al-Shafi'I, "*Bid'ah* is anything that has

---

<sup>342</sup> Ibrahim Mustapha and others, *Al-Mu'jam al-Wasit*, Dar al-Da'wah, Cairo, vol. 1, p.43.

<sup>343</sup> Allah says: "*He is the Originator (Badi'u) of the heavens and the earth...*" (Qur'an 2:117). In another verse He says: "*Say, I am not the first (Bid'ah) messenger ever sent.*" (Qur'an 46:9)

no basis in the Qur'an, Sunnah or sayings of any of the companions.”<sup>344</sup>

According to Ibn Rajab: “*Bid'ah* is any invented matter that has no basis in the Shari'ah. But whatever has a justification or basis from the Shari'ah will not be regarded as innovation in technical sense, although it may be regarded as an innovation from a linguistic point of view”.<sup>345</sup>

Blameworthy innovations (*bid'ah*), are usually, but not exclusively associated with heretical beliefs (*Aqidah*) and devotional acts of worship (*Ibadah*). The blameworthy innovator (*Mubtadi'*) usually intends good and means well in his/her innovated practise and does not deliberately reject any of the known fundamentals of Islam (*ma'lum min al-din bi al-darurah*). His desire is usually to get closer to Allah, but through means and practices that are not justified by sufficient evidence (*adillah*) or competent “juristic reasoning” (*Ijtihad*). His innocence, good intention, and faith in the essential fundamentals ensures that he is not regarded as a disbeliever or *Kafir*, even though his conclusions and rulings may be wrong and heretical.

---

<sup>344</sup> Ibn Rajab al-Hambali, *Bid'ah (Innovation)*, n.d, p.2-3.

<sup>345</sup> Ibn Rajab, *Jami' al-'Ulum wa al-Hikam*, Dar al-Ma'rifah, Beirut, 1408 AH, vol.1, p. 226; Ibn Hajar al-Asqalani, *Fath al-Bari Shar Sahih al-Bukhari*, edited: Ahmad bn Ali bn Hajar, Dar al-Ma'rifah, Beirut, 1379 AH, vol.13, p.253.

Due to differences in juristic definitions, as well as the criteria and approaches to some aspects of the subject of innovations in religion (*bid'ah*), there are some topics on which jurists and scholars have legitimate differences. While there are those forms of *Bid'ah* that all jurists would regard as blameworthy, there are those on which they differ.

Some heretical innovations are regarded as forms of disbelief (*kufr*) when they clearly imply categorical rejection of definitive divine truths, but which some consider as acceptable in Islam. These are referred to as *Bid'ah Mukaffirah* (“excommunicating forms of heresy or *Bid'ah*”) or *bid'ah* that excommunicates. These include pantheism, the belief in the “creation of Qur'an”, etc. It is the process of “establishing proof” of *Kufr* (*Iqamah al-Hujjah*) that may absolve those involved in this due to their ignorance or esoteric interpretations (*ta'wil*).

These issues are very technical subjects of scholarly diversity of opinion (*Khilaf*) which should be respectfully tolerated with intellectual humility, caution and civility. On such matters of diverse independent scholarly and juristic reasoning (*Ijtihad*) based on texts that are presumptive or speculative in their meanings and implications (*zanni al-dilalah*), the etiquettes and ethics of disagreement are imperative in preserving unity and the rights of brotherhood while encouraging the pursuit of knowledge, intellec-

tual inquiry and investigation, assessment of evidence, dialogue and debate in the search for truth and greater certainty.<sup>346</sup>

The blameworthy innovator (*Mubtadi'*) is however still regarded as a Muslim like any other, and there is no evidence to suggest that he is a *Kafir*. This is so long as there is no categorical evidence that he is deliberately and consciously denying Allah's guidance.

## ***Ta'wil* – Esoteric Interpretation**

According to Imam Abu Ja'far al-Tabari, the word *ta'wil* literally means interpretation (*tafsir*), the source (*marji'*) or

---

<sup>346</sup> For more on the diverse perspectives on the subject of *Bid'ah*, see Muhammad al-Ghazali, *Within the Boundaries of Islam: A Study on Bid'a*, Islamic Book Trust, Kuala Lumpur, 2010; Abd-Allah Umar Faruq, *Innovation and Creativity in Islam*, Nawawi Foundation, 2006; Gibril Fouad Haddad, *Sunna Notes: Studies in Hadith and Doctrine*, AQSA Publications, 2006, vol.2; Mohammad Hashim Kamali, *Freedom of Expression in Islam*, Ilmiah Publishers, Kuala Lumpur, Malaysia, 1998, p.131-143; Musharraf Hussain, "Is Every New Thing a *Bid'a*?", *Q-News*, April Issue, 2001, p.24; Nuh Ha Mim Keller, *The Concept of Bid'a in the Sharia of Islam* (M.A.T. Papers, Cambridge: Muslim Academic Trust, 1999); Raquel M. Ukeles, *Innovation or Deviation: Exploring the Boundaries of Islamic Devotional Law*, (Harvard University; PhD Thesis), 2006; Ibn Taimiyyah, *Iqtida' al-Sirat al-Mustaqim li mukhalafat as-hab al-Jahim*, Vol.2; Abu Ishaq al-Shatibi, *Al-I'tisam*, Vol.2; Al-'Izz bin Abdulsalam, *Qawa'id al-Ahkam fi Masalih al-An'am*. Dar al Ma'rif, Beirut, Lebanon Vol.2; Al-Suyuti, *Al-Amr bi al-Ittiba' wa al-Nahy 'an al-Ibtida'*.

the reference (*masir*).<sup>347</sup> It is often used as a synonym for *Tafsir* (i.e., interpretation) when applied to the text of the Qur'an.<sup>348</sup> Jurists applied *ta'wil* (literally, interpretation) to verses of the Qur'an or hadith narrations.<sup>349</sup>

Technically however, *Ta'wil* has been defined in different ways by various scholars. According to Ibn Hazm, it means, “moving from the apparent or original meaning of a word to another meaning...”<sup>350</sup> Abu al-Walid al-Baji said: “It is the movement of from the apparent meaning of a word to another (meaning) which it accommodates.”<sup>351</sup> Ibn al-Jawzi defines it as “moving from the usual meaning of a word, to another which does not directly imply it due to a proof that supports it.”<sup>352</sup> Looking at the aforementioned

---

<sup>347</sup> Al-Tabari, *jami' al-Bayan fi al-Ta'wil al-Qur'an*, edited, Ahmad Muhammad Shakir, *Mu'assasah al-Risalah*, 2000, vol. 6, p. 204; Mafatih Al-Gaith min al-Quran al-Karim, Dar ihyah al-Turath al-'Arabi, Beirut, vol.1, p.1092.

<sup>348</sup> Abu Mansur al-Azhari, *Tahdhib all-Lughaba*, vol. 3, p.135.

<sup>349</sup> Al-Merdawi, *Al-Tahbir Sharh al-Tahrir fi 'Usul Al-Fiqh*, Vol. 3, pp. 53, 336, 422, 31; Al-Subki, *Al-'Ihhaj fi Sharh al-Minhaj*, Vol. 1, p.216; Abu Hamid al-Ghazali, *Al-Mankhul fi Ta'liqat al-'Usul*, ed. Mohamed Hasan Hito, 2nd ed. (Damascus: Dar al-Fikr, 1400 AH), p.286; Al-Sarkhasi, *'Usul Al-Sarkhasi*, Vol. 1, p.369; Al-Zarkashi, *Al-Bahr Al-Muhit*, Vol. 4, p.473; Sa'ad al-Din al-Taftazani al-Shafi'i, *Sharh al-Talwih 'Ala al-Tawdith li matn al-Tanqih fi 'Usul Al-Fiqh*, ed. Zakariya Umairat ) Beirut: Dar al-Fikr, no date), Vol. 1, p.233; Al-Bukhari, *Kashf al-Asrar*, Vol. 4, p.469 - Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.154.

<sup>350</sup> Ibn Hazm, *Al-Ihkam fi Usul al-Ahkam*, vol.1, p. 42.

<sup>351</sup> Abu al-Walid al-Baji, *Al-Hudud fi al-Usul*, edited, Dr. Nazih Hammad, *Mu'assasah Muhammad 'Afif al-Za'bi*, 1392AH, p.48.

<sup>352</sup> Jamal al-Din Abu al-Faraj Abd al-Rahman, *Nazhah al-A'yun al-Nawazir fi 'Ilm al-Wujuh wa al-Nazahir*, *Mu'assasah al-Risalah*, Beirut, 1404 AH. p. 216.

definitions, it could be said that *Ta'wil* simply means giving a word a meaning that is different from its apparent or original meaning based on evidence that supports the new meaning or interpretation.

According to Ibn Hazm among others, if the evidence that supports the new interpretation is authentic, then the *ta'wil* is said to be valid (*sahih*) otherwise, it is regarded as invalid (*batil*).<sup>353</sup> Explaining Ibn Hazm statement further, Ibn Qayyim al-Jawziyyah asserts that “if the new interpretation matches the Qur'an and is supported by the Sunnah, it is called a valid interpretation (*ta'wil Sahih*), and if it does not, then it is regarded as an invalid interpretation (*ta'wil Fasid*).<sup>354</sup>

Therefore, when scholars condemn *ta'wil*, they usually mean “erroneous and esoteric interpretation” which is baseless, not supported by their context, nor by other texts, or rules of the Arabic language and grammar. The person who does this type of *ta'wil* is called *Mu'awwil*.

The message of the texts of the Qur'an and Hadith will continue to guide humanity till the Last Day. The profundity and depth of their meanings, insights, implications, and applications are endless. Consequently, every genera-

---

<sup>353</sup> Ibn Hazm, *al-Ihkam fi Usul al-Ahkam*, vol1, p.42.

<sup>354</sup> Ibn Qayyim al-Jawziyyah, *al-Sawa'iq al-Mursalah*, Dar al-'Asimah, al-Riyadh, 1408AH, vol.1, p.187.

tion of scholars and jurists has felt it necessary to write new commentaries and exegesis of the Qur'an based on new insights into the texts, discoveries and finding about life, and changing contexts. In reality therefore, every re-interpretation that is different from an earlier one, or from the usual interpretation is *ta'wil*. It is just another interpretation, or re-interpretation of the text and it is not necessarily less credible or weaker than another simply because it is more recent.

While scholars are concerned about unorthodox, esoteric, and heretical interpretations of the Qur'an and hadith, they are also interested in safeguarding and ensuring that there are new or deeper insights, alternative legitimate and beneficial meanings and interpretations by each generation of Muslims. They try to ensure that these are not disadvantaged by tying down the possible meanings and implications of the texts to the limitations of past generations of scholars and their contexts. Consequently, some jurists have put down certain conditions for the validity of *ta'wil*, which al-Zarkashi summaries as follows:

1. It should not contradict the linguistic rule of correctness in Arabic,
2. It should not contradict the normal/customary use of the Arabic language, and

3. It should not contradict the general principles of the Islamic law.<sup>355</sup>

These conditions therefore help in reducing the chances of attributing erroneous meanings to the texts, and of baseless interpretations built purely on “possible meanings” and hermeneutics.

Ibn Taymiyyah also explains that the scholarly predecessors condemned any interpretation (*ta'wil*) that takes the meaning of a word away from what is intended by Allah and His messenger, and he regarded such *ta'wil* as a false or erroneous interpretation.<sup>356</sup>

There are certain texts in the Qur'an that are explicitly clear with obvious meanings. They carry the most important teachings of Islam and are described by Allah as “*muhkamat*”. Others that are more allegorical and subject to alternative interpretations and requiring of intellectual rigour, introspection, and investigation, are referred to as “*mutashabihat*”. Often, the interpretation or meaning of verses that are allegorical (*mutashabihat*) can be very difficult and diverse, and what to one or many scholars would be regarded as the correct interpretation based usually on

---

<sup>355</sup> Al-Zarkashi, *Al-Bahr al-Muhit*, Vol. 3, p.32. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.154.

<sup>356</sup> Ibn Taymiyyah, *al-Safadiyyah*, edited, Muhammad Rashad Salim, Maktabah Ibn Taymiyyah, Cairo, 2nd edition, 1406AH, vol.1, p.291.



other pieces of evidence and considerations, may be regarded by another or many others as esoteric and unfounded. While it is easier for scholars to agree on the criteria for determining esoteric interpretations (*ta'wil*), it is more difficult for them to agree on when it has actually been done, as they often disagree on the other indications, evidence and considerations that informed their preferred interpretation. Sometimes, *Ta'wil* is unfortunately used by some to discredit those who differ from them, the past or those who differ from the majority or established orthodoxy.

As with differences over the identification of blameworthy innovation (*bid'ah*), the issues related to interpretations (*tafsir* or *ta'wil*) are very technical subjects of specialists. As there will naturally be some diversity of opinion (*Khilaf*) among distinguished scholars, there is the need for this diversity to be respectfully tolerated with intellectual humility, curiosity, caution and civility, even where one disagrees with the other. On such matters of diverse scholarly and juristic reasoning (*Ijtihad*) based on texts that are presumptive or speculative in their meanings and implications (*zanni al-dilalah*), the etiquettes and ethics of disagreement are critical in preserving unity and the rights of brotherhood while encouraging the pursuit of knowledge, intellectual inquiry and investigation, assessment of evidence, dia-

logue and debate in the search for truth and greater certainty.<sup>357</sup>

Some examples of interpretations that most scholars regard as esoteric include the interpretation of the relevant texts of the Qur'an by the distinguished historian and commentator (*Mufasssir*) of the Qur'an, Imam al-Tabari (and some others) who understood Iblis (Satan) to belong to the group of angels that Allah asked to bow down for Adam. Jinn, to which Iblis also belongs have been understood by al-Tabari as belonging to a tribe or class of angels.<sup>358</sup> Muhammad Asad seems to also hold this opinion.<sup>359</sup>

Another example cited by some is the opinion of the distinguished Jurist, Imam Ibn Taimiyyah, who (along with some others) presented the interpretation of the relevant texts of the Qur'an and hadith to conclude that the punish-

---

<sup>357</sup> Muslims must relearn the art and etiquette of agreeing to disagree and thus becoming more capable of dealing with potentially divisive situations and issues. See, Taha Jabir Al- Alwani, *Ethics of Disagreement in Islam*, The International Institute of Islamic Thought, Herndon, Virginia, USA, 1993; Yusuf al-Qaradawi, *Islamic Awakening Between Rejection and Extremism*, The International Institute of Islamic Thought (IIIT), Herndon, 2007.

<sup>358</sup> See *Tafsir al-Tabari*, commentary on Qur'an 2:35 and 18:50. See also the discussions on these verses in the commentaries on the Qur'an by Al-Qurtubi, al-Razi, al-Alusi, al-Baydawi and the authors of *Tafsir al-Manar* (Muhammad Abduh and Rashid Rida). Also cited in Muhammad Asad, *The Message of the Quran*, The Book Foundation, England 2003, footnote to Qur'an 18:50, and Appendix III: On the Term and Concept of Jinn, p. 1135.

<sup>359</sup> Muhammad Asad, *The Message of the Quran*, The Book Foundation, England 2003, footnote to Qur'an 18:50.

ment in Hell Fire will not be eternal for anyone, while the reward of Paradise will be eternal.<sup>360</sup>

It should be noted however, that nearly every distinguished scholar or jurist (*Mujtahid*) in Islamic history has been at some time or the other accused of an esoteric interpretation (*ta'wil*) by some other distinguished scholar(s) who disagreed with them. A scholar or person regarded as wrong for giving an erroneous or esoteric interpretation (*ta'wil*) to the texts, is not described as a *Fasiq* as he or she is assumed as not deliberately being disobedient to Allah. He (or she) is simply regarded as a *Mu'awwil* which describes them as associated with a specific mistaken, unorthodox, or esoteric interpretation.

He is also not regarded as a *Kafir* or *Munafiq* because he does not doubt, deny, or reject any categorical texts or any of the known and essential fundamentals of Islam - *ma'lum min al-din bi al-darurah*. He simply makes a mistake in

---

<sup>360</sup> See Ibn Qayyim al-Jawziyya, *Shifa' al-'Alil fi Masa'il al-Qada' wa al-Qadar wa al-Hikma wa al-Ta'lil*, ed. Al-Sayyid Muhammad al-Sayyid and Sa'id Mahmud, Dar al-Hadith, Cairo, 1414/1994 pp. 564–65. See also Ibn Qayyim al-Jawziyya, *Hadi al-Arwah ila Bilad al-Arfah*, vol.1, p.367-378. Ibn Taymiyya, *al-Radd 'ala man Qala bi-fana' al-Janna wa al-Nar*, ed. Muhammad b. 'Abd Allah al-Simhari, Dar al-Balansiyya, Riyadh, 1995. Ibn Taimiyyah, *The Response to Those Who Say Heaven & Hell Will Pass Away (Al-Radd 'ala man qala bi-fana' al-janna wa al-nar)* Translation: Hassan Radwan, (source: [https://www.academia.edu/49229114/\\_Response\\_to\\_Those\\_Who\\_Say\\_that\\_Heaven\\_and\\_Hell\\_Will\\_Pass\\_Away\\_by\\_Ibn\\_Taymiyyah](https://www.academia.edu/49229114/_Response_to_Those_Who_Say_that_Heaven_and_Hell_Will_Pass_Away_by_Ibn_Taymiyyah)).

interpretation of the text, not in his belief or faith. He is therefore a Muslim like others.

