

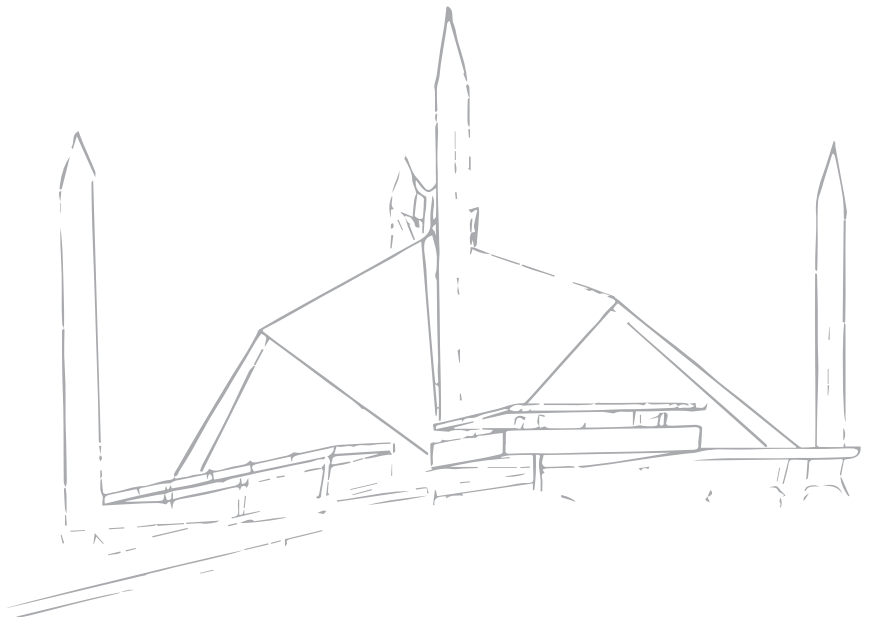


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ISLAMIC LEGAL DISCOURSE ON REBELLION

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ABSTRACT

For Muslim jurists, the right to rule the Muslim community was not just a constitutional issue but also it was deeply rooted in the worldview derived from the faith of the Muslim community. Several verses of the Qur'an and traditions of the Prophet (peace be on him) prohibit mischief and disorder and make it obligatory on Muslims to enjoin good and forbid evil. These verses are used both by government forces and rebels to justify their position. As Muslim history records several events of rebellion and civil wars in the every early stage and the Companions of the Prophet differently conducted themselves during these conflicts— such as obedience to authority, passive non-compliance with the unlawful commands of the rulers, pacific efforts to bring positive change in the system and forceful removal of the unjust ruler or replacing the unjust system – the Muslim heritage shows a rich variety of approaches towards the issue of resistance and revolt against an unjust ruler. This renders the monolithic approach of Orientalists untenable as they preached that Muslim jurists generally adopted the approach of passive obedience to usurpers.

INTRODUCTION

Islamic international law – or *Siyar* – has been proving to deal with the issue of rebellion, civil wars and internal conflicts in quite detail. Every manual of *fiqh* has a chapter on *Siyar* that contains a section on rebellion (*khuruj/baghy*).¹ Some manuals of *fiqh* have separate chapters on rebellion.² The Qur'an, the primary source of Islamic law, provides fundamental principles not only to regulate warfare in general but also to deal with rebellion and civil wars.³ The *Sunnah* of the Prophet (peace be

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¹ Thus, *Kitab al-Siyar* in *Kitab al-Asl* of Muhammad b. al-Hasan al-Shaybani contains a section (*Bab*) on *khuruj*. (Majid Khaduri, *The Islamic Law of Nations: Shaybani's Siyar* (Baltimore: John Hopkins Press, 1966), 230-54). The same is true of other manuals of the Hanafi School.

² This is the case with *al-Kitab al-Umm* of Muhammad b. Idris al-Shafi'i. This encyclopedic work of Shafi'i contains several chapters relating to *siyar*, and one of these chapters is *Kitab Qital Ahl al-Baghy wa Ahl al-Riddah*. (Muhammad b. Idris al-Shafi'i, *al-Kitab al-Umm*, ed. Ahmad Badr al-Din Hassun (Beirut: Dar Qutaybah, 2003), 5:179-242). The later Shafi'i jurists followed this practice. Thus, *al-Muhadhdhab* of Abu Ishaq Ibrahim b. 'Ali al-Shirazi also contains a separate chapter on *baghy* entitled *Kitab Qital Ahl al-Baghy*. (Abu Ishaq Ibrahim b. 'Ali al-Shirazi, *al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i* (Beirut: Dar al-Ma'rifah, 2003), 3:400-423).

³ Surat al-Hujurat gives directives for dealing with *baghy*. (49:9-10). Muslim jurists further discuss the issues relating to *baghy* while analyzing the implications of the religious duty of *al-amr bi 'l-ma'ruf wa al-nahy 'an al-munkar* (enjoining right and forbidding wrong). See, for instance, Abu Bakr al-Jassas, *Ahkam al-Qur'an* (Karachi: Qadimi Futubkhana, n. d.), 1:99-101 and 2:50-51.

on him) elaborates these rules⁴ and so do the conduct and statement of the pious Caliphs who succeeded the Prophet (peace be on him), these Caliphs especially ‘Ali (God be pleased with him), laid down the norms which were accepted by the Muslim jurists who in time developed detailed rules.⁵ Islamic history records several instances of rebellion in its early period and that is why rebellion has always been an issue of concern for the jurists. Furthermore, the jurists were very conscious about the obligations of both factions during rebellion because Islamic law deems both warring factions as Muslims.⁶ Significantly, rebellion from Muslim perspective is not only a question of law, but it also involves serious issues of faith as well as interpretation of historical events.

Hence, this paper first focuses on the Qur’anic verses about rebellion and how they are interpreted by the jurist, particularly those belonging to the Hanafi School. Then, it examines the Prophetic traditions about rebellion after which it shows how the divide on legal

⁴ See, for instance, traditions in *Kitab al-Imarah* in *al-Sahih* of Muslim b. al-Hajjaj al-Qushayri.

⁵ The illustrious Hanafi jurist Abu Bakr Muhammad b. Abi Sahl al-Sarakhsi in his analysis of the Islamic law of *baghy* asserts at many places that “‘Ali (May God be pleased with him) is the *imam* in this branch of law.” (*Al-Mabsut* (Bairut: Dar al-Kutub al-‘Ilmiyyah, 1997), 10:132.

⁶ The Qur’an calls both the warring factions as “believers” (Qur’an, 49:9) and ‘Ali (God be pleased with him) is reported to have said regarding his opponents: “These are our brothers who rebelled against us.” From this, the jurists derive this fundamental rule of the Islamic law of *baghy*. (Abu Bakr Muhammad b. Ahmad b. Abi Sahl al-Sarakhsi, *al-Mabsut* (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1997), 10: 136)

and constitutional issues developed into disagreement on issues of creed and faith resulting in creating various Muslim sects.

