

WILAYAT AL-FAQIH (Supreme Jurist Leadership)

The guidance of Ummah is a continuous process, which is needed even during the occultation of Imam Mahdi (ATF), so who will take the responsibility of leading and guiding the Ummah during this time? The answer to this question lies in the rule of just, pious and virtuous jurists so that we may faithfully follow them and seek guidance in the affairs of life. Our divine religion Islam has rules for every walk of life. There are laws for economic, social, civil, and spiritual affairs. These laws have not been put in suspension during the occultation of Imam (ATF), nor can we be assigned to an ignorant and corrupt ruler for leadership, so naturally there is genuine need for just, pious and learned men to lead Ummah. The obedience to these jurists by the people is as obligatory as it is to the Holy Prophet (SAW) and the Infallible Imam (AS). We must also have in mind that adherence to full Islamic rules is not possible until there is an Islamic government. So the necessity of an Islamic government cannot be ruled out even during the occultation of Imam (ATF).

Now, there are a number of questions, which arise and must be answered:

Do the Muslims need some system of Government? Should an Islamic State be protected and defended or not? Should the lands be safeguarded? Should laws be promulgated in an Islamic State? Should the right of the oppressed be restored to him? Should or should not the voice of Islam reach every nook and corner of the world? Were the teachings of the Prophets and the Imams confined to their time only or were they applicable to all places and all times? If the answers to these, questions lie in affirmative. If we want to safeguard our land, resources, culture, faith from the onslaught of enemies of Islam. If the very structure and essence of Islam is to be protected, then surely we need an Islamic Government, which should be based on the lines of guidance from holy Quran and Sunna.

If the government is necessary then the ruler is also necessary, because the government cannot be run without a ruler. Therefore, since Islam needs a government for enforcing its laws, we should find out the qualifications of the ruler and know whether he has a deep understanding of the Divine commandments, is just and competent, and can appreciate and face difficulties. If it is necessary that the ruler should be a true Muslim, well informed, pious, virtuous and statesman, then that person must be a jurist, and his government will be called the government of the jurist.

Those, who do not believe in the concept of the guardianship of a jurist should study the following viewpoints and accept anyone of them:

(i) Islam is confined only to prayers, fasting, individual worship, moral values only and it does not envisage the solution of social problems, justice, political and economic problems.

(ii) Islam was only meant for the duration of the lifetime of the Holy Prophet only, and it was abandoned after him and now its important social problems are confined only in books.

(iii) Important social laws; should be enforced by the ignorant and wicked persons only.

If none of the above-quoted view-points is acceptable or appeals to reason, then we must accept the guardianship of the jurist, which means that the enforcement of Islamic laws and solution of difficult problems should be solved by eminent Muslim scholars and thus we must not think that the guardianship of the jurist is unjustifiable.

Is it not narrated from Imam Ja'far Sadiq (AS) that: "In the Holy Qur'an all the individual and collective needs of the society have been described".

Hence, are the government, ruler, administration and various fields of human activities not included among the important needs of the society?

The Holy Prophet said, **"I am grateful to Allah that I have described all the requirements of the Ummah before my death"**.

Imam Ali Reza (AS) while dealing with the problem of guardianship says, **"There is no nation which is without its leader and the social structure of a society is directly concerned with the leader and that people should manage the public treasury by keeping an account of its income and expenditure, organize the society, fight against the enemies and protect the society from internal dissensions and disunity. If there is not going to be any such leader, then the nation will break up into pieces and the Divine commandments and the teachings of the Holy Prophet will be tampered with at the command of despotic ruler"**.

You will note that the, question of leadership and the government has been stated to be the most important problem by Imam Ali Reza (AS). It is obvious that for the benefit of the poor masses management of the public treasury, equitable distribution of wealth, struggle against enemies, administration of social institutions are not such that they are only concerned with the time of the previous infallible Imams and that the Ummah should be left to itself during the occultation of our living Imam Mahdi (ATF) that is to say, there should be no need of a government or a ruler during the period of occultation.