From the foregoing explanation, with regard to Kufr and its related terms:

- The ***Munafiq*** is a hypocrite who hides his true colours and his real disbelief. In the absence of clear evidence with which to identify him, he is therefore regarded as an innocent Muslim until categorically proven guilty of disbelief (*Kufr*).
- The ***Fasiq*** is regarded as a disobedient, transgressing, or corrupt Muslim. The *Fasiq*, in spite of his wrongdoings, is regarded as a Muslim because he has not rejected the sovereignty of Allah, nor denied any of the definitive divine truths and known fundamental of Islam.
- The ***Mubtadi'*** is a blameworthy innovator in religion. But because he does not reject faith, nor does he deliberately deny any of the known and essential fundamentals of Islam, he remains a Muslim.
- The ***Mu'awwil*** or person who gives or comes up with an esoteric interpretation (*ta'wil*) of a text, is regarded as having made a mistake in his or her interpretations of the texts of the Qur'an or Hadith. He is regarded as a Muslim (and probably even a scholar), for similar reasons as the *Mubtadi'* in that neither of them rejects

faith, nor do they deliberately deny any of the known and essential fundamentals of Islam.

While each of these people – *fasiq*, *munafiq*, *mubtadi'*, *mu'awwil* – is regarded as being wrong or mistaken for various reasons, in their actions or statements, they are all regarded as Muslims, as they have not denied or rejected any of the known and essential fundamentals of Islam (*ma'lum min al-din bi al-darurah*) agreed upon by complete scholarly consensus (*Ijma'*). It is permissible to pray behind each one of them, and if they die, they are buried as Muslims. This was the tradition and sunnah of the Prophet (p) and his companions toward each of these categories at their time. Some scholars would discourage following the prayers or funeral of Muslims guilty of major disobedience and innovation. This was meant to serve as deterrent and expression of disapproval of their wrongdoing. It was not to be understood as a prohibition which was contrary to the sunnah.<sup>361</sup>

---

<sup>361</sup> The Prophet (p) on some occasions refused to attend the burial of certain wrongdoers or disobedient Muslims while not prohibiting others. See, for example, the Prophet (p) did not join the funeral (*Janazah*) prayer of a debtor: *Sahih al-Bukhari*, hadith no. 2289; *Sahih Muslim*, hadith no. 4242; *Musnad Ahmad*, hadith no. 16510. And the Prophet (p) refrained from joining the funeral prayer of a person who stole from the state's booty before its distribution, see *Musnad Ahmad*, hadith no. 17031; *al-Mu'jam al-Kabir li al-Tabarani*, hadith no. 5030.

To not regard any of them as a Muslim, and regard it as prohibited to follow them in prayers (*salat*), is regarded as a heretical and blameworthy innovation (*bid'ah*) in Islam. To regard any of them as a disbeliever (*Kafir*) without the pre-requisite conditions and evidence for *Kufr*, is itself prohibited (*haram*) or a heretical innovation (*bid'ah*).

### ***Khilaf* - Scholarly Divergence or Difference of Juristic Opinion.**

A less controversial term, but no less important, is the term *Khilaf* or *Ikhtilaf al-Ulama'*. Scholars and schools of jurisprudence (*madhhabs*) sometimes differ on their rulings regarding certain secondary (*furu'*) issues on which the Qur'an and definitive Hadith (*mutawatir*) are silent or ambiguous and open to alternative interpretations. This is also when the evidence for a ruling is presumptive (*zanni*), conflicting, and/or dependent also on their methodologies (*Usul al-Fiqh*) of independent reasoning (*ijtihad*) and personal assessment of contexts and consequences of their rulings.<sup>362</sup>

---

<sup>362</sup> See more on why scholars differ in their opinions, see Da'wah Institute, *Shari'ah Intelligence: The Basic Principles and Objectives of Islamic Jurisprudence*, Islamic Education Trust, Minna, Nigeria, 2019, pp.233-236, 330-335; See also, Taha Jabir Al- Alwani, *Ethics of Disagreement in Islam*, The International Institute of Islamic Thought, Herndon, Virginia, USA, 1993, p. 21-34; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 2nd

For the fact that *Ta'wil* (esoteric interpretation) is an agreed hinderance to *Takfir*, it automatically follows that a more legitimate difference of opinion or diversity in interpretation of texts and evidence (*Ikhtilaf*) by distinguished jurists and their schools of law would definitely be an even greater hinderance to any form of *Takfir*. As cited earlier, according to Sheikh Abd al-Aziz al-Rees, “If it is established that the issue (at hand) is a matter of juristic reasoning (*ijtihad*), then it should be clear that excommunication (*takfir*) of individuals would not apply to such issues which are disputed about among the Sunni scholars. **The disagreement (*khilaf*) among the scholars is a hindrance to the excommunication of specific individuals**”.<sup>363</sup>

Shaykh Muhammad Abdulwahab said: “The scholars differed regarding the declaration of disbelief (*takfir*) on one who abandons the compulsory prayers (*salah*) due to laziness while not denying the belief in their obligatory status. However, **we do not excommunicate on anything**

---

Revised Edition, Ilmiah Publishers, Malaysia, 1991, p.323-348, 351-366 and 468-474; Muhammad al-Tahir Ibn 'Ashur, *Treatise on Maqasid al-Shari'ah*, IIIT London, 2006, p. 26-49; Mohammad Omar Farooq, *Toward our Reform: From Legalism to Value-Oriented Islamic Law and Jurisprudence*, The International Institute of Islamic Thought, London, 2011, p. 179.

<sup>363</sup> Abdul-aziz al-Rees, *Al-Burhan al-Munir fi Dahd Shubuhat ahl al-Takfir wa al-Tajfir*, Mashru' Taba'at al-Kutub al-Salafiyyah, Kuwait, 2nd edition, p.8-9.

**except on matters which all scholars unanimously agreed upon by consensus.”<sup>364</sup>**

Where distinguished jurists and their schools of law (*madhhabs*) differ on an issue, it is very difficult to conclusively determine which is absolutely right or wrong. The Prophet (p) also made it clear that if a jurist is correct in his judgement, he gets two rewards from Allah.<sup>365</sup> But if he makes a mistake in giving a judgement, he will still get a reward for his sincere efforts in trying to determining what is right from wrong. There is therefore no sin attributed to competent scholars or jurists who differ in their judgements. However, blindly following a scholar when one is convinced that his opinion is mistaken, is wrong and sinful.<sup>366</sup>

They may differ for example on their verdicts regarding certain foods, dressing, acts of worship, celebrations, policies, customs, and business transactions, etc. Some would regard something as prohibited, while others would dis-

---

<sup>364</sup> Muhammad bn Abdulwahhab, *al-Durar al-Saniyyah*, Maktabah al-Madinah al-Raqmiyyah, 1996, 6th edition, vol.1, p.102.

<sup>365</sup> Sahih Bukhari, no. 7352, Sahih Muslim, no. 1716.

<sup>366</sup> See Qur'an 9:31 and commentaries on it by scholars for the prohibition of taking scholars/*rabbis* as “gods” besides Allah. See also prohibition of blind imitation of scholars or others. See Muhammad bin Ali al-Shawkani, *Adab al-Talab wa Muntaha al-'Arb*, Dar al-Kutub al-'Ilmiyyah, Beirut, 2008, pp.205-206; Muhammad Nasir al-Din, *Sifah Salat al-Nabi*, Maktabah al-Ma'arif, Riyadh, 2006, p.32.



agree. For example, eating carnivorous animals is only discouraged (*makruh*) by most Maliki jurists while most of the other schools of law regard these as prohibited (*haram*). Many jurists among the Hanbali school regard the veiling of the face (*niqab*) by women as obligatory, while most other schools regard this as optional. There are many such differences cited in the books of Comparative Law (*Fiqh al-muqaranah*) and literatures on Divergence of Juristic Opinion (*Khilaf*).<sup>367</sup>

Where scholars have divergent opinions (*khilaf*) regarding their rulings on the degree of permissibility or prohibition (*Halal* or *Haram*) of a particular thing, it is prohibited to use the term *Fasiq* to describe those scholars who differ, and to prohibit someone from doing something he and his school of law regard as permissible. Consequently, one of the distinguished jurists (*Mujtahid*) of the early generation of Muslims, Sufyan al-Thawri said, "If you see a man doing something over which there is a difference of opinion among scholars, and which you believe to be forbidden, you should not forbid him from doing it."<sup>368</sup>

---

<sup>367</sup> Ibn Rushd, *Bidayat al-Mujtahid, The Distinguished Jurist's Primer*, (translated by Imran Ahsan Khan Nyazee), Garnet Publishing Limited, Reading, U.K., 1994; Sayyid Sabiq, *Fiqh Sunnah*, Dar Al-Kotob Al-Ilmiyah, Beirut, Lebanon, 1989.

<sup>368</sup> Ibn AbdulBarr, *al-Tamhid*, Mu'assasah al-Qurtobah, vol. 9, p.229; AbdulHakim Murad, *Understanding the Four Madhhabs*, Muslim Academic Trust, Cambridge, 1999; p.13.

Differences of scholarly opinion should therefore not be a basis for insulting others or breaking unity and the brotherhood of Islam which the Qur'an categorically enjoins upon Muslims.

The *Adab al-Ikhtilaf* (etiquettes of disagreement) are meant to ensure civility and intellectual humility especially when dealing with issues or opinions that are based on presumptive evidence (*zanni*) and juristic reasoning (*Ijtihad*). It is to ensure that differences of opinions and analyses of evidence do not lead to disunity and breakdown of brotherhood. It is therefore not permissible to refer to the opinion of another scholar, jurist or schools of law (*madhhab*) as *fiṣq* when these opinions are held by equally competent jurists and all opinions are products of the same “reasoning of jurists” (*ijtihād*). A maxim states that “an opinion based on *Ijtihad* is not invalidated by another *Ijtihad*” – *al-Ijtihad la yunqadu bi al-Ijtihad*.<sup>369</sup>

---

<sup>369</sup> Al-Suyuti, *Al-Ashabah wa al-Nazair*, Dar al-Kutub al-Ilmiyyah, Beirut, p. 101; al-Zarkashi, *al-Manthub fi al-Qawaid*, al-Maktabah al-Shamilah, 3.35, vol. 1, p. 32; Najm al-Deen al-Tufi, *Sharh Mukhtasar al-Raudah*, al-Maktabah al-Shamilah 3.35, vol. 3, p. 647.

## Applied Cases for Further Clarification of Defined Terms

### Possible rulings on someone who drinks alcohol

- **Faithful Muslim (*Mu'min*):** When a Muslim believes that it is prohibited (*haram*) to drink, and does not drink alcohol, he is compliant and faithful Muslim.
- **Faithful Muslim:** If he believes that alcohol is *haram* under normal circumstances, but he consumes it due to some necessity (*darurah*) or duress (*ikrah*), he is a faithful Muslim. Such a person has accepted the judgement (*hukum*) of Allah regarding alcohol – which is that it is *haram* – but has been forced by his situation to consume it against his will in order to survive. This is in line with Qur'an 2:173, 5:3, etc., cited earlier under discussion on conditions and hindrances to *takfir*. Such a Muslim has actually complied with the guidelines of Shari'ah which apply to those in situations of necessity, and he has a license (*rukhsah*) guided by Shari'ah to consume the needed amount of alcohol to take or keep him out of a state of dire necessity (*darurah*). Consuming alcohol is therefore permissible for him in Shari'ah. An Islamic legal maxim states that, “necessities permit prohibitions”.<sup>370</sup>

---

<sup>370</sup> Ali Haidar, *Sharh Majallah al-Ahkam*, Dar 'Alim al-Kutub, vol.21, p.33; al-Suyuti, *al-Ashabah wa al-Nazair*, Dar al-Kutub al-Ilmiyyah, 1991, p. 83. Allah says: “But if one is compelled by necessity (*darurah*), neither craving (it)

- **Muslim (*Mu'awwil* and *Mubtadi'*):** If he sincerely believes that alcohol is permissible (*halal*) for Muslims if taken in small quantities that do not intoxicate, but this belief is based on an esoteric interpretation of the relevant texts by a scholar whom he trusts. In this case, he is excused because he was innocently ignorant and so misguided by his teacher. Alternatively, it may be based on his own confusion with the evidence and his misinterpretation of the relevant evidence and their purposes in his sincere attempt to get to the truth. Such a Muslim will be regarded as a *Mu'awwil*, who has made an interpretive mistake that led to an esoteric and unorthodox view (*Ta'wil*).

He may also be described as a *Mubtadi'* (heretical innovator). He might even be rewarded, in spite of his mistaken judgement, if he was a scholar who tried his utmost to get to the truth. He may be seeking for the truth but has not yet found it. He remains a Muslim since he has not intended to deny nor deliberately rejected the definitive rulings or *hukm* of Allah. But as he has not consciously rejected the Divine truth, he is not a *kafir*.

- **Muslim (*Fasiq*):** If he believes that alcohol is *haram*, but still chooses to disobey this ruling and to consume it, or

---

*nor transgressing, there is no sin on him indeed, Allah is forgiving, merciful.*" (Qur'an 2:173).

encourages others to also drink, he is a *Fasiq* and disobedient. He is a sinner ('*Asin*) in this regard, but still a Muslim because he has accepted Allah's judgement (*hukm*) on it and agrees that it is prohibited (*haram*). He is morally lax, arrogant or sinful in his actions. He accepts that he is doing something wrong but finds it difficult to comply with the Shari'ah rulings which he believes is Divine. He has not rejected the Authority or ruling (*hukm*) of Allah on alcohol. He is therefore not a *Kafir*.

- **Disbeliever - *Kafir*:** If he understands and knows that alcohol is prohibited (*haram*) based on definitive Divine text, but he deliberately chooses to deny and opposes it, or he says the Divine text is wrong, then he is guilty of *Kufr*, and if proof of his disbelief is established with certainty against him, he is regarded as a *kafir*. This *takfir* is justified based on his belief and denial of definitive truth, whether or not he actually drinks alcohol himself. Such a person has consciously contradicted and rejected a known fundamental definitive truth from Allah, and has no pardonable excuses in the form of legal hinderances. He is excommunicated from Islam and an apostate.
- **Muslim (*Munafiq*):** If he has the same belief as the *Kafir* or apostate above in rejecting or denying the clear and categorical truth of the prohibition of alcohol, but publicly claims, or outwardly or behaves like one who regards

it as prohibited and wrong, then he is a hypocrite (*Munafiq*) guilty of “major hypocrisy”. Because he has deceptively hidden his true beliefs, and we cannot confirm or prove with certainty that he has actually disbelieved and rejected Allah's judgement, we have to continue to regard him as a Muslim. This is so, whether or not we have some indications, signs or reasons to suspect him of his disbelief (*kufr*) or hypocrisy (*nifaq*).

### **Possible rulings on someone who is involved in an interest-based transaction (*riba*)**

- **Faithful Muslim:** A person who believes that *riba* (usury/interest) is prohibited (*haram*) based on the judgement (*hukm*) of Allah and the Prophet (p), and does not deal in such financial transactions is a compliant and faithful Muslim.
- **Faithful Muslim:** One who believes that *riba* is haram, but is forced by his circumstances of necessity (*darurah*) to be involved in such deals has not done anything wrong. He is expected to benefit from the compassion of Allah and take advantage of the license (*rukhsah*) which his circumstance has put him into, and deal in *riba* for as long as, and to the degree that his situation justifies it. This is in compliance with Shari'ah regulations governing cases requiring such concessions. Such a person who is forced by necessity to deal in *riba* is a compliant Muslim

and has not committed any sin.