THE QUR'ANIC VERSES RELATING TO REBELLION

The Qur'an is the primary source of Islamic law and as such the jurists refer to several verses of the Qur'an while analyzing issues relating to rebellion. Khaled Abou El Fadl in his landmark study on the Islamic law of rebellion titled *Rebellion and Violence in Islamic Law* tried to explain "the doctrinal foundations of the laws of rebellion" by concentrating on four verses of the Qur'an, namely, the two "*baghy* verses" (Qur'an, 49:9-10)⁷ and the two "*hirabah* verses" (Qur'an, 5:33-34).⁸

Surprisingly enough, he does not relate the issue of rebellion to the verses about the religious and legal duty of enjoining right and forbidding wrong (*al-amr bi 'l ma'ruf wa al-nahy 'an al-munkar*).⁹ The fact remains that in Muslim history the discourse on rebellion, more often than not, revolved around this important duty and that is why the Hanafi jurists particularly discuss the issue of rebellion

⁷ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001), 37-47.

⁸ *Ibid.*, 47-60.

⁹ These verses include *inter alia*: Qur'an, 3:104, 110 and 114; 5:79; 9:67 and 112; and 22:41.

against unjust ruler under the doctrine of enjoining right and forbidding wrong.¹⁰ Similarly, the juristic analysis of the issues relating to rebellion always revolve around the notion of mischief or corruption in land (*fasad fi 'l-ard*) and as such it becomes all the more necessary to examine the Qur'anic notion of *fasad*.

Hence, the analysis here focuses on these four categories of the Qur'anic verses, namely, the verses about *fasad*, *hirabah*, *baghy* and *al-amr bi 'l ma'ruf wa al-nahy 'an al-munkar*.

The Duty of Enjoining Right and Forbidding Wrong

According to the Qur'anic teachings, it is the duty of every Muslim¹¹ as well as of the Muslim community and the ruler¹² to enjoin right and forbid wrong. The Qur'an mentions it as a distinctive characteristic of Muslims that they command good and forbid evil while the hypocrites (*munafiqin*) enjoin wrong and forbid right.¹³ Muslims are required,

¹⁰Jassas, *Ahkam al-Qur'an*, 1: 99-101. See also: Abu 'l-Fadl Shihab al-Din al-Sayyid Mahmud al-Alusi, *Ruh al-Ma'ani wa Tafsir al-Qur'an al-'Alim wa 'l-Sab' al-Mathani* (Beirut: Dar Ihya' al-Turath al-'Arabi, 1405), 4:22. Abou El Fadl himself acknowledges this fact. (*Rebellion and Violence*, 61). He also commented upon the traditions which emphasize the duty of enjoining right and forbidding wrong. (Ibid, 123). However, he proposes that "these verses and the reports surrounding them require a separate study." (Ibid., 61 fn. 120).

¹¹ Qur'an 41:33-36; 16:125.

¹² Ibid., 3:104; 22:41.

¹³ Ibid., 9:67.

however, to perform this obligation with wisdom (*hikmah*)¹⁴ and not to despair in face of difficulties during the performance of this obligation.¹⁵ The Qur'an also warns Muslims that if they do not fulfill his obligation and resultantly the society gets corrupted, God's wrath will not only befall those specific persons who commit the evil acts but also those who do not prohibit them from committing these acts.¹⁶ The Qur'an also mentions among the crimes of Bani Isra'il that they abandoned this important obligation due to which God's wrath befall them.¹⁷ This Divine punishment and wrath need not always be in the form of a natural disaster or catastrophe. According to the Qur'an, mutual conflict in various sections of a society in which people kill each other is also a form of this Divine punishment.¹⁸

The famous Hanafi jurist of the fourth/tenth century Abu Bakr al-Jassas al-Razi (d. 370 AH/980 CE) has gone into great details of how Abu Hanifah, the founder of the Hanafi School, relies on the verses and traditions about the duty of enjoining right and forbidding wrong for justifying effort to forcefully remove an unjust ruler.¹⁹

¹⁴ Ibid., 16:125.

¹⁵ Ibid., 31:18.

¹⁶ Ibid., 8:25.

¹⁷ Ibid., 5:79.

¹⁸ Ibid., 6:65.

¹⁹ See for details: Jassas, *Ahkam al-Qur'an*, 1:99-101.

The Qur’anic Notion of Mischief (*Fasad*)

Perhaps, the most elaborate discussion on the Qur’anic usage of the phrase *fasad fi ’l-ard* is found in *al-Jihad fi ’l-Islam* of Mawlana Abu ’l-A’la Mawdudi (d. 1979), a great Muslim reformer of the twentieth century. While explaining the details of the Islamic law of war, he divides jihad into two broad categories: defensive (*mudafi’annah*) and reformative (*muslihanah*).²⁰ He asserts that the reformative jihad is waged for the purpose of combating persecution (*fitnah*) and disorder (*fasad*).²¹ Then, he explains the situations that fall either in *fitnah* or *fasad*.²² He says that literally *fasad* denotes anything in excess and thus it signifies every unjust or evil act.²³ However, asserts Mawdudi, Qur’an generally applies this term on mischief and disorder at the community level.²⁴ In this regard, he identifies as many as eleven different instances of the Qur’anic usage of the term *fasad*.²⁵ It may,

²⁰ Abu ’l-A’la Mawdudi, *al-Jihad fi ’l-Islam* (Lahore: Idarah Tarjuman al-Quran, 1974), 53, 85.

²¹ *Ibid.*, 104-105.

²² *Ibid.*, 105-117.

²³ *Ibid.*, 109.

²⁴ *Ibid.*

²⁵ These include policy of racism and “ethnic cleansing” adopted and enforced by Pharaoh against the Israelites, imperialistic policies of the ancient Arab tribe of ‘Ad, indulgence in homosexuality and unnatural lust, corrupt trade practices, wanton destruction and putting hurdles in the way of Allah thereby making it difficult for people to accept the message of the Prophets. *Ibid.*, 5:62-64.

however, be noted here that Mawdudi does not include in this list some other instances of *fasad* mentioned in the Qur'an. Most important of these usages are:

1. The offence of *hirabah* which the Qur'an has explicitly declared as *fasad*;²⁶
2. *Fasad* as one of the causes for the death punishment;²⁷ and
3. Most importantly for our purpose, Mawdudi does not mention rebellion here.

Significantly, Mawdudi includes the law enforcing action against the criminals and the war against rebels within the scope of defensive jihad.²⁸ The net conclusion is that *fasad* is a generic term which includes every violation of the Divine law. For the sake of clarity, therefore, it is important to highlight the difference in the legal consequences of the different kinds of *fasad*.

²⁶ Ibid., 5:33-34.

²⁷ The other being the offence of intentional murder. See Qur'an 5:32. In this regard, one may also refer to a well-known tradition of the Prophet (peace be on him) which mentions three grounds for death punishment: intentional murder, unlawful sexual intercourse by a married person and apostasy.