Thus Islam acknowledges the existence of the society and the necessity of the government and its ruler, but what is important is that we should know the conditions and qualifications of the ruler, and what type of the government it should be and how it should carry on the administration.

According to common sense and keeping in view the various Islamic narrations, the responsibility of the government should be laid on the shoulders of the just jurist. We reproduce here excerpts from some narrations:

(i) The Holy Prophet considered the jurists as his caliph.

(ii) The living Imam Mahdi (ATF) with his own hand wrote in reply to a letter: "You should refer to our narrators about your problems and difficulties for they are our argument and proof on you just as we are the argument and proof of Allah".

(iii) When Imam Ja'far Sadiq (AS) was asked about the problems, which are referred to despotic administration for decision he said, "Referring to these departments is very bad because it is referring to the despot and if someone gets back his right from these despotic departments it becomes unlawful. On such occasions however, it is your duty to refer to those people who know our teachings and narrations fully well, because I declare them as the Qazi (Judge) for you. Thus you should remember that if this jurist has given you his decision and you consider it worthless it is as if you have considered the Divine command as worthless. If anyone disobeys these jurists, it is as if he has disobeyed us, and whosoever disobeys us, has in fact disobeyed Allah and this action amounts to polytheism".

(iv) The Holy Prophet (SAW) said, "Scholars are the successors of the Prophets". (Wasa'il, vol. XVIII, chapter 11)

(v) Imam Kazim (AS) said: "Jurists are the fortresses of Islam". (Kitabal Bai', Ayatullah Khumayni)

(vi) Allah (SWT) has taken an assurance from the scholars that they would not pass over the gluttony and oppression of the despots in silence and would not ignore the hunger of the poor. (Nahjul Balagha)

Naturally in a society supporting the oppressed and crushing the tyrant do need a government or its operative agency.

(vii) In the Holy Qur'an we have been taught that in a society we should stick to justice. Can justice in a society be maintained without the existence of a government or a ruler?

(viii) Imam Hussain (AS) says, "Discharging of the duties and the enforcement of laws should be in the hands of the scholars, God-fearing and pious persons. These are the people who do not make any changes in the Divine commands pertaining to lawful and unlawful things, and who are the custodians of trusts". (Tuhaful 'Uqul, p. 242)

(ix) Imam Ali (AS) says, "Scholars are the rulers of the people". (Ghururul Hikam, quoted from al-Hayat, vol. II, p. 293)

Thus it is deduced that in an Islamic society the head of the government should be a just jurist with all the prescribed qualifications. These very jurists are the authorized representatives of the infallible Imams during the period of the occultation of our living Imam Mahdi (ATF). If the authority and guardianship of the jurist is terminated, the despots would raise their heads and the Divine commandments will be altered.

Now after the above discussion we would like to ask few questions about the intentions and objectives of the persons opposing the concept of government by a just and righteous jurist:

- Do they say that for Muslims no government and no administration are necessary?
- Do they say that some system is necessary but there is no necessity of an administrator, ruler or guardian?
- Do they say that guardians and the rulers of the people should be those who have no concern with Islam?
- Do they say that the ruler should be a jurist and Muslim but it is not necessary that he should be just and pious?
- Do they consider that guardianship of the jurist is some sort of a dominating force? Is the jurist a representative of a particular group or class of people?
- Does the selfishness of the jurist not nullify his sense of justice and fair play by which his guardianship in the society will automatically cease to exist?

We would ask those who oppose the guardianship of the jurist as to whom they want to entrust the affairs of the Ummah? We ask whether the Muslims should not follow someone in their affairs or is their following restricted to worship of Allah only? Is there not the possibility of a lawful or an unlawful thing in matters of social problems such as strikes, rehabilitation, travels, disputes, agreements, pacts, appointments, dismissal etc.? Should we not follow some jurist in all those matters where there is a question of lawfulness and unlawfulness? Should the leadership of the Muslims be entrusted to an un-Islamic leader? Will it not be like handing over the administration of a medical college to a man who is not a physician himself?

Has the time not come when we should protect ourselves from false leadership, unscrupulous politicians and professional opportunists, we should come under the Islamic protection, and accept only that leadership, which is compatible with the standard laid down by Qur'anic revelations.