- **Muslim (*Fasiq*):** One who believes that *riba* is haram (has judged it by the *hukum* of Allah), but still chooses to deal in it with no justified or pardonable excuse is involved in a sinful act, and is a wrongdoer or *Fasiq*. But he is a Muslim because he does not deny the truthfulness of divine judgement on *riba*. His sin is in his action and non-compliance, and not in his beliefs about Allah and Divine truth.
- **Muslim (*Mu'awwil*):** A scholar or his followers may have an esoteric or mistaken interpretation of the relevant texts on *riba*, or have a definition that conflicts with what most scholars regard as what constitutes *riba*. Some may, for example, not regard the interest charged by conventional banks on digital currencies or paper money as being the same as the *riba* which is prohibited in the Qur'an. Most jurists therefore regard this as a mistaken or esoteric interpretation (*ta'wil*) of the relevant texts, but not disbelief (*kufr*).<sup>371</sup> Such a person regards *riba* to be

---

<sup>371</sup> Some regard only usury or exorbitant interest rates as *riba* (usurious loans). Others regard *riba* as applied only to certain economic goods and not to paper money, etc. For further readings on the “literalist”, “reformist” and “modernist approaches” to discussions on *riba*, see Fuady Abdullah & Moh. Mukhlis, “Dissenting Approaches of Islamic Economics”, *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol.17, No.1, June 2020. Source: [https://www.researchgate.net/publication/342638488\\_Dissenting\\_Approaches\\_of\\_Islamic\\_Economics\\_The\\_Contemporary\\_Juristic\\_Discussion\\_of\\_Riba](https://www.researchgate.net/publication/342638488_Dissenting_Approaches_of_Islamic_Economics_The_Contemporary_Juristic_Discussion_of_Riba).

haram. He does not reject the divine *hukum* of the prohibition of *riba* in the Qur'an and Sunnah, he only has an alternative understanding and interpretation of what *riba* is, and how it is defined.

- **Muslim - *Khilaf*:** Other scholars however view the disagreements on the definition of *riba* as a legitimate difference of opinion, and not a product of esoteric interpretation (*ta'wil*). They regarded this as a subject of divergence of opinion (*Khilaf*) among contemporary jurists which should be respected, since all opinions on this topic are products of some degree of presumption (*zanni*) in “juristic reasoning” (*ijtihad*).

This is therefore also not a case of *Kufr*, and any jurist who holds one of these differing opinions and promotes it, is not a *kafir*, since each of the opinions is not based on categorical (*qat'i*) evidence, but presumptive (*zanni*) texts and evidence, and the exercise of “juristic reasoning” (*ijtihad*) upon which there is no juristic consensus (*Ijma'*). Once again, it should be noted that they all accept the ruling (*hukm*) of Allah which regards *riba* as haram. They only differ on the definition and criteria of what constitutes *riba* in a contemporary context. There are many other similar examples of presumptive texts (*zanni al-dilalah*) on which scholars and jurists differ.<sup>372</sup>

---

<sup>372</sup> For example, the meaning of “*Quru*” in Qur'an 2:228 in reference to the waiting period (*iddah*) after a divorce, which is measured by the number of (menstrual) “periods” of the woman concerned.



- **Disbeliever - *Kafir*:** One who deliberately and consciously rejects the categorical Divine ruling (*hukum*) of Allah on *riba*, which is that it is *haram*, and regards *riba* as permissible (*halal*) is denying a definitive truth of Allah. If all conditions and hindrances of Takfir are satisfied, and proof of Takfir is established with certainty, then, such a person is regarded as a *kafir* based on his denial of a Divine truth, even if he does not engage in such *riba*-based transactions.

### **Possible rulings on the prescribed punishment (*hadd*) for theft.**

- **Muslim (Faithful):** One who believes that the prescribed (*hadd*) punishment for theft is the amputation of hand, which is based on the clear texts of the Qur'an, and desires that it be applied correctly and in the right context, is a faithful Muslim. A Muslim scholar (or leader) believes that the prescribed punishment (*hadd*) for theft in the Qur'an is amputation of a hand. But he may also consider that a particular socio-economic or political context – such as widespread poverty and corrupt governance – is not an appropriate context for the correct implementation of this punishment.
- Such a Muslim may believe he has other valid reasons for not adopting the prescribed punishment for theft in his context. He might not be a judge, and therefore not have

the legal authority, or he may be residing in *Dar al-Sulh* (Abode of Treaty) under non-Muslim rule, and not in a just Islamic State. In such contexts where there are pardonable excuses and justified reasons for not implementing the prescribed punishments, a Muslim would have done the right thing based on Shari'ah by suspending or not implementing the prescribed punishment for theft in such situations.

Other valid reasons for suspending the *hudud* punishments that are given by scholars, leadership or judges may include, depending on the society, endemic corruption, natural disaster (floods, drought, famine, etc.), societal needs (*hajah*), individual necessity (*darurah*), fear of communal conflict and insecurity or war, dubious witnesses, doubtful evidence, conditions surrounding the offence, absolute poverty, questionable motives, mental illness, incompetent or corrupt judicial system, etc. Such a Muslim leader or judge would have done nothing wrong by suspending such prescribed (*hadd*) punishments as these are legitimate excuses based on the Shari'ah as was done during the time of the Prophet (p) and Caliph Umar.<sup>373</sup>

---

<sup>373</sup> Muhammad Biltaji, *Manhaj Umar bin al-Khattab fi al-Tashri'*, Dar al-Fikr al-Arabi, 1970, p. 244; Ibn al-Mulaqqan, *Al-Badr al-Munir fi Takhrij al-Ahadith Wa al-Athar al-Waqi'ah fi al-Sharh al-Kabir*, Saudi Arabia: Dar al-Hijrah, 1425, vol.8, p.679; 'Atiyyah bin Muhammad Salim, *Sharh Bulugh al-*

Differences of opinions among scholars on this would only amount to diversity of opinions among jurists (*Khilaf*) at best, or esoteric interpretations (*Ta'wil*) at worst, but not intentional disobedience (*Fisq*) or disbelief (*Kufr*).

- **Muslim (*Mu'awwil*):** One who believes that the *hadd* for theft is amputation of hand but interpret it to mean something else. For example, some interpret “cut the hand” to imply a small cut on the hand instead of amputation.<sup>374</sup> Some understand the Qur'an as accommodating repentance even in the cases of *hudud*.<sup>375</sup> Yet others interpret it from an understanding that the *hudud* punishments are changeable means to an end, that are dependent on context, while it is their objectives and values that are fixed and unchangeable.<sup>376</sup> These would be considered by

---

*Maram, al-Maktabah al-Shamilah*, 3.13, 1420, p.12; Ahmad Hasan, *The Early Development of Islamic Jurisprudence*. Islamic Research Institute, Islamabad, 1970, p.145. See also, Abu Zahrah, *Usul al-Fiqh*, p.229; Shalabi, *Fiqh*, p.187; Isma'il, *Adillah*, p. 200; cited in Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, 2003, p.400.

<sup>374</sup> This is based on the meaning gotten by some from the phrase in Surah Yusuf, “*they cut their hands*” in Qur'an 12:31.

<sup>375</sup> Mohammad Hashim Kamali, *Are the Hudud Open to Fresh Interpretations?* Islam and Civilizational Renewal (ICR 3.1), 2010, p.516-518. Source: <https://icrjournal.org/index.php/icr/article/view/732/718>. An earlier version of this viewpoint appeared under the title “Strictly from the Qur'anic Perspective” in Kuala Lumpur's English-language daily The New Straits Times on 25 April 2009.

<sup>376</sup> Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age*, Rowman & Littlefield, Maryland, 2014, pp.222-58, 295-300.

orthodoxy as examples of esoteric interpretation (*Ta'wil*). Such a person actually accepts, and is not challenging Allah's judgement. He only has a mistaken (or most probably wrong) understanding of it. They all accept the ruling of Allah on theft, they only differ on the interpretation of text and its implications to other contexts. None of those who hold any of these opinions has rejected the truthfulness of the texts, and none of them is therefore a disbeliever or *Kafir* as no proof of this can be established to justify *Takfir*.

- **Muslim (*Mubtadi'*):** Some would consider propagating a position based on an esoteric interpretation (*ta'wil*) as a baseless and blameworthy innovation (*Bid'ah*) in religion. In view of the fact that this example (with the punishment for theft) is not directly related to acts of devotional worship (*ibadah*) or creed (*Aqidah*), many scholars do not consider such mistakes associated with worldly (*dunya*) and societal affairs (*mu'amalat*) with *bid'ah*. The concept of *bid'ah*, blameworthy innovation, or heresy is in the opinion of some scholars, is only associated with matters related to devotional worship (*ibadah*) and creed (*Aqidah*).
- **Muslim (*Fasiq*):** One who believes that the *hadd* for theft is amputation of the hand, and sees an appropriate context where it should be implemented, and has the jurisdiction to do so with no encumbrances, no justified con-

cerns or hinderances, but refuses to do so, is a wrongdoer or *Fasiq*, but not a *Kafir*, since he does not deny or reject the truthfulness of Allah's judgement on the matter.

- **Muslim (*Munafiq*):** One who publicly acknowledges that amputation is a divinely prescribed punishment for theft, but inwardly rejects, denies or contradicts it has committed an act of *kufr*, even if he implements the punishment for other selfish reasons. If he hides his disbelief and pretends to be a compliant Muslim, he is understood to be a hypocrite, but since proof of his disbelief cannot be established with certainty against him, he is regarded to be a Muslim.
- **Disbeliever (*Kafir*):** If such a Muslim does not hide his disbelief and is deliberately challenging Allah's judgement which he knows to be true, then if other conditions and hinderances are considered, and proof of disbelief is established with certainty, then he is regarded as a disbeliever or *Kafir*.

## CLARIFICATIONS ON COMMON MISUSES OF TAKFIR<sup>377</sup>

### ***Takfir* Implications of Working for Non-Muslim Governments or Leaders**

Some Muslims claim that it is prohibited to work for a non-Muslim government or leader based on their reasoning and claim that such employment is supporting the disbelief of people of other faiths and expressing allegiance and support to them in preference to Islam and Muslims. Such support is regarded by some as an expression of disbelief (*kufir*).

However, scholars regard it as permissible because the evidence for such logic does not come from clear texts, and the legal presumption (*istishab*) of permissibility remains. On the contrary, the Prophet (p) and companions did business with non-Muslim communities, gave charity to non-Muslims, collaborated to support common interests such as security. Also, the Qur'an (12:55-56) mentions how

---

<sup>377</sup> For some other specific responses to misuses of *Takfir* by violent extremist groups, see also Muhammad Haniff Hassan, “*The Danger of Takfir (Excommunication): Exposing IS' Takfiri Ideology*”, 2017, [https://www.academia.edu/33917562/Danger\\_of\\_Takfir\\_Exposing\\_IS\\_Takfiri\\_Ideology](https://www.academia.edu/33917562/Danger_of_Takfir_Exposing_IS_Takfiri_Ideology) Accessed 18.08.2023

Prophet Yusuf (p) offered to work for a non-Muslim king. The legal presumption is that in social transactions (*mu'amalat*), jurists agree that “everything is permissible except what is clearly prohibited.

However, debate on this topic, and the various conflicting positions of scholars shows that this is not an issue categorically treated by explicitly clear and definitive texts, and there is no consensus (*Ijma'*) of scholar regarding this issue. It is one of juristic reasoning (*Ijtihad*) based on presumptive (*zanni*) evidence. The difference of scholarly opinions (*khilaf*) and the presumption involved and lack of certainty, disqualifies this topic from the realm of disbelief (*kufr*) which require certainty.

### **Residing in an “Abode of Disbelief” (*Dar al-Kufr*) and Its Interpretations as a form of *Kufr*<sup>378</sup>**

Similar to the discussion under “working for a non-Muslim government or leader”, some Muslims claim that it as an act of *Kufr* to prefer to reside in a territory designated

---

<sup>378</sup> For further readings see Jasser Auda, *What is the Land of Islam?*, [www.jasserauda.net](http://www.jasserauda.net), n.d.; Amjad M. Mohammed, *Muslims in Non-Muslim Lands: A Legal Study with Applications*, Islamic Texts Society, Cambridge, UK, 2013; Moussa Abou Ramadan, “Muslim Jurists' Criteria for the Division of the World into Dar al-Harb and Dar al-Islam”, in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti et. al, Oxford University Press, United Kingdom, 2017; Ahmed Al-Dawoody, *The Islamic*

as “Abode of Disbelief” (*Dar al-Kufr*), and that it is an obligation for Muslims to migrate to and live in an Islamic state or caliphate (*Khilafah*).

As extensively discussed in the first part of this book, it is important to note that many companions of the Prophet (p) lived in territories that were governed by non-Muslims while the Prophet (p) was alive, including his uncle Abbas who lived in Mecca, while the Prophet (p) and most of his companions were based in the Islamic city-state of Medina. Many companions also lived in Abyssinia which was a Christian kingdom, but which also respected their freedom to practise Islam.<sup>379</sup> Similarly, many more companions of the Prophet (p) left Medina after the demise of the Prophet (p) and travelled and lived in non-Muslim nations in order to spread Islam and establish peace treaties with diverse non-Muslim nations across the world. So long as Muslims

---

*Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011; Wahba al-Zuhayli, *Athar al-Harb fi al-Fiqh al-Islami: Dirasa Muqarina*, 3rd edn., Dar al-Fikr, Beirut, 1998; Yusuf Al-Qaradawi, *Fiqh al-Jihad: Dirasa Muqarina li-Ahkamihi wa Falasafatihi fi Du'al Qur'an wa al-Sunna*, Maktabat Wahbe, Cairo, 2009; Abdul Wahab Khalaf, *al-Siyasa al-Shar'iyyah wa Nizam al-Dawla al-Islamiya*, Al-Matba'a al-Salafiya wa Maktabatuhu, Cairo, 1931; etc.

<sup>379</sup> Muhammad Mohar Ali, *Sirat al-Nabi and the Orientalists*, King Fahd complex for the printing of the Holy Quran, al-Madinah al-Munawwarah, 1997, vol. 2, p. 667-682; Yasir Qadhi, *The Sirah of the Prophet: A Contemporary and Original Analysis*, The Islamic Foundation UK, 2023, pp.87-97; Meraj Mohiuddin, *Revelation: the Story of Muhammad*, Whiteboard Press, LLC, USA, 2016, pp. 118-123.



had the freedom to practise and spread Islam, and they were free from religious persecution, there was no prohibition for Muslims to live in non-Muslim lands. The Prophet (p) and most of his companions only fled from Mecca in order to escape religious persecution and oppression. It should be noted that most prophets of Allah were sent to non-Muslim lands to deliver their message and live by example, while positively influencing and reforming the customs, culture, and laws of their communities. And that is exactly what the Prophet Muhammad (p) succeeded in doing.

It should be noted that the classification of territories into various “abodes” such as *Dar al-Kufr* (Abode of Disbelief), *Dar al-Islam* (Abode of Islam), *Dar al-Harb* (Abode of War or enemy states), *Dar al-Sulh/'Ahd* or *Dar al-Muwada'ah* (Abode of Peace treaties and alliances), etc. and their respective definitions and the implications of these are all products of juristic reasoning (*Ijtihad*) in response to diverse contexts and realities. These terms and their implications are not categorical teachings of definitive texts of the Qur'an and Sunnah. Consequently, there has been no consensus (*Ijma'*) among scholars regarding the definition of any of these terms, the number of abodes, where Muslims may reside, and when migration (*hijrah*) from a place becomes an obligation on Muslims. During the time of the Prophet (p) and his companions, there were

numerous peace treaties established with non-Muslim communities and nations, and those who embraced Islam from these communities, or Muslims who lived in security and safety in these territories were never obligated to migrate to the Islamic state of Medina. Many, such as Tufayl al-Dawsi and others were encouraged to remain in their communities and share the message of Islam with them. Their communities eventually accepted Islam.<sup>380</sup>

Non-Muslim territories that have security alliances or peace treaties with Muslims are generally referred to by classical scholars as *Dar al-Sulh*, *Dar al-'Ahd* or *Dar al-Muwada'a*. Most countries of the world today have established peace treaties and various other alliances under the United Nations, African Union, etc. These nations are regarded in traditional Islamic jurisprudence as being *Dar al-Sulh* or *Dar al-'Ahd* where Muslims are free to reside and work.

This topic of how lands and nations are classified does not belong to the fixed (*thawabit*) and “known fundamentals of the religion” (*ma'lum min al-din bi al-darurah*) regarding which there is complete scholarly consensus (*Ijma'*). It consequently is a topic of diverse juristic opinion (*khilaf*) based on “juristic reasoning” (*Ijtihad*) in different

---

<sup>380</sup> Khalid Muhammad Khalid, *Men Around the Messenger*, Dar al-Kotob al-Ilmiyah, Lebanon, 2006, p.422.

contexts and using presumptive (*zanni*) evidence. The uncertainty and presumption, the diverse scholarly position, and lack of any deliberate rejection of Divine guidance, implies that this topic or issue does not qualify to justify *Takfir*, and is not a basis for accusations of disbelief (*Takfir*) against those who hold opposing views.