²⁸ Mawdudi, *al-Jihad fi 'l-Islam*, 70-77. See for a detailed analysis of the views of Mawdudi and its comparison with those of Hamidullah and Wahbah al-Zuhayli: Muhammad Mushtaq Ahmad, "The Scope of Self-defence: A Comparative Study of Islamic and Modern International Law", *Islamic Studies* 49:2 (2010), 155-194.

In *Surat al-Ma'idah*, the Qur'an says that death punishment is permissible only for two offences, namely murder and *fasad*.²⁹ In the same *Surah*, however, the Qur'an mentions four different kinds of punishments for another category of *fasad* called *hirabah* by jurists.³⁰ Then, for curbing some categories of *fasad*, the Qur'an prescribes war.³¹

Now, the problem with the wider doctrine of *fasad* as expounded by Mawdudi is that it prescribes jihad, defensive or reformative, as the solution for all the various categories of *fasad*.³² As opposed to this, the jurists, particularly the Hanafis, distinguished between these various categories of *fasad* and their legal consequences. Thus, they held that some of these categories would attract the law of war;³³ many of them might be regulated by the general criminal law of the land under the doctrine of *siyasa*;³⁴ while

²⁹ Qur'an 5:32.

³⁰ Ibid., 5:33-34.

³¹ Ibid., 22:40 and 2:252.

³² Amīn Ahsan Islahī (d. 1997), a renowned exegete of the twentieth century, went to other extreme of bringing all the various forms of *fasad* under the umbrella concept of *hirabah*. (*Tadabbur-i-Qur'an* (Lahore: Faran Foundation, 2001), 2:505-508). See for a detailed criticism of this view: Muhammad Mushtaq Ahmad, "The Crime of Rape and the Hanafi Doctrine of *Siyasa*", *Pakistan Journal of Criminology*, 6:1 (2014), 161-192.

³³ Rebellion attracts this rule. That is why the jurists devote specific sections to the rules about rebellion in the chapters regarding the law of war (*siyar*).

³⁴ The famous Hanafi jurist Ibn Nujaym defines *siyasa* as "the act of the ruler on the basis of *maslahah* (protection of the objectives of the law), even if no specific text

only a few of them would be covered by the special criminal law of the land – *qisas* and *hudud*.³⁵

Hence, from the perspective of the Muslim jurists there are two doctrines of *fasad fi 'l-ard*: wider that covers all the various forms of *fasad* mentioned in the Qur'an and the *Sunnah* or covered by the general principles of law; and narrower doctrine of *fasad* which distinguishes between the various categories of *fasad* and their legal consequences. The jurists emphasize that the different kinds of *fasad* should be treated differently.

[of the Qur'an or the *Sunnah*] can be cited as the source of that act.” (Zayn al-'Abidin b. Ibrahim Ibn Nujaym, *al-Bahr al-Ra'iq Sharh Kanz al-Daqa'iq* (Beirut: Dar al-Ma'rifah, n. d.), 5:11). The jurists validated various legislative and administrative measures of the ruler on the basis of this doctrine. For instance, the *faramin* of the Mughal Emperors or the *qawanin* of the Ottoman Sultans were covered by the doctrine of *siyasa*. This authority of the ruler, however, is not absolute. The jurists assert that if the ruler uses this authority within the constraints of the general principles of Islamic law, it is *siyasa 'adilah* and the directives issued by the ruler under this authority are binding on the subjects. However, if the ruler transgresses these constraints, it amounts to *siyasa 'alimah* and such directives of the ruler are invalid. (Muhammad Amin b. 'Abidin al-Shami, *Radd al-Muhtar 'ala 'l-Durr al-Mukhtar Sharh Tanwir al-Absar*, ed. 'Adil Ahmad 'Abd al-Mawjud and 'Ali Muhammad Mu'awwad (Riyadh: Dar 'Alam al-Kutub, 2003), 6:20). See for details of the doctrine of *siyasa* the monumental work of the illustrious Imam Ahmad b. 'Abd al-Halim Ibn Taymiyyah: *al-Siyasa al-Shar'iyyah fi Islah al-Ra'i wa al-Ra'iyyah* (Jeddah: Majma' al-Fiqh al-Islami, n.d.).

³⁵ See for a detailed analysis of these various categories of crimes and their legal consequences: Imran Ahsan Khan Nyazee, *General Principles of Criminal Law* (Islamabad: Advanced Legal Studies Institute, 1998).

***Hirabah* (Robbery) as A Form of Mischief**

In *Surat al-Ma'idah*, much of which was revealed in 6 AH/627 CE,³⁶ the Qur'an mentions a particular form of mischief and prescribes four different kinds of punishments for it:

The only reward of those who make war upon Allah and His Messenger and strive to make mischief in the land is that they will be killed or crucified or have their hands and feet on alternate sides cut off or will be expelled out of the land. This is their disgrace in the world; and in the hereafter theirs will be an awful doom.³⁷

Abou El Fadl has gone into great details of how this offence is related to rebellion.³⁸ However, for the jurists, particularly those belonging to the Hanafi School, this offence was confined highway robbery and they distinguished rebels from robbers and bandits.³⁹ This distinction

³⁶ Abu 'l-Hasan 'Ali b. Ahmad al-Wahidi, *Asbab Nuzul al-Qur'an* (Bairut: Dar al-Kutub al-'Ilmiyyah, 1411/1991), 191; Jalal al-Din 'Abd al-Rahman b. Abi Bakr al-Suyuti, *Lubab al-Nuqul fi Asbab al-Nuzul* (Bairut: Mu'assasat al-Kutub al-Thaqafiyah, 1422/2002), 97.

³⁷ Qur'an, 5:33-34. The translation of all the verses in this paper is from the abridged version of *Tafhim al-Qur'an* of Sayyid Abu 'l A'la Mawdudi translated and edited by Zafar Ishaq Ansari. *Towards Understanding the Qur'an* (Leicester: The Islamic Foundation, 2006). Slight changes have been made on the basis of my understanding of the original.

³⁸ Abou El Fadl, *Rebellion and Violence*, 47-60.

³⁹ 'Ala' al-Din Abu Bakr b. Mas'ud al-Kasani, *Bada'i' Sana'i' fi Tartib al-Shara'i'*, ed. 'Adil 'Abd al-Mawjud and 'Ali al-Mu'awwad, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), 9:360.

had significant political implications. For instance, this necessitated that rebels must not be treated like ordinary criminals and gangsters.⁴⁰ It further necessitated declaration of war and acknowledging a state of war between the rebel group and the government forces.⁴¹

Furthermore, although the verse uses the letter *aw* (or) between the four different kinds of punishments, the jurists held that it did not give discretion and option to the ruler or the judge to choose between the various punishments; on the contrary, they held that these four different punishments were prescribed for four different grades of highway robbery.⁴² Thus, they held that death punishment could only be given to robbers if they committed murder during robbery.⁴³ They also declared that the offence of *hirabah* was a *hadd* offence which meant that it could be established only through a very strict standard of

⁴⁰ See for details about the distinction between the legal status of bandits and rebels and the legal consequences thereof: Sadia Tabassum, "Combatants not Bandits: The Status of Rebels in Islamic Law", *International Review of the Red Cross*, 93:881 (2011), 121-139.