To run Islamic government we need the guardianship of *Wilayat al-Faqih*, Imam Khomeini in his book "Islamic Government" discusses the concept in details. According to him: "**Wilayah means**

government, administration and leadership of the country... Wilayat al-faqih is a legal issue established by the Shari'ah. Just as the Shari'ah has made each one of us the guardian of his minor children, the duty of the guardian of the entire people does not differ from the guardianship of minors except in terms of quantity... Two qualifications must obtain in the Islamic ruler: he must be an expert of Islamic law and sciences and must be just. Without these two conditions no one may assume the office of the Imam of the Islamic State... It is not a system where the head of state enjoys absolute power, playing with the people's wealth and lives... It is a constitutional government, not in the ordinary known sense but in the sense that its functionaries adhere to a set of conditions and rules explained in the Qur'an and Sunnah, which make it imperative upon them to obey the system and apply the rules and laws of Islam. Hence the Islamic State is a realm of divine law. The difference between the Islamic government and the constitutional one, be it a monarchy or republic, lies in the fact that representatives of the people or the monarch legislate, while the authority of legislation (in the Islamic State) is confined to Allah alone... None, whosoever, is allowed to legislate and none has the right to govern with laws that do not enjoy Allah's sanction."

A Brief Account of Imam Khomeini's Argument on Wilayat-e Faqih

Imam Khomeini's arguments on the issue are as follows:

- Islam is a comprehensive religion, providing laws on politics, society, economy, etc. It is admitted that the Divine commandments are applicable to all societies in all eras.

- Religious commandments are not useful unless they are applied to form a state on the basis of Divine guardianship.

- Moreover, in order to protect the Islamic system, control the borders of Muslims from any encroachment by the enemy, and prevent chaos in Islamic society, it is necessary to form an Islamic government. Therefore, the reasons underlining the role of an Imam in the society stand for the formation of a government in the absence of infallible Imams (a).

- The leadership of an Islamic government has been specifically entrusted on a particular person in the absence of Imam Mahdi (ATF). But since the government is an Islamic in nature, its ruler should possess at least the following two qualifications: command over religious laws (*fiqh*); and he should be a just person.

- The scholar must be a just individual, and must be also pure and pious. The Guardian has to be an outstanding candidate, and as a result the most learned of all other candidates in order to be elected to this post. This position makes Him the leader of all the Ummah, not only the Shia, and he has to make decisions and lead on behalf of the Ummah. Of course not all of the Ummah follow the Guardian, however that is what is intended to happen. This position was intended by Imam Khomeini (RA) to be one that can unite and lead the Ummah to glory, until the return of Imam Mahdi (ATF). In no way is this position more powerful than the leadership of Imam Mahdi (ATF), and is not intended to be so. It is simply a temporary position until His return, so that in the time of His occultation the Ummah is not divided and doesn't go astray, because the Muslims of the world always need strong leadership.

Ayatollah Hashemi's Discourse On Wilayat al-Faqih

Notice: This, important discussion was presented by Ayatollah Hashemi Shahroodi in his course of Kharaji Fiqh (post advanced jurisprudence) in the holy city of Qom in the autumn, 1997. He is the head of the institute of Islamic Jurisprudence (Fiqh) Encyclopedia and the professor of Islamic

sciences in the chief Islamic seminary in Qom and recently has been appointed as the head of Iranian Judiciary.

In the name of God and peace be upon our master & Prophet Muhammad...

.... I come to the main point which includes Wilayat al-Faqih (The authority of a leading jurist as the Leader of society) and Marjaiyyat (the authority of a leading jurist as the people's reference on Islamic practical laws), the latter "Marjaiyyat" was functioning before Islamic revolution but the second (Wilayat al-Faqih) did not function because Maraji (famous leading jurists) were not authorized and also were not on power for ruling and leadership, therefore the principle of Wilayat al-Faqih could not function and just Marjaiyyat which was a part of Wilayat al-Faqih worked.