### ***Takfir* in the Context of Employment in Riba-based Financial Institutions**

*Riba*, which is sometimes translated as usury or interest, is prohibited by clear texts of the Qur'an, and there is a scholarly consensus (*Ijma'*) on this. The precise definition of *riba* however, and what forms of wealth it applies to is debated by some jurists. Some jurists do not apply *riba* to anything other than the specific forms of wealth which the Prophet (p) applied it to, namely gold, silver, dates, etc.<sup>381</sup> These scholars therefore do not apply it to interest-based transactions which contemporary banks operate. Some regard *riba* as usury, which is exploitative and exorbitant interest rates. Others consider interest as being the finan-

---

<sup>381</sup> Al-Qarafi, *Anwar al-Buruq fi Anwar al-Furuq*, al-Maktaba al-Shamilah 3.5, vol. 7, p. 382; Ibn Qudamah, *Rawdah al-Nazir wa Jannah al-Munazir*, al-Maktaba al-Shamilah, vol. 1, p.512; Ibn Hazm, *al-Ihkam fi Usul al-Ahkam*, al-Maktaba al-Shamilah 3.5, vol. 6, p.757; Alish, *Manh al-Jalil Sharh Mukhtasar Khalil*, al-Maktaba al-Shamilah 3.5, vol. 14, p.83.

cial advantage that balances the disadvantage of inflation rates in contemporary economies, and therefore not exploitative and unjust.<sup>282</sup>

The majority of contemporary jurists of Islamic finance however regard interest-based transactions paper-money, receipts and digital currencies used in the banking system as essentially the same as *riba* on quantity or quality of wealth mentioned in the Qur'an and Hadith respectively. Digital currencies, paper-money and the modern banking system are not discussed explicitly in the Qur'an or Hadith, nor were these deliberated by the Prophet's companions. Consequently, the debates amongst scholars on the application of the concept of *riba* to these issues have primarily based on their use of analogy (*Qiyas*), consideration of public interest (*maslahah*) and other tools of “juristic reasoning” (*Ijtihad*).<sup>383</sup> Some scholars regard the opinions of oth-

---

<sup>382</sup> See, Mohammad Omar Farooq, “The Riba-Interest Equivalence: Is There an Ijma (Consensus)?” (September 2007), Transnational Dispute Management, Vol. 4, No. 5; Farhad Nomani, “The Interpretative Debate of the Classical Islamic Jurists on Riba (Usury)”, in *Topics in Middle Eastern and African Economies*, Vol. 4, September 2002; See also an array of classical and contemporary views on *riba* in <https://en.wikipedia.org/wiki/Riba>.

<sup>383</sup> This is similar to the debates amongst some jurists on zakatable items such as vegetables, tubers, poultry, fish, real estate, paper-money, crypto currencies, etc. See Ibn Hazm, *al-Muhalla bi al-Athar*, Dar al-Fikr, vol. 5, p.209; al-Shawkani, *al-Durar al-Bahiyyah*, p. 7; Yusuf al-Qaradawi, *Fiqh al-Zakah*, Scientific Publishing Centre, King Abdulaziz University, Jeddah, vol. 1, p. 62-63; Abu Malik, *Sahih Fiqh al-Sunnah*, *al-Maktabah al-Tawfiqiyyah*, vol. 3, p.16.

ers as weak and based on mistaken or esoteric interpretations (*Ta'wil*), while others regard this debate as one of legitimate and tolerable juristic difference (*Khilaf*) in the exercise of their “juristic reasoning” (*Ijtihad*) within the context of contemporary banking and economic systems.

All jurists regard *riba* as prohibited (haram), and none reject what the Qur'an teaches on it. They differ mainly regarding its definition and implications to certain society contexts. This difference of opinion based on presumptive *Ijtihad* is therefore one of *Khilaf* and/or *Ta'wil*, but definitely not *Kufr*, in that none of these opinions deliberately and irreconcilably opposes, rejects or denies the definitive texts on *riba*.

Of those who regard bank interest as a form of *riba* which is prohibited, there are various reasons why their scholars would allow them to study and work in such banking systems as “lesser evils”. Sometimes the Muslim community, especially Muslim minorities, do not have alternative halal sources of financing. In this situation, a societal need (*hajah al-ammah*) of the community is considered and treated like a necessity (*darurah*), which permits what is usually prohibited. Some Muslims are very poor and in dire necessity (*darurah*) and do not have alternative sources of income or capital, and have to take *riba*-based loans. Some Muslims regard working in *riba*-based banks

and financial institutions as experiential and educational opportunities that give Muslims the competence and working experience of running contemporary banks and financial institutions successfully. This in turn gives these Muslims the qualifications and credentials to establish sustainable Islamic alternatives and win the confidence of investors.

Those who regard interest-based transactions as identical to *riba*, and therefore prohibited (*haram*), but still engage in it with no pardonable excuse are guilty of disobedience and wrongdoing (*fisq*), but not disbelief (*kufir*). Those who engage in it out of dire necessity (*darurah*) are not guilty of any sin, as they are excused due to their situation. Also, those contemporary jurists who make a mistake based on their *Ijtihad* have one reward, as mentioned in the hadith of the Prophet (p).

However, those who claim that the *riba* that is mentioned in the Qur'an is not *haram* have made a statement of *kufir*. It requires the consideration of the conditions and hindrances to *Takfir* and “establishment of proof” (*Iqamah al-hujjah*) before a competent authority can conclude that the person is a disbeliever (*Kafir*).

## Working as Lawyers, Judges, and Legislators using “Man-made Laws”<sup>384</sup>

A Muslim is obliged to practise and implement as much of the laws and guidance of the Qur'an and Sunnah as he or she is able to in his life and society. Once a Muslim has accepted the sovereignty of Allah's guidance and laws and believes in their superiority over all others that conflict with these, such a person is regarded as a Muslim and not a disbeliever or *Kafir*, even if due to various personal or contextual reasons, he or she is unable to practise or implement some of these laws.

If a Muslim believes in these Islamic laws and is able to implement any of these Divine laws but refuses to, despite knowing that they are most appropriate for their context, then such a Muslim is being disobedient and guilty of *fisq*. He is only regarded as a *Kafir* if he denies belief in Allah's guidance or rejects the belief in the sovereignty of Divine truths, and insists on his disbelief after all conditions/hinderances to *Takfir* have been considered and proof of disbelief (*Iqamah al-hujjah*) is established with certainty.

---

<sup>384</sup> See also “Studying Laws Other than Islamic Law” in Da'wah Institute of Nigeria, *Is “Boko” Haram? Responses to 35 Commonly Raised Arguments Against Conventional 'Western Education'*, Islamic Education Trust, Minna, Nigeria, 2018, p.41-45

It should be noted that not all sources of Islamic law are Divine. The sources of Islamic law include Divine sources such as the Qur'an and Sunnah, and human sources such as local custom ('*urf*) and public interest (*maslahah*), etc. which are endorsed by the Qur'an and Sunnah and the practise of the Companions. All human or man-made laws that do not conflict with the Qur'an and Sunnah, but help realise the higher objectives (*Maqasid*) of Shari'ah are permissible and endorsed as "Shari'ah compliant". These are often described as laws based on juristic reasoning" (*Ijtihad*) and on which some jurists (humans) differ based on their contexts and methodologies of interpretation and analysis. These man-made but Shari'ah compliant secondary sources of law include good customary laws ('*Urf*), consideration of public interest (*maslahah*), juristic discretion (*Istihsan*), preclusion (*sadd al-dhari'ah*), legal presumption of the status quo (*istishab*), analogy (*qiyas*), etc. These are acceptable and endorsed by Islamic law and the various schools of Islamic jurisprudence (*madhhabs*). These include traffic laws, and those laws related to the environment, security and safety, etc. that have not been prescribed nor proscribed by the Qur'an and Sunnah.

Most laws enacted by legislators in most senates and parliaments are not related to "religion" (*deen*) and beliefs or creed (*aqidah*) or to devotional worship (*ibadah*). Most laws and government policies are related to mundane or



worldly (*dunya*) transactional affairs (*mu'amalat*) which are governed by the Islamic legal maxim which states that “everything is permissible (*mubah*) except what is prohibited”<sup>385</sup> (*al-'asl fi al-ashya' al-ibahah*), and also “custom has the weight of (Islamic) law”<sup>386</sup> (*al-'adah muhakkamah*). It should be reiterated that it is prohibited for a Muslim to drop any divinely prescribed law, or to enact any law that clearly conflicts with both the letter and spirit of a definitive divine law. If he is however “unable to change it with his hand”, then according to the Prophet (p), “he should change it with his tongue”. If he is unable to do any of these, then he should “change it with his heart”.<sup>387</sup>

Punishments in Islamic law fall under three categories – fixed and prescribed (*hudud*), equitable retribution (*Qisas*),

---

<sup>385</sup> Mohammad Hashim Kamali, *Qawa'id Fiqh, The Legal Maxims of Islamic Jurisprudence*, p.2; Abu Sulayman, 'Abd al-Wahhab, “An-Nazariyyah wal-Qawa'id fi al-Fiqh al-Islami” in *Majallah Jama'ah al-Malik 'Abdal-'Aziz*, No.2, May 1978, p.53; Shihab ad-Din al-Qarafī, *Kitab al-Furuq*, Matha'ah Dar Ihya al-Kutub al-'Arabiyyah, Cairo, vol. 4, p.40; see also 'Jamal al Din Atiyyah, *Al-Tanzir al-Fiqhi*, p. 208; Abdurahman bn Abu Bakr al-Suyuti, *Al-ashbah wa al-Nazair*, vol.1, p.107; Badruddeen Muhammad bin Abdullahi Al-Zarkashi, *Al-Bahr Al-Muheet Fi Usul Al-Fiqh*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1421 AH, vol.1, p.126; Ibn Taymiyya, *Al-Qawa'id al-Fiqhiyya*, p.217 - Cited in Umar Faruq Abd-Allah, *Living Islam with Purpose*, Nawawi Foundation, 2007, p.51.

<sup>386</sup> Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.139; Umar Faruq Abd-Allah, *Living Islam with Purpose*, Nawawi Foundation, 2007, p.32.

<sup>387</sup> *Sahih Muslim*, no. 49.

and discretionary (*Ta'zir*) which are left to the discretion of the judge or judiciary and hence man-made in response to context. Of all the hundreds of specific legal punishments in a society that are implemented or prescribed by judges and lawyers, over 90% of them belong to the category of discretionary punishments (*Ta'zir*). Imam Malik is also reported to have said that 90% of the verdicts by a judge are based on “juristic discretion” (*istihsan*).<sup>388</sup>

In addition, there are societal contexts of need (*hajah*) or necessity (*darurah*) or situations where there is doubt that justice would be served by a specific Islamic law. In such circumstances, Islamic law would warrant the suspension of particular prescribed punishments, and the judge or leader would resort to an alternative and more appropriate judgement, guided by the principles of Islamic jurisprudence (*Usul al-Fiqh*).

So long as a Muslim does not reject the truthfulness of Allah's laws, guidance and values, he is a Muslim and not a *Kafir*, and he or she is expected to do their best to comply with Allah's guidance.

---

<sup>388</sup> Al-Qarafi, *Anwar al-Buruq fi Anwar al-Furuq*, al-Maktabah al-Shamilah, 3.35, vol.7, p.382; Ibn Qudamah, *Rawdah al-Nazir wa Jinnat al-Munazir*, al-Maktabah al-Shamilah, 3.35, vo.1, p.512; Ibn Hazm, *al-Ihkam fi usul al-Ahkam*, al-Maktabah al-Shamilah, 3.35, vo.6, p.757; 'Alish, *Manh al-Jalil Sharh Mukhtasar Khalil*, al-Maktabah al-Shamilah, 3.35, vol. 14, p.83.

## Democracy, the Sovereignty of the People, and Sovereignty of God

One definition of democracy is that it is a system of “government of the people, by the people and for the people” and where the people have the final say regarding their affairs. Some contemporary scholars regard democracy as prohibited in Islam and a form of disbelief (*Kufr*) based on the fact that it claims that final decision-making or sovereignty is with the people instead of with Allah. These scholars emphasise that in Islam sovereignty is with Allah alone and none other. To accept a political system or system of government that recognises anyone else as also having sovereignty and a final say on any matter, implies in their opinion, a clear challenge to Allah's dominion and sovereignty, and is tantamount to disbelief or *Kufr*.

Some other scholars disagree with this logic and form of reasoning, and do not see a conflict between the types of sovereignty that are associated with a people or nations, and the very different type of supreme sovereignty that is with Allah alone. A major point of difference of opinion here is associated with the various meanings and implications of the term “sovereign” or “sovereignty” in various contexts.

The Arabic term “*Rabb*” is used in the Qur'an to describe Allah as “Lord and Sustainer of all the worlds”. The

husband/father however, is also described in Arabic as the “*Rabb al-Bayt*” or “Lord of the House”, while the wife/mother is described as “*Rabbat al-Bayt*” or “Lady of the House”. The word “*Rabb*” (lord) however means different things depending on the context in which it is used. Similarly, when the word “lord” is used for a person, leigh lord, husband, judge, landlord, etc. is means the person is lord in a very limited and restricted sense. When the same word is used for Allah, it has an absolute meaning of “Lord of all the Worlds”. Using “*rabb*” for a person, in no way contradicts the fact that only Allah is the “*Rabb*” or Lord, Cherisher and Sustainer of all His creation.

Similarly, the term “sovereign” or “sovereignty” means different things depending on the contexts. The fact that sovereignty is with a people, in no way conflicts with, reduces or takes away any the Sovereignty of Allah. Similarly, describing a person as a sovereign leader, in no way conflicts with Allah being the Sovereign Lord of the universe. It does not imply sovereignty in an absolute sense when used for people.

A supreme leader, caliph, monarch, dictator or emperor is described as a “sovereign leader” of a nation only because he (or she) is the highest human authority and has the final say among the people he rules over. It does not mean he is sovereign over other nations, their leaders, or all of creation or God. It only applies to a particular limited jurisdiction.

A sovereign nation is one that is completely independent and is free to govern itself and makes final decisions regarding its affairs. It does not imply that such a nation has sovereignty over its neighbours or any other nation or people, or over God.

For example, the preamble to the Constitution of the Federal Republic of Nigeria, 1999 as amended, reads:

“We the people of the Federal Republic of Nigeria, Having firmly and solemnly resolved, to live in unity and harmony as **one indivisible and indissoluble sovereign nation under God**, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding; and to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people. Do hereby make, enact and give to ourselves the following Constitution”.<sup>389</sup>

This preamble makes it clear that the sovereignty of the nation is “under God”, and not equal to or above God. A people, nation or its constitution does not in any way

---

<sup>389</sup> See, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

replace the Qur'an and Sunnah, or any other religious scripture as a source of guidance in beliefs, worship, character, or most issues regarding the religious obligations and prohibitions. It focuses primarily on how a government should be run. Similar to a business or marriage contract, the constitution is a document that gives the negotiated terms of contract for all concerned with government, and how powers are separated in order to reduce abuses and ensure checks and balances.

The meaning of sovereignty in this context does not in any way conflict with any of the attributes of God or with His Sovereignty and the Creator and the only One to be worshipped. Describing anything – a constitution, state, person, language, etc. – as being “sovereign” is therefore always relative to others and contextual, and not the absolute sovereignty that belongs only to God.

In a monarchy, the King, Queen or Emperor is the sovereign leader of the land and final decision-maker amongst the people of that nation. In a military dictatorship, it is the dictator or president that is the sovereign leader. In a caliphate, it is the caliph that is the sovereign leader. In a democracy however, it is not the president or Prime Minister who is the sovereign leader, it is the people who elected him to serve the common good of the people. The leader in a democracy is a servant of the people – a civil servant –

and represents the will the people, who hold sovereignty over him, and can therefore correct or change their leader if they are convinced that he misuses or abuses his office.

Just as a supreme ruler or Caliph can choose to submit to Allah or to disobey Allah, so also can people choose to submit or to disobey Allah. It is still humans as Allah's vice-gerents (*khulafa'*) that have been given the choice and free-will by Allah to have the final say regarding whether they will submit or not to His will. Historically some leaders and their people have used their leadership well, while others have abused their sovereignty and power. Giving a single human being the powers of a caliphate and the final choice of compliance with God's will has never guaranteed that God's commandments will be respected by such supreme leadership.<sup>390</sup>

When discussing Democracy as a “government of the people” therefore, describing the people as sovereign or having the final say on their affairs, only means that instead of one dictator, king, ruler, or emperor having sovereignty and the final say regarding the affairs of the nation, it is the people who will have the final say through their elected representatives.