⁴¹ This is what governments generally do not want to acknowledge. See for details: ICRC, "Improving Compliance with International Humanitarian Law: Background Paper for Informal High-level Expert Meeting on Current Challenges to International Humanitarian Law", available at: www.icrc.org/eng/assets/files/other/improving_compliance_with_international_humanitarian_law.pdf (Last accessed: 21-11-2014).

⁴² Kasani, *Bada'i Sana'i*, 9:366-71

⁴³ *Ibid.*, 369.

evidence.⁴⁴ Thus, by standardizing the parameters of this offence, the jurists blocked the way of arbitrary application of these strict punishments to political opponents.

Of late, some of the scholars have again been trying to widen the scope of the offence of *hirabah* by bringing within its fold all the various forms of *fasad*.⁴⁵ If accepted this change will not only demolish the whole edifice of Islamic criminal law as developed by centuries of juristic scholarship but also it will give devastating powers to the rulers for curbing political opposition and silencing criticism.

Rebellion between Mischief and Duty

The verses of *Surat al-Hujurat* directly address the issue of rebellion and civil war

If two parties of the believers happen to fight, make peace between them. But then, if one of them transgresses against the other, fight the one that transgresses until it reverts to Allah's command. And if it does revert, make peace between them with justice, and be equitable for Allah loves the equitable. Surely, the believers are none but brothers unto

⁴⁴ Ibid., 366. See for details about the characteristic features of the *hudud* punishment: Ibid., 9:248-50.

⁴⁵ Islahi, *Tadabbur-e-Qur'an*, 3:505-508.

one another, so set things right between your brothers, and have fear of Allah that you may be shown mercy.⁴⁶

These verses make it clear that in case of mutual fighting between two Muslim groups, other Muslims should not remain indifferent. Rather, the verses impose a positive duty on other Muslims to try to resolve the conflict amicably.⁴⁷ Furthermore, if it is proved that one of the groups is committing aggression against the other, Muslims must support the group which is on the right side against the aggressor.⁴⁸

It may be mentioned here that some of the scholars, particularly those belonging to the Hashwiyyah⁴⁹ and the Ahl al-

⁴⁶Qur'an, 49:9-10.

⁴⁷Jassas, *Ahkam al-Qur'an*, 3: 595. In his commentary on Qur'an 49:9, the famous Andalusian commentator of the Qur'an Abu 'Abdillah Muhammad b. Ahmad al-Qurtubi (d. 671 AH/1273 CE) says: "This verse establishes the obligation of fighting against those who are definitely known to have committed rebellion against a Muslim ruler or against any Muslim on unjust ground. It also proves that the opinion those people is wrong who disallow fighting against Muslims on the basis of tradition of the Prophet which equates fighting against Muslims with *kufr* (infidelity). Had fighting against such Muslims been *kufr*, it would imply that Allah commanded us to commit *kufr*. Allah is exalted!" (*Al-Jami' li Ahkam al-Qur'an* (Beirut: Mu'assasat al-Risalah, 1427), 16:316). Abu Bakr Ibn. al-'Arabi, the famous Maliki jurist, says: "This verse is the basic source for the validity of fighting against those Muslims who take up arms on the basis of a *ta'wil*. The Companions relied on this verse and the leading figures of Muslims referred to it [while fighting against such people]." (*Ahkam al-Qur'an* (Beirut: Dar al-Ma'rifah, n.d.), 4:1717).

⁴⁸ Qurtubi, *al-Jami' li Ahkam al-Qur'an*, 16:316-17.

⁴⁹ Hashwiyyah is another name of the fatalists (Jabriyyah). (Muhammad b. 'Abd al-Karim al-Shahristani, *al-Milal wa 'l-Nihal* (Beirut: Dar Maktabat al-Mutanabbi, 1992), 1:85).

Hadith⁵⁰, were of the opinion that in case of mutual conflict between two Muslim groups, other Muslims should remain impartial and should not participate in war.⁵¹ They asserted that the word ‘*qatilu*’ (fight) in these verses did not refer to war, but to the use of a little force, such as beating with sticks and shoes.⁵² They pointed out that these verses were revealed when two Muslim groups used sticks and shoes against each other.⁵³ Similarly, they refer to the fundamental rule of Islamic law regarding the prohibition of the willful murder of Muslims and of waging war against them.⁵⁴ They also refer to many traditions of the Prophet (peace be on him) which prohibited support to

⁵⁰ Literally, the “people of Hadith”. They were scholars who stuck to tradition and opposed rationalism in matters of faith as well as law. Thus, they appeared as a group distinct both from the Mu‘tazilah, who subdued faith to reason, and the Ahl al-Ra’y (literally, the “people of reason”), who used to interpret the meaning of individual texts of the Qur’an and the *Sunnah* in the light of the general principles of law. See for a scholarly analysis of the difference in the approaches of the Ahl al-Hadith and the Ahl al-Ra’y: Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad* (Islamabad: Islamic Research Institute, 1994), 143-73.

⁵¹ Jassas, *Ahkam al-Qur’an*, 3:595. See also: Qurtubi, *al-Jami’ li Ahkam al-Qur’an*, 16:316-17; Alusi, *Ruh al-Ma’ani*, 26:172-73.

⁵² Jassas, *Ahkam al-Qur’an*, 3:595. See also: Abu Ja‘far Muhammad b. Jarir al-Tabari, *Jami’ al-Bayan* (Cairo: Matba‘at Mustafa al-Babi, 1954), 26:80.

⁵³ Abu ‘Abdillah Muhammad b. Isma‘il al-Bukhari, *al-Jami’ al-Sahih*, Kitab al-Sulh, Bab Ma Ja’ fi ‘l Islah bayn al-Nas, Hadith No. 2494; Suyuti, *Lubab al-Nuqul*, 197-198. See also: Abu ‘Abd al-Rahman Muqbil b. Hadi al-Wadi‘i, *al-Sahih al-Musnad min Asbab al-Nuzul* (Cairo: Maktabah Ibn Taymiyyah, 1987), 198.

⁵⁴ Qur’an, 4:92-93; Bukhari, Kitab al-Fitan, Bab Qawl al-Nabi: Man Hamal ‘alayna al-Silah fa-lays minna, Hadith No. 6543.

any group during such a conflict.⁵⁵ They also argued that during the conflicts in the early Muslim history, many of the prominent Companions of the Prophet (peace be on him) did not support any of the parties to the conflicts.⁵⁶

In his analysis of this debate, Jassas elaborated some very important legal principles and explained the true purport of these verses. He says:

The verses *prima facie* require that the group, which is committing transgression, must be fought until it agrees to resolve the conflict in accordance with the Divine law. This rule is general and includes every kind of fight. Hence, if that group [which has committed aggression] can be controlled by the use of minor force, such as beating with sticks and shoes, the use of excessive force will not be permissible. However, if it cannot be controlled by lesser force than sword, the verses *prima facie* require that they should be fought with sword. No one has the authority to limit the implications of the verses to beating with sticks and shoes when the aggressor group continues to commit

⁵⁵ Bukhari, Kitab al-Manaqib, Bab ‘Alamat al-Nubuwwah fi ’l-Islam. Hadith No. 3334; Muslim b. al-Hajjaj al-Qushayri, *al-Sahih*, Kitab al-Fitan wa Ashrat al-Sa’ah, Bab Nuzul al-Fitan ka Mawaqi’ al-Qatar, Hadith No. 5138.