This authorization as Wilayat al-Faqih started by Imam Komeini's great endeavour who made the governing of Fuqaha (leading Jurists) practical and possible. So nowadays we can see Wilayat al-Faqih, which is the most perfect form of Marjaiyyat is functioning. Wilayat al-Faqih not only includes referring to a leading jurist by people for the Islamic practical laws (Marjaiyyat) but also involves the leadership of the society by that leading jurist. This change in our society aims starting the realization of religion in whole society.

Now a Faqih (leading jurist) should not act just in very detailed cases such as managing the orphan's properties and the matters like this. It is really unreasonable that a Faqih engages himself with very detailed matters and does not feel any responsibility in society for important social problems. What does this belief mean saying a Faqih should just function for the detailed and practical laws such as orphan's affairs, and a Faqih is not deserved to come to power as Wilayat al-Faqih. This is my question, why is not it possible for a Faqih to have power to execute all Islamic laws in society as a ruler or authorized responsible?

The author of Javahir Al-Kalam says, "Whoever does not accept the principle of Wilayat al-Faqih will not taste the sweet taste of Fiqh". So it is clear that Wilayat al-Faqih is one of the most fundamental principles of Fiqh. The only disagreement comes back to the mentioned thought that a Faqih cannot govern. I think the root of this thought comes back to the periods and eras in which, the governing of a Faqih looked quite impossible, the thought, which was formed gradually.

However this principle "Wilayat al-Faqih" is a clarified and a settled point, which can be inferred from Quran and narrations and also by rational causes and understanding the spirit of Fiqh.

The author of, Javahir profit from his Fiqhi (Jurisprudential) talent and makes some interesting decision about important cases like Judgment. Some jurists doubts the important documents which indicate Wilayat al-Faqih such as Maqboulah or Abi-khadija narrations, even if we put this important document aside, we can infer by a rational method which says that a legislator surely would not be satisfied with not being a Judge, Shiite in a Shia society. So we can infer that there is a kind of appointment for a Shiite Judge who is a well-qualified jurist.

Here is a fundamental question, If we are not left in a simple point like appointing of a judge, in the case of appointing a deserved person as the Leader (Wali-e-Amr) this fact is very clear and this appointment and its conditions should be practiced in a society.

Another point, which I want to have a word on it, includes this fact that Wilayat al-Faqih is the continuation of Imamate (Leadership of Twelve Shia Imams). Today we see some spiteful ones who are instilling some doubts into people's mind that the legitimacy of Wilayat al-Faqih is given by people, these ideas are perfectly against the Quranic verses and famous narrations which explicitly express that Wilayat (Leadership) firstly belongs to God then his prophet next the Imams and finally the ones who are appointed by Imams so in this case there is no chance for the people to choose. In the narration, which indicated the appointing the judge it is been told that: "we choose for you a judge, not you".

In here, maybe someone rely on the theory of Al-Showra (Council) or the modern ideas such as direct election, which has come from the West. The point is, Shiism has not any background or any record about it. The best reason for not existing this point in Shia culture is that, there is not any narration of our Imams (peace be upon them) about Al-Showra or clarifying the condition of voters. This point "Al-Showra" can be applied nowadays for choosing the responsible of a state but for the case of Wilayat al-Faqih we see all the Quranic verses are against it and there is no way. Some Quran verses like "The ruling is for no one except God" or "There is no authority for them" or "Obey God and his prophet and those among you who have been authorized by the prophet to rule over you". If we care, we'll see there is no expression indicating the election of a ruler by people.

Among narrations we also see some such as "They are my deputies to you and I am God's deputy", which was told by the prophet Muhammad (SAW). As we see in the Islam history Imam Ali Ibn Abi Talib (AS) when he was the head of the Islamic State chose all of his governors himself and did not say to people which one you like to choose.

I believe the matter of election has come completely from the West and there is nothing about it in Islamic documents. In sunni culture even the concept of Al-Showra (counsel) is quite different from its today's concept because the appearance of Showra for sunni was based on political reasons. As we see in the period of Omayyads and Abbasids there is not any institution called Al-Showra and just is defined in the period of four caliphs.