Describing democracy as a government that goes with

---

<sup>390</sup> This is especially after the period of the four Rightly Guided Caliphs.

the will “of the people” instead of “the will of the king or supreme leader”; “by the people” through their chosen representatives instead of “by the king and his chosen representatives”, and “for the people” instead of “for the benefit of the king, royal family or supreme leader” is regarded by some contemporary jurists as not in any way conflicting with the principles of Shari'ah and Islamic governance. Democracy as a system of governance is seen as the opposite of dictatorship, despotism, and tyrannical leadership.

Consequently, many contemporary jurists do not see any fundamental incompatibility between the principles of Islam and those of democracy as a system of government and administration. Some forms of democracy may be preferable to others, but in their opinion, the fundamental principle of a consultative and participatory politics does not conflict with any known fundamental of Islam – *ma'lum min al-din bi al-darurah*.

There has been rampant abuse of power by sovereign leaders throughout human and Islamic history. Muslim jurists consider it permissible in issues related worldly or mundane (*dunya*) or social affairs (*mu'amalat*) – such as politics, security, economics, etc. – to find or adopt strategies and systems of administration from other cultures that do not conflict with the Qur'an and Sunnah, and which can bring benefit, limit or control the abuse of absolute power



or sovereignty by supreme leaders. This consideration of beneficial strategies from other cultures that do not conflict with the Shari'ah, is similar to the Prophet (p) adopting a Persian military strategy that was beneficial to the Muslims of Medina during the Battle of the Trench (Khandaq).

The debate on this subject is one of differing “juristic reasoning” (*Ijtihad*) based on diverse contexts, evidence and cultural preferences. The fact that this is a juristic subject of Islamic political thought (*al-siyasah al-shar'iyah*) and one of diverse juristic opinion (*Khilaf*), implies that it is not one where any group of jurists could be regarded as guilty of disbelief or *Kufr*.

The differences are at best described as *Khilaf*, where there is respected difference of opinion amongst scholars, or at worst, one of *Ta'wil* as a result of esoteric interpretation of relevant texts. No position here justifies Takfir of the scholars or the followers of any of the positions of democracy. As a topic related to *mu'amalat* (social transactions) and mundane issues, the Islamic legal maxim of presumed permissibility states that, “everything is permissible except what is prohibited (by evidence)” - *al-'asl fi al-ashya' al-ibahah*. Also, people's customs have the weight of law” – *al-'adah muhakkamah*.<sup>391</sup>

---

<sup>391</sup> Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.139.

## Saying “Merry Christmas”, etc., as an Endorsement of *Kufr*?

Islamic teachings emphasize the importance of courtesy, good neighbourliness, reciprocity in kindness and magnanimity. While Muslims and non-Muslims may exchange gifts, greetings and pleasantries, Muslim scholars, however, have an issue with greetings that are specific to religious festivities, especially if these may be understood to mean an acceptance and validation of an ideology that contradicts Islamic teachings. Muslim scholars have therefore differed on the Islamic rulings regarding greeting people of other faiths on the occasions of their religious festivities. While some of them permit it, others prohibit it.

A general and fundamental rule in the Principles of Islamic Jurisprudence (*usul al-fiqh*) is that anything that belongs to the category of worldly and mundane social transactions (*mu'amalat*) as opposed to prescribed religious or devotional worship (*ibadah*) or creed (*aqidah*), is governed by the general rule that “*everything is permissible except what is prohibited*”<sup>392</sup> by clear and explicit textual

---

<sup>392</sup> This well-known principle of *Usul ul-Fiqh* in Arabic is called “*Al-'asl fil ashya'i al-ibahah*” (“the legal premise of everything is permissibility”). See Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, IIFSO, Kuwait, 1992, p.14-18. See also: Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008; Mohammad Hashim Kamali, *Qawa'id Fiqh, The Legal Maxims of Islamic Jurisprudence*.

evidence from the Qur'an or authentic sunnah, or if it contradicts definite objectives (*maqasid*) of Shari'ah. In other words, whatever is not prohibited by clear evidence is in fact permissible.

According to Hatim bin 'Arif al-'Awni therefore, "The premise with regards to congratulating the unbelievers for their festivities is that of permissibility, except if such is done to show pleasure with their religion or where there is harm in it (i.e. where it could indicate an agreement with their disbelief)."<sup>393</sup>

---

p.2; Abu Sulayman, 'Abd al-Wahhab, "*An-Nazariyyah wal-Qawa'id fi al-Fiqh al-Islami*" in *Majallah Jama'ah al-Malik 'Abdal-'Aziz*, No.2, May 1978, p.53; Shihab ad-Din al-Qarafi, *Kitab al-Furuq*, Matha'ah Dar Ihya al-Kutub al-'Arabiyyah, Cairo, vol.4, p.40; Jamal al Din Atiyyah, *Al-Tanzir al-Fiqhi*, p. 208; Abdurahman bin Abu Bakr al-Suyuti, *Al-ashbah wa al-Nazair*, vol.1, p.107; Badruddeen Muhammad bin Abdullahi Al-Zarkashi, *Al-Bahr Al-Muheet Fi Usul Al-Fiqh*, Dar al-Kutub al-'Ilmiyyah, Beirut, 1421 AH, vol.1, p.126; Muhammad Amir, *Taysir al-Tahrir*, Dar Nashr, vol.2, p.247; Abdullah bin Yusuf al-Juda'i, *Taysir 'Ilm Usul al Fiqh*, p.34, 69, 71 and 72; Abdullah al-Fauzan, *Khulasah al-Usul*, p.7; al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, p.299; Muhammad bin Hassan al-Dadaw, *Sharh al-Waraqat*, p.76; Abdulkareem al-Khudair, *Sharh Matn al-Waraqat*, p.410; Abdulwahab Khallaf, *'Ilm Usul al-Fiqh*, Maktabah al-Da'wah, p.91; Muhammad Amin Ihsan Almujaiddi Albarkati, *Qawa'id al-Fiqh*, Dar al-Nashr, p.14; Zakariyya bin Gulam Qadir Albakistani, *Usul al-Fiqh 'Ala Manhaj Ahl al-Hadith*, Dar al-Kharraz, 1423 AH., p.116; Mashur bin Hasan Al-Salman, *Al-Tahqiqat wa al-Tanqihat al-Salafiyyah 'ala Matn al-Waraqat*, Dar Imam al-Malik, U.A.E, 1426AH, p.584-589.

<sup>393</sup> <http://www.dralawni.com/articles.php?show=187> (retrieved date: 4/2/2018)

Very often, the different cultural contexts and meanings assigned within that social environment to specific greetings have affected the way each greeting and its implications are understood or interpreted by a scholar or people.

The major point of difference among scholars therefore appears to be on whether or not such greetings and well-wishes, when used in a particular cultural context, are understood to be simply statements of courtesy and kindness (belonging to the category of greetings and social transactions – *mu'amalat*), or whether these statements are understood to automatically imply an acceptance and endorsement of the particular festivity and the religious ideology behind it (which is related to creed and worship – *aqeedah/ibadah*). The latter is the view held by distinguished scholars such as Ibn Qayyim, Ibn Taymiyyah and a number of contemporary scholars such as Bin Baz, Ibn Uthaimin, Safar al-Hawali amongst others, who regard such greetings as prohibited.<sup>394</sup>

---

<sup>394</sup> Ibn Qayyim al-Jawziyyah, *Ahkam ahl al-Dhimma*, Dar bin Hazm, Saudi Arabia, 1418AH, vol.1, p.144; Ahmad bin Abd al-Razzaq al-Duwaish, *Fatawa al-Lajnah al-Da'imah*, al-Ri'asah al-'Amah li al-Buhuth al-'Ilmiyyah wa al-Ifta', vol.3, p.436, al-Maktabah al-Shamilah 3.13; Qita' al-Ifta' wa al-Buhuth al-Shar'iyah, *Fatawa Qita' al-Ifta bi al-Kuwait*, vol.3, p.25, al-Maktabah al-Shamilah, 3.13; Safar al-Hawali, *Hukm al-Ihtifal Bi A'yad al-Kuffar*, p.35, al-Maktabah al-Shamilah; Muhammad bin Salih bin Uthaimin, *Majmu' Fatawa wa Maqalat al-'Allamah bin Uthaimin*, vol.3, p.28-29; Khalid Abdulqadir, *Fiqh al-Aqalliyyat al-Muslimah*, Dar al-Iman, Lebanon, 1419AH, p.577-578.

As for those who permit such greetings, they regard it as part of courtesy and kindness (*ihsan* and *birr*) – as taught by Islam – to people of other faiths, especially to those who are relatives, neighbours, friends, colleagues, school mates and those who are peaceful in general. This is the view of a number of distinguished scholars such as Abdullah bin Bayyah, Yusuf al-Qaradawi, Mustafa Zarqa, Rashid Rida, Hatim bin 'Arif al-'Awni, Gibril Fouad Haddad, Ali Gomaa, amongst others. Some scholars in this category also assert that this greeting may even become encouraged for Muslim minorities living among people of other faiths.<sup>395</sup>

However, virtually all Muslim scholars agree on the prohibition of such greeting if the words used to express it are understood by the user to contradict Islamic beliefs. They also agree that such greetings will be prohibited if the Muslim validates the religious festivities in his/her heart by believing that it pleases God.

Respected scholars have differed on this issue, as they have on many others. It is therefore a subject of difference

---

<sup>395</sup> Mustafa al-Zarqa, *Fatawa al-Zarqa*, vol.13, p.1-2; Abdullah bin al-Shaikh al-Mahfudh bin Bayyah, *Sina'ah al-Fatwa wa fiqh al-Aqalliyyah*, p.430-437; *Fatwas of European Council for Fatwa and Research*, translated by Anas Osama Altikriri and Shaikh Nasif Al-Ubaydi, Al-Falah Foundation, Egypt, p.177-182; [www.dar-alifta.org](http://www.dar-alifta.org), verdict no. 3670, issued on: 08/10/1998, (date: 9/2/2018); <http://www.dralawni.com/articles.php?show=187> (retrieved date: 4/2/2018).

in “juristic reasoning” (*Ijtihad*), and it is not correct to regard those who hold a different view as ignorant, or guilty of disobedience (*fisq*) or disbelief (*Kufr*). Even those scholars who regard such greetings on religious festivities as prohibited (*haram*), recognised the diversity of perspectives and interpretations, and do not go as far as regarding the opinion of those other scholars who consider it permissible (*halal*) as an act of disbelief (*kuf*r). The differences may be regarded as being one of respected scholarly diversity (*Khilaf*) at best, or at worst, one of esoteric interpretation (*ta'wil*) of evidence.

Despite their differences of opinion on this issue, all Muslim scholars agree that Muslims should relate with people of other faiths in a respectful, good and kindly manner, as the Qur'an prescribes:

*“As for such (of the unbelievers) as do not fight against you on account of (your) faith, and neither drive you forth from your homelands, God does not forbid you to show them kindness (birr) and to behave towards them with full equity (qist): for verily, God loves those who act equitably.” (Qur'an 60:8)*

The great scholar Sufyan Al-Thawri was reported to have said, "If you see a man doing something over which there is a difference of opinion among scholars, and which

you believe to be forbidden, you should not forbid him from doing it.”<sup>396</sup>

## **Saluting Flags, Use of Mace, and other National Symbols as Similar to Idol Worship?**<sup>397</sup>

Some Muslims understand the act of saluting a flag or a superior officer to be similar to an act of reverence, veneration and worship, and therefore regard it as an act of polytheism (*shirk*) and disbelief (*kufr*). Some also regard the salute gesture as similar to the raising of the hands in prayer (*salah*), except that it is done with only one hand.

There is no textually based prohibition of the gesture of saluting anyone or anything in the Qur'an or Sunnah of the Prophet Muhammad (p). Allah reminds us in Qur'an (16:116), *“And do not say about what your tongues assert of untruth, “This is lawful and this is unlawful,” to invent falsehood about Allah. Indeed, those who invent falsehood about Allah will not succeed.”*

---

<sup>396</sup> Ibn AbdulBarr, *al-Tamhid*, Mu'assasah al-Qurtobah, vol. 9, p.229; AbdulHakim Murad, *Understanding the Four Madhabs*, Muslim Academic Trust, Cambridge, 1999; p.13.

<sup>397</sup> See “Saluting the Flag as Similar to Reverence and Worship of an Idol” in Da'wah Institute of Nigeria, *Is “Boko” Haram? Responses to 35 Commonly Raised Arguments Against Conventional 'Western Education'*, Islamic Education Trust, Minna, Nigeria, 2018, p.107-110. Also, “Standing up in Respect for Other than Allah is Unislamic?”, Da'wah Institute of Nigeria, *ibid.*, p.99-106.

The analogy that implies similarity of salutation (to a flag) to prostration (*sujud*) or raising of the hands (in *takbirah Ihram*) in prayer (*salah*) is logically problematic. It implies that any gesture that is in any way similar to a posture done in prayer (*salah*) - such as standing, sitting, turning the head, waving, pointing with one finger, etc.- would also be prohibited even when clearly done with no intention of devotional worship (*ibadah*). This type of logic is not a legitimate basis for establishing ruling in Shari'ah.

This logic makes no distinction between non-devotional customary (*al-'adah* or *'urf*) gestures of respect, recognition and association to a symbol - such as raising or saluting a flag; facing and circumambulating (*tawaf*) round the *Ka'bah*; touching, pointing or kissing the Black Stone; sitting or standing in front of a teacher or *imam*; having symbols on mosques and flags such as the crescent moon and star (of the Ottoman Caliphate); etc. - and devotional worship (*ibadah*) related gestures towards an image or idol, which is clearly prohibited (*haram*). An example of symbolism in devotional worship which represents disassociation and rejection is the “stoning of the devil” during the Hajj pilgrimage. This is in no way a basis for drawing an analogy with other different reasons for throwing stones at anyone or anything.



The validity of using analogical reasoning (*qiyas*) in Islamic law is dependent of the correctness in identifying the clear effective cause/reason ('*illah*) or wisdom (*hikmah*) behind the original action, and its similarity with the new case. In the case of raising the hands in *salah*, the reason for doing it is devotional worship (*ibadah*) while in the case of saluting a flag, it is not so. If saluting or raising a flag was done as an act of devotion and worship, then it would be regarded as prohibited (*haram*). Most acts of *ibadah* do not have clear and specific textually identified reasons ('*illah*). Scholars of Islamic law therefore generally do not approve of *qiyas* being applied to issues related to creed (*aqidah*) and prescribed devotional acts or rituals (*ibadah*).<sup>398</sup>

Additionally, physical movements that look exactly like acts of worship (*ibadah*) do not automatically become acts of *ibadah* unless they are preceded by a deliberate intention for the act to be an *ibadah* and done for that purpose. Consequently, washing of the limbs, face and head without the prerequisite intention for it as an act of *ibadah* does not constitute an ablution (*wudu*) for prayer (*salah*); abstinence from food and drink from dawn to sunset does not consti-

---

<sup>398</sup> Mohammad Hashim Kamali, *Principle of Islamic Jurisprudence*, p.191; Abdul Wahab Khallaf, *Masadir al-Tashri' al-Islamiy fi ma la Nass fih*, Kuwait, Dar al-Qalam, 1414 AH, 6th ed., p.26 and 30; Ibn Kathir, *Tafsir Ibn Kathir*, Dar Tayba, Madinah, 1420 AH, vol.7, p.465; Al-Hasan bin Ali al-Barbahari, *Sharh al-Sunnah*, Makrabah al-Sunnah, Egypt, 1416 AH, p.28, 47 & 49.

tute fasting (*siyam*) without the prerequisite intention. The same applies to visiting specific sites at Makkah and pilgrimage (Hajj or Umrah), performing exercises or movements that are identical to those in prayer (*salah*); etc. The same also therefore applies to raising hands as in *salah* during *takbiratul ihram*. Raising one hand to salute a person or flag does not constitute an act of *ibadah* without the intention for it to be so. So, while a posture like prostration (*sujud*) when done towards any other than Allah is prohibited by clear text irrespective of the intent, the salutation of a flag is not prohibited by any text nor is the act done with the intention of being an act of worship (*ibadah*). Intention for devotion or worship is therefore required to make a posture or gesture an act of *ibadah* or an act of *shirk* if it is directed to any other than Allah. The mere similarity of a posture or gesture with an act of *ibadah* is not sufficient to constitute an act of *shirk*.

There is therefore no basis in the Qur'an, Sunnah, practice of the Companions (*sahabah*), consensus (*ijma'*) or analogical deduction (*qiyas*) to prohibit the salutation of a flag, or to say that it is prohibited because it is somehow similar to raising of the hands in *salah* during *takbiratul ihram*.