⁵⁶Jassas, *Ahkam al-Qur’an*, 3:595-596; Tabari, *Jami’ al-Bayan*, 26:80

transgression. This is one of the necessary corollaries of the duty of enjoining right and forbidding wrong.⁵⁷

In other words, as one of the implications of the obligation of enjoining right and forbidding wrong is to fight an unjust ruler. Another implication of this obligation is wage war against those who rebel against a just ruler.

As far as the reports of *sabab al-nuzul* (occasion of revelation)⁵⁸ are concerned, explains Jassas, they cannot restrict the implications of the verses to a specific occasion.⁵⁹ Further, asserts Jassas, even on that occasion lethal weapons would have been used,

⁵⁷ Ibid. See also: Alusi, *Ruh al-Ma'ani*, 26:172-73; Qurtubi, *al-Jami' li Ahkam al-Qur'an*, 16:316-17.

⁵⁸ The Qur'an was revealed to the Prophet (peace be on him) gradually in about twenty-three years. The knowledge of the historical context in which particular verses of the Qur'an were revealed to the Prophet (peace be on him) is called the Science of *Asbab al-Nuzul* (literally, causes of revelation). For ascertaining this historical context, the scholars not only look at the specific traditions of this particular genus, but also to the *Sirah* literature and, more importantly, to the internal evidence of the Qur'anic verses and chapters. Sometimes, a problem arises as to how to reconcile between the internal evidence of the verses and the external reports of *asbab al-nuzul*. For instance, the internal evidence may place the verses in the Makkah period and the *asbab al-nuzul* traditions may place these in the Madinan period, and vice versa. Similarly, more traditions than one are sometimes reported for one set of verses. Each of these cannot be a "cause" of revelation. Scholars of the Qur'anic Sciences have, therefore, always asserted that the *asbab al-nuzul* traditions should not be interpreted literally. Rather, some of these may well explain the "application" of the verses to concrete historical facts instead of explaining the "actual causes" of revelation. Furthermore, they also assert that the general rules mentioned in the verses cannot be restricted to the specific situations mentioned in the tradition, except where the internal evidence or other stronger arguments specify the rule to a particular space-time context. See for details: Badr al-Din al-Zarkashi, *al-Burhan fi 'Ulum al-Qur'an* (Beirut: Dar al-Fikr, 1988), 1:45-60.

⁵⁹ Jassas, *Ahkam al-Qur'an*, 3: 596.

had the fighters also used such weapons. However, as they only used sticks and shoes, only sticks and shoes were used against them in response.⁶⁰ Regarding the conduct of the Companions, Jassas says:

‘Ali (God be pleased with him) accompanied by some prominent Companions, including those who participated in the Battle of Badr⁶¹, fought rebels with sword. And in his wars, ‘Ali was on the right side. Further, none opposed him on this issue, except those who rebelled against him and those who followed these rebels.⁶²

For those Companions who did not participate in the wars against rebels, Jassas points out that they did not consider these wars as unlawful. “Perhaps, they did not fight because they thought that the ruler and his forces could overwhelm the rebels and that they did not need their support.”⁶³

⁶⁰ Ibid. See also: Tabari, *Jami' al-Bayan*, 26:80.

⁶¹ Among the Companions of the Prophet (peace be on him) those who participated in the famous Battle of Badr have a distinct and prominent position. They are deemed the torchbearers of justice, righteousness and truth.

⁶² Jassas, *Ahkam al-Qur'an*, 3:595-96.

⁶³ Ibid., 3:597. Sarakhsi mentions another possibility as well: “It is said that Ibn ‘Umar and other companions (God be pleased with them) remained in their homes [and did not participate in war against rebels]. Perhaps, they considered themselves exempted from the obligation because of illness or some other lawful excuse, and the obligation of participation in war is imposed only on those who have the capability of participation.” (*Al-Mabsut*, 10:136)

The Prophetic traditions which prohibit taking sides in civil wars of Muslims, will be discussed below along with other traditions, which make it obligatory on Muslims to fight against the aggressors.

THE PROPHETIC TRADITIONS ON REBELLION

The *Sunnah* of the Prophet (peace be on him) further elaborates these Qur'anic commandments. In this Section, first the traditions about the 'grades' of the duty of enjoining right and forbidding wrong will be examined. After this, the traditions dealing with obedience to unjust rulers will be analyzed.

Three Grades of the Struggle to Change the Evil

An important question regarding the duty of enjoining right and forbidding wrong is whether every Muslim has the authority to use force while performing this obligation. A famous tradition of the Prophet (peace be on him) mentions three 'grades' of this obligation:

If someone among you [Muslims] observes an evil, he should change it by force. If he does not have the capability for this, he should change it by raising voice against it. If he

cannot do even that, he should have the determination in heart [to change it], and this is the least category of faith.⁶⁴

Here, the first grade is to ‘change’⁶⁵ the evil forcefully; the second grade is to change it by raising voice against it; and the third grade is that even if one remains silent, he should have the determination to change the evil. The third grade of the duty is, no doubt, the least demand of the faith of every Muslim. As far as the second grade is concerned, the *fuqaha*’ mention that there is a *rukhsah* (exemption) for a Muslim to remain silent if he is sure that the person committing evil will cause him harm.⁶⁶ However, the text of this as well as other traditions proves that *‘azimah* (original rule) in such a situation is to raise voice against the evil and face the consequences with patience. Thus, the *fuqaha*’ assert that if this person is murdered, he will get the reward of *shahadah* (martyrdom).⁶⁷

The first grade of the duty of changing evil, mentioned in this tradition, is to change it by the use of force. The most important

⁶⁴ Muslim, Kitab al-Iman, Bab Bayan Kawn al-Nahy ‘an al-Munkar min Iman. Hadith No. 70

⁶⁵ The word used in the tradition is *falyughayyirhu*, which not only means that Muslims should ‘forbid’ evil but also that they should change it and replace it with good.

⁶⁶ Abu Bakr Muhammad b. Abi Sahl al-Sarakhsi, *Sharh Kitab al-Siyar al-Kabir*, ed. Isma‘il Hasan al-Shafi‘i (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1997), 1:116.