There is another meaning for election and electing in the Fiqh of Shia' in which the act of electing means knowing and introducing someone by people. This concept is highly different from its western concept, nevertheless in this concept there is a special role for the people to supervise the governors.

Nowadays we see some people who want to make the principle of Wilayat al-Faqih dependent on electing by people so that people can authorize or depose whenever they want. I believe the purpose of such an idea is sweeping Wilayat al-Faqih away and they want to deviate this important principle.

Hereby, I deeply request the young and the learned scholars to study on this case carefully and try not to be influenced by the deviating matters, which are exposed here and there.

The next point, which I want to discuss about, is "A'lamiyyat" (to be the most learned among the famous jurists). In old books on Fiqh this expression has not been mentioned and recently has been used in contemporary texts especially in the case of "Ijtihad" which includes referring to the jurist by people for their practical laws. The root for forming this idea comes back more to a rational cause. It means when there is a disagreement between two Faqihs (Jurist) in their opinion for a practical law, the people can refer to the more learned one (A'lim).

Some contemporary jurists believe in following the A'lim (the most learned jurist) as a obligatory precaution, meanwhile I have to mention some points about definition of A'lamiyyat. I believe the kind and the degree for A'lamiyyat, which can be considered as the base of preference between two learned Jurists is the difference, which is really highly deep and clear between them.

If the difference of two "Learned Jurist is" little but there is a lot of common points, in here we can not say which one is A'lim (more learned) because they have attended in the same seminary, the same school of thinking and also education and the methods are the same. When this differences is really deep so that they belong to two different periods, school or method, in here we can say the one who is more qualified and has attended more famous teachers and more advanced period can be considered as A'lim (more learned).

The other point concerning the concept of A'lamiyyat is that, the theory of A'lamiyyat does not consist of being dominant just on Usul-al-Fiqh (principles of Fiqh) or Rijal (the science of studying narrators' biography and their reliability). We consider these factors effective on A'lamiyyat when they have got a practical and applied use in Fiqh whereas we know these factors have not merely so much effective use in Fiqh by themselves.

So what are the other effective factors except above and also important aspects which are functioning in Fiqhi (Jurisprudential) inference that can make a jurist as the most Learned Jurist (A'lim).

In my opinion these factors can be as follows:

First, Having a deep understanding of the spirit of Islam, which can be very important for an inference. This kind of understanding not only needs having a good knowledge of Quran, traditions and narrations (Hadith), Fiqh and principles of Fiqh but also is in a great need of being familiar to the practice and manner of the Prophet (SAW) and the Imams (AS). It means a Faqih (leading jurist) should accurately know how the prophet and the Imams who had the control of society behaved facing different problems. How did they execute the Islamic laws in the society? I think for having a good knowledge on the prophet and the Imams practice and behaviour, first we should care that what kind of priorities they considered for the good of society paying attention to the circumstances of the society.

In here I should fire to this point that one of the reasons, which made Imam Khomeini as the most learned jurist was this character, I mean understanding the priorities. The time he presented the theory of Wilayat al-Faqih really shows his genius of understanding the situations and priorities. He felt a kind of suitability for exposing this theory and finally succeeded. Before Imam Khomeini this theory "Wilayat al-Faqih" just consisted of supervision of a jurist on the matters like appointing the judge, caring orphan's affairs and the subjects like these. If Imam Khomeini had not gained such a deep understanding of the reality of Islam, the Prophet's and the Imams' practice and especially a good understanding of social situations, he could not infer the theory of Wilayat al-Fiqh through the Islamic laws and Fiqh.

Paying attention to this point shows the character of A'lamiyyat in Imam Khomeini made a practical and applied benefit for the society, not just trying fruitlessly doing some theoretical work without any effects.

There is a narration which Wilayat al-Faqih can be inferred from it which is called "Ibn Issac Correspondence". Imam Khomeini with well-justified and persuading reasons inferred the theory of Wilayat al-Faqih from it. The mentioned reasons were literal and verbal or nonverbal.