This therefore implies that even if one still regards it as prohibited (*haram*) to salute a flag, emblem, person, etc.,

there is no basis for such reasoning to be a criterion for declaring polytheism (*shirk*) or disbelief (*kufir*) on a person who salutes a flag or someone. Any difference of opinion, could be described as one of scholarly diversity (*Khilaf*) at best, or of esoteric interpretation (*ta'wil*) at worst, but not disbelief or *Kufr*.

## **Medical Ethics and the Boundaries of Human Knowledge in Islamic Perspective<sup>399</sup>**

The Prophet (p), in an authentic hadith describes Allah as being the only One Who knows “what is in the wombs”. Some Muslim regard the modern ultrasound scanning of babies in the womb as revealing information for doctors to also know “what is in the wombs”. These procedures and technologies are understood by some to therefore challenge the authority of the Prophet (p) and the unique knowledge of Allah. The use and study of these medical equipment constitutes a claim to also know what only Allah knows. It implies falsehood on the part of the Prophet (p) and Allah which clearly establishes disbelief (*Kurf*).

Allah says in the Qur'an (31:34), “*Indeed, Allah [alone] has knowledge of the Hour and sends down the rain and*

---

<sup>399</sup> See Da'wah Institute of Nigeria, *Is 'Boko' Haram? Responses to 35 Commonly Raised Arguments Against Conventional 'Western Education'*, Islamic Education Trust, Minna, Nigeria, 2018, p.22-36.

*knows what is in the wombs. And no soul perceives what it will earn tomorrow, and no soul perceives in what land it will die. Indeed, Allah is Knowing and Acquainted."*

In a hadith that is narrated from Abdullah Ibn 'Umar, that Allah's Apostle (pbuh) said, "Keys of the unseen knowledge are five which nobody knows but Allah... nobody knows what will happen tomorrow; **nobody knows what is in the womb**; nobody knows what he will gain tomorrow; nobody knows at what place he will die; and nobody knows when it will rain."<sup>400</sup>

It is a mistake for anyone to conclude that any advancement in science and technology can challenge the authority of the Prophet (pbuh) or the unique knowledge of Allah. The hadith does not imply that since only Allah "knows what is in the womb", that we therefore know *absolutely nothing* about what is in it – such as whether there is actually a baby (foetus) there or not, whether it is human or something else, etc. Some scholars have concluded based on pure speculation that verse (Qur'an 31:34) and the Prophet (p)'s saying meant that *only* Allah knows the sex or gender of what is in the womb. However, this interpretation and conclusion is not based on the Qur'an or the Sunnah, but on an innocent but erroneous assumption attributed to the Qur'an and the words of the Prophet (p).

---

<sup>400</sup> *Sahih al-Bukhari*, 4778.

Sheikh Muhammad bin al-Uthaimeen clarified the seeming contradiction between the relevant texts and science on this issue and made it clear that there was no real contradiction. He said that such challenges in the meaning of texts occur due to limitations in our understanding of the science or of the relevant texts. He explained how as a foetus grows and develops; Allah allows us to get to know more about it. However, that does not mean that we know everything about it. He cited Ibn Kathir's commentary (*tafsir*) on Surah Luqman (31:34) which states, “*No one knows what Allah wants to create in the wombs apart from Him; but once He decrees that it should be male or female, doomed or blessed, the angels who are appointed in charge of it know that, and whoever else He wills among His creation.*”<sup>401</sup>

The fact that Allah has made it possible for us to know that there is a baby in the womb, that it is a human baby, that it has a beating heart, that it has legs and can kick, that it is a male or a female, that it is up-side-down (or not), that it has a deformity, etc. implies that these cannot be what the hadith is referring to. Since the hadith has not specified what exactly it is in the womb that “only Allah knows”, it

---

<sup>401</sup>Muhammad bin Salih al-Uthaimeen, *Majmu' Fatawa wa Rasa'il Fadilat al-Shaykh Muhammad ibn Salih al-Uthaimeen*, Maktabah al-Shamillah, version 3.13, vol. 1, p.68-70.

therefore implies that the hadith is referring to the “unseen” aspects of the foetus and something else which we do not know and which only Allah knows. This would therefore be things such as what “fate” (*qadr*), gifts or provisions (*rizq*), and other qualities that Allah has bestowed on the foetus which we definitely do not and cannot know, and which only Allah knows.

This hadith therefore cannot be used as a basis for prohibiting the use or study of medical procedures such as ultrasound scanning, X-rays, MRI, ECG, etc. as these do not in any way challenge the authority of the Prophet (pbuh) or the unique knowledge of Allah. It is in fact by the grace of Allah that humans have arrived at these useful medical technologies that have helped in saving the lives of many mothers and children in ways that were not possible in the past.

It is a mistake to claim that humans can challenge the knowledge of Allah based on our limited understanding of a verse of the Qur'an or hadith or of science and reality.

*Ghayb* refers to knowledge that is beyond our perception. Some forms of *ghayb* are absolute and known only to Allah, and there is nothing we can do to acquire such knowledge. Other forms of *ghayb* are relative. They are known to some people but not others; to some generations but not others, to some specialists and researchers but not

others; to those who have died and left this world but not to others left behind and still alive, etc. Some knowledge therefore will also not be known until the Hereafter.

This explains why every generation of scholars come up with new and sometimes different commentaries (*tafasir*) of certain verses of the Qur'an, and commentaries (*sharh*) of certain hadiths, based on their unique and God-given newly found knowledge, understandings and perspectives of the texts. Therefore, the limitations of one generation cannot be a basis for limiting the understanding and interpretations of the “living text” of the Qur'an (or of the *Sunnah*) by subsequent generations.

Allah is He “*who taught by the pen, and taught mankind what he knew not*” (Qur'an 96:4-5); “*And We (Allah) shall show them Our signs over the horizons and within themselves...*” (Qur'an 41:53)

The fact that someone knows something automatically implies that that knowledge was never a part of “absolute *ghayb*”, only “relative *ghayb*”, and that Allah has willed that such knowledge will eventually be known.

In addition, scholars such as Muhammad bin Uthaimeen have given rulings (*fatwahs*) on the permissibility of using beneficial medical technologies such as ultrasound scanning, etc., and that these do not contra-

dict the main hadith on this topic.<sup>402</sup>

The differing interpretations of the relevant texts on this (and other issues) do not conflict with definitive truths of the “known essential fundamental of Islam” – *Ma'lum min al-din bi al-darurah*.

There is no irreconcilable disagreement between the position of the texts of the Qur'an and hadith on the one hand, and that of science and medical technologies. This is therefore not a basis for describing such procedures as prohibited (*haram*) or acts of disobedience (*fisq*), let alone one of disbelief or *Kufr*.

### **The Claim that all the Shi'ah are Disbelievers (Kuffar)**

The declaration by some Muslims that all Shi'ites are disbelievers is at variance with the Amman Message (issued in 2005) that has been endorsed by hundreds of eminent Muslim scholars and thinkers from all over the world. These included such distinguished scholars as **Prof. Dr. Muhammad Sa'id Ramadan Al-Buti (Syria); Prof. Dr. Shaykh Wahba Mustafa Al-Zuhayli (Syria); Prof. Dr. Abd Al-**

---

<sup>402</sup> Muhammad bin Salih al-Uthaimeen, *Majmu' al-Fatwah*, al-Maktaba al-Shamilah, vol.5, p.198.



**Sattar Abu Ghuddah (Syria); Shaykh Mufti Muhammad Taqi Uthmani (Pakistan); Prof. Dr. Shaykh Yusuf Al-Qaradawi (Qatar); Dr. Ali Muhyi Al-Din Qaradaghi (Qatar); Dr. Abd Al-Aziz bin Uthman Al-Tuwaijiri (Saudi); H.E. Shaykh Abd Allah Sulayman bin Mani' (Saudi); Justice Dr. Sheikh Ahmed Lemu (Nigeria); Shaykh Prof. Abdal Hakim Murad (UK); Shaykh Hamza Yusuf Hanson (USA); Sheikh Suhaib D. Webb (USA); Shaykh Al-Habib 'Ali Al-Jifri (Yemen); Shaykh Dr. Isam Ahmad Al-Bashir (Sudan); Shaykh Dr. Rachid Ghannouchi (Tunisia); Sheikh Muhammad Sayyid Tantawi (Egypt); Sheikh Ali Gomaa (Egypt); Prof. Mohammad Hashim Kamali (Malaysia); H.E. Shaykh Abdallah Bin Bayyah, (Mauritania); etc.**

The Amman Message pronounces that:

“(1) Whosoever is an adherent to one of the four *Sunni* schools (*Mathahib*) of Islamic jurisprudence (*Hanafi, Maliki, Shafi`i* and *Hanbali*), the two *Shi'i* schools of Islamic jurisprudence (*Ja'fari* and *Zaydi*), the *Ibadi* school of Islamic jurisprudence and the *Thahiri* school of Islamic jurisprudence, is a Muslim. Declaring that person an apostate is impossible and impermissible. Verily his (or her) blood, honour, and property are inviolable. Moreover, in accordance with the

Shaykh Al-Azhar's *fatwa*, it is neither possible nor permissible to declare whosoever subscribes to the Ash'ari creed or whoever practices real *Tasawwuf* (Sufism) an apostate. Likewise, it is neither possible nor permissible to declare whosoever subscribes to true *Salafi* thought an apostate. Equally, it is neither possible nor permissible to declare as apostates any group of Muslims who believes in God, Glorified and Exalted be He, and His Messenger (may peace and blessings be upon him) and the pillars of faith, and acknowledges the five pillars of Islam, and does not deny any necessarily self-evident tenet of religion.”<sup>403</sup>

This declaration also refutes the claim by some that Sunni Muslim scholars are in consensus regarding the disbelief of all Shi'ite scholars. As earlier mentioned, “we do not excommunicate on anything except on matters which all scholars unanimously agreed upon by consensus.”<sup>404</sup> The disagreement (*khilaf*) among the scholars on any issue is a hindrance to the excommunication of specific individuals.”<sup>405</sup>

---

<sup>403</sup> <https://ammanmessage.com/the-three-points-of-the-amman-message-v-1/>

<sup>404</sup> Muhammad bn Abdulwahhab, *al-Durar al-Saniyyah*, Maktabah al-Madinah al-Raqmiyyah, 1996, 6th edition, vol.1, p.102.

<sup>405</sup> Abdul-aziz al-Rees, *Al-Burhan al-Munir fi Dahd Shubuhah ahl al-Takfir wa al-Tajfir*, Mashru' Taba'at al-Kutub al-Salafiyyah, Kuwait, 2nd edition, p.8-9.

## **The Claim that all Characteristics of *Jahiliyyah* are *Kufr***

Certain Muslims consider some sinful acts or statements as characteristics of Pre-Islamic ignorance (*Jahiliyyah*). These are consequently equated with acts of disbelief (*kufr*). It is not permissible to equate sinful actions or statements (*ma'asiah*) with disbelief (*kufr*). Whether these were also characteristics of *Jahiliyyah* or not is irrelevant to their classification.

The Prophet (p) described a racist and therefore sinful statement made by one of his companions as a feature or trait of *Jahiliyyah*. This statement by the Prophet (p) was not a confirmation of disbelief (*kufr*) on the part of the companion, Abu Dharr al-Ghifari.<sup>406</sup> The Prophet (p) himself therefore did not equate *Jahiliyyah* with *Kufr*.

In addition, based on this hadith, Imam al-Bukhari named a chapter in his book *Sahih al-Bukhari* as “*Vice is part of Ignorance (Jahiliyyah); an offender cannot be judged*

---

<sup>406</sup> Muhammad ibn Ismail al-Bukhari, *Sahih al-Bukhari*, Book of Knowledge, (transl. Muhammad Muhsin Khan), Darussalam Publisher and Distributer, Riyadh, 1997, vol. 8, p. 52, hadith no. 6050; Muslim ibn al-Hajaj ibn Muslim al-Qushairi, *Sahih Muslim*, Dar Taybah, 2006, hadith no. 1661, 787; Muhammad ibn Isa al-Tirmidhi, *Sunan al-Tirmidhi*, Dar al-Tasil, Cairo, 2014, vol. 3, p. 219.

*as kafir, unless the vice is shirk (associating God with others)”*.<sup>407</sup>

Based on the above, it is wrong to regard every trait or characteristic of *jahiliyyah* as an expression of disbelief or *kufir*.

### **Ruling by Laws Other than What Allah has Revealed, or Not Implementing Allah's Law**

Allah says in Qur'an 5:44, “*And whoever does not judge by what Allah has revealed, they are the disbelievers.*” This verse has been interpreted by some to mean that any Muslim – judge, legislator, executive, or leader, etc. – who makes or follows laws, passes judgements, constitutional directives, etc., which are other than what Allah has revealed is a disbeliever (*kafir*). The crafting and execution of “man-made” or secular laws, or non-implementation of Islamic law (including and especially) the prescribed (*hudud*) punishments, is seen as a sufficient criterion for excommunicating a Muslim leader.

As earlier established by Muslim scholars, to do *Takfir* based solely on sinful actions and statements such as the breaking of a moral or legal law of Islam, or the non-

---

<sup>407</sup> Ibn Abi Al-'Izz, *Sharh Al-'Aqidah Al Tahawiyah*, Beirut: Al-Maktab Al-Islami, 1984, p. 340.

implementation of a law of Islam, without confirming rejection of faith or denial of belief (“*kufr* of the heart”), was a distinctive characteristic of the grave mistake of the Khawarij sect on this issue of determining major *kufr* or apostasy.

In other words, declaring any Muslim to be a *Kafir* purely on the basis of the commission or omission of any action or statement without the fulfillment of the six divinely prescribed conditions/hinderances that would justify *Takfir* is misguidance and a heresy (*bid'ah*).

These conditions which are based on the Qur'an and Sunnah include maturity, sanity, intent, knowledge, willingness, and the absence of esoteric interpretation (*ta'wil*), along with the establishment of proof with certainty (*iqamat al-Hujjah*). Disregarding these divinely prescribed conditions/hinderances is a misguided act of ignorance similar to that of the Khawarij sect, and a dangerous misuse and abuse of *Takfir* in Islam, which has been a calamity (*fitna*) and source of great loss and grief to the Muslim Ummah throughout its history.<sup>408</sup>

The verse in Qur'an 5:44 which reads: “*And whoever does not judge by what Allah has revealed, they are the disbe-*

---

<sup>408</sup> Ibn Baz, *Majmu, Fatawa al-Allamah Abdul-Aziz ibn Baz*, al-Maktabah al-Shamilah 3.35, vol. 28, p. 254, Ibn Taimiyah, *al-Fatawa al-Kubra*, al-Maktabah al-Shamilah 3.35, vol. 5 p. 66.

*lievers*”, is unfortunately one of the most misunderstood by many Muslims today.

The Khawarij sect were historically the first group to use this verse to justify excommunicating Muslims (*takfir*) and were the only ones in the past to interpret it to justify accusing Muslims of major disbelief (*Kufr*). While classical Muslim scholars have had varied and nuanced interpretations of this verse, none of them interpreted in a way that was similar to that of the Khawarij. The Khawarij used this verse to justify *takfir* on anyone who through the sin of commission or omission, does not act or rule according to Allah's law. This led them to believe that this verse is about sinful actions or utterances committed by one who transgresses Allah's rules or regards things that are prohibited as permissible, or who permits what is prohibited, even when this does not involve denial of faith in Allah's Sovereignty and judgement. They were of the opinion that sinful actions and statements were automatically an expression of *Kufr* that excommunicate and make a person a disbeliever, and that these did not require the consideration of hinderance and conditions, or the establishment of proof (*Iqamah al-Hujjah*) in order to ascertain.

Some Muslims who claim to reject and even criticize the Khawarij, often do not seem to understand what exactly was wrong with their ideology and how it was

different from that of the Prophet's companions, including that of the Rightly Guided 4th Caliph, Ali, who they assassinated based on their interpretation of the verse. Some of these Muslims criticize what the Khawarij did while at the same time mistakenly adopting their approach to the interpretation and implications of this verse.

The great Companion and commentator of the Qur'an, Abdullah Ibn Abbas<sup>409</sup> said in reference to the verse (Qur'an 5:44): "*And whoever does not judge by what Allah has revealed*" – that, "whoever denies His Judgment has disbelieved. Whoever recognizes it but then does not judge by it, is a wrongdoer and a rebellious transgressor."<sup>410</sup>

Such sinful actions or "minor *kufir*" do not take a person out of Islam because the doer recognises and believes that Allah's judgement is a fact and does not deny it. Such "minor Kufr" or major sinful actions are not a justification for *Takfir*. In other words, this verse is addressing "minor kufr". It is not addressing "major Kufr" that excommunicates, and should never be used as evidence for *Takfir* or for declaring any Muslim as excommunicated. To use this verse for the purpose of excommunication (*Takfir*) is a key characteristic of the heretical Khawarij ideology.