⁶⁷ Ibid.

principle in this regard is that a person can use force for this purpose only against those people over whom he has the *wilayah* (legal authority).⁶⁸ Thus, if a person regards something as evil, he can call it evil and can raise voice to mold public opinion against it. However, he does not have the authority to stop it forcefully.⁶⁹ He can use force only against those over whom he has the legal authority and in that case, too, the use of force has to remain within the legal limits.⁷⁰ For stop others forcefully, he has to ask those having the *wilayah* over them.⁷¹

⁶⁸ See for a detailed analysis of the doctrine of *wilayah*: Abu 'l-'Abbas Ahmad b. Idris al-Qarafi, *al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam wa Tasarrufat al-Qadi wa al-Imam* (Beirut: Dar al-Basha'ir al-Islamiyyah, 1416 AH), 121.

⁶⁹ Thus, if a Muslim causes damage to the musical instrument of another Muslim, he is under an obligation to pay damages (*daman*). (Abu Bakr Burhan al-Din al-Marghinani, *al-Hidayah Sharh Bidayat al-Mubtadi* (Beirut: Dar al-Fikr, n.d.), 3:307) However, he shall pay damages only for the value of the raw material not of the manufactured instrument because the use of musical instrument is prohibited under Islamic law. (Ibid.)

⁷⁰ The illustrious jurist-cum-philosopher Abu Hamid Muhammad b. Muhammad al-Ghazali (d. 505 AH/ 1111 CE) in his monumental treatise on Islamic Jurisprudence *al-Mustasfa* says: "As far as the prerogative of enforcing commands is concerned, it is available only to the One Who has the creation (*al-khalq*) and the authority (*al-amr*). This is because only the commands of the owner (*al-malik*) are enforced on the owned (*al-mamluk*). As there is no owner but the Creator, only He has the authority to issue binding commands. When the Prophet (peace be on him), the ruler, the master [of a slave], the father and the husband issue a command and make an act obligatory, that act does not become obligatory by virtue of their command, but because Allah has made their obedience obligatory." (*Al-Mustasfa min 'Ilm al-Usul* (al-Madinah al-Munawwarah: Islamic University, n.d.), 1:275-76)

⁷¹ "To use force for enjoining right is the authority of the rulers because they have the capacity to enforce the decisions. Others can enjoin right only by raising their voice." Marghinani, *al-Hidayah*, 3:307.

Yusuf al-Qaradawi (b. 1926), a renowned contemporary scholar of Islamic law, in his recent study of the Islamic law of war titled *Fiqh al-Jihad: Dirasah Muqarinah li-Ahkamih wa Falsafatih fi Daw' al-Qur'an wa 'l-Sunnah* enumerates four conditions for using force for the purpose of changing the evil with force:

1. That there is a consensus on the act being evil; hence, if scholars disagree on the legality of an act, it cannot be changed with force;
2. That the evil act is committed openly; as such it is not permissible to enter into private premises for the purpose of changing the evil with force;
3. That force must be used only at the time of the commission of the evil act, not before or after the commission of the act; and
4. That the use of force does not result in causing greater evil.⁷²

Qaradawi gives details of each of these conditions citing the Qur'anic verses, the Prophetic traditions and the juristic opinions.⁷³

⁷² Qaradawi, *Fiqh al-Jihad: Dirasah Muqarinah li-Ahkamih wa Falsafatih fi Daw' al-Qur'an wa 'l-Sunnah* (Doha: Qatar Foundation, 2008), 2:1040-41.

⁷³ *Ibid.*, 1041-53.

This is a very important contribution of Qaradawi in understanding the true purport of the doctrine of enjoining right and forbidding wrong. However, it may be pointed out here that he does not mention the condition of *wilayah* in this regard and asserts that use of force for this purpose by individuals in their private capacity is not allowed by the contemporary laws. The fact is that this condition is prescribed by Islamic law also and the jurists discuss the implications of such acts of private individuals under the doctrine of *iftiyat 'ala haqq al-imam* (encroaching on the right of the ruler).⁷⁴

Thus, for instance, the Hanafi jurists hold that if an enemy combatant deserved death punishment after he was captured and he was killed by a Muslim soldier, the act will not attract the law of *qisas*;⁷⁵ however, no one shall execute the prisoner unless he is specifically authorized by the ruler for this purpose;⁷⁶ if an unauthorized person executes the prisoner, the ruler may award him reasonable punishment for committing *iftiyat*.⁷⁷

When a private person for the purpose of changing the evil takes the law into his own hands, other legal consequences may also

⁷⁴ See for details the entry on "*iftiyat*" in *al-Mawsu'ah al-Fiqhiyyah* (Kuwait: Wizarat al-Awqaf wa al-Shu'un al-Islamiyyah, 1986), 5:280-81.

⁷⁵ Sarakhsi, *Sharh Kitab al-Siyar al-Kabir*, 3:124-126.

⁷⁶ *Ibid.*, 2:197.

⁷⁷ *Ibid.*, 3:126.

follow. For instance, if a Muslim causes damage to the musical instrument of another Muslim, he is under an obligation to pay damages (*daman*) even if the use of musical instrument is prohibited for a Muslim.⁷⁸

Obedience to an Unjust Ruler: Two Modes of Behavior

On the issue of obedience to an unjust ruler, there are two sets of traditions, which stress two apparently conflicting modes of behavior.⁷⁹ The first set of traditions requires of Muslims to stay with the *jama'ah* (Muslim community) and forbids them from dividing it.⁸⁰ Some traditions condemn separation from the *jama'ah* in most severe terms.⁸¹ In this category, we may also place those traditions in which Muslims are prohibited from taking up arms against other Muslims,⁸² or which prohibit Muslims from taking the oath of allegiance to a new claimant of the governmental authority in the presence of an already

⁷⁸ Marghinani, *al-Hidayah*, 3: 307. However, he shall pay damages only for the value of the raw material not of the manufactured instrument. (Ibid.)

⁷⁹ Abou El Fadl calls these traditions of "obedience and counter-obedience". (*Rebellion and Violence*, 118).

⁸⁰ Bukhari, Kitab al-Fitan, Bab Kayf al-Amr Idha lam Takun Jama'ah, Hadith No. 6557

⁸¹ Ibid., Bab Qawl al-Nabi Sallallah 'alayh wa Sallam: Satarawn ba'di Umuran Tunkirunaha, Hadith No. 6531.

⁸² Musnad Ahmad, Baqi Musnad al-Mukthirin, Baqi al-Musnad al-Sabiq, Hadith No. 8009.

existing ruler.⁸³ In some traditions, Muslims are prohibited from revolt against their ruler even if he is unjust.⁸⁴ The traditions, which prohibit Muslims from supporting any group in civil war, also fall in this category.⁸⁵

In the second set of traditions, Muslims are prohibited from obeying those commands of the ruler which are explicitly against the norms of the Shari‘ah.⁸⁶ Similarly, Muslims are encouraged to raise their voice against the unlawful commands of the ruler and it has been termed as “the best form of jihad” (*afdal al-jihad*).⁸⁷ This rule, as elaborated earlier, is linked with the wider concept of enjoining right and forbidding wrong. Hence, Muslims are under an obligation to support the just ruler against the unjust rebels. The true purport of the tradition which prohibits Muslims from supporting any warring faction is explained by Jassas in these words:

⁸³ Muslim, Kitab al-Imarah, Bab Idha Buyi‘ li-Khalifatayn, Hadith No. 3444.