Another factor which is effective on A'lamiyyat is having a good understanding of cultural, intellectual and legal matters which is very influential on inferring the new and old matters, some new subjects like banking and banking systems, economy and Islamic economy, Judgment and etc., although such matters like prayer and cleanness are basically important but are not very effective on governing a country as a leader.

The other point which is really necessary for a Leading Faqih is being dominant on Ahlulbait's (the shia Imams) knowledge, theological matters, moral and historical points. If we suppose two Leading Faqih and the first one has limited himself just in a special Hadith book like Wasil al-Shia (one of the biggest hadith book of Shia) and the second Faqih has got a perfect knowledge of shia Imams' narrations, surely I consider the second one as a dominant person on public culture and Islamic knowledge. The mentioned skill can be very useful for understanding the Quran verses and narrations more deeply. In above example the first Faqih who lacks this knowledge is unable to infer perfectly and his reasoning are incomplete. We can conclude of what I told above, that it is not enough for a scholar to study just some years in a Islamic seminary studying only

Fiqh or Usul al-Fiqh very well and then say now I am a Learned Faqih or the most Learned (A'lim). This is just a small point of A'lamiyyat as I enumerated some factors already.

The characteristics, which I told for being A'lim are really existing in Ayatollah Khamenei. He believes that Fiqh should be gotten from the Fiqh itself and it should not be influenced by outer factors. This advantage is one of his high characters. In the case of inferring and making jurisprudential (Fiqhi) decisions, his decisions are really close to the famous decisions. He respects the great scholars' ideas very much and tries to get all of the good point of them and then expose his own opinion. This character is also one of the brilliant characters of Ayatullah Khamenei for being A'lim.

To summarize what I told about the case of A'lamiyyat, I believe, for this case we should consider a full dimensional definition as I explained in details.

Now as the final subject I pay a little attention to Marjaiyyat (the state of being as a Leading Jurist as people's reference for their practical Laws and needs). Here is a question, which expresses that A'lamiyyat is not the only condition for Marjaiyyat. If we care, we'll see Marjaiyyat is a kind of leadership of the people for their religious and practical laws needs in other words it is a kind of religious and legal legislation. For this reason there are some other conditions for Marjaiyyat such as justice, righteousness and legitimate birth. For some of these conditions we cannot find an important reason but we can just say because it is an important position in the society therefore, the owner of this responsibilities should qualify these conditions.

Ayatollah Sadr in his epistle of the practical laws called "Al-Fatawa Al-Waziha" enumerates another conditions as well as the other conditions mentioned by other jurists for the case of Marjaiyyat. These conditions are efficiency and adequacy of a jurist. I have not seen this point in other jurist's epistles and books.

I think it is a good topic to be discussed and analyzed in Islamic studies centers and seminaries. Now the point is that, the justice and righteousness, which are necessary for Marjaiyyat, how should be their degree? I believe it should have a high degree, even higher than the righteousness and justice, which were mentioned through narrations and former jurists' tales. But on the whole, I believe among the conditions enumerated for Marjaiyyat the most important is efficiency and the merit, because lots of people follow a Jurist who has the title of "Marjauyat" and they practice his decisions.

It is nice to say that this institution I mean Marjaiyyat didn't exist in Shia culture until Muhammad Ibn-Makki Al-Amili (13-14th century) known as Shahid-e-Awwal founded it, expressing that in a Shia society should exist a Leading Jurist for referring people to him for their religious needs and Islamic practical laws.

As I already mentioned the qualifications of A'lamiyyat, Muhammad Ibn-Makki as a brilliant Jurist and A'lim (the most learned) who had understood the spirit of Islam and Fiqh, founded one of the most important and fundamental principles of Fiqh which is Marjaiyyat and in our era the late Imam Khomeini as a unique jurist could expand the limits of Marjaiyyat having a perfect understanding of the spirit of Fiqh and Islam he presented the theory of "Wilayat al-Faqih" giving the persuading reasons and well justified causes and discussions so that, Marjaiyyat with all its importance is considered only as a part of Wilayat al-Faqih.

At the end, I thank God that our present leader Ayatollah Khamenei possesses the necessary qualifications for Marjaiyyat and Wilayat al-Faqih.