---

<sup>409</sup> Ibn Abbas incidentally debated with the early Khawarij and won over 2000 of them back from their misguidance.

<sup>410</sup> *Tafsir Ibn Abi Hatim*, hadith 6426.

The Khawarij were an early heretical Muslim sect with a very misguided ideology that regarded a sinful action (*ma'asiya*) or wrongdoing (*fisq*) as sufficient evidence for excommunicating a Muslim from Islam (*takfir*) and considering him or her to be a disbeliever (*kafir*). They did not distinguish “minor kufr” (*fisq*) of actions or statement from “major kufr” (*disbelief*). Unlike other Muslims including the Rightly Guided Companions of the Prophet (p), they regarded it as insufficient and inadequate that a person should accept as truth and believe in Allah's authority and value-system of judgement (*hukum*) regarding the essential fundamentals of Islam (*ma'lum min al-din bi al-darurah*). They regarded actions that in their view were contrary (*fisq*) to Islamic teachings as proof of disbelief (*Kufr*) and a basis for declaring a person as an Apostate (*Murtad*) and the consequent capital punishment.<sup>411</sup>

The respected Companion of the Prophet (p) described such “Minor Kufr” as being “*Kufr* without *Kufr*” (*kufr duna kufr*) as it did not tantamount to denial of faith or belief.<sup>412</sup>

The Prophet (p) said: “*To verbally abuse a Muslim is Fisq and to fight him is Kufr.*”<sup>413</sup> However, Imam Tirmidhi com-

---

<sup>411</sup> Ibn Baz, *Majmu, Fatawa al-Allamah Abdul-Aziz ibn Baz*, al-Maktabah al-Shamilah 3.35, vol. 28, p. 254; Ibn Taimiyah, *al-Fatawa al-Kubra*, al-Maktabah al-Shamilah 3.35, vol. 5 p. 66.

<sup>412</sup> Al-Hakim, *Al-Mustadrak*, al-Maktabah al-Shamilah 3.35, vol. 7, p. 351, no 3176.

<sup>413</sup> Sahih al-Bukhari 48, Sunan Tirmidhi 2635.



mented on it and said: "What is meant by this Hadith is not the *Kufr* that makes a person leave the religion. It has been narrated from Ibn Abbas, Tawus, 'Attaa and more than one of the people of knowledge: '(It is) *Kufr duna Kufr* and *Fisq duna Fisq*'.<sup>414</sup>

The Prophet (p) said: *"If an adulterer commits unlawful sexual intercourse, then he is not a believer at that time, and if a drinker consumes alcohol, then he is not a believer at the time he drinks it, and if a thief steals, then he is not a believer at the moment of stealing, and when a robber robs, and people look at him, then he is not a believer at the moment of robbing"*.<sup>415</sup> Imam Ahmad said: "As for the one who commits major sins many times and persists on them, he has been described as the person who is not a believer while consuming alcohol or while stealing. This Hadith is understood as minor disbelief, just like the saying of Ibn Abbas."<sup>416</sup>

It has been narrated that: A man from the Khawarij entered upon Al-Ma'mun. So Ma'mun said to him: "What caused you to differ with us?" He said: "A verse in the book of Allah." Then Ma'mun asked: "Which one?" The man

---

<sup>414</sup> Sunan Tirmidhi 2635.

<sup>415</sup> Sahih al-Bukhari 2475, Sahih Muslim 57a.

<sup>416</sup> *Ahkam an-Nisaa* p.57. Cited in Abu Bakr al-Khallal, *Masa'il Al-Shalanji*, pp. 78-79.

replied: "Whoever does not judge by what Allaah reveals then such are the disbelievers." So, Ma'mun said to him: "Do you have evidence that it was revealed?" He replied: "Yes." So, he said: "Then what is your evidence?" He replied: "Consensus of the Ummah." So, he said: "then as you accepted their consensus that it was revealed, then accept their consensus in the explanation." He replied: "You spoke the truth. *Assalamu alaikum O Amir al-Mu'minin*."<sup>417</sup>

Similarly, those who today would like to cite this verse as evidence for *takfir* of any Muslim judge, legislator, leader or lay person, should understand that none of the companions of the Prophet (p) or any of classical scholars and commentators (*Mufasssirun*) of the Qur'an understood this verse literally to mean that a Muslim who believes in Allah and who does not reject or deny the truthfulness of the Qur'an, is to be regarded as disbeliever (*kafir*) on the grounds that such a Muslim did not judge a case or implement a policy or ruling in accordance with Islamic law.

None of them understood it (or any other verse) to mean that Muslims or their leaders who for whatever rea-

---

<sup>417</sup> Al-Khateeb al-Bagdadi, *Tarikh al-Bagdad*, Dar al-Garb al-Islami, Beirut, vol.11, p. 434; al-Dhahabi, *Siyar a'lam al-Nubala*, Muassasat al-Risalah, 3rd edition, 1985, vol. 10, p. 280; al-Suyuti, *Tarikh al-Khulafa*, al-Maktabah al-Shamilah, 3.35, p.296-297.

son govern their affairs though a mixture of laws – customary, secular, civil, and/or Islamic – are to be regarded as disbelievers (*kuffar*) or apostates because they did not judge all their affairs according to what Allah has revealed.

Also, none of these distinguished Islamic authorities understood this verse (or any other) to imply that selfish, corrupt and oppressive Muslim leaders were out of the fold of Islam, because they governed by unjust and unislamic man-made constitutions and laws which were at variance with what Allah has revealed.

So long as a Muslim has not denied his faith (*iman*) in the truthfulness of the known fundamental definitive truths of the religion (*ma'lum min al-din bi al-darurah*), or those issues on which there is absolute consensus (*ijma' qati'*) of all Muslim scholars, then such a person remains a Muslim, even if his actions qualify him to be guilty of sinfulness (*ma'asiya*), disobedience (*fisq*) and oppression (*dhulm*).

The Christian King or Negus of Abyssinia at the time of the Prophet (p) had according to the majority of scholars accepted Islam before he passed away in the 9th year after the Hijrah, and the Prophet (p) while in Medina prayed for him (*Salat al-Gha'ib*) upon the news of his death. This king was however (and for whatever pardonable reasons) not known to have once prayed any of the 5 daily prayers, nor

fasted during Ramadan, nor known to have given zakat, nor tried to migrate to Medina, etc.<sup>418</sup> He was also not known to have governed his people or judge cases in accordance with what Allah had revealed. These actions however, were not regarded by the Prophet (p) as sufficient to negate his faith, or consider him a disbeliever (*Kafir*).

Whoever knowingly rejects or opposes the truthfulness of a definitive (*qat'i*) text or ruling that is from what Allah has revealed would have committed an act of disbelief (*kufir*) and is regarded as excommunicated once all conditions and hinderances have been considered, and proof has been established (*iqamah al-hujjah*) with certainty against such a Muslim by a competent authority. However, whoever accepts and believes what Allah has revealed as true, but does not rule by it or apply it, is not a disbeliever (*kafir*). Such a person may be described as a *Zalim* (transgressor) and a *Fasiq* (wrongdoer) if he does not have any pardonable excuses, but definitely not a disbeliever or *Kafir*.

---

<sup>418</sup> Ibn Taymiyyah, *Majmu' Fatawa*, Dar ibn Hazm, Riyadh, vol. 10, p.117

## **“Independent Human Reasoning” (Ijtihad) and Its Compatibility with Islamic Doctrine**

The sinful action (*ma'asiya*) of “judging things by other than what Allah has revealed” also only applies when one is judging something with evidence that conflicts with or contradicts “what Allah has revealed”. Traffic laws for example are not part of “what Allah has revealed” but they are not prohibited simply because that. It is in fact the Qur'an and Sunnah that establish the legal presumption of *Istishab* (and Islamic legal maxim) which states that “everything is permissible except what is prohibited”.

There are many issues related to worldly or mundane (*dunya*), interpersonal transactions (*mu'amalat*) and customary traditions (*al-'urf wa al-'adah*) – such traffic laws, safety laws, environmental laws, certain issues related to governance, defense, international travel, etc. - on which there is silence or ambiguity in the text of the Qur'an and Sunnah, and jurists have to resort to their “independent reasoning” or *Ijtihad*.

As a result of this “juristic reasoning” (*Ijtihad*), there have evolved various schools of juristic thought (*madhhabs*), methodologies, maxims, evidence, and principles of Islamic jurisprudence that try to give guidance on what Muslims should do when there is silence or nothing categorical on an issue in “what Allah has revealed”. Conse-

quently, there have been many issues documented in the manuals and texts of Islamic law (*fiqh*) related to the diversity of opinions (*khilaf*) among scholars and jurists on such matters.

Resorting to *Ijtihad* or “juristic reasoning” implies considering other sources of law and guidance such as presumptive juristic consensus (*Ijma' zanni*) also described by Ibn Taimiyyah as “collective ijtihad” (*ijtihad jama'iy*). It implies considering those other well-known secondary sources of Islamic law such as reasoning by analogy (*qiyas*), considering public interest (*maslahah*), opinion of a Companion (*ra'yi al-sahabi*), preclusion (*sadd al-dhari'ah*), customary norms (*al-'urf wa al-'adah*), juristic discretion (*Istihsan*), legal presumption (*Istishab*), etc.

Most of these sources of Islamic law are based on human judgement and are “man-made”. They are not divine in origin. They are accepted by jurists based on the fact that they were used and endorsed by the best generations of the Prophet's companions and early Muslims (*Salaf*), and they are supported, according to most scholars, by the general texts of the Qur'an and Sunnah. They also did not conflict with the letter or spirit of the Qur'an and Sunnah as understood by the Prophet and his rightly guided companions. They were also accepted because they

actually facilitated the realization of the intents and objectives (*maqasid*) of what Allah has revealed (*shari'ah*).

When the Khawarij declared the Rightly Guided Caliph Ali bin Abi Talib to be a disbeliever (*Kafir*) and justified assassinating him, it was based on the fact that he ruled based on “consideration of public interest” (*maslaha*) and what he believed was in the best interest or the common good of his people, in his context. He did not rule in accordance with the literal understanding of the text without regard to context or intents or spirit of the law. For this, the Khawarij accused him of “ruling by other than what Allah had revealed”. This they regarded as tantamount to disbelief on his part, and they justified assassinating him.

This consideration of public interest (*maslaha*) was similar to a case during the reign of the second Rightly Guided Caliph, Umar bin al-Khattab. He also made rules based on his independent reasoning (*Ijtihad*) while consideration of public interest (*maslaha*) during a period of famine and food shortage. Based on this context of general economic hardship at the time, he justified suspending the ruling revealed by Allah in the Qur'an (5:38) for punishment of theft. There are many such cases in Islamic jurisprudence where new situations or changed contexts justify changing the laws from the letter of text to new laws based on 'consideration of public interest" (*maslaha*), pre-

clusion or 'blocking the means' (*sadd al-dhari'ah*), juristic preference or discretion (*istihsan*) in order to realize the spirit (*ruh*), goals and objectives (*maqasid*) of that which Allah has revealed (Shari'ah). This is the field of specialization of distinguished jurists (*mujtahids*) and specialists in the subject of Islamic legal theory (*Usul al-Fiqh*).

It is permissible in Shari'ah to use man-made laws if these do not conflict with the Qur'an and Sunnah, or secondary sources of law. This is based on the legal maxims and presumption (*istishab*) of permissibility and freedom from obligation. It is also permissible to temporarily use man-made laws as part of the concessions (*rukhsa*) given to individuals or societies in situations of need or necessity where the divine law would not realize its objectives. These are regulated by the principles governing the laws of need (*hajah*) and necessity (*darurah*). It is however not permissible to follow any man-made law that clearly conflicts with the letter or spirit of any divine law of Shari'ah. Even in this case, those guilty are regarded as wrongdoers and sinful, but not disbelievers (*kuffar*).

It is an expression of deep ignorance and misguidance for any Muslim who has not mastered these specializations in Islamic legal theory to judge other Muslims as disbelievers (*kuffar*) based on their superficial and very literal readings of text, when these interpretations are at variance



with the understanding of the Prophet (p) and his companions. What is worse is when the interpretations of certain texts are identical with those of heretical sects whose own interpretations were used to justify the assassination of some of the greatest Muslims and companions of the Prophet (p).

## THE DANGERS OF *TAKFIR*

According to Bin Bayyah, excommunication is to legally declare a person or group to be a non-believer, regardless of whether that entails regarding them never to have been Muslim or declaring them to have done something that takes them out of Islam. Allah Himself warns us against it, saying: “*And do not say to him who offers you a greeting of peace, “You are not a believer”, simply out of desire for the chance gains of this life*”. (Qur'an 4:94)<sup>419</sup>

We have explained the evidence or reasons that justify the *takfir* of things – actions and statements – and the *takfir* of persons or individuals, and the conditions, hindrances, establishment of proof as well as who does *takfir*. It should also be clear that even if an action or statement is in and of itself clearly considered disbelief (*kufr*) or polytheism (*shirk*), the person who does such an action can only be excommunicated from Islam by the competent religious authority, if, and only if, the six already discussed conditions and hindrances have been ascertained and the proof is established with absolute certainty.

---

<sup>419</sup> Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.79.

Therefore, actions as profane and hideous as prostration or invoking in worship for any other than Allah, dedicating the slaughtering of an animal to any other than Allah, blasphemy or making mockery of any fundamental teaching of the religion, treating anything of religious sacredness with disdain and humiliation, denial any aspect of religion or its law that is based on unequivocal evidence, making claims of disbelieving the Last Day, the angels, etc. – cannot justify *takfir* of a Muslim until and unless the various agreed conditions and hindrances have been ascertained and the proof is established with certainty by a competent authority.

It is not permissible to rule a person as a disbeliever (*kafir*) for committing a sin or vice as long as he does not declare the vice as *halal* (permissible).<sup>420</sup> This is applicable for sinful acts like adultery and drinking alcohol, etc.<sup>421</sup> This is a known position of the Sunnis as opposed to that of the Kharijites and Mu'tazilites.<sup>422</sup>

It is not permissible to unequivocally declare a Muslim ruler as *kafir* just because he does not rule according to the

---

<sup>420</sup> Ibn Abi Al-'Izz, *Sharh Al-'Aqidah Al Tahawiyah*, Beirut: Al-Maktab Al-Islami, 1984, p. 316.

<sup>421</sup> Abdul Rahman b. Mualaa Al-Luwaihiq Al-Mutairi (transl. by Jamal Al-Din M. Zarabozo), *Religious Extremism in the Life of Contemporary Muslims*, Al-Basheer Publications, Denver, 2001, p. 268-9. See original work, Abd Al-Rahman bin Mu'alla Al-Luwayhiq, *Al-Ghuluw Fi Al-Din Fi Hayat Al-Muslimin Al-Mu'asirah*, Mu'assasat Al-Risalah, Beirut, 1992.

<sup>422</sup> Ibn Abi Al-'Izz, *Sharh Al-'Aqidah Al Tahawiyah*, Beirut: Al-Maktab Al-Islami, 1984, p. 340.

*Shari`ah*. Similarly, the people who do not try to change such a ruler cannot be deemed as *kafir*. Mainstream Muslim scholars regard the declaration of *kafir* in such instances as extremism.<sup>423</sup> They do not automatically rule such Muslim rulers as *kafir* as the Qur'an distinguishes such rulers into three categories: disbeliever (*kafir*), oppressor (*zalim*) or corrupt (*fasiq*).<sup>424</sup>

Ibn Abi Al-`Izz in *Sharh Al-`Aqidah Al-Tahawiyah* wrote:

“If he (the ruler) believes that ruling by what Allah revealed is not obligatory or that he has an option in the matter or he is showing disdain for it while he is certain that it is the rule of Allah, then that is the greater *kufir*. If he believes that it is obligatory to rule by what Allah revealed and he is aware of that fact, however, he abstains from doing so while admitting that he is deserving of punishment, then he is a sinner. He is called a *kafir* (disbeliever) only in a metaphorical sense or (in other words) it is the lesser *kufir*.”<sup>425</sup>

---

<sup>423</sup> Abdul Rahman b. Mualaa Al-Luwaihiq Al-Mutairi (transl. by Jamal Al-Din M. Zarabozo), *Religious Extremism in the Life of Contemporary Muslims*, Denver: Al-Basheer Publications, 2001, pp. 325-34.

<sup>424</sup> See the Qur'an, 5:44, 45 and 47.