⁸⁴ Ibid., Bab Khiyar al-A‘immah wa Shiraririm, Hadith No. 3447.

⁸⁵ Bukhari, Kitab al-Manaqib, Bab ‘Alamat al-Nubuwwah fi ‘l-Islam. Hadith No. 3334; Muslim, Kitab al-Fitan wa Ashrat al-Sa‘ah, Bab Nuzul al-Fitan ka Mawaqi‘ al-Qatar, Hadith No. 5138.

⁸⁶ Muslim, Kitab al-Imarah, Bab Wujub Ta‘at al-Umara’ fi Ghayr Ma‘siyah wa Tahrimiha fi Ma‘siyah, Hadith No. 3423.

⁸⁷ Abu Dawud Sulayman b. al-Ash‘ath al-Sijistani, *al-Sunan*, Kitab al-Malahim, Bab al-Amr wa al-Nahy, Hadith No. 3781.

In these traditions *fitnah* means a war in which various groups fight for worldly gains or on ethnic and parochial grounds and none of them fights under the command of a just ruler whose obedience is obligatory. As opposed to this, when it is established that one of the groups is a transgressor (*baghiyah*) and the other is on the right side (*'adilah*) under the command of the ruler, it is obligatory on every Muslim to support the ruler and his forces against the transgressors and to deem it an act that will surely bring reward for him.⁸⁸

Sarakhsi begins his commentary on *Bab al-Khawarij* in these words: “Know that when *fitnah* occurs between Muslims, it is obligatory on every Muslim to remain aloof (*ya'tazil*) from the *fitnah* and to stay at home.”⁸⁹ After this, however, he explains that Muslims must support the ruler if it is established that those who took up arms against him are on the wrong side.

When Muslims are united under the command of one ruler whom they trust, and there is peace in the society, then if a group of Muslims rebel against the ruler, it is obligatory on

⁸⁸Jassas, *Ahkam al-Qur'an*, 3:597.

⁸⁹Sarakhsi, *al-Mabsut*, 10:132.

everyone capable of fighting to fight under the command of the Muslim ruler against these rebels.⁹⁰

Hence, a holistic view of these various sets of traditions leads to the conclusion that's Islamic law requires of Muslims to raise their voice against the unjust commands of the ruler and to disobey such commands, but at the same time it stresses upon the unity of Muslims and prohibits mischief. As such, forceful removal of an unjust ruler cannot be permitted unless the expected mischief in the attempt to do so is lesser than the mischief coming from the unjust ruler.⁹¹

CREED, HISTORY AND LAW

Abou El Fadl rightly points out:

In the field of rebellion, Muslim jurists also responded to theological demands, e.g. how does one declare rebellion to be a crime without suggesting that some of the most esteemed Companions of the Prophet were criminal?

⁹⁰ Ibid.

⁹¹ Muhammad Mushtaq Ahmad, *Jihad, Muzahamat aur Baghawat Islami Shari'at aur Bayn al-Aqwami Qanun ki Roshni mayn* [*Jihad, Resistance and Rebellion in the Light of Islamic Law and International Law*], (Gujranwala: al-Sharia Academy, 2008), 21.

Significantly, however, they also worked within an inherited legal culture that imposed its own logic and language.⁹²

This political divide among Muslims was expressed in religious language⁹³ and, thus, with the passage of time these various political groups converted into religious sects each having its own set of beliefs as well as its own concept of the legitimate political authority. In time, three major groups were to emerge among Muslims; *the Ahl al-Sunnah wa al-Jama'ah*, the Shi'ah and the Khawarij.

The Right to Rule the Muslim Community

The Shi'ah believe that Muslim community cannot live in accordance with the norms of Islam unless it is led by a rightful successor of the Prophet (peace be on him). In their opinion, it was so important an issue that it could not be left for people to decide. Hence, they assert that succession to the Prophet (peace be on him) was to be declared by him through an explicit text (*nass*).⁹⁴ While various Shi'ah sub-groups

⁹² Abou El Fadl, *Rebellion and Violence*, 21.

⁹³ Muhammad Abu Zahrah, *Ta'rikh al-Madhahib al-Islamiyyah fi 'l-Siyasah wa 'l-'Aqa'id wa Ta'rikh al-Madhahib al-Fiqhiyyah* (Cairo: Dar al-Fikr al-'Arabi, n.d.), 21-24.

⁹⁴ This is known as the doctrine of *Imamah*. (Shahristani, *al-Milal wa 'l-Nihal*, 1:146) Among the Shi'ah, the Zaydiyyah hold that the Prophet (peace be on him) did not name his successor, but mentioned his characteristics. (Ibid., 1:153). The Shi'ah

disagree on the question of the legitimate authority, they all agree on one point: that the successor of the Prophet (peace be on him) is to be from among the descendants of ‘Ali (God be pleased with him). The Khawarij, on the other hand, were anarchists in essence⁹⁵ and some of them took the extreme position of asserting that political setup (*imamah*) was not at all necessary.⁹⁶

The Ahl al-Sunnah, or the Sunnis, were of the opinion a political setup is necessary for enforcing various provisions of Islamic law.⁹⁷ For this reason, they put several conditions for the eligibility of a person to become the ruler of the community. However, unlike the Shi‘ah, they did not deem it necessary that the Prophet explicitly declared the name of his political successor. Rather they were of the opinion that political leadership was dependent upon the support of the

Imamiyyah, on the other hand, believe that the Prophet mentioned his successor by name and the same is done by each Imam in his turn. (Ibid., 1:162)

⁹⁵ Shihab al-Din Ahmad Ibn Hajr al-Haytami (d. 973 AH/1566 CE), the famous sunni jurist of the tenth/sixteenth century, summarizes the arguments of the Khawarij in these words: “Establishing governmental setup brings harm as it makes the commands of the ruler binding on the subjects even though both are equal and as such it results in mischief (*fitnah*). Moreover, the ruler is not infallible (*ma’sum*) from infidelity and sins. If he is not removed, he inflicts harm on people and overthrowing him is not possible without bloodshed.” Ibn Hajr al-Haytami, *al-Sawa’iq al-Muhriqah ‘ala Ahl al-Rafd wa ‘l-Dalal wa ‘l-Zandaqah* (Cairo: al-Matba‘ah al-Maymaniyyah, 1312 AH.), 1:26).

⁹⁶ The Najdat, the followers of Najdah b. ‘Uwaymir, were of the opinion that establishment of political setup was not a requirement of the shari‘ah but a dictate of the practical needs. (Abu Zahrah, *Al-Madhahib al-Islamiyyah*, 122).

⁹⁷ Haytami, *Al-Sawa’iq al-Muhriqah*, 1:25.

Muslim community. In other words, only that person was entitled to caliphate who would command the confidence of the community.⁹⁸

Divergent Views on the Legal Status of the Usurper

Sunnis, Shi‘ah and Khawarij also disagree on the legal status of a ruler who does not fulfill the required conditions or who later on becomes disqualified due to violation of fundamental conditions.