<sup>425</sup> Ibn Abi Al-`Izz, *Sharh Al-`Aqidah Al Tahawiyah*, Beirut: Al-Maktab Al-Islami, 1984, pp. 323-4.

In this respect, Muslim scholars point out that the Prophet (p) did not condemn King Najashi (Negus) for not judging by the *Shari`ah*, neither did God condemn Prophet Yusuf (Joseph) for serving in the government of a non-Muslim king.<sup>426</sup> It is also not permissible to make an absolute declaration of *kufr* upon all the people under the rule of a government that does not judge by the *Shari`ah*. Here again, Muslim scholars refer to the past examples of Najashi (Negus), Prophet Yusuf (Joseph), and the stay of the Companions in Abbyssinia, which was not ruled by the *Shari`ah*.<sup>427</sup>

As *kufr* exists in the heart, prudence is required when judging matters related to the unknown. Given that *kufr* can only be ascertained by the heart's intentions, physical or outward acts alone cannot justify *takfir*; the only exception is when there is indisputable evidence to support it<sup>10</sup> because the Qur'an says:

*“And never concern thyself with anything of which thou hast no knowledge...”* (Qur'an 17:36);

---

<sup>426</sup> Abdul Rahman b. Mualaa Al-Luwaihiq Al-Mutairi (transl. by Jamal Al-Din M. Zarabozo), *Religious Extremism in the Life of Contemporary Muslims*, Denver: Al-Basheer Publications, 2001, pp. 309, 580-5.

<sup>427</sup> Abdul Rahman b. Mualaa Al-Luwaihiq Al-Mutairi (transl. by Jamal al-Din M. Zarabozo), *Religious Extremism in the Life of Contemporary Muslims*, Al-Basheer Publications, Denver, 2001, p. 312.

and, “O you who have attained to faith! Avoid most guesswork [about one another]....” (Qur'an 49:12).

One of Prophet Muhammad's companions caught someone during battle and the man quickly declared his conversion to Islam. Suspecting that the man's declaration was done out of fear of being killed, the companion proceeded to kill him. When the Prophet (p) found out, he reprimanded the companion with this retort repeatedly, “Did you cut open his heart to know whether his heart uttered it or not?”<sup>428</sup> Hence, where *takfir* is concerned, the benefit of the doubt must be given to the accused.

The misuse of *takfir* by ignorant, arrogant, self-righteous and fanatical Muslims has resulted in numerous evils and tribulations (*fitnah*) for many Muslim communities. Unjustified *Takfir* has led to a destruction of brotherhood and unity within the Muslim community. It has also resulted in various other forms of weakening the social fabric of the Muslim community, disunity, sects and denominations among Muslims. It has given rise to the fuelling of further hatred and intolerance among individuals, organisations and groups within even Muslim minorities, and has led to inciting conflicts, persecution, shedding the blood of innocent people. The consequences of the misuse of *Takfir* have

---

<sup>428</sup> Abu Dawud 2643; Bukhari 6872; Muslim 97.

also contributed to paving the way for violent extremism and undermining security. It tarnishes the image of Islam among both Muslims and non-Muslim, contributes to rising Islamophobia, and has made the propagation of Islam more challenging.

Numerous rigorously-authenticated Hadith of the Prophet (p) strongly warn and condemn those who accuse others of being apostates. Buhari and Ahmad both narrate, “*Whoever accuses a believer of unbelief (kufr), is as if he has killed him*”.<sup>429</sup>

In view therefore of the serious implications of the accusation of *Takfir* that the Prophet (p) warned against it. He says in a hadith: “*If a man says to his Muslim brother, 'O kafir!' then it is true about one of them.*”<sup>430</sup> On the last phrase of this hadith ‘...then it is true about one of them...’, Ibn Battal said: “the sin of labelling him will be recorded for him (if it was justified), and the blame of that accusation will return to him if he was a lair.”<sup>431</sup> Ibn Daqiq al-'Id said: “This hadith implies that there is a severe punishment for whosoever excommunicates a believer who does not deserve it”.

---

<sup>429</sup> *Sahih al-Bukhari* 6105.

<sup>430</sup> *Musnad Ahmad*, Hadith no. 5914.

<sup>431</sup> Ibn Battal, *Sharh Sahih al-Bukhari*, Maktabah al-Rushd, Riyadh, 2nd edition, 2003, vol. 9, p.287; see also: Ibn Abd al-Barr, *al-Istidhkar*, Dar al-Kutub al-'Ilmiyyah, Beirut, 2000, vol. 8, p.548.

Commenting on the same hadith, Ibn Abd al-Barr also said that “according to the jurists and scholars of hadith, it means that a Muslim is prohibited from labelling a Muslim brother with disbelief (*kufir*) due to a sin he committed or erroneous interpretation (*ta'wil*). That does not take a person out of Islam, according to scholars”.<sup>433</sup>

Muslim scholars all agree that the hadith is a proof that a Muslim calling another Muslim *Kafir* with no justification or unequivocal evidence is a grave or major sin.<sup>434</sup> And on account of the severity of the warnings against accusing others of disbelief, a significant number of distinguished jurists and scholars have strongly warned against it.

Imam al-Subki said, “As long as a person believes and testifies that there is no god but Allah, and Muhammad (p) is the Messenger of Allah, excommunicating him is extremely difficult”.<sup>435</sup>

---

<sup>432</sup> Ibn Daqiq al-'Id, *Ihkam al-Ahkam Sharh 'Umdah al-Ahkam*, n.d, vol.1, p.209.

<sup>433</sup> Ibn Abd al-Barr, *Al-Tamhid lima fi al-Muwatta' min al-Ma'ani wa al-Asanid*, Wizarah 'Umum al-Awqaf wa al-Shu'un al-Islamiyyah, Morocco, 1387AH, vol.17, p.14.

<sup>434</sup> See: Ibn Haja, *Fath al-Bari*, vol.17, p. 199 (al-Maktabah al-Shamilah, 3.13); al-Nawawi, *Shar al-Nawawi 'Ala Muslim*, vol.1, p.153 (al-Maktabah al-Shamilah, 3.13).

<sup>435</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.80.



Imam Abu Hamid Al-Ghazali went even further and rejected the excommunication of any group or party of people saying that, “the status of such people is a matter of independent juristic reasoning (*ijtihad*). But even so, every effort must be taken to avoid excommunication, for it is a grave mistake to make lawful the blood and the wealth of those who pray towards the Ka'aba in Mecca, and who publicly affirm the Oneness of Allah”.<sup>436</sup>

In *Jami' al-Fusulayn*, Imam al-Tahawi narrates, “The only thing that takes a person out of Islam is publicly rejecting that which brought him into Islam in the first place. Only when something is clearly apostasy, is it to be judged as such. If there is any degree of doubt, then it is not, for an Islam that has been confirmed, may not be removed by doubt; to say nothing of the fact that Islam is a thing of an exalted nature. So, when matters of this nature are brought before scholars, no one of them should hasten to excommunicate any of the people of Islam, even if that means he affirms the validity of the Islam of a person who has been forced into it”.<sup>437</sup>

Imam Ibn Mazah states in his *al-Fatawa al-Sughra*, “Apostasy is a very grave matter. So, I will not declare a

---

<sup>436</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.80.

<sup>437</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.80.

believer an apostate if there is any account attesting otherwise”. Imam al-Ghazali writes in *Al-Khulasah*, “If some factors require declaring apostasy, and only one factor prohibits it, then the Mufti must lean towards the factor of prohibition in order to always assume the best about a Muslim”.<sup>438</sup>

The author of *Al-Fatawa al-Bazaziyyah*, al-Kardari writes, “Mitigating assumptions (against *Takfir*) are possible so long as the person does not openly declare themselves to be an apostate”.<sup>439</sup>

Ibn al-'Ala states in *Al-Fatawa al-Tararkhaniyyah*, “A person may not be excommunicated on the basis of likelihood and probability, for as apostasy is a crime, the punishment for which is final, it must also be final and beyond any doubt that a person has perpetrated the crime and there is no finality in mere probability”.<sup>440</sup>

Sheikh Taqi al-Din Ibn Taymiyyah mentions in his *Al-Fatawa*, “The companions and all the Imams of the Muslims unanimously concur that saying something wrong is not necessarily enough cause to excommunicate a person, even if what he says appears to directly contravene the Sunnah. So, excommunicating all wrongdoers goes against

---

<sup>438</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.80.

<sup>439</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.80.

<sup>440</sup> Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.80-81.

the consensus of the Muslims. Yes, there is some difference of opinion among the people of knowledge regarding certain issues relating to excommunication which I have gone into at length elsewhere. But my purpose here is simply to stress the fact that it is not right for groups of people following a particular Imam or Sheikh to declare those who are not with them to be unbelievers; for we find in the *Sahih* (of *al-Buhari*) that the Prophet (p) said, 'When a man says to his brother, "or unbeliever!", the charge returns back upon one or the other of them'."441

It is narrated in the Musnad of Bazzar from Iyad al-Ansari that the Prophet (p) said "The statement that there is no god but Allah is something most dear and precious to Allah. The one who says it truthfully will be admitted by him into the Garden of Paradise. And the one who says it falsely will have his wealth and blood protected. Although when he goes to meet Allah in the Hereafter, he will be taken to account".442

It is therefore important that the issue of labelling, declaring, or calling an individual Muslim or group of Muslims as *kafir* or *kuffar* should not be treated with levity due to its serious nature.

---

441 Ibn Taymiyyah, *Majmooh al-Fatawah*, Dar al-Wafaa, vol.7 p.685.

442 Cited in Sheikh Abdullah bin Bayyah, *The Pursuit of Peace*, Abu Dhabi Forum for Peace, UAE, 2022, p.81.

# Conclusion

Throughout this book, we have explored the intricate tapestry of Islamic principles on two crucial aspects of Islamic jurisprudence – migration (*Hijrah*) and the nuanced concept of excommunication (takfir). At its core, this exploration has highlighted the diversity inherent in Islamic thought, reflecting the rich tapestry of beliefs within the Muslim community. From the classical paradigms to the contemporary challenges faced by Muslims residing in non-Muslim lands, the book has endeavoured to bridge the gap between tradition and modernity, inviting readers to examine the intersections of faith and reality critically.

The first part of the book explored the meanings of migration (*Hijrah*) in the Qur'an and Hadith, as well as in Islamic Legal Theory (*usul al-fiqh*). While *Hijrah* is not merely a physical relocation but also a spiritual and ideological journey towards the fulfillment of one's faith, we paid particular attention to physical migration, particularly from a land/location considered to not be a "Land of Islam" to one considered as such. We examined the Quranic and

Sunnah perspectives of the physical hijrah, revealing how it played a pivotal role in the lives of the Prophet (P) and his companions, and our exploration of the Islamic legal theory (*usul al-fiqh*) emphasized the importance of understanding the jurisprudential foundations that guide Muslim residence.

We also expatiated on the issue of classification of lands into various domains such as *Dar al-Islam* (“Land of Islam”), *Dar al-Harb* (“Land of War”), *Dar al-Kufr* (“Land of Disbelief”), *Dar al-Shirk* (“Land of Polytheism”), *Dar al-Sulh* (“Land of Treaty”), *Dar al-'Adl* (“Land of Justice”), etc. It was shown that all the political-legal classifications of domains, lands, territories or countries (into *Dar al-Islam*, *Dar al-Sulh*, *Dar al-Kufr*, etc.) and the various preferred criteria and definitions adopted by particular schools of law or scholars are not based on any divine prescription from the Quran or multiple chained (*mutawatir*) hadith but primarily on independent juristic reasoning (*Ijtihad*) in response to their own geo-political contexts. The examination of classical opinions regarding residence in non-Muslim lands revealed diverse paradigms and perspectives. We saw that the traditional binary and tripartite paradigms are not exhaustive and that there are other independent paradigms that consider different domains and states.

Understanding the reasons for the obligation of Hijrah shed light on the historical context in which these opinions developed. Our exploration concluded that there is nothing explicitly clear in the Qur'an or the tradition (Sunnah) of the Prophet (p) or his companions, to suggest that it is a religious obligation or even a recommendation for Muslims today, and in most parts of the modern world, to migrate to "*Dar al-Islam*" (land of Islam). Similarly, there is no evidence prohibiting Muslims from residing as minorities in a country governed by non-Muslims, or in Muslim lands that do not operate Islamic law, particularly if they are safe and free to practice their religion. The section on commonly misinterpreted texts related to Hijrah addresses the various verses of the Qur'an and hadith that some interpret to imply that Muslims living in non-Muslim lands are Islamically obliged to migrate, thus providing clarity for Muslim minorities navigating their faith in diverse lands. Also, the discussion on the laws of the land and Muslim identity highlighted the complexities of balancing religious obligations with civic responsibilities in contemporary society.

The second part of the book delved into the intricate world of Takfir, the declaration of disbelief, a concept often misused and misunderstood. We explored the technical and religious definitions of Kufr and the varying degrees of evidence and certainty required to identify it. Our discussions on "Major *Kufr*" and "Minor *Kufr*" shed light on the

nuances of this concept. Also, the distinction between *Takfir* of things (*al-Takfir al-Mutlaq*) and *Takfir* of people (*al-Takfir al-Mu'ayyan*) highlighted the importance of applying rigorous criteria when making declarations of disbelief. We also examined the conditions necessary for *Takfir*, including maturity, sanity, knowledge, intention, and willingness.

This book aimed to clarify misconceptions and provide a nuanced understanding of *Takfir*, emphasizing that it should not be used as a tool to label fellow Muslims as disbelievers. Rather, it should be employed judiciously and within the bounds of religious and legal principles. We emphasized the need to approach *Takfir* with caution and responsibility as the abuse of *Takfir* can have severe consequences and can lead to division and discord within the Muslim community. It is vital to establish clear criteria and authority for *Takfir* to prevent its misuse. Thus, only the competent authority, such as the qualified shariah court judges and the learned scholars in the field of Islamic juristic sciences - those who understand the texts, jurisprudence and also understand when, where and how to apply these in various contexts – have the authority to declare a thing or person as kufr after all conditions have been met, all hindrances are absent, and with the confirmation and establishment of proof (*Iqamah al-Hujjah*) for justifying *Takfir*.

This book is not intended to be a definitive endpoint but a stepping-stone for further exploration and understanding. It is thus an invitation to contemplate, question, and engage. As Muslims grapple with the complexities of migration and excommunication in the modern world, it is our hope that this text serves as a catalyst for meaningful dialogue, fostering unity, and strengthening the bonds of the Muslim Ummah. In today's interconnected world, where Muslims reside in various cultural and legal contexts, we hope that by this effort, Allah inspires a new era of tolerance, empathy, and unity within the global Muslim community, paving the way for a future where diversity is celebrated, and understanding prevails.

And Allah knows best.



## ABOUT THE BOOK

This book is in two parts with the first part exploring the concept of migration (*hijrah*), Muslim residence in non-Muslim lands, and the classification of lands. The discussions on traditional classifications of lands reveal the diversity of Islamic legal thought on the subject while elucidating the meanings of Hijrah as found in the Qur'an and Hadith and emphasizing its coexistence with Muslim residence in a broader Islamic legal framework. Shedding light on the multifaceted nature of these issues, this book demonstrates the importance of understanding the historical and jurisprudential context in addressing contemporary challenges faced by Muslim minorities residing in non-Muslim lands.

The second part of the book delves into the complex topics of disbelief (*Kufr*) and excommunication (*Takfir*) providing a comprehensive understanding of their definitions, conditions, and the nature of evidence required for their identification in contemporary society. It establishes the criteria for justifying *takfir* and addresses issues related to the authority to declare *takfir*. It debunks the common misconceptions and misuses of *takfir*, offering insights into contemporary issues like working for non-Muslim governments, residing in non-Muslim lands, involvement in interest-based (*riba*) financial institutions, and many more.

The book underscores the need for caution and precision when dealing with these complex issues while appreciating the richness and depth of Islamic jurisprudence. It thus encourages a thoughtful and considered approach to issues related to governance, residence, disbelief, and excommunication in the contemporary world.

## About the Author

The Da'wah Institute (DIN) is the research and public enlightenment department of the Islamic Education Trust (IET). It is an internationally recognized institute for its ground-breaking efforts in research, development of resources, and training. It has over the last 5 decades dedicated resources to providing enlightenment for the populace – Muslims and others. The DIN partners with other organizations for comprehensive capacity building and promoting peaceful co-existence.



### The Da'wah Institute (DIN),

Islamic Education Trust,

3 Ilimi Avenue, P. M. B. 229,

Minna, Niger State, Nigeria.

E-mail: [dawahinstitute@gmail.com](mailto:dawahinstitute@gmail.com)

Website: [www.dawahinstitute.org](http://www.dawahinstitute.org)

ISBN 978-1-100-22216-5



9 781100 222165