The Khawarij took the position that a Muslim who commits a major sin (*kabirah*) becomes infidel.⁹⁹ Thus, in their opinion, a usurper (*ghasib*) is not a legitimate ruler and he must be removed from his office by the use of force, if necessary.¹⁰⁰ Similarly, a legitimate ruler who later becomes unjust (*zalim*) or sinner (*fasiq*), is not qualified and

⁹⁸ Notwithstanding this, the Ahl al-Sunnah generally asserted that the caliph should be from the tribe of the Quraysh. (Ibid., 132-135) In fact, this has been explicitly mentioned in various traditions of the Prophet (peace be on him). (Bukhari, Kitab al-Ahkam, Bab al-Umara’ min Quraysh, Hadith no. 6606; Ahmad b. Hanbal al-Shaybani, *al-Musnad*, Baqi Musnad al-Mukthirin, Musnad Anas b. Malik, Hadith No. 16249). In the tenth/sixteenth century when the Ottoman Turks established their caliphate, many Sunni jurists felt compelled to re-examine their position. See, for instance, Abu ‘l-Kalam Azad, *Mas’ala-e-Khilafat* (Lahore: Maktaba-i-Jamal, 2006). This issue bothered many Muslims thinkers in the fourteenth/twentieth century. See, for instance, Sayyid Abu ‘l-A‘la Mawdudi, *Tafhimat* (Lahore: Islamic Publications, 1978), 129-152; Amin Ahsan Islahi, *Islami Riyasat* (Lahore: *Dar al-Tadhkir*, 2002).

⁹⁹ Ibn Hazm, *Al-Milal wa ‘l-Nihal*, 1:113

¹⁰⁰ Ibid.

must be removed.¹⁰¹ Rebellion (*khuruji*) against unjust rulers and usurpers is, thus, obligatory according to the Khawarij.¹⁰²

The Shi‘ah also had strong reservations regarding the legitimacy of the usurpers and unjust rulers.¹⁰³ However, they disagreed on the legitimacy or obligation of *khuruji* against such rulers. While some of the leading figures among the various Shi‘ah groups revolted against the Umayyads and the Abbasids, such as Muhammad b. al-Hanafiyyah, Zayd b. ‘Ali and Muhammad Dhu ‘l-Nafs al-Zakiyyah, the imams of the Twelver Shi‘ah never revolted against any ruler.¹⁰⁴ This was either because they could not express their beliefs regarding rebellion¹⁰⁵, or because they were of the opinion that

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid., 1:147ff.

¹⁰⁴ For the Sunni perspective of the struggle of Husayn b. ‘Ali (God be pleased with them both) against the Umayyad Caliph Yazid. Azad, *Mas’ala-e-Khilafat*, 99. Azad is of the opinion that there were two stages in the struggle of Husayn (God be pleased with him). When he went out of Madinah, the caliphate of Yazid had not established and many important cities had not yet taken the oath of allegiance to him. However, when Husayn (God be pleased with him) reached near Kufah, it became apparent to him that the people thereof had bowed to the rule of Yazid. At that point, he decided to return to Madinah, but the government forces encircled him and forced him to fight till he was martyred. “At the battlefield of Karbala’, Husayn was not an aspirant of *khilafah* and he was not fighting for this purpose. Rather, his position was that of saintly and innocent person whom the government forces wanted to arrest without a legal ground. He resisted his arrest and wanted to set an example of the patience and forbearance of the truth in front of the powerful and forces of tyranny.”

¹⁰⁵ This is known as the Shi‘ah doctrine of *taqiyyah*, a dispensation allowing believers to conceal their faith when under threat, persecution or compulsion. (Ibn Hazm, *Al-Milal wa ‘l-Nihal*, 1:145).

rebellion would result in a greater evil than the evil of the continued existence of an unjust ruler.¹⁰⁶ If it was this latter consideration, their view was not different from that of the great Sunni jurist Abu Hanifah al-Nu‘man b. Thabit (d. 150/767).

The Sunni jurists accepted the rule of usurpers firstly because in their opinion a Muslim remains Muslim even if he commits *kabirah*, and secondly because they concluded that rebellion results in bloodshed and anarchy, which is a greater evil. Some of them went to the extreme of asserting that any attempt to remove an unjust ruler is *fitnah* (mischief). Thus, they preached passive obedience to tyrants.¹⁰⁷ As opposed to them, Abu Hanifah strongly advocated the right of the community to remove an unjust ruler.¹⁰⁸

¹⁰⁶ This is how the Sunni scholars interpret the conduct of these Imams.

¹⁰⁷ The famous Hanafi jurist Abu Bakr al-Jassas severely criticizes passive obedience to the tyrants and points out its bad effects on Muslim society. (*Ahkam al-Qur’an*, 2:50-51). This attitude led people to accept the rule of tyrants as their fate. See for details of the doctrines of Jabriyyah (fatalists): *al-Milal wa 'l-Nihal*, 1: 84-90.

¹⁰⁸ The position of Abu Hanifah on these issues has been examined in detail in another article: Sadia Tabassum, “Recognition of the Right to Rebellion in Islamic Law with Special Reference to the Hanafi Jurisprudence”, *Hamdard Islamicus*, 34:4 (2011), 55-91.

In view of this variety of approaches of the Muslim jurists, it is surprising to see modern scholars generally denying the existence of “the right to rebellion” in the Islamic legal discourses.¹⁰⁹

CONCLUSIONS

Rebellion has always remained an issue of concern for Muslim jurists because the Qur’an and the Prophetic *Sunnah*, the primary sources of Islamic law, prohibit mischief and disorder and make it obligatory on Muslims to strive for bringing peace and order to society and for establishing a just legal and political system. Thus, rebellion not only involves issues of law and politics but also those of creed and faith.

The Qur’anic verses dealing with rebellion can be divided into four categories: (a) those enjoining the duty of commanding good and forbidding wrong; (b) those prohibiting mischief and disorder in society; (c) those prescribing punishment for bandits; and (d) those dealing specifically with rebellion and civil war. The first two sets of verses are variously interpreted by government forces and rebels to allege that the other party is committing mischief which it is under a

¹⁰⁹We have explained this in another place. See for details: Sadia Tabassum, “Modern Discourse on the Islamic Law of Rebellion”, *Islamabad Law Review* (Forthcoming).

legal obligation to curb. The third and the fourth sets of verses led the jurist to distinguish between bandits and rebels and develop different sets of rules for them. These verses have been elaborated with the help of the Prophetic traditions which, on the one hand, explain the grades and stages of the duty of enjoining good and forbidding wrong and, on the other, prescribes various modes of behavior for dealing with various forms of mischief, disorder and tyranny.

Muslim history records events of rebellion and civil war from very early on. The conduct of the Companions in these conflicts became one of the major sources for the jurists who were working on developing detailed law of rebellion and civil wars. These issues influenced not only law and politics but also creed and faith and that is why many of these issues are discussed in greater detail in the books of creed than in the books of law.